

FILED: April 17, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

IVAN CAM,
Defendant-Appellant.

Marion County Circuit Court
08C49052

A142984

Susan M. Tripp, Judge.

On appellant's petition for reconsideration filed February 8, 2013, and respondent's response to petition for reconsideration filed March 6, 2013. Opinion filed February 6, 2013. 255 Or App 1, ___ P3d ___.

Ryan Scott for petition.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Jamie K. Contreras, Assistant Attorney-in-Charge, for response.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

WOLLHEIM, J.

Reconsideration allowed; former opinion adhered to as modified.

1 WOLLHEIM, J.

2 Defendant has filed a petition for reconsideration of our decision in this
3 case, *State v. Cam*, 255 Or App 1, 296 P3d 578 (2013), in which we upheld most of
4 defendant's convictions and sentences for theft, possession of a stolen vehicle, possession
5 of controlled substances, and unlawful possession of a short-barreled shotgun, and
6 remanded some convictions of theft for merger and resentencing. We allow
7 reconsideration to discuss an alleged factual misstatement in our opinion and modify our
8 analysis accordingly, but otherwise adhere to the disposition.

9 The first issue that we addressed in our opinion was whether the trial court
10 erred in denying defendant's motion to suppress evidence seized at defendant's home
11 subsequent to a warrantless entry of his property. 255 Or App at 3. We concluded that
12 the trial court properly ruled that defendant had not manifested a clear intent to exclude
13 visitors from his property. *Id.* at 7-8.

14 The issue raised in the petition for reconsideration that we address concerns
15 the signs on defendant's driveway. In describing the evidentiary record at the suppression
16 hearing, defendant stated in his opening brief that "Detective Johnson saw a 'private
17 property' sign on a tree." He argued that, in entering defendant's property, detectives
18 drove past "two signs," a private property sign and a sign that read "10 mph." Defendant
19 did not argue that detectives drove past a "No Trespassing" sign.

20 In our opinion's statement of the facts, 255 Or App at 3, we described *three*
21 signs along defendant's driveway:

1 "On a tree next to the driveway, there was a sign that read 'PRIVATE
2 PROPERTY,' and above it, a sign that read '10 M.P.H.' Near the tree, on a
3 metal pipe, was a sign that read 'PRIVATE PROPERTY.' See photograph
4 attached as Appendix 2."

5 We included as Appendix 2 a photograph of defendant's driveway that had been included
6 in the record. Later in the opinion, *id.* at 6, we distinguished this case from *State v.*
7 *Roper*, 254 Or App 197, 200, 294 P3d 517 (2012), noting that, in this case, unlike in
8 *Roper*, there was not a no trespassing sign on defendant's property.

9 Defendant now brings it to our attention that, in the photograph we attached
10 to our opinion as Appendix 2, the private property sign under the 10 M.P.H. sign also
11 states no trespassing in lettering too small to be plainly legible in the photograph. *See*
12 <http://www.publications.ojd.state.or.us/docs/A142984.pdf>. It further comes to our
13 attention that that photograph was taken by a defense investigator in March 2009, more
14 than one year after the detectives first entered defendant's property on December 26,
15 2007. At the suppression hearing, the defense investigator was asked to read the signs in
16 the photograph and testified that one of them said "10 miles an hour," and one said
17 "private property." The state's detectives testified that they recalled seeing only a single
18 "Private Property" sign. No mention was made at the hearing of a no trespassing sign.
19 Defendant now, for the first time, argues that the 2009 photograph shows that detectives
20 drove past a no trespassing sign.

21 We do not ordinarily entertain arguments raised for the first time on
22 reconsideration. To the extent that defendant is contending that we got the facts of the
23 case wrong, we reject the contention. No witness made mention of the words "no

1 trespassing" on the private property sign. Counsel never mentioned them until the
2 petition for reconsideration. The trial court made no findings regarding the signage, but it
3 did find that defendant had allowed entry onto his property and had not manifested a
4 clear intent to exclude visitors. Viewing the evidence in a manner consistent with the
5 trial court's ultimate conclusion, *see State v. Ehly*, 317 Or 66, 75, 854 P2d 421 (1993), we
6 assume that the trial court either did not see the words "no trespassing" on the photograph
7 or assigned no special significance to them in the context of the record as a whole. We
8 conclude further that the words "no trespassing" shown on the photograph do not alter
9 our conclusion in our original opinion, 255 Or App at 8, that defendant did not manifest a
10 clear intent to exclude visitors, and we adhere to our original disposition of the case.

11 We reject without discussion defendant's contention that the trial court
12 erred in imposing consecutive sentences for defendant's convictions for theft by receiving
13 because all of the crimes were related as a matter of law and must be treated as a part of
14 the same criminal episode. *See Orchard v. Mills*, 247 Or App 355, 361, 270 P3d 309
15 (2011), *rev den*, 352 Or 33 (2012) (trial court's imposition of consecutive sentences was
16 supported by evidence of placement of separate firearms in separate locations in
17 petitioner's home, which allowed trial court to conclude that the firearms were acquired
18 separately).

19 Reconsideration allowed; former opinion adhered to as modified.