



# Supreme Court of Wisconsin

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FOR IMMEDIATE RELEASE

## Wisconsin Supreme Court accepts seven new cases

**Madison, Wis.** (Dec. 17, 2020) – The Wisconsin Supreme Court has voted to accept seven 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 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](#).

2019AP1404-CR

State v. Burch

**Supreme Court case type:** Certification

**Court of Appeals:** District III

**Circuit Court:** Brown County, Judge John Zakowski

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. George Steven Burch, Defendant-Appellant

### Issues presented:

1. Would a reasonable person consider the scope of consent to search a cell phone to be limited by the person's discussion with law enforcement, or would a reasonable person properly consider a subsequent discussion about police extracting "the information" from the cell phone as showing the person had consented to police searching the phone in its entirety?
2. May a reasonable person consider the broad scope of the consent form signed by Burch despite the officer's initial request to review only the text messages on the phone?
3. After police downloaded information from the cell phone, what portion of Burch's data could it lawfully retain?
4. If the police department was permitted to retain some or all of the downloaded material, how long could it do so?
5. Did the status of the original investigation that produced the download affect the ability of police to lawfully retain the downloaded material?

6. Did the police have any obligation to return the downloaded material to Burch, and if so, when?

2019AP1272-CR

State v. Lickes

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

**Court of Appeals:** District IV

**Circuit Court:** Green County, Judge James R. Beer, reversed

**Long caption:** State of Wisconsin, Plaintiff-Appellant, v. Jordan Alexander Lickes, Defendant-Respondent-Petitioner

**Issues presented:**

1. Does the expungement statute's requirement that a probationer have "satisfied the conditions of probation" also mean that the probationer must perfectly comply at all times with each and every rule of probation set by the probation agent?
2. When a circuit court chooses to hold a hearing and exercise discretion to determine whether a probationer who violated a rule set by his agent has nevertheless "satisfied the conditions of probation" so as to qualify for expungement, should the appellate court review the circuit court's decision for an erroneous exercise of discretion?
3. When a circuit court makes factual findings concerning whether a probationer violated a condition of probation rendering him ineligible for expungement, must the appellate court uphold the finding in the absence of clear error?

2019AP2073

Fond du Lac County v. S.N.W.

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

**Court of Appeals:** District II

**Circuit Court:** Fond du Lac County, Judge Dale L. English, affirmed

**Long caption:** In the matter of the mental commitment of S.N.W.: Fond du Lac County, Petitioner-Respondent, v. S.N.W., Respondent-Appellant-Petitioner

**Issues presented:**

1. Did the circuit court lack competency to proceed with the final hearing due to the 48-hour rule violation?
2. If the circuit court retained competency, did it err in admitting the tardy report and its author's testimony?
3. Was the evidence presented at S.N.W.'s final hearing sufficient to prove him dangerous?
4. Is this appeal moot?

2019AP1983-CR

State v. Beyer

**Supreme Court case type:** Certification

**Court of Appeals:** District IV

**Circuit Court:** Dane County, Judge William E. Hanrahan

**Long caption:** State of Wisconsin, Plaintiff-Respondent, v. Jacob Richard Beyer, Defendant-Appellant.

**Issue presented:**

Whether the guilty-plea-waiver rule applies when a defendant pleads not guilty to an offense, but stipulates to the inculpatory facts supporting each element of the offense, and explicitly agrees to a finding of guilt at a hearing before the circuit court at which no witness testifies.

2019AP1200

Schwab v. Schwab

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

**Court of Appeals:** District I

**Circuit Court:** Milwaukee County, Judge Michael J. Dwyer, reversed

**Long caption:** In re the marriage of: Kathy Schwab, n/k/a Siech, Petitioner-Respondent-Petitioner v. Paul Schwab, Respondent-Appellant

**Issues presented:**

Does Wis. Stat. § 893.40 deprive the circuit court of its inherent and statutory contempt power under Wis. Stat. ch. 785 when one party brings a contempt action to enforce a vested property right, which was not obtainable until after 20 years from the entry of the judgment?

2020AP1718-OA

Fabick v. Evers<sup>1</sup> (argued Nov. 16, 2020)

**Supreme Court case type:** Petition for Original Action

**Court of Appeals:** District IV

**Long caption:** Jere Fabick, Petitioner, v. Tony Evers, in his Official Capacity as the Governor of Wisconsin, Respondent

**Issues presented:**

Whether Governor Tony Evers violated Wis. Stat. § 323.10 when he issued multiple and successive executive orders declaring a state of emergency beyond 60 days in response to the COVID-19 pandemic.

2020AP1742

Tavern League v. Palm (argued Dec. 17, 2020)

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

**Court of Appeals:** District III

**Long caption:** Tavern League of Wisconsin, Inc., Sawyer County Tavern League, Inc. and Flambeau Forest Inn LLC, Plaintiffs v. Andrea Palm and Wisconsin Department of Health Services, Defendants-Respondents-Petitioners, Julia Lyons, Defendant-Respondent, THE MIX UP, INC (D/B/A, MIKI JO'S MIX UP), Liz Sieben,

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<sup>1</sup> Petition for leave to commence an original action granted on 10/28/20.

Pro-Life Wisconsin Education Task Force, Inc., Pro-Life Wisconsin, Inc. and Dan Miller, Intervenor-Plaintiffs-Appellants.

**Issues presented:**

Did the court of appeals err in concluding that Emergency Order 3 is invalid because it was not promulgated as a rule pursuant to Wis. Stat. ch. 227?

**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**

19AP1532-CR

State v. Lecker

**Calumet**

19AP486-CR

State v. Crawford

**Columbia**

19AP708-CR

State v. Blanchard

**Dane**

19AP629

Jama v. Gonzalez

*Justice Ann Walsh Bradley and Justice Rebecca Frank Dallet dissent. Justice Jill J. Karofsky did not participate.*

20AP160-CR

State v. Engen

*Justice Jill J. Karofsky did not participate.*

**Iron**

19AP280-CR

State v. Lussier

**Kenosha**

18AP1746-CR

State v. McNair

**Lincoln**

18AP152

State v. Boruch

*Justice Ann Walsh Bradley did not participate.*

**Marathon**

19AP197

J.W. v. R.B.

**Milwaukee**

16AP752-CRNM

State v. Williams

18AP2155-2156-CR

State v. Nicolai

19AP36-37-CR	<u>State v. Lathon</u>
19AP126-CR	<u>State v. Foster</u>
19AP157-CR	<u>State v. Jew</u>
19AP504	<u>State v. Shipp</u>
19AP1014-CR	<u>State v. Rivera-Diaz</u>
19AP1056	<u>State v. Anderson</u>
19AP1292-CR	<u>State v. Cantrell</u>
19AP1770-CR	<u>State v. Taylor</u>
19AP2049-CRNM	<u>State v. Myles</u>
20AP302-W	<u>Brown v. Hepp</u>
20AP962	<u>State v. K.A.B.</u>
20AP1109	<u>State v. D.Q.</u>
<b><u>Monroe</u></b>	
18AP2269-CR	<u>State v. Dieter</u>
19AP802-CR	<u>State v. Nichols</u>
<b><u>Outagamie</u></b>	
17AP1607-CRNM	<u>State v. Ducksworth</u>
20AP1761-OA	<u>O’Bright v. Lynch</u> <i>Chief Justice Patience Drake Roggensack concurs. Justice Ann Walsh Bradley, Justice Rebecca Frank Dallet, and Justice Jill J. Karofsky dissent.</i>
<b><u>Ozaukee</u></b>	
18AP2427-CR	<u>State v. Harper</u>
19AP1144-CR	<u>State v. Levanduski</u>
<b><u>Polk</u></b>	
20AP1749-OA	<u>Lindoo v. Evers</u>
<b><u>Rock</u></b>	
19AP738-CR	<u>State v. Hardaway</u>
20AP93	<u>Rock County v. R.J.</u>

**Sauk**

19AP1366

Fabian v. Fabian

**Washington**

19AP968-CR

State v. McGee

**Waukesha**

19AP293

State v. Stephens

**Winnebago**

19AP1621

Galston v. Castonia