



# Supreme Court of Wisconsin

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FOR IMMEDIATE RELEASE

## Wisconsin Supreme Court accepts 12 new cases

**Madison, Wis.** (July 15, 2021) – The Wisconsin Supreme Court has voted to accept 12 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 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 pending Supreme Court cases can be found [here](#).

2019AP1007

Container Life Cycle Management v. DNR

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

**Court of Appeals:** District I

**Circuit Court:** Milwaukee County, Judge Stephanie G. Rothstein, affirmed

**Long caption:** Container Life Cycle Management, LLC, Petitioner-Appellant-Petitioner, v. Wisconsin Department of Natural Resources, Respondent-Respondent

**Issues presented:**

1. Is “finality,” a word that appears nowhere in section 227.52, a required characteristic of an agency decision that is the subject of a petition for judicial review under that statute?
2. When an agency such as the Department makes a determination that has the effect of subjecting a person to a more rigorous and expensive regulatory regime and substantially increasing the cost and delay that person will encounter in seeking a permit, is that determination subject to immediate judicial review under section 227.52 of the Wisconsin Statutes?
3. When the Department declared in a December 14 letter that it had “determined that [a synthetic minor] permitting approach is not approvable in an after-the-fact PSD situation” but indicated that it would consider a synthetic minor cap after CLCM completed the costly and

- time consuming PSD permitting process, did that decision adversely affect CLCM's substantial interests?
4. Was CLCM precluded by an earlier decision by the Department in June of 2018, denying a different permitting request, from obtaining judicial review of the Department's December 14 determinations on the PSD major source and synthetic minor issues? Put another way, does issue preclusion apply in different permitting proceedings subject to chapter 227?

2019AP1850-CR

State v. Forrett

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

**Court of Appeals:** District II

**Circuit Court:** Waukesha County, Judge Michael Aprahamian and Judge Brad D. Schimel, reversed and remanded

**Long caption:** State of Wisconsin, Plaintiff-Respondent-Petitioner, v. Scott William Forrett, Defendant-Appellant

**Issues presented:**

1. Is Wisconsin's accelerated penalty structure for OWI related offenses unconstitutional under Birchfield v. North Dakota and State v. Dalton?
2. Is an increased penalty for an offense because the person is a repeater an increased penalty for the prior offense?

2019AP2150-CR

State v. Green

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

**Court of Appeals:** District II

**Circuit Court:** Kenosha County, Judge Bruce E. Schroeder, affirmed

**Long caption:** State of Wisconsin, Plaintiff-Respondent v. Valiant M. Green, Defendant-Appellant-Petitioner

**Issue presented:** Mr. Green was arrested for operating while intoxicated and his blood was taken pursuant to a search warrant. Did the affidavit in support of that search warrant fail to state probable cause to believe that Mr. Green had committed a crime and thus require suppression of the blood test result?

2020AP128

Slamka v. General Heating & Air Conditioning

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

**Court of Appeals:** District IV

**Circuit Court:** Dane County, Judge William Hanrahan, affirmed

**Long caption:** Robert L. Slamka, Petitioner-Appellant-Petitioner v. General Heating and Air Conditioning, Inc. and Wisconsin Employment Relations Commission, Respondents-Respondents

**Issues presented:**

1. Is the Right to Work Act in the State of Wisconsin pre-empted by Federal Law depriving the Wisconsin Employment Relations Commission of jurisdiction to hear and determine cases under the Right to Work Act § 111.06(1)(a) and § 111.04(3)(a) Wis. Stats.?
2. Does Article I, Section 9 of the Wisconsin Constitution provide a remedy before the Wisconsin Employment Relations Commission under the Right to Work Act § 111.04(3)(a) Wis. Stats?

2020AP925

Cobb v. King

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

**Court of Appeals:** District III

**Circuit Court:** Oconto County, Judge Jay N. Conley, affirmed

**Long caption:** James Cobb and Judith Cobb, Plaintiffs-Appellants-Cross-Respondents-Petitioners v. Gary A. King, Defendant-Respondent-Cross-Appellant

**Issues presented:**

1. Did the Circuit Court misconstrue Wis. Stat. § 706.10(3), which provides:  
*In conveyances of lands words of inheritance shall not be necessary to create or convey a fee, and every conveyance shall pass all the estate or interest of the grantor unless a different intent shall appear expressly or by necessary implication in the terms of such conveyance . . .*  
when it concluded that an easement, which mentioned only the grantees and no one else, nonetheless ran with the land by virtue of the statute?
2. Did the passage in the same statute that provided, “In conveyances of land words of inheritance shall not be necessary to create or convey a . . .” apply to easements, when a century of this Court’s cases hold that easements involve a limited right to use another’s property but do not involve a fee interest in the land and when Wis. Stat. § 700.02(1) defines fee interests in real property but does not include easements.
3. Did the passage in the statute that “every conveyance shall pass all the estate or interest of the grantor unless a different intent shall appear expressly or by necessary implication in the terms of such conveyance” mean that the easement ran with the land, when nothing in the easement’s terms indicated that was the case; in other words, did the terms of the statute supersede the terms of the easement?

2019AP1046-CR

State v. Ruffin

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

**Court of Appeals:** District I

**Circuit Court:** Milwaukee County, Judge Joseph M. Donald, affirmed in part; reversed in part and remanded

**Long caption:** State of Wisconsin, Plaintiffs-Respondent-Petitioner v. Theophilous Ruffin, Defendant-Appellant

**Issue(s) presented:** Was Ruffin entitled to an evidentiary hearing based on his postconviction allegation that his trial counsel was deficient for not pursuing a theory of self-defense?

2020AP192-CR

State v. Kizer

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

**Court of Appeals:** District II

**Circuit Court:** Kenosha County, Judge David P. Wilk, reversed and remanded

**Long caption:** State of Wisconsin, Plaintiffs-Respondent-Petitioner v. Chrystul D. Kizer, Defendant-Appellant

**Issue presented:**

Does the defense set forth in section 939.46(1m) – for crimes committed as a “direct result” of trafficking – provide a complete defense to a charge of first-degree intentional homicide?

2019AP2065-CR

State v. Arrington

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

**Court of Appeals:** District III

**Circuit Court:** Brown County, Judge Timothy A. Hinkfuss, reversed and remanded

**Long caption:** State of Wisconsin, Plaintiff-Respondent-Petitioner v. Richard Michael Arrington, Defendant-Appellant

**Issues presented:**

1. Did Arrington prove that his counsel was ineffective for failing to move to suppress the CI’s recordings and testimony on Sixth Amendment grounds?
2. Did Arrington prove that the State violated his Sixth Amendment right to counsel?

2021AP6

Sheboygan County v. M.W.

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

**Court of Appeals:** District II

**Circuit Court:** Sheboygan County, Judge Kent Hoffmann, reversed and remanded

**Long caption:** In the matter of the mental commitment of M.W.: Sheboygan County, Petitioner-Respondent v. M.W., Respondent-Appellant-Petitioner

**Issue presented:** Whether the court of appeals erred when it fashioned a remedy that was contrary to M.W.’s uncontested position, and which thwarted the express purpose of the underlying rule from D.J.W. under which the circuit court erred?

**Supreme Court case type:** Bypass

**Court of Appeals:** District I

**Circuit Court:** Milwaukee County, Judge Laura Gramling Perez

**Long caption:** Colectivo Coffee Roasters, Inc., Tandem Restaurant, LLC d/b/a The Tandem, Wrecking Crew, Inc., Iron Grate BBQ Company, Inc., East Troy Brewery Company, Logan & Potter, Inc., Buckley's Kiskeam Inn, LLC, Other Ones MKE, LLC, BCT 5, LLC, Company Brewing, LLC, Bryhopper's Bar & Grill, LLC, The River's Bar, LLC, Etcetera by BLH, LLC, REMBS, LLC, KRO Bar, Inc., Rivermill, Inc. and Pork's Place of Kaukana, LLC, Plaintiffs-Respondents, v. Society Insurance, a Mutual Company, Defendant-Appellant

**Issues presented:**

1. The Society policy issued to Colectivo provides Business Income and Extra Expense coverage when there is a "direct physical loss of or damage to" covered property. When Colectivo limited its operations in response to COVID-19 and the social distancing orders, did it experience a "direct physical loss of or damage to" covered property?
2. The Society Policy provides Civil Authority coverage when the government prohibits access to Covered Property because of damage to other property. When Colectivo limited its operations in response to social distancing orders, was access to its property "prohibited" because of damage to other property?
3. The Society Policy provides Contamination coverage when there is a contamination on Covered Property, resulting in action by a governmental authority that prohibits access to the Covered Property. When Colectivo limited its operations because of social distancing orders and the suspected presence of COVID-19 was there a "contamination" that resulted in action by the government to prohibit access to Covered Property or production of its product?
4. The Society policy excludes coverage for "Consequential Losses," defined as "[d]elay, loss of use or loss of market." Does the "Consequential Losses" exclusion bar coverage for Colectivo's alleged losses resulting from COVID-19 or the governmental closure orders?
5. The Society policy excludes coverage for "Acts or Decisions," defined as "[a]cts or decisions, including the failure to act or decide, of any person, group, organization or governmental body." Does the "Acts or Decisions" exclusion bar coverage for Colectivo's alleged losses resulting from the governmental closure orders?

**Supreme Court case type:** Petition for Review (Justice Jill J. Karofsky did not participate)

**Court of Appeals:** District III

**Circuit Court:** Juneau County, Judge Stacy Smith, affirmed in part; reversed in part and remanded

**Long caption:** State of Wisconsin, Plaintiff-Respondent-Petitioner, v. Donald P. Coughlin, Defendant-Appellant

**Issues presented:**

1. How does a court consider the theory of guilt in an evidence sufficiency claim when an inconsistency exists between a jury instruction and verdict?
2. Must a court accept a jury's resolution of any vagueness in testimony as jury credibility and weight determinations and must a court then adopt the reasonable inferences that a jury may have drawn from the evidence?
3. Has Coughlin, as the defendant challenging the sufficiency of the evidence, met his heavy burden to overcome the great deference this Court gives to the jury and its verdict to satisfy that the evidence, viewed most favorably to the State and the convictions, was insufficient to sustain the 15 guilty verdicts relating to his sexual assaults of John Doe 2 and John Doe 3?

2020AP307

Backus v. Waukesha County

**Supreme Court case type:** Certification

**Court of Appeals:** District III

**Circuit Court:** Waukesha County, Judge Michael O. Bohren

**Long caption:** Gregory M. Backus, Plaintiff-Respondent v. Waukesha County, Defendant-Appellant

**Issue presented:** In light of the supreme court's decision in 118th St. Kenosha, LLC v. DOT, 2014 WI 125, 359 Wis. 2d 30, 856 N.W.2d 486, is a temporary limited easement compensable under WIS. STAT. § 32.09(6g) (2019-20)?

**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:

2018AP1925-CRNM     State v. Knuuttila

2019AP265-CR        State v. Greer

2019AP838-CR        State v. Zeier

2019AP1092-CR       State v. Hudson

2019AP1259-CRNM   State v. Young

2019AP1474-CR	<u>State v. Walker</u>
2019AP1526-CR	<u>State v. Conley</u>
2019AP1996-CR	<u>State v. Watkins</u>
2019AP2080-CR	<u>State v. Whitelow</u>
2019AP2264	<u>State v. Linton</u>
2019AP2393	<u>State v. Hooker</u> (Justice Rebecca Frank Dallet did not participate)
2020AP115-CR	<u>State v. Ellis</u>
2020AP276	<u>State v. Anderson</u>
2020AP285	<u>Thom v. Rural Mutual Ins. Co.</u>
2020AP487-CR	<u>State v. Fennell</u>
2020AP552-CR 2020AP553-CR	<u>State v. Brown</u>
2020AP564-CR	<u>State v. W.A.H.</u>
2020AP689-CR	<u>State v. Thompson</u>
2020AP876	<u>Brellenthin v. Goblirsch</u>
2020AP999-CR	<u>State v. Dillard</u>
2020AP1037-CR	<u>State v. Willick</u>
2020AP1047	<u>Carroll v. Sarko</u>
2020AP1049-CR	<u>State v. White</u>
2020AP1170	<u>State v. Broeders</u>
2020AP1288	<u>Safeco Ins. v. State Farm</u> (Justice Rebecca Grassl Bradley dissents)
2020AP1660-W	<u>Winter v. Circuit Court for Columbia Co.</u>
2020AP2105	<u>Rock County v. J.J.K.</u>
2015AP1113-CR	<u>State v. Hawley</u> (Justice Brian Hagedorn did not participate)

2018AP1629-CR	<u>State v. Williams</u>
2018AP2009	<u>Columbia Co. Sheriff's Dept. v. O'Grady</u>
2019AP1046-CR	<u>State v. Ruffin</u> (Defendant's petition denied)
2019AP1747-CRNM	<u>State v. Medina-Patino</u>
2019AP2112-CR	<u>State v. Hassan</u>
2020AP265-CR	<u>State v. Camacho</u>
2020AP465-CR	<u>State v. Burke</u>
2020AP1096-CR	<u>State v. Dunn</u>
2020AP1097-CR	
2020AP1246-CR	<u>State v. Mendoza</u>
2020AP1847-CRNM	<u>State v. Baker</u>
2021AP351	<u>State v. T.G.</u>
2021AP1075-W	<u>Maday v. Fluke</u>
2019AP2165-CR	<u>State v. Simon</u>
2019AP2319-CR	<u>State v. Mathews</u>
2019AP2356-CR	<u>State v. Vaughn</u>
2020AP324-CR	<u>State v. Splivalo</u>
2020AP387-CR	<u>State v. Sanchez</u>
2020AP433	<u>Holmes v. City of Rhinelander City Council</u> (Justice Patience Drake Roggensack and Justice Rebecca Grassl Bradley dissent)
2020AP462	<u>Jessie v. State</u> (Justice Rebecca Grassl Bradley dissents)
2020AP708-CR	<u>State v. Kent</u>
2020AP833-W	<u>Lathan v. Meisner</u>
2020AP941	<u>Sunday v. McMillan-Warner, LLC</u>
2020AP1043-CR	<u>State v. Griffin</u>
2020AP1510-CR	<u>State v. Heimermann</u>



2020AP1744	<u>Sheboygan Co. V. MJM</u>
2020AP1778	<u>In the interest of ANB, MWB and ELG</u>
2020AP1779	
2020AP1780	
2021AP456-W	<u>Brown v. Jeager</u>
2021AP787-CR	<u>State v. Burnette</u>
2021AP1434-OA	<u>Stempski v. Heinrich</u> (Petition for Original Action denied 8/27/21; Chief Justice Annette Kingsland Ziegler, Justice Patience Drake Roggensack and Justice Rebecca Grassl Bradley dissent)
2019AP2059-CR	<u>State v. Deleon-Yuja</u>
2020AP783-CRNM	<u>State v. James</u>
2020AP784-CRNM	
2020AP1086-W	<u>Degorski v. Tegels</u>
2021AP1434-OA	<u>Stempski v. Heinrich</u> (Petition for Original Action denied 8/27/21; Chief Justice Annette Kingsland Ziegler, Justice Patience Drake Roggensack and Justice Rebecca Grassl Bradley dissent)