

**WISCONSIN SUPREME COURT**  
**TUESDAY, NOVEMBER 8, 2011**  
**9:45 a.m.**

*This is a certification from the Wisconsin Court of Appeals, District III (headquartered in Wausau). The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. This case originated in Trempealeau County Circuit Court, Judge Thomas E. Lister, presiding.*

2010AP2273-CR

[State v. Soto](#)

This certification examines whether a defendant's (Jon Soto's) statutory right to be physically present during a plea hearing was violated when the court conducted the hearing through video conferencing, and whether the issue was properly preserved. More broadly, the Supreme Court examines the effect of Wis. Stat. ch. 885, regarding the use of videoconferencing, on prior law.

Some background: In 2008, the Supreme Court created rules on the use of videoconferencing, and it adopted Wis. Stat. § 885.60 to govern the use of teleconferencing technology in criminal cases.

Under Wis. Stat. § 885.60(2)(a), a defendant in a criminal case is entitled to be "physically present" in the courtroom at all critical stages of the proceedings, including plea hearings.

Wisconsin Stat. § 971.04(1)(g) provides that a defendant "shall be present" at the pronouncement of judgment and the imposition of sentence. "Present" means "physically present." See State v. Vennemann, 180 Wis. 2d 81, 93, 96, 508 N.W.2d 404 (1993). In State v. Koopmans, 210 Wis. 2d 670, 672, 679, 563 N.W.2d 528 (1997), the court held the defendant may not waive his statutory right to be present.

Soto was charged with numerous felonies in Trempealeau County. Pursuant to a plea agreement, he pled guilty to second-degree recklessly endangering safety with a dangerous weapon.

Soto, his attorney, and the state's attorney appeared at the Trempealeau County Courthouse. The judge communicated through video teleconferencing from the Jackson County courthouse. Both counsel and Soto advised the court that it was all right to conduct the plea hearing by video teleconferencing.

Following his conviction, however, Soto filed a motion to withdraw his guilty plea, arguing that conducting the plea hearing via video teleconferencing violated his § 971.04(1)(g) rights. The state conceded that Soto's argument might have some force prior to the adoption of videoconferencing rules. However, the state asserted that the adoption of § 885.60 superseded the holding in the Koopmans case and permitted a defendant to waive or forfeit his right to be physically present at the plea hearing. The Court of Appeals noted it cannot overturn existing precedent. Cook v. Cook, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997).

A decision by the Supreme Court would harmonize rules created in 2008 governing the use of teleconferencing technology in criminal cases with existing precedent.