

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

March 6, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-2088**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**CITY OF MARION,**

**Plaintiff-Respondent,**

**v.**

**DONALD J. MINNIECHESKE,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for Waupaca County: JOHN P. HOFFMANN, Judge. *Affirmed.*

DEININGER, J.<sup>1</sup> Donald Minniecheske appeals from a judgment convicting him of speeding in violation of Marion City Ordinance 10-1-1, adopting § 346.57(5), STATS. The issue is whether the arresting officer had authority to issue Minniecheske a citation outside the city limits of Marion. We conclude that the officer was engaged in fresh pursuit under § 175.40(2), STATS., and was therefore authorized to issue a citation to Minniecheske for violating the city's traffic ordinance. Accordingly, we affirm.

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

## BACKGROUND

On February 5, 1996, City of Marion Police Officer Goerlinger clocked Minniecheske's vehicle travelling at 51 mph in a 35 mph zone along East Ramsdell Street (County Highway S) within the City of Marion. Goerlinger immediately pursued Minniecheske, keeping the vehicle within his sight during the entire course of the pursuit. Goerlinger stopped Minniecheske at the intersection of County Highway S and U.S. Highway 45, which is located approximately one hundred yards outside the city limits of Marion. The trial court found Minniecheske guilty of speeding under the Marion City Ordinance.

## ANALYSIS

Minniecheske argues that Goerlinger lacked jurisdiction to issue a citation because the stop occurred outside the city limits of Marion.

Section 175.40(2), STATS., 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."<sup>2</sup> The application of a statute to undisputed facts raises a question of law which we decide without deference to the trial court's decision. *Minuteman, Inc. v. Alexander*, 147 Wis.2d 842, 853, 434 N.W.2d 773, 778 (1989). An officer is in "fresh pursuit" when: (1) the officer acts without unnecessary delay; (2) the pursuit is continuous and uninterrupted; and (3) the period of time between the violation, the pursuit and the stop is reasonable. *City of Brookfield v. Collar*, 148 Wis.2d 839, 842-43, 436 N.W.2d 911, 913 (Ct. App. 1989).

In *Collar*, a Brookfield police officer observed a car speeding, crossing over the centerline and weaving in its lane. The officer waited to find a safe place to pull the car over, and as a result the stop occurred outside the city limits of Brookfield. Applying the three-factor test for fresh pursuit, we concluded that the officer acted to pursue Collar

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<sup>2</sup> The city cites § 345.22, STATS., while Minniecheske cites *State v. Barrett*, 96 Wis.2d 174, 291 N.W.2d 498 (1980) (construing § 59.24, STATS., (1975), currently § 59.28, STATS.), in support of their respective arguments. However, the controlling statute on these facts is § 175.40(2), STATS.

without delay, the pursuit was continuous and the several minute delay between the commission of the offense and the subsequent stop was reasonable based on the officer's concerns about finding a safe place to effect the stop. *See Collar*, 148 Wis.2d at 842-43, 436 N.W.2d at 913.

Officer Goerlinger testified that he determined by radar that Minniecheske's vehicle exceeded the speed limit by sixteen miles per hour within the City of Marion. The officer acted without delay in commencing the pursuit; the pursuit was continuous; and the period of time between the officer's observation of Minniecheske's violation and the time of the stop was very brief and therefore reasonable. We conclude that Goerlinger was in fresh pursuit of Minniecheske and was therefore authorized to arrest Minniecheske outside the Marion city limits for violating the city's traffic ordinance. *See* § 175.40(2), STATS. Accordingly, we affirm the judgment.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.