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IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,	)	
	)	
Plaintiff-Respondent,	)	Trial Court Nos. C111693CR
Petitioner on Review,	)	C112523CR
	)	
vs.	)	App. Court Nos. A152030 (control)
	)	A152033
JESUS R. PRIETO-RUBIO,	)	
	)	SC S062344
Defendant-Appellant,	)	
Respondent on Review.	)	
	)	

BRIEF ON THE MERITS OF RESPONDENT ON REVIEW, STATE OF OREGON

Review of the Decision of the Court of Appeals
on Appeal from a Judgment
of the Circuit Court for Washington Count
Honorable THOMAS KOHL, Judge

Continued...

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RESPONDENT ON REVIEW'S BRIEF ON THE MERITS

SUMMARY OF ARGUMENT

Defendant/respondent adopts the summary of argument from his respondent's brief before the Court of Appeals. In response to the argument found in petitioner's brief on the merits defendant/respondent supplements the summary of argument as follows.

The Court of Appeals and this court have extended the protections of Article I, section 12, and Article I Section 11 to government actions that may be characterized as the "investigative phase" of a criminal prosecution where the suspect is in custody or compelling circumstances and investigation is proceeding.

QUESTION PRESENTED

When must the prosecutor and police notify counsel before interviewing a criminal defendant who has been arraigned and has retained counsel?

PROPOSED RULE OF LAW

The prosecutor and police agents must notify counsel when the interrogation could foreseeable produce information that is relevant to the charged offense.

Summary of Argument

The Article I, section 11, right to counsel, and Article I section 12, right to remain silent, attaches no later than when a criminal defendant is formally charged with an offense. At that time, the adversarial parties and their representatives are formally identified before the court, and the judiciary's supervisory duty is officially invoked.

The question in this case is the scope of these rights upon formal charging. This court has indicated that the scope of the right to counsel does not extend to offenses that are unrelated to the charged offense. The critical question is what does "related" mean in this context. The answer to that question turns in part on the role of counsel in the criminal justice system.

Counsel has a multifaceted role, serving, *inter alia*, as defendant's legal advisor, as the intermediary between defendant and the prosecutorial forces arrayed against him, and as defendant's guide through the complex and arcane criminal justice system. The system identifies counsel as the defendant's legal representative and proper point of contact with the defendant. Preserving the integrity of the attorney-client relationship provides the individual with the full benefits of representation, maintains the integrity of the criminal justice system, and preserves the public's confidence in the system. Circumventing the

attorney-client relationship undermines the core values of a fair adversarial system.

In this case, Detective Rookhuyzen investigated reports that defendant abused A, a member of defendant's extended family. Rookhuyzen learned from A that defendant may have similarly abused two other members of defendant's family, K and L. Rookhuyzen arrested defendant, interrogated him in jail, and asked about A and AG and other children, including K. Defendant was indicted and arraigned for offenses involving complainant A, and he retained counsel.

A few weeks later and without informing counsel, Rookhuyzen again interrogated defendant in jail and obtained incriminating statements concerning K and L. Rookhuyzen acknowledged that it was "impossible to have a conversation [with defendant] and not have overlap" with respect to the three victims.

The A, AG, K, and L matters were "factually related" for purposes of Article I, section 11 and section 12. The alleged acts of abuse involved members of defendant's extended family, they occurred at defendant's house over several months, the same detective learned of multiple victims early in his investigation, and the prosecutor moved to join the cases because the allegations were of "the same or similar character and show a common scheme or plan." When it is reasonably foreseeable that a conversation on the

uncharged offenses would touch or produce information that is relevant to the charged offense, law enforcement is obliged to contact counsel prior to the interview with the defendant.

In this case, Detective Rookhuyzen acknowledged that that it was "impossible to have a conversation" with defendant concerning K and L without having "overlap" with respect to A. Under those circumstances the prosecutor and law enforcement were on notice of their obligation to contact counsel prior to having contact with defendant.

STATEMENT OF THE CASE

Supplemental Statement of the Case.

Respondent agrees with statement of the case set forth in the state's brief on the merits after the inclusion of the supplemental facts set forth in respondent's brief in the Court of Appeals. (Resp. Br. at 3-4). The key fact came from Detectives on cross-examination about the inter related nature of the three cases that were consolidated for trial including the three girls A, K and L listed as victims therein:

> THE COURT: "How would I ultimately be able to say, officer, that you weren't ending up talking to the defendant about things that fell with under the case that he was already represented? How do you know you weren't doing that?"
>
> THE WITNESS: "Well, I think it's impossible to have a conversation with him and not have some overlap. These

are family members. ***. Tr 73.

Concise Statement of the Facts

On August 9, 2011 defendant was questioned by deputies in the Washington County Jail regarding an investigation of allegations involving sexual touching of A, a 12 year old female relative of his, whose CARES investigation he witnessed. The detectives had earlier interviewed defendant at his home before arresting him. Tr 292-93. Another young female relative AG, was also seen the next day at CARES for an evaluation, which Detective Rookhuyzen also observed. Tr 293. Defendant was not prosecuted for any conduct with her.

Detective Rookhuyzen questioned defendant October 5, 2011 in the jail about other children in the family regarding possible abuse.

> State: "And did that include following up with some names that had come up like L or K, names that had come up in A's CARES exam? "
>
> A "Yes."
>
> Q "Okay. Did you spend the next month and a half or so, trying to figure out who those people were and get those children in for assessments?"
>
> A "Yes."
>
> Q "Can you tell us what the ABC House is?"

A "So the ABC House is just the CARES equivalent. It covers Linn and Benton Counties."

Q "Is it located down in Albany?"

A "It is."

Q "Okay. Did you track down who K and who L were?"

A "Yes. With the help of DHS we were able to locate them."

Q "Were they scheduled for child abuse assessments at ABC House?"

A "Yes."

Q "On what day?"

A "Let me check here. They went on September 27th of 2011"

Tr 293-94.

Defendant was in jail awaiting trial on charges that he sexually abused A, when detectives contacted him. The third interview on October 5, 2011 was in a jail interrogation room to which defendant was transported in the jail at a time the detectives knew he was represented by counsel. Detectives questioned defendant on allegations of multiple acts of sexual abuse arising from the complaint of abuse made by the cousin A in the first case and also AG. Tr 69.

Defendant eventually made admissions about conduct that supported the K and L's accusations though he denied abusing them. Detectives had discussed

K with defendant in the prior interviews August 9, 2011, when AG. was also a suspected victim. Tr 71. They used A's case as a lead in to discuss the allegations made by the other cousins on October 5, 2011. Tr 72.

Detective Rookhuyzen admitted on cross-examination there was no demarcation of subject matter between the "circumstances that existed with the children generally." Tr 72-73.

> Defense. "Basically, the conversations that you had with him, if you draw lines — circles or universes of topics and kids, if you talk about this as a universe of kid number one, for ease, the universe of victims number two overlapped in time, circumstance, location and individuals involved in your conversations during the discussion number three? Isn't that true?"
>
> A. " The location was the same."
>
> Q. " And the time frames were the same?"
>
> A. "I'm not sure — I'm not sure if that's a fair characterization."
>
> Q. " Well, the individuals, the first interview you talked about, Alyzea; is that correct?"
>
> A. "The first interview was about A."
>
> Q. "Yeah. I get the difference between A [and Alyzea, *brackets added for clarity*], okay. And — okay, in the third conversation you talked about A G too, didn't you, as part of the group of kids that went to his house and were tickled?"
>
> THE COURT: "How would I ultimately be able to say, Officer, that you weren't ending up talking to the defendant

about things that fell with under the case that he was already represented? How do you know you weren't doing that?"

THE WITNESS: "Well, I think it's impossible to have a conversation with him and not have some overlap. These are family members. So I mean, I think that it's fair to say, you know, a name might have come up. But at this point, he'd been charged on the first victim, and I was completely focused on victims two and three." Tr 73.

****

Q. (Defense) " *** Well, here's what — in each — in all three of the conversations you talked about the universe of kids who came to his during a two-year period of time."

A "I think that is fair to say, yes."

Q "Okay. And all the people that were mentioned in the third conversation were mentioned in the second conversation and the first conversation?"

A "Well, I think there, in the first interview, I think at that point, I think I had a first name for one of the victims to come — that were going to come forward. Or that I thought could be potential victims; I'll say it that way."

"But, no, that third interview, the focus is on the new victims. They were the ones that I lacked any statement from the defendant about. That was — that was the focus, yeah, L and K. That was the focus of that third interview in the jail." Tr 77.

****

Q (Defense) "So let's just review real quickly. So you're saying, then, that only K's name came up in the first interview at his house?"

A "Just as I'm looking over my report quickly, I see her name in that. Again, and I only knew her by her first name. I didn't know how to find her or anything like that."

Q "Okay. And that alerted you to contact other family members later to find out who K was and who L was?"

A "That's correct."

Q "Hence the investigation that later resulted in her in ABC House in late September of 2011?"

A. "That's correct." Tr 77-78.

Judge Kohl referred to defendant's statements in the third interview regarding A in his findings of fact for defendant's guilt in case number C11-2523CR involving K and L.

> Judge Kohl: "I looked to some of my notes in regard to 2523[C]R and the conversation that the detective had with Mr. Padilla [Prieto-Rubio] in the jail cell and statements like, "My hand slid back down. Why am I doing this? I can't understand myself. I pulled out my hand under the" -- I mean, all those statements I think contribute to the fact that he knew exactly what he was doing." Tr 581.

1st ARGUMENT Article I Section 12- right against compelled testimony

Defendant/respondent relies upon the argument in his brief before the Court of Appeals, and supplements that argument as follows.

This court found that Article I, section 12,[1] affords a criminal suspect a constitutional right to remain silent. *State* v. *Vondehn,* 348 Or 462,474,236 P3d 692 (2010), The rationale for exclusion of evidence obtained in violation of that constitutional right is not to deter police violation of that constitutional right, but instead focuses on protecting the individual's rights vis-a-vis the government by preserving that individual's rights to the same extent as if the government's officers had stayed within the law. The constitutionally significant fact in this case is that the state seeks to use the unlawfully obtained evidence in an Oregon criminal prosecution. *348 Or at 473.*

This court found that under Article I, section 12, of the Oregon Constitution, a motorist who was stopped, but not then in custody or "compelling circumstances" could not be statutorily compelled to provide testimony against himself as to those aspects of field sobriety tests that are clearly "testimonial". *State* v. *Fish,* 321 Or 48,60, 893 P2d 1023 (1995). The *Fish* court went on to find:

> "It is fundamental that the assertion of the right against self incrimination cannot be considered as evidence of guilt. *See State* v. *Wedersld,* 230 Or 57,62,368 P2d 393 (1962)(if the state may refer to a defendant's exercise of the right against self incrimination with impunity, the right is 'meaningless'). By creating a scheme whereby defendant could not invoke his right

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[1] Article I, section 12 provides in part: "No person shall * * * be compelled in any criminal prosecution to testify against himself."

> against compelled self incrimination, the automatic admission of the defendant's refusal to perform field sobriety tests under ORS 813.135 and 813.136 would violate Article I, section 12, of the Oregon Constitution." 321 Or at 61.

It is respectfully submitted that the state is asking this court to judicially create such a "scheme" that would effectively render a criminal suspect's freedom to decide whether to voluntarily speak with agents of the government "meaningless". By allowing the state to determine when that right may be invoked by a criminal suspect simply by taking no formal action against that suspect during the investigative phase of the prosecution, the state could, and would, tailor such formal actions in a manner so as to preclude the criminal suspect from exercising any rights under Article I, section 12, of the Oregon Constitution until after the state had obtained sufficient evidence to proceed formally.

Under the state's interpretation of the Article I, section 12 protections, a criminal suspect could lawfully be told that he had no right to silence, and be threatened that his continued failure to communicate with the government agents during the investigative phase of the prosecution could later be used against him at trial. Even if the criminal suspect chose to simply remain silent, the state could refer to this silence as an indication of "guilty knowledge", and likewise threaten to use that refusal to speak against the criminal suspect at

trial. Indeed, as in *Fish,* none of the "choices" the state would provide under its proposed interpretation would provide a criminal suspect a choice whereby he could exercise his right against self incrimination without that exercise being admitted into evidence as substantive evidence of guilt. This would effectively eliminate a suspect's ability in invoke his right to remain silent during the investigative phase of a criminal prosecution. *Fish,* 321 Or at 60-61.

The framers never considered the technological developments available to law enforcement today. Telephones, faxes, wiretaps etc have changed the power relationships between accused and the government. The right against compelled testimony should attach when practically it can have some effect, otherwise trial is a mere formality. The state in their brief, concedes that this Court acknowledged in *State v Davis*, 350 Or 440, 256 P3d 1075 (2011) that the nature of criminal prosecutions have changed since 1858 and there are many more circumstances of state power over a Defendant than previously existed. *State's brief at 26.*

The distinction of this case with *Davis*, was that Davis not in-custody when he was taped talking on the phone by police. The defendant here was in-custody and charged with a sexual offense alleged to have occurred with victims of the same age, in the same degree of kinship with him, at the same physical location in his house, and in the same manner, though at different

times. Additionally while he was questioned about K and L he was asked about failure by this court to recognize how that action defeats his right to counsel would eviscerate that right, especially since that was clearly the tactic the detectives intended used to try to get him to confess. They intended to show that his attorney could not help him.

Further accentuating his powerlessness, the defendant also did not have a functional choice to refuse to talk to the detectives in the jail. He had to comply and be transported internally by jail staff. He was compelled to leave his pod and go to the interrogation room where he was confronted with the detectives in plain clothes.

2nd Argument Article I Section 11- right to counsel

In the argument that follows, defendant will explain that (1) the Article I, section 11, right to counsel attaches no later than when a charging instrument is filed with the court, (2) counsel's role is to insure the fairness of the prosecution by, in part, advising the client of his rights and acting as the intermediary between the client and the prosecution, (3) the scope of the constitutional right to counsel extends to "factually related" charges, and (4) the charges in this prosecution were factually related for Article I, section 11, purposes because they involved three complainant family members, they occurred at the same location, they were investigated by the same law enforcement officer, and, as

argued by the prosecutor, they were joined for trial because they were of the same or similar character, scheme, or plan.

I. The Article I, Section 11, right to counsel attaches no later than formal charging; thereafter, counsel is the defendant's legal representative and intermediary with the other parts of the criminal justice system.

The Article I, section 11, right to counsel is conceptually different from and more substantive than the right to counsel in Article I, section 12. The right to counsel in Article I, section 12, is "derivative" of the right against compelled self-incrimination. *State v. Haynes,* 288 Or 59, 71, 602 P2d 272 (1979). The derivative right to counsel in Article I, section 12, exists to secure the individual's right against compelled self-incrimination. Law enforcement must inform a custodial suspect of the right to counsel prior to interrogation, but the custodial suspect must invoke the right to counsel to trigger its protections. *Id.*

By contrast, the Article I, section 11,[2] right to counsel attaches by operation of law no later than when a charging instrument is filed:[3]

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[2] Article I, section 11 provides in part:

"In all criminal prosecutions, the accused shall have the right * * * to be heard by himself and counsel * * * * *"

[3] In *State v. Durbin*, 335 Or 183, 63 P3d 576 (2003) and *State v. Spencer*, 305 Or 59, 750 P2d 147 (1988), this court held that in some situations the Article I, section 11 right to counsel can be triggered prior to the filing of a charging instrument (in those cases when defendants requested to consult with counsel prior to taking the intoxilyzer). The starting point of the Article I, section 11 right to counsel is not at issue in this case because the indictment in

> "The state had already initiated a 'criminal prosecution' against defendant and as a result his right to an attorney under Article I, section 11 *arose independently of any invocation of that right* by defendant in the course of a police interrogation."

State v. Sparklin, 296 Or 85, 93, 672 P2d 1192 (1983) (emphasis added); see also, *State v. Davis*, 350 Or 440, 256 P3d 1075 (2011).

Sparklin involved a defendant who was involved in prosecutions in two different counties. He was arrested for forgery in Lane County, where he was arraigned and provided counsel on the forgery charge.

Following the defendant's arraignment on the forgery charge, Portland police officers visited him in Lane County without notifying his Lane County attorney. They gave him the *Miranda* rights, obtained his waiver, and obtained his confession to his role in a robbery and murder in Portland.

Prior to the trial in Multnomah County for murder and robbery, the defendant sought to suppress his confession to Portland officers, arguing, in part, that the Lane County confession was the product of a violation of his Article I, section 11, right to counsel, because police did not contact his Lane County counsel prior to the interrogation and, therefore, his waiver of *Miranda* rights was ineffective.

C11-1693 was filed and defendant retained counsel prior to the police interviews at issue in this case.

This court reviewed Article I, section 11, case law to announce several principles that help guide the analysis in the present case. First, the court emphasized that the Article I, section 11, right to counsel arises by operation of law and does not require a defendant's invocation of the right:

> " * * * once a person is charged with a crime[,] he or she is entitled to the benefit of an attorney's presence, advice and expertise in any situation where the state may glean involuntary and incriminating evidence or statements for use in the prosecution of its case against defendant. This is so whether or not defendant specifically requests an attorney's presence at the interrogation."

State v. Sparklin, 296 Or at 93.

Second, it confirmed that the Article I, section 11, right to counsel is not limited to the time of trial: "There can be no question that the right to an attorney during the investigative stage is at least as important as the right to counsel during trial itself." *Sparklin*, 296 at 92, n 9.

Third, the court emphasized that a defendant's appearance in court and arraignment places significant limits on law enforcement's interactions with the defendant. There can be "no interrogation of a defendant concerning the events surrounding the crime charged unless the attorney representing the defendant on that charge is notified" and no "waiver of that right [to an attorney] may occur until defendant has consulted with his attorney." *Sparklin*, 296 Or at 93.

Fourth, the court explained that counsel's central purpose in a criminal prosecution is to ensure the fundamental fairness of the process: "It is the

fairness of the 'criminal prosecution' which counsel's presence helps to ensure." *Sparklin*, 296 Or at 95. Consequently, the state jeopardizes the fundamental fairness of the prosecution when it interferes with, undermines, or subverts the attorney-client relationship:

> "'The constitutional right to counsel is meant to counteract the handicaps of a suspect enmeshed in the machinery of criminal process. * * * To permit officers to question a represented suspect in the absence of counsel encourages them to undermine the suspect's decision to rely upon counsel. Such interrogation subverts the attorney-client relationship.'"

Sparklin, 296 Or at 93, quoting Note, *Interrogation and the Sixth Amendment: The Case for Restriction of Capacity to Waive the Right to Counsel*, 53 Ind LJ 313, 315 (1977-78).

Finally, *Sparklin* held that the Article I, section 11, prohibition against interrogation without prior notice to counsel does not categorically bar all interrogations on all matters. That is, the right to counsel that attaches upon formal charging does not require law enforcement to notify counsel before questioning a defendant about charges that are "factually unrelated to the [charged] events[.]" *Id.* at 98. Rather, the right to the assistance of counsel contemplated in Article I, section 11, extends to those events that are "factually related" to the charged offense or offenses. *Id.* This case concerns the meaning and application of the term "factually related."

II. "Factually related" for Article I, section 11, purposes means that law enforcement must first contact counsel before interviewing defendant if the proposed interview could foreseeably produce information that would be relevant to the charged offense.

The filing of a formal charge implicates the judiciary by formally triggering the court's duty to act as fair and neutral arbiter in a judicially-supervised adversarial contest. The scope of the right to counsel in Article I, section 11, extends to events that are "factually related" to the charged offense or offenses. *Sparklin.* The role of counsel during formal prosecution, the integrity of the judicial process, and the duty of a prosecutor and his police agents help inform the scope of the right to counsel.

Once the formal prosecution begins, a criminal defendant's liberty is formally and directly at risk. As the prosecutor's counterpart, defense counsel plays a critical and fundamental role during the prosecution. The attorney consults with the client, gathers discovery and police reports, evaluates the client's situation and potential exposure, conducts an independent investigation to develop the factual context, interview witnesses, evaluate the merits of the state's prosecution, develops a defense strategy, serves as the intermediary between client and law enforcement, engages the prosecutor in discussion and negotiation, and generally guides the client through a complex criminal justice system. See, e.g., *Maine v. Moulton*, 474 US 159, 168, 106 S Ct 477, 88 L Ed

2d 481 (1985) (counsel "safeguards the *other rights* deemed essential for the fair prosecution of a criminal proceeding." *Id.* at 169 (emphasis added)).

The identification of counsel at arraignment imposes ethical restrictions on the prosecutor and his police agents. This court noted that a prosecutor, like any attorney, is restricted from contacting a represented party, either directly or through police agents:

> "In the smallest civil matter an attorney and his or her investigator are restricted in their contact with a represented party. We can certainly require no less of prosecutors or police in criminal matters."

Sparklin, at 93 (citation omitted).

At a minimum, counsel must be informed whenever law enforcement intends to interview the defendant on a topic that could foreseeably produce information relevant to the charged offense.

III. Given Rookhuyzen's admission that it was impossible to converse with defendant about K and L without overlap as to A, it was reasonably foreseeable that Rookhuyzen's interrogation could produce information relevant to the charged offense involving A, and law enforcement had the obligation to notify counsel prior to the interview.

Detective Rookhuyzen investigated reports that defendant abused A, a member of defendant's extended family. Rookhuyzen learned from A that defendant may have similarly abused two other members of defendant's

extended family, K and L. At this point, Rookhuyzen and, by extension, the prosecutor knew that defendant was implicated in other similar offenses.

Rookhuyzen arrested defendant, interrogated him in jail, and asked him about A and other children, including K. Defendant was indicted and arraigned for offenses involving complainant A, and he retained counsel.

A few weeks later, Rookhuyzen again interrogated defendant in jail without informing counsel and obtained incriminating statements concerning K and L.The prosecutions were "factually related" for purposes of Article I, section 11. The alleged acts of abuse involved members of defendant's extended family, they occurred at defendant's house over several months, and the investigating detective learned of multiple victims early in his investigation, before defendant was indicted for conduct involving A. A prosecutor armed with that knowledge would reasonably recognize that the uncharged allegations against the defendant arose from the same investigation, bore sufficient similarity as to place, victims, and time period as the charged offense, and were part of a pattern of conduct. Indeed, the prosecutor later moved to join the cases for trial precisely because the allegations were of "the same or similar character and show a common scheme or plan." A reasonable person in the prosecutor's position would be on notice that the allegations were similar in nature, place, and circumstance as to constitute serial allegations of abuse.

The fact that the charges involve three complainants does not change the analysis. For example, the state does not appear to dispute that Rookhuyzen would have to inform counsel before questioning defendant as to prior or other uncharged incidents involving A. The reason that would be improper is that both counsel and the prosecutor would reasonably believe that interviewing defendant about other interactions with A would foreseeably produce information relevant to the charged offense, thereby undermining the role of counsel and the fairness of the criminal process.

The state's proposed rule in this case undermines the role of counsel and the fairness of the criminal justice system. Assume for the moment that defendant had been charged and tried solely for offenses against A. During a break at trial, defense counsel and the judge leave the courtroom. The prosecutor and the lead investigator approach defendant, administer *Miranda* warnings, obtain a waiver, and obtain incriminating statements concerning K and L.

Functionally, that investigatory procedure occurred in this case. While defendant was charged and had counsel for allegations involving A, Detective Rookhuyzen interrogated defendant concerning K and L. And, again, in the words of Rookhuyzen, it was "impossible to have a conversation with [defendant] and not have overlap" with respect to the three victims.

The courtroom hypothetical drives home the proposition that the protections afforded by the constitutional right to counsel are intended to preserve the fairness and integrity of the judicial process. The substantive right to counsel is intended to be both broad and profound; it is not a procedural nicety to be circumvented through gamesmanship. A reasonable prosecutor would recognize and refrain from the subversive elements embedded in the hypothetical courtroom interrogation; similarly, a reasonable prosecutor would recognize that Rookhuyzen's investigation disclosed undeniable commonalities among the victims. Accordingly, a reasonable prosecutor would notify defense counsel prior to interrogating defendant in the jail.

CONCLUSION

Under the facts presented in this case, it is respectfully submitted that the police investigation was a part of a "criminal prosecution" to which Article I, section 11 and 12, of the Oregon Constitution applies. It is respectfully submitted the Court of Appeals did not err in reversing Defendant's conviction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 4,743 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

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PROOF OF SERVICE

I hereby certify that I served this respondent's brief on the merits on Rebecca M. Auten, Assistant Attorney General, by mailing two certified true copies of it in a sealed envelope, placed in the United States Mail, at Hillsboro, Oregon on the 26th day of November, 2014, with first class postage prepaid, and addressed to the following:

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PROOF OF FILING

I hereby certify that I filed this respondent's brief on the merits with:

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by depositing it in the United States Mail, at Hillsboro, Oregon on November 26, 2014, with first class postage prepaid.

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