

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 18, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

Nos. 99-1447 and 99-1448

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

VILLAGE OF LINDEN,

PLAINTIFF-RESPONDENT,

v.

TODD N. NAGEL,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Iowa County:
WILLIAM D. DYKE, Judge. *Affirmed.*

¶1 ROGGENSACK, J.¹ Todd N. Nagel appeals from judgments convicting him of an unsafe lane deviation and operating a motor vehicle while under the influence of an intoxicant (OMVWI) in violation of §§ 346.13(3) and 346.63(1), STATS., which are also violations of the Village of Linden Ordinance

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

3.01, adopting those statutory provisions. He contends that the circuit court erred in denying his motion to suppress because the arresting officer did not have authority to issue Nagel the citations outside of the Village limits. We conclude that the officer was engaged in fresh pursuit under § 175.40(2), STATS., and was therefore authorized to issue the citations. Accordingly, we affirm.

BACKGROUND

¶2 On February 27, 1999, Officer David Sabot observed a vehicle being driven by Nagel approximately three-tenths of a mile inside the Village of Linden limits. Nagel was passing from a thirty mile-per-hour zone into a forty mile-per-hour zone. Sabot, who testified that he had extensive training in estimating vehicle speeds, opined that Nagel was traveling fifty to fifty-five miles per hour.

¶3 Sabot caught up with Nagel after following him for approximately one mile. At that time, Nagel was outside of the Village limits and traveling at sixty miles per hour. Nagel made a quick left turn and as he did so, the truck veered off the roadway, almost going into a ditch. Sabot activated his emergency lights and he pursued Nagel for approximately one-half mile before Nagel stopped. When he approached the vehicle and began questioning Nagel, Sabot noted that Nagel smelled of intoxicants, and his speech was slurred. Nagel admitted to Sabot that he had been drinking all day. Sabot then asked Nagel to perform field sobriety tests. Based on the results of those tests, Sabot placed Nagel under arrest and issued two citations: one for an unsafe lane deviation, and the other for OMVWI.

¶4 Nagel moved to suppress, claiming that the stop and the arrest were made outside of the arresting officer's jurisdiction and were therefore illegal. The circuit court denied the motion, concluding that Sabot had authority to pursue

Nagel after he observed him speeding within the Village limits. After a trial to the court, Nagel was found guilty of making an unsafe lane deviation and OMVWI. Nagel appeals.

DISCUSSION

Standard of Review.

¶5 Whether Sabot was in fresh pursuit of Nagel when he made an arrest outside of the Village of Linden pursuant to § 175.40(2), STATS., involves the application of a statute to a particular set of facts. As such, it is a question of law which we decide without deference to the circuit court’s decision. *See City of Brookfield v. Collar*, 148 Wis.2d 839, 841, 436 N.W.2d 911, 913 (Ct. App. 1989).

Fresh Pursuit.

¶6 Sections 61.28 and 61.31(2), STATS., authorize a village police officer to arrest any person within the village who violates an ordinance of the village.² In addition, § 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.” Nagel contends that Sabot was not in “fresh

² Section 61.28, STATS., authorizes the village marshal to “arrest with or without process every person found in the village engaged in any disturbance of the peace or violating any law of the state or ordinance of the village.” Section 61.31(2), STATS., grants to village police officers all the powers and privileges imposed by law upon village marshals.

pursuit” under § 175.40(2) because the stop and arrest occurred a mile and a half outside of the Village limits.³ We disagree.

¶7 In *Collar*, 148 Wis.2d at 842-43, 436 N.W.2d at 913, we adopted a three-part test to determine when an arrest made outside of an officer’s jurisdiction constitutes fresh pursuit. We concluded that 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. *See id.*

¶8 *Collar* involved a Brookfield police officer that observed a car speeding, crossing over the centerline and weaving in its lane. *See id.* at 840-41, 436 N.W.2d at 913. The officer waited to find a safe place to stop the car, and as a result, the stop occurred outside of the city limits of Brookfield. *See id.* at 841, 436 N.W.2d at 913. We concluded that the officer pursued Collar 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 id.* at 843, 436 N.W.2d

³ Nagel also contends that the stop and arrest were illegal because Sabot never gave Nagel a citation for speeding, the violation that he saw occur within the Village limits. However, in *State v. Baudhuin*, 141 Wis.2d 642, 416 N.W.2d 60 (1987), the supreme court considered whether a police officer, who had a factual basis to conclude that a driver was impeding traffic by driving under the speed limit, but stopped the driver only to render assistance, could subsequently give the driver a citation for operating a motor vehicle while under the influence of an intoxicant. The court stated that although the officer did not anticipate issuing a citation for impeding traffic, it was the driver’s violation of the law that prompted the stop. *See id.* at 650, 416 N.W.2d at 63. Further, the court recognized that “[a]s long as there was a proper legal basis to justify the intrusion, the officer’s subjective motivation does not require suppression of the evidence or dismissal.” *See id.* at 651, 416 N.W.2d at 63. Here, the circuit court found Sabot’s testimony that Nagel was speeding within the Village limits credible. Once Sabot had a proper legal basis to justify the intrusion, the fact that he gave other citations, rather than one for speeding, does not require suppression of the evidence or dismissal.

at 913. Therefore, pursuant to § 175.40(2), STATS., the officer's fresh pursuit permitted the stop and arrest of Collar outside of the city limits.

¶9 Similarly, we conclude that Sabot's arrest of Nagel outside the Village was made in fresh pursuit. Sabot estimated Nagel was exceeding the speed limit by twenty to twenty-five miles per hour while Nagel was traveling through Linden. Sabot immediately followed Nagel's vehicle, catching up to it after approximately one mile. At that time, Nagel was travelling approximately sixty miles per hour. At that rate of speed, it took Sabot about one minute to go one mile and stop Nagel. Therefore, the period of time between Sabot's observation of Nagel's speeding and the time of the stop spanned only two to three minutes. Given these circumstances, we conclude that Sabot acted without unnecessary delay; the pursuit was continuous and uninterrupted; and the period of time between the violation and the stop was reasonable, satisfying all elements of the test for fresh pursuit. Therefore, Sabot had the legal authority to arrest Nagel outside of the Village of Linden limits.⁴

CONCLUSION

¶10 Because the arresting officer was engaged in fresh pursuit under § 175.40(2), STATS., when he stopped Nagel approximately a mile and a half outside the Village limits, we conclude that the officer operated within the scope

⁴ Nagel also contends that there is "no legal basis to sustain these convictions" because the ordinance in question was not proven at trial under § 902.03, STATS. However, Nagel failed to raise this issue before the circuit court. Arguments not raised before the circuit court generally will not be considered for the first time on appeal. See *Bank One, Appleton, NA v. Reynolds*, 176 Wis.2d 218, 222, 500 N.W.2d 337, 339 (Ct. App. 1993). Therefore, we decline to reach this issue.

of his lawful authority when he issued the citations. Accordingly, we affirm the judgments of conviction.

By the Court.—Judgments affirmed.

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

