No. 98824-2

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent,

v.

STEVEN LONG,

Petitioner.

BRIEF OF WACDL AS AMICUS CURIAE OBO PETITIONER, STEVEN LONG

Thomas E. Weaver
WSBA #22488
WACDL Amicus Committee

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton WA 98337
(360) 792-9345

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

A. Identity of Amicus

The Washington Association of Criminal Defense Lawyers (WACDL) seeks to appear in this case as *amicus curiae* on behalf of the appellant Steven Long. WACDL was formed to improve the quality and administration of justice. A professional bar associated founded in 1987, WACDL has approximately 800 members, made up of private criminal defense lawyers, public defenders, and related professionals. It was formed to promote the fair and just administration of criminal justice and to ensure due process and defend the rights secured by law for all persons accused of crime. WACDL files this brief in pursuit of that mission.

B. Interest of Amicus

As part of its mission to promote the fair and just administration of criminal justice, WACDL is concerned with any cases that erode the constitutional protections of Washington citizens. Article 1, section 7 of the Washington Constitution is one of the bedrock constitutional provisions of criminal law in this state. *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986). Although Mr. Long's case involves a civil proceeding, the Court of Appeals' article 1, section 7 analysis, appearing as it does in a published decision, significantly undercuts this Court's precedent allowing appellate review for the first time on appeal. WACDL

asks this Court to accept review to correct Court of Appeals' misstatement of the law.

C. Issue of Concern to Amicus

Whether, in the context of a civil impound action, an invasion of a person's private affairs in violation of article 1, section 7, may be reviewed for the first time on appeal when the record is adequate for review?

D. Argument Why Review Should Be Granted

In the Court of Appeals' published decision, the Court refused to consider Mr. Long's article 1, section 7 claim, holding that it was being raised for the first time on appeal. This was error and this Court should accept review to correct this misstatement of the law.

Mr. Long argued for the first time on appeal that the impoundment of his vehicle constituted an illegal intrusion into his private affairs in violation of article 1, section 7 of the Washington Constitution. In support of this proposition, Mr. Long cited the case of *State v. Villela*, 194 Wn.2d 451, 460, 450 P.3d 170 (2019), which held, "Thus, an impound is lawful under article 1, section 7 only if, in the judgment of the impounding officer, it is reasonable under the circumstances and there are no

reasonable alternatives." The Court of Appeals held that a *Villela* claim may not be raised for the first time on appeal. This was error.

Issues that involve manifest error affecting a constitutional right may be raised for the first time on appeal. RAP 2.5(a). Issues pertaining to unlawful searches and seizures implicate constitutional rights as contained in the Fourth Amendment and article 1, section 7. The issue, therefore, is whether an alleged search or seizure error is manifest.

This Court has held that error relating to a failure to raise a search or seizure issue in the trial court is manifest if actual prejudice is shown in the record. "The defendant must identify a constitutional error and show how, in the context of the trial, the alleged error actually affected the defendant's rights; it is this showing of actual prejudice that makes the error 'manifest', allowing appellate review. If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest." *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995) (citations omitted). The purpose of this rule ensure that the trial court has the opportunity to correct any errors in the first instance, thereby avoiding unnecessary appeals. *State v. Robinson*, 171 W.2d 292, 304-05, 253 P.3d 84 (2011). In other words, whether the error is manifest turns on whether the record is sufficient for appellate review.

The Court of Appeals has consistently interpreted *McFarland* as requiring appellate review when the record is sufficient. For instance, in *State v. Contreras*, 92 Wn.App. 307, 313, 966 P.2d 915 (1998), the Court said, "We conclude that when an adequate record exists, the appellate court may carry out its long-standing duty to assure constitutionally adequate trials by engaging in review of manifest constitutional errors raised for the first time on appeal."

This Court has also been more willing to review search and seizure claims for the first time on appeal when there has been a significant change in the law while the case was pending on appeal. For instance, this Court allowed defendants whose cases were not final to raise *Gant* issues for the first time on appeal, although the cases were remanded for further proceedings. *State v. Robinson*, 171 W.2d 292, 253 P.3d 84 (2011); *Arizona v. Gant*, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).

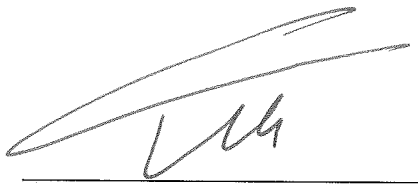
In the case of Mr. Long, an adequate record exists to review his article 1, section 7 claim and the Court of Appeals erred by refusing to consider the merits of his claim. The substantive facts related to Mr. Long's article 1, section 7 claim are identical to the substantive facts related to his Homestead Act, Eighth Amendment excessive fines, and Fourteenth Amendment substantive due process claims. Because the facts overlap, there was no impediment to reviewing the merits of Mr. Long's

article 1, section 7 claim. This Court should grant Mr. Long's petition for review and review his claim on the merits despite the fact that it was raised for the first time on appeal.

E. Conclusion

This Court should grant review of Mr. Long's petition for review and decide his article 1, section 7 claim on the merits.

Respectfully submitted this 24th day of September, 2020.



Thomas E. Weaver, WSBA #22488
Attorney for Amicus Curiae WACDL

THE LAW OFFICE OF THOMAS E. WEAVER

September 24, 2020 - 2:23 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98824-2
Appellate Court Case Title:	City of Seattle v. Steven Gregory Long

The following documents have been uploaded:

- 988242_Briefs_20200924142216SC529985_7157.pdf
  This File Contains:
  Briefs - Amicus Curiae
  The Original File Name was Long Brief of Amicus.pdf
- 988242_Motion_20200924142216SC529985_7103.pdf
  This File Contains:
  Motion 1 - Amicus Curiae Brief
  The Original File Name was Long Motion to Appear.pdf

A copy of the uploaded files will be sent to:

- Lise.Kim@seattle.gov
- alison.bilow@columbialegal.org
- brian.maxey2@seattle.gov
- cheryl.seelhoff@columbialegal.org
- erica.franklin@seattle.gov
- ivy.rosa@columbialegal.org
- kim.gunning@columbialegal.org
- lobsenz@carneylaw.com
- mjthomps@gmail.com
- rob.mitchell@klgates.com

Comments:

Sender Name: Alisha Freeman - Email: admin@tomweaverlaw.com
Filing on Behalf of: Thomas E. WeaverJr. - Email: tweaver@tomweaverlaw.com (Alternate Email:)

Address:
PO Box 1056
Bremerton, WA, 98337
Phone: (360) 792-9345

Note: The Filing Id is 20200924142216SC529985