



LGIT'S ROLL CALL REPORTER NOVEMBER 2008

APPLICABILITY OF THE IN-STATE FRESH PURSUIT STATUTE TO VIOLATIONS OF THE MARYLAND VEHICLE LAW

QUESTION: Does Maryland's Fresh Pursuit (In-State) Statute allow officers who observe violations of the Maryland Vehicle Law in their sworn jurisdictions to make traffic stops and arrests of offending motorists outside of their sworn jurisdictions?

ANSWER: Yes, if the violation of the Maryland Vehicle Law is classified as a felony or misdemeanor and, in the event of an arrest, the officer's actions satisfy the criteria applied by reviewing courts.

CASE: *Seip v. State*, Court of Special Appeals, Decided November 4, 2003

In *Seip v. State*, the Court of Special Appeals considered whether Maryland's Fresh Pursuit (In-State) Statute applied to violations of the Maryland Vehicle Law, including speeding. The facts in the case established that at approximately 1:30 a.m. on February 27, 2001, Earl Warren Seip, III, was observed exceeding the 55 mile per hour posted speed limit on Route 90 by PFC Ray Austin, Ocean City Police Department. Seip was within the Ocean City corporate limits when Officer Austin first detected he was speeding. Officer Austin initiated a traffic stop by activating his emergency equipment as Seip drove westbound over the Big Assawoman Bay Bridge. He followed Seip across the bridge, waiting, due to safety concerns, to reach the far side before pulling him over. Officer Austin's stop of Seip, consequently, occurred outside the Ocean City limits in Worcester County. Seip was arrested for driving while impaired.

Seip moved to suppress the evidence against him, alleging the stop violated Maryland law because it was made outside Officer Austin's sworn jurisdiction. The district court rejected Seip's argument and denied his motion to suppress. The court found that Seip was observed committing a misdemeanor (exceeding the posted speed limit) by Officer Austin while in the officer's sworn jurisdiction (Ocean City). Since Officer Austin immediately pursued Seip, initiated the stop, and, after determining that Seip was under the influence of alcohol, arrested him, his actions were authorized by Maryland's Fresh Pursuit (In-State) Statute (Criminal Procedure Article, § 2-301). Seip was found guilty and sentenced to jail. He appealed.

On appeal, the Court of Special Appeals upheld the denial of the motion to suppress and affirmed Seip's conviction. It did so on grounds that the common law doctrine of fresh pursuit, now codified in the Criminal Procedure Article, allows an officer to pursue and arrest a person outside of the officer's jurisdiction, without a warrant, for misdemeanors committed in the officer's presence in the jurisdiction in which the officer has the power of arrest. The pursuit need not be instant, but it must be continuous and without unreasonable delay. The

officer can arrest the person, hold him in custody, and return him to the jurisdiction in which a court has proper venue for the crime alleged to have been committed.

However, despite the seemingly uncomplicated language of the statute, all arrests made as a result of a fresh pursuit are carefully scrutinized by reviewing courts. Courts look to several factors to evaluate whether police action meets the fresh pursuit test. The factors include: (1) the nature of the crime; (2) the activities and location of the pursuer after receiving a report of the commission of the crime; (3) whether or not the pursued had been identified or would escape; (4) the extent and nature of the evidence connecting the pursued with the crime; and, (5) the potential for the pursued to cause immediate and additional injury or damage to others.

In this case, Officer Austin witnessed Seip driving in excess of the speed limit. Speeding can have potentially deadly consequences to the offender and other motorists or pedestrians. Consequently, Officer Austin's pursuit of Seip fell within the boundaries of the fresh pursuit doctrine because immediate pursuit was justified by the public danger created by Seip's speeding, the officer personally observed the criminal activity, and there was a high probability that Seip would escape. For all of these reasons, the pursuit, traffic stop, and subsequent arrest were valid.

NOTE: Section 27-101 of the Transportation Article states that a violation of any provision of the Maryland Vehicle Law is a misdemeanor unless the violation is declared to be a felony or is made punishable only by a civil penalty. Most, if not all moving violations, including speeding, are deemed misdemeanors. Accordingly, an officer can pursue a driver who commits a moving violation in the officer's presence in his or her sworn jurisdiction into another jurisdiction in order to make a traffic stop. If the traffic stop results in an arrest, the reviewing court then will apply the criteria mentioned above to ensure that the arrest is allowed by the Fresh Pursuit Statute. Finally, it is important to emphasize that the misdemeanor side of the Fresh Pursuit Statute requires officers to have observed the offense while in their sworn jurisdictions. If Officer Austin had been in Worcester County when he first observed Seip, he would not have been able to make a traffic stop under the Fresh Pursuit Statute. On the other hand, the felony side of the Fresh Pursuit Statute allows an officer to engage in fresh pursuit of a suspected felon if the person has committed or is reasonably believed by the law enforcement officer to have committed a felony in the officer's sworn jurisdiction. There is no requirement that the felony must have been committed in the officer's presence.

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