COURT OF APPEALS
DECISION
DATED AND FILED

October 12, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1965-CR **Cir. Ct. No. 2014CT183**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARREN WADE CASTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County: SCOTT R. NEEDHAM, Judge. *Affirmed*.

¶1 HRUZ, J.[1] Darren Caster appeals a judgment of conviction for second-offense operating a motor vehicle while intoxicated (OWI). Caster argues the circuit court erroneously denied his motion to suppress when it determined

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

officer Carlos de la Cruz of the City of New Richmond Police Department did not violate Caster's Fourth Amendment rights when de la Cruz conducted a traffic stop outside of New Richmond's municipal limits without being in "fresh pursuit" under WIS. STAT. § 175.40(2). We need not decide whether de la Cruz was engaged in fresh pursuit under that statute because we agree with the State's alternative argument. Namely, the evidence obtained following the stop should not be suppressed because there was no constitutional violation, and any determination that de la Cruz was not acting in his official capacity under § 175.40(2) does not, under the facts of this case, merit suppression as a remedy. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

¶2 Caster was charged with OWI and operating with a prohibited alcohol concentration, both as a second offense. He filed a motion to suppress evidence obtained by law enforcement resulting from the traffic stop on the grounds that de la Cruz acted outside of his jurisdiction and, according to Caster, lacked reasonable suspicion to make a valid stop. The circuit court held a motion hearing at which de la Cruz was the only witness.

¶3 De la Cruz testified that on the early morning of June 27, 2014, he was monitoring traffic in his squad car. He was parked parallel to County Highway A in New Richmond's city limits. At 1:33 a.m., de la Cruz observed a Jeep, later determined to be driven by Caster, drive south past his location. De la Cruz testified his radar reported Caster as travelling thirty-nine miles per hour when Caster passed him, which was six miles below the speed limit, and he observed Caster's vehicle abruptly go over the fog line on the right side of the road as Caster neared 174th Avenue. After witnessing the lane deviation,

de la Cruz decided to follow and monitor the vehicle. He observed Caster's vehicle was weaving within the lane as they passed West Richmond Way. De la Cruz radioed for a St. Croix County officer to come to his location because he was aware Caster's vehicle was approaching the New Richmond city limits. De la Cruz explained he attempted to contact county authorities because he "wasn't comfortable with what [he] had observed to conduct a traffic stop at that time," but he believed Caster's driving was "suspicious enough for [him] to continue following [Caster] for the public safety overall …."

¶4 As Caster and de la Cruz approached a curve to the west on County Highway A, de la Cruz observed Caster's vehicle "take that curve wide" and put its "side tires … across the center line." According to de la Cruz, this particular curve represented a "gray area" between the City of New Richmond limits and general St. Croix County land, in that "as soon as [County Highway A] curves, it becomes county property." De la Cruz continued to follow Caster along an approximately half-mile straightaway before they approached a second curve, at which point de la Cruz observed Caster's vehicle "take the curve a little low" and again cross the center line with its tires. Shortly after that observation and after he had made radio contact with a county deputy, de la Cruz conducted a traffic stop and pulled over Caster on county property. De la Cruz approached the vehicle and only requested Caster's identification while he awaited the arrival of county authorities.

¶5 De la Cruz testified two St. Croix County Sheriff's Department officers, deputy Fowler and sergeant Thomason, arrived at the scene a short time after he had stopped Caster. According to the police report filed by Fowler and attached to the criminal complaint, Fowler approached Caster's vehicle after making initial contact with de la Cruz. Fowler observed that Caster exhibited a

strong alcohol odor, bloodshot eyes, and slurred speech. As a result, Fowler conducted field sobriety tests and also administered a preliminary breath test with de la Cruz's assistance. Fowler arrested Caster, after which he transported Caster first to a hospital for a blood draw and then to the St. Croix County Jail. Neither Fowler nor Thomason testified at the hearing on Caster's motion to suppress.

¶6 The circuit court denied the motion to suppress, concluding de la Cruz had reasonable suspicion to believe Caster committed or would continue to commit traffic violations. Regarding specific and articulable facts that could give rise to reasonable suspicion of a traffic violation, the circuit court found de la Cruz observed Caster's Jeep:

> (1) swerve abruptly to the right; (2) cross the fog line with both passenger side tires; (3) weave within its own lane of travel; (4) negotiate a curve in a wide manner; (5) cross the center line with both driver side tires; (6) cross the fog line again with both passenger side tires; and (7) cross the center line again with both driver side tires. … including the fact that it was 1:33 a.m.

¶7 The circuit court next evaluated whether de la Cruz was in "fresh pursuit" of Caster under WIS. STAT. § 175.40(2) and, as a result, had authority as an officer of a political subdivision to arrest anyone outside his jurisdiction.[2] The court concluded de la Cruz was in fresh pursuit because de la Cruz did not delay in pursuit after his observation of a traffic violation in New Richmond city limits, had begun "continuous and uninterrupted pursuit" of Caster once observing that violation, and acted with minimal delay in performing a traffic stop. The court

[2] The full text of WIS. STAT. § 175.40(2) 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."

also found that after de la Cruz "effectuated the traffic stop[,] Officer Fowler arrived on the scene shortly thereafter and took over the investigation."

¶8 Following the denial of his motion to suppress, Caster pled no contest to the OWI charge. He now appeals pursuant to WIS. STAT. § 971.31(10).

DISCUSSION

¶9 A motion to suppress evidence resulting from a traffic stop presents a question of constitutional fact, to which we apply a two-step standard of review. *See* ***State v. Post***, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. Namely, we review the circuit court's findings of historical fact as clearly erroneous, while we review the application of law to those historical facts de novo. ***Id.*** In addition, when presented with application of a statute to a set of facts, we review that application de novo. ***City of Brookfield v. Collar***, 148 Wis. 2d 839, 841, 436 N.W.2d 911 (Ct. App. 1989).

¶10 As framed by Caster, the primary dispute in this case involves whether de la Cruz was in "fresh pursuit" under WIS. STAT. § 175.40(2) when he stopped Caster outside of the City of New Richmond.[3] *See* ***Collar***, 148 Wis. 2d at 841-42. In particular, Caster contends the validity of the traffic stop turns upon whether de la Cruz had reasonable suspicion to stop Caster before he left the jurisdiction. Caster argues that because de la Cruz left the jurisdiction in the midst

[3] For an officer to be in fresh pursuit, and thus acting with authority to arrest as an agent of their respective unit of government, an officer must satisfy three criteria. First, an officer "must act without unnecessary delay" in pursuing the suspect. ***City of Brookfield v. Collar***, 148 Wis. 2d 839, 842, 436 N.W.2d 911 (Ct. App. 1989). Second, "the pursuit must be continuous and uninterrupted," but the officer does not need to be in "continuous surveillance of the suspect." ***Id.*** at 842-43. Third, there must not have been an unreasonably long period of time between the suspect committing the offense and the officer engaging in pursuit. ***Id.*** at 843.

of his observations and, according to de la Cruz's own testimony, had not formed the intent to stop Caster before leaving his jurisdiction, de la Cruz did not observe an offense within his own jurisdiction and thus possessed no lawful authority to conduct a traffic stop under a theory of fresh pursuit. The State responds that the plain text of § 175.40(2) makes no reference to the location of the offense relative to the jurisdiction.[4] It further contends de la Cruz had reasonable suspicion Caster committed a specific traffic violation within his authorized jurisdiction, and he was authorized to continue pursuit anywhere in the state as a result.

¶11 We do not reach the question of whether de la Cruz was in "fresh pursuit" under WIS. STAT. § 175.40(2). Instead, we focus on the State's alternative argument regarding the use of suppression as a remedy, further explained below, and affirm on those grounds. *See* ***State v. Earl***, 2009 WI App 99, ¶18 n.8, 320 Wis. 2d 639, 770 N.W.2d 755.

¶12 We first observe that Caster asks us, on appeal, to suppress the evidence obtained as a result of a purported statutory overreach by de la Cruz in the form of an extra-jurisdictional traffic stop. Under WIS. STAT. § 62.09(13)(a), police officers are granted authority to arrest persons within their designated municipality for any violation of state or local law.[5] WISCONSIN STAT.

[4] We note the State never directly argues that Caster's attempt to use WIS. STAT. § 175.40(2) as a basis to argue for suppression fails because the statute appears to contemplate only matters of an officer's authority to "arrest" an individual for a violation of law, and Caster was lawfully arrested by county authorities, not by de la Cruz.

[5] The text of WIS. STAT. § 62.09(13)(a) reads in relevant part:

(continued)

§ 175.40(2) extends this authority to officers who are in "fresh pursuit" of a suspect outside their respective jurisdictions.

¶13 Regarding fresh pursuit, Caster asserts that because de la Cruz acted to seize Caster outside of the city limits, and did not meet the requirements of WIS. STAT. § 175.40(2) in doing so, de la Cruz did not have any power granted to him by the Wisconsin legislature to conduct a valid seizure. In its response brief, the State argues that even if de la Cruz was not engaged in "fresh pursuit" as that phrase is understood in § 175.40(2), suppression is improper. Summarizing the State's argument the best we can, suppression is inappropriate for three reasons: (1) the statutory grant of power in § 175.40(2) is distinct from any constitutional prohibition governing police authority; (2) suppression does not naturally flow from a "violation" of § 175.40(2); and (3) in all events, under the facts of this case, including that de la Cruz did not actually accomplish the arrest at issue, suppression would be an inappropriate remedy.

¶14 We agree with the State. The framework of Caster's argument may be correct to the extent it questions whether de la Cruz had statutory authority to *arrest* him outside of New Richmond, and detain him in that sense, in which the detention is beyond that of an initial traffic stop. *See* ***State v. Slawek***, 114 Wis. 2d 332, 335, 338 N.W.2d 120 (Ct. App. 1983). But Caster does not challenge the conclusion that de la Cruz—separate from any consideration of the jurisdictional

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> The chief and each police officer or combined protective services officer … shall arrest with or without process and with reasonable diligence take before the municipal judge or other proper court every person found in the city engaged in any disturbance of the peace or violating any law of the state or ordinance of the city.

statute—possessed reasonable suspicion to initiate a traffic stop when he did. Put another way, Caster does not argue the traffic stop was unreasonable (and therefore unconstitutional) in and of itself. *See* ***Post***, 301 Wis. 2d 1, ¶26 (reasonableness determined under totality of the circumstances through articulable facts observed by law enforcement officer).

¶15 In effect, it seems Caster is arguing de la Cruz's observations should not be considered, for the purposes of analyzing reasonable suspicion, at or past the point at which either Caster or de la Cruz crossed the New Richmond city limits, approximately what the circuit court found to be de la Cruz's fifth observation. *See supra* ¶6. We disagree. Whether de la Cruz exercised a valid extra-jurisdictional traffic stop under proper authorization from the Wisconsin Statutes and whether he exercised a valid traffic stop for the purposes of a constitutional seizure are not synonymous questions. *See* ***State v. Ewald***, 63 Wis. 2d 165, 169, 216 N.W.2d 213 (1974) (recognizing the "distinction between an arrest, which in one respect was illegal, but nevertheless valid because based upon probable cause" regarding extra-jurisdictional conduct by police officers).

¶16 Caster argues he has, in fact, alleged a constitutional violation on appeal, as traffic stops are considered seizures under the Fourth Amendment, *see* ***State v. Harris***, 206 Wis. 2d 243, 255, 557 N.W.2d 245 (1996), and he alleged de la Cruz's stop of Caster was unreasonable. But, again, Caster does not allege the stop was unreasonable or lacking in reasonable suspicion independent of the extra-jurisdictional issue, including de la Cruz's testimony that he did not feel "comfortable" initiating a traffic stop within his jurisdiction. He alleges only that de la Cruz lacked reasonable suspicion in the context of advancing his interpretation of "fresh pursuit" under WIS. STAT. § 175.40(2). That is to say, his

argument regarding the reasonableness of the stop is indivisible from his argument regarding whether de la Cruz was in "fresh pursuit."[6]

¶17 Caster's claim that this was an "illegal" stop under the Fourth Amendment because it was outside de la Cruz's official jurisdiction does not withstand scrutiny. On this point, Caster references ***Slawek***, 114 Wis. 2d at 335, and ***State v. Barrett***, 96 Wis. 2d 174, 291 N.W.2d 498 (1980), in his brief in chief for the principle that officers have no official power to arrest when acting outside their jurisdiction, the implication being that an arrest under such circumstances is inherently unreasonable. We read neither ***Barrett*** nor ***Slawek*** as addressing whether an officer who arrests a person outside any authorized jurisdiction—much less conducts a mere investigatory stop of a vehicle—violates the Fourth Amendment based upon that lack of authority alone.

¶18 ***Barrett*** involved whether a deputy sheriff was acting in his "official capacity," which is an element of the crime of battery against a peace officer (now WIS. STAT. § 940.20(4)). The deputy followed the defendant's vehicle into a neighboring county after both of them had travelled through the deputy's own authorized jurisdiction. ***Barrett***, 96 Wis. 2d at 176. The deputy ultimately seized and arrested the defendant for obstructing an officer, during which the defendant struck the deputy. ***Id.*** at 176-78. ***Barrett*** held that the elements of battery against a peace officer were not satisfied because the deputy was not acting with any relation to any "official capacity" and was outside the scope of his employment when he left his authorized county to engage in police activity. ***Id.*** at 181-82; *see*

[6] To whatever extent Caster claims de la Cruz's state of mind within New Richmond is relevant to reasonable suspicion, we reject his argument. *See* ***State v. Sykes***, 2005 WI 48, ¶33, 279 Wis. 2d 742, 695 N.W.2d 277.

also ***Williams v. State***, 45 Wis. 2d 44, 47-48, 172 N.W.2d 31 (1969) (for purposes of battery against a police officer, off-duty police officer was acting in his "official capacity" by intervening to stop an altercation). In fact, our supreme court expressly declined to opine whether probable cause to conduct a valid arrest was expressly linked to any "official capacity," including whether an officer is on duty and within his jurisdiction. ***Barrett***, 96 Wis. 2d at 181. The holding was thus unrelated to whether the deputy possessed reasonable grounds to stop the defendant outside the officer's jurisdiction.

¶19 ***Slawek*** involved whether on-duty Chicago officers who had followed the defendant into Wisconsin, where they witnessed a probable burglary, conducted a valid citizen's arrest.[7] ***Slawek***, 114 Wis. 2d at 334. Despite the Chicago officers having observed the defendant commit the burglary in Lake Windsor, Wisconsin, well outside their lawful jurisdiction, ***Slawek*** mentioned nothing about the officers' need to form reasonable suspicion before they left their jurisdiction to continue monitoring someone. ***Id.*** Citing ***Barrett***, we stated a police officer may "make a lawful arrest even when he or she is acting beyond his or her official capacity," even if an officer does not have "any official power to arrest." ***Slawek***, 114 Wis. 2d at 335. We ultimately concluded that the officers' lack of any authorization did not invalidate the arrest when they could have conducted an arrest as private citizens who had observed a probable felony committed in their presence. ***Id.*** at 336.

[7] Neither Caster nor the State argues de la Cruz conducted an invalid or valid citizen's arrest, and we have no need to pursue any further analysis on that point. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (appellate court shall not develop arguments on a party's behalf).

¶20 By the time de la Cruz stopped Caster, the totality of the circumstances readily gave de la Cruz reasonable suspicion—if not probable cause—that Caster had committed a traffic offense, either in the form of OWI or crossing the center line of traffic. ***State v. Houghton***, 2015 WI 79, ¶30, 364 Wis. 2d 234, 868 N.W.2d 143; ***Post***, 301 Wis. 2d 1, ¶26. Caster does not argue otherwise. That some of the circumstances giving rise to such a determination occurred outside of de la Cruz's jurisdiction does not matter for constitutional purposes. Without more from Caster, we cannot accept the notion that a constitutional violation occurred in this case when, regardless of "fresh pursuit" as understood in WIS. STAT. § 175.40(2), de la Cruz stopped Caster outside New Richmond while possessing reasonable suspicion that he committed a traffic offense.

¶21 Without a Fourth Amendment violation, we next consider the State's argument regarding whether suppression is a proper remedy here, again, assuming without deciding, de la Cruz lacked statutory authority to initiate his stop of Caster's vehicle. Citing ***State v. Keith***, 2003 WI App 47, ¶8, 260 Wis. 2d 592, 659 N.W.2d 403, the State argues that because Caster has not alleged de la Cruz committed any constitutional violation, we may not require suppression of evidence obtained following the initial traffic stop. Caster counters that "[e]vidence obtained in violation of a statute (or not in accordance with the statute) may be suppressed under the statute to achieve the objectives of the statute, even though the statute does not expressly provide for the suppression or exclusion of the evidence." ***State v. Popenhagen***, 2008 WI 55, ¶62, 309 Wis. 2d 601, 749 N.W.2d 611. While Caster's statement of the law is correct so far as it goes, we agree with the State that suppression of evidence following the initial seizure is inappropriate in this case.

¶22 Under ***Popenhagen***, a "circuit court has discretion to suppress or allow evidence obtained in violation of a statute that does not specifically require suppression of evidence obtained contrary to the statute, depending on the facts and circumstances of the case and the objectives of the statute." ***Id.***, ¶68. The circuit court only engaged in application of WIS. STAT. § 175.40(2) to the facts of this case and denied the suppression motion upon concluding de la Cruz fell within the purview of the statute. Because of this, the circuit court had no reason to reach the merits of suppression or make specific findings about the facts and circumstances.

¶23 We are permitted, however, to rule on the merits of suppression as a remedy in this case, regardless of whether WIS. STAT. § 175.40(2) was satisfied so as to give de la Cruz extra-jurisdictional authority, as "[a]n appellate court may sustain a lower court's holding on a theory or on reasoning not presented to the lower court." ***State v. Holt***, 128 Wis. 2d 110, 124-25, 382 N.W.2d 679 (Ct. App. 1985), *superseded on other grounds by statute*. Furthermore, because we review the language of WIS. STAT. §§ 175.40(2) and 62.09(13)(a), we independently review application and interpretation of each statute for whether suppression of evidence is proper in this case. *See* ***State v. House***, 2007 WI 79, ¶¶11, 34, 60, 302 Wis. 2d 1, 734 N.W.2d 140 (appellate courts may review the merits of suppressing evidence obtained in violation of wiretap statute when a circuit court did not reach that issue).

¶24 In general, suppression is a means to deter "unlawful or undesirable or unconstitutional police conduct" by making evidence obtained through that conduct inadmissible in a court of law. ***Conrad v. State***, 63 Wis. 2d 616, 635, 218 N.W.2d 252 (1974). For a constitutional violation, suppression typically serves as a remedy, save for when the benefit brought by deterrence is outweighed by the

costs to society imposed by frustrating the truth-seeking function. ***State v. Jackson***, 2016 WI 56, ¶46, 369 Wis. 2d 673, 882 N.W.2d 422. For a statutory violation, however, an automatic remedy of suppression may be unsuitable, as proscriptive statutes may already contemplate violations and set forth the appropriate penalties. The statute's language need not explicitly provide suppression or exclusion as a remedy, but it nevertheless must indicate suppression may be an option "with [no] greater clarity than ordinarily required of any legislative enactment." ***Popenhagen***, 309 Wis. 2d 601, ¶68. To that end, a statute may allow for suppression depending upon, first, whether the statute enumerates any remedies similar to suppression and, second, whether a suppression motion would be "germane to the objectives of the statute" in question. ***State v. Minett***, 2014 WI App 40, ¶¶9-10, 353 Wis. 2d 484, 846 N.W.2d 831 (citing ***Popenhagen***, 309 Wis. 2d 601, ¶¶36, 51, 54).

¶25 We conclude that suppression of evidence following de la Cruz's stop based upon any lack of authority under WIS. STAT. § 175.40(2) (and, by extension, WIS. STAT. § 62.09(13)) is unwarranted in this case.

¶26 First, these statutes do not provide for any remedy similar to suppression. In fact, WIS. STAT. § 175.40(2) does not provide any explicit recourse if an officer conducts an arrest outside of his or her jurisdiction and is not in "fresh pursuit." Nor can we discern any basis under the statutory language to conclude that any remedial recourse was intended. Under § 175.40(2), peace officers "may … arrest any person for the violation of any law or ordinance the officer is authorized to enforce" once they are in "fresh pursuit" of that person. That statute operates to extend the authority provided by WIS. STAT. § 62.09(13)(a), in which police officers "shall arrest" anyone within their jurisdiction who breaches the peace or violates the law. Unlike the statutes at

issue in ***Popenhagen*** and ***Minett***, §§ 175.40(2) and 62.09(13)(a) are affirmative grants of power that do not create protections or procedure for seized or arrested persons or proscribe any conduct by police officers. *See, e.g.*, ***Minett***, 353 Wis. 2d 484, ¶¶9-10. As WIS. STAT. ch. 62 governs the organization of cities and their general charters, this is unsurprising.

¶27 We recognize there could be consequences related to an officer performing duties in an "official capacity" outside of a statutorily authorized jurisdiction, including, perhaps, whether an officer could issue a valid citation for an offense. *See, e.g.*, ***Barrett***, 96 Wis. 2d at 182 (dismissing complaint charging battery to peace officer on lack of officer's "official capacity"). In this case, however, Caster asks for *suppression* of all evidence obtained after initial contact by de la Cruz, not for the invalidation of the arrest itself so as to require dismissal of the charges against him on that basis. The language of WIS. STAT. §§ 175.40(2) and 62.09(13)(a) provides no basis to read in such an expansive remedy, especially in a scenario where a lawful arrest follows an otherwise lawful and constitutional traffic stop.

¶28 Second, and flowing from that lack of specific remedial language in WIS. STAT. § 175.40(2), suppression here would not serve the objectives of the statute. The statutes regarding police authority are meant to set boundaries for official action, or extend them in the case of § 175.40(2) in limited circumstances, and to "protect the rights and autonomy of local governments." ***State v. Mieritz***, 193 Wis. 2d 571, 576-77, 534 N.W.2d 632 (Ct. App. 1995) (citation omitted). Section 175.40(2) and WIS. STAT. § 62.09(13)(a) do not create an individual right to be free from extra-jurisdictional seizures that are otherwise lawful, but rather serve to prevent "overlap" and conflict between the law enforcement agencies of

Wisconsin municipalities by clearly delineating authority to arrest. *See* ***Mieritz***, 193 Wis. 2d at 576-77 (citation omitted).

¶29 Furthermore, absent any constitutional defects, suppression of evidence obtained following an extra-jurisdictional stop on suspicion of OWI is problematic. A police officer may conduct a citizen's arrest as a private individual for suspected driving while intoxicated without being present in their jurisdiction at all. *See* ***City of Waukesha v. Gorz***, 166 Wis. 2d 243, 246-48, 479 N.W.2d 221 (Ct. App. 1991). Recognizing "[t]he state's interest in punishing and deterring drunk driving within its own jurisdiction is powerful and well-established[,]" we are unable to envision any benefits that would result from suppressing evidence stemming from an investigative stop for lack of statutory authority. *See* ***Strenke v. Hogner***, 2005 WI App 194, ¶21, 287 Wis. 2d 135, 704 N.W.2d 309; *see also* ***Jackson***, 369 Wis. 2d 673, ¶46. Given this interest, a defendant should not be free to offensively assert a statutory overreach on the part of law enforcement to escape liability when such overreach had no effect upon the defendant's constitutional rights or rights affirmatively granted by statute. ***Mieritz***, 193 Wis. 2d at 575.

¶30 We further stress, once again, that the language of WIS. STAT. § 175.40(2) authorizes police officers once in "fresh pursuit" to "follow anywhere in the state and *arrest*" outside of their jurisdiction, just as WIS. STAT. § 62.09(13) authorizes such intra-jurisdictional activities. Applying the language of both statutes to the specific facts here, there is a strong, additional reason to conclude the circuit court's ultimate result was correct when it did not suppress evidence obtained subsequent to de la Cruz's traffic stop. De la Cruz was well aware of his jurisdictional authority and made reasonable efforts to comply with it once Caster neared the city limits, only activating his emergency lights once he observed additional indications Caster was driving while intoxicated and posed a safety

threat. Neither statute speaks to the authority of police officers to temporarily seize a vehicle outside of their jurisdiction to conduct an investigatory stop.[8] The circuit court's factual findings and the record indicate Fowler conducted the investigation and ultimately performed the official arrest in this case, not de la Cruz. Under WIS. STAT. § 59.28(1), sheriffs and their deputies shall "keep and preserve the peace" in their respective counties. Thus, when Fowler, within his jurisdiction of St. Croix County, conducted the field sobriety tests and arrested Caster under suspicion of driving while intoxicated, he was acting within that statutory grant of authority. While de la Cruz performed the traffic stop in this case, he only acted in assistance of Fowler in conducting the tests and the ultimate arrest. De la Cruz's constitutionally permitted traffic stop contemporaneous with his hailing of the proper authorities, who ultimately arrested Caster, does not warrant using suppression to deter unwanted conduct.

¶31 In sum, the circuit court did not err when it denied the motion to suppress when, regardless of whether de la Cruz was in fresh pursuit under WIS. STAT. § 175.40(2), such a remedy was inappropriate under the circumstances of this case. Because there was no constitutional violation when de la Cruz seized Caster's vehicle, and exclusion of evidence is otherwise inappropriate, we affirm the judgment of the circuit court.

[8] Under WIS. STAT. § 968.24, a law enforcement officer is granted statutory authority to conduct a temporary detainment if the officer affirmatively identifies as a law enforcement officer and "reasonably suspects" unlawful activity is afoot. *See* ***State v. Post***, 2007 WI 60, ¶11, 301 Wis. 2d 1, 733 N.W.2d 634 (recognizing § 968.24 codifies the standard of ***Terry v. Ohio***, 392 U.S. 1, 22 (1968)). As neither party attempts to distinguish the statutory implications of the arrest from those of the investigative stop, we need not further undertake such analysis. *See* ***Industrial Risk Insurers***, 318 Wis. 2d 148, ¶25.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.