**APPENDIX A**

SUPREME COURT OF PENNSYLVANIA

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No. 19 EAP 2016

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COMMONWEALTH OF PENNSYLVANIA,

Appellant,

v.

ALWASI YONG,

Appellee.

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Appeal from the judgment of the Superior Court entered July 16, 2015 at No. 1972 EDA 2013 (reargument denied September 23, 2015) vacating and remanding the Judgment of Sentence entered on June 12, 2013 in the Court of Common Pleas, Philadelphia County, Criminal Division at No. CP–51–CR–0002313–2012.

Decided: January 18, 2018

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Before: SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

JUSTICE MUNDY

We granted review to consider the parameters of what has been termed the collective knowledge

doctrine.[1] The specific issue presented in this case is whether an investigating officer's knowledge of facts sufficient to create probable cause to arrest may be imputed to a second officer, who arrests the suspect, when the two officers are working as a team, but there is no evidence the investigating officer with probable cause directed the arresting officer to act. Under the version of the collective knowledge doctrine we adopt today, we conclude Yong's arrest was constitutional. Thus, we reverse the judgment of the Superior Court.

I.

The following factual account was developed at the suppression hearing held on April 17, 2013. On September 21, 2011, at approximately 1:25 p.m., Philadelphia Police Officer Joseph McCook and his partner, Officer Israel Morales, of the Narcotics Field Unit were conducting surveillance in the vicinity of the 3200 block of North Fairhill Street in Philadelphia. N.T. Suppression Hr'g, 4/17/13, at 4–5. Officer McCook observed Officer Morales hand $120.00 of pre-recorded buy money to a confidential informant (CI). *Id.* at 5. The CI approached Yong, who was standing in front of 3202 North Fairhill Street, engaged in a brief conversation with him, and handed Yong the money. *Id.* After accepting the money, Yong walked over to Samuel Vega and gave it to him. *Id.* at 5–6. Vega then entered 3202 North Fairhill Street and emerged approximately two minutes later. *Id.* at 6. Vega handed the CI a small object. *Id.* Following the exchange, the CI returned to where Officers McCook

[1] The collective knowledge doctrine is sometimes referred to as the "fellow officer rule." *See, e.g. United States v. Hinojos*, 107 F.3d 765, 768 (10th Cir. 1997).

and Morales were located. *Id.* He provided the officers with 12 clear, plastic packets, each with a "money symbol" stamped on it. *Id.* Officer McCook field-tested the packets' contents and determined they contained marijuana. *Id.* Officer McCook had worked in the Narcotics Field Unit for the previous 12 to 13 of his 18 years as a Philadelphia police officer. *Id.* at 13. He had been involved in "probably thousands" of narcotics investigations using confidential informants generally, and specifically, he had observed "hundreds" of transactions similar to the one observed on September 21, 2011, "[w]here one person would be the person accepting the money[.]" *Id.* at 12.

The following day, September 22, 2011, Officer Morales conducted surveillance of 3202, 3204, and 3213 North Fairhill Street without Officer McCook. *Id.* at 7–8. Officer Morales did not see Yong; however, 25 clear packets of marijuana were turned over to Officer McCook as a result of Officer Morales' investigation that day. *Id.* at 7–8. The packets were similar to the ones that were recovered the previous day. *Id.* at 7. On September 23, 2011, Officer McCook returned to the area of 3202 North Fairhill Street. *Id.* at 8. At approximately 1:15 p.m., he witnessed Officer Linwood Fairbanks, acting undercover, provide $40.00 of pre-recorded buy money to Vega. *Id.* at 9–10. Vega accepted the money, walked over to a lot situated at 3204 North Fairhill Street, retrieved an object from the dirt, and delivered it to Officer Fairbanks. *Id.* at 9. Yong was in the front of the property during the encounter between Officer Fairbanks and Vega, but he was not observed to be involved with this transaction. *Id.* at 10. Officer Fairbanks delivered to Officer McCook the items Vega had given him: eight packets

with the same money symbols stamped on them. *Id.* at 9. Officer McCook field-tested the contents of the packets, and they were determined to contain marijuana. *Id.* at 10.

Following this transaction, Officer McCook left and "met up with the other officers to get ready to execute [and] to brief them on the execution of the search warrant" for 3202 North Fairhill Street. *Id.* at 17. The team of approximately six to eight officers entered the residence at 1:25 p.m. with Officer McCook toward the rear of the group. *Id.* at 10, 17. Yong was standing in the living room. *Id.* at 10, 17–18. As Officer McCook was entering the residence, Officer Gerald Gibson seized Yong, patted him down, and recovered a .38 caliber revolver from Yong's waistband. *Id.* at 17–18. A search of the shed on the property yielded 100 clear, plastic bags, each stamped with a money symbol and containing marijuana.[2] *Id.* at 11–12.

The Commonwealth charged Yong with a number of drug and firearms offenses including possession with intent to manufacture or deliver a controlled substance (PWID), firearms not to be carried without a license, persons not to possess a firearm, and criminal conspiracy to commit PWID.[3]

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[2] Vega was arrested somewhere "out front of the property." N.T. Suppression Hr'g, 4/17/13, at 11. The $40.00 in pre-recorded money that Vega received from Officer Fairbanks and an additional $40.00 were recovered from his person. Ultimately, his case was dismissed pursuant to Pa.R.Crim.P. 1013 (governing the time in which trials must commence in municipal court). *See* Docket, MC–51–CR–0040839–2011.

[3] 35 P.S. § 780–113(a)(30); 18 Pa.C.S. §§ 6106(a)(1), 6105(a), 903.

On September 7, 2012, Yong filed an omnibus pretrial motion in which he sought the suppression of physical evidence resulting from his seizure and arrest. Specifically, Yong argued his mere presence at the subject residence of the search warrant was insufficient to justify a protective pat-down or *Terry*[4] frisk. Yong further argued police lacked probable cause to arrest him.[5] The trial court held a suppression hearing at which Officer McCook testified to the above facts regarding the three-day surveillance of the property and the execution of the search warrant. The Commonwealth did not introduce the search warrant into evidence.

Counsel for Yong argued that there was no probable cause to arrest Yong because "[t]here was no evidence presented that Officer Gibson had any knowledge about what Mr. Young [sic] may have done. And such knowledge cannot be inferred from the evidence presented. There is nothing to show that anyone spoke to Officer Gibson and told him what they

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[4] *Terry v. Ohio*, 392 U.S. 1 (1968). In *Terry*, the United States Supreme Court held "that an officer may conduct a limited, pat-down search for weapons when the officer has a reasonable suspicion that the individual is armed and dangerous." *Commonwealth v. Jackson*, 698 A.2d 571, 573 (Pa. 1997); *accord Terry*, 392 U.S. at 27.

[5] This Court has explained probable cause to arrest as follows.

> Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested.

*Commonwealth v. Burno*, 154 A.3d 764, 781 (Pa. 2017) (internal quotation marks and citation omitted).

had seen on the 21st." *Id.* at 19–20. Counsel further argued that even if Officer Gibson had knowledge of the transaction involving Yong that occurred two days prior, such information did not establish probable cause for his arrest. Finally, counsel argued mere presence on the premises at the time police were executing a search warrant was insufficient to create a reasonable suspicion that Yong was armed and dangerous, relying on *In re J.V.*, 762 A.2d 376 (Pa. Super. 2000).[6] Thus, a protective-pat down of Yong was impermissible under Terry. *Id.* at 20–23.

The Commonwealth highlighted that this arrest was the product of an ongoing, three-day investigation during which Yong was observed on the first and third days in the area from where drugs were obtained. *See id.* at 27. It argued that there was "more than enough" for police to have searched Yong because the information about Yong's activity was known by "the arresting authority" which was "the Narcotics Field Unit." *Id.* at 27–28. The trial court credited the testimony of Officer McCook, and agreed with the Commonwealth. *Id.* at 25. Specifically, the court concluded as follows.

> Okay. I agree with the Commonwealth. I think I've stated my reasons on the record, that what is in the mind of the observer is imputed to that of all those who served the warrant. With the warrant, there

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[6] In *In re J.V.*, the Superior Court concluded, based on Pennsylvania and federal case law, "mere presence during the execution of a search warrant is insufficient ground, in and of itself, for a protective pat-down" under the Fourth Amendment to the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. *In re J.V.*, 762 A.2d at 382.

> was enough to search [Yong].[7] Even if they were searching for dope and they happened to find guns, it was a search incident to something that was found reasonable by a magistrate for them to go in there, and it was reasonable for them to go in there based on what they saw. [Yong] was in there, and he got searched. I believe it is different from the mere presence piece.
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> So I will deny the motion to suppress.

*Id.* at 28–29

On April 24, 2013, at the conclusion of a three-day trial, a jury convicted Yong of carrying a firearm without a license and conspiracy to commit PWID.[8] In a separate proceeding, the trial court found Yong guilty of persons not to possess a firearm. On June 12, 2013, the trial court sentenced Yong to an aggregate term of five to ten years' imprisonment.[9] On July 8,

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[7] The trial court acknowledged the warrant was not in evidence. *Id.* at 23. Nevertheless, it "assumed" that it included the details of the surveillance between September 21 and 23, 2011, including identifying the people who were involved during the events of those days. *Id.* The trial court noted that Yong was present during the observed drug transactions on September 21 and September 23. *Id.*

[8] The jury was unable to reach a decision regarding PWID. The Commonwealth *nolle prossed* that count.

[9] The trial court sentenced Yong to a term of five to ten years' imprisonment for conspiracy and concurrent terms of imprisonment of five to ten years for persons not to possess a firearm and three and one-half to seven years for firearms not to be carried without a license, respectively.

2013, Yong filed a timely notice of appeal from his judgment of sentence.[10]

On appeal, Yong argued that the trial court erred in denying his motion to suppress because the arresting officer, Officer Gibson, had neither probable cause to arrest Yong nor reasonable suspicion to conduct a *Terry* frisk. However, he did not dispute that Officer McCook's first-hand knowledge of Yong's activity gave rise to sufficient probable cause to arrest. The Commonwealth countered that when a close group of officers are functioning as a team, the probable cause inquiry is based on an assessment of the collective knowledge of the team as a whole. Therefore, because the collective knowledge of the team amounted to probable cause to arrest Yong, the trial court did not err in denying Yong's suppression motion.

The Superior Court, in a published, majority opinion authored by now-Justice Wecht, began its analysis of this issue by outlining its standard of review in suppression matters, i.e., that appellate review is limited to determining whether the record supports the factual findings of the trial court and whether the legal conclusions drawn therefrom are

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[10] Following the initiation of the direct appeal, Judge Kenneth Powell, who presided over both the suppression hearing and the trial, directed Yong to file a statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Yong complied. Judge Powell filed a letter on October 23, 2013, stating he would file a Rule 1925(a) opinion upon receipt of the notes of testimony. On April 1, 2014, however, the trial court sent a letter to the Superior Court informing the court that no opinion would be forthcoming, as Judge Powell was no longer sitting as a judge in Philadelphia County.

correct. *See Commonwealth v. Yong*, 120 A.3d 299, 304 (Pa. Super. 2015). With respect to its scope of review, the court explained that it is confined to review "only the suppression hearing record, and [its review] excludes any evidence elicited at trial," relying on this Court's decision in *In re L.J.*, 79 A.3d 1073 (Pa. 2013).[11] *Yong*, 120 A.3d at 304.

The court traced the origin of the collective knowledge doctrine to *Williams v. United States*, 308 F.2d 326 (D.C. Cir. 1962). *Yong*, 120 A.3d at 305. The appellant in *Williams* challenged the constitutionality of his arrest because the arresting officer knew "the appellant was wanted by the police" but did not have knowledge of "the details of the crime or why appellant was suspected of the crime." *Williams*, 308 F.2d at 327. In challenging his arrest, Williams conceded that another officer involved in the investigation had probable cause to arrest him; however, he argued his arrest was unlawful because the arresting officer "did not have adequate first hand [sic] information and was acting on only [another officer's] instructions." *Id.* Rejecting Williams' argument, the circuit court held, "in a large metropolitan police establishment the collective knowledge of the organization as a whole can

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[11] Although *In re L.J.* held that appellate courts must confine their review over suppression issues to the record developed at the suppression hearing, the Court did not garner a majority with respect to whether the rule of law should be applied retrospectively or prospectively. This Court has not resolved the discrete question of retroactivity of the new rule of law. However, the Superior Court subsequently embraced the plurality's proposed rule in *Commonwealth v. Eichler*, 133 A.3d 775 (Pa. Super. 2016) and held that the limited scope of rule applies only to cases commenced after *In re L.J.* was decided. *Eichler*, 133 A.3d at 779–80.

be imputed to an individual officer when he is requested or authorized by superiors or associates to make an arrest." *Id.*

The Superior Court next referenced *Whiteley v. Warden*, 401 U.S. 560 (1971) opining that the United States Supreme Court echoed the reasoning of *Williams* in its analysis. *See Yong*, 120 A.3d at 305. In *Whiteley*, the United States Supreme Court addressed the constitutionality of an arrest by examining whether the information on which the arrest warrant was issued was sufficient to support a disinterested and independent magistrate's judgment that probable cause existed for the warrant. The Court concluded "the complaint on which the [arrest] warrant issued . . . clearly could not support a finding of probable cause by the issuing magistrate." *Whiteley*, 401 U.S. at 568. Thus, the Court ruled that Whiteley's arrest was unconstitutional. The state argued that, despite the inadequacy of the complaint to support the arrest warrant, the arresting police officers, members of a police force in Albany County, Wyoming were acting in reliance on a radio bulletin that was broadcast over the state. *Id.* at 568. The state reasoned that the arresting officers had probable cause to believe that Whiteley and another were the men described in the bulletin, and that it was reasonable for the officers to assume that the authority that issued the bulletin had probable cause to direct the arrest. *Id.* In disposing of this argument, the Court agreed that the officers were permitted to take action upon hearing the bulletin.

> We do not, of course, question that the [arresting] police were entitled to act on the strength of the radio bulletin. Certainly police officers called upon to aid other officers in executing arrest warrants

> are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest.

*Id.* at 568. Because the complaint, on which basis the warrant was issued and the bulletin was sent, did not support a finding of probable cause, and because the arresting officer was without information tending to corroborate the tip which served as the foundation of the complaint, the Court ruled the arrest unconstitutional. *Id.* at 568–69.

The Superior Court reasoned that reading *Whiteley* with *United States v. Hensley*, 469 U.S. 221 (1985), a subsequent United States Supreme Court case involving the appropriateness of relying on information relayed to officers of a police department from another department, "instruct[s] that the collective knowledge doctrine serves an agency function. When a police officer instructs or requests another officer to make an arrest, the arresting officer stands in the shoes of the instructing officer and shares in his or her knowledge." *Yong*, 120 A.3d at 307.

In *Hensley*, a police informant told a St. Bernard, Ohio police officer that Hensley had driven the getaway car from an armed robbery that occurred six days prior in St. Bernard, a suburb of Cincinnati. The officer issued a "wanted flyer" to surrounding police departments. *Hensley*, 469 U.S. at 223. The flyer described Hensley and the offense for which he was

sought, armed robbery, and requested that in the event he is encountered by a neighboring police department, he be picked up and held for the St. Bernard Police Department. *Id.* The police department in Covington, Kentucky, another suburb of Cincinnati, received the flyer and read it to the officers at the change of each shift. *Id.* Ultimately, Hensley was spotted by Covington police, who pulled him over while they determined if he was the subject of an arrest warrant. *Id.* at 224–25. The United States Supreme Court granted certiorari to determine the reasonableness of the stop and looked to its earlier decision in *Whiteley* for guidance.

> [L]anguage in *Whiteley* suggests that, had the sheriff who issued the radio bulletin possessed probable cause for arrest, then the [arresting] police could have properly arrested the defendant even though they were unaware of the specific facts that established probable cause. Thus *Whiteley* supports the proposition that, when evidence is uncovered during a search incident to an arrest in reliance merely on a flyer or bulletin, its admissibility turns on whether the officers who issued the flyer possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance. In an era when criminal suspects are increasingly mobile and increasingly likely to flee across jurisdictional boundaries, this rule is a matter of common sense: it minimizes the volume of information concerning suspects that must be transmitted to other jurisdictions and enables

> police in one jurisdiction to act promptly in reliance on information from another jurisdiction.

*Id.* at 230–31 (emphasis in original) (citation omitted). The High Court concluded "if a flyer or a bulletin has been issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person has committed an offense, then reliance on that flyer or bulletin justifies a stop to check identification[.]" *Id.* at 232.

The Superior Court noted that the *Whiteley* rationale was applied in *Commonwealth v. Kenney*, 297 A.2d 794 (Pa. 1972) by this Court to uphold a warrantless arrest when the arresting officer was instructed by the lieutenant overseeing the entire investigation to arrest the appellant, and the lieutenant had sufficient probable cause to believe appellant committed a crime.[12] *See Yong*, 120 A.3d at 307. The court underscored that Pennsylvania courts have cited to *Whiteley* and *Hensley* for the notion that an arresting officer, lacking sufficient personal knowledge amounting to probable cause, may rely on direction from an officer possessing the requisite knowledge without running afoul of the Fourth Amendment. *See id.* (collecting cases). Deeming evidence of either a specific instruction or communication of the relevant probable cause

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[12] *Kenney* differed from the facts of *Whiteley* and *Hensley* in that the arresting officer was directed by his own superior, who was overseeing the investigation, to make a warrantless arrest. As explained *supra*, *Whiteley* and *Hensley* involved fleeing suspects detained out-of-jurisdiction by police officers who became aware of the information through flyers or bulletins broadcast to different police departments by an investigating police department.

information necessary to Pennsylvania's application of the collective knowledge doctrine, the majority concluded as follows.

> Instantly, there is nothing in the suppression record to suggest that: (1) Officer McCook ordered or directed Officer Gibson to arrest Yong; or (2) Officer Gibson received information justifying Yong's arrest; or (3) Officer Gibson received information, which, coupled with the facts that he personally observed, provided probable cause to arrest Yong. This lack of evidence compels the conclusion that Officer Gibson—acting of his own accord—made a warrantless arrest. The fact that, unbeknownst to Officer Gibson, his colleague Officer McCook had observed Yong participate in a drug transaction two days earlier cannot suffice to permit the Commonwealth to leapfrog the Fourth Amendment.

*Id.*

The majority continued to explain that the courts of various jurisdictions have employed the collective knowledge doctrine under different factual circumstances falling into two general categories. A "vertical" application of the doctrine involves one law enforcement officer, possessing probable cause, instructing another officer, without the requisite knowledge, to act. *See id.* at 308 (explaining this approach is a direct application of *Whiteley* and *Hensley* and the approach Pennsylvania courts have used). The majority continued that a "horizontal" concept of the collective knowledge doctrine, by contrast, is broader. *Id.* The probable cause assessment is not focused on a single officer's

knowledge; rather, probable cause is assessed by aggregating the knowledge of two or more law enforcement officials working together. *Id.* However, the majority opined that many of the courts utilizing the latter approach, "have ignored the original aim of the rule" by "eliminating the requirement that officers actually communicate with each other." *Id.* at 309. In declining to adopt the horizontal approach, the majority reasoned that "an expansive interpretation of the collective knowledge doctrine does not comport with the fundamental requirement that warrantless arrests be supported by probable cause." *Id.* Although the majority took the opportunity to expressly reject expanding the collective knowledge doctrine, it somewhat incongruously also concluded that the horizontal approach would not apply to the facts of this case because there was no evidence of communication between Officers McCook and Gibson. *Id.* at 310.

> Pennsylvania courts have never expanded the doctrine beyond the situation where a police officer who possesses probable cause instructs a fellow officer to act. We decline to adopt the "horizontal" approach to collective knowledge, which some federal courts have used to aggregate knowledge among police officers functioning as a team. In any event, even if Pennsylvania law recognized such a broad rule, the absence of any evidence that Officers Gibson and McCook actually communicated with one another would render the rule inapplicable to this case.
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> We understand the trial court's temptation to infer that Officer McCook instructed Officer Gibson to arrest Yong. When a police officer observes a suspect engage in criminal conduct and then a

> second police officer arrests the suspect, one might reasonably assume that the officers communicated with one another. The testimony presented at Yong's trial suggests that this is what occurred . . . . Nevertheless, as a matter of law our scope of review in suppression matters is limited to the suppression hearing record, and excludes any evidence elicited at trial. *In re L.J.*, 79 A.3d at 1085.

*Id.* at 310–11 (some citations omitted). Accordingly, the Superior Court reversed the trial court's denial of Yong's motion to suppress.[13]

Judge Anne Lazarus filed a concurring statement to the majority's treatment of Yong's suppression issue. In her view, the issue should have been resolved by determining whether Officer Gibson had probable cause, based on reasonably trustworthy information, to believe Yong was committing or had committed a crime. *Id.* at 313 (Lazarus, J., concurring). Because the record did not reflect that Officer Gibson had information that, paired with first-hand observation, gave rise to probable cause to arrest Yong, his arrest was unlawful. *Id.* As there was no evidence that an officer with probable cause instructed or authorized Officer Gibson, Judge Lazarus opined, there was no need to contemplate the contours of the collective knowledge doctrine. *Id.*

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[13] Yong also challenged the sufficiency of the evidence supporting his conviction for criminal conspiracy to the Superior Court. The court concluded there was ample evidence supporting the conviction. *Yong*, 120 A.3d at 312.

The Commonwealth filed a petition for allowance of appeal, and this Court granted review of the following issue:

> Did the Superior Court-in contravention of the United States Supreme Court precedent and overwhelming supporting authority from this Court, the Superior Court itself, and virtually every federal and state court-err in holding that the Fourth Amendment does not permit a member of a close group of officers working as a team to act on the collective knowledge of that team, absent a directive or instruction issued by an officer who possesses probable cause?

*Commonwealth v. Yong*, 137 A.3d 573 (Pa. 2016) (per curiam).

II.

The Commonwealth argues that the collective knowledge doctrine justifies Yong's arrest because "the police as a whole" possessed sufficient probable cause to effectuate the arrest. Commonwealth's Brief at 12. It is the position of the Commonwealth that the application of the collective knowledge doctrine does not require any directive or instruction by an officer with personal knowledge. *Id.* at 12–13. It continues that this Court and the United States Supreme Court have applied the doctrine, for decades, "to impute knowledge to an officer . . . even where the acting officer does not personally know all, or even any, of the information necessary to establish probable cause." *Id.* at 13. The Commonwealth contends this Court's decision in *Commonwealth v. Jackson*, 698 A.2d 571 (Pa. 1997) "implicitly recognized that the strength of

the combined knowledge of the investigating officers is what matters, not which officer instructed another to act." *Id.* at 16. The Commonwealth argues the great weight of authority from our sister states and federal circuit courts supports a more expansive interpretation of the collective knowledge doctrine. *See id.* at 17–23. Finally, the Commonwealth argues policy supports this approach and reflects the realities of police work where communication among officers may be subtle and nonverbal. *See id.* at 23–28.

Yong counters that the Superior Court correctly decided the issue "because there was no evidence that Officer Gibson either had probable cause to arrest Yong or was directed to arrest Yong by an officer who had probable cause." Yong's Brief at 14. He continues that Pennsylvania courts have not adopted the broader "horizontal version" of the doctrine and consistently have applied the "vertical version" as derived from *Whiteley*. *See id.* at 15–17. He likens the instant case to this Court's decision in *Commonwealth v. Queen*, 639 A.2d 443, 445 (Pa. 1994),[14] and asserts

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[14] In *Queen*, a detective informed a fellow officer that the appellant "resembled a male wanted for robbery." *Queen*, 639 A.2d at 444. The officer to whom this comment was made then approached the appellant, asked him to exit his car, and ultimately frisked him and discovered a firearm. *Id.* At the appellant's suppression hearing the only Commonwealth witness to testify was the officer who frisked and arrested the appellant. This Court examined *Whiteley* and *Hensley* and concluded that evidence "establishing the articulable facts which support the reasonable suspicion" was required in order for the stop and frisk to be proper. *Id.* at 445. Because the detective instructing the officer did not testify, the suppression court was left to assume he had the requisite level of suspicion to effect an investigative stop. *Id.* Accordingly, this Court reversed the order of the Superior Court affirming Queen's judgment of sentence, ordered the

his arrest suffered from "the same constitutional defect." *Id.* at 18. The core of Yong's argument is grounded in the lack of evidence that Officer McCook instructed Officer Gibson to act: "[w]ithout that essential testimony, the government cannot establish that Officer Gibson had a constitutional reason to seize or search Yong." *Id.* at 18. Yong further observes the Superior Court decision in his case is in accord with the Eighth and Fourth Circuits, which have declined to adopt an expansive, horizontal framework. *Id.* at 22–24.

The Commonwealth filed a responsive brief, asserting Yong has offered "no justification for the Superior Court's limitation on the collective knowledge doctrine[.]" Reply Brief at 5. It acknowledges that this Court's decision in *Kenney* adopted the *Whiteley* rationale, but underscores that it "did not address, much less reject" a horizontal application of the doctrine." *Id.* at 6. The Commonwealth contends that *Queen* supports its view because in the instant case, unlike *Queen*, the officer who possessed knowledge of the relevant facts testified at the suppression hearing. *Id.* at 7–8. The Commonwealth reiterates that endorsing the Superior

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evidence suppressed, and remanded to the trial court for a new trial. *Id.* at 446. This Court was constrained to reverse in *Queen* because no evidence was offered to establish reasonable suspicion in the mind of the directing officer. In this case, the issue is not whether the requisite level of suspicion existed, but whether there was evidence that the arresting officer was directed to act by the officer with probable cause. As such, *Queen* is inapt under the present factual circumstances where it is unquestioned that Officer McCook possessed information establishing probable cause.

Court's rationale would hinder coordinated police efforts. *Id.* at 8–14.

III.

The collective knowledge doctrine's development in case law has created, broadly speaking, two formulas. The vertical approach has been applied with little controversy and finds support in the Supreme Court's decision in *Whiteley* and this Court's decision in *Kenney*. In *Kenney*, this Court concluded that when an officer makes an arrest on the direction of another officer, "the operative question" is not whether the arresting officer had independent probable cause to arrest but whether the officer who ordered the arrest had sufficient information to support probable cause. *See Kenney*, 297 A.2d at 796. Indeed, in support of the imputation of knowledge from an officer with probable cause to another carrying out a directive to arrest, we relied on the *Whiteley* Court's reasoning. *See id.* n.3. The doctrine applied in this manner reflects the realities of police work and the need for swift action and justifiable reliance on communications in order to efficiently perform the duties attendant to law enforcement. *See, e.g., Whiteley*, 401 U.S. at 568 (stating, "[c]ertainly police officers . . . are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause"); *Hensley*, 469 U.S. at 231 ("this rule is a matter of common sense: it minimizes the volume of information concerning suspects that must be transmitted to other jurisdictions and enables police officers in one jurisdiction to act promptly in reliance on information from another jurisdiction."); *see also Daniels v. United States*, 393 F.2d 359, 361 (D.C. Cir. 1968) ("[t]here is

no requirement that the arresting officer have sufficient firsthand knowledge to constitute probable cause. It is enough that the police officer initiating the chain of communication" has information that amounts to probable cause.); *United States v. Burton*, 288 F.3d 91, 99 (3d Cir. 2002) ("the arresting officer need not possess an encyclopedic knowledge of the facts supporting probable cause, but can instead rely on an instruction to arrest delivered by other officers possessing probable cause."). This approach in assessing whether a warrantless seizure meets Fourth Amendment standards has been said to be "the best compromise" for determining whether an arrest by an officer without reasonable suspicion or probable cause is lawful because it reflects the need for a "middle ground" between affording the police some flexibility in enforcing the law and adhering to a rigid probable cause standard to protect citizens from unreasonable intrusions. Derik T. Fettig, *Who Knew What When? A Critical Analysis of the Expanding Collective Knowledge Doctrine*, 82 UMKC L. REV, 663, 671–72; *see also* Simon Stern, *Constructive Knowledge, Probable Cause, and Administrative Decisionmaking*, 82 NOTRE DAME L. REV. 1085, 1098 (2007) (highlighting in a "fast-paced situation" where police are pursuing several suspects, requiring "that others cannot take up chase until they receive detailed information about every suspect, . . . would be counterproductive.").

In contrast to the relatively non-controversial, vertical approach, the horizontal approach "represents a broad expansion of the doctrine's scope" and has led to circuit splits in its adoption. *See id.* at 672. This formulation "subsumes situations where a number of

individual law enforcement officers have pieces of the probable cause puzzle, but no single officer possesses information sufficient for probable cause . . . . In such situations, the court must consider whether the individual officers have communicated the information they possess individually, thereby pooling their collective knowledge to meet the probable cause threshold."[15] *United States v. Chavez*, 534 F.3d 1338, 1345 (10th Cir. 2008). However, not every application of a purely non-vertical approach arises in the same factual manner. Some courts applying the collective knowledge doctrine impute knowledge in the absence of an explicit direction to act or transfer of information so long as there is "some communication" among the officers and they are acting in a coordinated investigation. In *United States v. Randy Terry*, 400 F.3d 575 (8th Cir. 2005), for example, officers were responding to a call to investigate a domestic disturbance. Upon briefly detaining Terry based on the description of his vehicle, one officer observed ammunition and searched Terry's truck, uncovering contraband. Contemporaneously, another officer, who at the time was speaking to Terry's wife, had knowledge of a protective order against Terry. Terry argued that the officer who searched his vehicle could not have done so in accord with Fourth Amendment protections because the "incriminating nature of the ammunition could not have been immediately apparent" without knowledge of the protective order. *Id.* at 580. The Eighth Circuit noted the district court's finding that the searching officer had knowledge of the

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[15] Although generally broken into two distinct frameworks, the *Chavez* court explained in certain situations, "the 'horizontal' and 'vertical' collective knowledge categories are by no means mutually exclusive." *Chavez*, 534 F.3d at 1345 n.12.

protective order was "not entirely without foundation in the record." *Id.* However, it continued that under its approach to the collective knowledge doctrine, the actual knowledge of the searching officer, or whether he was acting at the direction of another officer's command, were not dispositive of the Fourth Amendment inquiry.

> Where officers work together on an investigation, we have used the so-called "collective knowledge" theory to impute knowledge of one officer to others. *United States v. Gillette*, 245 F.3d 1032, 1034 (8th Cir. 2001), *cert. denied*, 534 U.S. 982, 122 S.Ct. 415, 151 L.Ed.2d 316 (2001). We impute information if there has been "some degree of communication" between the officers. *United States v. Gonzales*, 220 F.3d 922, 925 (8th Cir. 2000). This requirement distinguishes officers functioning as a team from officers acting as independent actors who merely happen to be investigating the same subject. *See Gillette*, 245 F.3d at 1034.

*Id.* at 581.

The Ninth Circuit observed that it was "willing to aggregate the facts known to each of the officers involved" in an investigation to meet the constitutional level of suspicion to act. *United States v. Ramirez*, 473 F.3d 1026, 1032 (9th Cir. 2007). It highlighted that it would permit aggregation when there had been "'communication among agents.'" *Id.* (citation omitted). However, "[a]t the same time, [the Ninth Circuit has] applied the collective knowledge doctrine 'regardless of whether [any] *information* [giving rise to probable cause] was actually communicated to' the officer conducting the stop, search or arrest." *Id.*

(citations omitted some alterations in original). The core inquiry appears to center on whether the officers are working with each other and not whether a command or directive was given by an officer with probable cause nor an assessment of the nature of the communication. *See United States v. Bernard*, 623 F.2d 551, 561 (9th Cir. 1979) (concluding the information known to three officers could be aggregated to form probable cause because "the agents were working in close concert"); *United States v. Stratton*, 453 F.2d 36, 37 (8th Cir. 1972) ("the knowledge of one officer is the knowledge of all and that in the operation of an investigation or police agency[,] the collective knowledge and the available objective facts are the criteria to be used in assessing probable cause").

The rationale underpinning a requirement that there be some form of communication in a coordinated police effort seems to reflect an assumption that if there is some communication, it may be inferred that sufficient knowledge was communicated to justify the police action. Stern, *Constructive Knowledge, Probable Cause, and Administrative Decisionmaking*, 82 NOTRE DAME L. REV. at 1110. The rule which does not require any communication among officers, however, "appears to reflect a different premise-namely, that officers working together are acting as a "single organism." *Id.* (footnote omitted).

Here, we are not presented with a case where numerous officers hold "a piece of the probable cause puzzle" and no officer alone has sufficient probable cause. *See Chavez*, 534 F.3d at 1345. We must address whether the knowledge of a single officer with probable cause may be imputed to another officer

where there is undisputed evidence that they were acting as a team, but there is no evidence the knowledge-holding officer gave a command to the officer who lacked probable cause or conveyed the information which gave rise to probable cause. Under the theory articulated by *Randy Terry*, actual direction is not required; neither is there a requirement that the communications between officers be examined, if it can be demonstrated that the officers who seek to justify their actions under the collective knowledge doctrine are working in a coordinated investigation and not as independent law enforcement personnel or agencies coincidentally or contemporaneously investigating the same crime. Applying this permutation of the horizontal approach to the instant case would result in reversal of the Superior Court decision because the record developed at the suppression hearing clearly reflects that the officers were involved in a coordinated effort to execute a search warrant and that Officer McCook met with his fellow officers prior to entering 3202 North Fairhill Street to "brief" them on the mission. N.T. Suppression Hr'g, 4/17/13, at 17. However, under any approach that permits aggregation of unspoken information or justifies actions taken absent direction from a person with the necessary level of suspicion, there remain serious concerns for protecting citizens from unconstitutional intrusions. In *United States v. Massenburg*, 654 F.3d 480 (4th Cir. 2011), the Fourth Circuit instructively summarized the purpose of the collective knowledge doctrine and its benefits and hazards under the different formulations.

> No case from the Supreme Court … has ever expanded the collective knowledge doctrine beyond

the context of information or instructions communicated ("vertically") to acting officers. Some of our sister courts have authorized "horizontal" aggregation of uncommunicated information. *See United States v. Ramirez*, 473 F.3d 1026, 1032–33 (9th Cir. 2007) (collecting cases) . . . .

The rationale behind the Supreme Court's collective-knowledge doctrine is, as the Court noted in *Hensley*, a "matter of common sense: [the rule] minimizes the volume of information concerning suspects that must be transmitted to other jurisdictions [or officers] and enables police . . . to act promptly in reliance on information from another jurisdiction [or officer]." *Hensley*, [U.S.] 469 U.S. at 231. Thus, law enforcement efficiency and responsiveness would be increased[.] . . .

The Government's proposed aggregation rule serves no such ends. Because it jettisons the present requirement of communication between an instructing and an acting officer, officers would have no way of knowing before a search or seizure whether the aggregation rule would make it legal, or even how likely that is. The officer deciding whether or not to perform a given search [or seizure] will simply know that she lacks cause; in ordinary circumstances, she will have no way of estimating the likelihood that her fellow officers hold enough uncommunicated information to justify the search. And as an officer will never know *ex ante* when the aggregation rule might apply, the rule does not allow for useful shortcuts when an officer knows an action to be legal, as Hensley did. Perhaps an officer who knows she lacks cause for a search will be more likely to roll the dice and

> conduct a search anyway, in the hopes that uncommunicated information existed. But as this would create an incentive for officers to conduct searches and seizures they believe are likely illegal, it would be directly contrary to the purposes of longstanding Fourth Amendment jurisprudence.

*Massenburg*, 654 F.3d at 494.

In light of these concerns, we cannot acquiesce to the Commonwealth's request to broadly interpret the collective knowledge doctrine and adopt an unrestricted horizontal application. Indeed, the United States Supreme Court has explained that the very purpose served by the exclusionary rule is to deter illegal searches and seizures. *See Commonwealth v. Arter*, 151 A.3d 149, 153–5 (Pa. 2016). Accordingly, we will not endorse an approach that has the potential of encouraging police without the requisite level of suspicion to infringe on a person's freedom of movement in the hopes that his or her fellow officers possess such level of suspicion. *See Massenburg*, 654 F.3d at 494.

Although we decline to adopt a sweeping rule authorizing the imputation of knowledge between officers without direction or communication, this case presents us with what we regard as a modest amplification of the vertical application of the collective knowledge doctrine. In the instant case it is undisputed Officer McCook had probable cause to arrest Yong, and that Officer Gibson was with Officer McCook at the scene working to execute the search warrant after Officer McCook had briefed him and his companions on the efforts, at the time Officer Gibson arrested Yong. *See* N.T. Suppression Hr'g, 4/17/13, at

4–5. This case bears similarity to *United States v. Ragsdale*, 470 F.2d 24 (5th Cir. 1972). In *Ragsdale*, two officers conducted a traffic stop based on Ragsdale's speeding. Upon asking Ragsdale to exit his vehicle, Officer Jones observed a hand gun in the car. Officer Jones whispered this to his partner, Officer Mullens; however, he admittedly did not hear the comment, but nevertheless undertook a warrantless search of the vehicle. Looking to the knowledge of the officers individually and collectively, the Fifth Circuit reasoned:

> If the possession of probable cause on the part of the searching officer were the alpha and omega of our inquiry the answer might be different. However, logic requires that we refocus on the broader concept-reasonableness. Unless Jones was to be derelict in his duty, Ragsdale's car had to be searched and had to be searched before Ragsdale could be allowed to return to it, and had to be searched during the moments that he was properly detained at this solitary and detached location. If Mullens had not commenced the search when he did, Jones would surely have commanded it, or would have put Ragsdale in Mullens' custody and performed it himself. There is just no way to characterize this search when and where it was made in any manner other than a reasonable one. It invaded no Fourth Amendment protection which Ragsdale could claim.
>
> Reasonableness-as its more usual concomitant, probable cause-is founded not on technicalities, but on "factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Factually and practically the

> search at this precise point in time and space was mandated by Jones' view of Ragsdale's gun. The fact that one member of the team moved too swiftly, which sometimes invalidates the result, should not thwart the proof of truth here where there existed a clear justification, and indeed demand, for the prompt search made. On this night and at this spot it would be hypertechnical to insist on bifurcating the knowledge of the officers and isolating Mullins from the realities of the existing situation.

*Ragsdale*, 470 F.2d at 30.

The Fifth Circuit's reasoning has been invoked in similar cases where the facts and circumstances make clear that the officer whose conduct was challenged is in close proximity to the officer who possesses probable cause. *See e.g.*, *Smith v. State*, 719 So.2d 1018, 1024 (Fla. Dist. Ct. App. 1998) (noting had the officer who performed the challenged pat-down not done so, he would certainly have imminently been ordered to by the officer in close proximity who had reason to effect a constitutional pat-down).

Equally as in *Ragsdale*, it would be hyper-technical to insist on bifurcating the knowledge of Officers McCook and Gibson and isolating Officer Gibson from the realities of the existing situation where the officers were working together and it is apparent the challenged conduct would have inevitably been undertaken if Officer Gibson had not acted too swiftly. *See Ragsdale*, 470 F.2d at 30. Officer McCook would certainly have been derelict in his duties had he executed the search warrant with his team and failed

to arrest Yong or to order his arrest when he had probable cause to do so.[16]

Accordingly, we maintain that Pennsylvania adheres to the vertical approach of the collective knowledge doctrine, which instructs that an officer with the requisite level of suspicion may direct another officer to act in his or her stead. *See Kenney*, 297 A.2d at 796. However, where, as here, the arresting officer does not have the requisite knowledge and was not directed to so act, we hold the seizure is still constitutional where the investigating officer with probable cause or reasonable suspicion was working with the officer and would have inevitably and imminently ordered that the seizure be effectuated. We echo that not all factual circumstances fit squarely within a purely vertical or horizontal framework, *see Chavez*, 534 F.3d at 1345 n.12, and we find this modified approach best balances the important interest of ensuring police efficacy and efficiency with protecting citizens' rights to be free from unconstitutional intrusions. Applying this approach to this case, we conclude that Yong's Fourth Amendment rights were not violated.

The judgment of the Superior Court is reversed.

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[16] The Superior Court noted that a review of the entire record suggests that Officer McCook indeed directed Yong's arrest. *See Yong*, 120 A.3d at 311.

JUSTICE DONOHUE, Dissenting

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

As the Majority observes, the collective knowledge doctrine was first recognized by the United States Supreme Court in *Whiteley v. Warden*, 401 U.S. 560 (1971), wherein the Court stated that a police officer is entitled to rely on a communication or directive from another law enforcement official to effectuate an arrest, and that arrest will be deemed lawful so long as the communicating officer had probable cause, despite the fact that the specific information giving rise to probable cause was not relayed to the arresting officer. *Id.* at 568. This created an exception to the traditional requirement that the arresting officer have probable cause to arrest an individual. *See United States v. Watson*, 423 U.S. 411, 423 (1976). In *United States v. Hensley*, 469 U.S. 221 (1985), the high Court reaffirmed its adherence to the collective knowledge doctrine, identifying it as a "common sense" rule because "it minimizes the volume of information concerning suspects that must be transmitted to other jurisdictions and enables police in one jurisdiction to act promptly in reliance on information from another jurisdiction." *Id.* at 231.

This Court first applied the collective knowledge doctrine in *Commonwealth v. Kenney*, 297 A.2d 794 (Pa. 1972). In *Kenney*, we stated that because the arresting officer was "carrying out the order of his

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

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

This Court has never adopted or applied the horizontal approach. As stated in the Superior Court's decision in the case at bar, "Extending the collective knowledge doctrine to apply in the absence of a

directive or instruction to arrest issued by an officer who possesses probable cause serves none of the legitimate law enforcement purposes behind the rule." *Commonwealth v. Yong*, 120 A.3d 299, 308-09 (Pa. Super. 2015). The Majority here rejects the Commonwealth's request for this Court to adopt the horizontal approach to collective knowledge based on its concern that it "has the potential of encouraging police without the requisite level of suspicion to infringe on a person's freedom of movement in the hopes that his or her fellow officers possess such level of suspicion." Majority Op. at 22 (citing *United States v. Massenburg*, 654 F.3d 480, 494 (4th Cir. 2011)).

The Majority recognizes that "under **any approach** that permits aggregation of unspoken information or justifies actions taken absent direction from a person with the necessary level of suspicion, there remain serious concerns for protecting citizens from unconstitutional intrusions." *Id.* at 20 (emphasis added). And yet, the holding announced by the Majority creates just such an approach and threatens citizens with unconstitutional intrusions. The Majority holds that an arrest made by an officer without the requisite knowledge passes constitutional muster simply because another officer who possesses the necessary information to effectuate a lawful arrest is also present at the scene. This rule requires no communication between the arresting officer and the one with the requisite probable cause, and "justifies actions taken absent direction from a person with the necessary level of suspicion."

There may be some facial appeal to the Majority's new rule. Given his proximity, Officer McCook, the officer with the requisite (but uncommunicated)

knowledge in the case at bar, would likely have arrested and searched Yong, or issued a directive that another officer do so had Officer Gibson not acted. Id. at 23; *see* N.T., 4/17/2013, at 11. However, the contours of Fourth Amendment protections cannot be derived from idiosyncratic facial appeal.

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

Such an expansion of this holding is particularly likely because the Majority identifies its novel rule as a "version of the collective knowledge doctrine," terming it a "modest amplification of the vertical application" of that doctrine. *Id.* at 1, 22. In my view, this rule bears no resemblance to vertical collective knowledge because there is no communication whatsoever such that probable cause could be imputed from one officer to another. As discussed, a communication is the hallmark of vertical collective knowledge. Instead, the rule announced by the Majority more closely aligns with a horizontal application of collective knowledge, as it permits a

hindsight review of what other officers were aware of at the time of the arrest, despite the fact that there was nothing communicated directly to the arresting officer to justify an arrest under the Fourth Amendment.

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

Justice Todd joins this dissenting opinion.

# APPENDIX B

SUPERIOR COURT OF PENNSYLVANIA

No. 1972 EDA 2013

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

ALWASI YONG,

Appellant.

Filed: July 16, 2015

Before: PANELLA, J., LAZARUS, J., and WECHT, J.

OPINION BY WECHT, J.:

This appeal requires that we determine the precise scope of the "collective knowledge doctrine" in Pennsylvania. We conclude that the trial court's application of the doctrine to the facts of Alwasi Yong ("Yong")'s arrest stretched the rule beyond its breaking point. As a result, the trial court erred in denying Yong's pretrial motion to suppress physical evidence. We reverse the trial court's order denying that motion, and we remand for proceedings consistent with this opinion.

On September 21, 2011, Officer Joseph McCook of the Philadelphia Police Department was conducting narcotics surveillance on the 3200 block of North Fairhill Street in Philadelphia. On that day, Officer McCook used a confidential informant ("CI") to conduct a controlled narcotics purchase. Officer McCook observed Yong standing in front of a residence located at 3202 Fairhill Street. The CI approached Yong, had a brief conversation with him, and then handed him $120 in pre-recorded currency. Yong passed the money to his codefendant, Samuel Vega, who then entered the residence and later returned with twelve packets of marijuana. Vega then handed the marijuana to the CI.

On September 22, 2011, police conducted surveillance of the same area, but did not observe Yong. The CI purchased twenty-five packets of marijuana, which were similar to the twelve packets that the CI previously had purchased from Yong and Vega. However, the record does not disclose who sold the marijuana to the CI on September 22, 2011. *See* Notes of Testimony Suppression ("N.T.S."), 4/17/2013, at 16 ("[T]here was a transaction. I'm not sure if it was with Vega or not.").

On September 23, 2011, the police continued their narcotics surveillance in the same area. Officer McCook observed Yong and Vega in front of 3202 Fairhill Street. Linwood Fairbanks, an undercover narcotics officer, approached Vega and handed him $40 in pre-recorded currency. Vega then walked over to a nearby vacant lot, retrieved something from the ground, and returned with eight packets of marijuana, which he gave to Officer Fairbanks.

Approximately ten minutes after this transaction, police executed a search warrant on 3202 North Fairhill Street. When police entered the home to execute the search warrant, Yong was standing in the first-floor living room. Without being prompted to do so by any other officer, and without knowing that other officers had observed Yong's prior drug activity, Officer Gerald Gibson immediately arrested Yong. Officer Gibson discovered a loaded .38 revolver concealed under Yong's waistband.

As a result of these events, Officer McCook filed a criminal complaint charging Yong with various drug and firearm offenses. On September 7, 2012, Yong filed an omnibus pretrial motion seeking to suppress the physical evidence obtained from the search of his person. Therein, Yong argued that Officer Gibson had neither reasonable suspicion to perform a *Terry*[1] frisk, nor probable cause to arrest and search him.

On April 17, 2013, the trial court held a hearing on Yong's motion to suppress. The Commonwealth's sole witness, Officer McCook, testified that he personally observed Yong accept money from the CI on September 21, 2011. Officer McCook further testified that Yong then handed the money to Vega, who gave the CI twelve packets of marijuana. Officer McCook also testified that, throughout his eighteen-year career as a Philadelphia Police Officer, he had observed "hundreds" of narcotics transactions where one

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[1] *See Terry v. Ohio*, 392 U.S. 1 (1968) (holding that police officers may conduct a limited pat-down search for weapons if they reasonably believe that criminal activity is afoot and that the individual is armed and dangerous).

participant accepts the money and then hands it off to a co-conspirator. N.T.S. at 12.

Officer Gibson did not testify at the suppression hearing. Officer McCook testified that he observed Yong participate in what he believed to be a narcotics transaction on September 21, 2011. Officer McCook further testified that Officer Gibson arrested and searched Yong on September 23, 2011 when police executed the search warrant on 3202 North Fairhill Street. While Officer McCook averred that he was present when Officer Gibson recovered the firearm from Yong's waistband, he stated that Officer Gibson arrested Yong "[j]ust as [he] was going inside." *Id.* at 18. Officer McCook explained that "there were six or seven, maybe eight" officers executing the search warrant, and that he was "towards the rear" as they entered the home. N.T.S. at 17. Officer McCook did not testify that he informed Officer Gibson of Yong's role in the narcotics transaction on September 21, 2011, nor did Officer McCook testify that he instructed Officer Gibson to arrest and/or search Yong.

At the conclusion of the hearing, Yong argued that his arrest was unsupported by probable cause because the Commonwealth failed to establish that "anyone spoke to Officer Gibson and told him what they had seen on the 21st." *Id.* at 19. The trial court denied Yong's motion to suppress, reasoning that Officer Gibson possessed sufficient probable cause to arrest Yong because Officer McCook's knowledge could be imputed to all of the officers who were executing the search warrant.

On April 22, 2013, Yong proceeded to a jury trial. On April 24, 2013, the jury found Yong guilty of carrying a firearm without a license and of conspiracy to commit possession with intent to deliver ("PWID").[2] Because Yong stipulated that he had a prior felony conviction that prohibited him from owning a firearm, the trial court also found Yong guilty of persons not to possess a firearm[3] in a severed proceeding.

By oral motion advanced during his sentencing hearing on June 12, 2013, Yong argued that the jury's guilty verdict on the conspiracy to commit PWID count was against the weight of the evidence. The trial court denied Yong's motion, and sentenced him to five to ten years' imprisonment for persons not to possess a firearm, with concurrent terms of three and one half to seven years' imprisonment for firearms not to be carried without a license and five to ten years' imprisonment for conspiracy to commit PWID.

On July 8, 2013, Yong timely filed a notice of appeal. On July 15, 2013, the trial court directed Yong to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Yong timely complied.

Yong presents two issues for our consideration:

1. Did the trial court err in denying Yong's pretrial motion to suppress the search of his person where the arresting officer had neither probable cause to arrest Yong nor reasonable suspicion to

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[2] 18 Pa.C.S. §§ 6106(a)(1), and 903 (35 P.S. § 780–113(a)(30)), respectively.

[3] 18 Pa.C.S. § 6105(a)(1).

> perform a [*Terry*] frisk where Yong was merely present during the execution of a search warrant?
>
> 2. Was the evidence insufficient to support Yong's conviction for criminal conspiracy where a veteran police officer wrote in his investigation report that Yong entered one house and then handed a clear bag to a confidential informant[,] but that same officer twice testified that it was [Vega] who went into a different house and handed the same small objects to the same confidential informant?

Brief for Yong at 7 (footnote omitted).

Yong first contends that the trial court erred in denying his motion to suppress the physical evidence obtained from his person. Our standard of review in this context is well-settled:

> In addressing a challenge to a trial court's denial of a suppression motion, we are limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Since the Commonwealth prevailed in the suppression court, we may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

*Commonwealth v. Brown*, 64 A.3d 1101, 1104 (Pa. Super. 2013) (citation omitted). Our scope of review in suppression matters includes only the suppression hearing record, and excludes any evidence elicited at trial. *See In re L.J.*, 79 A.3d 1073, 1085 (Pa. 2013).

Probable cause to arrest is not mere suspicion or conjecture. The relevant inquiry is "whether the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime." *Commonwealth v. Rodriguez*, 585 A.2d 988, 990 (Pa. 1991).

Yong does not dispute that **Officer McCook's** knowledge that Yong participated in a narcotics transaction two days earlier amounted to sufficient probable cause to justify a warrantless arrest. It was **Officer Gibson**, not Officer McCook, who ultimately arrested Yong. Yong argues that the trial court erred in imputing Officer McCook's knowledge to Officer Gibson.[4] *See* N.T.S. at 23 ("[T]he knowledge of one is imputed to all on the scene that day, all the [officers] who are executing the search warrant.").

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[4] At Yong's suppression hearing, the trial court also reasoned that the police were "entitled" to search everyone inside of the residence because they were executing a valid search warrant. N.T.S. at 22. This is incorrect. We have held that, unless the police obtain an "all persons present" warrant, mere presence during the execution of a search warrant, by itself, is insufficient to justify a search of the person. In re J.V., 762 A.2d 376, 382 (Pa. Super. 2000).

The Commonwealth maintains that Officer McCook's knowledge of Yong's participation in the earlier drug transaction was imputed to Officer Gibson under the "collective knowledge doctrine." The Commonwealth cites no Pennsylvania case law to support such an expansion of the rule. For the reasons that follow, we conclude that such an interpretation would stretch the doctrine well beyond its stated purpose.

The collective knowledge doctrine (sometimes called the "fellow-officer rule") was first articulated by then circuit-court judge Warren Burger in *Williams v. United States*, 308 F.2d 326 (D.C. Cir. 1962). There, an appellant argued that his arrest was unconstitutional because the arresting officer lacked "adequate first hand information" amounting to probable cause. The Court rejected this theory, finding that the arresting officer acted based upon the knowledge of another officer within the department who clearly had probable cause to arrest the appellant.

> [I]n a large metropolitan police establishment the collective knowledge of the organization as a whole can be imputed to an individual officer when he is **requested or authorized by superiors** or associates to make an arrest. The whole complex of swift modern communication in a large police department would be a futility if the authority of an individual officer was to be circumscribed by the scope of his first hand knowledge of facts concerning a crime or alleged crime.
>
> When the police department possesses information which would support an arrest without a warrant in the circumstances, the arresting officer, if

> **acting under orders based on that information**, need not personally or first hand know all the facts. The test, as we have said, is whether a prudent and cautious officer in those circumstances would have reasonable grounds—not proof or actual knowledge—to believe that a crime had been committed and that appellant was the offender.

*Id.* (emphasis added).

In *Whiteley v. Warden*, 401 U.S. 560 (1971), the United States Supreme Court echoed the D.C. Circuit's reasoning. There, a county sheriff received an uncorroborated tip stating that Whiteley and an accomplice had burglarized two local businesses. The sheriff then obtained an arrest warrant based upon an insufficient showing of probable cause. *See id.* at 565 ("Th[e] complaint consists of nothing more than the [sheriff's] conclusion that the individuals named therein perpetrated the offense described in the complaint. The actual basis for [the sheriff's] conclusion was . . . omitted from the complaint."). Following the issuance of the arrest warrant, the sheriff distributed a statewide bulletin via police radio, requesting that any officer who encountered the suspects arrest and extradite them.[5] After hearing the bulletin, a patrol officer in a nearby county arrested the two men and discovered evidence of the burglaries in Whiteley's vehicle.

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[5] Specifically, the bulletin contained the names and physical descriptions of the two suspects, described the vehicle that they were believed to be traveling in, and stated that an arrest warrant for the two men had been issued. *Whiteley*, 401 U.S. at 564.

The *Whiteley* Court held that: (1) the sheriff's complaint was insufficient to support the issuance of an arrest warrant; and (2) the informer's tip lacked sufficient indicia of reliability to provide the sheriff with probable cause. Still, the state argued that the arresting officer reasonably relied upon the police radio bulletin and, therefore, had sufficient probable cause to arrest the suspect. The state urged that preventing "officers from acting on the ***assumption*** that fellow officers who call upon them to make an arrest have probable cause for believing the arrestees are [perpetrators] of a crime would . . . unduly hamper law enforcement." *Id.* at 568 (emphasis added).

Justice John Harlan, writing for the majority, rejected this logic.

> We do not, of course, question that the . . . police were entitled to act on the strength of the radio bulletin. Certainly police officers called upon to aid other officers in executing arrest warrants are entitled to assume that the officers requesting aid offered the magistrate the information requisite to support an independent judicial assessment of probable cause. Where, however, the contrary turns out to be true, an otherwise illegal arrest cannot be insulated from challenge by the decision of the instigating officer to rely on fellow officers to make the arrest.

*Id.* This rule, which later became known as the "collective knowledge doctrine," was a matter of common sense. Had the Court concluded otherwise, the probable cause requirement could be easily circumvented; any officer could simply instruct another officer to make an illegal arrest.

In *United States v. Hensley*, 469 U.S. 221 (1985), the United States Supreme Court again considered the constitutionality of an arrest based upon a law enforcement bulletin. Expounding the collective knowledge doctrine's rationale, the Court explained:

> *Whiteley* supports the proposition that, when evidence is uncovered during a search incident to an arrest in reliance merely on a flyer or bulletin, its admissibility turns on whether the officers who issued the flyer possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance. In an era when criminal suspects are increasingly mobile and increasingly likely to flee across jurisdictional boundaries, this rule is a matter of common sense: it minimizes the volume of information concerning suspects that must be transmitted to other jurisdictions and enables police in one jurisdiction to act promptly in reliance on information from another jurisdiction.

*Id.* at 231.

Read jointly, *Whiteley* and *Hensley* instruct that the collective knowledge doctrine serves an agency function. When a police officer instructs or requests another officer to make an arrest, the arresting officer stands in the shoes of the instructing officer and shares in his or her knowledge. In *Commonwealth v. Kenney*, 297 A.2d 794 (Pa. 1972), the Pennsylvania Supreme Court adopted the rationale of *Whiteley*, and upheld a warrantless arrest made by a detective who lacked probable cause, where he acted at the direction of his superior who had specific knowledge of facts and

circumstances sufficient to constitute probable cause. Pennsylvania courts have since cited *Whiteley* and *Hensley* for the general proposition that an arresting officer need not possess encyclopedic knowledge of the underlying facts supporting probable cause. Instead, he or she may rely upon an instruction[6] to arrest from another officer who possesses the required knowledge. *See In re D.M.*, 727 A.2d 556, 558 (Pa. 1999); *Commonwealth v. Queen*, 639 A.2d 443, 445 (Pa. 1994); *Commonwealth v. Wagner*, 406 A.2d 1026, 1030 (Pa. 1979); *Commonwealth v. Cotton*, 740 A.2d 258, 262–63 (Pa. Super. 1999); *Commonwealth v. Fromal*, 572 A.2d 711, 717 (Pa. Super. 1990).[7]

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[6] There are no "magic words" that must pass between police officers to invoke the collective knowledge doctrine. The requirement that there be an actual communication between the fellow officers presents only a negligible burden to law enforcement. An officer may issue a conclusory directive to arrest a particular suspect. See generally 2 Wayne R. LaFave, Search and Seizure § 3.5 (5th ed. 2012).

[7] We are aware of no cases in which the Pennsylvania Supreme Court has departed from or expanded upon the rule announced in *Whiteley*. In *Commonwealth v. Gambit*, a panel of this Court stated that a police officer's knowledge can be imputed to his fellow officer where there "is some communication or connection" between them. 418 A.2d 554, 557 (Pa. Super. 1980). This seems to suggest that the collective knowledge may apply in the absence of a communication, so long as a particular officer is "connected to" an arrest. But, read in context, the inclusion of the word "connection" appears to be an imprecise statement of the law, and not an explicit enlargement of the doctrine. Indeed, the Court in *Gambit* rejected the Commonwealth's argument that relevant information possessed by an officer could be imputed to an arresting officer in the absence of an instruction or directive to arrest. Moreover, in the thirty-five years since *Gambit* was decided, it has never been cited for the proposition that knowledge can be imputed between officers in the absence of a

Instantly, there is nothing in the suppression record to suggest that: (1) Officer McCook ordered or directed Officer Gibson to arrest Yong; or (2) Officer Gibson received information justifying Yong's arrest; or (3) Officer Gibson received information, which, coupled with facts that he personally observed, provided probable cause to arrest Yong. This lack of evidence compels the conclusion that Officer Gibson—acting of his own accord—made a warrantless arrest. The fact that, unbeknownst to Officer Gibson, his colleague Officer McCook had observed Yong participate in a drug transaction two days earlier cannot suffice to permit the Commonwealth to leapfrog the Fourth Amendment.

Citing decisions issued by various federal courts, the Commonwealth encourages us to adopt a far more expansive rule. A series of conflicting interpretations of the collective knowledge doctrine have emerged over the last several decades. Some courts have conceptualized the collective knowledge cases as falling into two distinct categories, vertical and horizontal. The "vertical" collective knowledge cases present a straightforward application of *Whiteley* and *Hensley* (*i.e.*, where one law enforcement officer who possesses probable cause instructs a fellow officer to act). As discussed *supra*, Pennsylvania courts have consistently applied this version of the doctrine for several decades, with little controversy.

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communication between them. Instead, our own Supreme Court has explained that *Whiteley* simply allows an officer to make a warrantless arrest "undertaken at the direction of his superior who had sufficient knowledge of facts and circumstances to constitute probable cause to arrest the defendant." *Commonwealth v. Queen*, 639 A.2d 443, 446 (Pa. 1994).

By contrast, the "horizontal" collective knowledge cases arise when individual law enforcement officers each possess pieces of the probable cause puzzle, but no single police officer possesses information that amounts to probable cause. *United States v. Chavez*, 534 F.3d 1338, 1345 (10th Cir. 2008) (citing *United States v. Shareef*, 100 F.3d 1491, 1503–05 (10th Cir. 1996)). Under this approach, which has never been adopted in Pennsylvania, courts evaluate probable cause by aggregating the knowledge of two or more police officers who are working together on an investigation.

The Commonwealth cites several of these horizontal collective knowledge cases for the general proposition that "the information available to a close group of officers functioning as a team is assessed as a whole." Brief for Commonwealth at 10. According to the Commonwealth, we must consider the facts within Officer McCook's knowledge in order to determine whether Officer Gibson had probable cause to arrest Yong.

The view that a broader, "horizontal," collective knowledge doctrine exists is far from unanimous. Many courts have declined to enlarge the scope of the doctrine, and will only impute knowledge among fellow officers where there is evidence that the arresting officer acted at the direction of another officer. *See United States v. Massenburg*, 654 F.3d 480, 493 (4th Cir. 2011) ("[T]he collective-knowledge doctrine simply directs us to substitute the knowledge of the *instructing officer or officers* for the knowledge of the *acting officer* . . . ." (emphasis in original)); *Haywood v. United States*, 584 A.2d 552, 557 (D.C. 1990) ("An arresting officer need not have firsthand

knowledge of the facts giving rise to probable cause *provided that he or she is acting at the suggestion of someone who does*." (emphasis in original)); *United States v. Woods*, 544 F.2d 242 (6th Cir. 1976) (holding that supervising officer's knowledge could not be imputed to arresting officer where the evidence fails to demonstrate that the arrest was based upon supervising officer's order to arrest); *State v. Cooley*, 457 A.2d 352, 356 (Del. 1983) (citing *Gambit*, 418 A.2d 554); *State v. Mickelson*, 526 P.2d 583, 584 (Or. App. 1974) ("A police officer working in a team or in a modern police organization is entitled reasonably to arrest or search on the command or summary information of another officer.").

There does not appear to be a coherent rationale for enlarging the scope of the doctrine beyond the situation where an officer with probable cause directs a fellow officer to make an arrest.[8] Extending the collective knowledge doctrine to apply in the absence of a directive or instruction to arrest issued by an officer who possesses probable cause serves none of the legitimate law enforcement purposes behind the rule. *See Hensley*, 469 U.S. at 231 ("In an era when criminal suspects are increasingly mobile and increasingly likely to flee across jurisdictional boundaries, this rule is a matter of common sense: it minimizes the volume of information concerning suspects that must be transmitted to other jurisdictions and enables police in

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[8] Indeed, some courts have adopted the horizontal collective knowledge approach while purporting to apply the collective knowledge doctrine in its traditional form. *See, e.g., United States v. Verdugo*, 617 F.3d 565 (1st Cir. 2010) (assessing "the collective knowledge of the agents working … on [an] investigation.").

one jurisdiction to act promptly in reliance on information from another jurisdiction."). Many of the courts that have adopted the horizontal approach to the collective knowledge doctrine have ignored the original aim of the rule—to allow officers to rely upon succinct directives received from a fellow officer. Paradoxically, these courts have expanded the rule, which was intended to encourage communication between police officers while minimizing the volume of information that officers must transmit, by eliminating the requirement that officers actually communicate with one another.

The Supreme Court has endorsed the view "that effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another and that officers, who must often act swiftly, cannot be expected to cross-examine their fellow officers about the foundation for the transmitted information." *Id.* If there is no 'transmitted information,' a different result obtains. Our law does not permit a police officer to make a warrantless arrest and then later justify it based upon his colleague's knowledge. To adopt the horizontal collective knowledge approach would be to sever the doctrine from its constitutional impetus.

Moreover, an expansive interpretation of the collective knowledge doctrine does not comport with the fundamental requirement that warrantless arrests be supported by probable cause. The benchmark of a warrantless arrest is "whether the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution

in the belief that the suspect has committed or is committing a crime." *Commonwealth v. Rodriguez*, 585 A.2d 988, 990 (Pa. 1991). In the context of probable cause to conduct a warrantless arrest, the United States Supreme Court has explained:

> Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave lawabiding citizens at the mercy of the officers' whim or caprice.
>
> * * *
>
> In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.

*Brinegar v. United States*, 338 U.S. 160, 175–76 (1949).

To hold that a warrantless arrest is constitutional where the arresting officer is without direct knowledge or reasonably trustworthy information justifying it would be to ignore the "sensibl[e] . . . conclusions of

probability" made by reasonable people. *Id.* A reasonable arresting officer cannot reach a sensible conclusion based upon facts that are beyond his or her knowledge. The *post hoc* imputation of knowledge among police officers is an exercise for "legal technicians," not "reasonable and prudent men." *Id.* In the absence of any clear authority from the United States Supreme Court, or from our own Supreme Court, we decline to revise this standard.

Even if we were willing to adopt the horizontal collective knowledge doctrine, it would not apply to the facts of the case before us. As the Commonwealth notes, the courts that have accepted this formulation impute knowledge among police officers who are "functioning as a team." Brief for Commonwealth at 10. However, the horizontal collective knowledge approach also requires "some degree of communication between the officer who possesses the incriminating knowledge and the officer who does not." *United States v. Banks*, 514 F.3d 769, 776 (8th Cir. 2008); *see also United States v. Parra*, 402 F.3d 752, 766 (7th Cir. 2005) ("Agent Hehr, who arrested Correa, **was in constant communication** with Agent Becka and Agent Chamulak. On this basis, we find the collective knowledge doctrine applicable[.]" (emphasis added)); *United States v. Terry*, 400 F.3d 575, 581 (8th Cir. 2005) ("We impute information if there has been **"some degree of communication"** between the officers." (emphasis added)); *United States v. Lee*, 962 F.2d 430, 435 (5th Cir. 1992) ("[P]robable cause can rest upon the collective knowledge of the police, rather than solely on that of the officer who actually makes the arrest, when there is **'some degree of communication** between the two.'" (emphasis

added)). Instantly, the suppression hearing transcript lacks any testimony that Officer Gibson and Officer McCook communicated with each other. Thus, even the expanded collective knowledge doctrine advocated by the Commonwealth would not preclude suppression based upon the record before us.

Pennsylvania courts have never expanded the doctrine beyond the situation where a police officer who possesses probable cause instructs a fellow officer to act. *See Queen*, 639 A.2d at 446. We decline to adopt the "horizontal" approach to collective knowledge, which some federal courts have used to aggregate knowledge among police officers functioning as a team. In any event, even if Pennsylvania law recognized such a broad rule, the absence of any evidence that Officers Gibson and McCook actually communicated with one another would render the rule inapplicable to this case.

We understand the trial court's temptation to infer that Officer McCook instructed Officer Gibson to arrest Yong. When a police officer observes a suspect engage in criminal conduct and then a second police officer arrests the suspect, one might reasonably assume that the officers communicated with one another. The testimony presented at Yong's trial suggests that this is what occurred. *See* Notes of Testimony ("N.T."), 4/22/2013, at 68–69 ("When I got in there I wanted to make sure that everybody was patted down, so I told them to pat them down again. And Officer Gibson picked [Yong] up . . . and then he started patting him down."). Nevertheless, as a matter of law, our scope of review in suppression matters is limited to the suppression hearing record, and

excludes any evidence elicited at trial. *In re L.J.*, 79 A.3d at 1085.

The result we reach in this case is not a consequence of a hypertechnical legal rule. The collective knowledge doctrine unquestionably authorizes police officers to act upon information or instructions from their fellow officers. *Whiteley*, 401 U.S. at 568; *Hensley*, 469 U.S. at 231. At Yong's suppression hearing, it was the Commonwealth's burden to establish that Officer McCook directed Officer Gibson to arrest Yong. *See* Pa.R.Crim.P. 581 ("The Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant's rights."). The suppression record before us lacks any evidence to that effect. We are compelled to conclude that Yong's arrest was unconstitutional.

Because we cannot, based upon the state of this record, impute Officer McCook's knowledge that Yong had participated in a prior drug transaction to Officer Gibson, we must conclude that Yong's arrest and the subsequent search of his person were unconstitutional. Accordingly, we reverse the trial court's order denying Yong's motion to suppress.

In his second issue, Yong challenges the sufficiency of the evidence supporting his conviction for criminal conspiracy. Even though Yong's first claim entitles him to relief, we nonetheless are required to address his challenge to the sufficiency of the evidence, because double jeopardy principles would prohibit a retrial on the conspiracy charge in the event that this

issue has merit. *Commonwealth v. Palmer*, 751 A.2d 223, 227 (Pa. Super. 2000).

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proof of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all the evidence actually received must be considered. Finally, the trier of fact while passing on the credibility of witnesses and the weight of the evidence produced, is free to believe all, part[,] or none of the evidence.

*Commonwealth v. Pappas*, 845 A.2d 829, 835–36 (Pa. Super. 2004) (citation omitted). Additionally, in evaluating this claim, we do not review a diminished record. *Commonwealth v. Smith*, 568 A.2d 600, 603 (Pa. 1989); *Commonwealth v. Parker*, 644 A.2d 1245, 1247 (Pa. Super. 1994). Rather, we are required to consider all of the evidence that was actually received,

without consideration as to the admissibility of that evidence or whether the trial court's evidentiary rulings were correct. *Smith* and *Parker*, *supra.*

Section 903 of the Crimes Code provides as follows:

> **(a) Definition of conspiracy.**—A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:
>
> > (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
> >
> > (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

18 Pa.C.S. § 903. Once the trier of fact finds that there was an agreement, and that the defendant intentionally entered into the agreement, that defendant may be liable for the overt acts committed in furtherance of the conspiracy regardless of which co-conspirator committed the act. *See Commonwealth v. Wayne*, 720 A.2d 456, 463–64 (1998).

The essence of a criminal conspiracy, which distinguishes it from accomplice liability, is an agreement between the co-conspirators. *See Commonwealth v. Lambert*, 795 A.2d 1010, 1016 (Pa. Super. 2002). However, "[a]n explicit or formal agreement to commit crimes can seldom, if ever, be proved and it need not be, for proof of a criminal partnership is almost invariably extracted from the

circumstances that attend its activities." *Commonwealth v. Johnson*, 719 A.2d 778, 785 (Pa. Super. 1998) (*en banc*) (citations omitted). Therefore, where the conduct of the parties indicates that they were acting in concert with a corrupt purpose, the existence of a criminal conspiracy may properly be inferred. *Commonwealth v. Snyder*, 483 A.2d 933, 942 (Pa. Super. 1984). Non-exclusive circumstances that may establish proof of a conspiracy include: (1) an association between alleged conspirators; (2) knowledge of the commission of the crime; (3) presence at the scene of the crime; and (4) participation in the object of the conspiracy. *Commonwealth v. Swerdlow*, 636 A.2d 1173, 1177 (Pa. Super. 1994).

Instantly, there was ample evidence that Yong intentionally aided Vega in selling marijuana. At trial, the Commonwealth presented evidence that, immediately after Yong accepted currency from the CI, Vega handed the CI twelve packets of marijuana. Two days later, Yong was present when Vega sold marijuana to an undercover officer, and was standing in the living room of the residence when police executed a search warrant. Based upon this evidence, the jury was free to conclude that Yong and Vega had an agreement whereby Yong would screen and accept payment from potential drug purchasers, while Vega would retrieve and dole out the narcotics. *Compare Commonwealth v. Murphy*, 844 A.2d 1228 (Pa. 2004) (finding sufficient evidence to support conviction for conspiracy to commit PWID where appellant asked undercover officer if he was a "cop," and then introduced him to his co-conspirator who sold the

officer heroin). Accordingly, Yong's challenge to the sufficiency of the evidence is without merit.[9]

For the foregoing reasons, we vacate Yong's judgment of sentence, reverse the trial court's order denying Yong's motion to suppress, and remand for retrial.

Judgment of sentence vacated. Case remanded for further proceedings consistent with this opinion. Jurisdiction relinquished.

CONCURRING STATEMENT BY LAZARUS, J.:

I respectfully concur. In my opinion, we need not expound on the collective knowledge doctrine in the instant case where no other officer, involved in the narcotics' surveillance at 3202 Fairhill Street, had requested or authorized that Officer Gibson arrest

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[9] In arguing that the evidence adduced at trial was "insufficient in both volume and quality," Yong appears to conflate his challenge to the sufficiency of the evidence with a challenge to the weight of the evidence. Brief for Yong at 22. The sum of Yong's sufficiency argument is that the evidence was insufficient because Officer McCook's investigation report was inconsistent with his later testimony at trial. This argument challenges the credibility of the Commonwealth's witness and, therefore, implicates the weight of the evidence—a claim that Yong has failed to preserve for our review. *See* Statement of Errors Complained of on Appeal, 8/1/2013, at 1 ("[The trial c]ourt erred by denying [Yong's] post-verdict motion for a judgment of acquittal where [Yong] argued that there was **insufficient** evidence." (emphasis added)). Accordingly, Yong has waived his challenge to the weight of the evidence. Pa.R.A.P. 1925(b)(4)(vi) ("Issues not included in the [1925(b) statement] . . . are waived."); *see generally Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998).

Yong. *See Commonwealth v. Kenney*, 297 A.2d 794 (Pa. 1972) (warrantless arrest upheld where arresting officer relies upon instruction to arrest from another officer who possessed required knowledge supporting probable cause). Accordingly, this case is resolved by determining whether Officer Gibson had probable cause to arrest Yong, or, simply, "whether the facts and circumstances within the knowledge of [Officer Gibson] at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that [Yong] has committed or is committing a crime." *Commonwealth v. Williams*, 2 A.3d 611, 616 (Pa. Super. 2010).

As the majority correctly recognizes, "there is nothing in the … record to suggest that … Officer Gibson received information, which, coupled with facts that he personally observed, provided probable cause to arrest Yong." Majority Opinion, at 307. Accordingly, the trial court erred in denying Yong's pretrial motion to suppress physical evidence uncovered as a result of his unlawful arrest and subsequent search of his person.

## APPENDIX C
## SUPPRESSION HEARING TRANSCRIPT

COURT OF COMMON PLEAS FIRST JUDICIAL DISTRICT OF PENNSYLVANIA CRIMINAL TRIAL DIVISION

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No. CP–51–CR–0002313–2012

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COMMONWEALTH OF PENNSYLVANIA,

v.

ALWASI YONG,

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April 17, 2013

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Before: POWELL, JR., J.

**THE COURT**: Okay. Counsel, you have a motion to suppress?

**MR. O'RIORDAN**: Yes, sir. Good afternoon, your Honor. Daniel O'Riordan for Alwasi Young. This is my motion to suppress physical evidence based upon the Fourth Amendment of the United States Constitution and the broader protections of Article I, Section 9 of the Pennsylvania Constitution, specifically that the police had neither reasonable suspicion to search, nor probable cause to arrest Alwasi Young.

And I'm moving to suppress search and all fruits of that search of Mr. Young's person, your Honor.

**THE COURT**: Commonwealth, do you need anything more than that?

**MS. JONES**: I do not. I just want to be certain that this is not a CI motion as well?

**MR. O'RIORDAN**: No, it's not.

**MS. JONES**: Very well.

Commonwealth calls Officer McCook.

**COURT CRIER**: State your full name, spell your last name, badge number, and current assignment.

**THE WITNESS**: Police Officer Joseph McCook, M-C-C-O-O-K, badge No. 6277, Narcotics Field Unit.

OFFICER JOSEPH McCOOK, after having been duly sworn, was examined and testified as **follows**:

**MS. JONES**: May I, your Honor?

**THE COURT**: Sure.

**BY MS. JONES**:

**Q.** Good afternoon, Officer McCook.

**A.** Good afternoon.

**Q.** I'd like to direct your attention back to September 21st of 2011, at approximately 1:25 p.m.

Were you on duty as a Philadelphia Police Officer?

**A.** Yes, I was.

**Q.** And at that approximate time and on that date, were you in the area of the 3200 block of North Fairhill Street in Philadelphia?

**A.** Yes.

**Q.** At that date, time, and location, can you please tell his Honor about your investigation?

**A.** Yes. On that date and time, I met with a confidential informant, No. 1060, who was searched with negative results for any contraband or United States currency. We provided him with $120 prerecorded buy money. That was by Officer Morales in my presence, in the same automobile.

At that time the informant went to the 3200 block of Fairhill with me conducting surveillance. I observed the informant approach 3202 North Fairhill, where this defendant was standing out in front of.

**MS. JONES**: For the record, the officer pointed to the defendant seated at the bar of court, Alwasi Young.

**BY MS. JONES**:

**Q.** You can continue, Officer.

**A.** This defendant then accepted United States currency, after a brief conversation with the informant, from the informant. This defendant walked over to another male by the name of Vega, and handed the prerecorded buy money to -- the money that he accepted from the informant, to Vega.

And then Vega went inside of 3202 North Fairhill Street for about two minutes. He came back out and handed a small object to the informant. The informant returned back to myself and Officer Morales and handed over 12 packets of marijuana. They were clear with money symbols stamped on them. They were later field tested by myself with positive results. I am certified. And they were placed on a property receipt.

**Q.** What did they test positive for?

**A.** Marijuana.

**Q.** Now, Officer, on that date, at that time, you were interacting with the CI.

Was he checked prior to being sent out?

**A.** He was searched prior and after.

**Q.** And did you ever lose eye contact -- excuse me. Did you ever lose visual sight of the CI?

**A.** No, I did not.

**Q.** About how far away were you from the CI when he was interacting with this defendant?

**A.** I was about 100 to 200 feet. I was using binoculars. I was across the street on Allegheny Avenue.

**Q.** You said you were using binoculars?

**A.** Yes. The street on the 3200 block of Fairhill dead ends into Allegheny. I was on Allegheny, across Allegheny.

**Q.** At any point did the CI go into that property?

**A.** No.

**Q.** Just Vega?

**A.** Yes.

**Q.** And did your investigation continue the next day?

**A.** Yes, it did. But I was not present at the location. But I did later obtain 25 packets that were similar to the ones purchased the day before by Officer Morales. He turned them over to me, and I did field test them with positive results.

**Q.** And to your knowledge, did Officer Morales conduct a surveillance at that same location on September 22nd?

**A.** Yes. He did inform me that he did conduct a surveillance of that location and also of 3213 North Fairhill.

**Q.** 3202 and 3213 North Fairhill?

**A.** Yes, and 3204.

**Q.** And did Officer Morales indicate whether or not this defendant was out there on September 22nd?

**A.** I don't recall. I don't recall if he was out there on that day.

**MS. JONES**: And your Honor, I'll stipulate that this defendant was not involved in the surveillance on that day; however, this same property was under surveillance.

**THE COURT**: Okay.

**BY MS. JONES**:

**Q.** However 25 packets were turned over to you from the surveillance on that date, correct?

**A.** Yes, by Officer Morales. And I did field test them with positive results for marijuana. And I placed them on Property Receipt No. 2997712.

**Q.** And then the following day, on September 23, 2011, were you once again involved in a surveillance of the property of 3202 Fairhill?

**A.** Yes.

**Q.** Can you please tell us about that.

**A.** Yes. I was conducting a prearranged surveillance of that location. At that time Officer Fairbanks was provided with $40 prerecorded buy money. He went to that area of the 3200 block of Fairhill and met with the male by the name of Vega.

**Q.** Was this the same male from the two days prior?

**A.** Yes, from two days prior that the defendant was involved with.

**Q.** And tell us what happened when Officer Fairbanks met with Vega?

**A.** He approached Vega. Vega engaged him in a conversation and then accepted the $40 prerecorded buy money from the officer. Vega then went next to 3204 North Fairhill in a lot. He retrieved a small object from underneath some dirt and handed over eight packets of marijuana to Officer Fairbanks, which was later turned over to me. I did field test those with positive results.

**Q.** Now, is the lot the property that would have been 3204 or --

**A.** I think it would be 3206. 3204 was an abandoned property we later found out.

**Q.** Okay. But we're still on that same block on that same side of the street?

**A.** Yes. It's 3202, 3204, and then the lot.

**Q.** And what was brought off of Vega was field tested as well?

**A.** Yes. And it was similar packets with money symbols on them with marijuana. And I field tested them with positive results and placed them on a property receipt.

**Q.** Was this defendant out there at that time?

**A.** He was out front, but he was not involved in the transaction. Then we prepared to execute a search and seizure warrant. And when we went to that location at 3202 North Franklin Street, the defendant was inside.

**Q.** Was it Franklin Street or Fairhill Street?

**A.** Fairhill Street. I'm sorry. It's 3202 North Fairhill Street. The defendant was inside. He was stopped by Officer Gibson in my presence.

**Q.** Let me stop you there. When Officer Fairbanks went out, that was at 1:15 p.m.?

**A.** Yes.

**Q.** How long after he made the transaction with Vega was the search warrant executed?

**A.** 1:25 p.m.

**Q.** So just ten minutes later?

**A.** Yes.

**Q.** Okay. You can continue.

The defendant was in the property?

**A.** He was in the property. He was arrested by Officer Gibson in my presence. He sat the defendant down for a second while we secured everybody else. Then he stood the defendant up, and recovered from the defendant's waistband --

MR. O'RIORDAN: Objection to what was recovered, your Honor.

**THE COURT**: Unless you saw it.

**THE WITNESS**: It was in my presence.

**THE COURT**: I'll allow it.

**THE WITNESS**: From his waistband was recovered a .38 caliber revolver with four live rounds with a serial number of 312155. I later placed that on Property Receipt No. 2997724.

Officer Donahue did arrest Vega out front of the property. And he recovered the $40 prerecorded buy money off him that was used in the purchase by Officer Fairbanks, and also $40 United States currency off of him, which was placed on Property Receipt 2997723.

Confiscated from the rear shed area of 3202 North Fairhill was a total of 100 packets. They were in four different bundles of the same Ziploc packets with the money symbol, each containing a green weedy substance, alleged marijuana. I did field test them with positive results and placed them on a property receipt.

**BY MS. JONES**:

**Q.** And, Officer McCook, how many CI buys, these types of investigations, have you done in your career?

**A.** Hundreds, probably thousands.

**Q.** And I'm just taking you back to September 21st, 2011, when you first saw this defendant. Using a CI in the past, have you ever seen the types of interactions that the CI had with this defendant?

**A.** Yes. Where one person would be the person accepting the money, yes.

**Q.** And had those transactions resulted in positive results for narcotics?

**A.** Yes.

**Q.** About how many times would you say?

**A.** Hundreds of times.

**Q.** And how long have you been a Philadelphia Police Officer?

**A.** Eighteen years.

**Q.** And how long have you worked with the Field Unit?

**A.** I've worked in the Field Unit for the last 13 years, 12 or 13 years. But I've always been in the East Division.

**Q.** Can you describe what the Field Unit does?

**A.** Yes. We conduct undercover buys. We execute search and seizure warrants on houses that are selling and holding and storing narcotics.

**Q.** So you work just with narcotics, right?

**A.** Yes. We work undercover. We're working in an undercover capacity in the Narcotics Unit.

**Q.** Can you describe the neighborhood of 3200 North Fairhill?

**A.** It's a residential area with some abandoned houses and some abandoned lots and some houses that are lived in.

**Q.** If you know, what is the crime like around that area?

**A.** It's a high crime, high drug area.

**Q.** And when you were watching this defendant interact with the CI, what is it that you believed you were seeing?

**A.** A narcotics transaction.

**MS. JONES**: Thank you. I have no further questions for the officer.

BY MR. O'RIORDAN:

**Q.** Good afternoon, Officer.

**A.** Good afternoon.

**Q.** Officer, for the moment, I'd like to talk about September 21st of 2011. You stated that you were on the other side of Allegheny Avenue?

**A.** Yes.

**Q.** Were you on the sidewalk?

**A.** No. I was on the street, parked. I was parked, I guess, kind of -- across the street, the 3200 block, like I said, dead ends on Allegheny. I was right at the end of Allegheny but across the street. Right at the end of Fairhill but across the street in a parking spot.

**Q.** So were you in a position where Fairhill would run right into your position, or were you closer to 5th Street or closer to 6th Street?

**A.** I guess perpendicular, I would say.

**Q.** Okay. So if we were heading down Fairhill, we would have walked right into you?

**A.** Yes.

**Q.** And 3200 North Fairhill, it's a one-way street?

**A.** Yes. I can't remember if -- I can't remember if it's south. Yes. It's south, one-way running south.

**Q.** So it heads towards Allegheny?

**A.** Yes.

**Q.** It's one lane for driving on Fairhill?

**A.** Yeah, and one lane for parking.

**Q.** And is the parking on the even-numbered side or the odd-numbered side?

**A.** I believe on the odd-numbered side.

**Q.** That would be across the street from 3202?

**A.** Yes.

**Q.** On September 21st, of 2011, how long did your surveillance last?

**A.** Maybe 15 minutes, if that. Not even that, maybe 10 minutes.

**Q.** Okay. So the CI engages in this interaction. After the interaction was over, did the CI just come right back to you?

**A.** He came back, first, to Officer Morales, who was on foot, and then back to our car, yes.

**Q.** And how far away from you was Officer Morales?

**A.** He was on the corner of 6th and Allegheny.

**Q.** So half a block away from you?

**A.** Yes.

**Q.** So the CI leaves from the front of 3202, goes to Officer Morales, and then the CI goes from Officer Morales to you?

**A.** Yeah. I pulled off a little bit, and then, yes.

**Q.** On the 21st, is that the only interaction that the CI had with either Mr. Vega or Mr. Young?

**A.** That I observed, yes. I don't know -- I'm not sure about the next day, but there was a transaction. I'm not sure if it was with Vega or not.

**Q.** Okay. Now, on September 23rd, which is the day you executed the search warrant, at some point, I believe you said you saw Mr. Young out on the street?

**A.** When I was first out there doing the surveillance, yes.

**Q.** And were you observing from the same position you were on the 21st?

**A.** Yes, I was.

**Q.** How much time did Mr. Young -- strike that. How much time did you see Mr. Young on the street on the 23rd?

**A.** For the period while Officer Fairbanks was out there, maybe less than five minutes. Then I left that location. I met up with the other officers to get ready to execute, to brief them on the execution of the search warrant. And then we went back, and he wasn't out front at the time I went back.

**Q.** On the 23rd, were you part of the team

**A.** Yes.

**Q.** Were you the first person in the door?

**A.** No, I was not.

**Q.** Do you know what position you were?

**A.** I was towards the rear.

**Q.** But there were where was Mr. Young?

Was he immediately inside the door? Was he in the kitchen?

**A.** He was in the living room area. It's a real small property. There's maybe the kitchen and then the living room. But it's really small.

**Q.** Was Mr. Young in the very first room when you entered?

**A.** Yes.

**Q.** At the time that Officer Gibson arrested him, was he standing or sitting?

**A.** He was standing, and then he was sat down. And then he was brought back up, and then that's when he was patted down.

**Q.** Okay. How quickly after you entered 3202 did Officer Gibson seize Mr. Young?

**A.** Just as I was going inside.

**Q.** Okay.

MR. O'RIORDAN: Thank you, Officer.

That's all I have, your Honor.

**THE COURT**: Commonwealth.

**MS. JONES**: Just one question.

**BY MS. JONES**:

**Q.** Officer, to your knowledge, did this defendant live at that property of 3202?

**A.** I don't believe so. I don't recall.

**Q.** Did you fill out the 229 in this matter?

**A.** I don't know if I did.

**Q.** If I showed you, would you know your own handwriting?

**A.** Yes. That's not my writing.

**Q.** Do you know who filled this out?

**A.** I believe that's Officer Donahue, but I can't be 100 percent.

**Ms. Jones**: Very well. Thank you. I have no further questions.

**The Court**: Thank you, Officer.

**Ms. Jones**: Your Honor, the Commonwealth has no other witnesses for the motion to suppress.

MR. O'RIORDAN: No evidence, but I do have argument, your Honor.

**THE COURT**: Okay.

MR. O'RIORDAN: Regarding the lack of probable cause, your Honor, the police had no probable cause to arrest Mr. Young on September 23rd. Probable cause is said to exist when the facts and circumstances within the knowledge of the arresting officer warrants a man of reasonable caution to believe that the person to be arrested has committed the offense.

There was no evidence presented that Officer Gibson had any knowledge about what Mr. Young may have done. And such knowledge cannot be inferred from the evidence presented. There is nothing to show that anyone spoke to Officer Gibson and told him what they had seen on the 21st.

The evidence presented here today was simply that they executed a search warrant, that Officer Gibson went in and arrest him, your Honor. Even if Officer Gibson did have knowledge, I submit that the facts, as presented, do not establish probable cause. Because what you have here from Officer McCook is that two days before Mr. Young was arrested, a CI handed him money, and he then handed that money off to Mr. Vega. And Mr. Young was standing on the street in a high crime area.

That's pretty much all the evidence they have against Mr. Young. Now, we have case law in Pennsylvania that holds, essentially, that an exchange of money for unknown objects does not support reasonable suspicion or probable cause.

Here, you don't really have an exchange involving Mr. Young. You have somebody handing him money and him handing money to somebody else, and that's it. There is nothing to show that Mr. Young knew what Mr. Vega was going to do after he handed him the money. There is no content of any conversations

between Mr. Young and Mr. Vega, or the CI and Mr. Vega or Mr. Young.

In addition, your Honor, at the time the execution of the search warrant, there was no reasonable suspicion to believe that Mr. Young was presently armed and dangerous. Even during the execution of a search warrant, in order to do a Terry frisk, police still need facts to show that a person they search is presently armed and dangerous.

There is nothing presented here to show that Mr. Young was presently armed and dangerous when Officer Gibson seized him. Officer McCook testified that he went into 3202, and I don't know if he said immediately or quickly, but it was soon after he entered that Officer Gibson had seized Mr. Young.

There was nothing to show a suspicious bulge. Nobody said the word "gun." Nobody before the 23rd had seen Mr. Young handling a gun. There was no information from the CI saying, Hey, I went up and handed that guy money, and I saw a gun in his pocket. Essentially, your Honor, there is no evidence that was presented before this Court today to support any legal reason to have searched Mr. Young on September 23rd.

**THE COURT**: Don't you believe, Counsel, that when someone is entering a house, a police officer, with a search warrant for drugs, when they believe a drug operation is ongoing inside this house and a magistrate has approved it, and they go there with this search warrant, don't you believe they have the right to search everyone therein, at least for their own safety if not otherwise?

Do they need anything other than the warrant, itself, if there are people in the house?

Because they are in absolute danger of their lives once they open the door?

MR. O'RIORDAN: Well, they are not in danger simply by executing a search warrant, your Honor. And I believe that very position that your Honor has stated has been rejected by Pennsylvania courts. And I don't believe I have a copy of this case. I apologize, but I will provide it if you request it.

It is In Re: J.V., which is at 762 A.2d 376. It's a Pennsylvania Superior Court holding that mere presence on the premises during execution of a search warrant is insufficient grounds, in and of itself, for a protective pat-down.

**THE COURT**: But he's a suspect. I mean, the knowledge of one is imputed to all on that scene that day, all the ones who are executing the search warrant.

I don't have the search warrant. It wasn't entered into evidence. But I would assume that they noted that there were people who were involved on 9/21, 9/22, and 9/23. He's there on 9/21 and 9/23.

MR. O'RIORDAN: That would be an argument for mere presence, your Honor, an argument that the Pennsylvania Superior Court rejected.

**THE COURT**: Mere presence is something different. Mere presence is the daughter-in-law who just came in from Iowa and is in the house when they are executing the search warrant. This is an actual subject or suspect. He's involved in this drug operation.

MR. O'RIORDAN: He is a suspect of the police, but that does not mean that there is, legally, reasonable suspicion to search him at the time. If there were probable cause, in addition to a search warrant, they could have had an arrest warrant executed for him, which would obviate my entire motion, your Honor.

**THE COURT**: How about if he were on the street on 9/23, and they made the bust right there on the street with no search warrant. He's been seen before. He's back to the scene of the crime again.

When they go back, would they have reasonable suspicion to search him if there is another drug deal that goes down?

MR. O'RIORDAN: No. Because that would be presuming the "guns follow drugs" argument, which the Pennsylvania courts have also repeatedly rejected, your Honor.

Again, what we have is, he's there. And somebody handed him money, and he handed it off.

**THE COURT**: Well, we have testimony in this, which I have no reason to disbelieve, that that's a drug deal. He's seen them before hundreds of times.

MR. O'RIORDAN: I'm not asking you to disbelieve what Officer McCook said. But I'm saying that it's legally insufficient to support constitutional grounds to search this man two days later. It's not the case –

**THE COURT**: Well, he was there on the 23rd.

MR. O'RIORDAN: Right. He's there. But that's it. It's not a case where the CI handed Mr. Young money, and Mr. Young reached into his pocket and handed out objects and then the CI went back. All we have regarding Mr. Young on the 21st is that the CI handed

him money. Mr. Young handed it off to somebody else, and then that somebody else went and did stuff. That's the extent of Mr. Young's interaction. Beyond that, he is literally merely present, your Honor.

There was no reason, at any point, through any of these three days, to think that he was armed or dangerous at any time. And even during the execution of the search warrant, you cannot simply go in and search anyone, despite, you know, a danger that you might feel. You can't simply go in and search anyone. You need to have specific reasonable suspicion to believe that that person is presently armed and dangerous before you search him.

And there was nothing presented by the Commonwealth today to show that Officer Gibson had that. There was nothing. Officer Gibson is the guy who placed him under arrest. Officer Gibson is the guy who searched him. There was nothing to show Officer Gibson's state of mind except that he helped execute a search warrant on the 23rd.

**THE COURT**: Okay. I understand your argument.

MR. O'RIORDAN: Thank you, your Honor.

**MS. JONES**: Your Honor, it's the arresting authority that has to have this knowledge. And this is the Narcotics Field Unit. They do ongoing investigations of narcotics. This was an investigation that took three days. This defendant, as the Court has already noted, was out there the first day. He was also out there the third day. Of course, he wasn't arrested the first day. This is an ongoing investigation over multiple days.

In addition, it's about what the arresting authority, based on an experienced police officer -- I did get his

experience on the record. Based on his hundreds of arrests, he has seen similar situations. He's gotten positive results for drugs. And this defendant was certainly involved in this narcotics transaction.

Conspiracy is charged in this matter. And I absolutely agree with the Court that even if this defendant hadn't been seen, if police officers are going into a property executing a search warrant where they believe narcotics are being sold, they have every right to make sure that their safety is not in jeopardy. They can search everyone.

However, it's the Commonwealth's position that they already had reasonable suspicion that this defendant was out there selling narcotics based on an experienced officer's observations two days prior and the fact that this defendant was out there again with the same person that he was involved with the conspiracy two days prior.

I think there is more than enough for the police to have searched him for their own safety as well as based on the reasonable suspicion that he was selling marijuana along with Vega.

**THE COURT**: Okay. I agree with the Commonwealth. I think I've stated my reasons on the record, that what is in the mind of the observer is imputed to that of all those who served the warrant. With the warrant, there was enough to search this defendant. Even if they were searching for dope and they happened to find guns, it was a search incident to something that was found reasonable by a magistrate for them to go in there, and it was reasonable for them to go in there based on what they saw. The defendant was in there, and he got searched. I believe it is different from the mere presence piece.

So I will deny the motion to suppress.