

Oregon Supreme Court Summaries July 2010

State v. Vondehn

Decided: 07/01/2010

Case No.: S056371

Walters, J. for the Court; Concurrence, Linder, J., Balmer & Kistler, JJ.

<http://www.publications.ojd.state.or.us/S056371.htm>

CRIMINAL PROCEDURE ¶ When the police conduct a custodial interrogation without obtaining a valid waiver of Article I, section 12 rights, the derivative physical evidence must be suppressed. In addition, a trial court must exclude a defendant's post-Miranda statements unless the state establishes that, considering the totality of the circumstances, the belatedly administered Miranda warnings effectively and accurately informed the defendant of his or her Article I, section 12 rights.

After Defendant was arrested following a traffic stop, an officer questioned him about a backpack found in the car. Defendant admitted that the backpack was his and that it contained marijuana, and then consented to a search of the backpack. After searching the backpack, the officer gave Defendant Miranda warnings before further questioning him. The trial court suppressed the statements but did not suppress the marijuana, ruling that Defendant had waived his rights and that he had voluntarily agreed to the search. Defendant was convicted of delivery and possession of a controlled substance. The Court of Appeals reversed, holding that because the police had obtained both the marijuana and the post-Miranda statements by exploiting the pre-Miranda statements, they must be suppressed. The Supreme Court held that physical evidence obtained by failing to give Miranda warnings must be suppressed at trial. The Court further held that when police give belated but effective information necessary to obtain a valid waiver of the right against self-incrimination, subsequent statements are admissible. Affirmed in part, reversed in part, and remanded.

[Summarized by Jeff Turnoy]

State v. Daniels

Decided: 7/9/2010

Case No.: S057832

Walters, J. for the Court; En Banc

<http://www.publications.ojd.state.or.us/S057832.htm>

CRIMINAL LAW - Evidence that the defendant had possession of drugs ¶ Just

prior to the police's seizure alone is insufficient to support a reasonable inference that the defendant possessed drugs.

Defendant was charged with possession and distribution of methamphetamine after police executed a search warrant of his residence. The defendant's roommate and another person were present during the search and claimed the methamphetamine was theirs. Defendant moved for a judgment of acquittal arguing that the state had not submitted sufficient evidence for a conviction. The trial court denied the motion and a jury convicted defendant. Defendant appealed and the decision was affirmed without opinion. Defendant petitioned the Supreme Court of Oregon arguing that the state did not produce any evidence of the defendant possessing methamphetamine during the search. The state argues that the defendant had actual possession of the drugs just prior to the search and therefore possessed the methamphetamines. Alternatively, the state argues defendant had constructive possession evidenced by the shared control of the property. The Court rejected both arguments as being based on speculation, rather than reasonable inferences. Reversed and remanded.

[Summarized by Sean M. Neary]

State v. Portis

Decided: 07/29/2010

Case No.: S058179

De Muniz, C.J. for the Court.

<http://www.publications.ojd.state.or.us/S058179.htm>

CRIMINAL PROCEDURE - A decision by the Court will not be made, and the issue is considered moot, when under the law the decision would have no practical effect on the rights of a defendant.

Defendant pled guilty to five counts of identity theft and was sentenced to 39 months in prison. The judgment allowed for a form of sentence reduction for which Defendant was eligible at the time of sentencing. At the time of her crimes, ORS 421.121(2) provided that the maximum amount of reduction time could not exceed 20 percent of the sentence. In 2009, that statute was amended to a 30 percent maximum. There was objection to Defendants' eligibility. The trial court issued a supplemental judgment denying eligibility. The Appellate Commissioner for the Court of Appeals issued an order requiring Defendant to show cause why the appeal should not be dismissed for lack of jurisdiction. The Court of Appeals dismissed the case, ruling that there is no right to appeal when eligibility is denied because the original judgment has not been amended. The Supreme Court denied review of the post-judgment issue because the case is now moot. The Court held that because the legislature amended the statute back to 20 percent, and Defendant fell within the group of inmates who

were no longer eligible for the 30 percent reduction, the case is moot and dismissed.

[Summarized by Jeff Turnoy]

State v. Willis

Decided: 7/29/2010

Case No.: S057879

Gillette, J. for the Court; Landau, P.J.; & Schuman.

<http://www.publications.ojd.state.or.us/S057879.htm>

EVIDENCE ¶ Admission of a laboratory report without requiring the author to testify, over the objection of defendant, denies defendant her right to confrontation and is reversible error.

Upon arrest for disorderly conduct, defendant revealed to police she was in possession of contraband including a bundle of marijuana and a Chanel perfume container which contained crusted and dried material. Later the police crime lab report identified the substance as methamphetamine. The trial court admitted the laboratory report over defendant's objection. Defendant contends that admission of the report without producing the author is a violation of defendant's Sixth Amendment right to confront witnesses. The Court of Appeals held that the trial court was in error, but this error was harmless and did not warrant reversal. The Supreme Court held that the laboratory report is prima facie evidence and defendant has the right to subpoena and cross examine the author. Admitting the laboratory report over defendant's objections likely did affect the verdict. Reversed and remanded.

[Summarized by Omar Nur]

Oregon Court of Appeals Summaries

State v. Shepherd

Decided: 6/30/2010

Case No.: A139075

Schuman, J. for the Court; Landau, P.J. & Ortega, J.

<http://www.publications.ojd.state.or.us/A139075.htm>

APPELLATE PROCEDURE ¶ A failure to raise factual and procedural elements for a statutory interpretation argument eliminates adequate preservation of the argument on appeal.

Defendant pled guilty to driving under the influence of intoxicants,

unauthorized use of a vehicle, and attempting to elude a police officer. At sentencing, the judge ordered her to pay \$18,145.30 in restitution to the victims and \$1,200 as a compensatory fine to cover the loss attributable to the victims not having a vehicle as well as any items lost or damaged. Defendant did not object to this ruling. On appeal, Defendant claims that the victims do not qualify as victims under the statute and that the state failed to provide evidence of "objectively verifiable monetary loss" to warrant the \$1,200 compensatory damage fine. At trial, Defendant argued that the victims are not entitled to a civil remedy allowing recovery of the difference between the insurer's valuation of the car and the cost of replacing it. The Court of Appeals did not address the state's statutory response to Defendant's argument since the state's primary argument is correct. The state claims that Defendant's argument was not preserved because of her failure to make it prior to appeal. Affirmed.

[Summarized by Kimberly Morton]

State v. Rainoldi

Decided: 6/30/2010

Case No.: A136377

Schuman, P.J. for the Court; Brewer, C.J. & Riggs S.J.

<http://www.publications.ojd.state.or.us/A136377.htm>

CRIMINAL LAW - Defendant's knowledge of his status as a felon is a material element of felon in possession which requires a culpable mental state because it is relevant to the harm that is sought to be prevented by the offense.

Defendant was convicted of attempted felon in possession of a firearm after he attempted to purchase a shotgun at a gun show. Defendant explained that he was previously convicted of felony forgery; however, the sentencing judge explained to him that the forgery conviction would be treated as a misdemeanor once Defendant completed probation in 2006. At trial, Defendant asked for a jury instruction requiring the jury to find that Defendant knew he was a felon at the time he attempted to purchase the shotgun in order to convict him of attempted felon in possession. The trial court denied the request. On appeal, Defendant assigns error to the trial court's failure to give such an instruction. The State responds that it is not required to prove a culpable mental state for the element of Defendant's status as a felon and relied on *State v. Van Norsdall*, 127 Or App 300, 973 P2d 345, rev den, 320 Or 131 (1994) in support of its position. The Court of Appeals noted that the felon in possession statute is outside the Oregon Criminal Code. However, unless the statute clearly indicates legislative intent to dispense with a scienter requirement, the

offense is treated as within the criminal code and culpability is required for "each material element" that necessarily requires a culpable mental state. ORS 161.095(2). The Court found that the legislative history of the felon in possession statute does not support the conclusion that the legislature intended to dispense of a scienter requirement. Accordingly, the Court analyzed the issue whether the status of being a felon is a "material offense that necessarily requires a culpable state of mind." The Court overruled Van Norsdall and held that the defendant's knowledge of his status as a felon is a material element which requires a culpable mental state because it is relevant to the harm that is sought to be prevented by the offense. Reversed and remanded.

[Summarized by Mercedes Rhoden]

State v. Coffey

Decided: 6/30/2010

Case No.: A138460

Ortega J. for the Court; Landau, P.J., & Carson S.J.

<http://www.publications.ojd.state.or.us/A138460.htm>

CRIMINAL PROCEDURE - Search of the inside of a cowboy violated Article 1, Section 9, of the Oregon Constitution when, because the person wearing the cowboy boot was handcuffed, that person did not pose an immediate serious threat of physical injury to the officer or to others present.

Defendant pled guilty to possession of a controlled substance under ORS 475.894 based on evidence found when officers searched a cowboy boot that she was wearing. The search occurred during the execution of a warrant to search a residence that Defendant was visiting. The trial court denied Defendant's motion to suppress this evidence, concluding that the officer's actions did not exceed the scope of a reasonable frisk for officer safety reasons. Defendant appealed and the Court reversed and remanded, holding that, under the particular circumstances of the case, Defendant was handcuffed and did not pose an immediate threat of physical injury to the officer or others. As such, the collection of the evidence from the cowboy boot worn by Defendant violated Article 1, Section 9, of the Oregon Constitution. Reversed and remanded.

[Summarized by Lauren Robertson]

State v. Gardner

Decided: 6/30/2010

Case No.: A139006

Schuman, J. for the Court; Landau, P.J. & Ortega, J.

<http://www.publications.ojd.state.or.us/A139006.htm>

CRIMINAL PROCEDURE ¶ When an officer asks a suspect whether they will submit to a breath test, this is a normal part of the arrest and custody and not an interrogation for purposes of Miranda.

Defendant was arrested for a DUII and at the police station was asked (without Miranda warning) to take a breath test and she refused because she drank two glasses of wine and was afraid to fail the test. The trial court held that Defendant's statements were inadmissible because Defendant was not given Miranda warnings. State appealed and Defendant cross-appealed stating there was not probable cause to arrest. The issue on appeal is whether the statement was made during an interrogation. The Court of Appeals held that Defendant's statement was not made during an interrogation for purposes of Miranda because requesting a breath test is part of normal booking procedures and therefore does not constitute an interrogation. The Court of Appeals further held that given the totality of the circumstances, the officer had probable cause to arrest Defendant. On appeal reversed and remanded. On cross-appeal, affirmed.

[Summarized by Jessica Johnson]

State v. Caster

Decided: 7/7/2010

Case No.: A137030

Rosenblum, J for the Court; Haselton, P.J.; & Armstrong, J.

<http://www.publications.ojd.state.or.us/A137030.htm>

CRIMINAL PROCEDURE ¶ A home occupant's arrest does not vitiate his previous objection to a search of his home, and subsequent consent from a co-occupant is ineffective as to the person under arrest.

Defendant, a felon, refused to allow police to search his home to investigate a report that he was in possession of a firearm. The police then took Defendant into custody on an arrest warrant. After Defendant was escorted from the home and placed in the patrol car, Defendant's girlfriend and also a co-occupant of the home, subsequently consented to police entering the home. At trial, Defendant made a motion to suppress evidence of the firearms seized by police during the warrantless search of his home. Defendant argued that the police entry into his home violated his rights under the Fourth Amendment of the United States Constitution. He cited the United States Supreme Court Case of Georgia v. Randolph, 547 US 103, 126 S Ct 1515, 164 L Ed 2d 208 (2006) and argued that given his

previous objection to the police entering and searching his home, his girlfriend's consent afterward was not sufficient to justify a warrantless search. The trial court denied this motion and Defendant appealed. The Court of Appeals, finding no authority for a co-occupant to admit police over the objection of the arrested occupant, held the police entry into Defendant's home after his objection was unconstitutional and Defendant's girlfriend's consent of the entry was ineffective. Reversed and remanded.

[Summarized by Kevin M. Moore]

State v. A.M.R.

Decided: 7/7/2010

Case No.: A139503

Haselton, P.J. for the Court; Armstrong, J.; & Duncan, J.

<http://www.publications.ojd.state.or.us/A139503.htm>

EVIDENCE ¶ Forcibly resisting arrest without more does not meet the State's burden of proof by ¶ clear and convincing evidence ¶ that a person is a danger to others to support commitment in a mental hospital.

Upon arrival to the boarding house where A.M.R. lived, Junction Police heard A.M.R. yelling and cursing. A.M.R. told the officers she was ¶ talking to herself. ¶ She then told both of the officers that she believed one of them threatened to shoot her, and to use her and her cat for target practice. When the officers informed A.M.R. she was being taken to the hospital, she resisted arrest. In resisting, A.M.R. kicked, spit, and bit an officer. At trial, the treating psychiatrist testified A.M.R. has bipolar disorder and is a danger to others, without any additional facts as to why. The Court of Appeals held that such bare conclusions alone are not of ¶ extraordinary persuasiveness ¶ to meet the rigorous standard of clear and convincing evidence. Oregon law requires that there be a ¶ high probability ¶ of a future violent act. The Court of Appeals held that A.M.R.'s actions towards the officers were an isolated response to ¶ an unusual and threatening situation ¶ and without more does not evidence a high probability to of a future violent act. Reversed.

[Summarized by Omar Nur]

State v. Alwinger

Decided: 7/14/2010

Case No.: A137479

Landau, P.J. for the Court; Ortega, J. & Riggs, S.J.

<http://www.publications.ojd.state.or.us/A137479a.htm>

CRIMIAL PROCEDURE ¶ Under State v. Rodriguez-Buck's three-factor analysis, a 25-year prison sentence is not constitutionally disproportionate for a

single act of digital penetration of a three-year-old child by a defendant with some criminal history.

Defendant petitions for reconsideration of the Court of Appeals' former upholding of his 25-year prison sentence imposed by the lower court for unlawful sexual penetration of a young girl. On appeal, Defendant argued that the proportionality of the sentence violates the state and federal constitution. Defendant contended that subsequent case law, *State v. Rodriguez-Buck*, 347 Or 46 (2009), establishes a "markedly different" three factor test than the one applied in his case. The Court of Appeals held, pursuant to the *Rodriguez-Buck* analysis, that (1) Defendant's argument that his conduct was a brief, singular act, and without physical injury to the victim, does not lessen the severity of the offense; (2) unlawful sexual penetration is similar enough to the offense of rape to qualify for the same sentencing, and; (3) Defendant's criminal history was properly taken into account. Petition for reconsideration allowed; trial court sentence affirmed.

[Summarized by April Denton]

State v. Mitchell

Case No.: A138064

Decided: 07/14/2010

Landau, P.J. for the Court; Oretga, J. & Carson, S.J.

<http://www.publications.ojd.state.or.us/A138064.htm>

CRIMINAL PROCEDURE ¶ A post-prison supervision term which can be shortened or lengthened depending on prison time actually served is impermissibly indeterminate under OAR 213-005-0005. OAR 213-005-0002 (4) prohibits an incarceration term combined with the post-prison supervision term from exceeding the statutory maximum for the offense.

Defendant pled guilty to coercion, ORS 163.275, fourth-degree assault, ORS 163.160, and strangulation, ORS 163.187. The trial court sentenced Defendant to 58 months in prison and 36 months of post-prison supervision (PPS), with the restriction that the total sentence would not exceed the statutory maximum of 60 months for the offense. The trial court's sentencing attempted to provide for additional PPS hours in compensation for potential reduction of the prison term. Reviewing for plain error on appeal, the Court of Appeals held the sentencing unlawful because the PPS term could either increase or decrease based on an increase or decrease in the prison term and was therefore impermissibly indeterminate. In addition, the Court held the sentence invalid because the PPS term and prison term combined exceeded the statutory maximum. The combined lengths

of incarceration and PPS cannot exceed the statutory maximum regardless of reduction in prison time. Vacated and remanded for sentencing, otherwise affirmed.

[Summarized by Kristen Bramble]

Falkenstein v. Falkenstein

Decided: 7/28/2010

Case No.: A141251

Duncan, J for the Court; Haselton, P.J., & Armstrong, J.

<http://www.publications.ojd.state.or.us/A141251.htm>

CIVIL LAW ▯ Evidence entered into the record that an ex-husband sent his ex-wife a text message, called her, waited outside her house and ran her new boyfriend's license plate number is insufficient to support an objectively reasonable finding that the ex-wife felt alarm, coercion or apprehension as required for a stalking protective order.

M. Falkenstein petitioned for and was granted by the trial court a temporary stalking protective order (SPO) against her ex-husband. After a hearing, the trial court entered a final SPO of unlimited duration. Evidence was introduced that the ex-husband sent M. Falkenstein a text message and called her, and that he waited outside M. Falkenstein's house and ran her boyfriend's license plate number. There was little evidence regarding the time, manner, or circumstances of the contacts. The ex-husband appealed the final SPO, arguing that it was not supported by sufficient evidence. The Court of Appeals agreed, holding that, although the petition alleged more facts than were entered into the record, the evidence actually entered in the record did not support the conclusion that it was objectively reasonable for the calls or text message, or the ex-husband's waiting outside the house, to cause M. Falkenstein alarm, coercion or apprehension as required for an SPO by Oregon law. Reversed.

[Summarized by Kevin M. Moore]

Foster v. Miramontes

Decided: 7/28/2010

Case No.: A138024

Rosenblum, J. for the Court; Schuman, P.J. and Wollheim, J.

<http://www.publications.ojd.state.or.us/A138024.htm>

CIVIL LAW ▯ Neither ORS 30.866, nor Article I, section 17, or Article VII, section 3 of the Oregon Constitution, guarantees a defendant in a civil stalking action the right to a trial by jury.

Miramontes appeals the judgment of a stalking protective order (SPO)

entered against him in a civil stalking case. Miramontes claims that the trial court erred by proceeding with trial absent a jury. The issue on appeal was whether Miramontes's claim, pursuant to ORS 30.866, was required to be tried to a jury. The court undergoes a two-step analysis by (1) determining legislative intent; and (2) if intent is lacking, whether a jury trial was nonetheless required by Article I, section 17 or Article VII of the Oregon Constitution. The Court of Appeals found an absence of clear legislative intent to a jury trial pursuant to ORS 30.866. Furthermore, the Court explains that in reading the two Constitutional provisions together, a jury trial is guaranteed only in those cases where a jury was customary at the time the Oregon Constitution was adopted or in cases of "like nature." Miramontes argued that his case is of "like nature" to those of common law claims for the torts of assault and battery and, therefore, he is entitled to a jury trial. The Court held that a claim for stalking is distinctive from those claims of assault or battery and, therefore, not of "like nature." Affirmed.

[Summarized by April Denton]

State v. Gonzales

Decided: 7/28/2010

Case No.: A138187

Rosenblum, P.J. for the Court; Brewer, C.J. & Deits, S.J.

<http://www.publications.ojd.state.or.us/A138187.htm>

CRIMINAL LAW ☐ The community caretaker exception to the Fourth Amendment's warrant requirement does not encompass impounding a car for the purpose of deterring future illegal conduct.

Defendant was convicted of possession of a controlled substance after Officer Blood discovered cocaine in Defendant's car during an inventory pursuant to an impoundment. Blood pulled Defendant over for a traffic violation. Defendant stopped in his own driveway, where Blood cited him for driving with a suspended license and driving uninsured. Blood impounded Defendant's car to deter similar future conduct, under state statute and local code authorizing an officer to impound a vehicle if the driver was driving while suspended or without insurance. The trial court denied Defendant's motion to suppress the evidence, finding the impoundment valid under the community caretaker doctrine, which authorizes officers to impound vehicles that are a threat to public safety or impede traffic. On appeal, Defendant argued that impounding a vehicle for deterrent purposes is not within the community caretaker doctrine. The Court of Appeals found that whether an impoundment is within the community caretaker doctrine turns on the location of the vehicle and whether the vehicle was a threat to public safety. Accordingly, the Court held that the community caretaker exception to the Fourth Amendment's warrant

requirement does not encompass police seizures aimed at deterring future illegal conduct.

[Summarized by Mercedes Rhoden]

State v. Saucedo

Decided: 7/28/2010

Case No.: A138887

Wollheim, P.J. for the Court; Brewer, C.J. and vice Edmonds, P.J.

<http://www.publications.ojd.state.or.us/A138887.htm>

CRIMINAL LAW - Judgment is appealable where the trial court errs in failing to merge counts.

Defendant pled guilty to four counts of first-degree burglary amongst other crimes. The four counts all arose out of the same act, but each alleged a different theory of the crime. Defendant appeals arguing that the four counts should have merged into one. The State argues that the judgment is not appealable since the disposition does not exceed the maximum allowable by law. The Court of Appeals held that the trial court's failure to merge the counts was plain error. Since the defendant would have no strategic choice not to object, the Court found it within their discretion to correct the trial court's error. Reversed and remanded.

[Summarized by Sean M. Neary]

State v. Godines

Decided: 7/28/2010

Case No.: A138290

Sercombe J. for the Court; Wollheim, P.J., & Brewer C.J.

<http://www.publications.ojd.state.or.us/A138290.htm>

CRIMINAL PROCEDURE - It is not obvious, so as to give the Court discretionary review, that an adult who is tried in adult court for offenses committed when he or she was under the age of 15, is exempt from the mandatory minimum sentences of ORS 137.700 (Measure 11).

Defendant appealed his conviction of two counts of first-degree sodomy, two counts of first-degree sexual abuse, and one count of coercion. Defendant was tried and convicted as an adult for crimes he committed while under the age of 15 and argues that because of his juvenile status during the commission of the crime he is exempt from Measure 11 minimum sentencing. Although Defendant did not preserve the alleged error at trial, Defendant argues that the trial court committed plain error, thereby giving the Court of Appeals discretionary review. The Court of

Appeals examined the text, context, and legislative history of Measure 11 and determined the alleged error by the trial court was not obvious on the face of the record. The Court conceded that the Defendant raised an issue that was "reasonably in dispute" though offered no opinion on the merits of the issue because the alleged error was not preserved or apparent on the face of the record so as to give the Court discretionary review. Affirmed.

[Summarized by Lauren Robertson]

State v. Gomes

Decided: 7/28/2010

Case No.: A138135

Schuman, J. for the Court; Landau, P.J. and Ortega, J.

<http://www.publications.ojd.state.or.us/A138135.htm>

CRIMINAL PROCEDURE "An officer unnecessarily extends the duration of a traffic stop only when the officer asks questions unrelated to the stop after having obtained the necessary information to cite the defendant.

Defendant was convicted for possession of a controlled substance. In a lawful traffic stop, the officer pulled defendant's car over for traffic offenses. The officer noticed a butane lighter and discarded cigarette box which, in the officer's training, were indicators of either cocaine or methamphetamine use. The officer then obtained consent to search the car, the cigarette box, and defendant's purse and found drugs in the purse. On appeal, defendant argues that the evidence obtained during the traffic stop should have been suppressed. Defendant argued that the officer's unrelated inquiries made during the traffic stop, and the prolonged time period of the duration caused defendant to consent to information which led to proof of the controlled substance, were unlawful and evidence from those actions should be suppressed. The State contends that given the officer's training and experience in observing the butane lighter, and empty cigarette pack, he had reasonable suspicion of criminal activity and therefore, asking for consent to search the pack was lawful. The Court of Appeals held that because the inquiries about the cigarette package were asked during the process of obtaining defendant's license and registration, the duration of the traffic stop was not unnecessarily extended and the questioning and search of defendant's purse was lawful. Affirmed.

[Summarized by Elliot M.S. Yi]

State v. Lopez-Minjarez

Decided: 7/28/2010

Case No.: A134227

Brewer, C.J. for the Court; Sercombe, P.J. and Deits, S.J.
<http://www.publications.ojd.state.or.us/A134227.htm>

CRIMINAL PROCEDURE - Accomplice liability does not include all acts that are natural and probable consequences of the act the individual aided or abetted.

Defendant was charged with twelve counts of crimes relating to the kidnapping, assault, and murder of a man his mother was having an extra-marital affair with. On appeal, the Court addressed whether the trial court erred in using the uniform jury instruction which holds an accomplice liable for natural and probable consequences of the planning, preparation or commission of a crime. The Court held that the instruction does not correctly state the law, but rather affirmatively misstates the law of accomplice liability found in ORS 161.155. Because the prosecution repeatedly insisted that the defendant could be convicted based on the natural and probable consequences, the Court determined that the jury instruction was not harmless error, and that the instruction may have affected the homicide convictions. The Court found overwhelming evidence the defendant committed kidnapping, assault, and burglary; therefore, those convictions were not reversed. Felony and aggravated murder convictions reversed and remanded; otherwise affirmed.

[Summarized by Stephanie Lind]

(9) State v. Tanner
Decided: 7/28/2010
Case No.: A138575
Sercombe, J. for the Court; Wollheim P.J., & Brewer, J.
<http://www.publications.ojd.state.or.us/A138575.htm>

CRIMINAL PROCEDURE - A defendant's confession to police regarding a potential criminal charge is voluntarily and not coerced when the police officer merely states the consequences of not telling the truth.

Defendant appeals her conviction of delivery of marijuana and assigns error to the denial by the trial court to suppress all evidence collected after a traffic stop. Defendant raises two issues on appeal. The Court of Appeals did not consider the first issue, suppressing evidence obtained during the unlawful extension of duration of the traffic stop, because Defendant did not raise the issue of duration during the trial. Second, Defendant argued that her confession was involuntarily because the police officer used coercive tactics to elicit a confession. Defendant stated that the officer warned her that if she lied about her intent to sell the marijuana, the lie may be discovered by a party to a pending domestic violence case she was involved in and be used against her. The Court

upheld the trial court ruling, holding that the officer never used coercive methods, but merely told her that if she were to speak, she should tell the truth and informed her of potential consequences of lying. Since the officer read Defendant her Miranda rights and never forcefully compelled her to speak, the Court held her confession was voluntary. Affirmed.

[Summarized by Kimberly Morton]

12) Dept. of Human Services v. C. Z.

Decided: 7/28/2010

Case No.: A144712

Sercombe, J. for the Court; Landau, P.J., & Ortega, J.

<http://www.publications.ojd.state.or.us/A144712.htm>

JUVENILE LAW ¶ Showing of a parent's substance abuse alone is not sufficient to give the juvenile court jurisdiction over a child. The State must also show the substance abuse endangered the welfare of the child.

Upon entering a home, workers from the Department of Human Services (DHS) found beer bottles and claimed Father appeared to be intoxicated. Although the house was clean, there was sufficient food, and Mother was found to have appropriate parenting skills, Mother tested positive for marijuana. Two weeks later, Mother tested negative for all drugs. Mother missed her third urinalysis. The juvenile court held it had jurisdiction over the children based on Mother's circumstances because there was sufficient evidence to show Mother had a chemical dependency that endangered the welfare of the children. On appeal, Mother claimed the State had not shown a connection between her behavior and a particular risk to the children. The Court of Appeals held that, although the State proved Mother had a chemical dependency, there was no proof to show Mother's dependency created a reasonable likelihood of harm to the children. ¶ Reversed.

[Summarized by Joseph L. Dunne]

State v. Boitz

Decided: 7/28/2010

Case No.: A138799

Wollheim, P.J. for the Court; Brewer, C.J.; and Sercombe, J.

<http://www.publications.ojd.state.or.us/A138799.htm>

SENTENCING ¶ If a court imposes a departure sentence based on its finding that the defendant committed an offense while on release from pending criminal charges, the defendant's probation status from previous criminal convictions is not sufficient to prove that new criminal charges are pending.

Defendant was convicted of first-degree burglary. The trial court imposed a departure sentence, increasing defendant's prison term beyond normal sentencing guidelines because it found that prior criminal punishments had not deterred the defendant from reoffending, and defendant committed the offense while on release status from other pending criminal charges. In fact, defendant had no pending criminal charges against him, but rather was on probation from previous convictions. The Court of Appeals found that because of this error, the State did not prove the enhancement fact that it alleged; and even if it had, defendant suffered prejudice to his defense because of the variance between the allegation and the State's proof. Therefore, the Court held that the trial court erred in enhancing the defendant's sentence. Reversed and remanded for resentencing.

[Summarized by Dane Rowinski]

State v. Watkins

Decided: 07/28/2010

Case No.: A138692

Haselton, P.J. for the Court; Armstrong, J.; Edmonds, S.J.

<http://www.publications.ojd.state.or.us/A138692.htm>

SENTENCING – ORS 161.067(3) requires that multiple violations which are not separated by a sufficient amount of time to allow an offender to renounce his criminal intent shall be merged into a single offense.

Defendant was an inmate at Western Oregon Correction Institution. On August 25, 2005 he attacked the sole corrections officer on duty in his vicinity. Defendant stabbed the officer several times. The officer was able to kick Defendant away for about 3-4 minutes and activate the alarm on his wristband. Defendant resumed his attack on the officer until help arrived. Defendant stabbed the officer seven times and was charged with multiple counts including six counts of attempted aggravated murder and seven counts of second-degree assault. At sentencing, the trial court did not merge the several separate counts and instead merged the sentences into corresponding concurrent sentences. The Court of Appeals determined that there was not sufficient proof to show that Defendant temporarily ceased his criminal conduct between the several charged counts. As such, the State could not prove that there was adequate evidence to charge Watkins' with multiple counts of the same crime. Partially reversed and remanded with instructions to merge verdicts into one conviction for second degree assault.

[Summarized by Kristen Bramble]