

Legal Updates

CHILD NEGLECT / ENDANGERMENT

A brief, isolated incident of drug possession in a car does not transform the car into “a place” where unlawful activity involving controlled substances “is maintained or conducted” under ORS 163.575(1)(b).

State v. Gonzalez-Valenzuela, 358 Or 451, 365 P3d 116 (2015).

ENCOURAGING CHILD SEX ABUSE

A photograph of a young girl in a provocative pose was “lewd” even though she was not “naked” - instead the photograph depicts a young girl wearing a tank top and pink shorts, posed on a rock wall outside. Her legs are spread, with her right foot propped on the wall, and the photograph was shot from below, so a viewer can see up the left leg of her shorts. She does not appear to be wearing underwear, and the photograph shows her pubic area and inner thigh. To be guilty of encouraging child sexual abuse, the image at issue must depict “sexually explicit conduct,” which includes a “lewd exhibition of sexual or other intimate parts.” The standard does not require the images to be “clearly and unambiguously sexual in nature” or depict a child’s genitals on “public display,” but rather requires that a rational factfinder could infer from the photograph that the photographer intended to arouse the sexual desires of viewers.

State v. Navaie, 274 Or App 739, 362 P3d 710 (2015).

Images on defendant’s cell phone of partially clothed prepubescent girls posed in a sexually suggestive manner constituted a “lewd exhibition of sexual or intimate parts,” and therefore he was properly convicted of encouraging child sexual abuse.

State v. Mross, 274 Or App 302, 360 P3d 670, rev den, 358 Or 550 (2015)

FAILURE TO REGISTER AS A SEX OFFENDER

Don’t forget! With FTR, we need to prove where he *IS* – not where he *ISN’T*

The reporting requirement is triggered when the defendant has both left his former residence and acquired a new residence. Defendant was entitled to acquittal for charge of failing to register as a sex offender because state did not prove that he “acquired a new residence,” as required by ORS 163A.040.

State v. Williams, 278 Or App 620, ___ P3d ___ (2016) (per curiam)

LURING A MINOR

In context of other sexually suggestive text messages, defendant’s text message to child victim—“I really wanna bang you. No lie”—was an “explicit verbal description of sexual

conduct” under ORS 167.057. “In light of the text, context, and legislative history of ORS 167.057, in using the term ‘explicit verbal description... of sexual conduct,’ the legislature intended to target the explicit identification of sexual conduct when that identification is intended to bring a graphic sexual image to the mind of the recipient.” A “description,” for purposes of the luring statute, “can be accomplished with few or many words, as long as the words chosen are intended to bring a graphic sexual image to the mind of the recipient, that is, the words themselves are not necessarily required to be graphic.” In determining whether a communication qualifies as an explicit verbal description of sexual conduct, the court must consider the context in which a statement was made. “An adult defendant engaging in a sexualized text message conversation with a minor victim for the purpose of later committing a sexual act with her” is consistent with what the legislative history indicates the legislature intended to punish, which is grooming.

State v. King, 278 Or App 65, 373 P3d 1205 (2016)