

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,

Plaintiff-Respondent,
Petitioner on Review,

v.

VICTOR JAVIER PICHARDO,

Defendant-Appellant,
Respondent on Review.

Multnomah County Circuit
Court No. 110833156

CA A150488

SC S063885

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

Review of the Decision of the Court of Appeals on Appeal from a Judgment
of the Circuit Court for Multnomah County
Honorable CHRISTOPHER J. MARSHALL, Judge

Opinion Filed: December 2, 2015
Before: Flynn, Presiding Judge, and Haselton, Chief Judge, and Wollheim,
Senior Judge.

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

INTRODUCTION

At issue in this case is how Article I, section 9, of the Oregon Constitution applies in the context of criminal investigatory stops. Police officers briefly stopped defendant on suspicion that he was helping another person evade the police. During the investigatory stop, an officer asked him if he would consent to a search for drugs, and he voluntarily consented. Relying on cases involving routine, noncriminal traffic stops, the Court of Appeals ruled that the question was unlawful and that suppression was required as a result. But the request for consent to search—as part of an ongoing criminal investigation—was not illegal.

Unlike a typical traffic stop, where an officer is expected to confirm just a few administrative details and then end the encounter with a citation or a warning, stops to investigate criminal activity rarely follow routine or predictable lines of inquiry. Because of the very nature of the stop itself—to investigate possible criminal activity—“fishing” questions, as well as requests for consent to search, are reasonable investigative techniques and will rarely run afoul of Article I, section 9. Moreover, even if the question were illegal, the evidence that the officers obtained should not have been suppressed. Suppression is required only if the illegality significantly affected defendant’s

decision to consent to the search. The illegality here—extending the duration of the stop by the few seconds it took to ask the question—did not exert any significant pressure on defendant to give his consent.

QUESTIONS PRESENTED AND PROPOSED RULES OF LAW

First Question Presented

Under Article I, section 9, can an officer who has lawfully seized an individual to investigate possible criminal activity request consent to search without unlawfully extending the duration of the stop?

First Proposed Rule of Law

Yes. Article I, section 9, requires that all seizures be reasonable in duration. Relatedly, an officer's actions during a seizure must be reasonably related to the investigation of the suspected criminal activity. Criminal investigatory stops, however, rarely follow routine or predictable lines of inquiry and are, by their very nature, inherently fluid situations that call for a degree of flexibility in addressing the suspicions that gave rise to the seizure in the first instance. As a result, in the context of a criminal investigatory stop, a request for consent to search—without more—will rarely run afoul of Article I, section 9.

Second Question Presented

If a request for consent to search was unlawful, under what circumstances should a court exclude evidence found during a voluntary consent search?

Second Proposed Rule of Law

Under Article I, section 9's exclusionary rule, a court should exclude evidence found during a voluntary consent search only if the illegality was so severe or egregious that it "significantly affected" the defendant's decision to consent. If an officer unlawfully extends an otherwise lawful seizure by asking for consent to search for a reason unrelated to the purpose of the lawful seizure, that form of misconduct will, in most circumstances, be insufficiently severe to justify exclusion of evidence found during a subsequent consent search, because the illegal extension of the lawful seizure is brief and because it is not the type of conduct that, by itself, affects a person's ability to exercise free will.

STATEMENT OF THE CASE

A. Statement of Facts and Procedural Background

- 1. During a seizure supported by reasonable suspicion of criminal activity, police asked for and received voluntary consent to search defendant for drugs.**

Officers were attempting to arrest an individual named Hamilton, who was wanted on a felony arrest warrant. Hamilton ran from the officers. (Tr 8, 27). Shortly thereafter, a person matching Hamilton's description ran up to defendant's car (which was parked in a lane of traffic on the street), jumped into the passenger seat, and leaned the seat back. (Tr 8-10). Officers immediately stopped the car and took Hamilton into custody. (Tr 9-11).

Once Hamilton was in custody, Officer Long asked defendant if he would step out of the car; defendant agreed to do so. The officer asked defendant if he had a license and insurance, and defendant explained that he had insurance, but no license. At that point, Officer Long asked for consent “to search him for any drugs,” and defendant responded, “Yes, you can.” (Tr 11). The officer explained at the suppression hearing that, when Hamilton had fled from police, he had “dropped a backpack somewhere.” The officer also explained that, in his experience, people will run from the police when they have “nothing more than some drugs on them.” Thus, not knowing why Hamilton had run from police, Long was concerned that Hamilton may have passed contraband or weapons to defendant when he got into the car. (Tr 24-25; *see also* Tr 58-59).

As soon as the officer started the pat-down, defendant volunteered that he had heroin and directed the officer to the pocket where it was located. (Tr 11-12). The officer retrieved the heroin, placed defendant under arrest, advised him of his *Miranda* rights, and placed him in the back of his patrol car. (Tr 12-13). Defendant confirmed that he understood his rights, and the officer questioned him about drugs and his relationship with Hamilton. (Tr 12-13, 17). Defendant eventually consented to a search of his car, which revealed more heroin and a crack pipe. (Tr 17-18).

Before trial, defendant moved to suppress the evidence. As relevant here, he argued that the officer unlawfully extended the stop by asking for consent to search and that, as a result, suppression was required. (Tr 79-83, 89, 110). The trial court denied the motion. It found that the officer's actions were "perfectly reasonable" and that "the duration of time that passed was not unreasonable" because the officer's interactions with defendant "followed a logical progression." (Tr 117-18). In sum, the trial court concluded that the "duration and scope of the stop was all reasonable." (Tr 118).

2. The Court of Appeals concluded that the officer's request for consent to search unlawfully extended the duration of the criminal investigatory stop.

The Court of Appeals reversed and remanded defendant's conviction for possession of heroin, concluding that the trial court had erred in denying the motion to suppress evidence. The court reasoned that the officer had "reasonable suspicion to stop defendant to inquire about defendant's interactions with Hamilton and to gather information necessary to issue a traffic citation." *State v. Pichardo*, 263 Or App 1, 7, 326 P3d 624, *vac'd and remanded*, 356 Or 574, 342 P3d 87 (2014) (*Pichardo I*). But, because the officer lacked reasonable suspicion of "drug activity," the officer's request for consent to search for drugs unlawfully extended the duration of the stop. *Id.*

The state petitioned for review, arguing that the officer's request for consent to search did not unlawfully extend the investigatory stop. This court

allowed review, vacated the Court of Appeals' decision, and remanded for reconsideration in light of *State v. Unger*, 356 Or 59, 333 P3d 1009 (2014); *State v. Lorenzo*, 356 Or 134, 335 P3d 821 (2014); and *State v. Musser*, 356 Or 148, 355 P3d 814 (2014), without addressing whether any police illegality had occurred.

3. Focusing on temporal proximity and the officer's subjective purpose, the Court of Appeals concluded on remand that suppression was required.

On remand, the Court of Appeals again concluded that suppression was required, reasoning that the state had failed to demonstrate that defendant's voluntary consent to search "was not the product of police exploitation of the unlawful seizure." *State v. Pichardo*, 275 Or App 49, 51, 364 P3d 1 (2015) (*Pichardo II*). Specifically, the court held that suppression was required because the consent was given in "immediate temporal proximity" to the police illegality, because the officer had a criminal-investigative purpose in asking for consent, and because case law at the time indicated that the request was unlawful and thus made the officer's conduct "at least moderately flagrant." *Id.* at 54-58.

The court began its analysis by focusing on the question of temporal proximity, observing that "defendant's consent [was a] direct response to the inquiry that effectuated the unlawful seizure." *Id.* at 55. According to the court, that close temporal proximity, coupled with the lack of intervening

circumstances (such as *Miranda* warnings), strongly suggested “that defendant’s consent was the product of the unlawful conduct that immediately preceded it.” *Id.* (citing *Musser*, 356 Or at 158).

The court next observed that the original stop was lawful and that the officer had not engaged in threatening behavior to induce defendant’s consent. Rather, the officer “simply requested consent to search [defendant’s] person for drugs,” and defendant voluntarily agreed. *Pichardo II*, 275 Or App at 55. Nevertheless—and relying exclusively on cases involving traffic stops—the court viewed the officer’s conduct as “at least moderately flagrant” because “the prohibition against extending stops by way of gratuitous investigatory inquiries had been well established as of the time of this stop.” *Id.* at 55-56. The court also concluded that the “degree of intrusion” caused by the officer’s inquiry was “moderate” because it “effected an unlawful seizure.” *Id.*

Ultimately, the court held that, if the “purpose of the police misconduct was to obtain the evidence at issue, that consideration, combined with ‘almost immediate’ temporal proximity and a lack of intervening or mitigating circumstances, can be determinative.” *Id.* at 56. Applying that rule to the facts of this case, the court reasoned that the “patent ‘purpose’ of the misconduct was ‘directly to facilitate a search’ for the evidence at issue[.]” *Id.* at 58. When that purpose was “paired with immediate temporal proximity and the absence of any intervening or mitigating circumstance,” the consent was necessarily “the

product of police exploitation of the illegal stop,” such that suppression was required. *Id.* (quoting *Unger*, 356 Or at 74-75).

B. Summary of Argument

Because police inquiries are not searches and seizures, an officer remains free to approach an individual on the street, engage that individual in conversation, and ask for consent to search without effecting a seizure. It is only if the officer seizes an individual and then asks questions that extend the length of the seizure that the content of the questions matters. In that circumstance, the questions generally must be reasonably related to the investigation of the suspected illegality that provided the basis for the seizure.

In some situations, like routine traffic stops, determining whether a question is reasonably related to the purpose of the stop will be fairly easy. However, unlike a typical traffic stop, where an officer is expected to confirm a few administrative details and then end the encounter, stops to investigate criminal activity rarely follow routine or predictable lines of inquiry. Indeed, given the minimal threshold required for initiating a lawful investigatory stop, an officer may not be able to pinpoint a *particular* crime, as opposed to a possible range of criminal activity. As a result, an officer must have leeway to investigate in a manner appropriate to the particular circumstances, consistently with his or her training and experience. And questions that may *superficially* appear to have no direct relationship to the basis for the stop are nonetheless

reasonable, provided that the officer diligently pursues the investigation and the overall duration of the stop remains reasonable in light of the original basis and evolving circumstances.

Applying that standard to the facts of this case, the officer's request for consent to search did not unlawfully extend the stop. Officer Long explained that Hamilton had dropped a backpack when he fled from police and that, in his experience, people will run from police when they have nothing more than some drugs on them. As a result, the officer was concerned that Hamilton may have passed drugs or contraband to defendant when he got into the car. The request for consent to search defendant for drugs therefore was reasonably related to the overall purpose of the investigative detention: exploring the relationship between defendant and Hamilton and determining whether defendant had committed a crime.

But even if the request for consent unlawfully extended the duration of the stop, suppression was not required. Suppression is only required when an officer's misconduct either actually coerces the defendant to consent or, although the officer's conduct does not rise to the level of coercion, it significantly affects the defendant's decision to consent. Here, the illegality—a seconds-long extension of an otherwise lawful stop—did not significantly affect defendant's decision to consent to the search.

ARGUMENT

This case presents two interrelated questions: whether an officer's request for consent to search that—at least superficially—does not directly relate to the basis for the detention can nonetheless be reasonably related to the investigation and, if not, whether suppression is warranted. As explained below, the request for consent to search here, which was made as a part of an ongoing criminal investigation, was not illegal. And even if it were illegal, the evidence obtained during the search should not have been suppressed because the illegality—extending the duration of the stop by mere seconds—did not exert any significant pressure on defendant to give his consent.

A. The officer's request for consent to search did not unlawfully extend the duration of the stop.

1. A request for consent to search generally will be within the scope of the officer's constitutional authority if the basis of the stop is to investigate possible criminal activity.

Police inquiries “are not searches and seizures and thus by themselves ordinarily do not implicate Article I, section 9.” *State v. Rodgers/Kirkeby*, 347 Or 610, 622, 227 P3d 695 (2010). Thus, an officer may approach an individual on the street, engage that individual in conversation, and ask about the presence of weapons and for consent to search without seizing that individual. *State v. Holmes*, 311 Or 400, 409-10, 813 P2d 28 (1991). Similarly, questions that do not extend the duration of a seizure are not constitutionally significant.

But if the police seize an individual and then ask questions that extend the length of the seizure, the content of the questions matters. Police inquiries that extend the course of a lawful seizure generally must be “reasonably related to the investigation” of the suspected illegality that provided the basis for the seizure. *State v. Watson*, 353 Or 768, 782-83, 305 P3d 94 (2013) (police activities during lawful investigatory detention must be “reasonably related to the investigation” and the detention itself must not be “unreasonably lengthy”). That is because, as a general matter, officers must diligently pursue a course of investigation that is designed to quickly confirm or dispel the suspicions that gave rise to the detention in the first instance. *Id.* See also *Terry v. Ohio*, 392 US 1, 19-20, 88 S Ct 1868, 20 L Ed 2d 889 (1968) (“[I]n determining whether the seizure and search were ‘unreasonable’ our inquiry is a dual one—whether the officer’s action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.”).

In some situations, like routine traffic stops based on a traffic violation that the officer personally observed, it is fairly easy to determine whether a question is reasonably related to the purpose of the stop. Indeed, in most routine traffic stops, not only will the officer have personally observed the conduct that gave rise to the stop, but he will also have almost all of the information he needs to write the citation by the time he talks to the defendant.

However, unlike a typical traffic stop, where an officer is expected to confirm a few administrative details and then end the encounter, stops to investigate criminal activity rarely follow routine or predictable lines of inquiry. The very purpose of an investigatory detention, after all, is to clarify ambiguous situations in which criminal activity may have occurred or may be occurring.

Wayne R. LaFave, Jerold H. Israel, Nancy J. King, and Orin S. Kerr, 2 *Criminal Procedure* §3.8(d) (4th ed 2015). Frequently, the officer in those situations will have very little information and may need to ask open-ended questions or engage the suspect in general conversation to determine whether criminal activity is afoot. As a result, questions that may *superficially* appear to have no direct relationship to the basis for the stop are nonetheless reasonable, provided that the officer diligently pursues the investigation and the overall duration of the stop remains reasonable in light of the original basis and evolving circumstances. In other words, the nature of the investigation—including the methods employed and the particular questions asked—will be more fluid than a routine traffic stop and not necessarily tied to a specific crime because the very purpose of the investigation is to determine *whether* a crime has occurred and, if so, *which* crime.

Indeed, given the minimal threshold required for initiating a lawful investigatory stop, an officer may not be able to pinpoint a *particular* crime. The requirement that there be an objectively reasonable basis for suspecting that

a crime has occurred, is occurring, or is about to occur does not necessarily mean that the information inescapably leads to the conclusion that a particular, identifiable offense is imminent. *State v. Lichty*, 313 Or 579, 584, 835 P2d 904 (1992) (investigatory stop authorized when the officer can point “to specific and articulable facts which give rise to the inference that criminal activity is afoot”).¹ Instead, the lesser standard of reasonable suspicion is satisfied when an officer can point to specific and articulable facts indicating that “there is some type of criminal activity afoot and that this particular individual is somehow involved.” *State v. Valdez*, 277 Or 621, 626, 561 P2d 1066 (1977) (internal citation omitted). And because the officer may not be able to pinpoint a *particular* crime (as opposed to a potential range of criminal activity), what may be reasonably related to the investigation will not be as limited as in the context of a traffic stop (where the offense is already known).

Given that an officer investigating whether a crime has been committed has limited information, he cannot be expected to “process” the investigation in the same rote manner in which he or she would process a traffic violation.

¹ See also *United States v. Arvizu*, 534 US 266, 122 S Ct 744, 750, 151 L Ed 2d 740 (2002) (“The Fourth Amendment is satisfied if the officer’s action is supported by reasonable suspicion to believe that criminal activity may be afoot[.]”); *Illinois v. Wardlow*, 528 US 119, 123, 120 S Ct 673, 145 L Ed 2d 570 (2000) (“[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.”).

Instead, the officer must have leeway to investigate in a manner appropriate to the particular circumstances, consistently with his or her training and experience. An officer may employ any number of “investigative techniques which may be used effectively in the course of” an investigative detention, ranging from a request for consent to search, to detaining the individual while witnesses are questioned. Wayne R. LaFare and David C. Baum, *Search and Seizure: A Treatise on the Fourth Amendment* §9.2(f) (5th ed 2015) (outlining various methods). *See also Hiibel v. Sixth Judicial Dist. Court of Nevada*, 542 US 177, 185, 124 S Ct 2451, 159 L Ed 2d 292 (2004) (“Asking questions is an essential part of police investigations.”).

For example, if an officer detained an individual based upon reasonable suspicion of theft, the officer reasonably could inquire about the suspect’s history of drug use—not because the officer independently has reasonable suspicion of drug activity, but rather in an effort to gain some understanding of the suspect and a potential motive, as well as potentially developing a rapport that will facilitate the overall investigation.² The officer’s choice of a less-

² According to the United States Department of Justice’s Bureau of Justice Statistics, 17 percent of all state prisoners committed their crimes to obtain money for drugs, and nearly half of all federal inmates reported drug use in the month before their offense. Department of Justice, Bureau of Justice Statistics, C. Mumola and J. Karberg, *Drug Use and Dependence, State and Federal Prisoners, 2004*, p. 1-2 (October 2006), available at <http://www.bjs.gov/content/pub/pdf/dudsfp04.pdf> (accessed June 22, 2016).

direct or accusatory investigatory tactic would not mean that the questioning is no longer “reasonably related to the investigation.” To the contrary, the officer would be diligently pursuing the purpose of the investigation: to confirm or dispel his suspicions that some type of criminal activity involving a potential theft may be afoot.

2. The request for consent in this case was reasonably related to the purpose of the stop and therefore did not unlawfully prolong its duration.

In sum, consistently with this court’s analysis in *Watson*, the legal inquiry is whether the officer diligently pursued an investigation that was “reasonably related in scope to the circumstances which justified the interference in the first place.” *Terry*, 392 US at 20; *accord Watson*, 353 Or at 782-83, 783 n 16. And, in the context of a criminal investigatory stop, where the very purpose is to ferret out potential criminal activity, a request for consent to search, without more, will rarely run afoul of Article I, section 9. Applying that standard to the facts of this case, the officer’s request for consent to search did not unlawfully extend the stop.

Officer Long explained that, when Hamilton fled from police, he “dropped a backpack somewhere.” Long further explained that he had previously had people run from him when they had “nothing more than some drugs on them.” (Tr 25). Thus, not knowing why Hamilton had run from police, Long was concerned that Hamilton may have passed drugs or

contraband to defendant when he got into the car. (Tr 24-25; *see also* Tr 58-59). As a result, while Officer Long may not have had independent reasonable suspicion of drug activity, the request for consent was nonetheless reasonably related to the overall purpose of the investigative detention: exploring the relationship between defendant and Hamilton and determining whether defendant had committed a crime.

B. Even if the officer unlawfully extended the duration of the stop when he requested consent, the evidence should not have been suppressed.

1. The request for consent at issue here was not prompted by earlier unlawful activity, and the short extension of the stop did not significantly affect defendant’s decision to consent.

Even if the officer’s request for consent unlawfully extended the duration of the stop, not all illegal police conduct requires suppression of the evidence ultimately obtained as a result of that conduct. Misconduct that actually coerces a defendant to consent requires suppression. But even if the misconduct does not rise to the level of actual coercion, suppression may still be required “because the police took advantage of information gained from their illegal conduct or some other aspect of that conduct to obtain consent—an advantage that they would not have had [had] the police stayed within the bounds of the law.” *State v. Unger*, 356 Or 59, 74, 333 P3d 1009 (2014). Thus, for the evidence to be admissible, the state must prove “that the defendant’s consent

was independent of, or only tenuously related to, the unlawful police conduct.”

Id. at 76 (quoting *State v. Hall*, 339 Or 7, 35, 115 P3d 908 (2005)).

Subsumed within that test are two general scenarios where suppression may be required:

“A causal connection requiring suppression may exist because the police sought the defendant’s consent solely as the result of knowledge of inculpatory evidence obtained from unlawful police conduct. A causal connection requiring suppression also may exist because the unlawful police conduct, even if not overcoming the defendant’s free will, significantly affected the defendant’s decision to consent.”

Id. at 76 (quoting *Hall*, 339 Or at 35).

At issue in this case is the second scenario—whether any unlawful extension of the stop significantly affected the defendant’s decision to consent. A “voluntary consent to search that is prompted by an officer’s request,” such as occurred in this case, “can be sufficient to demonstrate that the consent is unrelated or only tenuously related to the prior illegal police conduct.” *Id.* at 79. “Whether the voluntary consent is sufficient—or whether the police exploited their illegal conduct to obtain consent—will depend on the totality of the circumstances” to determine the nature of the causal connection. *Id.* Factors relevant to that inquiry include temporal proximity, the presence of intervening circumstances, the nature of the illegal conduct, and the “purpose and flagrancy” of the misconduct. *Id.* at 79-80. The overarching inquiry

remains, however, “the effect of the police misconduct” and whether the defendant’s consent was “tainted” by the unlawful conduct. *Id.*

The logical starting point for making that legal inquiry is the nature of the alleged violation. *See id.* at 71 (“If the defendant argues that the initial encounter was an unlawful seizure, then the court must examine the nature of that encounter.”). *Cf. State v. Delong*, 357 Or 365, 373, 350 P3d 433 (2015) (“In deciding whether the taint has been attenuated, the court has considered, among other things: the nature of the violation[.]”). This court has never held that strict subject matter limitations apply to any questions asked during a stop; the “reasonably related” analysis is simply a tool to determine whether there has been an unlawful durational extension. *See, e.g., Watson*, 353 Or at 784 (holding that, even if warrants check was not “reasonably related” to the traffic stop, suppression was not required because there was no evidence that it “extend[ed] the duration of the stop”). As a result, the *content* of the question is not the illegality. The illegality is the delay occasioned by the question.

Thus properly framed, the inquiry is whether “the illegality”—here, a seconds-long delay of an otherwise lawful seizure—“significantly affected” defendant’s decision to consent. *Unger*, 356 Or at 76. Although the officer obtained defendant’s consent in response to the inquiry, it cannot be said that *the illegality*—a seconds-long extension of an otherwise lawful stop—significantly affected defendant’s consent to search.

2. The Court of Appeals misunderstood the role of purpose and flagrancy in the suppression analysis.

The Court of Appeals' contrary conclusion focused primarily on its view that the officer's misconduct was "at least moderately flagrant" because "a reasonable officer would have appreciated that [the] inquiry was prohibited." *Pichardo II*, 275 Or App at 56. But whether the officer should have appreciated the unlawful nature of his conduct has no bearing on whether the conduct "significantly affected" the defendant's decision to consent. Instead, the inclusion of "purpose and flagrancy" as a consideration contemplates only those situations in which the "conduct—such as excessive use of force in unlawfully arresting a defendant, the unlawful forcible entry into a home by multiple officers wielding automatic weapons, or unlawful and lengthy in-custody interrogation—is more likely to affect the defendant's decision to consent than more restrained behavior." *Unger*, 356 Or at 82. "Flagrancy," therefore, focuses on whether the officer's conduct was particularly coercive or violent, and not whether the officer should have known it was unlawful.

The same holds true for this court's adoption of "purpose" as a relevant factor in the exploitation analysis. The Court of Appeals concluded that, because "the purpose of the operative police misconduct" was to "facilitate a search for the evidence at issue," that factor was "decisive." *Pichardo II*, 275 Or App at 56-58. In other words, because the officer subjectively had an

investigative purpose when he asked for consent to search—a purpose that will be present in nearly every criminal case that comes before the court—defendant’s voluntary consent was necessarily tainted. But in *Unger*, this court held—at most—that purpose “*may* be a relevant consideration * * * in *some* circumstances.” 356 Or at 83-84 (emphasis added). This court has never held that an officer’s subjective purpose is the decisive factor in every case.

Instead, the suppression analysis focuses on whether the illegality significantly affected the defendant’s decision to consent. Thus, as factors within that analysis, purpose and flagrancy are concerned only with whether the officer’s conduct was particularly coercive or violent, and not whether he or she should have known it was unlawful or had an investigative intent. Here, the officer’s conduct was anything but purposeful or flagrant. He did not unlawfully arrest defendant, nor did he wield an automatic weapon or subject defendant to a lengthy in-custody interrogation. Instead, the illegality consisted of a seconds-long delay that did not significantly affect defendant’s decision whether to consent. The Court of Appeals erred in concluding otherwise.

CONCLUSION

In conclusion, this court should reverse the decision of the Court of Appeals and affirm the trial court’s denial of defendant’s motion to suppress. The officer’s request for consent to search was reasonably related to the overall investigatory purpose of the stop and therefore did not unlawfully prolong the

seizure. But even if it did, the misconduct at issue—unlawfully extending defendant’s seizure by mere seconds—did not significantly affect defendant’s decision whether to consent.

Respectfully submitted,

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State of Oregon

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on June 23, 2016, I directed the original Brief on the Merits of Petitioner on Review, State of Oregon to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Jed Peterson, attorney for appellant, respondent on review, by using the court's electronic filing system.

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 4,842 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(2)(b).

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