IN THE SUPREME COURT OF THE STATE OF OREGON

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| STATE OF OREGON,<br><br>Plaintiff-Appellant,<br>Respondent on Review,<br><br>v.<br><br>COY RANDELL SNOW,<br><br>Defendant-Respondent,<br>Petitioner on Review. | Josephine County Circuit<br>Court No. 99CR0872<br><br>Appellate Court No. A110840<br><br>Supreme Court No. S49504 |

# RESPONDENT'S BRIEF ON THE MERITS

Petition to Review the Decision of the Court of Appeals
on Appeal from a Judgment of the Circuit
Court for Josephine County
Honorable GERALD C NEUFELD, Judge

Opinion Filed: January 30, 2002
Author of Opinion: Haselton, P.J.
Dissenting Judge: Wollheim, J.


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# RESPONDENT'S BRIEF ON THE MERITS

## ISSUE PRESENTED

Did exigent circumstances – whether it be hot pursuit or the automobile exception – authorize the police to conduct a warrantless search of defendant's car for evidence of his identity and to forestall his escape where defendant refused to comply with the officer's attempt by signal to stop his car, sped away at high speed through a residential area, successfully eluded the pursuing officer, and managed to flee from his car during the one or two minutes that his car was out of the pursuing officer's sight?

## ARGUMENT

This case is a textbook illustration of hot pursuit by a police officer attempting to stop a driver who then successfully evades the police, bails out of his car, and flees the scene mere seconds before the pursuing officer catches up to the then-abandoned car. At issue here is whether the automobile exception or some other exception to the warrant requirement applies and allows the warrantless search of the ditched car for evidence to identify defendant and to forestall his escape.

Briefly, the facts here are as follows: While on patrol, Deputy Lucas saw defendant "accelerating heavily" in his car, causing it to make a "loud squealing noise," and drive away in the opposite direction at a high speed. (Tr 7-9). The deputy turned his patrol car around, activated his overhead lights, and followed defendant's car – which by then was about one-quarter mile ahead of him. (Tr 9-10). Traveling close to 50 mph in this residential area, defendant turned and went out of the deputy's

direct sight. (Tr 10). When the deputy came to the point where defendant's car left his view, a bystander pointed out the direction defendant had gone. (Tr 10-11). A block later, another bystander pointed out that defendant had made a quick, sharp turn. (Tr 11). Shortly afterward, yet another witness told Deputy Lucas that defendant had driven through a stop sign and into an apartment complex parking lot. (Tr 12-13). The deputy pulled into the lot, spotted defendant's car, and approached it; he saw that nobody was inside it, ascertained that the car's engine hood was hot to the touch, and looked through the window of defendant's car. (Tr 14-15). At that point, he received a radio report about a suspect running through a yard in the area, and he went around one of the apartment buildings to see if he could spot defendant or see where he fled. (Tr 15-17). He then received another radio report that a man had run through the house of a nearby resident, and a bystander told him that it was the third time that defendant "had been chased by the cops" in this manner. (Tr 17). Deputy Lucas returned to the car, which he had left unguarded, and decided to look inside it to try and identify defendant, who was not the registered owner of the car. (Tr 18). The car was unlocked, and the deputy looked inside and ultimately found a shotgun under some clothing strewn in the back as well as a backpack, which he looked through and found a checkbook and two identification cards with defendant's name and photograph on them. (Tr 20). Shortly after completing the search, a bystander directed the deputy to a set of keys to this car that defendant had dropped as he was fleeing. (Tr 22-23).

Based on his personal observations of defendant's driving, Deputy Lucas had probable cause to stop defendant for several traffic violations.[1] By the time the deputy caught up to defendant's fleeing car, and before he conducted any search of it, he had probable cause to believe defendant had committed other violations and crimes.[2]

Under Article I, section 9, of the Oregon Constitution,[3] warrantless searches are *per se* unreasonable unless they fall within one of the specifically established and carefully delineated exceptions to the warrant requirement. *State v. Bridewell*, 306 Or 231, 235, 759 P2d 1054 (1988). "The burden to establish the lawfulness of a warrantless search and seizure is on the state." *State v. Sargent*, 323 Or 455, 461, 918 P2d 819 (1996).

Probable cause accompanied by exigent circumstances constitutes a well-established exception to the warrant requirement. *State v. Stevens*, 311 Or 119, 126, 806 P2d 92 (1991). An "exigent circumstance" is a "situation that requires the police to act swiftly to prevent danger to life or serious damage to property, or to forestall a

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[1] Those violations included speeding (ORS 811.109(1), a Class B violation); heavy acceleration (ORS 811.125, a Class A violation); and causing unreasonable noise (ORS 815.025, a Class D traffic violation).

[2] These included careless driving (ORS 811.135, a Class A violation); reckless driving (ORS 811.140, a Class A misdemeanor); failing to obey a traffic control device (ORS 811.265, a Class B violation); failing to obey a police officer (ORS 811.535, a Class B violation); first-degree criminal trespass (ORS 164.255, a Class C felony); and first-degree burglary (ORS 164.225, a Class A felony).

[3] Article I, section 9, of the Oregon Constitution provides, in pertinent part: "No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure * * *."

suspect's escape or the destruction of evidence." *Id.* This court also has described exigent circumstances as "practical necessity." *State v. Greene*, 285 Or 337, 342, 591 P2d 1362 (1979).

**Automobile Exception**

The automobile exception is a subcategory of exigent circumstances, with the mobility of the vehicle alone supplying the exigency. As held in *State v. Brown*, 301 Or 268, 276, 721 P2d 1357 (1986): "No exigent circumstances other than the mobility of the stopped vehicle need be demonstrated." In announcing the automobile exception under the Oregon Constitution, this court held in *Brown*:

> [W]e join the federal courts and many other state courts, and hold that probable cause to believe that a lawfully stopped automobile which was mobile at the time of the stop contains contraband or crime evidence justifies an immediate warrantless search of the entire automobile for the object of the search, despite the absence of any additional exigent circumstances.

*Id.* at 277. Both *Brown* and its companion case, *State v. Bennett*, 301 Or 299, 721 P2d 1375 (1986), limited the automobile exception to instances where the automobile was mobile at the time it was stopped – provided the police also had probable cause to search. *See Brown*, 301 Or at 277 ("We are not confronted in this case with the search of a vehicle that is not mobile and has not just been lawfully stopped by a police officer."); and *Bennett*, 301 Or at 304 ("[W]e do not reach the issue of warrantless searches of unoccupied, parked or immobile vehicles.").

In *State v. Kock*, 302 Or 29, 725 P2d 1285 (1986), this court had the opportunity to consider the question left unaddressed in *Brown* and *Bennett* and declined to extend Oregon's automobile exception to the degree that the automobile

exception has been recognized under the federal Constitution. *See Carroll v. United States*, 267 US 132, 45 S Ct 280, 69 LEd 543 (1925) (exception applies to automobiles capable of mobility). In *Kock*, the police staked out the defendant's workplace for several hours and eventually saw him place merchandise stolen from his employer's business into his parked car and then return inside the store to continue his regular work shift. The police immediately searched the car for evidence of crime. This court held that the warrantless search of the defendant's parked car did not fall within the automobile exception because of the car's lack of mobility: "[A]ny search of an automobile that was parked, immobile and unoccupied *at the time the police first encounter it* in connection with the investigation of a crime must be authorized by a warrant issued by a magistrate or, alternatively, the prosecution must demonstrate that exigent circumstances other than the potential mobility of the automobile exist." 302 Or at 33 (Emphasis added). Unlike *Brown* and *Bennett* – as well as the present case – the police in *Kock* apparently never saw the car in motion but first encountered it parked, unoccupied, and immobile.

On appeal, defendant – and the dissenting Court of Appeals judge – incorrectly attempt to portray this case as identical to *Kock*, where the police came upon and searched a parked, immobile, and unoccupied car. Their mistake is their ignoring the crucial distinction under the automobile exception between mobility at the time of the stop and at the time of the search. The trial court here made the same mistake; in concluding that the automobile exception was inapplicable, it explained: "While the vehicle was mobile when Deputy Lucas first saw it, *it was not at the time*

*of the search.* Accordingly, the court would hold that the automobile exception does not apply in the case at bar." (App Br App 14) (Emphasis added). In his petition for review, defendant continues to misfocus on mobility at the time of the search rather than properly focusing on mobility at the time of the stop: "A car that is parked, unoccupied and immobile *at the time of a police search* does not present an exigency of the type contemplated by *Brown.* This is even when a car is parked, unoccupied and immobile only following police pursuit of the vehicle." (Pet Rev 1-2) (Emphasis added). This court, however, repeatedly has explained that it is the time of the lawful stop – not the time of the search – when the vehicle must be mobile. *See Brown,* 301 Or at 274; *Bennett*, 301 Or at 303; *Kock*, 302 Or at 33.

As a practical matter, whenever an officer conducts a search of a car, that car most likely is parked, immobile, and unoccupied – for safety and logistic reasons. Moreover, it cannot be clearer that *Brown* requires mobility only at the time the vehicle is stopped, not at the time of the search. Indeed, this court specifically noted in *Brown* that the potential mobility or lack of mobility after the stop has no bearing on the applicability of the automobile exception:

> In the case at bar, the trial judge recognized that the mobility of the vehicle alone created the exigent circumstances necessary to satisfy Article I, section 9, of the Oregon Constitution, and he *properly disregarded* that the defendant was under arrest and in police custody and that the car was under police control *when the search was conducted.* As previously mentioned, under the "automobile mobility" test it does not matter whether the passenger could have taken over custody of the car (which he eventually did), whether the police had adequate personnel to back-up the arrest, whether a tow truck was available, whether a magistrate was available by telephone or otherwise, or whether a threatening crowd gathered, etc. All the trial judge needed to find was what he did find: (1) the car was mobile at the time it was

> stopped by the police; and (2) the police had probable cause to believe that the car contained contraband or crime evidence. *** [W]e agree with the reasoning of the United States Supreme Court that for constitutional purposes no difference exists between, on the one hand, seizing and holding a car before presenting the probable cause issue to a magistrate and, on the other hand, carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Oregon Constitution.

301 Or at 278 (Footnote omitted) (Emphasis added).

Focusing on the key elements of mobility and when the stop occurred,[4] this case presents an unusual twist that none of the other reported Oregon cases do: must the police actually see the vehicle cease its movement for the automobile exception to apply or it is sufficient that the vehicle was moving when first observed by the police even though the actual cessation of the vehicle's movement – through a defendant's design or by fortuity – is not visible to the officer? Neither *Brown, Bennett, Kock,* nor any other of this court's cases require actual observation of the vehicle's physical stop as a prerequisite for application of the automobile exception; rather, they merely require its mobility incident to the stop and observation of its mobility when first encountering the vehicle in connection with investigating a crime. *See, e.g,, Kock,* 302 Or at 33. Given the variety of ways a lawful stop may occur, no principled reason requires the officer to actually see the car stop – particularly in a hot pursuit situation, as was the case here.

Consider, for example, these different scenarios following an officer's activation of his patrol car's overhead lights in a attempt to effectuate a traffic stop:

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[4] Defendant does not contend that the police lacked probable cause to search.

1). Driver # 1 sees the lights and immediately pulls over in view of the officer; 2). Driver # 2 pulls over at the first available safe point – an alleyway between two tall buildings – stops his car, and gets out to approach the officer. However, the buildings on either side of the alley obscure the officer's view of the actual cessation of the car's movement, and, when the officer arrives moments later and regains sight of the car, the driver already has stopped and exited his car, leaving it parked, immobile, and unoccupied; 3). Driver # 3 sees the overhead lights, speeds away, briefly escapes from view of the pursuing officer, and flees the scene mere seconds before the officer catches up to the abandoned car. Under defendant's view of the automobile exception, only the search of Driver # 1's car would be valid because the cars in the other two scenarios were parked, immobile, and unoccupied when the officer searched them.

The untenability of that argument is self-evident. It encourages motorists to refuse to stop when lawfully ordered and to evade police before bringing their vehicles to a stop. The Court of Appeals majority properly rejected that reasoning, explaining: "Under the dissent, defendant (and his car) would be afforded greater constitutional protections by virtue of defendant's unlawful evasion and flight than they would enjoy if defendant had lawfully complied with the command to stop. We need not, and do not, sponsor such an ironic result." *State v. Snow*, 179 Or App 222, 39 P3d 909 (2002). In each of the three scenarios presented above, the vehicles were mobile when first encountered by police and no significant temporal break interrupted

the observation of mobility and the actual search[5]; therefore, the automobile exception authorizes their warrantless search even if the officer does not actually see the vehicle stop.

The simple point is this: a car that is used in a high-speed chase to avoid being stopped and which is abandoned mere seconds before the pursuing officer catches up to it is distinctly different from a car the police previously have not seen moving and which is immobile, parked, and unoccupied when the police encounter it for the first time. The former is mobile at the time it was first encountered and when it stopped; the latter never was observed to be mobile and thus falls outside the scope of the Oregon automobile exception. *See Kock*, 302 Or at 33.

Defendant does not challenge the lawfulness of the stop[6] but apparently only the determination of when the "stop" occurred. In *State v. Holmes*, 311 Or 400, 407, 813 P2d 28 (1991), this court categorized police/citizen encounters into three groups:

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[5] In his petition for review, defendant asserts that "[p]olice arguably can now wait hours and days to perform a warrantless search, if the search at an earlier point would have been permissible." (Pet Rev 10-11). That claim is preposterous. Searches under the automobile exigency always have been required to occur close in time to the stop (and hence to the mobility). *See Brown*, 301 Or at 278 (describing the automobile exception search as an "immediate search" of the vehicle). The Court of Appeals correctly held that "at the time of the search, *which was proximate to the stop*, the police had probable cause to believe the car contained evidence of a crime[.]" *Snow*, 179 Or App at 235. (Emphasis added). Because the Court of Appeals held the stop here occurred earlier than the state believes it occurred, the time of the search in the state's view was even closer in time to the stop and to the vehicle's actual movement. Furthermore, nothing suggests that the search here occurred any later than it would have occurred had defendant remained in his car when the police arrived. Presumably the police would have had him step out of the vehicle before they searched his car in those circumstances. Thus no delay occurred here, and nothing in the Court of Appeals' holding suggests that its holding would authorize any delay beyond the short period that always has been allowed.

[6] See footnotes 1 and 2 for the basis of the deputy's probable cause to stop.

"mere conversation," "stops," and arrests. Only the last two are seizures under the Oregon Constitution. In addition, it held:

> [A] "seizure" of a person occurs under Article I, section 9, of the Oregon Constitution (a) if a law enforcement officer intentionally and significantly restricts, interferes with, or otherwise deprives an individual of that individual's liberty or freedom of movement; or (b) whenever an individual believes that (a) above, has occurred and such belief is objectively reasonable in the circumstances.

*Id.* at 409-10.

The Court of Appeals below relied on one of its recent decisions, *State v. Puffenbarger*, 166 Or App 426, 998 P2d 788 (2000), in deciding when the stop occurred here. In *Puffenbarger*, the police first encountered the defendant on the street and, during "mere conversation," asked consent to search his person. When the defendant refused consent and walked away – which was permissible because the police lacked reasonable suspicion to detain him – they followed him for 12 city blocks in their patrol car and on foot, and then confronted him with an accusation that he had lied to them about his arrest record. The Court of Appeals held that under the totality of the circumstances the defendant, who then ran away and ultimately was caught by the pursuing officers, was seized under the *Holmes* subsection (b) analysis "at the time that the police started chasing him" because he subjectively believed that his liberty or freedom of movement had been significantly restricted or interfered with by the officers' tracking of and chasing after him, and because his subjective belief was objectively reasonable: "The officers' conduct here was significantly beyond what would be acceptable from an ordinary citizen and amounted to more than an

inconvenience or annoyance to defendant. We conclude that defendant's belief was objectively reasonable under the totality of the circumstances here." *Id.* at 435.

*Puffenbarger* was not an automobile exception case, and its only application here is in determining when the "stop" and seizure occurred. Somewhat surprisingly, defendant does not cite *Puffenbarger* in his petition for review and makes only a passing reference to it in his brief on the merits, where he seeks to portray it as a "constructive detention" case. *See* Pet Br on Merits 12.

The Court of Appeals wrongly applied *Puffenbarger* and mistakenly concluded that a *Holmes* subsection (b) stop and seizure occurred here when the deputy activated his patrol car's overhead lights and began pursuing defendant. *See Snow*, 179 Or App at 234-35 ("defendant attempted to elude [Deputy] Lucas by driving at unlawful speeds, making at least three turns in rapid succession, running at least one stop sign, and then fleeing his car, all manifesting his subjective belief that Lucas's show of official authority not only was intended to – but had in fact – interfered with defendant's freedom of movement."). Defendant's conduct, however, belies the Court of Appeals' conclusion. The deputy did not order or force defendant to speed, run stop signs, or flee from his car. Rather than manifesting defendant's subjective belief that his freedom of movement had been interfered with, as the Court of Appeals held, defendant's conduct manifested exactly the opposite belief: that defendant believed he was not yet stopped or seized and that he intended to exercise his liberty and freedom of movement in unlawful ways to prevent the officer's attempted stop from materializing into a completed stop and seizure of his person.

This court previously has held that the exercise or demonstration of police authority – but without physically taking hold of a defendant – constituted a *Holmes* subsection (b) seizure only when the defendant submits to the display of authority and thus manifests his or her subjective belief that freedom of movement has been restricted. *See, e.g., State v. Dahl*, 323 Or 199, 208, 915 P2d 979 (1980) (defendant's submission to telephonic police order to "come out with your hands up" constituted a seizure inside his house under the *Holmes* subsection (b) test because he "reasonably believed that his liberty or freedom was intentionally and significantly restricted, interfered with, or otherwise deprived, and the facts that we have recited demonstrated that such belief was objectively reasonable in the circumstances"); and *State v. Jacobus*, 318 Or 234, 864 P2d 861 (1993) (mere activation of patrol car's overhead lights held not to constitute stop in and of itself; "stop" occurred only when officer ordered defendant out of the car, thus causing him to subjectively believe his liberty was interfered with, as manifested by his compliance with this assertion of police authority). Unlike the defendants in *Dahl* or *Jacobus*, defendant here refused to submit to police authority and cannot be deemed to have subjectively believed he was stopped or seized when he in fact did not stop and never came within police control.

Defendant apparently agrees. In his brief on the merits, he disclaims any subjective belief that he was seized or that his movement was restricted and suggests that he never saw the pursuing deputy or realized that he was being chased. (Pet Br on Merits 11-12). Without a subjective belief that he had been seized, defendant cannot fit within the *Holmes* subsection (b) analysis. In addition, without actual

seizure, he cannot fit within the *Holmes* subsection (a) analysis. *See California v. Hodari D.*, 499 US 621, 111 SCt 1547, 1550, 113 LEd2d 690 (1991) ("The word "seizure" readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful. * * * It does not remotely apply, however, to the prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee. That is no seizure."). The stop arose here when defendant halted his car's movement in belated compliance with the deputy's lawful directive. At most, though, that event constituted only a "stop" of defendant's car, rather than defendant personally, because he fled the scene and did not submit to the officer's lawful authority to stop and seize his person. The car indeed was mobile when it was lawfully stopped.

Even if defendant here subjectively believed he had been seized, that belief was not objectively reasonable. The Court of Appeals below dealt only with the subjective element of the *Holmes* subsection (b) analysis and failed to discuss or directly conclude that defendant's belief was objectively reasonable under the totality of the circumstances. Where defendant did not submit to police authority but instead flaunted it by fleeing, and where the police were not in close physical proximity to be able to physically control, trap, or surround him, defendant's conduct did not objectively indicate that he subjectively believed he was seized, and it is not objectively reasonable to believe he was stopped and seized when he in fact never stopped and when he never came into police control or custody.

*Dahl, Jacobus,* and *Puffenbarger* all are based not on actual physical seizure by police but on those defendants' objectively reasonable subjective belief that the police had seized them. In *Jacobus* and *Dahl* that objectively reasonable subjective belief was manifested by those defendants' submission to police authority. In *Puffenbarger*, the defendant did not submit to police authority, but he subjectively believed the police tracking of him and their refusal to let him leave without interference, coupled with their relatively close proximity, constituted a deprivation of his freedom of movement. In other words, the defendant believed he was trapped, and that subjective belief was objectively reasonable. The police conduct in *Puffenbarger* (hounding the defendant and following him at close range for 12 blocks when they lacked reasonable suspicion of criminal conduct and after defendant affirmatively had expressed his desire to leave) is a far cry from the police conduct here – where the police had probable cause to stop defendant and were not in close proximity to physically interfere with his freedom of movement. Deputy Lewis clearly was attempting to stop defendant, but he was not successful; defendant successfully eluded capture by abandoning his car and leaving it for police to seize. Because that car was mobile while the police chased it in an attempt to seize it, and because it remained mobile until abandoned, the automobile exception applied and authorized a warrantless search for evidence of crime and to forestall defendant's escape.

The car here was lawfully stopped or seized when it ceased moving in response to the lawful police directive for it to stop and therefore was mobile when

stopped. Merely because defendant stopped his car when shielded from the deputy's sight makes no difference. The car was an instrumentality of defendant's prior violations and crimes and was itself subject to lawful seizure. Regardless of whether defendant's car was lawfully "stopped" when the patrol car's overhead lights were activated and the deputy began chasing after him (as the Court of Appeals held) or not until he stopped the car while eluding the police in response to the police directive (as the state believes), defendant's car was mobile at both those times. Consequently, the automobile exception allowed a warrantless search of the car for evidence of crime and to forestall defendant's escape.

**Exigent Circumstances**

In addition to, but wholly apart from, the automobile exception, exigent circumstances authorized a warrantless search of defendant's car. The trial court concluded that exigent circumstances did not support the warrantless search (App Br App 14), and the Court of Appeals did not consider this justification for the search because it found the automobile exception applicable. *Snow*, 179 Or App at 236 n 13. The state renews the arguments it made at trial and in the Court of Appeals that the exigent circumstances here allowed a warrantless search. *See, e.g.*, App Br 10-13.

First and foremost, this case is a hot pursuit case. The police had attempted to conduct a lawful traffic stop, but defendant refused to stop and instead led them on a high-speed chase through a residential neighborhood. (Tr 10-13). Defendant was committing a continuing crime by eluding the police, and his car was an instrumentality of that crime. At the time the police caught up to defendant's hastily ditched car, and before they conducted a search of it, they believed defendant also had

committed trespass and burglary by running through nearby yards and through a house in making his escape. (Tr 15-17). They also just had learned from a bystander that it was the third time defendant had evaded police in this manner. (Tr 16-17). They knew defendant was not the registered owner of this car but did not have any information as to his identity. (Tr 18). Deputy Lucas momentarily had seen defendant from the neck up immediately before he tried to stop him, but he did not recognize defendant. (Tr 9).

The information that the police had about defendant's identity was unlikely ever to lead to his capture. The best and most reasonable way to find something to identify defendant – and thereby allow them to capture him – was to look inside his car to see if he had left any ID or other object that would identify him. Although four officers were in the general area searching for defendant, they were having no success finding this needle in a haystack. The search inside the car for defendant's identification was done to help narrow their search by possibly showing where defendant would run to and thus allow them to concentrate in one area to enable them to capture him before he disappeared for good. It also would allow them to stake out his home if they were unable to catch him in the immediately vicinity. In addition, the search might have provided important safety information (such as whether defendant was armed).

The trial court's stated reasons why exigent circumstances were not present are unpersuasive and, in some instances, factually unsupported.[7] None of the

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[7] The trial court's findings on exigent circumstances were as follows:

*Footnote continued...*

information the police had would reasonably allow a positive identification of defendant. Without his name, age, height, weight or other identifying features, the most the police could do would be to put out the most general of John Doe all-points bulletin. Moreover, nothing in this record suggests that the police could have contacted the car's registered owner or, even if they could, that she would have or could have identified defendant. Even if the trial court was correct that the manhunt "lasted a very short time" – something not apparent from this record – that fact would not mitigate the need to identify defendant; rather, it points up their need for more information to direct their search in a more fruitful direction because their blind search had produced nothing. Similarly, the availability of an officer to secure defendant's car did little to mitigate the exigency; although it would keep the car from

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*(...continued)*

> In the case at bar, Deputy Lucas testified he got a "pretty good look at the Defendant from the bottom of the neck up". Prior to the commencement of the search, Deputy Lucas had run the license plate of the vehicle and determined Debra K. was the registered owner. There was no evidence Deputy Lucas tried to contact the registered owner to determine who she may have loaned the car to despite the fact she had a local address. Further, two witnesses had seen the Defendant along the chase and after Defendant bailed from vehicle including one witness who had stated this was the third time Defendant had evaded the police Deputy Lucas had a sufficient description of information that could have led to a positive identification prior to the search that a "practical necessity" was not present. Additionally, the "manhunt" in this case lasted a very short time and there were three other officers in the area available to watch the vehicle while a warrant could be obtained. Deputy Lucas testified that once he returned to the Defendant's vehicle there was no opportunity for anyone to do anything with the vehicle. There were no unusual problems in the evidence that made getting a warrant more difficult nor were there any life threatening circumstances. The exigency justifying a warrantless search of the Defendant's vehicle simply did not exist.

(App Br App 14-15).

leaving or being tampered with, it would exacerbate the likelihood that defendant would escape because it would have reduced the number of officers searching the area by one quarter.

The whole point of searching defendant's car was to identify him in the hope that his name and/or address would assist their search and allow them to capture him quickly – before he escaped from the area and before he committed more crimes (such as the break-in he committed in effectuating his escape on foot). The delay inherent in applying for a warrant virtually would have guaranteed that the police would not be able to capture defendant quickly. Their best, and most reasonable, option was to search defendant's car for identification that would assist them in capturing him. That defendant successfully eluded police for several days does not detract from the exigency as it existed at the time. Their limited search was reasonable in these circumstances and was designed to preclude defendant's escape and effectuate a quick capture.

In that respect, this case presents essentially the same justification of exigency as a situation where police chase a bank robber's car as it flees the scene of the robbery. If the robber ditches his car and escapes on foot, certainly the police would be authorized to conduct a warrantless search of the getaway car to learn the robber's identity and to forestall his escape. This case is no different, and exigent circumstances – in addition to the automobile exception – justified the warrantless search of defendant's car for evidence identifying him to forestall his escape and for evidence of crime.

## CONCLUSION

The Court of Appeals' decision should be affirmed.

Respectfully submitted,

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**NOTICE OF FILING AND PROOF OF SERVICE**

I certify that I directed the original Respondent's Brief on the Merits to be filed with the State Court Administrator, Records Section, at 1163 State Street, Salem, Oregon 97301-2563, on April 30, 2003.

I further certify that I directed the Respondent's Brief on the Merits to be served upon Peter A. Ozanne and Ingrid A. MacFarlane, attorneys for petitioner on review, on April 30, 2003, by mailing two copies, with postage prepaid, in an envelope addressed to:

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