69913-0

69913-0

No. 69913-0-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

STEVEN SANDOZ,

Appellant.

On Appeal from the King County Superior Court
The Honorable Beth M. Andrus, Judge

REPLY BRIEF OF APPELLANT

Andrew P. Zinner
Attorneys for Appellant
NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison Street
Seattle, WA 98122
Telephone: (206)623-2373
Fax: (206)623-2488

TABLE OF CONTENTS

Page

A. ARGUMENT IN REPLY 1

1. THE TRIAL COURT CORRECTLY FOUND THE OFFICER SEIZED STEVEN SANDOZ WHEN HE ASKED HIM TO STEP OUT OF THE CAR.. 1

2. THE DETENTION WAS UNLAWFUL BECAUSE IT WAS NOT SUPPORTED BY FACTS ESTABLISHING A SUBSTANTIAL POSSIBILITY SANDOZ WAS COMMITTING A CRIME.....5

B. CONCLUSION.....8

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Doughty
170 Wn.2d 57, 239 P.3d 573 (2010) 5

State v. Ellwood
52 Wn. App. 70, 757 p.2d 547 (1988).....6

State v. Gatewood
163 Wn.2d 534, 182 P.3d 426 (2008)..... 7

State v. Gleason
70 Wn. App. 13, 851 P.2d 731 (1993)..... 5, 6, 7

State v. Guevara
172 Wn. App. 184, 299 P.3d 1167 (2012)..... 3

State v. Hart
66 Wn. App. 1, 830 P.2d 696 (1992)..... 6

State v. Johnson
156 Wn. App. 82, 231 P.3d 225 (2010),
review granted, cause remanded on other grounds,
172 Wn.2d 1001 (2011).....3, 4

State v. Moreno
173 Wn. App. 479, 294 P.3d 812,
review denied, 177 Wn.2d 1021 (2013).....8

State v. O'Neil
148 Wn.2d 564, 62 P.3d 489 (2003).....4

State v. Richardson
64 Wn. App. 693, 825 P.2d 754 (1992).....6

State v. Watkins
76 Wn. App. 726, 887 P.2d 492 (1995).....4, 5

A. ARGUMENT IN REPLY

1. THE TRIAL COURT CORRECTLY FOUND THE OFFICER SEIZED STEVEN SANDOZ WHEN HE ASKED HIM TO STEP OUT OF THE CAR.

SeaTac Police Officer Przygocki regularly watched a six-unit apartment building because of unusually high criminal activity occurring there. Four of the residents had drug-related convictions. 1RP 16-17. The building owner gave police permission to cite anyone for trespass who did not belong on the property. 1RP 51-52, 57-58. Przygocki drove by and observed an unknown white Jeep parked in a no-parking space in front of the building. 1RP 16-18, 38. He knew the Jeep did not belong to any of the residents. 1RP 58. As he drove by, Przygocki observed the man in the Jeep's driver's seat "slumped down." 1RP 18, 35-37. He drove past the Jeep, turned around, and parked his marked patrol car about 15 or 20 yards away. 1RP 14-15, 18-19.

The Jeep did not move for 15 minutes, so Przygocki left his car, walked up to the Jeep's driver, and asked him what he was doing. 1RP 19-20. The driver said he was there because he had gotten a call from a friend. 1RP 20. As Przygocki walked around to the passenger side of the Jeep, he saw Steven Sandoz leave the apartment of a woman with a history of drug convictions. 1RP 17, 20. Sandoz had his head down and walked

toward the Jeep. When he looked up and saw Przygocki, Sandoz's "eyes got big" and he climbed into the Jeep. 1RP 21, 33, 48.

Przygocki asked him what was going on, and Sandoz replied his friend had given him a ride so he could collect $20 from the woman. Sandoz was shaking and his face looked pale and thin. 1RP 21. Przygocki became suspicious because Sandoz's explanation for being there contradicted the driver's. 1RP 21. So he asked Sandoz "if he would mind stepping outside the car and just talking with" him. 1RP 21-22. Sandoz complied and walked toward the rear of the Jeep. 1RP 22.

Had Sandoz refused, Przygocki said he would have detained him for investigation of or arrested him for drug-related loitering under the SeaTac municipal code. 1RP 42, 46, 50-52, 56-57. Przygocki again asked Sandoz what was going on. Sandoz said he was there to collect $20 from the woman inside the apartment. 1RP 22-23. After a bit more conversation, Sandoz admitted he had a drug problem and said he had a pipe in his pocket. 1RP 23-24, 59-60. He produced the pipe and Przygocki arrested him for possession of drug paraphernalia. 1RP 23-24. In a search incident to arrest, Przygocki found two envelopes containing cocaine. 1RP 24-27, 46-47, 53.

The trial court concluded Przygocki seized Sandoz when he asked him to step out of the car. CP 52-53; 1RP 101. The State responds to

Sandoz's challenge to the stop by claiming the court erred by finding the seizure began when Przygocki asked Sandoz to step out of the car. Brief of Respondent (BOR) at 8-12. Sandoz disagrees.

Police actions likely to constitute a seizure include the intimidating presence of several officers, an officer's display of a weapon, touching of the person, or use of language or tone suggesting compliance with the officer's request may be required. State v. Guevara, 172 Wn. App. 184, 188, 299 P.3d 1167 (2012). The Guevara court reviewed several cases before determining the stop there was a seizure because the officer told three boys he suspected they were going to smoke marijuana and requested consent to search. 172 Wn. App. at 188-91.

One of the cases is State v. Johnson, 156 Wn. App. 82, 92, 231 P.3d 225 (2010), review granted, cause remanded on other grounds, 172 Wn.2d 1001 (2011). In Johnson, the lone officer parked his patrol car 10 to 15 feet behind a vehicle illegally parked and did not activate his emergency lights or siren. He walked up to the driver and asked why she and her passenger were there and why they parked in the spot. He did not demand identification or ask the driver to step out of the vehicle until after learning she had outstanding warrants. 156 Wn. App. at 87, 92.

The appellate court held that until that point, a seizure had not occurred. Id. at 92. By specifically noting the officer did not ask the

driver to step out of the vehicle, the court demonstrates the significance of such a request when determining whether a seizure occurred.

This point was not lost on the trial court in Sandoz's case. The court cited State v. O'Neil[1] in concluding Przygocki seized Sandoz when he asked him to step out of the car.

In O'Neil, the officer pulled up behind a car parked in front of closed store after dark. He activated his spotlight and determined someone was in the car. He approached the driver's side of the car, shined a flashlight in the driver's face, and asked him to roll the window down, which he did. The officer asked what he was doing there, and the driver explained his car had broken down and would not start. The officer then asked for identification, registration, and insurance papers. The driver, known by this time as O'Neil to the officer, produced registration that showed the car was registered to another person. When O'Neill said he was the other person, the officer asked him to step out of the car. 148 Wn.2d at 571-72. The Supreme Court held the officer did not show authority until he requested O'Neill exit the car. 148 Wn.2d at 581. See also, State v. Watkins, 76 Wn. App. 726, 729, 887 P.2d 492 (1995)

---

[1] 148 Wn.2d 564, 62 P.3d 489 (2003).

("Although the request that Watkins exit the car constituted a seizure, it did not amount to a custodial arrest.").

This authority supports the trial court's conclusion here that Przygocki seized Sandoz when he asked him to step out of the car. The State's contrary claim is incorrect and this Court should reject it.

2. THE DETENTION WAS UNLAWFUL BECAUSE IT WAS NOT SUPPORTED BY FACTS ESTABLISHING A SUBSTANTIAL POSSIBILITY SANDOZ WAS COMMITTING A CRIME.

The State maintains that even if the trial court correctly identified the point at which Przygocki seized Sandoz, he had reasonable suspicion to support an investigative detention at that point. BOR at 13-20. In doing, the State asserts State v. Doughty[2] and State v. Gleason,[3] cases upon which Sandoz relies, are distinguishable. BOR at 17-18.

In Doughty, the court concluded a two-minute, late-night visit to a *suspected* drug house did not justify an investigative detention. 170 Wn.2d at 64. The State relies on the "suspected" feature of the house for its distinction, noting in Sandoz's case, Przygocki knew numerous drug-related incidents *actually* occurred in the apartment building. BOR at 17.

---

[2] 170 Wn.2d 57, 239 P.3d 573 (2010).

[3] 70 Wn. App. 13, 851 P.2d 731 (1993).

Such a distinction did not, however, trouble this Court in State v. Ellwood, 52 Wn. App. 70, 757 P.2d 547 (1988). In Ellwood, this Court concluded an officer's detention of a suspect because the suspect was "in an area with a history of burglaries and assaults" at a late hour was not supported by sufficient facts. 52 Wn. App. at 74. This Court found the detention unlawful despite the known history of crime in the area. See also State v. Hart, 66 Wn. App. 1, 9, 830 P.2d 696 (1992) (suspect's presence "in an area where drug transactions were known to occur" did not justify detention); State v. Richardson, 64 Wn. App. 693-94, 697, 825 P.2d 754 (1992) (detention unlawful despite suspect's presence "in a area on the southeast side of Yakima known for its high drug activity, late at night, walking near someone the officer suspected was selling drugs).

The State also claims that Sandoz's case "is nothing like Gleason." BOR at 18. In Gleason, the officers detained an individual because he was seen leaving an apartment complex "plagued by a high incidence of illegal narcotics transactions." 70 Wn. App. at 14. The Gleason court held the detention was unlawful because "this was the first time the defendant had been seen in the area, the officers did not know what occurred inside the apartment and neither officer saw him involved in the purchase of drugs." 70 Wn. App. at 18. In this respect, Gleason is quite a lot like Sandoz's case.

Sandoz agrees with the State that Sandoz's startled reaction upon seeing Przygocki, his and the driver's "contradictory" explanations for his presence, the Jeep's "loitering occupants" and the driver's suspicious reaction to seeing Przygocki drive by, are facts absent from Gleason. BOR at 18. He disagrees, however, that those facts "provide the reasonable and articulable suspicion found lacking in Gleason." BOR at 18.

First, startled reactions upon seeing a police officer do not amount to reasonable suspicion. State v. Gatewood, 163 Wn.2d 534, 540, 182 P.3d 426 (2008). Second, as explained in the Brief of Appellant (BOA), Sandoz and the Jeep's driver did not give contradictory explanations for Sandoz's presence. BOA at 18. The State relies on Przygocki's written report to explain why he testified Sandoz contradicted the driver. BOR at 18-19. This is improper; the report was not admitted into evidence. The record does not support the State's assertion. This Court should reject it. Finally, while the occupants of the Jeep may have been "loitering," Sandoz was not. The same is true of the driver's suspicious behavior as Przygocki drove by. Justifying a stop of one person because of another person's actions is improper. The circumstances available to the officer must indicate a substantial possibility that the particular person stopped

has committed or is about to commit a crime. State v. Moreno, 173 Wn. App. 479, 492, 294 P.3d 812, review denied, 177 Wn.2d 1021 (2013).

The circumstances causing Przygocki to detain Sandoz were not sufficient to support particularized reasonable suspicion for the stop. This Court should reject the State's contrary claim.

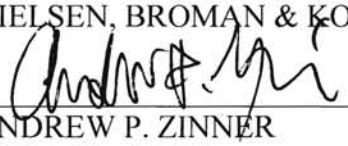
B. CONCLUSION

For the reasons set forth above and in the Brief of Appellant, this Court should reverse the trial court's denial of Sandoz's motion to suppress evidence.

DATED this 16 day of November, 2013.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



ANDREW P. ZINNER
WSBA No. 18631
Office ID No. 91051

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 69913-0-I
	)	
STEVEN SANDOZ,	)	
	)	
Appellant.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 18TH DAY OF NOVEMBER, 2013, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] STEVEN SANDOZ
NO. 213012664
KING COUNT JAIL / RJC
620 W. JAMES STREET
KENT, WA 98032

SIGNED IN SEATTLE WASHINGTON, THIS 18TH DAY OF NOVEMBER, 2013.

X Patrick Mayovsky