

FILED: November 19, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

HUNG NGOC TRUONG,
Defendant-Appellant.

Multnomah County Circuit Court
110532061

A150936

Kelly Skye, Judge.

On appellant's petition for reconsideration filed October 15, 2014. On respondent's petition for reconsideration filed October 15, 2014. Opinion filed October 1, 2014. 265 Or App 730, ___ P3d ___.

Peter Gartlan, Chief Defender, and Erik Blumenthal, Deputy Public Defender, Office of Public Defense Services, for appellant's petition.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Erin K. Galli, Senior Assistant Attorney General, for respondent's petition.

Before Tookey, Presiding Judge, and Hadlock, Judge, and De Muniz, Senior Judge.

PER CURIAM

Reconsideration allowed; former disposition withdrawn; reversed and remanded on Counts 2, 3, 6, 7, and 8; otherwise affirmed.

1 PER CURIAM

2 The state and defendant petition for reconsideration of our decision in *State*
3 *v. Truong*, 265 Or App 730, ___ P3d ___ (2014), contending that our disposition was
4 erroneous. We grant reconsideration, and, for the reasons stated below, withdraw our
5 former disposition and substitute a new one.

6 The judgment that defendant appealed reflected (1) convictions on
7 Counts 2, 6, 7, and 8; (2) the merger of the guilty verdict on Count 3 with Count 2, and
8 (3) defendant's acquittal on Counts 1, 4, and 5. On appeal, we concluded that the court
9 committed an evidentiary error that was not harmless. Our disposition stated, "Reversed
10 and remanded on Counts 2, 3, 6, 7, and 8; remanded for resentencing; otherwise
11 affirmed."

12 On reconsideration, both parties contend that our disposition was erroneous
13 because, having reversed and remanded on the five identified counts, there was no reason
14 "to conduct a new sentencing hearing unless defendant is found guilty following a new
15 trial." We agree. Accordingly, the parties are correct that we should not have remanded
16 the case for resentencing.

17 Reconsideration allowed; former disposition withdrawn; reversed and
18 remanded on Counts 2, 3, 6, 7, and 8; otherwise affirmed.