

SUPREME COURT OF OREGON

State of Oregon v. Jason Van Brumwell, 350 Or. 93

249 P.3d 965 (2011) · No. SC S054854 · Decided March 25, 2011

SUMMARY

The Supreme Court of Oregon, sitting en banc, affirmed Jason Van Brumwell’s conviction and sentence of death for aggravated murder. The court held that evidence concerning satanism and death metal music was relevant and not unfairly prejudicial during the penalty phase because it bore on the defendant’s motives, future dangerousness, and culpability. The court also rejected his state constitutional challenge to admission of that evidence.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Kistler, J.; Guimond, J.
JURISDICTION	Oregon
DECIDED	March 25, 2011
DOCKET	SC S054854
DISPOSITION	affirmed
PROCEDURAL POSTURE	Automatic and direct review of a judgment of conviction for aggravated murder and a sentence of death.
STANDARD OF REVIEW	Relevance and admissibility under OEC 401 are reviewed under the applicable evidence standards; the trial court's OEC 403 ruling is reviewed for abuse of discretion. Facial constitutional challenges are subject to the heavy-burden standard described in MacPherson. Unpreserved or procedurally improper constitutional challenges are not considered through a demurrer.
PRECEDENTIAL VALUE	Published, precedential en banc opinion of the Supreme Court of Oregon
PARTIES	Jason Van Brumwell v. State of Oregon

TOPICS

- sentencing
- evidence
- criminal procedure
- first amendment
- appellate procedure

PRACTICE AREAS

criminal law

capital punishment

evidence

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether evidence of Brumwell's interest in satanism and death metal music was relevant to the penalty-phase questions concerning future dangerousness, aggravating evidence, and whether death was the appropriate sentence.
2. Whether the probative value of the satanism and death metal evidence was substantially outweighed by the danger of unfair prejudice under OEC 403.
3. Whether admitting the evidence violated Brumwell's rights to freedom of religion, association, or expression under the Oregon Constitution and the First Amendment.
4. Whether ORS 163.150(1)(c)(B) was facially unconstitutional because it did not require jurors to agree unanimously on the specific aggravating evidence considered in answering whether the defendant should receive a death sentence.
5. Whether the alleged unconstitutional application of ORS 163.150(1)(c)(B) could be raised by demurrer.

HOLDINGS

1. Evidence of Brumwell's interest in satanism and death metal music was relevant to the penalty-phase issues because the evidence could connect those interests to the Dari Mart crimes, bear on future dangerousness, bear on culpability, and constitute aggravating evidence relevant to the death-sentence determination.
2. The trial court did not abuse its discretion in admitting the satanism and death metal evidence because its probative value was not substantially outweighed by unfair prejudice.
3. Admission of evidence of satanism to prove motive did not violate the Oregon Constitution because the trial court applied a religion-neutral rule that evidence of motive is generally admissible.
4. The First Amendment did not bar admission of the satanism and death metal evidence because it was introduced to prove the motive for specific violent crimes, not merely Brumwell's abstract beliefs.
5. ORS 163.150(1)(c)(B) is not facially unconstitutional merely because it does not expressly require juror unanimity concerning the specific aggravating evidence considered in answering the fourth penalty-phase question.
6. An alleged unconstitutional application of ORS 163.150(1)(c)(B) could not be raised by demurrer; Brumwell failed to preserve the issue because he did not request a jury instruction requiring unanimity concerning aggravating evidence.

KEY QUOTATIONS

"In sum, the trial court correctly ruled that evidence regarding defendant's interest in satanism and death metal music was relevant to the issues in the penalty phase." (350 Or. at 973)

"It is sufficient to hold only that the trial court correctly overruled defendant's demurrer." (350 Or. at 976)

“The judgment of conviction and sentence of death are affirmed.” (350 Or. at 976)

FACTUAL BACKGROUND

Brumwell was serving a sentence of life imprisonment without parole for an earlier aggravated murder and attempted aggravated murder when he and another inmate killed a third inmate in prison. At the penalty phase, the State introduced evidence concerning Brumwell's earlier Dari Mart crimes, including his association with satanism and death metal music, as bearing on the motives and circumstances of those crimes. The jury also heard evidence of Brumwell's criminal history, prison disciplinary record, background, character witnesses, and allocution before sentencing him to death.

PROCEDURAL HISTORY

A grand jury indicted Brumwell for aggravated murder after he and another inmate killed a fellow inmate in an Oregon state prison. A jury found him guilty after a joint guilt-phase trial, and the trial court conducted a separate penalty-phase hearing and imposed death. On automatic and direct review, Brumwell challenged 33 trial-court rulings, principally the admission of evidence concerning satanism and death metal music and the constitutionality of Oregon's death-penalty procedure.

DISPOSITION

affirmed

CASES CITED

- State v. Haugen, 349 Or. 174, 243 P.3d 31 (2010)
- State v. Hayward, 327 Or. 397, 406-09, 963 P.2d 667 (1998)
- State v. Cox, 337 Or. 477, 485, 98 P.3d 1103 (2004)
- State v. Fanus, 336 Or. 63, 68, 89, 79 P.3d 847 (2003), cert. denied, 541 U.S. 1075 (2004)
- State v. Moore, 324 Or. 396, 407, 417-19, 927 P.2d 1073 (1996)
- State v. Moen, 309 Or. 45, 73, 786 P.2d 111 (1990)
- Cooper v. Eugene Sch. Dist. No. 4J, 301 Or. 358, 368-72, 723 P.2d 298 (1986)
- State v. Plowman, 314 Or. 157, 165-66, 838 P.2d 558 (1992)
- Dawson v. Delaware, 503 U.S. 159, 112 S. Ct. 1093, 117 L. Ed. 2d 309 (1992)
- Wisconsin v. Mitchell, 508 U.S. 476, 485-90, 113 S. Ct. 2194, 124 L. Ed. 2d 436 (1993)
- Barclay v. Florida, 463 U.S. 939, 103 S. Ct. 3418, 77 L. Ed. 2d 1134 (1983)
- MacPherson v. DAS, 340 Or. 117, 139, 130 P.3d 308 (2006)
- State v. McNeely, 330 Or. 457, 462 n. 5, 8 P.3d 212 (2000)

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