Police Violate Due Process Rights by Crossing State Borders and Ignoring Fresh-Pursuit Laws

I. INTRODUCTION

An informant told police that Jesse Galan was trafficking drugs.[1] Acting on that tip, police staked out a house on October 11, 2001, waiting for Galan.[2] They watched as he loaded boxes into his truck, looking up and down the street suspiciously.[3] They tailed him when he drove off, making his way onto the Chicago Skyway, heading across state lines into Indiana.[4] When he stopped at a toll plaza about a mile inside Indiana, officers surrounded him with their guns drawn and ordered him out of the truck.[5] During a search of the vehicle, they found two boxes of marijuana.[6] They placed Galan in a patrol car and took him back to his parents' home in Illinois, where he sometimes resided.[7] Police searched the home and recovered two pistols, three kilograms of cocaine, and approximately $10,000 in cash.[8]

The Circuit Court of Cook County, Illinois, granted Galan's motion to quash and suppress the evidence of arrest and the evidence obtained at the house because police did not present Galan to a magistrate in Indiana before carting him back to Illinois, as required by Indiana law.[9] On appeal, Illinois' highest court reversed, holding that the hearing required under Indiana law was merely an extradition policy that did not implicate a defendant's due process rights, which in this case were satisfied when Galan was given a hearing after he was forcefully returned to Illinois.[10]

1. People v. Galan, 893 N.E.2d 597, 600 (Ill. 2008).
2. *Id.*
3. *Id.* at 601.
4. *Id.*
5. *Id.* at 599, 601.
6. People v. Galan, 856 N.E.2d 511, 513 (Ill. App. Ct. 2006).
7. *Id.*
8. *Id.*
9. *Id.*
10. *Galan*, 893 N.E.2d at 597. "[L]aw enforcement officials should not consider it a

Either by statute or common law, nearly all states allow officers from neighboring states to cross borders to make an arrest, but they usually require that officers immediately present the suspect to a magistrate in the state where the arrest takes place to determine whether the arrest is valid.[11] If the arrests are deemed valid, then the officers can take the suspects back to their home states. Galan's case and others like it present the issue of whether evidence collected from an arrest made in violation of a neighboring state's fresh-pursuit law should be suppressed.[12]

States that do not suppress such evidence argue that this is largely an issue of state sovereignty,[13] while the states that do exclude this evidence view the violations as an infringement of the defendant's due process

certainty that we will find the exclusionary rule inappropriate under a different set of facts, particularly in situations involving willful misconduct." *Id.* at 620.

11. ALA. CODE § 15-10-74 (1995); ARIZ. REV. STAT. ANN. §§ 13-3831 to 34 (2001); ARK. CODE ANN. §§ 16-81-401 to -407 (2005); CAL. PENAL CODE §§ 852-852.4 (West 2008); COLO. REV. STAT. § 16-3-104 (2008); CONN. GEN. STAT. ANN. § 54-156 (West 2009); DEL. CODE ANN. tit. 11, §§ 1931-33 (2007); D.C. CODE ANN. §§ 23-901 to -903 (LexisNexis 2001); FLA. STAT. ANN. §§ 901.25, 941.31-.37 (West 2001); GA. CODE ANN. § 35-1-15 (2009); IDAHO CODE ANN. §§ 19-701 to -707 (1997); 725 ILL. COMP. STAT. ANN. 5/107-4 to -5 (West 2009); IND. CODE ANN. §§ 35-33-3-1 to -7 (LexisNexis 1998); IOWA CODE ANN. §§ 806.1-.6 (West 2003); KAN. STAT. ANN. §§ 22-2-2404 to -2405 (2007); LA. CODE CRIM. PROC. ANN. art. 231-32 (2003); ME. REV. STAT. ANN. tit. 15, §§ 151-55 (2003); MD. CODE ANN., CRIM. PROC. §§ 2-301 to -309 (West 2008); MASS. GEN. LAWS ch. 276, §§ 10A-D (2008); MICH. COMP. LAWS ANN. §§ 780.101-.108 (West 2007); MINN. STAT. ANN. §§ 626.65-.72 (West 2009); MISS. CODE ANN. §§ 45-1-37, 45-1-43 (2004) (regulating intrastate police pursuits and police pursuits generally); MO. ANN. STAT. § 544.155 (West 2002); MONT. CODE ANN. § 46-6-411 (2009); NEB. REV. STAT. §§ 29-416 to -421 (2008); NEV. REV. STAT. ANN. §§ 171.166-.176 (LexisNexis 2006); N.H. REV. STAT. ANN. §§ 614:1-:10 (LexisNexis 2003); N.J. STAT. ANN. §§ 2A:155-1 to 156-4 (West 1985); N.M. STAT. ANN. §§ 31-2-1 to -8 (West 2000); N.Y. CRIM. PROC. LAW § 140.55 (McKinney 2004); N.C. GEN. STAT. § 15A-403 (2007); N.D. CENT. CODE § 29-06-04 (2006); OHIO REV. CODE ANN. §§ 2935.29-.31 (West 2006); OKLA. STAT. ANN. tit. 22, §§ 221-28 (West 2003); OR. REV. STAT. §§ 133.410 -.440 (2007); 42 PA. CONS. STAT. ANN. §§ 8921-24 (West 2007); R.I. GEN. LAWS §§ 12-8-1 to -6 (2002); S.C. CODE ANN. § 25-3-180 (2007); S.D. CODIFIED LAWS §§ 23A-3-9 to -20 (1998); TENN. CODE ANN. §§ 40-7-201 to -05 (2006); TEX. CODE CRIM. PROC. ANN. art. 14.051 (Vernon 2005); UTAH CODE ANN. §§ 77-9-1 to -3 (2008); VT. STAT. ANN. tit. 13, §§ 5041-45 (1998); VA. CODE ANN. §§ 19.2-79 (2008); WASH. REV. CODE ANN. §§ 10.89.010 -.080 (West 2002); W. VA. CODE ANN. §§ 62-11-1 to -7 (LexisNexis 2005); WIS. STAT. ANN. § 976.04 (West 2007); United States v. Holmes, 380 A.2d 598, 600-01 (D.C. 1977); District of Columbia v. Perry, 215 A.2d 845, 847 (D.C. 1966); People v. Fenton, 506 N.E.2d 979, 980 (Ill. App. 3d 1987); People v. Jacobs, 385 N.E.2d 137, 139-40 (Ill. App. 3d 1979); Commonwealth v. Sadvari, 752 A.2d 393, 395 (Pa. 2000); Commonwealth v. Gallagher, 896 A.2d 583, 588 (Pa. Super. Ct. 2006).

12. *Sadvari*, 752 A.2d at 399; *Galan*, 893 N.E.2d at 515-16; *Gallagher*, 896 A.2d at 588.

13. *Galan*, 893 N.E.2d at 616.

rights.[14] The arrests made in violation of fresh-pursuit laws and the evidence obtained as a result must be suppressed to encourage future compliance, assure comity, and safeguard the individual's right to be free from unlawful seizures.

Part II evaluates fresh-pursuit laws of various states and studies the reasons for their enactment. Without these statutes, citizens of one state could be in jeopardy of being illegally seized while visiting another. Conversely, states would never have legal authority to make arrests beyond their borders without these laws.

Part III looks at the different approaches used by courts in Pennsylvania and Illinois in handling evidence gathered by police officers who violate fresh-pursuit laws of neighboring states. The interpretations given to these statutes by the highest courts of Pennsylvania and Illinois represent the two main approaches toward fresh-pursuit laws.

Part IV discusses remedies available when such unlawful arrests are made, whether it matters if the irregularities affect the reliability of evidence, and whether suppression is an appropriate tool for ensuring police compliance. Part V concludes by siding with the Pennsylvania Supreme Court's approach of applying the exclusionary rule to improper arrests and fruits stemming from them.[15] Police violate not only state sovereignty rights when they ignore the laws of neighboring states, but also constitutional rights of individuals.[16]

II. FRESH-PURSUIT LAWS PROTECT STATE SOVEREIGNTY

A state does not have authority to extend its police power or its criminal law into another state.[17] This means that, as a rule, officers of one state

14. *Sadvari*, 752 A.2d at 399.

15. *Id.*

16. *Id.*

17. McLean v. Mississippi *ex rel.* Roy, 96 F.2d 741, 745 (5th Cir. 1938) (refusing "to extend the authority of its sheriffs into another [s]tate"); United States v. Trunko, 189 F. Supp. 559, 563 (E.D. Ark. 1960) (holding that the deputy "had no right to [arrest and] seize [defendant] in Arkansas and remove him to Ohio"); Kirkes v. Askew, 32 F. Supp. 802, 804 (E.D. Okla. 1940) (holding that an arrest warrant cannot be executed in a state other than the one that issues it); Six Feathers v. State, 611 P.2d 857, 861 (Wyo. 1980) (holding that at common law, law enforcement officers cannot effect arrest in another jurisdiction unless in fresh pursuit of a suspected felon); *see also* Kapson v. Kubath, 165 F. Supp. 542, 546 (W.D. Mich. 1958) (stating that the law-enforcement actions of a sheriff outside his home state should be "treated as acts of a private citizen"); COUNCIL OF STATE GOVERNMENTS, THE HANDBOOK ON INTERSTATE CRIME CONTROL 147-50 (1978) [hereinafter HANDBOOK] (stating that each state border "marks the territorial limitation on the execution" of that state's criminal law).

cannot make arrests in another, but exceptions exist.[18] Officers are permitted to arrest a suspect after a chase into another state if such authority has been granted by that other state at common law or by enactment of the Uniform Act on Fresh Pursuit.[19] The validity of the arrest is determined by the law of the state where the arrest occurs, not where the crime was committed.[20]

The Uniform Act is a crime-fighting tool, designed to help police arrest potentially dangerous suspects.[21] It authorizes an officer to enter another state in fresh pursuit of a person to "arrest him on the grounds that he is believed to have committed a felony in [the officer's] [s]tate."[22]

Fresh pursuit is defined within the Act to mean pursuit without unreasonable delay, which does not require instant pursuit.[23] An officer may spot a vehicle that matches the description of a getaway car and follow it for some miles without the driver speeding or taking other evasive

18. *McLean*, 96 F.2d at 745; *Trunko*, 189 F. Supp. at 563; *Kirkes*, 32 F. Supp. at 804; *Six Feathers*, 611 P.2d at 861.

19. United States v. Holmes, 380 A.2d 598, 600 (D.C. 1977); District of Columbia v. Perry, 215 A.2d 845, 847 (D.C. Cir. 1966); People v. Fenton, 506 N.E.2d 979, 980 (Ill. App. 3d 1987); People v. Jacobs, 385 N.E.2d 137, 139 (Ill. App. 3d 1979).

20. Crawford v. State, 479 So. 2d 1349, 1353 (Ala. Crim. App. 1985); *Jacobs*, 385 N.E.2d at 139; Hutchinson v. State, 380 A.2d 232, 235 (Md. Ct. Spec. App. 1977); Boddie v. State, 252 A.2d 290, 294 (Md. Ct. Spec. App. 1969).

21. Swain v. State, 435 A.2d 805, 810 (Md. Ct. Spec. App. 1981). "In many cases the effect of the statute will be a much quicker apprehension of the suspect, who is potentially dangerous to D.C. citizens, than would occur if the foreign police were required to stop at the D.C. border and notify the D.C. police." *Id.*

22. District of Columbia Fresh Pursuit Act, D.C. CODE ANN. §§ 23-901 to -903 (LexisNexis 2001) (quoted in *Swain*, 435 A.2d at 809 (holding that the felony giving rise to the pursuit must be a felony in the originating jurisdiction)); *see* State v. Malone, 724 P.2d 364, 365-66 (Wash. 1986) (holding that an Idaho officer who pursued a suspect into Washington for an offense that was a felony in Washington, but not in Idaho, lacked fresh-pursuit jurisdiction to arrest); *see also* 725 ILL. COMP. STAT. ANN. 5/107-4 (West 2008) (providing that the Uniform Act also applies to misdemeanors).

23. *Compare* FLA. STAT. ANN. § 941.35 (West 2001), which is representative of most fresh-pursuit statutes:

> The term "fresh pursuit" as used in this law shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

with State v. Menard, 822 A.2d 1143, 1146 (Me. 2003) (defining fresh pursuit as "instant pursuit of a person with intent to apprehend" regarding certain classes of felonies and misdemeanors).

maneuvers, eventually making it into a neighboring state.[24] This could be considered fresh pursuit.

Under the Act, the officer must have "reasonable grounds to believe the suspect committed a felony," and the pursuit must occur "within a reasonable period of time" after the crime.[25] The pursuit also must be continuous and uninterrupted,[26] though courts may consider other factors surrounding the arrest.[27] In addition, the suspect must be fleeing to avoid arrest, though he need not be aware that the pursuit is currently under way.[28] In fact, police may merely need to show that the suspect knows he or she has committed a crime and is attempting to evade capture, such as by hiding or by trying to cross state borders.[29] Fresh-pursuit statutes normally allow police from other states to chase only suspected felons, not those wanted for misdemeanors or traffic offenses,[30] but some jurisdictions will allow a chase stemming from a misdemeanor if the officer learns of a felony during the chase.[31] Such a felony validates the subsequent arrest if it was committed in the pursuant officer's home state.[32]

---

24. *See* Farewell v. State, 822 A.2d 513, 520 (Md. Ct. Spec. App. 2003) (holding that the Maryland fresh-pursuit statute "does not require instant pursuit").

25. *Swain*, 435 A.2d at 810 (quoting the D.C. Code).

26. *Id.* at 811; *see also* State v. Tillman, 494 P.2d 1178, 1181 (Kan. 1972); FLA. STAT. ANN. § 941.35.

27. A number of these factors were enumerated in *Six Feathers v. State*, 611 P.2d 857, 861 (Wyo. 1980):

> Immediate or fresh pursuit does not require the pursuer to keep the pursued in sight. It does not require recognition by the pursued that he is being pursued. But it does require . . . pursuit to be undertaken without unreasonable delay, the nature of the crime, the activities and location of the pursuer after receiving a report of the commission of the crime, the activities and location of the pursued after commission of the crime, whether or not the pursued had been identified or would escape, the extent and nature of the evidence connecting the pursued with the crime, and the potential for the pursued to cause immediate and additional injury or damage to others are examples of the circumstances to be considered in the determination as to whether or not the pursuit was without unreasonable delay.

28. People v. Wolforandt, 469 N.E.2d 305, 310 (Ill. App. Ct. 1984); State v. Ferrell, 356 N.W.2d 868, 870 (Neb. 1984); *Six Feathers*, 611 P.2d at 861.

29. *Wolforandt*, 469 N.E.2d at 310; *Ferrell*, 356 N.W.2d at 870; *Six Feathers*, 611 P.2d at 861.

30. District of Columbia v. Perry, 215 A.2d 845, 847 (D.C. 1966); People v. Fenton, 506 N.E.2d 979, 980 (Ill. App. 1987); *see* State v. Malone, 724 P.2d 364, 365-67 (Wash. 1986) (holding invalid, as outside an officer's fresh-pursuit authority, an arrest for an offense that was a felony in the host jurisdiction, but not in the originating jurisdiction).

31. Crawford v. State, 479 So. 2d 1349, 1353 (Ala. Crim. App. 1985). *See generally Perry*, 215 A.2d at 847; *Fenton*, 506 N.E.2d at 980.

32. *Crawford*, 479 So. 2d at 1353 (Ala. Crim. App. 1985) (stating that an Alabama officer in fresh pursuit of a suspect for misdemeanor reckless driving learned, during the

Many jurisdictions offer further flexibility to police. Under the Act, "the suspect is entitled to a hearing in the state of arrest" to determine the validity of the arrest before being returned to the state where the violation occurred.[33] Courts have denied challenges based on the arresting officer's failure to comply with procedure, and many states rely upon the *Ker-Frisbie* rule[34] that the illegality of the arrest does not preclude the court's personal jurisdiction over the defendant.[35] However, the Pennsylvania Supreme Court and other courts have indicated discomfort with unchecked procedural violations.[36]

III. INTENT OF FRESH-PURSUIT STATUTES MAY BE FOUND IN THEIR PLAIN LANGUAGE AND LEGISLATIVE INTENT

The authority of an out-of-state officer to make an extraterritorial arrest in another state is gained only through the grace of that other state "through operation of its statute."[37] In construing the meaning of the statute, the court's primary objective is to ascertain and give effect to the intent of the drafters.[38] *Black's Law Dictionary* defines legislative intent as the "design

chase and probably still in Alabama, that the tag number belonged to a stolen truck, giving the officer reason to follow the suspect into Florida and make an arrest).

33. A typical statute, WIS. STAT. ANN. § 976.04(2) (West 2007), provides that an officer:

> [S]hall without unnecessary delay take the person arrested before a judge of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful the judge shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant . . . . If the judge determines that the arrest was unlawful, the judge shall discharge the person arrested.

In other states, the court is authorized, pending a determination of lawful arrest, to turn the suspect over to the custody of the out-of-state arresting officer to return to the state where the offense took place. *See, e.g.*, MONT. CODE ANN. § 46-6-411(2) (2009).

34. United States v. Alvarez-Machain, 504 U.S. 655, 660-64 (1992).

35. People v. Galan, 893 N.E.2d 597, 600 (Ill. 2008); State v. Ferrell, 356 N.W.2d 868, 872 (Neb. 1984); People v. Walls, 321 N.E.2d 875, 876 (N.Y. 1974); People v. Bacon, 376 N.Y.S.2d 839, 840-41 (N.Y. Crim. Ct. 1975).

36. People v. Jacobs, 385 N.E.2d 137, 140 (Ill. App. Ct. 1979). Despite the courts' reluctance to invalidate arrests, suspects whose procedural rights are violated may have a cause of action for damages under 42 U.S.C. § 1983 (1982), which addresses violations of civil rights under color of state law. *Compare* Draper v. Coombs, 792 F.2d 915, 921-22 (9th Cir. 1986) (ruling that technical violations of Oregon's fresh-pursuit statute may state a claim under § 1983; nominal damages are available even if defendant suffers no actual damages), *with* Cole v. Williams, 798 F.2d 280, 283 (8th Cir. 1986) (holding that the suspects suffered no actual damages from the illegal arrest).

37. *Galan*, 893 N.E. at 624 (Freeman, J., dissenting).

38. Mich. Ave. Nat'l Bank v. County of Cook, 732 N.E.2d 528, 535 (Ill. 2000).

or plan that the legislature had at the time of enacting a statute."[39] The task of courts should be to first identify the wrong that the statute was enacted to eradicate and then interpret it to serve that purpose.[40]

The plain meaning of the language is presumed to be what the legislature intended; if the meaning is plain, the court cannot base its interpretation on any other method or source.[41] Words, grammar, and punctuation are to be given the meaning they would ordinarily produce, and every provision must be given weight and effect.[42] The court should only stray from the clear, literal language when its application would lead to a result unintended by the drafters.[43]

A. Indiana's Fresh-Pursuit Statute

Section 35-33-3-1 of Indiana's Code grants restricted authority to police officers of other states to arrest individuals in Indiana:

> Any member of a duly organized . . . peace unit of another state who enters this state in fresh pursuit, and continues within [Indiana] in such fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed a felony in the other state, shall have the same authority to arrest and hold such person in custody as has any law enforcement officer of this state.[44]

Authority is granted to the officer so long as she enters Indiana in "fresh pursuit," which is defined in three ways: (1) the definition given by the common law; (2) "the pursuit of a person who has committed a felony or who reasonably is suspected of having committed a felony";[45] or (3) "the pursuit of a person suspected of having committed a supposed felony, though no felony actually has been committed, if there is reasonable ground for believing that a felony has been committed."[46] The statute further states that "[f]resh pursuit shall not necessarily imply instant pursuit, but pursuit without unreasonable delay."[47]

39. BLACK'S LAW DICTIONARY 919 (8th ed. 2004).

40. *See*, *e.g.*, Moskal v. United States, 498 U.S. 103, 117 (1990); Smith v. City of St. Petersburg, 302 So. 2d 756, 757 (Fla. 1974).

41. Greenwood v. United States, 350 U.S. 366, 374 (1956); Ross v. Gore, 48 So. 2d 412, 415 (Fla. 1950).

42. *See* Smith v. United States, 508 U.S. 223, 228 (1993); Thayer v. State, 335 So. 2d 815, 816 (Fla. 1976).

43. Pa. Dep't of Pub. Welfare v. Davenport, 495 U.S. 552, 565 (1990); United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242 (1989).

44. IND. CODE ANN. § 35-33-3-1 (LexisNexis 1998).

45. *Id.* § -5.

46. *Id.*

47. *Id.*

In exchange for this privilege of making an arrest inside Indiana, the police officer is required to take certain steps subsequent to pursuit:[48]

> [H]e shall without unnecessary delay, take the person arrested before a judge of the county in which the arrest was made. The judge shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful, he shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant. . . . If the judge determines that the arrest was unlawful, he shall discharge the person arrested.[49]

The question of whether the officer has made the arrest in fresh pursuit is only the first step.[50] The court, looking at the facts and circumstances of the encounter, must consider whether the arresting officer had probable cause to believe that the defendant committed a crime.[51] This is not a post-arrest procedure as some courts have ruled;[52] the cross-border arrest is not complete unless the magistrate determines that the arrest is lawful.[53] This "presentment requirement" is a statutory procedure that did not exist at common law. At common law, an out-of-state police officer traditionally did not have authority to make the stop in the first place.[54]

This requirement involves substantial due process rights, and it advances several important interests. It promotes comity and ensures that the sovereignty of the state entered into by outside officers is preserved. A hearing before an impartial, neutral magistrate protects the rights of a person who has been subjected to an extraterritorial arrest. Unfortunately, this protection only exists if officers from outside states abide by the requirement and if the courts of their home states hold their officers accountable. When it works, the requirement is an important component in balancing the interests of law enforcement with the individual's right against unlawful seizure.

Illinois' high court chooses not to give effect to the presentment requirement of its neighboring states, holding that the accused receives adequate due process back in Illinois courts;[55] this undermines the

48. People v. Galan, 893 N.E.2d 597, 624 (Ill. 2008) (Freeman, J., dissenting); *see, e.g.*, Kindred v. Stitt, 51 Ill. 401, 409 (1869) (stating that at common law, a municipal peace officer had no authority to make a warrantless arrest outside of the political entity in which he held office).

49. IND. CODE ANN. § 35-33-3-1 (LexisNexis 1998).

50. *Galan*, 893 N.E.2d at 625 (Freeman, J., dissenting).

51. *Id.* at 626.

52. Commonwealth v. Sadvari, 752 A.2d 393, 395 (Pa. 2000).

53. *Id.*

54. *Galan*, 893 N.E.2d at 625 (Freeman, J., dissenting); *see, e.g.*, *Stitt*, 51 Ill. at 409.

55. *Galan*, 893 N.E.2d at 619-20.

authority of Indiana and other bordering states, as well as the protections provided to the accused. Courts are bound to give meaning and effect to all the provisions of a statute, and they must construe it so that no word, clause or sentence is rendered meaningless.[56] Illinois recognizes that Indiana's fresh-pursuit law grants its officers arrest power in Indiana—by virtue of the statute—but it fails to recognize the requirement that its officers must present the defendant to an Indiana magistrate. Illinois should recognize this requirement, because this is what Indiana lawmakers intended.[57]

B. Delaware's Fresh-Pursuit Statute

A uniformed officer from another state in a marked police cruiser may not effectuate an extraterritorial arrest in Delaware unless he adheres to the fresh-pursuit statute.[58] Similar to Indiana, and most other states, Delaware requires out-of-state officers to bring the suspect before a magistrate of the county in which the arrest was made for a hearing to determine the lawfulness of the arrest.[59] If the justice of the peace determines that the arrest was lawful, then the extradition process can begin.[60] If the arrest was unlawful, the defendant will be released.[61]

The Delaware statute is almost identical to Indiana's fresh-pursuit statute, granting authority to out-of-state officers to make arrests inside the state.[62] The Pennsylvania Supreme Court has twice interpreted the Delaware statute in this manner after Pennsylvania state troopers failed to present arrestees, taken into custody in Delaware, to a Delaware magistrate.[63] This is the position Delaware has taken;[64] a tribunal must assess compliance with § 1932 before the arrest can be deemed valid.[65]

Like most states, Delaware modeled its statute after the Uniform Act on Fresh Pursuit.[66] The Uniform Act was drafted in the mid-1930s by the

56. United States v. Menasche, 348 U.S. 528, 538-39 (1955); Tabor v. Ulloa, 323 F.2d 823, 824 (9th Cir. 1963).

57. *See* Pa. Dep't of Pub. Welfare v. Davenport, 495 U.S. 552, 565 (1990); United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242 (1989).

58. DEL. CODE ANN. tit. 11, §§ 1931-1933 (2007).

59. Commonwealth v. Sadvari, 752 A.2d 393, 395 (Pa. 2000).

60. *Id.*

61. *Id.*

62. DEL. CODE ANN. tit. 11, §§ 1931-1933 (2007); IND. CODE ANN. § 35-33-3-1 to -7 (LexisNexis 1998).

63. *Sadvari*, 752 A.2d at 395; Commonwealth v. Gallagher, 896 A.2d 583, 590-92 (Pa. Super. Ct. 2006).

64. State v. Cochran, 372 A.2d 193, 195 (Del. 1977).

65. *Sadvari*, 752 A.2d at 398.

66. HANDBOOK, *supra* note 17, at 147; DEL. CODE ANN. tit. 11, §§ 1931-1933 (2007); *see, e.g.*, ALA. CODE § 15-10-74 (1995); CAL. PENAL CODE §§ 852-852.4 (West 2008); FLA.

Interstate Commission on Crime, with the purpose of preventing criminals from using "state lines to handicap police in their apprehension."[67] The Uniform Act, however, was also intended to be of similar benefit to the person arrested under its provisions. The drafters noted that the Uniform Act protects the rights of the person taken into custody by providing that he shall, without unnecessary delay, be given a hearing before a magistrate, and requires his extradition if the arrest was lawful.[68] The Uniform Act balances the competing interests of law enforcement and the individual.[69]

The Uniform Act is in accordance with the Supreme Court's approach to the reasonableness of searches and seizures, which is governed by federal constitutional standards as expressed in the Fourth Amendment and the Court's decisions.[70] According to *Miller v. United States* and *United States v. Di Re*, the validity of a warrantless arrest is to be determined by looking at the laws of the arresting state,[71] which is precisely why the presentment requirement must be followed.

IV. ILLEGAL ARRESTS: WHAT REMEDY SHOULD BE AVAILABLE?

Without appropriate consequences, police will enter another state and make an arrest in violation of that state's law whenever it is convenient for them.[72] A remedy is needed to encourage compliance and safeguard the

STAT. ANN. §§ 901.25, 941.31-.37 (West 2001); GA. CODE ANN. § 35-1-15 (2009); 725 ILL. COMP. STAT. ANN. 5/107-4 to 107-5 (West 2006); MASS. GEN. LAWS ch. 276, §§ 10A-D (2008); NEV. REV. STAT. ANN. §§ 171.166-.176 (LexisNexis 2006); OHIO REV. CODE ANN. §§ 2935.29-.31 (West 2006); TENN. CODE ANN. §§ 40-7-201 to -205 (2006).

67. HANDBOOK, *supra* note 17, at 147:

> In the foreign state, the pursuing officer from the state wherein the crime was committed is, in general, no longer an officer. This . . . is remedied in a simple manner by this act. Thereunder, the moment an officer in fresh pursuit of a criminal crosses a state line, the state he enters will authorize him to catch and arrest such criminal within its bounds. The statute grants this right only when the officer is in fresh pursuit of a criminal, that is, pursuit without unreasonable delay, by a member of a duly organized peace unit, and only in cases of felonies or supposed felonies occurring outside the boundaries of the state adopting the act. It is thus based upon the little-known common-law doctrine of fresh pursuit, from which the statute has derived its name.

68. *Id.* at 148.

69. *See id.*

70. United States v. Ramirez, 523 U.S. 65, 71 (1998); Terry v. Ohio, 392 U.S. 1, 21 (1968); Ker v. California, 374 U.S. 23, 34-37 (1963).

71. Miller v. United States, 357 U.S. 301, 305 (1958); United States v. Di Re, 332 U.S. 581, 589 (1948); *see also* People v. Clark, 360 N.E.2d 1160, 1163 (Ill. App. Ct. 1977) ("The validity of an arrest without a warrant for state offenses is determined by the law of the state in which the arrest occur[s].").

72. Commonwealth v. Sadvari, 752 A.2d 393, 398-99 (Pa. 2000).

individual's right to be free from unlawful seizures.[73] Application of the exclusionary rule would be an appropriate remedy.

A number of jurisdictions have turned to suppression as a remedy when police violate fresh-pursuit statutes.[74] The D.C. Court of Appeals suppressed evidence when a defendant, taken into custody by Maryland officers in D.C., was not taken before a judge as required by D.C.'s fresh-pursuit statute.[75] The Appellate Court of Illinois held that suppression of evidence was appropriate where police failed to bring the suspect before an Iowa magistrate before returning him to Illinois.[76] The Supreme Judicial Court of Massachusetts excluded evidence after determining that an out-of-state trooper lacked authority to stop a suspect's vehicle based on suspicion that the defendant was driving under the influence.[77] The Supreme Court of Washington, on the other hand, refused to suppress evidence for the arrest of a juvenile in violation of Oregon's law in light of available alternative remedies in the form of civil liability. However, the court stated that in the future it would "not hesitate" to use its "supervisory power to exclude the fruits of unauthorized excursions."[78]

If it is determined that a search or seizure violates the Fourth Amendment, the fruits are suppressed or excluded, and they cannot be used, at least in the state's case-in-chief, on the merits of guilt or innocence.[79] The exclusionary rule is a "judicially created means of effectuating the rights secured by the Fourth Amendment."[80] The Supreme Court first applied the exclusionary rule to the states in *Mapp v. Ohio*,[81] describing at least three purposes of it.[82] An exclusionary rule could be designed to be remedial in nature, treating the exclusion of unlawfully seized evidence as part of the defendant's constitutional entitlement.[83] The rule also might be designed to serve the importance of judicial integrity, as tainted evidence could tarnish the image of the court system.[84] Even more, a third purpose could be a prophylactic one of general deterrence,

73. *See generally id.*

74. *Id.*

75. United States v. Holmes, 380 A.2d 598, 602 (D.C. 1977).

76. People v. Jacobs, 385 N.E.2d 137, 140 (Ill. App. Ct. 1979).

77. Commonwealth v. Savage, 719 N.E.2d 473, 478 (Mass. 1999).

78. State v. Bonds, 653 P.2d 1024, 1031 (Wash. 1982).

79. Mapp v. Ohio, 367 U.S. 643, 655 (1961); Wolf v. Colorado, 338 U.S. 25, 33 (1949).

80. Stone v. Powell, 428 U.S. 465, 482 (1976).

81. *Mapp*, 367 U.S. at 656-57.

82. WAYNE R. LAFAVE, JEROLD H. ISRAEL, NANCY J. KING & ORIN S. KERR, PRINCIPLES OF CRIMINAL PROCEDURE: INVESTIGATION 58-59 (2d ed. 2009).

83. *Id.*

84. *Id.*

discouraging future violations by denying violators the fruits of their unconstitutionality.[85] That deterrence, in turn, could be aimed at judges and police broadly, or it could be narrowly focused on the more limited mission of policing the police.[86] The use of this rule would help encourage the police to comply with the law and serve to protect a defendant's right against unlawful seizures and searches.

While some states have expanded the use of the exclusionary rule,[87] the Supreme Court has been reluctant to do so.[88] Beginning in the 1970s, a series of decisions limited the application of the rule by declining to apply it to grand jury proceedings,[89] civil cases,[90] the use of live witnesses whose identities were discovered through a Fourth Amendment violation,[91] the use of evidence for impeachment purposes,[92] and evidence at a parole hearing.[93] None of these restrictions on the use of the exclusionary rule apply in the violation of fresh-pursuit laws. "Although an illegal arrest or other unreasonable seizure of the person is itself a violation of the Fourth and Fourteenth Amendments, the exclusionary sanction comes into play only when the police have obtained evidence as a result of the unconstitutional seizure."[94] The Court has held that the rule applies only when its "deterrence benefits outweigh its 'substantial social costs.'"[95] Whether the rule is appropriate is an issue separate from whether the Fourth Amendment rights of a defendant were violated by the police.[96]

Even if the exclusionary rule would be an appropriate remedy, the Supreme Court has recognized a good-faith exception to the rule.[97] The

85. *Id.*

86. *See id.*; *see also Mapp*, 367 U.S. at 659.

87. Commonwealth v. Sadvari, 752 A.2d 393, 398-99 (Pa. 2000).

88. *See* Hudson v. Michigan, 547 U.S. 586, 592 (2006) ("[E]xclusion may not be premised on the mere fact that a constitutional violation was a 'but-for' cause of obtaining evidence.").

89. United States v. Calandra, 414 U.S. 338, 349, 351-52 (1974).

90. United States v. Janis, 428 U.S. 433, 447 (1976) ("[T]he Court never has applied [the exclusionary rule] to exclude evidence from a civil proceeding, federal or state.").

91. United States v. Ceccolini, 435 U.S. 268, 274-75 (1978).

92. United States v. Havens, 446 U.S. 620, 628-29 (1980).

93. Pa. Bd. of Prob. and Parole v. Scott, 524 U.S. 357, 367 (1998).

94. YALE KAMISAR, WAYNE R. LAFAVE, JEROLD H. ISRAEL, NANCY J. KING & ORIN S. KERR, BASIC CRIMINAL PROCEDURE: CASES, COMMENTS AND QUESTIONS 241 (12th ed. 2008).

95. Hudson v. Michigan, 547 U.S. 586, 589 (2006) (quoting United States v. Leon, 468 U.S. 897, 907 (1984)).

96. United States v. Leon, 468 U.S. 897, 906 (1984) (quoting Illinois v. Gates, 426 U.S. 213, 223 (1983)).

97. *Id.* at 905; *see also* Massachusetts v. Sheppard, 468 U.S. 981 (1984).

exception is as follows: if the officer in good faith obtained a search warrant, no deterrent effect would be achieved by excluding the evidence even if the judge had made a mistake in issuing the warrant.[98] The focus of the Supreme Court has not been on whether a Fourth Amendment violation has occurred, but on whether the officer, whose conduct is the exclusive concern of the exclusionary rule, has acted reasonably. When police arrest a driver suspected of drug dealing after tailing him for more than a half hour into a neighboring state, the officers know or should know that they are no longer operating within their jurisdiction. The officers should know that they do not have authority to make the arrest in another state unless that state allows them to do so. If the officers are given this authority, they should know, and can immediately find out, under what conditions that authority is granted. The officers cannot reasonably claim not to know the requirements of a neighboring state's fresh-pursuit law, and they cannot reasonably claim to have forgotten to present the arrestee to a court within the state in which the arrest was made.

A. Fruit of the Poisonous Tree Doctrine Bars Derivative Evidence

A related exclusionary principle, although not literally the exclusionary rule, is the "Fruit of the Poisonous Tree" doctrine.[99] That doctrine is not part of the Fourth Amendment specifically but involves the sanction for violations of constitutional protections generally.[100] It is concerned not with the exclusion of the direct product of the constitutional violation – such as the arrest of a person in violation of a fresh-pursuit law – but with the exclusion of the indirect or eventual fruits of the earlier violation.[101]

There are three classic exemptions from the exclusionary effect of the Fruit of the Poisonous Tree doctrine.[102] They are frequently referred to as "ways of . . .'unpoisoning the fruit.'"[103] These exemptions are ways of determining if the fruit was actually poisoned in the first place.[104] One method, explained in *Wong Sun v. United States*, is "'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'"[105] In many cases in which fresh-pursuit laws are violated, the police

98. LAFAVE ET AL., *supra* note 82, at 60-61.

99. *Id.* at 468-69.

100. *Id.*

101. *Id.*

102. Gibson v. State, 771 A.2d 536, 538 (Md. Ct. Spec. App. 2001).

103. *Id.*

104. *Id.*

105. Wong Sun v. United States, 371 U.S. 471, 488 (1963) (quoting JOHN MACARTHUR

officers may not exploit the violation of the fresh-pursuit law, but they do ignore the law of neighboring states.[106] The requirement of going before a tribunal in the arresting state is often avoided purposefully.[107]

The second exemption is referred to as "independent source."[108] Where the alleged fruit follows the alleged poisonous tree in point of time, but is nonetheless shown to have proceeded from an independent source, the fruit is not tainted and should not, therefore, be suppressed.[109] In *People v. Galan*, an Illinois case, the police officers would not have learned much of the evidence that was admitted at trial without the illegal arrest.[110] Here, the police did not have an independent source for the information concerning the drugs, money, and weapons found at the defendant's mother's home.[111]

The third exemption is known as "inevitable discovery."[112] The derivative evidence was discovered as a result of the constitutional violation but ultimately the evidence would have been discovered by other means.[113] In many pursuit cases, including *Galan*, prosecutors could make a strong argument for this basis for a good-faith exemption if police can show that evidence of the crime would have been found eventually.[114]

B. Evidence Gathered During the Investigatory Phase Need Not Be Suppressed

While evidence from an arrest made by an officer in violation of a fresh-pursuit law should be suppressed, evidence legally gathered during investigative custody should be admissible. Suppose police conduct a traffic stop. Although the stop constitutes a seizure within the meaning of the Fourth Amendment, it involves an investigative detention as opposed to an arrest.[115]

MAGUIRE, EVIDENCE OF GUILT 221 (1959)).

106. *See* Commonwealth v. Sadvari, 752 A.2d 393, 398 (Pa. 2000); *see also* Doolittle v. State, 154 P.3d 350, 354 (Wyo. 2007); Crawford v. State, 479 So. 2d 1349, 1349 (Ala. 1985); Bost v. Maryland, 958 A.2d 356, 364-65 (Md. 2007); Commonwealth v. Gallagher, 896 A.2d 583, 588-89 (Pa. 2006).

107. *Sadvari*, 752 A.2d at 398.

108. Murray v. United States, 487 U.S. 533, 537 (1988).

109. *Id.*; *see* Segura v. United States, 468 U.S. 796, 813-14 (1984).

110. People v. Galan, 893 N.E.2d 597, 599-600 (Ill. 2008).

111. *Id.* at 600.

112. Nix v. Williams, 467 U.S. 431, 444 (1984).

113. *Id.*

114. *Galan*, 893 N.E.2d at 599-600. Police knew from which house the defendant picked up the boxes of marijuana. *Id.*

115. Berkemer v. McCarty, 468 U.S. 420, 439 (1984); Delaware v. Prouse, 440 U.S. 648, 653 (1979).

For argument's sake, suppose the defendant is stopped for suspected drunk driving and given a field sobriety test. After failing the sobriety test, he is placed under arrest.[116] The stop is made a mile inside a neighboring state in which the officer has no authority except for what he is granted through that nearby state's fresh-pursuit law. After making the arrest, the officer immediately takes the defendant back to the officer's home state.

In this scenario, the evidence obtained after the driver's arrest should be suppressed. However, the officer's observation of the driver weaving across lanes, the driver's shaky and incoherent demeanor, the failed alcohol test, and other evidence attained before the illegal arrest should be admissible.[117] The sobriety test results should be allowed because the driver does not have to submit to the test, although a request from a police officer may arguably be a greater intrusion than an investigatory stop.[118] The arrest and its resulting evidence would have been admissible had the officer simply complied with the neighboring state's fresh-pursuit law.

V. CONCLUSION

Police who chase suspects from state to state make for compelling characters in movies (e.g., Jackie Gleason's Buford T. Justice, chasing Burt Reynolds from Texas to Georgia in "Smokey and the Bandit").[119] In real life, however, such conduct puts the rights of individuals in jeopardy, and violates the common-law. Fresh-pursuit laws attempt to change all of that by allowing officers to make such warrantless arrests, but only under certain conditions.[120]

Out-of-state officers are required to take the person arrested before a magistrate of the state in which the arrest was made without unnecessary delay.[121] First, the magistrate decides if the officer made the arrest in fresh pursuit;[122] then the court determines whether the officer had probable cause

116. Commonwealth v. Sadvari, 752 A.2d 393, 394-95 (Pa. 2000).

117. *Id.* at 400.

118. *See id.* at 399-400.

119. SMOKEY AND THE BANDIT (Universal 1977).

120. *See, e.g.*, ALA. CODE § 15-10-74 (1995); CAL. PENAL CODE §§ 852-852.4 (West 2008); FLA. STAT. ANN. §§ 901.25, 941.31-.37 (West 2001); GA. CODE ANN. § 35-1-15 (2009); 725 ILL. COMP. STAT. ANN. 5/107-4 to -5 (West 2006); MASS. GEN. LAWS ch. 276, §§ 10A-D (2008); NEV. REV. STAT. ANN. §§ 171.166-.176 (LexisNexis 2006); OHIO REV. CODE ANN. §§ 2935.29-.31 (West 2006); TENN. CODE ANN. §§ 40-7-201 to -205 (2006).

121. IND. CODE ANN. § 35-33-3-2 (LexisNexis 1998); HANDBOOK, *supra* note 17, at 147; *see, e.g.*, ALA. CODE § 15-10-74 (LexisNexis 1995); CAL. PENAL CODE §§ 852-852.4 (West 2008); FLA. STAT. ANN. §§ 901.25, 941.31-.37 (West 2001); GA. CODE ANN. § 35-1-15 (Supp. 2009).

122. People v. Galan, 893 N.E.2d 597, 625 (Ill. 2008); *e.g.*, CAL. PENAL CODE §§ 852-852.4 (West 2008); GA. CODE ANN. § 35-1-15 (Supp. 2009).

to believe the defendant committed a crime.[123] This is not a mere extradition procedure as some courts have stated.[124] A cross-border arrest is not complete until the magistrate determines that the arrest is lawful,[125] because the arresting officer does not have authority to make the arrest unless the magistrate decides he has complied with state law.

If the arrest is deemed valid, then the extradition prong of the statute takes effect. These statutes take into consideration the competing interests of law enforcement in completing an extraterritorial arrest, the rights of the state in which the arrest occurred, and the rights of the person taken into custody. Even in cases of hot pursuit, police officers do not have inherent authority to behave like movie cops, chasing suspects without regard to jurisdiction or state boundaries.

The appropriate remedy for violation of a fresh-pursuit statute is the exclusionary rule.[126] This would encourage officers to comply with the law, help preserve the rights of individuals against unlawful arrests, and further the interests of comity and state sovereignty.[127] The Supreme Court held that the rule will only be applied where its "deterrence benefits outweigh its 'substantial social costs.'"[128] Whether the rule is appropriate is an issue separate from those linkes to Fourth Amendment rights.[129] Several states already apply the exclusionary rule toward evidence gathered from these illegal arrests.[130] More states should follow their lead.

Che Odom

123. *Galan*, 893 N.E.2d at 626; *e.g.*, S.C. CODE ANN. § 25-3-180 (2007); S.D. CODIFIED LAWS §§ 23A-3-9 to -20 (1998).

124. Commonwealth v. Sadvari, 752 A.2d 393, 398 (Pa. 2000).

125. *Id.* at 395.

126. *Id.* at 393.

127. *Id.* at 398.

128. Hudson v. Michigan, 547 U.S. 586, 591 (2006) (quoting United States v. Leon, 468 U.S. 897, 902 (1984)).

129. *Id.* at 591-92.

130. *Sadvari*, 752 A.2d at 398; Doolittle v. State, 154 P.3d 350 (Wyo. 2007); Crawford v. State, 479 So. 2d 1349 (Ala. 1985); Commonwealth v. Gallagher, 896 A.2d 583 (Pa. Super. Ct. 2006).