



COURT OF APPEALS

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The Court of Appeals issued these opinions:

State of Oregon v. Andy Simrin
(A156472 - Marion County Circuit Court)

State of Oregon v. Shawn Phillip Warren
(A157253 - Beaverton Municipal Court)

S. H.
(A164811 - Deschutes County Circuit Court)

State of Oregon v. Jason Allen McFerrin
(A158880 - Jackson County Circuit Court)

Panayiota Cooksley v. Lauree Lofland
(A161658 - Multnomah County Circuit Court)

State of Oregon v. Russ Angus Woodbury
(A159205 - Umatilla County Circuit Court)

State of Oregon v. Donald Arthur Welch
(A158592 - Deschutes County Circuit Court)

Cassandra Givan v. State of Oregon
(A159314 - Columbia County Circuit Court)

State of Oregon v. Keylan Franklin Knapp
(A145259 - Washington County Circuit Court)

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

Susan Caren v. Providence Health System Oregon
(A160470 - Workers' Compensation Board)

State of Oregon v. Jodi Sue Lindquist
(A162191 - Lincoln County Circuit Court)

The Court of Appeals affirmed these cases without opinion:

Kenneth Nicholas Rowling v. Jeff Premo
(A160706 - Marion County Circuit Court)
Kevin Scott Bray v. Guy Hall
(A160777 - Marion County Circuit Court)
Charley William Carnes v. Mark Nooth
(A161061 - Malheur County Circuit Court)
Raymond Allen Stavig v. Mark Nooth
(A162305 - Malheur County Circuit Court)
Ernesto Alejandro Acosta-Ramirez v. State of Oregon
(A162524 - Marion County Circuit Court)
Toshya Tass v. Jennifer Bockmier
(A162679 - Marion County Circuit Court)
State of Oregon v. T. E. B.
(A163252 - Marion County Circuit Court)
Department of Human Services v. R. A. B.
(A164855 - Douglas County Circuit Court)
Department of Human Services v. J. H.
(A165185 - Multnomah County Circuit Court)
Department of Human Services v. K. D.
(A165509 - Jackson County Circuit Court)

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State of Oregon v. Andy Simrin

(Egan, J.)

Defendant appeals from the trial court's denial of his motion to set aside the record of his arrest for contempt of court under ORS 137.225(1)(b) (2013), which allows records of arrests that have not led to convictions to be set aside. The state opposed that motion, arguing that contempt is not a crime and that the statute only allows a court to set aside the arrest record of a person arrested for crimes. The trial court concluded that the statute did not apply to defendant. On appeal, defendant argues that the statute does apply to his record of arrest because the citation he received in lieu of arrest stated that he was accused of a "crime" and "offense" and the charging instrument purported to charge defendant with five counts of "the crimes of" contempt of court, which it labeled as a "U-Misdemeanor." Held: The trial court erred when it concluded that ORS 137.225(1)(b) (2013) did not apply to defendant's record of arrest for contempt and when it denied defendant's motion. Defendant was arrested for and charged with the "crime" of contempt of court. Those charges were then dismissed. The legislature intended for ORS 137.225(1)(b) (2013) to allow persons arrested for and charged with, but not convicted of, crimes to be able to have the record of those arrests set aside. Reversed and remanded for entry of an order setting aside defendant's record of arrest pursuant to ORS 137.225(1)(b).

State of Oregon v. Shawn Phillip Warren

(Egan, J.)

In this consolidated case, defendant appeals judgments of conviction for resisting arrest, driving under the influence of intoxicants, and failure to carry or present a license. He raises four assignments of error on appeal. In his first assignment of error, defendant asserts that the trial court erred in concluding that he waived his right to counsel. In his second, third, and fourth assignments, defendant contends that the trial court erred in imposing, in the judgment in Case Number UC7772401 (the DUI conviction), a \$15 license suspension fee, a \$255 DUI conviction fee, and a \$50 "Warrant Fee." Held: The record shows that defendant affirmatively and intentionally waived his right to counsel and chose to proceed pro se. However, as the state properly concedes, the court erred in imposing the license suspension fee, DUI conviction fee, and warrant fee for the first time in the judgment. In Case Number UC7772401, portions of judgment requiring defendant to pay \$15 license suspension fee, \$255 DUI conviction fee, and \$50 warrant fee reversed; otherwise affirmed. In Case Numbers UC7772411 and M8081911, affirmed.

S. H.

(Egan, P. J.)

In this consolidated juvenile dependency case, mother appeals orders of the juvenile court denying her motions to set aside guardianship over her three children. She asserts that, in light of the Court of Appeals decision in Dept. of Human Services v. S. M. H., 283 Or App 295, 388 P3d 1204 (2017), in which the court reversed the underlying permanency judgments changing the plan for her children from reunification to adoption, the juvenile court was required to grant her motions. Held: In light of the Court of Appeals' reversal of the underlying permanency judgments, the juvenile court had no discretion to deny mother's motions to set aside the guardianship judgments. Reversed and remanded.

State of Oregon v. Jason Allen McFerrin

(Tookey, J.)

Defendant appeals a judgment revoking four terms of probationary supervision for two separate supervision violations. The court imposed 20-month incarceration sanctions on each term of probationary supervision that was revoked. The court ordered three of the incarceration sanctions to be served consecutively, and the fourth incarceration sanction to be served concurrently with the other incarceration sanctions, for a total of 60 months' incarceration. On appeal, defendant contends that, under OAR 213-012-0040(2)(b), "each consecutive sanction requires a 'separate supervision violation'" and, therefore, it was error for the court to impose three consecutive incarceration sanctions because he committed only two separate supervision violations. Held: If the court revokes multiple probationary sentences for "separate supervision violations," OAR 213-012-0040(2)(b), then the court has the authority to impose concurrent or consecutive incarceration sanctions for each term of probationary supervision that is revoked. Because defendant committed more than a single supervision violation, the court did not err in imposing three consecutive sentences for defendant's two "separate supervision violations" of four terms of probationary supervision. Affirmed.

Panayiota Cooksley v. Lauree Lofland

(Tookey, J.)

Plaintiff appeals a judgment entered against defendant for personal injuries that plaintiff sustained in an automobile accident. After the judgment was entered, defendant filed a motion for partial satisfaction of the judgment, pursuant to ORS 31.555, in which she sought to reduce the amount of the judgment by the amount that her insurance carrier had previously provided to plaintiff in personal-injury-protection (PIP) benefits. The trial court granted defendant's motion. On appeal, plaintiff assigns error to that ruling. Held: The trial

court did not err in granting defendant's motion for partial satisfaction of the judgment. The verdict form did not indicate whether the jury considered the PIP reimbursement in awarding damages, and plaintiff's proposed verdict form, had it been used, would not have eliminated that resulting ambiguity. Affirmed.

State of Oregon v. Russ Angus Woodbury
(DeHoog, P. J.)

Defendant appeals from a judgment of conviction entered after a jury found him guilty on one count of driving under the influence of intoxicants. Defendant assigns error to the trial court's ruling that limited the testimony of a defense expert witness--a registered nurse--about defendant's traumatic brain injury (TBI). Defendant's theory at trial was that the trooper that arrested him misinterpreted defendant's TBI symptoms as signs of intoxication. Held: The trial court erred by not allowing defendant's expert to testify, under OEC 702, that defendant's behavior on a video recording of the field sobriety tests was consistent with her observations of patients she has worked with who have TBI. The error was not harmless. Reversed and remanded.

State of Oregon v. Donald Arthur Welch
(Shorr, J.)

Defendant appeals a punitive contempt judgment based on a finding that he violated the terms of a restraining order. He assigns error to the trial court denying his motion for judgment of acquittal and subsequently finding him in contempt. The court ordered defendant to abide by the terms of the restraining order but imposed no sanctions. Defendant argues that his appeal is not moot, because, first, the judgment of contempt alone carries significant social stigma, and, second, the judgment could have adverse legal consequences. Held: Defendant's appeal is moot. First, defendant did not identify how a contempt judgment that imposes no sanctions and only mandates compliance with a preexisting court order carries sufficient social stigma to prevent an appeal from being moot. Second, the mere possibility that the contempt judgment might in the future have adverse legal consequences for defendant is likewise insufficient to prevent the appeal from being moot. Appeal dismissed.

Cassandra Givan v. State of Oregon
(Aoyagi, J.)

Appellants filed claims against the decedent's estate. The decedent's estate was initially administered in a small estate proceeding and later put into full probate. The probate court allowed appellants' claims in the small estate proceeding but denied them in whole or part in the full probate proceeding. On appeal, appellants challenge the probate court's actions, asserting that, on the procedural facts of this case, the probate court lacked jurisdiction to order distribution of the property of the estate in a manner other than that provided in ORS 114.555. One appellant also challenges an attorney fee award against her contained in a limited supplemental judgment. Held: Where the probate court did not appoint a personal representative within four months of the filing of the small estate affidavit, the probate court lacked jurisdiction to administer the estate in a manner contrary to ORS 114.555. General judgment vacated and remanded; appeal of limited supplemental judgment dismissed.

State of Oregon v. Keylan Franklin Knapp
(Duncan, J. pro tempore)

On remand from the Supreme Court, defendant renews his argument that the trial court erred in denying his motion to suppress evidence obtained during a warrantless search of the car in which he was a passenger. Held: The trial court erred in denying defendant's motion to suppress, because defendant had a protected

privacy interest in the vehicle and its contents, the search occurred during an unlawful seizure of defendant, and the state failed to prove that the challenged evidence inevitably would have been discovered even without the unlawful seizure. Reversed and remanded.

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