



COURT OF APPEALS

Media Release

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The Court of Appeals issued these opinions:

State of Oregon v. Jacob E. Jasperse
(A166572 - Multnomah County Circuit Court)

State of Oregon v. Shawn Lee Hooper
(A169210 - Linn County Circuit Court)

State of Oregon v. John Patrick Gilbreath
(A170579 - Washington County Circuit Court)

Department of Human Services v. D. C. B.
(A174609 - Clackamas County Circuit Court)

State of Oregon v. Trevor William Slater
(A172012 - Douglas County Circuit Court)

State of Oregon v. Daniel Carlyon Etzel
(A163473 - Linn County Circuit Court)

Laurie Cumming v. Laurie Nipping
(A168015 - Lane County Circuit Court)

State of Oregon v. Robert Lewis Henley
(A170383 - Malheur County Circuit Court)

Xin Hickey v. Joshua Scott
(A173328 - Lincoln County Circuit Court)

K. G. G. v. David John Lucarelli*
(A173777 - Deschutes County Circuit Court)

Lincoln Loan Co. v. The Estate of George W. Geppert
(A172312 - Multnomah County Circuit Court)

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

State of Oregon v. Bryon Lloyd Akins
(A170923 - Washington County Circuit Court)

*This case title has been redacted in this media release and in the online version of the opinion, in compliance with 18 USC section 265(d)(3).

Ronald David Reed v. Board of Parole and Post-Prison Supervision
(A172437 - Board of Parole and Post-Prison Supervision)
State of Oregon v. Gregory Gerald Prichard
(A172883 - Yamhill County Circuit Court)
State of Oregon v. J. B.
(A174019 - Multnomah County Circuit Court)
State of Oregon v. C. T.
(A174667 - Klamath County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

Jonell Henry James v. Brandon Kelly
(A170183 - Marion County Circuit Court)
Rufus L. Washington v. Board of Parole and Post-Prison Supervision
(A170687 - Board of Parole and Post-Prison Supervision)
Little John Patrick Marcus v. Brandon Kelly
(A170841 - Marion County Circuit Court)
Angela Millard v. Paula Myers
(A170893 - Washington County Circuit Court)
State of Oregon v. Perry Vincent Luarca
(A171522 - St. Helens Municipal Court)
Annunziata Gould v. Deschutes County
(A171603 - Land Use Board of Appeals)
State of Oregon v. Douglas Albert Staudt
(A171689 - Clackamas County Circuit Court)
State of Oregon v. Tracy Leodoro
(A171713 - Douglas County Circuit Court)
State of Oregon v. Tiffany Ann Tanatchangsang
(A171826 - Multnomah County Circuit Court)
State of Oregon v. Kendall Michelle French
(A171890 - Multnomah County Circuit Court)
Steven William Perrault v. Psychiatric Security Review Board
(A171982 - Psychiatric Security Review Board)
State of Oregon v. Terrence Leighton Cabello
(A172017 - Jackson County Circuit Court)
State of Oregon v. Christian Alan Acosta
(A172038 - Umatilla County Circuit Court)
State of Oregon v. Robert Craig Maker
(A172198 - Umatilla County Circuit Court)
State of Oregon v. Timothy Edward Stafford
(A172220 - Lane County Circuit Court)
Celestino Guzman Hernandez v. Yvette Zavala Ramos
(A172238 - Washington County Circuit Court)

State of Oregon v. Timothy Lawrence Hokland
(A172343 - Deschutes County Circuit Court)
State of Oregon v. Lorenzo Silva-Martinez
(A172402 - Lane County Circuit Court)
Michael Paul Wille v. Board of Parole and Post-Prison Supervision
(A172462 - Board of Parole and Post-Prison Supervision)
State of Oregon v. Jasmine Irene Uken
(A172515 - Douglas County Circuit Court)
State of Oregon v. Michael Lee Dizer
(A172593 - Multnomah County Circuit Court)
Frank Roof v. Tyler Blewett
(A173914 - Umatilla County Circuit Court)
State of Oregon v. R. R.
(A174033 - Yamhill County Circuit Court)
State of Oregon v. M. G.
(A174034 - Multnomah County Circuit Court)
Department of Human Services v. M. P. K.
(A174850 - Washington County Circuit Court)
Beaverton Business Owners, LLC v. City of Beaverton
(A175441 - Land Use Board of Appeals)

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State of Oregon v. Jacob E. Jasperse

(Tookey, P. J.)

Defendant appeals his convictions after a jury trial and unanimous verdicts on six counts each of first-degree sodomy and first-degree sexual abuse, one count of strangulation, and one count of second-degree criminal mistreatment. The victim was defendant's then seven-year-old daughter, J. Defendant denied committing the acts. He assigns error to two rulings excluding evidence that he asserts would have assisted the jury to determine whether J's report of sexual abuse was truthful and to the trial court's denial of a motion for mistrial after juror misconduct. Held: Where there was adequate other evidence from which the jury could assess the victim's credibility, the trial court did not abuse its discretion under OEC 403 in excluding the disputed evidence, which was relevant but cumulative and of little probative value. Any error in excluding the evidence was not prejudicial, because it was unlikely to have affected the verdict. In response the jury misconduct, the court took appropriate remedial action and did not abuse its discretion in denying defendant's motion for mistrial. Affirmed.

State of Oregon v. Shawn Lee Hooper

(Tookey, J.)

Defendant appeals from a judgment of conviction for first-degree rape, ORS 163.375 (Count 1). On appeal, defendant argues that the trial court plainly erred when it failed to instruct the jury that, to convict him, the state had to prove that defendant had a culpable mental state when he engaged in sexual intercourse with the victim. In response, the state argues that, in light of the instructions as a whole, there is no error. Held: It is obvious error to omit the requisite mental state (i.e., "knowingly") from the part of the instruction that told the

jury what elements the state had to prove in this particular case to convict defendant of first-degree rape. Because that instructional error is both harmful and grave, the Court of Appeals exercised its discretion to correct it. Conviction on Count 1 reversed and remanded; otherwise affirmed.

State of Oregon v. John Patrick Gilbreath
(Tookey, J.)

Defendant appeals a judgment of conviction for first-degree unlawful sexual penetration, ORS 163.411. On appeal, defendant assigns error to the trial court's denial of his motion for judgment of acquittal and to its interpretation of ORS 163.411. Both assignments ultimately reduce to a single question: whether, under ORS 163.411, conviction for first-degree unlawful sexual penetration requires proof that a defendant acted with a "sexual or injurious intent." Defendant argues that it does. The state argues that it does not. Held: After construing ORS 163.411 according to the methodology set out in *State v. Gaines*, 346 Or 160, 206 P3d 1042 (2009), the Court of Appeals concluded that under ORS 163.411, a conviction for first-degree unlawful sexual penetration does not require proof of sexual or injurious intent. Given that interpretation, in this case, viewing the facts in the light most favorable to the state, a rational factfinder could conclude beyond a reasonable doubt that defendant unlawfully sexually penetrated the victim. Affirmed.

Department of Human Services v. D. C. B.
(Tookey, J.)

In this consolidated appeal of juvenile dependency cases, the juvenile court held that the Interstate Compact on the Placement of Children (ICPC), ORS 417.200 to 417.260, prohibited mother from residing in the state of Washington with her two children without that state's approval. On appeal, mother and father assign error to that ruling. Held: The Court of Appeals concluded that the ICPC applies only to children who are in substitutes for parental care, and, as such, its requirements are not mandatory when a child is placed with a parent in another state. Consequently, the trial court erred. Reversed and remanded.

State of Oregon v. Trevor William Slater
(Shorr, J.)

Defendant appeals from a judgment of conviction, following a bench trial, for aggravated theft in the first degree, ORS 164.057, and unlawful entry into a motor vehicle, ORS 164.272. To convict a person of aggravated theft in the first degree, the state must prove that the stolen property had a value of \$10,000 or more. That value is established by "the market value of the property at the time and place of the crime, or if such cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime." ORS 164.115(1). On appeal, defendant argues that the trial court erred in concluding that the market value of the stolen items was not reasonably ascertainable and in relying on evidence of replacement value. Held: The trial court erred in concluding that the market value of the stolen items could not be reasonably ascertained, and in concluding that it had an adequate basis to use replacement values to establish that the stolen property was worth at least \$10,000. Conviction on Count 1 reversed and remanded for entry of a judgment of conviction for theft in the third degree; remanded for resentencing; otherwise affirmed.

State of Oregon v. Daniel Carlyon Etzel
(Aoyagi, J.)

Defendant was convicted of two counts of first-degree sexual abuse, ORS 163.427, two counts of second-degree rape, ORS 163.365, and two counts of second-degree sodomy, ORS 163.395. The convictions stem from defendant's alleged sexual abuse of his girlfriend's daughter. On appeal, defendant challenges several of the trial court's evidentiary rulings: (1) the exclusion of testimony by defendant's ex-girlfriend and defendant's ex-wife regarding their opinions of defendant's "sexual propriety around children" as a character trait under OEC 404(2)(a); (2) the overruling of defendant's objection to a police detective's qualifications to testify about grooming of children for sexual abuse; and (3) the admission of grooming evidence over defendant's objections based on OEC 401, 702, and 403. Held: The trial court did not err in excluding opinion testimony regarding defendant's sexual propriety around children specifically, because character refers to one's tendency to act in a certain way in all the varying situations of life, and the court allowed opinion testimony about defendant's sexual propriety generally. As for the grooming-evidence rulings, the trial court did not err in deeming the police detective qualified to testify or in concluding that the evidence was relevant. However, the trial court did err under OEC 702 when it concluded that the evidence was not scientific and did not require a scientific foundation, requiring a remand for further proceedings. Reversed and remanded.

Laurie Cumming v. Laurie Nipping
(Aoyagi, J.)

This case is on appeal for the second time. Plaintiff brought a claim against defendants for unjust enrichment, asserting that plaintiff's stepmother had wrongfully transferred \$300,000 in trust assets to defendants. After a bench trial, the trial court denied plaintiff's claim. In the first appeal, the Court of Appeals concluded that the trial court had applied the wrong legal standard, vacated the judgment, and remanded for further proceedings. Under the correct legal standard, to prevail on an unjust enrichment claim in circumstances like these, the plaintiff must prove that (1) property or a property interest that rightfully belongs to the plaintiff was taken or obtained by someone else under circumstances that in some sense were wrongful or inequitable; (2) the person who now possesses the property is not a bona fide purchaser for value and without notice; and (3) the property upon which the plaintiff seeks to impose a constructive trust is the property that rightfully belongs to the plaintiff or is a product of or substitute for it. On remand, on the same record, the trial court again denied plaintiff's claim. Held: The trial court erred in its application of the legal standard to this record. Reversed and remanded.

State of Oregon v. Robert Lewis Henley
(Aoyagi, J.)

Defendant was convicted of first-degree sexual abuse, ORS 163.427, and attempted first-degree sodomy, ORS 163.405, for acts committed against his 11-year-old stepdaughter. On review, the Supreme Court held that a forensic interviewer's testimony regarding "grooming" of children for sexual abuse constituted scientific evidence under OEC 702, such that the trial court erred in not requiring the state to establish a scientific foundation for the evidence. On remand, the trial court determined that the evidence had a sufficient scientific foundation to be admissible under OEC 702, and it reentered defendant's convictions. Defendant appeals, challenging the admission of the grooming testimony under OEC 401 (relevance), OEC 403 (unfair prejudice), and OEC 702 (scientific validity). Held: Given the procedural history of this case, the trial court did not err in limiting the remand proceeding to addressing the scientific validity of the grooming evidence to

determine its admissibility under OEC 702. Nor did the trial court err in determining that the state had proved its scientific validity. Affirmed.

Xin Hickey v. Joshua Scott
(Aoyagi, J.)

In this action for residential forcible entry and detainer (FED), plaintiff landlord successfully sought to evict defendant tenants for nonpayment of rent. Defendants appeal, assigning error to the trial court's denial of their motion to dismiss. Defendants moved to dismiss on the basis that plaintiff's written notice of intent to terminate for nonpayment of rent was invalid, due to failing to "specify the amount of rent that must be paid * * to cure the nonpayment of rent," as required by ORS 90.394(3). Specifically, defendants argued that the notice was invalid because they actually owed less than the amount specified in the notice. The notice specified that the amount owed was \$1,700, whereas defendants contended that they owed either nothing or less than \$1,700, and the trial court ultimately found that they owed \$1,175. Held: The trial court did not err in denying defendants' motion to dismiss. Under ORS 90.394(3), a notice must specify the amount of rent that the landlord is demanding to cure the rent default and avoid an eviction action. If the landlord is incorrect about the amount of rent due, the landlord may lose on the merits in an FED action (if the tenant has paid the amount actually due), but that does not render the underlying notice invalid. Affirmed.

K. G. G. v. David John Lucarelli
(Aoyagi, J.)

Respondent challenges a restraining order entered under the Family Abuse Prevention Act (FAPA), ORS 107.700 to 107.735. Petitioner and respondent were a couple for eight or nine years and have a young child together. After they separated, petitioner obtained a FAPA restraining order against respondent, based on an incident of abuse on January 26, 2020. Respondent contested the restraining order. After hearing testimony from both parties, the court continued the restraining order. Respondent appeals, challenging the sufficiency of the evidence. He contends that the only incident during the 180 days preceding the filing of the petition did not legally qualify as an incident of "abuse" as defined in ORS 107.705(1)(b), i.e., that respondent intentionally, knowingly, or recklessly placed petitioner in fear of imminent bodily injury, which is an objective standard based on the totality of the circumstances. He also disputes the sufficiency of the evidence to establish an imminent danger of further abuse to petitioner or that respondent represents a credible threat to her physical safety. Held: The evidence was sufficient to support the restraining order. Affirmed.

Lincoln Loan Co. v. The Estate of George W. Geppert
(Brewer, S. J.)

Plaintiff appeals from a judgment which held that the two most senior of plaintiff's three remaining mortgages on a single property were barred from foreclosure under the applicable statute of limitations. The trial court concluded that the third mortgage was not time barred, and it was foreclosed. Defendant had previously purchased the property at a sheriff's sale arising from an earlier foreclosure action of a fourth junior mortgage on the same property. Held: The trial court properly concluded that defendant's rights in the property, acquired from the sheriff's sale in the previous foreclosure action, attached to the property after the designated period for enforcement of the two most senior mortgages expired under ORS 88.110 and before plaintiff commenced the present foreclosure action. Therefore, the exception to the bar in ORS 88.110 provided in ORS 88.120 did not apply, and enforcement of the two most senior mortgages was barred. Affirmed.

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