COURT OF APPEALS
DECISION
DATED AND FILED

October 25, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP408-CR **Cir. Ct. No. 2011CT68**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RANDALL LEE SUGDEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County: JAMES EVENSON, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.[1] Randall Lee Sugden appeals a judgment of conviction for operating a motor vehicle while intoxicated, second offense,

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) and (3) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

contrary to WIS. STAT. §§ 346.63(1)(a), 346.65(2)(am)2. Sugden argues that a Sauk County deputy sheriff exceeded his authority in stopping him and placing him under arrest in Richland County. We conclude that: (1) the initial stop was justified because the deputy sheriff was acting in fresh pursuit of Sugden under WIS. STAT. § 175.40(2); and (2) the brief detention was justified based on additional factors that gave rise to a reasonable suspicion that Sugden was operating a motor vehicle while intoxicated. Accordingly, we affirm.

BACKGROUND

¶2 On December 23, 2010, Sauk County Deputy Sheriff Thomas Clauer was on patrol and traveling west on State Highway 58 when he observed a vehicle cross over the highway centerline. As Deputy Clauer continued to follow the vehicle westbound towards the Sauk/Richland county line, he saw the vehicle again cross over the centerline. Deputy Clauer immediately activated his emergency lights to initiate a traffic stop. The driver continued to drive slowly for a couple hundred feet before coming to a stop in Richland County within one quarter mile of the Richland County sign.

¶3 Once stopped, the driver of the vehicle identified himself as Randall Lee Sugden. While speaking to Sugden, Deputy Clauer noticed that Sugden's eyes were glassy, his speech was slurred and his breath gave off a strong odor of intoxicants. After asking Sugden to step out of his car, Deputy Clauer noticed that Sugden was not steady on his feet and asked Sugden how much alcohol he had consumed. Sugden admitted to drinking "two or three beers." After Sugden performed field sobriety tests, Deputy Clauer informed Sugden that he was going to place him under arrest for operating a motor vehicle while intoxicated. A blood test later revealed Sugden had a blood ethanol level of .205% by weight.

¶4 Sugden was subsequently charged with operating a motor vehicle while intoxicated, as a second offense contrary to WIS. STAT. §§ 346.63(1)(a), 346.65(2)(am)2, and operating with a prohibited alcohol concentration, as a second offense contrary to WIS. STAT. §§ 346.63(1)(b), 346.65(2)(am)2. Sugden moved to dismiss the charges on the ground that Deputy Clauer acted without legal authority when he stopped and arrested him in Richland County because the deputy was outside of his jurisdiction.

¶5 The court denied the motion to dismiss, concluding that the fresh pursuit doctrine authorized Deputy Clauer to conduct a lawful stop in Richland County. The court reasoned that the fresh pursuit doctrine applied because Deputy Clauer observed the traffic violations in Sauk County and began the pursuit in Sauk County but Sugden did not stop until he was about a quarter mile outside of Sauk County. Sugden later pled no contest to one count of operating a motor vehicle while intoxicated, second offense. Sugden appeals.

DISCUSSION

¶6 The issue on appeal is whether Deputy Clauer acted with lawful authority when he stopped and arrested Sugden in Richland County. The application of a statute to a particular set of facts presents a question of law that we review de novo. ***City of Brookfield v. Collar***, 148 Wis. 2d 839, 841, 436 N.W.2d 911 (Ct. App. 1989).

¶7 In general, police officers acting outside of their jurisdiction do not act in an official capacity and do not have the official power to arrest. ***State v.***

Slawek, 114 Wis. 2d 332, 335, 338 N.W.2d 120 (Ct. App. 1983).[2] However, peace officers 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) (emphasis added). Courts consider three criteria when determining whether an officer acts in fresh pursuit:

> 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.

State v. Haynes, 2001 WI App 266, ¶6, 248 Wis. 2d 724, 638 N.W.2d 82 (citations omitted).

¶8 Sugden contends that Deputy Clauer was not acting with lawful authority when he stopped and arrested Sugden in Richland County because he lacked authority to place an individual under arrest in Richland County without requesting mutual assistance from officers of Richland County. He contends that this case is similar to ***State v. Barrett***, 96 Wis. 2d 174, 182, 291 N.W.2d 498 (1980), where the Wisconsin Supreme Court held that, because a Richland County deputy's statutory duties were limited to keeping and preserving the peace in his county of appointment, the deputy lacked statutory authority to stop and arrest the defendant in neighboring Grant County. In addition, Sugden contends that his

[2] *See also* WIS. STAT. § 59.28(1) which provides, in relevant part, that "[s]heriffs and their undersheriffs and deputies shall keep and preserve the peace *in their respective counties*." (Emphasis added.)

arrest is not justified under the fresh pursuit doctrine because the arrest was based on Deputy Clauer's investigation into whether he was operating a motor vehicle while intoxicated and not the initial stop for a traffic violation.

¶9 In response, the State argues that Deputy Clauer acted lawfully when he stopped and arrested Sugden in Richland County because he was in fresh pursuit. According to the State, Deputy Clauer was permitted to stop and arrest Sugden in Richland County because he observed Sugden commit traffic violations in Sauk County and pursued him continuously and without delay until Sugden stopped in Richland County. Moreover, the State argues that when an officer is acting under the fresh pursuit doctrine, the officer is not required to make a request for mutual assistance. Finally, the State argues that the arrest was lawful because Deputy Clauer became aware of additional suspicious factors that permitted him to broaden the scope of the stop to determine whether Sugden was operating a motor vehicle while intoxicated.

¶10 We first observe that this case is not controlled by ***Barrett*** because WIS. STAT. § 175.40(2) did not then exist. As noted above, in ***Barrett***, the court concluded that a Richland County deputy did not act in his official capacity when he questioned and detained the defendant in Grant County. ***Barrett***, 96 Wis. 2d at 180-81. The court determined that the deputy's duties "unless extended by some other rule not applicable here" are limited to keeping and preserving the peace in his respective county. ***Id.*** at 182. The State conceded that, under the facts of that case, the Richland County deputy's power to act as a peace officer was not extended by any statute or rule that would have allowed him to act as a peace officer in Grant County. ***Id.*** at 179 n.3. This is because § 175.40(2), which states that "*any* peace officer may, when in fresh pursuit, *follow anywhere in the state*," did not exist in 1977 when the defendant in ***Barrett*** was stopped. (Emphasis

added.) Rather, the statute then in effect was WIS. STAT. § 66.31 (1977), which stated that, "[*a*]*ny peace officer of a city, village or town* may, when in fresh pursuit, *follow into an adjoining city, village or town* and arrest any person or persons for violation of state law or the ordinances of the city, village or town employing such officer."[3] (Emphasis added.) Thus, in 1977, the Richland County deputy lacked authority to act as a peace officer in Grant County because he was a peace officer of a county and not a peace officer of a city, village or town.

¶11 We agree with the State that this case is controlled by ***Haynes***, in which we held that a police officer working in the Village of Butler in Waukesha County was authorized under the fresh pursuit doctrine to cross the Waukesha/Milwaukee County line and stop Haynes for a traffic violation. ***Haynes***, 248 Wis. 2d 724, ¶¶2, 14. In reaching our conclusion, we considered each of the three criteria used in determining fresh pursuit. ***Id.***, ¶7. First, there was no unnecessary delay between the traffic violation and the officer's decision to act because the officer immediately activated his emergency lights and siren after observing the traffic violation. ***Id.*** Second, the pursuit was continuous and uninterrupted. ***Id.*** Third, "the period of time between the violation, the start of the pursuit and Haynes's apprehension was very short, spanning only a few miles, and any minimal delay was caused by Haynes's refusal to pull over." ***Id.*** The court further concluded that, because the officer became aware during the initial stop of "additional factors that were sufficient to give rise to a suspicion that Haynes had committed or was committing an offense separate and distinct from the traffic violation," the officer could extend the stop and begin a new investigation. ***Id.***,

[3] WISCONSIN STAT. § 66.31 was repealed by 1981 Wis. Laws, ch. 324, § 1. WISCONSIN STAT. § 175.40 was created by 1981 Wis. Laws, ch. 324, § 2.

¶11. Accordingly, the court concluded that the officer lawfully extended the traffic stop after observing that Haynes had bloodshot eyes, slurred her speech, gave off a strong odor of intoxicants and later admitted that she had been drinking alcohol that evening. ***Id.***, ¶12. These additional factors gave rise to a reasonable suspicion that Haynes had committed the offense of operating a motor vehicle while intoxicated. ***Id.***

¶12 Applying ***Haynes*** to the facts of this case, we conclude that Deputy Clauer's initial traffic stop of Sugden was valid because Deputy Clauer was in fresh pursuit under WIS. STAT. § 175.40(2). First, the deputy acted without unnecessary delay because he immediately activated his emergency lights after twice observing Sugden cross over the centerline. Second, Deputy Clauer's pursuit was uninterrupted because he followed Sugden continuously from the time he first observed Sugden cross over the centerline in Sauk County to the time that Sugden stopped his vehicle about a fourth of a mile from the Richland County line. Third, there was a short period of time between the commission of the traffic violation, the commencement of the pursuit, and Sugden's apprehension. After activating his lights, Deputy Clauer drove only a couple hundred feet before Sugden stopped his car and was apprehended. Here, as in ***Haynes***, any minimal delay in time was caused by Sugden's refusal to immediately pull over. We note that, in contrast to the officer in ***Haynes*** who drove for a few miles before Haynes stopped his vehicle, in this case Deputy Clauer drove only a couple hundred feet before Sugden stopped. *See* ***id.***, ¶7; *see also* ***Collar***, 148 Wis. 2d at 843 (concluding that a stop was valid under the fresh pursuit doctrine when "the periods of time between the commission of the offense, the commencement of the pursuit, and the apprehension of the suspect were very short, spanning several

minutes at most"). We further note that there is no requirement under WIS. STAT. § 175.40(2) that an officer request mutual assistance before making an initial stop.

¶13 We also conclude that Deputy Clauer was justified in expanding the scope of the initial stop upon becoming aware of "additional factors that were sufficient to give rise to a suspicion" that Sugden was operating a vehicle while intoxicated. ***Haynes***, 248 Wis. 2d 724, ¶11; ***State v. Betow***, 226 Wis. 2d 90, 93, 593 N.W.2d 499 (Ct. App. 1999) (providing that "a police officer may stop a vehicle when he or she reasonably believes the driver is violating a traffic law; and, once stopped, the driver may be asked questions reasonably related to the nature of the stop"). Here, the deputy asked Sugden how much alcohol he had consumed after noticing that Sugden's eyes were glassy, his speech was slurred and his breath gave off a strong odor of intoxicants. Sugden admitted to consuming alcohol that evening. As in ***Haynes***, "these are additional suspicious factors sufficient to give rise to a suspicion that [Sugden] had committed the offense of drunk driving, an offense separate and distinct from the traffic violation." ***Haynes***, 248 Wis. 2d 724, ¶12. Based on these additional suspicious factors, Deputy Clauer could commence a new investigation and request that Sugden perform field sobriety tests, an important tool for conducting a new investigation. ***Id.*** (citing ***County of Jefferson v. Renz***, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999)). Moreover, it is undisputed that after observing Sugden perform field sobriety tests, Deputy Clauer had probable cause to place Sugden under arrest for operating a motor vehicle while intoxicated. Accordingly, Deputy Clauer acted under his lawful authority in placing Sugden under arrest. *See* ***Collar***, 148 Wis. 2d at 840-43 (determining that an officer who stopped a vehicle

about one mile outside of her jurisdiction acted lawfully in requiring the defendant to perform field sobriety tests and placing the defendant under arrest).[4]

CONCLUSION

¶14 For the reasons explained above, we conclude that Deputy Clauer's initial stop of Sugden was justified under the fresh pursuit doctrine, WIS. STAT. § 175.40(2). That is, the initial traffic stop was lawful because Deputy Clauer acted without delay, his pursuit of Sugden was continuous and uninterrupted and there was only a short period of time between the commission of the traffic offense, the commencement of the pursuit and Sugden's apprehension. We further conclude that there were additional factors that justified Deputy Clauer's brief detention of Sugden for further investigation, including Sugden's glassy eyes, slurred speech and the odor of intoxicants on his breath. Based on this lawful detention, Deputy Clauer obtained probable cause to arrest Sugden for operating a motor vehicle while intoxicated. Accordingly, we affirm.

By the Court.—Judgment affirmed.

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

[4] Because we conclude that Deputy Clauer's initial stop and arrest were lawful, we need not address whether the arrest qualifies as a valid citizen's arrest.