No. 95211-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals No. 49242-3-II)

STATE OF WASHINGTON,

Respondent,

vs.

SARAH J. SEWARES,

Petitioner.

ANSWER TO PETITION FOR REVIEW

On review from the Court of Appeals, Division Two,
And the Superior Court of Lewis County

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A. COURT OF APPEALS DECISION

The Petitioner, Sarah J. Sewares, seeks review of the unpublished court of appeals decision filed on October 17, 2017 in Division Two of the Court of Appeals.

B. COUNTERSTATEMENT OF THE ISSUES:

1. Is the decision of the Court of Appeals in conflict with this Court's decision in *State v. Z.U.E.*, 183 Wn.2d 610, 352 P.3d 796 (2015)?

2. Does Sewares's case involve a significant question of law under the Constitutions of the State of Washington or United States?

C. STATEMENT OF FACTS

The substantive facts of Sewares's case can be found in the unpublished Court of Appeals decision, attached for the Court's convenience as Appendix A.

D. ARGUMENT WHY REVIEW SHOULD NOT BE ACCEPTED

The State respectfully requests this Court decline review of the decision of the Court of Appeals because the decision is well-supported by the trial record and applicable law and none of the RAP 13.4(b) considerations governing acceptance of review have been met in this case. The decision of the Court of Appeals in this case, which involved reasonable suspicion based in part on information provided by a confidential informant, is not in conflict with this Court's

decision in *State v. Z.U.E.*, 183 Wn.2d 610, 352 P.3d 796 (2015), which involved reasonable suspicion based on a series of relatively unknown 911 callers. Sewares's case does not present a significant question under the Constitution of the United States or the Washington State Constitution.

1. THE COURT OF APPEALS DECISION IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN *Z.U.E.*

This Court may accept review of a Court of Appeals decision if it is in conflict with a decision of this Court. RAP 13.4(b)(1). Contrary to Sewares's arguments, the Court of Appeals decision is entirely consistent with previous case law, including this Court's decision in *Z.U.E.*

In *Z.U.E.,* officers received a series of 911 calls reporting seeing a shirtless man carrying a gun. 183 Wn.2d at 613-14. A number of the callers observed the man enter a vehicle with eight other people. *Id*. at 614. One witness identifying herself by first name reported witnessing what she believed looked like a 17-year-old female handing a gun off to a shirtless man, who then carried the gun through the park. *Id*. The officers had little information regarding the identities of any of the 911 callers. *Id*.

A block away from the park, the officers observed two women, one matching the description of the purported 17-year-old. *Id*. at 614-

15. The officers later observed the women enter a vehicle near the park which did not match the vehicle described by the callers. *Id*. None of the occupants matched the description of the shirtless man. *Id*. at 615. The officers conducted a "felony stop" of the vehicle's occupants and ultimately arrested and stun-gunned Z.U.E. for obstruction of law enforcement. *Id*. at 616. In a search incident to arrest, officers found marijuana on Z.U.E.'s person. *Id*. The officers never located the bald, shirtless subject. *Id*.

The Court found insufficient facts to support a reasonable suspicion the bald, shirtless subject was in the car. *Id*. at 622. The Court also found the police could not justify a stop to investigate the crime of minor in possession of a firearm. *Id*. at 622-23. The Court stated although there was little reason to doubt the veracity of the 911 caller, there was no factual basis for establishing how the caller knew or believed the reported female was a 17-year-old rather than an adult who could legally possess a firearm. *Id*. at 623. Without knowing anything about the caller other than a first name, the officers had no basis on which to evaluate the accuracy of her estimation. *Id*.

Here, unlike in *Z.U.E.*, the confidential informant was a known person to the officers and had an established track record of providing information that led to drug seizures and arrests. RP

(6/22/16) 6, 22-23. The informant was also working with law enforcement to gain a benefit regarding his own criminal charges. RP (6/22/16) 5-6. This suggests the informant had a strong incentive to provide accurate information. *State v. Bean*, 89 Wn.2d 467, 469-71, 572 P.2d 1102 (1978).

Further, the informant's information was borne out by multiple factors. The informant reported Neff would be arriving at the Motel 6 by car and later reported that Neff was seen at the nearby Arby's. RP (6/22/16) 97-98. This was corroborated by one officer observing a vehicle use the Arby's drive thru and enter the Motel 6 parking lot. RP (6/22/16) 98. The information was further corroborated when officers identified Neff as the man exiting the vehicle carrying an Arby's bag. RP (6/22/16) 98. The information was corroborated further when officers observed all three people walk to the specific room that had been selected as the meeting location. RP (6/22/16) 98. These facts, along with the presence of the backpack, gave the officers reasonable suspicion the trio was carrying out a plan to deliver heroin. RP (6/22/16) 98-99.

The detention of Sewares was also reasonable. Sewares was not merely present at the scene. RP (6/22/16) 101. Sewares got out of the same car with Neff and the woman with the backpack and

walked with them to the designated motel room door arranged with the informant. RP (6/22/16) 101. This gave the officers reasonable suspicion to believe Sewares was involved in the plan to deliver heroin. RP (6/22/16) 94.

The information the officers had was provided by a reliable confidential informant and was corroborated by observations made by the officers during the investigation. The Court of Appeals decision is not in conflict with this Court's decision in *Z.U.E.*

2. SEWARES'S CASE DOES NOT PRESENT A SIGNIFICANT QUESTION OF CONSTITUTIONAL LAW.

This Court may accept review of a Court of Appeals decision if it involves a significant question of law under either the Constitution of the State of Washington or the United States Constitution. RAP 13.4(b)(3).

The Court of Appeals correctly decided Sewares's direct appeal. Sewares raises one issue for discretionary review: she asks this Court to review whether there was reasonable suspicion to justify a *Terry*[1] stop of Sewares.

This Court only accepts review if a case meets the following standards:

[1] *Terry v. Ohio*, 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968).

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). Sewares's case meets none of these criteria.

The Court of Appeals applied the correct standard in holding the officers had a well-founded suspicion to stop Sewares as a perceived accomplice, finding the confidential informant was reliable and his information was corroborated by the officers' observations. Appendix A. There is no significant question of law under the constitutions of the State of Washington or of the United States that results from the Court of Appeals decision on this issue.

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E. CONCLUSION

The State respectfully requests this Court not accept review on the issue Sewares raises in her petition for review. If this Court were to accept review, the State would respectfully request an opportunity to submit supplemental briefing.

RESPECTFULLY submitted this 21st day of February, 2018.

JONATHAN MEYER
Lewis County Prosecuting Attorney

by:_____
JESSICA L. BLYE, WSBA 43759
Attorney for Respondent

Appendix A

State v. Sewares, 49242-3-II

Filed
Washington State
Court of Appeals
Division Two

October 17, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. SARAH JEAN SEWARES, Appellant.	No. 49242-3-II UNPUBLISHED OPINION

MELNICK, J. — Sarah Jean Sewares appeals her conviction for possession of a controlled substance, methamphetamine. Sewares contends the trial court erred by denying her motion to suppress evidence seized from inside her purse. We affirm Sewares's conviction.[1]

FACTS[2]

A confidential informant (CI) notified City of Centralia Detective Adam Haggerty that Christopher Neff would be traveling to Centralia to deliver multiple ounces of heroin to a specific motel. This CI had previously provided both state and federal law enforcement with reliable information relating to narcotics distribution. The CI provided information to law enforcement about Neff's location prior to arriving at the motel. Law enforcement verified the information.

[1] Sewares also opposes appellate costs, asserting that she does not have the ability to pay because she is indigent. We decline to address the issue. A commissioner of this court will consider whether to award appellate costs in due course under RAP 14.2 if the State decides to file a cost bill and if Sewares objects to that cost bill.

[2] The following facts are taken from the trial court's unchallenged CrR 3.6 findings of fact, which are verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

As the CI reported, Neff arrived at the motel. Neff exited the vehicle with two female companions, Sewares and Jazmine Hammond. All three walked to the motel room where the CI told the officers Neff would be delivering the narcotics. Hammond carried a back pack and Sewares carried a purse. Law enforcement perceived Sewares as an accomplice to Neff.

Officers handcuffed all three individuals outside the motel room. City of Centralia Detective Chad Withrow asked Sewares if she possessed any controlled substances. Sewares told Withrow that she had methamphetamine in her purse. Withrow then looked inside Sewares's open purse and saw an open pill bottle containing what Withrow recognized as methamphetamine. The detective retrieved the methamphetamine.

The State charged Sewares with possession of a controlled substance, methamphetamine. Sewares filed a motion to suppress the methamphetamine seized from inside her purse. The trial court denied the motion, concluding that Sewares's detention was a lawful *Terry*[3] stop. Following a bench trial, the court convicted Sewares as charged. She appeals.

ANALYSIS

Sewares contends the trial court erred by denying her motion to suppress the methamphetamine located inside her purse because law enforcement illegally detained her. Sewares argues the detention outside the motel room did not constitute a valid *Terry* stop. She further argues even if it was a valid *Terry* stop, Withrow exceeded the scope of the *Terry* stop by asking her if she possessed any controlled substances. We disagree with all of Sewares's arguments.

[3] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

A. STANDARD OF REVIEW

We review a trial court's ruling on a motion to suppress evidence to determine whether substantial evidence supports the trial court's findings of fact and whether those findings, in turn, support the trial court's conclusions of law. *State v. Russell*, 180 Wn.2d 860, 866, 330 P.3d 151 (2014). Unchallenged findings of fact are verities on appeal. *O'Neill*, 148 Wn.2d at 571. We review a trial court's legal conclusions de novo. *State v. Roden*, 179 Wn.2d 893, 898, 321 P.3d 1183 (2014).

B. LEGAL PRINCIPLES

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution prohibit a warrantless search and seizure unless the State demonstrates that one of the narrow exceptions to the warrant requirement applies. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). "These exceptions include exigent circumstances, consent, searches incident to a valid arrest, inventory searches, the plain view doctrine, and *Terry* investigative stops." *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 310, 178 P.3d 995 (2008) (footnote omitted). A *Terry* stop requires a well-founded suspicion that the defendant is engaged in criminal conduct. *State v. Doughty*, 170 Wn.2d 57, 62, 239 P.3d 573 (2010). The police officer must be able to point to "'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.'" *State v. Williams*, 102 Wn.2d 733, 739, 689 P.2d 1065 (1984) (quoting *Terry*, 392 U.S. at 21). If the stop goes beyond investigatory purposes, it becomes an arrest and requires a valid arrest warrant or probable cause. *State v. Flores*, 186 Wn.2d 506, 520, 379 P.3d 104 (2016).

The State bears the burden of showing that the search and seizure was supported by a warrant or an exception to the warrant requirement. *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996). The exclusionary rule requires suppression of all evidence obtained pursuant to a person's unlawful seizure. *State v. Winterstein*, 167 Wn.2d 620, 632, 220 P.3d 1226 (2009). If the initial stop was unlawful or officers exceed the scope of a valid stop, the evidence discovered during the unlawful portion of that stop is inadmissible. *State v. Saggers*, 182 Wn. App. 832, 839, 332 P.3d 1034 (2014).

C. CONCLUSIONS OF LAW SUPPORTED BY FINDINGS

The trial court concluded the encounter between Sewares and Withrow was a valid *Terry* stop.

Here, based on the unchallenged findings of fact, a CI, who had previously provided both state and federal law enforcement with information relating to narcotics distribution, provided information that Neff would be delivering heroin to a certain motel room. As the CI reported, Neff arrived at the motel. Neff exited the vehicle with Sewares and Hammond. Each woman was carrying a bag. All three walked to the motel room where the CI told the officers Neff would be delivering the narcotics. Sewares was perceived as an accomplice to Neff.

Taking the above specific and articulable facts together with rational inferences from those facts, officers had a well-founded suspicion to stop Sewares. Thus, we hold that the trial court's conclusions that the initial stop was a lawful *Terry* stop is supported by the findings of fact.

We also hold that Withrow did not exceed the scope of the *Terry* stop by asking if Sewares possessed any controlled substances.

A *Terry* stop must be limited in scope and duration to fulfilling the investigative purpose of the stop. If the results of the initial stop dispel an officer's suspicions, the officer must end the investigation without further intrusion. If the officer's initial suspicions are confirmed or are further aroused, the scope of the stop may be extended and its duration may be prolonged. *State v. Acrey*, 148 Wn.2d 738, 747, 64 P.3d 594 (2003).

Here, Withrow was outside the motel room with Sewares based on a CI's tip that heroin was being delivered. The officer suspected Sewares was an accomplice since she arrived with Neff and walked with him to the motel room where the delivery was supposed to occur. Both Sewares and Hammond were carrying bags when they exited the vehicle. Since Sewares was detained during the investigation of a controlled substance offense, the officer's question whether Sewares possessed any controlled substances would be necessary to effectuate the stop.

Withrow was therefore entitled to ask a moderate number of questions to confirm or dispel his suspicions as part of the *Terry* stop. Withrow's question whether Sewares possessed any controlled substances did not exceed the valid scope of the *Terry* stop. Accordingly, Sewares's detention was lawful. The trial court properly concluded likewise. Consequently, the trial court did not err in denying Sewares's motion to suppress.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Melnick, J.

We concur:

Johanson, P.J.

Lee, J.

LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

February 21, 2018 - 11:00 AM

Transmittal Information

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Appellate Court Case Title:	State of Washington v. Sarah Jean Sewares
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