

WISCONSIN SUPREME COURT
FRIDAY, OCTOBER 13, 2006
1:30 p.m.

05AP423

Karl McNeil v. Brandon Hansen

This is a certification from the Wisconsin Court of Appeals, District I (headquartered in Milwaukee). The Court of Appeals may certify cases that cannot be decided 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 Milwaukee County Circuit Court, Judge M. Joseph Donald presiding.

This case involves a man who was injured while working on a vehicle at an oil change shop. The Supreme Court is expected to determine whether the man's co-worker, who was standing outside the vehicle but set it in motion by leaning in and turning the key, was operating the vehicle under the meaning in the Worker's Compensation Statute.

Here is the background: On April 12, 2003, Karl McNeil was working with Brandon Hansen at Fast Track Oil Change. The two were flushing a radiator on a Jeep. McNeil hooked up the machine that flushes the radiator and positioned himself in front of the Jeep to watch the hoses for leaks. He asked Hansen to turn on the motor, which is necessary to flush out the radiator. Hansen leaned in, put the key in the ignition, and started the engine. The Jeep lurched forward and struck McNeil, causing injury.

McNeil filed a personal injury lawsuit against Hansen. Hansen filed a motion for summary judgment, asking the trial court to dismiss the case because, according to Hansen, his actions did not constitute operation of a motor vehicle within the meaning of the Worker's Compensation Statute, Wis. Stat. § 102.03(2). The statute provides:

The right to the recovery of compensation under this chapter shall be the exclusive remedy against the employer, any other employee of the same employer and the worker's compensation insurance carrier. This section does not limit the right of an employee to bring action against any co-employee ... *for negligent operation of a motor vehicle not owned or leased by the employer ...* [emphasis added]

The circuit court granted the motion for summary judgment and McNeil appealed. The Court of Appeals, as noted, certified this question to the Supreme Court after concluding that it is unclear whether the act of reaching into a window to start a car meets the definition of 'operation of a motor vehicle' within the Worker's Compensation Statute. In past cases involving alleged violation of different statutes (operating a motor vehicle while intoxicated, for example), the Supreme Court has defined "operate" as exercising physical control or manipulating the controls of a vehicle to set the vehicle in motion.

The Supreme Court will decide if Hansen's actions constituted 'operation of a motor vehicle' under the Worker's Compensation Statute. If so, McNeil will be able to pursue his personal injury claim against Hansen. If not, McNeil will be limited to collecting worker's compensation for his injuries.