

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

VICTOR MAGANA DUENAZ,
Defendant-Appellant.

Malheur County Circuit Court
1307431C1; A156347

Patricia A. Sullivan, Judge.

On appellant's amended petition for reconsideration filed March 10, 2016. Opinion filed December 9, 2015. 275 Or App 577, 366 P3d 847.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Lindsey K. Detweiler, Deputy Public Defender, Office of Public Defense Services, for petition.

Before DeVore, Presiding Judge, and Lagesen, Judge, and Duncan, Judge pro tempore.

PER CURIAM

Petition for reconsideration denied.

PER CURIAM

Defendant has petitioned for reconsideration, asserting that we should reverse the trial court's judgment and remand this case, because the trial court erred in admitting certain evidence "without first balancing the probative value of the evidence against its prejudicial effect." Defendant's argument is based on the Supreme Court's decision in *State v. Williams*, 357 Or 1, 346 P3d 455 (2015), which was decided after defendant filed his opening brief, but before the state filed its answering brief. The state relied on *Williams* in its brief, but defendant did not file a reply brief or a supplemental brief.

Because defendant's petition for reconsideration is based on a contention that was not, but could have been, raised in defendant's appellate briefing, we deny defendant's petition. See *Kinross Copper Corp. v. State of Oregon*, 163 Or App 357, 360, 988 P2d 400 (1999), *rev den*, 330 Or 71 (2000) (generally, "[i]f a contention was not raised in the brief, *** it is not appropriate to assert it on reconsideration").

Petition for reconsideration denied.