

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 6, 2007

A. John Voelker
Acting 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 Nos. 2006AP1887
2006AP1888
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2006TR238
2006TR239**

**IN COURT OF APPEALS
DISTRICT III**

VILLAGE OF TIGERTON,

PLAINTIFF-RESPONDENT,

V.

COREY S. MINNIECHESKE,

DEFENDANT-APPELLANT.

APPEALS from judgments and orders of the circuit court for Shawano County: JAMES R. HABECK, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Corey S. Minniecheske appeals a judgment of conviction for operating while suspended, fourth offense, and operating while

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2). Having concluded that these appeals should be consolidated, the court, on its own motion, ordered the
(continued)

under the influence of a controlled substance, first offense. Minniecheske also appeals orders denying his request for a jury trial. Minniecheske argues: (1) the trial court had no jurisdiction because the officer was outside his jurisdiction at the time of the arrest, (2) Minniecheske could not be charged with operating while under the influence because he was parked on private property and not operating a motor vehicle at the time of the arrest, (3) the court improperly denied his request for a jury trial, and (4) the court proceeded to trial without notice and while the case was on appeal. We disagree and affirm the judgments and orders.

BACKGROUND

¶2 Minniecheske received citations for operating while under the influence and operating while suspended on November 19, 2005. Minniecheske filed a motion to dismiss the cases based on lack of jurisdiction, stating the police officer was outside his jurisdiction when he arrested Minniecheske. The circuit court held a hearing on Minniecheske's motion on May 3, 2006, and denied the motion.

¶3 Minniecheske requested a jury trial; however, the request was untimely and the court therefore denied the request. Minniecheske appealed the decision, but the appeal did not result in a stay of the proceedings. Minniecheske failed to appear at the scheduled trial and the circuit court entered a default judgment.

DISCUSSION

appeals consolidated on February 26, 2007. All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶4 Minniecheske first argues the Tigerton police officer lacked jurisdiction to make an arrest because he was one mile outside of Tigerton when he arrested Minniecheske. WISCONSIN STAT. § 175.40(2) states, “[f]or 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.” Minniecheske argues he did not operate a motor vehicle on the night of his arrest and was simply sitting in his mother’s car listening to the radio when the officer approached him. The Village alleges the officer was in fresh pursuit from the Village of Tigerton at the time of the traffic stop.

¶5 The circuit court, not the appellate court, is the ultimate arbiter of weight and credibility. WIS. STAT. § 805.17(2). Its credibility assessments will not be overturned on appeal unless they are inherently or patently incredible. *Chapman v. State*, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975). Only a portion of the motion hearing transcript is included in the record, and that portion does not include any testimony from the arresting officer. When an appellant fails to file a transcript, this court is required to assume that every fact essential to sustain the fact-finder’s exercise of discretion is supported by the record. *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). Because Minniecheske failed to file a full transcript of the motion hearing, we are required to assume the officer’s testimony supported the circuit court’s finding that he was in fresh pursuit and therefore had jurisdiction to arrest Minniecheske.

¶6 Minniecheske also argues he could not be charged with operating while under the influence because he was parked on private property and not operating a motor vehicle at the time of the arrest. This appears to be a restatement of Minniecheske’s argument made at the motion hearing that he was

not driving and had not driven on the evening when the officer approached him. As noted above, the trial court apparently found the officer's testimony on this issue more credible than Minniecheske's. Because the relevant portion of the transcript is missing, we must assume the officer's testimony supported the trial court's determination. *See id.*

¶7 Minniecheske also argues the circuit court erred by not granting his request for a jury trial. Minniecheske had ten days from entering his not guilty plea to request a jury trial. WIS. STAT. § 345.43. Minniecheske's initial appearance in this case was on March 31² and he made his request for a jury trial on July 28. Therefore, Minniecheske's request for a jury trial was not timely and was properly denied.

¶8 Minniecheske finally argues the circuit court proceeded to trial without giving him notice, and when the case was on appeal. However, Minniecheske received notice of both the motion hearing and the trial. The notice for the motion hearing was hand delivered to Minniecheske on March 31 in the courtroom and the notice for the trial was hand delivered to Minniecheske at the motion hearing on May 3. Further, while Minniecheske did appeal the circuit court's ruling that his request for a jury trial was not timely, nothing in the record indicates that a stay had been entered or even requested. Therefore, the circuit court was not prohibited from proceeding with the case and had the authority to enter a default judgment. *See* WIS. STAT. § 808.07(1).

² Due to the incomplete nature of the record, this court used information from the Wisconsin Circuit Court Access Page to verify the Village's contention that the initial appearance was on March 31. Additionally, Minniecheske does not refute this date in his reply brief and therefore concedes this date is accurate. *See State v. Peterson*, 222 Wis. 2d 449, 459, 588 N.W.2d 84 (Ct. App. 1998) (unrefuted arguments are deemed admitted).

By the Court.—Judgments and orders affirmed.

This opinion will not be published. See WIS. STAT. RULE
§ 809.23(1)(b)4.

