

OREGON COURT OF APPEALS

Allen v. Miller

350 Or. App. 372 (2026) · No. A185685 · Decided June 10, 2026

SUMMARY

The Oregon Court of Appeals affirmed the denial of post-conviction relief to Marcellus Ramon Allen after his murder conviction at a second trial. The court held that trial counsel performed deficiently by making an opening-statement claim about phone records without verifying the records, but that Allen failed to establish prejudice in light of the overwhelming evidence of guilt. The court also concluded that counsel was not constitutionally deficient for failing to preserve a propensity-evidence objection concerning gang affiliations and other shootings.

CASE DETAILS

COURT	Oregon Court of Appeals
WRITING FOR THE COURT	Tookey, Presiding Judge; Kamins, Judge; Jacquot, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	June 10, 2026
DOCKET	A185685
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the Malheur County Circuit Court denying petitioner post-conviction relief after his second murder trial.
STANDARD OF REVIEW	The court reviewed the denial of post-conviction relief for errors of law and was bound by supported historical factual findings of the post-conviction court.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Marcellus Ramon Allen, Petitioner-Appellant v. Jamie Miller, Superintendent, Snake River Correctional Institution, Defendant-Respondent

TOPICS

- state post-conviction relief
- ineffective assistance
- right to counsel
- evidence
- criminal procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether trial counsel provided constitutionally inadequate assistance by stating in opening argument that phone records would show petitioner was not with Lomax at the time of the shooting without verifying the records.
2. Whether petitioner was prejudiced by counsel's inaccurate opening-statement claim about the phone records.
3. Whether trial counsel provided constitutionally inadequate assistance by failing to preserve an objection that gang-affiliation evidence and evidence concerning prior shootings involving a .380-caliber handgun were inadmissible propensity evidence.

HOLDINGS

1. Trial counsel's performance was constitutionally inadequate because counsel made factual claims about what the phone records would show without verifying that the records supported those claims.
2. Petitioner was not entitled to post-conviction relief because he failed to show that counsel's deficient performance had a tendency to affect the result of the murder trial.
3. Trial counsel did not provide inadequate assistance by failing to object on propensity grounds to the gang-affiliation evidence and evidence of prior shootings involving the .380-caliber handgun.

KEY QUOTATIONS

"We think it was unreasonable for trial counsel to make those claims without having checked whether the phone records supported them." (379)

"The post-conviction court did not err in determining that petitioner failed to show prejudice, and we affirm on that basis." (385)

"In our view, that strategic decision was reasonable." (388)

FACTUAL BACKGROUND

The victim was shot nine times with three guns by three shooters. Evidence at petitioner's second murder trial connected petitioner to the shooting, including testimony placing him with the other alleged shooters, three guns recovered from the apartment where they went after the shooting, clothing and ammunition connected to petitioner, evidence of gang affiliations, and testimony that petitioner offered an inmate money to kill a witness. Trial counsel mistakenly told the jury in opening statement that phone records would show petitioner was not with codefendant Lomax at the time of the shooting, and counsel did not object to certain gang and other-shooting evidence as impermissible propensity evidence.

PROCEDURAL HISTORY

Petitioner was convicted of murder at a 2014 joint trial, but the Oregon Court of Appeals reversed and remanded because the trial court failed to suppress evidence obtained through an overbroad cell-phone search warrant.

After a second trial in 2018, petitioner was again convicted, and the Court of Appeals affirmed. The post-conviction court denied relief on claims that trial counsel rendered inadequate and ineffective assistance by making an inaccurate opening-statement claim about phone records and failing to preserve an objection to propensity evidence. The Oregon Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Derschon v. Belleque, 252 Or. App. 465, 466, 474, 476-77, 287 P.3d 1189 (2012), rev. denied, 353 Or. 208 (2013)
- Gorham v. Thompson, 332 Or. 560, 567, 34 P.3d 161 (2001)
- State v. Allen, 311 Or. App. 454, 455-56, 457-63, 489 P.3d 1075 (2021), rev. denied, 368 Or. 702 (2021)
- State v. Allen, 288 Or. App. 244, 249, 406 P.3d 89 (2017)
- Antoine v. Taylor, 368 Or. 760, 767, 499 P.3d 48 (2021)
- Johnson v. Premo, 361 Or. 688, 699, 702, 399 P.3d 431 (2017)
- Smith v. Kelly, 318 Or. App. 567, 568-69, 508 P.3d 77 (2022), rev. denied, 370 Or. 822 (2023)
- Green v. Franke, 357 Or. 301, 312, 322, 350 P.3d 188 (2015)
- Rudnitskyy v. State, 303 Or. App. 549, 556, 464 P.3d 471 (2020)
- Myers v. Neal, 975 F.3d 611, 621 (7th Cir. 2020), cert. denied, 141 S. Ct. 2507 (2021)
- Farmer v. Premo, 363 Or. 679, 690, 427 P.3d 170 (2018)
- Mitchell v. State, 300 Or. App. 504, 515-16, 454 P.3d 805 (2019)
- Moser v. Lampert, 200 Or. App. 78, 83, 112 P.3d 482 (2005), rev. denied, 339 Or. 406 (2005)
- Hale v. Belleque, 255 Or. App. 653, 660, 298 P.3d 596 (2013), adhered to on reconsideration, 258 Or. App. 587, 312 P.3d 533 (2013), rev. denied, 354 Or. 597 (2013)
- Logan v. State, 259 Or. App. 319, 327, 313 P.3d 1128 (2013), rev. denied, 355 Or. 142 (2014)
- State v. Langley, 363 Or. 482, 526, 424 P.3d 688 (2018), adhered to as modified on reconsideration, 365 Or. 418, 446 P.3d 542 (2019), cert. denied, 141 S. Ct. 138 (2020)
- Zyst v. Kelly, 338 Or. App. 597, 607, 566 P.3d 1121, rev. denied, 374 Or. 188 (2025)