COURT OF APPEALS
DECISION
DATED AND FILED

July 6, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP73-CR

STATE OF WISCONSIN

Cir. Ct. No. 2012CF293

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

   PLAINTIFF-RESPONDENT,

V.

CHARLES DAVID SISLO,

   DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Douglas County: GEORGE L. GLONEK, Judge. *Reversed and cause remanded with directions*.

¶1   SEIDL, J.[1] Charles Sislo appeals a judgment of conviction for unlawful phone use, contrary to WIS. STAT. § 947.012(1)(c). Sislo argues the

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

circuit court erroneously denied his motion to suppress the fruits of his arrest, asserting there was no probable cause to arrest, even considering the collective-knowledge doctrine. Because the State fails to respond to Sislo's argument, we reverse the conviction and remand with directions to grant Sislo's suppression motion.

BACKGROUND

¶2   The following facts come from Superior police officer William Lear's testimony at Sislo's suppression motion hearing, where Lear was the only witness. After executing a traffic stop of Sislo in August 2012, Lear released Sislo. Suspecting Sislo had anonymously phoned Lear's mother and made threatening comments after the traffic stop, Lear returned to the police station and looked Sislo up on the police records system. When Sislo's information came up, there "was a big, red banner at the top [of the screen], it said: Probable cause."[2]

¶3   Lear learned there was an incident report from 2010 indicating there was probable cause to arrest Sislo. Both the responding officer and assigned detective from the 2010 incident were off duty, so Lear accessed the incident report and supplemental reports. He spent approximately fifteen to twenty minutes reviewing information on the 2010 incident. Lear learned the detective had referred the matter to the district attorney's office and requested that an arrest warrant be issued. There was no further information as to what transpired subsequently, including whether any warrant had issued.

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[2] The probable cause banner was not relayed to Lear at the time of the traffic stop, as dispatch had not completed its transition to the police department's new records system.

¶4   Lear relayed his findings to a sheriff's deputy who was present at the station, explaining the 2010 incident was a felony violation of using someone's identity to misappropriate money. The deputy proceeded to Sislo's home and arrested him. The deputy also seized Sislo's cell phone as Lear had requested.

¶5   At the suppression hearing, Lear did not testify about details of the crime Sislo allegedly committed back in 2010, or what investigation was done at that time to form probable cause. However, additional detail about the 2010 incident was provided by the defense when it offered Exhibit A into evidence.

¶6   Exhibit A is a case activity report prepared by the assigned detective. The report states the detective spoke with a Superior Water, Light and Power employee, who reported that someone calling from Sislo's phone called Western Union Speedpay to pay his utility bill. The utility payments were from a bank account belonging to another individual, E.L.

¶7   Sislo's suppression motion sought to suppress any information obtained from his phone and any statements made after his arrest. Counsel argued, inter alia, that Sislo's arrest was illegal because there was no probable cause to arrest him for the 2010 incident. The circuit court denied the motion, and Sislo entered a no contest plea. Sislo now appeals.

DISCUSSION

¶8   Sislo argues the arresting deputy lacked probable cause to arrest him for the 2010 incident, and probable cause was lacking even when considering the collective-knowledge doctrine. The Fourth Amendment to the United States Constitution requires that a person may be lawfully arrested only upon probable cause. *Beck v. Ohio*, 379 U.S. 89, 91 (1964). A police officer has probable cause

to arrest when "the totality of the circumstances within that officer's knowledge at the time of the arrest would lead a reasonable police officer to believe that the defendant probably committed a crime." *State v. Sykes*, 2005 WI 48, ¶18, 279 Wis. 2d 742, 695 N.W.2d 277. In reviewing a denial of a motion to suppress evidence, we will uphold a circuit court's findings of fact unless they are clearly erroneous. *Id.*, ¶12. However, we review the circuit court's application of constitutional principles to those facts de novo. *Id.*

¶9   Sislo acknowledges that an arresting officer can rely on another officer's notification that probable cause exists to arrest a person. The "court's assessment of whether the arrest was supported by probable cause is to be made on the collective knowledge of the police force." *State v. Cheers*, 102 Wis. 2d 367, 388, 306 N.W.2d 676 (1981). However, "it is necessary that the officer's underlying assumption of probable cause be correct." *Id.* at 389. Upon a challenge by the defendant, the State must prove the collective knowledge of the department. *State v. Pickens*, 2010 WI App 5, ¶¶13-14, 323 Wis. 2d 226, 779 N.W.2d 1. "Proof is not supplied by the mere testimony of one officer that he relied on the unspecified knowledge of another officer." *Id.*, ¶13. The record must demonstrate "specific, articulable facts" that would support a finding of probable cause. *Id.*

¶10   Sislo argues there was no probable cause to arrest him for the 2010 incident because Lear's testimony was inadequate and Exhibit A said nothing about whether E.L. approved of the utility payment from her account. Sislo emphasizes that the crime of unauthorized use of an individual's personal identifying information requires a lack of "authorization or consent" of the individual. *See* WIS. STAT. § 943.201(2). Sislo contends that without information

in the report that E.L. did not authorize the payment, the report fails to show a crime even occurred.

¶11   The State responds that, contrary to Sislo's purported argument, the arresting deputy did not need to know the facts underlying probable cause, because there exists a collective-knowledge doctrine. It then argues that both Lear and the original detective assigned to the 2010 case concluded there was probable cause, and that the arresting deputy could therefore rely on those determinations, which are sufficient in and of themselves.

¶12   The State's argument mischaracterizes Sislo's argument and is nonresponsive to his true argument. The State fails to acknowledge, much less respond to, Sislo's argument that the record fails to show that law enforcement's collective knowledge sufficiently demonstrated probable cause. Thus, it is unrefuted in this appeal that there was no evidence that Sislo used E.L.'s account information without permission, and that this omission is fatal to a probable cause determination. *See **Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded). Accordingly, we reverse the judgment of conviction and direct the circuit court to grant Sislo's suppression motion.[3]

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[3] Sislo's argument in this appeal is that the State failed to make a showing of probable cause at the suppression motion held in this case relating to unlawful phone use. This argument does not, however, implicate the underlying case related to the 2010 incident. The 2010 matter is not before us in this appeal, nor is the record of that case. The 2010 incident pertains to the case resolved by our no-merit decision in appeal No. 2015AP72.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.