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September 17, 2025

Chief Collin Smith
Spearfish Police Department
225 W. Illinois Street
Spearfish, SD 57783-2311

OFFICIAL OPINION 25-03

Re: Official Opinion Concerning Law Enforcement Jurisdictional Arrest
Authority

Dear Chief Smith,

In your capacity as Chief of Police for the City of Spearfish Police Department, you have requested an official opinion from the Attorney General's Office on the following questions:

QUESTION(S):

1. Does the collective knowledge doctrine apply to provide a law enforcement agency authority to make an arrest when probable cause for the arrest was established in another jurisdiction?
2. Is there an extension of jurisdictional arrest authority when a mandatory arrest offense is committed in a separate jurisdiction?
3. If arrest authority does not exist for a law enforcement agency to make an arrest outside its jurisdiction, do law enforcement officers of the jurisdiction where the arrest is attempted have a duty to intervene to prevent an unlawful arrest?

ANSWER(S):

1. Yes, the collective knowledge doctrine allows municipal law enforcement officers to rely on the probable cause determinations of other officers, whether from the same agency or different jurisdictions, to make arrests or conduct investigatory stops.¹
2. No, a municipal law enforcement agency's jurisdictional arrest authority does not generally extend outside its territorial limits, even in circumstances permitting warrantless arrests, except for citizens arrests.
3. No, municipal law enforcement officers generally do not have a duty to intervene to prevent an arrest made in its jurisdiction by an outside law enforcement agency because of the exception noted above, although the facts of every circumstance will differ.

FACTS:

Recently, two incidents occurred in Spearfish involving neighboring law enforcement agencies requesting and conducting custodial arrests in Spearfish, outside their jurisdictions or the jurisdiction where probable cause for arrest originated.

In the first example a police department sent out an "attempt to locate" (ATL) bulletin for a simple assault-domestic violence suspect. In the call they directed law enforcement agencies to arrest the suspect on their behalf if contact was made. You informed this police department that your department could not take a suspect into custody without a warrant. Their Chief of Police indicated his belief that you could effectuate such an arrest without a warrant because of the ATL issued by the original jurisdiction.

The second example you provided involved a situation where a neighboring municipality's police department, in a separate county, put out a vehicle "be on the lookout" (BOLO) notice after a simple assault suspect had fled their county. A Lawrence County Sheriff's deputy identified the vehicle at a location within the City of Spearfish. The neighboring police department was notified and, after arriving on the scene, arrested the suspect and transported him back to

¹ Your request for an official opinion also asked if "hot pursuit" applies to this question. The hot pursuit doctrine, grounded in the exigent circumstances exception to the Fourth Amendment's warrant requirement, allows law enforcement officers to enter a residence or other private property without a warrant while actively pursuing a fleeing suspect. This doctrine does not apply to the facts presented in your request.

their jurisdiction without consulting your officers who were also already on the scene. The neighboring police department claimed the collective knowledge doctrine gave them authority to effect the arrest outside their jurisdiction. They also asserted they had probable cause for a mandatory arrest.

IN RE QUESTION 1:

You have asked whether the collective knowledge doctrine applies to the first fact scenario to provide local law enforcement officers the authority to make an arrest when probable cause was established in an outside jurisdiction.

“The Fourth Amendment of the United States Constitution protects against unreasonable searches and seizures and is implicated when a vehicle is stopped.” *State v. Hodges*, 2001 S.D. 93, ¶ 11, 631 N.W.2d 206, 209 (quoting *State v. Vento*, 1999 S.D. 158, ¶ 18, 604 N.W.2d 468, 470). To stop a vehicle, law enforcement must have reasonable suspicion based on specific and articulable facts that its occupants are involved in criminal activity. *State v. Kenyon*, 2002 S.D. 111, ¶ 14, 651 N.W.2d 269, 273. A stop of a vehicle is a seizure of all its occupants so even a passenger has standing to challenge the stop. *State v. Krebs*, 504 N.W.2d 580, 584 (S.D. 1993) (citing *United States v. Erwin*, 875 F.2d 268, 270 (10th Cir. 1989)).

In South Dakota, “[l]aw enforcement personnel are allowed to rely upon information conveyed by one officer to another for determinations of probable cause and reasonable suspicion through the collective knowledge doctrine.” *State v. Mohr*, 2013 S.D. 94, ¶ 18, 841 N.W.2d 440, 445 (citing *State v. Richards*, 1998 S.D. 128, ¶ 15, 588 N.W.2d 594, 597). “The collective knowledge doctrine is designed to allow law enforcement personnel from the same agency, or from different jurisdictions, to rely on the probable cause determinations of one another in order to apprehend specific suspects.” *Richards*, 1998 S.D. 128, ¶ 15, 588 N.W.2d at 597 (citing *Maltby v. Winston*, 36 F.3d 548, 564 n.26 (7th Cir. 1994), *cert. denied*, 515 U.S. 1141, 115 S.Ct. 2576, 132 L.Ed.2d 827 (1995)). Thus, the collective knowledge doctrine allows local law enforcement officers to arrest an individual if probable cause was established in an outside jurisdiction.

Like many other states, “South Dakota has recognized the necessity of law enforcement relying upon each other for determinations of reasonable suspicion and probable cause through the collective knowledge doctrine.” *Richards*, 1998 S.D. 128, ¶ 15, 588 N.W.2d at 597 (citing *Krebs*, 504 N.W.2d at 586; *State v. Baysinger*, 470 N.W.2d 840, 845 (1991); and *State v. Czmowski*, 393 N.W.2d 72, 73 (1986)). In these circumstances, “whether or not probable

cause or reasonable suspicion exists is determined by considering the information possessed by the requesting officer.” *Richards*, 1998 S.D. 128, ¶ 18, 588 N.W.2d at 597. Of particular concern is the communication between agencies. Case law in South Dakota suggests the actual facts underlying the analysis of reasonable suspicion or probable cause be communicated to the acting officer prior to the stop, frisk, search, or arrest. See *Mohr*, 2013 S.D. 94, ¶ 18, 841 N.W.2d at 445; *Richards*, 1998 S.D. 128, ¶ 18, 588 N.W.2d at 597; and *Commonwealth v. Privette*, 491 Mass. 501, 509, 204 N.E.3d 967, 976 (2023) (comparing various requirements for inter-agency communication).

Police bulletins such as ATLS or BOLOs are likely sufficient to justify reasonable suspicion for minimally intrusive stops. *Krebs*, 504 N.W.2d at 585. See also *United States v. Hensley*, 469 U.S. 221 (1985) (upholding a *Terry* stop based on reasonable suspicion where officers relied on police-issued bulletins describing the suspect). But each situation is different. In fact, the South Dakota Supreme Court has found no authority specifying any “specific quantum of information justifying a stop” that “must be relayed to the stopping officer before the stop is upheld.” *Richards*, 1998 S.D. 128, ¶ 18, 588 N.W.2d at 597. “In assessing police justifications for arrests or intrusions of a type less offensive than full arrests, we take an objective view of all the facts and may evaluate the knowledge of all the officers collectively.” *Richards*, 1998 S.D. 128, ¶ 16, 588 N.W.2d at 597 (quoting *Czmowski*, 393 N.W.2d at 73) (other citations omitted).

The facts and knowledge of all the officers, from the requesting and arresting jurisdictions, is viewed collectively. *Id.* Each request for apprehension from an outside agency should state the facts underlying the request and whether or not probable cause or reasonable suspicion exists based on the information possessed by the requesting officer.

IN RE QUESTION 2:

You have also asked, relevant to the second fact scenario, whether there is an extension of a municipal law enforcement agency’s jurisdictional authority when a mandatory arrest offense is committed in a separate jurisdiction. This question contemplates SDCL 9-29-1, SDCL 9-29-19, and SDCL 23A-3-2.1.

When interpreting statutes, “the language expressed in the statute is the paramount consideration.” *Olson v. Butte County Comm’n*, 2019 S.D. 13, ¶ 5, 925 N.W.2d 463, 464 (quoting *Goetz v. State*, 2001 S.D. 138, ¶ 15, 636 N.W.2d 675, 681). “When the language in a statute is clear, certain, and unambiguous, there is no reason for construction[.]” *In re Implicated*

Individual, 2021 S.D. 61, ¶ 16, 966 N.W.2d 578, 583 (quoting *Long v. State*, 2017 S.D. 78, ¶ 13, 904 N.W.2d 358, 364). The intent of a statute “must be determined from the statute as a whole, as well as enactments relating to the same subject.” *In re Taliaferro*, 2014 S.D. 82, ¶ 6, 856 N.W.2d 805, 807 (citations omitted). “Where two statutes appear to conflict, it is [the court’s] duty to reasonably interpret both, giving effect, if possible, to all provisions under consideration, construing them together to make them harmonious and workable.” *Faircloth v. Raven Industries, Inc.*, 2000 S.D. 158, ¶ 7, 620 N.W.2d 198, 201 (cleaned up).

Under South Dakota law, municipal law enforcement officers generally lack the authority to make arrests outside their jurisdiction unless explicitly authorized by statute. Broadly, SDCL 9-29-19 grants police officers the following powers:

All policemen of any municipality shall possess the powers of constables. They may pursue and arrest any person fleeing from justice in any part of the state, and when performing the duties aforesaid may arrest and detain any person guilty of any breach of the peace or any violation of the laws of the state or ordinance of the municipality.

But that statute must be read in conjunction with SDCL 9-29-1, which defines a municipal officer’s jurisdictional territory as within one mile of the city limits:

Every municipality shall have power to exercise jurisdiction for all authorized purposes over all territory within the corporate limits and over any public ground or park belonging to the municipality, whether within or without the corporate limits, and in and over all places, except within the corporate limits of another municipality, within one mile of the corporate limits or of any public ground or park belonging to the municipality outside the corporate limits, for the purpose of promoting the health, safety, morals, and general welfare of the community, and of enforcing its ordinances and resolutions relating thereto.

Giving effect to both provisions and reading the language of the statutes explicitly, a municipal police officer’s power to exercise his or her authority forbids doing so “within the corporate limits of another municipality. . .” SDCL 9-29-1. The South Dakota Supreme Court has interpreted these statutes in the same way. If a municipal police officer enters another municipality to arrest a person, it could be an unlawful exercise of extra-territorial jurisdiction explicitly prohibited by SDCL 9-29-1. *State v. Hirsch*, 309 N.W.2d 832, 834 (S.D. 1981). “In the absence of specific statutory authority, it is a well established general principle, in most jurisdictions, that a public police officer

for a particular municipality has no official power to arrest offenders beyond the territorial jurisdiction of the municipality for which he serves.” *Hirsch*, 309 N.W.2d at 834 (quoting *State v. MacDonald*, 260 N.W.2d 626, 627 (S.D. 1977) (footnote omitted)).

In contrast, SDCL 23A-3-2.1 does not relate to territorial jurisdiction—it enumerates circumstances requiring a law enforcement officer to make a warrantless arrest. It says, “a law enforcement officer shall arrest and take into custody. . . any person, without a warrant, at any time that the opportunity presents itself, if the officer has probable cause to believe that” certain circumstances have been met. SDCL 23A-3-2.1.

SDCL 23A-3-2.1 confirms an officer making a valid legal arrest must have probable cause and be aware of certain criteria to make the mandatory arrest. But I find no legal authority suggesting that a mandatory arrest circumstance supersedes the jurisdictional authority explicit in SDCL 9-29-1.

Even so, it is possible that an officer from another jurisdiction could make a citizen’s arrest under the conditions set forth in SDCL 23A-3-3, as any citizen can do. See *MacDonald*, 260 N.W.2d at 627 (holding that when a municipal police officer made an arrest outside of his jurisdiction, “he does have the same power of arrest as that conferred on a private citizen”). Such an arrest must adhere to relevant laws for a citizen’s arrest, including that the offense either occur in the arresting person’s presence or that he has probable cause (see SDCL 23A-3-3), and that the arresting person immediately “take the arrested person before the nearest available committing magistrate or deliver him to the nearest available law enforcement officer.” SDCL 23A-4-1. A law enforcement officer is defined as “any officer . . . of the state or any of its political subdivisions . . . who is responsible for the prevention, detection, or prosecution of crimes, for the enforcement of the criminal or highway traffic laws of the state...” SDCL 22-1-2(22). Thus, it is likely the arresting officer qualifies as an officer legally entitled to take possession of the suspect. See *MacDonald*, 260 N.W.2d at 628 (“[t]he arrest had to meet the requirements of a private citizen arrest; but, once it met those requirements, the Police Chief was qualified and legally entitled to give him the implied consent warning.”)

IN RE QUESTION 3:

Finally, you ask whether local enforcement officers in the jurisdiction where an arrest is attempted have a duty to intervene if an outside law enforcement agency attempts to make an arrest in your jurisdiction.

The answer to your question depends on the facts of each circumstance. All law enforcement officers are generally required to act within the bounds of the law. Under 42 U.S.C. § 1983, either arresting or bystander law enforcement officers may be held liable for depriving individuals of constitutional rights while acting under color of law. For example, an arresting officer may be liable for using excessive force, and a bystander officer may be liable for the failure to intervene when the other officer uses excessive force. The test for whether an officer's conduct violates clearly established statutory or constitutional rights is not one's subjective beliefs, but what a reasonable officer should have known at the time and under those specific circumstances. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). "This objective legal reasonableness standard means the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Hart v. Miller*, 2000 S.D. 53, ¶ 13, 609 N.W.2d 138, 143 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)) (cleaned up).

I find no express duty applicable in all situations requiring you to intervene in these circumstances, particularly considering that any person can make a citizen's arrest as discussed above.

CONCLUSION

The collective knowledge doctrine provides a law enforcement agency authority to arrest an individual when probable cause was established and communicated by law enforcement in another jurisdiction. A municipal law enforcement agency's jurisdictional arrest authority does not generally extend outside its territorial limits, even in circumstances permitting warrantless arrests, except for citizens arrests. Furthermore, there is no express duty to intervene if an outside law enforcement agency attempts an arrest within your jurisdiction, unless it is sufficiently clear that a reasonable officer in that specific situation must intervene to protect a person's constitutional rights. In the event there is a desire to extend jurisdictional authority, the legislature has the power to change statutes regarding jurisdictional authority for mandatory arrest offenses or arrests outside of a jurisdiction.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/SLT/dd