



COURT OF APPEALS

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The Court of Appeals issued these opinions:

- State of Oregon v. William Glenn Street
(A169470 - Washington County Circuit Court)
- State of Oregon v. Heather M. Pitz
(A173827 - Coos County Circuit Court)
- State of Oregon v. Monica R. Keene
(A169671 - Polk County Circuit Court)
- William Cox v. HP Inc.
(A172614 - Multnomah County Circuit Court)
- Gene Albrecht v. Terry W. Emmert
(A174289 - Multnomah County Circuit Court)
- State of Oregon v. Adam James Singleton
(A175454 - Lincoln County Circuit Court)
- State of Oregon v. Barry William Bales
(A169003 - Washington County Circuit Court)

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

- State of Oregon v. Arrow Cliff Valenzuela
(A173468 - Coos County Circuit Court)
- State of Oregon v. Michael George Sperou
(A173587 - Multnomah County Circuit Court)
- State of Oregon v. Gerlinde Spring Lynch
(A173858 - Linn County Circuit Court)
- State of Oregon v. Christopher Ryan Hoppe
(A173942 - Grant County Circuit Court)
- Gene H. Albrecht v. City of Portland
(A174293 - Multnomah County Circuit Court)
- State of Oregon v. D. S.
(A176289 - Marion County Circuit Court)

Department of Human Services v. A. V.
(A176375 - Washington County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

State of Oregon v. Fabian Patino
(A172498 - Crook County Circuit Court)
State of Oregon v. Kathleen Denise Moore
(A172600 - Baker County Circuit Court)
State of Oregon v. Jesus Alberto Martinez
(A173081 - Multnomah County Circuit Court)
State of Oregon v. Richard Allen Burgett
(A173371 - Tillamook County Circuit Court)
State of Oregon v. William Travis Holland
(A173381 - Deschutes County Circuit Court)
State of Oregon v. Andrew Marden Young
(A173419 - Clackamas County Circuit Court)
State of Oregon v. Ryan Douglas Merckling
(A173768 - Linn County Circuit Court)
State of Oregon v. Judith Kaye Lichty
(A174507 - Josephine County Circuit Court)
State of Oregon v. Daniel Dale Husted
(A174734 - Marion County Circuit Court)
Edmund Enriquez v. Washington County District Attorney
(A175503 - Washington County Circuit Court)
Department of Human Services v. A. M. N.
(A175998 - Linn County Circuit Court)
Roxanne Rowe v. Employment Department
(A176467 - Employment Appeals Board)

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State of Oregon v. William Glenn Street
(Ortega, P. J.)

Defendant appeals a judgment of conviction for two counts of first-degree online sexual corruption of a child, ORS 163.433, (Counts 1 and 2), entered after a bench trial. On appeal, defendant assigns two errors. In his first assignment, he asserts that the trial court erred by denying his motion for judgment of acquittal on the two counts of first-degree online sexual corruption of a child. In defendant's second assignment, he contends that the trial court erred by failing to merge the verdicts on those counts into a single conviction. Held: The Oregon Court of Appeals rejected defendant's first assignment of error because, under ORS 163.433 and ORS 163.432, defendant's actions qualified as solicitation of a minor. However, as the state conceded, the trial court did err by failing to merge the guilty verdicts on the two counts. Convictions on Counts 1 and 2 reversed and

remanded for entry of a judgment of conviction for a single count of first-degree online sexual corruption of a child; remanded for resentencing; otherwise affirmed.

State of Oregon v. Heather M. Pitz
(Shore, J.)

Days after defendant's term of probation ended, the state moved for an order requiring her to appear and show cause why her probation should not be revoked for certain violations. The trial court issued an order to show cause the following day, apparently unaware that it no longer possessed the statutory authority to do so. When defendant failed to appear before the court, a warrant was issued for her arrest. Defendant's later arrest on that warrant led to the search of a lunchbox in her possession, the discovery of drug evidence, and her indictment for unlawful possession of methamphetamine. Defendant moved to suppress the evidence, contending that it was discovered as a result of her unlawful arrest on an invalid warrant. That motion was denied; although the trial court agreed that the warrant was invalid, it concluded that defendant had voluntarily consented to the search, purging any taint from the earlier constitutional violation. On appeal, defendant contends that her arrest was unlawful and that her later consent to the search was involuntary and the product of police exploitation of the prior illegal arrest. Held: Defendant was unlawfully arrested on an invalid warrant, and the state failed to meet its burden to prove that the police had not exploited that illegal arrest in obtaining defendant's consent to search her lunchbox. Reversed and remanded.

State of Oregon v. Monica R. Keene
(DeVore, S. J.)

After acquitting defendant of first-degree sexual abuse, the count with which she was charged, the trial court--on its own initiative and without notice to defendant--found her guilty of third-degree sexual abuse, a lesser-included offense. In doing so, the trial court erroneously identified and applied a culpable mental state of criminal negligence rather than finding that defendant knowingly committed the lesser-included offense. On appeal, defendant challenges that conviction, both on the ground that it violates her due process rights under *State v. Barrie*, 227 Or App 378, 206 P3d 256 (2009), and on the ground that it was based on a finding of a mental state that was too low. The state responds that defendant has not preserved her contentions, that *Barrie* does not control, and that her claims do not qualify for plain error review. Held: Defendant was excused from preserving her claims of error. Defendant's conviction for third-degree sexual abuse could not stand where the trial court found that the state had not proved she acted with the requisite mental state, and, as in *Barrie*, where defendant lacked actual notice that the lesser-included charge was under consideration. Conviction on Count 1 reversed; remanded for resentencing; otherwise affirmed.

William Cox v. HP Inc.
(DeVore, S. J.)

After William Cox sustained injuries from an explosion of a hydrogen generator, plaintiffs brought claims against defendant Spirax Sarco, Inc. (Spirax), an entity that supplied a component part to the generator's manufacturer. On appeal, plaintiffs argue that the trial court erred when it granted Spirax's motion to dismiss for lack of personal jurisdiction. Held: Spirax's activities in Oregon were insufficiently related to plaintiffs' claims so as to support the exercise of personal jurisdiction. Accordingly, the trial court did not err when it granted Spirax's motion to dismiss for lack of personal jurisdiction. Affirmed.

Gene Albrecht v. Terry W. Emmert
(DeVore, S. J.)

Plaintiffs appeal from a supplemental judgment denying their post-judgment motion for an award of attorney fees based on ORS 20.105, in which plaintiffs asserted that defendants had no objectively reasonable basis to have denied plaintiffs' claims. The trial court denied the motion because plaintiffs had failed to comply with the pleading, timing, and documentation requirements of ORCP 68. On appeal, plaintiffs assert that fees under ORS 20.105, awarded as a sanction, should be regarded as fees awarded by order so as to be exempt from the requirements of ORCP 68 under ORCP 68 C(1)(b). Alternatively, plaintiffs argue that their motion complied with ORCP 68. Held: Existing case law applying ORCP 68 to claims for attorney fees under ORS 20.105 was not plainly wrong when decided, and the trial court did not err in applying ORCP 68. Further, the trial court did not err in determining that plaintiffs' pleading and motion failed to comply with ORCP 68 where plaintiffs failed to avail themselves of the opportunity to plead their entitlement to attorney fees under ORS 20.105 in their reply or by an amendment of their complaint. Affirmed.

State of Oregon v. Adam James Singleton
(DeVore, S. J.)

Defendant appeals from an order denying his motion to set aside a conviction and seal records of arrest. He argues that the trial court erred in determining him ineligible for expungement and denying his uncontested motion without holding an evidentiary hearing. Held: The trial court erred in denying defendant's motion, and it was required to provide defendant with the opportunity to engage in a hearing where relevant evidence could be admitted and he could challenge, rebut, or explain that evidence and submit contrary evidence. Accordingly, the Court of Appeals vacated the trial court's order denying defendant's motion and remanded for further proceedings. Vacated and remanded.

State of Oregon v. Barry William Bales
(Hadlock, J. pro tempore)

In this criminal appeal, defendant challenges the trial court's entry of a conviction on fourth-degree assault and second-degree criminal mischief, following remand from the Court of Appeals. In the prior opinion, the Court of Appeals reversed and remanded the previous judgment because the trial court erred by excluding evidence related to defendant's mental health condition and by denying a motion for judgment of acquittal for third-degree assault, although the Court of Appeals left open the possibility of retrial for fourth-degree assault. On remand, the trial court determined that the proffered evidence was inadmissible on another basis and entered a judgment of conviction for fourth-degree assault and second-degree criminal mischief without holding a new trial. On appeal, defendant argues that the trial court erred by excluding the mental health evidence as irrelevant and by concluding a new trial was not warranted. Held: After the trial court's entry of conviction after remand, the Oregon Supreme Court decided *State v. Hightower*, 368 Or 378, 491 P3d 769 (2021), which clarified the analysis the trial court must undertake upon remand from an appellate court when deciding whether a new trial is required. Because the trial court did not undertake that required analysis, the Court of Appeals remanded for the trial court to consider whether, under *Hightower*, a new trial is required. Reversed and remanded.

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