

*Driving Under Influence - Arrest in Maryland - Pursuit Into Maryland*

1. Where a person is pursued by police from Pennsylvania into Maryland and is arrested in Maryland, the case is governed by Maryland law.
2. Maryland allows a police officer from another state who enters Maryland in fresh pursuit to arrest the person pursued if he is believed to have committed a felony.
3. An officer in pursuit must halt at the Maryland boundary if the offense is a misdemeanor such as driving under the influence.

*Frederic G. Antoun, Jr., Esquire*, Assistant District Attorney  
*Deborah K. Hoff, Esquire*, Assistant Public Defender

OPINION AND ORDER

EPPINGER, P.J. November 25, 1985:

Defendant, Wantana J. Haskell, was arrested in Maryland without a warrant for driving under the influence of intoxicating liquor in Pennsylvania by a Washington Township, Pennsylvania police officer who pursued her into Maryland. Subsequent to the arrest she was asked to perform a field sobriety test in the State of Maryland and upon completion of the test, she was taken to the Washington Township police station where she took an intoximeter test with readings of .147% and .140%. The officer filed a complaint charging her with driving under the influence of alcohol to a degree which rendered her incapable of safe driving and with operating while the amount of (alcohol) by weight in her blood was greater than .10%. The charges are misdemeanors.

All of this is alleged in an omnibus pretrial motion filed in this case. The Commonwealth admitted all of these allegations of the motion and the matter is now to be decided.

In the pretrial motion the defendant has asked us to suppress all of the evidence and dismiss the case because the officer was without authority to pursue her into Maryland, stop and arrest

her. All agree that to the extent applicable, the case is governed by Maryland law. The Annotated Code of Maryland, Article 27 §595 provides that a police officer of another state who enters Maryland in fresh pursuit and continues such pursuit of a person on the ground he is believed to have committed a felony in the other state may arrest such person. The next section of the code requires the out-of-state arresting officer to take the defendant before a Maryland court who shall determine the lawfulness of the arrest.

Though admitting the arrest was unlawful and any evidence obtained after the arrest must be suppressed, the Commonwealth argues that the case should not be dismissed and that all evidence obtained prior to the arrest should be admitted. In its brief the Commonwealth argues such evidence would include the officer's observations of the defendant driving the car in Pennsylvania and Maryland, the identification of the driver obtained after she was stopped in Maryland and the testimony concerning the field sobriety test. It would not include the results of the intoximeter. The Commonwealth's statement that the field sobriety test came after the arrest is not in accord with its stipulation. So even under the Commonwealth's theory of the case, the testimony concerning the field sobriety test would have to be suppressed.

It was held in *People v. Bacon*, 376 N.Y.S.2d. 839, 841 (1975), that the term "fresh pursuit" as used in the New Jersey Uniform Fresh Pursuit Law referred to the common law right of a police officer to cross jurisdictional lines in order to arrest. There is no authority for a Pennsylvania police officer in pursuit of one committing a misdemeanor in Pennsylvania to pursue the offender into Maryland and arrest her. *Commonwealth v. Ristau*, 73 D.&C.2d 342, 345 (Warren County, 1974). Under this view an officer in such pursuit must halt at the jurisdictional boundary if the offense is only a misdemeanor. *Banks v. Bradley*, 192 Va. 598, 66 S.E.2d 526, 529 (1951).

We believe this is the law and therefore that evidence of everything that happened after the officer crossed the Maryland line must be suppressed, including the identity of the defendant. Since that is so an order dismissing the case is appropriate.

The court recognizes that the law as it offers a sanctuary on the other side of the state line. The remedy is in the amendment of the Maryland law to permit the fresh pursuit of drivers believed to have committed an indictable offense in another state. Pennsylvania has such a law. Act of 1976 P.L. 586, 42 Pa.C.S.A. §8922.

#### ORDER OF COURT

November 25, 1985, the evidence obtained by the police officer after he crossed the Maryland state line is suppressed and the case is dismissed for the reasons stated in the opinion. The costs shall be paid by the County.

COMMONWEALTH v. DURHAM, C.P. Franklin County Branch,  
No. 484 - 1985

*Vehicle Code - Driving Under Influence - Charges Within Five Days of Arrest*

1. If a person is arrested for driving under influence and is released under Rule 130(d) the complaint must be filed within five days of arrest.
2. It is not improper for an officer to file a complaint more than five days after a blood test was taken where defendant was taken to a hospital for medical reasons and a blood test was taken prior to defendant's arrest.

*John F. Nelson, District Attorney, Counsel for Commonwealth*  
*E. Franklin Martin, Esquire, Counsel for Defendant*

#### OPINION AND ORDER

EPPINGER, S.J., January 8, 1986:

While William A. Durham, Jr. was driving an automobile in Washington Township on July 19, 1985, he was involved in an accident. When a township police officer arrived at the scene, he found Durham lying unconscious on the hood of his car. At that time the officer noticed the odor of alcohol on Durham's breath. An ambulance and medics were summoned and after Durham was removed, the officer continued his investigation. He concluded that Durham was driving north on Pa. Route No. 16 when his car struck a parked vehicle, went up an embankment, flew through the air and landed nose first.



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