

NO. 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 LOU CAULFIELD, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-00944-3

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BRIEF OF RESPONDENT

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## RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The trial court properly denied Ms. Caulfield's motion to suppress because there was a reasonable suspicion sufficient to seize Ms. Caulfield and probable cause supported her arrest.**
- II. **Should the State prevail it will not seek appellate costs.**

### STATEMENT OF THE CASE

#### A. PROCEDURAL HISTORY

Cindy Lou Caulfield was charged by information with Burglary in the Second Degree for an incident on or about May 25, 2015 and with Possession of a Controlled Substance – Methamphetamine, for methamphetamine that was discovered on her person at the jail following her arrest for the burglary. CP 5-6. The burglary count was later dismissed pursuant to the State's motion. CP 23-24. Ms. Caulfield filed a motion to suppress the drug evidence arguing that probable cause did not support her arrest. CP 25-33. She also argued that a *Franks* hearing was warranted and that evidence seized pursuant to the relevant search warrant should be suppressed, however, it does not appear that any evidence seized pursuant to that search warrant was relevant to the drug crime. CP 25-33; 126-27. The State authored a response to Ms. Caulfield's motion. CP 107-116.

The CrR 3.6 motion to suppress proceeded before The Honorable Gregory Gonzales. RP 1-29 (12-09-2016). No testimony was taken at the

hearing as it appears the parties relied on the responding deputy's police report, his search warrant affidavit, and other materials attached to Ms. Caulfield's motion. RP 7-8, 15-16 (12-09-2016); CP 26, 34-103.

Ultimately, the trial court denied the motion to suppress and entered findings of fact and conclusions of law. RP 2-9 (12-13-2016), 6-19 (12-27-2016); CP 128-134.

The parties then proceeded to a stipulated facts bench trial at which the trial court found Ms. Caulfield guilty of Possession of a Controlled Substance – Methamphetamine. RP 19-35 (12-27-2016); CP 124-127, 164. The trial court sentenced Ms. Caulfield to a standard range sentence of 22 days to be served on the work crew. RP 16-17 (02-17-2017); CP 166. Ms. Caulfield filed a timely notice of appeal. CP 176

#### B. STATEMENT OF FACTS

Robert and Bridget Foss owned a residence on Smith Quarry Road in Woodland, Washington. CP 102. The residence is in a very secluded location. CP 102. In fact, the road on which the residence is found leads only to the residence itself and to an old rock quarry. CP 102. Jersey barriers were placed on the road to prevent access to the quarry. CP 102. This left the Foss's long, private driveway as the only other destination off of Smith Quarry Rd. CP 102.

The Fosses did not, however, exclusively reside at this residence. CP 102. Indeed, they had departed the Woodland residence in November of 2014 and had only just returned in May of 2015. CP 102. While the Fosses were away this residence had been burglarized multiple times to include in the days just before they returned. CP 49-50, 55, 101-02. Upon their return to the residence, on the morning of May 25, 2015, Mr. Foss noticed a car in his driveway that was loaded with property from his house. CP 49-50, 102. He called the police and deputies arrived, stopped the vehicle, and arrested two men for burglary. CP 49-53, 101-02.

Following that arrest, Mr. Foss secured the residence to the best of his ability, drove to get a U-Haul to park in his driveway in an attempt to plug the narrowest part to keep people from driving up to the residence, and then left again to go to Walmart to pick up paint. CP 50-57, 101. As Mr. Foss was returning from Walmart he saw a yellow SUV parked against the jersey barriers and on his property, i.e., his “easement driveway.” CP 57-60. Mr. Foss then called 911 and waited in his parked car for the police to arrive. CP 61, 102. Just prior to the arrival of the police, and about 20 minutes after the 911 call, Mr. Foss saw activity in the suspicious vehicle. CP 61, 102. Mr. Foss believed the SUV was going to leave so he came down the road and took a picture of it. CP 61. At that point, the occupants of the car “flipped [him] off.” CP 61.

At about that same time, Deputy Jon Shields arrived at the scene. CP 61, 102. Dep. Shields had been dispatched to a suspicious circumstances call with the call notes indicating that the reporting party's home had been burglarized earlier in the day and that the reporting party had returned home to find another unknown car, a yellow SUV, in the road next to the home. CP 101-02. As Dep. Shields was responding to the scene he called the deputy who had been working on the prior burglary to get more information. CP 102. When Dep. Shields arrived he saw a yellow Nissan X-Terra SUV occupied by two females that appeared to leaving. CP 102. Dep. Shields stopped the vehicle and noticed from the passenger side of the vehicle that it was loaded with goods. CP 101-02.

Dep. Shields contacted the occupants of the SUV, one of which was Ms. Caulfield. CP 102-03. He then spoke with Mr. Foss and Ms. Foss, conducted some additional investigation, interviewed Ms. Caulfield and the other occupant of the SUV, and then placed Ms. Caulfield under arrest. CP 102-03. During the booking process a corrections officer found a baggie of methamphetamine within Ms. Caulfield's jacket. CP 101, 103. Ms. Caulfield was then booked for Burglary in the Second Degree and Possession of a Controlled Substance - Methamphetamine. CP 101, 103.

## ARGUMENT

### **I. The trial court properly denied Ms. Caulfield’s motion to suppress because there was a reasonable suspicion sufficient to seize Ms. Caulfield and probable cause supported her arrest.**

#### *a. Waiver*

Because Ms. Caulfield did not challenge her initial seizure in the trial court she waived the right to now raise the argument. The general rule is that an issue, theory, or argument not presented at trial will not be considered on appeal. RAP 2.5(a); *State v. Hayes*, 165 Wn.App. 507, 514, 265 P.3d 982 (2011) (citing *State v. McFarland*, 127 Wn.2d 322, 332–33, 899 P.2d 1251 (1995)). This “rule reflects a policy of encouraging the efficient use of judicial resources. The appellate courts will not sanction a party’s failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal . . .” *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1998) (citation omitted).

This rule also applies to suppression motions as, “[e]ven if a defendant objects to the introduction of evidence at trial, he or she ‘may assign evidentiary error on appeal only on a specific ground made at trial.’” *State v. Hamilton*, 179 Wn.App. 870, 878, 320 P.3d 142 (2014) (quoting *State v. Kirkman*, 159 Wn.2d 918, 926, 155 P.3d 125 (2007));

*State v. Higgs*, 177 Wn.App. 414, 423-24, 311 P.3d 1266 (2014); *State v. Garbaccio*, 151 Wn.App. 716, 731, 214 P.3d 168 (2009) (holding because defendant’s “present contention was not raised in his suppression motion, and because he did not seek a ruling on this issue from the trial court, we will not consider it for the first time on appeal”).

An exception to this rule exists, however, for manifest errors affecting a defendant’s constitutional rights. RAP 2.5(a)(3); *Hayes*, 165 Wn.App. at 514. Nevertheless, “RAP 2.5(a)(3) does not permit all asserted constitutional claims to be raised for the first time on appeal, but only certain questions of ‘manifest’ constitutional magnitude.” *Kirkman*, 159 Wn.2d at 934 (citation omitted). A defendant seeking appellate review of an issue or argument not presented to the trial court bears the burden of satisfying the strictures of RAP 2.5(a)(3). *State v. Knight*, 176 Wn.App. 936, 951, 309 P.3d 776 (2013); *State v. Bertrand*, 165 Wn.App. 393, 400-03, 267 P.3d 511 (2011).

More specifically, “[i]n order to benefit from this exception, ‘the [defendant] must identify a constitutional error and show how the alleged error actually affected the [defendant]’s rights at trial,’” i.e., show that the error is manifest. *State v. Grimes*, 165 Wn.App. 172, 180, 267 P.3d 454 (2011) (alterations in original) (quoting *State v. Gordon*, 172 Wn.2d 671, 676, 260 P.3d 884 (2011)) (quoting *State v. O’Hara*, 167 Wn.2d 91, 98,

217 P.3d 756 (2009)). Consequently, a defendant cannot meet her burden if she “simply assert[s] that an error occurred at trial and label[s] the error ‘constitutional. . . .’” *Grimes*, 165 Wn.App. at 186.

To be manifest, the alleged error must have had “practical and identifiable consequences in the trial of the case.” *State v. Kronich*, 160 Wn.2d 893, 899, 161 P.3d 982 (2007) (citing *State v. Stein*, 144 Wn.2d 236, 240, 27 P.3d 184 (2001)). In other words, the defendant must show actual prejudice as it is this “prejudice that makes the error ‘manifest,’ allowing appellate review.” *McFarland*, 127 Wn.2d at 333 (citing *Scott*, 110 Wn.2d at 688). Accordingly, a “purely formalistic error will not be deemed manifest,” nor will an error that is not “unmistakable, evident, or indisputable.” *Kronich*, 160 Wn.2d at 899; *State v. Burke*, 163 Wn.2d 204, 224, 181 P.3d 1 (2008) (citation omitted). In order to show actual prejudice regarding a suppression issue, the defendant “must show the trial court likely would have granted the motion if made.” *McFarland*, 127 Wn.2d at 333-34. Moreover, “[i]f 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.” *Id.* at 333.

Here, Ms. Caulfield now argues that her initial seizure, which was an “investigatory detention” or “*Terry* stop”, was unlawful and abandons her claim below that probable cause did not support her arrest. *Compare*

CP 25-33 *with* Brief of Appellant at 9-14. Because Ms. Caulfield failed to make her current argument for suppression to the trial court and fails to address RAP 2.5(a)(3) or issue preservation at all, she has waived the right to have this Court consider her new argument. Instead, she “simply assert[s] that an error occurred . . . and label[s] the error constitutional” because it allegedly affected her rights under the Fourth Amendment of the Constitution of the United States and under article I, section 7 of the Washington Constitution. *Id.* at 186; Br. of App. at 8-12. This is insufficient.

Moreover, even assuming constitutional error, such error would not be manifest for two reasons. First, Ms. Caulfield cannot meet her burden to show that had she made this argument to the trial court that “the trial court likely would have granted the motion. . . .” *McFarland*, 127 Wn.2d at 333-34. As argued *infra* the totality of the circumstances provided a reasonable, articulable suspicion that Ms. Caulfield had engaged or was engaged in criminal activity. Moreover, despite the fact that the initial seizure was not litigated, the trial court already concluded, based on the facts presented by the parties, that:

[b]ased on the facts compiled by the investigating officer, he had the right to stop, detain, and question the driver and passenger of the yellow car the [sic] Mr. Foss had identified.

CP 132 (Conclusion of Law #9). And:

Deputy Shields conducted a justified investigatory stop based on information from Mr. Foss and from dispatch. Deputy Shields had a reasonable and articulable suspicion that Ms. Caulfield had been involved in criminal activity.

CP 132 (Conclusion of Law #10).<sup>1</sup> Thus, the argument that the trial court would have granted Ms. Caulfield's motion on this issue is untenable.

Second, assuming *arguendo* the record does not support the proposition that Dep. Shields possessed sufficient information to give rise to a reasonable, articulable suspicion that Ms. Caulfield had been involved in criminal activity, such an absence should not result in victory for Ms. Caulfield. On the contrary, the focus of the litigation below was on the probable cause to arrest, not the totality of the circumstances known to Dep. Shields at the time he stopped Ms. Caulfield's vehicle. Had Ms. Caulfield challenged the initial stop the State would have had the opportunity to call Dep. Shields to testify in more detail about the information he learned prior to his arrival at the scene from 911 and from his conversation with the deputy who investigated the earlier burglary as well as any additional observations he made that were not included in his report. CP 102. Thus, Ms. Caulfield's claim must fail because "[i]f the

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<sup>1</sup> Ms. Caulfield did not assign error to these conclusions of law. *State v. Alvarez*, 74 Wn.App. 250, 255, 872 P.3d 1123 (1994) (holding "RAP 10.3(g) does not require a party to assign error to a conclusion of law") *but see State v. Slanaker*, 58 Wn.App. 161, 165, 791 P.2d 575 (1990) (holding "an unchallenged conclusion of law becomes the law of the case").

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.”

*McFarland*, 127 Wn.2d at 333-34. This Court should deny review of the issue.

*b. In the event that this court addresses the unlawful seizure argument on the merits, the deputy had a reasonable suspicion of criminal activity sufficient to lawfully seize Ms. Caulfield.*

When a defendant challenges a trial court’s denial of a suppression motion, “an appellate court determines whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law.” *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Findings of fact are verities on appeal when unchallenged or provided “there is substantial evidence to support the findings.” *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994); *State v. Valdez*, 167 Wn.2d 761, 767, 224 P.3d 751 (2009). “Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.” *Id.* A trial court’s conclusions of law following a suppression hearing are reviewed de novo. *Garvin*, 166 Wn.2d at 249.

It is well-settled that “[o]fficers may briefly, and without warrant, stop and detain a person they reasonably suspect is, or is about to be,

engaged in criminal conduct.” *State v. Day*, 161 Wn.2d 889, 895, 168 P.3d 1265 (2007). “[R]easonableness is measured not by exactitudes, but by probabilities.” *State v. Samsel*, 39 Wn.App. 564, 571, 694 P.2d 670 (1985). Moreover, while an “‘inchoate hunch’ is not sufficient to justify a stop, experienced officers are not required to ignore arguably innocuous circumstances that arouse their suspicions.” *State v. Santacruz*, 132 Wn.App. 615, 619–20, 133 P.3d 484 (2006). In fact, “‘the courts have repeatedly encouraged law enforcement officers to investigate suspicious situations.’” *State v. Howerton*, 187 Wn.App. 357, 365, 348 P.3d 781 (2015) (quoting *State v. Mercer*, 45 Wn.App. 769, 775, 727 P.2d 676 (1986)).

In determining whether the grounds for which an officer decided to stop someone were well-founded, courts must look at “the totality of circumstances known to the officer at the inception of the stop.” *State v. Lee*, 147 Wn.App. 912, 917, 199 P.3d 445 (2008) (quotation omitted); *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991) (holding that courts reviewing the reasonableness of a *Terry* stop “must evaluate the totality of circumstances presented to the investigating officer” while keeping in mind the “officer’s training and experience”). Thus, the focus is on “what the officer knew at the time of the stop.” *State v. Z.U.E.*, 178

Wn.App. 769, 780, 315 P.3d 1158 (2014) (citing *Lee*, 147 Wn.App. at 917).

The development of reasonable, articulable suspicion entitles the officer to “maintain the status quo momentarily while obtaining more information.” *State v. Williams*, 102 Wn.2d 733, 737, 689 P.2d 1065 (1984) (quotation omitted). In addition, the “detaining officer may ask a moderate number of questions . . . to confirm or dispel the officer's suspicions without rendering the suspect ‘in custody.’” *State v. Heritage*, 152 Wn.2d 210, 218, 95 P.3d 345 (2004). “If the results of the initial stop dispel an officer’s suspicions, then the officer must end the investigative stop.” *State v. Acrey*, 148 Wn.2d 738, 747, 64 P.3d 594 (2003).

But “[t]he scope of an investigatory stop . . . may be enlarged or prolonged as required by the circumstances if the stop confirms or arouses further suspicions.” *State v. Guzman-Cuellar*, 47 Wn.App. 326, 332, 734 P.2d 966 (1987). This is unsurprising as The Supreme Court has acknowledged that “[i]f the purpose underlying a *Terry* stop—investigating possible criminal activity—is to be served, the police must under certain circumstances be able to detain the individual for longer than the brief time period involved in *Terry*.” *Michigan v. Summers*, 452 U.S. 692, 700, and n. 12, 101 S.Ct. 2587, 69 L.Ed.2d 340 (1981).

Here, Dep. Shields lawfully seized Ms. Caulfield when he stopped her vehicle because under the totality of the circumstances he reasonably suspected she was, or had, engaged in criminal activity.<sup>2</sup> Prior to the stop, Dep. Shields knew that the Foss residence was located in a secluded area on private road and had been burglarized multiple times in the recent past to include that very morning. CP 101-02. Dep. Shields knew that the burglary from the morning involved an unknown car parked at the residence and that deputies arrested persons leaving the residence after burglarizing it. CP 101-02. Dep. Shields reasonably surmised that once the residence was known to be vacant that different groups and individuals would drive to the home, enter it, and steal property. CP 102. Dep. Shields also knew that homeowner was calling to report another suspicious vehicle parked in the road near the home and that the vehicle was a yellow SUV. CP 101-02. When Dep. Shields arrived, driving down the private road, he spotted the suspicious vehicle as described by the homeowner attempting to leave. CP 102. He also noticed that vehicle was “loaded with goods.” CP 102.

Based on the foregoing, Dep. Shields had a reasonable, articulable suspicion that the vehicle he stopped, and the persons within, were

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<sup>2</sup> The State does not dispute that a seizure occurred when Ms. Caulfield’s SUV, which she was driving, was stopped by Dep. Shields or that the stop was not a “traffic stop,” i.e., a stop to enforce the traffic code.

involved in criminal activity. More specifically, that they were likely involved in the burglary of the Foss residence, trespass upon their property, and/or the theft of their personal property. This suspicion was reasonable because the suspect vehicle was parked, at night, at a secluded residence that was located on a private road that led only to that residence, which had been repeatedly burglarized to include that very morning, attempted to leave when the deputy arrived, and was observed to be “loaded with goods”. CP 101-02. Importantly, this scenario, minus the time of day, mirrored the scenario from earlier that day in which a suspicious vehicle was stopped leaving the Foss residence and its occupants likewise arrested for burglary of the residence. CP 101-02. Moreover, further information following the stop confirmed Dep. Shields’s suspicion and warranted further investigation. CP 102-03. For example, Mr. Foss was able to identify boxes of light bulbs on the floor of the vehicle that he said belonged to him. CP 102.

Ms. Caulfield’s attempt to link the fact that the Foss home had been repeatedly burglarized with our Supreme Court’s consistent admonition that “[p]olice cannot justify a suspicion of criminal conduct based *only* on a person's location in a high crime area” is unpersuasive. *State v. Weyand*, 188 Wn.2d 804, 817, 399 P.3d 530 (2017) (emphasis added); Br. of App. at 13-14. The Foss residence cannot be described as

the type of “high crime area” discussed in *Weyand* and *State v. Larson*, 93 Wn.3d 638, 645, 611 P.2d 771 (1980). Rather the home was the scene of a crime that day and continued to be the same based on the relevant circumstances and the appearance of another suspicious vehicle. Taking into consideration the totality of the circumstances known to Dep. Shields, he lawfully stopped Ms. Caulfield. The trial court’s ruling denying Ms. Caulfield’s motion to suppress should be affirmed.

**II. Should the State prevail it will not seek appellate costs.**

The State will not seek appellate costs if it prevails.

**CONCLUSION**

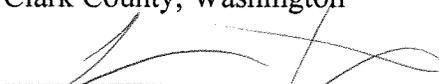
For the reasons argued above, this Court should affirm the trial court’s ruling denying Ms. Caulfield’s motion to suppress and affirm Ms. Caulfield’s conviction.

DATED this 19 day of October, 2017.

Respectfully submitted:

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## Transmittal Information

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