

July 15, 2021

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
Facsimile: (608) 267-0640
Web Site: www.wicourts.gov
Wisconsin Supreme Court Case Access: <http://wscca.wicourts.gov>

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- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.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 **July 15, 2021**. 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
2016AP308-CR	<u>State v. Dawn M. Prado</u> Was the blood draw justified under <u>Mitchell v. Wisconsin</u> , which established that for the category of cases involving suspected drunk drivers who are unconscious and taken to the hospital before a breath test can be administered, a warrantless blood draw is almost always justified by exigent circumstances? Was the blood draw from the defendant justified by her consent under the implied consent law? Was suppression of the blood test results improper because the police officer who ordered the blood draw relied in good faith on the unconscious driver provision in Wisconsin's implied consent law? Whether the "good faith" exception to the warrant requirement should be extended to an officer's reliance on law which is not "well established." Whether the "good faith" exception to the warrant requirement should be extended to officers who are not "well trained" in the matter they supposed exercised "good faith" in. Whether a circuit court's determination that an officer did not act in good faith is a question of fact, law, or both, and what standard of review ought to apply to such determinations, is an issue of first impression requiring a decision from this court.	10/21/2020 REVW Affirmed 06/18/2021 2021 WI 64	4 Dane	07/29/2020 Pub. 2020 WI App 42 393 Wis. 2d 526 947 N.W.2d 182
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 Affirmed 07/08/2021 2021 WI 71	4 Dane	--
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 Affirmed as modified; remanded 07/08/2021 2021 WI 72	4 Dane	--

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2018AP669	<u>Ronald L. Collison v. City of Milwaukee Bd. of Review</u> Whether the policy used by the City of Milwaukee in valuing contaminated property, "City of Milwaukee Environmental Contamination Standards (CMECS)", conforms to statute. Whether the assessor for the City of Milwaukee considered the impairment of the properties market value due to the presence of contamination as required by statute § 70.32(1m). Whether the assessment in the instant action conforms to Wisconsin statutes.	04/30/2020 REVW Affirmed 06/02/2021 2021 WI 48	1 Milwaukee	Unpub.
2018AP1476-CR	<u>State v. Octavia W. Dodson</u> Did the sentencing court violate the defendant's Second Amendment right by considering his status as a lawful gun owner an aggravating factor at sentencing?	01/20/2021 REVW Oral Arg 09/13/2021	1 Milwaukee	Unpub.
2018AP2205	<u>State v. C. G.</u> Does Wis. Stat. § 301.45, the statute governing juvenile sex offender registration, unconstitutionally infringe on Ella's* First Amendment right to freedom of speech by preventing her from legally changing her name to reflect her gender identity? Does requiring Ella to register under Wis. Stat. § 301.45 amount to cruel and unusual punishment in violation of the Eighth Amendment? * Ella is a pseudonym pursuant to Wis. Stat. § 809.19(1)(g). Ella is a transgender female and, therefore, will be referred to using female pronouns.	04/27/2021 REVW	3 Shawano	02/24/2021 Pub. 2021 WI App 11 396 Wis. 2d 105 955 N.W.2d 443
2018AP2220-CR	<u>State v. Adam W. Vice</u> Under the totality of the circumstances, was a defendant's confession voluntary?	08/20/2020 REVW Reversed; remanded 06/16/2021 2021 WI 63	3 Washburn	06/24/2020 Pub. 2020 WI App 34 392 Wis. 2d 754 946 N.W.2d 206
2018AP2318-CR	<u>State v. Alan M. Johnson</u> Was the defendant entitled to a jury instruction for perfect self-defense based on his testimony concerning his motivation for trespassing with a loaded firearm in the victim's house, despite the fact that the victim was unarmed, shot five times, and the defendant could not recall anything about the shooting other than that the victim "lunged" at him? Was the defendant entitled to submission of the lesser-included offense of second-degree reckless homicide under the above circumstances? Did the circuit court erroneously exercise its discretion in excluding evidence of alleged child pornography the defendant found on the victim's computer before he killed the victim?	09/16/2020 REVW Affirmed in part; reversed in part; remanded 06/16/2021 2021 WI 61	2 Walworth	08/31/2020 Pub. 2020 WI App 50 393 Wis. 2d 688 948 N.W.2d 377

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2018AP2319-CR	<u>State v. Manuel Garcia</u> Did the court of appeals err when it reversed the defendant's conviction based on the legal conclusion that the introduction at trial of inculpatory statements Garcia made to police violated his rights under <u>Miranda v. Arizona</u> , 384 U.S. 436 (1966) because the defendant himself did not testify, despite the fact that the circuit court admitted the statements under the "opening the door" exception, elucidated by this court in <u>State v. Brecht</u> , 143 Wis. 2d 297, 421 N.W.2d 96 (1988), and not the impeachment exception discussed in <u>Harris v. New York</u> , 401 U.S. 222 (1971)?	01/20/2021 REVW Oral Arg 09/13/2021	2 Racine	11/19/2020 Pub. 2020 WI App 71 ___ Wis. 2d ___ 951 N.W.2d 631
2019AP96	<u>Friends of Frame Park, U.A. v. City of Waukesha</u> Is the test to be applied to determine if a litigant is entitled to attorney's fees under Wis. Stat. § 19.37(2)(a) of the Public Records Law whether the legal custodian properly withheld records under an exception to that law initially, regardless of whether commencement of an action was a cause of the release of the records? May a draft contract which is the subject of negotiation between a municipality and a private entity be withheld from disclosure under the Public Records Law pursuant to Wis. Stat. §§ 19.35(1)(a) and 19.85(1)(e) where the contract has not yet been presented to the municipality's governing body for review, and before it meets in closed session to do so?	02/24/2021 REVW Oral Arg 09/09/2021	2 Waukesha	10/29/2020 Pub. 2020 WI App 61 394 Wis. 2d 387 950 N.W.2d 831
2019AP130	<u>Southport Commons, LLC v. Wisconsin Department of Transportation</u> What is the correct interpretation of Wis. Stat. § 88.87(2)(c), which provides in relevant part: "If ...[DOT] constructs and maintains a highway ... not in accordance with par. (a), any property owner damaged by the highway ... may, within 3 years after the alleged damage occurred, file a claim with the appropriate governmental agency."?	08/20/2020 REVW Affirmed 06/08/2021 2021 WI 52	2 Kenosha	05/27/2020 Pub. 2020 WI App 26 392 Wis.2d 207 944 N.W.2d 46
2019AP221-CR	<u>State v. Nhia Lee</u> If the circuit court lost jurisdiction to determine probable cause at a preliminary hearing because the ten-day time limit under Wis. Stat. § 970.03(2) had expired by 104 days, what is the appropriate remedy? Should circuit courts be required to appoint attorneys when there are delays in securing SPD-appointed counsel for a defendant? Was a defendant's right to counsel denied? Was defendant denied due process? Was a defendant's right to a speedy trial denied?	05/19/2021 REVW	3 Marathon	02/24/2021 Pub. 2021 WI App 12 396 Wis. 2d 136 955 N.W.2d 424

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2019AP299	<u>Friends of the Black River Forest v. DNR</u> Does a plaintiff satisfy the "injury-in-fact" prong of the standing test by alleging an injury that will not, and cannot, result from the challenged action until numerous intervening, uncertain, and unrelated events occur? Does a plaintiff satisfy the "zone of interest" prong of the standing test by alleging a violation of statutes and regulations that expressly grant the DNR the power to take such action? Does a Plaintiff satisfy the "zone of interest" prong of the standing test by alleging that an injury is environmental in nature, even where the statute at issue is not? Does the plaintiff's alleged injuries fall outside the zone of interests of the land-disposition law, so that they lack standing to challenge the Board's land exchange with one of the defendants?	02/24/2021 REVW Oral Arg 10/01/2021	2 Sheboygan	Unpub.
2019AP435-CR	<u>State v. James Timothy Genous</u> Do the following facts contribute to reasonable suspicion of illegal drug activity: a brief encounter in a car between two or more people, an officer's belief that one or more people is a known drug user, the time of day or night, and the car's headlights turning off right before the encounter and turning back on right afterward?	09/16/2020 REVW Reversed; remanded 06/04/2021 2021 WI 50	1 Milwaukee	Unpub.
2019AP447-CR	<u>State v. Heather Jan VanBeek</u> Whether a consensual encounter becomes an unconstitutional seizure under the Fourth Amendment when an officer requests and takes an individual's driver's license to the officer's squad car without reasonable suspicion.	09/16/2020 CERT Reversed; remanded 06/04/2021 2021 WI 51	2 Sheboygan	--

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2019AP488	<p><u>Kemper Independence Ins. Co. v. Ismet Islami</u></p> <p>What degree of endangerment must exist for innocent victims of abuse to support application of the public policy limitations on insurance contracts under Wis. Stat. § 631.95(2)(f)?</p> <p>Whether the Wisconsin Marital Property Act, Wis. Stat. § 766.01(7) and (8), which provides that a judgment of legal separation effectuates "dissolution" of marriage as a matter of law, applies to property insurance.</p> <p>Whether the public policy of the state of Wisconsin prohibits a property insurer from denying payment to an "innocent insured" victim of arson pursuant to the seminal supreme court decision in <u>Hedtcke v. Sentry Insurance Company</u>, 10 Wis. 2d 461, 326 N.W.2d 727, 739 (1992).</p> <p>Whether the language of the "intentional loss" clause in the subject policy, which specifically severs and preserves recovery rights under the policy to "innocent insureds," supersedes conflicting language of the "concealment or fraud" clause.</p> <p>Whether the wording of the "concealment or fraud" clause of the subject homeowner's policy is ambiguous, when viewed in isolation.</p> <p>Whether the superseding Wisconsin endorsement conditions E. and G. prohibit application of the "concealment or fraud" condition relied upon by the insurer to void coverage.</p>	<p>09/16/2020 REVW Affirmed 06/08/2021 2021 WI 53</p>	<p>2 Waukesha</p>	<p>06/24/2020 Pub. 2020 WI App 38 392 Wis. 2d 866 946 N.W.2d 231</p>
2019AP629	<p><u>Jama I. Jama v. Jason C. Gonzalez</u></p> <p>Is there an exception to the actual innocence rule that relieves criminal malpractice plaintiffs of establishing their innocence as to convictions on which they do not claim malpractice?</p> <p>If criminal malpractice plaintiffs need not establish their innocence as to all convictions, must they nevertheless establish their innocence as to all convictions transactionally related to the convictions on which they claim malpractice?</p> <p>If criminal malpractice plaintiffs need not, as a matter of law, establish their innocence as to any convictions, is the circuit court nevertheless allowed to determine, on a case-by-case basis, whether public policy considerations preclude imposing liability on the defendant, and did the circuit court correctly determine that public policy bars the claims at issue here?</p>	<p>03/24/2021 REVW Oral Arg 10/01/2021</p>	<p>4 Dane</p>	<p>01/27/2021 2021 WI App 3 395 Wis. 2d 655 954 N.W.2d 1</p>

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2019AP664-CR	<u>State v. Alan S. Johnson</u> Whether an alleged victim in a criminal case has standing under the 2020 Wisconsin Constitutional Amendment to lodge legal arguments in opposition to a defendant's motion for in camera review. Whether the 2020 Wisconsin Constitutional Amendment applies retroactively to an alleged victim's request for standing to lodge legal arguments in opposition to a pending motion for in camera review which was filed, and pertinent issue litigated, prior to the enactment of the amendment. Whether Wis. Stat. § 950.105, which provides in relevant part that, "[a] crime victim has a right to assert, in a court in the county in which the alleged violations occurred, his or her rights as a crime victim under the statutes or under article 1, section 9m of the Wisconsin Constitution," confers standing upon the alleged crime victim in this matter.	02/26/2021 REVW Oral Arg 09/29/2021	4 Waupaca	11/19/2020 Pub. 2020 WI App 73 394 Wis. 2d 807 951 N.W. 2d 616
2019AP691-CR 2019AP692-CR	<u>State v. Cesar Antonio Lira</u> Should the defendant's award of credit be reversed because, under the terms of Wis. Stat. § 973.155, the defendant's Oklahoma custody was not connected to the conduct for which he was sentenced in Wisconsin? Should <u>State v. Brown</u> , 2006 WI App 41, 289 Wis. 2d 823, 711 N.W.2d 708, be overruled because it misinterpreted the interplay between Wis. Stat. §§ 973.15(5) and 973.155? Should this award of credit to the defendant be vacated because it is contrary to Wis. Stat. § 973.155(1)(a) and case law interpreting the statute?	01/20/2021 REVW Oral Arg 09/27/2021	1 Milwaukee	Unpub.

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2019AP818	<u>Southwest Airlines Co. v. Wis. Dept. of Revenue</u> Did the Airline qualify for the Hub Facility Exemption for the 2013 Assessment Year when, in the prior year, the Airline operated and flew common carrier departing flights on each and every weekday; operated and flew at least 45 common carrier departing flights on all but six weekdays that were adversely impacted due to weather and holidays (or 97 percent of weekdays); and/or scheduled more than 45 common carrier departing flights on 98 percent of the weekdays? Did the Airline qualify for the Hub Facility Exemption for the 2014 Assessment Year when, in the prior year, the Airline scheduled and flew common carrier departing flights each and every weekday and scheduled an average of more than 46 common carrier departing flights on each weekday? Are the general property tax provisions at Wis. Stat. § 70.11(intro), which requires a newly-exempt taxpayer to file a form with the local assessor to request an exemption, and Wis. Stat. § 74.35, which purports to be the exclusive procedure to claim an exemption, inapplicable to an air carrier company that qualifies for the Hub Facility Exemption? In the absence of any other statutory-prescribed remedy, does Wis. Stat. § 76.075 provide the Airline with a procedure to request a refund when the statute allows the Department or a person subjected to tax under Chapter 76 to request an adjustment to the data submitted by the person at any time within four years? Did the Airline's filing of annual reports for the 2012 and/or 2013 Assessment Years during a transitional period in Southwest Airlines' acquisition of AirTran Airways constitute a mistake of fact that bars application of the voluntary payment doctrine to deny the Airline's claim for refund?	09/16/2020 REVW Affirmed 06/08/2021 2021 WI 54	4/1 Dane	Unpub.
2019AP882	<u>City of Mayville v. Dept. of Administration</u> Did DOA validly approve a Wis. Stat. § 66.0307 cooperative plan that changed the boundary between two municipalities by entirely eliminating it? Did Mayville have standing under ch. 227, Stats., to challenge DOA's approval of the plan? Whether DOA properly approved the cooperative plan boundary agreement between the Village of Kekoskee and the Town of Williamstown pursuant to Wis. Stat. § 66.0307. Whether Mayville had standing to challenge DOA's decision to approve the cooperative plan even though Mayville was neither a party to the cooperative plan nor a third party beneficiary of it.	12/17/2020 REVW Affirmed 06/11/2021 2021 WI 57	4 Dodge	10/29/2020 Pub. 2020 WI App 63 394 Wis. 2d 296 950 N.W.2d 925

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2019AP894	<u>Eau Claire County Department of Human Services v. S. E.</u> Whether as a matter of statutory construction the new, shorter timeframe begins with the initial CHIPS order, even if it predates the change in the statute and thus does not include notice of the shorter timeframe. Whether starting the shorter timeframe with a CHIPS order that predates the statutory change violates a parent's due process rights.	10/21/2020 REVW Affirmed 06/10/2021 2021 WI 56	3 Eau Claire	06/24/2020 Pub. 2020 WI App 39 392 Wis. 2d 726 946 N.W.2d 155
2019AP1033	<u>Sauk County v. S. A. M.</u> Whether respondent's appeal of his recommitment was moot because the commitment expired before respondent filed his notice of appeal. Whether Sauk County failed to meet its burden to prove by clear and convincing evidence that respondent was dangerous. Whether respondent was denied procedural due process because he did not receive particularized notice of the basis for his recommitment, including which of the standards of dangerousness was being alleged. Whether this court has the authority, through its "superintending and administrative authority over all courts" (Wis. Const. art. VII, § 3(1)) and/or its authority to "regulate pleading, practice, and procedure in judicial proceedings in all courts" (Wis. Stat. § 751.12(1)), to require the Court of Appeals to expedite the disposition of appeals under Wis. Stat. ch. 51, or in some other manner to ensure that appellants under Wis. Stat. ch. 51 receive an appeal that addresses the merits of the appellants' contentions?	02/24/2021 REVW Oral Arg 09/27/2021	4 Sauk	Unpub.
2019AP1200	<u>Kathy Schwab v. Paul Schwab</u> Does Wis. Stat. § 893.40 deprive the circuit court of its inherent and statutory contempt power under Wis. Stat. ch. 785 when one party brings a contempt action to enforce a vested property right, which was not obtainable until after 20 years from the entry of the judgment?	11/18/2020 REVW Reversed 06/22/2021 2021 WI 67	1 Milwaukee	06/24/2020 Pub. 2020 WI App 40 392 Wis. 2d 660 946 N.W.2d 241

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2019AP1206	<p><u>Daniel J. Hennessy, Jr. v. Wells Fargo Bank, N.A.</u></p> <p>Should Wisconsin modernize its approach to interpreting foreign countries' laws by adopting the federal and other states' approach of allowing judges to consult whatever resources they deem helpful and treating legal interpretation as a question of law?</p> <p>Did the circuit court correctly extend comity to a Mexican proceeding by entering a monetary judgment for no specific amount of money in the absence of a judgment for a definite sum of money by the Mexican court?</p> <p>Where it is undisputed that the Wisconsin contracts were governed by Wisconsin law and that the Mexican courts did not consider Wisconsin law, did the circuit court err in concluding that the Mexican judgment intended, <u>sub silentio</u>, to find liability under the Wisconsin Contracts?</p>	<p>02/24/2021 REVW Oral Arg 10/04/2021</p>	<p>1 Milwaukee</p>	<p>10/29/2020 Pub. 2020 WI App 64 394 Wis. 2d 357 950 N.W.2d 877</p>
2019AP1272-CR	<p><u>State v. Jordan Alexander Lickes</u></p> <p>Does the expungement statute's requirement that a probationer have "satisfied the conditions of probation" also mean that the probationer must perfectly comply at all times with each and every rule of probation set by the probation agent?</p> <p>When a circuit court chooses to hold a hearing and exercise discretion to determine whether a probationer who violated a rule set by his agent has nevertheless "satisfied the conditions of probation" so as to qualify for expungement, should the appellate court review the circuit court's decision for an erroneous exercise of discretion?</p> <p>When a circuit court makes factual findings concerning whether a probationer violated a condition of probation rendering him ineligible for expungement, must the appellate court uphold the finding in the absence of clear error?</p>	<p>11/18/2020 REVW Affirmed 06/15/2021 2021 WI 60</p>	<p>4 Green</p>	<p>09/30/2020 Pub. 2020 WI App 59 394 Wis. 2d 161 949 N.W.2d 623</p>
2019AP1317	<p><u>State v. Daniel J. Van Linn</u></p> <p>After the defendant was arrested on suspicion of drunk driving, a sheriff's deputy ordered his blood drawn for testing. The circuit court found the draw illegal and excluded its evidence as fruit of the poisonous tree. After the suppression decision, the prosecutor applied for a subpoena to the hospital where the defendant had been treated; the application included the results of the first, suppressed blood test. The court issued the subpoena and the hospital turned over evidence including the results of the blood alcohol test it had conducted. Was the State's decision to seek this subpoena the fruit of its earlier, unlawful search, such that its results should have been suppressed?</p>	<p>04/27/2021 REVW Oral Arg 10/27/2021</p>	<p>3 Oconto</p>	<p>Unpub.</p>

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2019AP1320	<u>Elliot Brey v. State Farm Mutual Automobile Ins. Co.</u> Does the definition of "underinsured motorist coverage" in Wis. Stat. § 632.32(2)(d) void underinsured motorist (UIM) insurance policy provisions requiring that an insured sustain a bodily injury in order for UIM benefits to be collectable, thereby overruling the prior Court of Appeals decision in <u>Ledman v. State Farm Mut. Auto Ins. Co.</u> , 230 Wis. 2d 56, 601 N.W.2d 312 (Ct. App. 1999)?	02/24/2021 REVW Oral Arg 09/15/2021	4 Monroe	07/29/2020 Pub. 2020 WI App 45 393 Wis. 2d 574 947 N.W.2d 205
2019AP1365	<u>Danelle Duncan v. Asset Recovery Specialists, Inc.</u> Was the repossession of plaintiff's vehicle from the ground floor, open door, multivehicle parking garage and separate parking space proper under Wis. Stat. § 425.206(2)(b), based on the circuit court's determination that the parking garage was not a "dwelling used by [the plaintiff] as a residence?" Was the dismissal of plaintiff's Wis. Stat. § 425.107 "Unconscionable Behavior" claim on summary judgment by the circuit court proper? Whether a plaintiff may bring an affirmative claim under Wis. Stat. § 425.107, or whether that section is limited to being raised only defensively in response to a suit by a merchant or creditor?	01/25/2021 REVW Oral Arg 09/15/2021	4 Dane	08/31/2020 Pub. 2020 WI App 54 393 Wis. 2d 814 948 N.W.2d 419
2019AP1404-CR	<u>State v. George Steven Burch</u> Would a reasonable person consider the scope of consent to search a cell phone to be limited by the person's discussion with law enforcement, or would a reasonable person properly consider a subsequent discussion about police extracting information from the cell phone as showing the person had consented to police searching the phone in its entirety? May a reasonable person consider the broad scope of the consent form signed by a defendant despite the officer's initial request to review only the text messages on the phone? After police downloaded information from the cell phone, what portion of Burch's data could it lawfully retain? If the police department was permitted to retain some or all of the downloaded material, how long could it do so? Did the status of the original investigation that produced the download affect the ability of police to lawfully retain the downloaded material? Did the police have any obligation to return the downloaded material to Burch, and if so, when?	11/18/2020 CERT Affirmed 06/29/2021 2021 WI 68	3 Brown	--
2019AP1479	<u>City of Waukesha v. City of Waukesha Board of Review</u> May a municipality seek certiorari review of a decision of its Board of Review?	03/24/2021 REVW Oral Arg 10/27/2021	2 Waukesha	12/23/2020 Pub. 2020 WI App 77 395 Wis. 2d 239 952 N.W.2d 806

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2019AP1565-CR	<u>State v. Ryan Hugh Mulhern</u> Must the rape shield statute bar relevant evidence of the victim's lack of sexual conduct that the victim offers to corroborate her claim of sexual assault, that is not prejudicial to her or to the defendant, and that causes none of the harms that the statute protects against? Assuming that the rape shield law barred a victim's elicited statement, is the error harmless, given that the admitted evidence was relevant, non-prejudicial, and admitted in violation of a statute designed to protect victims?	01/20/2021 REVW	3 Pierce	Unpub.
2019AP1618	<u>Nudo Holdings, LLC v. Board of Review for the City of Kenosha</u> Was the respondent's decision in affirming the property tax assessment for petitioner's land, classifying it as residential land instead of agricultural land, according to the law? Was the respondent's decision supported by sufficient evidence?	03/24/2021 REVW	2 Kenosha	12/23/2020 Pub. 2020 WI App 78 395 Wis. 2d 261 952 N.W.2d 816
2019AP1671	<u>Cree, Inc. v. LIRC</u> Whether the respondent erred in its interpretation and application of the Wisconsin Fair Employment Act's ("WFEA") substantial relationship test when it found that there was not a substantial relationship between an applicant for employment's multiple convictions for assaulting and battering women and the employment he sought at an employer, through which he would have regular, unsupervised interaction with women. Whether the respondent erred in disregarding the testimony of the applicant's fact and expert witnesses concerning the nature of the position to which he applied and the substantial relationship between his numerous domestic violence convictions and the potential for violence against those with whom he would interact if employed with this employer.	03/24/2021 REVW Oral Arg 10/15/2021	2 Racine	01/27/2021 Pub. 2021 WI App 4 395 Wis. 2d 642 953 N.W.2 883
*2019AP1832-CR	<u>State v. Christopher W. Yakich</u> When a defendant has been found guilty by reason of mental disease or defect in two separate cases and is subject to two separate commitment orders, does the circuit court have authority to run the terms of commitment consecutive to one another?	06/16/2021 REVW	4 Waupaca	Unpub.
2019AP1918	<u>Cheyne Monroe v. Chad Chase</u> Whether a malicious prosecution defendant's unilateral voluntary dismissal of a prior proceeding can ever satisfy the third element of a malicious prosecution claim—that the prior proceeding terminated in the malicious prosecution plaintiff's favor.	10/21/2020 CERT Reversed; remanded 06/22/2021 2021 WI 66	4 Dane	--

NOTE: 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.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2019AP1983-CR	<u>State v. Jacob Richard Beyer</u> Whether the guilty-plea-waiver rule applies when a defendant pleads not guilty to an offense, but stipulates to the inculpatory facts supporting each element of the offense, and explicitly agrees to a finding of guilt at a hearing before the circuit court at which no witness testifies.	11/18/2020 CERT Reversed; remanded 06/15/2021 2021 WI 59	4 Dane	--
2019AP2034	<u>Andrea Townsend v. ChartSwap, LLC</u> Whether Wis. Stat. § 146.83(3f)(b), which limits the amount that a "health care provider" may charge for providing copies of patient health records, applies to entities that are not "health care providers". Whether, under Wis. Stat. § 990.001(9), an agent is directly liable for any conduct that violates any statutory requirement applicable to the principal.	02/24/2021 REVW Oral Arg 09/29/2021	1 Milwaukee	12/23/2020 Pub. 2020 WI App 79 395 Wis. 2d 229 952 N.W.2d 831
2019AP2090	<u>Claudia B. Bauer v. Wisconsin Energy Corporation</u> Has Wisconsin law on prescriptive easements eliminated entirely the longstanding common law requirement that a property owner have notice of a utility company's use of their land, in order for the utility company to lawfully acquire a prescriptive easement? Can the continuous use requirement of Wis. Stat. § 893.28(2) be satisfied as a matter of law when a public utility substantially modifies its initial use of another's property? Are the constitutional rights of a private landowner violated if a public utility company can exercise its prescriptive easement rights without providing any notice whatsoever to the property owner, and in doing so, avoid having to use its condemnation powers?	05/19/2021 REVW	2 Walworth	--
2019AP2205	<u>Loren Imhoff Homebuilder, Inc. v. Lisa Taylor</u> Did Petitioners sufficiently assert an objection to the arbitrator on a single arbitrator panel sleeping through major portions of the arbitration hearing by objecting to such sleeping multiple times between the close of evidence and the issuance of the arbitration decision and award? Whether the doctrine of forfeiture applies in arbitration proceedings and, if so, whether it should be applied in this case?	04/22/2021 REVW Oral Arg 10/04/2021	4 Dane	12/23/2020 Pub. 2020 WI App 80 395 Wis. 2d 178 953 N.W.2d 353

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*2020AP29-CR	<u>State v. Westley D. Whitaker</u> Does it violate the First and Fourteenth Amendments and Article I Section 18 of the Wisconsin Constitution to consider a defendant's religious identity and impose a sentence intended to deter crime solely within his religious community? If a sentencing court may consider a defendant's religious association to deter other members of a religious community does the "reliable nexus" test in <u>State v. Fuerst</u> 181 Wis. 2d 903, 512 N.W.2d 243 (1994) and <u>State v. J.E.B.</u> 161 Wis. 2d 655, 469 N.W.2d 192 (1991) require congruity between the offense and the activity protected by the First Amendment? Does the sentencing factor/ objective of "protection of the public" include permitting the sentencing court to increase the sentence imposed on the defendant to send a message to an identified set of third parties that they should alter their behavior in the future, apart from generally being deterred from committing offenses like those committed by the defendant?	06/16/2021 REVW	4 Vernon	03/31/2021 Pub. 2021 WI App 17 396 Wis. 2d 557 957 N.W.2d 561
2020AP202	<u>Estate of Anne Oros v. Divine Savior Healthcare Inc.</u> Is a lawsuit against the respondent, a defined Wisconsin Chapter 655 provider and its affiliate healthcare providers subject to Chapter 655? Is a Community Based Residential Facility (CBRF) that is a d/b/a of the respondent, an affiliate entity "whose operations are combined as a single entity with a hospital" pursuant to Chapter 655.002, such that the respondent is entitled to the protections of Wisconsin Chapter 655?	04/27/2021 REVW	4 Columbia	01/27/2021 Pub. 2021 WI App 8 395 Wis. 2d 676 953 N.W.2d 914
*2020AP298-CR	<u>State v. Joseph G. Green</u> Did the circuit court have authority to order tolling of the 12-month statutory time limit for bringing an incompetent criminal defendant to trial competency?	06/16/2021 REVW	4 Dane	03/31/2021 Pub. 2021 WI App 18 396 Wis. 2d 658 957 N.W.2d 583
2020AP370	<u>Waukesha County v. E.J.W.</u> When a final hearing is adjourned for good cause to facilitate the appointment of new counsel, is the deadline to file a jury demand reset to 48 hours in advance of the new time set for the hearing under Wis. Stat. § 51.20(11)?	02/24/2021 REVW Oral Arg 09/09/2021	2 Waukesha	Unpub.
2020AP520	<u>Friendly Village Nursing and Rehab, LLC v. DWD and LIRC</u> Whether the LIRC reasonably concluded that the petitioner's filing of an application for unemployment account successorship was both untimely and not permitted due to excusable neglect. Whether the LIRC should have considered the interests of justice in determining whether the petitioner's application was untimely as a result of excusable neglect.	04/26/2021 REVW Oral Arg 10/25/2021	3 Oneida	01/27/2021 Pub. 2021 WI App 9 395 Wis. 2d 701 954 N.W.2d 392

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2020AP616-CR	<u>State v. Anthony M. Schmidt</u> Does Wis. Stat. § 973.042(1) (the child pornography surcharge statutes) permit the circuit court to impose a child pornography surcharge for an offense that is "read in" for sentencing purposes? Is the child pornography surcharge a punishment that must be explained during a plea colloquy? If so, was the defendant entitled to a hearing on his claim that the plea colloquy was deficient in this case?	12/28/2020 BYPA Affirmed 06/18/2021 2021 WI 65	2 Walworth	--
*2020AP704	<u>Daniel Doubek v. Joshua Kaul</u> Are <u>Evans v. DOJ</u> , 2014 WI App 31, 353 Wis. 2d 289, 844 N.W.2d 403, and <u>Leonard v. State</u> , 2015 WI App 57, 364 Wis. 2d 491, 868 N.W.2d 186, "good law" in light of the United States Supreme Court's decision in <u>United States v. Castleman</u> , 572 U.S. 157 (2014)?	06/16/2021 CERT	3 Brown	--
2020AP878-CR	<u>State v. Avan Rondell Nimmer</u> Does law enforcement, within a minute of receiving a ShotSpotter report of shots fired at a residential address, have reasonable suspicion to stop the only person outside the address, where the person reacts to the police by grabbing at his waistband, angling one side of his body away from police, and speeding his pace away from the officers?	03/24/2021 REVW Oral Arg 10/25/2021	1 Milwaukee	Unpub.
2020AP940	<u>Brown County v. Brown County Taxpayers Association</u> Does the sales and use tax the county enacted in 2017 and implemented as part of its 2018 budget process "directly reduce the property tax levy," as required by Wis. Stat. § 77.70 (2015-16), if the proceeds are designated to fund new capital projects that collectively would otherwise exceed the levy limits established by Wis. Stat. § 66.0602, but the county could otherwise fund the projects by borrowing?	04/22/2021 CERT	3 Brown	--
2020AP1058-CR	<u>State v. Teresa L. Clark</u> Does the burden shift to the State when a defendant collaterally attacking a prior conviction does not point to evidence that shows that the circuit court failed to inform her of the right to counsel but merely alleges that the court failed to do so? Did the defendant prove that her right to counsel was violated in her prior cases?	04/27/2021 BYPA Oral Arg 10/15/2021	3 Ashland	--
*2020AP1271-AC	<u>James Sewell v. Racine Unified School District Board of Canvassers</u> Does Wis. Stat. § 7.54 vest in challenging parties the right to review in open court ballots they assert were miscounted such that an incorrect election outcome will be sustained unless the errors alleged by the challengers are corrected by the circuit?	06/16/2021 REVW	2 Racine	--

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2020AP1419-OA (consolidated with 2020AP1420-OA and 2020AP1446- OA)	<u>Sara Lindsey James v. Janel Heinrich</u> Whether the School-Closure Order exceeds the Dane County health officer's statutory authority under Wis. Stat. § 252.03. Whether the School-Closure Order violates the petitioners' fundamental right to the free exercise of religion under Article I, § 18 of the Wisconsin Constitution. Whether the School-Closure Order violates the petitioners' fundamental right to direct the education and upbringing of their children under Article I, §1 of the Wisconsin Constitution. Whether indefinitely closing all public and private schools in Dane County to in-person student instruction for grades 3 through 12 is "reasonable and necessary for the prevention and suppression" of COVID-19 and/or "necessary to prevent, suppress and control" COVID-19.	09/10/2020 ORIG Rights declared; order vacated 06/11/2021 2021 WI 58	4 Dane	--
2020AP1420-OA (consolidated with 2020AP1419-OA and 2020AP1446- OA)	<u>WCRIS v. Janel Heinrich</u> Whether the School-Closure Order exceeds the Dane County health officer's statutory authority under Wis. Stat. § 252.03. Whether the School-Closure Order violates the petitioners' fundamental right to the free exercise of religion under Article I, § 18 of the Wisconsin Constitution. Whether the School-Closure Order violates the petitioners' fundamental right to direct the education and upbringing of their children under Article I, §1 of the Wisconsin Constitution. Whether indefinitely closing all public and private schools in Dane County to in-person student instruction for grades 3 through 12 is "reasonable and necessary for the prevention and suppression" of COVID-19 and/or "necessary to prevent, suppress and control" COVID-19.	09/10/2020 ORIG Rights declared; order vacated 06/11/2021 2021 WI 58	4 Dane	--
2020AP1446-OA (consolidated with 2020AP1419-OA and 2020AP1420- OA)	<u>St. Ambrose Academy, Inc. v. Joseph T. Parisi</u> Whether the School-Closure Order exceeds the Dane County health officer's statutory authority under Wis. Stat. § 252.03. Whether the School-Closure Order violates the petitioners' fundamental right to the free exercise of religion under Article I, § 18 of the Wisconsin Constitution. Whether the School-Closure Order violates the petitioners' fundamental right to direct the education and upbringing of their children under Article I, §1 of the Wisconsin Constitution. Whether indefinitely closing all public and private schools in Dane County to in-person student instruction for grades 3 through 12 is "reasonable and necessary for the prevention and suppression" of COVID-19 and/or "necessary to prevent, suppress and control" COVID-19.	09/10/2020 ORIG Rights declared; order vacated 06/11/2021 2021 WI 58	4 Dane	--

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2021AP265-CQ	<u>St. Augustine School v. Carolyn Stanford Taylor</u>	02/17/2021 CERQ Certified question answered; remanded 07/02/2021 2021 WI 70	U.S. Court of Appeals, 7 th Circ.	--
	<p>For purposes of determining whether two or more schools are "private schools affiliated with the same religious denomination" for purposes of Wis. Stat. 121.51, must the state superintendent rely exclusively on neutral criteria such as ownership, control, and articles of incorporation, or may the superintendent also take into account the school's self-identification in sources such as its website or filings with the state.</p> <p>The Free Exercise Clause and the Establishment Clause of the First Amendment may bear upon our interpretation of Wis. Stat. § 121.51 and its inclusion of "private schools affiliated with the same religious denomination." In meeting the query of the certified question, should we revisit this court's decisions in <u>State ex rel. Vanko v. Kahl</u>, 52 Wis. 2d 206, 188 N.W.2d 210 (1971) and <u>Holy Trinity Community School, Inc. v. Kahl</u>, 82 Wis. 2d 139, 262 N.W.2d 210 (1978).</p>			

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