COURT OF APPEALS
DECISION
DATED AND FILED

August 5, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2099-CR **Cir. Ct. No. 2012CF243**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PETER N. OTT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washington County: JAMES G. POUROS, Judge. *Affirmed*.

Before Neubauer, C.J., Reilly, P.J., and Gundrum, JJ.

¶1 PER CURIAM. Peter N. Ott appeals from a judgment convicting him of attempted robbery as party to a crime and first-degree recklessly endangering safety while using a dangerous weapon. He contends that the circuit

court erred in denying his motion to suppress evidence obtained as a result of his arrest. We disagree and affirm.

¶2 On June 29, 2012, police were dispatched to a home in the city of West Bend for a report of a male subject who had been attacked and stabbed. Upon arrival, police made contact with the victim who was shirtless and had blood covering his back and chest area. It was later determined that the victim had two stab wounds, one of which was considered life threatening.

¶3 At first, the victim told police that he did not know the identity of his attackers. However, he later identified them as Joshua Umhoefer and Peter Ott. He stated that he did not tell the truth initially because "he has a drug history and he knew that this looked bad." According to the victim, he agreed to meet with Umhoefer in Umhoefer's van because he owed him some money. At that meeting, Ott, who had been hiding behind the van's back seat, attacked him and took his wallet. The attack by Umhoefer and Ott was premeditated.[1]

¶4 On July 1, 2012, the West Bend Police Department issued a "temporary felony warrant" for Ott. Later that day, an officer with the Kewaskum Police Department arrested Ott on the basis of the temporary felony warrant. The officer searched Ott and his vehicle incident to arrest and discovered three folding knives. He then transported Ott to the West Bend Police Department for further questioning. There, Ott made an inculpatory statement.

[1] Phone records established that Ott and Umhoefer had been in phone contact at least seven times in the two hours before the incident.

¶5 Ott filed a motion to suppress evidence obtained as a result of his arrest. He argued that the West Bend Police Department was without authority to issue the temporary felony warrant and, therefore, his warrantless arrest violated the Fourth Amendment.

¶6 At the hearing on Ott's suppression motion, the State called two witnesses: Detective Timothy McCarthy of the West Bend Police Department and Officer Alan Ratzel of the Kewaskum Police Department. McCarthy was one of the investigators assigned to the case. Ratzel was the officer who arrested Ott.

¶7 McCarthy testified that the victim identified Ott as the person who stabbed him. After Ott was identified, the West Bend Police Department issued a temporary felony warrant, which McCarthy described as follows:

> [A] temporary felony warrant is a warrant that can be issued pending the charges. It gives us some time to enter a warrant. Our reports have to be done. It's a warrant that can be entered prior to the case being sent to the district attorney's office for review and official charges being sent.

¶8 McCarthy explained that a temporary felony warrant is not issued by a court or district attorney. Rather, it is issued by law enforcement based on a determination of probable cause and entered into the National Crime Information Center (NCIC). Once it is entered, it remains in the system for forty-eight hours, but can be re-entered once.

¶9 McCarthy indicated that when a temporary felony warrant is active in the system, police officers from other jurisdictions will detain a suspect who is the subject of the warrant if he or she is stopped or pulled over. McCarthy further indicated that the temporary felony warrant in NCIC for Ott stated, "Temporary felony warrant, wanted subject, temporary felony warrant."

¶10 According to McCarthy, shortly after the entry of the temporary felony warrant, Ratzel stopped and arrested Ott. Ratzel then transported Ott to the West Bend Police Department where he was interrogated by McCarthy. At the conclusion of the interrogation, Ott asked to call his mother, which McCarthy allowed. During the call, McCarthy stated that Ott told his mother that "he was going to jail for a very long time."

¶11 Ratzel, meanwhile, testified about the circumstances of Ott's arrest. Ratzel recounted leaving the police department on July 1, 2012, when he observed a truck pull up to a stop sign. He ran the plates of the truck and discovered that there was an "active warrant to a Peter Ott listed to that vehicle." He then stopped the truck, and the driver identified himself as Ott.

¶12 Ratzel acknowledged that, at the time of the stop, he did not know the facts of Ott's case. Indeed, when Ott asked Ratzel what this was about, Ratzel advised him "that there was a warrant out for his arrest from West Bend P.D." Ratzel then said he "did not know all—the whole history" and that Ott "would find out more when he got to West Bend P.D." Before taking Ott into custody, he discovered three folding knives—one in Ott's pocket and two in his vehicle.

¶13 Ultimately, the circuit court issued a decision denying Ott's motion to suppress. The court concluded that the temporary arrest warrant was a misnomer, as it was nothing more than an "attempt to locate" (ATL) a suspect being sought in connection with a crime. The court also concluded that the arrest was lawful, as Ratzel could rely on the "collective knowledge" of the West Bend Police Department in establishing probable cause.

¶14 Ott subsequently pled guilty to charges of attempted robbery as party to a crime and first-degree recklessly endangering safety while using a dangerous weapon. This appeal follows.

¶15 When reviewing a circuit court's decision on a motion to suppress evidence, we apply the clearly erroneous standard to the court's findings of fact. ***State v. Guard***, 2012 WI App 8, ¶14, 338 Wis. 2d 385, 808 N.W.2d 718. However, we review the court's application of constitutional principles to those findings de novo. ***Id.***

¶16 To be lawful, an arrest must be based on probable cause. ***State v. Secrist***, 224 Wis. 2d 201, 212, 589 N.W.2d 387 (1999). The arresting officer need not "personally have in his [or her] mind knowledge sufficient to establish probable cause for the arrest." ***State v. Mabra***, 61 Wis. 2d 613, 625, 213 N.W.2d 545 (1974). Rather, the officer "may rely on all the collective information in the police department" as long as "there is police-channel communication to the arresting officer" and the officer "acts in good faith." ***Id.*** This is sometimes referred to as the collective knowledge doctrine. *See,* e.g., ***State v. Rissley***, 2012 WI App 112, ¶19, 344 Wis. 2d 422, 824 N.W.2d 853.

¶17 Under the collective knowledge doctrine, the court's assessment of whether an arrest is supported by probable cause is made by looking at the collective knowledge of the officers involved. *See* ***id.***; ***State v. Pickens***, 2010 WI App 5, ¶11, 323 Wis. 2d 226, 779 N.W.2d 1. When an officer relies on information from a police department in making an arrest, the inquiry is whether the department, not the responding officer, had knowledge that would lead a reasonable officer to believe that the defendant probably committed a crime. *See*

State v. Koch, 175 Wis. 2d 684, 701, 499 N.W.2d 152 (1993); ***United States v. Hensley***, 469 U.S. 221, 231-32 (1985).

¶18 On appeal, Ott concedes that the West Bend Police Department had probable cause to arrest him.[2] He also concedes that Ratzel was aware of West Bend's temporary felony warrant or ATL and effectuated the arrest on that basis.[3] Nevertheless, Ott submits his arrest was invalid under the collective knowledge doctrine because Ratzel did not know the information underlying the probable cause determination. For this argument, he relies principally on the case of ***State v. Black***, 2000 WI App 175, 238 Wis. 2d 203, 617 N.W.2d 210.

¶19 In ***Black***, two police detectives observed a person engaging in what appeared to be a drug transaction. ***Id.***, ¶¶2-3. As the person walked away, they asked another officer to check the person's identity without providing any basis for their suspicion. ***Id.*** The officer's identification check ultimately led to seizing cocaine from the person. ***Id.***, ¶¶5-8. Although this court upheld the officer's action, we rejected the State's attempted use of the collective knowledge doctrine in the case. We noted that in order for the doctrine to apply, "such information must actually be passed to the officer before he or she makes an arrest or conducts a search." ***Id.***, ¶17 n.4.

¶20 Ott reads ***Black*** as requiring that, in order for the collective knowledge doctrine to apply, the information underlying the probable cause

[2] This concession is appropriate given the facts that were known to the West Bend Police Department at the time of Ott's arrest, including the victim's statement identifying him as one of the attackers.

[3] Ott does not argue that Ratzel relied on this information in bad faith.

determination must be communicated to the responding officer before he or she makes an arrest. We do not share this assessment. Indeed, such a requirement would arguably conflict with the principle that the arresting officer need not "personally have in his [or her] mind knowledge sufficient to establish probable cause for the arrest." ***Mabra***, 61 Wis. 2d at 625. At most, we read ***Black*** as standing for the proposition that simply instructing an officer to check someone's identity is insufficient communication to invoke the collective knowledge doctrine. ***Black***, 238 Wis. 2d 203, ¶¶2-3, 17 n.4.

¶21 Here, Ratzel possessed more information than was given to the officer in ***Black***. Specifically, he knew that there was a temporary felony warrant or ATL out for Ott's arrest based upon his recent actions in West Bend. We are satisfied that this communication was sufficient to invoke the collective knowledge doctrine. Accordingly, we conclude that Ratzel was justified in relying on the collective knowledge of the West Bend Police Department and could validly arrest Ott, even though he did not know the information underlying the probable cause determination.[4]

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

[4] In his reply brief, Ott contends for the first time on appeal that allowing police to issue temporary felony warrants like the one in this case would violate basic principles of separation of powers. Because Ott did not raise this contention in his brief-in-chief, we do not consider it. ***State v. Chu***, 2002 WI App 98, ¶42 n.5, 253 Wis. 2d 666, 643 N.W.2d 878.