COURT OF APPEALS
DECISION
DATED AND FILED

May 3, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP1419-CR **Cir. Ct. No. 2015CF32**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY H. GARBACZ, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Crawford County: LYNN M. RIDER, Judge. *Affirmed*.

¶1 SHERMAN, J.[1] Anthony Garbacz, Jr., appeals from a judgment of conviction for second offense operating a motor vehicle while under the influence

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

of an intoxicant. *See* WIS. STAT. § 346.63(1)(a).[2] Garbacz contends the circuit court erred in denying his motion to suppress evidence obtained after his arrest.[3] Garbacz argues that because Iowa's version of the Uniform Law on Close Pursuit, *see* IOWA CODE ch. 806 (2018), was violated, the exclusionary rule requires suppression of that evidence. For the reasons discussed below, I disagree with Garbacz and affirm the circuit court.

BACKGROUND

¶2 The circuit court determined that the following underlying facts are not in dispute:

> On April 1, 2015, Prairie du Chien, Wisconsin police officer Anthony Berg was on duty as a traffic officer in the City of Prairie du Chien when he observed a vehicle within the City operating at a high rate of speed, squealing tires and turning into oncoming traffic. Officer Berg, who was patrolling in a fully marked City of Prairie du Chien police vehicle, turned on his emergency lights and attempted to make a traffic stop. However, the vehicle observed by Officer Berg increased its speed and turned west onto Wisconsin Street heading toward the Wisconsin – Iowa bridge over the Mississippi River. Officer Berg continued his pursuit of this vehicle over the bridge into the State of Iowa where he was assisted by police officers from the Mar Mac, Iowa Police Department and the Clayton County, Iowa Sheriffs Department. These law enforcement officers pursued the vehicle to a home located in Marquette, Iowa. Officer Berg and the Iowa law enforcement officers approached [Garbacz] and identified him. Officer Berg noticed a strong odor of intoxicants

[2] Garbacz was also convicted of resisting and obstructing an officer, contrary to WIS. STAT. § 946.41(1). On appeal, Garbacz challenges only the circuit court's denial of his motion to suppress evidence, which does not impact that count. Accordingly, that count will not be considered further.

[3] Hon. James P. Czajkowski presided over the pretrial proceedings, including the motion to suppress evidence. Hon. Lynn M. Rider presided over Garbacz's plea and sentencing.

> emanating from [Garbacz] and questioned [Garbacz] regarding his consumption of alcohol. [Garbacz] admitted he had been drinking, performed field sobriety test and was arrested by Officer Berg. All of the law enforcement officers then placed [Garbacz] in Officer Berg's squad car and [Garbacz] was transported back to Wisconsin for further processing. Prior to being returned to Wisconsin, [Garbacz] was not brought before any Iowa magistrate to determine the lawfulness of the arrest nor did he waive extradition or participate in extradition proceedings. Furthermore, no habeas corpus proceeding was filed in either Iowa or Wisconsin by [Garbacz] and there have been no civil or criminal actions in the State of Iowa or in Federal Court to compel Wisconsin to return [Garbacz] to Iowa for hearing before an Iowa magistrate.

¶3 On March 14, 2016, Garbacz moved the circuit court to suppress all evidence obtained after his vehicle was stopped in Iowa, on the basis that he was not brought before an Iowa magistrate as required by IOWA CODE ch. 806. The court denied Garbacz's motion following a hearing. The court determined that Garbacz "was not deprived of any constitutional [or statutory] right for which … suppression of evidence obtained at the time of his arrest is appropriate." Garbacz appeals.

DISCUSSION

¶4 Garbacz contends the circuit court erred in denying his motion to suppress evidence. Garbacz argues that because he was not presented to an Iowa magistrate following his arrest, as required by IOWA CODE § 806.2, all evidence obtained after his removal to Wisconsin should be suppressed.

¶5 An appellate court applies a mixed standard of review when reviewing a grant or denial of a motion to suppress. This court will uphold the circuit court's factual findings unless they are clearly erroneous. *See* ***State v. Samuel***, 2002 WI 34, ¶15, 252 Wis. 2d 26, 643 N.W.2d 423. However, the

application of constitutional principals to the facts at hand is a question of law, which this court reviews de novo. ***Id***. In addition, this appeal requires this court to interpret an Iowa statute. Statutory construction presents a question of law which is also subject to this court's de novo review. *See* ***State v. Cole***, 2000 WI App 52, ¶3, 233 Wis. 2d 577, 608 N.W.2d 432.

¶6 Both Wisconsin and Iowa have adopted versions of the Uniform Act on Close Pursuit. *See* WIS. STAT. § 976.04 and IOWA CODE ch. 806. Section 976.04 and IOWA CODE ch. 806 are substantially identical, although the Iowa version refers to "fresh pursuit," where the Wisconsin version refers to "close pursuit." In both, the purpose of the statute or statutes is to govern the actions of a "member of a … law enforcing unit of another state … who enters this state in fresh pursuit, and continues within this state in such fresh pursuit." IOWA CODE § 806.1; *see also* WIS. STAT. § 976.04(1) ("Any member of a … peace unit of another state … who enters this state in close pursuit, and continues within this state such close pursuit."). Here, Officer Berg pursued Garbacz into Iowa, where he was arrested. Thus, as noted by the circuit court, it is only the Iowa statute and not the Wisconsin statute that is involved in this case.

¶7 Under IOWA CODE § 806.2, if an arrest is made by the out-of-state officer, here Officer Berg, the "the officer shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest." It is undisputed that Garbacz was not brought before any Iowa magistrate to determine the lawfulness of the arrest. Accordingly, the issue before this court is whether evidence obtained after Garbacz's arrest should be excluded because Garbacz was not brought before an Iowa magistrate as required by § 806.2.

¶8 When construing the law of another state, we do not interpret the law independently if an interpretation of the law has already been made by an appellate court of that state. *See* ***Scholle v. Home Mut. Cas. Co.***, 273 Wis. 387, 390, 78 N.W.2d 902 (1956), *overruled on other grounds by* ***Haumschild v. Continental Cas. Co.,*** 7 Wis. 2d 130, 95 N.W.2d 814 (1959) (stating that "the interpretations placed upon the statutes of Kansas by its supreme court are the substantive law of that state"); ***Weber v. John Hancock Mut. Life Ins. Co.***, 267 Wis. 647, 654, 66 N.W.2d 672 (1954) (stating that "[i]f decisions of the courts of the state in which the statute exists are offered in evidence, the interpretation placed by the courts of that state will be followed at the forum. In a matter of construction the state court's determination as to the meaning of a state statute prevails." (citation omitted)).

¶9 The Iowa Supreme Court has not interpreted Iowa's version of the Fresh Pursuit Act. However, it has interpreted the virtually identical Missouri version of the Fresh Pursuit Act in ***State v. Dentler***, 742 N.W.2d 84 (Iowa 2007). Significantly, in ***Dentler***, the Iowa court relied in part upon a Nebraska Supreme Court decision that interpreted Iowa's Fresh Pursuit Statute.[4] *See* ***id.*** at 87. I conclude that this reliance is the functional equivalent of an interpretation by the Iowa Supreme Court of its own statute.

¶10 In ***Dentler***, the Iowa Supreme Court concluded that the failure to comply with Missouri's Fresh Pursuit Act did not result in a due process violation. ***Id.*** at 89. The court then concluded that the Fresh Pursuit Act does not contain any language that requires the exclusion of evidence for the Act's violation. ***Id.***

[4] ***State v. Ferrell***, 218 Neb. 463, 356 N.W.2d 868 (1984).

The court also concluded that the violation of the Act does not involve a fundamental right of the defendant. The court stated:

> Here, the main purpose of the magistrate provision … is not to protect the individual from overreaching evidence-gathering techniques by government prosecutors, but to vindicate the sovereign rights of the State of Missouri. To the extent an ox is being gored in this case, it belongs to Missouri, not [the defendant]. The magistrate provision in Missouri's Fresh Pursuit Statute does not implicate fundamental, personal interests of the defendant.

Id. (internal citation omitted). In addition, the court determined that there was no police misconduct that aggravated the underlying statutory violation. On these bases, the court held that the exclusionary rule did not apply. ***Id.*** at 90.

¶11 While not explicitly arguing that I am bound by the precedent of ***Dentler***, the State bases its entire argument on ***Dentler,*** highlights that the circuit court relied on ***Dentler,***[5] and hopes that I affirm on that basis. I agree. Whether or not ***Dentler*** is expressly binding upon this court, the reasoning in ***Dentler*** is very persuasive. It is the functional equivalent of an interpretation by a state supreme court of the statute of that state.

¶12 Despite the circuit court and the State's reliance upon ***Dentler***, Garbacz does not mention ***Dentler*** in his appellant's brief, nor has he filed a reply brief. He has essentially conceded the State's argument regarding the significance of the case. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct.

[5] The circuit court stated in its order denying Garbacz's motion to suppress: "Thus, the decision in ***Dentler*** from the Supreme Court of the asylum state in this case supports this court's conclusion that Anthony Garbacz was not deprived of any constitutional right for which dismissal of the Wisconsin criminal action or suppression of evidence obtained at the time of his arrest is appropriate."

App. 1994) (a proposition asserted by a respondent on appeal and not disputed by the appellant's reply is taken as admitted). Because there is no assertion that there was police misconduct in this case, I conclude for the reasons set forth in ***Dentler*** that the exclusionary rule does not apply to the evidence obtained after Garbacz's arrest.

CONCLUSION

¶13 For the reasons stated above, I affirm the decision of the circuit court.

By the Court.—Judgment affirmed.

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