

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

NANETTE MARIE WHITE,
Defendant-Appellant.

Washington County Circuit Court
17CR06522; A165763

Rita Batz Cobb, Senior Judge.

Submitted March 1, 2019.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Stacy M. Du Clos, Deputy Public Defender, Office of Public Defense Services filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General and Julia Glick, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Egan, Chief Judge, and Powers, Judge.

PER CURIAM

Reversed and remanded.

PER CURIAM

Defendant appeals from a judgment of conviction for improper use of an emergency communications system, ORS 165.570.¹ On appeal, defendant argues that the trial court erred in excluding expert witness testimony. The state concedes that the trial court erred and that the case should be reversed and remanded for further proceedings. We agree and accept the state's concession.

The facts are undisputed. Defendant called the police to her home to have her ex-husband arrested for allegedly defrauding her. After the officers arrived, they determined that they did not have probable cause to arrest him. Defendant proceeded to argue with the officers. After one of the officers told defendant to sit down, she called 9-1-1 to report that she wanted to put that officer under citizen's arrest. A sergeant responded and investigated, after which defendant was arrested for improper use of an emergency communications system.

At trial, defendant sought to introduce testimony from Dr. Mohandessi, a forensic psychiatrist, who would have testified that defendant suffers from post-traumatic stress disorder (PTSD) and was experiencing a dissociative PTSD episode and believed that she was in an emergency when she called 9-1-1. On the state's objection, the trial court excluded that testimony as irrelevant under OEC 401 and insufficiently probative to outweigh the risk of jury confusion under OEC 403. Defendant argues that the trial court erred in excluding the testimony, and the state concedes that error.

The trial court erred in excluding the testimony under OEC 401 because the evidence was relevant to whether defendant knew that her 9-1-1 call was "for a purpose other than to report a situation that [she] reasonably believes requires prompt service in order to preserve human

¹ ORS 165.570(1) provides, in part:

"A person commits the crime of improper use of the emergency communications system if the person knowingly:

"(a) Makes an emergency call or calls the tip line for a purpose other than to report a situation that the person reasonably believes requires prompt service in order to preserve human life or property[.]"

life or property.” ORS 165.570(1); *see State v. Wiborg*, 285 Or App 131, 140-41, 396 P3d 258 (2017) (the state must prove that the defendant “knowingly” called 9-1-1 for an improper purpose); *State v. Smith*, 154 Or App 37, 50, 960 P2d 877 (1998) (evidence of a qualifying mental disorder offered under ORS 161.300 applies to the “knowing” mental state). Additionally, because the trial court based its OEC 403 ruling on an incorrect legal conclusion about the probative value of the evidence, the trial court did not properly weigh that evidence and erred when it excluded it under OEC 403.² Because that error was not harmless, we reverse and remand.

Reversed and remanded.

² To the extent the trial court’s ruling was based on Mohandessi using inadmissible evidence to form his opinion, that was also error. It was undisputed at trial, and the state concedes on appeal, that Mohandessi was relying on the type of evidence reasonably relied on by experts in the field, which is allowed under OEC 703.