COURT OF APPEALS
DECISION
DATED AND FILED

October 26, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0736

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

CITY OF WATERTOWN,

PLAINTIFF-RESPONDENT,

V.

DAVID J. HARBERS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County: DANIEL W. KLOSSNER, Judge. *Affirmed.*

¶1 ROGGENSACK, J.[1] David J. Harbers appeals his convictions for operating a motor vehicle while intoxicated (OMVWI) and operating with a

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1997-98). Additionally, all references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

prohibited alcohol concentration (PAC). He claims that the circuit court erred in denying his motion to suppress evidence obtained in an encounter between Harbers and a Watertown police officer because the police officer lacked reasonable suspicion to stop Harbers before he left the city of Watertown. We conclude that the officer had reasonable suspicion to stop Harbers within the city limits and that he was engaged in fresh pursuit when he stopped Harbers outside the city limits. Therefore, the evidence obtained was properly admitted, and we affirm the judgment of the circuit court.

BACKGROUND

¶2 Early in the morning of February 14, 1998, Officer Greg Worzalla of the Watertown police department saw Harbers's car traveling through the city of Watertown. Worzalla followed Harbers through the city, noting that his car was weaving and that his wheels crossed the center line at least once. Shortly before the Watertown city line, Harbers swerved violently to avoid a rabbit that was running off the road near the curb. Believing the violent swerve was an overreaction indicative of potential drunken driving, Worzalla decided to stop the car to investigate further. Because of safety concerns, Worzalla did not stop Harbers within the city limits, but waited until Harbers was in a safe area of roadway to conduct a stop before he activated the squad's lights. When Harbers failed field sobriety tests, Worzalla arrested him for OMVWI. When Harbers also failed the breathalyzer test, he also was charged with driving with a PAC.

¶3 Harbers moved to suppress all evidence relating to the encounter, claiming that Worzalla had not had reasonable suspicion to stop him before he left Watertown and that the extrajurisdictional stop was therefore invalid. The circuit court denied the motion, concluding that the combination of observed activities

gave rise to a reasonable suspicion before Harbers had left the Watertown city limits. The court also concluded that the fresh pursuit doctrine authorized Worzalla to stop Harbers outside the city limits of Watertown. Harbers appeals.

DISCUSSION

Standard of Review.

¶4 When we review a motion to suppress evidence, we will uphold a circuit court's findings of fact unless they are clearly erroneous. *See* ***State v. Eckert***, 203 Wis. 2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996). However, the application of constitutional principles to the facts as found is a question of law that we decide without deference to the circuit court's decision. *See* ***State v. Patricia A.P.***, 195 Wis. 2d 855, 862, 537 N.W.2d 47, 49-50 (Ct. App. 1995). Whether Worzalla was in fresh pursuit of Harbers when he made the arrest outside of the city of Watertown pursuant to WIS. STAT. § 175.40(2) involves the application of a statute to a particular set of facts. As such, it is a question of law that we decide without deference to the circuit court's decision. *See* ***City of Brookfield v. Collar***, 148 Wis. 2d 839, 841, 436 N.W.2d 911, 913 (Ct. App. 1989).

Reasonable Suspicion.

¶5 Harbers first argues that Worzalla did not have reasonable suspicion that a crime had been or was about to be committed before leaving his jurisdiction. Worzalla testified that he did not have reasonable suspicion to stop Harbers before Harbers swerved to avoid the rabbit; therefore, Harbers argues, he could not have had reasonable suspicion to stop him afterwards because his action in avoiding the rabbit was insufficient by itself to generate a reasonable suspicion. We disagree.

¶6 The Fourth Amendment prohibits unreasonable searches and seizures. *See* U.S. CONST. amend. IV. The detention of a motorist by a law enforcement officer constitutes a "seizure" of the person within the meaning of the Fourth Amendment. *See* ***Berkemer v. McCarty***, 468 U.S. 420, 436-37 (1984). Statements given and items seized during a period of illegal detention are inadmissible. *See* ***Florida v. Royer***, 460 U.S. 491, 501 (1983). However, an investigative detention is not "unreasonable" if it is brief in nature, and justified by a reasonable suspicion that the motorist has committed or is about to commit a crime. *See* ***Berkemer***, 468 U.S. at 439; *see also* WIS. STAT. § 968.24. The same standards that have been established for a stop challenged under the Fourth Amendment apply to a stop challenged under art. I, § 11 of the Wisconsin Constitution. *See* WIS. CONST. art. I, § 11; ***State v. Harris***, 206 Wis. 2d 243, 259, 557 N.W.2d 245, 252 (1996).

¶7 According to ***Terry v. Ohio***, 392 U.S. 1 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be bottomed on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be afoot and that action is appropriate. *See* ***id.*** at 21-22. "The question of what constitutes reasonable suspicion is a common sense test. Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience?" ***State v. Jackson***, 147 Wis. 2d 824, 834, 434 N.W.2d 386, 390 (1989). The test is designed to balance the personal intrusion into a suspect's privacy occasioned by the stop against the societal interests in solving crime and bringing offenders to justice. *See* ***State v. Guzy***, 139 Wis. 2d 663, 680, 407 N.W.2d 548, 556 (1987).

¶8 Here, we conclude that Worzalla had a reasonable suspicion sufficient to justify stopping Habers's car. Worzalla testified that he followed Harbers through the city of Watertown and repeatedly observed his car veering from side to side. Harbers's car crossed the center line at least once. Worzalla decided to stop him only after he saw the car swerve violently to avoid a rabbit that was within inches of the shoulder and running off the road, an overreaction that, combined with Worzalla's other observations, caused him to suspect that the driver of the car was impaired. Based on all the facts and circumstances present, we conclude Worzalla had reasonable suspicion to justify an investigative stop of Harbers.

Extrajurisdictional Pursuit.

¶9 WISCONSIN 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." Harbers contends that Worzalla was not in "fresh pursuit" under § 175.40(2) because he lacked reasonable suspicion to stop Harbers until after Harbers had left the city of Watertown. We disagree.

¶10 In ***Collar***, 148 Wis. 2d at 842-43, 436 N.W.2d at 913, we interpreted the doctrine of "fresh pursuit" to require the following:

> First, the officer must act without unnecessary delay. Second, the pursuit must be continuous and uninterrupted, but there need not be continuous surveillance of the suspect. Finally, the relationship in time between the commission of the offense, the commencement of the pursuit, and the apprehension of the suspect is important. The greater the length of time, the less likely it is that the circumstances under which the police act are sufficiently exigent to justify an extrajurisdictional arrest.

¶11 Worzalla's stop of Harbers meets these criteria. First, Worzalla developed the suspicion needed to justify a stop when Harbers overreacted to the rabbit at the side of the road. This took place before Harbers reached the Watertown city limits. Worzalla testified that the delay in stopping Harbers was necessary because the section of road in that area is narrow and inclined, making it a difficult place to conduct sobriety tests. Additionally, he believed it would be unsafe to stop Harbers on the bridge which followed, so he waited until Harbers had crossed the bridge before he activated his lights and stopped him. Second, the parties do not dispute that Worzalla continually observed Harbers from the time he swerved to avoid the rabbit until the stop. Finally, there is a close relationship in time between the commission of the offense, the commencement of the pursuit, and the apprehension of Harbers. Worzalla saw him swerve to avoid the rabbit; he continued to follow him and stopped him as soon as he could safely do so. Therefore, we conclude that Worzalla was in fresh pursuit of Harbers when he stopped him and that the stop was therefore valid.

CONCLUSION

¶12 We conclude that the officer had reasonable suspicion to stop Harbers within the city limits and that he was engaged in fresh pursuit when he stopped Harbers outside the city limits. Therefore, the evidence obtained was properly admitted, and we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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