

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III
Appeal No. 2015AP1965

RECEIVED
02-01-2016
CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DARREN WADE CASTER,

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING
CASTER'S MOTION, ENTERED IN THE CIRCUIT
COURT FOR ST. CROIX COUNTY, HONORABLE
SCOTT R. NEEDHAM, PRESIDING

PLAINTIFF-RESPONDENT'S BRIEF

Matthew L. Hartung
State Bar No. 1089951

Attorney for Plaintiff-Respondent

Office of the District Attorney
St. Croix County
1101 Carmichael Road
Hudson, WI 54016

TABLE OF CONTENTS

| | Page |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| TABLE OF AUTHORITIES | iii |
| STATEMENT OF THE ISSUE..... | 1 |
| STATEMENT ON ORAL ARGUMENT AND PUBLICATION | 1 |
| STATEMENT OF THE CASE..... | 2 |
| SUMMARY OF ARGUMENT | 4 |
| STANDARD OF REVIEW | 4 |
| ARGUMENT..... | 5 |
| I. CASTER’S UNSAFE DRIVING BEHAVIOR PROVIDED OFFICER DE LA CRUZ WITH REASONABLE SUSPICION THAT CASTER HAD COMMITTED AND WOULD CONTINUE TO COMMIT TRAFFIC OFFENSES, THUS DE LA CRUZ WAS AUTHORIZED TO FOLLOW AND STOP CASTER OUTSIDE OF NEW RICHMOND UNDER THE PURVIEW OF “FRESH PURSUIT”..... | 5 |
| a. First, Officer de la Cruz had reasonable suspicion to believe Caster committed or would commit traffic violations based upon Caster’s erratic driving behavior in New Richmond and near the city and county border | 5 |
| b. Second, because Officer de la Cruz had reasonable suspicion, he was authorized to continue in “fresh pursuit” of Caster given Caster’s inability to safely operate his vehicle and the threat Caster posed to the public. | 6 |

II. IF THIS COURT FINDS THAT OFFICER DE LA CRUZ WAS NOT ACTING IN “FRESH PURSUIT,” SUPPRESSION OF EVIDENCE IS NOT A PROPER REMEDY AS CASTER HAS NOT CLAIMED A CONSTITUTIONAL VIOLATION NOR A VIOLATION OF A STATUTE THAT REQUIRES SUPPRESSION9

CONCLUSION.....9

CERTIFICATION AS TO FORM AND LENGTH.....11

CERTIFICATE OF COMPLIANCE WITH
RULE 809.12(13)12

CERTIFICATE OF MAILING.....13

TABLE OF AUTHORITIES

CASES:

| | Page |
|------------------------------------------------------------------------------------------------|------|
| <i>Berkemer v. McCarty</i> , 468 U.S. 420 (1984) | 5 |
| <i>Brigham City, Utah v. Stuart</i> , 547 U.S. 398 (2006) | 6 |
| <i>City of Brookfield v. Collar</i> , 148 Wis. 2d 839, 436 N.W.2d 911 (Ct. App. 1989) | 7 |
| <i>Ohio v. Robinette</i> , 519 U.S. 33 (1996) | 6 |
| <i>Scott v. United States</i> , 436 U.S. 128 (1978) | 6 |
| <i>State v. Baudhuin</i> , 141 Wis. 2d 642, 416 N.W.2d 60 (1987) | 6 |
| <i>State v. Gaulrapp</i> , 207 Wis. 2d 600, 558 N.W.2d 696 (Ct. App. 1996) | 5, 6 |
| <i>State v. Haynes</i> , 2001 WI App 266, 248 Wis. 2d 724, 638 N.W.2d 82..... | 7 |
| <i>State v. Keith</i> , 203 WI App 47, 260 Wis. 2d 592, 659 N.W.2d 403..... | 9 |
| <i>State v. Kittlistad</i> , 231 Wis. 2d 245, 603 N.W.2d 732..... | 8 |

| | |
|------------------------------------------------------------------------------------|------------|
| <i>State v. Popke</i> , 2009 WI 37, 317 Wis. 2d 118, 765 N.W.2d 569..... | 6 |
| <i>State v. Post</i> , 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634..... | 5 |
| <i>State v. Swalek</i> , 114 Wis. 2d 332, 338 N.W.2d 120 (Ct. App. 1983) | 6 |
| <i>State v. Sykes</i> , 2005 WI 48, 279 Wis. 2d 742, 695 N.W.2d 277..... | 6 |
| <i>State v. Waldner</i> , 206 Wis. 2d 51, 556 N.W.2d 681 (1996) | 5 |
| <i>State v. Williams</i> , 2010 WI App 39, 323 Wis. 2d 460, 781 N.W.2d 495..... | 6 |
| <i>Terry v. Ohio</i> , 392 U.S. 1 (1968) | 5 |
| <i>Whren v. United States</i> , 517 U.S. 806 (1996) | 6 |
| STATUTES: | |
| Wis. Stat § 175.40 | 3, 4, 7, 9 |
| Wis. Stat § 346.05 | 6 |
| Wis. Stat § 346.13 | 6 |
| Wis. Stat § 343.63 | 6 |

| | |
|--------------------------|---|
| Wis. Stat § 346.89 | 6 |
| Wis. Stat § 990.01 | 8 |

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III
Appeal No. 2015AP1965

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DARREN WADE CASTER

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING
CASTER'S MOTION, ENTERED IN THE CIRCUIT
COURT FOR ST. CROIX COUNTY, HONORABLE
SCOTT R. NEEDHAM, PRESIDING

PLAINTIFF-RESPONDENT'S BRIEF

STATEMENT OF THE ISSUE

Did the trial court err when it held that City of New Richmond Police Officer de la Cruz lawfully stopped Caster's vehicle a mile outside of the city on reasonable suspicion and while engaged in fresh pursuit?

**STATEMENT ON ORAL ARGUMENT AND
PUBLICATION**

The parties' briefs will adequately address the issue presented, and oral argument will not significantly assist the court in deciding this appeal.

The State takes no position on publication of this Court's decision and opinion.

STATEMENT OF THE CASE

On Friday, June 27, 2014, at approximately 1:33 a.m., New Richmond Police Officer de la Cruz, while on duty in the city of New Richmond in St. Croix County, observed a dark-colored Jeep traveling Southbound on County Highway (HWY) A. (R.26:4,6,8).

At that time, Officer de la Cruz was in his vehicle and stationed parallel to County HWY A, facing south. (R.26:6). At his stationed location, Officer de la Cruz observed the Jeep "abruptly" cross the right fog line and then "quickly" correct itself back into the appropriate lane of traffic. (R.26:6-7). Officer de la Cruz testified this particular behavior occurred within New Richmond's city limits. (R.26:7). Officer de la Cruz began to follow the Jeep. (R.26:8). As both vehicles continued Southbound on County HWY A, still within city limits, Officer de la Cruz observed the Jeep weave within its lane of traffic near the West Richmond Way intersection. (R.26:8).

After this observation, Officer de la Cruz radioed for a county deputy to assist in monitoring the Jeep, as both he and the Jeep were nearing the border shared between the city and county. (R.26:8). Officer de la Cruz continued to follow the vehicle, testifying, "I believed that the driving was suspicious enough for me to continue following it for public safety." (R.26:9).

Officer de la Cruz stated that after the West Richmond Way intersection, the road curves to the right. (R.26:9). On this particular curved portion of the roadway, Officer de la Cruz observed the Jeep's driver's side tires cross the center line. (R.26:9). It is unclear as to whether this particular driving behavior was within New Richmond's city limits. (R.26:10). Officer de la Cruz classified this location as a "gray area," stating that as the road curves, jurisdiction shifts from the city to the county. (R.26:10). Officer de la Cruz stated he is familiar with that particular curve as he had prior

knowledge of a fatal accident that had occurred at that location the previous New Year's Eve. (R.26:10).

After the curve, Officer de la Cruz stated the roadway straightens for approximately one-fourth to one-half of a mile before the road curves to the left. (R.26:9). He observed the Jeep again cross the fog line on the straight portion of the road, and then observed the driver's side tires again cross the center line on the left-curved portion of the roadway. (R.26:9). There is no dispute these particular observations were outside of the city limits. (R.26:18).

After Officer de la Cruz made these observations, he was able to make contact with county deputies. (R.26:11). Subsequent to his contact with the county, Officer de la Cruz stopped the vehicle because of the totality of the erratic driving behavior he had observed. (R.26:10). Officer de la Cruz testified he "didn't believe the driver should continue driving anymore," and that his decision to stop the vehicle was due to a public safety concern. (R.26:10). The stop occurred approximately one mile from the city limits. (R.26:11).

Officer de la Cruz made contact with the driver, Darren Caster. Shortly thereafter, county deputies arrived and took over the investigation. (R.4:3; 26:11). Mr. Caster does not dispute the legality of his subsequent arrest.

In a written Decision and Order issued February 25, 2015, St. Croix County Circuit Court Judge Scott R. Needham ruled the stop as lawful because Officer de la Cruz had reasonable suspicion authorizing him to engage in "fresh pursuit" outside the city limits. (R.11).

First, addressing reasonable suspicion, the court held: "Under the totality of the circumstances, including the fact that it was 1:33 a.m., the Court is satisfied that Officer de la Cruz had grounds to reasonably suspect Caster had committed or would commit additional traffic violations." (R.11:3).

Second, when analyzing "fresh pursuit," the court held the criteria of Wis. Stat. § 175.40(2) were satisfied. The court

listed seven observations of poor driving behavior on behalf of Caster. (R.11:3-4). The court reasoned Officer de la Cruz's actions fell within the scope of fresh pursuit because his pursuit began in New Richmond, was continuous and uninterrupted, and Caster posed a threat to other vehicles on the road. (R.11:3-4).

SUMMARY OF ARGUMENT

Caster argues that Officer de la Cruz was not acting in "fresh pursuit" under Wis. Stat. § 175.40(2) when Officer de la Cruz stopped his Jeep a mile outside of the city limits. However, Caster's argument fails to highlight that his erratic driving behavior was in violation of several traffic statutes. Nor does Caster acknowledge the threat he posed to the public.

This Court should first find that Officer de la Cruz acted in eminently reasonable fashion. It would have been irresponsible for Officer de la Cruz to cease the investigation at the city limits and allow Caster to drive off to an unknown fate. Officer de la Cruz's conduct was reasonable and in conformity with Wis. Stat. § 175.40(2) because de la Cruz was lawfully engaged in "fresh pursuit" based on reasonable suspicion that Caster had and would continue to commit traffic violations that would endanger himself and other motorists.

Furthermore, this Court should find that Caster is seeking an inappropriate remedy. Caster does not allege a constitutional violation, rather he argues Officer de la Cruz was not acting pursuant to Wis. Stat. § 175.40(2), the "fresh pursuit" statute. A violation of the "fresh pursuit" statute does not require the suppression of evidence. Thus Caster's claim falls short.

STANDARD OF REVIEW

The State agrees with the standard of review as recited in Caster's brief.

ARGUMENT

I. CASTER’S UNSAFE DRIVING BEHAVIOR PROVIDED OFFICER DE LA CRUZ WITH REASONABLE SUSPICION THAT CASTER HAD COMMITTED AND WOULD CONTINUE TO COMMIT TRAFFIC OFFENSES, THUS DE LA CRUZ WAS AUTHORIZED TO FOLLOW AND STOP CASTER OUTSIDE OF NEW RICHMOND UNDER THE PURVIEW OF “FRESH PURSUIT.”

A. First, Officer de la Cruz had reasonable suspicion to believe Caster committed or would commit traffic violations based upon Caster’s erratic driving behavior in New Richmond and near the city and county border.

Under the totality of the circumstances, Officer de la Cruz had reasonable suspicion that Caster had committed or would commit a traffic violation, given Caster’s inability to properly navigate within his lane of traffic. Courts apply a common sense test as to whether the officer’s suspicion was grounded in articulable facts and reasonable inferences from those facts. *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). In Wisconsin, a traffic stop is reasonable if officers “...have grounds to reasonably suspect a violation has occurred or will be committed.” *State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696, 698-99 (Ct.App.1996) citing *Berkemer v. McCarty*, 468 U.S.420, 439 (1984); *Terry v. Ohio*, 392 U.S. 1 (1968). Furthermore, “a driver’s actions need not be erratic, unsafe or illegal to give rise to reasonable suspicion.” *State v. Post*, 2007 WI 60 ¶24, 301 Wis. 2d 1, 15, 733 N.W.2d 634.

Caster argues that Officer de la Cruz did not believe he had sufficient grounds to stop the Jeep before it left the city limits. Although Officer de la Cruz testified that he was uncomfortable stopping Caster knowing the city line was approaching, that does not mean that Officer de la Cruz lacked the reasonable suspicion to do so. He simply exercised discretion and chose not to stop the vehicle at that point. Officer de la Cruz’s subjective belief and intent regarding whether he had the grounds to perform a traffic stop within

the city limits do not determine the reasonableness of his actions. So long as the traffic stop was objectively reasonable, Officer de la Cruz's actual belief and intent was irrelevant. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 404 (2006); *Ohio v. Robinette*, 519 U.S. 33, 38 (1996); *Whren v. United States*, 517 U.S. 806; 813 (1996); *Scott v. United States*, 436 U.S. 128, 138 (1978); *State v. Sykes*, 2005 WI 48, ¶ 29, 279 Wis. 2d 742, 695 N.W.2d 277; *State v. Gaulrapp*, 207 Wis. 2d at 609-10; *State v. Baudhuin*, 141 Wis. 2d 642, 651-52, 416 N.W.2d 60 (1987); *State v. Williams*, 2010 WI App 39, ¶ 26, 323 Wis. 2d 460, 781 N.W.2d 495.

In summary, Officer de la Cruz articulated that while in New Richmond he observed 1) Caster's Jeep abruptly cross the fog line, 2) the Jeep swerve within its lane, and 3) the Jeep cross the center line near the "gray area" of the jurisdictional border. Those observations serve as reasonable grounds that Caster committed or was about to commit several traffic violations, including: Operating While Intoxicated (Wis. Stat. § 343.63(1)(a)), Operating with a Prohibited Alcohol Concentration (Wis. Stat. § 343.63(1)(b)), Inattentive Driving (Wis. Stat. § 346.89), Unsafe Lane Deviation (Wis. Stat. § 346.13(1)), Deviation from Designated Lane (Wis. Stat. § 346.13(3)), and Operating Left of Center Lane (Wis. Stat. § 346.05(1)). *See State v. Popke*, 2009 WI 37, ¶¶12-27, 317 Wis. 2d 118, 765 N.W.2d 569. Accordingly, this Court should find that Officer de la Cruz had objective, reasonable suspicion that Caster had committed or would commit traffic violations.

B. Second, because Officer de la Cruz's had reasonable suspicion, he was authorized to continue in "fresh pursuit" of Caster given Caster's inability to safely operate his vehicle and the threat Caster posed to the public.

Under the "fresh pursuit" doctrine, Officer de la Cruz had authority to conduct a traffic stop on Caster because Officer de la Cruz engaged in continuous and uninterrupted pursuit and Caster was unable to operate his Jeep in a safe manner. Generally, police officers do not have authority to act with the authority of a law enforcement agent outside of their jurisdiction. *State v. Swalek*, 114 Wis. 2d 332, 335, 338

N.W.2d 120 (Ct.App.1983). However, Wis. Stat. § 175.40(2) provides an exception to this rule, 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.

In Wisconsin, a three-pronged analysis is utilized when determining whether an officer acted in fresh pursuit: 1) the officer must act without undue delay; 2) the pursuit must be uninterrupted; and, 3) there is a close relationship in time between the commission of the offense, the commencement of the pursuit, and the apprehension of the suspect. *City of Brookfield v. Collar*, 148 Wis. 2d 839, 842-843, 436 N.W.2d 911 (Ct.App.1989); *State v. Haynes*, 2001 WI App 266, ¶6, 248 Wis. 2d 724, 730, 638 N.W.2d 82.

In *Haynes*, a Waukesha County officer observed Haynes's car speed through a red light on a highway that straddled the Waukesha and Milwaukee County line and subsequently stopped Haynes two miles into Milwaukee County. 248 Wis.2d 724, ¶¶ 2-4. The *Haynes* court found the officer's pursuit of Haynes to be continuous and uninterrupted, and the passage of time from the violation to the stop "was very short, spanning only a few miles." *Id.*, ¶7. The same reasoning should apply to Caster. Officer de la Cruz observed what appeared to be a traffic violation within New Richmond city limits, and observed more violations as the car approached the city line. Officer de la Cruz was aware of the approaching jurisdictional line and called for county assistance rather than conduct a stop on the Jeep. Only when the deputies did not immediately respond, and while continuing to observe erratic driving behavior, did Officer de la Cruz make the reasonable decision to stop the Jeep.

Also, the protection of the public bears weight to the "fresh pursuit" criteria. In *Collar*, a Brookfield police officer observed a vehicle with expired tabs speed and weave within its lane of traffic. 148 Wis. 2d at 840. Due to public safety

concerns, the officer chose to follow and stop the vehicle in Elm Grove rather than in Brookfield. *Id.* It was determined that the officer was acting under the purview of the fresh pursuit doctrine. *Id.* at 843. Caster’s case is similar. Officer de la Cruz did not stop Caster immediately upon the first suspected violation, but only after Officer de la Cruz determined the risk was too great to allow Caster to continue driving.

Furthermore, it would be unreasonable to require an officer to always immediately stop a vehicle upon the first reasonable suspicion of a traffic violation for fear that the vehicle will leave the city limits and render the officer powerless. *Id.* (“To find otherwise would encourage peace officers to stop and arrest in situations where safety dictates they wait.”). Rather, it is an entirely reasonable application of the “fresh pursuit” doctrine to hold that Officer de la Cruz acted reasonably in his decision to stop Caster’s Jeep outside of New Richmond after observing a number of traffic violations.

Caster argues that grounds for a traffic stop had to exist before his Jeep crossed the city line; otherwise the officer could not pursue and ultimately stop the Jeep beyond the city limits. However, nothing in the plain language of the statute makes such a distinction. As long as Officer de la Cruz was in fresh pursuit, Officer de la Cruz was authorized to follow Caster and arrest him “anywhere in the state” for violating “any law or ordinance the officer is authorized to enforce.” *See State v. Kittlistad*, 231 Wis. 2d 245, 256, 603 N.W.2d 732 (1999) (if the language of the statute is unambiguous, the court applies the “ordinary and accepted meaning of the language to the facts” when interpreting the statute). *See also* Wis. Stat. § 990.01(1) (words and phrases in a statute should be construed according to their common and approved usage). The “fresh pursuit” statute does not include a phrase of limitation requiring the offense to occur within the officer’s jurisdiction. Moreover, even assuming the statute could be read so restrictively, Officer de la Cruz had ample justification to conduct a traffic stop within city limits. This Court should find that Officer de la Cruz was authorized to both make the stop in New Richmond or to make the stop in fresh pursuit no more than a mile outside of the city limits.

Officer de la Cruz's actions were entirely reasonable and were indicia of good police work. This Court should hold that Caster's stop was founded on reasonable suspicion and thus valid under the "fresh pursuit" doctrine.

II. IF THIS COURT FINDS THAT OFFICER DE LA CRUZ WAS NOT ACTING IN "FRESH PURSUIT," SUPPRESSION OF EVIDENCE IS NOT A PROPER REMEDY AS CASTER HAS NOT CLAIMED A CONSTITUTIONAL VIOLATION NOR A VIOLATION OF A STATUTE THAT REQUIRES SUPPRESSION.

Caster has failed to allege a constitutional violation or a violation of a statute which requires suppression of evidence as a remedy. "Suppression of evidence is only required when evidence has been obtained in violation of a defendant's constitutional rights, or if a statute specifically provides for the suppression remedy." *State v. Keith*, 2003 WI App 47, ¶ 8, 260 Wis. 2d 592, 659 N.W.2d 403.

In *Keith*, the court held that suppression is not "required merely because a police officer acts without authority outside his or her jurisdiction." *Id.*, ¶9. The *Keith* ruling should be applied in Caster's case. Evidence should not be suppressed because Caster does not allege that Officer de la Cruz infringed upon a constitutional right, rather that Officer de la Cruz violated the "fresh pursuit" statute. A violation of Wis. Stat. § 175.40(2) does not require the suppression of evidence. As such, Caster's argument fails to meet the standard necessary to suppress evidence.

CONCLUSION

This Court should affirm the decision of the circuit court and find that Officer de la Cruz lawfully stopped Caster's vehicle under the "fresh pursuit" doctrine. Furthermore, this Court should find that suppression of evidence is not the appropriate remedy for Caster's claim.

Dated this ____ day of February, 2016.

Respectfully submitted,

MATTHEW L. HARTUNG
Assistant District Attorney
State Bar No. 1089951

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
matthew.hartung@da.wi.gov
Attorney for Plaintiff-Respondent

CERTIFICATION AS TO FORM AND LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 2,717 words.

Dated this ____ day of February, 2016.

Signed:

MATTHEW L. HARTUNG
Assistant District Attorney
State Bar No. 1089951

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
matthew.hartung@da.wi.gov
Attorney for Plaintiff-Respondent

**CERTIFICATE OF COMPLIANCE
WITH RULE 809.19(12)**

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 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.

Dated this ____ day of February, 2016.

Signed:

MATTHEW L. HARTUNG
Assistant District Attorney
State Bar No. 1089951

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
matthew.hartung@da.wi.gov
Attorney for Plaintiff-Respondent

CERTIFICATE OF MAILING

I certify that this brief was deposited into the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expedition, on February 1, 2016.

I further certify that on February 1, 2016, I served three copies of this brief via United States Mail upon all opposing parties.

I further certify that the brief was correctly addressed and postage was pre-paid.

Dated this ____ day of February, 2016.

Signed:

MATTHEW L. HARTUNG
Assistant District Attorney
State Bar No. 1089951

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
matthew.hartung@da.wi.gov

Attorney for Plaintiff-Respondent