

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

JEFFREY MICHAEL DARBY,
Defendant-Appellant.

Jackson County Circuit Court
17CR13640; A166093

Timothy Barnack, Judge.

Submitted January 4, 2019.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Rond Chananudech, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and David B. Thompson, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Egan, Chief Judge, and Powers, Judge.

PER CURIAM

Reversed and remanded.

PER CURIAM

Defendant appeals from a judgment of conviction for possession of methamphetamine. On appeal, defendant argues that the trial court erred in denying his motion to suppress evidence because the officer conducting the search obtained his consent to search after unlawfully extending a traffic stop. The state concedes that the trial court erred. We agree and accept the state's concession.

The relevant facts are as follows. A police officer stopped defendant for failure to maintain his lane. Defendant's car looked like it had been in an accident, and the officer believed the car was not safe to drive. Defendant gave the officer his driver's license but explained that he did not have vehicle registration or proof of insurance with him. During this exchange, defendant was nervous, and the officer saw an empty plastic baggie on the front seat and butane lighters on the floor. The officer asked defendant to walk with him to the patrol car, which defendant agreed to do. Defendant also agreed to a patdown search. The officer then called in to dispatch to run defendant's license and license plate number. Dispatch informed the officer that defendant's license was suspended for driving uninsured. The officer relayed that information to defendant, who seemed surprised by it. The officer then asked if he could search the car because "I'm a police officer, it's my job; it's what I do, look for criminal activity." Defendant told the officer to "just go ahead" because he was going to search it anyway. The officer found methamphetamine in the car.

Defendant filed a motion to suppress the evidence that the officer obtained in the search of his car because the officer did not have reasonable suspicion of criminal activity to support extending the traffic stop, and defendant's consent to the search was a product of that unlawful extension. The trial court denied the motion. On appeal, defendant argues that the trial court erred, and the state concedes that error.

We agree with and accept the state's concession. Here, the officer unlawfully extended the stop, at a minimum, when he asked for consent to search defendant's car. At that point, the request for the search was not occurring

during an unavoidable lull in the investigation of the traffic stop, and it was unrelated to citing defendant or towing defendant's car. *State v. Huggett*, 228 Or App 569, 574, 209 P2d 385 (2009), *rev dismissed*, 348 Or 71 (2010). In addition, the officer did not have reasonable suspicion of criminal activity to support extending the stop. *See, e.g., State v. Maciel-Figueroa*, 361 Or 163, 182, 389 P3d 1121 (2017) (reasonable suspicion requires that a subjective belief the stopped person committed a specific crime is "objectively reasonable under the totality of the circumstances existing at the time of the stop"); *State v. Reich*, 287 Or App 292, 300, 403 P3d 448 (2017) (nervousness and prior drug arrest insufficient); *State v. Gomes*, 236 Or App 364, 369, 236 P3d 841 (2010) (presence of butane lighter insufficient). As a result, defendant's consent to the search was tainted by the officer's unlawful extension of the traffic stop, and the trial court erred in denying defendant's motion to suppress.

Reversed and remanded.