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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appeal Case No. 2025AP000154

STATE OF WISCONSIN,
Plaintiff-Respondent,
vs.
RICHARD T. WESKE,
Defendant-Appellant.

AN APPEAL FROM A JUDGMENT OF CONVICTION
AND ORDER DENYING DEFENDANT’S MOTION TO
SUPPRESS ENTERED BY THE HONORABLE PAUL
BUGENHAGEN JR., CIRCUIT JUDGE, BRANCH 10,
WAUKESHA COUNTY

Case No. 2023CT836

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

1. Did the circuit court properly deny Weske's motion to suppress, which alleged that Officer Gurgul of the Village of Hartland Police Department lacked territorial jurisdiction to arrest Appellant for Operating While Intoxicated?

Yes, although the circuit court did not expressly reference §175.40(6)(a), the justification the court relied on is codified in § 349.03(4) in which an officer can arrest an individual for impaired driving anywhere in the State. Since Officer Gurgul had statutory authority to detain the appellant, Weske's argument for suppression of the evidence fails.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. § 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. §809.23(1)(b)4.

STATEMENT OF THE CASE

On June 23, 2023, at approximately 12:10 am, Officer Dillon Gurgul of the Village of Hartland Police Department observed Richard Weske's vehicle traveling eastbound on Highway 16. Officer Gurgul reports that he observed two vehicles enter the highway from the nearest on-ramp. Officer Gurgul then reports that he observed the front vehicle weave within its lane multiple times. (R. at 29:6). Officer Gurgul followed the defendant's vehicle outside of the Village of Hartland's jurisdiction to investigate possible impaired driving. Just outside the Village of Hartland, Officer Gurgul observed the defendant's vehicle drive on and over the lane markers. (R. at

29:7). Officer Gurgul, having developed reasonable suspicion, conducted a traffic stop. Richard Weske was subsequently arrested for Operating While Under the Influence, third offense.

On June 27th, 2023, a two-count Amended Criminal Complaint was filed in the Waukesha County Circuit Court, alleging violations of Wis. Stat. Section 346.63(1)(a) and (b), respectively. A motion hearing was heard on March 7th, 2024, in which the Court denied the request to suppress by the Defendant. A motion to reconsider was filed on May 30th, 2024, by the Defendant. The Court set a scheduling order for briefing on the issues. A motion in support was filed on July 5, 2024, with the States's response filed on July 10th, 2024. The Court denied the motion to reconsider on July 30th, 2024, with a final order being signed on July 31st, 2024. A notice of appeal was filed on August 1, 2024, which was subsequently dismissed for lack of jurisdiction by the Court of Appeals on September 24th, 2024. The appeal was refiled after a signed order had been filed by the circuit court, and the appeal was again dismissed on October 29th, 2024, by the Court of Appeals for lack of jurisdiction. The Defendant plead guilty to Count 1 of the Amended Criminal Complaint on January 23rd, 2025, and was sentenced. The sentence was stayed pending this appeal on January 28th, 2025.

This appeal follows.

SUMMARY OF ARGUMENT

Officer Gurgul lawfully conducted a traffic stop on the Defendant's vehicle because he had reasonable suspicion to believe that the operator was intoxicated, in violation of Wis. Stat. § 346.63. Based on that reasonable suspicion, Officer Gurgul was permitted to leave his jurisdiction in the City of Hartland under Wis. Stat. § 175.40 (6)(a) because (1) he was on duty and on the official business of being a law enforcement officer, (2) Officer Gurgul would be authorized to pull the vehicle over under the same circumstances within his territorial jurisdiction, and (3) impaired driving poses a significant threat to life or bodily harm. Additionally, because Officer Gurgul

notified and cooperated with the law enforcement agency within the arresting jurisdiction, the limitation in Wis. Stat. § 175.40 (6)(d) does not apply.

Apart from the extra jurisdictional statute, Wisconsin law has codified an officer can leave their jurisdiction and enforce a traffic stop outside their jurisdiction when there is a basis to believe the driver to be impaired. Wis. Stat. § 349.03(4). The circuit court did not err in denying Appellant's motion to suppress. This Court should follow suit.

STANDARD OF REVIEW

When reviewing a decision on a motion to suppress evidence, an appellate court upholds the circuit court's factual findings unless they are clearly erroneous, but it independently applies constitutional principles to the facts. *State v. Sykes*, 2005 WI 48, ¶ 12, 279 Wis. 2d 742, 695 N.W.2d 277. An appellate court independently interprets and applies a statute. *State v. Houghton*, 2015 WI 79, ¶ 18, 364 Wis. 2d 234, 868 N.W.2d 143.

ARGUMENT

I. Officer Gurgul was within his authority to stop a vehicle outside of his jurisdiction in order to prevent a threat to life or bodily harm.

A. A Wisconsin law enforcement officer may make an arrest outside of their jurisdiction when three criteria are met.

Statutes are to be interpreted by their plain language. *Pasko v. City of Milwaukee*, 252 Wis. 2d 1, 20, 643 N.W.2d 72, 81. If the language of the statute is clear, the court need not look anywhere else. *Id.* Wis. Stat. § 175.40(6)(a) provides:

“A peace officer outside of his or her territorial jurisdiction may arrest a person or provide aid or assistance anywhere in the state if the criteria under subs. 1. to 3. are met:

1. The officer is on duty and on official business.
2. The officer is taking action that he or she would be authorized to take under the same circumstances in his or her territorial jurisdiction.
3. The officer is acting to respond to any of the following:
 - a. An emergency situation that poses a significant threat to life or of bodily harm.
 - b. Acts that the officer believes, on reasonable grounds, constitute a felony.”

This statute was created in 1993 (See WI Act 98) and has not been modified since.

Peace officer is defined as “any person vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.” Wis. Stat. § 939.22 (22). Further “drunk driv[ing]—occurs with tragic frequency on our Nation's highways. The carnage caused by drunk drivers is well documented and needs no detailed recitation here.” *S. Dakota v. Neville*, 459 U.S. 553, 558. (1983). “Operating a motor vehicle while intoxicated is an activity which threatens the public security and involves violence. As such, it amounts to a breach of the peace.” *City of Waukesha v. Gorz*, 166 Wis. 2d 243, 247, 479 N.W.2d 221, 223 (Ct. App. 1991).

On June 23, 2023, Officer Gurgul was on duty, working the third shift for the City of Hartland Police Department when this arrest occurred. Officer Gurgul has the authority to pull vehicles over within his jurisdiction. Officer Gurgul observed the appellant driving past midnight and swerve within the lane that he was traveling in. Given the time of the evening and the nature of the driving—it is reasonable to assume that the operator of the vehicle was either impaired, tired, or made a mistake. The circuit court found Officer Gurgul credible. (R. at 29:40). The only way for Officer Gurgul to determine whether the swerving by the operator was an aberration or an ongoing emergency would be to follow and observe the driver. Officer Gurgul did just that and did not leave a potential emergency for a law enforcement officer in another jurisdiction to deal with. Once the officer determined there was a valid basis to stop the vehicle, he was able to determine that the appellant was in fact, intoxicated—and made a valid arrest.

B. The limitation to 175.40(6)(a) in subsection (d) is not applicable to the facts of this case.

Wis. Stat. § 175.40 (6)(d) provides:

“In order to allow a peace officer to exercise authority under par. (a), the peace officer’s supervisory agency must adopt and implement written policies regarding the arrest and other authority under this subsection, including at least a policy on notification to and cooperation with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken in the other jurisdiction.”

After pulling over Mr. Weske’s vehicle, Officer Gurgul contacted Waukesha County Communications and to notify the Pewaukee Police Department of the stop within their jurisdiction. (R. at 29:9). The Pewaukee police arrived on scene and indicated their preference for Officer Gurgul to complete the traffic stop because he had observed all of the driving. (R. at 29:10).

Based on Officer Gurgul’s notification of Pewaukee Police through the Waukesha County Communications system, and his willingness to allow Pewaukee to take the lead on the traffic stop within their jurisdiction, Gurgul complied with Wis. Stat. § 175.40(6)(d). Therefore, the extra jurisdictional stop by Officer Gurgul is valid under Wis. Stat. § 175.40(6)(a).

II. Wisconsin Statute Section § 349.03(4) is unambiguous that if a violation of § 346.63 occurs within a law enforcement officer’s jurisdiction, he or she may enforce the violation anywhere in the state

The statute reads “If a violation under § 343.305 (tests for intoxication) or § 346.63 (operating under the influence of intoxicant)...occurs within a law enforcement officer’s jurisdiction, he or she may enforce the violation anywhere in the state.” Wis. Stat. § 349.03(4).

It is undisputed that Officer Gurgul was within his jurisdiction when he spotted Richard Weske's vehicle swerve within his lane at a late hour of the night. "The officer noted weaving within the lane, that occurred just for a short bit in Officer Gurgul's jurisdiction, about 100 yards only of the jurisdiction, before they left his jurisdiction." (R. at 29:40). The Court of Appeals has ruled an officer, after observing a traffic violation and pursuing the defendant into another jurisdiction where the stop was made, was entitled to question the defendant beyond the purpose for which the stop was made and to issue citations for other violations when additional suspicious factors came to the officer's attention during the stop. *State v. Haynes*, 248 Wis. 2d 724, 732 (2001). "There was the officer acting correctly that something piqued his interest. He was, ultimately, as we know, correct on that...you don't actually have to have that reasonable suspicion for the offense, fully formed within your jurisdiction." (R. at 29:45). Officer Gurgul observed the vehicle weave outside of its lane and felt that it was imperative to follow the vehicle. (R. at 29:7-8).

Furthermore, the suppression of evidence is not required merely because an officer acts outside their jurisdiction. *State v. Keith*, 260 Wis. 2d 592, 597 (2003). Suppression is *only* required when evidence has been obtained in violation of a defendant's constitutional rights. *State v. Raflik*, 248 Wis. 2d 593, 608 (2001)(emphasis added). The circuit court agreed that suppression of the evidence was not the appropriate remedy in this case. (R at 29:44). Much like the defendant in *Keith*, the Appellant here has failed to identify a constitutional or statutory violation requiring suppression. *State v. Keith*, 260 Wis. 2d at 597.

CONCLUSION

For the reasons discussed, this Court should affirm the circuit court's denial of Weske's motion to suppress and affirm the judgment of conviction.

Dated this 29th day of August, 2025.

Respectfully submitted,

Electronically signed by Andrew Nesheim

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The word count of this brief is 2,302.

Dated this 29th day of August, 2025

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