

OREGON COURT OF APPEALS

State v. Pitcher

350 Or. App. 463 (2026) · No. A182682 · Decided June 10, 2026

SUMMARY

The Oregon Court of Appeals affirmed Chad Brandon Pitcher’s convictions for first-degree manslaughter, unlawful use of a weapon, and felon in possession of a firearm. The court held that Pitcher lacked a protected privacy interest or reasonable expectation of privacy in copies of Facebook messages stored in the victim’s account records and upheld admission of those records under the business records exception to the hearsay rule. The opinion also addresses suppression, warrant-taint arguments, and the foundation required for electronically maintained business records.

CASE DETAILS

COURT	Oregon Court of Appeals
WRITING FOR THE COURT	Joyce, J.; Ortega, Presiding Judge; Joyce, Judge; Hellman, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	June 10, 2026
DOCKET	A182682
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment convicting him after a second trial of first-degree manslaughter and unlawful use of a weapon, challenging evidentiary rulings, suppression rulings, jury instructions, and prosecutorial closing arguments.
STANDARD OF REVIEW	Suppression rulings were reviewed for legal error, with factual findings binding if supported by constitutionally sufficient evidence. Whether evidence qualified under the business-records exception was reviewed as a question of law. Evidentiary rulings were reviewed in light of the record before the trial court at the time of the ruling. An unpreserved prosecutorial-misconduct claim was reviewed under the plain-error standard requiring an obvious and incurable error that denied a fair trial. Harmlessness was assessed by whether there was little likelihood that the alleged error affected the jury's verdict.
PRECEDENTIAL VALUE	Published Oregon Court of Appeals opinion
PARTIES	Chad Brandon Pitcher v. State of Oregon

TOPICS

suppression of evidence

search and seizure

hearsay

right to counsel

self defense

PRACTICE AREAS

criminal procedure

evidence

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether defendant had a protected privacy interest under Article I, section 9, of the Oregon Constitution or a reasonable expectation of privacy under the Fourth Amendment in copies of Facebook messages he sent to R that were stored in R's Facebook account records.
2. Whether defendant could indirectly challenge the R-account warrant by alleging that a separate warrant for his own account was overbroad and tainted the evidence obtained from the R-account warrant.
3. Whether Facebook's records of R's account were admissible under the business-records exception in OEC 803(6), including whether the state's foundational witness had sufficient personal knowledge and whether the original records had to remain in existence.
4. Whether admission of defendant's custodial-interview statement violated his right to counsel under Article I, section 11, of the Oregon Constitution and, if so, whether any error was harmless.
5. Whether the trial court plainly erred by failing to define "initial aggressor" in the self-defense jury instructions.
6. Whether the prosecutor's challenged closing-argument statements were obviously improper and incurable so as to deny defendant a fair trial.

HOLDINGS

1. A sender does not retain a protected privacy interest under Article I, section 9, of the Oregon Constitution or a reasonable expectation of privacy under the Fourth Amendment in copies of messages delivered to and stored in the recipient's Facebook account records when the sender lacks access to or control over that account.
2. The court did not decide whether the DeJong burden-shifting framework applies when one warrant allegedly taints a separate warrant because, even assuming the R warrant was unconstitutional, defendant could not suppress the evidence without a protected privacy interest in the account records searched.
3. Facebook's records of R's account were admissible under OEC 803(6) because the state's records-custodian testimony and certificate of authenticity sufficiently established the business's record-making and record-keeping practices, reliability, and the accuracy of the copies, even though the foundational witness was not employed when the records were generated and Meta no longer retained the original records.
4. Even assuming that police violated defendant's Article I, section 11, right to counsel by questioning him without counsel present, any error was harmless because there was little likelihood that the statement affected the verdict.

5. The trial court did not plainly err by failing to define "initial aggressor" absent a request from defendant for a supplemental instruction.
6. The challenged prosecutorial statements did not warrant reversal because, even assuming they were improper, defendant failed to show that they were both obviously improper and incurable or that they denied him a fair trial.

KEY QUOTATIONS

"Facebook messages, like text messages, have digital copies stored in both the sender's and recipient's accounts. And like the defendant in Carle, defendant lost the ability to control the copies of his messages sent to R once they were delivered to R's Facebook account." (469)

"Evidence obtained in violation of Article I, section 9, is subject to suppression only if the unlawful search violated defendant's personal privacy rights." (472)

"Nothing in Arrowood or OEC 803(6) requires the continued existence of the original copy of the business record at issue to establish that the business's record-keeping practices are sufficiently reliable to allow for admission." (477)

"Even assuming that those statements, either individually or collectively, were improper (a proposition that we express no opinion on), they did not deprive defendant of a fair trial." (481)

FACTUAL BACKGROUND

In 2017, R stole defendant's truck. Several days later, defendant and an acquaintance went to find and confront R, each carrying a gun; both fired a shot during the confrontation, and R died from a gunshot wound. Before the shooting, defendant sent R threatening Facebook messages. After defendant's arrest, detectives conducted a custodial interview in which defendant made a brief statement after receiving Miranda warnings.

PROCEDURAL HISTORY

The state originally charged defendant with first-degree murder, unlawful use of a weapon, and felon in possession of a firearm. A 2019 jury convicted him of first-degree manslaughter, unlawful use of a weapon, and felon in possession of a firearm; the Court of Appeals reversed and remanded for a new trial on the first-degree manslaughter and unlawful-use counts because the jury had been instructed that nonunanimous verdicts were permissible. At the 2023 retrial, a unanimous jury again convicted defendant of first-degree manslaughter and unlawful use of a weapon. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Maciel-Figueroa, 361 Or. 163, 165-66, 389 P.3d 1121 (2017)
- Sterling v. Cupp, 290 Or. 611, 614, 625 P.2d 123 (1981)

- State v. Brown, 348 Or. 293, 297, 232 P.3d 962 (2010)
- State v. Lien/Wilverding, 364 Or. 750, 759-60, 441 P.3d 185 (2019)
- State v. Tanner, 304 Or. 312, 321 n. 7, 323, 745 P.2d 757 (1987)
- State v. Carle, 266 Or. App. 102, 110, 337 P.3d 904 (2014), rev. den., 356 Or. 767 (2015)
- State v. De Witt Simons, 375 Or. 70, 80-81, 87, 587 P.3d 311 (2026)
- State v. Delp, 218 Or. App. 17, 26-27, 178 P.3d 259 (2008), rev. den., 345 Or. 317 (2008)
- State v. Goode, 335 Or. App. 108, 111, 557 P.3d 1132 (2024), rev. den., 373 Or. 280 (2025)
- State v. Johnson, 340 Or. 319, 336, 131 P.3d 173 (2006)
- Carpenter v. United States, Carpenter v. United States, 585 U.S. 296, 304, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018)
- Rakas v. Illinois, 439 U.S. 128, 143, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978)
- Smith v. Maryland, 442 U.S. 735, 743-44, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (1979)
- Terrence Byrd v. United States, 584 U.S. 395, 410, 138 S. Ct. 1518, 200 L. Ed. 2d 805 (2018)
- State v. DeJong, 368 Or. 640, 655, 497 P.3d 710 (2021)
- State v. Turay, 371 Or. 128, 168, 532 P.3d 57 (2023)
- State v. Avalos-Izquierdo, 175 Or. App. 229, 233-34, 27 P.3d 528 (2001), rev. den., 334 Or. 190 (2002)
- Arrowood Indemnity Co. v. Fasching, 369 Or. 214, 223-26, 240-41, 250, 503 P.3d 1233 (2022)
- State v. Yocom, 334 Or. App. 34, 44, 555 P.3d 322 (2024), rev. den., 373 Or. 154 (2024)
- State v. Davis, 336 Or. 19, 32, 77 P.3d 1111 (2003)
- State v. Worsham, 373 Or. 739, 571 P.3d 759 (2025), modified on reconsideration, 374 Or. 781, 583 P.3d 1042 (2026)
- State v. Chitwood, 370 Or. 305, 312, 314-15, 317, 518 P.3d 903 (2022)
- State v. Perez, 373 Or. 591, 606, 568 P.3d 940 (2025)
- State v. Washington, 355 Or. 612, 660, 330 P.3d 596 (2014), cert. denied, 574 U.S. 1016 (2014)
- State v. Pitcher, 317 Or. App. 269, 270, 504 P.3d 701 (2022)