Criminal Law

Hiding a Corpse – Sufficient Evidence

***State v. Minck*, 2025 WI App 35 (filed May 28, 2025) (ordered published June 25, 2025)**

HOLDING: Sufficient evidence supported the defendant's conviction for hiding a corpse.

SUMMARY: A jury convicted the defendant of hiding a corpse. *See* Wis. Stat. § 940.11(2). The victim apparently died of a drug overdose. His body was found a month later in the adjoining unit of a duplex where the defendant lived; that unit was usually occupied by the defendant's brother, who was in jail at the time.

The court of appeals affirmed the conviction in an opinion authored by Judge Hruz. The court first rejected the defendant's claim that there was insufficient evidence on which to convict him of being the person who hid the corpse – he conceded that sufficient evidence showed that someone had hidden the corpse. Based on the compelling circumstantial evidence of the defendant's involvement with the victim in drug use, "the jury could easily find beyond a reasonable doubt" that the defendant was the person who hid the corpse (¶ 35). Nor did the state have to prove that the defendant had "exclusive" access to the residence where the body was found (¶ 36).

There was also sufficient evidence that the defendant hid the corpse with intent to conceal a crime. "In essence, Minck asserts that the crime of hiding a corpse under Wis. Stat. § 940.11(2) can only be committed by a person who hides a corpse in order to conceal the deceased person's homicide.... We agree with the State, however, that Minck's argument regarding the intent element fails because it ignores the plain language of the statute" (¶ 42). The scant case law did not restrict this statute to homicides: "The mere fact that defendants have been convicted of hiding a corpse under circumstances where they were also responsible for the deceased person's homicide does not compel a conclusion that a defendant can only be convicted of hiding a corpse under those circumstances" (¶ 44).

In this case, the evidence supported a finding that Minck had hidden the corpse to conceal evidence of his "drug trafficking" (¶ 45). "[T]he jury could reasonably infer that [the victim] died of a drug overdose in Minck's residence and that, thereafter, Minck would have feared being held criminally responsible for [the victim's] death, even if Minck did not provide [him] with fentanyl or heroin" (¶ 52).

Criminal Procedure

Withdrawn Guilty Pleas – Statements by Defendants – Wis. Stat. § 904.10

***State v. Rejholec*, 2025 WI App 36 (filed May 28, 2025) (ordered published June 25, 2025)**

HOLDING: The defendant's incriminating admissions made at a sentencing hearing on a plea that was later withdrawn could be used by the state in a subsequent trial.

SUMMARY: The defendant was charged with sexually assaulting a child. After the circuit court denied his motion to suppress incriminating statements he made to police officers, he pled no contest. At his sentencing hearing, the defendant made another round of incriminating statements in an effort to mitigate his guilt. He was sentenced to prison.

The defendant successfully appealed the denial of his suppression motion and on remand the circuit court granted his motion to withdraw the no-contest plea and set the matter for trial. The circuit court also granted the defendant's motion to exclude the incriminating statements he made at his earlier sentencing. In this second appeal of the case, the state challenged the judge's ruling.

The court of appeals reversed the circuit court in an opinion authored by Judge Grogan that focused on Wis. Stat. section 904.10, which excludes "statements" made "in connection with" withdrawn guilty pleas, no-contest pleas (as here), and offers to plead. "We need engage in very little statutory interpretation in this case, however, because prior cases construing and applying § 904.10 confirm that the phrase 'in connection with' has a much narrower – and in fact, quite precise – meaning" (¶ 16). And "those cases have clearly construed Wis. Stat. § 904.10's prohibition against allowing the State to introduce '[e]vidence of statements made in court or to the prosecuting attorney in connection with' withdrawn guilty pleas or no contest pleas as applying only to statements a defendant makes while plea negotiations are ongoing and prior to a plea negotiation being finalized and accepted – not inculpatory statements made *after* a plea has been finalized" (¶ 22).

The court of appeals "briefly" considered – and rejected – the alternative rationales relied on by the circuit court in addition to Wis. Stat. section 904.10 (*see* ¶¶ 24, 28).

Sentencing – Credits – Imposed and Stayed Sentence

***State v. Dachelet*, 2025 WI App 42 (filed June 25, 2025) (ordered published July 30, 2025)**

HOLDING: The trial court erroneously granted the defendant an additional 25 days of sentence credit.

SUMMARY: In April 2022, a jury convicted Dachelet of possessing drugs (methamphetamine) and bail jumping. Later that April he pled guilty to a separate felony bail-jumping offense for missing a jury-status hearing. For both cases, the court placed him on probation for 30 months, withholding sentence in the case that went to trial and imposing but

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In this column, Prof. Daniel D. Blinka and Prof. Thomas J. Hammer summarize select published opinions of the Wisconsin Court of Appeals. Full-text decisions are available online at www.wisbar.org/wislawmag.

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staying a nine-month jail sentence in the guilty plea case. Among other conditions of probation, the court ordered Dachelet not to possess any controlled substances without a valid prescription (*see* ¶ 3).

In October 2022, police officers again arrested the defendant for drug-related offenses and in November the Department of Corrections (DOC) revoked his probation. The court then sentenced Dachelet to concurrent time on the drug and bail-jumping case, to be served concurrently with the other bail-jumping case (the previously stayed nine-month sentence). The judge granted 83 days' credit, but the DOC later told the court that Dachelet was entitled to an additional 25 days' credit for the time between the date of his revocation (Nov. 4) and the date of his sentence (Nov. 29) on the other bail-jumping case. The trial judge granted the DOC's request.

The court of appeals reversed in an opinion authored by Judge Gundrum. Sentence credit is governed by Wis. Stat. section 973.155, which in turn has been construed by case law. In summarizing its decision, the court "agree[d]" with the state: "[F]ollowing revocation of probation, an imposed and stayed jail sentence begins on the day the probationer enters the jail, or, if the probationer is already in jail at the time, on the day of revocation. Dachelet was already in [jail] on November 4, 2022, when his probation was revoked, and so his jail sentence [for bail jumping due to missing the jury-status hearing] began on that day, severing the connection between his custody and the present case" (¶ 19). Thus, on the facts of this case, he was entitled to only 116 days' credit instead of 141 days.

Environmental Law

Standing to Challenge Issuance of Air Permit – Unpromulgated Administrative Rule

***Sierra Club v. Wisconsin Dep't of Nat. Res.*, 2025 WI App 39 (filed May 15, 2025) (ordered published June 25, 2025)**

HOLDINGS: The multiple holdings in this case are summarized in the analysis that follows.

SUMMARY: The Department of Natural Resources issued to Wisconsin Public Service Corp. and Wisconsin Electric Power Co. an air permit that allowed them to build and operate a natural gas-fired electric generation plant in Marathon County. The Sierra Club challenged several aspects of the permit. Following a hearing, an administrative law judge (ALJ) issued an order affirming the permit. The Department adopted the ALJ's decision as its own final decision. The Sierra Club petitioned for judicial review, and the circuit court affirmed the ALJ's decision. In an opinion authored by Judge Kloppenburg, the court of appeals affirmed in part and reversed in part.

The court of appeals first considered whether the Sierra Club had standing to challenge the issuance of the permit. It concluded that it did. "Sierra Club has sufficiently alleged both that it suffered an injury to its members' interest in breathing clean air, caused by the Department's issuance of the permit, and that the injury was to interests that Wisconsin law recognizes or seeks to regulate or protect" (¶ 34) (internal quotations and citation omitted).

The court next considered whether the ALJ erred in concluding that the Department was not required to consider supplemental battery storage as a pollution mitigation measure in step one of what is known as the best available control technology (BACT) analysis. ("Simply stated, BACT means pollution mitigation measures that have been determined, af-

ter a source-specific analysis, to achieve the maximum degree of reduction of air pollutants regulated by the federal Clean Air Act. [Wis. Admin. Code] § NR 405.02(7)" (¶ 39).)

The court held that the ALJ's decision was supported by substantial evidence (*see* ¶ 3). The ALJ found that adding batteries to the project would reduce the project's use, thereby reducing the amount of inertia on the grid, which would interfere with a stated fundamental purpose of the project. The ALJ also found that adding batteries would require a redesign of the project because of the considerable amount of space required for the storage.

Lastly, the court considered whether the background concentration protocol, a document used in this case that sets forth the procedure used by the Department for setting background pollutant concentrations for air permit modeling, is invalid as an unpromulgated administrative rule. Under Wis. Stat. section 227.01(13), a "rule" means "a regulation, standard, statement of policy, or general order of general application that has the force of law and that is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency." The court of appeals concluded that the protocol is invalid "because it meets the statutory definition of a rule and, therefore, should have been but was not promulgated in compliance with the statutory rulemaking procedures set forth in Wis. Stat. ch. 227 (2023-24)" (¶ 3).

Accordingly, the court of appeals affirmed the part of the circuit court's order concluding that the Department appropriately excluded battery storage in step one of the BACT analysis as redefining the source and it reversed the part of the order concluding that the background concentration protocol is not a rule. It remanded the matter to the circuit court to remand to the Department to reopen the permit and proceed consistent with this opinion (*see* ¶ 111).

Insurance

Insurance Contracts – Requirement of an Examination Under Oath

***Prunty v. Maple Valley Mut. Ins. Co.*, 2025 WI App 38 (filed May 13, 2025) (ordered published June 25, 2025)**

HOLDING: The circuit court properly granted summary judgment to the insurance company because the insured breached his obligation under the insurance policy to submit to an examination under oath (EUO).

SUMMARY: In this insurance coverage dispute, plaintiff Prunty appealed from a judgment in favor of Maple Valley Mutual Insurance Co. After a fire originating from a woodburning unit caused damage to Prunty's home, he filed a claim with his insurer, Maple Valley. During the investigation of Prunty's claim, Maple Valley questioned whether Prunty had misrepresented, in his communications to establish coverage with Maple Valley, whether the woodburning unit was operational and requested that Prunty submit to an EUO pursuant to the terms of the insurance policy. Rather than agreeing to the EUO, Prunty filed this breach-of-contract action against Maple Valley. The circuit court held that Prunty breached the insurance contract by failing to submit to the EUO and that Maple Valley was entitled to judgment as a matter of law.

In an opinion authored by Judge Stark, the court of appeals affirmed. It concluded that "Prunty was required by the terms of the policy to sit for an EUO and that his failure to do so before commencing litigation was a material and prejudicial breach of the insurance contract" (¶ 18). If Prunty were able to merely substitute a post-suit deposition for the EUO, the EUO policy provision would be rendered meaningless (*see* ¶ 35). As for prejudice, the court agreed with Maple Valley that, absent Prunty's EUO, Maple Valley was unable to fully assess its coverage position pre-suit and was therefore prejudiced in its ability to evaluate coverage (*see* ¶ 36).

Prunty argued that because he appeared for a deposition in the suit he commenced, this satisfied his obligation to appear for an EUO. The appellate court disagreed. "EUOs and depositions are materially different. EUOs are contractual, while depositions arise out of civil procedure. The purpose of the EUO provision in the policy is to permit Maple Valley to conduct an investigation prior to litigation to determine if there is coverage for an insured's claim under the policy and to grant or deny the claim. In contrast, a deposition is a discovery mechanism in litigation, after an insurer has denied a claim, that is subject to the provisions of Wis. Stat. ch. 804" (¶ 29).

Because Prunty breached his obligation under the policy to submit to the EUO, the circuit court properly granted summary judgment to Maple Valley (*see* ¶ 18).

Mental Health Law

Chapter 51 Commitments – Final Hearings – Examiners' Reports

***Outagamie Cnty. v. M.J.B. (In re Mental Commitment of M.J.B.)*, 2025 WI App 37 (filed May 20, 2025) (ordered published June 25, 2025)**

HOLDING: The circuit court lost competency to proceed with the respondent's final commitment hearing because one of two examiner's reports was not made accessible to his counsel at least 48 hours in advance of the final hearing.

SUMMARY: Respondent M.J.B. (hereinafter "Mark") appealed orders entered for his involuntary commitment pursuant to Wis. Stat. section 51.20 and for his involuntary medication and treatment pursuant to Wis. Stat. section 51.61(1)(g). He argued that the circuit court lacked competency to proceed with the final hearing for his involuntary commitment because one of two examiners' reports was not made accessible to his attorney at least 48 hours in advance of his final hearing, as required by Wis. Stat. section 51.20(10)(b). This statute provides that "[c]ounsel for the person to be committed *shall* have access to all psychiatric and other reports 48 hours in advance of the final hearing." (Emphasis added.)

In an opinion authored by Judge Stark, the court of appeals reversed the circuit court. It concluded that "a subject's substantial rights in a Wis. Stat. ch. 51 proceeding are affected by his or her counsel's inability to timely access an examiner's report in violation of Wis. Stat. § 51.20(10)(b). The failure to timely make both experts' reports accessible to a subject individual's counsel necessarily deprives a subject of the statutory right to two examiners; prevents a subject from effectively preparing for his or her final hearing; interferes with the subject's right to effective assistance of counsel; may deprive the subject of essential evidence; and incentivizes the late filing of reports, particularly those that may otherwise be helpful to the subject. *See* § 51.20(5)(a). The expert report accessibility deadline is therefore not merely a technical requirement; instead, that deadline is central to the statutory scheme of ch. 51. Consequently, the circuit court in this case lost competency to proceed with Mark's final hearing because Dr. Musunuru's report was not timely made accessible to Mark's counsel" (¶¶ 27-28).

In a footnote, the court observed that the circuit court's loss of competency

here is predicated upon the fact that Mark's final hearing could not be delayed to a later date due to the statutory deadline provided in Wis. Stat. section 51.20(7)(c). In situations in which a court can cure a violation of Wis. Stat. section 51.20(10)(b) by delaying the final hearing while simultaneously complying with Wis. Stat. section 51.20(7)(c), the court retains competency to proceed with the final hearing (*see* ¶ 22 n.9).

Real Property

Building Permits – Boathouses – Judicial Deference

***Dwyer v. City of Monona*, 2025 WI App 40 (filed May 15, 2025) (ordered published June 25, 2025)**

HOLDING: A zoning board reasonably denied a permit for a boathouse.

SUMMARY: An owner was granted a permit to build a boathouse on lakeshore property. The permit included a reference to plumbing but without specifications. The owner intended to include a bathroom with a toilet and a sink. Later, a building inspector notified him that the city had rescinded any "right" to include "facilities for the purpose of habitation," as prohibited by the city's ordinances. The local zoning board conducted a hearing and upheld the inspector's decision. The circuit court affirmed.

The court of appeals affirmed in an opinion authored by Judge Blanchard. The first issue addressed the standard of review, namely, whether the court must defer to the zoning board. Courts must defer to a "municipality's reasonable interpretation" of an ordinance that addresses a "local concern." The owner contended, however, that the no-habitation ordinance mirrored a statewide standard found in a Department of Natural Resources regulation and thus was not entitled to deference (¶ 17).

The court of appeals agreed: "while the City is presumed to have adopted its ordinance with the purpose of protecting the welfare of its particular shorelands, the City chose to do so in the specific manner contained in the statewide standard" (¶ 20). In short, the court would not defer to the zoning board.

Turning to the ordinance's non-habitation language, the court applied rules of statutory interpretation to the key terms "use" and "habitation" (¶ 24). As to how the boathouse might be used, the court applied a "design-based definition" that was not limited by the owner's representations about how the boathouse might be used (¶ 26). Defining "habitation," the court rejected the owner's contention that the ordinance prohibited only boathouses with "living, cooking, sanitary, and sleeping facilities." Here the court looked to various dictionary definitions as well as other related ordinances on "dwellings." The owner's narrow definition ignored the city's interest in protecting shorelands and wetlands (*see* ¶ 34).

Having interpreted the ordinance, the court reviewed the record and found that the owner had not overcome the presumption that the zoning board correctly applied the ordinance. The record "shows a reasonable basis for the Board's understanding that the inspector determined that the inclusion of plumbing for a bathroom, as the design called for, would allow the boathouse to be used for human habitation, when all permitted features are taken into account, including electricity and HVAC" (¶ 37). The board's decision was also supported by

"substantial evidence," namely evidence that was more than a "scintilla" but less than a "preponderance" (¶ 47). Finally, the board's decision was neither arbitrary nor unreasonable.

Taxation

Property Taxes – Exemptions – Hospital Buildings – "Readying Rule"

***Children's Hosp. of Wis. Inc. v. City of Wauwatosa*, 2025 WI App 43 (filed June 10, 2025) (ordered published July 30, 2025)**

HOLDING: A building being constructed by a hospital did not qualify for a property tax exemption that applied to nonprofit hospitals.

SUMMARY: Children's Hospital of Wisconsin Inc. (CHW) sought a tax exemption for a new building still under construction for the 2020 tax year. When assessed by the city in early 2020, the "North Tower" largely consisted of work on the foundation and was about "14%" completed (*see* ¶ 4). CHW contended that the North Tower nonetheless fell within a statutory tax exemption for hospital-based specialty clinics and surgical services, as provided by Wis. Stat. section 70.11(4m). The city disagreed, assessing CHW about $120,000 for this building, which it paid. CHW appealed to the circuit court, which granted summary judgment in favor of the city.

The court of appeals affirmed in a majority opinion authored by Judge Colón. "The question before us is whether a partially constructed building can qualify as a tax-exempt nonprofit hospital under § 70.11(4m) if it will eventually be used for such an exempt purpose" (¶ 10).

Case law construing property tax statutes narrowly construes exemptions from property taxes (*see* ¶ 12). CHW contended that the North Tower construction fell within the so-called readying rule established by case law. The prior cases, however, addressed "fully constructed buildings," not those under construction (¶ 19).

"The plain language of Wis. Stat. § 70.11(4m) indicates that exemption eligibility begins when property is 'used' as a nonprofit hospital. The readying rule provides some flexibility but cannot be stretched as far as CHW contends because such a broad interpretation of a judicially created rule would conflict with the plain language of § 70.11, effectively usurping the legislature's authority as the policymaker by fundamentally changing the point at which property can qualify for this exemption. While we recognize that tax exemption for alleged-hospital buildings that are under construction on the assessment date may serve a beneficial public purpose, such an exemption must be clearly spelled out by the legislature'" (¶ 26).

Chief Judge White dissented. "Because I believe that when an organization constructs a property that will qualify for an exemption under Wis. Stat. § 70.11(4m), such as a new hospital, the preparation and construction – the 'readying,' as our supreme court has described it – is indispensable to its use, and therefore such property should also qualify for the exemption during this prerequisite stage" (¶ 28). **WL**