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FOR IMMEDIATE RELEASE

Wisconsin Supreme Court accepts 12 new cases

Madison, Wis. (March 3, 2017) – The Wisconsin Supreme Court has voted to accept 12 new cases and acted to deny review in a number of other cases. The case numbers, issues, and counties of origin of granted cases are listed below. Hyperlinks to Court of Appeals' decisions are provided where available. The synopses provided are not complete analyses of the issues. More information about any particular case before the Supreme Court or Court of Appeals can be found on the Supreme Court and Court of Appeals Access website.

2015AP1530 The Manitowoc Company, Inc. v. Lanning

Supreme Court case type: Petition for Review
Court of Appeals: District II
Circuit Court: Manitowoc County, Judge Gary L. Bendix, reversed and remanded with directions
Long caption: The Manitowoc Company, Inc., Plaintiff-Respondent-PETITIONER, v. John M. Lanning, Defendant-Appellant-RESPONDENT

Issues presented: This case examines whether Wis. Stat. § 103.465, relating to restrictive covenants, governs non-solicitation of employees (NSE) clauses, and if so, whether the particular NSE clause at issue here is unenforceable.

Some background: The Manitowoc Company is a manufacturer with a food service equipment division and a crane division. The defendant, John Lanning, began his career with Manitowoc in 1985, in the crane division, where he worked as an engineer for over 25 years. Lanning was a senior-level employee who was held in high esteem. He had significant knowledge of Manitowoc's products and intellectual property, and of Manitowoc's employee base.

In 2008, Lanning signed a confidentiality/non-solicitation agreement that stated, in part, that he would not either directly or indirectly solicit, induce, or encourage any employee(s) to terminate their employment with Manitowoc or to accept employment with any competitor, supplier or customer of Manitowoc.

In 2010, Lanning left Manitowoc and accepted employment with a foreign competitor in the crane business, SANY. Manitowoc asserts that Lanning engaged in a number of recruiting

actions over the next two years that violated the NSE provision and led to three Manitowoc employees leaving to work for SANY.

Manitowoc filed suit against Lanning in March 2011. Lanning filed an unsuccessful motion to dismiss for failure to state a claim. In April 2013, the parties filed cross-motions for summary judgment.

In September 2013, after extensive briefing, the circuit court granted Manitowoc's motion for summary judgment and denied Lanning's motion. The court entered judgment in favor of Manitowoc on the merits on Oct. 14, 2013.

In July 2014, the parties tried the issue of damages. In December 2014, the court awarded Manitowoc $97,844.78. Subsequently, the court awarded Manitowoc $1,000,000 in attorneys' fees and $37,246.82 in costs. Lanning appealed and the Court of Appeals reversed.

As stated by the Court of Appeals, if the text of the NSE provision restrains trade impermissibly, it is unenforceable even if the acts complained of in this action could have been proscribed by a more narrowly written and permissible restrictive covenant.

The Court of Appeals concluded that the NSE provision "must comply with Wis. Stat. § 103.465," citing Tatge v. Chambers & Owen, Inc., 219 Wis. 2d 99, 112, 579 N.W.2d 217 (1998) (holding that a nondisclosure provision is subject to § 103.465) for the proposition that it "would be an exercise in semantics to overlook []§ 103.465 merely because … the agreement is not labeled a 'covenant not to compete.'"

Manitowoc maintains that the statute only applies to traditional non-compete provisions envisioned when the statute was approved. Manitowoc emphasizes that its provision is in "stark contrast" to an NSE provision, that "merely restricts an individual from enticing others to leave his/her former company, which plainly does not fall within the legislature's intended purview for § 103.465."

Lanning says that numerous types of restrictive covenants have been interpreted and enforced (or not enforced) by Wisconsin courts in accordance with § 103.465 and that many of these are not "traditional" non-compete restrictions.

Lanning argues that Wisconsin courts have broadly interpreted § 103.465 to apply to any restrictive covenant that seeks to restrain competition or trade.

Manitowoc says that the intent of the NSE clause is merely to prevent a key employee like Lanning from raiding Manitowoc employees and siphoning them to a competitor, supplier, or customer where he is capable of utilizing insider knowledge not akin to that which any other employee at the competitor/supplier/customer would have regarding Manitowoc's talent base.

The Supreme Court is expected to decide whether NSE provisions are subject to § 103.465 and what analysis applies to determine enforceability.

2015AP1261-CR State v. Brar

Supreme Court case type: Petition for Review
Court of Appeals: District IV
Circuit Court: Dane County, Judge John W. Markson, affirmed
Long caption: State of Wisconsin, Plaintiff-Respondent, v. Navdeep S. Brar, Defendant-Appellant-PETITIONER

Issues presented: This drunken driving case examines what constitutes actual consent to a blood draw when no search warrant is obtained, and whether the facts here would negate any

such consent as constitutionally involuntary. The Supreme Court reviews the issues in light of the U.S. Supreme Court decision in Missouri v. McNeely, ___ U.S. ___, 133 S. Ct. 1552 (2015). The issues, as presented by the defendant Navdeep S. Brar:

- Whether consent justified the warrantless blood draw?
- Whether the state proved consent to be voluntary?

Some background: Brar was convicted of operating while intoxicated (OWI), third offense. Middleton Police Officer Michael Wood had stopped Brar for speeding. During the stop, Wood arrested Brar for OWI. The stop and the arrest are not being challenged by Brar.

After the arrest, Wood transported Brar to the Middleton Police Department, where Wood read the Informing the Accused form to Brar. What happened next is subject to some differing interpretations. As directed at the end of the form, Wood asked Brar whether he would "submit to an evidentiary chemical test of your blood."

At a later suppression hearing, Wood testified that Brar gave a response to the effect of "Of course, [I don't] want to have [my] license revoked." Wood testified that he understood Brar's response to mean that he was consenting to a blood draw. Brar, however, then asked what kind of test would be conducted. Wood responded that it would be a blood test. Brar responded by asking whether a search warrant was required for a blood test. Wood shook his head, indicating that no search warrant was required.

Brar says an audio recording of the conversation contradicts Wood's testimony, and that there is no audible response when Wood asked Brar if he would submit to the test. Brar claims that his continuing to ask the officer questions shows that he never actually consented to the blood draw. Further, Brar says Wood misled him about the need for a search warrant, which caused him to acquiesce in allowing the blood draw and rendered any possible consent involuntary.

Brar's suppression motion was denied.

He challenges the circuit court's factual finding that he consented to the blood draw and to the legal conclusion of both the circuit court and the Court of Appeals that his consent was constitutionally valid.

He asks the Supreme Court to determine what constitutes consent to a blood draw, in light of the Supreme Court's decision in McNeely that the dissipation of alcohol, by itself, is not sufficient to avoid the necessity of a search warrant for a blood draw.

Brar points out that the Supreme Court has established an objective test for determining the scope of a person's consent to a Fourth Amendment search. Florida v. Jimeno, 500 U.S. 248, 251 (1991). He argues that a reasonable bystander would not have understood his expressions of desire to avoid revocation of his driver's license as an agreement to a bodily invasion, especially when it was part of a back-and-forth that was immediately followed by questions about what type of test would be conducted and whether a warrant was needed before any such test could be performed.

A decision by the Supreme Court is expected to provide police and lower courts guidance on what is required for a suspect to provide consent and for that consent to be knowing and voluntary.

2015AP450-CR State v. Blackman

Supreme Court case type: Petition for Review
Court of Appeals: District II
Circuit Court: Fond du Lac County, Judge Gary R. Sharpe, reversed and remanded
Long caption: State of Wisconsin, Plaintiff-Appellant-RESPONDENT, v. Adam M. Blackman, Defendant-Respondent-PETITIONER

Issues presented: This case arises from a collision between a vehicle and a bicyclist who was seriously injured. The Supreme Court examines Wis. Stat. § 343.305(3)(ar)2, the state's implied consent law, in light of an apparent legislative drafting error, and more specifically here, whether evidence from Adam Blackman's warrantless blood test should have been suppressed.

Some background: Adam M. Blackman made a left-hand turn in front of an oncoming bicyclist, who sustained very serious injuries. A police officer investigated the accident and concluded that Blackman failed to yield to the bicycle. The officer did not suspect and did not have probable cause to believe that Blackman was under the influence of an intoxicant at the time of the accident. Given the serious injuries to the bicyclist, the officer requested a blood sample from Blackman pursuant to Wis. Stat. § 343.305(3)(ar)2.

The officer read Blackman the Informing the Accused form, the language of which is mandated by § 343.305(4). The form includes the warning that "[i]f you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties."

Blackman gave a sample of his blood, which revealed a blood-alcohol concentration (BAC) of 0.10 percent. He was charged with reckless driving causing great bodily harm, injury by intoxicated use of a vehicle, injury by use of a vehicle with a prohibited BAC, operating a motor vehicle while under the influence of an intoxicant (OWI), and operating a motor vehicle with a prohibited BAC.

Blackman moved to suppress the results of the blood test, arguing that his consent to the blood test was coerced. Blackman claimed that his consent was not voluntarily given because there is no revocation procedure in the implied consent law for a driver in his situation – one involved in a serious injury crash who violated a traffic law but who had not shown signs of impairment. In particular, Blackman argued that, for a driver involved in a serious injury crash who violated a traffic law but who had not shown signs of impairment, the issues at a refusal hearing are statutorily limited to: 1) whether the officer had probable cause to believe the driver was under the influence of alcohol/controlled substance; and 2) whether the driver was lawfully placed under arrest for an OWI-related violation. *See* § 343.305(9)(a)5. Blackman argued that, if he had requested a refusal hearing within 10 days, the presiding court could not have concluded that either of these two circumstances existed here. Blackman claimed that it was coercive for police to force him to choose between a blood draw and a threatened license revocation that is legally unsustainable.

The trial court agreed with Blackman's argument and suppressed the blood test result.

The Court of Appeals reversed, finding that the fact that Blackman could have prevailed at a refusal hearing due to the Legislature's failure to amend the refusal hearing statute does not transform Blackman's freely given actual consent under Wisconsin's implied consent law into a coerced submittal.

Blackman continues to argue that it was coercive for police to force him to choose between a blood draw and a threatened license revocation that is legally unsustainable. Blackman also argues that, as a general matter, it is unconstitutional for Wisconsin to penalize motorists who are not suspected of any impaired driving for refusing to take a warrantless blood test. He insists that the recently decided United States Supreme Court case, Birchfield v. North Dakota, 579 U.S. ___, 136 S.Ct. 2160, 2184–85 (2016), supports his argument.

The state says that it was entirely correct for the officer to inform Blackman that if he refused a request for a blood draw, his operating privilege could be statutorily revoked. The state argues that the disconnect between the terms of Wis. Stat. § 343.305(3)(ar)2. and the statutory scheme for refusal hearings does not make the implied consent law unconstitutional.

2015AP1294-CR State v. Floyd

Supreme Court case type: Petition for Review
Court of Appeals: District II
Circuit Court: Racine County, Judge Allan B. Torhorst, affirmed
Long caption: State of Wisconsin, plaintiff-respondent, v. Lewis O. Floyd, Jr., defendant-appellant-petitioner

Issues presented:

- Whether an officer's justification to search is objectively reasonable where the suspect is not observed doing or saying anything suspicious, but cooperating in circumstances that the officer believes are suspicious?
- Whether counsel rendered ineffective assistance by failing to present additional evidence to show Floyd did not provide valid consent?

Some background: Around 6:45 p.m. on July 23, 2013, a Racine County deputy stopped Lewis O. Floyd's vehicle because the registration was suspended. During the deputy's two- or three-minute initial contact, Floyd said he had neither a driver's license nor insurance. Floyd did provide his Wisconsin identification card, from which the deputy determined Floyd's address was in Kenosha.

The deputy suspected there might be some criminal activity going on in the vehicle because usually a large number of air fresheners as seen in Floyd's vehicle are used to mask the smell of narcotics. The deputy knew the area of the stop was a high crime area with large quantities of drug and gang activity. The deputy also suspected possible criminal activity because of the time of day, the fact that the windows of Floyd's vehicle were tinted, and Floyd was alone in the vehicle.

After observing the air fresheners, the deputy went back to his squad car and prepared three citations related to the suspended registration, lack of insurance, and lack of a driver's license. The deputy contacted dispatch to ask for a canine unit or a "cover" squad. No canine unit was available, but a city of Racine police officer was sent to the scene.

After five or six minutes, the deputy re-initiated contact with Floyd. The deputy asked Floyd to exit the vehicle, which Floyd did, so the deputy could explain the citations to him. The deputy said at the hearing on the suppression motion that Floyd was not free to leave at that point because the deputy still had to explain the citations to him and return his identification.

As Floyd exited the vehicle, the deputy asked if had "any weapons or anything on him that could hurt" the deputy. Floyd said he did not. The deputy "asked him then if I could search him for my safety and he said yes, go ahead." During the search, the deputy located illegal drugs that led to charges of two counts of possession with intent to deliver a controlled substance, second or subsequent offense, and two counts of bail jumping.

At the hearing on the suppression motion, the circuit court found the deputy had reasonable suspicion to extend the traffic stop beyond just addressing the citations due to the air fresheners, as well as "the tinted windows, the time of the day, that Mr. Floyd was alone in his vehicle, [and] he's from Kenosha."

The circuit court also found that the deputy had asked Floyd to get out of the vehicle and consented to a search of his person. Accordingly, the circuit court denied the suppression motion.

Floyd pled no contest to one count of possession with intent to deliver a controlled substance and the second count of possession with intent to deliver as well as the two counts of bail jumping were dismissed and read in. Floyd was sentenced to three years of initial confinement and three years of extended supervision. The sentence was stayed in favor of three years of probation.

Floyd filed a post-conviction motion claiming that his trial counsel was deficient in failing to call as a witness at the suppression hearing the City of Racine police officer who arrived at the scene to provide "cover" for the deputy.

Floyd argued that officer would have testified that the deputy did not ask Floyd if he could search him but rather told him he was going to do so. The circuit court denied the motion. Floyd appealed. The Court of Appeals affirmed.

The Court of Appeals said the question of reasonable suspicion was a very close call in this case, but based on the totality of the circumstances it concluded the deputy's suspicion that there might be some sort of criminal activity going on in the vehicle was reasonable and warranted a brief extension of the traffic so the deputy could conduct further investigation.

The Court of Appeals also upheld the circuit court's denial of Floyd's post-conviction motion which argued that trial counsel was ineffective in failing to present evidence at the suppression hearing that the deputy did not in fact ask Floyd if he could be patted down but rather told Floyd he was going to do a pat down. Floyd asserted that if counsel had called as a witness at the suppression hearing the Racine police officer who came to provide "cover" for the deputy, Floyd's consent to the search would not have been found voluntary.

2015AP2366 Benson v. City of Madison

Supreme Court case type: Petition for Review
Court of Appeals: District IV
Circuit Court: Dane County, Judge Richard G. Niess, affirmed
Long caption: Thomas F. Benson, Mark Rechlicz, Mark Rechlicz Enterprises, Inc., Robert J. Muranyi, RJM Pro Golf Incorporation and William J. Scheer, plaintiffs-appellants-petitioners, v. City of Madison, defendant-respondent

Issues presented:
This case examines the Wisconsin Fair Dealership Law, and whether golf pros working at city golf courses under an agreement had a "dealership" within the meaning of the law.

- Is a Wisconsin municipality or other governmental unit engaging in revenue-generating activities in competition with private sector businesses a "person" required to abide by the same rules under the Wisconsin Fair Dealership Law that private businesses are obligated to follow?
- Did the City of Madison, through the operation of its city-owned golf courses, sell any goods or services to the public, satisfying the goods and services element of the Wisconsin Fair Dealership Law as the golf pros were independently contracted to sell those goods and services for the city?
- Did the golf pros' contractual obligations to contribute thousands of dollars annually to a joint advertising fund with the city, for purposes of marketing the city golf courses utilizing the city brand, "Golf Madison Parks," satisfy the Wisconsin Fair Dealership Law requirement for selling goods or services using a "trade name, trademark, service mark, logotype, advertising or other commercial symbol"?

Some background: The City of Madison owns four golf courses which it makes available to the public as part of its parks department. The city had an arrangement with a golf pro for each course, governed by a written operating agreement. As part of the parties' arrangement under the operating agreements, the city maintained the grounds of the golf courses. The golf pros performed most other golf course operations including controlling the use of the golf courses; providing golfing equipment for rental; operating food and beverage concessions; providing lessons to golf course patrons; and operating pro shops selling golf-related products. The golf pros employed staff to assist in carrying out these contractual obligations.

The city decided not to renew its contracts with the golf pros and instead started using city personnel to run all golf course operations. The golf pros sued the city, arguing that it had violated the fair dealership law by not renewing or terminating their contracts without good cause or adequate written notice. They sought money damages caused by the city's alleged fair dealership law violations.

The golf pros moved for partial summary judgment on liability, and the city moved for full summary judgment. Following briefing and oral argument, the circuit court denied the golf pros' motion for partial summary judgment on liability and granted the city's motion for summary judgment, dismissing the golf pros' amended complaint. The circuit court found that the golf pros' contractual relationships with the city were not protected "dealerships" under the Wisconsin Fair Dealership Law.

The Court of Appeals agreed, finding also that the golf pros did not have dealerships because their arrangement with the city did not give them the right to sell or distribute city goods or services or the right to use a city trade name, trademark, service mark, logotype, advertising, or other commercial symbol – one element that is necessary to be considered a dealership under a previous Wisconsin Supreme Court decision.

The Court of Appeals affirmed the circuit court's entry of summary judgment dismissing the golf pros' fair dealership law claims against the city.

The golf pros also continue to argue that the lower courts incorrectly found that they failed to satisfy either the "goods or services" or the "right to use logo, advertising, or commercial symbols" portions of the fair dealership law.

The City of Madison says both lower courts followed the statutory definition of a "dealership" previously explicated by this court and concluded the golf pros did not have "dealerships" with the city.

A decision by the Supreme Court is expected to develop and harmonize the law with respect to various issues concerning service dealerships.

2015AP2041-CR State v. Reyes Fuerte

Supreme Court case type: Petition for Review
Court of Appeals: District IV
Circuit Court: Columbia County, Judge Alan J. White, reversed
Long caption: State of Wisconsin, Plaintiff-Respondent, v. Jose Alberto Reyes Fuerte, Defendant-Appellant-PETITIONER

Issues presented: This case examines notification requirements about the potential immigration consequences faced by defendants who enter plea agreements. The Supreme Court reviews this case in light of Wis. Stat. § 971.08(1) (c) and decisions in Padilla v. Kentucky, 559 U.S. 356 (2010) and State v. Douangmala, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1.

Some background: In February 2014, Jose Alberto Reyes Fuerte was charged with attempting to flee or elude an officer (a felony) and to operating a motor vehicle with a controlled substance in his blood, second offense (a misdemeanor). He pled guilty.

After his conviction and sentencing, Reyes Fuerte filed a postconviction motion to withdraw his pleas, relying on Wis. Stat. § 971.08 and State v. Douangmala, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1.

Wisconsin Stat. § 971.08(1)(c) provides specific language that circuit courts are required to use when advising defendants of the deportation and other immigration consequences of a guilty or no contest plea before accepting a plea. If a court fails to advise a defendant as required by sub. (1)(c) and a defendant later shows that the plea is likely to result in the defendant's deportation, exclusion from admission to this country or denial of naturalization, the court on the defendant's motion shall vacate any applicable judgment against the defendant and permit the defendant to withdraw the plea and enter another plea. Wis. Stat. § 971.08(2).

Reyes Fuerte contends that the circuit court failed to sufficiently comply with both § 971.08 and this court's interpretation of that statute in Douangmala.

Douangmala had the effect of lifting a harmless error rule that prohibited a defendant who was aware of the potential immigration consequences of a plea from being able to withdraw the plea just because the circuit court failed to give a statutory immigration warning that complied with Wis. Stat. § 971.08(1)(c).

The circuit court did not permit Reyes Fuerte to present evidence regarding the likelihood that his pleas would result in deportation.

Reyes Fuerte appealed. The Court of Appeals agreed that the circuit court did not comply with the statute, stating that the circuit court "deviated in significant ways from that statutorily specified language."

Justice Shirley S. Abrahamson concurs.

2015AP756-CR State v. Smith

Supreme Court case type: Petition for Review
Court of Appeals: District IV
Circuit Court: Dane County, Judge Stephen E. Ehlke, reversed and cause remanded with directions
Long caption: State of Wisconsin, plaintiff-respondent-petitioner, v. Frederick S. Smith, defendant-appellant

Issues presented:

- When a police officer performs a lawful traffic stop, is it reasonable for the officer to make contact with the driver to ask for the driver's name and identification and to explain the basis for the stop, even if the reasonable suspicion supporting the stop has dispelled by the time the officer does so?
- When an officer is unable to request a driver's name and identification and explain the basis for a traffic stop because, as in this case, the driver indicates that the driver's side window and door are both broken, is the officer then permitted to open the passenger's side door to achieve that goal?

Some background: This case arose when an officer pulled over the car Frederick S. Smith was driving because a check showed that the driver's license of the vehicle's owner was suspended. However, on approaching the vehicle, the officer noted that Smith was a man; the vehicle's owner was a woman.

Although the officer realized it could not be the owner driving, the officer continued to approach the car and asked the driver to open the window, and then the door. The driver, communicating through the vehicle window, explained that they were broken and didn't open.

The officer then went around to the passenger side and, according to a circuit court finding, opened that door. The officer then noticed that the driver appeared intoxicated.

Smith was charged with his seventh drunk driving offense and operating a motor vehicle while revoked. Smith filed a motion to suppress evidence, including the arresting officer's observations of him during the traffic stop, arguing that the officer improperly failed to terminate the stop immediately when he saw that the driver was not the registered owner.

The circuit court disagreed, leading to a conviction on one count of operating while intoxicated. The Court of Appeals reversed and vacated the conviction.

On appeal, Smith presented several arguments and cited case law in support of his claim that the officer improperly extended the duration of the seizure after reasonable suspicion dissipated.

The state asserted on appeal that the essential inquiry is whether the officer's actions were "reasonable" under all the facts and circumstances present, citing State v. Williams**,** 2002 WI App 306, ¶12, 258 Wis. 2d 395, 655 N.W.2d 462 (citation omitted). In Williams, the Court of Appeals held that when an officer has reasonable suspicion to make a traffic stop, the officer is permitted to ask for the driver's name and identification even if the officer realizes that the driver is not the party that the officer is looking for.

The Court of Appeals "assumed without deciding" that the officer in this case was permitted to make contact with Smith notwithstanding the officer's realization that he was not the owner.

Smith questions the state's reliance on Williams, noting that it was based on State v. Ellenbecker, 159 Wis. 2d 91, 464 N.W.2d 427 (1990). Smith contends that "Ellenbecker and similar cases have been criticized as 'questionable authority,'" citing Wayne R. La Fave, Search and Seizure: A treatise on the Fourth Amendment § 9.3(c), at 511 n.162 (5th ed. 2012). Indeed, Smith says, Ellenbecker and Williams should be overruled, because under Delaware v. Prouse, 440 U.S. 648 (1979), suspicionless detentions for license checks are in fact unconstitutional.

Smith next argued on appeal that the officer was also not permitted to go around to the other side of the vehicle and open the passenger door without consent or without probable cause. On direct appeal, Smith argued that the investigative methods used during a seizure must be, quoting case law, "the least intrusive means reasonably available to verify or dispel the officer's suspicion." Florida v. Royer, 460 U.S. 491, 500 (1983). Here, Smith argues that opening the passenger door did not comply with that requirement.

The state now says the officer was permitted to open the door to speak with Smith and ask for his license because officers have the legal authority to order occupants out of a validly-detained vehicle under Pennsylvania v. Mimms, 434 U.S. 106 (1977), and because case law from other jurisdictions indicates that an officer may open the door to achieve that purpose.

A decision by the Supreme Court is expected to clarify what constitutes reasonable action of an officer in extending the duration of a seizure after reasonable suspicion has dissipated.

2015AP2052-CR State v. Asboth

Supreme Court case type: Petition for Review
Court of Appeals: District IV
Circuit Court: Dodge County, Judge John R. Storck, affirmed
Long caption: State of Wisconsin, plaintiff-respondent, v. Kenneth M. Asboth, Jr., defendant-appellant-petitioner

Issues presented:

- Must a community-caretaker impoundment of a vehicle be governed by "standard criteria" limiting the discretion of law enforcement officers and, if so, was the impoundment here made in accord with such criteria?
- Was the impoundment here a valid community caretaker action where the vehicle was parked at a private storage facility?
- Relatedly, does the Constitution require the state to show that a community caretaker impoundment and search is not a pretext concealing criminal investigatory motives?

The Supreme Court reviews this case in light of other state and federal court cases, as well as law enforcement department policy differences between Dodge County and the city of Beaver Dam.

Some background: Kenneth M. Asboth, Jr. was suspected of robbing a bank in Beaver Dam, with what appeared to be a handgun. About a month after the robbery, the Fox Lake police received a tip that Asboth was at a storage facility. The first officer to arrive saw a man, who turned out to be Asboth, standing outside of a car parked in the lane between rows of storage units and reaching into the back seat. The officer took Asboth into custody for a violation of a probation warrant, as well as suspicion that he had committed the robbery. It turned out that the car was registered to an owner in Madison. Police decided to remove the vehicle.

The car was towed to the Beaver Dam police station where officers searched it, and a pellet gun, appearing similar to that used in the robbery, was found in the spare tire compartment. The officers testified that they considered the search to be a routine inventory search.

Pretrial, Asboth moved to suppress the gun on the ground that the search of the vehicle was not a valid inventory and violated the Fourth Amendment. The court denied the suppression motion. Following an unsuccessful motion for reconsideration, Asboth pled no contest to armed robbery. He attempted, unsuccessfully, to withdraw this plea, and to pursue an interlocutory appeal of the denial of withdrawal. The court sentenced him to 20 years of imprisonment, with 10 years of initial confinement and 10 years of extended supervision. Asboth appealed and the Court of Appeals affirmed. State v. Asboth, No. 2015AP2052-CR, 2016 WL 5416012 (Wis. Ct. App. Sept. 29, 2016).

The Court of Appeals' decision discusses the requirements of the community caretaker requirement. That court noted that there is disagreement among the circuits as to the proper test for a vehicle impoundment. Some jurisdictions hold that law enforcement officers may only constitutionally impound vehicles pursuant to "standardized departmental criteria" while others deny that this is a requirement. However, the Court of Appeals declined to decide whether this is the law of Wisconsin, concluding that even if such a policy is necessary, the sheriff's department policy in this case was sufficient. It further held that the seizure of Asboth's vehicle was a valid community caretaker activity.

Police do not violate the Fourth Amendment if they seize a vehicle pursuant to the community caretaker doctrine, that is, if the seizure is consistent with the role of police as "caretakers" of the streets. *See* South Dakota v. Opperman, 428 U.S. 364, 370 (1976); State v. Clark, 2003 WI App 121, ¶20, 265 Wis. 2d 557, 666 N.W.2d 112.

The relevant policies at play belong to the Beaver Dam Police Department (who took Asboth's car into custody) and that of the Dodge County Sheriff's Department (who had jurisdiction over the location where Asboth was arrested).

The county's policy, which the Court of Appeals ruled relevant, authorized deputies to seize vehicles in various scenarios, including when: (1) the driver of a vehicle is taken into police custody; and (2) as a result, that vehicle would be left unattended.

Asboth argues that the city's was applicable here. He says that neither the county's policy nor the city's policy contained standardized criteria that provided sufficient guidance to justify seizure under the community caretaker doctrine.

The parties agree that police seized the car here within the meaning of the Fourth Amendment. However, Asboth suggests that the seizure was not a valid exercise of community caretaker activity because the police actually had a motive to search the car (for evidence related to the robbery) implying that their invocation of the community caretaker excuse was a pretense.

The Court of Appeals concluded that "an otherwise valid seizure of a vehicle under the justification of the community caretaker doctrine is not rendered invalid by the fact that police appear to have an investigatory motive – even a strong investigatory motive – in seizing the vehicle."

The Supreme Court is expected to decide whether an impoundment and inventory are unconstitutional where they serve as a pretext for criminal investigation.

2012AP2377 /2015AP870 Debra K. Sands v. John R. Menard Jr.

Supreme Court case type: Petition for Review/Petition for Cross Review
Court of Appeals: District III
Circuit Court: Eau Claire County, Judge Paul J. Lenz, affirmed
Long caption: Debra K. Sands, Plaintiff-Appellant-PETITIONER, v. John R. Menard, Jr., Menard, Inc., Menard Thoroughbreds, Inc., Webster Hart as Trustee of the John R. Menard, Jr. 2002 Trust and Related Trusts, Angela L. Bowe as Trustee of the John R. Menard, Jr. 2002 Trust and Related Trusts and Alphons Pitterle as Trustee of the John R. Menard, Jr. 2002 Trust and Related Trusts, Defendants-Respondents-RESPONDENTS
Midwest Manufacturing Co., Wood Ecology Inc., Countertops Inc., Team Menard Inc., Menard Engine Group, Menard Competition Technologies LTD, MC Technologies Inc., Menard Engineering LTD, UltraMotive LTD and Merchant Capital LLC, Defendants

Issue presented: This somewhat complicated case examines how Supreme Court rules on the professional conduct of attorneys, specifically SCR 20:1.7(b) and SCR 20:1.8(a), may or may not be invoked in civil actions involving attorneys.

The Supreme Court reviews whether a lawyer's noncompliance with SCR 20:1.8(a) may be used as a legal basis for denying the lawyer's civil claim for unjust enrichment arising out of a joint enterprise created during a romantic cohabitation, and whether a lawyer, who may have violated SCR 20:1.7(b) by failing to disclose conflicts of interest to a client, may invoke the discovery rule under the applicable statute of limitations to bar a client's claim for breach of fiduciary duty.

Some background: The original defendants include John R. Menard, Jr., a prominent Wisconsin business owner, and Menard, Inc., the large chain of lumber and home improvement stores that is primarily owned by Menard.[1] The plaintiff is Debra K. Sands, who is Menard's former fiancé. Sands graduated from a Minnesota law school in 1993 and was licensed to practice law in that state. She was never licensed to practice law in Wisconsin.

Menard and Sands began dating in November 1997, about 40 years after Menard established his business in Eau Claire. The couple was engaged in 1998 and remained so until April 2006, when they broke up.

It is not disputed that during their relationship Sands performed a substantial number of roles both for Menard personally and for his various companies, including Menard, Inc. She was allegedly involved in Menard, Inc.'s product offerings, marketing and sales activities, and governmental relations. She states that she was also involved in helping Menard to find new investment opportunities and to acquire and manage several new companies. She also oversaw work at his residences, assisted with his health care, and made social appearances.

Sands claims Menard repeatedly promised her during the relationship that in return for her work on his behalf and that of his companies, he would give her an ownership interest in his

[1] In this summary, when John Menard, Jr., Menard, Inc., and Menard Thoroughbreds, Inc. are referred to collectively as defendants, they are the "Menard Defendants." John Menard, Jr. is referred to individually as "Menard;" Menard, Inc. alone is referred to by that name; and the trustees of a 2002 trust established by Menard are referred to collectively as the "Menard Trustees."

various business ventures to which she contributed. Menard denies ever making any such promises.

Sands filed her complaint against the Menard Defendants on Nov. 3, 2008. She filed a second amended complaint in May 2011, in which she alleged that, unbeknownst to her, Menard had transferred the vast majority of his non-voting stock in Menard, Inc. to the John R. Menard, Jr. 2002 Trust and added the trustees as defendants.

Sands' amended complaint made claims against Menard personally for unjust enrichment, breach of contract, and promissory estoppel (quasi-contract). She also made unjust enrichment claims against the other Menard Defendants and the Menard Trustees. Sands' claims against these other defendants sought "judgment in an amount equal to the fair and reasonable value of the substantial benefits" she had provided to them.

Menard Defendants and the Menard Trustees filed a motion to dismiss and an answer to the second-amended complaint. In addition, Menard, Inc. filed a counterclaim against Sands for breach of fiduciary duty in connection with a transaction that created a private equity fund managed by a long-time business associate of Menard and funded by one of Menard's business entities. Menard, Inc.'s counterclaim alleged that Sands had failed to disclose, among other things, that the fund manager had secretly paid her a "bonus" and had hired her as general counsel for the fund while she was allegedly retained as a lawyer to represent the interests of Menard, Inc.

The Menard Defendants sought partial summary judgment and dismissal of "all of [Sands'] claims by which she [sought] a portion of [Menard's] net worth or assets, ownership interest in the Menard companies, or any part of the increase in value of the Menard companies."

The motion alleged that Sands was barred from obtaining any such portion of Menard's assets or ownership interests because she had failed to comply with Supreme Court Rule 20:1.8(a). That rule addresses potential conflicts of interest and makes it an ethical violation for a lawyer to enter into a business transaction with a client, or to obtain an ownership or pecuniary interest that is adverse to a client, unless a number of conditions are satisfied.

The circuit court found that Rule 1.8(a) prohibited Sands, because she was a lawyer, from obtaining any part of Menard's assets because she did not satisfy the conditions of SCR 20:1.8(a). However, the court indicated that the rule did not apply to any transaction, where the attorney and client had a pre-existing romantic relationship prior to the beginning of a lawyer-client relationship. The circuit court concluded that Sands could not dispute that she had acted as legal counsel for Menard or Menard, Inc. in connection with a Department of Natural Resources (DNR) investigation prior to the start of her romantic relationship with Menard. Sands alleged that she had not acted as a lawyer in the DNR investigation, that the payment by Menard, Inc. was intended merely to pay off her outstanding student loan, and that Menard had instructed her to send a bill for legal services in the amount of the loan to Menard, Inc. so that it could write off the payment as a business expense. The circuit court concluded that Sands' allegations in this regard gave her unclean hands because she would have participated in a scheme designed to hide Menard, Inc. income from taxation.

Because the court viewed Sands as "seek[ing] relief from the rule prohibiting lawyers from obtaining a client's assets without a written agreement," the circuit court refused to allow her to avoid the prohibition of Rule 1.8(a). It rejected all of Sands' claims, whether legal or equitable, to the extent they sought a portion of the assets of Menard or his companies. It also granted summary judgment to the Menard Trustees, reasoning that if Sands could not prevail

against the principal (i.e., Menard), then she could not obtain any recovery against the trust or its trustees.

However, the circuit court also granted summary judgment to Sands on Menard, Inc.'s counterclaim for breach of fiduciary duty. It ruled that the claim was barred by the applicable two-year statute of limitations because Menard, Inc. had sufficient grounds to investigate a breach of fiduciary duty claim more than two years before Sands had filed her complaint.

Ultimately, the circuit court ruled that neither side was a prevailing party for purposes of obtaining an award of fees and costs from the other side.

Sands appealed the dismissal of her claims, and Menard, Inc. appealed the dismissal of its counterclaim. The Court of Appeals affirmed the circuit court's orders in their entirety.

The Court of Appeals rejected Sands' argument that her alleged violation of Rule 1.8(a) cannot be a categorical bar to recovery against Menard and the corporations he owns on her claim for unjust enrichment under Watts v. Watts, 137 Wis. 2d 506, 405 N.W.2d 303 (Wis. 1987). Sands relied primarily on both the preamble to the Rules of Professional Conduct for Attorneys and this court's decision in Foley-Ciccantelli v. Bishop's Grove Condominium Assn., 2011 WI 36, ¶2, 333 Wis. 2d 402, 797 N.W.2d 789, where the court stated that violations of the Code of Professional Conduct are determined only by means of disciplinary action.

On the other hand, the Court of Appeals rejected Menard, Inc.'s argument that Sands' failure to comply with her ethical duty to disclose a conflict of interest relieved it of its duty to exercise reasonable diligence in discovering her breach of fiduciary duty.

A decision by the Supreme Court could determine how the Rules of Professional Conduct for Attorneys may or may not be used as a basis for making or defending claims in civil litigation in which an attorney is a party.

Justice Shirley S. Abrahamson dissents in part.

2014AP2420 Estate of Stanley G. Miller v. Storey

Supreme Court case type: Petition for Review
Court of Appeals: District III
Circuit Court: Marathon County, Judge Jill N. Falstad, reversed and cause remanded with directions
Long caption: Estate of Stanley G. Miller c/o Genevieve Miller, Personal Representative, plaintiff-respondent-petitioner, v. Diane Storey, defendant-appellant

Issues presented:

- Whether statutory claims are considered tort claims for purposes of Wis. Stat. § 799.01(1).
- Whether Wis. Stat. § 895.446(3) allows for recovery of attorney's fees to a prevailing plaintiff.
- Whether the Court of Appeals abused its discretion by taking up arguments improperly placed before the Court of Appeals in Diane Storey's appellate brief.
- Whether the Court of Appeals abused its discretion by denying the Estate of Stanley G. Miller's motion for reconsideration.

Some background: The Estate of Stanley G. Miller filed a small claims action against Diane Storey, seeking money damages of $10,000. The estate alleged that Storey misappropriated

funds through checking account transactions. After Storey prevailed at a small claims trial to the court commissioner, the estate filed a demand for a de novo jury trial.

During the ensuing two-day jury trial, testimony showed that Stanley Miller was 86-years-old in May 2010 when Storey, his niece, began serving as his caretaker. Storey cared for Stanley Miller through May 2011. During that time, Storey helped Stanley by doing his shopping, cooking meals, doing laundry, taking him to appointments, getting his mail, and other necessary tasks. Storey also helped Stanley with his checkbook and paying bills. At Stanley's request, Storey wrote out checks for him, which he then signed. While Storey wrote check entries in Stanley's checkbook ledger, she never balanced his checkbook.

After Stanely died, his estate determined that funds from Stanley's bank accounts had been withdrawn in large amounts over the course of the year Storey stayed with Stanley. Storey's property taxes in Horicon, Wisconsin, were paid from Stanley's checking account, and personal checks were made payable to "Cash," among other questionable transactions.

After trial and post-trial motions, the circuit court awarded the estate restitution of $10,000 in actual damages, $20,000 in exemplary damages, $20,000 in attorney fees, and over $1,600 in double statutory costs.

The Court of Appeals reversed, ruling in pertinent part as follows:

- The circuit court judge improperly awarded exemplary damages without a jury determination.
- The circuit court should have limited the estate's judgment for compensatory damages to $5,000, rather than the $10,000 awarded, because the estate asserted a tort claim (misappropriation of funds), and tort claims seeking more than $5,000 exceed the small claims limit.
- The circuit court should not have awarded double statutory costs because the estate was only entitled to $5,000 in compensable damages in small claims court, which is less than the $7,500 statutory settlement offer made by the Estate.
- The circuit court should not have awarded attorney fees because the applicable statute, Wis. Stat. § 895.446 ("Property damage or loss caused by crime") does not allow attorney fees.
- The circuit court should not have ordered that the judgment be deemed the same as restitution because there was no basis for it to be labelled restitution.

In its petition for review, the estate argues, among other points, that § 895.446, like § 895.80 before it, is intended to allow victims of criminal conduct to act as their own "private attorney generals" in seeking vindication and restitution for their damages, including their own attorneys fees. The estate says § 895.446 permits an attorney fee award, given that the plaintiff under this statute "has been tasked with seeking justice after the intentional commission of a crime."

The estate says the Court of Appeals erred in deeming Storey's argument that the estate's civil theft claim under § 895.446(3)(c) an action in tort. The Estate says it was pursuing a statutory claim, not a tort claim, and Storey's arguments to the contrary were so unsupported as to justify being ignored, rather than being deemed admitted by the Court of Appeals.

Storey contends, among other things, that the Court of Appeals correctly determined that § 895.446(3)(b) does not permit an award of attorney fees by applying the well-established rules of statutory construction. Storey says subsection (3)(b) does not specifically state that attorney

fees are available, whereas subsection (3m)(b) does specifically state that attorney fees may be awarded under that particular subsection; that distinction has significant meaning under the rules of statutory construction, Storey says.

2015AP791-CR State v. Lazo Villamil

Supreme Court case type: Petition for Review/Petition for Cross Review
Court of Appeals: District II
Circuit Court: Waukesha County, Judges Donald J. Hassin, Jr. and Michael J. Aprahamian, affirmed in part; reversed in part and cause remanded with directions
Long caption: State of Wisconsin, plaintiff-respondent-cross petitioner, v. Ernesto E. Lazo Villamil, defendant-appellant-petitioner

Issues presented:
This case examines issues arising from statutory language that appears to make operating after revocation (OAR) and causing death both a misdemeanor and a felony.

Lazo Villamil's Issues:

- Whether it is proper to determine that a single offense can be punished as either a misdemeanor or felony in order to resolve ambiguity in the statutory language when the legislative intent was to create a penalty scheme with increasing punishment for additional elements?
- Whether a statute, unintentionally created by the legislature, which gives discretion to the prosecution where none was intended, [can] be applied constitutionally?

State of Wisconsin's Issues:

- Should Wis. Stat. § 343.44(1)(b) be authoritatively construed as though the word "knowingly" did not appear there, to correct an obvious oversight by the Legislature in failing to delete this word when it revised the statute, to clarify the statutory scheme for punishing drivers who cause a death while operating after revocation of their operator's license, and to fully effectuate the Legislature's actual intent?
- Should Wis. Stat. § 343.44(2)(b) be authoritatively construed to be directory rather than mandatory, so as to provide that a circuit court may, but is not required to, consider the enumerated factors in the exercise of its sentencing discretion, just as it may, but is not required to, consider other proper sentencing factors?

Some background: On Oct. 30, 2012, Ernesto E. Lazo Villamil drove into the rear end of another vehicle, killing the operator of that vehicle. Villamil's driver's license was revoked at the time. The state charged Lazo Villamil with, and Lazo Villamil pled to, one count of violating Wis. Stat. § 343.44(1)(b) and Wis. Stat. § 343.44(2)(ar)4 for causing the death of another person while OAR, a felony. In the course of his plea, he admitted that at the time he operated the vehicle, he knew his license was revoked.

The trial court sentenced Lazo Villamil to the maximum penalty of three years of initial confinement followed by three years of extended supervision. Lazo Villamil filed a post-conviction motion, which the trial court denied following a hearing.

Lazo Villamil appealed, arguing that because Wis. Stat. § 343.44(1)(b) (2009-10) and Wis. Stat. § 343.44(2)(ar)4. (Eff. Mar. 1, 2012) provide that either the misdemeanor or the felony provision could apply to his offense, ambiguity exists as to which provision should apply. Based upon the rule of lenity, he says the misdemeanor should apply. The rule of lenity "provides generally that ambiguous penal statutes should be interpreted in favor of the defendant." State v. Cole, 2003 WI 59, ¶67, 262 Wis. 2d 167, 663 N.W.2d 700.

The Court of Appeals noted that the legislature intended to treat an OAR causing death offense as a misdemeanor, if the operator did not know his/her license had been revoked, and as a Class H felony if the operator knew. The legislature, however, failed to remove the "knowledge" element from the misdemeanor language of §§ 343.44(1)(b)/343.44(2)(ar)4., and thus failed to accomplish the first part of this intent. Nonetheless, the Court of Appeals held that in the situation involved here, where Lazo Villamil caused the death of another and knew his license had been revoked, the legislative history shows that the Legislature intended to treat such an offense as a Class H felony.

Lazo Villamil also unsuccessfully argued at the Court of Appeals, and maintains before the Supreme Court, that the prosecutor's decision to charge the felony penalty violated due process and equal protection principles.

The state agrees with the Court of Appeals about legislative intent, and says there was an obvious drafting oversight that may be corrected through the doctrine of "implied repeal."

On another issue, the Court of Appeals remanded for new sentencing, agreeing with Lazo Villamil that he is entitled to resentencing because the record failed to show that the circuit court considered sentencing factors required by Wis. Stat. § 343.44(2)(b). The parties dispute the meaning of the word "shall" as used in the statute.

2016AP1980-W Wis. DNR v. Wis. Court of Appeals (District IV)

Supreme Court case type: Petition for Supervisory Writ
Court of Appeals: District IV
Circuit Court: Dane County, Judge John W. Markson
Long caption: State of Wisconsin ex rel. Department of Natural Resources, Petitioner, v. Wisconsin Court of Appeals, District IV, Clean Wisconsin, Inc., Lynda A. Cochart, Amy Cochart, Roger D. DeJardin, Sandra Winnemueller, Chad Cochart and Kinnard Farms, Inc., Respondents.

Issues presented: This is a dispute about the process for selecting an appellate venue in the Wisconsin court system. The Supreme Court examines the interplay of three statutes: Wis. Stat. §§ 227.53 (pertaining to review of an administrative decision), 801.50(3) (venue in civil actions), and 752.21 (venue in Court of Appeals).

Some background: In 2011, the Wisconsin Legislature amended two venue statutes addressing venue in the Court of Appeals. Changes resulting from 2011 Wisconsin Act 61, among others, include:

> **Wis. Stat. 752.21**
> (1) Except as provided in sub. (2), a judgment or order appealed to the Court of Appeals shall be heard in the Court of Appeals district which contains the court from which the judgment or order is appealed.

(2) A judgment or order appealed from an action venued in a county designated by the plaintiff to the action as provided under s. 801.50 (3) (a) shall be heard in a Court of Appeals district selected by the appellant but the Court of Appeals district may not be the Court of Appeals district that contains the court from which the judgment or order is appealed.

The underlying case involved here began taking shape in March 2012, when Kinnard Farms, Inc., a dairy farm in Kewaunee County, asked the state Department of Natural Resources (DNR) to reissue its Pollutant Discharge Elimination System permit. The DNR granted the request. Five individuals (the Cochart petitioners) then challenged the DNR's decision. An Administrative Law Judge (ALJ) concluded that the DNR could reissue Kinnard Farm's permit only if two other conditions were included in the permit related to groundwater monitoring and maximum animal units.

Kinnard Farms petitioned the DNR to review the ALJ's decision. Initially, the DNR declined. Then, after consultation with the Department of Justice, the DNR reconsidered its denial and determined that the two permit conditions added by the ALJ were unlawful under 2011 Wisconsin Act 21.

On Oct. 12, 2015, Clean Wisconsin and the Cochart petitioners separately petitioned for judicial review of the DNR's decision under Wis. Stat. § 227.52. Clean Wisconsin filed in Dane County Circuit Court. A few hours later, the Cochart petitioners filed in Kewaunee County Circuit Court. All parties then submitted briefs in Dane County on the question of venue.

Both Clean Wisconsin and the Cochart petitioners argued that Dane County was the appropriate venue if the cases were to be consolidated. The Dane County Circuit Court consolidated the cases and placed the case on its docket.

On July 14, 2016, the Dane County Circuit Court ruled in favor of Clean Wisconsin and the Cochart petitioners on the merits, concluding that the DNR was required to enforce the ALJ's two extra conditions on Kinnard Farms' reissued permit.

The DNR appealed. In its notice of appeal, it selected the Court of Appeals for District II, headquartered in Waukesha, as the appellate venue, citing § 752.21(2).

The Court of Appeals for District IV, headquartered in Madison, issued a brief order on Aug. 31, 2016, ruling that § 752.21(2) did not apply. The District IV court removed the case from District II's docket, and placed it on its own docket. The DNR's motion for reconsideration was denied Sept. 29, 2016.

District IV held that Clean Wisconsin/Cocharts had not "designated" the venue under Wis. Stat. § 801.50(3)(a) because venue in this case was governed by Wis. Stat. § 227.53(l)(a)3, which restricts venue in an appeal of an ALJ's decision to a petitioner's county of residence.

The Court of Appeals interpreted § 801.50(3)(a) as applying only when "venue [is] designated unilaterally by the plaintiff."

Wis. Stat. 801.50(3) (Venue in civil actions or special proceedings).

801.50(3)(a)(a) Except as provided in pars. (b) and (c), all actions in which the sole defendant is the state, any state board or commission, or any state officer, employee, or agent in an official capacity shall be venued in the county designated by the plaintiff unless another venue is specifically authorized by law.

The District IV Court of Appeals ruled that since "venue was not designated by the plaintiffs under s. 801.50(3)(a) . . . the provision of Wis. Stat. 752.21(2) that allows an appellant to select an appellate district does not apply."

The DNR filed a petition for supervisory writ on Oct. 13, 2016, asking the Supreme Court to decide the question of venue before the case proceeds on merit. The DNR says Clean Wisconsin designated Dane County as the venue under Subsection 801.50(3)(a), and that as the appellant, it has the right to "select" the Court of Appeals under § 752.21(2).

The District IV Court of Appeals says Clean Wisconsin and the Cochart petitioners had no "choice" of venue – they were required to file in Dane County and Kewaunee County, respectively, because § 227.53(l)(a)3 "specifically authorized" venue only in petitioner's county of residence.

District IV says that in 2013, District II denied a state agency's attempted venue selection under § 752.21(2) in another Chapter 227 judicial review case. Lamar Cent. Outdoor, LLC v. State of Wisconsin, No. 2013AP1188 (Wis. App., Dist. II, June 20, 2013).

The Court of Appeals says that under the DNR's view, any appellant, including the state, is entitled to select a different appellate district in essentially *every* case, unless the action is ultimately venued somewhere different from where a complaint was filed.

The DNR maintains that a Subsection 801.50(3)(a) "designation" occurs whenever a plaintiff, in a case in which the state is the sole defendant, indicates the venue in its pleadings, regardless of whether any venue limitations outside of Subsection 801.50(3)(a) also apply.

A decision by the Supreme Court would provide the parties, bench and bar with an opinion as to the applicability of § 752.21(2) to the DNR's appeal.

Review denied: The Supreme Court denied review in the following cases. As the state's law-developing court, the Supreme Court exercises its discretion to select for review only those cases that fit certain statutory criteria (see Wis. Stat. § 809.62). Except where indicated, these cases came to the Court via petition for review by the party who lost in the lower court:

Brown

2015AP70	State v. Collins
2016AP943-W	Pugh v. Richardson
2016AP1332	Prelude LLC v. CEnergy Glenmore Wind Farm 1 LLC

Calumet

2016AP456-CR	State v. Paulson

Dane

2015AP759-CRNM	State v. Jones
2015AP1246-CR	State v. Fierro
2015AP1450	Tyler v. Wall
2015AP2257	State v. Cuesta
2015AP2473	Slocum v. DOR

2016AP805 City of Madison v. Peterson

2016AP1218-W Thomas v. Dane Co.

Douglas
2015AP2220-CR State v. Krivinchuk

2015AP2591-W Peterson v. Foster

Eau Claire
2016AP1503-W Northern v. Tegels

2016AP2420-W Stafford v. Jensen

Grant
2015AP908 Virnich v. Vorwald

2015AP1600 Virnich v. Vorwald

Kenosha
2015AP996-CR State v. Holcomb

2016AP1741-W Turner v. Pollard

Lafayette
2015AP1366-CR State v. Wand

2015AP2344-CR State v. Wand

Marathon
2015AP2001 State v. Sisson

Milwaukee
2013AP2473-W Myles v. Hepp

2014AP259 State v. Walker

2014AP784-CR State v. Lilek

2014AP1719-W Hoover v. Baenen

2015AP356-CR State v. Leichman
Chief Justice Patience Drake Roggensack did not participate.

2015AP414 State v. Gils

2015AP537 Colleran v. Wildes

2015AP651 GMAC Mortgage v. Kops

2015AP823-CR State v. Hall

2015AP858 State v. A.L.
Justice Rebecca Grassl Bradley did not participate.

2015AP873-CR State v. King
Chief Justice Patience Drake Roggensack did not participate.

2015AP921-CR State v. Rogers

2015AP968-CR State v. Giacomantonio

2015AP974-CR State v. Weathersby

2015AP1092-W Smith v. Hepp

2015AP1154-CR State v. Scott

2015AP1247 Green v. Housing Auth. of the City of Milwaukee

2015AP1514-CR State v. Johnson

2015AP1542-CR State v. Payne

2015AP1657 Bach v. LIRC

2015AP1852 State v. Daniels

2015AP1912 Przytarski v. Vallejos

2015AP1939 State v. Hill

2015AP1990-CR State v. Bivens

2015AP2023 State v. Crittendon

2015AP2030-CR State v. Davis

2015AP2159 Kresovic v. Kresovic

2015AP2230-32-CR State v. Cooper

2015AP2301-CR State v. Wilcoxson

2015AP2432-CR State v. Graf

2015AP2525-CR State v. Odom
Chief Justice Patience Drake Roggensack did not participate.

2016AP229 State v. Gwin

2016AP483-85 State v. J.B.
Justice Rebecca Grassl Bradley did not participate.

2016AP1075 Wingo v. Progressive Ins.

2016AP1614-W Dallas v. Milwaukee Co.

2016AP1735-W Smith v. Hepp

Monroe
2015AP2036-CR State v. Hoff

Ozaukee
2015AP1032-CR State v. Steinhardt

2015AP1326-CR State v. Scott

Pierce
2015AP2113-CR State v. Dallman

Price
2015AP852-CR State v. Powell

Racine
2015AP2096-CR State v. Lawhorn

2016AP834-W Olmstead v. Smith

2016AP1083-W Larson v. Douma

Rock
2015AP1522-CR State v. Lincoln

2015AP1802-CR State v. Brown

Sheboygan
2015AP2380-CR State v. Lay

2016AP1239 Hoefler v. K. Bee Window & Siding

St. Croix
2014AP2592 Foster v. Regent Ins.
Chief Justice Patience Drake Roggensack dissents.

2016AP186 Ray v. Town of Kinnickinnic
Justice Rebecca Grassl Bradley and Justice Daniel Kelly dissent.

Taylor
2015AP2074-CR State v. Miller

Walworth
2015AP1969-CR State v. Noren

Washington
2015AP1383-CR State v. Green

2015AP1704 State v. Cherry

2015AP2360-CR State v. May

Waukesha
2015AP1367 The Homestead of Waukesha v. The Homestead Condo Ass'n.

2015AP1561 Adams v. Hayes

2015AP1851-CR State v. Simon

2016AP618-CR State v. Jossi

Winnebago
2015AP731 State v. Price

2015AP2240 Townsend v. Neenah Joint Sch. Dist.

2016AP136-CR State v. Reyna

2016AP662 State v. Valenti