IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

FREDERICK PERCY STILLS,
Defendant-Appellant.

Deschutes County Circuit Court
16CR68023; A166183

Beth M. Bagley, Judge.

Submitted May 29, 2019.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Anna Belais, Deputy Public Defender, Office of Public Defense Services, filed the briefs for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Leigh A. Salmon, Assistant Attorney General, filed the briefs for respondent.

Before Ortega, Presiding Judge, and Powers, Judge, and Sercombe, Senior Judge.

PER CURIAM

Reversed and remanded.

PER CURIAM

Defendant appeals a judgment of conviction for driving under the influence of intoxicants. On appeal, defendant assigns error to the trial court's denial of his motion to suppress his refusal to perform the field sobriety tests (FSTs) and statements made to the officer, making three arguments in support of his assignment: (1) he was subjected to interrogation without first being given *Miranda* warnings; (2) the officer did not, as required under ORS 813.135 and ORS 813.136, inform him of the consequences of refusing to perform the FSTs; and (3) his refusal was an assertion of his right under Article I, section 9, of the Oregon Constitution to refuse consent to a warrantless search and must be suppressed. We reject defendant's first argument without discussion. The state concedes that, based on the unique facts of this case, defendant's refusal to submit to the FSTs was an invocation of his Article I, section 9, right to refuse a warrantless search, and, therefore, is not admissible as evidence of his guilt. On this record, we agree with and accept the state's concession, and, therefore, reverse and remand.[1]

Reversed and remanded.

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[1] Our resolution of defendant's argument regarding the admissibility of his refusal to perform the FSTs based on his third argument obviates our need to address defendant's second argument.