

SUPREME COURT OF THE STATE OF OREGON

State v. Leistiko

352 Or. 622 (2012) · No. S059191 · Decided November 8, 2012

SUMMARY

The Oregon Supreme Court allows the defendant's petition for reconsideration in State v. Leistiko and adheres to its prior opinion as modified. The court clarifies that the defendant had raised suppression and jury-unanimity issues in his petition for review but pursued only the uncharged-misconduct evidence issue on the merits, and declines to consider for the first time on reconsideration whether that evidence affected convictions other than the rape convictions.

CASE DETAILS

COURT	Supreme Court of the State of Oregon
WRITING FOR THE COURT	Kistler, J.
JURISDICTION	Oregon
DECIDED	November 8, 2012
DOCKET	S059191
DISPOSITION	other
PROCEDURAL POSTURE	Defendant petitioned for reconsideration of the Oregon Supreme Court's prior decision concerning the admission of uncharged-misconduct evidence. The court allowed reconsideration, modified its prior opinion to clarify the scope of issues raised on review, and adhered to the prior opinion as modified.
STANDARD OF REVIEW	The court applied the general rule that arguments raised for the first time on reconsideration will not be addressed.
PRECEDENTIAL VALUE	Published, precedential Oregon Supreme Court opinion decided en banc
PARTIES	Ronald Marcus Leistiko v. State of Oregon

TOPICS

- appellate procedure
- preservation of error
- criminal procedure
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the prior opinion should be modified to clarify that defendant had raised suppression and jury-unanimity issues in his petition for review but had not pursued those issues in his merits briefing.
2. Whether the court should consider on reconsideration defendant's argument that the erroneous admission of uncharged-rape evidence affected convictions other than the two first-degree rape convictions.

HOLDINGS

1. The court may modify its prior opinion on reconsideration to clarify that defendant raised the suppression and jury-unanimity issues in his petition for review but did not pursue them in his merits briefing.
2. The court will not address an argument raised for the first time in a petition for reconsideration.

KEY QUOTATIONS

“The petition for reconsideration is allowed. The former opinion is adhered to as modified.”

“We decline, however, to address that alternative argument, which defendant has made for the first time on reconsideration.”

FACTUAL BACKGROUND

The state charged defendant with three counts of first-degree rape involving three victims, and the jury convicted him on two of those counts. The jury also convicted him of other offenses, including strangulation, second-degree kidnapping, prostitution, fourth-degree assault, and furnishing alcohol to a minor; defendant pleaded guilty to stalking and harassment. The Supreme Court's former opinion held that the trial court erred in admitting testimony from a fourth woman alleging that defendant had forced her to engage in sexual intercourse, but declined to disturb the remaining convictions because defendant had not argued that the error affected them.

PROCEDURAL HISTORY

The case originated in the circuit court under case number C072939CR and proceeded to the Oregon Court of Appeals, which issued a decision at 240 Or. App. 338, 246 P.3d 82 (2011). The Oregon Supreme Court issued its former opinion at 352 Or. 172, 282 P.3d 857 (2012). On defendant's petition for reconsideration, the Supreme Court modified footnote four to clarify that defendant had raised suppression and jury-unanimity issues in his petition for review but had not pursued them in his merits briefing. The court declined to consider defendant's newly raised argument concerning the effect of uncharged-rape evidence on convictions other than the two rape convictions.

DISPOSITION

other

CASES CITED

- State v. Leistiko, 352 Or. 172, 282 P.3d 857 (2012)
- Fleming v. United Services Automobile Assn., 330 Or. 62, 65, 996 P.2d 501 (2000)

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