

SUPREME COURT OF OREGON

State v. Moore

361 Or. 205 (2017) · No. CC 14CR12536, SC S063946 · Decided March 9, 2017

SUMMARY

The Oregon Supreme Court considered whether a trial court’s sua sponte mistrial order, issued after the prosecution disclosed a newly discovered insurance investigator witness, satisfied the constitutional “manifest necessity” standard. The court held that it did not, because the mistrial resulted from the prosecutor’s lack of preparation, the state had already presented eight witnesses, and the defendant had objected to a mistrial. The court ordered a peremptory writ of mandamus requiring dismissal of the indictment with prejudice.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Baldwin, J.
JURISDICTION	Oregon
DECIDED	March 9, 2017
DOCKET	CC 14CR12536, SC S063946
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding in mandamus arising from a criminal trial court's sua sponte declaration of a mistrial over defendant's objection and denial of defendant's motion to dismiss the resulting indictment on former-jeopardy grounds.
STANDARD OF REVIEW	Whether manifest necessity justified a mistrial over defendant's objection was a legal question. Mandamus was available because the trial court's ruling constituted fundamental legal error and defendant's right to avoid reprosecution could not be vindicated through an ordinary appeal after conviction.
PRECEDENTIAL VALUE	Published, en banc Oregon Supreme Court decision; binding precedent in Oregon.
PARTIES	Mark Lyle Moore, aka Mark Lyle Moore, Sr., Defendant-Relator v. State of Oregon, Plaintiff-Adverse Party

TOPICS

double jeopardy

criminal procedure

remedies

constitutional law

PRACTICE AREAS

Criminal procedure

Constitutional law

Mandamus

Double jeopardy

QUESTIONS PRESENTED

1. Whether the trial court's sua sponte declaration of a mistrial over defendant's objection satisfied the manifest-necessity standard under Article I, section 12, of the Oregon Constitution.
2. Whether the trial court's denial of defendant's motion to dismiss the subsequent indictment constituted fundamental legal error subject to correction by mandamus.
3. Whether defendant's objection to the mistrial was equivocal because he argued that a continuance would not cure the prejudice from admission of the newly disclosed evidence.

HOLDINGS

1. The state failed to establish manifest necessity for the trial court to declare a mistrial over defendant's objection. The prosecutor's failure to identify a key witness before trial, together with the substantial testimony already presented and defendant's clear desire to continue with the selected jury, made reprosecution constitutionally barred under Article I, section 12.
2. Mandamus was appropriate because the trial court's mistrial order and denial of defendant's motion to dismiss constituted fundamental legal error and violated a clear legal right to be free from reprosecution.
3. Defendant's objection was unequivocal. His argument that a continuance would not cure the prejudice from admitting the new evidence did not amount to consent to a mistrial or an assertion that he could not proceed if the evidence were admitted.

KEY QUOTATIONS

“The issue before us now is whether, under Article I, section 12, of the Oregon Constitution, there was “manifest necessity” for the trial court’s mistrial order.” (207)

“Thus, we hold, as a matter of law, that the trial court’s mistrial order violated defendant’s right to be free from a second prosecution for the same offense under Article I, section 12.” (220-221)

“Under the circumstances presented, the sua sponte mistrial ordered by the trial court over defendant’s objection was outside the constitutional bounds of discretion and constituted legal error.” (221)

“We direct the issuance of a peremptory writ of mandamus requiring the trial court to dismiss the indictment with prejudice.” (222)

FACTUAL BACKGROUND

The victim died from smoke inhalation and carbon monoxide after a fire in a detached garage. Initial fire investigators found no arson indicators and identified several possible accidental causes, but the state later obtained information from insurance investigator Gunsolly that the fire was intentionally started. The prosecutor

disclosed Gunsolly during the state's case-in-chief, after eight witnesses had testified. Moore objected to admission of the new evidence and unequivocally opposed a mistrial, but the trial court declared one sua sponte and the state sought to retry him.

PROCEDURAL HISTORY

After a jury was impaneled and eight state witnesses had testified in defendant's arson-related murder and first-degree arson trial, the prosecutor disclosed a previously unidentified insurance investigator who would testify that the fire was intentionally set. The trial court admitted the new evidence, granted codefendant Golden's mistrial motion, declared a mistrial as to Moore sua sponte, and dismissed the charges without prejudice. After the state reindicted Moore, the trial court denied his motion to dismiss with prejudice based on former jeopardy. Moore sought mandamus relief from the Oregon Supreme Court.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

Issue a peremptory writ of mandamus requiring the Multnomah County Circuit Court to dismiss the indictment against defendant with prejudice.

CASES CITED

- Longo v. Premo, 355 Or. 525, 326 P.3d 1152 (2014)
- State ex rel. Turner v. Frankel, 322 Or. 363, 908 P.2d 293 (1995)
- Lindell v. Kalugin, 353 Or. 338, 297 P.3d 1266 (2013)
- State ex rel. Keisling v. Norblad, 317 Or. 615, 860 P.2d 241 (1993)
- State v. Cole, 286 Or. 411, 595 P.2d 466 (1979)
- Sterling v. Cupp, 290 Or. 611, 625 P.2d 123 (1981)
- State v. Kennedy, 295 Or. 260, 666 P.2d 1316 (1983)
- State v. Rathburn, 287 Or. 421, 600 P.2d 392 (1979)
- State v. Brown, 262 Or. 442, 497 P.2d 1191 (1972)
- Green v. United States, 355 U.S. 184, 78 S. Ct. 221, 2 L. Ed. 2d 199 (1957)
- United States v. Perez, 22 U.S. 579, 6 L. Ed. 165, 9 Wheat. 579 (1824)
- Arizona v. Washington, 434 U.S. 497, 98 S. Ct. 824, 54 L. Ed. 2d 717 (1978)
- Illinois v. Somerville, 410 U.S. 458, 93 S. Ct. 1066, 35 L. Ed. 2d 425 (1973)
- United States v. Jorn, 400 U.S. 470, 91 S. Ct. 547, 27 L. Ed. 2d 543 (1971)
- Downum v. United States, 372 U.S. 734, 83 S. Ct. 1033, 10 L. Ed. 2d 100 (1963)
- Wade v. Hunter, 336 U.S. 684, 69 S. Ct. 834, 93 L. Ed. 974 (1949)