WISCONSIN SUPREME COURT
CALENDAR AND CASE SYNOPSES
JANUARY 2019

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

Chippewa
Dane
Iowa
Milwaukee
Trempealeau
Wood

WEDNESDAY, JANUARY 16, 2019

9:45 a.m.	17AP2006-CR	State v. John Patrick Wright
10:45 a.m.	17AP684-AC	Town of Lincoln v. City of Whitehall

FRIDAY, JANUARY 18, 2019

9:45 a.m.	17AP850-CR	State v. Joseph B. Reinwand
10:45 a.m.	17AP1618-CR	State v. Michael A. Keister

THURSDAY, JANUARY 24, 2019

9:45 a.m.	16AP2258-CR	State v. Corey R. Fugere
10:45 a.m.	16AP2491	David MacLeish v. Boardman & Clark LLP

Note: The Supreme Court calendar may change between the time you receive these synopses and when the cases are 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 camera coverage of Supreme Court oral argument, contact media coordinator Hannah McClung at WISC-TV, (608) 271-4321. The Synopses provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
January 16, 2019
9:45 a.m.

2017AP2006-CR State v. John Patrick Wright

This is a review of an opinion filed by the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), that affirmed a Milwaukee Circuit Court decision, Judge Hannah C. Dugan, presiding.

The State has asked the Court to review a Court of Appeals' decision affirming a circuit court order suppressing evidence of a loaded handgun found in the glove box of John Patrick Wright's car, for which the State charged him with one count of carrying a concealed weapon. The State claims the Court of Appeals' decision "plainly conflicts" with the Wisconsin Supreme Court's decision in State v. Floyd, 2017 WI 78, 377 Wis. 2d 394, 898 N.W.2d 560.

Late one evening in June 2016, two officers pulled Wright over for a burnt-out headlight. One officer approached Wright's car and spoke to him through the driver's side window. According to the officer, the officer identified himself, stated the reason for the stop, and asked Wright for his driver's license, which Wright provided. The officer then asked Wright if he was a concealed carry weapon (CCW) permit holder, and if he had any weapons in the vehicle. Wright told the officer that he had recently taken the CCW permit class, and that he had a firearm in the vehicle. Police found a loaded gun in the glove compartment. The officer ran a CCW check which showed that Wright did not have a CCW permit. Wright was arrested for carrying a concealed weapon without a license.

Wright filed a motion to suppress the handgun as evidence. At the suppression hearing, Wright testified that he had taken a concealed carry class just four days before the traffic stop; that he gave the officer his certificate of completion from the class; that he had purchased the gun in question at a gun store two days prior; and that he had picked up the gun from the gun store on the day he was stopped by police.

The circuit court granted Wright's suppression motion. The court ruled that the stop itself was "fine" based on the defective headlight, but that the subsequent search did not follow the principles under Rodriguez v. U.S., 135 S. Ct. 1609 (2015), which prohibits the unconstitutional extension of a traffic stop. The circuit court noted that the police lacked reasonable suspicion to ask Wright about whether he held a CCW license and whether there was a concealed firearm in the vehicle, and thus the officer's questioning violated Wright's Fourth Amendment rights. And, the court reasoned, Wright was unable to leave the traffic stop and not answer the officer's questions.

The State appealed, arguing that, in Floyd, this court held that because officer safety is an integral part of every traffic stop's mission, officers may take negligibly burdensome precautions in order to stay safe. It argued that under Floyd, the officer's questions about Wright's concealed carry status——asked at the beginning of the traffic stop——must be viewed as permissible questions to ensure the safety of the officer, not an unlawful prolongation of the stop. Wright disagreed, arguing that Floyd was distinguishable for a variety of reasons, including that Floyd involved a consensual pat-

down search, and that the questions the officer asked Floyd were more closely connected to officer safety than the officer's questions to Wright.

The Court of Appeals sided with Wright, citing Rodriguez and holding that the authority of the officer's seizure ended when he reasonably could have issued a citation for Wright's traffic violation. The weapons-related questions, the Court of Appeals said, were unrelated to the traffic stop and were asked with no articulated reasoning that they were for the officer's safety. Thus, they were "impermissible questions," asked "while Wright was clearly not free to leave," and the questions "impermissibly expanded the scope of Wright's traffic stop."

The following issue is presented for review:

Does asking a lawfully stopped motorist as to whether he is carrying any weapons, in the absence of reasonable suspicion, unlawfully extend a routine traffic stop?

WISCONSIN SUPREME COURT
January 16, 2019
10:45 a.m.

2017AP684-AC Town of Lincoln v. City of Whitehall

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), that affirmed a Trempealeau County Circuit Court decision, Judge Charles V. Feltes, presiding, that granted summary judgment in favor of the City of Whitehall.

In 2015, the City of Whitehall's common council passed four annexation ordinances detaching territory from the Town of Lincoln. The annexation was the initiative of Whitehall Sand and Rail, LLC, which wanted to locate a sand mine northwest of the City's borders and wanted to have the mine within City limits. Whitehall Sand and Rail selected the property it wanted included in the annexed territory and approached property owners with offers to purchase their land, contingent on annexation.

The annexation was to occur in four phases, with the territory in each phase the subject of a separate ordinance. Each of the ordinances was adopted pursuant to a method of annexation known as "direct annexation by unanimous approval" which requires "all of the electors residing in the territory and the owners of all of the real property in the territory" to petition the city or village for direct annexation. See Wis. Stat. § 66.0217(2).

The Town of Lincoln sought review of the annexation from the Department of Administration (DOA) under Wis. Stat. § 66.0217(6)(d). The Department concluded the annexation violated statutory contiguity because the territory was in an impermissible configuration, which it described as a "balloon-on-a-string."

After receiving these favorable findings from the DOA, the Town commenced a declaratory judgment action seeking a court declaration that the annexation ordinances were invalid and unenforceable. In addition to challenging the contiguity of the annexed territory, the Town made several claims, including that the annexation petitions were procedurally defective because they were not signed by all owners of the real property in the territory; the ordinances were arbitrary and violated the rule of reason; and the City, rather than the individual petitioners, was the real controlling influence behind the annexation petitions.

The City filed a motion to dismiss all of the Town's claims except the challenge to contiguity. The City asserted the Town was barred from challenging other matters under Wis. Stat. § 66.0217(11)(c). The circuit court agreed that all of the Town's claims but for the contiguousness claim were barred. The City then moved for summary judgment, asserting that statutory contiguity was satisfied as a matter of law because the annexed territory shared a three-quarter mile border with the City and the territory was of an unexceptional shape. The circuit court granted that motion. The Court of Appeals affirmed.

The Town argues that this case raises novel and significant issues regarding a town's right to challenge an annexation petition that is labeled an "annexation by unanimous approval" but does not meet the statutory definition due to missing landowner signatures. The Town also says this case provides the Supreme Court with the opportunity to decide whether a town may raise a challenge to an annexation based on an exceptional shape, and it says the case demonstrates the need for the Court to revisit existing law regarding the meaning of "controlling influence" to address situations where the annexation boundaries are determined by a business that is not an owner of the annexed property.

The following issues are presented for review:

1. Is a town from which property is being annexed barred and precluded, under Wis. Stat. § 66.0217(11)(c), from asserting that the annexation petition is not, in fact, a petition for direct annexation by unanimous approval when the annexation petition lacks all of the landowners' signatures required, by statute, for the petition to constitute a petition for direct annexation by unanimous approval?
2. Was the annexed property "contiguous" to the City of Whitehall when the annexation resulted in a balloon on a string configuration and irregular boundaries and exclusions?
3. Was the City of Whitehall a "controlling influence" in the annexation boundaries when it acted, in concert with a business owner who was not an annexation petitioner, to establish boundaries in order to facilitate a sand mining operation, including by dictating what the boundaries would be so the City could provide electrical service; requiring revisions to boundaries so that the annexation would not create an "island"; and attempting to negotiate a Development Agreement, prior to approval of the annexation, that included obligations on the part of the City regarding zoning and annexation?
4. Can a town challenge a direct annexation by unanimous consent under the last two elements of the judicially created Rule of Reason?

WISCONSIN SUPREME COURT
January 18, 2019
9:45 a.m.

2017AP850-CR State v. Joseph B. Reinwand

This is an appeal, taken on certification from the Wisconsin Court of Appeals, District IV (headquartered in Madison), of a judgment of conviction against Joseph B. Reinwand for the first-degree intentional homicide of Dale Meister and an order in Wood County Circuit Court (Judge Gregory J. Potter, presiding) that denied Reinwand's motion for a new trial.

Joseph B. Reinwand was convicted of the first-degree intentional homicide of Dale Meister, the father of Reinwand's grandchild. In 2006 Reinwand's daughter filed a paternity action against Meister. In January 2008 Meister asked for and received a court order in the paternity action directing Meister and Reinwand's daughter to participate in a mandatory mediation regarding the placement of their child. The mediation ultimately was unsuccessful when Reinwand's daughter indicated to Meister that she intended to deny him any visitation or placement with the child. Before any formal placement proceedings were initiated, Meister was found dead in his home. According to various witnesses, in the period preceding his death, Meister had made out-of-court statements to others that if he died, people should dig deeper because Reinwand would be responsible and that Reinwand had made threats to harm or kill Meister.

The trial court allowed the State to call witnesses to present many of these statements made by Meister in Reinwand's trial, and a jury found Reinwand guilty of first-degree intentional homicide. The circuit court then sentenced Reinwand to life in prison without the possibility of release to extended supervision. Reinwand filed a motion seeking a new trial. The circuit court denied his motion, and Reinwand appealed.

On appeal, Reinwand argued, in part, that in order for the forfeiture-by-wrongdoing exception to the right of confrontation to apply, the intent to prevent testimony must relate to a legal proceeding where the declarant would be expected to testify that was pending at the time of the declarant's death. In this case, there was no pending proceeding where Meister would have been expected to testify against Reinwand. Moreover, Reinwand further claims that since a formal placement proceeding had not yet been initiated at the time of Meister's death, he could not have acted with the intent to prevent Meister from testifying even in such a proceeding (in which Reinwand was not a party). Thus, the forfeiture-by-wrongdoing exception should not be applied, and the circuit court violated his confrontation rights by admitting the statements that Meister had made to others prior to his death. (Reinwand also raised some other issues on appeal that will be considered by the Supreme Court.)

The State argued in response that the intention to prevent the declarant from testifying need only be a general intent and may relate to any pending or likely legal proceeding.

The Court of Appeals asks the Supreme Court to determine whether the defendant must have intended to prevent the declarant from testifying against the defendant, or

whether it is sufficient that the defendant intended to prevent the declarant from testifying at any legal proceeding.

The following issues are presented for review:

1. Whether the "forfeiture by wrongdoing" doctrine applies at a homicide trial where the declarant is the homicide victim, but where the defendant killed the declarant to prevent him or her from testifying at a separate proceeding; and
2. Whether preventing the declarant from testifying must be the defendant's primary purpose for the wrongful act that prevented the declarant from testifying in that separate proceeding.

WISCONSIN SUPREME COURT
January 18, 2019
10:45 a.m.

2017AP1618-CR State v. Michael A. Keister

This is a review of an opinion filed by the Wisconsin Court of Appeals, District IV (headquartered in Madison), that dismissed, on mootness grounds, the State's appeal of an Iowa County Circuit Court decision, Judge William Andrew Sharp, presiding.

The State seeks review of the Court of Appeals' decision that dismissed its appeal, on mootness grounds, of an Iowa County Circuit Court declaratory judgment finding that the operation of Wisconsin Statutes §§ 165.95(1)(a) and (3)(c) is unconstitutional as applied to Keister and others similarly situated.

Keister was a voluntary participant in the Iowa County Treatment Court, after a heroin overdose in November 2015. At the time, he was an Iowa County resident but was not facing any charges in Iowa County. He based his eligibility for treatment court on a 2014 conviction in Sauk County for which he was on extended supervision.

In December 2015, Keister was charged in Iowa County with possession of narcotic drugs and possession of drug paraphernalia, stemming from his November 2015 heroin overdose. In August 2016, Keister picked up new charges in Sauk County, which included substantial battery, strangulation and suffocation, and felony bail jumping. In September 2016, the Iowa County Treatment Court team moved to expel Keister from treatment court based on the new Sauk County charges. The motion relied on Wis. Stat. § 165.95(3)(c) and the rules of the treatment program that established that a "violent offender" is not eligible to participate in the program. Because of the new Sauk County charges, Keister met the definition of "violent offender," so the treatment team asked for an expulsion hearing.

Keister stated he would challenge the motion to expel on constitutional grounds, so the expulsion hearing was put on hold. In December 2016, Keister was sent back to prison, presumably due to a revocation of his extended supervision in the 2014 Sauk County case.

In January 2017, with the expulsion motion still on hold, Keister entered in to a conditional plea agreement in the pending Iowa County case, whereby he pled no contest to possession of narcotic drugs and the possession of drug paraphernalia charge was dismissed. If Keister was allowed to continue with and complete the Iowa County treatment court program, the State would recommend two years of probation. If Keister failed to complete the program, the State would recommend four months in the county jail. Since the plea agreement was conditioned on future events, the sentencing date was put off.

The following month, Keister filed a motion to dismiss the State's motion to expel him from treatment court and asked for a declaration that Wis. Stat. §§ 165.95(1)(a) and (3)(c) are facially unconstitutional and unconstitutional as applied. He also asked for an order enjoining any further enforcement of the statute "against the defendant or any other participant in drug treatment courts in Wisconsin." Keister argued that he had a substantive due process right not to be expelled from the program as a "violent offender" based solely on a criminal charge (as opposed to a conviction) and no amount of

procedural due process afforded in the expulsion process could justify a violation of that substantive right. Keister used the plea agreement in the Iowa County case to assert that expulsion from treatment court would result in a deprivation of liberty since it would result in jail time.

The circuit court ultimately entered a declaratory judgment finding that the operation of §§ 165.95(1)(a) and (3)(c) is unconstitutional as applied to Keister and others similarly situated. The court reasoned that by enacting Wis. Stat. § 165.95, Wisconsin created a liberty interest in participating in treatment courts and having created that opportunity, admission to treatment court falls within the Fourteenth Amendment's guarantee of liberty. The circuit court did not find the statute unconstitutional on its face, and it declined Keister's request for a statewide injunction.

The State filed a notice of appeal on August 17, 2017. The Sauk County charges against Keister were dismissed on October 17, 2017. In April 2018, the Court of Appeals ordered the parties to address whether the appeal was moot.

The State admitted the issues presented were likely moot because the resolution would no longer have an effect on Keister's expulsion from treatment court. However, the State asked the Court of Appeals to decide the issues raised, in spite of mootness.

Keister argued that the sole basis for his expulsion from drug treatment, the pending charges in Sauk County, no longer existed and therefore he no longer qualified as a "violent offender." Keister said no matter how the Court of Appeals interpreted the "violent offender" statutes, the procedural bar that the State contended prevented Keister's participation in the drug treatment court had disappeared. The Court of Appeals agreed and issued a one-line order dismissing the State's appeal as moot.

The State sought Supreme Court review of the two issues it raised on appeal in spite of mootness. The State argues the questions presented are of great public importance because a treatment court's decision to admit, deny, or expel a person charged with violent conduct affects the program as a whole, not just the individual participant at issue. The State says treatment courts are routinely tasked with deciding who to admit into their programs, and it argues the circuit court's declaration in this case that the operation of the statute is unconstitutional as applied to individuals charged with violent conduct may improperly affect both exclusion and expulsion decisions.

The following issues are presented for review:

1. Does an individual have a fundamental liberty interest in participating in a treatment court funded by the state and county when he or she has been charged with an offense involving violent conduct, as defined in Wis. Stat. § 165.95(1)(a) (2015-16)?
2. Does Wis. Stat. § 165.95, the statute defining the Wisconsin Department of Justice's grant funding program, have to define procedures for treatment courts to follow for the statute to survive a procedural due process challenge?

WISCONSIN SUPREME COURT
January 24, 2019
9:45 a.m.

2016AP2258-CR State v. Corey R. Fugere

This is a review of an opinion filed by the Wisconsin Court of Appeals, District III (headquartered in Wausau), that affirmed a Chippewa County Circuit Court decision, Judge Roderick A. Cameron, presiding.

This case asks the Supreme Court to address the circuit court's responsibility in a plea colloquy to advise a defendant of the maximum possible commitment for a not guilty by reason of mental disease or defect (NGI) plea in order to ensure a plea is knowingly, intelligently, and voluntarily entered.

Corey Fugere was charged with four counts of first-degree sexual assault of a child under the age of 12. At the time the charges were filed, Fugere was committed at Mendota Mental Health Institute on a prior order of commitment after having been found not guilty by reason of mental disease or defect (NGI) of third-degree sexual assault. In this case, Fugere agreed to plead NGI to one count of first-degree sexual assault of a child and the other charges would be dismissed and read-in. The parties stipulated that Fugere lacked substantial authority to appreciate the wrongfulness of his conduct or conform his conduct to the requirements of law. The parties agreed to recommend that Fugere be civilly committed for 30 years.

At Fugere's plea colloquy, Fugere pled NGI to one count of first-degree sexual assault of a child. However, during the plea colloquy, Fugere was mistakenly told that he could be committed for up to 60 years. In fact, the maximum commitment was 40 years. The circuit court accepted the plea and ordered Fugere committed for 30 years.

Fugere moved for plea withdrawal, arguing that his plea was not entered knowingly, intelligently, and voluntarily because the circuit court erroneously told him he was facing a maximum 60-year civil commitment rather than the correct 40-year maximum commitment. The circuit court denied the motion, finding there was no requirement under the law that it advise Fugere of the correct maximum amount of time he could be civilly committed. Fugere appealed. The Court of Appeals affirmed the circuit court's decision.

Fugere sought Supreme Court review, arguing that the question of whether a circuit court must advise a defendant of the maximum possible commitment for an NGI plea to be knowing, intelligent, and voluntary, is a novel question which directly impacts a circuit court's colloquy with a defendant entering an NGI plea without an accompanying not guilty plea. He says this Court may wish to utilize its superintending and administrative authority over circuit courts to establish, institute, or clarify the safeguards specific to a circuit court's colloquy with a defendant who is entering an NGI plea.

The following issue is presented for review:

For an NGI plea to be knowing, intelligent, and voluntary, is a circuit court required to accurately advise the defendant of the maximum term of commitment?

WISCONSIN SUPREME COURT
January 24, 2019
10:45 a.m.

2016AP2491 David MacLeish v. Boardman & Clark LLP

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), that affirmed a Dane County Circuit Court decision, Judge Josann M. Reynolds, presiding, granting summary judgment in favor of the law firm in this malpractice action.

This legal malpractice claim, brought by four adult children against the lawyer (and his law firm) that administered their father's estate in 1984, raises questions about the children's standing to bring this lawsuit, and the law firm's administration of the father's estate.

In 1967, Charles executed a simple one-page will, the precise terms of which are now disputed. When Charles died in 1984, all of the assets from Charles's estate were passed directly to Charles' widow, Thelma, at the recommendation of the lawyer handling Charles's estate. Thelma claimed a federal estate tax marital deduction for all those assets. So, the assets were not subject to federal estate tax in 1984, but were subject to taxation upon Thelma's death. In 2008 Thelma died, leaving her estate equally to her four children. There were estate taxes of $261,343.

In 2012, the children filed suit against the lawyer and his firm. The children believe the lawyer negligently failed to construe the will as though it created a testamentary trust, and incorrectly construed the will as bequeathing Charles's entire estate to Thelma outright. The children contend that the legal decisions made when Charles died adversely affected their interests in several ways, including an unnecessary estate tax, and an unnecessary and protracted full-blown probate, exacerbated by the stock market crash of 2008.

The law firm maintains that Charles executed a simple one-page will leaving his entire estate to his wife, Thelma, which gave Thelma the right to use both the income and principal, and the restrictions placed on Thelma's use of the assets were left to her discretion. The law firm asserts that its advice reflected Charles's testamentary wishes.

In April 2016 the law firm moved for summary judgment, contending that the children could not show that Charles's testamentary intent was thwarted by the manner in which the estate was probated. The circuit court determined that there was no evidence that the administration of Charles's estate thwarted Charles's testamentary intent and granted summary judgment to the lawyer and firm. The children appealed and the Court of Appeals affirmed.

A threshold issue presented in this case is whether the children have standing to bring this lawsuit. Although both lower courts assumed, without deciding, that the children have standing based on Auric v. Continental Cas. Co., 111 Wis. 2d 507, 512, 513, 331 N.W.2d 325 (1983), there is an open question whether a third party beneficiary may bring a legal malpractice action against an attorney who was allegedly negligent in the manner in which the attorney administered an estate. The children urge the Supreme Court to adopt a broad rule with respect to who (namely third parties) can sue a lawyer for malpractice, and specifically ask the Court to adopt Restatement of Torts (third) § 51.

The following issues are presented for review:

1. In the context of the distribution of an estate, do the legatees have standing to sue the administering lawyer (regardless of privity) when their constitutional rights are violated by the assets not being distributed according to the will and the probate judgment?
2. Should this Court adopt the Restatement of Torts (third) § 51 test for standing to sue a lawyer in cases of errantly probated estates?