

IN THE SUPREME COURT OF THE
STATE OF OREGON

STATE OF OREGON,
Petitioner on Review,

v.

WILLIAM P. MILLER,
Respondent on Review.

(CC 110646662) (CA A149963) (SC S064136)

On respondent on review's petition for reconsideration filed August 31, 2018; considered and under advisement on September 25, 2018.*

Kali Montague, Deputy Public Defender, Office of Public Defense Services, Salem, filed the petition for reconsideration on behalf of respondent on review. Also on the petition was Ernest Lannet, Chief Defender.

No appearance *contra*.

Before Walters, Chief Justice, and Balmer, Kistler, Nakamoto, Flynn, and Nelson, Justices.**

FLYNN, J.

The petition for reconsideration is allowed. The former opinion is modified and adhered to as modified.

* 363 Or 374, 422 P3d 240 (2018); on review from the Court of Appeals, 277 Or App 147, 370 P3d 882 (2016).

** Duncan, J., did not participate in the reconsideration of this case.

FLYNN, J.

Defendant has petitioned for reconsideration of our decision in *State v. Miller*, 363 Or 374, 422 P3d 240 (2018), in which we held that the officer who was about to administer field sobriety tests to defendant during a lawful investigatory stop did not unlawfully extend the stop by asking if defendant was carrying a firearm because (1) the officer perceived a circumstance-specific danger and decided that an inquiry about weapons was necessary to address that danger; and (2) the officer's perception and decision were objectively reasonable. Defendant correctly identifies a potential incongruity between our analysis, which listed among the circumstances giving rise to the officer's objectively reasonable perception of danger his "specific basis to believe that defendant might be carrying a gun," and the text of footnote 2 of the opinion, which emphasized that the officer's knowledge that defendant was licensed to carry a concealed handgun "plays no role in our legal analysis." *Id.* at 388, 377 n 2.

We accordingly allow the petition for reconsideration and modify our opinion as follows:

Footnote 2 in the original opinion at page 377 is replaced with a new footnote 2:

In this case, the officer believed that defendant might be carrying a firearm after learning during the background check that defendant was licensed to carry a concealed handgun. For purposes of our legal analysis, however, it does not matter why the officer perceived a risk that defendant might be carrying a gun during field sobriety tests.

The petition for reconsideration is allowed. The former opinion is modified and adhered to as modified.