



COURT OF APPEALS

Media Release

COPIES:

Copies of the slip opinions may be obtained from the Appellate Records Section, (503) 986-5555.
The full text of the opinions can be found at <http://www.publications.oid.state.or.us>.

CONTACT:

Lora Keenan
(503) 986-5660

September 04, 2014

The Court of Appeals issued these opinions:

State of Oregon v. Cameron Thomas Duvall
(A152472 - Jackson County Circuit Court)

State of Oregon v. Alyssa Linn Hunt
(A149706 - Multnomah County Circuit Court)

State of Oregon v. Dwayne Edward Abraham
(A150400 - Multnomah County Circuit Court)

State of Oregon v. Glen Gallegos
(A150906 - Multnomah County Circuit Court)

Broadway Cab LLC v. Employment Department
(A150627 - Office of Administrative Hearings)

State of Oregon v. Allan Darryl Hall
(A151077 - Lincoln County Circuit Court)

American Federation of State, County and Municipal Employees,
Council 75, Local 2043 v. City of Lebanon
(A152059 - Employment Relations Board)

John Steven Burcham v. Steven Franke
(A150449 - Umatilla County Circuit Court)

State of Oregon v. Sean Michael Turntine
(A149335 - Washington County Circuit Court)

State of Oregon v. Francis Benito Lucero
(A149756 - Clackamas County Circuit Court)

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

State of Oregon v. Jayson Andrew Tindall-Martin
(A151559 - Linn County Circuit Court)
State of Oregon v. Gary Erwin Vaughn
(A152891 - Marion County Circuit Court)
State of Oregon v. K. L. F.
(A154812 - Jefferson County Circuit Court)
State of Oregon v. D. K.
(A156070 - Lincoln County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

Karl Anthony Terry v. Jeff Premo
(A150646 - Marion County Circuit Court)
State of Oregon v. K. G.
(A151302 - Union County Circuit Court)
David Ernest Gildersleeve v. State of Oregon
(A152432 - Marion County Circuit Court)
Tama King v. United Fire, Health & Safety Equipment Co., Inc.
(A152589 - Multnomah County Circuit Court)
State of Oregon v. Dennis Paul Wharton
(A152712 - Douglas County Circuit Court)
State of Oregon v. T. M. H.
(A153082 - Multnomah County Circuit Court)
State of Oregon v. Glenn Ray Brunoe
(A153094 - Wasco County Circuit Court)
Gerald Ryan Payseno v. Rick Coursey
(A153206 - Umatilla County Circuit Court)
Robert A. Corry v. Marion County
(A153478 - Marion County Circuit Court)
State of Oregon v. Z. J. T.
(A153567 - Multnomah County Circuit Court)
Stanley W. Hiatt v. Oregon Department of Human Services
(A153675 - Oregon Department of Human Services)
Western Radio Inc. v. Terry Cowan
(A153798 - Deschutes County Circuit Court)
Bob Eugene West, Jr. v. Mark Nooth
(A155299 - Malheur County Circuit Court)
John Harper v. Oleg Borishkevich
(A155377 - Clackamas County Circuit Court)
Cynthia M. Braun v. Employment Department
(A155670 - Employment Appeals Board)
Edward B. Onimus v. Employment Department
(A156214 - Employment Appeals Board)

The Stop the Dump Coalition v. Yamhill County
(A157099 - Land Use Board of Appeals)

* * * * *

State of Oregon v. Cameron Thomas Duvall

(Haselton, C. J.)

Defendant, who was convicted of third-degree assault, felony fourth-degree assault, menacing, and three counts of reckless endangerment, appeals, arguing, inter alia, that the trial court erred in (1) failing to instruct the jury on the legal definition of "burglary" as it related to his self-defense defense; and (2) denying defendant's motion for judgment of acquittal with respect to the felony enhancement of fourth-degree assault. The state concedes error in both respects and acknowledges that defendant is entitled to reversal for a new trial on all counts, with any retrial of the fourth-degree assault charge limited to the misdemeanor variant of that offense. Held: The Court of Appeals accepted the state's concessions as well-founded and, accordingly, reversed and remanded for a new trial. Reversed and remanded.

State of Oregon v. Alyssa Linn Hunt

(Ortega, P. J.)

Defendant appeals a judgment of conviction for unlawful possession of heroin. She assigns error to the trial court's denial of her motion to suppress evidence, arguing that an officer stopped her without reasonable suspicion because he relied on an informant's report that lacked sufficient "indicia of reliability." Held: The trial court did not err by denying the motion to suppress evidence because the informant's report was sufficiently reliable to justify reasonable suspicion that defendant had committed or was committing a crime. Affirmed.

State of Oregon v. Dwayne Edward Abraham

(Sercombe, J.)

Defendant appeals a judgment of conviction for unlawful delivery of cocaine within 1,000 feet of a school. He argues that the trial court erroneously admitted evidence that, two weeks after the charged conduct, he told his girlfriend that he wanted to sell crack cocaine. In defendant's view, that evidence about a possible sale of cocaine at some unspecified time in the future was irrelevant to show that, two weeks earlier, defendant intended to deliver the cocaine in his possession; the state counters that the evidence was relevant to show defendant's prior intent to deliver cocaine. Held: Defendant's stated desire to sell cocaine at some point in the future was not relevant to show that he intended to sell the cocaine that he possessed two weeks earlier. The trial court erred in admitting that evidence, and that error likely affected the jury's verdict. Convictions on Counts 1 and 2 reversed and remanded; remanded for resentencing; otherwise affirmed.

State of Oregon v. Glen Gallegos

(Nakamoto, J.)

Defendant appeals a judgment of conviction for second-degree assault. He argues that the trial court erred when it denied his motion for a continuance of his trial after a key witness failed to appear at trial despite having received a subpoena. Defendant sought the continuance so that he could attempt to procure the witness's testimony. Held: Because defendant failed to establish that he could produce the witness, the trial court did not abuse its discretion in denying defendant's motion. Affirmed.

Broadway Cab LLC v. Employment Department

(Hadlock, J.)

Broadway Cab LLC (Broadway) seeks judicial review of a final order of an administrative law judge (ALJ) that affirmed a tax assessment issued by the Employment Department (department). In that order, the ALJ determined that Broadway, a taxicab company, had employed taxicab drivers and that the drivers' compensation was therefore subject to unemployment insurance tax, which Broadway had not paid. On review, Broadway contends that it was not required to pay unemployment insurance tax because its drivers did not perform services for remuneration and therefore the drivers' performance of driving services did not constitute employment. Alternatively, Broadway argues that even if the drivers did perform services for remuneration, Broadway did not have an employment relationship with the drivers because they were independent contractors. The department cross-petitions for review of the same ALJ order, contending that the ALJ erred in (1) concluding that the amount of assessed taxes in the notice was incorrect and (2) failing to provide the department with guidance as to what steps it should take next, as required by ORS 657.683(4). Held: The ALJ did not err in concluding that the drivers performed services for remuneration and that the drivers were not independent contractors. However, the ALJ was required to affirm, modify, or set aside the department's assessment under ORS 657.683(4), and failed to do so. Affirmed on petition; on cross-petition, reversed and remanded for reconsideration of the amount of the assessment.

State of Oregon v. Allan Darryl Hall

(Hadlock, J.)

Defendant appeals a judgment of conviction for driving under the influence of intoxicants. He assigns error to the trial court's denial of his motion to dismiss on speedy trial grounds under former ORS 135.747, repealed by Or Laws 2013, ch 431, § 1, arguing that the amount of pretrial delay attributable to the state was unreasonable. Held: The state was responsible for a total of 16 months of delay leading up to defendant's trial. Because most of the state-attributable delay was due to docket congestion for which the trial court gave a detailed and reasonable explanation, the Court of Appeals concluded that defendant was brought to trial within a reasonable period of time. Affirmed.

American Federation of State, County and Municipal Employees, Council 75, Local 2043 v. City of Lebanon

(Tookey, J.)

The City of Lebanon seeks judicial review of an order of the Employment Relations Board in which the board concluded that the city committed an unfair labor practice when Margaret Campbell, a city councilor, wrote a letter criticizing unions and sent it to a local newspaper. Held: The board erred when it concluded that the city committed an unfair labor practice through Campbell's act of writing and sending her letter. Campbell is not the city's "designated representative," as that term is used in ORS 243.672(1). Reversed and remanded.

John Steven Burcham v. Steven Franke

(Garrett, J.)

Petitioner was convicted of several crimes arising out of an incident in which he provided alcohol to a 16-year-old girl and, while she was intoxicated, sexually assaulted her. Petitioner brought a petition for post-conviction relief arguing that, in a variety of ways, his trial attorney had performed inadequately. The post-conviction court agreed with petitioner that his attorney had failed to exercise reasonable professional skill and judgment in two respects. First, the trial attorney failed to challenge the state's novel interpretation of the term "consent" as used in ORS 163.305(4) (2007), the statute that defines when a victim is considered

"mentally incapacitated." Second, the trial attorney failed to adequately prepare for, and respond to, testimony by the state's medical expert, the emergency room nurse who examined the victim after the assault. On those bases, the post-conviction court reversed petitioner's judgment of conviction in its entirety. The state appeals. Held: An attorney exercising reasonable professional skill and judgment would have challenged the state's theory that lack of "consent" to the consumption of alcohol could be established solely by the fact that the victim was 16 years old. Furthermore, his trial attorney's failure to do so affected the result of petitioner's prosecution because he was convicted of certain crimes when those charges should have been dismissed. Petitioner is not, however, entitled to relief based on his trial counsel's failure to adequately respond to the testimony of the state's medical expert. The evidence in the record does not demonstrate that additional preparation or a more thorough cross-examination of that expert would have had a tendency to affect the result of petitioner's trial. Portion of judgment reversing petitioner's convictions on Counts 7, 8, 9, and 10 reversed; otherwise affirmed.

State of Oregon v. Sean Michael Turntine

(De Muniz, S. J.)

Defendant appeals a judgment of conviction for felony assault in the fourth degree. He contends that the trial court erred by denying his motion for a judgment of acquittal on the ground that the state failed to prove that defendant had been "previously convicted" of assaulting the victim. Held: The trial court did not err by denying the motion for a judgment of acquittal. As the purpose of the statute demonstrates, the legislature intended the words "previously convicted" to include those offenders found guilty of previously assaulting the same victim, even if a formal judgment of conviction has not yet been entered on the previous assault. Affirmed.

State of Oregon v. Francis Benito Lucero

(De Muniz, S. J.)

Defendant appeals a judgment of conviction for one count of first-degree criminal trespass and one count of harassment. He argues that the trial court erred in excluding evidence supporting his belief that the legal proceedings resulting in his eviction from a foreclosed property were unlawful. Held: The legal proceedings resulting in the eviction order were final, establishing that defendant was not licensed or privileged to enter the premises. Under the circumstances, evidence supporting defendant's belief that those proceedings were somehow illegal or invalid was of no consequence regarding the legality of defendant's entry or whether defendant was aware of the fact that his entry was not otherwise licensed or privileged. Affirmed.

[End of Document]