

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 27, 2001

Cornelia G. Clark
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. 01-1350-FT

Cir. Ct. No. 01-TR-1357

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN THE MATTER OF THE REFUSAL OF RYAN M.
HORNECK:**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RYAN M. HORNECK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County:
JOHN A. DES JARDINS, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Ryan Horneck appeals from the circuit court's order revoking his driving privileges for refusing to submit to a chemical test requested pursuant to Wisconsin's Implied Consent Law, WIS. STAT. § 343.305. At the refusal hearing, Horneck contended, as he does now on appeal, that the arresting officer lacked the authority under the Fourth Amendment to enter his garage to investigate or arrest him without a warrant. The circuit court concluded that the officer had authority to enter Horneck's garage and arrest him. This court agrees and affirms the revocation order.

¶2 The underlying facts are undisputed. While on routine patrol shortly after midnight, officer Michael Parker of the Appleton Police Department observed a car traveling at a high rate of speed. The driver was later identified as Horneck. Parker also observed Horneck failing to yield the right of way while making a left turn. Parker activated his emergency lights and pursued Horneck, who continued to drive at an excessive rate of speed. At one time, Parker concluded that Horneck was driving at least twenty miles per hour in excess of the speed limit. When Horneck turned into his driveway and into his garage, Parker followed him and entered the garage where he asked Horneck to step out of the car. At this time, Parker was able to observe Horneck, who appeared intoxicated. Horneck then submitted to some field sobriety tests, which Horneck failed. Parker arrested Horneck for OWI, read him the Informing the Accused form and asked

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) and is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

him to submit to a chemical test of his blood for purposes of determining his blood alcohol concentration.² Horneck refused.

¶3 At the refusal hearing, Horneck challenged the refusal on the grounds that Parker had no authority to enter Horneck's garage and investigate a municipal speeding violation. The circuit court rejected his argument.

¶4 Horneck's sole contention is that the police possessed no legal authority to enter his driveway and garage and to later arrest him. In support, Horneck relies on the United States Supreme Court's ruling in *Welsh v. Wisconsin*, 466 U.S. 740 (1984). There, the Court held that the Fourth Amendment prohibits the police from making a warrantless entry of a person's home in order to arrest the individual for a violation of a nonjailable traffic offense, absent probable cause and exigent circumstances. *See id.* at 749, 755.

¶5 However, the facts of *Welsh* are readily distinguishable from those presented here. There, the police arrested Welsh in the privacy of his own bedroom for a noncriminal traffic offense. *See id.* at 743. A citizen witness who had earlier observed Welsh driving erratically and then swerve off the road provided the information underlying the arrest. *See id.* at 742. Because Welsh had abandoned his vehicle and walked home before the police arrived at the scene, the police did not have contact with Welsh prior to arriving in his home. *See id.* In declining to find that the search was reasonable based on the "hot-pursuit doctrine," the Court noted that "there was no immediate or continuous pursuit of the petitioner from the scene of a crime." *Id.* at 753.

² Horneck does not dispute that the officer had sufficient probable cause for the OWI arrest.

¶6 The facts of this case are markedly different from those in *Welsh*. Here, Parker observed Horneck commit a traffic violation. While activating his emergency lights and, later, his siren, Parker pursued Horneck to his home, where Horneck drove into the driveway and then into his garage. Horneck does not dispute that he committed a civil traffic regulation in Parker's presence. Nor does he dispute that Parker pursued him to the garage of his home. Thus, it is undisputed that Parker had reasonable grounds to execute a traffic arrest pursuant to WIS. STAT. § 345.22.

¶7 Most importantly, Parker never lost contact with Horneck after observing the violation and pursued him in an effort to issue a citation. It was an immediate and continuous pursuit of Horneck from the time Parker observed the traffic violation.

¶8 Finally, Parker's contact with Horneck did not involve a warrantless entry into his home. Instead, the contact took place in Horneck's driveway and garage. However, even if the garage could be considered part of his home, it would make no difference in the analysis.

¶9 The State contends, and this court agrees, that the facts of this case are more akin to those presented in *United States v. Santana*, 427 U.S. 38 (1976). There, the Court held that a person standing in the threshold of his or her residence does not have an expectation of privacy and therefore is not a subject of Fourth Amendment protection. *See id.* at 42. In further deciding whether a person's retreat into the residence could thwart an otherwise proper arrest, the Court held that "a suspect may not defeat an arrest which has been set in motion in a public place ... by the expedient of escaping to a private place." *Id.* at 43.

¶10 This court agrees with the circuit court that Parker had the authority to pursue Horneck into his driveway and garage for purposes of detaining him in order to issue a traffic citation. When that detention revealed additional facts establishing probable cause to believe that Horneck had committed an OWI offense, Parker had the further authority to arrest Horneck for that offense.

By the Court.—Order affirmed.

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

