



COURT OF APPEALS

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CONTACT:

Daniel Parr
(503) 986-5589

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The Court of Appeals issued these opinions:

- Department of Human Services v. W. C. T.
(A174195 - Grant County Circuit Court)
- State of Oregon v. Scott Leander Camirand
(A165966 - Lincoln County Circuit Court)
- State of Oregon v. Hans Guenter Wulf
(A173165 - Washington County Circuit Court)
- Chester Mooney v. State of Oregon
(A174300 - Oregon Health Authority)
- State of Oregon v. David Leroy Center, Jr.
(A166777 - Multnomah County Circuit Court)
- State of Oregon v. Brian G. Hubbell
(A170143 - Washington County Circuit Court)

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

- State of Oregon v. Karl Robert Jensen
(A171617 - Washington County Circuit Court)
- State of Oregon v. Steven Ray Hall
(A173082 - Crook County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

- Richard W. Salmon v. Board of Parole and Post-Prison Supervision
(A169077 - Board of Parole and Post-Prison Supervision)
- State of Oregon v. Stephen John Jones
(A171351 - Douglas County Circuit Court)
- State of Oregon v. Manuel Daniel Delgado
(A171754 - Coos County Circuit Court)

State of Oregon v. Janet Sue Karambelas
(A172570 - Multnomah County Circuit Court)
State of Oregon v. Robby Joe King
(A172711 - Lane County Circuit Court)
State of Oregon v. William Andrew Morgan
(A172974 - Yamhill County Circuit Court)
Timothy L. Aikens v. Board of Parole and Post-Prison Supervision
(A173067 - Board of Parole and Post-Prison Supervision)
State of Oregon v. Brett Olivas
(A173187 - Jefferson County Circuit Court)
State of Oregon v. Kenneth N. Rudderham
(A173199 - Polk County Circuit Court)
State of Oregon v. Torn Khing Saephan
(A173242 - Multnomah County Circuit Court)
State of Oregon v. Troy Allen Baca
(A173306 - Multnomah County Circuit Court)
State of Oregon v. Ryan Joseph Smith
(A173320 - Lane County Circuit Court)
State of Oregon v. Damon Robert Fletcher
(A173671 - Curry County Circuit Court)
Gilbert Lewis Lane v. Colette Peters
(A174140 - Marion County Circuit Court)
State of Oregon v. Jeffrey Todd Rauch
(A174356 - Marion County Circuit Court)
State of Oregon v. R. E. P.
(A174852 - Washington County Circuit Court)
Department of Human Services v. N. N.
(A175478 - Deschutes County Circuit Court)
Department of Human Services v. O. B.
(A175598 - Multnomah County Circuit Court)
Department of Human Services v. J. J. J.
(A175704 - Multnomah County Circuit Court)

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Department of Human Services v. W. C. T.

(DeVore, J.)

In consolidated appeals, mother and father appeal judgments of jurisdiction and disposition. The juvenile court took jurisdiction over parents' daughter and directed parents to cooperate in the plan for reunification. Mother and father assert ten assignments of error in the decision to take dependency jurisdiction. Both parents assign error to the court's order that they participate in psychological evaluations, arguing that a line of cases relying on ORS 419B.337(2) as authority for such evaluations should be overruled as plainly wrong

and that under their preferred statutory authority, ORS 419B.387, the juvenile court failed to justify psychological exams as a component of treatment or training by tying the exams to substance abuse. In addition, mother assigns error to the court's order that she engage in consistent visitation, obtain safe and stable housing, sign information releases, and complete a "protective capacity assessment." Held: The line of cases relying on ORS 419B.337(2) and ORS 419B.343(1)(a) as authority for the juvenile court to order parent participation in psychological evaluations was not plainly wrong and could be harmonized with recent cases involving ORS 419B.387. After an evidentiary hearing, a juvenile court may order a psychological evaluation when finding that (a) the evaluation is rationally related to the jurisdictional findings, (b) it serves as a predicate component to the determination of treatment and training, (c) there is a need for treatment or training to ameliorate the jurisdictional findings or to facilitate the child's return, and (d) the parent's participation in needed treatment or training is in the best interests of the child. The Court of Appeals affirmed the jurisdictional judgment and affirmed the dispositional judgment as to mother. However, the court agreed with father that the juvenile court erred in directing him to participate in a psychological evaluation and reversed and remanded that part of the dispositional judgment. Jurisdictional judgment affirmed; dispositional judgment affirmed in part, reversed and remanded in part.

State of Oregon v. Scott Leander Camirand

(Lagesen, P. J.)

The Court of Appeals initially affirmed defendant's convictions after concluding that the trial court's error in allowing the prosecutor to argue facts not in evidence was harmless, as was any error in failing to give the "witness-false-in-part" jury instruction. The Supreme Court vacated that decision and remanded it for reconsideration in light of the Supreme Court's subsequent decisions in *State v. Payne*, 366 Or 588, 468 P3d 445 (2020), and *State v. Banks*, 367 Or 574, 481 P3d 1275 (2021). Held: On reconsideration in light of *Banks*, the prosecutor's improper argument had some likelihood of affecting the jury's verdict and, therefore, the court's error in overruling defendant's objection to it was not harmless. Reversed and remanded.

State of Oregon v. Hans Guenter Wulf

(Lagesen, P. J.)

Petitioner appeals a judgment of conviction for driving while suspended, ORS 811.182. He assigns error to the trial court's denial of his motion to suppress evidence that his license was suspended, contending that the evidence was obtained during an unlawful traffic stop for a U-turn. In defendant's view, his U-turn in an intersection did not violate ORS 811.365(1)(a), which regulates U-turns in intersections, meaning that there was no probable cause to stop him for it. Petitioner argues that ORS 811.365(1)(a) only prohibits U-turns from the portions of an intersection that are controlled by an electrical signal, and that he turned from a lane not controlled by the signal. The state argues U-turns are prohibited at any point within a signal-controlled intersection. Held: Correctly construed, ORS 811.365(1)(a) prohibits U-turns in any intersection with an electrical traffic control signal, unless "posted otherwise," which was not the case here. The traffic stop was legal, and the trial court did not err when it denied defendant's motion to suppress evidence that resulted from the stop. Affirmed.

Chester Mooney v. State of Oregon

(Lagesen, P. J.)

Petitioners bring this rule-review proceeding under ORS 183.400, seeking to have an Oregon Health Authority (OHA) document, entitled "Statewide Mask, Face Shield, Face Covering Guidance," invalidated. OHA contends that the court lacks jurisdiction over this matter for two reasons: (1) because the challenged guidance is not an administrative rule under ORS 183.340(9), but part of an executive order, and thus excluded from review; and (2) because the guidance in the challenged document has been superseded by

subsequent guidance, so the proceeding is moot. Held: Assuming without deciding that the guidance at issue is an administrative rule, it was superseded by subsequently promulgated temporary administrative rules. Consequently, under case law, the proceeding was moot. See, e.g., *Reid v. DCBS*, 235 Or App 397, 401, 232 P3d 994 (2010) (so holding). Petition dismissed.

State of Oregon v. David Leroy Center, Jr.
(DeHoog, J.)

Defendant appeals a judgment convicting him of attempting to elude a police officer, ORS 811.540(1)(b)(B). Defendant contends that the trial court erred in denying his motions to suppress (1) his confession to being the driver of the pursued vehicle, and (2) an eyewitness's identification of defendant as the driver. The court did not reach the merits of the identification issue, as any error was harmless under the circumstances. Regarding the confession, defendant argues that, under ORS 136.425(1), the state did not meet its burden of proving that the confession was voluntary, because it was the product of a police officer's explicit threat of jail and the loss of defendant's car. The state concedes that the officer's threats prompted defendant's confession, but argues that the threats were not unlawfully coercive, because the officer had lawful authority to carry out the threatened actions. Held: Under ORS 136.425(1), the voluntariness of a confession depends on whether a person's confession is the unlawful product of threats, not whether the threatened actions themselves are lawful or unlawful. Accordingly, the trial court erred by denying defendant's motion to suppress his confession. To the extent that the trial court erred in denying defendant's motion to suppress eyewitness-identification evidence, any such error was harmless under the specific circumstances of defendant's trial, but defendant was given leave to raise the issue again upon any retrial. Reversed and remanded.

State of Oregon v. Brian G. Hubbell
(James, J.)

Defendant appeals a judgment of conviction for delivery of a controlled substance that was based on the theory that his possession of a large amount of fentanyl, some of which was individually packaged, was sufficient to prove a "Boyd delivery." See *State v. Boyd*, 92 Or App 51, 756 P2d 1276, rev den, 307 Or 77 (1988) (holding that "attempted transfer" for purposes of the definition of "delivery" in ORS 475.005(8) incorporates the meaning of the inchoate crime of attempt under ORS 161.405(1)). In light of recent Court of Appeals decisions casting doubt on Boyd's reasoning and its resort to ORS 161.405 as a definition of the word "attempted," the court requested supplemental briefing from the parties with regard to whether Boyd was plainly wrong in its construction of ORS 475.005(8). In supplemental briefing, defendant argues that Boyd is inconsistent with legislative intent and plainly wrong, and that the legislature intended "the ordinary definition of an overt act by which the actor means to accomplish the thing 'attempted,' especially when the actor is unsuccessful through interruption, prevention, or other circumstance." The state, for its part, argues that Boyd was correctly decided because the legislature intended to criminalize possession with intent to distribute; that, even if the court were to disagree, it should not overrule Boyd as plainly wrong; but that, even if it did, defendant's conviction should nevertheless be affirmed under the ordinary meaning of "attempted." Held: Boyd's leap--defining the word "attempted" within a substantive statute to be the inchoate crime of attempt--was not just wrong but plainly wrong. After employing the usual methodology for construing statutes (something that did not happen in Boyd), it was readily apparent that the legislature meant for the word "attempted" in ORS 475.005(8) to capture an unsuccessful transfer, not to combine the inchoate and completed crimes of delivery of a controlled substance in the way that Boyd did. Accordingly, the court overruled Boyd, applied the ordinary meaning of "attempted" transfer to the record in the case, and concluded that the state's evidence was legally insufficient to prove the crime of delivery of a controlled substance. However, because the evidence was legally sufficient to show a substantial step toward the completed crime of delivery, the court reversed and remanded for entry of a conviction for the lesser-included crime that the

state did prove: the inchoate crime of attempted delivery of a controlled substance. Conviction for delivery of a controlled substance reversed and remanded for entry of a conviction for attempted delivery of a controlled substance; remanded for resentencing; otherwise affirmed.

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