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**State of Washington**  
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N<sup>o</sup>. 50084-1-II

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

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STATE OF WASHINGTON  
Respondent,

v.

CINDY L. CAULFIELD,  
Appellant.

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REPLY BRIEF OF APPELLANT

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Appeal from the Superior Court of Clark County,  
Cause No. 15-1-00944-3  
The Honorable Gregory Gonzalez, Presiding Judge

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Reed Speir  
WSBA No. 36270  
Attorney for Appellant  
3800 Bridgeport Way W., Ste. A #23  
(253) 722-9767

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**I. REPLY**

**A. Ms. Caulfield may challenge the lawfulness of her initial seizure on appeal because it was challenged in the trial court.**

The State argues that Mr. Caulfield may not challenge the lawfulness of her initial seizure because it was not challenged below. The State is incorrect and misrepresents the motion to suppress litigated in the trial court.

Contrary to the State’s claim that Ms. Caulfield did not challenge the lawfulness of her initial seizure in the trial court, the motion to suppress<sup>1</sup> attacks the lawfulness of the initial seizure numerous times, clearly differentiating it from the arrest. The motion indicated Ms. Caulfield was seeking an order “suppressing all of the evidence seized as a result of the **illegal detention and** arrest.”<sup>2</sup> The motion argued the initial seizure “was without probable cause” and argued that “[a]ll evidence obtained as a result of the seizure **and** arrest” should be suppressed.<sup>3</sup> The motion argued that Deputy Shields did not have probable cause to *detain* Ms. Caulfield based upon his failure to investigate.<sup>4</sup> The motion also argued that “Deputy Shields did not have probable cause to arrest Ms. Caulfield upon his arrival, stopping the vehicle, placing Ms. Caulfield in

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<sup>1</sup> CP 25-33.

<sup>2</sup> CP 25 (emphasis added).

<sup>3</sup> CP 25 (emphasis added).

handcuffs making her sit handcuffed in a patrol vehicle while he is supposedly ‘investigating’ for at least an hour or longer.”<sup>5</sup>

Ms. Caulfield clearly challenged the lawfulness of her initial seizure at trial separately from the lawfulness of her ultimate arrest by Deputy Shields. The State’s argument that Ms. Caulfield waived this argument lacks support in the record. Ms. Caulfield clearly challenged the lawfulness of her initial seizure as being made without probable cause independently from and in addition to her challenge to the formal arrest.

**B. Even if this court finds that Ms. Caulfield did not challenge the lawfulness of her initial seizure below, she may challenge it for the first time on appeal because the lawfulness of a warrantless seizure is an issue of constitutional magnitude.**

In an abundance of caution, should this court find that Ms. Caulfield did not challenge the lawfulness of her initial detention below, Ms. Caulfield presents the following argument as to why she may challenge her seizure for the first time on appeal.

“An established rule of appellate review in Washington is that a party generally waives the right to appeal an error unless there is an objection at trial. RAP 2.5(a).”<sup>6</sup> Under RAP 2.5(a)(3), an appellant may raise for the first time on appeal a claim of manifest error affecting a

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<sup>4</sup> CP 26.

<sup>5</sup> CP 32.

<sup>6</sup> *State v. Kalebaugh*, 183 Wn.2d 578, 583, 355 P.3d 253 (2015).

constitutional right.<sup>7</sup> “This exception strikes a careful policy balance [because] a procedural rule should not prevent an appellate court from remedying errors that result in serious injustice to an accused.”<sup>8</sup>

“Whether RAP 2.5(a)(3) applies is based on a two-part test: (1) whether the alleged error is truly constitutional and (2) whether the alleged error is ‘manifest.’”<sup>9</sup>

“An error is manifest when it has practical and identifiable consequences in the trial of the case.”<sup>10</sup>

1. The lawfulness of the initial seizure of Ms. Caulfield is an issue of constitutional magnitude.

“To determine if an error is of constitutional magnitude, we look to whether, if the defendant's alleged error is true, the error actually violated the defendant's constitutional rights.”<sup>11</sup>

As discussed in Ms. Caulfield Opening Brief, Ms. Caulfield has a right to be free from unlawful seizure by police under both the Fourth Amendment to the US Constitutional and Article 1, § 7 of the Washington

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<sup>7</sup> *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

<sup>8</sup> *Kalebaugh*, 183 Wn.2d at 583, 355 P.3d 253.

<sup>9</sup> *State v. Ridgley*, 141 Wn.App. 771, 779, 174 P.3d 105 (2007) (internal quotation marks omitted) (quoting *State v. Kronich*, 160 Wn.2d 893, 899, 161 P.3d 982 (2007)).

<sup>10</sup> *Ridgley*, 141 Wn.App. at 779, 174 P.3d 105 (quoting *State v. Stein*, 144 Wn.2d 236, 240, 27 P.3d 184 (2001)); see also *McFarland*, 127 Wn.2d at 333, 899 P.2d 1251 (“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.”).

<sup>11</sup> *State v. Kalebaugh*, 179 Wn.App. 414, 420-421, 318 P.3d 288 (2014), *affirmed* 183 Wn.2d 578, 355 P.3d 253 (2015), *citing State v. O'Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009).

Constitution.<sup>12</sup> An unconstitutional seizure is clearly an issue of constitutional magnitude.

2. The unlawful seizure of Ms. Caulfield is a manifest error.

[U]nder RAP 2.5(a)(3), manifestness requires a showing of actual prejudice. To demonstrate actual prejudice, there must be a plausible showing by the appellant that the asserted error had practical and identifiable consequences in the trial of the case. Next, to determine whether an error is practical and identifiable, the appellate court must place itself in the shoes of the trial court to ascertain whether, given what the trial court knew at that time, the court could have corrected the error.<sup>13</sup>

“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.”<sup>14</sup>

The record showed that Ms. Caulfield was seized, handcuffed, and placed in a police car by Deputy Shields as soon as Deputy Shields arrived on scene.<sup>15</sup> The unlawful initial seizure and detention of Ms. Caulfield for over an hour when Deputy Shields knew nothing about Ms. Caulfield or her activities prior to his arrival had practical and identifiable consequences because it was an unlawful seizure by police and all

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<sup>12</sup> Appellant’s Opening Brief, p. 9-11.

<sup>13</sup> *Kalebaugh*, 183 Wn.2d at 584, 355 P.3d 253, internal citations omitted.

<sup>14</sup> *McFarland*, 127 Wn.2d at 333, 899 P.2d 1251, citing *State v. Riley*, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993).

<sup>15</sup> CP 98, 102.

evidence derived from an unlawful seizure must be suppressed.<sup>16</sup> If all evidence discovered following Ms. Caulfield's unlawful seizure were suppressed, then the drugs found on her person during the booking search at the jail would not have been admissible and there would have been no evidence to support convicting her of unlawful possession of a controlled substance.

All facts necessary to determine the lawfulness of the seizure of Ms. Caulfield were present in the record. Deputy Shields seized Ms. Caulfield and handcuffed and placed her in a police car immediately upon arriving at the scene, despite knowing *nothing* about Ms. Caulfield or her behavior prior to his contacting her. As pointed out in Ms. Caulfield's Opening Brief, Deputy Shields lacked knowledge of facts sufficient to conduct a *Terry* stop, much less perform a full custodial seizure.<sup>17</sup>

The record is more than sufficient to show that the unlawful seizure of Ms. Caulfield was a manifest error.

3. The trial court would likely have granted the motion to suppress on the basis that the initial seizure of Ms. Caulfield was unlawful had it been brought.

When a claim of constitutional error for failure to suppress

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<sup>16</sup> *State v. Ladson*, 138 Wn.2d 343, 359-360, 979 P.2d 833 (1999); *see also Wong Sun v. United States*, 371 U.S. 471, 491, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) (Evidence obtained directly or indirectly through exploitation of an unconstitutional police action must be suppressed, unless the secondary evidence is sufficiently attenuated from the illegality as to dissipate the taint).

evidence is raised for the first time on appeal because no motion to suppress was made at the trial court, the party raising the issue must show that the trial court would have likely granted the suppression motion had it been made.<sup>18</sup>

As discussed at pages 8-15 of Ms. Caulfield's Opening Brief, the initial stop of Ms. Caulfield's vehicle was unlawful because Deputy Shield's lacked knowledge of facts sufficient to support an objectively reasonable belief that Ms. Caulfield was personally involved in criminal activity. At worst, the facts known to Deputy Shields support both innocent and criminal interpretations, rendering the investigatory seizure of Ms. Caulfield unlawful.

However, even if the totality of the circumstances known to Deputy Shields did support conducting a lawful investigative detention of Ms. Caulfield, Deputy Shields' actions far exceeded the permissible scope of an investigative stop. Deputy Shields could have lawfully stopped Ms. Caulfield and asked for her identification and an explanation of her activities in the area.<sup>19</sup> This is the permissible scope of a lawful *Terry* stop. Deputy Shields far exceeded the permissible scope of a *Terry* stop when he handcuffed Ms. Caulfield and placed her in the back of a patrol

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<sup>17</sup> Appellant' Opening Brief, p. 12-14.

<sup>18</sup> *McFarland*, 127 Wn.2d at 333-34, 899 P.2d 1251.

<sup>19</sup> *See State v. Glover*, 116 Wn.2d 509, 513, 806 P.2d 760 (1991).

car, especially when he did so with no knowledge of who Ms. Caulfield was or what she was doing. Even if the initial seizure of Ms. Caulfield was lawful at its inception, it immediately became unlawful when Ms. Caulfield was ordered out of her vehicle, handcuffed, and detained in a police car, a situation equivalent to full custodial arrest, not a *Terry* stop.

Deputy Shields knew nothing about Ms. Caulfield or what she was doing prior to his removing her from her vehicle, handcuffing her, and putting her in a police vehicle. The facts known to Deputy Shields at the time he forcibly detained Ms. Caulfield did not support even a *Terry* stop, much less a full custodial arrest.

Had these arguments been made to the trial court, the trial judge would likely have granted the motion to suppress since Deputy Shields' lack of any knowledge specific to Ms. Caulfield precludes his ability to form the requisite objectively reasonable belief that she was involved in criminal activity necessary to conduct even a minimally intrusive *Terry* stop, much less order her from her vehicle, handcuff her, and keep her locked in the back of a police car for over an hour while he investigated what was going on. The law requires Deputy Shields to have done his investigation *before* he handcuffed Ms. Caulfield, not after.

Accordingly, should this court believe that Ms. Caulfield did not challenge the lawfulness of her initial seizure below, Ms. Caulfield may

challenge her seizure for the first time on appeal. All facts necessary to adjudicate the issue are present in the record and the issue is one involving a manifest error of constitutional magnitude that, had it been raised in the trial court, would have been successful.

## II. CONCLUSION

For the reasons stated above and in Ms. Caulfield's Opening Brief, this Court should vacate Ms. Caulfield's conviction and remand for a new trial where all evidence discovered pursuant to Ms. Caulfield's unlawful seizure is suppressed.

DATED this 17<sup>th</sup> day of November, 2017.

Respectfully submitted,



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Reed Speir, WSBA # 36270  
Attorney for Appellant

CERTIFICATE OF SERVICE

Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 17<sup>th</sup> day of November, 2017, I delivered a true and correct copy of the Brief of Appellant to which this certificate is attached by United States Mail, to the following:

Clark County Prosecutor's Office  
1013 Franklin Center  
PO Box 5000, Vancouver WA 98666-5000

And to:

Cindy Lou Caulfield  
625 E. Dogwood Avenue  
La Center, WA 98649

Signed at Tacoma, Washington this 17<sup>th</sup> day of November, 2017.



Reed Speir, WSBA No. 36270

**LAW OFFICE OF REED SPEIR**

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**Transmittal Information**

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Address:

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