

vehicle traveling westbound on public highway 2000N in rural Crawford County. He testified that he activated his radar and clocked the defendant's vehicle "traveling 66 miles per hour in a 55 mile per hour zone." He began to follow the vehicle and observed it traveling on the wrong side of the road, then swerving back to the correct lane. He then activated his emergency lights, and as the defendant pulled over, the defendant "pulled down into the right side of the ditch where the right tires were both completely in the ditch." Strauch testified that when he approached the defendant, the defendant smelled of alcohol, had red, watering eyes, and had great difficulty locating his license and insurance information. The defendant subsequently failed a number of field sobriety tests, which were witnessed by a Crawford County sheriff's department deputy who had arrived on the scene, and the defendant was placed under arrest. The defendant declined to take a breath test. At the conclusion of the preliminary hearing, the trial judge found probable cause as to each count with which the defendant was charged, and he set the matter for arraignment.

¶ 5 The defendant subsequently filed a motion to quash his arrest and suppress evidence, alleging that because Strauch was a Robinson police officer, and because the traffic stop and arrest occurred approximately eight miles outside of the Robinson city limits, the arrest was an improper extraterritorial one. A hearing was held on June 18, 2010, at which Strauch again testified. His testimony was consistent with his preliminary hearing testimony; however, in response to more specific questions, he gave more specific answers. Strauch testified that on the date in question he was working "[a]s part of the Crawford County DUI Task Force." With regard to his initial decision to activate his radar, Strauch testified he did so because he "could tell" the defendant's vehicle was speeding. When asked by defense counsel if it was his intent, at the time his radar confirmed that the defendant was speeding, to arrest the defendant for speeding, Strauch testified that his "intent at that time was to turn around and observe the vehicle." Strauch also testified that in his 10 years as a police officer,

he had issued approximately 400 citations for speeding and that based upon his experience and training, his observations of the defendant's driving after he began to follow the defendant led him to believe the defendant "was possibly under the influence" and that the defendant "was committing several violations of improper lane usage and basically operating his vehicle at a high rate of speed and in a reckless manner." At the conclusion of the hearing, the trial judge granted the defendant's motion to quash his arrest and suppress evidence. The State filed a motion to reconsider, which was denied following a hearing on July 30, 2010. No additional testimony was adduced at that hearing. The State then filed a certificate of impairment, and this timely appeal followed.

¶ 6

ANALYSIS

¶ 7 We begin by noting our standard of review. When reviewing a trial judge's ruling on a motion to quash arrest and suppress evidence, this court gives "great deference" to factual findings of the trial judge, and we will reverse such findings "only if they are against the manifest weight of the evidence." *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). We remain free, however, to undertake our own assessment of the facts in relation to the issues raised, and we may draw our own conclusions when deciding what relief should be granted. *Luedemann*, 222 Ill. 2d at 542. Thus, we review *de novo* the trial judge's ultimate ruling regarding quashing the arrest and suppressing the evidence. *Luedemann*, 222 Ill. 2d at 542.

¶ 8 On appeal, the State contends the arrest of the defendant was proper and should not have been quashed because it was permissible under several different sections of the Code of Criminal Procedure of 1963 (Code). For example, the State contends the arrest was lawful under section 107-3 of the Code (725 ILCS 5/107-3 (West 2008)), which codifies common law provisions for citizen's arrests. The principal case dealing with the parameters of a legitimate citizen's arrest by a police officer is the Illinois Supreme Court case of *People v. Lahr*, 147 Ill. 2d 379, 382-83 (1992), wherein the court noted that although "a police officer

acting outside his jurisdiction retains all the rights of an ordinary citizen, including the right to effect a citizen's arrest," that officer's "right to arrest is no greater than that of a private citizen" and accordingly "an extraterritorial arrest will not be upheld if in making the arrest the officer uses the powers of his office to obtain evidence not available to private citizens." Accordingly, under *Lahr*, although a police officer may use his or her unaided senses to gather evidence establishing probable cause for a citizen's arrest under section 107-3, the use of radar to determine that an individual is speeding, in the absence of any other evidence, is prohibited. 147 Ill. 2d at 385-86. On the other hand, "the ability of an experienced law enforcement officer to interpret what he witnesses is not an exercise of the powers granted to police," and therefore "[a]n extraterritorial arrest based solely on the unaided observations of an officer is not an exercise of police authority if the officer does not use the powers of his office to obtain evidence unavailable to a private citizen." *People v. Erby*, 375 Ill. App. 3d 860, 863-64 (2007). Therefore, the appellate court has held that an on-duty police officer outside his or her jurisdiction who personally observes erratic driving has reasonable grounds for a traffic stop of the driver pursuant to section 107-3. *People v. Plummer*, 287 Ill. App. 3d 250, 253 (1997). Moreover, "when a police officer outside her jurisdiction has obtained evidence sufficient to warrant a traffic stop through her own observations without resorting to the power of her office, the subsequent use of her powers of office to acquire further evidence not available to a private citizen does not invalidate an arrest." *People v. Ciesler*, 304 Ill. App. 3d 465, 471 (1999) (citing *Plummer*, 287 Ill. App. 3d at 253).

¶ 9 The defendant contends he was not subject to a proper citizen's arrest because Strauch's testimony could have led the circuit court to conclude that the only basis for the arrest of the defendant for speeding was Strauch's use of his radar, and that under *Lahr* and its progeny the arrest was therefore invalid. To support this argument, the defendant points out that in the preliminary hearing, Strauch testified only that he used his radar, not that he

"could tell" the defendant was speeding and therefore used the radar only to gather additional evidence. We cannot agree with the defendant's interpretation of Strauch's testimony. Although it is true, as the defendant claims, that Strauch testified only about his radar use at the preliminary hearing, at that hearing he was asked very general questions designed to establish probable cause for the defendant's arrest. At the hearing on the motion to quash arrest and suppress evidence, he was asked much more specific questions about the series of events that led to the defendant's arrest, and he gave much more specific answers. The possibility of contradictions in Strauch's testimony was not raised or argued by the defendant in the trial court. To the contrary, at the conclusion of the June 18, 2010, hearing, counsel for the defendant misrepresented the testimony given by Strauch therein, stating that he recalled Strauch testifying that he saw the defendant traveling at a "high rate of speed," not that he saw him speeding, and that counsel's recollection was that Strauch testified he was able to determine the defendant was speeding only after Strauch used his radar. This, as described above, is not at all an accurate description of Strauch's testimony. We note as well that the trial judge made no findings of fact on the record that would indicate that he did not believe Strauch's testimony that he "could tell" the defendant was speeding prior to activating his radar to gather additional evidence. However, even if we were to assume, *arguendo*, that the defendant is correct and that the judge disregarded Strauch's specific answers at the hearing on the motion to quash and relied instead on his very general answers at the preliminary hearing, we would conclude that in so doing, the judge erred and that any factual findings based upon that error would be against the manifest weight of the evidence presented to the judge.

¶ 10 The defendant's disputed version of the facts notwithstanding, applying the legal principles developed in the foregoing cases to the case at bar, we conclude the arrest of the defendant was a proper citizen's arrest. Officer Strauch testified at the June 18, 2010, hearing

that he activated his radar because he observed the defendant's vehicle and "could tell" the vehicle was speeding. Thus, like the officers in *Plummer* and *Ciesler* and other similar cases, Strauch used his own unaided powers of observation to determine that the defendant was speeding. The fact that he used his radar—one of the "powers" of his office—to obtain further evidence not available to a private citizen to support his stop of the defendant does not invalidate his subsequent arrest of the defendant. See *People v. Ciesler*, 304 Ill. App. 3d 465, 471 (1999) (citing *Plummer*, 287 Ill. App. 3d at 253). Moreover, after observing the defendant speeding, Strauch began to follow the defendant, and before activating his emergency lights or in any way interacting with, or curtailing the liberty of, the defendant, Strauch made unaided observations of additional offenses and erratic driving that led him to conclude, based upon his training and experience, that the defendant might be committing the offense of driving under the influence of alcohol. See, e.g., *People v. Gutt*, 267 Ill. App. 3d 95, 96 (1994) (extraterritorial citizen's arrest by officer proper where officer testified that, based upon her observation and experience, she "could tell [defendant's vehicle] was exceeding the speed limit" prior to activating her radar, and where she observed a subsequent traffic violation prior to stopping defendant).

¶ 11 We also agree with the State that the arrest of the defendant was lawful under section 107-4(a-3)(2) of the Code, which allows a police officer to make an arrest outside his or her jurisdiction "if the officer, while on duty as a peace officer, becomes personally aware of the immediate commission of a felony or misdemeanor violation of the laws of this State." 725 ILCS 5/107-4(a-3)(2) (West 2008). The State correctly points out that there is only one reported decision on this subsection of the Code, *People v. Kirvelaitis*, 315 Ill. App. 3d 667 (2000). In *Kirvelaitis*, the defendant was cited for speeding and charged with two counts of driving under the influence of alcohol after Woodridge police officer Jerry Symonds arrested him half a mile outside of Woodridge. 315 Ill. App. 3d at 668-69. At a hearing on a petition

to rescind the statutory summary suspension of the defendant's driving privileges, Symonds testified that on the date in question he was on duty when he observed the defendant's car traveling at a high rate of speed. *Kirvelaitis*, 315 Ill. App. 3d at 668. Symonds testified that he was outside of Woodridge when he observed the defendant and that he did not know if the defendant " 'was in town or out of town. It was that close.' " *Kirvelaitis*, 315 Ill. App. 3d at 668-69. Symonds activated his radar as the defendant's car got closer to him, at which point the defendant was "not in any municipality." *Kirvelaitis*, 315 Ill. App. 3d at 669. Symonds testified that the radar showed that the defendant was speeding, so Symonds made a U-turn, caught up with the defendant, and stopped him. *Kirvelaitis*, 315 Ill. App. 3d at 669. Only after approaching the vehicle and interacting with the defendant during his "investigation" did Symonds arrest the defendant for driving under the influence of alcohol. *Kirvelaitis*, 315 Ill. App. 3d at 669.

¶ 12 On appeal, the *Kirvelaitis* court reasoned, with regard to section 107-4(a-3)(2), that the section did not apply because the defendant was arrested for speeding, which is a petty offense, not a misdemeanor or felony as required by the section. 315 Ill. App. 3d at 671. The court posited that although the defendant was also arrested for misdemeanor driving under the influence of alcohol, the evidence supporting that arrest was only discovered after the defendant had been pulled over for the petty offense of speeding. *Kirvelaitis*, 315 Ill. App. 3d at 672. The court pointed out that there was no evidence that prior to his poststop investigation, Symonds observed the defendant "driving erratically" or otherwise had reason to believe the defendant was committing the misdemeanor or felony offense of driving while under the influence of alcohol. *Kirvelaitis*, 315 Ill. App. 3d at 672. Thus, the *Kirvelaitis* court interpreted section 107-4(a-3)(2) to require the observation of the misdemeanor or felony in question to have occurred prior to the pulling over—or literal "arrest"—of a defendant for a petty offense. 315 Ill. App. 3d at 672. The court then conducted a separate analysis to

determine if the arrest was proper pursuant to section 107-3, and it concluded that under *People v. Lahr*, 147 Ill. 2d 379 (1992), and its progeny, the arrest was improper. *Kirvelaitis*, 315 Ill. App. 3d at 672-73.

¶ 13 In the case at bar, the defendant asks this court to conflate the analyses of sections 107-4(a-3)(2) and 107-3 and by virtue thereof to apply the requirements of *Lahr* and its progeny to section 107-4(a-3)(2). We cannot agree with the defendant that the *Kirvelaitis* court undertook such a conflation, nor can we discern any other basis for so doing. To the extent the trial judge believed that, with regard to section 107-4(a-3)(2), *Lahr* was applicable, he erred as a matter of law. *Lahr* and its progeny deal specifically, and only, with citizen's arrests, which may be undertaken whether an officer is on duty or not and may be for any "offense other than an ordinance violation." 725 ILCS 5/107-3 (West 2008). In such situations, the officer's "right to arrest is no greater than that of a private citizen." *People v. Lahr*, 147 Ill. 2d 379, 382-83 (1992). Section 107-4(a-3)(2), on the other hand, applies only to officers who are on duty and become "personally aware of the immediate commission of a felony or misdemeanor violation of the laws of this State." 725 ILCS 5/107-4(a-3)(2) (West 2008). Moreover, as explained above, the only reported case interpreting the subsection, *People v. Kirvelaitis*, stands for the proposition that under section 107-4(a-3)(2), the officer must observe a misdemeanor or a felony, not just a petty offense, prior to the pulling over—or literal "arrest"—of a defendant for the petty offense. 315 Ill. App. 3d at 672. In this case, Strauch observed the defendant commit the petty offense of speeding, then followed the defendant to observe him further. Prior to activating his emergency lights or in any way interacting with, or curtailing the liberty of, the defendant, Strauch observed erratic driving that led him to believe the defendant "was possibly under the influence" and that clearly demonstrated that the defendant "was committing several violations of improper lane usage and basically operating his vehicle at a high rate of speed and in a reckless

manner." Accordingly, the arrest of the defendant did not run afoul of the prohibitions set forth in *Kirvelaitis* and was legitimate under section 107-4(a-3)(2).

¶ 14 We recognize that both sections 107-3 and 107-4(a-3)(2) grant broad powers to police officers operating outside of the jurisdictions they are paid to serve, powers that may give rise to legitimate concerns of taxpayers within those jurisdictions, and citizens in general, but it is the province of the General Assembly, not this court, to make any needed amendments to sections 107-3 and 107-4(a-3)(2).

¶ 15 **CONCLUSION**

¶ 16 For the foregoing reasons, the trial court erred when granting the defendant's motion to quash arrest and suppress evidence. Accordingly, we reverse the trial court's rulings and remand for further criminal proceedings against the defendant.

¶ 17 Reversed; cause remanded.