

PUBLIC SAFETY COORDINATING COUNCIL

MINUTES

TUESDAY,
February 23, 2021

11:30

ZOOM VIDEO CONFERENCE

MEETING CALLED BY	Eric Guyer
ATTENDEES	Joshua Aldrich, Lee Ayers, Dave Bellamy, Dave Carter, Travis Christian, Scott Clauson, Johanna Costa, Doug Engle, Beth Heckert, Barbara Johnson, Tyler Lee, Benjamin Lull, Lorenzo Mejia, Gilda Montenegro-Fix, Julia Pinsky, Tina Qualls, Jazmin Ramirez, Mark Reagles, Nathan Sickler, Fay Stetz-Waters, Rita Sullivan, A. John Watson, Brittany Whitmire

- Eric Guyer opened the meeting at 11:30
- Opening Remarks: Eric Guyer welcomed everyone to the February PSCC meeting.

Agenda Topics

MINUTE ADOPTION – JANUARY

ERIC GUYER, CHAIR

DISCUSSION	
Two suggested revision were identified for the January minutes, to include Tyler Lee and Barbara Johnson. Barbara Johnson provided a motion to adopt, seconded by Jennifer Mylenek. A roll call vote was requested, all were in favor, and none were opposed. The January minutes were officially adopted, with suggested revisions.	

PROSECUTING HATE CRIMES: NEW BIAS CRIME LAW

DISCUSSION	
<p><i>Bumjoon (BJ) Park— Deputy District Attorney, Multnomah County District Attorney's Office</i></p> <p><u>Old Law (ORS 166.165): Intimidation 1 (Felony)</u> Two or more defendants acting together:</p> <ul style="list-style-type: none"> • intentionally, knowingly, or recklessly cause physical injury to victim or, • with criminal negligence cause physical injury to the victim by means of a deadly weapon or, • intentionally place victim in fear of imminent serious physical injury <p>because of defendant's perception of victim's race, color, religion, sexual orientation, disability, or national origin.</p> <p><u>Old Law (ORS 166.155): Intimidation 2 (Misdemeanor)</u></p> <ul style="list-style-type: none"> • Tamper or interferes with property (having no right to do so nor reasonable ground to believe that defendant has such right) with the intent to cause substantial inconvenience to victim • Intentionally subjects victim to offensive physical contact • Intentionally subjects victim to alarm by threatening <ul style="list-style-type: none"> (A) to inflict serious physical injury or commit a felony affecting the victim or a member of victim's family or (B) to cause substantial damage to the property of victim or victim's family <p>because of defendant's perception of victim's race, color, religion, sexual orientation, disability, or national origin.</p> <p><u>New Law (ORS 166.165): Bias Crime 1 (Felony)</u> Two or more defendants acting together:</p> <ul style="list-style-type: none"> • Intentionally, knowingly, or recklessly cause physical injury to victim • With criminal negligence cause physical injury to the victim by means of a deadly weapon • Intentionally place victim in fear of imminent serious physical injury <p>because of defendant's perception of victim's race, color, religion, gender identity, sexual orientation, disability, or national origin.</p> <p>Gender identity: an individual's gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.</p> <p><u>New Law (ORS 166.155): Bias Crime 2 (Misdemeanor)</u></p> <ul style="list-style-type: none"> • Tamper or interferes with property (having no right to do so nor reasonable ground to believe that defendant has such right) with the intent to cause substantial inconvenience to victim • Intentionally subjects victim to offensive physical contact • Intentionally subjects victim to alarm by threatening to inflict serious physical injury or commit a felony affecting the victim or a member of victim's family or to cause substantial damage to the property of victim or victim's family • Bias Crime (new statute) took effect July 15, 2019. • Not retroactive. 	

- All bias crimes committed before July 15, 2019 is under the old Intimidation statute.

Proving Motive

- Intent vs. motive
- "Because of" requirement
 - State v. Hendrix, 813 Or.App. 734 (1991)
 - Affirmed by Oregon Supreme Court in 314 Or. 170 (1992)
 - Mixed motive
 - Not "but for" test

State's Instruction

UCrJI No. 2318

INTIMIDATION IN THE SECOND DEGREE—

SUBSECTION (1)(b)

(Intentional—Offensive Physical Contact)

Oregon law provides that a person commits the crime of intimidation in the second degree if the person intentionally subjects another to offensive physical contact because of the person's perception of the other's race, color, or national origin.

In this case, to establish intimidation in the second degree, the state must prove beyond a reasonable doubt the following elements:

- (1) The act occurred on or about May 18, 2019;
- (2) Delisa Gil intentionally subjected Maria Aguilar-Sanchez to offensive physical contact; and
- (3) Delisa Gil committed the offense because of her perception of Maria Aguilar-Sanchez's race, color, or national origin.

Intimidation the Second Degree

- Act occurred on or about May 18, 2019
- Delisa Gil intentionally subjected Maria Aguilar-Sanchez to offensive physical contact; and
- Delisa Gil committed the offense because of her perception of Maria Aguilar-Sanchez's race, color, or national origin.

State's Instruction

Special Instruction

DEFINITION: BECAUSE OF

When used in the phrase "person intentionally subjects another person to alarm by threatening to inflict serious physical injury on the other person because of the person's perception of the race or color of the other person." or "Delisa Gil committed the offense because of his perception of the race or color of the other person.", "because of" means that the perception of Maria Aguilar-Sanchez's race or color or national origin played any role in defendant's commission of the offense.

State v. Hendrix, 107 Or App 734, 739, 813 P2d 1115 (1991), *aff'd*, 314 Or 170, 838 P2d 566 (1992), *cert den*, 508 US 974 (1993) ("On its face, the Intimidation Law creates criminal liability when unlawful motive plays any role in the proscribed conduct.")

"because of"

The perception of Maria Aguilar-Sanchez's race or color or national origin played any role in defendant's commission of the offense.

- Oregon Bar Requirement of talking about cases
- African-American victims
 - State v. Michael Amatullo
 - State v. Mathu Karcher
 - State v. Michael Black
 - State v. Chris Edwards
 - State v. Jeremy Helliwell (Security guard)
 - State v. Dorian Cannon (Trimet driver)
 - State v. Eric Scardino (chasing with shovel)
 - State v. Autumn Burns (Security guard)
 - State v. John Rodgers (X2)
 - State v. Charles Bernbeck
 - State v. Thomas Delong
- Latino victims
 - State v. Alexander Harrington
 - State v. Kaysiliana Leatherbury (Soccer game)
 - State v. Matthew Young (Gresham officer)
 - State v. Delisa Gil
- National origin
 - State v. Robert Oden
 - State v. Jermaine McKenzie
 - State v. Sierra McDonald
 - State v. Sierra McDonald
- LGBTQ gay/lesbian victims
 - State v. Justin Watling
 - State v. Camar Livingston
 - State v. Robert Oden
 - State v. Don Kirkhoff (Bakery)
- LGBTQ transgender victims
 - State v. Timothy Walsh
 - State v. Dominick Gonzalez
- Muslim victims
 - State v. Frederick Sorrells
 - State v. Jasmine Campbell

Legal Proceedings

- Release hearings or bail
- Charge only the portions of the protected class that applies
- Using or saying the actual slur
- Closing arguments examples
- Sentencing for these cases
- Unranked crime
- Federal prosecution options

Voir Dire

- Racism
- Racial slurs
- Hate Crime laws
- Motive v. intent
- Minority or female defendants

Contact information

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Questions/Discussion

Chair Eric Guyer mentioned that last month's presenter Johanna Costa, Department of Justice Bias Response Coordinator is present at the meeting, and he opened time for questions and discussion.

Jackson County District Attorney Beth Heckert commented that in the examples BJ mentioned, the "because of" came from the defendants themselves. Beth asked if BJ has done any cases where that was not the situation. BJ replied that nearly 100% of the cases have been a defendant saying some kind of slur.

Benjamin Lull, Jackson County Deputy District Attorney, asked if there are situations where they can foresee if the individual had a social media presence that espoused racial hatred and then attacked someone of that race, and could this be attached to the case even if they did not use a racial slur in the attack. BJ replied that the way these laws are made are they are attached to the incident. A racist can act non-racist in an incident or several times and someone who is non-racist can act racist in an incident, therefore the charge is not racism since racism is not criminalized. When people commit actual crimes and then bring in race or something such as gender identity, Oregon law has said that the addition of the slur makes the crime worse. If there is no slur said at the actual crime then the defense attorney will bring this up, so it would be tough or impossible to prosecute in a case without a slur.

Judge Lorenzo Mejia: "I have a question on unranked defenses, you said these are unranked felonies? That is your crime seriousness?" BJ confirmed. Judge Mejia asked if he is getting different results from different judges or if they are locked in to something once they receive it from a certain judge in the jurisdiction. BJ replied no, not really, DW's and assault on a public safety officer are considered more minor person felonies, C felonies, and those are ranked 6s. The more serious ones are ranked 8 or higher. A lot of people think depending on the injury, that bias crimes should not be counted as just another minor crime and should be ranked at a 7 or an 8. Defense argues for a 1, 2, 3. BJ says they have not done a lot of felony bias crime contested sentencings after a trial. Judge Mejia added that under the old statute it seemed like two people assaulting somebody would be an Assault III, he asked if they are ranked the same and if there is something added that made it a more serious crime under the old statute. BJ replied no, and added that he does not know what the old statute was ranked. Perhaps because times have changed and society is taking this more seriously, they are doing this at a 7.

Eric thanked BJ and Johanna for presenting. In terms of our overall system and community it seems there is a need for specified victim supports, prosecution that is adept at this type of work, law enforcement that understands what to look for on the front end, and a community that is educated on what is reportable. Eric asked if there are efforts or endeavors that they are aware of, within different communities on each of these fronts, that try to make a difference and try to make this a more prosecutable crime. BJ confirmed and mentioned their new district attorney, Mike Schmidt, has made this one of his priorities and has been dealing with these types of crimes in Portland. He has also been reaching out to community groups and informing them of what the county has been working on. BJ does not have exact figures, but according to what he sees he feels that minority community has felt a lot safer in reporting bias crimes.

Regarding transgender cases and gender identity, Gilda Montenegro-Fix asked if there is a rule, agreement, or a decision as to what pronoun gets used during a proceeding. BJ replied that they ask the victim how they identify at the very beginning and that pronoun is respected by the prosecution throughout the proceeding. Many times, judges and the defense attorneys ask what pronoun should be used and the prosecution tells them what the victim prefers. Gilda asked if this decision is established by everyone or if the decision to use the pronoun is up to each person. BJ replied that there is no requirement and it is essentially up to each person to take it upon themselves, there are signs posted in the courtroom asking individuals their preferred pronouns and this environment is prevalent in Multnomah County.

Eric commented that Faye Stetz-Waters, the Director of Civil Rights for the Department of Justice, noted that the city of Eugene has specialized officers who respond to bias incidents.

Eric thanked the presenters once more, and thanked Beth Heckert for bringing this topic up to the LPSCC.

Next Scheduled PSCC Meeting: March 23, 2021
Meeting Adjourned: 12:47 pm