

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 23, 2011

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. 2010AP2324-CR
2010AP2325-CR**

**Cir. Ct. Nos. 2010CT374
2010CT375**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

BRADLEY A. FABER,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Walworth County:
DAVID M. REDDY, Judge. *Affirmed.*

¶1 REILLY, J.¹ The State of Wisconsin appeals from an order of the circuit court dismissing the criminal charges against Bradley A. Faber. Faber was issued a pair of citations for operating a motor vehicle while intoxicated (OWI) (First offense) by the City of Delavan in November 2005 and February 2006. The City apparently lost track of the prosecution of these citations as they never reached final disposition in municipal court. Faber was later convicted of three OWI-type offenses between 2007 and 2008. When the Walworth County District Attorney's Office learned of the November 2005 and February 2006 citations, the State charged Faber with two counts of OWI—fourth offense on May 10, 2010. Faber argued that the three-year statute of limitations period to prosecute misdemeanors had run, and the circuit court agreed. We affirm the circuit court's order.

FACTS

¶2 On November 19, 2005, Faber was issued a citation for OWI—first offense by the City. Faber was issued another OWI citation by the City on February 18, 2006. The February 2006 citation was also issued as an OWI—first offense as the November 2005 citation was unresolved. Faber and the City entered into a written agreement to hold open the February 2006 OWI violation pending the disposition of his November 2005 OWI violation.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶3 Not content with two pending OWI charges, Faber racked up three more OWI-related charges between 2007 and 2008. Faber was convicted of these charges on May 11, 2007, May 19, 2008, and November 7, 2008.² The City apparently lost track of the November 2005 and February 2006 citations as Faber was not charged for these offenses until 2010 when the Walworth County District Attorney’s Office became aware of the citations. On May 10, 2010, the State charged Faber with two OWI—fourth offense counts stemming from the two unresolved citations.

¶4 Faber filed a motion to dismiss the charges. Faber argued that as the State waited more than four years to charge him with the November 2005 and February 2006 citations, the three-year statute of limitations window to prosecute misdemeanors expired. *See* WIS. STAT. § 939.74(1). The State responded that the statute of limitations was tolled during the period that Faber was being prosecuted for his three other OWI-related offenses because the November 2005 and February 2006 citations were still “held open.” According to the State, the municipal court continued to exercise jurisdiction over these citations until May 11, 2007, when Faber pled guilty to a 2007 OWI—first offense. Only after this date did the three-year clock on the statute of limitations begin to tick.

¶5 The circuit court granted Faber’s motion to dismiss and the State appeals.

² Faber was convicted once for operating a motor vehicle with a prohibited alcohol concentration and twice for operating a motor vehicle while intoxicated.

STANDARD OF REVIEW

¶6 Courts may not exercise personal jurisdiction over a defendant when the relevant criminal statute of limitations has expired. *State v. Jennings*, 2003 WI 10, ¶15, 259 Wis. 2d 523, 657 N.W.2d 393. To determine if the statute of limitations expired for Faber’s 2005 and 2006 OWI citations, we must examine WIS. STAT. § 939.74. An interpretation of statute is a question of law that we review de novo. *West v. Dep’t of Commerce*, 230 Wis. 2d 71, 74, 601 N.W.2d 307 (Ct. App. 1999).

DISCUSSION

¶7 Misdemeanors must be prosecuted within three years of the commission of the act.³ WIS. STAT. § 939.74(1). A prosecution is commenced when “a warrant or summons is issued, an indictment is found, or an information is filed.” *Id.* The primary purpose of criminal statutes of limitations is to protect the accused from having to defend himself against charges for remote conduct, while a corollary purpose is to ensure that criminal prosecutions are based on recent evidence. *John v. State*, 96 Wis. 2d 183, 194, 291 N.W.2d 502 (1980). Statutes of limitations demand that law enforcement officials act promptly to investigate and prosecute criminal activity, which helps to preserve the integrity of the decision-making process in criminal trials. *Id.* While the State has a strong interest in punishing repeat drunk drivers, it also has a statutory obligation to

³ On July 1, 2010, an OWI—fourth offense went from being a misdemeanor to a felony. See 2009 Wis. Act 100, §§ 42, 96. As the Legislature specified that this change will only apply to offenses committed after July 1, 2010, Faber’s OWI—fourth offense charges are misdemeanors. See *id.*, § 96.

prosecute cases within the relevant statute of limitations. As we hold that the three-year statute of limitations for misdemeanors has run, the State may not prosecute Faber for his November 2005 and February 2006 OWI citations.

¶8 We begin by stating the obvious—*criminal* charges were not “commenced” against Faber for his November 2005 and February 2006 OWI citations until May 10, 2010. This is the date when the State filed the criminal summons and complaint in circuit court charging Faber with two counts of OWI—fourth offense related to those two citations.⁴ Prior to May 10, 2010, the November 2005 and February 2006 citations were prosecuted as OWI—first offenses, which are forfeiture actions and not criminal proceedings. *See* WIS. STAT. § 346.65(2)(am)1.; WIS. STAT. § 939.12. While the amended OWI—fourth offense charges were filed more than three years after February 2006, the State argues that the statute of limitations was tolled while the prosecution of the citations was “pending” in municipal court. *See* WIS. STAT. § 939.74(3).

¶9 We reject the State’s argument as a municipal traffic citation is not enough to confer personal jurisdiction in criminal proceedings before a circuit court. *See State v. Banks*, 105 Wis. 2d 32, 40, 313 N.W.2d 67 (1981). The time the City spent prosecuting Faber for an OWI—first offense did not toll the statute of limitations for the State’s prosecution of Faber for an OWI—fourth offense because an OWI—first offense is a forfeiture action and thus is not a criminal proceeding. *See* WIS. STAT. § 939.12. Therefore, the tolling provision of WIS. STAT. § 939.74(3) does not apply to the City’s prosecution of Faber’s November

⁴ The summons lists only the November 2005 citation, but Faber stipulated that he was charged with the February 2006 citation as well.

2005 and February 2006 OWI—first offense ordinance violations because the circuit court did not exercise personal jurisdiction over those citations.

CONCLUSION

¶10 As we hold that the prosecution of Faber in municipal court for his November 2005 and February 2006 OWI—first offense citations did not toll the three-year statute of limitations for the amended OWI—fourth offense charges, we hold that the circuit court could not exercise personal jurisdiction over Faber. The order of the circuit court is affirmed.

By the Court.—Order affirmed.

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