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Wisconsin Supreme Court accepts four cases at November 12 conference

Madison, Wisconsin (December 4, 2024) – The Wisconsin Supreme Court recently voted to accept four cases, and the Court acted to deny review in a number of other cases. The case numbers, counties of origin and the issues presented in granted cases are listed below. More information about pending appellate cases can be found on the Wisconsin Supreme Court and Court of Appeals Access website. Published Court of Appeals opinions can be found here, and the status of pending Supreme Court cases can be found here.

No. 2021AP1346-CR State v. Molde

Supreme Court case type: Petition for Review
Court of Appeals: District III
Circuit Court: Dunn County, Judge Rod W. Smeltzer. *Affirmed*.

Long caption: State of Wisconsin, Plaintiff-Respondent-Petitioner, v. Jobert L. Molde, Defendant-Appellant-Respondent.

Issue(s) presented:

1. What is the proper place for statistical evidence of the prevalence of false reports of abuse in sexual assault cases, and did the court of appeals wrongly conclude in Mader[1] and now in this case in holding that statistical testimony putting the incidence of false reporting at or below 8 percent amounts to Haseltine testimony that the victim in the case is telling the truth?
2. Even if Mader correctly determined that such statistical testimony violates Haseltine[2], was this proposition settled law at the time of Mader's and Molde's 2019 trials, as Mader and the court here held below, so that trial counsel should have known to object to the testimony?

[1] State v. Mader, 2023 WI App 35, 408 Wis. 2d 632, 993 N.W.2d 761 (petition for review denied). The petition for review raised numerous ineffective assistance of counsel issues, but it did not raise the issue of whether the court of appeals was wrong in concluding that testimony from a therapist and interviewing officer about the frequency of false reporting did not violate the Haseltine rule.
[2] State v. Haseltine, 120 Wis. 2d 92, 352 N.W.2d 673 (Ct. App. 1984).

No. 2022AP1759 McDaniel v. Department of Corrections

Supreme Court case type: Petition for Review
Court of Appeals: District I
Circuit Court: Milwaukee County, Judge Glenn H. Yamahiro. *Reversed.*

Long caption: Nicole McDaniel, David Smith, and Matthew Davis, Plaintiffs-Respondents-Petitioners, v. Wisconsin Department of Corrections, Defendant-Appellant-Respondent.

Issue(s) presented:

1. Did the Wisconsin Court of Appeals err by applying an unprecedented and excessively demanding pleading standard when deciding a motion for class certification, effectively treating it as a motion for summary judgment?
2. Did the Wisconsin Court of Appeals err when it ruled, contrary to many state and federal courts around the country, that the corrections officers cannot be compensated for pre-shift and post-shift activities such as security screenings?

No. 2023AP70–FT Van Oudenhoven v. Wisconsin Department of Justice

Supreme Court case type: Petition for Review
Court of Appeals: District III
Circuit Court: Winnebago County, Judge Teresa S. Basiliere. *Affirmed*.

Long caption: Scot Van Oudenhoven, Petitioner-Appellant-Petitioner, v. Wisconsin Department of Justice, Respondent-Respondent-Respondent.

Issue(s) presented:

- Whether an expungement under Wisconsin law qualifies as an "expungement" as that term is used in 18 U.S.C. § 921(a)(33)(B)(ii).

No. 2023AP1140 Department of Corrections v. Hayes

Supreme Court case type: Petition for Review
Court of Appeals: District I
Circuit Court: Milwaukee County, Judge Thomas J. McAdams. *Reversed.*

Long caption: State of Wisconsin ex rel. Wisconsin Department of Corrections, Division of Community Corrections, Petitioner-Respondent-Petitioner, v. Brian Hayes Administrator, Division of Hearings and Appeals, Respondent-Appellant, Keyo Sellers, Intervenor-Co-Appellant-Respondent**.**

Issue(s) presented:

1. Even if a sexual assault victim's out-of-court statements are found inadmissible, must the agency in a revocation proceeding still consider whether other unobjected-to, non-hearsay evidence supports a finding of the probation violations?
2. Does a probationer's conditional right to confront the victim under Morrissey v. Brewer, 408 U.S. 471, 487, 489-90 (19), allow an agency to consider out-of-court statements by a sexual assault victim?
3. Where an agency commits an error of law about its ability to consider certain evidence and thus fails to consider it, does a reviewing court properly ignore that error and simply consider the remaining evidence under certiorari review?

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:

Brown County

2023AP2339	Brown County v. J.D.T

Calumet County

2023AP1526-CRNM	State v. Cruz-Gonzalez
2024AP32	State v. M.P.

Chippewa County

2023AP1029-CR	State v. Plemon

Dane County

2023AP1535-CR 2023AP1536-CR 2023AP1537-CR 2023AP1538-CR	State v. Jones

Fond du Lac County

2023AP1466	State v. Rios Jaimes

Kenosha County

2023AP1409-W	Smith v. Benzel

Manitowoc County

2023AP908-CR	State v. Tingler

Milwaukee County

2021AP1941-CR	State v. McMath
2022AP515	State v. Jones
2022AP1141	Rider Hotel, LLC v. City of Milwaukee
2022AP2108-CR	State v. Burkes
2023AP9-CR	State v. Pierce
2023AP298-CR	State v. Borges
2023AP967-CRNM	State v. Moore
2023AP1125	State v. Selders
2023AP1129-CR	State v. Richmond
2023AP1158-CR	State v. White
2024AP767-W	Green v. Mlodzik

Ozaukee County

2023AP2411	City of Mequon v. Schumacher

Racine County

2023AP105	Silverman v. Caledonia Board of Appeals
2023AP256-CR	State v. Burnette

Shawano County

2024AP1823-W	Knutson v. Lenzner

Sheboygan County

2023AP1079	State v. Krueger

Walworth County

2024AP1633-W	Kinnaman v. Walworth County Circuit Court

Washington County

2024AP21	Washington County v. T.R.Z.
2024AP815-W	Leventhal v. Circuit Court for Ozaukee County

Waukesha County

2022AP1713	Koch v. Kirschbaum
2023AP34	Nielsen v. Wisconsin Memorial Park
2023AP77-CR	State v. Potrykus
2023AP107-CR 2023AP108-CR	State v. Skiba
2023AP1707	Village of Butler v. Hernandez

2023AP1941-CR State v. Reiner

Waushara County

2023AP867-CRNM State v. Vigo

Winnebago County

2023AP867-CRNM State v. Vigo State v. Vigo