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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2020AP000007-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KALLIE M. GAJEWSKI,

Defendant-Appellant.

Appeal from a Judgment and Order Entered in the Marathon County Circuit Court, the Honorable Michael K. Moran, Presiding

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SUPPLEMENTAL BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

I. Ms. Gajewski's arrest was not justified by Deputy Stroik's personal knowledge or by any collective knowledge. It was therefore unlawful not just because it occurred in the curtilage of Ms. Gajewski's home, but also because it was unsupported by probable cause.

In response to this Court's order for supplemental briefing, the state argues that Stroik lawfully arrested Ms. Gajewski based on probable cause because of the collective knowledge doctrine. (App. 3-4; State's Br. 5). Specifically, the state contends that Stroik and Goetsch were "on the scene, in communication, and working together," Goetsch's personal observations were imputed onto Stroik, and thus, the officers' collective knowledge allowed Stroik to arrest Ms. Gajewski. (State's Br. 5-12). The state also asserts that the case law does not distinguish between jailable and non-jailable offenses when applying the collective knowledge doctrine. (State's Br. 12-13).

Ms. Gajewski agrees that no binding case law applies the collective knowledge doctrine differently based on the seriousness of the offense. But that's where the parties' agreement ends. Even if Goetsch's personal observations established probable cause for *him* to arrest Ms. Gajewski (or direct Stroik to do so), they were never imputed to Stroik through either police-channel communication or direction. Therefore,

the state failed to meet its burden to prove that Stroik had sufficient knowledge—personal or imputed under the collective knowledge doctrine—to establish probable cause to arrest Ms. Gajewski.

A. Either police-channel communication or direction is necessary to establish collective knowledge.

To determine whether probable cause existed, a court may consider facts not personally known to the arresting officer if the state proves those facts under the collective knowledge doctrine—as it is the state's burden to prove that an arrest was reasonable under the Fourth Amendment. *State v. Pickens*, 2010 WI App 5, ¶¶13-14, 323 Wis. 2d 226, 779 N.W.2d 1.

Collective knowledge can support an arrest when an officer or group of officers personally know facts establishing probable cause, knowledge of those facts is imputed to the arresting officer, and the arresting officer relies in good faith on that imputed knowledge. *State v. Mabra*, 61 Wis. 2d 613, 626, 213 N.W.2d 545 (1974). Knowledge is imputed to an officer through either (1) police-channel communication, *see id*., or (2) a direction to act, *see Tangwall v. Stuckey*, 135 F.3d 510, 517 (7th Cir. 1998).

1. Police-channel communication.

Police-channel communication refers to information provided to officers through dispatch or police radio. *Mabra*, 61 Wis. 2d 613, 617-18. Through these channels, police departments relay important

facts about suspected crimes and those involved. Officers, in turn, act based on the information conveyed through police channels. Thus, although the officer who conducts an arrest may not have personal knowledge about the relevant crime or the suspect's connection to it, when the arresting officer relies on facts relayed through dispatch or police radio, a court may consider those facts in assessing whether the arrest was supported by probable cause. *Id.* at 626.

For example, in *Brandsma*, this Court determined that a dispatch report stating that Brandsma was intoxicated and had been involved in a domestic dispute, combined with the responding deputies' personal observations that Brandsma was driving, established reasonable suspicion of an OWI. *State v. Brandsma*, No. 16AP2480-CR, unpublished op., ¶¶10-12 (Wis. Ct. App. Sept. 14, 2017); (App. 6). The collective knowledge doctrine meant Brandsma's prior conduct was imputed to the deputies who ultimately stopped him because it was conveyed to them through police channels and they acted on it in good faith. *Id.*

This component of the collective knowledge doctrine reflects how much of policing works. Various actors within a law enforcement agency and between such agencies gather information about suspected wrongdoing, share it via police channels, and then act in good faith to follow up on the information they receive—sometimes by investigating, sometimes by conducting investigative detentions, and sometimes by arresting crime suspects.

2. Direction to act.

Setting aside police-channel communication, "[t]he collective knowledge doctrine permits an officer to stop, search, or arrest a suspect at the direction of another officer or police agency, even if the officer himself does not have firsthand knowledge of facts that amount to the necessary level of suspicion to permit the given action." *United States v. Williams*, 627 F.3d 247, 252 (7th Cir. 2010). Commonly, another investigative agency, such as the federal Drug Enforcement Administration, will instruct local officers to stop or arrest a suspect in their own investigation. *Id.* at 253 (citing *United States v. Rodriguez*, 831 F.2d 162, 166 (7th Cir. 1987)). Officers are permitted to follow such instructions.

The Seventh Circuit has stated that, in order for the collective knowledge doctrine to apply in this scenario, "(1) the officer taking the action must act in objective reliance on the information received, (2) the officer providing the information—or the agency for which he works—must have facts supporting the level of suspicion required, and (3) the stop must be no more intrusive than would have been permissible" for the officer giving the direction. *Id.* at 252-53 (quoting *United States v. Nafzger*, 974 F.2d 906, 911 (7th Cir. 1992)). Importantly, if there is no direction from one officer or agency to another, then there is no "information received" for the arresting officer to "act in objective reliance on"—and this component of the collective knowledge doctrine is inapposite.

B. Specific facts are necessary to establish collective knowledge.

While the collective knowledge doctrine enables a court deciding a suppression motion to consider facts that were not personally known to the arresting officer, a court will *not* consider the "bare knowledge" that one officer relied on the unspecified knowledge of another officer. *Pickens*, 323 Wis. 2d 266, ¶¶11-14. Rather, the state has an evidentiary burden to prove that the officer with the alleged personal knowledge did in fact know facts amounting to probable cause or reasonable suspicion, and what those specific facts were. *Id.*, ¶15. Testimony that an officer relied on the unspecified knowledge of another officer "provides no basis for the court to assess the validity of the police suspicion," and thus no basis to deem the ensuing detention constitutional. *Id.*, ¶13.

C. The state did not prove that Stroik lawfully arrested Ms. Gajewski based on knowledge imputed from Goetsch under the collective knowledge doctrine.

The state cites no police-channel communication and no direction to act that might justify Stroik's seizure of Ms. Gajewski. Rather, it appears to argue that simply because Stroik and Goetsch were on the scene together before Ms. Gajewski's arrest, Goetsch's personal observations of Ms. Gajewski were imputed to Stroik under the collective knowledge doctrine. (State's Br. 7-8). This is not the case. The state failed to meet their burden at the suppression hearing to

establish that Stroik had knowledge—personal or imputed—sufficient to establish probable cause. The testimony relevant to this analysis is summarized below.

On the evening in question, Officer Goetsch responded to a dispatch call asking officers to assist the Marathon County Sherriff's Department "with a call regarding a vehicle parked on Corlad Road, parked in the road without its lights on." (53:5). The caller also believed the driver of the blue Saturn may be "under the influence of some substance." (53:5). Moments later, Goetsch spoke to a driver of a blue Saturn but did not believe the driver "was the one that the reporting party had saw." (53:5).

After some driving around, Goetsch was told by a person on the side of the road that "a car had pulled into a residence" down the road. (53:7). Eventually, in seeking this car out, Goetsch pulled into the driveway of Ms. Gajewski's home. (53:7). Goetsch observed a blue Saturn parked in her backyard. (53:7). Goetsch "told dispatch that [he] believed [he] located the vehicle" and that he didn't feel safe investigating the scene because of two dogs on the property. (53:7-8). So, "[he] got back in the vehicle and waited for Deputy Stroik to arrive." (53:8).

Stroik learned from dispatch that a blue Saturn was parked on the street without its lights on, and the caller believed the driver to be intoxicated. (53:22). Stroik was also "aware that Village of Athens was requested for mutual aid," so he responded. (53:22).

Once Stroik arrived, Goetsch "advised him about the animals, [and] told him that [he] believe[d] [the suspect] went back inside the house." (53:9, 23). They both walked around the house and knocked on Ms. Gajewski's door. (53:9, 23-24). When she answered, Stroik asked her a series of questions about where she had been that night. (53:25). He also noticed signs of intoxication. (53:25).

Ms. Gajewski denied driving that night or being in the area. (53:12, 25). Goetsch testified that while standing about 10 to 13 feet from Ms. Gajewski, he told her that he saw her driving earlier. (53:12, 17-18, 25). Stroik did not recall him saying that. (53:31).

According to Stroik, once Ms. Gajewski attempted to go inside, he grabbed her, put her hands behind her back, and took her to the squad car where he continued to question her. (53:13). Goetsch "stood there" waiting as Stroik attempted to contact the person who originally called the blue Saturn in so they could come identify Ms. Gajewski. (53:14, 26-17).

"That is when Officer Goetsch advised [Stroik that] he had observed the defendant driving the vehicle that was parked now behind the residence in the yard." (53:27). With this information, Stroik stated he was placing Ms. Gajewski under arrest, as only then did he believe he had probable cause to believe she had committed an OWI violation. (53:28-29).

The officers' testimony at the suppression hearing demonstrates that Goetsch's personal observations were not imputed to Stroik such that he

could lawfully act upon them. Simply being in proximity to an officer with the relevant knowledge does not satisfy the elements of the collective knowledge doctrine. The testimony does not demonstrate that Goetsch ever gave Stroik a direction to arrest Gajewski, nor was there any police-channel communication providing Stroik with the facts supporting probable cause.

Even when Stroik arrived at Ms. Gajewski's home, Goetsch only informed Stroik about the large dogs and that Ms. Gajewski was in her home. (53:9, 23). This limited communication alone is not enough to establish police-channel communication *regarding the facts establishing probable cause*, nor does it constitute a direction from Goetsch on which Stroik acted in good faith.

Even Stroik testified that he was not aware that Goetsch saw Ms. Gajewski driving until after he grabbed her, put her hands behind her back, pulled her off her porch, and stood her in front of his squad car. (53:28-29). At that point, Stroik was relying on the initial dispatch call about a blue Saturn and on his own personal observations of Ms. Gajewski's residence and behavior. He correctly believed that this information gave him reason to suspect she'd committed an OWI but did *not* establish probable cause. He correctly determined he had probable cause only *after* Goetsch finally said he'd seen Ms. Gajewski driving earlier that night. (53:28-29).

Although the state does not have to prove that Stroik knew Goetsch's specific personal observations, the state *does* have to demonstrate that there was police-channel communication to Stroik regarding the existence of probable cause, or that Goetsch instructed Stroik to arrest Ms. Gajewski, to prove her arrest was lawful. That is, even if the facts known to *Goetsch* were enough to establish probable cause to arrest, *Stroik* had to have knowledge of those facts—personal knowledge or knowledge imputed to him under the collective knowledge doctrine—before conducting the arrest. Without that link, which the state has failed to establish, the information Stroik had was insufficient to justify an arrest.

II. If this Court holds that Stroik had probable cause to arrest Ms. Gajewski, it should still hold her arrest unlawful and acknowledge that her unlawful arrest was followed by a custodial interrogation with no *Miranda* warnings. The results of the blood test that followed these illegalities should be suppressed.

In its order for supplemental briefing, this Court requested input on whether Ms. Gajewski's arrest was supported by probable cause, and whether the collective knowledge doctrine is relevant to that inquiry. As set forth above and in Ms. Gajewski's opening brief, the officer who arrested Ms. Gajewski did not have probable cause to conduct the arrest; neither his personal knowledge, nor information transmitted through police channels, nor any direction

he received justified the arrest. But the Court also asks the parties to assume, for purposes of argument, that Stroik had probable cause to arrest. In that case, should the evidence in question—Ms. Gajewski's blood test results—be excluded as the fruit of the poisonous tree, or admitted under *State v. Felix*, 2012 WI 36, 339 Wis. 2d 670, 811 N.W.2d 775? (App. 3). The short answer is that *Felix* dictates admission, but *Felix* was wrongly decided; federal constitutional case law dictates exclusion.

Felix claimed to adopt the rule set forth in *New York v. Harris*, 495 U.S. 14 (1999). *Harris* held that *statements* made outside the home after an illegal in-home arrest need not be suppressed; it discussed the factors relevant to determining the admissibility of statements, and it was silent as to other types of evidence. The exact words of its final holding were:

> We hold 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*.

Id. at 21.

Felix, ostensibly applying *Harris*, held the exclusionary rule inapplicable to statements and *any other evidence* gathered outside the home after an illegal in-home arrest based on the illegality of the arrest from which it stemmed. *Felix*, 339 Wis. 2d 670, ¶4. The exact words of its holding were:

> [W]e adopt the *Harris* exception to the exclusionary rule for certain evidence obtained after a *Payton* violation. We hold that, where police had probable cause to arrest before the unlawful entry, a warrantless arrest from Felix's home in violation of *Payton* requires neither the suppression of statements made outside the home after Felix was given and waived his *Miranda* rights, *nor the suppression of physical evidence obtained from Felix outside of the home.*

Id. (emphasis added).

Felix went further than the federal constitution allows. Since *Harris*, only four United States Supreme Court cases have even referred to the principle it set forth. None has extended the *Harris* exception to the exclusionary rule beyond the context of statements:

1. *Minnesota v. Olson*, 495 U.S. 91, 95 n.2 (1990): The Supreme Court mentioned in a footnote that it would not apply *Harris*, as the state had conceded that the statement in question was the fruit of the challenged arrest.

2. *United States v. Montalvo-Murillo*, 495 U.S. 711, (1990): The Supreme Court held that the failure to hold a timely detention hearing does not preclude the government from arguing that continued detention is required when the hearing finally takes place. It compared its ruling to that in *Harris*: "[A]n unlawful arrest does not require a release and rearrest to validate custody [and thereby produce an admissible inculpatory

statement], where probable cause exists. In this case, a person does not become immune from detention because of a timing violation." *Id.* at 722.

3. *Powell v. Nevada*, 511 U.S. 79 (1994): Within 48 hours of the defendant's arrest, a neutral magistrate had to determine whether it was supported by probable cause. That didn't happen. Several days later, after waiving his *Miranda* rights, the defendant made an inculpatory statement. The Supreme Court, analogizing to the *Harris* rule, deemed the statement admissible: "it cannot be argued that the [probable cause] error somehow made petitioner's custody unlawful and thereby rendered the statement the product of unlawful custody." *Id.* at 90.

4. *Hudson v. Michigan*, 547 U.S. 586 (2006): The Supreme Court held that officers' violation of the "knock-and-announce" rule did not require suppression of evidence obtained through a search supported by a warrant. In doing so, it drew a loose analogy to *Harris*: "While Harris's statement was the product of an arrest ... it was not the fruit of the fact that the arrest was made in the house rather than someplace else. Likewise here: While acquisition of the [evidence] was the product of a search pursuant to a warrant, it was not the fruit of the fact that the entry was not preceded by knock-and-announce." *Id.* at 601 (internal quotation marks and citations omitted).

In contrast to these cases, which confine the *Harris* rule to statements, consider *Lange v. California*, 141 S.Ct. 2011 (2021)—the case for which briefing in this appeal was put on hold. The question presented in *Lange* was "whether the pursuit of a fleeing misdemeanor suspect always ... qualifies as an exigent circumstance" justifying a warrantless entry into a home. *Id.* at 2016. That question mattered to the defendant—and to the Supreme Court, which of course did not have to review the matter—because suppression of "all evidence obtained after the officer entered his garage" was at stake. *Id.* Only Justices Thomas and Kavanaugh believed otherwise. *Id.* at 2026-28 (Thomas, J., concurring in part and concurring in the judgment).

This Court should adhere to federal precedent, including *Harris* and *Lange*, which precludes reliance on *Felix* here. The results of Ms. Gajewski's blood draw should be suppressed.

There are an unusual number of moving parts in this case, doctrinally. But as a factual matter this case presents a simple pair of illegalities followed by a blood draw, the results of which constitute the fruit of the poisonous tree. Ms. Gajewski was forcibly arrested in the curtilage of her home late at night by an officer without knowledge—personal or imputed—sufficient to establish probable cause. After this unlawful seizure, Ms. Gajewski was interrogated without receiving *Miranda* warnings. *Miranda v. Arizona*, 348 U.S. 436 (1966); *see also* Gajewski Br. 29. And last but not least, she was put in a squad car and transported

to a blood draw, where she allowed a needle to pierce her skin so the state could remove, and search, a sample of her blood. She respectfully requests, for the reasons set forth here and in her opening brief, reply brief, and letter-brief regarding *Lange*, that this Court preclude the state from using the results of that blood draw against her.

CONCLUSION

Kallie M. Gajewski respectfully requests that this Court vacated her judgement of conviction and remand the case to the circuit court with instructions to suppress the evidence stemming from her unlawful arrest.

Dated this 3rd day of May, 2022.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 3,103 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 3rd day of May, 2022.

Signed:
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