SUPREME COURT NO. 90270-4

NO. 69913-0-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

STEVEN SANDOZ,

Petitioner.

REC'D
MAY 19 2014
King County Prosecutor
Appellate Unit

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Beth M. Andrus, Judge

PETITION FOR REVIEW

FILED
MAY 27 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

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A. IDENTITY OF PETITIONER

Steven Sandoz, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition pursuant to RAP 13.3(a)(1) and RAP 13.4(b)(3).

B. COURT OF APPEALS DECISION

Sandoz seeks review of the Court of Appeals decision entered on April 21, a copy of which is attached hereto as an appendix.

C. ISSUE PRESENTED FOR REVIEW

A police officer observed Sandoz leave the apartment of a woman known to have drug-related convictions, saw Sandoz act surprised and nervous, heard "conflicting" stories from Sandoz and his friend as to why they were there, observed the friend slouch down in the seat of his parked Jeep as the officer drove by, and had the authority to trespass individuals who did not belong on the property. Were these circumstances sufficient to support a reasonable suspicion that Sandoz was engaging in criminal activity?

D. STATEMENT OF THE CASE

SeaTac police officers regularly watched a particular six-unit apartment building because of the high number of documented criminal

incidents that occurred there. Four of the tenants had drug-related convictions. 1RP 16-17.[1] The building owner gave police permission to cite anyone for trespass who did not belong on the property. 1RP 51-52, 57-58.

On a late May night, Officer Chris Przygocki drove by the building and observed a white Jeep parked in a no-parking space in front of the building. 1RP 16-18, 38. He knew each tenant as well as the type of car each had because he had been watching the building for about five months. 1RP 16-18. Przygocki had never seen the Jeep before and knew it did not belong to any of the residents. 1RP 58. As he drove by the Jeep, Przygocki observed the man in the 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.

Przygocki sat in his car and watched the Jeep, which did not move for 15 minutes. None of the three occupants left and no one came to the vehicle. 1RP 19. 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. Przygocki

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[1] The verbatim report of proceedings is cited as follows: 1RP – 1/3/13; 2RP 1/7/13; 3RP -- 2/1/13.

walked around to the passenger side of the Jeep and then saw 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 visibly 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 repeated thata he was there to collect $20 from the woman inside the apartment. 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 felt something in Sandoz's groin area. He then read Sandoz his rights. Sandoz told Przygocki what he felt was cocaine stored in two small envelopes concealed in his underwear. 1RP 24-27, 46-47, 53. He also claimed the woman in the apartment set him up. 1RP 26-27. Przygocki retrieved the envelopes. 1RP 26-27.

The State charged Sandoz with cocaine possession. CP 1-4. Sandoz moved to suppress his statements and the cocaine. CP 6-15. He contended he was seized from the moment Przygocki asked him to get out of the Jeep. CP 10-11. The seizure, Sandoz argued, was not supported by a reasonable suspicion of criminal activity. CP 12-15.

The trial court agreed Przygocki seized Sandoz when he asked him to exit the Jeep. CP 52-53; 1RP 101. Contrary to Sandoz's argument, however, the trial court held Przygocki had specific and articulable facts to support the seizure. 1RP 102. They were: extremely high rate of drug activity at the apartment; the woman who lived in the apartment from which Sandoz emerged was involved with drugs and had drug convictions; Przygocki was authorized by the building owner to trespass non-occupants

who were loitering on the property; Przygocki did not recognize the Jeep; the driver appeared to try to hide when Przygocki drove by; the driver and Sandoz gave differing explanations for their presence; and Sandoz appeared surprised when he saw Przygocki and was shaking and pale. CP 53-54; 1RP 102-03. The trial court denied Sandoz's motion to suppress evidence. CP 54.

The trial court also denied the motion to suppress statements. The court concluded Sandoz was not in custody when he admitted he had the pipe. The court also concluded all Sandoz's statements made after the advisement of his rights were admissible because Sandoz voluntarily waived his rights. CP 48; 1RP 103-04.

The Court of Appeals affirmed, concluding Przygocki properly seized Sandoz when he asked him to get out of the car based on the totality of the circumstances. State v. Sandoz, COA No. 69913-0-I, slip op. at 6-8 (4/21/2014).

E. ARGUMENT

POLICE UNLAWFULLY DETAINED SANDOZ WITHOUT SUFFICIENT REASONABLE SUSPICION OF CRIMINAL WRONGDOING.

Whether Przygocki detained Sandoz without reasonable suspicion to believe he was engaged in criminal activity is a significant question

under the Washington Constitution. RAP 13.4(b)(3). This Court should accept review to answer this question.

Article I, section 7 of the Washington Constitution provides "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Unlike the Fourth Amendment, which precludes only "unreasonable" searches and seizures without a warrant, article I, section 7 prohibits any disturbance of an individual's private affairs "without authority of law," whether reasonable or unreasonable in the Fourth Amendment context. State v. Valdez, 167 Wn.2d 761, 771-72, 224 P.3d 751 (2009).

A warrantless search is per se unconstitutional under article I, section 7 unless it falls within an exception to the warrant requirement. State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004). "Exceptions to the warrant requirement are limited and narrowly drawn." State v. Parker, 139 Wn.2d 486, 496, 987 P.2d 73 (1999). The State always carries the "heavy burden" of proving a warrantless search is justified. State v. Ortega, 177 Wn.2d 116, 122, 297 P.3d 57 (2013). The showing must be by clear and convincing evidence. State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 573 (2010).

One exception to the warrant requirement permits police officers to briefly stop and detain a person they reasonably suspect is engaged in criminal conduct. State v. Day, 161 Wn.2d 889, 895, 168 P.3d 1265 (2007). There must be a substantial possibility of criminal activity. State v. Duncan, 146 Wn.2d 166, 179, 43 P.3d 513 (2002). This is commonly referred to as a "Terry" stop. Day, 161 Wn.2d at 895.[2] The facts justifying a Terry stop must be more consistent with criminal than with innocent conduct. State v. Pressley, 64 Wn. App. 591, 596, 825 P.2d 749 (1992). The State must establish the warrant exception by clear and convincing evidence. State v. Garvin, 166 Wash. 2d 242, 250, 207 P.3d 1266, 1270 (2009).

The trial court concluded Officer Przygocki effectuated a valid Terry stop when he asked Sandoz to step out of the Jeep. The question is whether the totality of the circumstances known to the officer supported his suspicion at that moment. State v. Rowe, 63 Wn. App. 750, 753, 822 P.2d 290 (1991), overruled in part on other grounds by State v. Bailey, 109 Wn. App. 1, 3, 34 P.3d 239 (2000). This includes the officer's experience, the location of the detention, and the suspect's conduct. State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991). This is a legal question this

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

Court reviews de novo. State v. Gaddy, 152 Wn.2d 64, 70, 93 P.3d 872 (2004).

In Sandoz's case, Przygocki knew criminal activity had occurred at the apartment building, including possession of drugs with intent to deliver by the tenant of the apartment Sandoz departed. Presence in a high-crime area, however, even late at night, does not alone justify an investigative detention. State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 573 (2010). As this Court held, police may not seize a person who visits a suspected drug house simply because he was there early in the morning and stayed only two minutes. 170 Wn.2d at 63; see also State v. Gleason, 70 Wn. App. 13, 18, 851 P.2d 731 (1993) (officers lacked reasonable suspicion to detain suspect merely because he was seen leaving an apartment complex where narcotics had been sold in the past, where suspect had never been seen there before, officers did not know what occurred inside the apartment, neither officer saw suspect involved in drug deal, and suspect was not acting suspiciously or carrying any unusual objects).

The driver of the Jeep Sandoz returned to slouched down when Przygocki drove by. That conduct may have contributed to a reasonable suspicion that the driver was engaged in criminal activity, but not Sandoz. Indeed, the driver had parked in a no-parking zone. Sandoz was not even

in the car at the time. Even if he were, "mere proximity to others independently suspected of criminal activity does not justify" an investigative detention. State v. Thompson, 93 Wn.2d 838, 841, 613 P.2d 525 (1980).

Sandoz's eyes widened when he saw Przygocki and he was shaking. 1RP 40. Mere nervousness does not add to the reasonable suspicion calculus. See, e.g., State v. Barron, 170 Wn. App. 742, 754, 285 P.3d 231 (2012) ("We assume that many, if not most, people will react with a level of nervousness when they are arrested."); United States v. I.E.V., 705 F.3d 430, 438 (9th Cir. 2012) (citing cases). Nervousness, however, has been recognized as a pertinent factor in determining reasonable suspicion when it suggests evasiveness. Illinois v. Wardlow, 528 U.S. 119, 124, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000). Sandoz did not try to evade Przygocki or attempt to hide anything. Furthermore, it was 11:30 p.m. and dark outside when Sandoz lifted his head and saw Przygocki standing next to an illegally parked vehicle he needed to get into. 1RP 14, 38-39. Under those circumstances, Sandoz had legitimate reason to be nervous and surprised.

Przygocki further relied on the fact the driver of the Jeep and Sandoz provided conflicting explanations for why they were there. The

"conflict," if there was one, was not material. The driver said he was there "because he received a phone call from one of his friends." 1RP 20. Sandoz said the driver had given him a ride to collect a debt from the woman in the apartment. 1RP 21, 23. Both events could have been true. The driver merely said he received a phone call from Sandoz. He did not say when or from where. Sandoz may have called his friend from home and asked for a ride to and from the apartment building.

Furthermore, the trial court found that after stepping out of the Jeep upon request, Sandoz told Przygocki he went into the apartment to pay the woman back. CP 51 (FOF 14). This is not supported by the evidence. Przygocki twice during his testimony said Sandoz explained he was at the apartment to get money *from* the resident. 1RP 23, 59. "A trial court's erroneous determination of facts, unsupported by substantial evidence, will not be binding on appeal." State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). For these reasons Sandoz's explanations for being at the apartment did not conflict and did not add to reasonable suspicion.

Przygocki also noted he had authority from the building owner to identify and remove persons who did not belong on the property, knew none of the tenants drove a Jeep, and had never seen the Jeep there. 1RP 51, 58, 60-61. He ended up trespassing each of the three occupants of the

Jeep as well as Sandoz, but not until after arresting him for cocaine possession. 1RP 43-44, 60.

A brief discussion of State v. Little is in order at this point. In Little, police officers were dispatched to the Lakeshore Village Apartments to investigate a report of a group of juveniles loitering on the grounds of the apartment complex. 116 Wn.2d 488, 496, 806 P.2d 749 (1991). Management of the multi-unit complex regularly experienced problems with drug and gang activity. Management encircled the complex with a fence topped with concertina wire and posted signs prohibiting trespassing or loitering throughout the complex. Little, 116 Wn.2d at 490. The management also had an agreement with the Seattle Police Department to investigate persons suspected of being trespassers. Id.

A responding officer observed several juveniles in the complex, all of whom ran upon seeing the police. One of them, Little, refused to heed an officer's command to stop, and instead ran inside an apartment and attempted to close the door in the face of the pursuing officer. The officer kept the door open and arrested Little for obstruction. Little, 116 Wn.2d at 496. Little was ultimately found guilty of obstruction and trespassing. Little, 116 Wn.2d at 493.

He appealed his convictions and challenged the legality of the police order to stop. Id. at 495. The Supreme Court held the circumstances known to the officer, the trespass investigation agreement, the report of loitering juveniles, the many posted signs warning against loitering, and Little's flight, were sufficient to justify the investigative detention. Id. at 496.

As the Little Court held, the trespass agreement was a factor supporting the officer's reasonable suspicion, but did not itself justify the detention. In contrast to Little, Sandoz did nothing inherently suspicious before he was seized. Furthermore, Przygocki did not recognize Sandoz, his cohorts, or their vehicle and therefore had no reason to suspect they had been told to stay away from the property. 1RP 58. Finally, Przygocki saw Sandoz emerge from a resident's apartment after seeing no one enter or leave the Jeep for 15 minutes. The reasonable inference was that Sandoz visited the apartment resident for that period of time. Visiting the resident of an apartment under these circumstances can hardly be considered "trespassing."

Przygocki also testified he believed he had seen enough to detain or arrest Sandoz for drug-related loitering under the SeaTac Municipal Code (STMC). 1RP 46, 56-57. The provision, STMC § 8.05.380(C),

makes it unlawful to "loiter in or near any thoroughfare, place open to the public, or near any public or private place in a manner and under circumstances manifesting the intent to engage in drug-related activity contrary to any of the provisions of Chapter 69.41, 69.50, or 69.52 RCW." Appendix B.

"Loiter" is not defined in the STMC or the Revised Code of Washington. There are several dictionary definitions, the most pertinent of which is "to remain in or near a place in an idle or apparently idle manner: hang around aimlessly or as if aimlessly." Webster's Third New International Dictionary 1331 (1993). Sandoz did not loiter; he remained inside the apartment and out of Przygocki's view. When he emerged from the apartment, he approached and entered the Jeep. He did not act "in a manner and under circumstances manifesting the intent to engage in drug-related activity." Przygocki may have believed he had a reason to detain Sandoz for drug traffic loitering, but his belief was mistaken. The existence of a drug-related loitering ordinance was not relevant to determining the propriety of the detention.

Considered individually and collectively, the circumstances presented to Przygocki at the time he asked Sandoz to get out of the Jeep did not support a reasonable suspicion of criminal activity. His eventual

discovery of cocaine was thus unlawful. The cocaine must be suppressed. See Duncan, 146 Wn.2d at 176 ("The exclusionary rule mandates the suppression of evidence gathered through unconstitutional means."). Without the seized evidence, the state cannot sustain the charge. This Court should therefore reverse the trial court's denial of Polk's motion to suppress, reverse the conviction, and remand for dismissal with prejudice. State v. Armenta, 134 Wn.2d 1, 17-18, 948 P.2d 1280 (1997).

F. CONCLUSION

Sandoz respectfully requests that review be granted because the Court of Appeals decision involves a significant constitutional question. RAP 13.4(b)(3).

DATED this 19 day of May, 2014.

Respectfully submitted,

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APPENDIX

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 69913-0-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
STEVEN SANDOZ,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: April 21, 2014

COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 APR 21 AM 10: 24

SPEARMAN, C.J. — Steven Sandoz was charged with a violation of the Uniform Controlled Substance Act, possession of cocaine. Prior to trial he moved to suppress evidence of his incriminating statements and the cocaine found in his possession during a search incident to his arrest. He argued that his initial detention was unlawful because the arresting officer lacked the reasonable and articulable grounds to believe he was engaged in criminal activity and therefore, any evidence obtained subsequently was inadmissible at his trial. The trial court denied the motion and after a bench trial on stipulated facts, he was found guilty as charged. Sandoz appeals, contending that the trial court erred in denying his motion to suppress. We conclude his claim lacks merit and affirm.

FACTS

Late in the evening on May 23, 2012, King County Sheriff Deputy Christopher Przygocki observed a white Jeep illegally parked in front of an apartment building known for an unusually high number of documented criminal incidents. As a result of the frequent criminal activity at the location, the owner of the building had authorized police officers to cite anyone for trespass if they did not belong on the property, and the building had been designated as part of a problem solver project for added emphasis to stop crime in the area. Przygocki knew the vehicles owned by each of the tenants and did not recognize the Jeep. When he drove by, the driver of the Jeep "slumped down" so he parked in a nearby cul-de-sac 20 yards away for further observation. Verbatim Report of Proceeding (VRP) (1/3/13RP) at 18.

When nobody entered or exited the vehicle for 15 minutes, Deputy Przygocki exited his patrol car and contacted the driver. Przygocki asked the driver what he was doing, and the driver responded that his friend had called him for a ride. The driver did not answer Przygocki's question about why he slumped down. Then Przygocki walked around to the passenger side of the vehicle and noticed Steven Sandoz walking out of an apartment toward the Jeep with his eyes down and his hands in his pocket. Przygocki knew from previous experience that the tenant of the apartment Sandoz exited had a history of convictions for possession of controlled substances with intent to distribute. When Sandoz saw Przygocki, his "eyes got big, and he entered the Jeep." VRP (1/3/13RP) at 21. Przygocki asked Sandoz what he was doing, and Sandoz stated the driver gave him a ride to the apartment to collect $20 from the resident of the

apartment. The deputy believed the explanations contradicted each other. Przygocki also stated that Sandoz was visibly shaking, and his face looked pale and thin.

Based on the information he had obtained, Przygocki asked Sandoz to step out of the Jeep to talk in private. Sandoz complied, and the two walked to the back of the Jeep. Had Sandoz declined, Przygocki stated he would have detained him and investigated for drug-related loitering. Once outside, Sandoz initially told Przygocki that he was at the apartment to collect $20 from the tenant, but then admitted he had a drug problem and a crack pipe in his pocket. Przygocki arrested Sandoz for possession of drug paraphernalia and felt an object in Sandoz's groin area during a search incident to arrest. Przygocki advised Sandoz of his rights and waited for another officer to arrive before removing the object, which turned out to be two small envelopes of cocaine. Sandoz admitted to purchasing narcotics from the tenant and claimed the tenant had set him up. In transit, Sandoz admitted he had a drug problem, asked for help, and told Przygocki he would be coming off narcotics.

The State charged Sandoz with possessing cocaine, a violation of the Uniform Controlled Substance Act.[1] In a pretrial motion pursuant to CrR 3.5 and 3.6, Sandoz argued his initial detention was illegal and, as a result, all of his statements and the evidence seized from him subsequent to his detention should be suppressed. CP 6-15. In denying the motion, the trial court concluded as follows:

> The deputy had reasonable and articulable suspicion to conduct a Terry[2] stop of the defendant, when he asked to talk to the defendant privately at the back of the vehicle. The area that this occurred was an area of extremely high drug activity, known to the officer based on objective 911 calls reporting drug activity and investigations into

[1] RCW 69.50.4013

[2] Terry v. Ohio, 392 U.S. 1, 30-31, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

> drug dealing. The deputy was aware that occupants of the apartment complex, specifically the one apartment the defendant exited, was known as a place where drug deals occurred.... The deputy had express authority from the complex owner people (sic) to trespass people who were non-occupants loitering at the complex. The Jeep seen did not belong to any occupants of the complex. The driver of the Jeep slouched down when the deputy drove past. The driver and the defendant had conflicting stories as to why they were in the area. The defendant looked surprised when he saw the deputy. The defendant was visibly shaken and pale when the deputy initiated contact with him, At this point, the deputy had reasonable and articulable suspicion that the defendant was engaging in illegal drug activities.

Clerk's Papers at 53.

Following the court's ruling on the motion, Sandoz waived his right to a jury trial and submitted the case to the bench on stipulated facts. The trial court found him guilty. Sandoz appeals, arguing the trial court erred in denying his motion to suppress. We affirm.

DISCUSSION

A seizure occurs under the Washington constitution when considering all the circumstances, an individual's freedom of movement is restrained and the individual would not believe he or she is free to leave or decline a request due to an officer's use of force or display of authority. (Citing State v. O'Neill, 148 Wn.2d 564, 574, 62 P.3d 489 (2003)). The determination is based on a purely objective look at the actions of the law enforcement officer. State v. Young, 135 Wn.2d 498, 512, 957 P.2d 681 (1998). The relevant question is whether a reasonable person in the defendant's position would feel that he or she was being detained. O'Neill, 148 Wn.2d at 581. On the other hand, if a reasonable person would feel free to walk away from the officer, the encounter does not

amount to a seizure. United States v. Mendenhall, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980).

A law enforcement officer's request that a person exit a vehicle constitutes a seizure because a reasonable person in that circumstance would not feel free to decline the request. See O'Neill, 148 Wn.2d at 581 (finding an officer did not show sufficient authority for a seizure until he asked the driver to exit a parked car); State v. Johnson, 156 Wn. App. 82, 92, 231 P.3d 225 (2010) review granted 172 Wn.2d 1001, 257 P.3d 1112 (2011) (noting that a seizure did not occur when the officer did not ask a passenger to step out of a car until the officer knew of the passenger's outstanding warrants); State v. Watkins, 76 Wn. App. 726, 729, 887 P.2d 492 (1995) (asking the passenger to exit a car during a traffic stop constituted a seizure). Thus, Sandoz was seized when Przygocki asked him to exit the vehicle.

Sandoz argues that the seizure was unlawful because Przygocki lacked reasonable and articulable grounds to believe that Sandoz had engaged or was about to engage in criminal activity. We disagree. Article 1, section 7 of the Washington Constitution provides "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." This language provides more protection than the Fourth Amendment and creates nearly an absolute bar on warrantless seizures. State v. Valdez, 167 Wn.2d 761, 772, 224 P.3d 751 (2009). For a warrantless seizure to be lawful, the State must show by clear and convincing evidence that the seizure was justified by one of the limited exceptions to the warrant requirement. State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 573 (2010).

Under Terry, brief investigatory stops are one such exception to the general rule against warrantless seizures. See also State v. Acrey, 148 Wn.2d 738, 746-47, 64 P.3d 594 (2003). A Terry stop is proper when an officer's reasonable suspicion that the stopped person has been or is about to be involved in a crime is grounded in specific and articulable facts. Id. at 747. "The reasonableness of the officer's suspicion is determined by the totality of the circumstances known to the officer at the inception of the stop." State v. Rowe, 63 Wn. App. 750, 753, 822 P.2d 290 (1991) overruled in part on other grounds by State v. Bailey, 109 Wn. App. 1, 3, 34 P.3d 239 (2000). The officer's training, the location of the stop, the conduct of the person detained, the purpose of the stop, the amount of physical intrusion, and the length of time the suspect is detained are all proper to consider in determining the reasonableness of the stop. Acrey, 148 Wn.2d at 747.

Deputy Przygocki properly seized Sandoz based on the totality of the circumstances at the time of the seizure. As the trial court found, Przygocki had extensive knowledge of frequent drug and other criminal conduct occurring at the apartment complex, and Sandoz exited the apartment of a convicted drug dealer. For six months, Przygocki had been working on a problem solver project involving the complex and had authority from the owner to trespass anyone that did not belong on the property. Przygocki saw the driver in the Jeep slump down in his seat as the deputy drove by, and the Jeep was illegally parked in front of the building for 15 minutes. Once Sandoz exited the apartment, Przygocki noticed that Sandoz appeared nervous at the sight of the officer and was visibly shaking. His face also looked pale and thin. The driver and Sandoz offered conflicting stories to explain their presence at the complex...

Considering all the information he had ascertained, Przygocki had reasonable and articulable grounds to suspect that Sandoz was engaging in illegal drug activities.

Sandoz's reliance on Doughty and Gleason is misplaced. In Doughty, the court held that a seizure was improper when the defendant left a suspected drug house late at night after staying for only two minutes. 170 Wn.2d 57, 63, 239 P.3d 573 (2010). But the arresting officer in Doughty relied on "incomplete observations" and only used neighbor complaints to identify the residence as a drug house. Id. at 64. With more information about why the drug house was designated as such, the officer's conduct may have been proper. Id. at 65 (Chambers, J., concurring). Here, Przygocki knew the tenant was a convicted drug dealer and the complex had been a part of the problem solver project because of the frequent criminal activity. His personal knowledge of the circumstances provides specific, articulable grounds for his suspicion that Sandoz was engaged in illegal drug activity.

Likewise, Gleason is distinguishable as well. In Gleason, the arresting officers relied "solely" on racial incongruity in seizing the defendant. 70 Wn. App. 13, 18, 851 P.2d 731. In fact, "there was no evidence Mr. Gleason was acting suspiciously, he was not carrying any unusual objects, and the officers admitted there was no basis to arrest him for loitering." Id. Here, Przygocki observed Sandoz leave the apartment of a known drug dealer. Sandoz looked nervous, thin and pale, and was visibly shaking when Przygocki made contact with him and Sandoz's explanation for being at the apartment complex contradicted the driver's explanation. Based on the totality of the

circumstances, Deputy Przygocki had reasonable and articulable grounds to believe that Sandoz was engaged in illegal drug activity.[3]

Affirmed.

Spearman C.J.

WE CONCUR:

Verellen, A.C.J.

Leach, J.

[3] Sandoz also contends for the first time on appeal that the Przygocki lacked probable cause to arrest Sandoz because mere possession of drug paraphernalia is not a crime under the Revised Code of Washington. As a general rule, appellate courts will not consider a claim of error which was not raised in the trial court. RAP 2.5(a). An exception to the general rule is where the claimed error is a "manifest error affecting a constitutional right." RAP 2.5(a)(3). For this exception to apply, "[t]he 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." State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). Although, Sandoz's claim arguably affects Sandoz's rights under the Fourth Amendment to the federal constitution and article I, section 7 of our state constitution, Sandoz makes no argument, and we perceive of none, that the claimed error is manifest in this case. Accordingly, we decline to consider it.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	SUPREME COURT NO. _____
vs.	)	COA NO. 69913-0-I
	)	
STEVEN SANDOZ,	)	
	)	
Petitioner.	)	

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 19TH DAY OF MAY, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] STEVEN SANDOZ
900 UNIVERSITY STREET
APT. 13N
SEATTLE, WA 98101

SIGNED IN SEATTLE WASHINGTON, THIS 19TH DAY OF MAY, 2014.

x Patrick Mayovsky