

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

SHAUN ALLEN DICK,
Defendant-Appellant.

Umatilla County Circuit Court No. CF150130

Court of Appeals No. A163648

ORDER OF SUMMARY AFFIRMANCE

Respondent has moved pursuant to ORS 138.225 for summary affirmance on the ground that the appeal does not present a substantial question of law. The court determines that, for the reasons articulated in respondent's motion, appellant's brief does not present a substantial question of law. *State v. Bowen*, 215 Or App 199, 168 P3d 1208 (2007), *modified on other grounds on recons*, 220 Or App 380, 185 P3d 1129, *rev den*, 345 Or 415 (2008), *cert den*, 558 US 815 (2009) (rejecting constitutional argument). The motion is granted.¹

Affirmed.



JAMES W. NASS
APPELLATE COMMISSIONER
8/15/2018 9:55 AM

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

Costs: No costs allowed

c: Morgen E Daniels
Jamie Contreras

ej

¹ The Appellate Commissioner has authority to decide the motion for summary affirmance notwithstanding that the motion recites that petitioner objects to the motion, because petitioner did not file written opposition to the motion. *State v. Ibarra*, 293 Or App 268 __ P3d __ (August 8, 2018) (so holding).

ORDER OF SUMMARY AFFIRMANCE

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

SHAUN ALLEN DICK,
Defendant-Appellant.

Umatilla County Circuit Court No. CF150130

Court of Appeals No. A163648

ORDER DENYING RECONSIDERATION

Appellant petitions for reconsideration of the Appellate Commissioner's order dated August 15, 2018, granting the state's motion for summary affirmance. The petition is denied.



JAMES C. EGAN CHIEF JUDGE, COURT OF APPEALS 9/26/2018 11:01 AM
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c: Morgen E Daniels
Jamie Contreras

ej

ORDER DENYING RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,
Respondent on Review,

v.

SHAUN ALLEN DICK,
Defendant-Appellant,
Petitioner on Review.

Court of Appeals
A163648

S066382

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.



MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
1/31/2019 2:36 PM

c: Morgen E Daniels
Jamie Contreras

ms

ORDER DENYING REVIEW

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

APPENDIX D

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

SHAUN ALLEN DICK,
Defendant-Appellant.

Umatilla County Circuit Court
CF150130

A163648

APPELLATE JUDGMENT

Respondent has moved pursuant to ORS 138.225 for summary affirmance on the ground that the appeal does not present a substantial question of law. The court determines that, for the reasons articulated in respondent's motion, appellant's brief does not present a substantial question of law. *State v. Bowen*, 215 Or App 199, 168 P3d 1208 (2007), *modified on other grounds on recons*, 220 Or App 380, 185 P3d 1129, *rev den*, 345 Or 415 (2008), *cert den* 558 US 52 (2009) (rejecting constitutional argument). The motion is granted.

Affirmed.

AUG 15, 2018
DATE

/s/ James W. Nass
Appellate Commissioner

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

☒ No costs allowed.

Appellate Judgment
Effective Date: March 5, 2019

COURT OF APPEALS
(seal)

APPELLATE JUDGMENT

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State St, Salem OR 97301-2563
Page 1 of 1

APPENDIX E

UMATILLA COUNTY
CIRCUIT COURT

2015 MAR -3 PM 4: 04

TRIAL COURT ADMINISTRATOR

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF UMATILLA

BY BB

STATE OF OREGON

Court No. CF150130

Plaintiff,

**SECRET INDICTMENT
(ORS 132.410)**

vs.

SHAUN ALLEN DICK,

Defendant.

DA No. 073496

The Defendant is accused by the Umatilla County, Oregon, Grand Jury of the following offenses:

Count 1: SODOMY IN THE FIRST DEGREE - FELONY (FSG= 9; A Felony; ORS 163.405) FPN #JUMA115005062

Count 2: UNLAWFUL SEXUAL PENETRATION IN THE FIRST DEGREE - FELONY (FSG= 9; A Felony; ORS 163.411) FPN #JUMA115005062

Count 3: UNLAWFUL SEXUAL PENETRATION IN THE FIRST DEGREE - FELONY (FSG= 9; A Felony; ORS 163.411) FPN #JUMA115005062

Count 4: ^{ATTEMPTED} RAPE IN THE FIRST DEGREE - FELONY (FSG= 7; A Felony; ORS 163.375) FPN #JUMA115005062

Count 5: SEXUAL ABUSE IN THE FIRST DEGREE - FELONY (FSG= 8; B Felony; ORS 163.427) FPN #JUMA115005062

Count 6: SEXUAL ABUSE IN THE FIRST DEGREE - FELONY (FSG= 8; B Felony; ORS 163.427) FPN #JUMA115005062

Count 7: COERCION - FELONY (FSG= 6; C Felony; ORS 163.275) FPN #JUMA115005062

Count 8: MENACING - MISDEMEANOR (FSG= N/A; A Misdemeanor; ORS 163.190) FPN #JUMA115005062

committed as follows:

Page 1 - SECRET INDICTMENT (ORS 132.410)

Daniel R. Primus
Umatilla County District Attorney
216 SE 4th Street, Pendleton, OR 97801
Ph (541) 278-6270 : Fax (541) 278-5466

COUNT 1

The defendant, on or about January 18, 2015, in Umatilla County, Oregon, did unlawfully and knowingly, by forcible compulsion, engage in deviate sexual intercourse with Tiffany Marie Baird; contrary to statute and against the peace and dignity of the State of Oregon.

COUNT 2

The defendant, on or about January 18, 2015, in Umatilla County, Oregon, did unlawfully and knowingly, by forcible compulsion, penetrate the vagina of Tiffany Marie Baird, with an object to wit: his finger; contrary to statute and against the peace and dignity of the State of Oregon.

COUNT 3

The defendant, on or about January 18, 2015, in Umatilla County, Oregon, did unlawfully and knowingly, by forcible compulsion, penetrate the anus of Tiffany Marie Baird, with an object to wit: his finger; contrary to statute and against the peace and dignity of the State of Oregon.

COUNT 4

The defendant, on or about January 18, 2015, in Umatilla County, Oregon, did unlawfully and intentionally attempt to engage in sexual intercourse with Tiffany Marie Baird by means of forcible compulsion; contrary to statute and against the peace and dignity of the State of Oregon.

COUNT 5

The defendant, on or about January 18, 2015, in Umatilla County, Oregon, did unlawfully and knowingly, by means of forcible compulsion, subject Tiffany Marie Baird, to sexual contact by touching her vagina, a sexual or intimate part of Tiffany Marie Baird; contrary to statute and against the peace and dignity of the State of Oregon.

COUNT 6

The defendant, on or about January 18, 2015, in Umatilla County, Oregon, did unlawfully and knowingly, by means of forcible compulsion, subject Tiffany Marie Baird, to sexual contact by causing Tiffany Marie Baird to touch defendant's penis, a sexual or intimate part of the defendant; contrary to statute and against the peace and dignity of the State of Oregon.

COUNT 7

The defendant, on or about January 18, 2015, in Umatilla County, Oregon, did unlawfully and knowingly compel or induce Tiffany Marie Baird to abstain from engaging in conduct in which Tiffany Marie Baird had a legal right to engage by means of instilling in Tiffany Marie Baird a fear that if Tiffany Marie Baird engaged in the conduct contrary to said compulsion or inducement, defendant would unlawfully cause physical injury to Tiffany Marie Baird; contrary to statute and against the peace and dignity of the State of Oregon.

COUNT 8

The defendant, on or about January 18, 2015, in Umatilla County, Oregon, did unlawfully and intentionally attempt to place Tiffany Marie Baird in fear of imminent serious physical injury by words and/or conduct; contrary to statute and against the peace and dignity of the State of Oregon.

DATED this 3/3/2015.


☒ A TRUE BILL
☐ NOT A TRUE BILL

WITNESSES, who appeared in person
unless otherwise noted:

Det. Erik Palmer, UCSO
Tiffany Baird


Grand Jury Foreperson

DANIEL R. PRIMUS
Umatilla County District Attorney

By: 
Deputy District Attorney

Arresting Agency Case #: PLS/15-0081/Palmer
IDENTIFIERS: W/M Ht: 5'08 Wt: 190 Hair: BRO

Eyes: BRO

DOB: 01/09/1978

DA No: 073496
SID#

Deputy District Attorney Jaclyn Jenkins

APPENDIX F

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF UMATILLA

STATE OF OREGON,

Plaintiff,

No. CF 150130

v.

SPECIAL JURY INSTRUCTION
AND MEMORANDUM OF LAW

SHAUN ALLEN DICK,

Defendant.

Special Jury Instruction #1

The defendant submits this memorandum in support of the following special jury instruction:

When you return to the jury room, select one of your members to act as presiding juror. The presiding juror has no greater voting weight but is to preside over your deliberations and be the spokesperson for the jury. You should then deliberate and find your verdict.

If it becomes necessary during your deliberations to communicate with me, please do so in writing. I will consult with the parties before responding. Remember that you are not to tell anyone, including me, how the jury stands numerically until you have reached a lawful verdict or have been discharged.

This being a criminal case, all twelve jurors must agree on your verdict. When you have arrived at a unanimous verdict, the presiding juror will sign the

1 appropriate form.

2 After you have reached your verdict, signal the bailiff. The court will be
3 reassembled to receive your verdict.
4

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6 Article I, Section 11 of the Oregon Constitution and its implementing
7 legislation, ORS 136.450, authorizes a verdict of 10 out of 12 jurors from criminal
8 trials other than murder or aggravated murder. However, the amendment to the
9 Oregon Constitution prescribing a less than unanimous verdict, which was referred to
10 the voters by the Legislature, and adopted in 1934, violates the separate-vote rule of
11 *Armatta v. Ktizhaber*, 327 OR. 250, 959 P.2d 49 (1998) and Or. Const. Art. XVII,
12 Sec. I, as well as the single-subject rule contained in Or. Const. Art. IV, sec I (2)(d)
13 as interpreted in *McIntire v. Forbes*, 322 Or 426 (1996). The separate-vote rule
14 applied in *Armatta* is applicable equally to constitutional amendments enacted
15 pursuant to legislative referral and popular initiative. *Armatta*, supra 327 Or. at 261
16 (“We conclude that the separate-vote requirement applies to constitutional
17 amendments proposed by initiative, as well as to those proposed by the legislature.”)
18 The 1934 constitutional amendment, in violation of Or. Const. Art. XVII, sec 1 –
19 unambiguously encompasses subjects that should be put to a separate vote as well
20 as more subjects than just the number of votes required in order to convict a person
21 on a criminal offense. Prior to the 1934 constitutional amendment, Oregon law
22 required a unanimous verdict in criminal cases. See *State v. Gann*, 254 Or 549
23 (1969). Because the 1934 constitutional amendment is void as a result of its
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1 violation of both Or. Const. Art. XVII, sec 1, and Or. Const. Art. IV, sec 1(2)(d), the
2 pre-1934 requirement of unanimous verdicts in criminal trials mandates the
3 requested instruction.

4 Oregon's rule allowing a less than unanimous verdict was upheld by a 5 to 4
5 vote of the U.S Supreme Court in *Apadoca v. Oregon*, 406 US 404 (1972).

6 Interestingly, the deciding vote in *Apodaca* was supplied by Justice Powell, whose
7 rationale for upholding Oregon's scheme was that, in his view, the 6th Amendment's
8 requirements were not fully applicable to the States through the 14th Amendment.

9 That this position has since been rejected in subsequent Supreme Court
10 jurisprudence is abundantly clear by more recent decisions of the Court, including
11 *Booker*, *Blakely*, *Ring* and *Apprendi*, *infra*. At the time the Court decided *Apadoca*,
12 only Oregon and Louisiana permitted a less than unanimous verdict in a criminal
13 case. We are informed that, to this day, the other 48 States and the Federal
14 jurisdiction require a unanimous verdict in all criminal cases, except by stipulation of
15 the parties. Defendant maintains that allowing a less than unanimous verdict in a
16 criminal case contravenes the right of the defendant to trial by jury as guaranteed by
17 the 6th and 14th Amendments to the United States Constitution. Defendant's position
18 is supported by recent decisions of the United States Supreme Court, within the line
19 of authority established in the following cases: *United States v. Booker*, 125 S. Ct
20 738 (2005); *Blakely v. Washington*, 124 S. Ct 2531 (2004); *Ring v. Arizona*, 536 US
21 584 (2002); and *Apprendi v. New Jersey*, 530 US 466 (2000). Specifically, in
22 *Booker*, Justice Stevens reviewed the longstanding right to trial by jury, dating back
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1 to the Magna Carta, and wrote for the Court as follows: "[T]he historical foundation
2 for our recognition of these principles extends down centuries into the common law.
3 '[T]o guard against a spirit of oppression and tyranny on the part of rulers,' and 'as
4 the great bulwark of [our] civil and political liberties,' trial by jury has been understood
5 to require that 'the truth of every accusation, whether preferred in the shape of
6 indictment, information, or appeal, should afterwards be confirmed by the *unanimous*
7 *suffrage of twelve* of [the defendant's] equals and neighbors....' "(citations omitted,
8 emphasis added). *Booker, supra*, 125 S. Ct at 738. At this point in our Nation's
9 history, we submit that Oregon's minority rule allowing a non unanimous jury to
10 render verdict in a criminal case must be rejected as being inconsistent with the 6th
11 Amendment's guarantee of the defendant's right to a jury trial. For the forgoing
12 reasons, we request that the jury in the instant case be instructed that a unanimous
13 verdict is required.
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17 Respectfully submitted this 2nd August 2016
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22 Robert G Klahn, OSB # 80068
23 Attorney at Law
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APPENDIX G

FILED
UMATILLA COUNTY
CIRCUIT COURT

9-28-16

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF Umatilla

State of Oregon

Petitioner / Plaintiff.

CASE NO. CF150130

JURY POLL

vs.
Shaun Allen Dick

Respondent / Defendant.

Indicate your vote for each count by placing a "G" (for guilty) or "NG" (for not guilty) in the appropriate box:

Juror No.	Count 1	Count 2	Count 3	Count 4	Count 5	Count 6	Count 7	Count 8	Count 9	Count 10	Count 11
995	G	G	G	G	G	G	G	G			
894	G	G	G	NG	G	G	G	G			
611	G	G	G	G	G	G	G	G			
442	G	G	G	G	G	G	G	G			
487	NG	NG	NG	NG	NG	NG	NG	NG			
41	G	G	G	G	G	G	G	G			
802	G	G	G	G	G	G	G	G			
729	G	G	G	G	G	G	G	G			
941	G	G	G	G	G	G	G	G			
50	G	G	G	G	G	G	G	G			
989	G	G	G	G	G	G	G	G			
954	G	G	G	G	G	G	G	G			

Received this 28 day of Sept, 2016

Circuit Court Judge