

SUPREME COURT OF OREGON

State v. Agee

358 Or. 749 (2016) · No. SC S059530; CC 09C41224 · Decided March 10, 2016

SUMMARY

The Oregon Supreme Court granted reconsideration of its prior decision affirming Isacc Creed Agee's aggravated-murder conviction. The court modified its opinion to clarify that Agee effectively waived his first objection to the prosecutor's questioning of a defense witness at a pretrial hearing, while adhering to its conclusion that any error from the later questioning was harmless.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Balmer, C. J.; Kistler, J.; Walters, J.; Landau, J.; Baldwin, J.; Brewer, J.
JURISDICTION	Oregon
DECIDED	March 10, 2016
DOCKET	SC S059530; CC 09C41224
DISPOSITION	other
PROCEDURAL POSTURE	Defendant petitioned the Oregon Supreme Court for reconsideration of its prior decision affirming his aggravated-murder conviction.
PRECEDENTIAL VALUE	Published and precedential Oregon Supreme Court opinion
PARTIES	Isacc Creed Agee v. State of Oregon

TOPICS

criminal procedure

preservation of error

appellate procedure

evidence

fifth amendment

PRACTICE AREAS

criminal procedure

appellate procedure

criminal evidence

QUESTIONS PRESENTED

1. Whether defendant's concession that certain questioning of Davenport was proper constituted an effective waiver of his first objection.

2. Whether the court should reconsider its conclusion that any error in permitting extensive cross-examination of Davenport at the pretrial hearing was harmless.

HOLDINGS

1. Defendant effectively waived his first objection by conceding that the prosecutor had reason to question Davenport about his prison-gang involvement and who ordered the murder.
2. Once the questioning moved into detailed exploration of the witnesses' and defendant's conduct and thoughts during the murder, requiring Davenport to answer effectively revealed his substantive trial testimony and exceeded the legitimate purpose of the hearing; the trial court therefore erred in overruling the second and third objections.
3. The court declined to reconsider its conclusion that any trial court error in permitting the extensive cross-examination of Davenport was harmless.

KEY QUOTATIONS

“With that concession, defendant waived the first objection.” (752)

“The prosecutor’s continued questioning of Davenport constituted, in essence, a pretrial deposition—the sort of discovery that is not permitted under the statutes governing pretrial discovery in criminal matters and that is prohibited by the requirement in ORS 136.420 that all testimony ‘shall be given orally in the presence of the court and jury.’” (752-753)

FACTUAL BACKGROUND

At a pretrial hearing concerning whether inmate witnesses would testify at defendant's aggravated-murder trial, the prosecutor extensively questioned defense witness Davenport about his prison-gang involvement and the murder. Defendant objected multiple times, but later conceded that the prosecutor had reason to question Davenport about his gang involvement and who ordered the murder; the court treated that concession as an effective waiver of the first objection. The court concluded that questioning after the second and third objections exceeded the legitimate purpose of the hearing, but that any resulting error was harmless.

PROCEDURAL HISTORY

The Oregon Supreme Court previously affirmed defendant's judgment of conviction in *State v. Agee*, 358 Or. 325, 364 P.3d 971 (2015). Defendant sought reconsideration, arguing that the court had incorrectly identified the point at which the trial court erred in permitting extensive prosecutorial questioning of defense witness Davenport and had incorrectly held any error harmless. The court allowed reconsideration, modified its former opinion to clarify the waiver issue, and adhered to the opinion as modified while denying reconsideration of the harmless-error conclusion.

DISPOSITION

other

CASES CITED

- State v. Agee, 358 Or. 325, 364 P.3d 971 (2015)

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