

FILED: January 5, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

JACK WILLIAM EVERITT,
Defendant-Appellant.

Grant County Circuit Court
0909240CR

A144850

Russell B. West, Judge.

Argued and submitted on July 14, 2011.

Carol L. Chaffee argued the cause and filed the brief for appellant.

Tiffany Keast, Assistant Attorney General, argued the cause for respondent. With her on the brief were John R. Kroger, Attorney General, and Mary H. Williams, Solicitor General.

Before Ortega, Presiding Judge, and Nakamoto, Judge, and Rosenblum, Senior Judge.

PER CURIAM

Remanded for resentencing; otherwise affirmed.

1 PER CURIAM

2 Defendant appeals a judgment of conviction for one count each of
3 menacing, ORS 163.190, harassment, ORS 166.065, and disorderly conduct in the second
4 degree, ORS 166.025. He assigns error to the denial of his motions for judgment of
5 acquittal on each of those counts; we reject those assignments without discussion.

6 Defendant also challenges the imposition of community service as a condition of
7 probation, arguing that the court lacked authority to impose that condition without his
8 consent. ORS 137.128(1) provides, in part: "A judge may sentence an offender to
9 community service either as an alternative to incarceration or fine or probation, or as a
10 condition of probation. Prior to such order of community service the offender must
11 consent to donate labor for the welfare of the public." The state concedes that defendant
12 did not consent to donate labor for the welfare of the public and that the court therefore
13 erred in imposing that condition of probation. We accept the state's concession and
14 remand the case for resentencing.

15 Remanded for resentencing; otherwise affirmed.