

SUPREME COURT

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On December 9, 2021, the Supreme Court:

1. Allowed the petition for alternative writ of mandamus as follows¹:

Keith Tharp v. Kelsey Hergett, (S068955) (original mandamus proceeding involving an order from the Washington County Circuit Court)

Relator is the mother of a child conceived when she was unmarried. One of two men is the biological father of the child. One of the men, who is a necessary party (and referred to here as "necessary party"), signed a voluntary acknowledgement of paternity (VAP) that was filed with the state. The other man, who is the adverse party, filed a petition to establish paternity through a filiation proceeding under ORS 109.125.

Soon after adverse party initiated his filiation proceeding, relator and necessary party were married and remain married and cohabiting. Relator moved for summary judgment, arguing that the VAP establishes necessary party as the child's legal father, to the exclusion of adverse party. Adverse party opposed the motion for summary judgment on the ground that the child's biological paternity was a genuine issue of material fact and separately moved for a DNA blood test of himself, relator, daughter, and necessary party.

The trial court denied relator's motion for summary judgment and granted adverse party's motion for DNA tests.

¹ These summaries of cases are prepared for the benefit of members of the media to assist them in reporting the court's activities to the public. Parties and practitioners should not rely on the summaries, or the statement of issues to be decided in the summaries, as indicating the questions that the Supreme Court will consider. Regarding the questions that the Supreme Court may consider, see Oregon Rule of Appellate Procedure 9.20.

Relator filed a petition for a writ of mandamus. The Oregon Supreme Court allowed the petition and issued an alternative writ of mandamus, commanding the trial court to vacate its order requiring blood testing, or in the alternative, show cause for not doing so.

The issue in this mandamus proceeding is whether biological parentage is a relevant fact in a filiation proceeding if there is a VAP signed by the cohabiting spouse of the mother, or whether, instead, the VAP resolves the question of legal paternity as a matter of law.

2. Allowed petitions for review in:

Wayne Thomas Houff v. Garrett Laney, 312 Or App 274, 487 P3d 853 (2021) (A171501) (S068887) (on review from the Marion County Circuit Court)

Plaintiff Wayne Thomas Houff has been granted review of a Court of Appeals decision affirming without opinion a general judgment that granted defendant Garrett Laney's motion to dismiss plaintiff's habeas corpus proceeding and that denied plaintiff's cross-motion for summary judgment.

On review, the issue is:

Was plaintiff entitled to habeas corpus relief on the basis that he was entitled to earned-time credits for counts that he served concurrently with a sentence served pursuant to ORS 137.700?

State of Oregon v. Ahmed Gbanabom Turay, Jr., 313 Or App 45, 493 P3d 1058 (2021) (A166973) (S068894) (on review from the Washington County Circuit Court)

The State of Oregon has been granted review of a Court of Appeals decision that vacated the trial court's denial of defendant's motion to suppress evidence discovered during a search of his cell phone, and remanded for development of a record as to how the forensic search of the phone was conducted and for the trial court to determine whether all or part of the evidence at issue was lawfully discovered, and whether a new trial is necessary.

On review, the issues are:

- (1) Is a warrant to search a personal electronic device sufficiently particular if it is limited to a general class of information

(such as internet search history, communication, images, or documents) connected to specific people or specific conduct?

- (2) If a warrant contains both sufficiently particular and insufficiently particular commands to examine a personal electronic device of the sort contemplated in *State v. Mansor*, 363 Or 185, 421 P3d 323 (2018), how should a court determine what evidence must be suppressed due to the insufficiently particular commands?

State of Oregon v. Anthony Randall Delaney, 314 Or App 561, ___ P3d ___ (2021) (A165686) (S068908) (on review from the Clackamas County Circuit Court)

Defendant Anthony Randall Delaney has been granted review of a Court of Appeals decision that affirmed the trial court's denial of defendant's pretrial motion to sever, in which he sought separate trials for charges related to two separate victims.

On review, the issues are:

- (1) Does a finding that charges are sufficiently simple and distinct that they will not confuse the jury adequately address the variety of ways that joinder of similar charges can render a trial unfair?
- (2) Are sexual assault charges involving different victims, on different days, sufficiently simple and distinct to mitigate substantial prejudice when each victim describes the defendant's reputation for either violence or sexual violence in order to explain the victim's behavior?

3. Denied petitions for reconsideration in:

David Roberts v. State Farm Mutual Automobile Insurance Company (S068662) (A173209)

Santos Cuevas v. State of Oregon (S068807)

4. Denied petitions for review in:

State of Oregon v. David Wynn Best, Jr. (S068837) (A171755)

Linda Much v. Jane Doe (S068845) (A168009)

Jack L. Edwards v. Cavenham Forest Industries (S068895) (A171184)
State of Oregon v. Alexander Tomas Harrison (S068901) (A173014)
State of Oregon v. Steven Michael Chase (S068902) (A171805)
Joseph Schaefer v. Oregon Aviation Board (S068906) (A175219)
The Bank of New York Mellon v. Lucille Wills (S068926) (A172608)
State of Oregon v. Gloria Mae Reed-Hack (S068922) (A169946)
Galina Burley v. Clackamas County (S068934) (A165863)
Scott Brian Steffler v. Board of Parole and Post-Prison Supervision (S068935)
(A172937)
State of Oregon v. Richard William Salmon (S068951) (A175440)
Joseph Schaefer v. Oregon Aviation Board (S068944) (A175219)
State of Oregon v. Thomas Lee Benson (S068952) (A168917)
State of Oregon v. Abdiwali Mohamed Hussein (S068954) (A173389)
State of Oregon v. Travis Leroy Grigsby (S068956) (A172941)
State of Oregon v. Jeffrey Todd Rauch (S068957) (A174356)
State of Oregon v. Jordan Tyrese Parks (S068967) (A172619)
State of Oregon v. G. K. C. (S068965) (A172129)
State of Oregon v. Manuel Daniel Delgado (S068970) (A171754)
Brittany Deyo-Bundy v. SAIF Corporation (S068973) (A174082)
Larry Kine v. Deschutes County (S068979) (A175462)
Anthony Abram Mendibles v. Brad Cain (S068985) (A173005)
Department of Human Services v. A. M. E. (S068993) (A175653)
Pedro Cardenas Valdez v. Brandon Kelly (S068994) (A172491)
State of Oregon v. Leonardo Rodriguez Rodriguez (S069002) (A171936)
(A172280)
Department of Human Services v. R. H. (S069015) (A175692)

5. Dismissed the petition for review as improvidently allowed in:

Mindful Insights, LLC v. Verify Valid, LLC (S067847) (A161850)

6. Denied petitions for writs of mandamus in:

State ex rel Matthew Jonathan Maxwell v. Kate Brown (S068920)
Monika D. Ramirez and Skeeter E. Ramirez (S068995)

7. Denied petitions for writs of habeas corpus in:

Uriel Alberto-Toledo v. Clifton Harrold (S068875)
Matthew Alexander McAdoo v. Pat Garrett (S068893)

8. Reinstated the following attorney to the active practice of law:

Benjamin H. Kaminash (Bar No. 890661)

On December 3, 2021, the Supreme Court:

1. Issued a peremptory writ of mandamus as follows:

I. H. v. A. A. (S069072) (original mandamus proceeding involving an order from the Washington County Circuit Court)

Petitioner filed a petition for writ of mandamus requesting issuance of an alternative or peremptory writ of mandamus directing the circuit court judge to reverse an order entered on December 1, 2021, which had granted Respondent-Adverse Party's motion to compel discovery in the underlying case, in which petitioner already had been granted a restraining order. After petitioner filed that petition, the trial court entered an order that dismissed the restraining order previously granted to petitioner. The Oregon Supreme Court issued a peremptory writ of mandamus that commanded the trial court to vacate its order dismissing the restraining order; petitioner's petition for a writ of mandamus as to the discovery issue remains pending in the Supreme Court.

On December 8, 2021, the Supreme Court:

1. Dismissed the petition for writ of mandamus in:

State of Oregon v. Henry Jamar Brogdon (S069017)