

WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES JANUARY 2016

The cases listed below will be heard in the Wisconsin Supreme Court Hearing Room, 231 East, State Capitol. This calendar includes cases that originated in the following counties:

Brown
Jefferson
Milwaukee
Outagamie

WEDNESDAY, JANUARY 20, 2016

9:45 a.m.	13AP2686-CR	- State v. Luis C. Salinas
10:45 a.m.	14AP1213	- Cheryl M. Sorenson v. Richard A. Batchelder
1:30 p.m.	13AP2316-CR	- State v. Richard J. Sulla

MONDAY, JANUARY 25, 2016

9:45 a.m.	13AP1424-CR	- State v. James Elvin Lagrone
10:45 a.m.	14AP2097/2295	- Prince Corporation v. James N. Vandenberg
1:30 p.m.	14AP2238-CR	- State v. Mastella L. Jackson

Note: The Supreme Court calendar may change between the time you receive these synopses 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. If your news organization is interested in providing any camera coverage of Supreme Court argument in Madison, contact media coordinator Rick Blum at (608) 271-4321. Summaries provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
WEDNESDAY, JANUARY 20, 2016
9:45 a.m.

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

2013AP2686-CR

[State v. Salinas](#)

This case examines Wis. Stat. § 971.12(1) and the circumstances under which crimes may be joined in one trial.

Crimes may be joined if they are similar or if they are connected as part of a common plan. Wis. Stat. § 971.12(1) provides, in part:

Two or more crimes may be charged in the same complaint [or] information . . . in a separate count for each crime if the crimes charged, whether felonies or misdemeanors, or both, are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan.

Some background: In 2010, Luis C. Salinas was sentenced on several charges relating to domestic abuse. Salinas pled guilty to strangulation and suffocation and battery with use of a dangerous weapon in a domestic abuse setting. As part of a plea bargain, charges of physical abuse of a child and disorderly conduct—domestic abuse were dismissed and read in. A girlfriend at the time and a teenage girl spoke on the defendant’s behalf. Sentence was withheld in favor of probation, and the defendant was ordered to serve nine months conditional jail time, for which he received 197 days credit for time already served.

Two days after the sentencing hearing in the domestic abuse case, the girl who spoke at the sentencing hearing told police that the defendant had sexually assaulted her repeatedly over a 2 ½-year period, most recently on the day of the domestic abuse incident. The defendant was charged with the three sexual assault counts as a result of the girl’s allegations.

Three or four months later, police discovered from jail phone call recordings that the defendant tried to influence testimony of the girl and his girlfriend at his sentencing hearing in the domestic abuse case. These calls led to the two victim intimidation charges.

On the state’s motion, and over defense objection, the trial court joined the victim intimidation charges with the sexual assault charges. Because the domestic abuse incident was deemed relevant to the victim intimidation charges, the domestic abuse evidence was introduced at trial on the joined cases.

The jury found Salinas guilty on all counts. He appealed. The Court of Appeals agreed with Salinas that the circuit court improperly joined the sexual assault and intimidation counts. The appellate court further concluded that the error was not harmless and reversed and remanded for new trials.

The Court of Appeals decided that allegations that Salinas sexually assaulted his girlfriend’s child, and that he intimidated his girlfriend and her child, were not similar acts or connected as part of a common plan.

The court said the state failed to actually identify any common factors or evidence between the intimidation charges and the sexual assault charges. It also said the state's argument ignored the differing allegations with respect to the two victims.

The state argues the Court of Appeals' decision is in conflict with prior decisions dictating when joinder is appropriate and that joinder was appropriate because all charges against the defendant "are related to his overarching control, manipulation and abuse of both" the girl and the girlfriend.

Salinas says in arguing harmless error, the state fails to acknowledge that the intimidation charges arose post-plea and pre-sentencing in a domestic violence incident and the domestic violence case was disposed of prior to the filing of the intimidation or sexual assault charges.

WISCONSIN SUPREME COURT
WEDNESDAY, JANUARY 20, 2016
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), with District IV judges presiding. The Court of Appeals reversed a Milwaukee County Circuit Court decision, Judge Michael Guolee presiding.

2014AP1213

Sorenson v. Batchelder

This case calls for an interpretation of the service requirements involving claims against the state under § 893.82 and the law's provision that service "shall be served upon the attorney general at his or her office in the Capitol by certified mail."

Some background: The plaintiff, Cheryl Sorenson, filed an action against the Wisconsin Department of Administration (DOA) and Richard A. Batchelder. Sorenson claimed that Batchelder had negligently operated his vehicle within the scope of his employment at the DOA, causing a collision in which the plaintiff suffered injuries. Sorenson effected personal service of her notice of claim on the attorney general. The state moved to dismiss the complaint against Batchelder on the grounds that the notice of claim was improperly served. The state moved to dismiss the complaint against the DOA on sovereign immunity grounds. The circuit court dismissed the DOA but denied the motion to dismiss as to Batchelder, holding that the notice of claim had been properly served. In its oral ruling from the bench, the circuit court relied in large part on a federal district court case, Weis v. Board of Regents, 837 F. Supp. 2d 971 (E.D. Wis. 2011). The state appealed, and the Court of Appeals reversed.

The Court of Appeals noted that § 893.82(3) provides that no civil action may be brought against any state officer, employee or agent unless a claimant first timely serves written notice of claim upon the attorney general. Section 893.82(5) requires that the notice "shall be served upon the attorney general at his or her office in the Capitol by certified mail." The Court of Appeals concluded that a plain language interpretation of the statute showed that the plaintiff's (and the circuit court's) conclusion that service of a notice of claim by personal service rather than certified mail was not sufficient to comply with the statute.

The Court of Appeals relied on its decision in Hines v. Resnick, 2011 WI App 163, 338 Wis. 2d 190, 807 N.W.2d 687, which held, "Obviously, a claimant cannot comply with the statute by hand-delivering a notice to the attorney general's Capitol office because such service would not comply with the certified mail requirement."

While Sorenson conceded she did not serve the notice of claim by certified mail, she argued that the personal service she did accomplish was sufficient to comply with the notice of claim statute. She presents the following issues to the Supreme Court:

- Can the plaintiff-respondent strictly comply with the service requirements for a notice of claim under Wis. Stat. § 893.82 without literally complying with the language of the statute?
- Does a literal interpretation of Wis. Stat. § 893.82 fulfill the statutory purpose and spirit intended in its creation?
- Is it against public policy to dismiss a valid claim which was filed in accordance with all statutory purposes under Wis. Stat. § 893.82?

**WISCONSIN SUPREME COURT
WEDNESDAY, JANUARY 20, 2016
1:30 p.m.**

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed a Jefferson County Circuit Court decision, Judge David Wambach presiding.

2013AP2316-CR

[State v. Sulla](#)

This criminal case examines when an evidentiary hearing is or is not required. The Supreme Court reviews the question in light of three prior cases and potentially conflicting holdings:

- State v. Bentley, 201 Wis. 2d 303, 548 N.W.2d 50 (1996), which requires a hearing to be held if the defendant alleges facts that, if true, would entitle the defendant to relief and allows a hearing to be denied if the record conclusively demonstrates that the defendant is not entitled to relief.
- State v. Straszkowski, 2008 WI 65, 310 Wis. 2d 259, 750 N.W.2d 835, holding that agreeing to have a charge read-in is not an admission of guilt, and;
- State v. Frey, 2012 WI 99, ¶73, 343 Wis. 2d 358, 817 N.W.2d 436, which held, as did Straszkowski, that a read-in charge necessarily exposes the defendant to a higher sentence and restitution.

Some background: The defendant, Richard J. Sulla, was charged with two counts of burglary, conspiracy to commit arson of a building, and operating a motor vehicle without the owner's consent, party to a crime, all as a repeater. He pled no contest to burglary while armed and burglary of a building or dwelling. The plea questionnaire/waiver of rights form stated that "although the judge may consider read-in charge when imposing sentence, the maximum penalty will not be increased" and the defendant "may be required to pay restitution on any read-in charges."

At the sentencing hearing, the court discussed the defendant's age at the time of the burglaries, 22 and 23 years old, and the fact he had 18 criminal convictions. The court also specifically addressed the read-in count of arson.

The court sentenced the defendant to 7½ years of initial confinement and 7½ years of extended supervision on the armed burglary count with a consecutive sentence of 2½ years of initial confinement and 2½ years of extended supervision on the burglary of a building or dwelling count.

The defendant filed a post-conviction motion asking the court to vacate the judgment of conviction and allow him to withdraw the no contest pleas.

Among other things, the defendant argued the plea was not entered knowingly and resulted in a manifest injustice because "he was misinformed and did not understand that for purposes of the read-in arson charge, he would effectively be considered to have committed the offense." He also alleged that trial counsel was ineffective.

The circuit court denied the defendant's request for an evidentiary hearing, concluding that "the record conclusively demonstrates and shows that his counsel was not deficient and that there was not any prejudice to the defendant."

The defendant appealed, and the Court of Appeals reversed and remanded. The Court of Appeals identified a “potential inconsistency . . . in the standards described in Bentley.”

The Court of Appeals said given the potential for confusion that is inherent in the read-in concept, it concluded the defendant did allege facts that, if true, would entitle him to relief.

The Court of Appeals said to obtain an evidentiary hearing, a defendant seeking plea withdrawal must also allege that he would have pled differently if he had properly understood the information he claimed not to have understood. See Bentley, 201 Wis. 2d at 313. The defendant’s motion alleged that “if I had known that it [the read-in offense] was going to be considered as a negative at my sentencing I would have not have entered the no contest plea.”

The state asserts that based on the Court of Appeals’ decision, any time a defendant sets forth in an affidavit that in his own mind, whether it is based on something someone told him or came from other source, he did not understand that a read-in offense would be considered as a negative in sentencing, the defendant will be entitled to an evidentiary hearing.

In taking the case to the Supreme Court, the state raises the following issues:

- Did the Court of Appeals improperly extend this court’s holding in Bentley by finding that Sulla’s affidavit, asserting that he did not understand that by agreeing to the read-in charge of arson he was effectively admitting guilt and that the read-in charge would have a negative impact on his sentence, was sufficient as a matter of law under Bentley to alleged facts that require an evidentiary hearing on a post-conviction motion for plea withdrawal?
- Did the Court of Appeals improperly reverse the trial court’s exercise of its discretion under Bentley to find that the record in its entirety, including the signed plea questionnaire, the plea colloquy and the sentencing memorandum outlining Sulla’s criminal history, conclusively demonstrated that Sulla is not entitled to an evidentiary hearing on his motion for plea withdrawal based solely on his affidavit asserting that Sulla did not understand the effect of the read-in offense on his sentence?
- By ignoring Supreme Court precedent in Straszkowski, holding that agreeing to have a charge read-in is not an admission of guilt, and by ignoring Supreme Court precedent in both Straszkowski and Frey, holding that a read-in charge necessarily exposes the defendant to a higher sentence and restitution, did the Court of Appeals commit a fundamental error of law by finding that the statements in Sulla’s affidavit were sufficient to require a hearing on his motion for plea withdrawal?

A decision by the Supreme Court is expected to clarify when an evidentiary hearing is or is not required, particularly as it relates to “read-in charges.”

WISCONSIN SUPREME COURT
MONDAY, JANUARY 25, 2016
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.

2013AP1424-CR

[State v. Lagrone](#)

The primary question in this case is whether the trial court erred by not conducting a colloquy at the second phase of a not guilty by reason of mental disease or defect proceeding to ascertain whether the defendant was knowingly, intelligently, and voluntarily waiving his right to testify.

Additionally, the court reviews whether the doctrine of harmless error applies when a circuit court fails to conduct a colloquy and the defendant asserts that he did not understand he could testify.

Some background: In May 2011, a complaint was filed charging that James Elvin Lagrone forced his way into his ex-girlfriend's apartment at about 10:00 p.m. on April 30, 2011, and "proceeded to 'humiliate' her until approximately 1:00 p.m. on May 1, 2011."

During the time Lagrone held the woman captive, he choked her, urinated on her, and forced her to touch his genitals numerous times. When one of the woman's friends came to the apartment, Lagrone fled in her car.

Lagrone later turned himself in to police. He was charged with strangulation and suffocation, false imprisonment, second-degree sexual assault, first-degree recklessly endangering safety, and operating a vehicle without the owner's consent—all with the domestic abuse modifier.

Lagrone, who had been diagnosed with paranoid schizophrenia, pled not guilty to the charges by reason of mental disease or defect (NGI). Consequently, a bifurcated proceeding took place as required by Wis. Stat. § 971.165.

During the first phase of the NGI proceeding, Lagrone pled guilty to all five counts. Before accepting Lagrone's guilty plea, Milwaukee County Circuit Court Judge Richard J. Sankovitz conducted a colloquy with Lagrone, inquiring whether he had read the plea questionnaire and waiver-of-rights form, discussed it with his attorney, and understood all of the rights "listed in these documents," including "the right to have a trial on whether you committed these crimes" and "the right to present witnesses."

Lagrone said that he did read the form and that his attorney helped him understand what the form said, and he said that he understood all of the rights he was foregoing by pleading guilty in the first phase of the proceeding. One of the rights listed on the form was the "right to testify and present evidence at trial." Next to that phrase there was an additional handwritten notation explaining that Lagrone was giving up his right to testify for "phase I," but "[n]ot for [phase] II" of the proceeding.

During the second phase of the NGI proceeding (the mental responsibility phase), Lagrone stood trial but did not testify. The trial court did not conduct an additional colloquy on the record regarding whether Lagrone understood his right to testify or that he was in effect waiving his right to do so.

Following the second phase, the trial court found that Lagrone did not lack substantial capacity to understand the wrongfulness of his actions or conform his behavior to the requirements of law, and entered a judgment of conviction finding him criminally responsible for the crimes charged. Lagrone was sentenced to 12 years (six years of initial confinement and six years of extended supervision).

After sentencing, Lagrone filed a post-conviction motion requesting an evidentiary hearing and seeking an order granting a new trial on the second phase of the NGI proceeding. Lagrone argued that the trial court erred in failing to conduct an on-the-record colloquy regarding the waiver of his right to testify at the mental responsibility phase, and that he (Lagrone) did not understand that he had the right to testify at that phase.

Another judge denied Lagrone's post-conviction motion. Lagrone appealed. The Court of Appeals affirmed, ruling that any error in failing to conduct an additional colloquy and/or denying Lagrone's request for an evidentiary hearing was harmless.

Lagrone argues that "[g]iven that the Fifth Amendment right against self-incrimination applies at the second phase and the right to testify is a 'necessary corollary' to the Fifth Amendment's guarantee against self-incrimination, *see Rock v. Arkansas*, 483 U.S. 44, 52 (1987), it is only logical that the right to testify and accompanying law regarding an on-the-record colloquy is applicable to the mental responsibility phase."

The state suggests that because the second phase, unlike the first, "is not criminal in its attributes or purposes," it is not necessary to require a colloquy regarding a defendant's right to testify during the second phase. The Court of Appeals acknowledged that this appears to be an issue of first impression (describing it as an "open question" and an "issue of first impression") but declined to reach it because it concluded that any error was harmless.

A decision by the Supreme Court is expected to clarify whether a colloquy is required at the second phase of a not guilty by reason of mental disease or defect proceeding to ascertain whether the defendant was knowingly, intelligently, and voluntarily waiving his right to testify.

WISCONSIN SUPREME COURT
MONDAY, JANUARY 25, 2016
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a Brown County Circuit Court decision, Judge Marc A. Hammer presiding.

2014AP2097/2295

[Prince Corporation v. Vandenberg](#)

This matter involves a complicated garnishment proceeding that arose when four tenants in common sought to sell their property and it transpired that one of the owners (James Vandenberg) had numerous unpaid judgments and tax liens.

The Supreme Court reviews three issues:

- Whether a circuit court may award garnishment sua sponte to a party who has not requested garnishment, and who has not complied with the statutory prerequisites therefore?
- May a creditor who garnishes a payment owed to multiple persons obtain more than the debtor's proportionate share of that payment?
- Where both the vendors and the purchaser under a land contract request partition and sale of the property, should a court of equity grant such request?

Some background: On May 6, 2010, Prince Corporation (Prince) obtained a \$165,000 judgment against James Vandenberg (James) in Brown County. The judgment was docketed the same day. Prince made various efforts to collect on the judgment but was unsuccessful.

Meanwhile, James and three others (the Intervenors) owned a parcel of property in Brown County as tenants in common, with each owning a one-fourth interest. On July 14, 2011, they entered into a land contract to sell the property to Van De Hey Real Estate, LLC (Van De Hey).

However, at the time they executed the land contract, James had several outstanding obligations, including a mortgage, delinquent taxes and other judgments that totaled more than \$400,000.

On Feb. 17, 2012, after the first two payments were made but before the final payment, Prince commenced a non-earnings garnishment action, naming James as defendant and Van De Hey (the buyer) as garnishee defendant. Prince asserted it was entitled to garnish the entire final land contract payment to satisfy its \$165,000 judgment.

Van De Hey filed an answer conceding it had possession or control of property belonging to James. Van De Hey asserted, however, that garnishable property was limited to one-fourth of the *final* land contract payment plus interest, or \$28,788.34. Prince maintained the garnishable amount was one-fourth of the *entire* land contract price, or \$85,425 and filed a motion to compel payment.

The other property owners intervened in the garnishment action; Van De Hey then filed a cross-claim against them, seeking specific performance.

On Nov. 6, 2012, the circuit court granted Prince's motion to compel payment reasoning that there was "little doubt" that Prince had a valid and enforceable lien against James that

extended “not only to actual real estate owned, but also, proceeds from the sale of any ownership interest.” The court concluded Prince was “entitled to one-fourth of . . . [James’s] entire interest in the land sale” and was “not limited to one-fourth of the final land sale payment.” The court ordered Van De Hey to remit \$85,425 of the final land contract payment to Prince.

The court ordered the parties to mediate the disputes but mediation failed. On Nov. 14, 2013, the Intervenor filed a third-party summons and complaint naming the Department of Revenue (DOR) as a third-party defendant. In its answer, the DOR stated it “claim[ed] an interest in the Property” pursuant to the three delinquent tax warrants against James. It is undisputed that the first two tax warrants were docketed before Prince docketed its judgment against James. The DOR requested judgment “in accordance with the foregoing[.]”

On April 9, 2014, the Intervenor moved for reconsideration of the circuit court’s Nov. 6, 2012 order granting Prince’s motion to compel payment. On Aug. 13, 2014, the circuit court granted the Intervenor’s motion for reconsideration, explaining that reconsideration was warranted due to “changes in circumstances” since the Nov. 6, 2012 order—specifically, the fact that the court was now aware the DOR had “perfected liens against James’s property pursuant to docketed delinquent tax warrants[.]”

Relying on Wis. Stat. § 71.91(4), the court concluded the two tax warrants docketed on Jan. 4, 2010 were superior to Prince’s lien. The court rejected the Intervenor’s arguments that the final land contract payment was not subject to garnishment and that the garnishable amount, if any, was limited to one-fourth of the final payment and ordered Van De Hey to pay “the garnishable amount of \$85,425” to the DOR. The court denied the Intervenor’s request for partition. It deemed Van De Hey’s claim for specific performance of the land contract premature because the contract had not yet been breached.

Prince and the Intervenor appealed. The Court of Appeals affirmed all aspects of the circuit court decision in a published decision. The DOR claimed, and the Court of Appeals agreed, that the DOR adequately “asserted its priority lien its [sic] answer to the Third-Party Complaint and demanded judgment in accordance with its interest in the funds.”

The Intervenor contends that by “sua sponte awarding the DOR a garnishment remedy it never even requested, the circuit court and the Court of Appeals short-circuited those procedures . . .” They reason that if James sued Van De Hey, he could not recover \$85,425 from Van De Hey, because Van De Hey has already paid James (or his creditors) two thirds of that money.

A decision by the Supreme Court could clarify law relating to garnishment actions and other issues presented under the circumstances here.

WISCONSIN SUPREME COURT
MONDAY, JANUARY 25, 2016
1:30 p.m.

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

2014AP2238-CR

[State v. Jackson](#)

This homicide case examines the inevitable discovery doctrine, which provides “evidence obtained during a search which is tainted by some illegal act may be admissible if the tainted evidence would have been inevitably discovered by lawful means.” State v. Lopez, 207 Wis. 2d 413, 427, 559 N.W.2d 264 (Ct. App. 1996).

The Supreme Court reviews a Court of Appeals’ decision that applied the inevitable discovery doctrine to reverse a circuit court order suppressing evidence due to police misconduct.

Some background: On Feb. 21, 2012, officers were dispatched to a hotel room at the Road Star Inn in Grand Chute, where they discovered the body of Derrick Whitlow. He had been stabbed approximately 25 times.

Later that afternoon, police made contact with the victim’s wife, Mastella Jackson, at her residence. She was taken to the police station in a manner the circuit court deemed consistent with custodial suspects. She was placed in an interrogation room at about 4:30 p.m.

Jackson remained in the room for about two hours until police began questioning her. Jackson was not informed of her Miranda rights. About 30 minutes into the interview, Jackson began complaining of stomach pain. After about 30 minutes of intermittent pain, an officer offered to retrieve her prescription pain medication from her home.

At about 7:25 p.m., while doubled over and complaining of stomach pain, Jackson asked to leave, stating, “Can I go home right now, please, I don’t want to talk.... [C]an I go with you [to get the medication], can I just go home or do I have to stay[?]” One of the officers responded that he needed to make a phone call and left the room. The other officer continued the interrogation.

At about 8:36 p.m., Jackson began to make incriminating statements. At around 9:19 p.m., she admitted going to Whitlow’s hotel room earlier that afternoon. She told police Whitlow attacked her when she arrived. She conceded she may have brought a knife with her to the hotel. At 9:37 p.m., Jackson was allowed to take prescribed oxycodone for her pain.

After Jackson made incriminating statements, police applied for a warrant to search her house and garage. The affidavit in support of the search warrant relied, in part, on Jackson’s statements that she went to see Whitlow at the Road Star Inn that afternoon, she may have brought a knife, and she and Whitlow “[got] into a confrontation[.]”

In reliance on this warrant, police began searching Jackson’s residence shortly after midnight.

Meanwhile, Jackson’s interrogation continued. Throughout the interrogation, numerous references were made. She was finally informed of and waived her Miranda rights at about 12:39 a.m., approximately six hours after her interrogation began. Jackson subsequently admitted

stabbing Whitlow and putting the knife and the bloody clothes she was wearing in a garbage can in her garage. Jackson's interrogation ended at 2:01 a.m.

Police then took Jackson home, where the search was still in progress. Jackson then directed police to a garbage can they had not yet examined, in which they found a duffel bag containing a Winchester knife, bloody shoes, and bloody clothing.

The following day, Jackson was charged with one count of first-degree intentional homicide (domestic abuse) and one count of misdemeanor bail jumping.

Jackson filed a motion in circuit court to suppress all of her statements to police, as well as any physical evidence derived from those statements. Following a series of hearings, the circuit court issued an oral ruling suppressing many of Jackson's statements as well as physical evidence.

The court found that Jackson was in custody for Miranda purposes at 7:25 p.m. on Feb. 21, 2012, and that police intentionally violated her rights by interrogating her after that point without providing Miranda warnings. The circuit court ordered suppression of all statements Jackson made to police between 7:25 p.m. and 12:39 a.m., the time she was finally advised of her Miranda rights.

Citing Missouri v. Seibert, 542 U.S. 600 (2004), the circuit court also suppressed the statements Jackson made *after* she received the Miranda warning, including her statement telling police where to find the knife and bloody clothes. The circuit court explicitly found that Jackson's statements were involuntary.

The circuit court also suppressed the physical evidence obtained during the search of Jackson's residence. The circuit court explained that when Jackson's improperly obtained statements were excised from the search warrant affidavit, he deemed the remaining facts insufficient to establish probable cause for a warrant to search her home.

The circuit court rejected the state's argument that the physical evidence was admissible under the inevitable discovery doctrine. To establish that the evidence would have been inevitably discovered, the state must demonstrate by the preponderance of the evidence that: 1) a reasonable probability that the evidence in question would have been discovered by lawful means but for the police misconduct, 2) the leads making the discovery inevitable were possessed by the government at the time of the misconduct, and 3) prior to the unlawful search the government was also actively pursuing some alternative line of investigation. *Id.* at 427-28; State v. Avery, 2011 WI App 124, ¶29, 337 Wis. 2d 351, 804 N.W.2d 216.

The state appealed, and the Court of Appeals reversed, holding that the inevitable discovery doctrine was satisfied. The Court of Appeals ruled that this evidence was sufficient to conclude there was a fair probability a search of Jackson's residence would uncover evidence of wrongdoing. *See State v. Romero*, 2009 WI 32, ¶3, 317 Wis. 2d 12, 765 N.W.2d 756.

Moreover, on *de novo* review, the Court of Appeals determined that it was reasonably probable that the knife, clothes, and shoes would eventually have been discovered by lawful means. State v. Jackson, 2015 WI App 49, ¶25, 363 Wis. 2d 554, 866 N.W.2d 768.

Jackson argues that the proper standard is that the state must show that the alternate line of investigation began "prior to the misconduct" which in this case was the questioning before Miranda warning.

A decision by the Supreme Court could clarify and potentially develop the law for the benefit of law enforcement, the bench and bar.