

# SUPREME COURT

## Media Release



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Case decided January 28, 2021.

*State of Oregon v. Catrice Pittman*, (CC 16CN03799) (CA A162950) (SC S067312)

On review from the Court of Appeals in an appeal from the Marion County Circuit Court, Tracy A. Prall, Judge. 300 Or App 147, 452 P3d 1011 (2019). The decision of the Court of Appeals is reversed. The judgment of the circuit court is reversed, and the case is remanded to that court for further proceedings. Opinion of the Court by Chief Justice Martha L. Walters.

Today, the Oregon Supreme Court held that Article I, section 12, of the Oregon Constitution permits an order compelling a criminal defendant to unlock a cell phone so long as the state (1) has a valid warrant authorizing it to seize and search the phone; (2) already knows the information that the act of unlocking the phone would communicate; and (3) is prohibited from using the defendant's act against the defendant, except to obtain access to the contents of the phone.

Catrice Pittman (defendant) was the driver in a car crash, which led to a drug investigation and criminal charges against her. During their investigation of the case, the police discovered a cell phone in defendant's purse, which was located in the hospital room where defendant was being treated for injuries resulting from the crash. The police obtained a warrant to seize and search the phone, but after seizing it, they discovered it was encrypted and that they could not unlock it without a passcode. In defendant's criminal case, the state filed a motion to compel defendant to unlock the cell phone so that the state could execute its search warrant. Defendant objected, arguing that such an order would violate defendant's right against self-incrimination under Article I, section 12, of the Oregon Constitution and the Fifth Amendment to the United States Constitution. The trial court disagreed and ordered defendant to unlock the cell phone. When defendant twice entered an incorrect passcode, the trial court found defendant in contempt. Defendant appealed the contempt judgment, challenging the constitutionality of the court's underlying order. The Court of Appeals affirmed. *State v. Pittman*, 300 Or App 147, 452 P3d 1011 (2019). Defendant sought review in the Supreme Court.

In a unanimous opinion written by Chief Justice Martha L. Walters, the Supreme Court reversed the judgment holding defendant in contempt of court. The Court began by noting that the case involved two questions of first impression: The first question was whether the trial court's order compelled an act that would provide incriminating, testimonial evidence. If it would, the second question was whether the trial court's order violated defendant's right against self-incrimination.

As to the first question, the Court concluded that the trial court's order compelled an act that would provide incriminating, testimonial evidence. The Court noted that defendant had not been compelled to provide testimony, nor had she been compelled to perform an act, such as nodding her head to say "yes," that was expressly communicative. Nonetheless, the Court explained, compelled acts which reveal something about a person's beliefs, knowledge, or state of mind, are testimonial under Article I, section 12. Applying that reasoning, the Court concluded that, had defendant complied with the trial court's order compelling her to unlock the cell phone, that act would have communicated that she knew the passcode to the phone -- knowledge that constituted incriminating, testimonial evidence.

As to the second question, the Court explained that, generally, an act that communicates incriminating, testimonial evidence cannot be compelled, but that the state argued for a different result in the narrow circumstances presented: The state had obtained a warrant to seize the cell phone and search its contents, and the state sought the order compelling defendant to unlock the phone for the sole purpose of conducting that authorized search. The state contended that because it already knew, and did not seek to learn, that defendant knew the phone's passcode, defendant's act would have limited legal significance.

The Court agreed that there were circumstances in which an order requiring a criminal defendant to unlock a cell phone would not violate Article I, section 12, but held that the following requirements must be satisfied. First, the state must have a valid warrant authorizing it to seize and search the phone. Second, the state must establish, beyond a reasonable doubt, that the defendant knows the phone's passcode. Third, the order must prohibit the state from using the defendant's act against the defendant, except to obtain access to the contents of the phone. Applying that rule, the Court concluded that two of those requirements were not met: The trial court had not found, beyond a reasonable doubt, that the state knew the information that the act of unlocking the phone would communicate -- that defendant knew the passcode to the phone. Additionally, the trial court had not expressly prohibited the state from using the act of unlocking the phone for a purpose other than accessing its contents. Because the trial court's order violated Article I, section 12, the Supreme Court reversed the decision of the trial court holding defendant in contempt and did not reach the question of whether the trial court's order also violated the Fifth Amendment to the United States Constitution.