

Filed: January 10, 2013

IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,

Respondent on Review,

v.

FRANK LUMPKINS, JR.

Petitioner on Review.

(CC C082003CR; CA A141532; SC S059173)

On review from the Court of Appeals.\*

Argued and submitted September 19, 2011.

Kenneth A. Kreuzscher, Portland Law Collective, Portland, argued the cause and filed the brief for petitioner on review. With him on the brief was Travis Eiva.

Doug M. Petrina, Assistant Attorney General, Salem, argued the cause and filed the brief for respondent on review. With him on the brief were John R. Kroger, Attorney General, and Mary H. Williams, Solicitor General.

Kendra M. Matthews, Ransom Blackman LLP, Portland, filed the brief for *amicus curiae* ACLU Foundation of Oregon, Inc.

Before Balmer, Chief Justice, Kistler, Walters, and Linder, Justices, and Durham and De Muniz, Senior Judges, Justices pro tempore.\*\*

The decision of the Court of Appeals and the judgment of the circuit court are affirmed by an equally divided court.

\*Appeal from Washington County Circuit Court, Mark Gardner, Judge.  
240 Or App 323, 245 P3d 703 (2010).

\*\*Landau, Brewer, and Baldwin, JJ., did not participate in the consideration or decision of this case.