WISCONSIN SUPREME COURT
CALENDAR AND CASE SYNOPSES
SEPTEMBER 2021

The cases listed below will be heard in the Supreme Court Hearing Room, 231 East, State Capitol. The cases originated in the following counties:

Dane
Milwaukee
Monroe
Racine
Waukesha
Waupaca

THURSDAY, SEPTEMBER 9, 2021

9:45 a.m.	20AP370	Waukesha County v. E. J. W.
10:45 a.m.	19AP96	Friends of Frame Park, U.A. v. City of Waukesha

MONDAY, SEPTEMBER 13, 2021

9:45 a.m.	18AP2319-CR	State v. Manuel Garcia
10:45 a.m.	18AP1476-CR	State v. Octavia W. Dodson

WEDNESDAY, SEPTEMBER 15, 2021

9:45 a.m.	19AP1320	Elliot Brey v. State Farm Mutual Automobile Ins. Co.
10:45 a.m.	19AP1365	Danelle Duncan v. Asset Recovery Specialists, Inc.

MONDAY, SEPTEMBER 27, 2021

9:45 a.m.	19AP691 / 692-CR	State v. Cesar Antonio Lira

WEDNESDAY, SEPTEMBER 29, 2021

9:45 a.m.	19AP664-CR	State v. Alan S. Johnson
10:45 a.m.	19AP2034	Andrea Townsend v. ChartSwap, LLC

Note: The Supreme Court calendar may change between the time you receive it and when a case is heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at (608) 266-1880. If your news organization is interested in providing any type of camera coverage of Supreme Court oral argument, you must contact media coordinator Stephanie Fryer at WISC-TV, (608) 271-4321. The synopses provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
September 9, 2021
9:45 a.m.

2020AP370 Waukesha County v. E.J.W.

This is a review of a decision of the Wisconsin Court of Appeals, District II, (headquartered in Waukesha), which affirmed a Waukesha County Circuit Court judgment, Paul Bugenhagen, Jr., presiding, which held that E.J.W. had waived his right to a jury trial because his lawyer failed to timely file a jury demand.

E.J.W. has been under a Wis. Stat. § 51.20 commitment order continually since April 2014, with recommitment hearings held annually. On Feb. 7, 2019, Waukesha County requested a sixth extension of commitment. On Feb. 18, 2019, the County electronically filed a document, entitled "Notice of Extension of Commitment Hearing and Witnesses," and dated Feb. 15, 2019. The County sent the notice to the Office of the State Public Defender and to E.J.W. In that notice, as well as in a trial court notice provided to E.J.W. dated Feb. 7, 2019, E.J.W. was advised that the commitment hearing was scheduled for March 5, 2019, at 1:15 p.m.

The day of the March 5th hearing arrived, and E.J.W.'s lawyer had not filed a jury trial demand. Under Wis. Stat. § 51.20(11)(a) , an individual or his counsel must demand a jury trial at least 48 hours in advance of the time set for final hearing.

E.J.W. and his counsel appeared before the circuit court for the hearing, along with the County's lawyer. E.J.W. stated that he wanted a new lawyer because "I gave him my telephone number and he never called me and we never prepped. He's unprepared for court today." The County's lawyer had no objection to the appointment of a new lawyer for E.J.W. or the postponement of the final hearing so as to accommodate the appointment of new counsel. But he insisted that the postponement of the final hearing should not reset the clock for demanding a jury. E.J.W.'s counsel argued that if E.J.W. were to receive a new lawyer and a new final hearing date, E.J.W. should have until 48 hours before the new hearing date to demand a jury trial.

Ultimately, the circuit court found good cause to postpone the final commitment hearing for a week, and ordered the State Public Defender to appoint E.J.W. a new lawyer. The circuit court adjourned the hearing to March 12, 2019.

On March 7, 2019, new counsel was appointed for E.J.W. On March 8th – four days before the rescheduled final hearing – new counsel filed a jury demand. The circuit court denied the jury demand in an order dated March 11, 2019, writing: "The demand for a Jury Trial is hereby denied pursuant to § 51.20(11)(a) Wis. Stat. The matter was set for a final hearing on March 5, 2019 and no jury demand was made prior to the hearing."

At the March 12 hearing, the circuit court confirmed its denial of E.J.W.'s demand for a jury trial, reasoning that the date set for final hearing was March 5, and no jury demand was filed at least 48 hours before that time. E.J.W. and the County then stipulated to an eight-month extension with a medication order.

E.J.W. appealed. He argued that the circuit court erred by determining that his jury demand was untimely. E.J.W. pointed out that Wis. Stat. § 51.20(11)(a) provides that a jury trial "is deemed waived unless demanded at least 48 hours ***in advance of the time set for final hearing***, if notice of that time has been previously provided to the subject individual or his or her

counsel." E.J.W. argued that under this statutory language, his demand was timely as long as it was made at least 48 hours before the time the final hearing actually took place, on March 12. He argued that an extension provided for good cause, as happened here, resets the time in which to demand a jury trial.

The Court of Appeals disagreed, holding that "Wisconsin Stat. § 51.20(11)(a) requires a subject individual to request a jury trial at least forty-eight hours before 'the time set for the final hearing,' not at least forty-eight hours before the final hearing actually occurs." Marathon County v. R.J.O., 2020 WI App 20, ¶41, 392 Wis. 2d 157, 943 N.W.2d 898. The Court of Appeals held that R.J.O.'s interpretation of Wis. Stat. § 51.20(11)(a) governs the outcome of this case and E.J.W.'s jury trial demand was untimely because he failed to make the demand at least 48 hours before March 5, 2019. The Court of Appeals was unmoved by E.J.W.'s argument that his case was different than R.J.O.'s because E.J.W. changed lawyers in part due to his first lawyer's failure to request a jury. The Court of Appeals noted that E.J.W. had not asserted a claim for ineffective assistance of counsel. The Court of Appeals declared that the trial court properly concluded that E.J.W. waived his right to a jury trial.

E.J.W. has petitioned the Supreme Court for review on the following issue:

When a final hearing is adjourned for good cause to facilitate the appointment of new counsel, is the deadline to file a jury demand reset to 48 hours in advance of the new time set for the hearing under Wis. Stat. § 51.20(11)?

WISCONSIN SUPREME COURT
September 9, 2021
10:45 a.m.

2019AP96 Friends of Frame Park, U.A., v. City of Waukesha

This is a review of a decision of the Wisconsin Court of Appeals, District II, (headquartered in Waukesha), which reversed a Waukesha County Circuit Court judgment, Michael O. Bohren., presiding, which held that the City of Waukesha fully complied with public records law and does not owe attorney fees to Friends of Frame Park, U.A.

This case concerns a public records dispute. On one side is the City of Waukesha. On the other side is Friends of Frame Park, U.A. (Friends), an unincorporated association that formed in 2017 because its members – Waukesha citizens, property owners, and taxpayers – were interested in the City's purported plan to build and operate a baseball stadium in Frame Park in the City of Waukesha.

Friends was particularly concerned that the City might contract with certain private entities to run the stadium and its baseball team. Friends was interested in the details of the plan, such as how taxpayer funds would be used and to what extent private entities would profit from the project.

On Oct. 9, 2017, Friends submitted a public records request to the Waukesha City Administrator, seeking "any Letters of Intent . . . or Memorandum of Understanding . . . or Lease Agreements between [certain private entities] and the City of Waukesha during the time frame of 5-1-16 to the present time frame."

Two weeks later, the City attorney responded by letter, denying the request. The letter explained that "[a] park use contract . . . is presently in draft form." The letter then articulated two rationales, somewhat overlapping, for withholding this "draft contract." Both rationales relied on Wis. Stat. §§ 19.35(1)(a) and 19.85(1)(e). Under § 19.35(1)(a), "any requester has a right to inspect any record," but exceptions to the open meetings law under § 19.85 may constitute grounds for denying access. Section 19.85(1)(e), in turn, permits closed meetings (and thus, potentially, nondisclosure of records) "whenever competitive or bargaining reasons [so] require."

The City attorney's first rationale implied that disclosure would either cause the City to lose the baseball team to another entity or force the City to contract on less favorable terms to secure the team. A second, related rationale was that disclosure prior to the Waukesha common council review would hamper the City's ability to negotiate favorable terms within the draft contract.

On Dec. 18, 2017, a little over two months after Friends submitted its public records request, Friends filed suit under Wis. Stat. § 19.37(1)(a), which permits a requester to "bring an action for mandamus asking a court to order release of the record" where "an authority withholds a record . . . or delays granting access to a record . . . after a written request for disclosure is made." Section 19.37(2)(a) further provides that "the court shall award reasonable attorney fees . . . and other actual costs to the requester if the requester prevails in whole or in substantial part in any action filed under [§ 19.37(1)(a)] relating to access to a record . . . under [Wis. Stat. §] 19.35(1)(a)."

On Dec. 20, 2017, two days after Friends filed suit, the City attorney fulfilled Friends' public records request by e-mailing Friends the draft contract. The parties do not dispute that

this draft contract was created by and shared among private entities and City representatives in a back-and-forth exchange. The City attorney's e-mail explained that the document was "being released now because there is no longer any need to protect the City's negotiating and bargaining position."

Friends filed additional requests on Dec. 8, 2017, and on January 25, February 2, and March 6, 2018. Friends also filed an amended complaint including some of these requests and addressing the impact of the City's December 20 disclosure of the draft contract. The amended complaint asserted that "[t]he City's subsequent production of the withheld records that it represented as responsive to the October 9th request does not eliminate the violation at issue, which was the improper withholding of records based on the assertion of an invalid or inadequate exception and justification, or otherwise." Friends asked the trial court to "declare whether the City's actions to withhold records in the face of the valid October 9, 2017 request was in violation of the Open Records law." Friends also sought litigation costs and attorney's fees.

The City filed for summary judgment, claiming that the action was moot because the City had turned over all documents responsive to all of Friends' requests.

The circuit court held that the City properly invoked the "competitive or bargaining reasons" exception of Wis. Stat. § 19.85(1)(e). The circuit court found that the City attorney's letter outlined this rationale with the specificity required under Wis. Stat. § 19.35(1)(a). Finally, the circuit court found that the City released the draft contract on December 20, not because of Friends' lawsuit, but because there were no longer any "competitive or bargaining reasons" for nondisclosure. For that reason, the circuit court denied Friends' request for attorney's fees and dismissed the action in its entirety.

Friends appealed, successfully. The Court of Appeals disagreed with the circuit court's decision, holding that the City had not properly invoked the "competitive or bargaining reasons" exception when it initially denied access to the record in question, and thus Friends was entitled to some portion of its attorney's fees.

The City of Waukesha filed a petition with the Supreme Court, raising the following two issues:

1. Is the test to be applied to determine if a litigant is entitled to attorney's fees under Wis. Stat. § 19.37(2)(a) of the Public Records Law whether the legal custodian properly withheld records under an exception to that law initially, regardless of whether commencement of an action was a cause of the release of the records?
2. May a draft contract which is the subject of negotiation between a municipality and a private entity be withheld from disclosure under the Public Records Law pursuant to Wis. Stat. §§ 19.35(1)(a) and 19.85(1)(e) where the contract has not yet been presented to the municipality's governing body for review, and before it meets in closed session to do so?

WISCONSIN SUPREME COURT
September 13, 2021
9:45 a.m.

2018AP2319-CR State v. Manuel Garcia

This is a review of a decision of the Wisconsin Court of Appeals, District II, (headquartered in Waueksha), which reversed a Racine County Circuit Court judgment, Judge Michael J. Piontek, presiding, that found Manuel Garcia guilty of reckless homicide.

The State charged Manuel Garcia with first-degree reckless homicide in connection with the death of his girlfriend's two-year-old son. The boy was determined to have died due to blunt trauma to the abdomen. A jury found Garcia guilty. Garcia filed a post-conviction motion in which he argued that the circuit court had erred when it had allowed his in-custody inculpatory statements obtained in violation of Miranda to be used in the State's case. The motion was denied.

On appeal, Garcia argued that the circuit court had violated his constitutional rights when it allowed the State, during its case-in-chief, to introduce his inadmissible statements for the purpose of rehabilitating one of the state's witnesses. In response, the State argued that when a defendant attempts to use the exclusion of his inculpatory statements from the State's case-in-chief to mislead the jury, "the rule established in [Harris v. New York, 401 U.S. 222 (191)] and its progeny permits the trial court to admit the confession during the State's case-in-chief in order to rehabilitate a witness."

The Court of Appeals agreed with Garcia that the circuit court should not have allowed the introduction of the inculpatory statements during the State's case-in-chief and reversed Garcia's conviction. The State petitioned the Supreme Court for review.

> The State's petition sets forth the following issue:
> Did the Court of Appeals err when it reversed Garcia's conviction based on the legal conclusion that the introduction at trial of inculpatory statements Garcia made to police violated his rights under Miranda[1] because Garcia himself did not testify, despite the fact that the circuit court admitted the statements under the "opening the door" exception, elucidated by this Court in State v. Brecht, 143 Wis. 2d 297, 421 N.W.2d 96 (1988) and not the impeachment exception discussed in Harris v. New York, 401 U.S. 222 (1971)?

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

WISCONSIN SUPREME COURT
September 13, 2021
10:45 a.m.

2018AP1476-CR State v. Octavia W. Dodson

This is a review of a decision of the Wisconsin Court of Appeals, District I, (headquartered in Milwaukee), which affirmed a Milwaukee County Circuit Court judgment, Judges M. Joseph Donald and Carolina Stark, presiding, that found Octavia Dodson guilty of one count of second-degree intentional homicide. The Court of Appeals decision also affirmed the circuit court's decision to deny Dodson's post-conviction motion for plea withdrawal and/or resentencing.

It is undisputed that Octavia Dodson shot and killed Deshun Freeman. The criminal complaint alleged that Dodson told police that his vehicle was rear ended by a man driving a Buick. Dodson said he got out of his car to check for damage and observed the other vehicle drive backwards. Dodson, who had a valid concealed carry permit, removed his semi-automatic pistol from his holster and held it in his hand. The other vehicle drove forward, went around Dodson's vehicle, and left the scene.

Dodson told police that he got back into his vehicle and drove in the direction of the Buick to try to get a license plate number. While he was driving, Dodson removed a ten-round magazine from his pistol and replaced it with an extended seventeen-round magazine.

As Dodson was driving, a Buick that Dodson believed was the same vehicle he had been following came up from behind at a high rate of speed.[2] Both vehicles stopped and parked on the side of the street. Dodson said a male exited the car in front of him and ran toward Dodson. Dodson said he could not see the man's hands because they were either in his jacket pockets or underneath his shirt. Dodson said he thought the man was pulling something out and the man was yelling.

Dodson initially told police that he discharged his firearm at the man while he was still in his car and that he never at any point got out of the car. Dodson later confessed that he did exit his car and shot the victim from a standing position outside of the car. Dodson said he believed he shot his gun three times, and he saw the victim fall to the ground. He said he got back into his car and drove to his girlfriend's house. He said he spoke to his girlfriend and from there drove to his father's house and on the way he called 911 to report the shooting.

Dodson entered into a plea agreement with the state. In exchange for pleading guilty, the State agreed to dismiss a dangerous weapon penalty enhancer, which lowered the potential exposure by five years, to forty years of initial confinement and twenty years of extended supervision. The State agreed to recommend "substantial prison time," with the terms of initial confinement and extended supervision left to the trial court's discretion.

The circuit court conducted a plea colloquy, during which Dodson agreed that the facts in the criminal complaint were true and correct. The court dismissed the penalty enhancer, accepted Dodson's guilty plea, and found him guilty.

At the sentencing hearing, the court heard arguments from both parties and from representatives for Dodson and the victim. Dodson personally addressed the court and expressed

[2] Police were unable to confirm that the Buick that approached Dodson's vehicle at a high rate of speed was in fact the same Buick that had rear ended Dodson's vehicle. The State suggested at sentencing that Freeman may not have been involved in the rear ender accident.

remorse for the victim's death. The court sentenced Dodson to fourteen years of initial confinement and six years of extended supervision.

In its sentencing remarks, the court said:

> *In reviewing this case, I have to say I am completely baffled as to why this happened. And I don't think that there is any rational way of trying to explain it. I can tell you this, Mr. Dodson, that in my experience as a judge, I have seen over time how individuals when they are possessing a firearm, how that in some way changes them. It changes how they view the world. It changes how they react and respond to people. I know that this is only speculation on my part, but I do strongly feel that the day that you applied for that concealed carry permit and went out and purchased that firearm, and that extended magazine, [whatever] your rational beliefs for possessing it, whether you felt the need to somehow arm yourself and protect yourself from essentially the crime that is going on in this community I think on that day set in motion this circumstance.*
>
> *It is clear to me, Mr. Dodson, that for whatever reason, and it appears that it is a distorted, misguided belief of the world that somehow Mr. Freeman was a threat that required you, in essence, to terminate his life. Makes no sense . . . .*
>
> *But it is clear to me that you were operating under some misguided belief, some distorted view of the world that somehow Deshon Freeman was a threat to you when in reality it was nothing further from the truth.*

Dodson filed a post-conviction motion seeking to withdraw his plea based on ineffective assistance of counsel with respect to the guilty plea. In the alternative, Dodson sought resentencing on the ground that the trial court considered an improper factor – Dodson's legal gun ownership – at sentencing.

The post-conviction court denied the motion. It found that trial counsel was not ineffective. With respect to Dodson's claim that the sentencing court considered an improper factor, the post-conviction court said it did not find any improper sentencing factors when taken in context of what the sentencing court said.

Dodson appealed, continuing to argue that the trial court relied on an improper factor at sentencing and that, as a result, he was entitled to resentencing. The Court of Appeals disagreed and affirmed.

Dodson filed a petition for Supreme Court review, raising one issue:

Did the sentencing court violate Mr. Dodson's Second Amendment right by considering his status as a lawful gun owner an aggravating factor at sentencing?

WISCONSIN SUPREME COURT
September 15, 2021
9:45 a.m.

2019AP1320 Elliot Brey v. State Farm Mutual Automobile Insurance Company

This is a review of a decision of the Wisconsin Court of Appeals, District IV, (headquartered in Madison), which reversed a Monroe County Circuit Court judgment, Judge Richard A. Radcliffe, presiding, which granted summary judgment in favor of State Farm, declaring there was no coverage for Elliot Brey's underinsured motorist claim.

This case considers whether the "Omnibus Statute," Wis. Stat. § 632.32(2)(d), requires a motor vehicle insurance policy to include underinsured motorist (UIM) coverage when the insured suffers no bodily injury as a result of an accident involving an underinsured motorist.

Ryan Johnson was the father of Elliot Brey (Elliot). Mr. Johnson was killed in an automobile accident while a passenger in a vehicle driven by Channing Matthews.

At the time of Johnson's death, Elliot lived with his mother, Hannah Brey (Hannah), and his stepfather, Jake Brey (Jake). Jake and Hannah were the named insured under an automobile insurance policy issued by State Farm Mutual Automobile Ins. Co. As a resident relative of the named insured, Elliot was also an insured under the State Farm policy. Ryan Johnson was not an insured under the State Farm policy.

The State Farm policy includes UIM coverage. The UIM section of the policy includes the following language that is at the center of this case:

> *We will pay compensatory damages for bodily injury an insured is legally entitled to recover from the owner or driver of an underinsured motor vehicle. The bodily injury must be:*
>
> 1. *sustained by an insured; and*
> 2. *caused by an accident that involves the ownership, maintenance, or use of an underinsured motor vehicle.*

There is no dispute among the parties that the vehicle driven by Matthews at the time of the accident was an "underinsured motor vehicle" under the State Farm policy. It is also undisputed that only Johnson suffered bodily injuries as a result of the accident, and that Elliot suffered no bodily injuries as a result of the accident.

Elliot filed a complaint that included a claim against State Farm seeking damages based on its policy's UIM coverage. Elliot's complaint alleged that Matthews had negligently operated the motor vehicle, that the motor vehicle was an underinsured motor vehicle, that Matthew's negligence had been a cause of Johnson's death, and that Elliot had suffered a loss of monetary support from Johnson as a result of Johnson's death.

State Farm opposed the claim, arguing that its policy provides UIM benefits only if one of its insureds suffers bodily injuries as a result of the use of an underinsured motor vehicle. Since Elliot did not suffer any bodily injuries because of Matthew's use of an underinsured motor vehicle, State Farm argued that it had no coverage obligation to cover Elliot's claim for loss of support.

After the coverage and liability/damages issues in the litigation were split, State Farm moved for summary judgment on the coverage issue. The circuit court granted summary

judgment to State Farm. The circuit court concluded that it was bound by the decision in Ledman v. State Farm Mut. Ins. Co., 230 Wis. 2d 56, 601 N.W.2d 312 (Ct. App. 1999) and that there must be a nexus between the bodily injury and the status as an insured. The circuit court also concluded that the Legislature had not intended for UIM coverage to apply to uninjured insureds.

Elliot appealed and the Court of Appeals reversed. The Court of Appeals began its analysis by noting that both sides agreed that Elliot's UIM claim was barred by the requirement in the State Farm policy that an insured must suffer bodily injury due to the use of an underinsured motor vehicle. The dispute then centered on whether the State Farm policy provided at least as much coverage as the Omnibus Statute requires. The pertinent language of the Omnibus Statute related to UIM coverage, found in Wis. Stat. § 632.32(2)(d), states as follows:

> *"Underinsured motorist coverage" means coverage for the protection of persons injured under that coverage who are legally entitled to recover damages for bodily injury [or] death . . . from owners or operators of underinsured motor vehicles.*

The Court of Appeals read this statutory language to mean that UIM coverage in Wisconsin policies must meet three requirements: (1) the person who makes the UIM claim must be an insured under the UIM coverage of the policy; (2) the person must be legally entitled to recover damages for bodily injury or death; and (3) the person must be legally entitled to recover from an owner or operator of an underinsured motor vehicle. It ultimately concluded that the statutory language in § 632.32(2)(d) did not allow an insurer to require that UIM coverage be limited to insureds who themselves sustain bodily injury or death. Having distinguished it prior decision in Ledman as not applicable, it therefore held that the requirement in the State Farm policy that the bodily injury must be sustained by an insured was void, and it reversed the circuit court's grant of summary judgment to State Farm.

State Farm filed a petition for Supreme Court review, raising one issue:

> *Does the definition of "underinsured motorist coverage" in Wis. Stat. § 632.32(2)(d) void uninsured motorist (UIM) insurance policy provisions requiring that an insured sustain a bodily injury in order for UIM benefits to be collectable, thereby overruling the prior Court of Appeals decision in Ledman v. State Farm Mut. Auto Ins. Co., 230 Wis. 2d 56, 601 N.W.2d 312 (Ct. App. 1999)?*

WISCONSIN SUPREME COURT
September 15, 2021
10:45 a.m.

2019AP1365 Danelle Duncan v. Asset Recovery Specialists, Inc.

This is a review of a decision of the Wisconsin Court of Appeals, District IV, (headquartered in Madison), which reversed a Dane County Circuit Court judgment, Judge Stephen E. Ehlke presiding, which granted summary judgment in favor of Asset Recovery Specialists and determined that their repossession of Danelle Duncan's vehicle was lawful.

Danelle Duncan purchased a car, financed by a loan from Wells Fargo Bank. Duncan failed to make the payments on the loan and Wells Fargo hired Asset Recovery Specialists, Inc., to repossess the vehicle pursuant to Wis. Stat. § 425.206, which provides for "nonjudicial" repossession. Asset Recovery entered the garage attached to Duncan's apartment building to repossess the vehicle.

Duncan filed suit in circuit court. Duncan claimed that by entering the garage to obtain the vehicle, Asset Recovery violated § 425.206(2)(b), which states that when taking possession of repossessed goods, "no merchant may . . . (e)nter a dwelling used by the customer as a residence except at the voluntary request of a customer." Duncan also claimed that Asset Recovery had engaged in "unconscionable conduct" while interacting with her during the repossession, in violation of Wis. Stat. § 425.107(1). That section states:

> *With respect to a consumer credit transaction, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against the customer by a party to the transaction, or any result of the transaction is unconscionable, the court shall . . . either refuse to enforce the transaction against the customer, or so limit the application of any unconscionable aspect or conduct to avoid any unconscionable result.*

Both Duncan and Asset Recovery filed motions for summary judgment. The circuit court granted summary judgment in favor of Asset Recovery on all claims.

Duncan appealed. The Court of Appeals reversed the circuit court's decision. The Court of Appeals found that the garage on the ground floor of Duncan's apartment building was part of Duncan's "dwelling" under § 425.206(2)(b), and stated the judgment on that claim should be entered in her favor. The Court of Appeals did not resolve the second "unconscionable conduct" claim, but remanded it for further proceedings.

Asset Recovery filed a petition for Supreme Court review, raising two issues:

1. Was the repossession of Duncan's vehicle from the ground floor, open door, multivehicle parking garage and separate parking space proper under Wis. Stat. § 425.206(2)(b), based on the circuit court's determination that the parking garage was not a "dwelling used by Duncan as a residence?"

2. Was the Dismissal of Plaintiff's Wis. Stat. § 425.107 "Unconscionable Behavior" claim on Summary Judgment by the circuit court proper?

WISCONSIN SUPREME COURT
September 27, 2021
9:45 a.m.

2019AP691-CR & 2019AP692-CR State v. Cesar Antonio Lira

This is a review of a Wisconsin Court of Appeals, District I (headquartered in Milwaukee) decision reversing in part, Milwaukee County Circuit Court, Judge Frederick C. Rosa presiding, orders denying Cesar Antonio Lira's motions for sentence credit.

In 1992, Ceasar Antonio Lira was sentenced to 10 years for possession of controlled substance with intent to deliver. He was released on parole in 1996. In January of 1999, Lira was arrested again, and the Department of Corrections revoked his parole in the 1992 case. In December 1999, Lira was convicted of conspiracy to deliver cocaine and felon in possession of firearm and was sent to prison.

In January of 2001, Lira was released from prison; he remained on parole for his 1992 conviction and on probation for his 1999 conviction. In November 2002, Lira fled from his parole agent and was not apprehended until January 2004. He remained in custody in Milwaukee County until April 15, 2004. On that day, he was being transported to a medical appointment and escaped. Lira fled to Oklahoma. On April 16, 2004, while fleeing Oklahoma police, Lira ran a roadblock, attempted to escape through a freeway exit and crashed the vehicle he was driving. His girlfriend and her child were in the vehicle with him, his girlfriend died in the crash. He was arrested that same day. Also on April 16, the Wisconsin Department of Corrections formally revoked both Lira's parole and probation through a revocation order and warrant, which mandated that Lira be reconfined in Wisconsin's custody (a/k/a detainer hold). In September 2004, Lira pled guilty in Oklahoma to 2nd degree murder, among other charges. He was sentenced to 20 years in Oklahoma prison.

Lira remained in Oklahoma until May of 2005, when Oklahoma transferred him to Wisconsin to face trial on the outstanding charges stemming from his escape on April 15, 2004. On June 16, 2005, Lira posted bail in Milwaukee and was released, in error, and absconded to Texas. In December 2005, Lira was arrested in Texas. He was returned to Milwaukee on January 6, 2006. On March 17, 2006, Lira entered into a plea agreement for the outstanding Wisconsin charges and was sentenced to 3 years of initial confinement and 3 years of extended supervision, to be served consecutively to his Oklahoma sentence. He received no sentence credit. Despite the preexisting detainer hold, which mandated that Lira serve his revocation sentence in Wisconsin, Lira was returned to Oklahoma on April 5, 2006, to resume serving his sentence there. He completed the Oklahoma sentence and was extradited to Wisconsin in June 2017.

In August of 2017, Lira began his efforts to obtain sentence credit for various periods he spent in custody between 2004 and 2017. He filed a total of four motions seeking sentence credit in Milwaukee County circuit court. All were denied. In denying the fourth motion, the circuit court concluded that State v. Brown, 2006 WI App 41, 289 Wis. 2d 823, 711 N.W.2d 708, was inapplicable and that Lira was not "made available" to Oklahoma by the detainer. Lira appealed.

As noted above, the Court of Appeals reversed in part. The Court of Appeals held that, pursuant to Brown, Lira was entitled to substantial sentence credit (more than 11 years) for the time he spent in custody in Oklahoma. The Court of Appeals, applying Brown, concluded that

Lira was not "made available" to Oklahoma after his escape from Wisconsin in 2004, but that he was "made available" to Oklahoma when Wisconsin returned him in a lawful manner after the plea agreement in 2006. The Court of Appeals held that Lira was entitled to sentence credit under § 973.15(5) from April 5, 2006, forward, for his 1992 and 1999 convictions.

The State sought review of the Court of Appeals' decision.

The following issues are presented for review:

1. Should Lira's award of credit be reversed because, under the terms of Wis. Stat. § 973.155, Lira's Oklahoma custody was not connected to the conduct for which he was sentenced in Wisconsin?
2. Should State v. Brown, 2006 WI App 41, 289 Wis. 2d 823, 711 N.W.2d 708, be overruled because it misinterpreted the interplay between Wis. Stat. §§ 973.15(5) and 973.155?
3. Should the Court of Appeals' award of sentence credit to Lira under § 973.155 for a second period of custody unconnected to the present sentences be vacated because it is contrary to § 973.155(1)(a) and case law interpreting the statute?

WISCONSIN SUPREME COURT
September 29, 2021
9:45 a.m.

2019AP664-CR State v. Alan S. Johnson

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison) holding that, based on the Marsy's Law amendment, an alleged crime victim, T.A.J. has standing to challenge the defendant's request for a Shiffra-Green hearing. The case arises out of the Waupaca County Circuit Court, Judge Raymond S. Huber presiding.

Alan S. Johnson is charged with multiple crimes stemming from his alleged sexual assault of T.A.J. Johnson filed a motion requesting the circuit court conduct an in camera review of T.A.J.'s health care records which is referred to as a Shiffra-Green, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993) motion.

T.A.J. filed a pleading in the circuit court arguing that T.A.J. has standing to challenge the motion under Wis. Stat. § 950.105 and that Johnson's Shiffra-Green motion should be denied on the grounds that Johnson's motion fails to meet the requirements necessary to obtain an in camera review of T.A.J.'s health care records. Johnson challenged T.A.J.'s standing to oppose Johnson's Shiffra-Green motion. The State took no position in the circuit court on whether T.A.J. has standing in these circumstances.

The circuit court ruled that T.A.J. did not have standing to challenge Johnson's Shiffra-Green motion, citing Jessica J.L. v. State, 223 Wis. 2d 622, 589 N.W.2d 660 (Ct. App. 1998), which held that an alleged victim does not have standing to object to, or make arguments to the court regarding a defendant's Shiffra-Green motion.

T.A.J. petitioned for leave to appeal the circuit court's nonfinal order. The Court of Appeals granted the petition and ordered the State named as an additional respondent in this appeal, providing the state the opportunity to file a respondent's brief.

In April 2020, while the parties briefed the issues, the "Marsy's Law" amendment passed, which amends the Wisconsin Constitution to set forth certain crime victim rights, including authorizing victims to assert those rights in court.

The Court of Appeals ordered additional briefing; the parties disputed the effect, if any, of the constitutional amendment on this case. T.A.J. maintains standing independent of the amendment under Wis. Stat. § 950.105. The Court of Appeals concluded that the Marsy's Law amendment grants crime victims such as T.A.J. standing to oppose, and to make arguments supporting their opposition to, a defendant's Shiffra-Green motion. The court further determined that these rights apply retroactively.

Johnson seeks review, contending that permitting an alleged victim to participate in the prosecution of the defendant by lodging legal arguments in response to a Shiffra-Green motion undermines a defendant's right to present a complete defense.

T.A.J. asks the court to address an issue the Court of Appeals declined to address, namely, the argument that Wis. Stat. § 950.105 authorizes standing for crime victims independent of the Marsy's Law amendment. T.A.J. expresses concern that if the Marsy's Law

amendment is declared void[3], then T.A.J. will lose the right to challenge the Shiffra-Green motion, a right T.A.J. believes T.A.J. has, notwithstanding the recent constitutional amendment.

Johnson presents these issues for review:

1. Whether an alleged victim in a criminal case has standing under the 2020 Wisconsin Constitutional Amendment to lodge legal arguments in opposition to a defendant's motion for in camera review.
2. Whether the 2020 Wisconsin Constitutional Amendment applies retroactively to an alleged victim's request for standing to lodge legal arguments in opposition to a pending motion for in camera review which was filed, and pertinent issue litigated, prior to the enactment of the amendment.

[3] The Marsy's Law Amendment was declared unconstitutional in the circuit court. An appeal is pending as of the date of this case summary, see Wis. Justice Initiative v. WEC, 2020AP2003,

WISCONSIN SUPREME COURT
September 29, 2021
10:45 a.m.

2019AP2034 Andrea Townsend v. ChartSwap, LLC

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), reversing an order of the Milwaukee County Circuit Court, Judge Paul R. Van Grunsven presiding.

Andrea Townsend authorized her attorneys to obtain her medical records and bills from her radiologist. ChartSwap responded to the records request and provided a one-page certified health care bill for Townsend in the amount of $35.87. Townsend's attorneys paid the fee and obtained the records. On December 4, 2018, Townsend, on behalf of herself and other class members, filed a class action complaint against ChartSwap alleging that the fees it charged for providing copies of medical records and billings exceeded the statutorily imposed limits in § 146.83(3f)(b). Townsend's complaint alleged that ChartSwap was subject to the same statutory regulations and limits regarding copy charges as the health care provider. The complaint also alleged an unjust enrichment claim.

ChartSwap moved to dismiss the complaint. It argued that the statute applies only to "health care providers, a term that the health records statute defines as comprising of 26 discrete categories of individual health care providers, associations of individual health care providers, and licensed health care facilities." ChartSwap argued that since it is not a health care provider, it is not subject to the billing limitations in § 146.83(3f)(b).

The circuit court granted ChartSwap's motion to dismiss. Relying heavily on the federal court's decision in Smith v. RecordQuest, LLC, 380 F. Supp. 3d 838 (E.D. Wis. 2019), the circuit court concluded that § 146.83(3f)(b) does not impose liability on entities that are not health care providers even when they are acting as agents of health care providers.

The court of appeals reversed and remanded concluding that ChartSwap was subject to the cost containment provisions of § 146.83(3f)(b) and, as an agent of medical providers under § 990.001(9), ChartSwap qualifies as "any person" under the remedial provisions of § 146.84(1)(b).

The Supreme Court is expected to resolve these issues:

1. Whether Wis. Stat. § 146.83(3f)(b), which limits the amount that a "health care provider" may charge for providing copies of patient health records, applies to entities that are not "health care providers"?
2. Whether, under Wis. Stat. § 990.001(9), an agent is directly liable for any conduct that violates any statutory requirement applicable to the principal?

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