

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 26, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2017AP820-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2016CT126

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER C. BOUCHETTE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Wood County: GREGORY J. POTTER, Judge. *Affirmed.*

¶1 BLANCHARD, J.¹ Christopher Bouchette appeals a judgment of conviction for operating a motor vehicle with a prohibited alcohol concentration

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.

(2nd offense), denial of his motion to suppress evidence, and denial of his post-conviction motion, which effectively requested reconsideration of the denial of his suppression motion. Bouchette argues that the circuit court erred in denying his motion to suppress evidence obtained by a police officer during an encounter with Bouchette that ended outside of the officer's jurisdiction. This involves the fresh pursuit doctrine, which defines an exception to the general rule that police officers lack authority to take official action outside of the physical boundaries of the political subdivision within which they primarily exercise their official authority. *See* WIS. STAT. § 175.40(2). For reasons explained below, I reject Bouchette's arguments and affirm.

BACKGROUND

¶2 The following are the pertinent, undisputed facts as testified to by the arresting officer, the only witness called at the suppression hearing. The officer worked for the Grand Rapids Police Department, and therefore was generally authorized to take official action in the Town of Grand Rapids, which is located in Wood County, and on its east side shares a border with Portage County.

¶3 One night, while on patrol in a squad car in Grand Rapids, the officer was notified by the Wood County dispatch center that a vehicle was traveling on Washington Street "at a higher rate of speed."² The officer was driving northbound on 64th Street and approaching the east-west Washington Street, when, from a distance of "a couple hundred feet," he witnessed a vehicle

² Bouchette disputes the quality of the tip and asks that I not give the tip "any consideration whatsoever" in reviewing the circuit court's suppression decision. I will assume without deciding that Bouchette is correct, and I give no weight to the existence of the tip in the discussion section below.

eastbound on Washington Street traveling at a speed that the officer estimated to be 10-15 miles per hour over the 45 miles per hour limit. The officer testified that he believed that his training and experience as a police officer watching for speeding and gauging the speed of vehicles gave him the ability to reasonably estimate the speed differential from a couple hundred feet away, given the conditions, based on visual clues alone. It is undisputed that the driver of this vehicle was Bouchette.

¶4 After concluding that Bouchette's vehicle had exceeded the speed limit, the officer turned onto Washington Street and followed it for what the officer estimated was fewer than five minutes.³ During the pursuit, Bouchette's vehicle crossed a road that separates Grand Rapids (and Wood County) from an area in Portage County, still in Wisconsin but outside the officer's jurisdiction. As Bouchette's vehicle crossed into Portage County, the officer activated his emergency lights. The officer continued to pursue Bouchette's vehicle into Portage County, and activated his siren, but Bouchette did not pull over. Eventually, still in Portage County, Bouchette's vehicle veered across the centerline and drove into a ditch along the left side of the road, where it stopped, engine still running. The officer pulled over near the stopped vehicle. The officer ultimately detained Bouchette and took him into custody, but the details of those events do not matter to any issue that I resolve on appeal.

³ During the pursuit, the officer observed what he believed to be two traffic violations by Bouchette, in addition to speeding. As referenced below, the circuit court found that there was "reasonable suspicion" based not only on the speeding, but also on these two other alleged traffic violations. Bouchette argues that the officer lacked probable cause to believe that any of the three alleged violations had occurred. However, as discussed below, I conclude that, based on the record, the circuit court's finding that the officer witnessed Bouchette traveling at a significantly higher speed than the posted limit is sufficient to resolve this appeal. Thus, I do not need to address the details or resolve the arguments of the parties regarding the other alleged violations.

¶5 After Bouchette was charged, he filed a motion to suppress all evidence obtained as a result of the detention. Bouchette argued that the officer was not in “fresh pursuit” of Bouchette when he followed Bouchette into Portage County, and therefore lacked the authority to detain Bouchette outside the boundaries of Grand Rapids.

¶6 At the end of the hearing, the circuit court found in pertinent part that there was “reasonable suspicion that a violation had occurred” as soon as the officer witnessed the apparent speeding as described above. Further, based on the officer’s testimony, the court determined that the officer was in fresh pursuit of Bouchette at the time he attempted to effectuate a stop in Portage County, and that therefore the pursuit and attempted stop were lawful.

¶7 Bouchette filed a motion for post-conviction relief addressing the suppression issue, which was denied by operation of WIS. STAT. § 809.30(2)(i). Bouchette appeals.

DISCUSSION

¶8 In reviewing a denial of a motion to suppress, I will uphold the circuit court’s findings of fact unless they are clearly erroneous and review de novo whether those facts necessitated suppression. *State v. Bullock*, 2014 WI App 29, ¶14, 353 Wis. 2d 202, 844 N.W.2d 429.

¶9 As a general rule, police officers may exercise their official authority only within the physical boundaries of their home jurisdictions. *See State v. Haynes*, 2001 WI App 266, ¶13, 248 Wis. 2d 724, 638 N.W.2d 82. One exception to the general rule is the fresh pursuit doctrine. 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.

¶10 The State must prove the following to invoke the fresh pursuit doctrine, justifying official action outside an officer's home jurisdiction: (1) the officer commenced the pursuit without unnecessary delay; (2) the pursuit was continuous and uninterrupted; and (3) the relationship in time between the commission of the offense, the commencement of the pursuit, and the apprehension was brief enough such that the circumstances were sufficiently exigent to justify an extra-jurisdictional arrest. *City of Brookfield v. Collar*, 148 Wis. 2d 839, 842-43, 436 N.W.2d 911 (Ct. App. 1989).

¶11 Lightly implied in the first step of the *Collar* test, and strongly implied in its third step, is a requirement that the pursuit is triggered by an officer having some level of suspicion that the pursued person has committed an offense. I interpret Bouchette to contend, in the only argument that I resolve, that the required level of suspicion must rise to the level of probable cause, and that the facts here do not rise to that level.⁴ The State argues that the officer needed to have only reasonable suspicion in order to pursue Bouchette beyond the Grand Rapids limits, and that that level of suspicion was met here.

¶12 I need not reach the issue of whether the reasonable suspicion standard or the probable cause standard applies to the fresh pursuit doctrine under WIS. STAT. § 175.40(2), because I conclude that, at the time the officer attempted

⁴ Bouchette does not argue that there is a constitutional dimension to his argument on appeal not addressed in my discussion, nor that he presented such additional argument to the circuit court.

to stop Bouchette in Portage County, the officer had probable cause, which is the higher level of suspicion, to pursue Bouchette for the offense of speeding committed in the officer's jurisdiction.

¶13 Whether probable cause to stop a person exists is a question of constitutional fact. *State v. Iverson*, 2015 WI 101, ¶17, 365 Wis. 2d 302, 871 N.W.2d 661 (citation omitted). As such, I review the circuit court's findings of fact under a deferential standard, and then independently apply constitutional principles to those facts. *Id.* ¶18 (citation omitted). When the facts are not disputed, whether probable cause exists is a question of law that I determine independently of the circuit court. *State v. Lange*, 2009 WI 49, ¶20, 317 Wis. 2d 383, 766 N.W.2d 551. In determining whether there is probable cause, I consider the information available to the officer and the officer's training and experience. *Id.* The question of probable cause must be assessed on a case-by-case basis, looking at the totality of the circumstances. *Id.*

¶14 Probable cause to conduct a traffic stop exists when an officer has reasonable grounds to believe that a traffic violation has occurred. *State v. Popke*, 2009 WI 37, ¶14, 317 Wis. 2d 118, 765 N.W.2d 569 (quotation omitted). The officer does not need proof beyond a reasonable doubt or even evidence that guilt is more likely than not—probable cause merely requires that the available information shows that a reasonable officer would find that guilt is more than a possibility. *Id.*

¶15 I conclude that the officer had probable cause to stop Bouchette when he saw his vehicle appearing to travel at a speed *significantly* above the posted limit through the 64th Street intersection with Washington Street from the officer's vantage point on 64th Street. Bouchette argues that the officer "was

unable to apply any of the common methods and techniques that police officers often use to determine speeding violations without the aid of a speed detecting device,” and therefore he could not have had probable cause to pursue Bouchette. It is true that the officer did not testify that he had used any “speed detecting device.” He testified that he relied solely on his ability to mentally process what he observed. However, I reject the premise of Bouchette’s argument that, as a matter of logic and common sense, an observant and trained officer under the circumstances here could not accurately determine to the level of probable cause, based on visual evidence alone, that the vehicle was traveling *significantly* in excess of the speed limit (55-60 m.p.h. in a 45 m.p.h. zone with which he was familiar). In addition, Bouchette fails to explain why I should conclude that the circuit court committed clear error in crediting the officer’s testimony, based in part on his training and experience, that he was able to reasonably gauge this particular speed differential as the vehicle traveled approximately 100 feet.

¶16 In sum, I conclude that the officer’s pursuit and detention of Bouchette outside Grand Rapids, in Portage County, was justified under WIS. STAT. § 175.40(2) based on probable cause for speeding committed in Grand Rapids, and that therefore the circuit court properly denied Bouchette’s motion to suppress.

By the Court.—Judgment and order affirmed.

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

