

OREGON COURT OF APPEALS

State v. Bement

350 Or. App. 198 (2026) · No. A180315 · Decided June 3, 2026

SUMMARY

The Oregon Court of Appeals held that imposing a true-life sentence for first-degree murder under ORS 163.107(2)(b) based on judicial factfinding of sentencing reasons violated the Sixth Amendment under Apprendi and Blakely. The court rejected or declined to reach the defendant's remaining assignments of error concerning alleged prosecutorial misconduct and an unruled motion. The conviction was otherwise affirmed, but the case was remanded for resentencing.

CASE DETAILS

COURT	Oregon Court of Appeals
WRITING FOR THE COURT	Ortega, Presiding Judge; Hellman, Judge; O'Connor, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	June 3, 2026
DOCKET	A180315
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed judgments entered after a retrial convicting him of first-degree murder, first-degree robbery with a firearm, and felon in possession of a firearm, including a true-life sentence under ORS 163.107(2)(b).
STANDARD OF REVIEW	The court declined to reach several claims because they were undeveloped or unpreserved, and declined to consider one pro se assignment under ORAP 5.45(4)(a). The sentencing issue was reviewed for legal error under the Sixth Amendment and applicable sentencing statutes.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Brian Daniel Bement v. State of Oregon

TOPICS

- sentencing
- sixth amendment
- criminal procedure
- appellate procedure
- preservation of error

PRACTICE AREAS

criminal law

criminal procedure

sentencing

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court violated the Sixth Amendment by imposing a true-life sentence under ORS 163.107(2)(b) based on judicial factfinding of the reasons supporting that sentence.
2. Whether the trial court erred by failing to dismiss the murder count or grant a mistrial after the state introduced evidence of bloody money without informing the jury that the blood did not belong to the victim.
3. Whether the trial court erred by denying or failing to rule on defendant's motion to prevent prosecutorial misconduct at retrial.

HOLDINGS

1. A trial court violates the Sixth Amendment when it imposes an enhanced true-life sentence under ORS 163.107(2)(b) based on judicial factfinding of the reasons supporting the sentence. Enhancement facts supporting the sentence must be submitted to and found by a jury under the procedures in ORS 136.760 through 136.792.
2. Remand for resentencing, rather than an order limiting defendant to a life sentence with the possibility of parole, is the appropriate remedy because the state had alternatively requested a post-verdict jury trial on enhancement factors and the record did not establish that timely notice on remand was impossible.
3. The court rejected the assignments concerning the bloody-money evidence and the alleged prosecutorial misconduct because the arguments were undeveloped, unpreserved, or failed to comply with ORAP 5.45.

KEY QUOTATIONS

“When ORS 163.107(2)(b) is viewed in the context of those related statutes that apply generally to sentencing practices, it becomes evident that the statutes work together harmoniously in a manner that results in a constitutional sentence: A jury is empaneled—should the defendant choose to have sentence enhancement facts found by a jury—under ORS 136.770 or 136.773.” (at 208-209)

“Here, it is undisputed that the trial court did not do so and instead imposed an enhanced true-life sentence based on its own findings that the murder was premeditated and the victim particularly vulnerable. That was error.” (at 210)

FACTUAL BACKGROUND

In 2010, defendant shot and killed the victim and stole more than \$13,000 in cash. Defendant did not dispute the shooting and killing but asserted self-defense, claiming that the victim had attempted to rob him at gunpoint. At the retrial, the state introduced evidence of cash found in defendant's car, including dollar bills with blood on them, although the disclosed DNA analysis excluded the victim as the source of the blood. The trial court

imposed a true-life sentence based on findings that the murder was premeditated and that the victim was particularly vulnerable, as well as defendant's criminal history and lack of remorse.

PROCEDURAL HISTORY

Defendant was initially convicted in 2012 of aggravated felony murder, intentional murder, robbery, and felon in possession of a firearm, and received a life-without-parole sentence after the penalty phase. The Oregon Court of Appeals reversed and remanded for a retrial because the trial court prejudicially excluded the victim's email statements regarding his financial problems, and the Oregon Supreme Court affirmed. After a 2022 retrial under the post-Senate Bill 1013 murder statutes, defendant was again convicted of first-degree murder, robbery, and felon in possession of a firearm. The trial court imposed a true-life sentence based on its own findings concerning premeditation and the victim's vulnerability.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for resentencing. The state may provide notice of enhancement facts within a reasonable time before resentencing as permitted by ORS 136.790. The convictions and all other aspects of the judgment were otherwise affirmed.

CASES CITED

- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- Blakely v. Washington, 542 U.S. 296 (2004)
- State v. Bement, 284 Or. App. 276, 300, 391 P.3d 838 (2017), aff'd, 363 Or. 760, 781, 429 P.3d 715 (2018)
- State v. Wolfe, 368 Or. 38, 44, 486 P.3d 748 (2021)
- State v. Johnson, 329 Or. App. 588, 630-638, 542 P.3d 467 (2023), rev. den., 372 Or. 718 (2024)
- State v. Ardizzone, 270 Or. App. 666, 673, 349 P.3d 597 (2015), rev. den., 358 Or. 145
- State v. Perez-Martinez, 348 Or. App. 420 (2026)
- State v. Ibarra-Ruiz, 250 Or. App. 656, 663, 282 P.3d 934 (2012), rev. den., 353 Or. 127