



COURT OF APPEALS

Media Release

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The Court of Appeals issued these opinions:

Laura Jo Husk v. Alice Adelman
(A158504 - Multnomah County Circuit Court)
T. K. v. Bridget Stutzman*
(A153035 - Jackson County Circuit Court)
Department of Human Services v. Z. E. W.
(A160745 - Washington County Circuit Court)
State of Oregon v. Nicholas Bounden Wright
(A156811 - Washington County Circuit Court)
Dwight G. Purdy v. Deere And Company
(A144265 - Lane County Circuit Court)
State of Oregon v. Timothy Mark Bray
(A158753 - Klamath County Circuit Court)

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

State of Oregon v. Jose Noel Gonzales-Acevedo
(A158447 - Lane County Circuit Court)
State of Oregon v. Deondre Michael Cloman
(A159052 - Washington County Circuit Court)
State of Oregon v. William Howard Pauley
(A159112 - Clackamas County Circuit Court)
State of Oregon v. David Michael Berry
(A160666 - Lincoln County Circuit Court)
State of Oregon v. J. S.
(A161618 - Marion 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).

The Court of Appeals affirmed these cases without opinion:

State of Oregon v. Cyrus Eugene Surratt
(A157104 - Jefferson County Circuit Court)

Kris Elaine Fisher-Spurlock and Roderick Joseph Spurlock
(A157695 - Multnomah County Circuit Court)

State of Oregon v. Jeronimo Novoa-Leal
(A158023 - Klamath County Circuit Court)

State of Oregon v. Chad Ray Paxton
(A158075 - Jackson County Circuit Court)

State of Oregon v. Amir Reza Karimzadeh
(A158362 - Multnomah County Circuit Court)

Gerardo Garcia Gonzalez v. Mark Nooth
(A158427 - Malheur County Circuit Court)

State of Oregon v. James Albert Rios
(A158482 - Washington County Circuit Court)

Danovan Maurice Pooler v. Jeff Premo
(A158580 - Marion County Circuit Court)

Arnold Ray Huskey v. Board of Parole and Post-Prison Supervision
(A158587 - Board of Parole and Post-Prison Supervision)

State of Oregon v. Toriano Villaverde Couture
(A158659 - Washington County Circuit Court)

State of Oregon v. Michael Wayne Buie
(A158713 - Crook County Circuit Court)

State of Oregon v. David Young
(A158924 - Lake County Circuit Court)

State of Oregon v. Desiree Laymon
(A158932 - Tillamook County Circuit Court)

State of Oregon v. Travis Robert Belleisle
(A158989 - Tillamook County Circuit Court)

State of Oregon v. Christopher Shane McKelvey
(A159008 - Washington County Circuit Court)

State of Oregon v. Nickolas Allen Hostens
(A159017 - Washington County Circuit Court)

Charles Samuel Pope v. Board of Parole and Post-Prison Supervision
(A159093 - Board of Parole and Post-Prison Supervision)

State of Oregon v. T. J., Jr.
(A160057 - Multnomah County Circuit Court)

Jason Osborne v. Travelers Insurance Company
(A160234 - Workers' Compensation Board)

Luis W. Rodriguez v. Robert George Parsons
(A160791 - Clackamas County Circuit Court)

Department of Human Services v. D. W.
(A161789 - Clackamas County Circuit Court)
Department of Human Services v. L. R. F.
(A161889 - Columbia County Circuit Court)
Tom Walter v. City of Eugene
(A162680 - Land Use Board of Appeals)

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Laura Jo Husk v. Alice Adelman
(Ortega, P. J.)

Adelman, the legal parent of child, G, appeals a judgment awarding Husk (Adelman's former partner) visitation with G. The court determined that Husk had established an "ongoing personal relationship" with G and ordered visitation as allowed by ORS 109.119. Adelman challenges the visitation plan, arguing that the court erred by concluding that Husk rebutted the statutory presumption that Adelman acted in the best interest of G. She further argues that the court erred by ordering the extensive visitation that it did and by granting Husk access to G's medical and education records. Held: There was sufficient evidence to support the court's findings of fact which, when taken together, support the court's ultimate determination that Husk rebutted, by clear and convincing evidence, the presumption that Adelman acted in G's best interest. Further, the extent of the visitation ordered by the court was within the range of legally permissible choices. However, the court abused its discretion in ordering that Husk receive access to G's medical and education records. Judgment provision granting Husk access to child's medical and education records reversed; otherwise affirmed.

T. K. v. Bridget Stutzman
(Duncan, P. J.)

Respondent appeals an order continuing a temporary restraining order that petitioner obtained against her under the Family Abuse Prevention Act. ORS 107.700-107.735. Respondent asserts that petitioner failed to present sufficient evidence that (1) respondent had abused petitioner, (2) there was an imminent danger of further abuse to petitioner, and (3) respondent presented a credible threat to the physical safety of petitioner. Held: The evidence was insufficient to show that respondent posed an imminent danger and a credible threat to petitioner's physical safety. Reversed.

Department of Human Services v. Z. E. W.
(Duncan, P. J.)

Father appeals orders and judgments by the juvenile court that asserted jurisdiction over father's two children. Father argues that the juvenile court erred by asserting jurisdiction over the children because the record does not contain sufficient evidence to establish that the children's conditions or circumstances were "such as to endanger [their] welfare." ORS 419B.100(1)(c). The Department of Human Services (DHS) concedes that the juvenile court erred and agrees that, given the absence of evidence of a specific risk to the children's welfare, "the juvenile court erred when it relied on the negative [Interstate Compact for the Placement of Children (ICPC) report] as the basis for taking jurisdiction." Held: DHS failed to present legally sufficient evidence to establish that the children were endangered by their conditions and circumstances as alleged in the amended jurisdiction petitions. The fact that father has not been approved as an ICPC placement is not,

in and of itself, a basis for asserting jurisdiction over the children. Reversed and remanded with instructions to terminate wardships.

State of Oregon v. Nicholas Bounden Wright
(DeVore, J.)

Defendant appeals a judgment of conviction for aggravated identity theft, identity theft, and first-degree theft. At trial, the state told the jury that it could find defendant guilty under a theory of principal liability or under a theory of aiding and abetting in the commission of the crimes. The trial court did not instruct the jury that it must concur as to whether defendant was either the principal or an aider-and-abettor. Defendant contends that, under *State v. Phillips*, 354 Or 598, 317 P3d 236 (2013), the trial court plainly erred in failing to provide a jury concurrence instruction that would have required the jurors to agree upon a theory of liability and that the Court of Appeals should exercise its discretion to correct the error. Held: Failing to provide a jury concurrence instruction constituted plain error, and the court exercised its discretion to correct it. Reversed and remanded.

Dwight G. Purdy v. Deere And Company
(Lagesen, P. J.)

On remand from the Supreme Court, in this products liability and negligence action for injuries sustained by a young girl from a riding lawn mower manufactured and sold by defendants, *Purdy v. Deere*, 355 Or 204, 324 P3d 455 (2014) (*Purdy II*), the Court of Appeals considered the merits of nine assignments of evidentiary and instructional error. The court previously had affirmed, rejecting those assignments of error on the ground that, under Supreme Court precedent, the verdict form was insufficient to demonstrate that any of the alleged errors were reversible under ORS 19.415. *Purdy v. Deere*, 252 Or App 635, 287 P3d 1281 (2012) (*Purdy I*). The Supreme Court reversed and remanded for reconsideration after modifying its previous analysis of what constitutes reversible error under ORS 19.415. *Purdy II*, 355 Or at 226-32. The Court of Appeals also considered the merits of defendants' cross-assignments of error, which asserted, among other things, that the trial court erred by admitting "risk-utility" evidence in connection with the products liability claim. Held: The jury instructions regarding the products liability claim were erroneous in three respects: (1) they provided an incomplete statement of the law as to how the jury was permitted to take the lawn mower operator's negligence into account; (2) they incorrectly instructed the jury regarding the statutory presumption that a product is safe for its intended use; and (3) they incorrectly instructed the jury on how to assess the "risk-utility" evidence. Under the Supreme Court's interpretation of ORS 19.415 in *Purdy II*, those errors required reversal of the judgment as to the products liability claim. Under *McCathern v. Toyota Motor Corp.*, 332 Or 59, 62, 23 P2d 320 (2001), the trial court did not abuse its discretion by admitting "risk-utility" evidence in connection with the products liability claim. Products liability claim against defendant Deere reversed and remanded; otherwise affirmed.

State of Oregon v. Timothy Mark Bray
(Haselton, S. J.)

Defendant appeals a judgment of conviction of one count of unlawful possession of methamphetamine, ORS 475.894, and one count of felon in possession of a restricted weapon, ORS 166.270, assigning error to the denial of his motion to suppress evidence of both of those offenses discovered following a traffic stop. Defendant contends that the predicate traffic stop was extended by a request to check his criminal history and that that extension was unlawful as neither occurring during an "unavoidable lull" in the traffic stop nor

justified by reasonable suspicion of criminal conduct. Held: The request to check defendant's criminal history was not justified by reasonable suspicion of criminal activity. Accordingly, that request unlawfully extended the traffic stop and resulted in the discovery of the disputed evidence. Thus, the trial court erred in denying suppression. Reversed and remanded.

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