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FOR IMMEDIATE RELEASE

Wisconsin Supreme Court accepts five new cases

Madison, Wis. (Dec. 21, 2017) – The Wisconsin Supreme Court has voted to accept five new cases and acted to deny review in a number of other cases. The case numbers, issues, and counties of origin of granted cases are listed below. The synopses provided are not complete analyses of the issues. More information about any particular case before the Supreme Court or Court of Appeals can be found on the Supreme Court and Court of Appeals Access website.

2014AP2812 Mayo v. Wis. Injured Patients and Families Comp. Fund

Supreme Court case type: Petition for Review
Court of Appeals: District I
Circuit Court: Milwaukee County, Judge Jeffrey A. Conen, Affirmed
Long caption: Ascaris Mayo and Antonio Mayo, Plaintiffs-Respondents-Cross-Appellants, United Healthcare Insurance Company and Wisconsin State Department of Health Services, Involuntary-Plaintiffs, v. Wisconsin Injured Patients and Families Compensation Fund, Defendant-Appellant-Cross-Respondent-Petitioner, Proassurance Wisconsin Insurance Company, Wyatt Jaffe, MD, Donald C. Gibson, Infinity Healthcare, Inc. and Medical College of Wisconsin Affiliated Hospitals, Inc., Defendants

Issues presented: In this medical malpractice case, the Wisconsin Injured Patients and Families Compensation Fund (the Fund) challenges a Court of Appeals decision finding a $750,000 cap on noneconomic damages in medical malpractice actions, as stated in § 893.55, Stats. (2015-16), is unconstitutional on its face. The Fund also asks the Supreme Court to decide whether the cap is constitutional as applied here to the plaintiffs, Ascaris Mayo and Antonio Mayo.

The Supreme Court reviews the issues in light of Ferdon v. Wisconsin Patients Compensation Fund, 2005 WI 125, 284 Wis. 2d 573, 701 N.W.2d 440. According to the Court of Appeals, Ferdon held that there was no rational relationship between the stated legislative objectives of the fund and amount of the cap, which at that time Ferdon was decided was $350,000.

Some background: In May 2011, 50-year-old Ascaris Mayo was seen in the emergency room of Columbia St. Mary's Hospital in Milwaukee for abdominal pain and high fever. Mayo was seen by Dr. Wyatt Jaffe and a physician's assistant, Donald Gibson. Gibson included infection in his differential diagnosis, and he admitted at trial that Mayo met the criteria for Systemic Inflammatory Response Syndrome. However, neither medical professional informed Mayo about that diagnosis or the available treatment, which was antibiotics.

Instead, Mayo was treated for uterine fibroids because she had a history of that condition. She was told to follow up with her personal gynecologist. Mayo's condition worsened the next day, prompting her to visit a different emergency room, where she was diagnosed with a septic infection caused by the untreated infection. The infection resulted in what physician called a "medical tsunami," which caused nearly every organ to fail and caused dry gangrene in all four of Mayo's extremities. All four extremities eventually had to be amputated.

The Mayos filed suit, alleging medical malpractice and failure to provide proper informed consent. Prior to trial, the Fund filed a motion to consider constitutional issues. The circuit court held the cap was not facially unconstitutional, but it allowed the Mayos to raise an "as applied" challenge after trial.

A jury found that neither Jaffe nor Gibson was medically negligent, but it found that both medical professionals failed to provide Mayo with the proper informed consent about her diagnosis and treatment options. The jury awarded Ascaris Mayo $15 million in noneconomic damages, and it awarded $1.5 million to Antonio Mayo for loss of society and companionship.

In seeking entry of judgment on the verdict, the Mayo's renewed their facial challenges to the cap on damages and argued that the cap was unconstitutional as applied. The circuit court concluded the cap was not facially unconstitutional but that it was unconstitutional as applied to the Mayos' jury award because it violated the Mayos' rights to equal protection and due process.

The circuit court, relying in part on principles set forth in Ferdon, found that an application of the cap would reduce the Mayos' jury award on noneconomic damages by 95.46 percent. The circuit court also found that there was no rational basis for depriving Ascaris Mayo of the award the jury deemed appropriate to compensate her for her injuries; that reducing the Mayos' jury award would not further the cap's purpose of promoting affordable health care to Wisconsin residents while also ensuring adequate compensation to medical malpractice victims; that the Fund is financially fully capable of honoring the jury's award; and that applying the cap would not advance the legislative purpose of policing high or unpredictable damage awards.

The Court of Appeals affirmed. It concluded that the statutory cap on noneconomic damages is unconstitutional on its face because it violates the same principles articulated by the Wisconsin Supreme Court in Ferdon by imposing an unfair and illogical burden only on catastrophically injured patients, thereby denying them the equal protection of the law and creating a class of fully compensated victims and partially compensated victims. The Court of Appeals found, as in Ferdon, that the cap on non-economic damages is not rationally tied to the legislative objectives of keeping doctors in the state, preventing defensive medicine, controlling the cost of health care and premiums.

The Court of Appeals did not reach the question of whether the statute was unconstitutional as applied to the Mayos.

The Fund says the Court of Appeals decision jeopardizes longstanding precedent that recognizes that the legislature sets the policy for the state and should be afforded substantial deference in doing so. The Fund argues that the Court of Appeals employed an exacting level of scrutiny that cannot be reconciled with proper "rational basis" review. It also argues the appellate court ignored legislative fact-finding and investigation, took no steps to independently construct a rationale for the cap, and searched out its own sources to contradict the legislature's findings.

The Fund also says that because the Court of Appeals left undisturbed the circuit court's decision that declared the cap unconstitutional as applied to the Mayos, this leaves open the possibility that the cap, even if ultimately deemed facially constitutional in all respects, can still be undone one "as applied" challenge at a time.

The Fund also asks the Supreme Court to clarify whether uniform application of a law can violate equal protection simply by producing harsh results. It says the cap has been applied

to the Mayos exactly the same as it is to all other individuals receiving an award in excess of $750,000.

In addition to addressing constitutional questions raised by the Mayos, a decision by the Supreme Court is expected to clarify the proper scope of rational basis review following Ferdon, and the level of scrutiny a court must undertake when analyzing economic legislation applicable to medical malpractice cases.

2016AP1409-CR State v. Joseph T. Langlois

Supreme Court case type: Petition for Review
Court of Appeals: District II
Circuit Court: Washington County, Judge James K. Muehlbauer, affirmed
Long caption: State of Wisconsin, Plaintiff-Respondent, v. Joseph T. Langlois, Defendant-Appellant

Issues presented: This homicide case examines whether the jury was given proper instructions before convicting Joseph T. Langlois of homicide by negligent handling of a dangerous weapon, and whether Langlois' counsel was ineffective for not objecting to the jury instructions as delivered.

Some background: Langlois fatally stabbed his brother Jacob during an altercation in Jacob's room as Jacob was packing to leave for the National Guard. The two were arguing over items that belonged to their father and what items Langlois may have been taking with him.

The knife used in the stabbing was a fillet knife that had belonged to their father. Their mother had set the knife, still in its sheath, on a nightstand in Jacob's room before the physical altercation.

Jacob pushed Langlois out of the room and held the door against him. Langlois pushed through the door and went over to Jacob's bed, asking, "What else do you have in here?" The men started wrestling. Jacob placed Langlois in a headlock. Langlois said he couldn't breathe. Jacob released Langlois.

Langlois said he was confused, angry, and furious. He took the knife from the nightstand, removed it from its sheath, and "held it up threateningly" against his right shoulder with the sharp end pointed out. Jacob did not have a weapon.

Langlois yelled at Jacob, saying he "never liked him" and "always hated him." Jacob kicked Langlois on his right side. Langlois told police that he reacted by stabbing Jacob in the chest once, using an extended stabbing motion.

Langlois was charged with first-degree reckless homicide. At the close of the evidence at trial, the state asked that Langlois be charged with lesser included offenses of second-degree reckless homicide and homicide by negligent handling of a dangerous weapon. Langlois requested instructions on the defenses of self-defense and accident. The state then asked for an instruction on retreat. The circuit court granted all requests. Defense counsel made no objection to the instructions.

The circuit court gave complete jury instructions on self-defense for the first- and second-degree reckless homicide counts but on the negligent homicide count – on which the jury ultimately found Langlois guilty – the court did not specifically reinstruct the jury that the state had the burden of proving beyond a reasonable doubt that Langlois did not act lawfully in self-defense.

The jury returned a verdict acquitting Langlois of the first- and second-degree reckless homicide counts, but convicting him of homicide by negligent handling of a dangerous weapon. Sentence was withheld, and Langlois was placed on five years probation with conditions.

Langlois filed a motion for judgment notwithstanding the verdict, arguing there was insufficient evidence to convict him because a normally prudent person would not have reasonably foreseen that his conduct exposed another to an unreasonable risk and high probability of bodily harm. He also argued that the trial court's instruction on accident violated his due process rights because the instruction referred to risk without qualifying that the risk had to be unreasonable and substantial. The motion was denied.

Langlois then moved for a judgment of acquittal, again arguing that the evidence was insufficient to support the verdict. In the alternative, he asked for a new trial in the interest of justice on the ground that trial counsel's failure to object to the instructions on self-defense and accident deprived him of the effective assistance of counsel. The motion was denied without an evidentiary hearing.

The Court of Appeals, with Judge Paul F. Reilly dissenting, affirmed. The Court of Appeals said Langlois viewed the jury instructions in isolation rather than considering them as a whole. With respect to the self-defense instructions, Langlois faulted his attorney for not objecting with the trial court failed to repeat the instruction given in conjunction with first-degree reckless homicide when it instructed the jury on homicide by negligent handling of a dangerous weapon.

The Court of Appeals said the trial court did instruct the jury on self-defense as it related to the count charging homicide by negligent handling of a dangerous weapon, although the court did not repeat the portion of the instruction telling the jury that it was the state's burden to prove beyond a reasonable doubt to show that Langlois did not act in self-defense.

Judge Reilly said the trial court, by omission, instructed the jury that self-defense for homicide by negligent handling of a dangerous weapon does not require the state to prove beyond a reasonable doubt that Langlois did not act lawfully in self-defense. Reilly says this omission, by inference, removed from the state its burden to disprove self-defense and erroneously put the burden to prove self-defense on Langlois.

The state says contrary to Langlois's position, the circuit court did not need to completely reinstruct the jury on the requirements of self-defense as they pertain to the negligent homicide charge when the court had previously given the jury a complete instruction on self-defense on the greater charges.

A decision by the Supreme Court is expected to clarify what constitutes proper jury instructions in the common situation where multiple lesser included offenses are at play.

2016AP897-CR State v. Lamont Donnell Sholar

Supreme Court case type: Petition for Review
Court of Appeals: District I
Circuit Court: Milwaukee County, Judge Rebecca F. Dallet and Judge Thomas J. McAdams, Affirmed.
Long caption: State of Wisconsin, Plaintiff-Respondent, v. Lamont Donnell Sholar, Defendant-Appellant

Issues presented:

- When assessing the prejudice of defense counsel's deficient performance in a multiple-count jury trial, may a court – and if so, when – divide the prejudice analysis on a count-

by-count basis, finding prejudice warranting relief on some counts from the single trial but not others?

- If a party fails to file a petition for review following an unfavorable Court of Appeals ruling on a particular argument, may the party re-litigate the same question in a second appeal of the same case?

Some background: In October 2011, Lamont Donnell Sholar was charged with one count of trafficking a child, one count of soliciting a child for prostitution, two counts of pandering/pimping, and one count of human trafficking related to two women, one 17 years old; the other, 21. He was also charged with one count of second-degree sexual assault related to the 21-year-old.

The women independently testified that they met Sholar through his friend, Shawnrell Simmons, and then began working as prostitutes for Sholar. They testified that Sholar uploaded advertisements with pictures of them to a website. They each described in detail how Sholar drove them to and from various hotels for the purpose of engaging in sexual acts with men for payment. Their testimony regarding the prostitution was corroborated by testimony from other witnesses, including another sex worker, one of the women's mother, the clerk at the hotel where Sholar had rented several rooms and where much of the sex work occurred, and evidence of lingerie and condoms retrieved by hotel staff. The 21-year-old woman also testified that Sholar sexually assaulted her but added that she didn't say no because she was afraid and felt she didn't have a choice.

Sholar's defense was that he was not personally involved in prostitution. He described himself as acting like "a friend" to the 17-year-old and denied having sex with the 21-year-old. He blamed Simmons for engaging them in prostitution. He offered what the trial court would describe as "incredible" and inconsistent stories about where he was living and why he was staying at the Econolodge with a 17-year-old girl.

When Sholar was arrested, he had a cell phone on him and made some statements indicating it was his phone and later claimed it belonged to Simmons. The state introduced as exhibit 79, a 181-page printout, including photos of females in suggestive poses, and text messages referencing drugs, prostitution and threats of violence. Trial counsel did not object. Later, the jury asked to see a specific text message. All the text messages were part of a single exhibit. Exhibit 79 was provided in its entirety to the jury, without any objection by defense counsel. After a six-day jury trial, Sholar was found guilty of all six charges.

Sholar filed a postconviction motion asserting that his trial counsel was ineffective in allowing exhibit 79 to be sent to the jury in its entirety. The trial court denied the motion without a hearing, ruling that even if the text messages contained improper other acts evidence, Sholar hadn't shown prejudice.

The Court of Appeals concluded that "Sholar's allegations in this regard, if true, are sufficient to entitle Sholar to a Machner hearing." *See* State v. Machner**,** 92 Wis. 797, 285 N.W.2d 905 (Ct. App. 1979).

The judge determined that Sholar's trial counsel was ineffective in allowing exhibit 79 to be sent to the jury, stating, "The messages and the pictures [in the exhibit] are in my opinion so inflammatory that I think a jury then and there might have convicted him of virtually anything."

However, the Machner court said that it was only prejudicial as to the second-degree sexual assault charge. The Machner court believed that Sholar would have been convicted of the five human trafficking counts, regardless of exhibit 79. The Machner court then issued a written order vacating Sholar's conviction and sentence on count five (the sexual assault) and denied the remainder of Sholar's postconviction motion.

Sholar unsuccessfully sought summary reversal and then appealed. The state did not cross appeal and does not challenge the order vacating the sexual assault charge. Sholar argued on his second appeal that the Machner court misunderstood the remand order. He argued that "the only issue to be addressed at the Machner hearing was whether trial counsel's performance was deficient."

The Court of Appeals considering Sholar's second appeal concluded that the Machner court interpreted its order correctly when it conducted a full Machner hearing.

Sholar says that it was incorrect for the Machner court to essentially "parse" whether, as a result of his counsel's ineffective assistance, he was prejudiced as to each individual count. He contends that if counsel was ineffective (which is undisputed) that ineffectiveness taints the entire proceeding. He claims that there is no precedent for the Court of Appeals to determine the prejudice of a trial attorney's deficient performance on a count-by-count basis.

The state says that the Court of Appeals got it right. It points to the court's conclusion that "there is no reasonable probability that the outcome of the trial would have been different if exhibit 79, in its entirely, would not have been given to the jury during deliberations." The state says that "Sholar has not shown that this was improper."

A decision by the Supreme Court may determine whether the prejudice analysis may occur on a count-by-count basis, and if so, under what circumstances.

2017AP1595-CQ Winebow, Inc. v. Capitol-Husting Co., Inc.

Supreme Court case type: Certified question from the U.S. 7th Circuit Court of Appeals
Long caption: Winebow, Inc., Plaintiff-Appellee, v. Capitol-Husting Co., Inc. and L'Eft Bank Wine Co. Limited, Defendants-Appellants.

Issue(s) presented: Does the definition of a dealership contained in Wis. Stat. § 135.02(3)(b) include wine grantor-dealer relationship?

Some background: The Seventh Circuit notes that the Wisconsin Fair Dealership Law (WFDL) restricts the circumstances under which certain sellers may unilaterally stop doing business with their existing distributors. The WFDL is premised on the notion that dealer-grantors have inherently superior economic powers and should not be allowed to behave opportunistically once franchisees or other dealers have invested substantial resources into tailoring their business around, and promoting, a brand. Kenosha Liquor Co. v. Heublein, Inc., 895 F.2d 418, 419 (7th Cir. 1990). If a grantor substantially impairs or terminates an existing relationship with a distributor, the distributor may recover damages, injunctive relief, and attorney's fees. See § 135.06, Stats.

Prior to 1999, the WFDL regulated only those grantor-distributor relationships in which there was a "community of interest," which was defined as a "continuing financial interest between the grantor and grantee in either the operation of the dealership business or the marketing of such goods or services." See § 135.02(1).

In 1999, the legislature sought to broaden the WFDL to ensure that all "intoxicating liquor" dealerships were protected, and it eliminated the need to prove "community of interest" for those businesses. These changes were included in the budget bill. Large volume distributors of "intoxicating liquor" were brought under the umbrella of the statute's definition of a protected dealership. In addition, the legislature created § 135.066 which expressed the legislature's desire for a competitive and stable wholesale market and the need for new rules governing a party's acquisition of an entity that has an existing intoxicating liquor dealership.

Then-Gov. Tommy G. Thompson used his partial veto power so that wine dealerships would not be treated the same as other alcohol dealerships. The result, according to the Seventh Circuit, is that § 135.066(2), Stats., is now the "minus wine" provision. In his veto message, Governor Thompson said he was "partially vetoing these provisions so that wine will be excluded from treatment . . . because I object to wine being treated the same as intoxicating liquor." The General Assembly failed to override the partial veto, and the law has been on the books for the past 18 years with no adjustments.

As germane to the instant case, Winebow, Inc. imports and distributes wines to downstream wholesalers. It wants to cut ties with two wholesale distributors, Capitol-Husting and L'Eft Bank wine. Winebow began using Capitol-Husting as a distributor of its wines in 2004. It added L'Eft Bank in 2009. Winebow granted the distributors the exclusive right to sell and distribute Winebow products within specified regions in Wisconsin.

In 2015 Winebow abruptly terminated both dealerships. The distributors agued that the WFDL barred Winebow from doing this without a financial penalty. Winebow brought a declaratory judgment action in U.S. District Court for the Eastern District of Wisconsin, seeking confirmation that the statutory restrictions on dealership terminations do not apply to wine dealerships. Winebow argued that its interpretation of the WFDL was in keeping with Governor Thompson's intent when he partially vetoed the appropriations bill in 1999.

The district court agreed with Winebow and granted Winebow's motion for judgment on the pleadings, finding that wine dealerships do not fall within the "intoxicating liquor" dealerships protected by the WFDL. The distributors appealed.

The Seventh Circuit says the distributors naturally prefer the greater protection of the "good cause" standard and argue that wine dealerships are included in the per se dealership definition contained in § 135.02(3)(b). In the alternative, they argue that the statute is ambiguous but that the term "intoxicating liquor" should be construed as including wine, either as a matter of policy or as a consequence of the supposed plain meaning of the phrase. Winebow counters that the "minus wine" provision removes wine dealerships from the per se definition.

The Seventh Circuit says it is logical to think that the "minus wine" provision would serve no purpose if it didn't set the definition for "intoxicating liquor" throughout the WFDL. On the distributors' side of the equation is the fact that the "minus wine" provision is not expressly limited to § 135.066, nor does it expressly extend to the entirety of ch. 135. In addition, the "minus wine" definition is not contained in the "Definitions" section of the WFDL.

The Seventh Circuit is unable to decide with any confidence if the "minus wine" provision defines "intoxicating liquor" as that term is used throughout the WFDL and, if not, whether an "intoxicating liquor" dealership includes wine dealerships. It says rather than attempt to answer the question itself, it believes the better course is to ask this court for guidance.

2015AP1799-CR State v. Anthony R. Pico

Supreme Court case type: Petition for Review
Court of Appeals: District II
Circuit Court: Waukesha County, Judge Michael O. Bohren, reversed and judgment reinstated
Long caption: State of Wisconsin, Plaintiff-Appellant, v. Anthony R. Pico, Defendant-Respondent-Petitioner

Issue(s) presented: This case examines how a trial court's findings in ineffective assistance of counsel cases are to be reviewed on appeal. The Supreme Court reviews a Court of Appeals'

decision reversing a circuit court order which, after a Machner[1] hearing, vacated a judgment of conviction for first-degree sexual assault and ordered a new trial based on the defendant, Anthony R. Pico having received ineffective assistance of counsel. Pico presents the following issues:

1. Did the Court of Appeals properly apply the standard of review, which is deference to the trial court unless there is clear error, to the trial court's factual findings in this case?
2. Was the trial court correct that counsel's failure to investigate a serious head injury was deficient performance that caused prejudice to Pico both in pretrial proceedings and at trial, in violation of the Sixth and Fourteenth Amendments and the corresponding Wisconsin Constitutional provisions?
3. Did the sentencing court impermissibly burden the Fifth Amendment privilege against self-incrimination, applied to the states through the Fourteen Amendment, and the corresponding provision of the Wisconsin Constitution?
4. [D]id the Court of Appeals deny Pico due process under the Fourteenth Amendment and the corresponding Wisconsin constitutional provision and err as a matter of law in concluding that he waived issues not raised by cross-appeal?
5. Was it proper for the postconviction court to admit and rely on testimony from another criminal defense lawyer, who was not involved in Pico's case (i.e. a "Strickland" expert), to opine on Pico's trial counsel's action?

Some background: A jury found Pico guilty of first-degree sexual assault of eight-year old girl. He was sentenced to six years of initial confinement and ten years of extended supervision.

The girl claimed that while Pico was a parent volunteer in her second grade class and was listening to her read to him, twice put his hand inside her pants and touched her vagina.

At trial, testimony differed about whether or not Pico made contact with the girl's vagina. During questioning, police led Pico to falsely believe they had much evidence against him. Pico initially told police that he did not make contact with the girl's vagina and later said he didn't know for sure.

The defense did not present any evidence at trial, relying on a reasonable doubt theory. During closing arguments, trial counsel emphasized the girl's unreliability and suggestibility and argued that her mother had suggested that Pico put his hand in her underwear.

Counsel argued Pico was a well-respected member of the community with no history or reason to commit the act and emphasized the unlikelihood that Pico would have touched the girl sexually in a busy classroom with an experienced teacher present.

Pico moved for a new trial based on trial counsel's ineffective assistance. Following a two-day Machner hearing, the post-conviction court vacated the judgment of conviction and ordered a new trial.

In the postconviction proceeding, Pico alleged that as a result of a 1992 motorcycle accident, he sustained a traumatic brain injury, a frontal lobe injury. He argued counsel's failure to obtain the records documenting that injury and failure to consult with an expert on the impact of a frontal lobe injury affected the case in three ways: (1) the injury would have been the basis for an NGI plea; (2) it would have explained his behavior with the girl.; and (3) it would have shown that Pico was more susceptible to making false statements during the detective's interview of him, especially through a technique that can trick a suspect into thinking there was more evidence of guilt than the police actually possess. The postconviction court found that trial counsel was deficient and granted Pico's motion for a new trial.

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[1] State v. Machner, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

The Court of Appeals, with Judge Paul F. Reilly dissenting, reversed. The Court of Appeals rejected Pico's arguments about alleged failures of counsel and noted that a defendant claiming ineffective assistance of counsel must show both deficient performance and prejudice. Strickland, 466 U.S. at 687; State v. Thiel, 2003 WI 111, ¶18, 264 Wis. 2d 571, 665 N.W.2d 305. It also noted that a heavy measure of deference must be given to counsel's judgment. Further, it noted that an ineffective assistance claim is a mixed question of law and fact where a circuit court's findings of fact will be upheld unless they are clearly erroneous but the determination of counsel's effectiveness is a question of law that is reviewed de novo.

The Court of Appeals said counsel testified at the Machner hearing that he considered mental health issues but saw no signs he would have typically seen in someone who had deficits or problems. The Court of Appeals said because counsel made a reasonable investigation, no further investigation was necessary. The Court of Appeals also found counsel was not ineffective in concluding there was no basis for a not guilty by reason of insanity plea.

In his dissent, Judge Reilly said the trial judge here found that trial counsel's decision not to investigate Pico's brain injury was unreasonable and was deficient performance.

Pico argues that review is appropriate because the majority rejected careful factual and legal findings of the circuit court and found that trial counsel had no duty to investigate because he did not know the full extent of Pico's brain damage.

The state says this case presents merely a routine application of the Strickland standard that lower courts regularly make. The state says the Court of Appeals applied the clearly erroneous standard to the factual findings of the post-conviction court, and it says Pico's petition for review, as well as Judge Reilly's dissent, reflect a misunderstanding of the Strickland standard of review.

The state notes that over its objection, Pico was allowed to present testimony at the Machner hearing from an attorney to opine on whether trial counsel conducted the trial in an effective manner. The state says the only published Wisconsin case that counsel is aware of addressing the use of Strickland experts in State v. McDowell, 2003 WI App 168, ¶62 n.20, 266 Wis. 2d 599, 669 N.W.2d 204.

In McDowell, the Court of Appeals said the circuit court should not have admitted Strickland expert testimony because no witness may testify as an expert on issues of domestic law and the only expert on domestic law is the court.

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 County

2016AP54-CRNM	State v. Ackley
2016AP278-CR	State v. Jones

Barron County

2016AP1552	Summers v. Litscher
2017AP1640-OA	Dean v. State

Brown County

2015AP2586-CR	State v. Hilgenberg
2016AP359-CR	State v. Hodkiewicz

2016AP704-CR State v. Sierra-Lopez
2016AP760-CR State v. Mineau
2015AP1545-CR State v. Kocian

Columbia County
2016AP1491-CR State v. Coder

Dane County
2015AP273 HSBC Bank USA v. Lisse
Justice Shirley S. Abrahamson and Justice Ann Walsh Bradley dissent
2016AP420-CR State v. Reynolds
2016AP844 Commc'ns Prods. Corp. v. Am. Trust & Savings Bk.
2016AP952 R.B.O v. Knutson
2016AP1023-CR State v. Wendt
20161190/91-CR State v. Pope
2016AP1296-CR State v. Bacallao
2016AP1581-CRNM State v. Meidam
2016AP1673-CRNM
2016AP1611-CR State v. Ezrow
2016AP2174-W Singleton v. Smith

Dodge County
2016AP1351 State v. Davis
2017AP662-W Eauslin v. Humphreys

Door County
2015AP2261-CR State v. Cooper

Eau Claire County
2016AP411-CR State v. Torgerson

Fond du Lac County
2016AP542-CR State v. Tucker

Grant County
2016AP1689-CR State v. Pittman

Green Lake County
2016AO2010-CR State v. Sundberg

Jefferson County
2016AP706-CR State v. Nicholas
2016AP2276 Ionetz v. LIRC

Kenosha County
2015P2180 State v. Kellam
2016AP856-CR State v. Young
2016AP918-CR State v. Boone
2016AP1548 State v. Holt

2016AP2114-CR State v. Hansen
2016AP2027-CRNM State v. Kendrick Williams
2016AP2027-CRNM
2017AP188-CR State v. White

La Crosse County
2016AP1724 State v. Hendrickson
2016AP2358 State v. J.L.B.
2017XX1066-CR State v. Mathews

Lafayette County
2016AP1579 County of Lafayette v. Humphrey

Marathon County
2016AP1470-CR State v. Townsend

Milwaukee County
2014AP1555-CR State v. Wester
2015AP2024 State v. Boyd
2015AP2530-CR State v. Alexander
2015AP2588-CR State v. Hopkins
2016AP68 State v. N. Taylor
2016AP638-CR State v. Smith
2016AP657-CR State v. Young
2016AP885-CR State v. Allen
2016AP973 State v. Smith
2016AP1074-CR State v. Poehlman
2016AP1164-CR State v. Johnikin
2016AP887-CR State v. Caldwell
Chief Justice Patience Drake Roggensack did not participate
2016AP1732-W Higgins v. Strahota
2016AP1289 State v. Pantoja
2019AP1928-CRNM State v. Searcy
2014AP2811-CRNM State v. Wilson
2015AP2089-CR State v. Spooner
2016AP546-CR State v. Sauve
2016AP627 State v. Lee-Kendrick
2016AP694-CR State v. Benton
2016AP682-CR State v. M. Taylor
2016AP964-CR State v. Wellman
2016AP974 State v. Brooks
2016AP1054-CR State v. Carter
2016AP1167-CR State v. Griffis
2016AP1199-CR State v. Jackson
2016AP1054-CR State v. Carter
2016AP1167-CR State v. Griffis
2016AP1199-CR State v. Jackson
2016AP1261-CR State v. Scott
2016AP1262-CR

2016AP1296-CR State v. Bacallao
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2016AP1299-CR
2016AP1359-CR State v. Marshall
2016AP1360-CR
2016AP1361-CR
2016AP1368-CR State v. Weatherall
2016AP1369-CR
2016AP1404-W Love v. Strahota
2016AP1418-CR State v. Tatum
2016AP1419 State v. Campbell
2016AP1463 State v. Love
2016AP1468-CR State v. Jones
2016AP1501 State v. K.J./A.W.
2016AP1502
2017AP720
2017AP721
2016AP1513-CR State v. Smith
2016AP1701 State v. S.D.
2016AP1702
2016AP1819-CR State v. Grant
2017AP62-CR State v. Hernandez
2017AP249 Bach v. Cir. Ct. for Milwaukee Cty
2017AP558 State v. F.J.R.
2017AP559
2017AP611 Kohner Mann & Kailas SC v. Metallurgal Assoc.
Chief Justice Patience Drake Roggensack did not participate
2017AP612 State v. K.P.
2017AP613
2017AP1278 State v. C.L.H.
2017AP1279
2017AP1280
2017AP1473-W Nicholson v. Meisner
2017AP1474-W
2017AP1704-W Bach v. Borowski
2017AP1892-W Bach v. Borowski

Oconto County
2015AP1860-CRNM State v. Locke
2016AP14 Bach v. REM Wis II

Ozaukee County
2016AP1484-CR State v. Wisth
2016AP1567 Reilly v. Milshteyn
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