

SUPREME COURT OF OREGON

State v. Fanus, 336 Or. 63

79 P.3d 847 (2003) · No. SC S46472 · Decided October 23, 2003

SUMMARY

The Oregon Supreme Court reviewed Jesse Stuart Fanus's convictions for two counts of aggravated murder and 11 additional felony convictions, along with his sentence of death. The court addressed constitutional challenges to Oregon's death-penalty statutes and the denial of motions for a change of venue based on alleged prejudicial pretrial publicity. The court affirmed the convictions and death sentence.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Carson, C.J.; Carson, Chief Justice; Gillette, Justice; Durham, Justice; Riggs, Justice; De Muniz, Justice; Balmer, Justice
JURISDICTION	Oregon
DECIDED	October 23, 2003
DOCKET	SC S46472
DISPOSITION	affirmed
PROCEDURAL POSTURE	Automatic and direct review of a judgment of conviction and sentence of death after a jury convicted defendant of two counts of aggravated murder and 11 additional felonies.
STANDARD OF REVIEW	The court reviewed legal questions such as relevance and constitutional statutory challenges for errors of law; reviewed juror-bias and change-of-venue rulings for abuse of discretion or manifest abuse of discretion; reviewed OEC 403 rulings for abuse of discretion; and applied plain-error review to the unpreserved prosecutorial-misstatement claim.
PRECEDENTIAL VALUE	Published Oregon Supreme Court decision; precedential.
PARTIES	Jesse Stuart Fanus v. State of Oregon

TOPICS

- sentencing
- criminal procedure
- jury selection
- evidence
- first amendment

PRACTICE AREAS

criminal law

capital punishment

criminal procedure

evidence

constitutional law

QUESTIONS PRESENTED

1. Whether Fanus could raise facial constitutional challenges to Oregon's aggravated-murder death-penalty provisions by pretrial demurrer.
2. Whether ORS 163.150(1)(a) and ORS 163.150(1)(c)(B) (1997) violated the Eighth Amendment by inadequately limiting aggravating evidence considered in deciding whether to impose death.
3. Whether Oregon's death-penalty statute permitted meaningful judicial review and required comparative sentencing review.
4. Whether the trial court abused its discretion by denying motions for a change of venue based on prejudicial pretrial publicity.
5. Whether the trial court abused its discretion by refusing to excuse a prospective juror for actual bias.
6. Whether the prosecutor's closing argument warranted plain-error relief, a curative instruction, or a sua sponte mistrial.
7. Whether evidence of Fanus's racist and Nazi beliefs was relevant and admissible during the penalty phase under Oregon evidence law.
8. Whether admission of that evidence violated the First Amendment.
9. Whether the indictment constitutionally alleged an offense making Fanus eligible for the death penalty.

HOLDINGS

1. A defendant may challenge by pretrial demurrer the constitutionality of the only penalty provision applicable to an aggravated-murder charge because the challenge relates to whether the facts stated constitute an offense under ORS 135.630(4).
2. ORS 163.150(1)(a) and ORS 163.150(1)(c)(B) (1997) did not violate the Eighth Amendment by failing to provide more specific limits or standards for aggravating evidence relevant to whether a death sentence should be imposed.
3. The court rejected Fanus's challenges that ORS 163.150 lacked meaningful judicial review or required comparative sentencing review.
4. The trial court did not abuse its discretion in denying Fanus's motions for a change of venue because the record did not establish such community prejudice that he could not receive a fair and impartial trial.
5. The trial court did not manifestly abuse its discretion by refusing to excuse Ocumpaugh for cause because, after questioning, she demonstrated that she could apply the presumption of innocence, require proof beyond a reasonable doubt, and decide the case impartially based solely on trial evidence.
6. Even assuming the prosecutor misstated the law by suggesting an all-or-nothing choice, the trial court's failure to issue a curative instruction or declare a sua sponte mistrial was not plain error because the isolated statement was corrected by subsequent argument and accurate jury instructions and was not so prejudicial as to deny a fair trial.

7. Evidence of Fanus's racist and Nazi beliefs was relevant to future dangerousness and was not unfairly prejudicial under OEC 403 because the state also presented evidence that he had engaged in dangerous or criminal conduct connected to those beliefs.
8. Admission of evidence concerning Fanus's racist and Nazi beliefs did not violate the First Amendment because the evidence was relevant to an issue being decided in the penalty proceeding.

KEY QUOTATIONS

“As the foregoing cases illustrate, the Eighth Amendment does not prohibit the state from introducing a wide range of evidence for the jury's consideration in determining whether to impose a death sentence.” (at 854)

“When a defendant establishes that there exists such a level of prejudice against the defendant as to preclude a fair and impartial trial, then the defendant is entitled to a change of venue.” (at 858)

“the test is whether the prospective juror's ideas or opinions would impair substantially his or her performance of the duties of a juror to decide the case fairly and impartially on the evidence presented in court.” (at 859)

FACTUAL BACKGROUND

On June 28, 1998, Fanus broke into the home of Marion and Edna Carl in Douglas County while armed with a shotgun stolen from a towing business. He shot and killed Marion Carl, wounded Edna Carl, and forced Edna to surrender money and vehicle keys. Fanus was arrested in California on July 5, 1998, extradited to Oregon, and later convicted of the charged aggravated murder, murder, attempted murder, robbery, assault, burglary, and theft offenses.

PROCEDURAL HISTORY

A Douglas County jury convicted Fanus of all 13 charged counts following an April 1999 trial. After a separate penalty-phase proceeding, the jury answered yes to the statutory questions and the trial court imposed a death sentence. The Oregon Supreme Court reviewed the judgment automatically and directly and affirmed the convictions and death sentence.

DISPOSITION

affirmed

CASES CITED

- State v. Pinnell, 319 Or. 438, 877 P.2d 635 (1994)
- City of Portland v. Dollarhide, 300 Or. 490, 714 P.2d 220 (1986)
- State v. Moore, 324 Or. 396, 927 P.2d 1073 (1996)
- State v. Cunningham, 320 Or. 47, 880 P.2d 431 (1994)
- Zant v. Stephens, 462 U.S. 862 (1983)
- Tuilaepa v. California, 512 U.S. 967 (1994)

- California v. Ramos, 463 U.S. 992 (1983)
- Gregg v. Georgia, 428 U.S. 153 (1976)
- State v. Langley, 314 Or. 247, 839 P.2d 692 (1992)
- State v. Little, 249 Or. 297, 431 P.2d 810 (1968)
- State v. Jensen, 209 Or. 239, 289 P.2d 687, 296 P.2d 618 (1957)
- Murphy v. Florida, 421 U.S. 794 (1975)
- Irvin v. Dowd, 366 U.S. 717 (1961)
- Rideau v. Louisiana, 373 U.S. 723 (1963)
- State v. Barone, 328 Or. 68, 969 P.2d 1013 (1998)
- State v. Lotches, 331 Or. 455, 17 P.3d 1045 (2000)
- State v. Compton, 333 Or. 274, 39 P.3d 833 (2002)
- State v. Farrar, 309 Or. 132, 786 P.2d 161 (1990)
- State v. Simonsen, 329 Or. 288, 986 P.2d 566 (1999)
- State v. Smith, 310 Or. 1, 791 P.2d 836 (1990)
- State v. Rose, 311 Or. 274, 810 P.2d 839 (1991)
- Dawson v. Delaware, 503 U.S. 159 (1992)
- State v. Oatney, 335 Or. 276, 66 P.3d 475 (2003)
- State v. Reyes-Camarena, 330 Or. 431, 7 P.3d 522 (2000)
- State v. Montez, 324 Or. 343, 927 P.2d 64 (1996)
- State v. Meyrick, 313 Or. 125, 831 P.2d 666 (1992)
- State v. Wyatt, 331 Or. 335, 15 P.3d 22 (2000)
- Buchanan v. Angelone, 522 U.S. 269 (1998)
- Furman v. Georgia, 408 U.S. 238 (1972)
- Duncan v. Louisiana, 391 U.S. 145 (1968)
- New York Times v. Sullivan, 376 U.S. 254 (1964)

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