

RECEIVED

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

12-16-2015

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2015 AP 1965

State of Wisconsin,

Plaintiff-Respondent,

v.

Darren Wade Caster,

Defendant-Appellant.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

An appeal of a judgment by the Saint Croix County Circuit Court,
Honorable Scott R. Needham, presiding.
Trial court case no. 14 CT 183.

NELSON & LINDQUIST, S.C.

BY: Andrew M. Nelson

State Bar No. 1061508

600 Third Street

Hudson, Wisconsin 54016

(715) 381-8270

Attorney for Appellant Darren Wade Caster

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

STATEMENT OF ISSUE PRESENTED FOR REVIEW 3

STATEMENT ON ORAL ARGUMENT AND PUBLICATION..... 3

STATEMENT OF THE CASE AND FACTS 4

SUMMARY OF ARGUMENT 5

STANDARD OF REVIEW 6

APPELLATE ARGUMENT 6

 I. DID THE CIRCUIT COURT ERR WHEN IT HELD THAT
 NEW RICHMOND POLICE OFFICER CARLOS DE LA CRUZ
 ACTED WITH LAWFUL AUTHORITY WHEN HE STOPPED AND
 ULTIMATELY ARRESTED MR CASTER OUTSIDE THE CITY
 LIMITS OF NEW RICHMOND, WISCONSIN?..... 6

 A. OFFICER DE LA CRUZ WAS NOT ACTING IN HIS
 OFFICIAL CAPACITY PURSUANT TO WIS. STATS.
 175.40(2) BECAUSE HE WAS NOT ENGAGED IN
 FRESH PURSUIT WHEN HE LEFT HIS JURISDICTION..... 6

CONCLUSION 10

CERTIFICATION 12

APPENDIX 13

TABLE OF AUTHORITIES

Wisconsin Supreme Court Cases

Minuteman, Inc. v. Alexander, 147 Wis.2d 842, 853 (1989)..... 6

Court of Appeals Cases

State v. Slawek, 114 Wis.2d 332 (Ct. App. 1983) 5, 7

City of Brookfield v. Collar, 148 Wis.2d 839 (Ct. App. 1989)..... 6, 8

State v. Haynes, 248 Wis.2d 724 (Ct. App. 2001)..... 5, 8, 9

State v. Barrett, 96 Wis.2d 174 (1980)..... 7

Statutes

Wis. Stat. § 175.40.....2, 5-7, 9

Wis. Stats. §346.63(1)a and b..... 4

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Did the circuit court err when it held that New Richmond Police Officer Carlos de la Cruz acted with lawful authority when he stopped and ultimately arrested Mr. Caster outside the city limits of New Richmond, Wisconsin?

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The defendant-appellant is not requesting oral argument or publication.

STATEMENT OF THE CASE AND FACTS

Darren Caster was charged by criminal complaint in this matter with two counts, alleging violations of Wis. Stats. §346.63(1)a and b, respectfully. (R. 4:1). Mr. Caster brought a motion to suppress and/or dismiss the complaint against him, claiming that at the time the officer initiated the traffic stop, he did so without lawful authority. (R. 7). The circuit court denied the motion, Mr. Caster plead guilty to OWI, 2nd and was sentenced accordingly. (R. 11, 15). This appeal followed.

The complaint and testimony provided by Officer de la Cruz states that on Friday, June 27, 2014, Officer de la Cruz, of the New Richmond, WI Police Department was on duty, conducting stationary radar checks on County HWY A within the city limits of New Richmond. (R. 26:4, 6). Officer de la Cruz obtained a speed reading on Mr. Caster's Jeep of 39 MPH in a 45 MPH zone and then observed the Jeep move over the fog line and quickly back into his lane of traffic. (R. 26:7). Officer de la Cruz approximated the location to be just prior to or just past a cross street identified as 174th Ave. The officer could not recall or could not tell if he saw the vehicle move right over the fog line either before or after 174th Ave. (R. 26:7, 13).

In any event, Officer de la Cruz exited his location in order to more closely observe Mr. Caster's Jeep. The officer observed the Jeep weave within its lane, as they approached West Richmond Way. (R. 26:8). The city limits of New Richmond end shortly after West Richmond Way. Officer de la Cruz did not conduct, nor did he

attempt to initiate a traffic stop within the City of New Richmond, as he did not have the requisite reasonable suspicion to do so. (R. 26:8, 12, 15). Specifically, Officer de la Cruz testified “that the reasonable suspicion in order to actually stop, it wasn’t totally in the City of New Richmond...[i]f he would have crossed the center line in the city, I would have been comfortable with that to stop him, but I did not”. (R. 26:12).

Nevertheless, the officer continued to follow Mr. Caster out of the City of New Richmond limits, where he observed Mr. Caster’s Jeep cross the center line, as it went around two curves. (R. 26:9-10). After seeing the Jeep cross the center line, outside of the City of New Richmond, Officer de la Cruz initiated a traffic stop and Mr. Caster pulled over to the side of the road. *Id.* Mr. Caster was subsequently arrested, brought a motion to dismiss and/or suppress the stop, plead guilty to OWI (2) after the court denied his motion, was sentenced and this appeal followed.

SUMMARY OF ARGUMENT

In Wisconsin, police officers do not have authority to act outside of the political subdivision in which they are officers and lack official power to arrest. See *State v. Haynes*, 248 Wis.2d 724 (Ct. App. 2001) and *State v. Slawek*, 114 Wis.2d 332 (Ct. App. 1983). The exception to this rule is Wis. Stats. §175.40(2), which allows a police officer to follow a person anywhere in the state, so long as

they are engaged in “fresh pursuit”. In order to be engaged in “fresh pursuit”, however, there must be a “commission of an offense” for which the officer is actually pursuing the defendant for, otherwise, the officer is not in pursuit, he or she is simply observing. In the present case, Mr. Caster committed no such offense within the boundaries of the City of New Richmond, WI and Officer de la Cruz was not pursuing him when they left the jurisdiction of New Richmond.

STANDARD OF REVIEW

The application of a statute to a particular set of facts presents a question of law that the Court of Appeals should review *de novo* and without deference to the trial court. *City of Brookfield v. Collar*, 148 Wis.2d 839, 841 (Ct. App. 1989) and *Minuteman, Inc. v. Alexander*, 147 Wis.2d 842, 853 (1989).

APPELLATE ARGUMENT

I. THE CIRCUIT COURT ERRED WHEN IT HELD THAT NEW RICHMOND POLICE OFFICER CARLOS DE LA CRUZ ACTED WITH LAWFUL AUTHORITY WHEN HE STOPPED AND ULTIMATELY ARRESTED MR CASTER OUTSIDE THE CITY LIMITS OF NEW RICHMOND, WISCONSIN.

A. OFFICER DE LA CRUZ WAS NOT ACTING IN HIS OFFICIAL CAPACITY PURSUANT TO WIS. STATS. 175.40(2) BECAUSE HE WAS NOT ENGAGED IN FRESH PURSUIT WHEN HE LEFT HIS JURISDICTION

Officer de la Cruz, having driven out of his jurisdiction in order to continue to observe Mr. Caster drive along Hwy A, was not acting in his official capacity as a

police officer when he decided to initiate a pursuit and eventually stop Mr. Caster outside the city limits of New Richmond, Wisconsin. The geographic location of a police officer within the State of Wisconsin can determine whether or not he or she is acting within his or her official capacity and with lawful authority. *State v. Barrett*, 96 Wis.2d 174, 181 (1980). The general rule in Wisconsin is that police officers acting outside their jurisdiction do not act in their official capacities and do not have any official power to arrest. *State v. Slawek*, 114 Wis.2d 332, 335 (Ct. App. 1983).

The exception to this rule is codified in Wis. Stats. §175.40(2), which states:

For purposes of civil and criminal liability, any peace officer may, when in fresh pursuit, follow anywhere in the state and arrest any person for the violation of any law or ordinance the officer is authorized to enforce.

Id.

Wisconsin has further established a three part test to determine when, in fact, an officer was engaged in “fresh pursuit” under Wis. Stats. §175.40(2):

First, the officer must act without unnecessary delay. Second, the pursuit must be continuous and uninterrupted, but there need not be continuous surveillance of the suspect. Finally, the relationship in time between the *commission of the offense*, the commencement of the pursuit, and the apprehension of the suspect is important. The greater the length of time, the less likely it is that the circumstances under which the police act are sufficiently exigent to justify an extrajurisdictional arrest.

City of Brookfield v. Collar, 148 Wis. 2d 839, 842-43 (Ct. App. 1989), emphasis added; see also *State v. Haynes*, 248 Wis.2d 724 (Ct. App. 2001). The court in the

present case erred when it found Officer de la Cruz was engaged in fresh pursuit, after applying this three part test.

In the present case, the Circuit Court states the following in its decision:

In *Haynes*, the court held that the officer was acting in fresh pursuit, and thus had authority to conduct an extrajurisdictional arrest when: (1) there did not appear to be any delay between the *traffic violation* and the officer's decision to act because the officer immediately activated his emergency lights and siren; (2) the officer's pursuit of the defendant was continuous and uninterrupted; and (3) the period of time between the *violation*, the start of the pursuit and the defendant's apprehension was very short and only lasted for a few miles.

(R. 11:3-4), emphasis added. The Court then goes on to decide that in applying the factors outlined above from *Haynes*, in the present case, Officer de la Cruz was engaged in fresh pursuit. *Id.* It is clear that in both *Collar* and *Haynes*, that the commission of an offense or a traffic violation that occurs *within the officer's jurisdiction* is what gives rise to the intent to stop the suspect vehicle and is the determinate factor for a finding of fresh pursuit under the statute.

Mr. Castor's situation is completely distinguishable from the circumstances in *Collar* and *Haynes* because Officer de la Cruz did not form the intent to stop Mr. Caster within the jurisdiction of the City of New Richmond. As Officer Cruz testified on both direct and cross examination, he lacked the necessary reasonable suspicion of a commission of an offense or a traffic violation within the city limits to initiate a traffic stop. (R. 26:8, 12,15). Without the intent to stop developed and established within the New Richmond city limits, there was no fresh pursuit of Mr. Castor. If no

intent was formed to stop him in the City, the officer was merely engaged in observation of Mr. Castor's Jeep. The intent to stop and the actual violations that gave rise to that intent occurred *outside* Officer de la Cruz' jurisdiction. Since he was not engaged in fresh pursuit at the time, there was no lawful authority to stop Mr. Caster.

Since *Haynes* was decided in 2001, a number of additional cases were decided by the Wisconsin Court of Appeals regarding this issue of fresh pursuit. In every one of these cases, the alleged violation observed by law enforcement or by citizen eyewitnesses occurred *within the home jurisdiction* of the officer conducting the traffic stop. (R. 9:3-4). The extrajurisdictional arrests were only upheld in these cases under the doctrine of fresh pursuit found in Wis. Stats. 175.40(2) because the commission of the offense or the traffic violation giving rise to the intent to stop occurred within the officer's home jurisdiction. In the present case, while in a stationary position, the officer observed a Jeep traveling below the posted speed limit and allegedly cross the fog line and quickly move back into his lane of traffic. Upon following the Jeep, the offer observed the vehicle weave within a single lane of traffic. These are the only actions the officer confirmed to have occurred within the jurisdiction of the City of New Richmond. All other observations of any alleged traffic offenses occurred outside the city limits. The observations made by the officer,

as he specifically testified to, did not give rise to the reasonable suspicion necessary to stop Mr. Caster within the city limits of New Richmond.

CONCLUSION

Police officers who act outside of the political subdivision in which they are officers lack official power to arrest, unless they are engaged in fresh pursuit of a suspect at the time they leave their jurisdiction. In order to be engaged in fresh pursuit the officer must have formed the intent to stop the suspect based on the commission of an offense or a traffic violation observed or otherwise committed within that officer's home jurisdiction. Since Mr. Castor committed no such offense or traffic violation necessary to give rise to the intent to stop him within the city limits of New Richmond, Officer de la Cruz was not engaged in fresh pursuit. Since he was not engaged in fresh pursuit, there was no lawful authority for the officer to stop Mr. Caster nearly a mile outside the city limits.

Mr. Castor respectfully requests that this honorable Court enter an order directing that the Circuit Court properly suppress any evidence obtained as a result of his unlawful stop and arrest.

Dated: _____ December 16, 2015 _____

NELSON & LINDQUIST, S.C.
Attorneys for defendant-appellant

Electronically signed by Andrew M. Nelson
BY: Andrew M. Nelson
State Bar No. 1061508

Address
600 Third Street
Hudson, WI 54016
(715) 381-8270

CERTIFICATIONS

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c), Stats., for a brief produced using a proportional serif font: 10 characters per inch; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides. The length of this brief is 2,171 words.

I further certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of section 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

I further certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix (if one is attached or filed) that complies with s. 809.19(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated: _____

NELSON & LINDQUIST, S.C.
Attorneys for defendant-appellant

BY: Andrew M. Nelson
State Bar No. 1050236