



# Supreme Court of Wisconsin

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**FOR IMMEDIATE RELEASE**

## Wisconsin Supreme Court accepts 27 cases

**Madison, Wis.** (July 24, 2018) – The Wisconsin Supreme Court has voted to accept 27 cases, and the Court acted to deny review in a number of other cases. The case numbers, issues, and counties of origin of granted cases are listed below, along with a list of cases in which review was denied. The list below is a compilation of cases granted or denied review during the months of February, March, April, May, June and July that have not previously been included in a press release. A more detailed synopsis of each case will be released before the oral argument is heard in coming months.

More information about cases before the Wisconsin Supreme Court or the Court of Appeals 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](#).

2016AP1521

Paula M. Grigg v. Aarrowcast, Inc.

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. III

**Circuit Court:** Shawano County, Judge William F. Kussel, Jr., reversed and cause remanded for further proceedings

**Long caption:** Paula M. Grigg, as Special Administrator of the Estate of Raymond B. Grigg, Plaintiff-Appellant, v. Aarrowcast, Inc., AXIS Insurance Company and IOP Cast Iron Holdings, LLC, Defendants, Hudson Insurance Company and Hudson Specialty Insurance Company, Defendants-Respondents-Petitioners.

**Issues presented:**

1. Whether an insurer's duty to defend is triggered under Wisconsin law where the underlying suit expressly sought to hold the individual liable in his uninsured capacity because there "might be" an unpled claim against the individual in a covered capacity?
2. Do Wisconsin's notice-prejudice statutes apply to "claims made" policies and, if so, can an insured meet its burden to show the insurer was not prejudiced because the insurer did not affirm it would have defended had the insured provided timely notice even though the insurer lost an opportunity to participate in settlement of a prior related claim/lawsuit?
3. Whether the Estate is barred by the doctrine of issue preclusion from relitigating whether Grigg was sued in his capacity as a director or officer on appeal against

Hudson where an inconsistent final judgment was entered against the other co-defendants upon the same finding?

2017AP1337-CR

State v. Zachary S. Friedlander

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. IV

**Circuit Court:** Jefferson County, Judge David J. Wambach, reversed and cause remanded with directions

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Zachary S. Friedlander, Defendant-Appellant.

**Issues presented:**

1. To be entitled to sentence credit, an offender must have been “in custody” under Wis. Stat. § 973.155(1) during the time for which credit is sought. Under [State v. Magnuson, 2000 WI 19, ¶¶25, 31, 47, 233 Wis. 2d 40, 606 N.W.2d 536], an offender is “in custody” within the meaning of § 973.155(1) if the offender would be subject to an escape charge for leaving his or her status. When, as here, an offender is mistakenly released from prison or jail, is the offender “in custody” under § 973.155(1) and Magnuson such that sentence credit should be given for this time spent at liberty?
2. Should this Court overrule the court of appeals’ decisions in [State v. Riske, 152 Wis. 2d 260, 448 N.W.2d 260 (Ct. App. 1989)] and [State v. Dentici, 2002 WI App 77, 251 Wis. 2d 436, 643 N.W.2d 180]?

2017AP909

West Bend Mutual Ins. Co. v. Ixthus Medical Supply, Inc.

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. II

**Circuit Court:** Racine County, Judge David W. Paulson, reversed and cause remanded with directions

**Long caption:** West Bend Mutual Insurance Company, Plaintiff-Respondent, v. Ixthus Medical Supply, Inc. and Karl Kunstman, Defendants-Appellants, Abbott Laboratories, Abbott Diabetes Care Inc. and Abbott Diabetes Care Sales Corp., Defendants-Co-Appellants.

**Issues presented:**

1. Do allegations of Ixthus’ unlawful diversion to U.S. markets of Abbott’s diabetic test strips manufactured for foreign markets, and fraudulent rebate scheme with resultant loss to Abbott, constitute injury caused by advertising so as to invoke “advertising injury” liability coverage and invoke West Bend’s duty to defend the underlying lawsuit in federal court in New York, Abbott Laboratories, et al. v. Adelpia Supply USA, et al., No. 15 Civ. 05826 (CBA)(MDG)(E.D.N.Y.)(the “Abbott Suit”)?
2. Do allegations of Ixthus’ unlawful diversion of test strips and fraudulent rebate scheme constitute a knowing violation of rights of another such that the exclusion for Knowing Violation applies?
3. Do allegations of Ixthus’ unlawful diversion of test strips and fraudulent rebate scheme preclude coverage pursuant to the Criminal Acts exclusion?

4. Do allegations that Ixthus intentionally caused damage to Abbott by participating in the unlawful diversion of test strips and fraudulent rebate scheme preclude coverage on the basis of the Doctrine of Fortuity?
5. Do allegations of Ixthus' unlawful diversion of test strips and fraudulent rebate scheme preclude coverage on the basis of an insured's reasonable expectations?
6. Do allegations of Ixthus' unlawful diversion of test strips and fraudulent rebate scheme preclude coverage on the basis of public policy considerations?

2017AP516     Peter Ogden Fam. Trust 2008 v. Bd. of Review - Town of Delafield

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. II

**Circuit Court:** Waukesha County, Judge Kathryn W. Foster; reversed and cause remanded with directions

**Long caption:** State of Wisconsin ex rel. The Peter Odgen Family Trust of 2008 and The Therese A. Mahoney-Ogden Family Trust of 2008, Petitioners-Appellants, v. Board of Review for the Town of Delafield, Respondent-Respondent.

**Issue presented:**

Did the Court of Appeals consider and properly apply all required statutory and regulatory provisions when it determined that to qualify for agricultural classification all that needs to be shown is that there are "growing qualifying crops" on the land?

2016AP1631                     Steadfast Ins. Co. v. Greenwich Ins. Co.

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. I

**Circuit Court:** Milwaukee County, Judge Glenn H. Yamahiro, affirmed

**Long caption:** Steadfast Insurance Company, Plaintiff-Respondent, v. Greenwich Insurance Company, Defendant-Appellant-Petitioner.

**Issues presented:**

1. When two insurers each owe a duty to defend a mutual insured under claims-made policies, and the policies each provide coverage for the same loss (costs related to the defense of an additional insured in the underlying actions) arising out of a discrete (not long-tail) claim, is the priority of coverage appropriately determined by the other insurance provisions contained in the respective policies?
2. Is a claim advanced by one insurer against another for the payment of defense costs incurred by a mutual insured, and paid by the demanding insurer when both insurers have a duty to defend, considered a claim for contribution or a subrogation claim?
3. When one insurer successfully argues that another insurer had a contemporaneous duty to defend a mutual insured, is the appropriate remedy a recovery of an allocated share of the mutually owed defense costs, or a recovery of all defense costs, regardless of other insurance provisions or the demanding insurer's own independent duty to defend the mutual insured?

4. When one insurer successfully argues that another insurer had a contemporaneous duty to defend a mutual insured, is the demanding insurer entitled to recover attorneys' fees in establishing coverage?

2017AP1142

Cacie M. Michels v. Keaton L. Lyons

**Supreme Court case type:** Certification

**Court of Appeals:** Dist. III

**Circuit Court:** Chippewa County, Judge James M. Isaacon

**Long caption:** In the matter of the grandparental visitation of A.A.L.: In re the Paternity of A.A.L.: Cacie M. Michels, Petitioner-Appellant, v. Keaton L. Lyons, Respondent-Appellant, Jill R. Kelsey, Petitioner-Respondent.

**Issue presented:**

What is the standard of proof required for a grandparent to overcome the presumption that parents' decisions regarding the scope and extent of their child's visitation with the grandparent is in the child's best interest?

2017AP1261-CR

State v. Justin A. Braunschweig

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. IV

**Circuit Court:** Jefferson County, Judge Randy R. Koschnick, affirmed

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Justin A. Braunschweig, Defendant-Appellant-Petitioner.

**Issue(s) presented:**

The issue presented in the petition can be summarized as follows: Whether an expunged prior OWI conviction can be used to support a conviction for OWI, second offense.

2017AP1574

Portage County v. J. W. K.

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. IV

**Circuit Court:** Portage County, Judge Thomas T. Flugaur; Court of Appeals dismissed appeal as moot

**Long caption:** In the matter of the mental commitment of J.W.K.: Portage County, Petitioner-Respondent, v. J.W.K., Respondent-Appellant-Petitioner.

**Issues presented:**

1. Is the appeal on sufficiency grounds of an extended mental health commitment moot when a subsequent extension is ordered?
2. Is a doctor's recitation of the recommitment standard, without a factual explanation as to why the individual meets the standard, sufficient to extend an individual's mental health commitment?

2018AP203-W

Ezequiel Lopez-Quintero v. Michael A. Dittmann

**Supreme Court case type:** Petition for Writ

**Court of Appeals:** Dist. II

**Circuit Court:** Kenosha County, Judge David P. Wilk; Court of Appeals denied petition for a writ of habeas corpus

**Long caption:** State of Wisconsin ex rel. Ezequiel Lopez-Quintero, Petitioner, v. Michael A. Dittmann, Respondent.

**Issue presented:**

Can the Court of Appeals apply an irrebuttable presumption of prejudice and deny ex parte a sufficiently pled petition for writ of habeas corpus solely for untimeliness, under Wis. Stat. § 809.51(2)?

2016AP880

State v. A.L.

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. I

**Circuit Court:** Milwaukee County, Judge T.C. Dee, reversed and cause remanded with directions

**Long caption:** In the interest of A.L., a person under the age of 17: State of Wisconsin, Petitioner-Appellant, v. A.L., Respondent-Respondent-Petitioner.

**Issues presented:**

1. Whether a circuit court may reinitiate competency proceedings in a delinquency case for a juvenile who is found not competent and not likely to regain competency during the statutory time limits.
2. Does the circuit court retain competency over a juvenile delinquency petition that has been suspended due to the juvenile's incompetence and subsequently converted to a juvenile in need of protection and services (JIPS) order after that JIPS order has expired?

2017AP146

Daniel Marx v. Richard L. Morris

**Supreme Court case type:** Certification

**Court of Appeals:** Dist. III

**Circuit Court:** Eau Claire County, Judge William M. Gabler, Sr.

**Long caption:** Daniel Marx, Fracsand, LLC, Michael Murray and R&R Management Funds, LLC, Plaintiffs-Respondents, v. Richard L. Morris and R.L. Co., LLC, Defendants-Appellants.

**Issues presented:**

1. Does a member of a limited liability company (LLC) have standing to assert a claim against another member of the same LLC based on an injury suffered primarily by the LLC, rather than the individual member asserting the claim?
2. Does the Wisconsin Limited Liability Company Law, Wis. Stat. ch. 183, preempt common law claims by one member of an LLC against another member based on the second member's alleged self-dealing?

2016AP601

Midwest Neurosciences Associates, LLC v.  
Great Lakes Neurosurgical Associates, LLC

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. II

**Circuit Court:** Ozaukee County, Judge Paul V. Malloy, reversed and cause remanded with directions

**Long caption:** Midwest Neurosciences Associates, LLC and Neurosurgery and Endovascular Associates, SC, Plaintiffs-Appellants, v. Great Lakes Neurosurgical Associates, LLC and Yashdip Pannu, M.D., Defendants-Respondents.

**Issues presented:**

1. The Court of Appeals has created a conflict in the law of Wisconsin by requiring the trial court to compel a party to arbitration who has never agreed to arbitrate simply because a co-defendant is purportedly required to have an arbitrator determine arbitrability of an issue unique to it.
2. The Court of Appeals' decision in Mortimore v. Merge Technologies Inc., 2012 WI App 109, 344 Wis. 2d 459, 824 N.W.2d 155, was wrongly decided and is creating confusion in the judiciary's role in deciding motions to compel arbitration.
3. The Court of Appeals' decision here and its application of its decision in Mortimore creates a conflict with this Court's decision in Town Bank v. City Real Estate Development, LLC, 2010 WI 134, 330 Wis. 2d 340, 793 N.W.2d 476, regarding the application of merger clauses.
4. Can a contract containing a merger clause and which does not contain an arbitration clause effectively change the forum of dispute resolution when a prior, now inapplicable, agreement between the parties contained an arbitration clause?

2017AP631

Christopher Kieninger v. Crown Equipment Corp.

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. IV

**Circuit Court:** Dane County, Judge Ellen K. Berz, reversed and cause remanded for further proceedings

**Long caption:** Christopher Kieninger and Dewayne Meek, Plaintiffs-Appellants, v. Crown Equipment Corporation d/b/a Crown Lift Trucks, LLC, Defendant-Respondent-Petitioner.

**Issues presented:**

1. Must Wisconsin courts consider the federal Employee Commuting Flexibility Act ("ECFA"), which clarified the Portal-to-Portal Act, 29 U.S.C. § 254(a), in the analysis of Wisconsin wage and hour law claims, specifically as it relates to the compensability of commuting time for employees who voluntarily elect to commute using their employer's vehicle?
2. If the application of ECFA is not mandatory, may Wisconsin courts nevertheless consider ECFA in the analysis of Wisconsin wage and hour law claims, specifically as it relates to the compensability of commuting time for employees who voluntarily elect to commute using their employer's vehicle?

2018AP291-W

CityDeck Landing LLC v. Cir. Crt for Brown County

**Supreme Court case type:** Petition for Supervisory Writ

**Court of Appeals:** Dist. III

**Circuit Court:** Brown County, Judge Thomas J. Walsh

**Long caption:** State of Wisconsin ex rel. CityDeck Landing LLC, Petitioner, v. Circuit Court for Brown County, the Honorable Thomas J. Walsh, presiding, Society Insurance, Smet Construction Services Corporation and GB Builders, LLC, Respondents.

**Issue presented:**

Does a circuit court exceed its jurisdiction by staying a separate arbitration proceeding involving a different dispute than the one before it, and where some of the parties to the arbitration—along with the arbitrator—are not parties in the circuit court action and have not been duly subjected to the circuit court’s jurisdiction?

2016AP2259

Stuart White v. City of Watertown

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. IV

**Circuit Court:** Jefferson County, Judge Jennifer L. Weston, affirmed

**Long caption:** Dr. Stuart White and Janet White, Plaintiffs-Respondents, v. City of Watertown, Defendant-Appellant, Township of Watertown and Township of Watertown Chairman, Richard Gimbler, Defendants.

**Issues presented:**

1. Does the entirety of Wisconsin Statutory Chapter 90, the “Fences” Chapter, apply to cities and villages when the Chapter’s remedial and enforcement provisions do not specifically identify any application to cities and villages?
2. Is Chapter 90 ambiguous because cities and villages are not identified as remedial or enforcement entities within the statute?
3. Did the state legislature intentionally omit statutory language contained within an 1875 Act when it drafted the 1878 Revised Statutes?

2016AP1765

Melvin DeWitt v. Earl G. Ferries

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. IV

**Circuit Court:** Vernon County, Judge Michael J. Rosborough, reversed

**Long caption:** Petition for Order Regarding Williams/Jones Pioneer Cemetery: Melvin DeWitt, Donna DeWitt, Darrell Parker, Ruth Parker, Merlin Williams, Wanda Williams and Phyllis McCoy, Petitioners-Respondents, v. Earl G. Ferries and Paulette M. Ferries, Respondents-Co-Appellants, Town of Forest, Appellant.

**Issues presented:**

1. Does the evidence presented support the Circuit Court conclusion that the parcel was and is used as a cemetery and, therefore, the parcel cannot be subject to a claim of adverse possession by the Ferries?

2. Does the evidence presented support the Petitioners and Circuit Court's conclusion that there exists no association or group with authority to transfer ownership and operation of the one (1) acre cemetery to the Town of Forest?
3. Whether the parcel at issue is a "cemetery."
4. Whether a "cemetery" may be adversely possessed by a private citizen.
5. Whether it is necessary to resolve the question of the parcel's ownership to effect a transfer under Wis. Stat. § 157.115.
6. What does Wis. Stat. § 157.115 require to demonstrate that "by reason of the removal or death of the persons interested in its upkeep there exists no association or group with authority to transfer ownership and operation of the cemetery to the town."

2015AP2486

Russell Robertson v. Cleaver-Brooks, Inc.

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. I

**Circuit Court:** Milwaukee County, Judge David A. Hansher, Reversed and cause remanded for further proceedings

**Long caption:** Russell Robertson, individually and Executor of the Estate of Donald J. Robertson, Plaintiff-Appellant, v. Cleaver-Brooks, Inc., L & S Insulation Company, Inc., Sprinkmann Sons Corporation and Weil-McLain Company, Defendants-Respondents, Oakfabco, Inc., Blue Cross Blue Shield of Tennessee and Owens-Illinois, Inc., Defendants.

**Issue presented:**

Did L&S Insulation Company, Inc., as the moving party on summary judgment, establish the absence of a genuine issue of material fact as to whether exposure to its products through repair and maintenance work caused harm to Donald Robertson?

2016AP299

SECURA Insurance v. Ray Duerr Logging LLC

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. III

**Circuit Court:** Douglas County, Judge Kelly J. Thimm, affirmed in part; reversed in part and cause remanded with directions

**Long caption:** SECURA Insurance, A Mutual Company, Plaintiff-Appellant-Cross-Respondent, v. Lyme St. Croix Forest Company, LLC, Lyme St. Croix Land Company LLC, St. Croix Forest Products LLC, American Family Mutual Insurance Company, Safeco Insurance Company of America, State Farm Fire & Casualty Company, Wisconsin Mutual Insurance Company, Erie Insurance Group, Wilson Mutual Insurance Company, USAA Casualty Insurance Company, Western National Insurance Company p/k/a Western National Assurance Company, Auto-Owners Insurance Company, Farmers Insurance Exchange, Sentry Insurance Company, a mutual company, Jeremiah Nelson, Amy Nelson, Steigerwaldt Tree Farms, LLC, Steigerwaldt Land Services, Inc., LFF III Timber Holding, Frankenmuth Insurance Company, General Casualty Company of Wisconsin, Regent Insurance Company, Continental Western Insurance Company, Foremost Insurance Company of Grand Rapids Michigan, Foremost Property and Casualty Insurance Company, West Bend Mutual Insurance Company, American Family Home Insurance Company, Integrity Mutual Insurance Company, Defendants-Respondents, Hanover Insurance Company, Defendant-Respondent-Cross-Appellant.



**Issue presented:**

Are all property damages from the May 2013 Germann Road Fire the result of a single, uninterrupted cause, and therefore a single occurrence for purposes of liability coverage under a commercial policy issued by SECURA Insurance, A Mutual Company?

2016AP1525

Milwaukee District Council 48 v. Milwaukee Co.**Supreme Court case type:** Petition for Review**Court of Appeals:** Dist. I**Circuit Court:** Milwaukee County, Judge Stephanie Rothstein, affirmed**Long caption:** Milwaukee District Council 48, Plaintiff-Respondent, v. Milwaukee County, Defendant-Appellant.**Issue presented:**

Whether an ordinance amendment which designated County employees “covered by the terms of a collective bargaining agreement” was applicable to those employees after their collective bargaining agreement (which included provisions for wages) had expired and 2011 Wisconsin Act 10 was enacted, by before their union was decertified.

2016AP636

Koss Corporation v. Park Bank**Supreme Court case type:** Petition for Review**Court of Appeals:** Dist. I**Circuit Court:** Milwaukee County, Judge David L. Borowski, judgment affirmed**Long caption:** Koss Corporation, Plaintiff-Appellant, v.

Park Bank, Defendant-Third-Party Plaintiff-Respondent-Cross-Appellant, v. Michael J. Koss, Third-Party Defendant-Appellant-Cross-Respondent, Grant Thornton LLP, Third-Party Defendant-Cross-Respondent.

**Issue(s) presented:**

1. Did the court of appeals err by creating a new two-part test regarding what is required for plaintiffs to prove “bad faith” within the meaning of the Wisconsin Uniform Fiduciaries Act, Wis. Stat. § 112.01 et seq. (“UFA”), which differs from the legal standard established by courts in other jurisdictions that have adopted the UFA?
2. Did the circuit court and court of appeals improperly resolve factual disputes and competing inferences drawn from the evidence in granting summary judgment when they decided that the evidence proffered by Koss Corporation merely demonstrated that Park Bank was at most negligent and not liable for bad faith?
3. Did Koss Corporation proffer sufficient evidence to create a genuine issue of material fact as to whether Park Bank’s acts and omissions amounted to “bad faith” in violation of the Wisconsin UFA?

2016AP801

Michael Engelhardt v. City of New Berlin**Supreme Court case type:** Petition for Review**Court of Appeals:** Dist. II**Circuit Court:** Waukesha County, Judge J. Mac Davis, reversed

**Long caption:** Michael Engelhardt, Julieann Engelhardt individually and as the Personal Representative of the and Estate of Lily Engelhardt, Plaintiffs-Respondents, State of Wisconsin Department of Health Services, Involuntary-Plaintiff, v. City of New Berlin, ABC Insurance Company and New Berlin Parks and Recreation Department, Defendants-Appellants, Wiberg Aquatic Center f/k/a Wirth Aquatic Center and MNO Insurance Company, Defendants.

**Issues presented:**

A government entity or employee has no immunity for liability associated with the performance of ministerial duties imposed by law. Brown v. Acuity, 2013 WI 60, ¶42, 348 Wis. 2d 603, 833 N.W.2d 96. Where a written law or policy defining a duty exists, courts “look to the language of the writing to evaluate whether the duty and its parameters are expressed so clearly and precisely, so as to eliminate the official’s exercise of discretion.” Pries v. McMillon, 2010 WI 63, ¶26, 326 Wis. 2d 37, 784 N.W.2d 648. This case raises multiple issues regarding the type of writing which establishes such a duty:

- a. In Lodl v. Progressive N. Ins. Co., 2002 WI 71, ¶24, 253 Wis. 2d 323, 646 N.W.2d 314, this court indicated that the title of a document is not dispositive as to whether it creates a ministerial duty. Does a question of fact exist regarding whether a ministerial duty is imposed by law by a governmental entity’s writing, titled a “guideline,” where a governmental employee or representative identifies it as stating “the policy” governing the program?
- b. In Meyers v. Schultz, 2004 WI App 234, ¶19, 277 Wis. 2d 845, 690 N.W.2d 873, the court declared that “[l]aw’ in this context means, at a minimum, an act of government.” Can a document mailed to its citizens by a governmental entity create ministerial duties for the defendant governmental entity, particularly where representatives identify it as stating the policies of the entity’s program?
- c. This court has held that “a duty need not dictate each precise undertaking that the government actor must implement in order to be ministerial.” Pries, 326 Wis. 2d 37, ¶131. Do a governmental entity’s rules, requiring employees to (inter alia) “supervise the kids at all times,” create a ministerial duty?
- d. Do material issues of fact bar summary judgment in this case where there is evidence that New Berlin violated its rules and procedures for supervision of its summer day camp participants?
- e. Cords v. Anderson, 80 Wis. 2d 525, 542, 259 N.W.2d 672 (1977), held that, when the government actor is aware of a “known danger” and chooses not to act, immunity does not apply. Application of this exception applies when there is a showing of “imminent danger [that] is known by the employee or officer to be present and is a danger of such force as to leave nothing to the discretion of the officer.” C.L. v. Olson, 143 Wis. 2d 701, 723, 422 N.W.2d 614 (1988). Do material issues of fact bar summary judgment where, after two incidents at Wiberg pool requiring rescue by life guards, New Berlin, despite knowing that Lily Engelhardt could not swim and promising her mother that she would be safe, failed to do anything to fulfill that promise, resulting in Lily’s death?

2017AP140 Yacht Club at Sister Bay Condo. Assoc., Inc. v. Vill. of Sister Bay

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. III

**Circuit Court:** Door County, Judge D. Todd Ehlers, affirmed in part; reversed in part and cause remanded for further proceedings

**Long caption:** The Yacht Club at Sister Bay Condominium Association, Inc., Plaintiff-Appellant, v. Village of Sister Bay, Defendant-Respondent.

**Issue presented:**

Does Wisconsin law prohibit a party from asserting a claim against a municipality for a noise nuisance from a concert that occurs in 2015, 2016, 2017 or beyond simply because it failed to complain within 120 days about a noise nuisance from a different concert the municipality sponsored in 2014?

2015AP1083-CR State v. Gary Lee Wayerski

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. III

**Circuit Court:** Dunn County, Judge William C. Stuart Jr. and Maureen D. Boyle, affirmed and cause remanded with directions

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Gary Lee Wayerski, Defendant-Appellant.

**Issues presented:**

1. Whether Wayerski was denied his right to effective assistance of counsel under the Sixth Amendment to the United States Constitution and Article I, Section 7 of the Wisconsin Constitution;
2. Whether the prosecution's [Brady v. Maryland, 373 U.S. 83 (1963)], [Giglio v. United States, 405 U.S. 150 (1972)], [Kyles v. Whitley, 514 U.S. 419 (1995)] violation warrants a new trial?

2016AP1541-CR State v. Shawn T. Wiskerchen

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. II

**Circuit Court:** Racine County, Judge Faye M. Flancher, affirmed

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Shawn T. Wiskerchen, Defendant-Appellant.

**Issues presented:**

Must [State v. Queever, 2016 WI App 87, 372 Wis. 2d 388, 887 N.W.2d 912] be overturned because it is impossible for a crime committed on a certain date to cause losses on an earlier date? If not, what are the limits of Queever and of the definition of "a crime considered at sentencing" for restitution purposes? Can the definition include alleged prior-committed crimes?

2016AP1609-CR State v. Faith N. Reed

**Supreme Court case type:** Petition for Review (filed following denial of reconsideration by the court of appeals on remand)

**Court of Appeals:** Dist. IV

**Circuit Court:** Monroe County, Judge J. David Rice, affirmed

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v.  
Faith N. Reed, Defendant-Appellant.

**Issue(s) presented:**

1. Did Sullivan initially consent to Keller's entry into the apartment?
2. If Sullivan initially consented to the entry, did he take sufficient action to withdraw that consent?
3. If Sullivan consented to the entry, was his consent freely and voluntarily given?

2017AP208-CR

State v. Johnny K. Pinder

**Supreme Court case type:** Certification

**Circuit Court:** Ozaukee County, Judge Paul V. Malloy

**Court of Appeals:** Dist. II

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Johnny K. Pinder, Defendant-Appellant.

**Issue presented:**

If a search warrant issued under Wis. Stat. § 968.12 for the placement and use of a GPS tracking device on a motor vehicle is not executed within five days after the date of issuance per Wis. Stat. § 968.15(1) is the warrant void under § 968.15(2), even if the search was otherwise reasonably conducted?

2017AP1413

State v. C.L.K.

2017AP1414

**Supreme Court case type:** Petition for Review

**Court of Appeals:** Dist. I

**Circuit Court:** Milwaukee County, Judge Christopher R. Foley, affirmed

**Long caption:** In re the termination of parental rights to S.M.H., a person under the age of 17: State of Wisconsin, Petitioner-Respondent, v. C.L.K., Respondent-Appellant.

**Issues presented:**

1. Where, during the grounds phase of a [termination of parental rights (TPR)] trial, the circuit court errs by directing a verdict in favor of the State without giving the respondent an opportunity to present evidence, has the court committed structural error, or is the error subject to the harmless error analysis?
2. In this case, if the error is not structural, was the error harmless?

**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:

**Ashland**

2017AP614-CRNM

State v. Johnson

**Barron**

2017AP776 Frankhauser v. Frankhauser

**Brown**

2015AP1857-CR State v. Lott

2016AP1222-CR State v. Phillips

2016AP1654-1656-CRMN State v. Roberts

2016AP1828-1829-CR State v. Price

2016AP1830-1831-CR State v. Niemi

2016AP2098 State v. Ninham

2016AP2367-CR State v. Stowe

2016AP2404-CR State v. Grullon

2016AP2501 DePere Ledgeview Municipal Court v. Knaus

2017AP263 Henson v. Henson

2017AP356-CR State v. Johnson

2017AP386-W Flowers v. Richardson

2017AP636-CR State v. Sanders

2017AP1514-CRNM State v. Goff

2018AP199-W Mineau v. Foster

**Columbia**

2016AP1946 Eisenga v. Eisenga  
*Justice Rebecca Grassl Bradley did not participate.*

**Dane**

2014AP2586-OA Citizens for Responsible Government Advocates, Inc. v. Barland  
*Justice Daniel Kelly did not participate. Justice Annette Kingsland Ziegler and Justice Rebecca Grassl Bradley dissent.*

2015AP1493 The Segregated Account of Ambac Assurance Corporation v. Countrywide Home Loans, Inc.  
*Justice Ann Walsh Bradley dissents. Justice Daniel Kelly did not participate.*

2016AP2004-CRNM State v. Rowe

2016AP2373	<u>State v. Richardson</u>
2016AP2427	<u>Musgraves v. Heise</u>
2016AP2451-CR	<u>State v. Chang</u>
2016AP2534	<u>Balele v. Roggensack</u>
2017AP2	<u>Zecchino v. Dane County</u>
2017AP104-106-CR	<u>State v. Badon</u>
2017AP133	<u>State v. Herling</u>
2017AP257-CR	<u>State v. Nellen</u>
2017AP473	<u>Petitioner v. Willan</u>
2017AP587-CR	<u>State v. Taylor</u>
2017AP601	<u>Campbell v. Village of DeForest</u>
2017AP659-CR	<u>State v. Longley</u>
2017AP660-CR	<u>State v. Owens</u>
2017AP837-CR	<u>State v. Black</u>
2017AP1211	<u>Grant v. Barth</u>
2017AP2209-W	<u>Tayr Kilaab al Ghashiyah v. Boughton</u>
2018AP549- W	<u>Hagberg v. Smith</u>
<b><u>Dodge</u></b>	
2016AP1535	<u>Pollnow v. Town of Elba</u>
2016AP1843-CR	<u>State v. Smith</u>
2016AP2460	<u>The Bank of New York Mellon Trust Co. v. Ryczek</u>
2017AP291-CR	<u>State v. Brown</u>
<b><u>Douglas</u></b>	
2017AP445-CR	<u>State v. Howes</u>
<b><u>Eau Claire</u></b>	
2017AP23-CR	<u>State v. Scott</u>

2017AP578	<u>Members of Sky Park Industrial Center v. The City of Eau Claire</u>
2018AP443-W	<u>Staffa v. Court of Appeals, District III</u>
<b><u>Fond du Lac</u></b>	
2016AP2224	<u>State v. Rogler</u>
2017AP603-CR	<u>State v. Schultz</u>
2017AP849-CR	<u>State v. McCullagh-Hurley</u>
2017AP856	<u>Society Ins. v. Degross</u>
<b><u>Grant</u></b>	
2017AP97-CR	<u>State v. Riley</u>
<i>Justice Shirley S. Abrahamson dissents.</i>	
2017AP415-CR	<u>State v. Kruger</u>
<b><u>Jackson</u></b>	
2016AP2284-2285-CRNM	<u>State v. Koller</u>
<b><u>Jefferson</u></b>	
2017AP127	<u>Green Tree Servicing, LLC v. Lorang</u>
2017AP879-CR	<u>State v. Schwan</u>
<b><u>Juneau</u></b>	
2016AP2179-CR	<u>State v. Perkins</u>
2017AP751	<u>Mile Bluff Medical Center v. Village of Necedah</u>
<b><u>Kenosha</u></b>	
2016AP1053	<u>State v. Harden</u>
2016AP1836-CR	<u>State v. Kinsley</u>
2016AP1956-1957-CR	<u>State v. Taylor</u>
2016AP2222-CR	<u>State v. Frison</u>
<i>Justice Shirley S. Abrahamson and Justice Ann Walsh Bradley dissent.</i>	
2017AP652-CR	<u>State v. Garrett</u>
2017AP704-CR	<u>State v. Padilla-Martinez</u>
2017AP1150-51	<u>Kenosha County DHS v. V.J.G</u>
2017AP2370-W	<u>Turner v. Schroeder</u>

**La Crosse**

2016AP2007

State v. Alexander**Langlade**

2017AP1313-FT

Langlade County v. D. J. W.**Lincoln**

2017AP772-CRNM

State v. Rash**Manitowoc**

2017AP74

Lafrombois v. Reisen

2017AP1299

State v. Halda

2017AP2371

Manitowoc County HSD v. J.K.**Marathon**

2017AP1271-CR

State v. Rothenberger**Marinette**

2016AP2192-CR

State v. Spaude

2016AP2453-CR

State v. Smith

2017AP1055

State v. Hanson**Milwaukee**

2014AP1623-CR

State v. Nieves

2015AP1244

Scott v. UW System Board of Regents

2015AP2020-CR

State v. Mason*Chief Justice Patience Drake Roggensack did not participate.*

2015AP2267

State v. Cabagua

2015AP2319-CR

State v. Brownlee

2015AP2535-CR

State v. Freiboth*Justice Ann Walsh Bradley did not participate.*

2016AP118-CR

State v. Morgan

2016AP137/1446

Hying v. Hying

2016AP143-CRNM

State v. Linsmeyer

2016AP211-CR

State v. Benson



2016AP371-CR	<u>State v. Hampton</u>
2016AP384-CR	<u>State v. Pickett</u>
2016AP481-CR	<u>State v. Murray</u>
2016AP545-CRNM	<u>State v. Acosta</u>
2016AP568-CR	<u>State v. Robertson</u> <i>Justice Ann Walsh Bradley did not participate.</i>
2016AP631-CRNM	<u>State v. Bridges</u>
2016AP889-CR	<u>State v. Pizzaro</u>
2016AP914-CR	<u>State v. Robinson</u>
2016AP919-CR	<u>State v. Johnson</u>
2016AP947	<u>Estate of Ziolkowski v. WMK</u>
2016AP975-CR	<u>State v. Gutierrez-Mendoza</u>
2016AP981-CR	<u>State v. James</u>
2016AP1022	<u>State v. Buchanan</u>
2016AP1025	<u>State v. Banks</u>
2016AP1045-1049-CR	<u>State v. Egerson</u>
2016AP1058	<u>State v. Walker</u>
2016AP1105-CR	<u>State v. Peace</u>
2016AP1120-CR	<u>State v. Al-Mujaahid</u>
2016AP1122	<u>Przytarski v. Vallejos</u>
2016AP1157	<u>State v. Lelinski</u>
2016AP1200-CR	<u>State v. Kropp</u>
2016AP1323-CR	<u>State v. Smith</u>
2016AP1326-CRNM	<u>State v. Brunilson</u>
2016AP1371-CR	<u>State v. Reno</u>

*Justice Shirley S. Abrahamson dissents.*

2016AP1372-CR	<u>State v. Simpson</u>
2016AP1421	<u>State v. James</u> <i>Chief Justice Patience Drake Roggensack did not participate.</i>
2016AP1449	<u>D.L. v. State</u>
2016AP1565-CR	<u>State v. Boyd</u>
2016AP1626-CR	<u>State v. Donald</u>
2016AP1674-CR	<u>State v. Coleman</u>
2016AP1677-CR	<u>State v. Elliott</u>
2016AP1742-CR	<u>State v. Scott</u> <i>Justice Shirley S. Abrahamson dissents.</i>
2016AP1748	<u>State v. Davis-Clair</u>
2016AP1850	<u>Hopkins v. Milwaukee County Transit</u>
2016AP1865-CR	<u>State v. Douglas</u>
2016AP1905	<u>State v. Williams</u>
2016AP1924-CR	<u>State v. Young</u>
2016AP1926-CR	<u>State v. Adams</u>
2016AP1949	<u>State v. Brodie</u>
2016AP2006-CR	<u>State v. Wilson</u>
2016AP2019-2020-CR	<u>State v. Cintron</u>
2016AP2050-CR	<u>State v. Goodenough</u>
2016AP2102-2103	<u>State v. S.N.N</u>
2016AP2139-CR	<u>State v. McElroy</u>
2016AP2140-CR	<u>State v. Lewis</u>
2016AP2201-CR	<u>State v. Garner</u>
2016AP2229-2230	<u>State v. D. C.</u>

*Justice Rebecca Grassl Bradley did not participate.*

2016AP2235-CR	<u>State v. Bracken</u>
2016AP2238-CR	<u>State v. Guider</u>
2016AP2273	<u>State v. Fowler</u>
2016AP2304	<u>Oberhofer v. Oberhofer</u>
2016AP2315-2317-CR	<u>State v. McArthur</u>
2016AP2340	<u>State v. Weston</u>
2016AP2393	<u>State v. Ford</u>
2016AP2394-CR	<u>State v. Mitchell</u>
2016AP2395-CR	<u>State v. Bell</u>
2016AP2494-CR	<u>State v. Rash</u>
2016AP2495-CR	<u>State v. White</u>
2016AP2516-CR	<u>State v. Baker</u>
2017AP35-CR	<u>State v. Marlow</u>
2017AP38-CR	<u>State v. Wilder</u>
2017AP75-77-CR	<u>State v. Vang</u>
2017AP142	<u>Ehr v. West Bend Mutual Ins. Co.</u> <i>Chief Justice Patience Drake Roggensack and Justice Rebecca Grassl Bradley dissent.</i>
2017AP145	<u>D'Acquisto v. LoCoco</u>
2017AP157-W	<u>Rogers v. Foster</u>
2017AP174-175-CR	<u>State v. Sewell</u>
2017AP227-CR	<u>State v. Hines</u>
2017AP237-CR	<u>State v. Wilkes</u>
2017AP256	<u>North Mayfair 1 LLC v. Wisconsin Department of Transportation</u> <i>Justice Rebecca Grassl Bradley and Justice Daniel Kelly dissent.</i>
2017AP274-CR	<u>State v. Harris</u>

*Justice Ann Walsh Bradley dissents.*

2017AP275-CR	<u>State v. Laws</u>
2017AP282	<u>Hupy v. Underwriters Syndicate</u> <i>Justice Rebecca Grassl Bradley did not participate.</i>
2017AP285-CR	<u>State v. Robinson</u>
2017AP294-295-CR	<u>State v. Gibson</u>
2017AP310-CR	<u>State v. Oliver</u>
2017AP328-CR	<u>State v. West</u>
2017AP350-CR	<u>State v. Barnes</u>
2017AP381-CR	<u>State v. Ardell</u>
2017AP385-CR	<u>State v. Villanueva</u>
2017AP482	<u>State v. Leichman</u>
2017AP497	<u>Johnson v. Zurich American Insurance Company of Illinois</u>
2017AP503	<u>State v. Jordan</u> <i>Justice Ann Walsh Bradley did not participate.</i>
2017AP532-CR	<u>State v. Grant</u>
2017AP548	<u>State v. T. S. R.</u>
2017AP581	<u>City of Milwaukee Municipal Court v. Sherard</u>
2017AP596-CR	<u>State v. Williams</u>
2017AP670-CR	<u>State v. Rogers</u>
2017AP671-CR	<u>State v. Romero</u>
2017AP689-690	<u>State v. J.W.</u>
2017AP737-CR	<u>State v. Buress</u>
2017AP771-CR	<u>State v. Terrell</u> <i>Chief Justice Patience Drake Roggensack did not participate.</i>
2017AP777-CR	<u>State v. Valdez</u> <i>Chief Justice Patience Drake Roggensack did not participate.</i>

2017AP787	<u>Lacy v. Boughton</u>
2017AP795	<u>Est. of Tomas Saravi v. Rotary Int'l</u> <i>Justice Annette Kingsland Ziegler did not participate.</i>
2017AP803	<u>State v. McLemore</u>
2017AP813-CR	<u>State v. Wilson</u>
2017AP908-CR	<u>State v. Grady</u>
2017AP943-CR	<u>State v. Lovelace</u>
2017AP968-CR	<u>State v. Jackson</u>
2017AP979-CR	<u>State v. Washington</u>
2017AP1069-CR	<u>State v. Bump</u>
2017AP1078	<u>State v. R.G.</u>
2017AP1087-CR	<u>State v. Sanders</u>
2017AP1138	<u>State v. C. S. S.</u>
2017AP1225-1227	<u>State v. L. J.</u> <i>Justice Rebecca Grassl Bradley did not participate.</i>
2017AP1228-1230	<u>State v. C. W.</u> <i>Justice Rebecca Grassl Bradley did not participate.</i>
2017AP1302-W	<u>Rogers v. Bartow</u>
2017AP1348-CR	<u>State v. Turner</u>
2017AP1349	<u>State v. A. S.</u>
2017AP1397-CR	<u>State v. Neal</u>
2017AP1635	<u>State v. D.C.</u> <i>Justice Rebecca Grassl Bradley did not participate.</i>
2017AP1715	<u>State v. T.G., Sr.</u>
2017AP1783	<u>State v. J.C.</u>
2017AP1814-CR	<u>State v. L.M.O.</u>
2017AP1945-1946	<u>State v. M. D. W.</u>

2017AP1953	<u>State v. M.K.</u>
2017AP2144-CR	<u>State v. Easley</u>
2017AP2390-2391	<u>State v. B.D.H.</u>
2018AP124-125	<u>State v. D.M.W., Sr.</u>
2018AP24-W	<u>Douglas v. Milwaukee Municipal Court, Branch 2</u>
2018AP98-W	<u>Shaw v. Circuit Court for Milwaukee County</u>
2018AP126-W	<u>11225 Heather, LLC v. Court of Appeals, District I</u>
<b><u>Monroe</u></b>	
2016AP2529-CR	<u>State v. Brink</u>
2017AP526-CR	<u>State v. Walton</u>
2017AP1859-CRNM	<u>State v. Loutsch</u>
<b><u>Oconto</u></b>	
2016AP1325-CRNM	<u>State v. Arveson</u>
2016AP1504-CR	<u>State v. Paholke</u>
2017AP301-CRNM	<u>State v. Coppens</u>
<b><u>Outagamie</u></b>	
2015AP2242	<u>R.L. v. Circuit Court for Outagamie County</u>
2016AP1227	<u>Auto-Owners Insurance Company v. City of Appleton</u>
2016AP1367-CR	<u>State v. Potts</u>
2016AP1540-CR	<u>State v. Sorenson</u>
2016AP2128-CR	<u>State v. Anderson</u>
2017AP450	<u>Outagamie County v. C. A.</u>
2017AP459-CR	<u>State v. Storm</u>
<b><u>Ozaukee</u></b>	
2015AP2479	<u>State v. Seiler</u>
2017AP3-CR	<u>State v. Stib</u>
2017AP209-CRNM	<u>State v. Adams</u>

2017AP455-CR	<u>State v. Milshteyn</u>
2017AP1533-1534-W	<u>Grady v. Smith</u>
<b><u>Pierce</u></b>	
2017AP1679-CR	<u>State v. Close</u>
<b><u>Polk</u></b>	
2016AP1918	<u>State v. Mikulski</u>
2017AP265-266-CRNM	<u>State v. Lansing</u>
2017AP745-CRNM	<u>State v. Bruflo</u>
2017AP2504-2505-W	<u>Youngmark v. Foster</u>
<b><u>Price</u></b>	
2017AP46	<u>Byrd v. Hoeft</u>
<b><u>Racine</u></b>	
2015AP2648	<u>Jendusa-Nicolai v. Larsen</u>
2016AP2033-2034-CR	<u>State v. Sanchez-Morales</u>
2016AP2040-CR	<u>State v. Gutierrez</u>
2017AP53-CR	<u>State v. Johnson</u>
2017AP200	<u>State v. Cosey</u>
2017AP375-CR	<u>State v. Cartagena</u>
2017AP615-CR	<u>State v. Andrews</u>
2017AP616-CRNM	<u>State v. Sanders</u>
2017AP750	<u>Racine Cty. HSD v. C. C.</u>
2017AP759-CR	<u>State v. Roy</u>
2017AP1085-CR	<u>State v. Martinez-Gonzalez</u>
2017AP1267-CR	<u>State v. Soumare</u>
<b><u>Rock</u></b>	
2015AP989-CR	<u>State v. Kimps</u>
2016AP1885	<u>Wells Fargo Bank v. Shaikh</u>

2016AP2074                      Pulera v. Town Board of Town of Johnstown  
*Justice Daniel Kelly did not participate.*

2016AP2080                      Hansel v. DHS

2017AP1217-1219                M.R.B. v. S. S.

**St. Croix**

2016AP2341                      Garves v. Empire Fire and Marine Ins. Co.

**Sauk**

2016AP1436                      Steinmetz v. Clendenning

**Sawyer**

2017AP181                        Wis. DNR v. Timber & Wood Prods. Sawyer Cty.

**Shawano**

2016AP608                        State v. DePaoli

**Sheboygan**

2017AP290-CRNM                State v. Littleton

2017AP351-352-CR               State v. Krueger

2017AP2409-W                   Ross v. Circuit Court for Sheboygan County

**Taylor**

2017AP568                        Westrich v. Memorial Health Center

**Trempealeau**

2016AP1679                       Lovelien v. Austin Mutual Ins.  
*Chief Justice Patience Drake Roggensack dissents.*

**Vernon**

2017AP1483-W                   Landis v. DOC

**Walworth**

2017AP394-CR                   State v. Kitral

**Washburn**

2016AP1097                       UMB Bank v. Whitehead  
*Justice Annette Kingsland Ziegler did not participate.*

2017AP730-CR                   State v. Scherz

**Washington**

2016AP2257-CR                   State v. Rose



**Waukesha**

2014AP2124/2016AP1953     Otter Creek Farms v. Waukesha County

2016AP666                     Hartland Sportmen's Club, Inc. v. City of Delafield  
*Justice Rebecca Grassl Bradley dissents.*

2016AP1000-1001             Waukesha County DH&HS v. T.C.S.

2016AP1099-CR               State v. Cooper

2016AP1437-CR               State v. Tatum

2016AP1666                   State v. Adams

2016AP1871-CR               State v. Montano

2016AP2036-CR               State v. Eggum

2016AP2217                   Duffrin v. Hutchinson

2016AP2326                   State v. Adams

2016AP2390-CR               State v. Olson

2018AP348-W                   Tikalsky v. Circuit Court for Waukesha County  
*Justice Shirley S. Abrahamson did not participate.*

**Waupaca**

2017AP685-CR               State v. Miller

2017AP2366                   Backwoods Const., LLC v. Everson

**Waushara**

2017AP1954-W               Thomas v. Meisner

**Winnebago**

2016AP1207-NM               Winnebago County v. V.S.

2016AP1596-CR               State v. Van Dera

2016AP1822-CR               State v. Jorgenson

2017AP687-CR               State v. Funches

2017AP905-CR               State v. Summerville

2017AP1610-CR               State v. Larson

2017AP1698-NM

Winnebago v. P.F.

2018AP243-W

Adams v. Boughton

2018AP585-OA

Musgraves v. Key