[J-11-2017] [MO: Mundy, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 19 EAP 2016
	:	
Appellant	:	Appeal from the judgment of the Superior Court entered July 16, 2015 at No. 1972 EDA 2013 (reargument denied September 23, 2015) vacating and remanding the Judgment of Sentence entered on June 12, 2013 in the Court of Common Pleas, Philadelphia County, Criminal Division at No. CP-51-CR-0002313-2012
v.	:	
ALWASI YONG,	:	
Appellee	:	
	:	
	:	ARGUED: March 7, 2017

DISSENTING OPINION

JUSTICE DONOHUE **DECIDED: January 18, 2018**

The Majority today announces a new rule that permits uncommunicated knowledge of one police officer to justify an arrest conducted by another officer. In my view, the absence of a communication or directive by an officer with probable cause to the arresting officer renders the arrest unconstitutional.

As the Majority observes, the collective knowledge doctrine was first recognized by the United States Supreme Court in *Whiteley v. Warden*, 401 U.S. 560 (1971), wherein the Court stated that a police officer is entitled to rely on a communication or directive from another law enforcement official to effectuate an arrest, and that arrest will be deemed lawful so long as the communicating officer had probable cause, despite the fact that the specific information giving rise to probable cause was not relayed to the arresting officer. *Id.* at 568. This created an exception to the traditional requirement

that the arresting officer have probable cause to arrest an individual. *See United States v. Watson*, 423 U.S. 411, 423 (1976). In *United States v. Hensley*, 469 U.S. 221 (1985), the high Court reaffirmed its adherence to the collective knowledge doctrine, identifying it as a “common sense” rule because “it minimizes the volume of information concerning suspects that must be transmitted to other jurisdictions and enables police in one jurisdiction to act promptly in reliance on information from another jurisdiction.” *Id.* at 231.

This Court first applied the collective knowledge doctrine in *Commonwealth v. Kenney*, 297 A.2d 794 (Pa. 1972). In *Kenney*, we stated that because the arresting officer was “carrying out the order of his superior officer,” and “did not undertake on his own initiative to arrest” the defendant, the question concerning the legality of the arrest centered on whether the superior officer issuing the command “had knowledge of facts and circumstances sufficient to constitute probable cause to arrest.” *Id.* at 796. This traditional version of the collective knowledge doctrine is now commonly referred to as “vertical” collective knowledge and requires a communication between the officer with the requisite knowledge and the officer taking action based on the communication. It has been consistently adhered to and utilized in cases decided by this Court. *See, e.g., Commonwealth v. Jackson*, 698 A.2d 571, 576 n.3 (1997); *Commonwealth v. Queen*, 639 A.2d 443, 445-46 & n.4 (Pa. 1994); *Commonwealth v. Wagner*, 406 A.2d 1026, 1030 n.5 (Pa. 1979).

Other jurisdictions, however, have adopted a far more expansive approach, known as “horizontal” collective knowledge. The horizontal version permits the suppression court to aggregate, after the fact, the collective information known to a

group of police officers working together as a single operating unit or a team. Under the horizontal approach, the legality of the search depends not on any particular officer's level of knowledge at the time of the search or arrest, but on whether, in hindsight, the disparate pieces of uncommunicated information known by different officers, taken together, give rise to a finding of probable cause. *United States v. Rodriguez-Rodriguez*, 550 F.3d 1223, 1228 n.5 (10th Cir. 2008).

This Court has never adopted or applied the horizontal approach. As stated in the Superior Court's decision in the case at bar, "Extending the collective knowledge doctrine to apply in the absence of a directive or instruction to arrest issued by an officer who possesses probable cause serves none of the legitimate law enforcement purposes behind the rule." *Commonwealth v. Yong*, 120 A.3d 299, 308-09 (Pa. Super. 2015). The Majority here rejects the Commonwealth's request for this Court to adopt the horizontal approach to collective knowledge based on its concern that it "has the potential of encouraging police without the requisite level of suspicion to infringe on a person's freedom of movement in the hopes that his or her fellow officers possess such level of suspicion." Majority Op. at 22 (citing *United States v. Massenburg*, 654 F.3d 480, 494 (4th Cir. 2011)).

The Majority recognizes that "under **any approach** that permits aggregation of unspoken information or justifies actions taken absent direction from a person with the necessary level of suspicion, there remain serious concerns for protecting citizens from unconstitutional intrusions." *Id.* at 20 (emphasis added). And yet, the holding announced by the Majority creates just such an approach and threatens citizens with unconstitutional intrusions. The Majority holds that an arrest made by an officer without

the requisite knowledge passes constitutional muster simply because another officer who possesses the necessary information to effectuate a lawful arrest is also present at the scene. This rule requires no communication between the arresting officer and the one with the requisite probable cause, and "justifies actions taken absent direction from a person with the necessary level of suspicion."

There may be some facial appeal to the Majority's new rule. Given his proximity, Officer McCook, the officer with the requisite (but uncommunicated) knowledge in the case at bar, would likely have arrested and searched Yong, or issued a directive that another officer do so had Officer Gibson not acted. *Id.* at 23; *see* N.T., 4/17/2013, at 11. However, the contours of Fourth Amendment protections cannot be derived from idiosyncratic facial appeal.

The exception announced by the Majority could swallow probable cause requirements since as long as a hindsight evaluation reveals that the officer with knowledge was in some respects "available" to direct the officer who conducted the arrest, the acting officer need not have any information that would otherwise permit him or her to infringe upon an individual's right to be free from unreasonable searches and seizures. In my view, the Majority's pronouncement is equally as likely as the horizontal application of collective knowledge to "encourag[e] police without the requisite level of suspicion to infringe on a person's freedom of movement in the hopes that his or her fellow officers possess such level of suspicion." Majority Op. at 22.

Such an expansion of this holding is particularly likely because the Majority identifies its novel rule as a "version of the collective knowledge doctrine," terming it a "modest amplification of the vertical application" of that doctrine. *Id.* at 1, 22. In my

view, this rule bears no resemblance to vertical collective knowledge because there is no communication whatsoever such that probable cause could be imputed from one officer to another. As discussed, a communication is the hallmark of vertical collective knowledge. Instead, the rule announced by the Majority more closely aligns with a horizontal application of collective knowledge, as it permits a hindsight review of what other officers were aware of at the time of the arrest, despite the fact that there was nothing communicated directly to the arresting officer to justify an arrest under the Fourth Amendment.

The Majority posits that it would be “hyper-technical” to suppress the evidence obtained from Yong as a result of Officer Gibson’s actions. *Id.* at 23. To me, it is not hyper-technical to adhere to the probable cause standard to ensure the protection of a citizen’s right to be free of unreasonable search and seizure. The facts of record here reveal that an officer, without probable cause, arrested an individual, searched his person and recovered a firearm from his waistband. N.T., 4/17/2013, at 11, 17-18. I agree with the Superior Court majority that the police conduct required the suppression of the evidence and I would affirm on the basis of the rationale expressed in the opinion authored by then-judge, now-Justice Wecht. Accordingly, I dissent.

Justice Todd joins this dissenting opinion.