

COURT OF APPEALS OF OREGON

State v. Levitt

345 Or. App. 497 (2025) · No. A180776 · Decided December 10, 2025

SUMMARY

The Oregon Court of Appeals held that when a trial court allows a demurrer challenging the indictment, the court must enter a final judgment dismissing the indictment rather than permit amendment by interlineation. The court reversed and remanded the judgment of conviction so the defendant could decide whether to withdraw his conditional guilty plea.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Powers, Presiding Judge; Pagán, Judge; Armstrong, Senior Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	December 10, 2025
DOCKET	A180776
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed after entering a conditional guilty plea, challenging the trial court's allowance of the state's motion to amend the indictment after granting defendant's demurrer.
STANDARD OF REVIEW	Statutory interpretation under the framework of examining text, context, and useful legislative history; the court reviewed the legal effect of the trial court's ruling on the demurrer.
PRECEDENTIAL VALUE	published
PARTIES	Daniel Ray Levitt v. State of Oregon

TOPICS

- criminal procedure
- statutory interpretation
- appellate procedure
- plea bargaining

PRACTICE AREAS

- criminal procedure
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether, after a trial court allows a demurrer to an indictment affecting the entire indictment, the court may permit the state to amend the existing indictment by interlineation rather than enter a final judgment dismissing it.
2. Whether the distinction between defects of form and defects of substance permits amendment of an indictment after the demurrer has been allowed.
3. What relief is appropriate after reversal when the convictions resulted from a conditional guilty plea.

HOLDINGS

1. When a trial court allows a demurrer that affects the entire indictment, ORS 135.670 requires the court to enter a final judgment dismissing the indictment; the state may proceed only by resubmitting or refileing a new accusatory instrument if the court permits it.
2. The state may not cure insufficient joinder pleading by amending an existing indictment after the trial court has allowed a demurrer affecting the entire indictment.
3. When a defendant finally prevails on appeal after entering a conditional guilty plea, the judgment of conviction must be reversed and remanded so that the defendant may decide whether to withdraw the plea.

KEY QUOTATIONS

“In short, the plain text of ORS 135.670 requires the trial court to dismiss an indictment upon allowing a demurrer applicable to the entire indictment.” (504-05)

“We hold only that, given our statutory analysis of ORS 135.670, when a trial court allows a demurrer that affects the entire indictment, as it did in this case, it must enter a final judgment dismissing the indictment.” (504-05)

FACTUAL BACKGROUND

The State charged defendant with eleven offenses, including first-degree aggravated theft, second-degree robbery, unauthorized use of a vehicle, and fleeing or attempting to elude a police officer. The indictment alleged that the offenses were of the same or similar character and based on the same act or transaction, but defendant contended that the allegation did not sufficiently state the statutory basis for joinder. The trial court allowed the demurrer and then entered an order granting the demurrer with leave to amend the indictment by interlineation.

PROCEDURAL HISTORY

The State charged defendant by an eleven-count indictment and alleged that the offenses were joinable because they were of the same or similar character and arose from the same act or transaction. Defendant demurred, arguing that the indictment insufficiently pleaded the basis for joinder. The circuit court allowed the demurrer but granted the state leave to amend the indictment by interlineation; defendant then entered a conditional guilty plea and appealed. The Court of Appeals reversed and remanded.

DISPOSITION

REMAND INSTRUCTIONS

Reverse and remand the judgment of conviction so that defendant may decide whether to withdraw his conditional guilty plea. The trial court must enter a final judgment dismissing the indictment; any further prosecution must proceed through resubmission or refiling of a new accusatory instrument as authorized by law.

CASES CITED

- State v. Poston, 277 Or. App. 137, 144-45, 370 P.3d 904 (2016), adh'd to on reconsideration, 285 Or. App. 750, 399 P.3d 488, rev. denied, 361 Or. 886 (2017)
- State v. Gaines, 346 Or. 160, 171-72, 206 P.3d 1042 (2009)
- State v. Keith, 299 Or. App. 355, 360, 450 P.3d 1034 (2019)
- State v. Picard, 37 Or. App. 483, 486, 587 P.2d 514 (1978)
- State v. Miller, 254 Or. 244, 250, 458 P.2d 1017 (1969)
- State v. Haji, 366 Or. 384, 387-88, 419-20, 462 P.3d 1240 (2020)
- State v. Stamper, 197 Or. App. 413, 418, 106 P.3d 172, rev. denied, 339 Or. 230 (2005)
- State v. Warren, 364 Or. 105, 114, 132-33, 430 P.3d 1036 (2018)
- State v. Ferrell, 315 Or. 213, 224, 843 P.2d 939 (1992)
- State v. Page, 290 Or. App. 562, 567, 415 P.3d 1139 (2018)