

IN THE SUPREME COURT OF OREGON

Kini Cosma,

Appellant-Petitioner-Defendant

vs.

STATE OF OREGON,
KLAMATH COUNTY, Et. Al.

Plaintiff-Respondent,

CASE NO.:

Oregon Court of Appeals: A145734
Lower Ct Case.:0901352CR

BRIEF OF APPELLANT

On appeal from the Klamath County Circuit Court,
State of Oregon
in and for the County of Klamath

PETITION FOR REVIEW

APPEARANCES:

Kini Cosma
5146 ½ Bristol Ave.
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(541) 880-4534
In Propria Persona

Attorney for Respondent
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APPELLANTS' OPENING BRIEF AND EXCERPT OF RECORD

Appeal from the Judgment of **Order Authorizing Psychological Examination of Defendant and Order To Transport Defendant To Oregon State Hospital** of the Circuit Court for Klamath County dated June 8, 2010

The Honorable Cameron F. Wogan

Appeal from the Judgment of Dismissal of the Court of Appeals of the State of Oregon dated June 9, 2010.

The Honorable David V. Brewer

Kini Cosma
5146 1/2 Bristol Avenue
Klamath Falls, OR 97603
In Propria Persona
(541) 880-4534

IN THE SUPREME COURT OF OREGON

Kini Cosma,)	
)	CASE NO.:
Appellant-Petitioner-Defendant)	
)	Oregon Court of Appeals: A145734
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STATE OF OREGON,)	
KLAMATH COUNTY, Et. Al.)	PETITION FOR REVIEW
)	
Plaintiff-Respondent,)	
_____)	

TO: THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT

1. NOTICE IS HEREBY GIVEN that the above-named Defendant-Appellant does hereby appeal to the **OREGON SUPREME COURT** from the final judgment(s) rendered in this action in the above related matters before the court based on constitutional, jurisdictional, or other substantial grounds going to the legality of the final judgment on or about June 8, 2010.
2. This appeal will be based on all, but not limited to, Defendant-Appellant's complaints, supporting documents, records, reports, memorandum of points and authorities, declarations, and sworn testimonies of all associated proceedings and matters presented to the court.

3. The grounds and issues in this case will include, but not be limited to:
 - i. Defendant-Appellant is being subjected to prosecutorial vindictiveness in violation of the Due Process Clause; the Sixth Amendment right to a speedy trial.
 - ii. Fundamental fairness including bad faith prosecutorial overreaching and harassment; demanding irrelevant and undue hardships, i.e. a “mental health evaluation” on May 11, 2010 for a frivolous dog bite a man sustained from Defendant-Appellants’ dog.
4. Defendant-Appellant contends that in extraordinary cases where the Defendant can prove that the ineffective assistance of counsel made mistakes that are egregious and likely will change the outcome of the case, she must be afforded relief.
5. Defendant-Appellant is defined as a criminal suspect and an individual who is being held involuntarily through financial ruin and servitude labor. She is within Plaintiff’s-Respondent’s custody and physical control.
6. Plaintiffs-Respondents acted under the color of law specifically intending to inflict severe physical and mental pain and suffering upon this Defendant and has inflicted certain levels of harm what appears to be **human experimentation**¹ by the authorization of “Psychological Examination” for a frivolous dog bite entitled, “Reckless Endangering.”
7. Interrogation is defined as questioning related to law enforcement or to military and national security intelligence gathering, designed to prevent harm or danger to

¹ Reference: Physicians for Human Rights <http://phrtorturepapers.org>

individuals, the public, or national security. Interrogations are distinct from questioning used by physicians to assess the physical or mental condition of an individual. To be appropriate, interrogations must avoid the use of coercion - that is, threatening or causing harm through physical injury or mental suffering.

8. According to 18 U.S.C. §§2340-2340A (2001), any experiment should be conducted so as to avoid all unnecessary physical and mental suffering and injury. However, Defendant contends that Plaintiffs' coerced interrogation techniques has no direct clinical relevance to the application of the charges against her and medical monitoring is being inflicted as cruel treatment; as torture, humiliating and degrading treatment being effectively employed as one criminal act to protect against liability for another, as illegal and non-consensual.

9. Further, the practice of human experimentation proscribed for this Defendant has no legitimate purpose and has endangered the Defendant and raises the threshold for what can be considered illegal biological experimentation. (See 18 U.S.C. §2441 (2006)).

10. Moreover, Plaintiffs are complicit in rationalizing their direct and indirect interrogation methods to elicit information violating Defendant's Fifth Amendment rights to test and evaluate, including observational studies, and to gather data through intervention or interaction² for generalized inferences in research development without consent and without compensation.

11. In this instant case, the purpose of coercive techniques is to induce

² Activities that constitute human subject research and experimentation do not require a particular research study design, the testing of hypotheses, or the use of control groups. (See 45 Code of Federal Regulations (C.F.R.) § 46.102(d) (2005))

psychological regression in Defendant by bringing a superior outside³ force to bear on her will to resist. Regression is basically a loss of autonomy, a reversion to an earlier behavioral level. As the subject regresses, her learned personality traits fall away in reverse chronological order thus contributing to physical and mental suffering and anguish.

12. The impact using threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality and threaten imminent death are beyond standard measures, and are being used to induce humiliation through physical or substantial psychological pressure designed to maximize Defendant's feelings of vulnerability and helplessness, and reduce or eliminate her will to resist sanction techniques.

13. **A. The Presumption of Vindictiveness**

14. Paragraphs 1 through 13 are incorporated as if set forth fully herein.

15. Prosecutor, Cole Chase sought to dissuade Defendant from exercising her Sixth Amendment jury trial right, and that the superseding action, the "mental health evaluation," came in retaliation for forcing the government to prove its case at trial.

16. Chase goaded the Court by intruding into the unfettered exercise of a constitutional guarantee; the right to a Speedy Trial; His intentional misconduct included compelling Defendant to be a witness against herself, threatening to deprive Defendant of life, liberty, and property, without due process of law without just compensation.

³ "Bootstrapping"-Turning to advice about pain caused by techniques of the very health professionals who implemented them.

17. According to State v. Allen, 234 Or App 243, 254, 227 P3d 219 (2010). "A defendant's consent to a delay must be express; her implicit consent or failure to object to a postponement by the state or by the trial court to accommodate other judicial priorities is not enough." *Id.* (citation omitted); State v. Adams, 339 Or 104, 109, 116 P3d 898 (2005) ("consent" under ORS 135.747 means "express consent"). For purposes of ORS 135.747, "'the state' is a unitary political entity that includes the courts as well as the executive and legislative branches, and, thus, court-related delays are attributable to the state." State v. Myers, 225 Or App 666, 671 n 3, 202 P3d 338 (2009) (citation omitted). Under the statute, the delays that a defendant did not apply for or consent to are attributable to the state⁴.

18. Assessed under those principles, the period of delay under ORS 135.747 for this case is 315+ days, approximately 11 months; The entire period of delay, from the date of the initial information on September 9, 2009, to the delayed initial setting of a trial date⁵.

19. On January 27, 2010, Prosecutors disqualified Rose as Defendant's defense counsel blaming it on Defendant's "lack of cooperation."

20. On May 11, 2019, Chase made extrajudicial comments regarding Defendant's mental state⁶ then demanded that she be taken into custody for a

⁴ "Attributable to the state" in this sense merely means the unconsented portion of the delay, the part of the delay period included in the statutory calculation of reasonableness. The phrase "is simply a shorthand way of saying that the delay was not one for which the defendant applied or to which the defendant consented" and implies no causative role on behalf of the state. State v. Spicer, 222 Or App 215, 221, 193 P3d 62 (2008).

⁵ See also Bayer, 229 Or App at 278 (speedy trial delay period under ORS 135.747 calculated from date of subsequently filed information after initial citation dismissed).

⁶ Plaintiff declared a conflict of interest and requested that Judge Rambo recuse himself from further proceedings in the recklessly endangering case. Plaintiff also asked Judge Wogan to secure a witness, Michael Dougherty, whose index fingers were severely lacerated from a pit bull and whose owner's, Michael and Lisa Lunt, were never charged.

“mental health evaluation”. This predicate act rose above the threshold to the level of a constitutional violation which prejudiced the presiding Judge against Defendant therefore extending unwarranted continuances.

21. Defendant contends the objective evidence⁷ shows the government’s unreasonable motivation by establishing a direct link between the retaliatory response and barring Defendants’ exercise of a right⁸ and that the Prosecutor harbored an improper motive. (An example of the type of evidence that might establish actual vindictiveness in the pre-trial context can be found in State v. Halling, 672 P.2d 1386 (Or. Ct. App. 1983).

22. In *Halling*, the Oregon Court of Appeals found a prosecutor’s statement to defense counsel, after the collapse of plea negotiations, that “I have a brilliant idea. I have just thought of a way to cause further evil to poor Mr. Halling” constituted objective evidence of actual prosecutorial vindictiveness. *Id* at 1388.)

23. Chase used the criminal justice system to file pleadings with the Court that is presented for improper purpose, such as to harass, cause unnecessary delay, and needlessly increase the cost of litigation. The evidence will prove Defendant sustained substantial prejudice to her right to a fair trial and that delay was used as an intentional device to gain tactical advantage over the Defendant.

24. It was Defendant’s right not to testify and Defendant contends that Plaintiff intended to use the goal of psychological torture to induce psychological regression in this case by bringing a superior outside force to bear on her will to resist.

(Regression is basically a loss of autonomy, a reversion to an earlier behavioral level.

⁷ Transcripts of May 11, 2010

As the subject regresses, her learned personality traits fall away in reverse chronological order. She begins to lose the capacity to carry out the highest creative activities, to deal with complex situations, or to cope with stressful interpersonal relationships or repeated frustrations).

25. **The Meaning of “Coercion”**

26. The term “coercion” means (A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process pursuant to 22 USC §7102(8).

27. Sosa v. Alvarez-Machain, 124 S. Ct. 2739, 2763 (2004); id. At 2783 (Breyer, J., concurring): “The use of physical or mental torture or any coercion to compel prisoners to provide information[,]” and provides that “[n]o form of physical torture or moral coercion will be exercised against the [civilian internee]”

28. **Ineffective Counsel**

29. Paragraphs 1 through 28 are incorporated as if set forth fully herein.

30. Plaintiff Evelyn Oldenkamp failed to detect and object to the Prosecution’s progression of manipulative tactics designed to coerce⁹ false confessions. This inadequate representation¹⁰ rose to the level of a constitutional violation because the

⁸ Plaintiff contends she asserted her protected rights for sufficient reason.

⁹ On June 14, 2010, Plaintiff filed a Motion to Disqualify said public defender. (Not to be construed as a waiver of her statutory speedy trial right)

¹⁰ The clearly established federal law that applies in this case is the framework articulated for analyzing claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984). See Williams, 529 U.S. at 390 (applying Strickland as the “clearly established federal law” that governed petitioner’s ineffective-assistance claim).

deficiency so infected the adversarial process as to raise doubts about the reliability of the proceeding's outcome; (1) that Defendant's counsel's performance was deficient, and (2) that she suffered prejudice¹¹ as a result.

31. Under Strickland¹², if we consider the totality of the available mitigation evidence provided by Defendant to her Counsel, Oldenkamp—both that if adduced at trial would have been a reasonable likelihood the outcome would have been different and a Court might have provided strong support for Defendant's claim of innocence.

32. Instead, the cursory nature of Counsel's referral to a limited one day "mental health examination" selected by Counsel¹³ was on its face an unreasonable application of clearly established federal law, constitutionally inadequate and fell below an objective standard of reasonableness and facially prejudiced Defendant.

33. The evidence will show Defendant acted reasonably to defend herself and another person's property, which was essential for her survival and an estate against an imminent and unlawful use of force in a manner proportionate to the degree of danger. (**Klamath County Circuit Court Case No.: 0804232CV**) The presiding judge, Richard Rambo did not consider the merits pointed out by Cosma and that case was arbitrarily dismissed.

34. At the same time, the conduct of neighbor alleged in a restraining order by Cosma (**Klamath County Circuit Court Case No.: 0803782CV**) constituted

¹¹ Porter v. McCollum , 558 U. S. ___, ___ (2009) (per curiam) (slip op., at 3), where counsel at trial had attempted to blame his client's bad acts on his drunkenness...

¹² Strickland, 466 U.S., at 694

¹³ According to the Order, ORS 161.315, upon **filing of notice or the introduction of evidence by the defendant** as provided in ORS 161.309 (Notice prerequisite to defense) (3), the state shall have the right to have at least one psychiatrist or licensed psychologist of its selection examine the defendant. The state shall file notice with the court of its intention to have the defendant examined...

activities whereas Cosma acted necessarily and reasonably to avoid imminent and serious bodily injury and/or death, the threat of bodily harm and/or death by antagonizing and menacing Cosma, her two dangerous wild horses; one domestic; and her dog at issue; And, asserted landlords were harboring tenants in an illegal structure.

35. A reasonable person would foresee that Defendant, in this instant case, acted necessarily and reasonably to avoid that threat made by other persons and other circumstances beyond her control. This quantum of evidence was already known to Counsel and her decision to forgo a particular line of defense was unreasonable and there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

36. We conclude, Plaintiffs objected to the delays in bringing Defendants' to trial on both statutory and constitutional grounds under Oregon Constitution, Article I, section 10, then, under ORS 135.750, by determining whether the court properly exercised its discretion under that statute to deny defendant her right to a speedy trial¹⁴.

¹⁴ The "relationship between [ORS 135.747] and ORS 135.750 remains uncertain and, perhaps, inscrutable." *Id.* At 257. Both statutes require an assessment of the reasons for the delay attributed to the state. Nonetheless, "sufficient reason" under ORS 135.750 "refers to conditions or circumstances that are distinct from those commonly associated with delays triggering the docket regulating protections of ORS 135.747," *id.* at 257, and "that has some relevance to, and does not essentially undermine, the overall purpose of [the speedy trial] statutes," *Johnson*, 339 Or at 90, where "some specific circumstance or policy * * * outweighs the general determination of unreasonableness made under ORS 135.747," *Spicer*, 222 Or App at 220. Here, the state does not identify any specific circumstance or policy that would outweigh the determination of unreasonable delay under ORS 135.747.

37. Plaintiff's conduct stretched the limits of propriety and it cannot be condoned because Defendant exercised her procedural rights. Basic human decency should preclude such conduct, making clear to health professionals and government institutions both its essentially unethical nature and illegal status under U.S. law.

_____ Dated: _____
Kini Cosma, Petitioner-Appellant

PROOF OF SERVICE

I certify that on the 7th day of August, 2010 the original and twelve (12) copies of the foregoing Petitioner's Brief were deposited in the United States Post Office at Klamath Falls, Oregon, with first class postage prepaid thereon addressed to:

Oregon Supreme Court
1163 State Street
Salem, OR 97301-2563

I further certify that on the 7th day of April, 2010 two (2) copies of the foregoing Petitioner's Brief were deposited in the United States Post Office at Klamath Falls, Oregon, with first class postage prepaid thereon addressed to:

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_____ Dated: August 7, 2010
Kini Cosma, Petitioner