

SUPREME COURT OF OREGON

State v. Taylor, 364 Or. 364

434 P.3d 331 (2019) · Decided February 7, 2019

SUMMARY

The Oregon Supreme Court reviewed the convictions and death sentence of a defendant convicted of aggravated murder, kidnapping, bank robbery, and related offenses. The court addressed joinder of offenses, substantial prejudice from a joint trial, death qualification of the jury, and the need for jury concurrence on robbery theories, affirming the judgment.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Flynn, J.
JURISDICTION	Oregon
DECIDED	February 7, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Automatic and direct review of convictions and a sentence of death imposed after a jury convicted defendant of aggravated murder, kidnapping, bank robbery, and related offenses.
STANDARD OF REVIEW	Questions concerning statutory joinder and the denial of severance for substantial prejudice were reviewed for errors of law. The constitutional effect of an asserted trial error was assessed under whether there was little likelihood that the error affected the verdict. The impartial-jury issue was reviewed for legal error, and discretionary new-trial rulings are ordinarily reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential Oregon Supreme Court decision
PARTIES	Taylor v. State of Oregon

TOPICS

[criminal procedure](#)[jury selection](#)[jury instructions](#)[sentencing](#)[statutory interpretation](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the indictment properly joined offenses arising from the two bank robberies, the Gutierrez kidnapping and murder, and firearm possession under ORS 132.560(1)(b).
2. Whether the indictment had to expressly use the statutory terms describing the basis for joinder or could allege the basis through facts and cross-references.
3. Whether the trial court erred by denying severance based on substantial prejudice from the joint trial.
4. Whether the Constitution prohibited death-qualifying the jury.
5. Whether defendant was entitled to a concurrence instruction requiring jurors to agree on the theory of robbery liability.
6. Whether Oregon's death-penalty statute unconstitutionally imposed punishment based on propensity or future dangerousness.
7. Whether the Governor's moratorium on executions prevented the jury from constitutionally considering or imposing a death sentence.
8. Whether an alternate juror's undisclosed bias required a new trial or a presumption that the deliberating jurors were tainted.

HOLDINGS

1. An indictment may sufficiently allege the basis for joining offenses under ORS 132.560(1)(b) by alleging facts and cross-referencing counts that establish the statutory basis; it need not recite the statute's exact language.
2. The indictment properly joined the offenses because the two bank robberies were of the same or similar character, the Gutierrez offenses were part of a common scheme or plan to commit the Mapleton robbery, and the firearm-possession counts were connected to the robberies.
3. The trial court did not err in denying severance because defendant offered only a general concern about the prejudicial effect of other-acts evidence and did not demonstrate substantial prejudice tied to the particular facts of the case.
4. The Constitution does not prohibit death-qualifying juries in capital cases, and the court declined to reconsider its precedent approving the practice.
5. The court did not decide whether defendant was entitled to a concurrence instruction on the robbery theories because, on this record, the instructional error, if any, presented little likelihood of affecting the verdict and therefore was not a basis for reversal.
6. Oregon's use of a jury question concerning whether the defendant would probably commit future violent criminal acts does not punish status or mere propensity in violation of the Eighth Amendment.

7. The Governor's moratorium did not make the jury's death-penalty determination unconstitutional because the trial court instructed the jury to assume that a death sentence imposed while the moratorium was in effect would ultimately be carried out.
8. An undisclosed bias by an alternate juror does not require a new trial or support a presumption that the deliberating jury was tainted when the alternate did not participate in deliberations and there is no evidence that the alternate communicated the bias or extrajudicial information to deliberating jurors.

KEY QUOTATIONS

“Both purposes are served when the indictment alleges facts that allow the defendant to understand the state’s basis for joining the offenses and allow the court to determine whether that joinder is proper.” (364 Or. at 375)

“However, neither the federal cases on which defendant relies nor the decisions from this court apply a presumption of prejudice when there is not even evidence that the jurors were exposed to an improper consideration.” (364 Or. at 393)

FACTUAL BACKGROUND

Defendant participated in two Siuslaw Bank robberies in Creswell and Mapleton, Oregon. Before the Mapleton robbery, defendant and his associates kidnapped and killed Celestino Gutierrez to obtain his vehicle for use in the robbery. The state presented testimony from associates who had received immunity or plea benefits, physical and forensic evidence, bait money, weapons, and DNA evidence linking defendant to the crimes. An alternate juror later was found to have possessed undisclosed information about the case and to have expressed the view that defendant should die, but she did not participate in deliberations and the record contained no evidence that she communicated her bias or extrajudicial information to deliberating jurors.

PROCEDURAL HISTORY

The state charged defendant in a single indictment with 31 counts arising from two bank robberies, the kidnapping and murder of Celestino Gutierrez, and firearm possession. The trial court denied defendant's demurrer and motions to sever, and a jury convicted him of all charged offenses except that it returned a lesser-included murder verdict on one aggravated-murder count. After a penalty-phase proceeding, the jury unanimously answered the statutory death-penalty questions affirmatively, and the trial court entered judgment imposing death. The Oregon Supreme Court affirmed after reviewing all 131 assignments of error.

DISPOSITION

affirmed

CASES CITED

- State v. Warren, 364 Or. 105, 430 P.3d 1036 (2018)
- State v. Huennekens, 245 Or. 150, 154, 420 P.2d 384 (1966)

- State v. Poston, 277 Or. App. 137, 145, 370 P.3d 904 (2016), adhered to on reconsideration, 285 Or. App. 750, 399 P.3d 488 (2017)
- State v. Thompson, 328 Or. 248, 257, 971 P.2d 879 (1999)
- State v. Fitzgerald, 267 Or. 266, 273, 516 P.2d 1280 (1973)
- State v. Miller, 327 Or. 622, 629, 969 P.2d 1006 (1998)
- State v. Barone, 329 Or. 210, 217, 986 P.2d 5 (1999)
- Lockhart v. McCree, 476 U.S. 162, 173, 106 S. Ct. 1758, 90 L. Ed. 2d 137 (1986)
- State v. Leland, 190 Or. 598, 624-25, 227 P.2d 785 (1951)
- Leland v. Oregon, 343 U.S. 790, 72 S. Ct. 1002, 96 L. Ed. 1302 (1952)
- State v. Boots, 308 Or. 371, 379, 381, 780 P.2d 725 (1989)
- State v. Pipkin, 354 Or. 513, 522, 316 P.3d 255 (2013)
- State v. Davis, 336 Or. 19, 27, 32, 77 P.3d 1111 (2003)
- State v. Ashkins, 357 Or. 642, 659-64, 357 P.3d 490 (2015)
- Robinson v. California, 370 U.S. 660, 667, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962)
- Powell v. Texas, 392 U.S. 514, 533, 88 S. Ct. 2145, 20 L. Ed. 2d 1254 (1968)
- Simmons v. South Carolina, 512 U.S. 154, 162, 114 S. Ct. 2187, 129 L. Ed. 2d 133 (1994)
- Caldwell v. Mississippi, 472 U.S. 320, 325, 328-29, 333, 105 S. Ct. 2633, 86 L. Ed. 2d 231 (1985)
- State v. Amini, 331 Or. 384, 391, 15 P.3d 541 (2000)
- Morgan v. Illinois, 504 U.S. 719, 729, 112 S. Ct. 2222, 119 L. Ed. 2d 492 (1992)
- State v. McAnulty, 356 Or. 432, 462, 338 P.3d 653 (2014)
- State v. Pratt, 316 Or. 561, 573-75, 853 P.2d 827 (1993)
- Remmer v. United States, 347 U.S. 227, 229, 74 S. Ct. 450, 98 L. Ed. 654 (1954)
- Dickson v. Sullivan, 849 F.2d 403, 405 (9th Cir. 1988)
- Marino v. Vasquez, 812 F.2d 499, 504 (9th Cir. 1987)
- State v. Sundberg, 349 Or. 608, 623-25, 247 P.3d 1213 (2011)
- Lambert v. Sisters of St. Joseph, 277 Or. 223, 231, 560 P.2d 262 (1977)
- State v. Rogers, 313 Or. 356, 372, 836 P.2d 1308 (1992)
- State v. Kell, 303 Or. 89, 99-100, 734 P.2d 334 (1987)
- State v. Langley, 363 Or. 482, 507, 424 P.3d 688 (2018)
- Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 877, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009)
- State v. Washington, 355 Or. 612, 662, 330 P.3d 596 (2014)
- Baze v. Rees, 553 U.S. 35, 47, 128 S. Ct. 1520, 170 L. Ed. 2d 420 (2008)
- Bean v. Calderon, 163 F.3d 1073, 1083 (9th Cir. 1998)
- Park v. California, 202 F.3d 1146, 1150 (9th Cir. 2000)
- State v. Nefstad, 309 Or. 523, 538, 789 P.2d 1326 (1990)