

Astoria man tried third time for child sex abuse

Brown, Matyas cleared to hear the case again

By **BRENNA VISSER**
The Daily Astorian

District Attorney Ron Brown and Circuit Court Judge Cindee Matyas will prosecute and hear the case against Thomas Kelly, who was twice convicted of sexually abusing a family member, for a third time.

Defense motions that requested Brown and Matyas be removed from the case based on concerns over fairness were denied

this week by Multnomah County Senior Circuit Judge Julie Frantz.

"I was very happy to see it upheld," Brown said. In 2008, a jury convicted the Astoria man of 12 counts of first-degree sodomy and 12 counts of first-degree sexual abuse for ongoing abuse of the 9-year-old family member between July 2004 and May 2006. He was sentenced to more than 33 years in prison.

An Oregon Supreme Court decision in 2010 held that medical experts cannot testify about child sex abuse diagnoses if no physical evidence exists. As a result,

Dr. Roy Little's testimony, which did not contain physical evidence, was deemed invalid. The Oregon Court of Appeals overturned Kelly's conviction in 2011 and ordered that Clatsop County Circuit Court schedule a new trial.

Kelly was retried in 2013 and was again convicted of 24 counts of sexual abuse and sodomy. The conviction on the retried case was possible due to the victim's testimony and DNA evidence found where the abuse took place, Brown said.

The Oregon Supreme Court upheld the conviction in 2016.

But last year, Kelly filed another appeal in Umatilla County, where he argued his lawyer should have objected to a line of questioning from Brown that enabled a witness giving inadmissible testimony.

The judge sent the case back to Clatsop County Circuit Court, and Kelly was released on bail.

The defense had argued that Brown, in a line of questioning, disregarded previous case law by asking Little whether the victim had been coached.

The Multnomah County judge assigned to hear the dispute found that while Brown

eliciting the inadmissible testimony "created error," it was not done with the intent to deny the defendant a fair trial.

The defense also argued that Brown has a "delusional" view of the state's evidence and "lacks the ability to objectively assess the case." These claims were also dismissed, given that the reason for the reversal of the original case was not based on ethical issues, but rather the change in the law that prohibited a sexual abuse diagnosis without physical findings.

The defense also claimed Brown showed his bias toward Kelly by using words like "evil" and "despica-

ble" in his closing statement. Judge Frantz found his language summarized the defendant's acts that were "strongly supported by the evidence," and were not used because of personal prejudice or bias.

"There is nothing to indicate that the prosecuting attorney harbored any bias against the defendant as an individual, but rather that it was the defendant's criminal acts that fueled his concerted effort to obtain a conviction," Frantz found.

A hearing to set the new trial is expected to be scheduled sometime next month, Brown said.

Oregon lawmakers take aim at plastic bags and Styrofoam

Bills clear the state House

By **MARK MILLER**
Oregon Capital Bureau

SALEM — Plastic grocery bags and Styrofoam takeout containers may become a thing of the past in Oregon.

The state House voted 32-28 on Tuesday to prohibit retailers and restaurants from serving food to customers in polystyrene containers, and 42-18 on Thursday to ban retailers and restaurants from providing single-use bags to customers at checkout.

The first bill includes a ban on polystyrene cups, plates, bowls and takeout containers. The second covers plastic bags, except for thick plastic bags designed to be reusable, as well as paper bags that aren't made from at least 40% recycled fiber.

"Everybody here knows that we have a problem in our environment with too much plastic," state Rep. Sheri Schouten, D-Beaverton, said on the House floor Tuesday. "I think the bigger question is, what are we all going to do about it?"

If the Senate also approves House Bill 2883, and Gov. Kate Brown signs it into law, Oregon would become the first state to ban polystyrene food containers. Such bans have become increasingly common at the city level across the country, including in Portland, Milwaukie and Silverton. Eugene is considering a ban.

Critics — including several Democratic legislators — note that polystyrene can be recycled, unlike some other forms of plastic.

"I do fear the transition from the polystyrene, which is fully recyclable, to the clamshell, fully hard plastic, hinged to-go containers — which is a lot more harmful to the environment," said Rep. David Brock Smith, R-Port Orford, a coastal legislator who owns a restaurant, the Port & Starboard, in his hometown.

"We should be discussing how we can make it easier to get these materials to the recycling facility so that we can make a difference, rather than banning this product."

However, the number of recycling facilities that accept polystyrene foam is limited — there is one in Tigard, Agilyx Corp. — and



An art installation made from plastic bags serves as a backdrop during a concert performance at the Liberty Theatre.

Colin Murphy/The Daily Astorian

most curbside services won't pick it up unless it's being disposed of as garbage.

"Most people will simply trash their food containers," Rep. Janeen Sollman, D-Hillsboro, said. "They do not go to the extent that I do, where I rinse and I store my takeout containers to later drive them to Tigard, to Agilyx, for them to recycle. ... When we rely on customers to self-transport the recycle material to a singular facility in Tigard, it means that a limited amount is recycled, and it ends up in the landfill."

Like Smith, Rep. Margaret Doherty, D-Tigard, said she wants to create a transfer system to make recycling foam products more feasible. Doherty, normally a reliable Democratic vote, voted against HB 2883. "The intent of this bill is honest, and we don't want things that you can't recycle out there," Doherty said. "But these, you can."

To Schouten, it doesn't make economic or environmental sense for far-flung Oregon communities to truck small polystyrene food containers to Tigard when restaurants could simply use more eco-friendly alternatives instead. "If it's going to go in the landfill, let's make it something that will biodegrade," Schouten said.

Targeting plastics

House Bill 2509, the bag ban, would make Oregon the fourth state to ban plastic checkout bags. California has a similar law, which voters approved in 2016. Seventeen Oregon cities have already banned plastic bags at stores, including Portland, Salem, Eugene, Bend and

Hillsboro. HB 2509 is based in large part on Hillsboro's ban, which also applies to restaurants, Sollman noted.

Critics of plastic bag bans argue that targeting plastic bags won't move the needle on greenhouse gas emissions, which are the primary driver behind climate change. Several studies suggest that manufacturing plastic bags takes less energy than paper bags, and paper bags have a larger carbon footprint than plastic.

However, unlike paper and other wood products, plastic is not biodegradable. Experts aren't sure how long it would take a typical plastic bag to decompose — they haven't existed for long enough to observe their

decomposition — but it's likely to be on the order of centuries. Plastic waste also frequently makes its way into waterways and oceans, where it can pose a choking or suffocation hazard for animals.

"It is ending up in our own food chain," Sollman said. "We are consuming this by consuming the animals that are getting this in their own system."

HB 2509 also includes a 5-cent fee for paper bags, to which the paper industry objects. "The charge will increase costs for working families and discourage consumers from choosing paper bags that are easily recycled and do not create hazards for wildlife," warned Mike Draper, chairman of the Forest Products Industry National Labor-Management Committee.

Doherty and Smith voted for HB 2509 on Thursday, but they said they hope the bag fee provision will be changed before the bill

passes the Senate. Legislators who spoke against the bill also cited the fee as a reason to vote against it.

"Enough is enough," said Rep. Jack Zika, R-Redmond, who opposed the bill in Thursday's vote. "We're nickel-and-diming our citizens."

Retailers will collect the fee. Essentially, it's a surcharge on any purchase for which a customer requests a paper bag — although those paying with Women, Infants and Children or Oregon Trail card benefits are exempt — thereby helping to cover businesses' own costs for replacing cheaper plastic bags with paper.

Beyond that, grocers argue it will prod shoppers to bring their own bags, thus discouraging waste.

"The 5 cents is really a trigger to change behavior — to move to reusable," said Shawn Miller, Northwest Grocery Association lobbyist, at a committee meeting Monday.

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To Celebrate the Life of Jerry Hebert

We are having a potluck at the Gearhart Fire Dept. to revisit the good times we have had with Jerry. Please come and share your stories with us on Saturday, May 4th at noon.

Kathy, Jess and Theresa



The U.S. Navy INVITES YOU TO PARTICIPATE in the Northwest Training and Testing Supplemental EIS/OEIS Public Involvement Process

This notice announces a 15-day extension of the public comment period.

The U.S. Navy has prepared a Draft Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) to reassess the potential environmental impacts associated with conducting proposed ongoing and future training and testing activities within the Northwest Training and Testing (NWT) Study Area beyond 2020.

Public Involvement

The Navy welcomes substantive comments on the Draft Supplemental EIS/OEIS. Comments may be submitted at the public meetings, online at www.NWTTEIS.com, or by mail to:

Naval Facilities Engineering Command Northwest
Attention: NWT Supplemental EIS/OEIS Project Manager
3730 N. Charles Porter Ave., Building 385
Oak Harbor, WA 98278-3500

Comment Period Extended: Comments must be postmarked or received online by June 12, 2019, for consideration in the Final Supplemental EIS/OEIS.

Individuals requiring reasonable accommodations, please contact Julianne Stanford, Public Affairs Officer, at 360-396-1630 or julianne.stanford@navy.mil.

The draft supplement is available online at www.NWTTEIS.com or at the following public libraries in Oregon: Astoria Public Library; Driftwood Public Library; Newport Public Library; Oregon State University, Guin Library; Hatfield Marine Science Center; and Tillamook Main Library. Additional public meetings will be held in Washington, Northern California, and southeastern Alaska.

Open House Public Meetings: 5 to 8 p.m.

Arrive and submit comments anytime during the open house. No presentation or formal oral comment session will be conducted.

Monday, April 29, 2019
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Tuesday, April 30, 2019
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