WISCONSIN SUPREME COURT CALENDAR
AND CASE SYNOPSES
OCTOBER, 2009

Please note, cases listed on Oct. 13 and Oct. 21 will be heard in the Wisconsin Supreme Court Hearing Room, 231 East, State Capitol. Cases listed on Oct. 20 will be heard at the Iowa County Courthouse in Dodgeville as part of the Supreme Court's Justice on Wheels program.

This calendar includes cases that originated in the following counties:

Brown
Milwaukee
Ozaukee
Winnebago

TUESDAY, OCTOBER 13, 2009 [MADISON]

9:45 a.m.	07AP1253	-	Denice Brunton v. Nuvell Credit Corporation
10:45 a.m.	07AP2651	-	Colleen Pawlowski v. American Family Mutual Ins. Co.
1:30 p.m.	07AP1898-CR	-	State v. Richard M. Fischer

TUESDAY, OCTOBER 20, 2009 [DODGEVILLE]

9:00 a.m.	08AP697-CR	-	State v. Dimitri Henley
11:00 a.m.	08AP912	-	Bank Mutual v. S.J. Boyer Construction, Inc., et al
02:00 p.m.	08AP810-CR	-	State v. Landray M. Harris

WEDNESDAY, OCTOBER 21, 2009 [MADISON]

9:45 a.m.	08AP921	-	E-L Enterprises, Inc. v. Milwaukee Metropolitan Sewerage District
10:45 a.m.	06AP1811-CR	-	State v. Patrick C. Carter

In addition to the cases listed above, the following case will be decided by the court based upon the submission of briefs without oral argument:

92AP2445-D - Board of Attorneys Professional Responsibility, n/k/a Office of Lawyer Regulation v. Jimmie G. Davison

The Supreme Court calendar may change between the time you receive this synopsis and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at 608-266-1880. That office will also have the names of the attorneys who will be arguing the cases.

Radio and TV, and print media wanting to take photographs, must make media requests 72 hours in advance by calling Supreme Court Media Coordinator Rick Blum at 608-271-4321. Summaries provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
TUESDAY, OCT. 13, 2009
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed a Dane County Circuit Court decision, Judge Stuart A. Schwartz, presiding.

2007AP1253 Brunton v. Nuvell Credit Corp.

This case examines jurisdictional issues arising from a car loan. More specifically, the Supreme Court has been asked to review when a defendant is deemed to have waived a challenge of improper venue under Wis. Stat. § 431.401 – the Wisconsin Consumer Act's venue provision.

Some background: In 2003, Denice Brunton bought a new car from Hesser Oldsmobile, Inc. Both Brunton and the dealership are in Rock County. Brunton and Hesser executed a monthly installment contract, which Nuvell Credit Corp. later purchased. In late 2005, Brunton fell behind in monthly payments to Nuvell. In November 2005, Nuvell began trying to collect the debt. Brunton felt Nuvell's collection practices were improper.

In December 2005, Brunton filed a lawsuit against Nuvell in Dane County Circuit Court. The lawsuit alleged that Nuvell violated various provisions of the Wisconsin Consumer Act (WCA). In February 2006, Nuvell filed a Notice of Appearance and an Answer denying Brunton's allegations. During the next year, the parties litigated the dispute, engaging in discovery and making several court appearances.

In February 2007, Nuvell filed a motion for summary judgment asserting the court should dismiss the action for lack of jurisdiction on the theory that pursuant to the terms of the statute, the action was improperly in Dane County Circuit Court. Brunton responded that Nuvell had waived any challenge to venue by litigating the action for more than a year. The circuit court granted Nuvell's motion for summary judgment. Brunton appealed and the Court of Appeals reversed.

The Court of Appeals concluded that Nuvell "appear[ed] and waive[d]" its objection to improper venue within the meaning of Wis. Stat. § 421.401(2) "at some point prior to filing its venue challenge."

Brunton has conceded that Dane County was not a proper venue for her action under § 421.401. The parties further agree that § 421.401 (2) provides that a party who appears in an action brought under the WCA may waive an objection to improper venue. The question is, when and how is improper venue waived?

Nuvell argues that the statute requires an affirmative act by the defendant to execute a waiver of improper venue and that "mere participation" in the litigation alone does not suffice.

WISCONSIN SUPREME COURT
TUESDAY, OCT. 13, 2009
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed a Winnebago County Circuit Court decision, Judge T.J. Gritton, presiding.

2007AP2651 Pawlowski v. American Family and Nancy L. Seefeldt

In this strict liability case involving a dog bite, the Supreme Court has been asked to review statutes and case law to clarify the statutory keeper provisions of Wis. Stat. § 174.02.

Some background: After discussions among mutual friends, Walter Waterman and his two dogs moved into Nancy L. Seefeldt's residence in June 2003. Waterman had lost his job and needed a place to live that allowed dogs. Seefeldt's residence had a large backyard, and she already had two dogs of her own.

On Oct. 26, 2003, Seefeldt was home when Waterman opened the front door to go to the grocery store. The dogs immediately charged across the street with Waterman chasing behind and bit Colleen Pawlowski three times, resulting in 16 puncture wounds and soft tissue damage. Seefeldt testified in her deposition that Waterman always put the dogs in his car and took them with him when he left the house. She also testified she was unaware of the dog bite until after Waterman had returned from the grocery store.

Waterman subsequently moved out of Seefeldt's home with his two dogs and could not be located for purposes of this litigation. Pawlowski and her husband sued Seefeldt and her insurance carrier, American Family Mutual Insurance Co.,

Seefeldt and American Family moved for summary judgment on the grounds the Pawlowskis had failed to state a claim upon which relief could be granted because Seefeldt was not the "keeper" of the dogs at the time of the incident and was not a statutory owner subject to liability under § 174.02.

The trial court granted summary judgment for the Seefeldts and American Family, concluding that at the moment the dog bit Pawlowski, the dog's legal owner had control of the animal and thus Seefeldt was not a statutory keeper.

The Court of Appeals reversed, concluding Seefeldt was a keeper under the statute, and that both a legal owner and statutory keeper can be simultaneously liable. The Court of Appeals reasoned by permitting the dogs to reside at her home over a period of months, Seefeldt provided the dogs with both shelter and protection on an ongoing basis and therefore was a keeper within the meaning of the statute.

In asking the Supreme Court to review the case, Seefeldt and American Family note it is not uncommon for a dog owner to reside with other individuals. Specifically, they ask the Court to review if, under § 174.02, Seefeldt was a keeper of the dog at the time of the injury and whether public policy is contrary to the imposition of liability on Seefeldt.

The Pawlowskis contend the goal of the statute is to protect innocent third parties from injuries caused by a dog and the only way to do that is to place the responsibility on the person or persons who have control over the dog.

WISCONSIN SUPREME COURT
TUESDAY, OCT. 13, 2009
1:30 p.m.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed an Ozaukee County Circuit Court decision, Judge Thomas R. Wolfgram, presiding.

2007AP1898-CR State v. Fischer

This operating while intoxicated (OWI) case examines whether testimony of an exert witness who relied, in part, on the results of a preliminary breath test, was properly excluded by the trial court.

Some background: At approximately 1:40 a.m. on January 29, 2005, a Village of Thiensville police officer stopped Fischer's vehicle for a possible OWI offense. Fischer failed the field sobriety tests. The officer then had Fischer take a preliminary breath test. This test was administered approximately a half hour after the initial traffic stop and showed a blood-alcohol concentration (BAC) of 0.112 percent.

Fischer was arrested for OWI and taken to a local hospital for a blood test, which was administered at 2:48 a.m. The blood test produced a blood alcohol content of 0.147 percent. The state charged Fischer with second offenses for OWI and operating a motor vehicle with a prohibited blood alcohol concentration (PAC).

Fischer's defense was that he was not over the legal limit at the time of the traffic stop, but that his blood alcohol level increased after the stop. He hired an expert, Dr. John Steele, to analyze his BAC at the time of the traffic stop. Steele had an extensive background in the methodology of science and the validation of instrumental techniques.

Steele's conclusion as stated in his initial report was that “there is a greater probability that when stopped Mr. Fischer was below the 0.08 threshold than that he was above it,” likely between 0.04 percent and 0.067 percent.

The state filed a preliminary motion to exclude the expert testimony, contending the opinion and report were not admissible because. Wis. Stat. § 343.303 prohibits the use of PBT test results in OWI prosecutions.

The circuit court granted the state's motion solely on the basis of Wis. Stat. § 343.03. The circuit court did not rely on the general rule regarding the admissibility of expert opinions, Wis. Stat. § 907.02. The charges against Fischer were tried to a jury, which found Fischer guilty. On the OWI charge, the circuit court sentenced Fischer to 5 days in jail with Huber privileges, a fine, and revocation of his driver's license for one year.

On appeal, Fischer challenged the exclusion of Steele's testimony. The court of appeals affirmed the conviction, concluding that Steele’s testimony was barred by Wis. Stat. § 343.03 and that Fischer could not rely on Wis. Stat. § 907.02 as a basis for admitting Steele’s expert testimony because Steele’s opinion was not valid.

A decision by the Supreme Court could determine whether the blanket exclusion of PBT results in Wis. Stat. § 343.303 extends to expert testimony by a defense witness that relies, in part, on PBT results, and could provide further guidance regarding the proper role of a trial court in determining admissibility of expert opinions under Wis. Stat. § 907.02.

WISCONSIN SUPREME COURT
TUESDAY, OCTOBER 20, 2009
9:00 a.m.

08AP697-CR State v. Dimitri Henley

This is a certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison). The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. The case originated in Jefferson County Circuit Court, Judge Jacqueline R. Erwin presiding.

This case focuses on the extent of a court's authority to vacate a conviction and order a new trial long after the deadline for direct appeals has expired. The Supreme Court is expected to address several questions that were certified by the Court of Appeals:

> 1. Does Wis. Stat. § 805.15(1) [a section of law that deals with civil procedure] permit the circuit court to grant a new trial in the interest of justice without time limits?
>
> 2. If not, does the circuit court have inherent authority to do this?
>
> 3. If not, does Wisconsin law (Wis. Stat. § 752.35) grant the state Supreme Court the authority to reach back and reverse the original conviction?
>
> 4. If not, does the state Supreme Court have inherent authority to do this? And: should it exercise its inherent authority to grant relief in this case?

Here is the background: Dimitri Henley was charged in 1998, along with two other men, Rovaughn Hill and Jarrett Adams, with sexual assault in connection with an incident in a dorm room at UW-Whitewater. The three were initially tried together. That trial ended in a hung jury. The charges against Hill were dropped after another hung jury and a mistrial. Henley and Adams were re-tried together. Both were convicted, and both appealed – with different results.

Adams was granted a new trial after a federal appeals court concluded that he had received ineffective assistance from his lawyer, because the lawyer had failed to call a witness whose testimony could have undercut the victim's version of events. Henley made this same argument, unsuccessfully, in the state Court of Appeals.

In February 2008, however, Henley's case took a turn. The circuit court judge who had presided in the trial vacated his conviction in the interest of justice. Henley was represented by attorneys from the Wisconsin Innocence Project. The judge also released him on cash bail from prison, where he had served 10 years.

The State appealed the decision to grant a new trial to the Court of Appeals, which certified the case (sent it directly without issuing an opinion) to the Supreme Court.

In certifying this case, the Court of Appeals noted that "The implications of a decision on this issue could be profound. If Wis. Stat. § 805.15(1) is available in this manner, every person currently subject to a Wisconsin criminal sentence could theoretically file such a motion in the interest of justice immediately…." On the other hand, the court pointed out that this case may be unusual: "While many motions for a new trial would probably be denied, the case before us is one in which the circuit court, in the person of the same judge who heard the original trial conviction, agreed that justice requires a new trial."

The Supreme Court will clarify the statutory and inherent authority of the courts to vacate convictions after the time for appeal has expired, and will determine whether Dimitri Henley will be given a new trial.

WISCONSIN SUPREME COURT
TUESDAY, OCTOBER 20, 2009
11:00 a.m.

08AP912 Bank Mutual v. S.J. Boyer Construction, Inc., et al

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a judgment of the Brown County Circuit Court, Judge Timothy A. Hinkfuss presiding.

This is a commercial mortgage foreclosure case involving a Brown County construction company that defaulted on loans on five parcels of land. The Brown County Circuit Court and the Court of Appeals reached opposite conclusions about the requirements of a section of Wisconsin's Real Estate Foreclosure Law. The Supreme Court is expected to clarify the law's meaning.

Wis. Stat. § 846.103 (2) allows for a shortened redemption period (the time during which a borrower may reclaim property by paying a debt) to speed up the foreclosure process. In exchange for expediting the process, the law requires the bank to give up pursuing a mortgage-deficiency judgment against any parties personally liable for the debt. The mortgage deficiency is the difference between what is owed on the property and the selling price.

In this case, the bank obtained a shortened redemption period and, in exchange, agreed to forego pursuing Boyer Construction for the mortgage deficiency. However, the bank maintains that the Boyers are still personally liable for the mortgage deficiency. The circuit court agreed with the bank; the Court of Appeals agreed with the Boyers.

Here is the background: S. J. Boyer Construction, Inc. purchased properties in Green Bay and De Pere for development. In order to buy those properties, the company borrowed $1.1 million from Bank Mutual. Steven and Marcy Boyer signed a guaranty assuming responsibility for payment of Boyer Construction's debt to Bank Mutual.

Boyer Construction defaulted on the loans and Bank Mutual sued the construction company and Steven and Marcy Boyer. The bank sought to foreclose on each of the five properties that had been used to secure the loans. In order to obtain a shortened (three-month) redemption period, the bank waived any deficiency claim against Boyer Construction. It also sought a separate judgment against Steven and Marcy Boyer for repayment of the approximately $1.44 million owed on the loans.

The circuit court entered the judgment of foreclosure and entered separate judgments against the Boyers for $1.44 million. The properties were sold at auction in September 2007 for $1.18 million. Over the Boyers' objection, the circuit court concluded that the Boyers were personally liable for the deficiency because they had personally guaranteed the loan.

The Boyers appealed, and a three-judge panel of the Court of Appeals reversed the circuit court, writing:

> Given the effect of the guaranty of payment, we conclude the Boyers were personally liable for the debts secured by the mortgages. As a result, Bank Mutual could not reap the benefit of a shorter redemption period … *and* obtain judgment for a deficiency against the Boyers.

Now, Bank Mutual has come to the Supreme Court, where it argues that it lawfully obtained a separate money judgment against the Boyers under the guaranty that they signed.

The Boyers, on the other hand, contend that the bank wants to have it both ways by reaping the benefits of a shortened redemption period while maintaining the right to pursue a deficiency judgment against the loan guarantors.

Because commercial lenders in Wisconsin routinely use loan document forms that contain the waivers and consents that the Court of Appeals in this case has found unenforceable, the resolution of this case is expected to have statewide impact.

WISCONSIN SUPREME COURT
TUESDAY, OCTOBER 20, 2009
2:00 p.m.

08AP810-CR State v. Landray M. Harris

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which vacated a sentence entered by the Milwaukee County Circuit Court, Judge Joseph Wall presiding.

This is a Milwaukee County case involving a man who was convicted on felony charges related to dealing cocaine. At the time of his arrest, Landray M. Harris, 21, was carrying 7.21 grams of cocaine. He admitted that he had used cocaine for five years, had been a dealer for several months, and had never held a job. He had no prior record.

At sentencing, the trial court made comments about Harris staying home with his toddler daughter while his girlfriend worked and went to school. Here is part of the exchange that forms the basis for this appeal:

THE COURT: Where are you working now?
THE DEFENDANT: I'm unemployed right now.
THE COURT: You're unemployed still?
THE DEFENDANT: Yes.
THE COURT: Have you gotten a job since January?
THE DEFENDANT: No, sir.
THE COURT: You're kidding.
THE DEFENDANT: No.
THE COURT: What do you do all day?
THE DEFENDANT: I just stay at home with my daughter and that's it.
THE COURT: Where is her mother?
THE DEFENDANT: At work.
THE COURT: So the mother works and you sit at home, right?
THE DEFENDANT: Yeah.
THE COURT: And watch the child?
THE DEFENDANT: I got all types of things goin'. My personal family.
THE COURT: Where does the baby's mama work?
THE DEFENDANT: Metro Market.
THE COURT: Did she finish school?
THE DEFENDANT: Yes.
THE COURT: Is she going to college, too?
THE DEFENDANT: Yes.
THE COURT: Where do you guys find these women? Really, seriously. I'd say about every fourth man who comes in here unemployed, no education, is with a woman who is working full-time, going to school. Where do you find these women? Is there a club?
THE DEFENDANT: No.

THE COURT: You're sure?
THE DEFENDANT: I ain't find her at—she not the club [type].
THE COURT: Oh, she's not the club type. I need the truth now, when was the last time you smoked marijuana?
THE DEFENDANT: Yesterday.

Later in the same hearing, the judge made another comment that is central to this appeal: "Mr. Harris sits at home, gets high while his baby mama works and goes to school. I swear there's a club where these women get together and congregate."

The judge ultimately sentenced Harris to two years' confinement followed by three years' extended supervision.

Based upon the judge's comments at sentencing, Harris filed a post-conviction motion for re-sentencing. Another circuit court judge reviewed the record and denied the motion, concluding that the sentencing judge had properly considered the defendant's character in sentencing him.

Harris took his case to the Court of Appeals, which saw things differently. The majority concluded that the court's comments were inappropriate and left the impression that the defendant's race might have been improperly considered at sentencing:

> While the term "baby mama" might well have non-racial meaning used in some situations in isolation, the totality of the comments are of concern because, in combination with references to "these women" and "you guys"—a short step from the phrase "you people" which is commonly understood to be insulting to the group addressed—these terms could reasonably be understood by an African-American or other observer, or a defendant in Harris's position, to be expressions of racial bias, even though we assume they were not intended to be racially offensive.

Judge Kitty K. Brennan dissented, writing:

> Whether the comments were advisable is not the question and determining whether they violate the aspirational goals of the judicial code is not this court's function. The question is whether the trial court's comments show an unreasonable basis for the sentence imposed. They do not.

Brennan argued that the sentencing judge was merely discussing the defendant's character, a proper consideration in sentencing, and that the term "baby mama" is a pop culture term unconnected to race.

The State has appealed, and the Supreme Court will clarify whether the sentence was appropriately vacated based upon the trial court's comments.

WISCONSIN SUPREME COURT
WEDNESDAY, OCT. 21, 2009
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a Milwaukee County Circuit Court decision, Judge Richard J. Sankovitz, presiding.

2008AP921 E-L Enterprises v. Milw. Metro. Sewerage Dist.

This case, stemming from a dispute over damages allegedly caused when groundwater was pumped out from under a building's foundation, examines legal issues related to "takings" and inverse condemnation.

Some background: The Milwaukee Metropolitan Sewerage District, which provides wastewater treatment for 28 communities, contracted with Bowles Contracting Inc./Tomasini Construction Inc. Joint Venture to construct the "cross-town 7" sewer in 1987-88.

The sewer ran under a private alley directly south of E-L Enterprises' building, where the District had a construction easement. The sewer did not touch E-L's land, and neither the District nor the joint venture entered E-L's property on North 12th Street in Milwaukee, between the Menominee River and West St. Paul Avenue.

During construction, in the vicinity of E-L's building, groundwater began to enter the sewer trench. The joint venture, which was responsible for any resulting damage to surrounding properties, pumped out the groundwater.

In 2004, E-L sued the District and CNA Insurance Co.s, the insurer for the now-defunct joint venture, making claims for negligence, continuing nuisance and inverse condemnation.

A jury found that the pumping of water resulted in the draining of groundwater that was keeping the pilings of E-L's building sufficiently saturated to support the building. The jury also found that the District's removal of groundwater from E-L's property was unreasonable, was a taking, and caused the building to settle.

The circuit court dismissed E-L's negligence and nuisance claims against the District, based on governmental immunity. CNA settled E-L's negligence and nuisance claims against the joint venture in a confidential agreement. In its written order denying the District's post-verdict motions, the trial court said the jury determined E-L should be compensated for the lost groundwater and accompanying loss in property value.

The District appealed, unsuccessfully arguing that as a matter of law, its diversion of groundwater was neither a "taking" nor an occupation of the property. The Court of Appeals noted that where there has been a taking but the entity with condemnation power fails to pay just compensation, the property owner may seek inverse condemnation under Wis. Stat. § 32.10.

The District has asked the Supreme Court to review its assertion that takings claims lie only when the government occupies private property or otherwise deprives the owner of all beneficial use of the entire property. Under the Court of Appeals' decision, the District contends that the state and all other governmental entities that construct public works in the ground will be exposed to previously unrecognized takings liability for using groundwater and consequential damages resulting from that use.

E-L contends that the effect of the government's action will determine whether or not there has been a taking. It says Wisconsin case law establishes a takings claim if the taking was foreseeable, even though it may have been unintended.

A decision by the Supreme Court will develop and clarify the law in this area and provide guidance for future cases.

WISCONSIN SUPREME COURT
WEDNESDAY, OCTOBER 21, 2009
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (District IV judges), which reversed a decision in Milwaukee County Circuit Court decision, Judge Mel Flanagan, presiding. District I Court of Appeals is headquartered in Milwaukee; District IV in Madison.

2006AP 1811-CR State v. Patrick C. Carter

This case, which is being argued before the Supreme Court a second time, examines how sentence credits may apply in relation to a portion of time a defendant spent in custody in Illinois.

Some background: On July 23, 2003, a criminal complaint charging Patrick C. Carter with first-degree recklessly endangering safety was filed in the Milwaukee County Circuit Court. A felony arrest warrant, which authorized Carter's extradition from any state, was then issued.

On Dec. 13, 2003, Carter was arrested in the Chicago area in connection with an armed robbery and a charge of driving under the influence (DUI). The Illinois authorities also placed a hold on Carter because of a Wisconsin "fugitive warrant." Several days later, Carter was "charged" with the Wisconsin warrant. He remained in the Cook County Jail for nearly a year.

On December 15, 2003, Carter's Illinois probation from an earlier case was revoked and he was sentenced to 30 days in jail with 3 days of sentence credit. Under Illinois law, this sentence was completed on December 21, 2003. During his period of incarceration Carter was also convicted of the Illinois armed robbery charge and in October 2004 began serving a 14-year sentence for that offense.

On March 14, 2004, while in Cook County Jail, Carter was served with a Wisconsin governor's warrant. Carter was extradited to Wisconsin in June 2005. On Aug. 30, 2005, Carter entered a guilty plea to the Wisconsin charge of first-degree recklessly endangering safety. He was sentenced to seven and a half years of initial confinement and five years of extended supervision. The court stated the sentence was to run concurrently to the existing Illinois sentence on the armed robbery conviction. Pursuant to an agreement between defense counsel and the prosecutor, Carter was given 91 days of sentence credit for the period between his initial appearance and the sentencing date in the Wisconsin case.

The circuit court denied Carter's post-conviction motion seeking a sentence credit for 324 days for the time he had been incarcerated in Illinois prior to the beginning of his Illinois armed robbery sentence, concluding Carter had not been in custody "in connection with the course of conduct for which (the Wisconsin) sentence was imposed" under Wis. Stat. § 973.155 until he had been placed under the control of Wisconsin authorities.

The Court of Appeals reversed, granting Carter credit for 227 additional days of incarceration on the basis that some of the time served in custody in Illinois was attributable, at least in part, to the Wisconsin warrants.

The state appealed, and the Supreme Court granted review in March 2008, and heard oral argument on September 12, 2008. On September 17, 2008, the court issued an order holding the proceedings in this court in abeyance and remanding the matter to the Milwaukee County Circuit Court to receive documents relating to the Illinois presentence proceedings and for a determination of the ground or grounds on which Patrick Carter was held in an Illinois jail from December 14, 2003 (the date of his initial custody in Illinois), until November 2, 2004 (the date of sentencing on the Illinois offense). The circuit court issued its findings of fact on June 14, 2009. Among other things, it found that, apart from the period of December 15-21, 2003, Carter's custody in Illinois resulted in part from the Wisconsin warrants.

The parties have now been asked to reargue the case in light of the circuit court's findings of facts and the recent Supreme Court decision in State v. Johnson, 2009 WI 57.

A decision by the Supreme Court could clarify how the rulings in prior cases fit together when interpreting the sentence credit statute in Carter's situation.