



COURT OF APPEALS

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The Court of Appeals issued these opinions:

- Bank of New York Mellon v. Tammie M. Delaney
(A163489 - Crook County Circuit Court)
- State of Oregon v. Terri Lynn McBride
(A163302 - Multnomah County Circuit Court)
- State of Oregon v. Steven Clyde Dearmitt
(A161616 - Clackamas County Circuit Court)
- State of Oregon v. Clarence Elwood Morrow
(A163970 - Deschutes County Circuit Court)
- Joseph Andrew Nelson v. Driver and Motor Vehicle Services (DMV)
(A166526 - Deschutes County Circuit Court)
- Julie Hulme v. City of Eugene
(A170513 - Land Use Board of Appeals)

The Court of Appeals issued these *per curiam* opinions:

- SAIF Corporation v. Kevin J. Siegrist
(A164226 - Workers' Compensation Board)
- State of Oregon v. Raymond Everett Cook
(A165912 - Marion County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

- State of Oregon v. Travis Alexander Waterman
(A165276 - Lane County Circuit Court)
- State of Oregon v. John Matthew Wallace, II
(A166057 - Coos County Circuit Court)
- Mark S. Milnes v. Employment Department
(A169711 - Employment Appeals Board)

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Bank of New York Mellon v. Tammie M. Delaney

(Armstrong, P. J.)

Defendants appeal a general judgment of judicial foreclosure of a residential deed of trust, arguing that the trial court erred in concluding that plaintiff was entitled to enforce the promissory note that was secured by the deed of trust. Defendants make multiple arguments on appeal, primarily based on their contention that the promissory note was not properly indorsed by the named lender. Held: Evidence in the record supported the trial court's factual finding that plaintiff was the holder of the promissory note indorsed in blank. Defendants did not raise any arguments on appeal that could provide a basis for the conclusion that plaintiff was not entitled to enforce the note as the holder of it. Affirmed.

State of Oregon v. Terri Lynn McBride

(Tookey, J.)

Defendant appeals a judgment of conviction for possession of methamphetamine, ORS 475.894. Defendant assigns error to the trial court's denial of her motion to suppress evidence that a law enforcement officer discovered during a traffic stop. Defendant argues that the trial court erred in denying her motion to suppress because the officer's questioning of defendant during the traffic stop unlawfully extended the traffic stop. Held: The trial court did not err when it concluded that the officer did not unlawfully extend the traffic stop. The officer's questioning of defendant took place during an unavoidable lull in the traffic stop. The officer did not question defendant instead of expeditiously proceeding with the steps necessary to complete the traffic stop. Affirmed.

State of Oregon v. Steven Clyde Dearnitt

(DeHoog, P. J.,)

Defendant appeals a judgment of conviction entered upon his plea of guilty to four counts of sexual abuse in the second degree, ORS 163.425(1)(a), all of which he committed against the same victim. Defendant assigns error to the trial court's failure to merge two of those counts--Counts 4 and 6--into a single conviction. Held: The trial court erred in failing to merge its findings of guilt as to Counts 4 and 6. Convictions on Counts 4 and 6 reversed and remanded for entry of judgment of conviction for one count of second-degree sexual abuse; remanded for resentencing; otherwise affirmed.

State of Oregon v. Clarence Elwood Morrow

(Aoyagi, J.)

Defendant appeals a judgment of conviction for felony fourth-degree assault, ORS 163.160(3), and harassment, ORS 166.065(3), in connection with an alleged incident between defendant and his girlfriend T. Defendant asserts that the trial court erred by admitting evidence of other uncharged acts of domestic violence against the same victim. The other acts occurred over approximately 14 months and included multiple incidents in which defendant got drunk, got upset with T about something, tried to kick her out of wherever they were staying, and assaulted her when she did not leave. The trial court admitted the other-acts evidence under OEC 404(3) as relevant to showing defendant's motive for the charged acts.

Defendant contends that the other-acts evidence was not relevant to motive and, instead, was improper character evidence. The state defends the trial court's ruling, arguing that the uncharged acts are logically connected to the charged acts because they involved similar conduct and that they tended to show that defendant's motive for the charged acts was "defendant's hostility toward [T] and his desire to exert control over her." Held: The trial court erred in admitting the evidence of the other uncharged acts as relevant to motive for the charged acts under OEC 404(3). On this record, the evidence does not allow an inference that defendant was "generally hostile" toward T, so as to provide a common motive for all acts of violence over an extended period of time. As for the state's "control" argument, the state did not identify that alleged motive to the trial court. In any event, on this record, the state's argument falls on the side of character and propensity reasoning, rather than motive. Judgment of conviction for fourth-degree assault and harassment reversed and remanded; otherwise affirmed.

Joseph Andrew Nelson v. Driver and Motor Vehicle Services (DMV)

(Aoyagi, J.)

Petitioner was arrested for driving under the influence of intoxicants and violating a restraining order. The arrest took place in petitioner's bedroom in another person's house where petitioner was temporarily residing. After arresting him, the police asked petitioner to consent to a breath test, which he refused. As a result of that refusal and after a hearing, the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) ordered a three-year suspension of petitioner's driving privileges. The circuit court affirmed. In his sole assignment of error on appeal, petitioner argues that Article I, section 9, of the Oregon Constitution was violated when the police entered his bedroom without a warrant or valid consent and that, therefore, the suspension is invalid. In particular, petitioner argues that the homeowner did not have actual authority to consent to the police entering into petitioner's bedroom or, alternatively, that, even if he did have actual authority, the homeowner did not voluntarily consent to the entry. Held: The DMV erred in ordering the suspension. Even assuming that the homeowner had actual authority to consent to the entry into petitioner's bedroom, the state failed to establish that the homeowner voluntarily consented to the entry, rather than merely acquiescing to police authority. Reversed.

Julie Hulme v. City of Eugene

(Aoyagi, J.)

The Land Use Board of Appeals (LUBA) affirmed a final land use decision by the City of Eugene approving, with conditions, a consolidated application to build a 94-unit apartment complex. Petitioners seek judicial review of the resulting final order. In their sole assignment of error, petitioners challenge the city's net-density calculation for the proposed development, asserting that LUBA erred when it affirmed the inclusion of a leasing office, a maintenance building, and two internal parking circulation areas in the calculation. Under EC 9.2751(1)(b), "net density" is defined as "the number of dwelling units per acre of land in actual residential use and reserved for exclusive use of the residents in the development." EC 9.2751(1)(c) (1) lists specific exclusions from that calculation: "public and private streets and alleys, public parks, and other public facilities." Petitioners argue that the two buildings at issue should have been excluded from the calculation, focusing on the terms "actual" and "exclusive" in EC 9.2751(1)(b). As for the circulation areas, petitioners argue that, because they will allow through-motor vehicle traffic, the circulation areas are not "parking drives" as defined in EC 9.5500(11)(b) but are instead "streets" as defined in EC 9.0500 and, therefore, should have also been excluded from the calculation under EC 9.2751(1)(c)(1). Held: LUBA erred with respect to the leasing office, because it is not reserved for the exclusive use of the residents within the meaning of EC 9.2751(1)(b). LUBA did not err with respect to the maintenance building or the internal parking circulation areas. Reversed in part and remanded.

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