

Delay of Jessica Smith trial challenged

District Attorney argues the surviving daughter should be able to put this behind her

By KYLE SPURR
The Daily Astorian

The dispute continues over the July 7, 2015, trial date for Jessica Smith, the mother accused of drugging and murdering her 2-year-old daughter and attempting to kill her 13-year-old daughter in a Cannon Beach hotel July 31.

Smith's defense attorneys have made it clear they will need more time to prepare for trial, while District Attorney Josh Marquis is requesting the trial date remain set, especially since the case involves a surviving child, Alana Smith.

Such disagreement was the focus of a status hearing Tuesday afternoon in Clatsop County Circuit Court. Prior to the hearing, Marquis filed a "date certain" motion for the trial.

"The state has consulted with the victim and her father and it is their wish for a trial as soon as possible and to minimize the disruption to Alana Smith's life that the trial be held, as scheduled, during the summer school break," Marquis wrote in the motion.

Smith's defense attorneys asked to respond to the "date certain" motion in writing within 14 days, which was granted by Judge Cindee Matyas.



Jessica Smith, alongside her defense attorney Williams Falls, surveys the scene inside Courtroom 100 on the ground floor of the Clatsop County Courthouse Nov. 6.

"As we informed the court, that is not a realistic date for us," defense co-counsel Lynne Morgan said.

Matyas set another status hear-

ing for 2 p.m. Jan. 22 to further discuss the trial date, which remains set for July 7.

The discovery, or evidence, deadline is eight days later on Jan. 30.



ALEX PAJUNAS — The Daily Astorian
Jessica Smith, 40, is ushered toward Courtroom 100 of the Clatsop County Courthouse by deputies from the Clatsop County Sheriff's Office Oct. 7.

Marquis said the prosecution, which has the burden of proof, has provided almost 3,500 pages of police reports, 34 separate CDs and DVDs and detailed copies of the defendant's statements to investigators. So far, the defense has not submitted any evidence.

At the hearing Tuesday, defense attorney William Falls handed the court a 429-page law journal from Hofstra Law School. The journal argues that defense attorneys are allowed more time in cases involving the death penalty.

Smith, 40, of Goldendale, Wash., pleaded not guilty Aug. 12 to aggravated murder and attempted aggravated murder. Smith is accused of

drowning her 2-year-old daughter Isabella Smith and cutting the throat of Alana Smith in room 3302 at the Surfsand Resort.

Isabella Smith died of asphyxiation by drowning, according to the state medical examiner. High level over-the-counter antihistamine sedatives were found in the toddler's system.

Due to the aggravated factor in the charges, Smith faces the possibility of the death penalty.

Smith appeared in court Tuesday via video link from Tillamook County Jail, which has an agreement with Clatsop County to offer rented space. She recently transferred to Tillamook at the Clatsop County Jail's discretion.

She signed a waiver of personal appearance prior to the hearing Tuesday. She remains in jail without the possibility of posting bail.

At a previous hearing, Smith's defense attorneys said, they will both be busy in another aggravated murder case in Multnomah County and will not have time for the Smith trial until 2016.

In his motion, Marquis said, the convenience of the lawyers should not be the focus of setting a trial date. All attorneys have other cases, Marquis said, and the focus should be on the defendant and the victims.

"For a 13-year-old child in which her natural mother is accused of killing her sister and then attempting to cut her throat, delays are nothing short of torture," Marquis said. "A year's delay for a 13-year-old child means much more than a similar delay to someone who is 60 years of age."

Let state know about ailing birds

Chinook Observer Report

OLYMPIA, Wash. — If you encounter an afflicted chicken, tottering turkey, debilitated duck or other feeble fowl, the Washington and Oregon departments of Fish and Wildlife would like you to give them a call.

Wildlife managers say they need the public to help them test waterfowl and other wild birds for a new type of "bird flu", known as H5N2, that has killed tens of thousands of chickens and domestic turkeys in Western Canada. They are asking anyone who sees a sick or dead wild bird to call WDFW at 800-606-8768 or ODFW at 866-968-2600 or email WildlifeHealth@state.or.us.

Scientists are concerned because this highly contagious strain of avian influenza appears to be spreading quickly. While it doesn't appear to pose a threat to human health, it can be deadly to domestic poultry, and it occasionally kills wild birds too. It has recently been detected in wild birds in Washington, and an infected domestic guinea fowl has also

been confirmed in southern Oregon.

Researchers are particularly interested in gathering information about waterfowl and birds such as eagles, hawks, falcons, ravens, and gulls that prey on waterfowl or scavenge their carcasses. In addition to collecting reports from citizens, field staff from WDFW and two federal agencies will ask hunters' permission to collect samples from harvested birds, so they can test for the disease.

WDFW waterfowl section manager Don Kraege, said in a press release that the sample collection takes less than one minute per bird, and is an important step in the effort to keep the disease from spreading.

"Waterfowl are carriers of the disease, but often don't show symptoms. The primary risk is to domestic chickens and turkeys," Kraege said. He noted that between 2005 and 2011, WDFW tested more than 10,000 wild birds for bird flu viruses, and found that about 10 percent of all birds tested were infected. However, none of the strains at that time were

associated with any illnesses or mortality.

Canadian inspectors first confirmed the presence of H5N2 at two British Columbia poultry farms in early December. WDFW subsequently had two dead birds from Whatcom County tested the following week. A gyrfalcon, that had been used for hunting and fed wild duck by its owner, was found to have H5N8, a different, "highly pathogenic" form of the virus. A duck found at Wiser Lake was infected with H5N2 — the strain found in poultry in British Columbia. On Dec. 18, the USDA confirmed the presence of the H5N8 virus in a backyard poultry flock in Winston, Ore.

Ducks, geese and shorebirds are now migrating southward from Alaska along the Pacific Flyway, making domestic birds especially susceptible to contracting the disease.

While it is extremely unlikely that hunters or people feeding wild birds could contract bird flu from wild birds, the following com-

mon-sense precautions will reduce the risk of contracting any wildlife disease:

- Do not harvest or handle wild birds that are obviously sick or found dead.
 - Wear rubber gloves while cleaning game or cleaning bird feeders.
 - Do not eat, drink or smoke while cleaning game.
 - Wash hands with soap and water or alcohol wipes immediately after handling game or cleaning bird feeders.
 - Wash tools and work surfaces used to clean game birds with soap and water, then disinfect with a 10 percent solution of chlorine bleach.
 - Separate raw meat, and anything it touches, from cooked or ready-to-eat foods to avoid contamination.
 - Cook game birds thoroughly. Meat should reach an internal temperature of 155 to 165 degrees Fahrenheit to kill disease organisms and parasites.
- For more information about avian influenza, see WDFW's website at <http://1.usa.gov/1K4dtxT> or ODFW's at <http://bit.ly/1EPqGKS>

Astoria transient takes plea deal for rape charges

By KYLE SPURR
The Daily Astorian

An Astoria transient accused of raping and sexually abusing a 14-year-old runaway girl accepted a plea deal Wednesday in Clatsop County Circuit Court.

Clinton "Zippy" Brian Holmen, 30, entered an Alford Plea to three counts of third-degree rape. An Alford Plea is a guilty plea from a defendant who proclaims their innocence, but admits the prosecution has enough evidence to prove they are guilty.

Other charges of third-degree sexual abuse and contributing to the sexual delinquency of a minor were dropped.

District Attorney Josh Marquis said he will recommend a back-end sentence of three months in jail and three years probation. If

Holmen violates the probation, he will face 30 months in prison.

A sentencing hearing was scheduled for Jan. 14.

The charges against Holmen reference events that occurred between Jan. 1 and Oct. 5, according to the indictment. Holmen is accused of having sex on three separate occasions with a 14-year-old runaway. He was 29 at the time.

Astoria police arrested Holmen Oct. 3 after a nearly monthlong investigation into allegations made by the family of the 14-year-old girl.

"These investigations are difficult," Deputy Chief Brad Johnston said at the time. "While to the family it is obvious what is going on, proving the facts in the case requires a great deal of work." Third-degree rape is a class c felony.

LaMear invites applications for city boards, commissions

The Daily Astorian

Astoria Mayor-elect Arline LaMear is inviting applications to fill volunteer positions on several city boards and commissions.

The new mayor will make the appointments in January

based on recommendations from the City Council, city staff and department heads.

Applications can be submitted for vacancies on the city's Budget Committee; Design Review Committee (for design professional and builder vacancies); the His-

toric Landmarks Commission; the Hospital Authority; the Library Board; the Parks and Recreation Board; the Planning Commission and the 3R Committee.

Interested applicants can obtain information and application forms through the

city's web page at <http://bit.ly/1vxkJaB> or through the mayor's office on the third floor of City Hall.

Applications are due at the mayor's office by Jan. 15. The mayor expects to make the appointments by Jan. 30.

New Oregon laws apply today

PORTLAND (AP) — Oregon's most talked about new law for 2015 — legalization of recreational marijuana — does not take effect until July. Here are some of the new laws that do apply Jan. 1.

- Children of volunteer firefighters and reserve police officers killed or disabled in the line of duty are eligible for special scholarships. Similar scholarships have long been available to the children of killed or disabled police officers and firefighters.
- Foreclosed homes on the auction block must con-

tain a warning to prospective buyers if they haven't been tested for methamphetamine contamination.

- Young people who report an alcohol-related emergency can't be prosecuted for being a minor in possession of alcohol. The law does not shield them from other offenses, such as driving under the influence.

- Those with one minor out-of-state marijuana conviction can apply for a concealed handgun license in Oregon.
- The Oregon Department

of Justice gains more power to take on charities that fail to file annual reports with the state or submit false information.

- Mutuel pools for live or previously held horse races may include amounts carried forward from the mutuel pool of previous races. This esoteric law allows Portland Meadows to install Instant Racing electronic gambling machines to help subsidize live racing. The machines resemble slots and players bet on previously run races, with identifying information not shown.

Admire fashion and support The Harbor

Think Project Runway, but with thrift items from Déjà Vu.

La Fête is a fundraiser for The Harbor, the domestic and sexual violence resource center for Clatsop County. It includes a fashion show competition with judges and people's choice awards where you can vote with donations.

There will be food, wine, and a dance party to follow. Get dolled up and come on down and support survivors and the mission of The Harbor.

La Fête kicks off at 7 p.m. Jan. 17 at the Astoria Arts and Movement Center. Admission costs \$7. For more information, call 503-325-3426.

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