

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

STATE OF IDAHO, )  
 ) No. 49099-2021  
 Plaintiff-Appellant, )  
 ) Blaine County Case No.  
 v. ) CR07-19-1575  
 )  
 JONATHAN ELSTON BELL, )  
 )  
 Defendant-Respondent. )  
 \_\_\_\_\_ )

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**REPLY BRIEF OF APPELLANT**  
\_\_\_\_\_

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

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

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## ARGUMENT

### The District Court Erred When It Concluded That The Idaho Constitution Prohibits A Warrantless Misdemeanor Arrest By An Officer Other Than The Officer In Whose Presence The Crime Occurred

#### A. Introduction

The district court identified the “crucial question” in this case as “whether an arrest is lawful when one officer observes a misdemeanor and reports his findings to another officer, who did not witness the misdemeanor but then makes the arrest.” (R., p.169.) As the state argued in its opening brief, the district court erred when it answered that question in the negative and reversed the magistrate’s order denying Bell’s motion to suppress. The state argued that Clarke and Article I, Section 17 of the Idaho Constitution have been satisfied where an officer observes a suspected crime being committed in his presence, communicates his observations to another officer, and the officer who did not observe the offense conducts a warrantless arrest based on probable cause.

In the Respondent’s brief, Bell argues the arrest was unlawful because, although the crime was committed in Officer Pallas’s presence, Officer Pallas did not have probable cause and therefore had no lawful authority to arrest Bell to delegate to Officer Murphy, whose investigation resulted in probable cause. Although this Court’s precedents require both probable cause and that the misdemeanor offense occur in an officer’s presence before a warrantless arrest may be made, nothing in them suggests that both elements must be met by the same officer. Bell’s assertion that the probable cause and presence requirements for the warrantless arrest must vest in the same officer before the arrest is lawful would be an unwarranted expansion of this Court’s precedents.

B. So Long As A Warrantless Misdemeanor Arrest Is Supported By Probable Cause And The Crime Occurred In The Presence Of An Officer, The Arrest Complies With The Idaho Constitution Regardless Of Whether The Officer Who Observed The Offense Is The Same Officer That Develops Probable Cause Or Effectuates The Arrest

For a warrantless misdemeanor arrest to comport with Article I, Section 17 of the Idaho Constitution, the offense must have occurred in the presence of an officer and the arrest must be supported by probable cause. State v. Amstutz, 169 Idaho 144, 147, 492 P.3d 1103, 1106 (2021) (citing State v. Clarke, 165 Idaho 393, 446 P.3d 451 (2019)). It is undisputed that the crime occurred in the presence of Officer Pallas and that Officer Murphy's investigation developed probable cause. (See Respondent's brief, p.16.) Thus, Bell's warrantless arrest was lawful under the Idaho Constitution and the district court erred when it concluded otherwise. (See Appellant's brief, pp. 7-15.)

The district court's error rests on its conclusion that the crime must have occurred in the presence of the *arresting* officer. (R., pp.169-73.) This Court has not addressed whether the presence requirement must be met by the arresting officer or if it is sufficient that the crime occurred in the presence of a different officer involved in the investigation. For all the reasons argued in the opening brief, incorporated by reference here, this Court should determine that the presence requirement is satisfied when the crime occurs in the presence of an officer involved in the investigation, even if that officer does not ultimately effectuate the arrest.

In the Respondent's brief, Bell argues that "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." (Respondent's brief, p.14.) Bell agrees that the crime occurred in Officer Pallas's presence and that Officer Murphy developed probable cause. (Respondent's brief, p.16.) However, in Bell's view "[b]oth requirements of probable cause and presence must co-existent [sic] for a lawful warrantless arrest for a misdemeanor." (Respondent's brief, p.16.)

Bell cites no authority to support a co-existence requirement and such a requirement is inconsistent with Fourth Amendment and Article I, Section 17 jurisprudence.

First, probable cause and presence need not exist at the same point in time. Although an officer who observes a crime being committed in his presence may immediately develop probable cause, that is not necessarily the case. An officer's observations of suspected criminal activity occurring in his midst may give rise to reasonable suspicion but not probable cause. See State v. Linze, 161 Idaho 605, 609, 389 P.3d 150, 154 (2016). That reasonable suspicion justifies the officer conducting an investigative detention during which the officer may conduct a limited investigation to confirm or dispel his suspicions of criminal activity. State v. Fairchild, 164 Idaho 336, 429 P.3d 877, 883 (Ct. App. 2018). The officer may develop probable cause that the suspect had been committing a crime in his presence. However, at that point the crime may no longer be occurring. Nonetheless, the absence of temporal co-existence is irrelevant to the constitutionality of a subsequent arrest.

For example, when an officer observes a driving pattern and suspects DUI, he may have only reasonable suspicion but not probable cause to believe that crime is occurring in his presence. When the officer stops the driver and conducts field sobriety tests and a breath alcohol test, he may develop probable cause to believe the driver was in fact committing a DUI. However, at the time probable cause arises the crime is no longer occurring in the officer's presence because the driver is no longer operating a motor vehicle; and, at the time the crime was occurring in the officer's presence the officer lacked probable cause. Nonetheless, a subsequent warrantless arrest for misdemeanor DUI would be lawful because both presence and probable cause were satisfied, even if not at the same time.

Second, there is no basis for a requirement that presence and probable cause co-exist in the same individual officer. The reality of modern police work is that officers cooperate and share information. Officers often provide backup for each other during investigations. And, as the collective knowledge doctrine recognizes, officers can rely on their collective knowledge and observations to develop reasonable suspicion and probable cause without having personal knowledge or observation. Amstutz, 169 Idaho at 148-49, 492 P.3d at 1107-08; State v. Carr, 123 Idaho 127, 130, 844 P.2d 1377, 1380 (Ct. App. 1992).

The same should be true for the presence requirement. If one officer's observations, including observation of the commission of a crime in his presence, conveyed to the officer that ultimately effectuates an arrest can support probable cause for the arrest, there is no basis to conclude that it cannot also satisfy the presence requirement. A "police team" rule that recognizes the collaborative efforts of law enforcement rather than parsing out each individual officer's observations should be applied in the presence context, as it is in the probable cause context. See Henry v. Comm'r of Pub. Safety, 357 N.W.2d 121, 122-23 (Minn. Ct. App. 1984) ("The 'police team' qualification of the presence requirement permits officers who are working together to combine their collective perceptions to satisfy the presence requirement; thus, the arresting officer does not need to witness all of the elements of the misdemeanor offense."). Where the "police team" observes a crime being committed in the presence of one officer and, through an additional officer, the team conducts further investigation and develops probable cause that the crime had been committed, a warrantless misdemeanor arrest should be lawful under Article I, Section 17 of the Idaho Constitution and Clarke because both presence and probable cause were satisfied by the team of officers working in concert on the investigation.

Bell makes much of the fact that in the state's hypothetical examples, the initial officer had both probable cause and presence. (Respondent's brief, pp.16-18.) Although that was the case in those examples, that need not be true. Two real cases presented to Idaho courts (addressing issues other than that presented in this case) demonstrate that routine DUI stops may often result in a situation where the crime occurs in the presence of one officer and another officer develops probable cause.

In State v. Hunter, 156 Idaho 568, 328 P.3d 548 (Ct. App. 2014), an initial officer conducted a traffic stop. The officer observed signs indicating Hunter was intoxicated. Id. at 569, 328 P.3d at 549. The initial officer then requested assistance from Officer Gibson, who specialized in DUI investigations. Id. at 569-70, 328 P.3d at 549-50. Officer Gibson took over the investigation; he made additional observations, conducted field sobriety tests, and heard Hunter's admissions to consuming alcohol. Id. at 570, 328 P.3d at 550. Officer Gibson developed probable cause and arrested Hunter for misdemeanor DUI. Id. The Idaho Court of Appeals concluded the warrantless misdemeanor arrest was lawful. Id. at 572, 328 P.3d at 552.

A similar situation was presented in State v. Diaz, 163 Idaho 165, 408 P.3d 920 (Ct. App. 2017). In that case, an initial officer conducted a traffic stop based on his suspicion that Diaz was driving under the influence of alcohol or controlled substances. Id. at 167, 408 P.3d at 922. A second officer arrived on scene to provide assistance. Id. The second officer conducted the field sobriety tests, which Diaz failed. Id. The second officer developed probable cause that Diaz was operating her motor vehicle while under the influence of some substance. Id. The second officer performed a breath alcohol test on Diaz, which indicated no breath alcohol. Id. Then, the second officer transported Diaz to the police station, where a third officer performed a



drug recognition evaluation and determined Diaz was under the influence of drugs. Id. That determination was later confirmed by a urine test. Id.

Both Hunter and Diaz demonstrate that officers work together in DUI investigations like the one at issue in this case, and that multiple officers may be involved throughout the process. In both cases, the initial officer who observed the crime occurring in their presence was not the same officer that completed the investigation; another officer arrived and conducted field sobriety tests. In both cases, the assisting officer's investigation gave rise to probable cause. And, in both cases, as in this case, the requirements of presence and probable cause were satisfied by the collective observations and investigation of the officers involved. Neither the warrantless arrests in these cases nor this case should offend the Idaho Constitution.

In Bell's view, the validity of a warrantless misdemeanor DUI arrest on the facts presented in Hunter and Diaz would depend entirely on one thing—whether the initial officer in whose presence the crime occurred observed the additional testing that gave rise to probable cause. If so, then presence and probable cause would co-exist in the initial officer and the arrest would be lawful. If not, then the lack of co-existence would render the arrest unconstitutional. Bell's approach would require the court to assess each officer's observations separately to determine whether any individual officer had personally satisfied each piece, regardless of what information and observations the officers developed and shared collectively. There is no constitutional justification for this Court to do so.

There seems to be no dispute that this arrest would be lawful if only one officer were involved. If Officer Pallas observed the offense and then made contact with Bell at his residence, taking all the same actions as Officer Murphy, the warrantless misdemeanor arrest would have been lawful in Bell's view because the crime was committed in Officer Pallas's

presence and he was the officer who developed probable cause. Likewise, if Officer Murphy had made Officer Pallas's observations before contacting Bell at his residence, there would be no constitutional issue. Somehow, the fact that one officer began the investigation and communicated all his observations and suspicions to a second officer who completed the investigation renders the otherwise lawful arrest unconstitutional. The fact that two officers, rather than one, conducted the investigation cannot have constitutional significance where the two requirements for a warrantless misdemeanor arrest—presence and probable cause—are undisputedly present. Bell has cited no authority to support such a conclusion.

Bell argues that the state's position would allow for any officer's "happenstance" presence during an offense to be used to satisfy the presence requirement for a subsequent warrantless arrest. (Respondent's brief, p.21.) Bell asserts it would allow the presence requirement to be satisfied by an officer who happened to be at a gas station and see another car drive away if at some later point someone reported that driver had been drinking; or by an officer who happened to see a shopper wandering through a store if someone later reported that the shopper stole a candy bar. (Respondent's brief, p.21.) Contrary to Bell's assertion, the state's position is not that so long as a crime occurs in an area where any officer happens to be, the presence requirement is satisfied.

"Presence is ... determined by the officer's use of all of his senses combined with the officer's knowledge of the violation." Carr, 123 Idaho at 130, 844 P.2d at 1380. The officer must recognize the potential criminal nature of what he observes, though that need not rise to the level of probable cause. In Bell's hypothetical examples, the officer who happened to be at a gas station or in a store may have been around while criminal activity occurred but the officer had no

“knowledge of the violation,” and therefore the officer could not satisfy the presence requirement.

Bell’s assertion that Officer Pallas’s presence is insufficient because “Officer Pallas d[id] not know that a crime ha[d] occurred” is contrary to the undisputed facts. (Respondent’s brief, p.15.) Officer Pallas observed that “Bell appeared unsteady on his feet, swayed from side to side, front to back, had difficulty walking, and appeared confused.” (R., p.164.) Officer Pallas “observed Bell had difficulty finding his car in the parking lot.” (R., p.164.) Based on his observations, Officer Pallas believed Bell was intoxicated. (R., p.164.) He watched “as Bell got into the driver’s seat of a vehicle and drove the car onto a public street.” (R., p.164.) He called Officer Murphy and reported Bell as possibly committing a DUI. (R., pp.164-65.) He then called dispatch and gave “a description of the vehicle, the license plate number and reported that the driver was intoxicated.” (R., p.165.) Officer Pallas made specific observations about Bell’s conduct and identified it as potential criminal activity; he specifically suspected that Bell was committing a DUI; and he initiated an investigation into that criminal activity by reporting his observation of the potential DUI to both Officer Murphy and dispatch. Bell’s argument that Officer Pallas’s observation cannot satisfy the presence requirement because Officer Pallas did not “know” that a crime occurred is meritless.

Last, Bell argues that the state’s position would effectively render Clarke meaningless because “[i]f, under the State’s position, one officer can lend their presence to another, why could a citizen not do the same?” (Respondent’s brief, pp.22-23.) Bell’s argument misstates the state’s position and conflates presence and probable cause. Probable cause deals with the information known to an officer from which the officer believes it is more probable than not that the person committed a crime. Amstutz, 169 Idaho at 148, 492 P.3d at 1107. It is well-

established that an officer may rely on information beyond that which he has personally acquired to develop probable cause, such as information provided by other officers or citizen reports. Id. at 148-49, 492 P.3d at 1107-08; State v. Thla Hum Lian, 168 Idaho 211, 216, 481 P.3d 759, 764 (Ct. App. 2020). The *presence* requirement, by its very nature, cannot be extended to citizen informants. The presence requirement requires that the crime occur in an *officer's* presence. Clarke, 165 Idaho at 396-99, 446 P.3d at 454-57; Reagan v. Idaho Transportation Dep't, 169 Idaho 689, 696, 502 P.3d 1027, 1034 (2021). Clearly, the presence requirement could not be satisfied by a non-officer citizen's observation or Clarke would be meaningless. The state's position—that the presence requirement can be satisfied not only by the arresting officer but also other officers involved in the investigation—does not result in the “logical conclusion” Bell suggests.

For the foregoing reasons, as well as those articulated in the state's opening brief, this Court should conclude that a warrantless misdemeanor arrest is lawful under Article I, Section 17 of the Idaho Constitution when the arrest is supported by probable cause and the crime occurred in the presence of an officer involved in the investigation, even though that officer was not the same officer that ultimately effectuated the arrest.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order on intermediate appeal reversing the magistrate court's denial of Bell's motion to suppress.

DATED this 31st day of August, 2022.

/s/ Kacey L. Jones  
KACEY L. JONES  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of August, 2022, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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