



Supreme Court of Wisconsin

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FOR IMMEDIATE RELEASE

Wisconsin Supreme Court accepts five new cases

Madison, Wis. (Dec. 17, 2019) – The Wisconsin Supreme Court has voted to accept five 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 pending Supreme Court cases can be found [here](#).

2016AP2082 & 2017AP634

Kathleen Papa v. DHS

Supreme Court case type: Petition for Review

Court of Appeals: District II

Circuit Court: Waukesha County, Judge Kathryn W. Foster, reversed – remanded with directions; orders vacated

Long caption: Kathleen Papa and Professional Homecare Providers, Inc., Plaintiffs-Respondents-Petitioners, v. Wisconsin Department of Health Services, Defendant-Appellant

Issues presented:

1. Is judicial review under Wis. Stat. § 227.40 applicable to the Department’s policy, based on its interpretation of statute and administrative rules, that it may recoup Medicaid payments from a provider based solely on a provider’s alleged imperfect compliance with the Medicaid Provider Handbook or other program requirements?
2. Do the 2017 Act 369 revisions to Wis. Stats. §§ 227.40(1) and (4)(a), which expanded the scope of declaratory judgment actions to guidance documents, permit the Court to rule on the validity of the Department’s recoupment policy regardless of whether the challenged policy is a rule?
3. Does the Department’s policy of recouping payments for Medicaid services based on a provider’s alleged failure to strictly comply with program requirements exceed the scope of the Department’s statutory recoupment authority under Wis. Stat. § 49.45(3)(f)2., thus conflicting with Wis. Stat. § 227.10(2)?
4. Is the Department’s recoupment policy a “rule” which was not promulgated, in violation of Wis. Stat. § 227.10(1)?

Justice Brian K. Hagedorn did not participate.

2018AP1774-CR

State v. Alfonso Lorenzo Brooks

Supreme Court case type: Petition for Review

Court of Appeals: District I

Circuit Court: Milwaukee County, Judge Jeffrey A. Wagner, affirmed

Long caption: State of Wisconsin, Plaintiff-Respondent, v. Alfonso Lorenzo Brooks, Defendant-Appellant-Petitioner

Issue presented: Whether the community caretaker exception permits law enforcement to inventory and tow a vehicle after discovering that the driver does not have a valid license, when the vehicle is lawfully parked and not obstructing traffic?

2018AP947

Quick Charge Kiosk LLC v. Josh Kaul

Supreme Court case type: Petition for Review

Court of Appeals: District I

Circuit Court: Milwaukee County, Judge John J. DiMotto, affirmed

Long caption: Quick Charge Kiosk LLC and Jeremy Hahn, Plaintiffs-Appellants-Petitioners, v. Josh Kaul, in his official capacity as Attorney General, Defendant-Respondent.

Issues presented:

1. The Wisconsin Gambling Statute defines consideration, a required element of both lotteries and gambling machines, within the definition of lottery, but not within the definition of gambling machine. Should the specific definition of consideration in the statute apply to both gambling machines and lotteries?
2. Under Wis. Stat. § 945.01(3)(a), four elements are required to establish a gambling machine: contrivance, consideration, chance, and prize. Petitioners ran a promotion with the use of electronic charging kiosk that allowed customers to participate in the promotion without purchase or entry fee. Does the availability of free participation negate the element of consideration under Wisconsin's Gambling Machine Definition?
3. Wis. Stat. § 100.16 governs marketing promotions that involve "selling with pretense of prize" and creates requirements needed to legally facilitate such a promotion. Petitioners used a mechanical/electronic device to conduct a marketing promotion. Does Wis. Stat. § 100.16 apply to electronic/mechanical devices used to facilitate a marketing promotion?

2018AP731-CR

State v. Kevin L. Nash

Supreme Court case type: Petition for Review

Court of Appeals: District II [District IV judges]

Circuit Court: Waukesha County, Judge Ralph M. Ramirez, affirmed

Long caption: State of Wisconsin, Plaintiff-Respondent, v. Kevin L. Nash, Defendant-Appellant

Issue presented: When accepting a guilty plea under *Alford v. North Carolina*, 400 U.S. 25 (1970), a circuit court may find there is a factual basis for the plea only if there is “strong proof of guilt.” May a court find strong proof of guilt based only on the information contained in the criminal complaint, or must the court hear additional evidence before it can make that finding?

2018AP875-CR

State v. Ryan M. Muth

Supreme Court case type: Petition for Review and Cross-petition for Review

Court of Appeals: District IV

Circuit Court: Washington County, Judge Todd K. Martens, affirmed in part; reversed in part; and cause remanded with directions

Long caption: State of Wisconsin, Plaintiff-Respondent, v. Ryan M. Muth, Defendant-Appellant

Issues presented:

1. Is marital income lost by a deceased victim’s family member “income lost,” such that the family member may recover it as restitution?
2. In a criminal restitution proceeding where the crime victims have accepted and received a prior civil settlement for damages including “lost wages, expenses . . .” and the defendant is asserting an accord and satisfaction of the subsequent restitution claim for lost wages and expenses, must the defendant produce extrinsic evidence of the nature of the unambiguous civil settlement agreement to show that the victims are seeking a double recovery?

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:

Barron

16AP1709

Roberts v. Robert

Dane

18AP508

Wilmington Savings Fund Society FSB v. Ayres

18AP822

Hill v. Hayes

Justice Ann Walsh Bradley and Justice Rebecca Frank Dallet dissent.

19AP48

Dane County v. N.W.

19AP1674-W

Balele v. Reynolds

Dunn

18AP271

Francois v. Olsen

Fond du Lac

18AP1705-CR

State v. Cousin

Kenosha

17AP1569-CRNM State v. Dale

Justice Brian Hagedorn did not participate.

18AP1548 Powerbrace Corporation v. Grede Holdings

18AP1879-CR State v. Shaw

La Crosse

18AP2300-CR State v. Mravik

Marathon

17AP2223-CR State v. Williams

Marquette

18AP2264-W Saldivar v. Winkleski

Justice Ann Walsh Bradley and Justice Rebecca Frank Dallet dissent.

Milwaukee

16AP1621-CR State v. Benson

17AP1186-CR State v. Lemons

17AP1601 Mallett v. LIRC

18AP88-CR State v. Ortiz

18AP615-CR State v. Guzman

18AP1002 State v. Muniz-Munoz

18AP1067-CR State v. Hernandez

18AP1171-CR State v. Nowels

18AP1291-CR State v. T.L.G.

18AP1402-CR State v. Bryant

Chief Justice Patience Drake Roggensack did not participate.

18AP1597-CR State v. Reed

18AP1639-CR State v. Zollicoffer

18AP1650-CR State v. Jones

Chief Justice Patience Drake Roggensack did not participate.

18AP1935-CR	<u>State v. Green</u>
18AP2017-2019-CR	<u>State v. Sanders</u>
19AP834	<u>Bach v. LIRC</u>
19AP561-W	<u>Shaw v. Circuit Court for Milwaukee County</u>
19AP642-643-CR	<u>State v. Smith</u>
Outagamie	
18AP99-CR	<u>State v. Reiner</u>
Portage	
18AP2211-2212-CR	<u>State v. Nunez</u>
Racine	
18AP1469-CR	<u>State v. Baer</u>
Rock	
17AP2270	<u>American Family Mutual Insurance Co. v. Bell-Johnson</u>
18AP1648	<u>McCray v. City of Beloit</u>
Trempealeau	
18AP815	<u>State v. Santiago</u>
Vilas	
18AP837	<u>Vilas County v. Bowler</u>
Walworth	
18AP879	<u>State v. Williams</u>
18AP1311-CR	<u>State v. Wigman</u>
18AP1750-CR	<u>State v. Durski</u>
Waukesha	
18AP645	<u>State v. Abt</u>
19AP544/19AP1310-W	<u>Anderegg v. Ihnen</u>
Winnebago	
18AP1547-CR	<u>State v. Whatley</u>
Wood	
18AP1089-CR	<u>State v. Haefner</u>