

FILED: January 5, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

RYAN LAWRENCE ANTHONY,
Defendant-Appellant.

Clackamas County Circuit Court
CR0700610

A136945

On remand from the Oregon Supreme Court, *State v. Anthony*, 350 Or 716 (2011).

Steven L. Maurer, Judge.

Submitted on remand November 03, 2011.

Laura Graser for appellant.

John R. Kroger, Attorney General, Jerome Lidz, Solicitor General, Janet A. Metcalf, Assistant Attorney General, and Jennifer S. Lloyd, Attorney-in-Charge, Criminal Appeals, for respondent.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

SCHUMAN, P. J.

Affirmed.

1 SCHUMAN, P. J.

2 This case comes to us on remand from the Supreme Court with instructions
3 to reconsider our first decision, [State v. Anthony](#), 234 Or App 659, 228 P3d 1222 (2010),
4 in light of [State v. Cazares-Mendez/Reyes-Sanchez](#), 350 Or 491, 256 P3d 104 (2011). In
5 *Anthony*, we relied on our decision in [State v. Cazares-Mendez](#), 233 Or App 310, 227 P3d
6 172 (2010) (*Cazares-Mendez I*); the Supreme Court subsequently took review of *Cazares-*
7 *Mendez I* and, although it affirmed our decision in that case, it employed different
8 reasoning. Our task, then, is to apply that reasoning here. We affirm.

9 In 2007, defendant was charged with the aggravated murders of an elderly
10 couple in Lake Oswego. The murders had occurred 27 years earlier, in 1980. At a
11 pretrial hearing, the court ruled that the defense could not introduce testimony from a man
12 named Jackson to the effect that a third man, Smith, had told him (Jackson) that he
13 (Smith) was the perpetrator of the murders for which defendant was on trial. Jackson and
14 Smith had been cellmates. Defendant was subsequently convicted. On appeal, he
15 assigned error to the court's ruling prohibiting the hearsay evidence of Smith's
16 confessions. In affirming the trial court's decision, we wrote:

17 "[D]efendant argues that the court erred in excluding a hearsay
18 statement from a third party allegedly confessing to the crime for which
19 defendant was convicted. Defendant relies on OEC 804(3)(c). That
20 provision allows admission of such statements if (1) the declarant is
21 unavailable, (2) the statement is so inculpatory that a reasonable person in
22 the position of the declarant would not have made the statement unless it
23 was true, *and* (3) corroborating circumstances clearly establish that the
24 statement is trustworthy. *State v. Schutte*, 146 Or App 97, 101, 932 P2d 77
25 (1997). We reject without discussion defendant's argument that, because

1 the witness's testimony was evasive, he was unavailable for purposes of
2 OEC 804(3)(c). [Thus, ordinarily, the hearsay statement would be
3 inadmissible, because the declarant was available.]

4 "Nonetheless, in a recent case, we held that, where 'the
5 corroboration/'trustworthiness' requirement for admission of statements
6 against penal interest' is met, exclusion as hearsay evidence of a confession
7 merely because the confessing witness is not 'unavailable' can, in some
8 circumstances, violate the Due Process Clause of the Fourteenth
9 Amendment to the United States Constitution. [*Cazares–Mendez I*, 233 Or
10 App at 323]. * * * Although we held in *Cazares–Mendez* [*I*] that the
11 circumstances there were sufficiently clear to establish the trustworthiness
12 of the hearsay confession so as to justify a due process inquiry, we reach a
13 different conclusion here.

14 "In brief, the corroboration in *Cazares–Mendez* [*I*] consisted of
15 *multiple* witnesses who had heard *detailed* confessions that 'related
16 *particulars* that were *peculiar* to' the crime that defendant allegedly
17 committed. *Id.* at 326 (emphasis added). Here, the 'corroboration' consisted
18 of the following details: an uninvolved witness saw an unidentified man in
19 the doorway of the victims' house on the night after the murder; the same
20 witness saw two motorcycles outside the victims' home, and the witness
21 who confessed owned a motorcycle; and a different witness saw 'two
22 ominous-looking men' walking toward the victims' home on the night of the
23 murder. That evidence is a far cry from what the defendant presented in
24 *Cazares–Mendez* [*I*]. In light of the circumstances presented, the trial court
25 did not err in excluding the hearsay confession in this case."

26 *Anthony*, 234 Or App at 663-64 (emphasis in original).

27 In its opinion in *Cazares-Mendez*, the Supreme Court clarified certain
28 aspects of the rule that a statement against penal interest is admissible, even if the
29 declarant is available, if "corroborating circumstances clearly indicate the trustworthiness
30 of the statement." 350 Or at 506 (quoting OEC 804(3)(c)). The proper focus of the
31 trustworthiness inquiry, the court held, is not the trustworthiness of the witness, but of the
32 declarant. *Id.* at 506-11. Thus, our focus in our original opinion in *Anthony* on the

1 circumstances that defendant introduced in order to demonstrate that the witness's hearsay
2 testimony was trustworthy was misplaced; the proper focus was on the declarant himself.

3 The declarant was singularly untrustworthy. He was a self-confessed serial
4 killer, serving five consecutive life sentences, whose testimony was, in the words of
5 defendant's own appellate counsel, "disjointed and evasive." When asked how many
6 murders he had been convicted of, he replied, "It's difficult for me to testify, not having
7 records before me to recall that_[.]" He testified in court that he had no involvement in the
8 Lake Oswego murders for which defendant was on trial. His supposed "confession" to
9 Jackson--"Me and [another person, not defendant] did that one,"--was far from detailed,
10 and was itself contradicted by his subsequent denials to, among others, Jackson. Further,
11 as we noted in our first opinion, nothing in the circumstantial evidence that defendant
12 cites to bolster the theory that Smith was the perpetrator, and hence that Smith's
13 "confession" was trustworthy, prove anything of the sort. In sum, applying the analysis
14 that the Supreme Court mandates in *Cazares-Mendez*, we reach the same conclusion we
15 reached in our first opinion. The court did not deny defendant due process of law by
16 excluding hearsay evidence of Smith's confession.

17 Affirmed.