

FILED: September 08, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

DYLAN BAXTER FORD,
Defendant-Appellant.

Columbia County Circuit Court
086002

A142212

Jenefer Stenzel Grant, Judge.

On appellant's petition for reconsideration filed July 27, 2011. Opinion filed July 13, 2011. 244 Or App 289, ___ P3d ___.

Andy Simrin and Andy Simrin PC for petition.

Before Ortega, Presiding Judge, and Brewer, Chief Judge, and Sercombe, Judge.

PER CURIAM

Reconsideration allowed; former opinion modified and adhered to as modified.

1 PER CURIAM

2 Defendant petitions for reconsideration of our opinion in [State v. Ford](#), 244
3 Or App 289, ___ P3d ___ (2011). In that case, defendant appealed a judgment of
4 conviction for two counts of third-degree sexual abuse. ORS 163.415. Defendant
5 assigned error to the trial court's denial of his motion to suppress incriminating statements
6 made after he was stopped and questioned by police. We determined that the statements
7 were made in compelling circumstances and in the absence of *Miranda* warnings, and
8 thus were obtained contrary to Article I, section 12, of the Oregon Constitution. We
9 reversed the judgment because the trial court erred in failing to grant defendant's motion
10 to suppress.

11 Defendant raised two other assignments of error. We noted that "we need
12 not address those claims, because we conclude that defendant's first assignment of error
13 [the claimed error on the motion to suppress] provides grounds for reversal." *Ford*, 244
14 Or App at 291 n 1. Defendant argues that the reversal of the judgment did not obviate the
15 need to decide one of the remaining assignments of error--that the trial court erred in
16 failing to grant a motion for judgment of acquittal on one of the counts *sua sponte*. We
17 agree, and grant reconsideration to determine the merits of that assignment of error.

18 With respect to that assignment, defendant contends that the only evidence
19 adduced to support one of the counts of sexual assault was his admissions to the police.
20 Consequently, he claims that the evidence was insufficient to support the conviction
21 under ORS 136.425. At the time of the crime, that statute provided that a confession is

1 not "sufficient to warrant the conviction of the defendant without some other proof that
2 the crime has been committed." Defendant, however, did not move for a judgment of
3 acquittal or challenge the sufficiency of the state's evidence in any other way. The trial
4 court had no duty to rule, *sua sponte*, on the sufficiency of the state's evidence. Thus,
5 there was no error.

6 Reconsideration allowed; former opinion modified and adhered to as
7 modified.