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CLERK OF WISCONSIN
COURT OF APPEALS

WISCONSIN COURT OF APPEALS
District III

STATE OF WISCONSIN

Plaintiff-Respondent

v.

Appeal No. 2021AP000142
Circuit Court Case No. 2018CF510

CHARLES W. RICHEY

Defendant-Appellant

On appeal from a Judgment Entered
in the Circuit Court for Marathon County,
the Honorable Gregory J. Strasser, Circuit Judge, presiding.

DEFENDANT-APPELLANT'S
REPLY BRIEF

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ARGUMENT

On page 7 of its brief, the State argues that, pursuant to the collective knowledge doctrine, Officer Alexis Meier could act and rely on D'Acquisto's knowledge about the mysterious motorcycle's traffic violation without personally knowing about the violation. (State's Br. at 7). It cites to the *Pickens* case for this proposition. (*Id.*). Indeed, *Pickens* tells us that under the collective knowledge doctrine there are situations in which the information in the hands of another police officer may be imputed to officers on the scene to help establish reasonable suspicion for a traffic stop. *State v. Pickens*, 2010 WI App 5, ¶11 n.1, 323 Wis.2d 226, 779 N.W.2d 1. Richey agrees this is the law.

However, in a collective knowledge situation, if a defendant moves to suppress, the prosecutor must prove the collective knowledge that supports the stop. *Id.* ¶13. The State always bears the burden of proving that a temporary detention was reasonable. *Id.* ¶14. Such a detention requires a reasonable suspicion, grounded in specific and articulable facts, and reasonable inferences from those facts, that an individual is engaging in illegal activity. *Id.*

That proof, however, is not supplied by the mere testimony of one officer stating that she relied on the unspecified knowledge of another officer. *Id.* Such limited testimony provides no basis for the court to assess the validity of the police suspicion as it contains no specific articulable facts from the officer who observed the illegal behavior. *Id.* The circuit court needs the underlying articulable facts in order to perform its neutral oversight function. *Id.* ¶14.

Thus, when a trial court assesses the reasonableness of a temporary detention, it may not consider the bare fact that the

investigating officer knew that other officers suspected an individual of engaging in criminal behavior. *Id.* ¶16. It needs to hear from the other officers who have personal knowledge that the suspect may have broken the law. *Id.* ¶17.

As in *Pickens*, here only one officer testified, namely Meier. But she had no personal knowledge that the mysterious motorcycle driver may have broken one or more traffic laws. D'Acquisto may have had that knowledge, but he never testified. Consequently, the trial court never had the opportunity to learn about the requisite specific articulable facts that were necessary to find reasonable suspicion.

This omission in *Pickens* caused the court of appeals to reverse the trial court and suppress the evidence in *Pickens*. *Id.* ¶51. The same omission in Richey's case should cause this Court to do the same here.

Also, on page 10 of its brief the State says the *Adams* case is not on point because what this Court found problematic in *Adams* was that the deputy transferred the reasonable suspicion of criminal activity attributed to the fleeing suspect onto Adams simply because he was driving in the search area. (State's Br. at 10). Here the State says, there was no transfer of reasonable suspicion from one person to another. (*Id.*). More to the point, the State says, Meier did not stop Richey because she believed Richey was helping the person D'Aquisto saw driving erratically. (*Id.*).

Obviously the exact facts in *Adams* are not the exact facts found in Richey's case. But in all respects, Meier did transfer the mysterious motorcycle driver's conduct to Richey. She admitted the same at the suppression hearing:

Q And, then, you made a traffic stop on that motorcycle. Why did you make the traffic stop?

A I made the traffic stop due to the information in which Deputy D'Acquisto had broadcast regarding the Harley-Davidson traveling at a high rate of speed and driving erratically within the area, and due to the fact it was the only Harley-Davidson motorcycle which I had observed in the area. (R76:12-113).

It just cannot get any plainer than that. Meier stopped Richey because she believed he was the motorcycle driver that D'Acquisto had observed driving erratically.

In summary, based on the evidence offered by Officer Meier, she stopped Richey because he was riding a Harley-Davidson motorcycle in the vicinity of Alderson Street and for no other reason. However, the law says an individual's presence in an area of criminal activity is not enough to support reasonable suspicion. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). More is needed and in this instance, Officer Meier did not have more. The circuit court should have granted Richey's motion to suppress.

CONCLUSION

Charles Richey respectfully asks this Court to reverse the circuit court's denial of his motion to suppress and remand with directions that his motion be granted and that his conviction be vacated.

Dated this 25th day of May 2021.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stats. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of the brief is 761 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding appendix, if any, which complies with the requirements of the Interim Rule for Wisconsin's Appellate Electronic Filing Project, Order No. 19-02.

I further certify that a copy of this certificate has been served with this brief filed with the court and served on all parties either by electronic filing or by paper copy.

Dated this 25th day of May 2021.

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