

WISCONSIN SUPREME COURT
WEDNESDAY, SEPTEMBER 12, 2007
10:45 a.m.

2006AP1114-CR

State v. Michelle R. Popenhagen

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed an Oneida County Circuit Court decision, Judge Mark A. Mangerson, presiding.

This case examines whether a person has a protected right to privacy of bank records under Wisconsin law and how state law interacts with federal law regarding the question.

Police say they believe Michelle R. Popenhagen may have improperly obtained as much as \$29,000 from Save More Foods, where she worked in Minocqua. The store owner claimed that Popenhagen had cashed at the store a number of checks with insufficient funds or from a closed account and had stolen the store's money when making deposits into an ATM located in the store.

Minocqua Police obtained subpoenas for Popenhagen's bank records from the district attorney's office. But there was no record of how the district attorney's office obtained a judge's signature, and the record of the circuit court proceedings did not indicate findings of probable cause by a judicial officer as required under Wis. Stat. § 968.12.

When police confronted Popenhagen with records showing that the amount of missing money matched deposits she had made, she made a number of self-incriminating statements.

Popenhagen filed a motion, seeking suppression of both the bank records and statements, and the circuit court granted it. The court concluded Popenhagen had a constitutional right to privacy in her bank records and that suppression was an appropriate remedy.

The court of appeals reversed the suppression order, citing the U.S. Supreme Court's decision in United States v. Miller, 425 U.S. 435 (1976). In that case, the Supreme Court concluded that bank records are not private papers of the account holders, but business records of the bank.

The state argues that the Court of Appeals relied on well-established precedent, and that Popenhagen has no legal basis for arguing that the state Constitution protects bank records.

A decision by the Supreme Court could determine how state and federal law may differ as it relates to privacy of bank records.