

SUPREME COURT OF OREGON

State v. Swanson, 351 Or. 286

266 P.3d 45 (2011) · No. SC S059135; CA A140575; CC 071371M · Decided November 10, 2011

SUMMARY

The Supreme Court of Oregon held that ORS 136.465 authorizes a jury to find a defendant guilty only of a lesser-included crime, not a lesser-included violation. Because careless driving is a traffic violation rather than a crime, the trial court properly declined to instruct the jury on careless driving as a lesser-included offense of reckless driving.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Linder, J.; De Muniz, Chief Justice; Durham, Justice; Balmer, Justice; Kistler, Justice; Walters, Justice; Linder, Justice
JURISDICTION	Oregon
DECIDED	November 10, 2011
DOCKET	SC S059135; CA A140575; CC 071371M
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant sought review of a Court of Appeals decision affirming his misdemeanor reckless-driving conviction and the trial court's refusal to instruct the jury on careless driving as a lesser-included offense.
STANDARD OF REVIEW	Statutory interpretation to determine legislative intent; the court independently reviewed the meaning and scope of ORS 136.465.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; binding precedent in Oregon.
PARTIES	David Lee Swanson v. State of Oregon

TOPICS

- statutory interpretation
- legislative intent
- legislative history
- criminal procedure

PRACTICE AREAS

- criminal procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether ORS 136.465 permits a jury to find a defendant guilty of a lesser-included violation when the charged offense is a crime.
2. Whether the term "crime" in ORS 136.465 is limited by the definition in ORS 161.515 to offenses for which imprisonment is authorized.

HOLDINGS

1. ORS 136.465 authorizes a jury to find a defendant guilty only of a lesser-included criminal offense, not a lesser-included violation. Because careless driving is a violation rather than a crime, the trial court properly refused the requested instruction.

KEY QUOTATIONS

"We conclude that the jury's authority, described in ORS 136.465, to find a defendant guilty of "any crime the commission of which is necessarily included in that with which the defendant is charged," extends only to a crime as that term is defined in ORS 161.515 an offense "for which a sentence of imprisonment is authorized," i.e., felonies and misdemeanors." (351 Or. at 50)

"The offense for which defendant sought lesser-included treatment careless driving is not a "crime" within the meaning of that definition." (351 Or. at 50)

FACTUAL BACKGROUND

Defendant was charged with reckless driving, a Class A misdemeanor. During his jury trial, he requested an instruction on careless driving, which is a traffic violation punishable by a fine but not imprisonment. The trial court declined to give the instruction, and defendant challenged that ruling on appeal.

PROCEDURAL HISTORY

Swanson was charged with reckless driving and requested a jury instruction on careless driving, a traffic violation. The trial court denied the request. The Oregon Court of Appeals affirmed, reasoning that ORS 136.465 authorizes consideration of lesser-included crimes but not lesser-included violations. The Oregon Supreme Court allowed review and affirmed both the Court of Appeals and the circuit court.

DISPOSITION

affirmed

CASES CITED

- State v. Swanson, 237 Or. App. 508, 240 P.3d 63 (2010)
- State v. Gaines, 346 Or. 160, 171, 206 P.3d 1042 (2009)
- Holcomb v. Sunderland, 321 Or. 99, 105, 894 P.2d 457 (1995)
- Mastriano v. Board of Parole, 342 Or. 684, 696, 159 P.3d 1151 (2007)
- Easton v. Hurita, 290 Or. 689, 697, 625 P.2d 1290 (1981)

- *Mattila v. Mason*, 287 Or. 235, 250, 598 P.2d 675 (1979)
- *Brown v. Multnomah County District Court*, 280 Or. 95, 99-110, 570 P.2d 52 (1977)
- *Enertrol Power Monitoring Corp. v. State of Oregon*, 314 Or. 78, 84, 836 P.2d 123 (1992)
- *State ex rel. Frohnmayer v. Oregon State Bar*, 307 Or. 304, 308 n. 2, 767 P.2d 893 (1989)
- *State v. Conger*, 319 Or. 484, 493 n. 4, 878 P.2d 1089 (1994)
- *State v. Hitt*, 305 Or. 458, 462, 753 P.2d 415 (1988)
- *State v. Dyson*, 292 Or. 26, 33-34, 636 P.2d 961 (1981)
- *State v. Mendacino*, 288 Or. 231, 236 n. 4, 603 P.2d 1376 (1980)