STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT III

Case No. 2020AP0007-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KALLIE M. GAJEWSKI,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE MARATHON COUNTY CIRCUIT COURT, THE HONORABLE MICHAEL K. MORAN, PRESIDING

SUPPLEMENTAL BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

This Court ordered supplemental briefing to address two questions. First, considering the collective knowledge doctrine as it relates to jailable and non-jailable offenses, was there probable cause to arrest Kallie M. Gajewski? And second, if there was probable cause, but also a Fourth Amendment violation, what effect does the rule set forth in *New York v. Harris*, 495 U.S. 14 (1990) and adopted in *State v. Felix*, 2012 WI 36, 339 Wis. 2d 670, 811 N.W.2d 775, have on whether evidence obtained after the arrest should be excluded?

The information known by Officer Goetsch was sufficient for probable cause to arrest Gajewski. Under the collective knowledge doctrine, information known by Officer Goetsch is properly imputed to Deputy Stroik, who was on the scene, in communication, and working together with Officer Goetsch. The arrest by Deputy Stroik was therefore supported by probable cause.

Under the *Harris* rule adopted in Wisconsin in *Felix*, when there is probable cause for an arrest, but the arrest is made inside a house in violation of the Fourth Amendment, the exclusionary rule applies to evidence obtained inside the home, but not to evidence obtained outside the home. Therefore, even if Gajewski's arrest violated the Fourth Amendment, the results of her blood test, to which she consented outside her home after her arrest, was admissible and should not be excluded.

ARGUMENT

A. There was probable cause to arrest Gajewski for operating a motor vehicle while under the influence of an intoxicant and for obstructing an officer.

"Police have probable cause to arrest if they have 'information which would lead a reasonable police officer to believe that the defendant probably committed a crime.'" *Felix*, 339 Wis. 2d 670, ¶ 28 (quoting *West v. State*, 74 Wis. 2d 390, 398, 246 N.W.2d 675 (1976)). A law enforcement officer may arrest a person when "There are reasonable grounds to believe that the person. . . has committed a crime," Wis. Stat. § 968.07(1)(d), or when the officer "has reasonable grounds to believe that the person is violating or has violated a traffic regulation." Wis. Stat. § 345.22.

Here, there was probable cause that Gajewski operated a motor vehicle while under the influence of an intoxicant, and that she obstructed an officer. When the officers knocked on the doors to Gajewski's trailer home, they knew that minutes before, a citizen had called the police to report that a blue Saturn was on a road, not moving, with its lights off. (R. 53:5, 21.) They knew that the citizen had spoken with the driver and thought she might be intoxicated. (R. 53:5, 22.) When the officers pulled into Gajewski's driveway, they observed a blue Saturn parked in the backyard. (R. 53:7, 24.) And Officer Goetsch knew that Gajewski had been driving the blue Saturn because he had encountered Gajewski while she was driving it, minutes before. (R. 53:5, 8.)

When Gajewski came out of her home, the officers observed that she had slurred speech, glassy and bloodshot eyes, a strong odor of alcohol, and that she had difficulty following the questioning. (R. 53:12, 25.) This information was easily sufficient to "lead a reasonable law enforcement officer to believe that the defendant was operating a motor vehicle

while under the influence of an intoxicant." *State v. Lange*, 2009 WI 49, ¶ 19, 317 Wis. 2d 383, 766 N.W.2d 551.

There also was probable cause that Gajewski obstructed an officer. A person violates Wis. Stat. § 961.41 "Resisting or obstructing an officer," when she "knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority." Wis. Stat. § 946.41(1). A person "obstructs" an officer by "knowingly giving false information to the officer." Wis. Stat. § 946.41(2)(a). Obstruction of an officer is punished as a Class A misdemeanor. Wis. Stat. § 946.41(1).

Here, as the circuit court recognized, there was probable cause that Gajewski obstructed the officers by giving them false information, when she told the officers she had not left her home that evening and had not been driving. (R. 56:7–8, 10.) Officer Goetsch knew that this information was false, because he had seen Gajewski driving the blue Saturn and had spoken to her only minutes before. (R. 53:5, 8.)

B. Under the collective knowledge doctrine, information known to each officer can be imputed to the other officer.

Gajewski does not seem to dispute that there was probable cause to arrest her for operating a motor vehicle while under the influence of an intoxicant (OWI) and for obstructing an officer. She argues that while Officer Goetsch had probable cause, Deputy Stroik did not. (Gajewski's Br. 16–17.) According to Gajewski, since Deputy Stroik arrested her, the arrest was not justified by probable cause. (Gajewski's Br. 16–17.)

However, the arrest was justified by probable cause because under the collective knowledge doctrine, information known to either officer can be imputed to the other officer. "Where officers work together on an investigation, we have used the so-called 'collective knowledge' theory to impute the

knowledge of one officer to others." *United States v. Terry*, 400 F.3d 575, 581 (8th Cir. 2005) (quoting *United States v. Gillette*, 245 F.3d 1032, 1034 (8th Cir.2001)). Officers may make an arrest or a stop "even if they do not have firsthand knowledge of the facts amounting to reasonable suspicion." *United States v. Eymann*, 962 F.3d 273 (7th Cir. 2020) (citation omitted). As the United States Supreme Court put it, "where law enforcement authorities are cooperating in an investigation, as here, the knowledge of one is presumed shared by all." *Illinois v. Andreas*, 463 U.S. 765, 771 n.5, 103 S. Ct. 3319 (1983).

Wisconsin courts have adopted the collective knowledge doctrine and have applied it in cases including *State v. Mabra*, 61 Wis. 2d 613, 213 N.W.2d 545 (1974) and *State v. Pickens*, 2010 WI App 5, 323 Wis. 2d 226, 779 N.W.2d 1. In *Mabra*, the defendant challenged his arrest on the ground that the arresting officer did not have probable cause. *Mabra*, 61 Wis. 2d at 625. The Wisconsin Supreme Court rejected the argument that "the arresting officer must personally have in his mind knowledge sufficient to establish probable cause for the arrest," as "an incorrect view of the law." *Id*. The court said that "The arresting officer may rely on all the collective information in the police department." *Id.* The court recognized that "The police force is considered as a unit and where there is police-channel communication to the arresting officer and he acts in good faith thereon, the arrest is based on probable cause when such facts exist within the police department." *Id*. at 625–26 (citing *Whiteley v. Warden*, 401 U.S. 560 (1971)). Notably, after the "police-channel communication," the officer did not have information "in his mind" sufficient for probable. *Id.* at 617. But since the department had probable cause, and was in contact with the officer, the officer could properly arrest the suspect. *Id.* at 625.

In *Pickens*, the defendant challenged his detention on the ground that there was no reasonable suspicion. *Pickens*, 323 Wis. 2d 226, ¶¶ 1, 11. This Court noted that in determining the validity of a stop, a court looks "at the collective knowledge of police officers." *Id.* ¶ 11. This Court said that where the "arresting officer does not personally know the facts, an arrest is proper if the knowledge of the officer directing the arrest, or the collective knowledge of police, is sufficient to constitute probable cause." *Id.* ¶ 12 (citing *Tangwell v. Stuckey*, 135 F.3d 510, 517 (7th Cir. 1998)). This Court said, "we do not hold that police officers must have personal knowledge of all the facts needed to support a seizure before acting." *Id.* ¶ 17. What matters is whether there actually was probable cause there was "collective knowledge that supports the stop." *Id.* ¶ 13.

Neither *Mabra* nor *Pickens* can reasonably be interpreted as requiring that only information explicitly given by one officer to a second officer can be imputed to the second officer. If that were the case, the court in *Mabra* seemingly would have agreed with the defendant's argument that "the arresting officer must personally have in his mind knowledge sufficient to establish probable cause for the arrest." *Mabra*, 61 Wis. 2d at 625. But that is "an incorrect view of the law." *Id.* And this Court in *Pickens* seemingly would have held that an officer must have personal knowledge of all the facts needed to support a seizure before acting. Instead, the court said the opposite. *Pickens*, 323 Wis. 2d 226, ¶ 17.

Cases in other jurisdictions confirm that information known by one officer at the scene of an investigation is properly imputed to other officers at the scene who are also involved in the investigation. Under the collective knowledge doctrine, a court will "impute information if there has been 'some degree of communication' between the officers." *Terry*, 400 F.3d at 581 (quoting *United States v. Gonzales*, 220 F.3d 922, 925 (8th Cir. 2000)). The "communication" requirement

"distinguishes officers functioning as a team from officers acting as independent actors who merely happen to be investigating the same subject." *Id.* at 581 (citing *Gillette*, 245 F.3d at 1034). Accordingly, the "communication" need not be the specific facts that make up probable cause. *United States v. Shareef*, 100 F.3d 1491, 1504 (10th Cir. 1996). There must "be a communication but not necessarily the conveyance of any actual information." *United States v. Ramirez*, 473 F.3d 1026, 1032–33 (9th Cir. 2007). "[W]hen officers are in communication with each other while working together at a scene, their knowledge may be mutually imputed even when there is no express testimony that the specific or detailed information creating the justification for a stop was conveyed." *United States v. Nafzger*, 974 F.2d 906, 911 (7th Cir. 1992). The collective knowledge doctrine can apply "regardless of whether [any] *information* [giving rise to probable cause] was actually communicated to" the officer conducting the stop, search, or arrest." *Ramirez*, 473 F.3d at 1032 (quoting *United States v. Bertrand*, 926 F.2d 838, 844 (9th Cir. 1991)) (emphasis in *Ramirez*).

The knowledge of one arresting officer is imputed to another simply because the officers "made the arrest together." *United States v. Edwards*, 885 F.2d 377, 383–383 (7th Cir. 1989). In *Edwards*, the court did not decide whether either of the two arresting officers "had sufficient knowledge alone to arrest Edwards because the concept of imputed knowledge means that [the officers] could rely upon the information they possessed as a team in executing the arrest of Edwards." *Id.* at 383. The court concluded that the officers "had sufficient knowledge between them to constitute probable cause to arrest" the suspect. *Id.* So long as officers are "working in close concert with each other," the "knowledge of one of them was the knowledge of all." *United States v. Bernard*, 623 F.2d 551, 561 (9th Cir. 1979) (citation omitted). Information can be imputed from one officer to another when

both are "working closely together during a stop or an arrest" because in such a circumstance, officers "can be treated as a single organism." *Shareef*, 100 F.3d at 1504 n.6. Imputing information also makes sense because officers can "convey suspicions through nonverbal as well as verbal cues." *Id.*

It does not appear that a published Wisconsin decision has directly addressed imputing information between multiple officers working together at the scene of a stop or arrest. But both *Mabra*, 61 Wis. 2d 613 and *Pickens*, make it clear that information not expressly given by one officer to another may be imputed to the second officer. And what matters is whether the officers collectively had probable cause. *Pickens*, 323 Wis. 2d 226, ¶ 13.

Here, both Officer Goetsch and Deputy Stroik had information from dispatch about the citizen report of a blue Saturn on a road, not moving, with its lights off. (R. 53:5, 21.) And they knew that the citizen had spoken with the driver and thought she might be intoxicated. (R. 53:5, 22.) Under the collective knowledge doctrine, this information is properly considered in determining properly cause. And Officer Goetsch had information that Gajewski was the person in the blue Saturn and that she had driven the car. He had encountered Gajewski while she was driving the car but did not realize that it was the car about which the citizen had called the police. (R. 53:5, 8.) Under the collective knowledge doctrine, the information Officer Goetsch knew was properly imputed to Deputy Stroik, who was at the scene working with Officer Goetsch and in communication with him. And that information was sufficient for probable cause for OWI and for obstructing an officer. Accordingly, either officer could properly arrest Gajewski.

A contrary conclusion would mean that although there was probable cause, and Officer Goetsch could properly have arrested Gajewski, Deputy Stroik, who was working with Officer Goetsch, could only have arrested Gajewski if Officer Goetsch directed him to do so, or gave him all the information required for probable cause. But requiring one officer to have all the information necessary for probable cause would ignore the collective knowledge doctrine and would be contrary to *Mabra* and *Pickens*.

C. There was probable cause of OWI—which can be a jailable or non-jailable offense, and obstruction of an officer—which is a jailable offense

When she was arrested, Gajewski had multiple prior OWI-related offenses. Accordingly, her current OWI is a felony. (R. 42.) However, nothing in the record demonstrates that the officers knew about Gajewski's prior offenses at the time they encountered her and then arrested her. Therefore, while the officers had probable cause that Gajewski committed an OWI-related offense, they apparently did not know whether the offense was a first offense—a non-jailable civil offense, or a second or subsequent offense—a jailable criminal offense that could be either a misdemeanor or a felony.

There was also probable cause that Gajewski obstructed an officer. When questioned by Deputy Stroik, Gajewski denied driving the blue Saturn or being in the area to which police had been dispatched. (R. 53:25.) When Officer Goetsch pointed out that he had seen her driving her car, Gajewski "quickly ended the conversation" and said she was going back inside. (R. 53:11–12.) Officer Goetsch knew that Gajewski was not telling the truth, because he had observed Gajewski driving the blue Saturn a short time before. (R. 53:11–12.) Therefore, there was probable cause that

Gajewski committed a jailable criminal offense by obstructing an officer.

The State is unaware of any case that distinguishes between jailable and non-jailable offenses when applying the collective knowledge doctrine. Logically, the doctrine would apply in the same manner whether the offense is jailable or non-jailable. Officers can properly rely on a dispatch. And then, when multiple officers are on the scene and cooperating in the investigation, information known by one officer is imputed to the others even when the first officer does not specifically give the information to the other officers. That is exactly what occurred here. Accordingly, the arrest by Deputy Stroik was supported by probable cause.

D. Even if the arrest was unlawful because officers went onto Gajewski's porch, evidence gathered outside of her home need not be suppressed.

The United States Supreme Court has held that "where the police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the statement is taken after an arrest made in the home in violation of *Payton*." *Harris*, 495 U.S. at 21 (citing *Payton v. New York*, 445 U.S. 573 (1980)).

In *State v. Felix*, the Wisconsin Supreme Court adopted the *Harris* rule. The court held that "where police had probable cause to arrest before the unlawful entry and warrantless arrest from a defendant's home, this violation of *Payton* does not require the suppression of evidence obtained from a defendant outside of the home." *Felix*, 339 Wis. 2d 670, ¶ 42. The court reasoned that the *Harris* rule "appropriately balances the purposes of the exclusionary rule and the *Payton* rule with the social costs associated with suppressing evidence." *Felix*, 339 Wis. 2d 670, ¶¶ 38–39. The court said

that suppressing evidence outside the home following a *Payton* violation did not serve to protect the physical integrity of the home from police misconduct. *Id.* ¶¶ 39–40.

In two unpublished cases, this Court has applied *Felix* in the context of an arrest for a violation of Wis. Stat. § 346.63 in a person's home. In *State v. Schiewe*, No. 2012AP2767-CR, slip op. (Wis. Ct. App. Oct. 24, 2013) (unpublished),[1] this Court applied *Felix* in the context of an arrest for OWI. The officer entered the suspect's garage and arrested her for OWI. *Id.* ¶ 6. A blood sample was later obtained outside the garage under the implied consent law. *Id.* ¶ 7. This Court concluded that since there was probable cause to arrest the defendant, even though the arrest inside her garage was unlawful, under *Felix*, evidence obtained outside the garage—specifically the blood test results—need not be suppressed. *Id.* ¶¶ 21–26.

In *State v. McGinnis*, No. 2018AP1388-CR, slip op. (Wis. Ct. App. Oct. 8, 2019) (unpublished),[2] this Court applied *Felix* in the context of an arrest for operating a motor vehicle with a prohibited alcohol concentration. The officer knocked on the door to the suspect's home. *Id.* ¶ 7. The suspect came to the door and opened it but did not step outside. *Id.* ¶ 9. When the suspect began to close the door, the officer attempted to grab the suspect's wrist. *Id.* The officer "unholstered his TASER" and told the suspect to put his hands behind his back. *Id.* When the suspect eventually came out of the house, the officer told him he was under arrest and handcuffed him. *Id.* ¶ 10. The suspect was transported to a

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[1] The State cites this unpublished opinion, issued after July 1, 2009, for persuasive value. Wis. Stat. § 809.23(3)(b). The opinion is appended to this supplemental brief.

[2] The State cites this unpublished opinion, issued after July 1, 2009, for persuasive value. Wis. Stat. § 809.23(3)(b). The opinion is appended to this supplemental brief.

hospital and his blood was drawn. *Id.* The State conceded that the arrest inside the suspect's house was unlawful. *Id.* ¶ 27 n.2. But it argued that since there was probable cause to arrest the suspect, evidence gathered outside the home should not be excluded. *Id.* ¶ 11. This Court agreed. It recognized that "Under *Harris* and *Felix*, only evidence obtained from inside [the suspect's] residence following [the officer's] entry need be suppressed." *Id.* ¶ 27 (citing *Harris*, 495 U.S. at 17; *Felix*, 339 Wis. 2d 670, ¶¶ 38–39). The evidence obtained outside the home, including the results of the blood test, were admissible. *Id.*

If this Court determines that the arrest here was unlawful because it was conducted in Gajewski's home, the rule established in *Harris*, and adopted in *Felix*, should apply. Evidence gathered inside the home would properly be excluded. But evidence obtained outside the home would be admissible. Here, the evidence at issue is the result of a blood test to which Gajewski consented outside her home. (R. 53:27–28.) Just as in *Schiewe* and *McGinnis*, the blood test results are admissible under the *Harris* rule that the Wisconsin Supreme Court adopted in *Felix*. This Court therefore should affirm even if it decides (or assumes without deciding) that the arrest violated the Fourth Amendment.

CONCLUSION

This Court should affirm the judgment of conviction.

Dated: April 1, 2022.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 3271 words.

Electronically signed by:

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 1st day of April 2022.

Electronically signed by:

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