

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

June 7, 2000

Cornelia G. Clark  
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-3064

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT II

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CITY OF WHITEWATER,

PLAINTIFF-RESPONDENT,

v.

DARREN R. GILL,

DEFENDANT-APPELLANT.

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APPEAL from an order of the circuit court for Walworth County:  
MICHAEL S. GIBBS, Judge. *Affirmed.*

¶1 ANDERSON, J.<sup>1</sup> Darren R. Gill appeals for the second time from a circuit court order affirming his municipal court conviction for operating a motor vehicle while intoxicated which was prohibited by a city ordinance incorporating

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

WIS. STAT. § 346.63(1)(a). After considering the first appeal, we reversed and remanded the case to the circuit court. We concluded that jurisdiction had not been transferred from the municipal court to the circuit court because the municipal court failed to certify the transcript to the circuit court as required in WIS. STAT. § 800.14(5). In response to our remand instructions, the municipal court prepared a certified transcript of Gill's municipal court proceeding. The following certification was attached to the transcript:

I ... Municipal Court Clerk for the City of Whitewater, hereby certify this 26<sup>th</sup> day of January, 1999, pursuant to Wisconsin Statutes 800.14(5), that the attached is a true transcript of the testimony given and record made at the trial of City of Whitewater v. Darren R. Gill which took place on the 29<sup>th</sup> day of October, 1997, as typed by me to the best of my abilities from recorded electronic tapes made on said trial date.

¶2 The circuit court, relying in part on the transcript, affirmed the conviction on remand. The transcript's certification is the basis for Gill's second appeal. He argues that WIS. STAT. § 800.14(5) clearly requires that the municipal court judge personally certify the transcript. Because the court clerk certified the transcript and not the municipal court judge, Gill contends that we should hold, as we did on his first appeal, that jurisdiction was not established because of a procedural defect. We do not address the merits of Gill's argument, however, because the issue has been waived. As a result, we affirm the circuit court's order.

¶3 Supporting his appeal, Gill argues that "the decision of the Circuit Court should be again reversed and dealt with accordingly because the problem which warranted reversal and remand on the earlier appeal has yet to be rectified." This is an argument that should have been raised before the circuit court. As a general rule, issues that are not presented to the circuit court will not be considered for the first time on appeal. See *State v. Gove*, 148 Wis. 2d 936, 940-41, 437

N.W.2d 218 (1989). This court has frequently stated that even the claim of a constitutional right will be deemed waived unless timely raised in the circuit court. *See id.* The party raising the issue on appeal has the burden of establishing, by reference to the record, that the issue was raised before the circuit court. *See Young v. Young*, 124 Wis. 2d 306, 316, 369 N.W.2d 178 (Ct. App. 1985). Gill does not. If Gill wished to preserve the issue for appeal, it was his duty to make a record of raising it. *See State v. Caban*, 210 Wis. 2d 597, 605, 563 N.W.2d 501 (1997).

¶4 Gill asserts that his appellate rights should not be rendered meaningless and that “fundamental fairness” requires us to consider his contention. We disagree because fairness to the parties and the judicial system is achieved when issues are raised in the proper forum. The municipal court clerk certified the transcript to the circuit court on January 26, 1999. This date was almost eight months before the circuit court issued its September 21, 1999 decision. Gill certainly had adequate time to become aware of any defects in the transcript during this period. Once he became aware of such an issue, he should have raised it before the circuit court, allowing the issue to be addressed before a decision was reached. We decline to address the issue for the first time on appeal. *See C.A.K. v. State*, 154 Wis. 2d 612, 624, 453 N.W.2d 897 (1990).

*By the Court.*—Order affirmed.

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

