

**FILED**  
**06-05-2025**  
**CLERK OF WISCONSIN**  
**COURT OF APPEALS**

No. 2025AP000154

---

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II

---

**STATE OF WISCONSIN,**  
*Plaintiff-Respondent,*

vs.

**RICHARD T. WESKE,**  
*Defendant-Appellant.*

---

Appeal from the Circuit Court for Waukesha County, the Honorable Michael J. Aprahamian Presiding

Case No. 2023CT000836

---

**BRIEF FOR DEFENDANT-  
APPELLANT, RICHARD T. WESKE**

---

**MARK P. POWERS**  
State Bar No. 1038398  
*Attorney for Defendant-Appellant*

**HUPPERTZ & POWERS SC**  
W240N1221 Pewaukee Road  
Waukesha, WI 53188  
T: (262) 549-5979  
F: (262) 970-0298

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....3

ISSUES PRESENTED.....4

ORAL ARGUMENT AND PUBLICATION.....4

STATEMENT OF THE CASE.....4

    I.    PROCEDURAL BACKGROUND.....4

    II.   FACTUAL BACKGROUND.....4

STANDARD OF REVIEW.....6

ARGUMENT.....6-7

    I.    The Circuit Court Erred in Finding that suppression was not  
          required when officer Gurgul acted outside his jurisdiction

CONCLUSION.....7

CERTIFICATE OF COMPLIANCE.....8

CERTIFICATE OF APPENDIX CONTENT.....9

APPENDIX TABLE OF CONTENTS.....10

**TABLE OF AUTHORITIES**

**UNITED STATES SUPREME COURT CASES**

*Whren v. United States*,  
517 U.S. 806, 809-10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).....6

**WISCONSIN CASES**

*City of Brookfield v. Collar*,  
148 Wis.2d 839, 841 (Ct. App. 1989).....6

*State v. Bentley*,  
201 Wis. 2d 303, 548 N.W.2d 50 (1996).....6

*State v. Gaulrapp*,  
207 Wis.2d 600, 605, 558 N.W.2d 696 (Ct.App.1996).....6

*State v. Keith*,  
260 Wis. 2d 592 (Ct. App. 2003).....6

*State v. Popke*,  
765 N.W.2d 569 (2009).....6

*State v. Raflik*,  
248 Wis.2d 593 (2001).....6

**WISCONSIN STATUTES**

Wis. Stat. Section 175.40.....6

Wis. Stat. Section 346.63.....4

Wis. Stat. Section 968.24.....6

### **ISSUE PRESENTED**

Although the Circuit Court held that Officer Gurgul was not acting in fresh pursuit of the Defendants vehicle as the Officer's testimony was that he did not have reasonable suspicion in his jurisdiction to stop the vehicle, based upon *State v. Keith*, 260 Wis. 2d 592 (Ct. App. 2003), the Court held that suppression is not required merely because a police officer acts without authority outside his or her jurisdiction, except when evidence is obtained in violation of a constitutional right or in violation of a statute providing suppression as a remedy.

The circuit court incorrectly held that the appropriate remedy given the factual findings by the Court, was not suppression.

### **ORAL ARGUMENT AND PUBLICATION**

Oral argument and Publication is unnecessary.

### **STATEMENT OF THE CASE**

#### **I. Procedural Background.**

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.

## **II. Factual Background.**

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 prior to turning around to return to his jurisdiction, 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, without ever crossing the center line or touching the lane markers.

Officer Gurgul continued to follow the defendant's vehicle outside of the Village of Hartland's jurisdiction for more than a mile before exiting eastbound on Capitol Drive and continued following therefrom.

After continuing to follow Richard Weske's vehicle outside of his jurisdiction, Officer Gurgul testified that only then did he observe the defendant's vehicle drive on and over the lane markers. Officer Gurgul testified that while observing Richard Weske's vehicle within his jurisdiction, he did not observe any local ordinance or state violations warranting a traffic stop. [Motion Hearing Transcript 3-7-24, p. 10 ln. 12-17]. Officer Gurgul then conducted a traffic stop and Richard Weske was subsequently arrested for Operating While Under the Influence, third offense. At no point did Officer Gurgul make a mutual aid request to the Village of Pewaukee prior to conducting the traffic stop.

After hearing Officer Gurgul's testimony, the court denied Richard Weske's Motion to Suppress. The court made a preliminary ruling that Officer Gurgul was not acting in fresh pursuit of Richard Weske's vehicle, however, the court would reconsider its decision if a reconsideration motion were brought further explaining the remedy for an Officer who performs an extraterritorial traffic stop while not in fresh pursuit of a vehicle.

## STANDARD OF REVIEW

The issue at hand is a question of law. Therefore, the Court reviews the question of law de novo. *State v. Bentley*, 201 Wis. 2d 303, 548 N.W.2d 50 (1996).

## ARGUMENT

### **I. The Circuit Court Erred in Finding that suppression was not required when officer Gurgul acted outside his jurisdiction**

Wis. Stat. § 175.40(2) authorizes a peace officer to arrest outside of his or her jurisdiction under certain circumstances. 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. Wis. Stat. § 175.40(2). To determine whether an officer is in fresh pursuit: the officer must act without unnecessary delay: the pursuit must be continuous and uninterrupted, but here is not need be continuous surveillance of the suspect, and: the commission of offense, commencement of pursuit, and apprehension of suspect should be close in time. *City of Brookfield v. Collar*, 148 Wis.2d 839, 841 (Ct. App. 1989), that suppression is *not required* merely because a police officer acts without authority outside his or her jurisdiction. *State v. Keith*, 260 Wis.2d 597, 597 (Ct. App. 2003)[*emphasis added*]. 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.” *Id.* At 597 (quoting *State v. Raflik*, 2001 WI 129, P15 248 Wis. 2d 593, 636 N.W.2d 690. Temporary stops have been codified in Wisconsin in Wis. Stat. Section 968.24. Federal and Wisconsin law continually discuss Constitutional protections as it relates to traffic stops and constitutional protections (See *State v. Popke*, 765 N.W.2d 569 (2009), discussing, “The temporary detention of individuals during the stop of an automobile by the police, even if for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of the Fourth Amendment.” citing; *State v. Gaulrapp*, 207 Wis.2d 600, 605, 558 N.W.2d 696 (Ct.App.1996) (citing *Whren v. United States*, 517 U.S. 806, 809-10, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996)).

The facts at hand are uncontroverted. The officer stopped the Defendant-Appellant’s vehicle for violations outside of his Department’s jurisdiction. The

Officer was not requested to do so via mutual aid, was not in fresh pursuit, or any other circumstance allowing for this encroachment on the Defendant's right to not be unreasonably seized. The Court decided, given the cases discussed during the motion hearings, that suppression was not the appropriate remedy, essentially, because there was no violation of a constitutional right. (See Transcript of Motion Hearing p. 44, lines 6-9).

### CONCLUSION

This Court should hold that the circuit court's denial of suppression denied the Defendant-Appellant's right to be free of unreasonable seizure pursuant to Constitutional protections.

Dated at Waukesha, Wisconsin this 2<sup>nd</sup> day of June, 2025.

Respectfully submitted,  
*HUPPERTZ & POWERS SC*

*Electronically signed by Mark P. Powers*

---

MARK P. POWERS  
State Bar No. 1038398

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 1656 words.

Dated at Waukesha, Wisconsin this 2<sup>nd</sup> day of June, 2025.

Respectfully submitted,  
*HUPPERTZ & POWERS SC*

*Electronically signed by Mark P. Powers*

---

MARK P. POWERS  
State Bar No. 1038398

**CERTIFICATION BY ATTORNEY OF APPENDIX CONTENT**

I hereby certify that filed with this brief is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings of opinion of the circuit court; (3) a copy of any unpublished opinion cited under Wis. Stat. § 809.23(3)(a) or (b), and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit 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 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 at Waukesha, Wisconsin this 2nd day of June, 2025.

Respectfully submitted,  
*HUPPERTZ & POWERS SC*

*Electronically signed by Mark P. Powers*

---

MARK P. POWERS  
State Bar No. 1038398

**APPENDIX TABLE OF CONTENTS**

Motion Hearing Transcript (03/7/2024).....App. 1-47

Order Denying Motion.....App. 48

Notice of Appeal.....App. 49