

# SUPREME COURT

## Media Release



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Case decided July 22, 2021.

*State of Oregon v. Gregory Leon Hightower*, (CC 120632737) (CA A166654) (SC S067539)

On review from the Court of Appeals in an appeal from the Multnomah County Circuit Court, Edward J. Jones, Judge. 301 Or App 750, 459 P3d 266 (2020). The decision of the Court of Appeals is affirmed. The judgment of the circuit court is reversed, and the case is remanded to the circuit court for further proceedings. Opinion of the Court by Justice Adrienne C. Nelson. Justice Thomas A. Balmer filed a dissenting opinion, in which Justice Christopher L. Garrett joined.

Today, the Oregon Supreme Court held that defendant was entitled to a new trial on remand because the trial court record could have developed differently if the trial court had properly understood its discretionary choice to consider defendant's midtrial requests for self-representation in the first instance.

During defendant's criminal trial, the trial court denied defendant's repeated requests to represent himself for the remainder of the proceedings. In defendant's first appeal, the Oregon Supreme Court determined that the trial court's decision to deny defendant's midtrial requests for self-representation was not based on a proper exercise of discretion but instead appeared to reflect an understanding that the trial court did not have discretion to grant the requests midtrial. Accordingly, the Court reversed defendant's convictions and remanded the case to the trial court for further proceedings. *State v. Hightower*, 361 Or 412, 422, 393 P3d 224 (2017). On remand, defendant requested a new trial, but the state argued that a new trial was not necessary as long as the trial court articulated, on the record, what it would have done had it properly exercised its discretion. The trial court agreed with the state and explained that it would have denied defendant's requests based on concerns about trial disruption, if it had conducted the required analysis on the record during the first trial. The court denied defendant a new trial, and defendant appealed. Concluding that defendant was entitled to a new trial on remand, the Court of Appeals reversed.

In an opinion written by Justice Adrienne C. Nelson, the Supreme Court held that defendant was entitled to a new trial on remand. The Court explained that, when interpreting an appellate court decision that identifies an error that occurred below, the trial court should focus on the explicit and implicit instructions provided in the appellate court's opinion, as well as the context of how the record developed as it relates to the error that was identified. Although implicit in the Court's decision to reverse a case is a finding that the error identified was not harmless, there may be instances in which a reversible error does not affect the verdict in a way that requires a new trial. In this case, however, the Court concluded that a new trial was required because the record could have developed differently if the trial court had considered defendant's requests for self-representation under the proper discretionary framework in the first instance. Accordingly, defendant was entitled to a new trial on remand.

Justice Thomas A. Balmer filed a dissenting opinion in which Justice Christopher L. Garrett joined. Justice Balmer would have held that the Court's prior opinion did not itself foreclose the trial court from reconsidering its ruling on self-representation. Justice Balmer noted that, if the trial court had concluded on remand that, exercising discretion as required by The Court's opinion, it would have ruled differently and permitted defendant to represent himself, a new trial would have been necessary. But, in Justice Balmer's view, it was also permissible, and not an abuse of discretion here, for the trial court to reconsider its earlier decision under the proper standard and to determine that it would have reached the same result, which it did. For that reason, Justice Balmer would have held that the trial court's determination on remand was consistent with the scope of the Court's remand and not an abuse of discretion.