

August 17, 2022

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- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.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 **August 17, 2022**. 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
2018AP942-CR	<u>State v. Robert Daris Spencer</u> Was the court of appeals correct that the trial court's assumed unconstitutional ex parte communication with, and dismissal of, the only African-American on the defendant's jury, was subject to harmless error analysis; and, if so, was the court of appeals correct that the dismissal of the juror constituted harmless error? Did the trial court violate the defendant's constitutional rights and/or erroneously exercise its discretion when it considered the race of the defendant and of trial participants when justifying the juror's dismissal? If Defendant-Appellant-Petitioner's right to counsel was denied at a critical state, was that error harmless? Did the circuit court's decision dismissing the sick juror violate Defendant-Appellant-Petitioner's rights to due process and equal protection, or constitute an erroneous exercise of discretion?	08/13/2021 REVW Affirmed in part, reversed in part 07/06/2022 2022 WI 56	1 Milwaukee	Unpub.
2018AP2005-CR	<u>State v. Garland Dean Barnes</u> Can a defendant "open the door" to testimonial hearsay violating his confrontation rights, and which was excluded based on an "egregious" discovery violation, by challenging the quality of the police investigation? Can the claim that a non-testifying officer witnessed the defendant commit the crime be admitted over hearsay objections under the theory that it is admissible to show the course of investigation, not for the truth of the matter asserted?	04/15/2022 REVW Oral Arg 10/03/2022	3 Douglas	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 Affirmed 07/07/2022 2022 WI 60	3 Shawano	02/24/2021 Pub. 2021 WI App 11 396 Wis. 2d 105 955 N.W.2d 443

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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 Reversed 07/06/2022 2022 WI 57	2 Waukesha	11/29/2020 Pub. 2020 WI App 61 394 Wis. 2d 387 950 N.W.2d 831
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 Reversed 06/30/2022 2022 WI 52	2 Sheboygan	Unpub.
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

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2019AP1033	<p><u>Sauk County v. S. A. M.</u></p> <p>Whether respondent's appeal of his recommitment was moot because the commitment expired before respondent filed his notice of appeal.</p> <p>Whether Sauk County failed to meet its burden to prove by clear and convincing evidence that respondent was dangerous.</p> <p>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.</p> <p>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?</p>	<p>02/24/2021 REVW Reversed 06/23/2022 2022 WI 46</p>	<p>4 Sauk</p>	<p>Unpub.</p>

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2019AP1085 2019AP1086	<p><u>5 Walworth, LLC v. Engerman Contracting, Inc.</u></p> <p>Whether there must be damage to third-property for there to be "property damage" caused by an "occurrence" under a standard Commercial General Liability ("CGL") insurance policy.</p> <p>Whether the integrated-systems test analysis applies to insurance coverage disputes to aid in the determination of whether there was "property damage" caused by an "occurrence."</p> <p>When a plaintiff's claims exclusively seek the cost of removing and replacing an improperly constructed product, and allege no damage to property other than to that product itself, has there been an "occurrence" such that a standard Commercial General Liability ("CGL") insurance policy must provide coverage?</p> <p>Does the integrated-systems test apply in construction related insurance coverage cases to help determine whether "property damages" were the result of an "occurrence"?</p> <p>Is an insurer entitled to summary judgment declaring it has no coverage obligations when its policy commenced roughly a year after a contractor had received notices of damages, had attempted to repair damages, and was aware of claims of ongoing damages at a pool complex, when its policy does not extend to losses which have occurred, or which have begun to occur, prior to its term?</p> <p>Does the plaintiff's claim that it bought a defective pool complex that needed to be replaced constitute "property damage" caused by an "occurrence" within the meaning of the commercial general liability policy issued by the insurer to a construction company?</p> <p>Is the pool complex an "integrated system" such that damage by one component to another component is not "property damage" caused by an "occurrence"?</p> <p>Do the policy's business risk exclusions, specifically the "your product" exclusion, eliminate coverage under the insurer's policy?</p>	<p>01/11/2022 REVW Oral Arg 09/12/2022</p>	<p>2 Walworth</p>	<p>08/25/2021 Pub. 2021 WI App 51 399 Wis.2d 240 963 N.W.2d 779</p>

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2019AP1319	<u>Milwaukee Police Supervisors Organization v. City of Milwaukee</u> Does the 2013-2016 Collective Bargaining Agreement between the Milwaukee Professional Firefighters' Local 215 and the City of Milwaukee, the City of Milwaukee's Charter, and the parties' past practice require the City of Milwaukee Employees' Retirement System to include the 5.8% wage increase in its calculation of duty disability retirement ("DDR") benefits? Does the 2013-2016 Collective Bargaining Agreement between the Milwaukee Policy Supervisors Organization and the City of Milwaukee, the City of Milwaukee's Charter, and the parties' past practice require the City of Milwaukee Employees' Retirement System to include the 5.8% wage increase in its calculation of DDR benefits? Does the court of appeals' decision comply with precedent regarding the interpretation of pension laws, in this case Milwaukee City Charter § 36?	05/18/2022 REVW Oral Arg 10/12/2022	1 Milwaukee	Unpub.
2019AP1728 (consolidated with 2019AP2063)	<u>Marilyn Casanova v. Michael S. Polsky, Esq.</u> May an undocumented, unrecorded lien—created by judicial fiat—have priority over a Trustee's perfected first mortgage and security interest? Did the Court of Appeals (and, by extension, this Court) lack jurisdiction over these appeals by virtue of the failure to appeal from a final order? Did the Bondholders agree that their right to re-payment is subject to the Residents first receiving reimbursement of their entrance fees? Do the appellate courts have jurisdiction over the present case?	10/18/2021 REVW Oral Arg 09/09/2022	2 Racine	Unpub.
2019AP1987	<u>Lowe's Home Centers, LLC v. City of Delavan</u> Can the fee simple market value of a retail property be determined under the Markarian Hierarchy based on sales of reasonably comparable properties (Tier II) that are "vacant" (i.e., not occupied by a retail business at the time of sale), but do not constitute sales under duress or distressed sales, or are all sales of properties which are merely vacant at the time of sale per se disqualified as "dark stores"? When does a "presumption of correctness" attach to a property assessment as a threshold matter, and what responsibility does a statutory assessor bear in a tax assessment challenge to demonstrate or otherwise evidence that an assessment was determined in accordance with Wisconsin law?	01/11/2022 REVW Oral Arg 09/28/2022	2 Walworth	--

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2019AP2063 (consolidated with 2019AP1728)	<u>Marilyn Casanova v. Michael S. Polsky, Esq.</u> May an undocumented, unrecorded lien—created by judicial fiat—have priority over a Trustee's perfected first mortgage and security interest? Did the Court of Appeals (and, by extension, this Court) lack jurisdiction over these appeals by virtue of the failure to appeal from a final order? Did the Bondholders agree that their right to re-payment is subject to the Residents first receiving reimbursement of their entrance fees? Do the appellate courts have jurisdiction over the present case?	10/18/2021 REVW Oral Arg 09/09/2022	2 Racine	Unpub.
2019AP2065-CR	<u>State v. Richard Michael Arrington</u> Did the defendant prove that his counsel was ineffective for failing to move to suppress the CI's recordings and testimony on Sixth Amendment grounds? Did the defendant prove that the State violated his Sixth Amendment right to counsel?	09/14/2021 REVW Reversed 07/01/2022 2022 WI 53	3 Brown	05/26/2021 Pub. 2021 WI App 32 398 Wis. 2d 198 960 N.W.2d 459
2019AP2184-CR	<u>State v. Jeffrey L. Moeser</u> Whether the 'Oath' requirement under the Fourth Amendment of the US Constitution and Article 1, Section 11 of the Wisconsin Constitution require a police officer to swear an oath to the truthfulness of an affidavit used to obtain a search warrant to conduct an evidentiary blood draw in a criminal OWI matter.	11/17/2021 REVW Oral Arg 09/06/2022	4 Portage	Unpub.
2019AP2383-CR	<u>State v. Daimon Von Jackson, Jr.</u> Is a defendant prejudiced when trial counsel does not communicate with the defendant in advance of a homicide trial? Should a defendant be allowed to obtain new counsel when that defendant's counsel is deficient?	03/15/2022 REVW	2 Racine	Unpub.

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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 Affirmed 07/05/2022 2022 WI 54	4 Vernon	03/31/2021 Pub. 2021 WI App 17 396 Wis. 2d 557 957 N.W.2d 561
2020AP32-CR	<u>State v. Oscar C. Thomas</u> Whether the appellate court misapplied the standard in determining that admission of DNA evidence in violation of a defendant's right of Confrontation was harmless. Whether the appellate court erred in determining that a defendant's confession was corroborated by a significant fact.	01/11/2022 REVW Oral Arg 09/28/2022	2 Kenosha	08/25/2021 Pub. 2021 WI App 55 399 Wis. 2d 277 963 N.W.2d 887
2020AP128	<u>Robert L. Slamka v. General Heating and Air Conditioning</u> Is the Right to Work Act in the State of Wisconsin pre-empted by Federal Law depriving the Wisconsin Employment Relations Commission of jurisdiction to hear and determine cases under the Right to Work Act § 111.06(l)(a) and § 111.04(3)(a) Wis. Stats.? Does Article I, Section 9 of the Wisconsin Constitution provide a remedy before the Wisconsin Employment Relations Commission under the Right to Work Act § 111.04(3)(a) Wis. Stats.?	09/14/2021 REVW Oral Arg 09/09/2022	4 Dane	Unpub.

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2020AP189	<u>ACUITY v. Estate of Michael Shimeta</u> Whether an insurer providing underinsured motorist ("UIM") coverage in a "predetermined, fixed sum," which does nothing more than put those insured under the UIM policy in the same position they would have occupied had the tortfeasor's liability limits been the same as the UIM limits purchased, may reduce the benefits payable to those afforded coverage under the same UIM policy by all sums paid on behalf of any person that may be legally responsible for a motor vehicle accident. Whether Wis. Stat. § 632.32(5)(i) permits an insurer issuing a UIM policy to reduce its per accident limit by any amounts paid on behalf of any person that may be legally liable for a motor vehicle accident to those insured under the same UIM policy to achieve the "predetermined, fixed sum" purchased.	01/11/2022 REVW Oral Arg 09/30/2022	1 Milwaukee	09/29/2021 Pub. 2021 WI App 64 399 Wis. 2d 375 965 N.W.2d 78
2020AP192-CR	<u>State v. Chrystul D. Kizer</u> Does the defense set forth in section 939.46(1m)—for crimes committed as a "direct result" of trafficking—provide a complete defense to a charge of first-degree intentional homicide?	09/14/2021 REVW Affirmed 07/06/2022 2022 WI 58	2 Kenosha	07/28/2021 Pub. 2021 WI App 46 398 Wis. 2d 697 963 N.W.2d 136
2020AP225	<u>Louis Pagoudis v. Marcus Keidl</u> Whether a seller of residential real estate can be held liable in perpetuity to a subsequent third-party purchaser or transferee for alleged misrepresentations in a Real Estate Condition Report issued on a s part of an earlier home sale. Whether an owner of residential real estate who transfers the property to a third party can recover for damages not incurred by the owner before transfer. Whether Limited Liability Companies (LLCs) are treated as separate legal entities even if they are owned by the same person.	11/17/2021 REVW Oral Arg 09/09/2022	2 Washington	08/25/2021 Pub. 2021 WI App 56 399 Wis. 2d 75 963 N.W.2d 803

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2020AP226-CR	<u>State v. Jeffrey L. Hineman</u> In cases involving credibility contests between a complaining witness and the defendant, to what extent can a reviewing court reweigh the witnesses' credibility in assessing whether, based on omitted evidence, there was a reasonable likelihood of a different result under the <u>Brady</u> materiality (<u>Brady v. Maryland</u> , 373 U.S. 83 (1963)) or <u>Strickland</u> prejudice standards (<u>Strickland v. Washington</u> , 466 U.S. 668 (1984))? Did the court of appeals have authority to reach an abandoned <u>Shiffra/Green</u> (<u>State v. Shiffra</u> , 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993), <u>State v. Green</u> , 2002 WI 68, 253 Wis. 2d 356, 646 N.W.2d 298) issue, which the defendant did not raise as a direct claim on appeal, and did it have authority to reverse the postconviction court's ruling on a basis that the defendant did not advance? Was the fact that the victim's therapist made a mandatory report, without more, enough to satisfy the <u>Green</u> pleading standard permitting in camera review of the victim's therapy files "related to the report"?	04/13/2022 REVW	2 Racine	Unpub.
2020AP307	<u>Gregory M. Backus v. Waukesha County</u> In light of the decision in <u>118th St. Kenosha, LLC v. DOT</u> , 2014 WI 125, 359 Wis. 2d 30, 856 N.W.2d 486, is a temporary limited easement compensable under Wis. Stat. § 32.09(6g) (2019-20)?	09/14/2021 CERT Reversed, remanded 07/05/2022 2022 WI 55	2 Waukesha	--
2020AP485	<u>Wisconsin Property Tax Consultants, Inc. v. Wisconsin Department of Revenue</u> In concluding that the Tax Appeals Commission had jurisdiction to entertain a declaratory judgment action asserting the Department of Revenue failed to comply with the rule promulgation requirements of Chapter 227 when it denied the exemption enacting in Wis. Stat. § 70.111(27) to all manufacturers, did the circuit court improperly rely on the primary jurisdiction doctrine to dismiss the declaratory judgment action under Wis. Stat. § 227.40?	10/18/2021 REVW Reversed, remanded 06/30/2022 2022 WI 51	2 Ozaukee	07/28/2021 Pub. 2021 WI App 47 398 Wis.2d 654 963 N.W.2d 103

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2020AP806	<u>Allsop Venture Partners III v. Murphy Desmond SC</u> When is evidence of a settlement between plaintiff and co-defendant joint tortfeasors admissible under Wis. Stat. § 904.08? Are allegations in a prior, unverified and superseded complaint admissible as admissions of a party opponent if the prior allegations are not inconsistent with the operative complaint? Is a negligent tortfeasor entitled to indemnity from an intentional tortfeasor without proof of any connection between the intentional wrongdoing and subsequent negligence? Do certain comments made in defense counsel's closing argument require a new trial?	05/18/2022 REVW Oral Arg 10/17/2022	4 Dane	Unpub.
2020AP877	<u>Rachel Slabey v. Dunn County</u> Are the county and the county defendants liable under 42 U.S.C. § 1983 for their failure to address credible allegations that an employee was likely to cross a line sexually or romantically with female county jail inmates? Are the county and the county defendants liable under § 1983 for their failure to protect the plaintiff from a single sexual assault in light of the constitutional risk of being sexually assaulted, particularly in light of allegations that its employee was likely to engage in inappropriate sexual conduct?	01/11/2022 REVW Oral Arg 10/10/2022 (in Waupaca County Courthouse, Justice on Wheels program)	3 Dunn	Unpub.

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2020AP925	<u>James Cobb v. Gary A. King</u> Did the Circuit Court misconstrue Wis. Stat. § 706.10(3), which provides: In conveyances of lands words of inheritance shall not be necessary to create or convey a fee, and every conveyance shall pass all the estate or interest of the grantor unless a different intent shall appear expressly or by necessary implication in the terms of such conveyance . . . when it concluded that an easement, which mentioned only the grantees and no one else, nonetheless ran with the land by virtue of the statute? Did the passage in the same statute that provided, “In conveyances of land words of inheritance shall not be necessary to create or convey a . . .” apply to easements, when cases hold that easements involve a limited right to use another’s property but do not involve a fee interest in the land and when Wis. Stat. § 700.02(1) defines fee interests in real property but does not include easements. Did the passage in the statute that “every conveyance shall pass all the estate or interest of the grantor unless a different intent shall appear expressly or by necessary implication in the terms of such conveyance” mean that the easement ran with the land, when nothing in the easement’s terms indicated that was the case; in other words, did the terms of the statute supersede the terms of the easement?	09/14/2021 REVW Dismissed 07/06/2022 2022 WI 59	3 Oconto	Unpub.
2020AP1014-CR	<u>State v. Christopher D. Wilson</u> Did the police have implicit license to enter the backyard of defendant’s home through a gated privacy fence?	11/17/2021 REVW Oral Arg 09/12/2022	1 Milwaukee	Unpub.
2020AP1032	<u>John Doe 1 v. Madison Metro School District</u> May plaintiffs in Wisconsin courts sue using pseudonyms in appropriate cases, and if so, when and how? Did the lower courts erroneously deny Petitioners’ anonymity request? Whether the lower court erred by declining to enjoin an alleged violation of constitutional rights without considering Petitioner’s likelihood of success or properly weighing the serious harms Petitioners identified?	01/11/2022 REVW Affirmed, remanded 07/08/2022 2022 WI 65	4 Dane	08/25/2021 Pub. 2021 WI App 60 399 Wis. 2d 102 963 N.W.2d 823

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2020AP1078-FT	<u>Secura Supreme Insurance Company v. The Estate of Daniel Keith Huck</u> Whether the statutorily approved phrase "all sums...[p]aid or payable because of the bodily injury under...[w]orker's compensation law" in an underinsured motorist ("UIM") insurance policy's reducing clause necessarily permits the reduction for all amounts paid, including those amounts that the employer/worker's compensation insurer initially paid, but then recovered through a third-party action pursuant to Wis. Stat. § 102.29.	04/13/2022 REVW	2 Racine	10/27/2021 Pub. 2021 WI App 69 399 Wis. 2d 542 966 N.W.2d 124
2020AP1124	<u>Matthew W. Murphy v. Columbus McKinnon Corporation</u> Did the Wisconsin State legislature ("Legislature") eliminate application of the consumer-contemplation standard for design defect claims when it enacted Wis. Stat. § 895.047? If the Legislature did not eliminate application of the consumer-contemplation test, can a product, as a matter of law, be "unreasonable dangerous" where the risk was undisputedly obvious and foreseeable? In a products liability design defect case, can a factfinder reasonably base its verdict on ipse dixit expert testimony that is: (i) not based on testing despite the expert's ability to test, or; (ii) reliant on the circular inference that the accident itself is evidence of a design defect?	11/17/2021 REVW Oral Arg 09/12/2022	4 Sauk	08/25/2021 Pub. 2021 WI App 61 399 Wis. 2d 18 963 N.W.2d 867
2020AP1213-CR	<u>State v. Corey T. Rector</u> Whether the plain meaning of "separate occasions" in the sex-offender-registration statute means that the two convictions must have occurred at <u>different</u> times in two <u>separate proceedings</u> so that the qualifying convictions occurred sometime before a defendant is convicted in the current case. Stated otherwise, can the qualifying convictions occur simultaneously, as they did in this case, and as <u>State v. Wittrock</u> , 119 Wis. 2d 664, 350 N.W.2d 647 (1984) and <u>State v. Hopkins</u> , 168 Wis. 2d 802, 484 N.W.2d 549 (1992) held?	02/16/2022 CERT Oral Arg 10/12/2022	2 Kenosha	--
2020AP1362-CR	<u>State v. Jovan T. Mull</u> Did the court of appeals fail to defer to a defendant's attorney's strategic decisions?	05/18/2022 REVW	1 Milwaukee	Unpub.
2020AP1582	<u>Beatriz Banuelos v. University of Wisconsin Hospitals and Clinics Authority</u> May a health care provider charge a fee for providing an electronic copy of a patient's health care record, where neither Wis. Stat. § 146.83(3f) nor any other provision of state or federal law prohibits such a fee?	03/15/2022 REVW	4 Dane	10/27/2021 Pub. 2021 WI App 70 399 Wis.2d 568 966 N.W.2d 78

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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WISCONSIN SUPREME COURT PENDING CASES

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2020AP1683	<u>Citation Partners, LLC v. Wisconsin Department of Revenue</u> Are reimbursement payments made under a lease by the lessees of an aircraft for the lessees' proportional share of airplane parts and maintenance and repair services exempt from sales tax pursuant to the provisions of 2013 Wisconsin Act 185 and the common law of agency?	05/18/2022 REVW Oral Arg 10/17/2022	4 Dodge	12/27/2021 Pub. 2021 WI App 86 400 Wis. 2d 260 968 N.W.2d 734
2020AP1696	<u>Saint John's Communities, Inc. v. City of Milwaukee</u> In order to pursue an action under Wis. Stat. § 74.35, must a tax payer pay the disputed real estate taxes before filing a claim against the municipality?	02/16/2022 REVW Oral Arg 10/06/2022	1 Milwaukee	11/17/2021 Pub. 2021 WI App 77 399 Wis. 2d 729 967 N.W.2d 151
2020AP1728-CR	<u>State v. Percy Antione Robinson</u> Whether the CR-215 procedure triggers the attachment of the Sixth Amendment right to counsel, which would then entitle an accused person to have the right to counsel for any subsequent "critical stage" of the legal proceedings.	05/18/2022 CERT	1 Milwaukee	--
*2020AP1775	<u>Nancy Kindschy v. Brian Ash</u> Whether Wis. Stat. §813.125, as construed by the Court of Appeals to prohibit speech from a public sidewalk intended to persuade listeners to repent sinful conduct violates the First Amendment of the U.S. Constitution and Art. I, §3 of the Wisconsin Constitution? Whether speech from a public sidewalk intended to persuade listeners, even if directed to a specific listener, to repent sinful conduct serves "no legitimate purpose" within the meaning of Wis. Stat. §813.125? Whether enjoining, for a period of four years, a pro-life, anti-Planned Parenthood protestor from protesting on a public sidewalk in front of a Planned Parenthood during its business hours constitutes an unconstitutional restraint on First Amendment protected expression?	06/22/2022 REVW	3 Trempealeau	04/28/2022 Pub. 2022 WI App 17 401 Wis. 2d 406 973 N.W.2d 828
2020AP1943	<u>Lindsey Dostal v. Curtis Strand</u> Does issue preclusion stemming from a criminal conviction bar the civil claims of a victim who was not a party to the criminal proceedings? Does the defendant's conviction of second-degree reckless homicide, Wis. Stat. § 940.06, preclude an "occurrence" under the policy as a matter of law?	02/16/2022 REVW Oral Arg 10/06/2022	3 Barron	11/17/2021 Pub. 2021 WI App 79 399 Wis. 2d 781 967 N.W.2d 157

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2020AP2003	<u>Wisconsin Justice Initiative, Inc. v. Wisconsin Elections Commission</u> In the April 7, 2020 election, Wisconsin voters ratified "Marsy's Law"—the proposed amendment to WIS. CONST. art. I, § 9m that provided additional "privileges and protections" to crime victims. Did the ballot question for the Marsy's Law amendment in the April 2020 election "reasonably, intelligently, and fairly comprise or have reference to every essential of the amendment"? <u>See State ex rel. Ekern v. Zimmerman</u> , 187 Wis. 180, 201, 204 N.W. 803 (1925). Was the ballot question for the Marsy's Law amendment misleading—either by containing misinformation or by failing to "mention[] [its subject] in accord with the fact"? <u>See State ex rel. Thomson v. Zimmerman</u> , 264 Wis. 644, 660, 60 N.W.2d 416 (1953). Under the "separate amendment" rule, was the Marsy's Law amendment required to have been submitted as more than one ballot question because it encompassed more than one subject matter and accomplished more than one purpose? <u>See McConkey v. Van Hollen</u> , 2010 WI 57, ¶¶25-26, 41, 326 Wis. 2d 1, 783 N.W.2d 855.	02/17/2022 CERT Oral Arg 09/06/2022	4 Dane	--
2020AP2119-CR	<u>State v. Larry L. Jackson</u> Whether defendant's post-conviction motion, claiming ineffective assistance of his trial counsel, alleged sufficient facts to warrant an evidentiary hearing.	01/11/2022 REVW Oral Arg 09/30/2022	1 Milwaukee	--
2020AP2146	<u>DEKK Property Development, LLC v. Wisconsin Department of Transportation</u> Can DOT remove a "right of access," contained in a record deed made under eminent domain procedures, as an exercise of policy power without prior due process proceedings or compensation?	05/18/2022 REVW	2 Kenosha	Unpub.
2021AP21-CR	<u>State v. Robert K. Nietzold, Sr.</u> Whether a prosecutor breached a plea agreement by inadvertently recommending a specific term of imprisonment but then remedied the error after defendant's objection by withdrawing the mistaken recommendation and substituting the agreed recommended sentence. (See, i.e., <u>State v. Smith</u> , 207 Wis. 2d 258, 558 N.W.2d 379 (1997), <u>State v. Bowers</u> , 2005 WI App 72, 280 Wis. 2d 534, 696 N.W.2d 255; <u>State v. Knox</u> , 213 Wis. 2d 318, 570 N.W.2d 599 (Ct. App. 1997)).	04/13/2022 REVW Oral Arg 10/10/2022 (in Waupaca County Courthouse, Justice on Wheels program)	4 Vernon	Unpub.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2021AP102	<u>Green Bay Professional Police Association v. City of Green Bay</u> Does providing notice to law enforcement officers of "the nature of the investigation" prior to being interrogated under §164.092, Stats., satisfy the <u>Cleveland Board of Education v. Loudermill</u> , 470 U.S. 532 (1985) requirement that a public employee be provided with notice and an opportunity to be heard with respect to disciplinary "charges" after a personnel investigation has been completed? Is due process satisfied when a law enforcement officer is disciplined for "charges" never identified in either a <u>Loudermill</u> notice or <u>Loudermill</u> hearing, simply because his employer identified the policies that eventually led to such discipline prior to interrogating the officer? Does <u>Loudermill</u> limit the government's ability to discipline its employees to the "charges" that are actually identified in a <u>Loudermill</u> notice and/or at a <u>Loudermill</u> hearing? Did the arbitrator "manifestly disregard the law" articulated in <u>Loudermill</u> ?	01/11/2022 REVW Oral Arg 10/03/2022	3 Brown	10/27/2021 Pub. 2021 WI App 73 399 Wis.2d 504 966 N.W.2d 107
2021AP142-CR	<u>State v. Charles W. Richey</u> Whether, at the time of a traffic stop, the law enforcement officer only had a generalized hunch that the defendant's motorcycle may have been the one that committed a traffic violation.	04/13/2022 REVW Oral Arg 10/06/2022	3 Marathon	Unpub.
*2021AP267-CR	<u>State v. Mitchell D. Green</u> Did the circuit court erroneously exercise its discretion when it concluded that there was a manifest necessity for a mistrial after the defendant introduced unnoticed third-party perpetrator evidence at trial via the testimony of a witness who claimed to have committed the crime but was unrepresented by counsel?	06/22/2022 REVW	1 Milwaukee	Unpub
2021AP419	<u>State v. X.S.</u> Did the court of appeals erroneously exercise its discretion in denying the motion for reconsideration less than 24 hours after it was filed in a written order that contained no explication? Did the juvenile court err when it permitted the respondent to introduce an explanation of the underlying offense that mitigated, but did not negate probable cause for, the offense(s) alleged in the delinquency petition?	10/18/2021 REVW Modified, affirmed, remanded 06/29/2022 2022 WI 49	1 Milwaukee	Unpub.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2021AP462-CR	<u>State v. Michael K. Fermanich</u> Whether, in order to prove that his custody was “in connection with the course of conduct for which sentence was imposed” on count one, under Wis. Stat. § 973.155(1)(a), the defendant was required to prove that count one was based on the same “specific act” as counts four and five. Whether <u>State v. Tuescher</u> 226 Wis. 2d 465, 595 NW 2d 443 (1999 Ct. App.) should be re-examined to determine whether its definition of “course of conduct” as meaning “specific act” was erroneous, or alternatively, whether the definition should be limited to the specific circumstances present in <u>Tuescher</u> .	06/22/2022 REVW	3 Langlade	Unpub
2021AP1321-LV (consolidated with 2021AP1325)	<u>County of Dane v. Public Service Commission of Wisconsin</u> Whether an appeal challenging the lawfulness of a subpoena for testimony (that has been stayed pending appeal) is mooted when the subpoenaing party withdraws the subpoena while simultaneously stating that it will soon issue, and does issue, yet another subpoena for testimony to which the subpoenaed party objects on the same grounds. Whether a circuit court commits a per se abuse of discretion on the “likelihood of success” prong of the Gudenschwager test by simply cross-referencing its merits decision in its denial of a motion for stay pending appeal? See <u>Waity v. LeMahieu</u> , No. 2021AP802 (July 15, 2021) (P-App. 1103). Whether conduct by an adjudicator that creates a mere “appearance of bias” violates the Due Process Clause. Whether an adjudicator’s personal connections to individuals linked to parties appearing before the adjudicator, whether those individuals are close friends or mere professional acquaintances, give rise to a “serious risk of actual bias” under the Due Process Clause, notwithstanding the presumptions of regularity, integrity, honesty, and impartiality that attach to the adjudicator’s decisions. Whether the practice of applying for employment, after leaving public office, with an entity that had previously appeared before the adjudicator creates a “serious risk” that the adjudicator, when the entity appeared before him, had been actually biased.	09/21/2021 REVW Reversed 07/07/2022 2022 WI 61	4 Dane	--

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2021AP1325 (consolidated with 2021AP13210-LV)	<u>County of Dane v. Public Service Commission of Wisconsin</u> Whether an appeal challenging the lawfulness of a subpoena for testimony (that has been stayed pending appeal) is mooted when the subpoenaing party withdraws the subpoena while simultaneously stating that it will soon issue, and does issue, yet another subpoena for testimony to which the subpoenaed party objects on the same grounds. Whether a circuit court commits a per se abuse of discretion on the “likelihood of success” prong of the Gudenschwager test by simply cross-referencing its merits decision in its denial of a motion for stay pending appeal? See <u>Waity v. LeMahieu</u> , No. 2021AP802 (July 15, 2021) (P-App. 1103). Whether conduct by an adjudicator that creates a mere “appearance of bias” violates the Due Process Clause. Whether an adjudicator’s personal connections to individuals linked to parties appearing before the adjudicator, whether those individuals are close friends or mere professional acquaintances, give rise to a “serious risk of actual bias” under the Due Process Clause, notwithstanding the presumptions of regularity, integrity, honesty, and impartiality that attach to the adjudicator’s decisions. Whether the practice of applying for employment, after leaving public office, with an entity that had previously appeared before the adjudicator creates a “serious risk” that the adjudicator, when the entity appeared before him, had been actually biased.	09/21/2021 REVW Reversed 07/07/2022 2022 WI 61	4 Dane	--
2021AP1673	<u>Joshua L. Kaul v. Frederick Prehn</u> Does respondent’s refusal to leave office on the Wisconsin Natural Resources Board to allow a successor gubernatorial appointee to take office support the issuance of a writ of quo warranto?	11/16/2021 BYPA Affirmed 06/29/2022 2022 WI 50	4 Dane	--
2022AP91	<u>Richard Teigen v. Wisconsin Elections Commission</u> Whether guidance provided by the respondent to municipal clerks concerning absentee ballot provisions contravenes Wisconsin law, specifically, Wis. Stat. §§ 6.87 and 6.855,	01/28/2022 BYPA Affirmed 07/08/2022 2022 WI 64	2 Waukesha	--

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