WISCONSIN SUPREME COURT
CALENDAR AND CASE SYNOPSES
SEPTEMBER 2023

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

Ashland
Douglas
Milwaukee
Outagamie
Waukesha

MONDAY, SEPTEMBER 11, 2023

9:45 a.m.	22AP1334	A. M. B. v. Circuit Court for Ashland County
11 a.m.	20AP2007	Cath. Charities Bureau, Inc. v. WI Labor and Ind. Review Comm.

WEDNESDAY, SEPTEMBER 13, 2023

9:45 a.m.	21AP1399-CR	State v. Morris V. Seaton
11 a.m.	22AP11-D	Office of Lawyer Regulation v. Steven D. Johnson

THURSDAY, SEPTEMBER 14, 2023

9:45 a.m.	21AP311-CR	State v. Donte Quintell McBride

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 Logan Rude at WISC-TV, (608) 271-4321. The synopses provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
September 11, 2023
9:45 a.m.

2022AP1334 A.M.B. v. Circuit Court of Ashland County

This case is before the court on a petition to bypass the Wisconsin Court of Appeals, District III (headquartered in Wausau), seeking Supreme Court review of an order of the Ashland County Circuit Court, Judge Kelly J. McKnight, presiding, which denied the petition for adoption of the minor child, M.M.C.

The petitioners, A.M.B. and T.G., filed a petition to adopt M.M.C on June 9, 2022. The Ashland County Department of Human Services found that it would be in the child's best interest for T.G., the long-time partner of A.M.B., to adopt M.M.C. At a June 22, 2022 hearing, the circuit court concluded that under current Wisconsin statutes and this court's holding in Angel Lace M.,[1] he lacked the authority to approve the adoption despite the fact that "clearly this [adoption] would be in [M.M.C.'s] best interest." The circuit court stated, "[T]his is a court of law, not a court of equity and I can't make the law up. [The] law doesn't grant me the authority to do this."

The petitioners appealed. When briefing was completed in the Court of Appeals, the petitioners filed a petition with the Wisconsin Supreme Court to bypass the Court of Appeals. The petitioners argue that due to the passage of time or changing circumstances, the Angel Lace M. decision is ripe for reconsideration given the significant historical, cultural, and legislative changes that have occurred since Angel Lace M. was decided, and special justifications exist to overturn

[1] In Angel Lace M., the Wisconsin Supreme Court held that the relevant provisions of Chapter 48 do not violate the constitutional rights of either the child or the proposed adoptive parent. Wisconsin Stat. § 48.81 provides that any child who is present in this state at the time a petition for adoption is filed may be adopted if any of the following criteria are met:

> (1) Both of the child's parents are deceased.
> (2) The parental rights of both of the child's parents with respect to the child have been terminated . . .
> (3) The parental rights of one of the child's parents with respect to the child have been terminated . . . and the child's other parent is deceased.
> (4) The person filing the petition for adoption is the spouse of the child's parent with whom the child and the child's parent reside and either of the following applies:
> (a) The child's other parent is deceased.
> (b) The parental rights of the child's other parent with respect to the child have been terminated . . . .

that holding. Second, the petitioners argue that denying a minor child's adoption based solely on the marital status of her parents violates the equal protection rights of both the minor child and the petitioning prospective parent. This court granted the petition to bypass.

The issues for the Supreme Court to decide are:

1. Whether Wis. Stat. §§ 48.81 and 48.92(2) violate the equal protection rights of M.M.C. afforded to her under Wis. Const, art. I, § 1 and the Fourteenth Amendment of the U.S. Constitution, by requiring A.M.B. and T.G. to be married to enable T.G. to adopt her?
2. Whether Wis. Stat. §§ 48.81 and 48.92(2) violate the equal protection rights of T.G. afforded to him under Wis. Const, art. 1, § 1 and the Fourteenth Amendment of the U.S. Constitution by requiring T.G. to be married to A.M.B. to adopt M.M.C.?
3. Do unstated legislative interests of "promoting marriage" and "preserving the traditional unitary family" trump the stated legislative interest of promoting the best interest of the child in Chapter 48?
4. Is it consistent with Wisconsin law to discriminate against individuals based on marital status for stepparent adoptions to "promot[e] marriage" and "protect the traditional unitary family?"

WISCONSIN SUPREME COURT
September 11, 2023
11:00 a.m.

2020AP2007 Catholic Charities Bureau, Inc. v. State of Wisconsin Labor and Industry Review Commission

This a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau) that reversed the Douglas County Circuit Court's order, Judge Kelly J. Thimm, presiding, that ruled in favor of the decisions of the Department of Workforce Development (DWD) and the Labor and Industry Review Commission (LIRC) exempting Catholic Charities Bureau from Wisconsin's unemployment insurance.

Catholic Charities Bureau (CCB) is the Catholic Charities entity for the Diocese of Superior, Wisconsin. CCB's statement of philosophy states that the organization's purpose is "to be an effective sign of the charity of Christ" by providing services that are "significant in quantity and quality" and are not duplicative of services adequately provided by public or private organizations. CCB provides these services according to an "Ecumenical orientation," meaning that "no distinctions are made by race, sex, or religion in reference to the clients served, staff employed and board members appointed."

CCB has various separately incorporated nonprofit sub-entities, which include the four involved in this case: Barron County Developmental Services, Inc. (BCDS); Black River Industries, Inc. (BRI); Diversified Services, Inc. (DSI); and Headwaters, Inc. CCB provides management services and consultation to its sub-entities, establishes and coordinates the sub-entities' missions, and approves capital expenditures and investment policies.

CCB and its sub-entities have historically considered themselves subject to Wisconsin's Unemployment Compensation Act, and CCB's sub-entities have reported their employees under CCB's unemployment insurance account. In 2015, however, a Douglas County Circuit Court judge ruled that Challenge Center, Inc., another CCB sub-entity, was operated primarily for religious purposes and was therefore exempt from the Unemployment Compensation Act under religious purposes exemption. Wis. Stat. § 108.02(15)(h)2.

CCB and the four sub-entities involved in this case sought a determination from DWD that they, too, were exempt from the state's unemployment insurance law under Wis. Stat. § 108.02(15)(h)2. DWD determined that CCB and the four sub-entities are not operated primarily for religious purposes, and are therefore not exempt from the state's unemployment insurance law under the statute. On appeal, an administrative law judge reversed, holding that CCB and the four sub-entities are operated primarily for religious purposes, and are therefore exempt from unemployment insurance coverage. On appeal to LIRC, the administrative law judge's holding was reversed because the CCB and four sub-entities provide essentially secular services and engage in activities that are not religious. On appeal to the circuit court, LIRC's decision was reversed, ruling that the CCB and the four sub-entities are operated primarily for religious purposes because their mission is to serve the underserved in accordance with Catholic principles.

Then on yet another appeal, this one to the Wisconsin Court of Appeals, the circuit court's decision was reversed. The Court of Appeals held that CCB and the four sub-entities are not operated primarily for religious purposes because the services they provide are neither inherently nor primarily religious, and therefore are not exempt from the state's unemployment insurance law under Wis. Stat. § 108.02(15)(h)2.

CCB and the sub-entities filed a petition for review with the Wisconsin Supreme Court, and this court granted their petition.

The issues for this court to decide are:

1. Whether Wisconsin's unemployment insurance law, which exempts "an organization operated primarily for religious purposes," exempts the CCB and the four sub-entitles.
2. Whether the Court of Appeals' interpretation of the religious exemption to Wisconsin's unemployment insurance law violates the First Amendment to the United States Constitution and Article I, Section 18 of the Wisconsin Constitution.

WISCONSIN SUPREME COURT
September 13, 2023
9:45 a.m.

2021AP1399-CR State v. Morris V. Seaton

This a review of an order of the Circuit Court for Waukesha County, Judge Jennifer Dorow presiding, denying the State's motion to introduce evidence of an alleged prior sexual assault by Seaton. Pursuant to Wis. Stat. § 809.61, the Court of Appeals, District II (headquartered in Waukesha) certified this case to this court.

As background, in 2014, the Wisconsin Legislature amended Wis. Stat. § 904.04(2)(b) relating to admitting evidence of past actions in a criminal proceeding, to expand the application of the greater latitude rule. The greater latitude rule says "evidence of any similar acts by the accused is admissible, and is admissible without regard to whether the victim of the crime that is the subject of the proceeding is the same as the victim of the similar act" in criminal proceedings alleging sex and domestic abuse crimes. § 904.04(2)(b)1. In 2018, this court concluded that the recently amended statute "allows admission of other-acts evidence with greater latitude" under a Sullivan analysis.[2] State v.Dorsey, 2018 WI 10, ¶¶23-25, 379 Wis. 2d 386, 906 N.W.2d 158.

The criminal complaint filed against Morris V. Seaton alleges that in June of 2019, 17-year-old Anna[3] and her older sister invited 19-year-old Seaton and the sister's boyfriend to their apartment for an evening of drinking and camaraderie. Both women became inebriated and went to their shared bedroom to sleep. The sister told her boyfriend and Seaton via text that they could stay in the apartment as long as they wanted and could let themselves out. Instead of leaving, the men went into the bedroom. The sister's boyfriend joined the sister on her bed, and Seaton got onto Anna's bed. Seaton sexually assaulted Anna. Seaton eventually left the apartment.

Seaton was charged in the criminal complaint with third-degree sexual assault. Prior to trial, the State filed a motion seeking to introduce evidence of an alleged prior sexual assault by Seaton of another 17-year-old young woman, Jane.[4] The State represented that the incident occurred in September 2017 or 2018, and that Jane had consumed some alcohol and was "hanging out" with Seaton in her sister's front yard; when Seaton followed Jane, who had left to look for her cousin, he "suggested they go behind a residence," where he subsequently sexually assaulted her.

---

[2] State v. Sullivan, 216 Wis. 2d 768, 568 N.W.2d 30 (1998). Under Sullivan, the other-acts evidence must be offered for a permissible purpose; must be relevant; and its probative value cannot be substantially outweighed by the risk of unfair prejudice to the defendant.

[3] A pseudonym.

[4] Also a pseudonym.

The State indicated it was offering this other-acts evidence pursuant to Wis. Stat. § 904.04(2)(a) for the purpose of providing context bolstering Anna's credibility and providing "motive, identity, plan, opportunity, and modus operandi." At the hearing on the motion, the State said it was offering the evidence to prove intent.

The circuit court considered the admissibility of the 2017-2018 incident using the three part Sullivan test. The circuit court noted similarities between the two incidents but said it did not believe evidence of the 2017-18 incident fit under identity, plan, or modus operandi. The court acknowledged the incident could bolster Anna's credibility but concluded bolstering credibility, by itself, was not a permissible purpose. Finally, the court said it had difficulty finding that the evidence would be relevant because it was not being offered for a permissible purpose. Thus, the circuit court denied the State's motion.

The State filed an interlocutory appeal, which the Court of Appeals granted. After briefing was completed, the Court of Appeals certified the following issue to this court:

> In light of the 2014 amendment of Wis. Stat. § 904.04(2)(b) (2019-20), codifying and expanding the "greater latitude" rule and the Wisconsin Supreme Court's decision in State v. Dorsey, 2018 WI 10, ¶¶23-25, 379 Wis. 2d 386, 906 N.W.2d 158, interpreting and applying that amendment, are State v. Alsteen, 108 Wis. 2d 723, 324 N.W.2d 426 (1982), and State v. Cofield, 2000 WI App 196, 238 Wis. 2d 467, 618 N.W.2d 214, still controlling law as they relate to the admissibility of prior nonconsensual sexual wrongs in cases involving an adult victim of an alleged sexual assault where consent is the primary issue?

The Court of Appeals noted that Alsteen held that "the fact that one woman was raped . . . has no tendency to prove that another woman did not consent," and where the only issue is whether the complainant consented, evidence of prior acts "has no probative value on the issue of the complainant's consent" and should be excluded under Wis. Stat. § 904.02 as irrelevant. Given the amendment of § 904.02(2)(b) and this court's Dorsey decision interpreting the amendment, the Court of Appeals said there is a significant question of whether Alsteen is still good law.

A decision from this court will develop and clarify the law and provide guidance to the bench and bar.

WISCONSIN SUPREME COURT
September 13, 2023
11:00 a.m.

The Wisconsin Supreme Court is responsible for supervising the practice of law in the state and protecting the public from misconduct by lawyers. Lawyers must follow a code of ethics developed by the Court. When there is an allegation that a lawyer has acted unethically, the Supreme Court's Office of Lawyer Regulation (OLR) investigates, and, if warranted, prosecutes the attorney. A referee - a court-appointed attorney or reserve judge - hears the discipline cases and makes recommendations to the Supreme Court. The lawyer involved in this case has a practice in Appleton.

2022AP11-D Office of Lawyer Regulation v. Steven D. Johnson

In this case, Atty. Steven D. Johnson has appealed a referee's report and recommendation that his law license be suspended for six months and that he be required to pay full costs of $33,001.74.

Johnson was admitted to practice law in Wisconsin in July 2005. His prior disciplinary history includes a private reprimand in 2008 and a public reprimand in 2010.

The referee's report in this case arises out of a January 2022 Office of Lawyer Regulation (OLR) complaint charging Johnson with five counts of professional misconduct. The OLR's complaint stems from Johnson's behavior from late 2018 to April 2020, where he is alleged to have engaged in offensive personality toward his staff (using derogatory language directed at his staff or swearing at them, etc.) in violation of the Attorney's Oath in SCR 40.15, which is enforced via SCR 20:8.4(g); failed to review documents prepared by his staff prior to those documents being filed with the court and failed to adequately supervise and train his staff, in violation of SCR 20:5.3(a) and (b); knowingly omitted material facts when he testified at a small claims trial in violation of SCR 20:3.3(a)(1); and failed to explain matters to a criminal client in violation of SCR 20:1.4(b) and made a false statement to the court in violation of SCR 20:3.3(a)(1).

After the OLR investigated the grievances filed against Johnson, it filed a complaint with the Supreme Court. The court appointed a referee to hear the disciplinary case against Johnson. The referee ordered briefing and held a hearing at which testimony was taken from former staff members and a current employee of Johnson and Johnson himself. The referee found Johnson's violations to be very serious and recommended that Johnson receive a six-month suspension.

Johnson does not believe his poor language choices constituted "offensive personality." He claims he did not violate SCR 20:5.3(a) and (b) because these provisions do not require him to personally train his staff, nor do they prohibit him from delegating these functions. Johnson says that he truthfully testified at the small claims trial, did not knowingly omit any material fact, and to the extent there was any omission, he said he corrected it at the trial. Further, Johnson claims that because the client he represented in the criminal proceeding did not testify at his disciplinary

hearing, it is not known what the client understood or did not understand, and there was no other evidence the client was harmed or otherwise unhappy with Johnson's representation. Finally, Johnson insists the OLR did not prove by clear, satisfactory and convincing evidence that he knowingly made a false statement to the court during his representation of that client.

As to the referee's recommendation of a six-month suspension and payment of costs, Johnson insists that a 90-day suspension would be sufficient. Johnson says the referee gave insufficient weight to difficulties he was experiencing in his personal life at the time. In addition, Johnson notes that because of the time involved in the reinstatement process, a six-month suspension could effectively stretch into a much longer period, which he claims is "a professional death sentence" for a solo practitioner like himself.

The Supreme Court is expected to decide the appropriate sanction for Johnson's misconduct.

WISCONSIN SUPREME COURT
September 14, 2023
9:45 a.m.

2021AP311-CR State v. Donte Quintell McBride

This a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee) that reversed the Milwaukee County Circuit Court's judgment of conviction and order, Judge Jonathan D. Watts presiding, denying McBride's motion to suppress of the evidence obtained by the police during a traffic stop.

This a reasonable suspicion case. At approximately 11:15 p.m. on October 28, 2018, two officers with the Milwaukee Police Department's Anti-Gang Unit were on a routine patrol when they observed an SUV parked in an alley. The SUV had no lights on and was parked fully on the paved alley (not partially off of it). One of the officers approached the vehicle and observed an individual in the passenger seat (McBride) engaged in what is referred to as "furtive movements" by bending toward his waist area and moving his hands around. The officer testified that based on his training, these furtive movements are consistent with someone having illegal narcotics or weapons on them. The officer removed McBride from the vehicle and while doing so, the officer observed an orange, unlabeled pill bottle which he believed indicated McBride was possessing a controlled substance without a prescription. The officer initiated a pat-down search of McBride and found another pill bottle in his front right pocket that contained a controlled substance. The officer also found a plastic bag that contained heroin.

The State initially charged McBride with one count of possession of heroin with intent to deliver and one count of possession of narcotic drugs. A second count of possession of narcotic drugs was subsequently added to the information, as were enhancers for second and subsequent offenses on all counts.

McBride filed a motion to suppress, arguing the police lacked reasonable suspicion to "stop" the SUV and remove him from the vehicle. The circuit court found the officer's testimony to be credible in all respects and denied McBride's suppression motion. The court concluded that the officers (1) had reasonable suspicion to conduct a "Terry[5] stop" of the SUV and frisk McBride, and (2) subsequently had probable cause to arrest McBride for possession of controlled substances. In finding reasonable suspicion for the initial stop, the circuit court pointed to the following facts: (1) the SUV was parked in a "high-crime" area; (2) the SUV had its lights off; (3) there were two people sitting inside the parked SUV; and (4) McBride moved in response to seeing the spotlight shining into the SUV. McBride pled guilty to the three counts identified above.

McBride filed an appeal. The Court of Appeals disagreed with the circuit court that the officer had reasonable suspicion to seize McBride for an investigatory stop. The Court of Appeals noted that (1) being in a high-crime area, by itself, is insufficient to create reasonable suspicion; (2) two people sitting in a parked SUV is not inherently suspicious; (3) furtive or suspicious

---

[5] Terry v. Ohio, 392 U.S. 1 (1968).

movements do not automatically give rise to reasonable suspicion; and (4) concluded the circuit court's finding that the SUV had "obstructed traffic" was clearly erroneous. The Court of Appeals reversed both the circuit court's judgment of conviction and its order denying McBride's suppression motion.

The State petitioned this court for review of the Court of Appeals' decision.

The issues for this court to decide are:

1. When reviewing a motion to suppress, what is the proper application of the "clearly erroneous" standard of review?
2. Was the seizure and subsequent search of McBride constitutional where the officer observed two people sitting in an unilluminated SUV, which appeared to obstruct traffic, late at night in a high crime area when McBride made furtive movements in response to the officer's spotlight?