

# SUPREME COURT

## Media Release



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On August 3, 2017, the Supreme Court:

1. Allowed petitions for review in<sup>1</sup>:

*Coos Waterkeeper v. Port of Coos Bay Oregon*, 284 Or App 620, 395 P3d 14 (2017)  
(A154347) (S064934) (from the Department of State Lands)

Petitioners Sierra Club, Greenpeace, and Friends of Oregon Living Waters have been granted review of a Court of Appeals decision that affirmed a decision of the director of the Department of State Lands (DSL), which authorized the issuance of a fill/removal permit to the Oregon International Port of Coos Bay to dredge part of Coos Bay to create a new multipurpose slip and marine terminal, along with an access channel connecting Coos Bay with that slip.

On review, the issues are:

(1) In evaluating an application for a fill/removal permit under ORS 196.825, is DSL required to consider all of the aquatic impacts of the project as a whole (including the impacts of the project's existence, construction, and operation), or should DSL limit its analysis to the removal or fill component of the project?

(2) If DSL's analysis of the project's adverse aquatic impacts is limited to the removal or fill component of a project, is DSL allowed to weigh the economic benefits of the project as a whole?

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<sup>1</sup> 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.

*State of Oregon v. Jason Benjamin Madden*, 283 Or App 524, 390 P3d 1087 (2017) (A155807) (S064760) (from the Lane County Circuit Court)

Defendant Jason Benjamin Madden has been granted review of a Court of Appeals decision that affirmed a trial court's denial of his motion to suppress evidence in his trial for unlawful delivery of methamphetamine, unlawful possession of methamphetamine, and felon in possession of a firearm.

On review, the issues are:

(1) Under Article I, section 9, of the Oregon Constitution, what is the scope of a police officer's authority to detain and question individuals when executing a search warrant?

(2) Under Article I, section 9, of the Oregon Constitution, may police officers who are executing a search warrant at a residence detain and question a person they encounter outside the residence?

*State of Oregon v. Tracy Lynn Lien*, 283 Or App 334, 387 P3d 489 (2017) (A158646) (S064826) (from the Linn County Circuit Court)

*State of Oregon v. Travis Allen Wilverding*, 283 Or App 334, 387 P3d 489 (2017) (A158647) (S064826) (from the Linn County Circuit Court)

Defendants Tracy Lynn Lien and Travis Allen Wilverding have been granted review of a Court of Appeals decision that affirmed the trial court's denial of defendants' motions to suppress evidence with respect to various drug charges brought against them.

On review, the issues are:

(1) When does a person relinquish his protected possessory interest in his garbage?

(2) When does a person relinquish his protected privacy interest in his garbage?

(3) Is the manager of a private garbage company acting as a state agent when, at the request of the police, he collects a customer's garbage in an atypical manner such that it may be identified with the customer for evidentiary purposes, rather than allowing it to be collected in the ordinary course of business and comingled with other people's garbage?

*Daniel Bret Garges v. Jeff Premo*, 284 Or App 313, 390 P3d 1124 (2017) (A161918) (S064938) (from the Marion County Circuit Court)

Petitioner Daniel Bret Garges has been granted review of a per curiam Court of Appeals decision that affirmed the trial court's dismissal of his petition for a writ of habeas corpus as moot because he had been transferred to a different prison.

On review, the issue is:

Does a habeas corpus action that alleges unconstitutionally insufficient medical treatment at an Oregon Department of Corrections (DOC) prison become moot when the plaintiff is transferred to a different DOC prison during the proceedings if there is evidence that a centralized DOC committee controls the course of treatment, not the superintendent at a particular prison?

*State of Oregon v. Brian Daniel Bement*, 284 Or App 276, 391 P3d 838 (2017) (A152702) (S064956) (from the Washington County Circuit Court)

The State of Oregon has been granted review of a Court of Appeals decision that reversed and remanded the convictions of defendant Brian Daniel Bement for aggravated murder, murder, first-degree robbery, and felon in possession of a firearm.

On review, the issue is:

When a victim's state of mind is relevant to the issues in a case, what kinds of out-of-court statements by the victim are admissible under OEC 803(3)?

*Esteban Chavez v. State of Oregon*, 283 Or App 788, 391 P3d 801 (2017) (A151251) (S064968) (from the Multnomah County Circuit Court)

Petitioner Esteban Chavez has been granted review of a Court of Appeals decision that affirmed a trial court decision granting the state's motion to dismiss his petition for post-conviction relief.

On review, the issues are:

(1) Was *Page v. Palmateer*, 336 Or 379, 84 P3d 133 (2004) incorrectly decided?

(2) Is retroactivity a factor to be considered under Oregon's post-conviction relief statutes?

(3) Did *Padilla v. Kentucky*, 559 US 356, 130 S Ct 1473, 176 L Ed 2d 284 (2010) announce a new constitutional rule that could not reasonably have been anticipated?

(4) May petitioner be presumed to know the deportation consequences of a criminal conviction such that he could reasonably have timely raised his Sixth Amendment claim for relief under ORS 138.510(3)?

*State of Oregon v. Peter A. Fonte*, 285 Or App 653, \_\_ P3d \_\_ (2017) (A161939) (S065012) (from the Multnomah County Circuit Court)

Defendant Peter A. Fonte has been granted review of a Court of Appeals decision that affirmed without opinion his convictions for first-degree theft.

On review, the issue is:

Under ORS 164.055(1)(c), for purposes of first-degree theft by receiving, does a person "sell" stolen property by fraudulently returning it to a store for a refund?

*Aline L. Miller v. Ford Motor Company*, (S065010) (certified question accepted from the United States Court of Appeals for the Ninth Circuit, Case No. 14-36001)

Pursuant to ORS 28.200, the Oregon Supreme Court accepted the following certified question from the United States Court of Appeals for the Ninth Circuit:

"Oregon's statute of repose for products liability actions ([ORS] 30.905(2)) provides that a civil action 'must be commenced before the later of \* \* \* ten years \* \* \* or \* \* \* the expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured \* \* \*.' If the state of manufacture has no relevant statute of repose, is a plaintiff entitled to an unlimited period (subject to the statute of limitations) in which to bring suit in Oregon court?"

*Cynthia Raynor v. United of Omaha Life Insurance Company*, (S065032) (certified question accepted from the United States Court of Appeals for the Ninth Circuit, Case No. 14-36090)

Pursuant to ORS 28.200, the Oregon Supreme Court accepted the following certified question from the United States Court of Appeals for the Ninth Circuit:

- (1) "If the Director of the Department of Consumer and Business Services approves a contractual limitations provision in an insurance policy under [ORS] 742.021, does the language of the policy always control or do the standard provisions of the Oregon Insurance Code apply if the standard provisions are more favorable than the approved insurance policy provision?"
- (2) "If the Oregon standard provisions do apply, when does 'the period for which the insurer was liable' under [ORS] 743.429 end?"

2. Allowed the petition for review in *State of Oregon v. David Henry Holt* (S064432) (A154052), vacated the decision of the Court of Appeals, and remanded to the Court of Appeals for reconsideration in light of *State of Oregon v. Edward Jones Zavala*, (opinion reported at 361 Or 377, 393 P3d 230 (2017)); *State of Oregon v. Brett Nicholas Mazziotti*, (opinion reported at 361 Or 370, 393 P3d 235 (2017)); *State of Oregon v. Russell Allen Baughman* (opinion reported at 361 Or 386, 393 P3d 1132 (2017)).

Allowed the petition for review in *State of Oregon v. Daniel David White* (S065007) (A159685), vacated the decision of the Court of Appeals, and remanded to the Court of Appeals for reconsideration in light of *State of Oregon v. Edward Jones Zavala*, (opinion reported at 361 Or 377, 393 P3d 230 (2017)); *State of Oregon v. Brett Nicholas Mazziotti*, (opinion reported at 361 Or 370, 393 P3d 235 (2017)); *State of Oregon v. Russell Allen Baughman* (opinion reported at 361 Or 386, 393 P3d 1132 (2017)).

Allowed the petition for review in *State of Oregon v. Steve Ray Rives* (S064875) (A154099), vacated the decision of the Court of Appeals, and remanded to the Court of Appeals for reconsideration in light of *State of Oregon v. Shawn Edwin Haugen*, (S063754) (A151535) (opinion reported at 361 Or 284, 392 P3d 306 (2017)).

3. Denied petitions for review in:

*Thomas Nicholas Meriweather v. Board of Parole and Post-Prison Supervision* (S064703) (A159414)

*Roslyn Ann Sherman v. Daniel Staton* (S064836) (A159954)

*John Berman v. Mark Oto* (S064911) (A161231)

*State of Oregon v. Leonard Madison Huckabee* (S064921) (A160070)

*Elaine Higgins v. State Farm Fire and Casualty Company* (S064923) (A161906)

*State of Oregon v. Wayne Raymond Hagner* (S064948) (A156340)

*State of Oregon v. Jonathan Robert Wilson* (S064961) (A158275)

*BP West Coast Products, LLP v. Oregon Department of Justice*  
(S064963) (A156902)  
*State of Oregon v. Pedro Cardenas Valdez* (S064979) (A156707)  
*Department of Human Services v. R. F.* (S065004) (A163030)  
*Everett James Scott v. Board of Parole and Post-Prison Supervision*  
(S065005) (A160572)  
*State of Oregon v. Thomas Martinez* (S065013) (A160362)  
*State of Oregon v. Selvyn Julian Velasquez-Orozco* (S065016) (A160337)  
*State of Oregon v. Kenneth Eugene Woods* (S065020) (A154144)  
*Nathaniel Harbert v. Steve Franke* (S065026) (A154871)  
*Department of Human Services v. S. G. B.* (S065027) (A163034)  
*Christine Lynch v. Tony Romano* (S065029) (A155071)  
*State of Oregon v. Michael Thomas Berry* (S065041) (A160689)  
*State of Oregon v. Clifford Allen Reyes* (S065054) (A160306)  
*Lucinda Rae Hilt and Jonathan James Hilt* (S065075) (A160911)

4. Denied petitions for reconsideration in:

*International Association of Machinist, Woodworkers Local W-1 v. Jon Heil*  
(S064686) (A158416)  
*Dameion Douglas v. Oregonian Publishing Co.* (S064731) (A154183)

5. Denied petitions for writ of mandamus in:

*Maria Nancy Pelaez v. Farmers Insurance Exchange* (S064936)  
*Walter Wurster v. TD Ameritrade, Inc.* (S064991)  
*Louis J. Appignani v. Deloitte & Touche, LLP* (S064992)  
*Cow Creek Properties, LLC v. Pacific Community Resource Center* (S065053)  
*Marita C. Barth v. Gavin F. McNett* (S065081)

6. Conditionally admitted Michael Paul Graham to the practice of law in Oregon upon receipt by the State Court Administrator of an executed oath of office, provided that the oath of office is received within 90 days of the date of the Court's order. Upon successful compliance with all conditions of the Conditional Admission Agreement, the terms of which expire two years from the effective date of the Court's order, Michael Paul Graham shall be unconditionally admitted to the practice of law in Oregon without further order of the court.

7. The court accepted the resignation of attorney Jason C. Hawes, (Bar No. 120151). His name shall be stricken from the roll of attorneys and as of this date, he is not entitled to the rights or privileges of an attorney.