COURT OF APPEALS
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The Court of Appeals issued these opinions:

State of Oregon v. James Everette Jacobson, Jr.
(A158826 - Clatsop County Circuit Court)
D. R. S. v. Amy Baker*
(A166740 - Multnomah County Circuit Court)
State of Oregon v. Gary Lee Rose
(A154758 - Clackamas County Circuit Court)
Department of Human Services v. D. W. M.
(A166682 - Lane County Circuit Court)
State of Oregon v. Trena Annjelic Harper
(A161642 - Washington County Circuit Court)
Mary Geddry v. Dennis Richardson
(A164828 - Marion County Circuit Court)

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

State of Oregon v. Dwight William Eubanks
(A165391 - Clackamas County Circuit Court)
State of Oregon v. J. O. B.
(A168501 - Lane County Circuit Court)

The Court of Appeals affirmed this case without opinion:

Glenn E. Leonard v. State of Oregon
(A166199 - Umatilla County Circuit Court)

*The case title has been redacted in this media release and in the online version of the opinion, in compliance with 18 USC section 2265(d)(3).

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State of Oregon v. James Everette Jacobson, Jr.
(Egan, C. J.)

Defendant appeals from a judgment of conviction for driving under the influence of intoxicants, contending that the trial court erred in allowing a jury trial to proceed in his absence. Held: The trial court erred in determining that defendant had waived his appearance at trial by signing a form for his waiver of appearance for trial if he failed to appear. Reversed and remanded.

D. R. S. v. Amy Baker
(Egan, C. J.)

Respondent appeals an order continuing for one year a restraining order issued against her under the Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA), arguing that the trial court erred in finding that respondent presented an "immediate and present danger of further abuse" to petitioner, as required by EPPDAPA. Held: The trial court erred in continuing the restraining order. Although respondent's actions were offensive to petitioner, the record lacked evidence that respondent made recent threats of additional abuse before the trial court's order. Thus, it was error for the trial court to find that respondent posed an immediate and present danger of further abuse to petitioner. Reversed.

State of Oregon v. Gary Lee Rose
(Ortega, P. J.)

This case is on remand from the Oregon Supreme Court, which vacated the Court of Appeals' prior decision for reconsideration in light of State v. Nichols, 361 Or 101, 390 P3d 1001 (2017). In its prior opinion, the Court of Appeals concluded that defendant's statement, "I don't have nothing to say"--when considered in the context that defendant had previously said that he was not thinking and that he was taken aback and surprised that the detectives had possession of incriminating photographs--was an assertion that he had no response to being confronted with the photographs and not an invocation of his constitutional right to remain silent. Held: In light of the court's analysis in Nichols, defendant's statement was an equivocal invocation of his right to remain silent. Because the detectives failed to clarify defendant's intent before proceeding further, the trial court erred in not suppressing the statements that followed the invocation. Reversed and remanded.

Department of Human Services v. D. W. M.
(Ortega, P. J.)

Father appeals a juvenile court judgment asserting jurisdiction over his child, challenging the court's determination that father's substance abuse and perpetuation of domestic violence against the mother in the presence of child endangered the welfare of child. The Department of Human Services (DHS) and child cross-appeal the juvenile court judgment dismissing the allegation that father sexually abused child. On appeal, father contends that, even if father was engaging in domestic violence and substance abuse, DHS failed to prove a nexus between that conduct and a nonspeculative risk of serious loss or injury to child. On cross-appeal, DHS and child argue that the evidence was sufficient to establish that father posed a current risk of harm to child where the juvenile court explicitly found that father sexually abused child and child's

sister; at the time of the jurisdictional hearing, child was the same age as sister when father sexually abused sister; there was uncontested evidence that father continued to treat child in a sexualized manner; father had not completed sex offender treatment; and child reported cutting herself in response to father's sexual abuse. Held: On appeal, the juvenile court erred in asserting jurisdiction over child because, on de novo review, although there was evidence that father exposed child to domestic violence and abused alcohol, DHS failed to present persuasive evidence of either the risk of serious loss or injury to child, or a nexus between father's conduct and any perceived harm, sufficient to support juvenile court jurisdiction. On cross-appeal, the juvenile court erred in dismissing DHS's claim that father sexually abused child. On de novo review, DHS met its burden to establish that father posed a current risk to child because father previously sexually abused child and child's older sister, father continued to say sexually inappropriate things to child, child is in the same class of father's victims, and father has failed to engage in any treatment or acknowledge any harm to child. On appeal, reversed; on cross-appeal, reversed and remanded.

State of Oregon v. Trena Annjelic Harper
(Garrett, J. pro tempore)

Defendant appeals a judgment of conviction for possession of methamphetamine, ORS 475.894, arguing that the trial court erroneously denied her motion for a judgment of acquittal (MJOA) and incorrectly instructed the jury. Both assignments of error rely on defendant's contention that the state was required to prove that she knew that the illicit substance she possessed was methamphetamine. Held: The trial court did not err in denying defendant's MJOA, but it did err in instructing the jury that the state "does not need to prove that the defendant knew the specific identity of the substance." The text of the statute does not clearly indicate "a legislative intent to dispense with" the culpable mental state. ORS 161.105(1)(b). Thus, the identity of the substance as "methamphetamine" is a material element of the offense to which the required mental state of "knowingly or intentionally" applies. ORS 161.095(2). Conviction on count one for possession of methamphetamine reversed and remanded; otherwise affirmed.

Mary Geddry v. Dennis Richardson
(Garrett, J. pro tempore)

Plaintiffs, chief petitioners of Initiative Petition 2016-055 (IP 55), brought this action to enjoin defendant, the Secretary of State, to certify IP 55 for the 2016 election after the secretary rejected IP 55 on the ground that it violated certain constitutional requirements for proposed initiatives. The trial court reversed the secretary's decision, concluding that the secretary had exceeded his preelection authority by engaging in a "substantive" review to determine whether IP 55 complied with the Oregon Constitution. The court further declared that IP 55 facially complied with all constitutional requirements for proposed initiatives and--because the 2016 election had, by that point, already passed--the court ordered the secretary to certify IP 55 for the 2018 election based on requirements that had been met in 2016. On appeal, the secretary challenges each of those rulings. Held: Under the Supreme Court's recent decision in Unger v. Rosenblum, 362 Or 210, 407 P3d 817 (2017), the trial court erred in ordering the secretary to certify IP 55 for the 2018 election based on requirements that had been met for the 2016 election. That conclusion rendered the secretary's other challenges moot; however, the Court of Appeals concluded that those moot issues nonetheless remained justiciable under ORS 14.175, and the Court of Appeals exercised its discretion to consider the issue of whether the secretary exceeded his preelection authority. The Court of Appeals held that the secretary did not and that the trial court erred in ruling otherwise. Reversed.

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