

September 27, 2016

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
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The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an * next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, CERQ = Certified Question, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ, REMD = Remanded from the U.S. Supreme Court;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted and decisions issued through **September 27, 2016**. Please direct any comments regarding this table to the Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2013AP950	<u>State v. Thornton F. Talley</u> Was a respondent entitled to an evidentiary hearing on his petition for discharge from Chapter 980 commitment which included information that he had terminated sexual acting out and where a psychologist reported improvement in an important area of functioning? Should this case be remanded to the circuit court for a review that meets the requirements of Wis. Stat. § 980.09(2), namely, that the circuit court review all previous evaluations of a Chapter 980 respondent?	06/15/2016 REVW Oral Arg 11/10/2016	4 Dane	Unpub.
2013AP2882	<u>Dr. Randall Melchert, et al. v. Pro Electric Contractors</u> Whether Wis. Stat. § 893.80(4) immunizes a government or any of its agents or employees from liability for causing property damage through negligent construction work. Does Wis. Stat. § 182.0175(2), the Diggers Hotline statute, create a ministerial duty?	06/16/2016 REVW Oral Arg 11/09/2016	2 Waukesha	Unpub.
2014AP195	<u>Braylon Seifert v. Kay M. Balink, M.D.</u> Are an expert witness' qualifications and personal preferences alone sufficient to meet Wis. Stat. § 907.02(1)'s new reliability standard? Do the allegedly prejudicial comments made by plaintiffs' counsel during closing argument require a new trial? Under all of the circumstances, do the interests of justice require a new trial under Wis. Stat. § 751.06?	11/04/2015 REVW Oral Arg 09/06/2016	4 Grant	08/26/2015 Pub. 2015 WI App 59 364 Wis. 2d 692 869 N.W.2d 493
2014AP304-CR	<u>State v. Richard L. Weber</u> Did the deputy's "hot pursuit" of a under Wis. Stat. § 346.04(2t) and/or Wis. Stat. § 946.41(1) constitute a sufficient exigency to justify a deputy's warrantless entry into the motorist's garage?	02/03/2016 REVW Oral Arg 09/06/2016	4 Wood	Unpub.

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*2014AP1623-CR	<u>State v. Raymond L. Nieves</u> Did the admission of a co-defendant's nontestimonial statement at a joint trial violate this defendant's Sixth Amendment right to confront the witnesses against him given that, after the change in confrontation law initiated by <u>Crawford v. Washington</u> , 541 U.S. 36 (2004), "only testimonial statements are excluded by the Confrontation Clause?" <u>Giles v. California</u> , 554 U.S. 353, 376 (2008). Even if <u>Bruton v. United States</u> , 391 U.S. 123 (1968)] prohibits the admission of a non-testifying co-defendant's nontestimonial statements, did the admission of this defendant's statement at trial violate his confrontation rights when other testimony about the statement did not say that the defendant was involved in the crimes, but instead used "they" to refer to the perpetrators? Was any <u>Bruton</u> violation harmless error in light of the strong evidence against the defendant?	09/13/2016 REVW	1 Milwaukee	Unpub.
2014AP1767-CR	<u>State v. Brian I. Harris</u> Whether a defendant was deprived of his constitutional right against self-incrimination (Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 8 of the Wisconsin Constitution) by the admission at trial in the state's case-in chief of the defendant's unwarned custodial statements made in response to the law enforcement's request for a statement.	04/06/2016 REVW Oral Arg 10/18/2016	2 Kenosha	01/27/2016 Pub. 2016 WI App 2 366 Wis. 2d 777 874 N.W.2d 602
2014AP1870-CR	<u>State v. David W. Howes</u> Whether provisions in Wisconsin's implied consent law authorizing a warrantless blood draw from an unconscious suspect violate the Fourth Amendment to the United States Constitution. Whether the "implied consent" that is deemed to have occurred before a defendant becomes a suspect is voluntary consent for purposes of the consent exception to the Fourth Amendment's warrant requirement.	04/07/2016 CERT Oral Arg 10/20/2016	4 Dane	--

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2014AP1914	<u>McKee Family I, LLC v. City of Fitchburg</u> Does the building permit rule announced in <u>Lake Bluff Housing Partners v. City of South Milwaukee</u> , 197 Wis. 2d 157, 540 N.W.2d 189 (1995), apply where the government has actively, knowingly and directly induced developer expenditures, including the installment of public improvements and dedications of land to the public in exchange for land use approvals? Did Planned Development District (PDD) Zoning granted by a city for the subject property create private rights of a contractual nature where the city actively induced developer investments in reliance on zoning including maintaining an ordinance that expressly states that the zoning obtained constitutes an “agreement” between the property owner and the city? Is the sole test for regulatory takings whether the owner has been deprived of all or nearly all economically productive use of the property?	04/07/2016 REVW Oral Arg 11/03/2016	4 Dane	Unpub.
2014AP2236	<u>Carolyn Moya v. Healthport Technologies, LLC</u> Whether a person authorized in writing by a patient may obtain the patient’s medical records without having to pay the certification or retrieval fees set forth in Wis. Stat. § 146.83(3f)(b).	04/06/2016 REVW Oral Arg 10/20/2016	1 Milwaukee	01/27/2016 Pub. 2016 WI App 5 366 Wis. 2d 541 874 N.W.2d 336
2014AP2278/ 2014AP2279	<u>Ricardo M. Garza v. American Transmission Co.</u> Whether an easement grants the right to change, replace, and upgrade use of the easement area to take advantage of technological developments. Whether an easement grants the right to cut brush and trees on the owner’s property to prevent interference with the operation of a transmission line in the contiguous highway right-of-way.	04/06/2016 REVW Oral Arg 11/01/2016	4 Waupaca	Unpub.

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2014AP2360	<u>Dennis A. Teague, et al. v. Brad D. Schimel</u> Does Wis. Stat. § 19.356 preclude petitioners from seeking a declaratory judgment that the DOJ's alias name policy violates Wisconsin's public records law? Does Wis. Stat. § 19.70 require the DOJ to correct or supplement the criminal history reports it produces in response to name-based requests about innocent subjects once those subjects demonstrate to DOJ they have no criminal history? Does the DOJ's alias name policy violate equal protection by discriminating against one class of "innocent" persons? Does the DOJ's alias name policy violate substantive due process by identifying innocent people with criminal records that are not their own? Is the DOJ's criminal history database sufficiently like other government databases that courts must apply the constitutional principles developed in those cases?	06/15/2016 REVW Oral Arg 11/09/2016	4 Dane	03/30/2016 Pub. 2016 WI App 20 367 Wis. 2d 547 877 N.W.2d 379
2014AP2376	<u>Russell T. Brenner v. National Casualty Company</u> Should Wisconsin adopt the <u>Restatement (Third) of Torts § 51</u> which supersedes the <u>Restatement (Second) of Torts §§ 352 and 353</u> ? Does the <u>Restatement (Second) of Torts § 352</u> relieve former possessors of land from liability for hazards created at their direction? Under the <u>Restatement (Second) of Torts § 353</u> , does the liability of a former possessor of land who concealed a hazardous condition it created continue until the current possessor has actual knowledge of the condition?	02/03/2016 REVW Oral Arg 10/26/2016 (Justice on Wheels in Bayfield County Courthouse)	1 Milwaukee	11/18/2015 Pub. 2015 WI App 85 365 Wis. 2d 476 872 N.W.2d 124
2014AP2536-FT	<u>Democratic Party of Wisconsin v. Wisconsin Department of Justice</u> Did the DOJ properly exercise its discretion in the law-enforcement context to conclude that the public interest would be harmed by disclosure of information about crime victims and law enforcement techniques and strategies in its denial of an open records request. If a final ruling in this case results in an order for disclosure, should DOJ be given the opportunity to analyze the records in light of that ruling for possible redaction?	01/07/2016 REVW Oral Arg 09/06/2016	4 Dane	--

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*2014AP2581	<u>Taft Parsons, Jr. v. Associated Banc-Corp</u> Can parties to a business transaction agree that any disputes between them will be resolved without the need for a jury trial? Should a party seeking to enforce a jury trial waiver be required to prove—beyond establishing elements of the contract as a whole—that the specific waiver term was made "knowingly and voluntarily" by the other party? If a party seeking to enforce a jury trial waiver is required to establish a "knowing and voluntary" waiver, does the party seeking enforcement have the burden of proof and may the court rely upon the allegations of the complaint and a conflicting affidavit to make this determination? Did the trial court properly exercise its discretion to manage the procedure and timing to resolve the dispute regarding a jury trial? Is it procedurally and substantively unconscionable for a lender to advise a business customer that it will not provide financing unless certain terms are agreed upon and the loan is closed "soon" and must the lender give up something of value within the jury clause itself in order to maintain enforceability?	09/13/2016 REVW	1 Milwaukee	06/29/2016 Pub. 2016 WI App 44 370 Wis. 2d 112 881 N.W.2d 793
2014AP2603-CR	<u>State v. Glenn T. Zamzow</u> Whether the Sixth Amendment confrontation clause applies at a pretrial suppression hearing.	03/07/2016 REVW Oral Arg 10/13/2016	2 Fond du Lac	01/27/2016 Pub. 2016 WI App 7 366 Wis. 2d 562 874 N.W.2d 328
2014AP2637	<u>Antjuan Redmond v. Brian Foster</u> Whether an offender whose parole and extended supervision was revoked after a revocation hearing has an adequate remedy other than a writ of habeas corpus to pursue a claim that the attorney who represented him during the hearing rendered constitutionally ineffective assistance. Specifically, must the offender raise a claim of ineffective assistance of revocation counsel in a motion to the Division of Hearings and Appeals (DHA) in the Department of Administration?	06/15/2016 CERT CERT vacated and case remanded by order of the court dated 09/13/2016	2 Sheboygan	--
2014AP2813-CR	<u>State v. Jeffrey P. Lepsch</u> Whether prospective jurors must establish impartiality by "unequivocal assurances" that they can set aside prior beliefs and decide a case solely on the evidence. Cf. <u>Oswald v. Bertrand</u> , 249 F. Supp. 2d 1078 (E.D. Wis. 2003) and <u>State v. Erickson</u> , 227 Wis. 2d 758, 596 N.W.2d 749 (1999).	05/11/2016 REVW Oral Arg 11/09/2016	4 La Crosse	Unpub.

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2014AP2840-CR	<u>State v. Christopher Joseph Allen</u> At sentencing, did a trial court violate <u>State v. Leitner</u> , 2002 WI 77, 253 Wis. 2d 449, 646 N.W.2d 341 (circuit courts cannot consider an expunged record of conviction, but may consider the facts underlying an expunged record of conviction at sentencing) when it considered that the defendant had an expunged conviction and served a term of probation? Was trial counsel ineffective for failing to object to the references to the defendant's expunged conviction in the presentence investigation and at sentencing?	04/06/2016 REVW Oral Arg 10/20/2016	1 Milwaukee	12/16/2015 Pub. 2015 WI App 96 366 Wis. 2d 299 873 N.W.2d 92
2014AP2947	<u>Regency West Apartments LLC v. City of Racine</u> Do sales of HUD § 8 rent subsidized properties constitute "reasonably comparable" sales of properties with "similar restrictions" for purposes of applying the comparable sales approach to assess an IRC § 42 low income housing tax credit property? Is it appropriate to rely solely upon the income approach in valuing subsidized housing projects for property tax assessment purposes?	01/11/2016 REVW Oral Arg 09/09/2016	2 Racine	Unpub.
2014AP2981-CR	<u>State v. Tabitha A. Scruggs</u> Beginning January 1, 2014, all criminal defendants are required to pay a \$250 DNA surcharge for every felony conviction, and a \$200 DNA surcharge for every misdemeanor conviction. Are the state and federal prohibitions against ex post facto laws violated when the surcharges are imposed on defendants who committed their crimes before January 1, 2014? Did the court of appeals misapply the test for determining whether a law violates ex post facto by failing to separately consider the punitive intent and the punitive effect of the mandatory DNA surcharge?	03/07/2016 REVW Oral Arg 10/13/2016	2 Racine	11/18/2015 Pub. 2015 WI App 88 365 Wis. 2d 568 872 N.W.2d 146
2015AP79	<u>Maya Elaine Smith v. Jeff Anderson</u> Can a third-party complaint state a claim that an insurance company has a duty to defend, where the complaint against the third-party plaintiff is for misrepresentation? Should a party looking to his insurance company to provide him with a defense be able to introduce information not stated in the pleadings to show that there could be claims requiring his insurer to provide a defense? Can a party denied a defense after his insurance company succeeds on a motion for summary judgment reassert a right to a defense if later developments in the case show that he is entitled to a defense?	04/06/2016 REVW Oral Arg 10/18/2016	1 Milwaukee	Unpub.

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2015AP146	<u>Wisconsin Carry, Inc. v. City of Madison</u> Whether state law preempts local agencies from regulating carrying of firearms when the governing bodies of such municipalities themselves lack the authority to do so. Whether an enabling ordinance for an agency is preempted to the extent it purports to give an agency the authority to regulate the carrying of firearms.	01/11/2016 REVW Oral Arg 09/09/2016	4 Dane	09/30/2015 Pub. 2015 WI App 74 365 Wis. 2d 71 870 N.W.2d 675
2015AP158-CR	<u>State v. Rozerick E. Mattox</u> Is there a violation of a defendant's rights under the Confrontation Clause (Sixth Amendment to the United States Constitution) where the State introduces at trial a toxicology report identifying certain drugs in a deceased victim's system and/or testimony of a medical examiner basing his/her cause-of-death opinion, in part, on the information set forth in such a report, if the author of the report does not testify and is not otherwise made available for examination by the defendant?	04/06/2016 CERT Oral Arg 10/26/2016 (Justice on Wheels in Bayfield County Courthouse)	2 Waukesha	--
2015AP202-CR	<u>State v. Jeffrey C. Denny</u> Did the court of appeals err when it held that a defendant seeking postconviction DNA testing of "relevant" evidence under Wis. Stat. § 974.07(2) need not demonstrate that the physical evidence "contains biological material or on which there is biological material" as provided under subparagraph § 974.07(6)(a)2.? (See <u>State v. Moran</u> , 2005 WI 115, 284 Wis. 2d 24, 700 N.W.2d 884) In reviewing a motion for DNA testing at State expense under Wis. Stat. § 974.07(7)(a), must a circuit court always assume that a DNA test result will be exculpatory? In assessing whether it is "reasonably probable" that a defendant would not have been convicted if exculpatory DNA results had been available, should a circuit court apply a newly discovered evidence standard? Did the circuit court erroneously exercise its discretion under Wis. Stat. § 974.07(7)(a) when it found that the jury would have convicted a defendant even if exculpatory DNA results were present?	06/15/2016 REVW Oral Arg 10/26/2016 (Justice on Wheels in Bayfield County Courthouse)	2 Ozaukee	04/27/2016 Pub. 2016 WI App 27 368 Wis. 2d 363 878 N.W.2d 679
2015AP366-CR	<u>State v. Stanley J. Maday, Jr.</u> Did a social worker's testimony constitute a prohibited opinion that, during an interview, a child was telling the truth?	02/11/2016 REVW Oral Arg 09/09/2016	4 Columbia	Unpub.

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*2015AP491	<u>AllEnergy Corporation v. Trempealeau County Environment & Land Use Committee</u>	09/13/2016 REVW	3 Trempealeau	Unpub.
	<p>Do unsubstantiated public comments on the possible negative impacts of a non-metallic mine constitute substantial evidence upon which to base a conditional use permit denial?</p> <p>Should the court adopt a new doctrine that where a conditional use permit applicant has shown that all conditions and standards, both by ordinance and as devised by the zoning committee, have been or will be met, the applicant is entitled to the issuance of the permit?</p> <p>Did the county committee exceed its jurisdiction by denying a conditional use permit based upon generalized concerns, reflecting the exercise of policy-based, quasi-legislative authority by a committee whose members are appointed, not elected?</p>			
*2015AP643	<u>North Highland Inc. v. Jefferson Machine & Tool Inc.</u>	09/13/2016 REVW	4 Jefferson	Unpub.
	<p>Is the amount of money that a company bids on a contract "information" protectable as a trade secret under Wis. Stat. § 134.90(1)(c), when it has value through secrecy meeting the requirements of Wis. Stat. § 134.90(1)(c)(1)-(2)?</p> <p>In a covenant not to sue one defendant, can a plaintiff maintain suit against other defendants for any of the following: (a) conspiracy among all defendants to violate covenanted defendant's fiduciary duties to plaintiff, (b) aiding and abetting covenanted defendant's breach of fiduciary duties to plaintiff, (c) interference with covenanted defendant's contractual or fiduciary obligations to plaintiff?</p>			
2015AP656-CR	<u>State v. Patrick K. Kozel</u>	03/07/2016 REVW Oral Arg 10/18/2016	4 Sauk	Unpub.
	<p>Is an Emergency Medical Technician who draws a person's blood while under the general supervision of a doctor a "person acting under the direction of a physician," under Wis. Stat. § 343.305(5)(b)?</p> <p>If blood is drawn under the implied consent law by a person not authorized to do so under § 343.305(5)(b), is suppression of the blood test results required?</p>			
*2015AP959-CR	<u>State v. Jack M. Suriano</u>	09/13/2016 REVW	3 Door	Unpub.
	<p>Whether the trial court erred by ruling that a defendant forfeited his Sixth Amendment right to counsel after three appointed attorneys withdrew from his case, without first warning defendant that forfeiture was a possibility or advising him of the difficulties and dangers of self-representation.</p>			

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2015AP1016/ 2015AP1119	<u>Margaret Pulera v. Town of Richmond</u> What is the certiorari review filing deadline under Wis. Stat. § 68.13 in the context of raising a challenge in the highway order process of Wis. Stat. § 82.15? (See <u>Dawson v. Town of Jackson</u> , 2011 WI 77, 336 Wis. 2d 318, 801 N.W.2d 316)	04/13/2016 CERT	4 Rock	--
2015AP1055	<u>Lela M. Operton v. LIRC</u> What is the standard of review of the LIRC's conclusions of law in cases where the issue is whether an unemployment benefit claimant has allegedly committed substantial fault? Did the LIRC reasonably conclude that the benefit claimant's failures amount to substantial fault? (See Wis. Stat. § 108.04 (5g) (a) (2013-14)).	07/14/2016 REVW Oral Arg 11/10/2016	4 Dane	05/25/2016 Pub. 2016 WI App 37 369 Wis. 2d 166 880 N.W.2d 169
2015AP1152	<u>Voces de la Frontera, Inc. v. David A. Clarke, Jr.</u> Does the Wisconsin Open Records Law (Wis. Stat. §§ 19.31 through 19.39) require the records custodian of a local law enforcement agency to produce federal immigration detainer hold documents (I-247s) received from U.S. Immigration and Customs Enforcement (ICE), despite the specific prohibition contained in 8 C.F.R. § 236.6? In the alternative, does the balancing test set forth under the Wisconsin Open Records Law weigh in favor of the non-production of these same federal immigration detainer hold documents received by a local law enforcement agency from ICE?	06/15/2016 REVW Oral Arg 11/03/2016	1 Milwaukee	05/25/2016 Pub. 2016 WI App 39 369 Wis. 2d 103 880 N.W.2d 417
*2015AP1292-CR/ 2015AP1293-CR	<u>State v. Edward J. Zimbal</u> Is a substitution request timely when: (1) a defendant, before having an attorney appointed, requests substitution in the circuit court orally and in the court of appeals in writing, within the deadline to do so, (2) is told by the circuit court that action on substitution will be deferred until after an attorney is appointed, and (3) counsel formalizes the substitution request 17 days after being appointed?	09/13/2016 REVW	3 Brown	Unpub.

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*2015AP1877-CR	<u>State v. Lazaro Ozuna</u> Whether to "satisf[y] the conditions of probation" under Wis. Stat. § 973.015(1m)(b), a probationer must perfectly comply with every probation condition, or whether under <u>State v. Hemp</u> , 2014 WI 129, 359 Wis. 2d 320, 856 N.W.2d 811, it is enough that the probation agent determines that the probationer has "successfully completed . . . probation." Whether the defendant's procedural due process rights were violated when the court failed to provide him with notice or a hearing before denying expungement.	09/13/2016 REVW	2 Walworth	Unpub.
*2016AP46-FT	<u>Waukesha County v. J.W.J.</u> Whether the standard adopted in <u>Fond du Lac County v. Helen E.F.</u> , 2012 WI 50, 340 Wis. 2d 500, 814 N.W.2d 179, for determining whether an individual is a proper subject for treatment under Chapter 51 should be clarified.	09/13/2016 REVW	2 Waukesha	Unpub.
2016AP923-W	<u>Universal Processing Services v. Circuit Court of Milw. Co.</u> Whether the court should exercise its supervisory authority and direct the circuit court that it may not, in matters set for trial by jury, without the consent of the parties, appoint a referee to address all pre-trial matters and issue orders that will be approved as orders of the circuit court, without hearing, with all costs of the referee to be borne by the parties.	06/29/2016 WRIT Oral Arg 11/01/2016	1 Milwaukee	--

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