



Supreme Court of Wisconsin

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FOR IMMEDIATE RELEASE

Wisconsin Supreme Court accepts ten new cases

Madison, Wis. (April 17, 2019) – The Wisconsin Supreme Court has voted to accept ten new cases, and the Court acted to deny review in a number of other cases. The case numbers, counties of origin, and the issues presented in granted cases are listed below. More detailed synopses will be released at a later date. More information about pending appellate cases can be found on the Wisconsin Supreme Court and Court of Appeals Access [website](#). Published Court of Appeals opinions can be found [here](#), and the status of cases pending in the Supreme Court can be found [here](#).

2017AP1977-CR

State v. Alexander M. Schultz

Supreme Court case type: Petition for Review

Court of Appeals: District III

Circuit Court: Lincoln County, Judge Robert R. Russell, affirmed

Long caption: State of Wisconsin, Plaintiff-Respondent, v. Alexander M. Schultz, Defendant-Appellant-Petitioner

Issues presented:

- 1) [W]hen determining whether two offenses charged in successive prosecutions are the same in fact, for purposes of the Double Jeopardy Clause, may a court determine the scope of jeopardy in the first prosecution based upon testimony which was adduced at trial?

Or alternatively, must a court determine the scope of jeopardy based upon whether a reasonable person familiar with the totality of the facts and circumstances would have [to] construe the initial charging documents, at the time jeopardy attached in the first case, to cover the offense that is charged in the charging document of the subsequent prosecution?

To put it in plainer language, how do you determine the scope of jeopardy? Do you look at the charging documents in light of the facts and circumstances known when jeopardy attached, which in the case of a jury trial is when the jury is sworn, or may a court narrow the scope of jeopardy based upon testimony that was later adduced at trial?

- 2) [I]f there should be any ambiguity in the timeframe of a charging document, for purposes of the Double Jeopardy Clause, who should bear the burden resulting from the ambiguity, the defendant or the State?

2016AP1688/2016AP2502 Clean Wisconsin, Inc. v. DNR

The Supreme Court accepted certification in two consolidated cases (2016AP1688/2016AP2502) and a third case (2018AP59), all of which address the same subject matter – 2011 Wis. Act 21 (Act 21) and its application to the regulatory permit approval process.

Supreme Court case type: Certification

Court of Appeals: District IV (Dist. III judges)

Circuit Court: Dane County, Judge John W. Markson

Long caption: Clean Wisconsin, Inc., Lynda Cochart, Amy Cochart, Roger DeJardin, Sandra Winnemueller and Chad Cochart, Petitioners-Respondents, v. Wisconsin Department of Natural Resources, Respondent-Appellant, Kinnard Farms, Inc., Intervenor

Issues presented:

1. Does [the Department of Natural Resources (DNR)] have authority to impose off-site groundwater-monitoring requirements and an animal-unit maximum on a [Wisconsin Pollution Discharge Elimination System (WPDES)] permit?
2. Did DNR retain discretion to decide whether to impose certain permit conditions after denying review of the [Administrative Law Judge's] decision?
3. Was the circuit court competent to enter, and, if so, did it correctly enter an award of costs and fees to Petitioners?

2018AP59

Clean Wisconsin, Inc. v. DNR

Supreme Court case type: Certification

Court of Appeals: District IV (Dist. II judges)

Circuit Court: Dane County, Judge Valerie Bailey-Rihn

Long caption: Clean Wisconsin, Inc. and Pleasant Lake Management District, Petitioners-Respondents, v. Wisconsin Department of Natural Resources, Respondent-Appellant, Wisconsin Manufacturers & Commerce, Dairy Business Association, Midwest Food Processors Association, Wisconsin Potato & Vegetable Growers Association, Wisconsin Cheese Makers Association, Wisconsin Farm Bureau Federation, Wisconsin Paper Council and Wisconsin Corn Growers Association, Intervenor-Co-Appellants.

Issues presented:

1. Did [the Department of Natural Resources (DNR)] lawfully approve eight high capacity wells without conducting an additional environmental review not required by statute or rule, given that Act 21 prohibits agencies from enforcing any requirement that is not “explicitly” permitted, and given that no statute explicitly authorizes additional environmental review for these wells?
2. Is Petitioners’ claim that DNR failed to “consider . . . cumulative impacts” when approving the wells barred by Wis. Stat. § 281.34(5m), which prohibits any person from “challeng[ing] an approval . . . of a high capacity well based on the lack of consideration of [] cumulative environmental impacts”?

2017AP1823

Lamar Central Outdoor, LLC v. Div. of Hrng & Appeals

Supreme Court case type: Petition for Review

Court of Appeals: District IV

Circuit Court: Portage County, Judge Jon M. Counsell, affirmed

Long caption: Lamar Central Outdoor, LLC d/b/a Lamar Advertising of Central Wisconsin and TLC Properties, Inc., Petitioners-Appellants, v. State of Wisconsin Division of Hearing & Appeals, Respondent-Respondent, State of Wisconsin Department of Transportation, Other Party

Issues presented:

1. Whether [the Division of Hearings and Appeals (DHA)] erroneously interpreted a provision of law.
 - a. Whether DHA erred in finding that Wis. Stat. s. 84.30 and Wisconsin Administrative Code Trans. s. 201.10 prohibit the enlargement of nonconforming, off-premise signs erected after March 18, 1972.
 - b. Whether DHA misinterpreted and misapplied common law authorities relating to nonconforming uses.
2. Whether DHA erred as a matter of law by finding that the right to cure provision in Wis. Stat. s. 84.30 (11) does not apply to Lamar's sign.
3. Whether DHA erred as a matter of law by failing to require [the Wisconsin Department of Transportation (DOT)] to resolve statutory ambiguities by engaging in rulemaking.
 - a. Whether [DOT]'s change of policy relating to the addition of extensions to nonconforming signs without promulgating a formal rule pursuant to Wis. Stat. s. 227.10(1) constituted unlawful rulemaking.
 - b. Whether Wis. Stat. s. 227.10(1) required [DOT] to promulgate as rule its revised interpretation of Wis. Stat. s. 84.30(11).

2017AP913-CR

State v. Autumn Marie Love Lopez

2017AP914-CR

State v. Amy J. Rodriguez

Supreme Court case type: Petition for Review

Court of Appeals: District IV

Circuit Court: Green County, Judge James R. Beer, reversed and causes remanded for further proceedings

Long caption: State of Wisconsin, Plaintiff-Appellant, v. Autumn Marie Love Lopez, Defendant-Respondent-Petitioner

State of Wisconsin, Plaintiff-Appellant, v. Amy J. Rodriguez, Defendant-Respondent

Issue presented: Does Wis. Stat. § 971.36 or prosecutorial charging discretion allow for seven separate acts of retail theft of merchandise valued at \$126-\$314 each and committed over a two-week period to be charged as a single count of felony retail theft of merchandise totaling \$1,452.12?

2017AP1416-CR

State v. Matthew C. Hinkle

Supreme Court case type: Petition for Review

Court of Appeals: District II

Circuit Court: Fond du Lac County, Judge Robert J. Wirtz, affirmed

Long caption: State of Wisconsin, Plaintiff-Respondent, v. Matthew C. Hinkle, Defendant-Appellant-Petitioner.

Issues presented:

- Did the Fond du Lac County criminal court lack competency under § 938.183(1)(b) to proceed on Hinkle’s nontraffic counts, when competency was based solely on Milwaukee County’s previous waiver?
- Did trial counsel provide ineffective assistance, when she failed to object to the nontraffic counts in criminal court and to the order waiving juvenile jurisdiction?

2017AP822

Veritas Steel, LLC v. Lunda Construction Company

Supreme Court case type: Petition for Review

Court of Appeals: District IV

Circuit Court: Dane County, Judge Frank D. Remington, affirmed

Long caption: Veritas Steel, LLC, Plaintiff-Respondent, v. Lunda Construction Company, Defendant-Third-Party Plaintiff-Appellant-Petitioner, v. Bridge Resources, LLC n/k/a Bridge Fabrication Holdings, LLC, Alan Sobel, Matthew Cahill and Atlas Holdings, LLC, Third-Party Defendants-Respondents

Issues presented:

1. Did the court’s decision in *Fish v. Amsted Indus. Inc.*[, 126 Wis. 2d 293, 376 N.W.2d 820 (1985)] “significantly” refine the court’s analysis in *Tift v. Forage King Industries Inc.*, 108 Wis. 2d 72, 322 N.W.2d 14 (1982)]?
2. Does *Fish* require proof of “identity of ownership” to establish successor liability?
3. Did *Fish* establish a rule of law that an actual transfer of stock or the sell to the buyer is a required element to establish successor liability under the de facto merger and continuation exceptions to rule of successor non-liability even though such a transaction is not a requirement of a statutory merger under Wis. Stat. § 180.1101(2)(c)?
4. Is Wis. Stat. § 242.08(5)(b) a complete defense to the claim [sic] to the fraudulent transaction claim asserted by Lunda in light of this court’s recent decision in *Springer v. Nohl Electric Products Corp.*, 2018 WI 48, 381 Wis. 2d 438, 912 N.W.2d 1?

2017AP1104-CR

State v. Roy S. Anderson

Supreme Court case type: Petition for Review

Court of Appeals: District II

Circuit Court: Racine County, Judge Michael J. Piontek, affirmed

Long caption: State of Wisconsin, Plaintiff-Respondent, v. Roy S. Anderson, Defendant-Appellant-Petitioner

Issues presented:

1. What constitutes sufficient knowledge of an offender’s community supervision status where an officer wants to search him or her pursuant to Act 79?
2. Did officers lack reasonable suspicion to search Roy Anderson’s person pursuant to Act 79?

2017AP1720-CR

State v. Robert James Pope, Jr.

Supreme Court case type: Petition for Review

Court of Appeals: District I

Circuit Court: Milwaukee County, Judge Jeffrey A. Conen, reversed

Long caption: State of Wisconsin, Plaintiff-Appellant, v. Robert James Pope, Jr., Defendant-Respondent-Petitioner

Issues presented:

1. Where no transcripts of a jury trial occurring over 20 years ago are available in a direct appeal and appellate counsel is new to the case, does application of [the requirement of State v. Perry, 136 Wis. 2d 92, 401 N.W.2d 748 (1987)] that appellant assert a “facially valid claim of error” that might be supported by a portion of a missing transcript deny the constitutional right to meaningful appellate review?
2. Whether a statement on transcript filed in an appeal binds an appellant in all future appeals in the same case?

2018AP333 Official Committee of Unsecured Creditors of Great Lakes Quick Lube LP v. John W. Theisen

Supreme Court case type: Petition for Review

Court of Appeals: District I

Circuit Court: Milwaukee County, Judge Clare L. Fiorenza, reversed and cause remanded

Long caption: Official Committee of Unsecured Creditors of Great Lakes Quick Lube LP, Plaintiff-Appellant, v. John W. Theisen, Tom Chambasian and Chester J. Bojanowski, Defendants-Respondents-Petitioners

Issue presented:

[W]hether the one-year “discovery rule” set forth in Wis. Stat. § 893.425(1) – which governs the statute of limitations for fraudulent transfer and obligation claims – is triggered by the discoverability of the alleged fraudulent transfer or obligation itself, or rather is only triggered if and when the “*fraudulent nature*” of the transfer or obligation becomes discoverable.

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

18AP122-CR

State v. Hendricks

Calumet

17AP2236-CR

State v. Wegner

Clark

18AP30-CR

State v. Gibson

Dane

17AP642 Howard v. Neitzel

17AP1250 Fernandez-Close v. Litscher

17AP2234-2235-CR State v. Cabrera

Eau Claire

16AP2154-CRNM State v. McReynolds

17AP147 State v. Her

17AP2088-CRNM State v. Helgeson

Fond du Lac

18AP1088-FT Fond du Lac County v. S.R.H.

Forest

17AP1077-CR State v. Zamber
Justice Ann Walsh Bradley dissents.

Kenosha

17AP1308 State v. Minnick

17AP1358-W Miller v. Eckstein

18AP429-CR State v. Webster

18AP571-CR State v. Mays

18AP2207-W Williams v. Hayes

Marathon

17AP1870-CR State v. Degorski

18AP430 Baars v. Weber

Milwaukee

16AP260 State v. Wilber

16AP1867-1868-CRNM State v. Pruitt

16AP2318-CR State v. Bryson

17AP501-502/504-CRNM State v. Jordan

17AP942 State v. Davis

17AP1332-CR State v. Brown

17AP1443 Siddique v. Bd. Of Regents University of Wisconsin System
Justice Annette Kingsland Ziegler and Justice Rebecca Grassl Bradley dissent.

17AP1907 Tankstar USA Inc. v. Navistar, Inc.

17AP2252 Team Property Management v. Houston
Chief Justice Patience Drake Roggensack did not participate.

18AP14-CR State v. Hendricks

18AP96-CR State v. Porter

18AP200-CR State v. Hamilton
Chief Justice Patience Drake Roggensack and Justice Rebecca Frank Dallet did not participate.

18AP320-CR State v. Smith

18AP869-CR State v. Norwood

18AP1827 State v. R.H.

19AP266-W Castellano v. Hayes

Ozaukee

17AP2283-CR State v. Jahn

Pierce

17AP1679-CR State v. Close

Rock

17AP743-CR State v. Warfield

17AP1220 Aamaans Properties v. Wisconsin DOT

18AP127-CR State v. Carter

Sheboygan

17AP677-678-CR State v. Howard

Washburn

17AP1734-CRNM State v. Peterson

Waukesha

17AP680-CR State v. Malone

18AP397-CR State v. Keota

Winnebago
17AP1971-CR

State v. George

18AP1505-FT

Winnebago County v. A.A.