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Cite as 2010 Ark. App. 738

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR10-183

TODD T. DEBRIYN APPELLANT V. STATE OF ARKANSAS APPELLEE	**Opinion Delivered** November 3, 2010 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [CR-2008-2206-4] HONORABLE MARY ANN GUNN, JUDGE AFFIRMED

DAVID M. GLOVER, Judge

Appellant, Todd Debriyn, was convicted by a Washington County jury of driving while intoxicated (fourth offense) and violation of the Arkansas implied-consent law. He was sentenced to one year imprisonment and assessed a $900 fine and $300 in court costs. On appeal, Debriyn argues that the trial court erred in denying his motion to suppress[1] because the police officer had no jurisdiction to conduct a DWI investigation after he was stopped. We affirm.

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[1]Debriyn's attorney originally filed a motion in limine that included jurisdictional arguments in March 2009; he later filed a "Brief in Support of Motion to Suppress" in November 2009 addressing whether the police officer had jurisdiction to begin an independent DWI investigation outside of his jurisdiction. However, no motion to suppress is found in the record. It appears that the brief was in support of his earlier motion in limine, and counsel simply used the terms interchangeably.

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At the motion hearing, Officer Mark Laird of the Fayetteville Police Department testified that on August 14, 2008, at approximately 9:20 a.m., he was working patrol in the Fayetteville city limits about one-half mile from the Farmington city limits when he observed a silver pickup, later determined to be driven by Debriyn, traveling at what he approximated to be between sixty-five and seventy miles per hour in the center lane heading westbound toward Farmington. He waited about twenty seconds for oncoming traffic before he was able to pull out safely to proceed after the pickup; he did not turn on his siren or lights; and he proceeded westbound toward Farmington for a distance between one-quarter and one-half mile before he caught up to the pickup; it was still traveling in the center lane. At that time, they were entering the Farmington city limits, and Officer Laird activated his blue lights. He stated that they traveled another one-half mile or so before the vehicle pulled over and came to a stop.

On cross-examination, Officer Laird said that he was not patrolling in Farmington, but was in the Fayetteville city limits when he first observed Debriyn committing a traffic violation. He testified that he planned to stop Debriyn and issue him a citation after witnessing his driving. He said that when he activated his blue lights, Debriyn did not pull over immediately, but instead made three turns before coming to a stop. He testified that the only reason he went into Farmington was in pursuit of Debriyn because he observed the violation take place in the Fayetteville city limits.

At the close of the hearing, the trial court denied Debriyn's motion, finding that Officer Laird was in pursuit of Debriyn and reasonably believed that Debriyn had committed

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a criminal offense in his presence. Prior to trial, Debriyn's counsel conceded that Officer Laird had the ability to stop Debriyn pursuant to the fresh-pursuit doctrine found in Arkansas Code Annotated section 16-81-301 (Repl. 2005), which provides:

> Any law enforcement officer of this state in fresh pursuit of a person who is reasonably believed to have committed a felony in this state or has committed or attempted to commit any criminal offense in this state in the presence of the officer, or for whom the officer holds a warrant of arrest for a criminal offense, shall have the authority to arrest and hold in custody such person anywhere in this state.

However, Debriyn argued that Officer Laird could not, after the stop, then commence to conduct a separate DWI investigation because he was not within his jurisdiction.[2] The trial court denied that motion as well. The jury found Debriyn guilty, and he filed a timely notice of appeal.

In reviewing a trial court's denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court and proper deference to the trial court's findings. *Canada v. State*, 2010 Ark. App. 510. Debriyn correctly states that a police officer may not make a warrantless arrest outside the territory of his jurisdiction unless he is authorized by statute to do so. *Perry v. State*, 303 Ark. 100, 794 S.W.2d 141 (1990). The applicable statutory authority in this case is the above stated fresh-pursuit doctrine.

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[2]Debriyn makes no argument on appeal that there was insufficient evidence to support his arrest for DWI.

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Debriyn argues that *Brown v. State*, 38 Ark. App. 18, 827 S.W.2d 174 (1992), is distinguishable from the present case because "the argument that the police officer conducted a second investigation after stopping the driver was not mentioned." We disagree. *Brown* is precisely on point and is indistinguishable from this case. In *Brown*, the officer was inside the city limits when he observed appellant drive by on a road outside the city limits at an excessive rate of speed. The officer pulled behind appellant and followed him for about a mile, during which time the officer observed appellant cross the center line on multiple occasions. The officer who stopped appellant and another officer who had responded as backup administered field-sobriety tests, and appellant was arrested for driving while intoxicated. This court found that the officer's actions were justified under the fresh-pursuit doctrine, holding that because the officer was within his territorial jurisdiction when he first observed the appellant's erratic driving and began his pursuit from that point, the subsequent arrest was valid under the fresh-pursuit doctrine.

The supreme court authority relied upon by this court in *Brown*, *Smith v. City of Little Rock*, 305 Ark. 168, 806 S.W.2d 371 (1991), is also directly on point. In *Smith*, a UALR patrolman observed appellant driving in an erratic manner within his jurisdiction; however, when the patrolman activated his blue lights, appellant drove out of the patrolman's jurisdiction. The patrolman followed appellant, pulled him over, and arrested him for DWI when appellant smelled strongly of alcohol and almost fell when he got out of his car. Our supreme court upheld the arrest, holding that our statutes contemplate arrests under the theory of fresh pursuit for criminal offenses committed in a peace officer's presence, which in that

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case, as well as the present case, involved traffic offenses. Furthermore, the *Smith* court held that, "more importantly, under such circumstances the patrolman could form a reasonable belief that the appellant was intoxicated and legitimately detain him under our rules." 305 Ark. at 172, 806 S.W.2d at 373. The fact that Debriyn was originally stopped for a traffic offense under the theory of fresh pursuit does not prohibit the officer from arresting him for DWI if facts arose during the stop that gave the officer reasonable cause to believe that Debriyn was driving while intoxicated.

Affirmed.

VAUGHT, C.J., and BAKER, J., agree.