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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

STATE OF OREGON,)	No. 18CR64910
)	
Plaintiff,)	MOTION TO SUPPRESS
)	
vs.)	Oral Argument Requested
)	
SAUL REYES-HERRERA,)	
)	
Defendant.)	

COMES NOW the defendant, by and through the undersigned attorney, and moves this Court for an Order suppressing the stop of the Defendant and the seizure of any and all evidence obtained as a result therefrom, including the acquisition of any and all oral derivative evidence.

Pursuant to UTCR 4.050, defendant requests oral argument, official court reporting services, and estimates the time necessary for this hearing will not exceed 2 hours.

This Motion is based upon the attached Memorandum of Law, and is, in the opinion of counsel, well-founded in law and not made nor filed for the purpose of delay.

DATED this 10th day of January, 2019.

/s/ Gabriel Biello
Gabriel Biello, OSB #055265
Attorney for Defendant

POINTS AND AUTHORITIES:
Oregon Constitution, Art. I, Sec. 9
United States Constitution, Amendments IV, XIV

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

STATE OF OREGON,) No. 18CR64910
)
Plaintiff,) MEMORANDUM OF LAW IN SUPPORT
) OF MOTION TO SUPPRESS
vs.)
)
SAUL REYES-HERRERA,)
)
Defendant.)

MOTION

The defendant moves the court for an order suppressing evidence of the fact that he was stopped and searched, together with any evidence that is the direct or indirect product of the stop, including but not limited to statements, observations, the arrest itself, and test results, if any, on the grounds and for the reasons that:

- A) The Defendant was stopped and without reasonable suspicion of a crime or probable cause of a violation.
- B) The search of the Defendant was not lawful.

The stop of the defendant and the following search was in violation of ORS 131.615, ORS 153.039 and/or Article I section 9 of the Oregon Constitution and the Fourth and Fourteenth Amendments of the United States Constitution.

FACTS

The following facts are from the police report of Mathew Delepine of the Hillsboro Police Department. On September 20th, 2018 at 3:20 PM Delepine was driving near the Les Schwab at 320 SE 10th Ave in Hillsboro. He saw a “male walking south in the parking lot and a mail walking north in the parking lot. The men were about 10 feet apart and walking directly away from each other like they had just been face to face. The male walking south had several bills of US currency in his hand that he appeared to be counting. The male walking north had nothing in his hand.” Based on the

1 behavior Delepine believed a drug deal had just occurred.

2 Delepine drove north and parked his car ahead of where the male without the money
3 (Defendant) was headed. He got out of his car and approached the Defendant. He told Defendant
4 “he was not in trouble and then described what [he] had just observed.” Defendant “appeared to be a
5 native Spanish speaker and spoke a limited amount of English.” Delepine asked the Defendant if
6 “he had any drugs on him and he said “no.” Delepine continued, “no drogas?” which he says is
7 Spanish for drugs. Defendant said, “no, no.” Delepine asked him if he could “check for drugs and
8 pointed to his pants.” Defendant said “Si.” Delepine said, “Puedo Mirar” which he says means,
9 “can I look?” While asking, Delepine “pointed to the [Defendant’s] pants and made hand motions of
10 patting down.” Defendant said “Si” and put his hands on top of his head.

11 Delepine put Defendant’s hands behind his back and searched his pockets. In the coin pouch
12 of the right front pocket he found two bags with what he suspected was methamphetamine.
13 Defendant was arrested.

14

15 LAW

16 I. STOP OF A VEHICLE OR PERSON

17 A. STOP OF A PERSON

18 The taking of a suspect’s identification to call dispatch to conduct a warrants check
19 constitutes a stop. *State v. Hall*, 339 Or 7, 19, 115 P3d 908 (2005). Approaching a suspect and
20 obtaining their identification to conduct a warrant check is a stop. *State v. Painter*, 296 Or 422, 676
21 P2d 309 (1984); *State v. Holcomb*, 202 Or App 73, 121 P3d 13 (2005) (citing *State v. Hall*, supra,
22 for the proposition). There is no statutory authority to demand identification from a passenger in a
23 lawfully stopped vehicle. Any inquiry into the passenger’s identity must be justified by a reasonable
24 suspicion that the *passenger* has committed some crime. *State v. Olson*, 116 Or App 525 (1992).

25 Where there is an unlawful stop, suppression of the identification of the defendant and all
26 evidence from that identification was the remedy. *State v. Starr*, 91 Or App 267 (1988).

1 B. REASONABLE SUSPICION / PROBABLE CAUSE

2 A “stop” of a person is unreasonable when the officer has insufficient articulable facts
3 providing a reasonable suspicion that a crime has been committed. ORS 131.615; *State v. Warner*,
4 284 Or 147 (1978). Reasonable suspicion requires a subjective and objective component. *State v.*
5 *Valdez*, 277 Or 621, 629 (1977). The officer’s suspicion, to be reasonable, must be based upon the
6 circumstances known to the officer at the time of the stop. *Ybarra v. Illinois*, 444 US 85, 100 S Ct
7 338 (1979); *State v. Moreno*, 150 Or App 306 (1996). A stop of an individual that is not supported
8 by reasonable suspicion is a violation of Article I, Section 9, of the Oregon Constitution. *State v.*
9 *Holcomb*, 202 Or App 73, 121 P3d 13 (2005).

11 C. SCOPE OF CONSENT

12 “When police rely on consent as a basis of a search, they have no more authority to search
13 than they are given by consent.” *State v. Lerch*, 63 Or App 707, 712, 666 P2d 840 (1983), *aff’d*, 296
14 Or 377, 677 P2d 678 (1984). Thus, when police search pursuant to consent, the court must determine
15 whether the defendant’s consent extended to the particular item or area searched and whether it was
16 otherwise limited in purpose or time.

17 In determining whether a particular search falls within the scope of a defendant’s consent, the
18 trial court determines, “based on the totality of circumstances, what the defendant actually intended.
19 That determination is a factual one.” *State v. Blair*, 361 Or 527, 537, ___ P3d ___ (2017). “However,
20 where—based on the totality of circumstances—the defendant’s intent with respect to the scope of
21 consent is unambiguously expressed, that manifestation of intent is controlling.” *State v. Blair*, 361
22 Or at 538.

23 D. UNLAWFUL EXTENTION OF A LEGAL STOP

24

1 A police officer who reasonably suspects that a person has committed or is about to commit a
2 crime may stop the person and...make a reasonable inquiry. ORS 131.615. The inquiry shall be
3 considered reasonable if it is limited to the immediate circumstance that aroused the officer's
4 suspicion. *Id.* Evidence obtained as a result of an unlawful detention must be suppressed under
5 Article I, Section 9 of the Oregon Constitution. *State v. Ehret*, 184 Or App 1, 13 (2002). Article I,
6 Section 9 prohibits an officer conducting a traffic stop from questioning a driver about weapons
7 unless the officer has reasonable suspicion that the driver poses an immediate threat of serious injury
8 to the officer. *State v. Bates*, 304 Or 519 (1987) (as noted in *State v. Amaya*, 336 Or 616, n.2.
9 (2004), the reasoning in *State v. Toevs*, 327 Or 525 (1988) is consistent with *State v. Bates supra*).
10 Questioning that has the effect of detaining a person beyond the completed traffic stop must be
11 supported by reasonable suspicion that the person is engaged in criminal activity. *State v. Raney*,
12 168 P.3d 803, 805 (2007), citing *State v. Toevs*, and *State v. Ehret*. An officer is permitted to ask
13 consent to search a defendant's car without individualized suspicion that the defendant was involved
14 in criminal activity only if the request does not extend the detention beyond the reasonable time to
15 complete the traffic citation. *Id.*

18 Inquiries unrelated to the initial traffic infraction can lead to an unlawful restraint of a
19 person's liberty in two situations. *State v. Rodgers*, 219 Or App 366, 371 (2008). The first occurs
20 when the officer concludes a stop and then reinitiates a second stop by beginning to question the
21 person about unrelated matters without reasonable suspicion. *Id.* The second occurs when the
22 officer, without letting the person know expressly or by implication that he or she is free to leave,
23 detains the person beyond the time reasonably required to investigate the traffic infraction and issue
24 a citation. *Id.* When an officer has all the information necessary to issue a citation the officer is
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1 obligated to either, (1) ask additional questions related to the initial traffic infraction, (2) issue a
2 citation, or (3) end the stop at that point. *Id at 372-373*. The court expressly declined to adopt a rule
3 that would measure the reasonable duration of the traffic stop by the time it would have taken an
4 officer to complete a citation. *Id*.

5
6 ARGUMENT

7 I. THE DEFENDANT WAS STOPPED WHEN DELEPINE APPROACHED THE
8 DEFENDANT AND TOLD HIM HE BELIEVED HE HAD JUST BOUGHT NARCOTICS

9 An officer's statement to a person that the person has broken the law in the presence of the
10 officer generally converts an encounter into a stop. *State v. Morfin-Estrada*, 251 Or App 158, 283
11 P3d 378, rev den, 352 Or 565 (2012) (officer's conduct in telling pedestrian that he had just seen him
12 jaywalking would lead a reasonable person to believe he was not free to leave unless and until he
13 was issued a citation or told he was free to go). In this case, the Defendant was stopped without
14 reasonable suspicion of crime.
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16 II. DEFENDANT'S CONSENT TO SEARCH WAS NOT KNOWING, INTELLIGENT OR
17 VOLUNTARY

18 In the totality of the circumstances, the Defenant's consent was involuntary.

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1 III. DELAPINE EXCEEDED THE SCOPE OF THE DEFENDANT’S CONSENT WHEN HE
2 SEARCHED THE INTERIOR OF THE DEFENDANT’S POCKETS

3 Even if Defendant consented to a pat down, he only consented to a pat down of the exterior
4 of his person, not the interior of his pockets. Therefore, it exceeded the scope of his consent and was
5 unlawful.
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8 DATED this 10th day of January 2019.

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/s/ Gabriel Biello
Gabriel Biello, OSB #055265
Attorney for Defendant

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CERTIFICATE OF SERVICE

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I certify that on April 22, 2018, I or a representative of my office served the within: MOTION AND MEMORANDUM TO SUPPRESS on the attorney of record for plaintiff by E-Filing and Serving a true copy to Kimberly Silverman.

/s/ Gabriel Biello
Gabriel Biello