No. 21-1104

In the
United States Court of Appeals
for the Seventh Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RAPHEAL SEAY,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Indiana, South Bend Division.
No. 3:20-cr-06 — Hon. Jon E. DeGuilio, *Chief Judge*.

BRIEF FOR THE UNITED STATES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUES

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BRIEF FOR THE UNITED STATES

JURISDICTIONAL STATEMENT

Appellant's jurisdictional statement is complete and correct.

ISSUE STATEMENT

After an evidentiary hearing, the district court found that an officer saw Seay run two stop signs and, via cell phone, directed a second officer to pull him over. Were these factual findings clearly erroneous? If not, did the district court correctly conclude the stop complied with the Fourth Amendment under the collective knowledge doctrine?

STATEMENT OF THE CASE

I. Nature of the case

After a two-day trial, a jury convicted defendant Rapheal Seay of being a felon unlawfully in possession of a firearm. R. 46.[1] The district court sentenced Seay to 64 months' imprisonment. Def. App. 2. Seay challenges the denial of his pretrial motion to suppress.

II. Seay's arrest

Seay already had three state felony gun convictions when he was convicted federally in 2017 for being a felon unlawfully in possession of a firearm. R. 57 ¶¶ 35-42. He was released in May 2019 and began a two-year term of supervised release. R. 57 ¶¶ 41-42. Within six months, officers were investigating Seay for dealing drugs. Hrg. Tr. 8-9, 22, 61.

On the afternoon of December 9, 2019, plainclothes Michigan City Police Detectives Kyle Shiparski and Jim Fish sat in an unmarked car watching a house near Elm Street. Hrg. Tr. 7-10. The house was two blocks from the Michigan City police station. Hrg. Tr. 12-13. Using an encrypted radio channel,

[1] Citations to the district court record are designated as "R." followed by the PDF page number. Citations to the suppression hearing transcript (R. 26) are designated as "Hrg. Tr." followed by the page number, and to the exhibits introduced as "Hrg. Ex." Citations to the consecutively paginated trial transcript (R. 52-53) are designated as "Tr." followed by the page number. Citations to Seay's brief are designated as "Def. Br." and to his appendix as "Def. App."

Det. Shiparski maintained "constant communication" with Corporal Willie Henderson. Hrg. Tr. 12, 15, 24-26.

The detectives believed that, as part of their investigation, they might want to conduct a traffic stop. Hrg. Tr. 15, 25. Subject to limited exceptions, an Indiana police officer can only stop a vehicle if in full uniform or a marked car. Tr. 38; Ind. Code § 9-30-2-2. The detectives therefore reached out to two uniformed officers in separate marked cars: Officer Matthew Babcock and Corporal Michael Oberle. Hrg. Tr. 12, 35-36, 74-75.

Neither Officer Babcock nor Cpl. Oberle had access to the encrypted radio. Tr. 12, 25. Det. Shiparski therefore conference called them on a cell phone/Bluetooth system. Hrg. Tr. 12, 16, 24-26, 57. While on the call, Officer Babcock and Cpl. Oberle could hear everything the other said, as well as everything Det. Shiparski said to them and to Cpl. Henderson. Hrg. Tr. 26, 37, 57, 75. Det. Shiparski had to press a button to radio Cpl. Henderson, but, when he did, Cpl. Henderson could also hear all the other officers. Hrg. Tr. 26, 57.

Det. Shiparski saw Seay drive up and get out of his car. Hrg. Tr. 10. After a few minutes, Seay approached another car that pulled up and engaged in a hand-to-hand transaction. Hrg. Tr. 10-11, 37, 56. About 15 minutes later, Seay drove off, heading south on Elm Street. Hrg. Tr. 10, 15, 32.

Det. Shiparski witnessed Seay fail to completely stop at two stop signs on Elm Street. Hrg. Tr. 15-16, 30. After pressing the talk button on his radio

so that Cpl. Henderson could hear, he told "everybody that the vehicle and driver had disregarded those two stop signs." Hrg. Tr. 16, 29. He requested that either Officer Babcock or Cpl. Oberle stop Seay's car. Hrg. Tr. 16, 37-38, 58, 68, 76-77.

Officer Babcock caught up to Seay within a minute or two, activated his lights, and pulled Seay over. Hrg. Tr. 17, 38, 43. He then introduced himself to Seay, saying "I stopped you for rolling a couple of stop signs back there on Elm." Hrg. Ex. 4 at 00:18-00:21 (body camera footage); Hrg. Tr. 40.

Seay had no driver's license. Hrg. Tr. 40. While Officer Babcock ran Seay's information, Cpl. Oberle's K-9 partner sniffed the car and alerted to drugs. Hrg. Tr. 41, 60-61, 79-80. Officers patted Seay down and found marijuana in his pockets. Hrg. Tr. 70. Cpl. Oberle searched the car and discovered a firearm under the front passenger seat. Hrg. Tr. 81. The pistol was loaded with a high capacity magazine containing 27 rounds, some of which were hollow point, and an additional round in the chamber. R. 57 ¶ 8. Seay waived his *Miranda* rights and confessed the firearm was his and he knew he could not possess it. Hrg. Tr. 18-19; Hrg. Ex. 2; R. 57 ¶ 6.

III. District court denies Seay's motion to suppress

A federal grand jury indicted Seay for being a felon unlawfully in possession of a firearm, in violation of 18 U.S.C. § 922(g). R. 1.

Seay filed a motion to suppress evidence from the stop, arguing in relevant part that Officer Babcock lacked probable cause to stop Seay since he did not see the traffic violations. R. 17 at 12-16. Seay attached as exhibits the officers' reports. R. 17, Exs. A-D. Det. Shiparski's report said he saw the traffic violations and contacted Officer Babcock about the stop. Ex. A at 1; Hrg. Tr. 28-29. Cpl. Henderson reported Det. Fish and Det. Shiparski observed traffic violations and Officer Babcock made the stop. Ex. B at 1; Hrg. Tr. 65. Contradicting these reports, however, Officer Babcock wrote that Cpl. Henderson saw the violations and contacted him. Ex. C at 1; Hrg. Tr. 38.

To resolve the conflict, the district court held an evidentiary hearing at which Det. Shiparski, Officer Babcock, Cpl. Oberle, and Cpl. Henderson testified. R. 22. Det. Shiparski testified he witnessed the traffic violations and then "request[ed]" to "have a traffic stop done on that vehicle by Officer Babcock and/or Oberle." Hrg. Tr. 15-16.

Officer Babcock testified he was in communication with all four of the other officers but "primarily" received information from Det. Shiparski. Hrg. Tr. 35-37. He first testified that "they noticed several traffic infractions and wanted me to initiate a traffic stop of that vehicle," but later clarified that "information about the traffic violations … was coming from Detective Shiparski." Hrg. Tr. 37-38. Officer Babcock acknowledged his report said the stop information came from Cpl. Henderson. Hrg. Tr. 38. But, he testified, he

was at the time "confused as to who had actually viewed it because we were all talking on the same line." Hrg. Tr. 38. At the end of the hearing, Seay implored the district court to reject the officers' in-court testimony. Hrg. Tr. 90-92.

The court denied the motion. R. 24, 30. Although Officer Babcock did not personally see Seay commit a driving infraction, the court concluded the stop was nevertheless valid under the collective knowledge doctrine. Def. App. 11-15. Under that doctrine, an officer may conduct a stop "at the direction of another officer," if the directing officer knows facts supporting the required suspicion, and the stop is not overly intrusive. Def. App. 12, citing *Tangwall v. Stuckey*, 135 F.3d 510, 517 (7th Cir. 1998), *United States v. Williams*, 627 F.3d 247, 252 (7th Cir. 2010) and *United States v. Nafzger*, 974 F.2d 906, 911 (7th Cir. 1992). The court noted the doctrine applies when officers "conducting surveillance" and those "making the traffic stop are in close communication with each other," even if they were not "physically at the same scene." Def. App. 12, citing *United States v. Parra*, 402 F.3d 752 (7th Cir. 2005) and *Nafzger*, 974 F.2d at 911.

The court accepted the officers' in-court testimony as credible and found they "were part of a coordinated investigation and were in close communication with each other." Def. App. 14, 17. It held the officers collectively had sufficient facts in the aggregate to establish probable cause. Def. App. 12-13. First, the court found as fact that Det. Shiparski saw Seay run two stop signs, which

alone provided probable cause. Def. App. 15 (collecting cases). Next, it found as fact that Det. Shiparski "informed everyone that Mr. Seay had disregarded two stop signs" and that "formed the basis for Detective Shiparski's direction to stop [Seay's] vehicle." Def. App. 13-15. Finally, the court found as fact that Officer Babcock "rel[ied] on that information from Detective Shiparski" to pull Seay over. Def. App. 15.

The district court acknowledged Seay's argument that the police reports "complicate matters" because they were "not clear [about] what information was conveyed by whom" or "how the information was communicated to" the officers. Def. App. 11, 13, 18 (emphasis removed). It recognized Seay's position that the hearing testimony and reports were "completely contradict[ory]." Op. Def. App. 17. But the court held the officers' suppression hearing testimony was "credible, consistent, and reasonably explained the inconsistency in the officer's police reports, i.e., discrepancy about which officer had actually witnessed the traffic offense and communicated that information to Officer Babcock." Def. App. 17; *see also* Def. App. 14, 18-19.

The district court credited Officer Babcock's testimony that he was confused about who said what when he prepared the police report and found that confusion "understandable" given the "number of officers involved and the different methods of communication utilized." App. 18. It concluded that the in-court testimony of Det. Shiparski and Officer Babcock was truthful and

established that Det. Shiparski "directed [Officer Babcock] to make the stop." Def. App. 18.

IV. Jury convicts Seay

Seay proceeded to a jury trial. R. 43, 46. Det. Shiparski again testified he contacted Officer Babcock and Cpl. Oberle via cell phone and used the radio to talk with Cpl. Henderson. Tr. 41-42. Det. Shiparski saw Seay run two stop signs and "upon seeing those infractions, I then contacted and advised Officer Babcock of the two infractions that I observed," asking him to stop the car. Tr. 31-32, 40-43.

Officer Babcock said he was on the conference call when Det. "Shiparski notified us that he was observing a vehicle and he witnessed that vehicle commit several traffic infractions and asked me to initiate a traffic stop." Tr.47; *see also* Tr. 68-69. Officer Babcock admitted on cross-examination that he wrote in his report that Cpl. Henderson told him about Seay's traffic violation, but said "[t]hat's a mistake in my report" and he "mistook that [Cpl. Henderson] was the one that gave me the information," which was wrong since Cpl. Henderson "didn't tell me anything." Tr. 63-65, 69.

At the end of the government's case, Seay renewed his suppression motion, but acknowledged there was not "any new ground to be tread here based on all of the evidence [the court] heard at the suppression" hearing. Tr. 189-90. The court "denie[d] the objection seeking to suppress the search and

seizure, consistent with its previous ruling." Tr. 197. The jury convicted. Tr. 226.

SUMMARY OF THE ARGUMENT

The district court's factual findings are not clearly erroneous. The court recognized that there were inconsistencies between Officer Babcock's police report on the one hand and the officers' live hearing testimony on the other. It acted within its discretion in finding that Officer Babcock credibly explained his mistake in reporting that Cpl. Henderson directed the stop. The court committed no clear error in finding that Det. Shiparski saw Seay's traffic violations and directed Officer Babcock to stop Seay's car. Based on those factual findings, the court correctly applied the collective knowledge doctrine. Det. Shiparski had sufficient cause to stop Seay's vehicle, so he could ask Officer Babcock, with whom he is in constant communication, to perform that stop consistent with the Fourth Amendment.

ARGUMENT

The district court did not clearly err in finding Det. Shiparski directed the stop, or err by applying the collective knowledge doctrine when the officers were in constant communication

This Court reviews the district court's factual findings in a suppression order for clear error and its legal conclusions *de novo*. *United States v. Common*, 818 F.3d 323, 329 (7th Cir. 2016); *United States v. Williams*, 627 F.3d 247, 251 (7th Cir. 2010). It will only disturb a district court's factual findings

and credibility determinations if they are "completely without foundation." *Common*, 818 F.3d at 329.

Under the collective knowledge doctrine, a law enforcement officer who possesses the required level of suspicion—*i.e.*, reasonable suspicion or probable cause—may direct another officer to effectuate a Fourth Amendment seizure. *Williams*, 627 F.3d at 252. For the doctrine to apply, (1) the stopping officer must act in objective reliance on the information he receives; (2) the directing officer—or the agency for which he works—must possess facts supporting the requisite level of suspicion; and (3) the stop must be no more intrusive than if the directing officer had performed it. *Id.* at 252-53; *United States v. Garcia Parra*, 402 F.3d 752, 764 (7th Cir. 2005). A prototypical example is when a requesting officer has probable cause and asks another officer to stop a "specifically identified" vehicle. *Williams*, 627 F.3d at 253-55 (collecting cases); *United States v. Rodriguez*, 831 F.2d 162, 166 (7th Cir. 1987); *United States v. Nafzger*, 974 F.2d 906, 913-14 (7th Cir. 1992).

The collective knowledge doctrine applies even if the stopping officer does not know the facts underlying the requesting officer's reasonable suspicion. *Williams*, 627 F.3d at 253-55. It is also "inconsequential" "whether the requesting officer had direct knowledge of the facts supporting his suspicion" or conveyed facts received from a third officer, so long as the requesting officer was in coordination and communication with others who had

the required level of suspicion. *Id.* at 255 (quoting *Nafzger*, 974 F.2d at 914). Officers can rely on "directions and information transmitted" from one another because they "cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information." *United States v. Hensley*, 469 U.S. 221, 231 (1985) (internal quotation omitted).

Though not a prerequisite, the Court often applies the doctrine in the so-called vertical cases where the officers are all members of the "same agency." *Tangwall v. Stuckey*, 135 F.3d 510, 517 (7th Cir. 1998); *see also United States v. Nicksion*, 628 F.3d 368, 376 (7th Cir. 2010) (same agency); *Williams*, 627 F.3d at 255 (discussing *United States v. Ramirez*, 473 F.3d 1026 (9th Cir. 2007)). *See also United States v. Latorre*, 893 F.3d 744, 753 (10th Cir. 2018) (discussing 'horizontal' and 'vertical' collective knowledge doctrines").

Based on its factual findings, the district court correctly applied the collective knowledge doctrine. It found that Det. Shiparski, Officer Babcock, and the other officers were part of a coordinated investigation. Def. App. 13-14. Det. Shiparski saw Seay fail to completely stop at two stop signs. Def. App. 8, 13, 15, 18. He then "informed everyone" with whom he was in communication of that fact and asked that Officer Babcock stop Seay's vehicle. Def. App. 13; *see also id.* at 15, 18. Officer Babcock stopped Seay based on Det. Shiparski's request and "direction." Def. App. 15, 18.

This fact pattern falls squarely within this Court's collective knowledge precedents, which establish that Officer Babcock could stop Seay based on Det. Shiparski's reasonable suspicion. *Williams*, 627 F.3d at 253 (citing *Rodriguez*, 831 F.2d at 155 and *United States v. Celio*, 945 F.2d 180, 183-84 (7th Cir. 1991)); *see also Nafzger*, 974 F.2d at 914; *United States v. Harris*, 585 F.3d 394, 401 (7th Cir. 2009) ("[I]nformation about the [car] and the need to conduct a traffic stop" "alone" justified doctrine's application).

Seay argues this Court only applies the doctrine if the government proves evidence of a "clear chain of communication between the requesting officers and stopping officers" (Def. Br. 14, 17-22, 24-25) and that the court here never found such a clear chain. (Def. Br. 21-23). This argument is wrong on both counts.

Factually, the district court found that Det. Shiparski witnessed Seay "committing traffic violations." Def. App. 15. The court further found that Officer Babcock learned this fact through "communication from Detective Shiparski." Def. App. 15. This is the clear chain Seay argues must be proven.

Throughout his brief, Seay cites the court's statements about the "confused" police reports, arguing that the reports were "not clear" and inconsistent. Def. Br. 5, 11, 14-15, 18, 21-22, 25 Had the court resolved the legal issue on the reports alone, as Seay intimates, it would have been problematic. But the court did not. Rather, it did what it was supposed to do:

hold an evidentiary hearing to resolve the conflict in the evidence and decide whether someone who possessed sufficient cause directed Officer Babcock to make the stop. *United States v. Chrismon*, 965 F.2d 1465, 1470 (7th Cir. 1992) (review especially deferential to judge who conducted hearing and resolved conflict in evidence).

After the hearing, the court "acknowledged [Seay's] argument" that the live testimony and police reports were contradictory and that the court had to decide which to credit. *Common*, 818 F.3d at 329. It chose to credit the officers' live testimony. That credibility determination was not "completely without foundation" and thus cannot be clearly erroneous. *Id.* (affirming when court credited live testimony over police reports); *see also United States v. Cherry*, 920 F.3d 1126, 1138 (7th Cir. 2019) (rejecting challenge based on allegedly "inconsistent" police reports since district court's credibility determination was "based on live testimony"); *compare with Ray v. Clements*, 700 F.3d 993, 1013 (7th Cir. 2012) (no deference afforded when district court based its credibility "finding" on "nothing more than a string of speculative doubts, none of which were based on any competent contradictory evidence"). Nothing in the officers' testimony was "contrary to the laws of nature or … internally inconsistent or implausible on its face." *United States v. Faulkner*, 885 F.3d 488, 493 (7th Cir. 2018). While it is unfortunate that Officer Babcock misreported a fact in his police report, it was also perfectly consistent with the laws of nature. It was

reasonable to conclude that Officer Babcock, listening to four other officers over the phone, confused Det. Shiparski and Cpl. Henderson and thus incorrectly identified which specific officer saw Seay's infractions and requested the stop.

Even if the Court found a clear factual error and concluded that it was unclear exactly who directed Officer Babcock to stop Seay, that fact would not matter. This Court has affirmed that the collective knowledge doctrine applies even when the "record does not directly reveal" the chain of communication. *Nafzger*, 974 F.2d at 911 (stopping officer received information from "briefing officers," but the exact source of their information was unclear). The operative question is what was the "collective knowledge of the agency," so long as all officers were in "close communication with one another." *Williams*, 627 F.3d at 255-56. Even if Cpl. Henderson, rather than Det. Shiparski, in fact directed the stop, all five Michigan City officers were working together and closely communicating. Thus, the district court was correct that so long as Det. Shiparski shared his knowledge of Seay's violation with the group, the exact way "the information was communicated" was not "a critical point." Def. App. 18.

The footage from Officer Babcock's body camera leaves no ground to doubt that Det. Shiparski's observation of Seay's traffic violation triggered the stop. Among the first words out of Officer Babcock's mouth upon approaching Seay were "I stopped you for rolling a couple of stop signs back there on Elm."

Hrg. Ex. 4 at 00:18-00:21 (body camera footage). Seay has never disputed rolling the stop signs and fails to explain how Officer Babcock could have known the fact if Det. Shiparski did not communicate it to him. The body camera footage confirms Officer Babcock did not stop Seay based on "curiosity, inchoate suspicion, or a hunch," (Def. Br. 16-17), but instead due to his fellow officer's report of a moving violation.

The cases Seay cites where this Court has declined to apply the collective knowledge doctrine do not involve cases where the exact identity of the requester was unclear. Instead, they deal with situations where there is no evidence of communication, period. In *United States v. Wilbourn*, 799 F.3d 900 (7th Cir. 2015), officers effectuated an arrest but there was no evidence they had received a police radio call or any other communication of criminal activity from other agents. *Id.* at 909; *see also Reher v. Vivo*, 656 F.3d 772, 777 (7th Cir. 2011) (denying summary judgment when "extent of the communication between the officers was not clear"). In *United States v. Ellis*, 499 F.3d 686 (7th Cir. 2007), this Court applied the "vertical" collective knowledge doctrine to impute information unidentified "DEA agents" told an officer at a research briefing. *Id.* at 687-88 (facts), 690 (recounting knowledge). But the Court would not impute knowledge on what Seay calls a "horizontal" plane as there was no evidence anyone in one part of the house communicated facts to the officer in another part of the house. *Id.* at 690; *see also Harris*, 585 F.3d at 401 (doctrine

did not apply in *Ellis* since there "was no communication between the officers at the scene"). Those cases are inapplicable here because Det. Shiparski and Officer Babcock were in communication throughout.

Seay next argues the district court did not appropriately analyze whether Officer Babcock objectively relied on the information he received. Def. Br. 23-27. But this argument, too, is premised on his claim that it is unclear "who provided information to Babcock." Def. Br. 24. That argument factually fails for the same reasons discussed above: the district court found credible Officer Babcock's hearing testimony that Det. Shiparski provided him that information and, at any rate, all that matters is that Det. Shiparski's request was in fact communicated. *See Rodriguez*, 831 F.2d at 166; *Williams*, 627 F.3d at 253; *Nafzger*, 974 F.2d at 914.

Seay finally argues Officer Babcock could not objectively rely on the information because he gave "three different accounts" of what he was told. Def. Br. 21-22. Again, however, the district court did not clearly err in reconciling those accounts and crediting Officer Babcock's in-person hearing testimony. Moreover, Officer Babcock consistently testified at the suppression hearing and trial that he received the information about Seay's traffic violations "from Detective Shiparski." Hrg. Tr. 38; *see also* Tr. 47. Even Seay's trial counsel admitted the trial and suppression hearing testimony were consistent and there was not "any new ground to be tread here." Tr. 190. Thus,

even if this Court exercises its discretion to consider trial testimony in reviewing the suppression motion, *see United States v. Howell*, 958 F.3d 589, 597 (7th Cir. 2020), that testimony further supports the district court's conclusion that the collective knowledge doctrine applied because Officer Babcock stopped Seay based on Det. Shiparski's communicated observation of Seay's moving violations.

CONCLUSION

For the foregoing reasons, the Court should affirm Seay's conviction.

Respectfully submitted,

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RULE 32 CERTIFICATION

This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 3,859 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using the Microsoft Word processing program, with fourteen point Century Schoolbook font.

/s/ Nathaniel L. Whalen
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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Misha Bennett
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