

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Criminal Law

To be guilty of the crime of willfully transmitting a telephone communication that contained a threat to injure another person, the government need not establish that the person allegedly threatened was real. Judge Anna J. Brown denied a motion for a judgment of acquittal, holding that where a defendant makes a phone call and tells the person who answers the phone that he intends to cause harm to an individual, the crime is complete. The court noted that fact that the individual is fictional is irrelevant, since the government need not prove that the defendant had the intent to carry out his threat. United States v.

Coverstone, CR 00-79-BR (Opinion, March 7, 2001).

AUSA: Frank Noonan

Defense Counsel:

Michael Greenlick

Employment

A former sales associate filed an action against her employer claiming Title VII gender discrimination, retaliation, wrongful

discharge and intentional infliction of emotional distress. Plaintiff claimed that she was subjected to a hostile work environment and that she was terminated after she lodged a sexual harassment complaint. As part of her prima facie case and as evidence of pretext, plaintiff relied upon direct evidence of discriminatory animus in the form of derogatory comments her supervisor made about women in general and a single derogatory comment that he directed against the plaintiff. Defendant claimed that it terminated plaintiff for falsifying sales. However, the investigation into plaintiff's sales did not take place until shortly after she complained of sexual harassment.

Judge Aiken found that the timing of the defendant's investigation along with the direct evidence of discriminatory animus were sufficient to defeat defendant's motion for summary judgment as against the Title VII and state claims for gender discrimination and retaliation. However, the court found plaintiff's hostile environment allegations fell far short of the threshold required to demonstrate a "polluted" work environment and

thus, the court granted the defendant's motion for summary judgment against this claim. The court also rejected plaintiff's claim for intentional infliction of emotional distress finding no evidence of the requisite intent. Alfonso v. GTE, CV 99-1422-AA (Opinion, March, 2001).

Plaintiff's Counsel:

Tom Steenson

Defense Counsel:

John Acosta

7 Judge Aiken granted a defense motion for summary judgment in a disability discrimination case brought under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The plaintiff was a city police officer who sustained a work-related injury to his left hand. Following surgery, he was released by his doctor for permanent light duty. Plaintiff was physically capable of performing most of the duties of his job except his reduced grip strength meant that he would have difficulty handling forcible arrest situations. Plaintiff sought another position within the police department. Defendant offered plaintiff a non-

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sworn civilian position which plaintiff rejected and plaintiff was then terminated.

Plaintiff argued that defendant failed to reasonably accommodate his disability and that it terminated him because of his disability. Judge Aiken held that plaintiff's left-hand injury was not a "disability" within the meaning of the ADA or the Rehabilitation Act. The court reasoned that not all impairments, even if permanent, are disabling and she rejected the suggestion that the inability to perform a single, particular job could constitute a substantial limitation to a major life activity. Judge Aiken also rejected a common law wrongful discharge claim, finding that state statutes provided an exclusive and adequate remedy. Fultz v. City of Salem, CV 99-399-AA (Opinion, March, 2001).

Plaintiff's Counsel:

Kevin Lafkey

Defense Counsel:

Stephanie Smythe

Insurance

A postal employee originally designated his son as his sole beneficiary under a life insurance policy. Thereafter, the postal worker and his wife divorced and, as part of the decree, the wife was awarded an interest in his retirement fund. The wife was

also named as the life insurance beneficiary as security for the payments due under the retirement account. The Office of Personnel and Management (OPM) began making monthly payments to the wife pursuant to the decree. After several years, the postal employee determined that he had fulfilled his retirement fund obligation to his ex-wife and asked OPM to stop making payments. OPM refused to do so without a court order. The postal worker was in the process of attempting to obtain a court order when he died. Both the ex-wife and son sought to obtain the proceeds of the insurance policy.

The life insurance company then filed a declaratory judgment action to resolve the competing claims. Judge Jones held that under the plain language of applicable OPM regulations, the wife was the last designated beneficiary and thus, was entitled to the proceeds. The court held that it could not consider the decedent's intent or equitable principles under the applicable regulatory scheme. Metropolitan Life Ins. Co. v. Holland, CV 00-1230-JO (Opinion, March, 2001).

Plaintiff's Counsel:

Robert B. Miller

Defense Counsel:

Jennifer Peet; Bruce Brothers

Habeas

Judge Robert E. Jones denied a

habeas corpus petition on grounds of procedural default and on the merits. The court applied the statutory presumption of correctness to post-conviction court factual findings and held that the state court correctly applied Oregon statutory law regarding imposition of consecutive sentences. Kappel v. Palmateer, CV 99-1559-JO (March 2001).

Jurisdiction

Judge Dennis James Hubel denied a motion to dismiss for lack of personal jurisdiction in a freight collection case. The court noted that the facts were very similar to those present in Grey & Co. v. Firstenberg, 913 F.2d 758 (9th Cir. 1990), a case in which the court held personal jurisdiction was lacking. However, Judge Hubel found Grey distinguishable because, unlike Grey, the defendant initiated contract negotiations with the plaintiff either directly or through an agent. L.L. Smith Trucking Co., Inc. v. Hughes Bros Aircrafters, Inc., CV 00-1183-HU (Opinion, March 8, 2001).

Plaintiff's Counsel:

John Carr

Defense Counsel:

Alex Shebiel