

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 7, 2003**

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. 02-2163-CR**

**Cir. Ct. No. 01-CT-71**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ROSS ALLYN BURT,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Pierce County:  
DANE F. MOREY, Judge. *Affirmed.*

¶1 PETERSON, J.<sup>1</sup> Ross Burt appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant. Burt argues: (1) the stop was illegal because there was no fresh pursuit to justify the stop, which occurred outside the officer's jurisdiction; and (2) the stop was not justified under WIS. STAT. § 349.03(4), which allows an officer to enforce an OWI

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

violation outside the officer's jurisdiction. As a result, Burt argues that evidence obtained as a result of the traffic stop should have been suppressed. We conclude the stop was authorized under § 349.03(4). Therefore, we need not determine whether the officer was in fresh pursuit. We affirm the judgment.

## BACKGROUND

¶2 On July 11, 2001, Darren Ekholm, an officer with the Village of Ellsworth, was on duty on Highway 65 in Ellsworth. He saw a car, driven by Burt, pass him going the opposite direction, and saw the vehicle cross the centerline. Ekholm followed the car and caught up with it south of the village line. For the second time, Ekholm saw the car deviate from its lane and again cross the centerline. He did not attempt to stop the car, however, because they were on a hill and Ekholm felt this was not a safe place to make the stop. Ekholm continued to follow the car outside the village limits. After again seeing the car deviate in its lane and cross the center line, Ekholm put on his emergency lights and stopped the car, about two miles north of the Village of Ellsworth limits.

¶3 Burt was subsequently charged with operating while intoxicated. He pled not guilty and filed a motion challenging the validity of the traffic stop because it occurred outside Ekholm's jurisdiction. The circuit court denied the motion, ruling that Ekholm had authority to make the stop under WIS. STAT. § 175.40(2), which allows an officer to make a stop outside the jurisdiction if the officer is in fresh pursuit. The court ruled that Ekholm also had authority to make the stop under WIS. STAT. § 349.03(4). Burt was convicted of operating while intoxicated and now appeals.

## STANDARD OF REVIEW

¶4 The issue in this case turns upon the interpretation and application of WIS. STAT. § 349.03(4). An issue of statutory interpretation presents a question of law, which we review independently. *State v. Isaac J.R.*, 220 Wis. 2d 251, 255, 582 N.W.2d 476 (Ct. App. 1998). “The aim of statutory construction is to ascertain the intent of the legislature, and our first resort is to the language of the statute itself.” *Id.* If the terms of the statute are unambiguous, we apply them as written without any further inquiry. *In re Noah J.M.*, 223 Wis. 2d 768, 771, 590 N.W.2d 21 (Ct. App. 1998).

## DISCUSSION

¶5 WISCONSIN STAT. § 349.03(4) addresses enforcement of OWI and implied consent offenses, and provides:

If a violation under s. 343.305 or 346.63 or a local ordinance in conformity with s. 346.63 (1), (5) or (7) occurs within a law enforcement officer's jurisdiction, he or she may enforce the violation anywhere in the state.

Burt argues this provision did not give Ekholm authority to stop Burt outside Ekholm’s jurisdiction. He contends the statute is merely an extension of the fresh pursuit doctrine, and not an independent basis for making an extra-jurisdictional stop. Burt points out that § 349.03(4) does not contain language authorizing an officer to follow and arrest as does the language of the fresh pursuit doctrine.<sup>2</sup>

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<sup>2</sup> 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.

Instead, he contends § 349.03(4) merely allows an officer already in fresh pursuit to enforce the OWI statute when the officer suspects such an offense after a stop is made. Burt also states the statute allows transporting outside the jurisdiction a driver arrested for OWI to have blood tests conducted. Burt concludes § 349.03(4) is merely a clarification of the enforcement powers of the police and not an independent basis to justify an extra-jurisdictional stop.

¶6 The flaw in Burt’s argument is that the statute is unambiguous. Burt posits many other purposes for the statute, but he does not jump the first hurdle in statutory interpretation—showing ambiguity in the words of the statute. WISCONSIN STAT. § 349.03(4) states that when an OWI or implied consent violation occurs within an officer’s jurisdiction, the officer “may enforce the violation anywhere in the state.”

¶7 We note that WIS. STAT. § 349.03(4) was enacted as part of 1983 WIS. ACT 535. Before this, except in cases of fresh pursuit, an officer was restricted to his or her own jurisdiction. *See* WIS. STAT. § 349.03 (1981-82). Section 349.03(4) now gives an officer authority to go beyond the jurisdiction, indeed anywhere in the state, to enforce a violation of OWI or implied consent. The officer need only establish that the violation occurred within his or her jurisdiction to have the authority to investigate and arrest outside the jurisdiction. Here, Ekholm observed Hunt’s car make several lane deviations and cross the yellow line twice within his jurisdiction. Ekholm therefore had the authority to stop and arrest Burt even after Burt had left the village limits.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.21(1)(b)4.