Practicing Criminal Defense in Oregon

Cosponsored by the Oregon New Lawyers Division

Wednesday, August 24, 2022
Noon–1 p.m.

1 Practical Skills credit (ID 92390)
# TABLE OF CONTENTS

Schedule .................................................................................................................................................. v

Faculty .................................................................................................................................................. v

10 Tips for Criminal Defense Practitioners .......................................................................................... 1

Search and Seizure Case Law to Note ..................................................................................................... 2

Sample Information of District Attorney ............................................................................................... 3

Sample Indictment .................................................................................................................................. 5
SCHEDULE

Noon  Practicing Criminal Defense in Oregon
    ✦ Basic easement practice
    ✦ How to avoid litigation over easements
    ✦ Basic escrow/title practice

1:00  Adjourn

FACULTY

Ben Eder, Thuemmel Uhle & Eder, Portland. Mr. Eder has tried over 100 DUII jury trials and won a major
DUII case at the Oregon Supreme Court. Mr. Eder is chair of the Oregon State Bar Litigation Section,
past chair of the Oregon New Lawyers Division, and a member of the Multnomah Bar Association,
American Bar Association, and Oregon Criminal Defense Lawyers Association. He is a contributor
to The DUII Trial Notebook (Oregon Criminal Defense Lawyers Association 2014 edition, with 2016
update) and has been a featured presenter on trial techniques, DUII defense, cross-examination of
police, and DMV hearings.

Sean Pank, Morris & Sullivan PC, The Dalles. Mr. Pank practices criminal law defense. Prior to joining
the firm, he served as judicial clerk for the Honorable Judith H. Matarazzo in the Multnomah County
Circuit Court, where he worked on cases of all types in both civil and criminal litigation.
10 Tips for Criminal Defense Practitioners

1. Look at the Jury Instructions and the corresponding statute for each offense

2. Be familiar with the defenses that may apply
   a. Elements
   b. Self Defense
   c. Definitions
   d. Choice of Evils

3. Do your own investigation (or give very clear instructions to your investigator)
   a. You are in the best position to evaluate each witness
   b. Go to the scene of the alleged crime

4. Use the resources
   a. Other lawyers
   b. OCDLA listserv
   c. OCDLA Library of Defense

5. Keep your client informed as to what is happening
   a. Clients get anxiety about the unknown so cover the basics about each court appearance, what you are doing on their case

6. Let the client know your plan so they understand why they should hire you

7. Go to CLE’s

8. There is no substitute for trying cases
   a. Learn from watching other lawyers
   b. Be critical of what you see and also be critical of yourself

9. Don’t let a loss get you down for very long

10. Trial work is difficult but it’s important. Develop a system that works for you.
Search and Seizure Case Law to Note:

Constitutionally Significant Seizures (Article I, Section 9):

- **State v. Ashbaugh**, 349 Or 297 (2010) – Defining the various types of encounter or seizures for purposes of the Oregon Constitution and differentiating between “mere conversation,” a “stop,” and an “arrest.”
- **State v. Arreola-Botello**, 365 Or 695 (2019) - Officer may not *inquire* into matters unrelated to the initial stop without independent reasonable suspicion justifying the separate inquiries. Did away with the “unavoidable lull” doctrine.

Searches (Article I, section 9):

- **State v. Wacker**, 317 Or 419 (1993) – Defining a “search” for purposes of the Oregon Constitution – “Unlike under the federal constitution, a search is not defined by a reasonable expectation of privacy, but in terms of “the privacy to which one has a right.” *State v. Campbell*, 306 Or 157, 164 (1988).
- **State v. McCarthy**, 369 Or 129 (2021) – State must show actual exigent circumstances exist to justify the warrantless search or seizure of a vehicle, overruling the “automobile exception” and *State v. Brown*.

**Miranda Rights** (Article I, section 12):

- **State v. Schwerbel**, 233 Or App 391 (2010) – *Miranda* warnings required under Oregon Constitution when police place a person in “compelling circumstances” in addition to traditional “custody.”
- **State v. Vondehn**, 348 Or 362 (2010) – Physical evidence discovered as result of *Miranda* violation must be suppressed in addition to statements.
- **State v. Swan**, 363 Or 121 (2018) – Invocation of right to counsel and officer’s continued questioning without an attorney required suppression of breath test results where submission to breath test was product of prior *Miranda* violation.

**Exercising Constitutional Rights:**

- **State v. Banks**, 364 Or 332 (2019) – A person’s exercising of a constitutional right may not be used against them as evidence of guilt.
- **State v. Durbin**, 335 Or 183 (2003) – Person who invokes right to counsel under Article I, section 11 has a right to privately communicate with counsel. Police actions that interfere with ability to communicate privately result in suppression.

(This list is intended as a starting point for individual research and is by no means a comprehensive or exhaustive list of constitutional issues or useful cases)
In the Circuit Court of the State of Oregon
For Multnomah County

STATE OF OREGON,

Plaintiff,

v.

Defendant(s).

The above-named defendant(s) is accused by this information of the crime(s) of COUNT 1 - MISDEMEANOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICANTS, COUNT 2 - RECKLESS DRIVING, committed as follows:

COUNT 1
MISDEMEANOR DRIVING WHILE UNDER THE INFLUENCE OF INTOXICANTS

The said Defendant(s), [redacted], on or about [redacted] in the County of Multnomah, State of Oregon, did unlawfully drive a vehicle upon a public highway and premises open to the public while under the influence of intoxicants and within two hours after driving the vehicle, and without consuming alcohol in the intervening time period, had 0.08 percent or more by weight of alcohol in the blood of the person, as shown by chemical analysis of the breath or blood of the person, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon.

The state further alleges that the defendant drove a vehicle on a premises open to the public while the person has a .15 percent or more by weight of alcohol in their blood as shown by chemical analysis of their breath or blood.

COUNT 2
RECKLESS DRIVING

The said Defendant(s), [redacted], on or about [redacted] in the County of Multnomah, State of Oregon, did unlawfully and recklessly drive a vehicle upon a public highway and premises open to the public, in a manner that endangered the safety of persons or property, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon.

Dated at Portland, Oregon, in the county aforesaid, on [redacted].

[Redacted]
District Attorney
Multnomah County, Oregon

By /s/ Branden J. Meadows
Issuing Deputy, OSB # [redacted]

Security Amount (Def - [redacted]) $2,500 + $2,500

Uniform Complaint

AFFIRMATIVE DECLARATION

The District Attorney hereby affirmatively declares for the record, at the time of the defendant's first appearance on this charging instrument and before the court asks under ORS 135.020 how the defendant pleads to the charge(s), the State's intention that any non-person Class C felony(s) or violation(s) of ORS 475.640(3)(a), 475.654, 475.864(2), or 475.874 be treated as a Class A Misdemeanor pursuant to ORS 161.570.

INFORMATION OF DISTRICT ATTORNEY
Pursuant to 2005 Or Laws ch. 463 sections 1 to 7, 20(1) and 21 to 23, the State hereby provides written notice of the State's intention to rely at sentencing on enhancement facts for any statutory ground for the imposition of consecutive sentences codified under ORS 137.123 on these counts or to any other sentence which has been previously imposed or is simultaneously imposed upon this defendant.
In the Circuit Court of the State of Oregon
For Multnomah County

STATE OF OREGON

Plaintiff,
v.

Defendant(s).

The above-named defendant(s) are accused by the Grand Jury of Multnomah County, State of Oregon, by this indictment of crime(s) of COUNT 1 - BURGLARY IN THE SECOND DEGREE, COUNT 2 - CRIMINAL MISCHIEF IN THE SECOND DEGREE, committed as follows:

COUNT 1
BURGLARY IN THE SECOND DEGREE

The said Defendant(s), on or about in the County of Multnomah, State of Oregon, did unlawfully and knowingly enter and remain in a building located at Street, Portland, Oregon, with the intent to commit the crime of Criminal Mischief therein, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon.

This count is connected together by two or more acts or transactions with the other counts of this charging instrument. This count is of the same and similar character as the conduct alleged in the other counts of this charging instrument. This count constitutes part of a common scheme or plan based on two or more acts or transactions with the other counts of this charging instrument.

COUNT 2
CRIMINAL MISCHIEF IN THE SECOND DEGREE

The said Defendant(s), on or about in the County of Multnomah, State of Oregon, did unlawfully and intentionally damage real property, the property of the said defendant having no right to do so nor reasonable ground to believe that the defendant had such right, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Oregon.

This count is connected together by two or more acts or transactions with the other counts of this charging instrument. This count is of the same and similar character as the conduct alleged in the other counts of this charging instrument. This count constitutes part of a common scheme or plan based on two or more acts or transactions with the other counts of this charging instrument.

Dated at Portland, Oregon, in the county aforesaid, on .

Witnesses
Examined Before the Grand Jury in person (unless noted)

(By Simultaneous Television Transmission)

Security Amount (Def - ) $5,000 + $2,500

A TRUE BILL

/S/ Foreperson of the Grand Jury

MIKE SCHMIDT (084679)
District Attorney
Multnomah County, Oregon

By

AFFIRMATIVE DECLARATION

The District Attorney hereby affirmatively declares for the record, as required by CRS 166.146, upon the date scheduled for the first appearance of the defendant on the charge(s), the State's intention that any misdemeanor charged herein proceed as a misdemeanor.

Pursuant to 2005 ORS 663 sections 1 to 7, 20(1) and 21 to 21, the State hereby provides written notice to the defendant's attorney to rely at sentencing on the imposition of consecutive sentences provided under CRS 157.110 in these counts or to any other sentence which has been previously imposed or a simultaneous

INDICTMENT Dist: Original: Court – Copies: Defendant, Def. Attorney, DA, Data Entry

Practicing Criminal Defense in Oregon