

December 26, 2019

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
Facsimile: (608) 267-0640
Web Site: www.wicourts.gov
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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- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.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 **December 26, 2019**. 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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WISCONSIN SUPREME COURT PENDING CASES
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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2016AP1688 (consolidated with 2016AP2502)	<u>Clean Wisconsin, Inc. v. DNR</u> Does the Department of Natural Resources (DNR) have authority to impose off-site groundwater-monitoring requirements and an animal-unit maximum on a Wisconsin Pollution Discharge Elimination System (WPDES) permit? Did DNR retain discretion to decide whether to impose certain permit conditions after denying review of the Administrative Law Judge's decision? Was the circuit court competent to enter, and, if so, did it correctly enter an award of costs and fees to Petitioners?	04/09/2019 CERT	4 Dane	--
2016AP1982	<u>Winnebago County v. C.S.</u> Does Wis. Stat. § 51.61(1)(g) violate substantive due process because it does not require a finding of dangerousness to involuntarily medicate a prisoner?	08/15/2019 REVW Oral Arg 01/15/2020	2 Winnebago	04/24/2019 Pub. 2019 WI App 16 386 Wis. 2d 612 927 N.W.2d 576
*2016AP2082 (consolidated with 2017AP634)	<u>Kathleen Papa v. DHS</u> Is judicial review under Wis. Stat. § 227.40 applicable to the Department's policy, based on its interpretation of statute and administrative rules, that it may recoup Medicaid payments from a provider based on a provider's alleged imperfect compliance with the Medicaid Provider Handbook or other program requirements? Do the 2017 Act 369 revisions to Wis. Stats. §§ 227.40(1) and (4)(a), which expanded the scope of declaratory judgment actions to guidance documents, permit the court to rule on the validity of the Department's recoupment policy regardless of whether the challenged policy is a rule? Does the Department's policy of recouping payments for Medicaid services based on a provider's alleged failure to strictly comply with program requirements exceed the scope of the Department's statutory recoupment authority under Wis. Stat. § 49.45(3)(f)2? Is the Department's recoupment policy a "rule" which was not promulgated, in violation of Wis. Stat. § 227.10(1)?	12/10/2019 REVW	2 Waukesha	Unpub.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2017AP634 (consolidated with 2016AP2082)	<u>Kathleen Papa v. DHS</u> Is judicial review under Wis. Stat. § 227.40 applicable to the Department's policy, based on its interpretation of statute and administrative rules, that it may recoup Medicaid payments from a provider based on a provider's alleged imperfect compliance with the Medicaid Provider Handbook or other program requirements? Do the 2017 Act 369 revisions to Wis. Stats. §§ 227.40(1) and (4)(a), which expanded the scope of declaratory judgment actions to guidance documents, permit the court to rule on the validity of the Department's recoupment policy regardless of whether the challenged policy is a rule? Does the Department's policy of recouping payments for Medicaid services based on a provider's alleged failure to strictly comply with program requirements exceed the scope of the Department's statutory recoupment authority under Wis. Stat. § 49.45(3)(f)2? Is the Department's recoupment policy a "rule" which was not promulgated, in violation of Wis. Stat. § 227.10(1)?	12/10/2019 REVW	2 Waukesha	Unpub.
2017AP774-CR	<u>State v. Courtney C. Brown</u> Did an officer have the requisite level of reasonable suspicion to extend the detention beyond issuing a seat belt citation? Did an officer improperly extend the traffic stop?	10/15/2019 REVW Oral Arg 01/21/2020	2 Fond du Lac	07/31/2019 Pub. 2019 WI App 34 388 Wis. 2d 161 931 N.W.2d 890
2017AP822	<u>Veritas Steel, LLC v. Lunda Construction Company</u> Did the court's decision in <u>Fish v. Amsted Indus. Inc.</u> , 126 Wis. 2d 293, 376 N.W.2d 820 (1985) "significantly" refine the court's analysis in <u>Tift v. Forage King Industries Inc.</u> , 108 Wis. 2d 72, 322 N.W.2d 14 (1982)? Does <u>Fish</u> require proof of "identity of ownership" to establish successor liability? Did <u>Fish</u> establish a rule of law that an actual transfer of stock or the sale to the buyer is a required element to establish successor liability under the de facto merger and continuation exceptions to rule of successor non-liability even though such a transaction is not a requirement of a statutory merger under Wis. Stat. § 180.1101(2)I)? Is Wis. Stat. § 242.08(5)(b) a complete defense to a fraudulent transaction claim in light of this court's recent decision in <u>Springer v. Nohl Electric Products Corp.</u> , 2018 WI 48, 381 Wis. 2d 438, 912 N.W.2d 1?	04/09/2019 REVW Oral Arg 09/19/2019	4 Dane	Unpub.

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2017AP880-W	<u>Joshua M. Wren v. Reed Richardson</u> Whether a defendant was deprived of his direct appeal due to the ineffectiveness of his trial counsel. Whether the defense of laches should preclude granting relief to the defendant.	05/14/2019 RE VW Affirmed 12/26/2019 2019 WI 110	1 Milwaukee	--
2017AP913-CR 2017AP914-CR	<u>State v. Autumn Marie Love Lopez</u> <u>State v. State v. Amy J. Rodriguez</u> Does Wis. Stat. § 971.36 or prosecutorial charging discretion allow for seven separate acts of retail theft of merchandise valued at \$126-\$314 each and committed over a two-week period to be charged as a single count of felony retail theft of merchandise totaling \$1,452.12?	04/09/2019 RE VW Affirmed 11/27/2019 2019 WI 101	4 Green	01/31/2019 Pub. 2019 WI App 2 385 Wis. 2d 482 922 N.W.2d 855
2017AP1104-CR	<u>State v. Roy S. Anderson</u> What constitutes sufficient knowledge of an offender's community supervision status where an officer wants to search him or her pursuant to Act 79? Did officers lack reasonable suspicion to search suspect's person pursuant to Act 79?	04/09/2019 RE VW Affirmed 11/15/2019 2019 WI 97	2 Racine	Unpub.
2017AP1416-CR	<u>State v. Matthew C. Hinkle</u> Did one county's court lack competency under § 938.183(1)(b) to proceed on a defendant's nontraffic counts, when competency was based solely on another county's previous waiver? Did trial counsel provide ineffective assistance, when she failed to object to the nontraffic counts in criminal court and to the order waiving juvenile jurisdiction?	04/09/2019 RE VW Affirmed 11/12/2019 2019 WI 96	2 Fond du Lac	11/28/2018 Pub. 2018 WI App 67 384 Wis. 2d 612 921 N.W.2d 219

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2017AP1616	<p><u>London Scott Barney v. Julie Mickelson, MD</u></p> <p>Should <u>Miller v. Kim</u>, 191 Wis. 2d 187, 528 N.W.2d 72 (Ct. App. 1995) be reversed by this Court in order to permit a jury to consider alternative methods of treatment or diagnosis standard of care evidence at trial?</p> <p>Does <u>Miller v. Kim</u> supply the proper rule for analysis where there was expert testimony at trial that there were several accepted alternative methods of assessing fetal heart tones during labor, one of which was external fetal monitoring?</p> <p>Where multiple experts testified at trial that there were several recognized methods of monitoring fetal heart tones during labor, one of which is the use of an external fetal heart monitor, was the optional “alternative methods” jury instruction under Wis [JI—]Civil 1023 properly given by the trial court?</p> <p>Should this Court clarify the application of the alternative methods paragraph in Wis [JI—]Civil 1023?</p> <p>Should this Court clarify and resolve the different interpretations of the alternative methods paragraph between different court of appeals panels?</p>	<p>09/03/2019 REVW Oral Arg 01/13/2020</p>	<p>1 Milwaukee</p>	<p>Unpub.</p>
2017AP1720-CR	<p><u>State v. Robert James Pope, Jr.</u></p> <p>Where no transcripts of a jury trial occurring over 20 years ago are available in a direct appeal and appellate counsel is new to the case, does application of the requirement of <u>State v. Perry</u>, 136 Wis. 2d 92, 401 N.W.2d 748 (1987) that appellant assert a “facially valid claim of error” that might be supported by a portion of a missing transcript deny the constitutional right to meaningful appellate review?</p> <p>Whether a statement on transcript filed in an appeal binds an appellant in all future appeals in the same case.</p>	<p>04/09/2019 REVW Affirmed 12/17/2019 2019 WI 106</p>	<p>1 Milwaukee</p>	<p>Unpub.</p>

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2017AP1823	<u>Lamar Central Outdoor, LLC v. Division of Hearing & Appeals</u> Whether DHA erred in finding that Wis. Stat. s. 84.30 and Wisconsin Administrative Code Trans. S. 201.10 prohibit the enlargement of nonconforming, off-premise signs erected after March 18, 1972. Whether DHA misinterpreted common law authorities relating to nonconforming uses. Whether DHA erred as a matter of law by finding that the right to cure provision in Wis. Stat. s. 84.30 (11) does not apply to the circumstances. Whether DHA erred as a matter of law by failing to require the Wisconsin Department of Transportation (DOT) to resolve statutory ambiguities by engaging in rulemaking. Whether [DOT]'s change of policy relating to the addition of extensions to nonconforming signs without promulgating a formal rule pursuant to Wis. Stat. s. 227.10(1) constituted unlawful rulemaking. Whether Wis. Stat. s. 227.10(1) required DOT to promulgate as rule its revised interpretation of Wis. Stat. s. 84.30(11).	04/09/2019 REVW Reversed and remanded 12/19/2019 2019 WI 109	4 Portage	Unpub.
2017AP1894-CR	<u>State v. Stephan I. Roberson</u> Whether identifications made out-of-court using a single photo are "showups" and inadmissible absent a showing of necessity.	02/12/2019 REVW Affirmed 12/03/2019 2019 WI 102	4 Wood	Unpub.
2017AP1962	<u>Richard A. Mueller v. TL90108, LLC</u> Whether the six-year repose provision contained in Wis. Stat. §§ 893.35 and 893.51 for wrongful taking, conversion, or detention can be revived after it has expired if the original owner demands possession from the current possessor on the theory that the current possessor is "wrongfully detaining" the property even though it was previously converted.	01/15/2019 Oral Arg 11/04/2019	1 Milwaukee	08/29/2018 Pub. 2018 WI App 52 383 Wis. 2d 740 917 N.W.2d 551

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2017AP1977-CR	<u>State v. Alexander M. Schultz</u> When determining whether two offenses charged in successive prosecutions are the same in fact, for purposes of the Double Jeopardy Clause, may a court determine the scope of jeopardy in the first prosecution based upon testimony which was adduced at trial? Or alternatively, must a court determine the scope of jeopardy based upon whether a reasonable person familiar with the totality of the facts and circumstances would have to construe the initial charging documents, at the time jeopardy attached in the first case, to cover the offense that is charged in the charging document of the subsequent prosecution? To determine the scope of jeopardy, does the court look at the charging documents in light of the facts and circumstances known when jeopardy attached, which in the case of a jury trial is when the jury is sworn, or may a court narrow the scope of jeopardy based upon testimony that was later adduced at trial? If there should be any ambiguity in the timeframe of a charging document, for purposes of the Double Jeopardy Clause, who should bear the burden resulting from the ambiguity, the defendant or the State?	04/09/2019 REVW Oral Arg 09/09/2019	3 Lincoln	01/31/2019 Pub. 2019 WI App 3 385 Wis. 2d 494 922 N.W.2d 866
2017AP2132	<u>Timothy W. Miller v. Angela L. Carroll</u> Does a judge being a litigant's "friend" on Facebook alone, without allegations of bias in the matter before the judge, overcome the presumption that judges are fair, impartial, and capable of ignoring any biasing influences thereby constituting a due process violation and a bright-line rule prohibiting the judicial use of electronic social media? Does a judge "liking" a litigant's Facebook post unrelated to the pending litigation or commenting on a Facebook post unrelated to the pending litigation constitute an ex parte communication between a party and a judge?	08/14/2019 REVW Oral Arg 01/13/2020	3 Barron	03/27/2019 Pub. 2019 WI App 10 386 Wis. 2d 267 925 N.W.2d 580
2017AP2217	<u>Marathon County v. D. K.</u> When the county's sole witness testifies that a respondent could be "potentially dangerous" does this evidence constitute clear and convincing evidence that the respondent is currently dangerous?	07/10/2019 REVW Oral Arg 11/25/2019	3 Marathon	Unpub.

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2017AP2265-CR	<u>State v. Carrie E. Counihan</u> Whether one's right to due process at sentencing is violated when the circuit court conducts an independent investigation of "similar" cases and relies on these cases as the "most significant" of all information at sentencing but does not give the parties advance notice of such to allow the defense to review and rebut this information. Whether one forfeits a due process claim when during the court's pronouncement of sentence, the court first reveals that it conducted its own investigation and relied on information it discovered in determining a sentence but counsel did not interrupt to object. Whether a defendant, in establishing the prejudice prong of an ineffective assistance of counsel at sentencing claim, must show that the outcome of the proceeding—the sentence—would have been different.	05/14/2019 REVW Oral Arg 10/21/2019	3 Door	Unpub.
2017AP2292-CR	<u>State v. Donavinn D. Coffee</u> Does a defendant forfeit the constitutional due process right to be sentenced based only upon accurate information by failing to make a contemporaneous objection at the time of sentencing when the nature of the inaccuracy could not have been reasonably determined by effective counsel at the time the misinformation is presented to the court at the sentencing hearing?	05/14/2019 REVW Oral Arg 10/21/2019	1 Milwaukee	Unpub.
2017AP2352	<u>DSG Evergreen Family Limited Partnership v. Town of Perry</u> Is a property owner whose property is subject to a partial taking permitted to rely on a condemnor's promises to construct improvements in a manner intended to provide post-taking benefits to the property owner in exchange for greater compensation? If a condemnor is able to acquire property in eminent domain at a lower cost by including construction of improvements for the benefit of the property owner in its project, but does not subsequently construct those improvements as promised, does claim preclusion prevent the property owner from maintaining an action against the condemnor for damages or to compel construction of the promised improvement to the promised standard? Is a special exception to the doctrine of claim preclusion appropriate or necessary for such circumstances in the context of eminent domain proceedings? Can a private citizen maintain an action against a town for failing to construct a town road in accordance with the geometric design standards of Wis. Stat. § 82.50?	03/13/2019 REVW Oral Arg 10/03/2019	4 Dane	Unpub.

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2017AP2361	<p><u>Chris Hinrichs v. DOW Chemical Company</u></p> <p>In determining whether a fraudulent statement was made “to the public” (Wis. Stat. § 100.18), should courts employ a “particular relationship” test, abandon or modify that test, or follow § 100.18’s terms?</p> <p>Can a plaintiff proceed with a Wis. Stat. § 100.18 claim when the plaintiff admits that it was in an ongoing commercial relationship with the defendant before the statement in question? (cf. <u>Kailin v. Armstrong</u>, 2002 WI App 70, 252 Wis. 2d 676, 643 N.W.2d 132).</p> <p>Are Wis. Stat. § 100.18 claims subject to the same heightened pleading requirements that Wis. Stat. § 802.03(2) says “shall” apply to “all” fraud claims?</p> <p>Whether the Economic Loss Doctrine (ELD) applies to a commercial plaintiff bringing a Wis. Stat. § 100.18 claim.</p> <p>In the context of <u>Linden v. Cascade Stone Co., Inc.</u>, 2005 WI 113, ¶6, 283 Wis. 2d 605, 699 N.W.2d 189; <u>Kaloti Enterprises, Inc. v. Kellogg Sales Co.</u>, 2005 WI 111, 129, 283 Wis. 2d 555, 699 N.W.2d 205, should the question of what constitutes an “integrated system” be answered by the “Product Bargained For” test?</p> <p>The ELD will not bar an intentional misrepresentation claim. <u>Kaloti Enterprises, Inc.</u>. In that context, if there is no obligation to purchase another product, does each purchase of another product constitute a new contract?</p>	<p>06/11/2019 REVW Oral Arg 10/03/2019</p>	<p>2 Waukesha</p>	<p>Unpub.</p>
2017AP2364-CR	<p><u>State v. David Gutierrez</u></p> <p>Whether the appellate court gave deference to evidentiary findings of the trial court, particularly in relation to findings concerning Wis. Stat. § 972.11(2)(b) (Wisconsin’s rape shield law), in accordance with the principles of appellate review.</p>	<p>11/12/2019 REVW Oral Arg 02/10/2020</p>	<p>2 Green Lake</p>	<p>08/28/2019 Pub. 2019 WI App 41 388 Wis. 2d 312 933 N.W.2d 133</p>
2017AP2440-CR 2017AP2441-CR	<p><u>State v. Richard H. Harrison, Jr.</u></p> <p>Did the court of appeals err when it did not consider Wis. Stat. § 973.04 when awarding sentence credit?</p> <p>Whether a defendant is entitled to sentence credit against 2007 and 2008 sentences for three years spent in prison serving no other lawfully imposed sentence.</p>	<p>08/14/2019 REVW Oral Arg 01/15/2020</p>	<p>4 Clark</p>	<p>Unpub.</p>
2017AP2510	<p><u>Antoinette Lang v. Lions Club of Cudahy Wisconsin, Inc.</u></p> <p>Is a business providing services to a sponsored event considered an agent of the sponsors such that they are afforded immunity from alleged negligence under Wis. Stat. § 895.52 (recreational immunity statute)?</p>	<p>03/13/2019 REVW Oral Arg 11/04/2019</p>	<p>1 Milwaukee</p>	<p>11/28/2018 Pub. 2018 WI App 69 384 Wis. 2d 520 920 N.W.2d 329</p>

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2017AP2525	<u>Town Of Delafield v. Central Transport Kriewaldt</u> Does federal law, particularly the Surface Transportation Assistance Act, preempt the State and municipalities from enacting non-safety specific regulations such as special vehicle weight limitations?	10/15/2019 REVW	2 Waukesha	07/31/2019 Pub. 2019 WI App 35 388 Wis. 2d 179 932 N.W.2d 423
2018AP53-CR	<u>State v. Dennis Brantner</u> Do the United States and Wisconsin Constitutional protections against double jeopardy bar the State from punishing a criminal defendant twice for violations of Wis. Stat. § 961.41(3g)(am) for possessing pills containing different doses of the same substance at the same time? When an individual is arrested in one county with controlled substances on his person and transported in police custody to a different county where the substances are removed from the individual's person during the booking process, does a trial for possession of the controlled substances in the destination county violate the individual's rights under Article I, Section VII of the Wisconsin Constitution and Wis. Stat. § 971.19?	05/14/2019 REVW Oral Arg 10/03/2019	2 Fond du Lac	--
2018AP59	<u>Clean Wisconsin, Inc. v. DNR</u> Did the Department of Natural Resources (DNR) lawfully approve eight high capacity wells without conducting an additional environmental review not required by statute or rule, given that Act 21 prohibits agencies from enforcing any requirement that is not "explicitly" permitted, and given that no statute explicitly authorizes additional environmental review for these wells? Is Petitioners' claim that DNR failed to "consider . . . cumulative impacts" when approving the wells barred by Wis. Stat. § 281.34(5m), which prohibits any person from "challeng[ing] an approval . . . of a high capacity well based on the lack of consideration of [] cumulative environmental impacts"?	04/09/2019 CERT	4 Dane	--
2018AP75-CR	<u>State v. Charles L. Neill, IV</u> When a defendant was convicted of third offense operating while intoxicated (OWI) and was subject to a doubling of the minimum fine under Wis. Stat. § 346.65(2)(f)2 for having a child in the vehicle and a quadrupling of the minimum fine under Wis. Stat. § 346.65(2)(g)3 for having a blood alcohol concentration above .25, did the statute require that the circuit court multiply the defendant's minimum fine by a factor of eight?	06/11/2019 REVW Oral Arg 10/14/2019 (in Marquette County Courthouse, Justice on Wheels)	1 Milwaukee	01/31/2019 Pub. 2019 WI App 4 385 Wis. 2d 471 922 N.W.2d 861

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2018AP116	<u>Roger Choinsky v. Germantown School District Board of Education</u> If an insurer refuses to provide an initial defense to its insured, can it nevertheless avoid application of the four-corners rule (see, e.g., <u>Olson v. Farrar</u> , 2012 WI 3, ¶32, 338 Wis. 2d 215, 809 N.W.2d 1) in determining whether the insurer breached its duty to defend? If an insurer refuses to provide a defense and coverage to its insured, but begins paying for the defense almost a year later, can the insurer invoke the protections of <u>Mowry v. Badger State Mut. Cas. Co.</u> , 129 Wis. 2d 496, 385 N.W.2d 171 (1986), to avoid fee liability and other equitable relief under <u>Elliott v. Donahue</u> , 169 Wis. 2d 310, 485 N.W.2d 403 (1992) and/or fee liability under <u>Newhouse v. Citizens Security Mut. Ins. Co.</u> , 176 Wis. 2d 824, 836, 501 N.W.2d 1 (1993)?	06/11/2019 REVW Oral Arg 10/28/2019	2 Washington	03/27/2019 Pub. 2019 WI App 12 386 Wis. 2d 285 926 N.W.2d 196
2018AP145-FT	<u>Langlade County v. D. J. W.</u> A doctor opined that a respondent is unable to care for himself, and therefore dangerous under Wis. Stat. § 51.20(1)(am), because he lost employment and relies on the assistance of the government and his family for income and housing. As a matter of law, did the circuit court err by concluding that the county, under these circumstances, met its burden to prove by clear and convincing evidence that the respondent is dangerous?	07/10/2019 REVW Oral Arg 11/25/2019	3 Langlade	Unpub.
2018AP168	<u>Waukesha County v. J.J.H.</u> Whether the mootness doctrine should apply to an appeal from a commitment order. Whether the circuit court violated due process under the 5 th and 14 th Amendments when it held a Chapter 51 probable cause hearing, which resulted in a 30-day temporary guardianship and temporary protective placement or services, without providing the subject of the proceeding who is deaf, sign language interpreters. Whether the circuit court erred by entering a Wis. Stat. § 51.67 conversion order: (a) at the probable cause stage of a Chapter 51 commitment hearing, and (b) without making any of the statutorily-required findings for such an order. What is the mechanism for appealing a Wis. Stat. § 51.67 order of conversion to temporary guardianship and temporary protective placement and/or services?	09/03/2019 REVW Oral Arg 02/10/2020	2 Waukesha	--

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2018AP283	<u>Gail Moreschi v. Village of Williams Bay and Town of Linn ETZ Zoning Board of Appeals</u> Whether a board can create new minutes and new decisions after receipt of a writ of certiorari action. Whether the court of appeals determination of what constitutes a “triggering event” for purposes of appeal on a writ of certiorari conflicts with Wis. Stats. § 62.23(7); ETZ ordinances; or the Court of Appeals’ holding in <u>Zelman v. Town of Erin</u> , 2018 WI App 50, 383 Wis. 2d 679, 917 N.W.2d 222.	11/12/2019 REVW	2 Walworth	Unpub.
2018AP458	<u>Emer’s Camper Corral, LLC v. Western Heritage Insurance Company</u> In a suit for failure to procure requested insurance, must the plaintiff prove causal damages by showing she could have personally obtained an insurance policy equal to or better than the policy promised to her by her agent?	07/10/2019 REVW Oral Arg 11/25/2019	3 Burnett	04/24/2019 Pub. 2019 WI App 17 386 Wis. 2d 592 928 N.W.2d 641
2018AP623	<u>David Skindzelewski v. Joseph Smith, Jr.</u> Should Wisconsin join jurisdictions that have recognized exceptions to the innocence requirement in malpractice cases against criminal defense counsel where the lawyer’s negligence resulted in an unlawful conviction or sentence?	10/15/2019 REVW Oral Arg 02/10/2020	1 Milwaukee	Unpub.
2018AP651-CR	<u>State v. Kelly James Kloss</u> Is Solicitation of First-Degree Reckless Injury a crime under Wisconsin law? Was the evidence sufficient to show the defendant “unequivocally” intended that a “felony be committed” when the solicited conduct required the element of surprise and defendant knowingly forewarned the alleged victims?	06/11/2019 REVW Oral Arg 10/14/2019 (in Marquette County Courthouse, Justice on Wheels)	3 St. Croix	03/27/2019 Pub. 2019 WI App 13 386 Wis. 2d 314 925 N.W.2d 563
2018AP712-FT	<u>Joan C. Pulkkila v. James M. Pulkkila</u> Does a marital settlement agreement expressly providing a remedy that “shall” apply if either party fails to maintain life insurance provide an exclusive remedy such that a constructive trust is unavailable by operation of law? Was it a violation of Petitioner’s right to due process under the federal and state constitutions for the appellate court to impose a constructive trust as a matter of law, without remand, before any court heard evidence related to the elements of constructive trust or adjudicated Petitioner’s objection to Respondent’s legal standing to move for a constructive trust in the divorce proceeding?	06/11/2019 REVW Oral Arg 10/14/2019 (in Marquette County Courthouse, Justice on Wheels)	2 Waukesha	Unpub.

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APPENDIX
WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2018AP731-CR	<u>State v. Kevin L. Nash</u> When accepting a guilty plea under <u>Alford v. North Carolina</u> , 400 U.S. 25 (1970), a circuit court may find there is a factual basis for the plea only if there is “strong proof of guilt.” May a court find strong proof of guilt based on the information contained in the criminal complaint, or must the court hear additional evidence before it can make that finding?	12/10/2019 REVW	2 Waukesha	Unpub.
*2018AP875-CR	<u>State v. Ryan M. Muth</u> Is marital income lost by a deceased victim’s family member “income lost,” such that the family member may recover it as restitution? In a criminal restitution proceeding where the crime victims have accepted and received a prior civil settlement for damages including “lost wages, expenses . . .” and the defendant is asserting an accord and satisfaction of the subsequent restitution claim for lost wages and expenses, must the defendant produce extrinsic evidence of the nature of the civil settlement agreement to show that the victims are seeking a double recovery?	12/10/2019 REVW	2 Washington	Unpub.
*2018AP947	<u>Quick Charge Kiosk LLC v. Josh Kaul</u> The Wisconsin Gambling Statute (Wis. Stat. § 945.01 et seq.) defines consideration, a required element of both lotteries and gambling machines, within the definition of lottery, but not within the definition of gambling machine. Should the specific definition of consideration in the statute apply to both gambling machines and lotteries? Under Wis. Stat. § 945.01(3)(a), four elements are required to establish a gambling machine: contrivance, consideration, chance, and prize. Does the availability of free participation negate the element of consideration under Wisconsin’s Gambling Machine Definition? Wis. Stat. § 100.16 governs marketing promotions that involve “selling with pretense of prize” and creates requirements needed to legally facilitate such a promotion. Does Wis. Stat. § 100.16 apply to electronic/mechanical devices used to facilitate a marketing promotion?	12/10/2019 REVW	1 Milwaukee	09/25/2019 Pub. 2019 WI App 51 388 Wis. 2d 525 934 N.W.2d 18
2018AP1129	<u>City of Cedarburg v. Ries B. Hansen</u> When a circuit court reviews a first offense OWI that is mischarged due to an unknown prior offense, it is a defect in the circuit court’s competency but not the circuit court’s subject matter jurisdiction. Accordingly, a defendant must timely object to the circuit court’s lack of competency or the objection is forfeited. (See <u>City of Eau Claire v. Booth</u> , 2016 WI 65, ¶1, 370 Wis 2d. 595, 882 N.W.2d 738). Is the same true when the mischarged OWI is in a municipal court?	02/12/2019 BYPA Oral Arg 09/19/2019	2 Ozaukee	--

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2018AP1165	<u>Jose M. Correa v. Woodman's Food Market</u> Given the proliferation of video surveillance evidence in the 21 st century, what is the status of Wisconsin jurisprudence with regard to constructive notice and standards of proof in premises liability cases? <u>See, i.e., Kochanski v. Speedway SuperAmerica, LLC</u> , 2014 WI 72, 356 Wis. 2d 1, 850 N.W.2d 160.	10/15/2019 REVW Oral Arg 01/21/2020	1 Milwaukee	Unpub.
2018AP1209-CR	<u>State v. Mose B. Coffee</u> Did the totality of circumstances create a basis for a search of the defendant's vehicle and of the contents of a backpack found on the backseat floor after police arrested the defendant, cuffed him and placed him in the back of a squad car on suspicion of drunk driving?	10/15/2019 REVW Oral Arg 01/21/2020	2 Winnebago	05/29/2019 Pub. 2019 WI App 25 387 Wis. 2d 673 929 N.W.2d 245
2018AP1681	<u>Steven J. Piper v. Jones Dairy Farm</u> Are the plaintiffs' state law claims for compensation for donning and doffing activities subject to the parties' historical negotiations and enforcement of their collective bargaining agreements, thus rendering those activities non-compensable? Are the plaintiffs' state law claims for compensation for donning and doffing activities subject to the doctrines of equitable estoppel, laches, waiver, and/or unjust enrichment, in light of the successive collective bargaining agreements plaintiffs agreed to and benefited from, and thus rendering those activities non-compensable? Are the plaintiffs' state law claims for compensation for donning and doffing activities subject to the doctrine of <u>de minimis non curat lex</u> , thus rendering those activities non-compensable?	05/14/2019 BYPA Oral Arg 10/28/2019	4 Jefferson	--
*2018AP1774-CR	<u>State v. Alfonso Lorenzo Brooks</u> Whether the community caretaker exception permits law enforcement to inventory and tow a vehicle after discovering that the driver does not have a valid license, when the vehicle is lawfully parked and not obstructing traffic.	12/10/2019 REVW	1 Milwaukee	Unpub.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2018AP2162	<u>Town of Wilson v. City of Sheboygan</u> Was a company's petitioned-for annexation a contiguous annexation under Wisconsin's annexation statutes? (Wis. Stat. § 66.0217 et seq.) Did the annexation strictly comply with the statutes when the Department of Administration did not certify the population count or estimate set forth in a company's petition? Did the annexation strictly comply with the signature requirements in Wis. Stat. § 66.0217(3)? Did a company's annexation petition satisfy the judicial rule of reason, and specifically the requirements that a need be demonstrated for the annexation?	05/14/2019 BYPA Oral Arg 09/19/2019	2 Sheboygan	--
2019AP567-W	<u>Milton Eugene Warren v. Michael Meisner</u> Whether postconviction claims should be heard in the circuit court or the Court of Appeals and, further, how is the decision in this matter to be explained under the ruling of <u>State v. Starks</u> , 357 Wis. 2d 142, 849 N.W.2d 724 (2014)?	10/15/2019 REVW	4 Rock	--
2019AP622	<u>Service Employees International Union (SEIU), Local 1 v. Robin Vos</u> Whether the Wisconsin Legislature may enforce certain provisions of 2017 Wisconsin Act 369 and 370.	04/19/2019 Wis. Stat. § 809.61, on court's own motion Oral Arg 10/21/2019	4 Dane	--
2019AP1376-OA	<u>Nancy Bartlett v. Tony Evers</u> Whether, in partially approving an appropriation bill pursuant to Article V, § 10 of the Wisconsin Constitution, the governor may strike parts of the bill which are "essential, integral, and interdependent parts of those which were approved." <u>State ex rel. Wisconsin Tel. Co. v. Henry</u> , 218 Wis. 302, 260 N.W. 486, 493 (1935). Does Art. V, § 10's direction that appropriations bills may be approved in whole or in part permit the Governor to strike words in a way that transforms the meaning and purpose of the law, changing it into a different law?	10/16/2019 ORIG	4 Dane	--

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