

OREGON SUPREME COURT

State v. Edmonds, 364 Or. 410

435 P.3d 752 (2019) · Decided February 28, 2019

SUMMARY

The Oregon Supreme Court held that the limitations in the official-records hearsay exception, OEC 803(8)(b), cannot be circumvented by admitting law-enforcement records under the business-records exception, OEC 803(6). The court also held that the defendant properly raised the OEC 803(8)(b) argument in response to the state's alternative ground for affirmance. Because the trial court improperly admitted a transcript of a police interview, the court reversed the defendant's rape conviction.

CASE DETAILS

COURT	Oregon Supreme Court
WRITING FOR THE COURT	Balmer, J.
JURISDICTION	Oregon
DECIDED	February 28, 2019
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant petitioned the Oregon Supreme Court for review of a Court of Appeals decision affirming his conviction for first-degree rape. The Supreme Court allowed review concerning preservation of defendant's hearsay argument and the interaction between Oregon Evidence Code provisions governing official records and business records.
STANDARD OF REVIEW	The court reviewed legal issues concerning preservation and statutory interpretation for legal error. It assessed evidentiary error under the harmless-error standard, asking whether the error had little likelihood of affecting the verdict.
PRECEDENTIAL VALUE	Published, precedential Oregon Supreme Court opinion
PARTIES	State of Oregon v. Edmonds

TOPICS

[hearsay](#)[evidence](#)[statutory interpretation](#)[appellate procedure](#)[harmless error](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether defendant was required to preserve an argument under OEC 803(8)(b) when that argument responded to the state's new appellate contention that the transcript was admissible under OEC 803(6).
2. Whether a law-enforcement transcript that falls within the first clause of OEC 803(8)(b) may nevertheless be admitted in a criminal case under the business-records exception in OEC 803(6).
3. Whether the erroneous admission of the transcript was harmless.

HOLDINGS

1. A party is not required to preserve a response to an alternative ground for affirmance that the opposing party raises for the first time on appeal.
2. In a criminal case, law-enforcement records that fall within the exclusion in OEC 803(8)(b) may not be admitted through the more general business-records exception in OEC 803(6). OEC 803(6) does not provide a back door around OEC 803(8)(b).
3. A record satisfies the 'pursuant to duty imposed by law' requirement when a public employee makes observations in the course of carrying out duties assigned by the public office or its rules, so long as those duties are part of carrying out the office's overall legal duties; a specific statutory duty to make the observation is not required.
4. The erroneous admission of the transcript was not harmless because it had more than a little likelihood of affecting the verdict.

KEY QUOTATIONS

"We hold that the limitations that the legislature placed on the use of law enforcement records in OEC 803(8)(b) cannot be avoided by introducing those records under the business records exception." (754)

"Because of the overlap between the two exceptions, virtually all law enforcement records barred by OEC 803(8)(b) would be admissible under OEC 803(6), and the prohibition in OEC 803(8)(b) would be nullified." (759-60)

"Thus, the second clause of OEC 803 (8)(b) prohibits its admission in a criminal case under the official records exception or under the business records exception." (763)

FACTUAL BACKGROUND

Defendant was charged with raping a five-year-old girl in 1994 or 1995. At trial, the victim testified that defendant raped her and that she had reported the abuse in 2002, while defendant argued that the victim had developed a false memory only recently. To rebut that defense, the state introduced a transcript of a 2002 police interview in which the victim referred to being touched sexually at a babysitter's when she was very young. The transcript had been prepared by a sheriff's office records division, reviewed and signed by one interviewing deputy, and placed in a case file after the original audio recording was destroyed.

PROCEDURAL HISTORY

Defendant was convicted in circuit court of first-degree rape after the court admitted a transcript of a police interview under the past-recollection-recorded exception. The Court of Appeals agreed that admission under OEC 803(5) was erroneous but affirmed on the state's alternative theory that the transcript was admissible as a business record under OEC 803(6). The Oregon Supreme Court held that defendant's response under OEC 803(8)(b) was properly before the appellate courts, concluded that the transcript was inadmissible, and reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The decision of the Court of Appeals and the judgment of the circuit court are reversed. The case is remanded to the circuit court for further proceedings.

CASES CITED

- State v. Pinnell, 311 Or. 98, 117 n. 29, 806 P.2d 110 (1991)
- Outdoor Media Dimensions Inc. v. State of Oregon, 331 Or. 634, 659-60, 20 P.3d 180 (2001)
- State v. Edmonds, 285 Or. App. 855, 398 P.3d 998 (2017)
- Peebles v. Lampert, 345 Or. 209, 191 P.3d 637 (2008)
- State v. Scally, 92 Or. App. 149, 758 P.2d 365 (1988)
- State v. Vallin, 364 Or. 295, 300, 434 P.3d 413 (2019)
- State v. Gaines, 346 Or. 160, 171, 206 P.3d 1042 (2009)
- Unger v. Rosenblum, 362 Or. 210, 221, 407 P.3d 817 (2017)
- State v. Guzek, 322 Or. 245, 268, 906 P.2d 272 (1995)
- University of Oregon Co-Operative v. Department of Revenue, 273 Or. 539, 544, 542 P.2d 900 (1975)
- United States v. Oates, 560 F.2d 45 (2d Cir. 1977)
- United States v. Cain, 615 F.2d 380, 381-82 (5th Cir. 1980)
- United States v. Sims, 617 F.2d 1371, 1377 (9th Cir. 1980)
- United States v. Orozco, 590 F.2d 789, 793-94 (9th Cir. 1979)
- United States v. Smith, 521 F.2d 957, 968-69 n. 24 (D.C. Cir. 1975)
- United States v. King, 613 F.2d 670, 673 (7th Cir. 1980)
- State v. Henley, 363 Or. 284, 307, 422 P.3d 217 (2018)
- State v. Bement, 363 Or. 760, 779, 429 P.3d 715 (2018)
- State v. Marrington, 335 Or. 555, 566, 73 P.3d 911 (2003)
- State v. Davis, 336 Or. 19, 34, 77 P.3d 1111 (2003)
- Hoag v. Washington-Oregon Corp., 75 Or. 588, 602, 147 P. 756 (1915)

- Simmons v. Holm, 229 Or. 373, 397, 367 P.2d 368 (1961)
- Vroman v. Upp, 158 Or. 597, 603, 77 P.2d 432 (1938)
- Shahtout v. Emco Garbage Co., 298 Or. 598, 604, 695 P.2d 897 (1985)
- Miller v. Grants Pass Irrigation, 297 Or. 312, 323, 686 P.2d 324 (1984) (Lent, J., concurring)
- Evanston v. Gunn, 99 U.S. 660, 666-67, 25 L. Ed. 306 (1878)
- State v. Roisland, 1 Or. App. 68, 71-72, 459 P.2d 555 (1969)