IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON, Plaintiff-Respondent, Petitioner on Review, v. KAYLAN MICHELLE WINN, Defendant-Appellant, Respondent on Review.	Marion County Circuit Court No. 12C46360 CA A154313 SC S064263

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 Marion County
Honorable ALBIN W. NORBLAD, Judge

Opinion Filed: May 25, 2016
Author of Opinion: Presiding Judge Sercombe
Before: Presiding Judge Sercombe, Chief Judge Hadlock, and Judge Tookey

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

QUESTION PRESENTED AND PROPOSED RULE OF LAW

Question Presented

If a person voluntarily consents to have a courthouse security officer "search" her purse, and if the words used to request and give consent do not further qualify the consent, does Article I, section 9, of the Oregon Constitution permit the officer to open closed, unlocked containers inside the purse?

Proposed Rule of Law

Yes. If a person consents to a search of her purse, and if the words used to request and give consent do not further qualify the consent, the consent authorizes an officer to open closed, unlocked containers inside the purse—unless other circumstances show that the consent did not extend so far.

SUMMARY OF ARGUMENT

A courthouse security officer asked defendant for consent to conduct a "search" of her purse, and defendant said yes. That consent authorized the officer, as part of the search, to open a make-up compact inside the purse, and to thereby discover methamphetamine. The Court of Appeals erred by concluding otherwise.

Viewed objectively, the words used to request and grant consent show that defendant's consent encompassed the opening of unlocked, closed

containers inside her purse. A "search" commonly is understood as a careful, thorough, rigorous inspection of an item. Hence, if a person consents to a "search" of a purse without qualification, the person consents to an inspection meant to determine the purse's contents—which include containers within the purse *and* any materials inside those containers.

The other circumstances further support the conclusion that defendant's consent encompassed the opening of defendant's compact. Defendant never asked the security officer to stop searching and expressed no surprise when the officer opened the compact. Moreover, immediately before consenting to the search, defendant twice let the purse be scanned by an X-ray machine—a machine whose purpose is to enable officers to see inside opaque containers. And because the person seeking consent was a courthouse security officer, a reasonable person would have presumed that the search would encompass any container that could have held items (including drugs) that could not legally be possessed in the courthouse—a location where the need to exclude contraband is, if anything, greater than the need to do so in most other public locations. Each of those circumstances supports the conclusion that defendant's consent encompassed the opening of opaque containers inside the purse.

To be sure, circumstances can exist that might limit an otherwise general consent to a search of a purse: If an officer seeks consent to search for a specific item, consent might not encompass the opening of containers that are

too small to contain the item. Further, if an officer would need to break or dismantle a container to open it, the consent generally will not authorize such conduct. Here, neither circumstance existed. Instead, defendant's consent encompassed the opening of unlocked, closed containers inside her purse, including her compact.

SUMMARY OF FACTS

A. Defendant twice let her purse go through a courthouse X-ray machine, she then consented to a "search" of the purse, and methamphetamine was found inside a compact in the purse.

On July 6, 2012, Veronica Spencer-Wold, an employee of DePaul Security, was working as a security officer for the Juvenile Department at the Marion County Courthouse. (11/29/12 Tr 8; *see id.* at 4, containing testimony that a contract exists "between the court and the Sheriff's Office to provide security for the courts * * * through DePaul"). Defendant had entered the courthouse, and Spencer-Wold asked her to place her "personal property" on the X-ray belt. (*Id.* at 8). Defendant placed her purse on the belt, and the X-ray machine showed "what appeared to be a compact with a possible * * * spoon." (*Id.*). To the naked eye, the compact was opaque, although the X-ray enabled the security officer to see inside it. (*See id.* at 16-17, containing officer's testimony that "to look at it, physically," one "couldn't see * * * absolutely inside of it"; *id.* at 16, containing prosecutor's question whether officer could "see in" the compact, and containing security officer's response that "[t]hrough

the x-ray, I could"). The security officer thought "it might be some sort of drug paraphernalia or something." (*Id.* at 15). She also testified that "controlled substances and paraphernalia are considered contraband" at the courthouse. (11/29/12 Tr 15).

The security officer then asked defendant, "May I please run this through a second time," and defendant said "yes." (11/29/12 Tr 8).

After the security officer again ran defendant's purse through the X-ray machine, she turned to defendant and said, "[M]ay I please search your purse." (11/29/12 Tr 9). Defendant said, "Yes." (*Id.*).

The security officer "started searching [defendant's] bag, and pulled out the compact." (11/29/12 Tr 9). She "opened it up and noticed a small baggie with a powdery substance in it." (*Id.*). Defendant was "present the entire time." (*Id.*). She did not "at any point ask [the officer] to stop searching." (*Id.*).

Marion County Sheriff's Deputy Katherine Stevens testified that, on the day in question, "there [were] signs out at the juvenile department that notify a person that they are subject to search on entry." (11/29/12 Tr 4). No other evidence was presented about the placement or contents of the signs. Defendant did not testify at the hearing, and nothing in the record indicates that she had seen the posted signs.

The record does show that the Marion County presiding judge issued a seven-paragraph order in December 2011, and that the order's first paragraph generally prohibited possession of firearms "or other dangerous weapons" in the Marion County Juvenile Court or County Courthouse, while also referring to exceptions to the prohibition. (ER-21).[1] The second through fifth paragraphs described other requirements for, and restrictions on, possession of firearms and dangerous weapons, and the sixth paragraph stated "that signs shall be posted at each entrance to each facility as identified above." (*Id.*).

B. After being charged with methamphetamine possession, defendant moved to suppress evidence of the drugs inside her purse, but the trial court ruled that her "unqualified consent" authorized their discovery.

After determining that the substance in the compact was methamphetamine, the state charged defendant with one count of possession of methamphetamine. (ER-1, Indictment; *see* ER-2, Motion to Suppress, noting that Marion County Custody Report described the compact as containing a "blue mini baggie [that] tested positive for methamphetamine").

Defendant moved to suppress the evidence found in her purse (ER-2, Motion), and the trial court denied the motion. The trial court concluded that

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[1] "ER" refers to the Excerpt of Record attached to defendant's appellant's brief in the Oregon Court of Appeals. The cited order was admitted as Exhibit 1 at the suppression hearing. (Exhibit List Report, created 11/29/2012).

defendant had given "unqualified consent" to the search of her purse, that her consent encompassed the opening of the compact, and that no basis to suppress existed. (ER-19, Opinion Letter; ER-20, Order).

Following a stipulated facts trial, the trial court convicted defendant of possession of methamphetamine (ER-42, Amended Judgment), based on the methamphetamine found in the purse. (4/16/13 Tr 3, Stipulated Facts Trial, containing defense counsel's representation that methamphetamine was discovered in the purse, and including counsel's reference to facts adduced at the suppression hearing).

C. The Court of Appeals held that defendant's consent did not encompass the opening of the compact found in her purse.

Defendant appealed, and the Court of Appeals reversed. The Court of Appeals held that "the state failed to prove that the search of defendant's makeup compact was within the scope of her consent to the search of her purse." *State v. Winn*, 278 Or app 460, 471, 375 P3d 539, *rev allowed*, 360 Or 400 (2016). Consequently, when the security officer opened defendant's compact, she violated defendant's rights under Article I, section 9, of the Oregon Constitution. *Id*.

The Court of Appeals concluded that

> where, as here, the officer's request to search neither explicitly nor implicitly specifies an objective of that search, the mere fact that the officer asked to "search" defendant's purse is not enough to allow a reasonable person to infer that the scope of that request

> extended beyond an outward examination of the contents of the purse.

Winn, 278 Or App at 467. The court further stated that "there were two signs at the entrance of the courthouse: one informing people that they were subject to search before entering the facility and another informing them that 'firearms' and 'dangerous weapons' were prohibited in the building." *Id.* at 469. The court "discern[ed] nothing that would have led a reasonable person to conclude that, when she asked to search defendant, Spencer-Wold intended to search for drugs or drug paraphernalia that would fit inside of a small, closed container within defendant's purse." *Id.* at 469. Similarly, "that the search occurred at a security checkpoint would not lead a reasonable person to infer that Spencer-Wold was looking for drugs or drug paraphernalia." *Id*.

ARGUMENT[2]

A. Under the Oregon Constitution, the scope of a consent to a search depends on the totality of the circumstances; to authorize the opening of an item, consent need not expressly refer to that item.

Article I, section 9, of the Oregon Constitution provides:

> No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

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[2] Pages 7-17 of this argument are essentially identical to the argument that appears at pages 8-18 of the state's petitioner's brief on the merits in *State v. Blair*, 278 Or App 512, 380 P3d 313, *rev allowed*, 360 Or 400 (2016). Both cases will be argued on March 9, 2017.

> search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Under that provision, warrantless searches by the state are "*per se* unreasonable," "subject to certain specifically established and limited exceptions." *State v. Bonilla*, 358 Or 475, 480, 366 P3d 331 (2015). One of those exceptions is consent, which "relinquishes a person's privacy interest in property so that there is no unlawful intrusion." *Id.*, 358 Or at 480. "When the state relies on consent, it must prove by a preponderance of the evidence that 'someone having the authority to do so' voluntarily gave the police consent to search the defendant's property and that any limitations on the scope of the consent were complied with." *Id.* at 481, quoting *State v. Weaver*, 319 Or 212, 219, 874 P2d 1322 (1994).

In this case, it is undisputed that defendant (1) had authority to consent to the opening of the compact inside her purse and (2) voluntarily consented to a search of her purse. The question is whether her voluntary consent encompassed the opening of the compact inside her purse. The Court of Appeals, in assessing the scope of the given consent, correctly explained that the "scope of consent is determined based upon what a typical, reasonable person would have understood by the exchange between the officer and the [defendant] * * * in light of the totality of the circumstances surrounding the

grant of consent in a particular case." *Winn*, 278 Or App at 465 (quote marks and citation to prior Court of Appeals decision omitted); *see also State v. Helow*, 171 Or App 236, 240-41, 15 P3d 103 (2000), *rev den*, 332 Or 56 (2001) ("the intent of the parties is determined objectively in light of the totality of the circumstances"). The United States Supreme Court has applied that same general standard under the Fourth Amendment to the United States Constitution, which is worded similarly to Article I, section 9.[3] *See Florida v. Jimeno*, 500 US 248, 251, 111 S Ct 1801, 114 L Ed 2d 297 (1991) ("[t]he standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?"). In sum, when a defendant voluntarily consents to a search, a court must examine the words used to request consent, the words used to give consent, and the surrounding circumstances to determine the scope of the consent.

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[3] The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

But to prove that the communicated consent authorized an officer to open a particular item, the state need not show that the words used expressly referred to that item. The state instead may rely on other circumstances to establish that the communicated consent encompassed the opening of the item. *State v. Paulson*, 313 Or 346, 833 P2d 1278 (1992), supports that conclusion. In *Paulson*, the record sufficed to show that the defendant consented to an officer's entry into her house, even though she had not explicitly invited the officer in: Evidence that she called 9-1-1 and "asked for emergency assistance for [her husband]," that she "did not limit her request to medical personnel," and that "she never asked the police to leave" after seeing an officer enter with other emergency personnel, permitted a conclusion that she "consented to the officers' presence." *Paulson*, 313 Or at 352.

Thus, to prove that consent authorized an officer to open a particular item, the state may rely on the totality of the circumstances; it need not prove that the words used expressly referred to that item.

B. A reasonable person would understand an unqualified and voluntary consent to search a purse as authorizing an officer to open closed, unlocked containers inside the purse.

1. The requirement that consent must be voluntary supports that conclusion.

When a court assesses the scope of a defendant's consent, it generally does so—as in this case—only after the state has shown that consent was "voluntary." That means that nothing coerced the defendant's choice to

consent; nothing impaired the defendant's ability to either grant or deny the request for consent. *See State v. Unger*, 356 Or 59, 72, 333 P3d 1009 (2014) (for consent to exempt the state from Article I, section 9's warrant requirement, "the state must prove that the defendant's consent was the product of his or her own free will, rather than the result of coercion").

That the person who consented exercised the ability to make a free-will decision, and thereafter retained that ability, is significant. That freedom means that the person necessarily was able to limit the consent, and to place express restrictions on what the state could examine. Similarly, the person remained free, after initially consenting, to subsequently limit the scope of the consent or to revoke consent altogether. That a person voluntarily consented to a general and unqualified request to conduct a search, and that the person chose not to limit or qualify the consent despite the ability to do so, is an important factor when assessing the scope of that consent.

2. The common meaning of "search" supports the conclusion that an unqualified consent to a search of a purse authorizes the opening of containers inside the purse.

The security officer asked defendant, "[M]ay I please search your purse," and defendant said yes. (11/29/12 Tr 9). The key word in the exchange thus was "search." In light of the word's common meaning, a request for consent to search a purse is akin to asking, "May I inspect your purse to determine its contents?" In turn, a purse's contents include additional containers inside the

purse *as well as* the contents of those containers. Hence, one who consents to the search of a purse generally consents to an examination that will encompass the interior of containers within the purse (with some possible exceptions, as is discussed later).

Dictionary definitions of the word "search" support that conclusion. *Webster's Third New International Dictionary* at 2048 (unabridged ed 1993), for example, defines the noun "search"—at least as it relates to personal property or other objects—as "an act or the action of searching: an endeavor to find, ascertain, recover, or bring into view," or as "a critical scrutiny or survey (as of a ship's cargo)." (App-1). The same dictionary defines the verb "search," as it pertains to personal property or objects, as a careful, thorough, rigorous examination of an object and its contents: Definition **1** defines search as "to look into or over carefully or thoroughly in an effort to find something"; **1b** defines search as "to look into with thorough scrutiny and rigorous objective examination"; **1c** defines it as "to look through or explore thoroughly esp. by checking on possible places of concealment"; **1d** defines it as "to peruse thoroughly and usu. with a particular objective: subject to a careful check." (App-1, *Webster's Third New Int'l Dictionary* at 2048).[4]

[4] Definitions **1a** ("to go about or traverse in careful quest"), **1e** ("to examine (a person) thoroughly"), and **1f** ("to look at fixedly in order to or as if in order to discover true intention," as in "searched him with a glance") of the

Footnote continued…

As a result, when a person consents to a general "search" of a purse, and places no limits on the search, the consent—viewed objectively—is a consent to a careful, thorough, rigorous inspection meant to determine the purse's contents. Those contents necessarily include not just any containers within the purse, but any items or materials inside those containers. Consequently, a consent to "search" a purse encompasses consent to open unlocked, closed containers within the purse.

The Second Circuit has, based on the common meaning of "search," reached an analogous conclusion in the context of a car search. That court has held that a defendant's consent to a "search" of his car entitled officers to open "closed containers discovered inside," even though the defendant "was not informed of the purpose of the search." *United States v. Snow*, 44 F3d 133, 135 (2d Cir 1995). In so holding, the court noted that the definitions of "search" in *Webster's New World Dictionary* at 1210 (3d ed 1988), and in the *Oxford English Dictionary* at 804-05 (2d ed 1989), show that "the term 'search' implies something more than a superficial, external examination," and "entails 'looking through,' 'rummaging,' 'probing,' 'scrutiny,' and 'examining internally.'" *Snow*, 44 F3d at 135.

(…continued)
verb "search" appear to be inapplicable to a search of personal property. Definition **2** through **4** also appear inapplicable. (App-1).

The common meaning of "search" shows that an unqualified consent to "search" a purse encompasses consent to open unlocked, closed containers within the purse.

3. If consent to a "search" is requested by a police officer or courthouse security officer, that fact supports that same conclusion.

Any time that consent to a general "search" of a piece of property is requested by a law enforcement or official courthouse-security officer, that will further support the conclusion that consent encompasses the opening of unlocked containers found within the examined object.

As the Second Circuit commented in *Snow*, it generally is "self evident" that a police officer who seeks consent to search is seeking "evidence of illegal activity"; further, "[i]t is just as obvious that such evidence might be hidden in closed containers." *Snow*, 44 F3d at 135 ("[i]t is self-evident that a police officer seeking general permission to search a vehicle is looking for evidence of illegal activity"). Similarly, if a courthouse security officer asks for consent to a "search," it may be presumed that the object of the search is anything that may not lawfully be possessed inside a courthouse, including drugs or other illegal items that are relatively small. If anything, the need to exclude drugs and other contraband from a courthouse is greater than the need to do so in other public locations. It is important to ensure that inmates passing through a courthouse do not gain access to contraband that might then be introduced into

a correctional facility. It also is important to ensure decorum and order in courtrooms, and to prevent the entry of substances or items that might impair a judge's ability to do his or her job.

When a person consents to a courthouse security officer's request to search a purse, the consent generally encompasses consent to look inside closed, unlocked containers.

4. Even so, the circumstances in a particular case may show that consent to search a purse does not encompass opening closed containers.

Even when a person consents to the search of a purse, surrounding circumstances might indicate that consent is not granted to the opening of closed containers inside the purse. At least two common circumstances will generally indicate that the consent does not extend so far.

First, if the officer seeking consent has communicated that the object of the search is something that would not fit within containers of a certain size, consent might not extend to opening such containers. For example, if an officer asks for and obtains consent to search a duffel bag for a bowling ball, consent would not necessarily encompass the opening of a make-up compact or aspirin bottle found inside the bag.

Second, consent to search a purse generally will not encompass opening closed containers inside the purse that can be opened only by breaking or damaging them. If an officer would need to break or damage a closed item to

determine its contents, that generally will fall outside any general consent to search. An objectively reasonable person would not understand consent to a "search"—even though stated unconditionally—as authorizing conduct that would harm or disassemble property.

Finally, it should be noted that resolving this case in the state's favor will not suggest that general consent to search a purse or bag necessarily authorizes the opening of a cell phone or laptop found inside it, or the scrutiny of data inside such items. Under the state's proposed rule, consent to search a purse or similar item generally will authorize an officer to open closed, unlocked containers for the purpose of determining what types of physical *objects* they contain. Historically, those faced with an officer or courthouse security officer's request for consent to search generally would have presumed that the focus of the search (absent some indication of a different focus) would encompass *objects* that may not lawfully be possessed or that constitute plain evidence of a crime. Whether citizens today would presume that such a search would encompass a search for *data*—including information contained in a cellular phone or analogous device—may not be so apparent. Whether consent to search a purse encompasses consent to open a cell phone and peruse the data within it is better left for another day.

5. As a general matter, consent to search a purse authorizes the opening of unlocked, closed containers inside it.

Although the Court of Appeals correctly noted that "the scope of a defendant's consent to a thorough 'search' for drugs will extend to smaller containers" that might contain drugs, *Winn*, 278 Or App at 467-68, its ultimate holding creates a paradox: Under the Court of Appeals' holding, agreement to a general search will often authorize a *narrower* search than will agreement to a search whose stated objective is more limited. The Court of Appeals held that consenting to a "search" without qualification precludes the opening of closed containers inside a purse, and that consenting to a search whose stated objective is limited to a particular item (drugs, for example) authorizes a *more intrusive* inspection (including opening closed containers). The rule should be the reverse: When the request to search a purse is general and unqualified, subsequent consent should be deemed general as well, and as encompassing efforts to determine the purse's contents, including contents within closed containers inside the purse. When the request is limited, and is expressed as a request to search for a particular item, consent should be deemed similarly limited—limited to the portions of the purse capable of containing that item.

If a person consents to a search of a purse and does not qualify the consent, consent authorizes an officer to open closed, unlocked containers

inside the purse, unless other circumstances show that the consent did not extend so far.[5]

C. The totality of the circumstances shows that defendant's consent was unqualified, and that it authorized the security officer to open closed unlocked containers inside her purse.

1. The request for consent to "search" the purse, defendant's affirmative response, and defendant's conduct after, show that defendant gave unqualified consent to a search of her purse.

Nothing that the security officer said before requesting consent to search defendant's purse suggested that she was seeking consent for a limited purpose, or that she was otherwise asking to conduct a search that would be restricted in any way. Instead, she simply asked defendant, "[M]ay I please search your

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[5] At least four federal circuit courts of appeal have reached an analogous conclusion under the Fourth Amendment. *See United States v. Infante-Ruiz*, 13 F3d 498, 500, 505 (1st Cir 1994) (concluding that "*Jimeno* would seem to allow a finding of consent" to search a briefcase found inside a car, based on the driver's agreement to give "consent to search the vehicle," even though officer did not tell the driver "that he was looking for drugs," and holding that consent did not extend to the briefcase contents only because the driver said that it belonged to someone else); *Snow*, 44 F3d at 135 (in which the Second Circuit held that consent to "search" a car, given by a defendant who "was not informed of the purpose of the search," entitled officers to search closed containers inside the car); *United States v. Crain*, 33 F3d 480, 483, 484-85 (5th Cir 1994), *cert denied*, 513 US 1169 (1995) (consent to "look inside the car" entitled officers to open a paper bag inside car that had "been twisted and rolled up," although officers "did not tell [the defendant] what they were looking for in the search"); *United States v. Lechuga*, 925 F2d 1035, 1037, 1042-43 (7th Cir 1991) (because "the scope of the consent [the defendant] gave on the form he completed was unlimited," the consent—which appeared to refer to the defendant's apartment—entitled law enforcement officials to look inside a suitcase found inside the apartment).

purse." (11/29/12 Tr 9). Similarly, defendant said nothing to qualify her consent or to indicate that any of the contents of the purse would be off limits. Defendant responded to the request for consent with a simple "Yes." (*Id.*).

Consequently, the words used to request and give consent did not qualify or limit the search. The common meaning of the word "search," as used by the security officer, supports the conclusion that the consented-to search encompassed the opening of unlocked, closed containers inside the purse.

That conclusion is consistent, moreover, with defendant's behavior during and after the search. Although defendant was "present the entire time," she did not "at any point ask [the security officer] to stop searching" (11/29/12 Tr 9), or express surprise when the officer opened her compact. Although those circumstances are not by themselves dispositive, they are pertinent. Construing defendant's affirmative broad consent as encompassing the opening of containers within the purse is absolutely consistent with her behavior when the security officer opened the compact. *Cf. Paulson*, 313 Or at 352 (evidence that defendant called 9-1-1 and requested emergency assistance for her husband and "did not limit her request to medical personnel," and that "she never asked the police to leave" despite observing an officer enter with other emergency personnel, permitted trial court to conclude that she had consented "to the officers' presence").

2. Other circumstances—including defendant's submission of her purse to an X-ray machine—support the conclusion that her consent encompassed opening closed containers.

It also is pertinent that, immediately before consenting to the search of her purse, defendant permitted her purse to be subjected to an X-ray. In fact, she did so twice. (11/29/12 Tr 8-9). Defendant thus indicated that she had no objection to the use of technology whose purpose is to enable security officers to see inside opaque containers. (*See id.* at 16, containing security officer's testimony, when asked if she could "see in" the compact, that "[t]hrough the x-ray, I could"). That further supports the conclusion that defendant's subsequent consent encompassed the opening of unlocked, closed containers inside the purse.

Finally, it is pertinent that the person seeking consent was a courthouse security officer. Faced with a request to search a purse by a courthouse security officer, a citizen generally will presume that the officer is searching for objects, regardless of size, that may not lawfully be possessed in the courthouse—which is a public building where the need to exclude contraband is likely greater than the need in most other public locations. Such objects would include drugs or other substances that could fit inside a compact or analogous container. The totality of the circumstances supports the conclusion that defendant's consent encompassed the opening of unlocked, closed containers inside her purse.

3. The Court of Appeals' reference to signs in the courthouse provides no basis for concluding that defendant's consent was limited.

The Court of Appeals wrote that,

> based on the [courthouse] sign announcing the prohibition of "firearms" and other "dangerous weapons," a reasonable person would more likely have inferred that those items were the target of the search, not drugs, drug paraphernalia, or any other contraband that might fit inside a makeup compact.

Winn, 278 Or App at 470. The court appeared to view the courthouse signs as evidence that defendant's consent was limited to portions of the purse, and containers inside the purse, that were large enough to hold a gun. Yet for at least three independent reasons, the evidence about the signs at the courthouse does not support that conclusion.

First, although the record contains testimony that "there [were] signs out at the juvenile department that notify a person that they are subject to search on entry," the record contains no additional evidence about what those signs said or where they were posted. (11/29/12 Tr 4). As a result, the record does *not* establish that any posted signs referred to guns and dangerous weapons as the object of whatever search might occur. The record does show that the Marion County presiding judge had issued an order prohibiting firearm and dangerous-weapon possession, and stating "that signs shall be posted at each entrance to each facility as identified above." (ER-21). But nothing shows that any signs that were

actually posted referred either to dangerous weapons or to searches for such items.

Second, even if the posted signs had stated that entrants would be subject to a search for firearms and dangerous weapons, nothing shows that defendant had seen or read any such signs before consenting to the search of her purse. The record does not establish the precise location of the signs or establish that defendant necessarily would have passed them, and defendant did not testify at the suppression hearing. Nothing in the record indicates that she had seen, much less read, any posted signs.

Third, even if the signs were as the Court of Appeals described them, and even if defendant *had* read them, that would not support the Court of Appeals' conclusion that defendant's consent did not encompass opening closed containers. Instead, the totality of the circumstances would still show that defendant's consent to search was unlimited: Neither the request for consent nor the consent itself referred to guns or weapons, to any signs in the courthouse, or to the courthouse policy on guns or weapons. Further, defendant gave consent immediately after allowing her purse to run through an X-ray machine—a machine that is designed to detect not just weapons, but essentially anything that has been placed inside an opaque container.

The words used to request and grant consent, and the other circumstances surrounding the consent, show that defendant's voluntary consent was unlimited, and that it encompassed the opening of unlocked, closed containers inside her purse. The trial court correctly denied defendant's motion to suppress.

CONCLUSION

This court should reverse the Court of Appeals' decision and affirm the trial court's judgment.

Respectfully submitted,

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NOTICE OF FILING AND PROOF OF SERVICE

I certify that on December 5, 2016, I directed the original Brief on the Merits to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Ernest Lannet and Emily P. Seltzer, attorneys for 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 5,385 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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