

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	NO. 49099-2021
	)	
v.	)	BLAINE COUNTY NO. CR07-19-1575
	)	
JONATHAN E. BELL,	)	RESPONDENT'S BRIEF
	)	
Defendant-Respondent.	)	
_____	)	

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BLAINE**

\_\_\_\_\_  
**HONORABLE NED WILLIAMSON**  
**District Judge**  
\_\_\_\_\_

**HONORABLE DANIEL DOLAN**  
**Magistrate Judge**  
\_\_\_\_\_

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**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	2
ISSUE PRESENTED ON APPEAL .....	11
ARGUMENT .....	12
The District Court Properly Reversed The Magistrate Court’s Denial Of Mr. Bell’s Motion To Suppress Because Article I, Section 17 Of The Idaho Constitution Prohibits The Warrantless Arrest For A Now-Completed Misdemeanor Committed In The Presence Of Another Officer That Did Not Have Probable Cause To Justify The Arrest .....	12
A. Introduction .....	12
B. Standard Of Review .....	12
C. The District Court Properly Granted Mr. Bell’s Motion To Suppress Because Officer Murphy Arrested Him Without A Warrant For A Completed Misdemeanor, And Officer Pallas’s Presence During The Offense’s Commission Cannot Justify Officer Murphy’s Arrest Because Officer Pallas Lacked Probable Cause To Arrest .....	13
CONCLUSION .....	24
CERTIFICATE OF MAILING .....	24

**TABLE OF AUTHORITIES**

Cases

*Brown v. State*, 442 N.E.2d 1109 (Ind. 1982) ..... 17

*Daniel v. Village of Royal Palm Beach*, 889 So. 2d 988 (Fla. Dist. Ct. App. 2004) ..... 17

*Medical Recovery Services., LLC v. Eddins*, 494 P.3d 784 (Idaho 2021)..... 13

*Pelayo v. Pelayo*, 154 Idaho 855 (2013) ..... 12

*Reagan v. Idaho Transportation Department*, 502 P.3d 1027 (Idaho 2021) ..... 9, 10, 14, 22

*State v. Amstutz*, 169 Idaho 144, 492 P.3d 1103 (2021) ..... 14, 16, 20, 23

*State v. Ash*, 12 S.W.3d 800 (Tenn. Crim. App. 1999)..... 17

*State v. Bergeron*, 326 N.W.2d 684 (N.D. 1982) ..... 20

*State v. Bishop*, 146 Idaho 804 (2009) ..... 15

*State v. Boatman*, 901 So. 2d 222 (Fla. Dist. Ct. App. 2005)..... 18

*State v. Bryant*, 678 S.W.2d 480 (Tenn. Crim. App. 1984) ..... 17

*State v. Campbell*, 145 Idaho 754 (Ct. App. 2008)..... 6, 21

*State v. Carr*, 123 Idaho 127 (Ct. App. 1992) ..... 6, 15, 20, 21

*State v. Clarke*, 165 Idaho 393 (2019) ..... *passim*

*State v. Conant*, 143 Idaho 797 (2007)..... 7

*State v. Danney*, 153 Idaho 405 (2012)..... 13

*State v. Henry*, 357 N.W.2d 121 (Minn. Ct. App. 1984) ..... 16

*State v. Hunter*, 1989 WL 119464 (Tenn. Crim. App. Oct. 13, 1989)..... 17

*State v. Koivu*, 152 Idaho 511 (2012)..... 13

*State v. Lyon*, 706 P.2d 516 (N.M. Ct. App. 1985)..... 16, 17

*State v. Sutterfield*, 168 Idaho 558 (2021)..... 22

*State v. Watts*, 142 Idaho 230 (2005) ..... 13

*United States v. Hensley*, 469 U.S. 221 (1985) .....15

Statutes

I.C. § 18-1501(3).....3

I.C. § 18-8004(1)(c) .....3

I.C. § 19-606..... 19, 20

Constitutional Provisions

IDAHO CONSTITUTION art. I, § 17 .....*passim*

## STATEMENT OF THE CASE

### Nature of the Case

The State appeals from the district court's appellate decision granting Jonathan Bell's motion to suppress, which had been previously denied by the magistrate court. The State argues the district court erred by granting Mr. Bell's motion because Mr. Bell's warrantless arrest for a completed misdemeanor did not violate the Idaho Constitution's prohibition of warrantless arrests for completed misdemeanors. To justify the warrantless arrest, the State asserts one officer's communications to another officer on his observations of a possible misdemeanor allowed the other officer to conduct a warrantless arrest for the now-completed misdemeanor. The State asserts this "collective knowledge" satisfies the constitutional "in-the-presence" requirement for a warrantless misdemeanor arrest.

Respectfully, the State's position is misguided. "Collective knowledge" applies for an officer to develop probable cause, or to delegate authority for a lawful arrest, but it does not apply to the presence requirement when the "present" officer does not have probable cause to justify the arrest. In other words, an officer that lacks probable cause to arrest cannot transfer their "presence" alone to save another officer's warrantless arrest for an offense committed outside their presence. Because an officer arrested Mr. Bell, without a warrant, for a misdemeanor committed outside his presence, the district court properly granted Mr. Bell's motion to suppress. Accordingly, Mr. Bell respectfully requests this Court affirm the district court's appellate decision.

## Statement of Facts and Course of Proceedings

Similar to the State's brief, the magistrate court's undisputed factual findings are recited here:

On May 16, 2019, Officer Pallas was off duty and not in uniform<sup>1</sup> as he was checking out at the Albertsons Grocery Store in Hailey, Idaho. As he was checking out, Officer Pallas noticed Bell. Bell appeared unsteady on his feet, swayed from side to side, front to back, had difficulty walking, and appeared confused. Officer Pallas also observed Bell had difficulty finding his car in the parking lot once he exited the store. Officer Pallas believed Bell's behavior was associated with intoxication, although Officer Pallas did not get close enough to hear Bell's speech pattern or determine whether Bell had the odor of alcohol on his person or breath.

Officer Pallas watched from his personal vehicle as Bell got into the driver's seat of a vehicle and drove the car onto a public street. Officer Pallas called his training officer, Officer Murphy, who was on duty, to report Bell as possibly driving under the influence. Officer Murphy advised that Officer Pallas should call dispatch, which Officer Pallas did. Officer Pallas explained that he gave dispatch a description of the vehicle, the license plate number and reported that the driver was intoxicated.

Officer Pallas left the parking lot, continued onto McKercher Boulevard and turned right onto Main Street, where he parked and waited for Bell to exit the parking lot so he could follow Bell. However, Bell continued straight onto McKercher after exiting the parking lot, rather than turning right onto Main Street. Officer Pallas made a U-turn in order to follow Bell then he drove on McKercher to Buttercup but did not locate Bell's vehicle until he reached Fourth Street. Officer Pallas noticed other law enforcement officers in the area and at that point, Officer Pallas reported Bell's location to dispatch and then ended the call.<sup>2</sup> Then Officer Pallas drove to the Hailey Police Station to begin his shift. Officer Pallas did not see Bell violate any traffic laws during his pursuit. After ending the call with dispatch, Officer Pallas had no further role in the investigation and later detention of Bell.

Officer Murphy was on duty when he got the call from Officer Pallas reporting his observations of Bell. When Officer Murphy received the call, he was in Bellevue, and began to respond toward Albertson's during his conversation with Officer Pallas. It did not take Officer Murphy more than ten minutes to respond to

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<sup>1</sup> Officer Pallas was not yet POST-certified, but had completed his field training with the Hailey Police Department. (R., p.89.)

<sup>2</sup> Officer Pallas did not call the recorded line for dispatch, so there was no recording of the phone call. (R., p.89.)

Bell's location. Officer Murphy received information from dispatch there was an intoxicated driver in the area of 911 North Main and the Albertsons Grocery Store in Hailey. Dispatch stated that the vehicle was a white GMC Acadia with Idaho license plate Y67E and provided an address of 314 North 4th Avenue. Officer Murphy went to that address and saw the white Acadia parked in the front of the home. Officer Murphy felt the hood of the car, which was warm to the touch.

Officer Murphy activated his bodycam and knocked on the home's front door. A young person answered and told Officer Murphy they had just returned from the grocery store. The young person told Officer Murphy that Bell was driving the car. Bell came to the door and Officer Murphy asked him to step outside so they could speak to one another. Bell exited the home and during his conversation with Officer Murphy admitted he had just returned from a grocery store. Bell stated that before his trip to the store, he consumed five alcoholic beverages and that he had not consumed any alcohol since he returned home from the store. Officer Murphy said during his conversation with Bell, Bell seemed unsteady on his feet and smelled of alcohol. There were two other officers present during this conversation, although they did not take part in the interaction.

Officer Murphy decided to investigate whether Bell had driven under the influence and asked Bell to perform field sobriety tests. Bell failed the Horizontal Gaze Nystagmus ("HGN") test. Officer Murphy next had Bell attempt a walk and turn test; however, Bell could not stand in the starting position and attempted to walk before being told to begin. Bell told Officer Murphy he could not complete the walk and turn test and chose not to complete it. Next, Officer Murphy attempted to administer the one leg stand test, which Bell also said he could not complete. Murphy placed Bell under arrest for misdemeanor [DUI] and transported him to Blaine County Jail to administer a breath alcohol test. Bell provided samples of 0.326 and 0.330.

(R., pp.164–66 (district court's factual summary of magistrate court's findings); *see also* R., pp.89–92 (magistrate court's factual findings); App. Br., pp.1–3.)

Officer Murphy cited Mr. Bell for two misdemeanor offenses: an excessive DUI, in violation of I.C. § 18-8004(1)(c), and injury to a child, in violation of I.C. § 18-1501(3), for transporting a nine-year-old child in the car. (R., p.11; *see also* R., pp.14–16 (Officer Murphy's probable cause affidavit).) Mr. Bell pled not guilty. (R., p.21.)

In late July 2019, Mr. Bell filed a motion to suppress. (R., pp.43–46.) Mr. Bell argued Officer Murphy unlawfully seized him when Officer Murphy had Mr. Bell exit his residence.

(R., pp.43–44.) He stated Officer Murphy detained him “for the purpose of investigating a completed misdemeanor outside the presence or observation of the police officer, namely a DUI. . . . [Mr. Bell] was not wanted for a warrant or for some other law violation. (R., pp.43–44.) He also argued Officer Murphy’s request to do field sobriety tests (FSTs) was a search. (R., p.44) Finally, he argued Officer Murphy’s request to do FSTs or the subsequent arrest was a *Clarke* violation for a warrantless arrest of a completed misdemeanor. (R., p.44.) The Idaho Supreme Court had decided *State v. Clarke*, 165 Idaho 393 (June 12, 2019), about one month prior to Mr. Bell’s motion.

The magistrate court held two hearings on the motion. (R., pp.55–56, 58–59; Exs.,<sup>3</sup> pp.2–58.) Officer Pallas testified at the first hearing, (Exs., pp.2–34), and Officer Murphy testified at the second hearing, (Exs., pp.35–57). At the first hearing, the magistrate court inquired as to *Clarke*’s possible application. (Exs., pp.32–34 (Tr., p.31, L.23–p.33, L.8.) After the second hearing, the magistrate court took the matter under advisement pending briefing by the parties. (Exs., pp.55–56 (Tr., p.54, L.22–p.55, L.24).)

In Mr. Bell’s brief in support, he asserted the officers did not have a warrant for his arrest, and Officer Murphy arrested him for a misdemeanor outside the officer’s presence, in violation of *Clarke*. (R., p.68.) He also contended Officer Pallas did not have reasonable suspicion or probable cause of DUI when Officer Pallas saw him in the grocery store. (R, p.69.) Lastly, he again argued Officer Murphy seized him when Officer Murphy had him exit his residence. (R., pp.69–70.)

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<sup>3</sup> The “Exhibits on Appeal” electronic document contains a scanned copy of the CD with Officer Murphy’s bodycam video (page one) and a transcript of the two motion to suppress hearings (pages two to fifty-eight). Officer Murphy’s bodycam video is in the appellate record as State’s Exhibit 1.



In response, the State asserted, although Officer Murphy did not see the offense occur, Officer Murphy relied on Officer Pallas's observations. (R., p.73.) The State further asserted, under the collective knowledge doctrine, "the observations of Pallas were also the observations of Murphy and thus the crime could be said to be committed in Murphy's presence. In essence, the crime occurred in the presence of the Hailey Police department." (R., p.74.) The State also argued Mr. Bell and Officer Murphy's encounter was consensual until Officer Murphy's request for FSTs and, at that point, Officer Murphy had probable cause. (R., p.75.)

In reply, Mr. Bell argued collective knowledge did not apply because Officer Pallas did not have reasonable suspicion. (R., pp.78–79.) Relatedly, he argued collective knowledge should not apply to Officer Pallas, since he was off-duty, and Officer Pallas only gave Officer Murphy "a piece of information that put together might create probable cause for an arrest." (R., p.79.)

He further explained:

The collective knowledge exception is a weak argument in this case, as the off-duty [Officer Pallas] did not see an offense, he maybe had a hunch that Mr. Bell had violated a law. His knowledge did not involve the viewing of an offense but rather the possibility of an offense, that needed more investigation. In fact, to stop Mr. Bell while driving there would have had to have been another traffic offense. The off-duty [Officer Pallas's knowledge], plus the knowledge that the arresting officer, Officer Murphy, [had], was not enough information [to] be reasonable suspicion to detain someone or probable cause to arrest someone.

(R, p.80.) On the unlawful arrest, Mr. Bell argued the misdemeanor did not occur in Officer Murphy's presence and Officer Pallas "did not know that there was an offense occurring either, but rather the possibility of an offense . . . ." (R., pp.80–81.) He asserted the State was misapplying the collective knowledge doctrine, which establishes reasonable suspicion or probable cause through the officers' shared knowledge, to the "in the presence" requirement for the warrantless arrest of a misdemeanor. (R., p.81.)

A few months later, the magistrate court issued a memorandum decision and order denying Mr. Bell's motion to suppress. (R., pp.88–95.) After making factual findings, (R., pp.89–92), summarized above, the magistrate court framed the issue as: "Could Officer Murphy arrest Bell for DUI when Officer Murphy did not see Bell operate the motor vehicle and thus the misdemeanor was not committed in the presence of Officer Murphy." (R., p.92.) The magistrate court noted the State did not pursue any *Clarke* retroactivity argument. (R., p.92.) The magistrate court ruled:

*Clarke* provides that a person may not be arrested for a completed misdemeanor not committed in the presence of the officer. However, *Clarke* does not define what a completed misdemeanor is.

In this case it is clear that Pallas, a Hailey Police Officer, observed Bell driving a motor vehicle on a public roadway. Previous to this driving Pallas observed Bell having difficulty walking and finding his vehicle Pallas believed that the Bell's motor skills where an indication of intoxication.

It is recognized by this Court that the observations of Pallas standing alone did not give Pallas a basis to conduct a traffic stop.

The State argues that the collective knowledge of the police is sufficient to allow Murphy to use the additional information of Pallas witnessing Bell driving the motor vehicle on the roadway.

In this case there was direct communication between Pallas and Murphy as to Pallas's concern of Bell's intoxication. This direct communication was supplemented with the additional information provided by Pallas through dispatch. It is clear in this matter that Pallas and Murphy where working together and it was the collective knowledge of the two officers that gave rise to Murphy contacting Bell and the subsequent arrest of Bell for DUI.

Idaho does recognize the collective knowledge doctrine to allow the collective knowledge of the police officers to form the basis to establish the necessary element that the misdemeanor was committed in the presence of the law enforcement and the arresting officer. See: *State v. Campbell*, 145 Idaho 754 [(Ct. App. 2008)] and *State v. Carr*, 123 Idaho 127 [(Ct. App. 1992)].

(R., pp.92–93.) The magistrate court then found that Officer Murphy’s initial contact with Mr. Bell was consensual. (R., p.93.) As a consensual encounter, the magistrate court determined Officer Murphy did not need reasonable suspicion. (R., p.94.) The magistrate court concluded:

In this matter Pallas observed Bell driving a motor vehicle on a public roadway and observed that Bell had difficulty with his balance and appeared intoxicated.[ ] Murphy assisted Pallas in the investigation which started with a consensual encounter at the residence where Bell was contacted. This consensual encounter evolved into an investigative detention when Murphy confirmed that Bell was the driver of the vehicle, that Bell had consumed 5 alcoholic drinks earlier in the day and that Murphy observed the odor of alcohol and on Bell’s person. After Bell failed the field sobriety test Murphy had probable cause to arrest Bell for a [DUI] that had occurred in the presence of Officer Pallas and Murphy collectively.

It is important to note that while at some locations in *Clarke* the Court does cite other early cases that state the misdemeanor occurred in the presence of the officer.

When reviewing the history of lawful arrest *Clarke* also cited: “*State v. Conant*, 143 Idaho 797, 799–800 (2007), officer may make a warrantless arrest when a person has committed a public offense in the presence of a peace officer.”

In this case the misdemeanor of Excessive DUI did occur in the collective presence of Officers Pallas and Murphy of the Hailey Police Department.

(R., p.95.) The magistrate court denied the motion. (R., p.95.)

Mr. Bell pled guilty to both misdemeanor offenses. (R., pp.109–110.) He reserved the right to appeal the magistrate court’s denial of his motion to suppress. (R., pp.104, 105.) The magistrate court placed him on probation for two years, with underlying sentences of one year for the excessive DUI and six months for injury to a child. (R., pp.110, 113–16.) Mr. Bell timely appealed to the district court. (R., pp.117–19.)

On appeal, Mr. Bell made three related arguments. First, Mr. Bell argued Officer Murphy seized him when Officer Murphy requested that he exit his residence. (R., pp.147–49.) Second, Mr. Bell argued the “fellow officer” or “collective knowledge” doctrine did not apply to Officer

Murphy's conduct because Officer Pallas lacked reasonable suspicion to justify it. (R., p.149.) He argued: "The test is not whether Officer Murphy acted in reliance upon a report of reasonable suspicion. The test is that Officer Pallas who issued the report had knowledge of articulable facts supporting a reasonable suspicion. He clearly did not which in return violated Mr. Bell's Fourth Amendment rights." (R., p.149.) He asserted "[t]he 'fellow officer rule' is concerned with reasonable suspicion and probable cause, not whether the crime was committed in the presence of the arresting officer. That issue is separate and addressed under a *Clarke* analysis." (R., p.150.) Third, Mr. Bell argued Officer Murphy's arrest violated *Clarke* because, again, Officer Pallas did not communicate reasonable suspicion to Officer Murphy to allow a seizure, the misdemeanor did not occur in Officer Murphy's presence, and Officer Murphy did not have personal knowledge or observation of the misdemeanor. (R., pp.150–51.)

In its brief, the State argued the misdemeanor DUI occurred in the presence of the Hailey Police Department because Officer Pallas's observations became Officer Murphy's as well. (R., p.157.) The State also argued Officer Murphy did not seize Mr. Bell until the FSTs, at which time Officer Murphy had at least reasonable suspicion. (R., p.158.)

After oral argument, the district court issued a written decision reversing the magistrate court's order denying Mr. Bell's motion to suppress. (R., pp.160–62, 163–74.) The district court determined substantial and competent evidence supported the magistrate court's factual findings. (R., p.164.) On the seizure issue, the district court agreed with the magistrate court that Officer Murphy's initial encounter with Mr. Bell was consensual. (R., p.167 n.3.) On the constitutionality of Mr. Bell's arrest, the district court summarized Mr. Bell's position as:

Bell contends that while the collective knowledge doctrine or the fellow officer rule may apply to off-duty officers, Officer Pallas lacked reasonable suspicion that Bell was driving under the influence and therefore could not have imputed any knowledge onto Officer Murphy that would have justified a warrantless

seizure. Finally, Bell argues his warrantless arrest violates [*Clarke*] because he was arrested for a completed misdemeanor that occurred outside either Officer Murphy's or Officer Pallas's presence.

(R., p.167.) The district court recognized that the State argued the collective knowledge doctrine allowed the arrest because Mr. Bell committed the offense in the presence of the Hailey Police Department. (R., pp.167–68, 171.) After discussing *Clarke* and the more recent decision *Reagan v. Idaho Transportation Department*, 502 P.3d 1027 (Idaho 2021), the district court held:

However, in light of the Idaho Supreme Court's recent decisions, particularly *Reagan*, the Court finds that the collective knowledge doctrine does not allow a peace officer to make a warrantless arrest for a DUI committed outside of the officer's presence. In both *Clarke* and *Reagan*, the arresting officer possessed at least reasonable suspicion that a crime occurred based on reliable and veracious accounts from witnesses to the crimes. The same is true here. Officer Murphy, via information relayed by Officer Pallas, possessed reasonable suspicion Bell had driven while he was intoxicated. The *Reagan* Court determined that the arresting officer has a sufficient basis to investigate the DUI offense at the driver's home. Similarly, the Court agrees with the Magistrate that Officer Murphy's initial encounter with Bell was voluntary and that there was reasonable and articulable suspicion that Bell had committed a DUI, thereby allowing further investigation such as field sobriety tests.

However, whether Officer Murphy possessed reasonable suspicion to conduct field sobriety tests or probable cause to effect an arrest is not the relevant inquiry under Article I, Section 17 of the Idaho State Constitution. *Clarke* and *Reagan* make clear that if an officer does not personally witness a completed misdemeanor, the officer must obtain a warrant before he makes an arrest. In this case, Officer Pallas' role was similar to that of the complaining witness in *Clarke* or the concerned citizen in *Reagan*. Officer Pallas provided credible information to Officer Murphy, much like the citizens in *Clarke* and *Reagan* provided to the arresting officers in those cases. Just like crimes in *Clarke* and *Reagan*, the misdemeanors in this case did not occur in Officer Murphy's presence. Of course, just like the arresting officers in *Clarke* and *Reagan*, Officer Murphy arrested Bell for a completed misdemeanor committed outside his presence. The result must be the same. Like the arrests in *Clarke* and *Reagan*, Bell's arrest violates Article I, Section 17 of the Idaho State Constitution.

*Clarke* and *Reagan* suggest that a court should examine the policy of the basis of a warrantless arrest. The collective knowledge doctrine allows warrantless seizures and searches based on receipt of information from various sources. The collective knowledge doctrine promotes the public policy of safety and efficiency by allowing law enforcement to rely on multiple sources of

information, which would otherwise be difficult or impossible to perform by one officer in a timely manner. In contrast, *Clarke* and *Reagan* are concerned with the constitutional authority to make a warrantless arrest for a completed misdemeanor. . . . Stated differently, the collective knowledge doctrine may provide sufficient facts to justify a warrantless arrest but Article I, Section 17 of the Idaho State Constitution prohibits such a warrantless arrest. Using the same language found in *Clarke* and *Reagan*, the public policy justifying the collective knowledge doctrine or fellow officer rule must yield to constitutional considerations.

(R., pp.171–73.) The district court concluded:

The *Clarke* and *Reagan* Courts recognize the ramifications of the decision to prohibit warrantless arrests for misdemeanors committed outside the presence of an officer. . . . Many aspects of misdemeanor[ ] crimes have been impacted by these decisions, but the Idaho Supreme Court has concluded that state laws and law enforcement tactics must yield to the Idaho Constitution. Protections under the Article I, § 17 of the Idaho Constitution are designed to protect Idaho citizens' reasonable expectations of privacy against unreasonable searches and seizures. Simply put, there is no authority to make a warrantless arrest for a completed misdemeanor committed outside of the presence of an officer.

(R., p.173.) The district court reversed the magistrate court's denial of Mr. Bell's motion to suppress. (R., pp.173–74.) The State timely appealed. (R., pp.175–76.)

## ISSUE

The State frames the issue as:

Did the district court err by reversing the magistrate court's denial of Bell's motion to suppress when it concluded that Article I, Section 17 of the Idaho Constitution prohibits a warrantless arrest for a misdemeanor committed in the presence of an officer other than the arresting officer?

Mr. Bell reframes the issue as:

Did the district court properly reverse the magistrate court's denial of Mr. Bell's motion to suppress because Article I, Section 17 of the Idaho Constitution prohibits the warrantless arrest for a now-completed misdemeanor committed in the presence of another officer that did not have probable cause to justify the arrest?

## ARGUMENT

### The District Court Properly Reversed The Magistrate Court's Denial Of Mr. Bell's Motion To Suppress Because Article I, Section 17 Of The Idaho Constitution Prohibits The Warrantless Arrest For A Now-Completed Misdemeanor Committed In The Presence Of Another Officer That Did Not Have Probable Cause To Justify The Arrest

#### A. Introduction

Mr. Bell asserts the district court correctly reversed the magistrate court's decision denying his motion to suppress because the district court properly determined the collective knowledge doctrine, used by the State to justify a warrantless arrest for a completed misdemeanor, had no application to this case. This was neither a situation where an officer developed probable cause for a lawful arrest based on information from multiple sources nor a situation where an officer with probable cause for a lawful arrest requested assistance from another officer to make that arrest. This was a situation where an officer did not have probable cause for a lawful arrest after a misdemeanor possibly occurred in his presence and then, to circumvent *Clarke's* protection, a second officer used the first officer's "presence" to justify a warrantless arrest for the now-completed misdemeanor. Based on these facts, the district court properly ruled the collective knowledge did not apply to Mr. Bell's arrest. Mr. Bell respectfully requests this Court affirm the district court's appellate decision.

#### B. Standard Of Review

On appeal from the district court's decision in its appellate capacity, the Court reviews "the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings." *Pelayo v. Pelayo*, 154 Idaho 855, 858 (2013) (citation omitted). If the evidence supports the magistrate court's findings and its legal conclusions follow those



findings, and the district court affirmed the magistrate court, the Court will affirm the district court's decision "as a matter of procedure." *Id.* (citation omitted). However, if the district court reversed the magistrate court, the Court "owe[s] no particular deference to the district court's decision . . . ." *Medical Recovery Servs., LLC v. Eddins*, 494 P.3d 784, 790 (Idaho 2021).

The Court uses a bifurcated standard to review a motion to suppress. *State v. Danney*, 153 Idaho 405, 408 (2012). "The Court accepts the trial court's findings of fact if supported by substantial evidence." *State v. Watts*, 142 Idaho 230, 234 (2005). The Court exercises free review of "the trial court's application of constitutional principles to the facts found." *Danney*, 153 Idaho at 408.

C. The District Court Properly Granted Mr. Bell's Motion To Suppress Because Officer Murphy Arrested Him Without A Warrant For A Completed Misdemeanor, And Officer Pallas's Presence During The Offense's Commission Cannot Justify Officer Murphy's Arrest Because Officer Pallas Lacked Probable Cause To Arrest

Article I, Section 17 of the Idaho Constitution states:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

IDAHO CONST. art. I, § 17. "In some instances," the Court has "construed Article I, section 17, to provide greater protection than is provided by the United States Supreme Court's construction of the Fourth Amendment." *State v. Koivu*, 152 Idaho 511, 519 (2012).

*State v. Clarke*, 165 Idaho 393 (2019), is one such instance. In *Clarke*, the Court held Article I, Section 17 prohibited an officer from making a warrantless arrest for a completed misdemeanor. *Id.* at 399. "A completed misdemeanor is one which is no longer in progress when the officer arrives on the scene." *Id.* at 396 n.6. Although *Clarke* was a landmark decision, the Court later clarified that *Clarke* "did not state new law; it merely memorialized what the framers

of the Idaho Constitution initially intended in limiting an officer’s arrest powers for completed misdemeanors.” *State v. Amstutz*, 169 Idaho 144, 492 P.3d 1103, 1106 (2021) (citing *Clarke*, 165 Idaho at 399–400). Thus, in *Clarke*, the Court held the defendant’s arrest for a misdemeanor “was unlawful even though it was supported by probable cause, because it occurred outside the officer’s presence.” *Amstutz*, 492 P.3d at 1106.

On appeal, the State argues “the collective observations” of Officer Pallas can satisfy *Clarke*’s presence requirement for Officer Murphy’s arrest. (App. Br., p.7.) The State points to the ostensibly broad language of “an” officer in a subsequent decision reciting *Clarke*’s holding,<sup>4</sup> (App. Br., p.9), that the collective knowledge doctrine for probable cause has been used post-*Clarke*, (App. Br., pp.9–10), and to some policy concerns and practicalities of police work that demand relieving the presence requirement, (App. Br., pp.10–12). In challenging the district court’s decision, the State asserts the district court “overlooked the one key factual distinction” in this case that “the crime was committed in the presence of an officer.” (App. Br., p.14.) Finally, the State concludes Officer Murphy had probable cause to arrest Mr. Bell, so the arrest was lawful, even though the alleged misdemeanor did not occur in his presence. (App. Br., pp.14–15.)

Setting aside the policies and practicalities for now, the State has simply put the cart before the horse. Officer Pallas’s observations cannot satisfy *Clarke*’s presence requirement because Officer Pallas did not have probable cause that a crime was occurring in his presence. “Probable cause exists when the facts and circumstances known to the officer warrant a prudent

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<sup>4</sup> Mr. Bell does not respond directly to this “an officer” argument except to say that, if the Court intended to broaden its holding to any officer, the Court would have done so. *See State v. Clarke*, 165 Idaho at 396 (“a police officer violates Article I, Section 17 of the Idaho Constitution by making an arrest for a misdemeanor offense that occurred outside his presence but for which probable cause exists”); *see also Amstutz*, 492 P.3d at 1105–06, 1109 (discussing and applying *Clarke*); *Reagan*, 502 P.3d at 1032–34 (same).

man in believing that the offense has been [or is being] committed.” *State v. Bishop*, 146 Idaho 804, 816 (2009) (alteration in original) (quotation marks and citation omitted). Here, Officer Pallas saw Mr. Bell swaying, having difficulty walking, and looking confused in a grocery store and the parking lot. (R., p.164.) Officer Pallas then saw Mr. Bell get into his car and drive away. (R., p.164.) Officer Pallas thought Mr. Bell’s behavior was indicative of intoxication, but Officer Pallas never smelled alcohol on Mr. Bell, heard him speak, or saw other signs of intoxication (such as horizontal nystagmus). (R., p.164.) Officer Pallas also did not see any driving errors. (Exs., pp.14–15, 22–25 (Tr., p.13, L.24–p.14, L.25, p.21, L.19–p.24, L.20).) In short, Officer Pallas saw a man displaying odd behavior get in a car and drive away. Officer Pallas agreed that his observations “just gave me reasonable suspicion.” (Exs., pp.20–21 (Tr., p.19, L.23–p.20, L.3); *see also* Exs., pp.19–20 (Tr., p.18, L.24–p.19, L.4).) In light of these facts, the magistrate court found Officer Pallas’s observations alone “did *not* give Pallas a basis to conduct a traffic stop.” (R., p.93 (emphasis added).) The district court went a little further, stating, “Officer Murphy, via information relayed by Officer Pallas, possessed reasonable suspicion Bell had driven while he was intoxicated.” (R., p.171.) Nonetheless, neither court ruled Officer Pallas had probable cause to arrest Mr. Bell for a DUI committed in his presence. The State has not challenged this on appeal, and the facts fall short of any probable cause finding.

Officer Pallas’s complete lack of probable cause matters because Officer Murphy cannot rely on Officer Pallas’s presence during the commission of a crime when Officer Pallas does not know that a crime has occurred. The collective knowledge doctrine allows an officer to gather information from a variety of sources—bulletins, dispatch, fellow officers, etc.—to support a finding of probable cause (or reasonable suspicion). *State v. Carr*, 123 Idaho 127, 130 (Ct. App. 1992); *United States v. Hensley*, 469 U.S. 221, 232 (1985) (collective knowledge for reasonable

suspicion). Equipped with probable cause from those various sources, an officer may effectuate a lawful arrest under the Fourth Amendment, even though the officer may not have personally and directly obtained each piece of information that adds up to probable cause. *Amstutz*, 492 P.3d at 1108 (“the collective knowledge doctrine eliminates the requirement of personal knowledge, [but] it does not eliminate the requirement of some knowledge”). The Idaho Constitution, however, imposes another requirement upon the officer during that arrest. For misdemeanors, it requires the offense to occur in the officer’s presence to arrest without a warrant. *Clarke*, 165 Idaho at 399. Both requirements of probable cause and presence must co-existent for a lawful warrantless arrest for a misdemeanor. They are not interchangeable. Probable cause pertains the officer’s knowledge of the offense, and presence pertains to officer’s observation of the offense. Here, Officer Murphy had probable cause but no presence; Officer Pallas had presence but no probable cause. The State cannot use the collective knowledge doctrine for the probable cause requirement to satisfy the presence requirement. These are distinct requirements from different constitutional sources.

The State’s own examples bear this out. In the State’s examples, the officer with probable cause for the offense also was in the presence of the offense:

State’s Footnote Four Example: In *State v. Henry*, 357 N.W.2d 121 (Minn. Ct. App. 1984), Officer 1 saw the defendant speeding, stopped the defendant, and saw that he was intoxicated. *Id.* at 122. Officer 1 radioed Officer 2 for assistance, and Officer 2 arrived on scene. *Id.* at 122. The court held Officer 2’s assistance with the arrest was lawful. *Id.* at 122–23. (*See* App. Br., pp.11–12 & p.12 n.4.)

State’s Footnote Five Example: In *State v. Lyon*, 706 P.2d 516 (N.M. Ct. App. 1985), Officer 1 saw the defendant driving with a beer bottle between his legs. *Id.* at 518. Officer 1

stopped the defendant and saw that he was intoxicated. *Id.* at 519. But, because Officer 1 had a canine unit with him, Officer 1 requested assistance, and Officer 2 arrived on scene and arrested the defendant. *Id.* at 518. The court held Officer 2's arrest was lawful. *Id.* at 520. The court reasoned, "[W]hen a misdemeanor is committed in the presence of a police officer and information of such is promptly placed on the police radio or otherwise communicated and a description of the misdemeanant given, the arrest of the misdemeanant by another police officer within a reasonable time of receipt of the information is valid." *Id.* (See App. Br., p.12 & n.5.)

State's Footnote Six Example: In *State v. Bryant*, 678 S.W.2d 480 (Tenn. Crim. App. 1984), Officer 1 saw the defendant speeding, and, upon Officer 1's radio request for assistance, Officer 2 stopped the defendant and arrested him. *Id.* at 482. The court held Officer 2's arrest for the misdemeanor speeding offense was lawful. *Id.* at 483. (See App. Br., p.12 & n.6.)

State's Footnote Seven Example: In *State v. Hunter*, 1989 WL 119464 (Tenn. Crim. App. Oct. 13, 1989) (unpublished), Officer 1 saw a defendant driving and saw that the defendant was intoxicated. See *State v. Ash*, 12 S.W.3d 800, 805 (Tenn. Crim. App. 1999) (summarizing *Hunter*). Officer 1 called Officer 2, who had jurisdiction to arrest, and the court held Officer 2's arrest was lawful. *Id.* (See App. Br., p.12 & n.7.)

State's Footnote Eight Example: In *Daniel v. Village of Royal Palm Beach*, 889 So. 2d 988 (Fla. Dist. Ct. App. 2004), Officer 1 saw the defendant commit misdemeanor reckless driving, and Officer 2's subsequent arrest for the defendant's reckless driving seen by Officer 1 was lawful. *Id.* at 990–91. (See App. Br., p.12 & n.8.)

State's Footnote Nine Example: In *Brown v. State*, 442 N.E.2d 1109 (Ind. 1982), Officer 1 "did actually observe the misdemeanor [(drinking alcohol)] and relayed this information to

[Officer 2].” *Id.* at 1115. The court held Officer 2’s arrest for the alcohol offense was lawful. *Id.* (See App. Br., p.12 & n.9.)

State’s Footnote Ten Example: In *State v. Boatman*, 901 So. 2d 222 (Fla. Dist. Ct. App. 2005), Officer 1 came upon a defendant passed out behind the wheel of his car with the keys in the ignition, and Officer 1 discovered the defendant’s license was suspended. *Id.* at 223. Two more officers arrived as backup, and Officer 1 directed one of the backup officers to arrest the defendant for the misdemeanor offense of driving with a suspended license. *Id.* The court held the backup officer’s arrest was lawful. *Id.* at 224. In upholding the arrest, the court explained, “The fellow officer rule is typically, although not always, a rule permitting an officer who has lawful power to arrest a person the option of delegating that function to another officer.” *Id.* The court also noted its state law “expressly allowed an officer observing a misdemeanor to delegate to a fellow officer the authority to make the misdemeanor arrest.” *Id.* (See App. Br., p.12 & n.10.)

In all of these examples, Officer 1 had probable cause for the offense *and* was present when the offense occurred. As such, Officer 1 could conduct a lawful arrest, but, for some reason, was unable to exercise that authority. These courts held that Officer 1’s request for assistance or delegation of authority to another officer to conduct the constitutionally authorized arrest was not improper.

That is not what happened here. Officer Pallas did not have probable cause and, therefore, did not have the constitutional authority to conduct a lawful arrest. Without the authority to arrest, there nothing for Officer Pallas to delegate to Officer Murphy. While Officer Pallas could convey his observations to Officer Murphy for Officer Murphy to later develop

probable cause, the separate Idaho constitutional requirement of presence cannot be imputed to Officer Murphy's arrest independent of Officer Pallas's authority to arrest.

Nonetheless, relying on this case law, the State proposes, "This Court should adopt an interpretation of the presence requirement that permits warrantless misdemeanor arrests where the offense was committed in the presence of an officer and that officer's observations were communicated to the arresting officer." (App. Br., p.10.) The State reasons this rule is appropriate because "[a]llowing the observing officer, *who could constitutionally conduct a warrantless arrest himself*, to communicate his observations and direct another officer to effectuate that arrest does not infringe upon the interests sought to be protected or the limitations imposed by Article I, Section 17's presence requirement." (App. Br., p.11 (emphasis added).) But, again, the State's proposed rule did not happen here. Officer Pallas could not have "constitutionally conduct[ed] a warrantless arrest himself" because he did not have probable cause. To be sure, if Officer Pallas did possess probable cause, he could likely transfer his authority to arrest to Officer Murphy. *See* I.C. § 19-606 (person making an arrest may orally summon aid "as he deems necessary"). On the facts here, without probable cause, Officer Pallas had no authority to give.<sup>5</sup>

Moreover, the State's alleged policy concerns and police work complications from *Clarke*'s presence requirement fall apart when it becomes clear that the State's examples all involve an officer with the lawful authority to arrest delegating their authority to someone else. (App. Br., pp.10–12.) In addition to the State's footnote-based examples, the State submits,

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<sup>5</sup> The State's proposed rule on an officer with the constitutional authority to arrest delegating his authority to another is incompatible with the facts of this case, so Mr. Bell assumes the State is also proposing the broader rule that an officer without the authority to arrest could lend his presence alone to another officer to justify a warrantless arrest for a now-completed misdemeanor.

under a “narrow” presence interpretation, a backup officer during a DUI traffic stop could not lawfully arrest the driver since the DUI did not occur in the backup officer’s presence. (App. Br., pp.11–12.) The State also asserts the Court should take into account that police communicate with each other and work together on investigations and arrests. (App. Br., p.11.) However, the presence requirement does not stop the backup officer from arresting the driver, nor does it generally inhibit police sharing of information or delegation of authority. The backup officer could lawfully assist the initial officer with the arrest since the initial officer was present for the DUI’s commission and had probable cause for the offense. *See* I.C. § 19-606 (aid in making an arrest statute). And, more generally, the collective knowledge doctrine already allows officers to work together and gather information to give rise to probable cause for an offense. The constitutional presence requirement does not change that. *See Amstutz*, 492 P.3d at 1106–09 (applying collective knowledge post-*Clarke*. It only prevents an officer, in the limited circumstance of a completed misdemeanor, from conducting a warrantless arrest if the misdemeanor crime did not occur in his presence.

While the State relies primarily on examples and policy concerns for its position, Idaho case law does not support its position either. In *Carr*, 123 Idaho 127, an officer stopped the defendant for driving without working lights. *Id.* at 129. During the stop, the officer learned from dispatch that the defendant had a suspended or revoked license. *Id.* The officer arrested the defendant for the misdemeanor offense of driving without privileges. *Id.* The Court of Appeals rejected the defendant’s argument that the offense did not occur in the officer’s presence because the officer only knew about the suspension from dispatch. *Id.* at 130. The Court of Appeals held the officer’s warrantless arrest for misdemeanor was lawful. *Id.* at 130–31. The court explained:

Probable cause to arrest deals with probabilities that a crime has been committed, not absolute certainty, and an officer is allowed to use all his senses



and information from reliable sources to determine whether a crime has been committed. . . . Presence is also determined by the officer's use of all of his senses combined with the officer's knowledge of the violation. See *State v. Bergeron*, 326 N.W.2d 684 (N.D. 1982) (presence is determined by all of the officer's senses, including the observation of a car being driven by a person whose license is later learned by the officer to be suspended). The fact that the officer in this case had not personally and directly learned or been notified of Carr's license suspension when he arrested Carr is not dispositive. An officer in the field may rely on information supplied by other officers, and the collective knowledge of police officers involved in the investigation—including dispatch personnel—may support a finding of probable cause.

*Id.* at 130 (citation omitted). Ultimately, the *Carr* arrest was lawful because (a) the officer had probable cause for the offense based on his knowledge, from collective sources, that the defendant was driving without a license, and (b) the offense occurred in the officer's presence once he observed the defendant driving without a license. See also *State v. Campbell*, 145 Idaho 754 (Ct. App. 2008) (holding warrantless arrest for misdemeanor lawful because crime occurred in officers' presence—officers saw a car being driven, came upon the same car in a parking lot with defendant inside, and learned the defendant's license was suspended).

Further, *Clarke* and post-*Clarke* case law cannot be reconciled with the State's broad in-the-presence-of-any-officer position. The State's position would mean that any officer's presence during an offense's commission, even if the officer has no more than a hunch, could be used to satisfy the presence requirement for a subsequent warrantless arrest. For example, an officer could be at a gas station when he watches another car drive away or at a grocery store when he notices a shopper wandering through the store. If, later, someone reports that the driver had been drinking or that the shopper stole a candy bar, the State's position would allow a second officer to rely on the first officer's happenstance presence to justify a warrantless arrest for the now-completed offense. There is no presence requirement, as the framers intended it, if any officer can transfer their presence to another officer.

If, under the State’s position, one officer can lend their presence to another, why could a citizen not do the same? The State asserts there is a difference between an officer’s and a citizen’s presence, but the State has conflated probable cause and presence once again. (App. Br., p.14.) The State argues, unlike *Clarke* or *Reagan*,<sup>6</sup> “the crime was committed in the presence of an officer. The reporting witness was Officer Pallas, not a citizen witness.” (App. Br., p.14.) However, regardless of whether Officer Pallas or a citizen reported their observations to Officer Murphy, both reports would go toward Officer Murphy’s eventual determination of probable cause. The only distinction between the two is that the citizen’s information may carry less weight than the officer’s to meet the probable cause standard. *See, e.g., Reagan*, 502 P.3d at 1031 (weighing a citizen’s eyewitness tip to establish reasonable suspicion for DUI investigation). The weight of that information, however, has no bearing on whether the citizen or officer was present for the offense. It would not be in dispute (as it is not in dispute here) that the citizen was physically present when the offense was committed, notwithstanding whether the citizen knew a crime was occurring. Thus, taking the State’s position to its logical conclusion, there is no reason why only an officer should be used to satisfy the presence requirement. A citizen’s presence is no different. If that is the case, the post-*Clarke* decisions on whether an officer acted as a citizen’s agent during an arrest or whether an officer, after a citizen’s tip, had probable cause to elevate a misdemeanor to a felony are irrelevant. *See State v. Sutterfield*, 168 Idaho 558 (2021) (officer did not violate *Clarke* because he may act as citizen’s agent to aid in a

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<sup>6</sup> In *Reagan*, the Court applied *Clarke* to administrative proceedings where a driver’s license was suspended for a DUI. *Reagan v. Idaho Transp. Dep’t*, 502 P.3d 1027, 1032–34 (Idaho 2021). In *Reagan*, a citizen saw a possibly intoxicated driver on the road. *Id.* at 1030. The citizen followed the car until it pulled into a residence. *Id.* While the citizen was following the driver, the citizen called the police. *Id.* An officer was dispatched to the residence, confirmed the driver was intoxicated, and arrested the driver for a misdemeanor DUI. *Id.* The Court held the officer’s arrest violated the Article I, Section 17 of the Idaho Constitution because the misdemeanor did not occur in the officer’s presence. *Id.* at 1032–34.

citizen's arrest); *Amstutz*, 492 P.3d 1103 (officer violated *Clarke* after arresting defendant for a completed misdemeanor because officer did not know misdemeanor could be charged as a felony). In fact, there would be little significance to *Clarke*'s protection at all if anyone's presence would suffice.

In the end, the magistrate court erred by denying Mr. Bell's motion to suppress, and the district court correctly reversed the magistrate court's decision. The magistrate court determined the misdemeanor offense occurred in Officer Pallas's and Officer Murphy's collective presence. (R., pp.92–93, 95.) The district court properly recognized the constitutional requirements of presence and probable cause are not interchangeable. (R., pp.169–73.) The district court also understood that the collective knowledge doctrine to establish probable cause (or reasonable suspicion) could not be applied to the separate Idaho constitutional requirement of presence. (R., pp.171–73.) The district court properly concluded the presence requirement was not satisfied in Mr. Bell's arrest. (R., pp.172–73.) Officer Murphy clearly did not arrest Mr. Bell for a misdemeanor offense committed in his presence. (*See also* R., p.14 (Officer Murphy's affidavit that crime did not occur in his presence).) And Officer Murphy did not arrest upon Officer Pallas's authority because Officer Pallas, although present for the offense, did not have probable cause to justify a lawful arrest. Therefore, Officer Murphy's arrest of Mr. Bell violated Article I, Section 17 of the Idaho Constitution. *Clarke*, 165 Idaho at 399. The district court did not err in reversing the magistrate court's denial of Mr. Bell's motion to suppress. Mr. Bell respectfully requests this Court affirm the district court's appellate decision.

CONCLUSION

Mr. Bell respectfully requests this Court affirm the district court's memorandum decision reversing the magistrate court's memorandum decision and order denying Mr. Bell's motion to suppress.

DATED this 30<sup>th</sup> day of June, 2022.

/s/ Jenny C. Swinford  
JENNY C. SWINFORD  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30<sup>th</sup> day of June, 2022, I caused a true and correct copy of the foregoing RESPONDENT'S BRIEF to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

JCS/eas