

**OREGON SUPREME COURT SUMMARIES,  
MAY 2010**

**State v. Morgan**

Decided: 5/13/2010

Case No.: S057279

Gillette, J. for the Court; En Banc.

<http://www.publications.ojd.state.or.us/S057279.htm>

**CRIMINAL PROCEDURE** ¶ Defendant's act of reaching into her purse, coupled with her sudden exit from her vehicle and a swift change in her demeanor are specific and articulable facts which give rise to an officer's reasonable belief that his safety may be in danger, and Article I, section 9 of the Oregon Constitution does not forbid the officer's seizure of defendant's purse to protect himself.

Defendant appeals her conviction for the unlawful possession of heroin, which Officer Lance discovered in her purse at a legal traffic stop of a vehicle in which Defendant was a passenger. Officer Lance learned that the vehicle's driver had a suspended license and warrant for his arrest. After placing the driver in the back of the patrol car, Officer Lance asked Defendant if she had a driver's license, so he could release the vehicle to her instead of having it towed. Defendant complied with Officer Lance's request. Officer Lance then asked Defendant if he could search the vehicle for contraband, and Defendant consented while seated in the vehicle. Defendant swiftly exited the vehicle to permit the search and took a large purse with her. Officer Lance told Defendant he would have to search the purse for weapons if she kept it with her, otherwise she could leave it in the vehicle and he would not search the purse. Defendant's demeanor then changed from calm and cooperative to agitated and nervous. She refused to allow Officer Lance to search her purse, clutched it to her chest and began backing away from him. Defendant then began to reach inside the purse. Officer Lance, fearing for his safety, seized the open purse and saw drug paraphernalia in it. At trial, the court denied Defendant's motion to suppress the evidence found and the court of appeals upheld that ruling. The Supreme Court held that in applying the officer safety doctrine articulated in *State v. Bates*, 304 Or 591, 524, 747 P2d 991 (1987), Officer Lance's concern for his safety was reasonable given Defendant's act of reaching into her purse, coupled with her change in demeanor and quick exit from the vehicle. Therefore, Article I, section 9 of the Oregon Constitution does not forbid him from taking reasonable steps to protect his safety, including seizure of Defendant's purse. Affirmed.

[Summarized by Terisa Page]

**State v. Brown**

Decided: 5/27/2010

Case No.: S057594

De Muniz, C. J. for the Court

<http://www.publications.ojd.state.or.us/S057594.htm>

**CRIMINAL PROCEDURE ¶ When a person denies ownership of bags left in a hotel room rented to another person, and leaves those bags in the hotel room when asked by police to vacate the room, the person has relinquished a possessory interest in those bags and a warrantless search does not violate the Oregon Constitution.**

The evidence used to charge Defendant with 22 counts of identity theft was obtained by a warrantless search of two bags left in a hotel room that Defendant did not rent. Defendant repeatedly told police she did not own the bags. The trial court granted Defendant's motion to suppress, finding that the search violated the Oregon and Federal constitutions. The state appealed. On appeal, Defendant argued that the search of the bags violated her privacy rights. The state argued that when Defendant denied owning the bags and left the hotel room, she abandoned any possessory or privacy interest in the bags. The Supreme Court held that Defendant had lost her privacy interest in the bags due to her repeated denial of ownership of the bags. In addition, the Court found that when Defendant left the bags in the locked hotel room rented by her companion, she gave up her possessory rights to her companion. The Court held that any remaining privacy interest in the bags was released by Defendant's companion's consent to search. Reversed and remanded.

[Summarized by Alisa Ray]

**OREGON COURT OF APPEALS SUMMARIES, MAY 2010**

**State v. Ceballos**

Decided: 05/05/2010

Case No.: A134983

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

<http://www.publications.ojd.state.or.us/A134983.htm>

**CRIMINAL LAW ¶ A person is a victim who suffered economic damages under ORS 137.106 when he or she pays expenses for the victim's funeral, and is therefore entitled to restitution from the defendant charged with the victim's murder.**

The state appeals the restitution calculations of the trial court omitting

funeral expenses from the restitution order. On appeal, the Court of Appeals examined ORS 137.106 to determine whether Faulkner, the brother of Defendant's murder victim, was entitled to restitution as a "victim" who "suffered economic damages" when he voluntarily used insurance funds to pay for the murder victim's funeral service. Although the insurance company would pay funeral expenses regardless of the manner of decedent's death, the legislature included burial and memorial expenses in the statute, thereby indicating an intent that those costs be included as part of the statutory restitution. The Court held that Faulkner was "subjected" to the costs of the funeral and entitled to restitution under the statute because Defendant's criminal activity was the but-for cause of those expenses. Reversed and remanded.

[Summarized by Stephanie Lind]

**State v. Davis**

Decided: 5/12/2010

Case No: A134216

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

<http://www.publications.ojd.state.or.us/A134216.htm>

**EVIDENCE- It is an error to exclude evidence if it is relevant and its exclusion will have a high likelihood of affecting the verdict.**

Defendant was convicted of one count manslaughter and one count murder in the death of his 15-month-old child, who died on June 30, 2002, of head and abdominal injuries caused by physical abuse. At trial the State and Defendant's expert witnesses each presented conflicting testimony regarding the timing of when the child's injuries occurred. The State's evidence showed the injuries occurred the day before the child's death while in the care of Defendant. Defendant's evidence showed the injuries occurred a few days prior, while the child was in her mother's care. Defendant appeals his conviction and contends the trial court erred in excluding three types of evidence: (1) evidence of prior injuries to the child; (2) lay witness opinion that the child exhibited symptoms of a brain injury earlier; and (3) testimony regarding the victim's mother had knowledge of a possible brain injury and failed to report that to medical providers. The Court of Appeals rejected defendant's first two challenges and held the trial court erred in excluding evidence that the victim's mother was told of a potential brain injury a few days before the victim's death, because such evidence was relevant and could have affected the jury's verdict. Reversed and Remanded.

[Summarized by Laura Franzen]

**State ex rel Juv. Dept. v. K. C. W. R.**

Decided: 5/12/2010

Case No.: A139566

Rosenblum, J. for the Court; Wollheim, P.J.; & Sercombe, J.

<http://www.publications.ojd.state.or.us/A139566.htm>

**JUVENILE LAW ¶ When a defendant's conduct is extensively intertwined with the injury causing conduct, defendant is said to have produced that injury and is therefore liable for the injury.**

Defendant, a youth, appeals the judgment of the juvenile court finding him to be within the that court's jurisdiction for committing acts that, if committed by an adult, would constitute third-degree assault. He contends the State failed to prove beyond a reasonable doubt that he caused physical injury to the victim or alternatively that, if Defendant did so, he was aided by another person. Defendant punched Victim in the face outside a bar. Victim grabbed Defendant, and they wrestled to the ground. Each time Victim would let Defendant go, Defendant continued his attack. At the same time, Defendant's mother hit Victim in the face with a baseball bat, while an unidentified third party also punched Victim. The Court of Appeals held that Defendant's conduct did not cause the inflicted injuries to Victim. However, Defendant's conduct was extensively intertwined with the injury causing conduct because Defendant would continue to attack the victim when Victim would let go of Defendant to defend himself from the other attackers. If not for Defendant's actions, Victim would have been able to defend himself from the mother's attack, or retreat. Therefore, Defendant is directly liable for Victim's injuries. Affirmed.

[Summarized by Omar Nur]

**State v. Baker**

Decided: May 12, 2010

Case No.: A142260

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

<http://www.publications.ojd.state.or.us/A142260.htm>

**SENTENCING ¶ A trial court abuses its discretion by extending a defendant's probation in lieu of conducting a stalking protective order hearing over defendant's objection.**

Defendant was serving a 1-year probation as part of a plea bargain for harassing her former husband's girlfriend. At a hearing to determine whether to grant a permanent stalking protective order (SPO) the trial court extended Defendant's probation from 1 year to 5 years, in lieu of hearing arguments regarding the SPO. Defendant objected to this ruling and

appealed, contending the trial court erred when it extended her probation without a hearing and without determining whether her probation was serving its intended purposes. The Court of Appeals found that the trial court did not balance considerations of public safety and rehabilitation of Defendant in its judgment, but ruled to avoid a hearing on the SPO. The Court held it is impermissible to extend probation in lieu of conducting an SPO hearing absent the parties' stipulation. Since Defendant had objected, she had not stipulated and the trial court abused its discretion. The Court did not decide whether a hearing was necessary to extend probation. Reversed.

[Summarized by Tyler Reid]

### **Sivik v. DMV**

Decided: 5/19/2010

Case No.: A138782

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

<http://www.publications.ojd.state.or.us/A138782.htm>

**CRIMINAL PROCEDURE - Although the "emergency aid" exception to the warrant requirement applies to searches but not stops, where a police officer approaches a vehicle under his or her authority to render aid, but smells alcohol, sees a suspect's bloodshot eyes, and hears a suspect's slurred speech before restraining the suspect's freedom of movement, the police officer has probable cause and the subsequent stop is valid.**

Relying on his authority to stop a motorist to render aid under the "emergency aid" exception to the warrant requirement, Officer Mills approached Defendant's parked car after observing Defendant pull quickly into the parking lot, turn off the engine, and slump over the wheel. Upon rousing Defendant, Mills noticed a smell of alcohol, Defendant's slurred speech and bloodshot eyes. Defendant refused to take a sobriety test, and Mills arrested Defendant for driving under the influence of intoxicants. The DMV suspended Defendant's driver's license and the circuit court affirmed. On appeal, Defendant argued that any evidence gathered after Mills determined that there was not an emergency is inadmissible. While the Court of Appeals held that Mills could have reasonably believed that Defendant was ill or injured, the Court refused to apply the "emergency aid" exception because it applies to searches, while Mills stopped Defendant. Instead, the Court held that the fact that Mills smelled alcohol from the vehicle before interacting with Defendant was enough to give Mills reasonable suspicion that Defendant had driven while intoxicated, and therefore the stop was lawful and evidence was admissible. Affirmed.

[Summarized by Matthew Brewer]

**State v. Doak**

Decided: 5/19/2010

Case No.: A137375

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

<http://www.publications.ojd.state.or.us/A137375.htm>**CRIMINAL PROCEDURE ¶ A case will not be dismissed on statutory speedy trial grounds when the delay is reasonable under the circumstances and when a large enough portion of the delay is attributable to the defendant.**

On February 23, 2006, the state charged Defendant with DUII, reckless driving, and tampering with physical evidence, to which Defendant pled not guilty on two of the charges. The trial court set a date for August 2, 2006. On August 1, 2006, the parties announced their inability to reach a plea agreement and the state announced an intention to add an additional charge. Defendant asked to reset the trial date to December 2006 and later agreed to the state's request to postpone until February 2007. Later, both parties agreed to postpone the trial until July 17, 2007. On June 22, 2007, Defendant moved to dismiss on statutory speedy trial grounds under ORS 135.747, and the trial court granted the motion. The Court of Appeals held that, under the circumstances, the delay was reasonable and therefore not in violation of 135.747, which only requires the case be brought to trial in a "reasonable" amount of time. The Court also held that some of the delays were attributable to Defendant because Defendant consented to or requested the delay. Therefore, Defendant's statutory speedy trial rights were not violated by the delay. Reversed and Remanded.

[Summarized by Kimberly Morton]

**Ross v. Hill**

Decided: 5/19/2010

Case No.: 135040

Landau, P.J. for the Court; Brewer, C.J. &amp; Schuman, J.

<http://www.publications.ojd.state.or.us/A135040.htm>**POST-CONVICTION RELIEF - That an issue has unsettled questions of law is not grounds for failure to raise an issue so obvious that a lawyer exercising reasonable professional skill and judgment would have done so.**

After pleading no contest, Defendant was convicted of multiple offenses including two counts of first-degree kidnapping arising from the same incident. At sentencing, trial counsel failed to raise the argument that the two kidnapping convictions should be merged, and the trial court

entered judgment on each count. Defendant sought post conviction relief on the grounds that trial counsel provided constitutionally inadequate assistance in failing to raise the merger issue. The Court of Appeals first noted that although the state of the law pertaining to the merger of convictions was somewhat blurred at the time of Defendant's conviction, it has since been clarified and Defendant's convictions should have been merged. The Court held that although the law was somewhat unclear at the time, a lawyer exercising reasonable professional judgment would have raised the argument for the benefit of the client. Reversed and remanded with instructions to enter judgment granting post-conviction relief and resentencing on kidnapping conviction; otherwise affirmed.

[Summarized by Rena Jimenez-Blount]

**State v. Pierce**

Decided: 5/26/2010

Case No.: A136976

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

<http://www.publications.ojd.state.or.us/A136976.htm>

**CRIMINAL LAW ¶ Instructing a jury on various means of committing a crime is improper if only one of the various means is alleged in the indictment.**

Police arrested Defendant and two others, who were driving a stolen truck. Defendant testified that he did not participate in stealing the truck, but only rode in it. A jury convicted Defendant of seven crimes, including Unauthorized Use of a Motor Vehicle (UUV). The trial court instructed the jury that a person commits UUV when he "takes, operates, exercises control over, rides in, or otherwise uses another's vehicle...without consent of the owner." However, the indictment only alleged that Defendant knowingly took the truck. Defendant objected to and appealed the jury instruction that a person commits UUV by means other than "taking" a vehicle, because "taking" was the only means alleged in the indictment. The Court of Appeals held that the jury instruction allowed for conviction on an unindicted crime, and therefore violated Defendant's state constitutional rights. Reversed on the UUV conviction; otherwise affirmed.

[Summarized by Joe Dunne]