



# Supreme Court of Wisconsin

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FOR IMMEDIATE RELEASE

## Wisconsin Supreme Court accepts two new cases

**Madison, Wis.** (Nov. 15, 2019) – The Wisconsin Supreme Court has voted to accept two new 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 detailed synopses will be released at a later date. 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 cases pending in the Supreme Court can be found [here](#).

2017AP2364-CR

State v. David Gutierrez

**Supreme Court case type:** Petition for Review

**Court of Appeals:** District II

**Circuit Court:** Green Lake County, (Judge W. Andrew Voigt, Columbia County Circuit Court, presiding) reversed and cause remanded

**Long caption:** State of Wisconsin, Plaintiff-Respondent-Petitioner v. David Gutierrez, Defendant-Appellant

### Issues presented:

1. Did the Court of Appeals violate the elementary principle of appellate review of trial court evidentiary rulings when it second-guessed the wisdom of the trial court's decision: (a) to exclude defense evidence that DNA from five unidentified males was found on the child sexual assault victim's underwear, and the DNA of three unidentified males was found on the outside of her mouth, 24 hours after the alleged oral assault by Gutierrez; (b) to allow Gutierrez to prove that his DNA was not found on her mouth or on her underwear; and (c) to allow defense counsel to examine the expert witness about how long transferred DNA might remain on the victim's mouth and underwear, and how easily it can be removed?
2. Did the Court of Appeals act contrary to the interests protected by Wis. Stat. § 972.11(2)(b), Wisconsin's rape shield law, when it rejected out of hand the trial

court's concern that the jury might infer that the victim had sexual contact with one or more of the unidentified males, not including Gutierrez, whose DNA was found on the victim's underwear and on the outside of her mouth 24 hours after the assault?

3 . Did the Court of Appeals err when it held that the trial court's evidentiary ruling led to a misleading inference that the absence of Gutierrez's DNA around the victim's mouth and on her underwear could be explained by her having washed it off immediately after he sexually assaulted her, even though the DNA of other males was found 24 hours later?

*Brian K. Hagedorn, J., did not participate.*

2018AP283 Moreschi v. Village of Wms. Bay and Town of Linn ETZ Zoning Bd. of Appeals

**Supreme Court case type:** Petition for Review

**Court of Appeals:** District II

**Circuit Court:** Walworth County, Judge David M. Reddy, affirmed

**Long caption:** Gail Moreschi, Plaintiff-Appellant-Petitioner, v. Village of Williams Bay and Town of Linn ETZ Zoning Board of Appeals, William L. Edwards and Suzanne Edwards, Defendants-Respondents

**Issues presented:**

- 1 . The novel question of whether a board can create new minutes and new decisions after receipt of a writ of certiorari action must be addressed by the Supreme Court to preserve the due process protections of writ certiorari actions.
- 2 . The Court of Appeals' majority opinion's determination of what constitutes a "triggering event" for purposes of appeal on a writ of certiorari conflicts with Wis. Stats. § 62.23(7); ETZ ordinances; or the Court of Appeals' holding in Zelman.
- 3 . Whether the Board's failure to follow the correct theory of law is a question of law, not fact, that is likely to recur unless resolved by the Supreme Court.

*Brian K. Hagedorn, J., did not participate.*

**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:

**Columbia**

19AP744-W

Maday v. Carr

**Dane**

18AP1153-CR

State v. Mouth

**Douglas**

18AP1866-CR State v. Kielb

*Justice Brian K. Hagedorn concurs.*

**Fond du Lac**

18AP1920-CR State v. Gray

**Grant**

18AP1006-CR State v. Tiggs

**Juneau**

19AP553-556 Juneau County DHS v. S.G.M.

**Kenosha**

18AP1310-CR State v. Sanders

**Milwaukee**

16AP728 State v. Wright

17AP2254-2255-CR State v. Xiong

18AP72-CR State v. Jackson

18AP234-CR State v. Gabriel

18AP491 State v. Lewis

18AP987 Milwaukee County v. D.C.B.

18AP1144-CR State v. Hutchins

18AP1256-CR State v. Hutchinson

18AP1591-CR State v. Young

18AP1644-CR State v. Slack

18AP1684-W Echols v. McDermott

18AP1748-W Cunningham v. Foster

18AP1969 State v. Maldonado

19AP631 Federal National Mortgage Association v. Bach

*Justice Brian K. Hagedorn did not participate.*

19AP1478-W Pryztarski v. Court of Appeals

**Racine**

18AP647-CR State v. Lorbecke

18AP899-CR State v. Taylor  
*Justice Brian K. Hagedorn did not participate.*

**Walworth**

18AP860-CR State v. Valdez  
*Justice Brian K. Hagedorn did not participate.*

**Waukesha**

19AP1316-W Puchner v. Circuit Court for Waukesha County  
*Justice Brian K. Hagedorn did not participate.*

19AP1431-1432-OA Weller v. Petitioner

**Winnebago**

19AP222 Lietz v. Frost  
*Justice Brian K. Hagedorn did not participate.*