

Appellate Procedure Criminal Appeals – Cases Involving Deferred Judgment Agreements

State v. King, 2026 WI App 15 (filed Feb. 18, 2026) (ordered published March 25, 2026)

HOLDING: The court of appeals lacked jurisdiction over this appeal because there was not yet a final judgment that disposed of the entire matter in litigation between the parties.

SUMMARY: Defendant King was charged with three misdemeanors and a felony. He reached a plea agreement with the state that included a deferred-judgment agreement (DJA) for the felony count. Pursuant to that agreement, King pled guilty to the three misdemeanors. He also pled guilty to the felony, but he was not sentenced on that count, and a judgment of conviction will not be entered on the felony count while the agreement is in effect. If King successfully completes the terms of the DJA, the state will move to dismiss the felony charge without costs and with prejudice. If he violates the conditions of the DJA, he will be returned to court for sentencing.

King filed a notice of intent to pursue postconviction relief from the judgment of conviction on the misdemeanors while the DJA was still in effect. His appointed counsel filed a no-merit notice of appeal that led to the opening of the appeal that is the subject of this decision. The case required the court of appeals to address its appellate jurisdiction in this situation



BLINKA



HAMMER

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.

Want faster access to Wisconsin Supreme Court and Court of Appeals decisions? Get weekly updates on the previous week's supreme court and court of appeals decisions. Subscribe to CaseLaw Express, a benefit of your membership, delivered to your inbox every Monday.

Prof. Daniel D. Blinka, U.W. 1978, is a professor of law at Marquette University Law School, Milwaukee. daniel.blinka@marquette.edu

Prof. Thomas J. Hammer, Marquette 1975, is an emeritus professor of law and the former director of clinical education at Marquette University Law School, Milwaukee.

thomas.hammer@marquette.edu

in which the appellant was convicted of three crimes but a fourth criminal count in the same case (the felony) remains unresolved due to the DJA.

In a per curiam decision, the court of appeals applied the plain language of Wis. Stat. section 808.03(1) to conclude that it lacked jurisdiction over this premature no-merit appeal. Said the court: “While the three crimes resulted in a conviction and sentencing on those three counts, there is not yet a final judgment that disposes of the entire matter in this litigation between the parties” (¶ 1).

A judgment of conviction has not yet been entered on the felony count and sentencing on that felony has not taken place; dismissal of the felony count has also been deferred (see ¶ 9). Therefore, at this time, the court of appeals lacks jurisdiction to review the judgment of conviction for the three misdemeanor counts. Once the felony count is resolved by entry of a final order or judgment, King will be able to seek postconviction review of the entire case (see ¶ 10). The court declined to exercise its discretion to grant leave to appeal the nonfinal order so that its no-merit review of the three misdemeanor convictions could proceed without delay (see ¶ 12).

Civil Procedure Misnamed Parties – Technical Defect – Dismissal

College Ave. BP Inc. v. Arorora Invs., 2026 WI App 11 (filed Feb. 10, 2026) (ordered published March 25, 2026)

HOLDING: Misnaming a defendant party was a technical defect, but the circuit court properly exercised its discretion by refusing to permit an amendment to the pleadings and dismissing the plaintiffs’ complaint.

SUMMARY: The plaintiffs, who operate gas stations, brought a class action complaint that inadvertently misnamed the defendant. More than one year later, the plaintiffs moved to amend their pleadings to identify the correct defendant. The circuit court agreed that the misnaming was a technical defect but declined to permit the amendment and dismissed the complaint.

The court of appeals affirmed in an opinion authored by Judge Hruz. First, it agreed that the “misnomer of the Defendant” was “merely a technical defect” (¶ 19). This case fell “squarely within those prior cases where courts have held the misnomer to be a technical defect because the plaintiff simply misnamed the other-

wise clearly intended defendant” (¶ 26).

The second issue, on which there was no “controlling Wisconsin case law,” was whether the court erred by “not automatically” allowing the pleadings to be amended (¶ 38). The court held that Wis. Stat. section 802.09 controlled (see ¶ 41).

“[M]erely because a misnomer of a party defendant is only a technical error does not mean that the error is without consequence. We see no reason why a circuit court, upon concluding that a defect is technical and retaining personal jurisdiction over the correct party, should not retain its usual discretion to decide whether to allow an amendment of the pleadings after the ‘amendment as of right’ period in Wis. Stat. § 802.09(1) has expired” (¶ 43). The circuit court properly exercised its discretion by not granting the plaintiffs’ motion to amend (see ¶ 46).

The court expressly declined to address or rely upon the parties’ arguments regarding the “fictitious name” statute, Wis. Stat. section 807.12 (¶ 52).

Criminal Procedure Juvenile Justice – Reverse Waivers

State v. Mann-Tate, 2026 WI App 17 (filed Feb. 3, 2026) (ordered published March 25, 2026)

HOLDING: The standard set forth in Wis. Stat. section 970.032(2) for determining whether reverse waiver is appropriate is unconstitutional to the extent it does not require circuit courts to consider the unique attributes of youth identified by the U.S. Supreme Court.

SUMMARY: In January 2023, the state filed a criminal complaint alleging that Mann-Tate committed first-degree intentional homicide. Mann-Tate was 10 years old when the crime was committed. Under current Wisconsin statutes, the adult criminal court has exclusive original jurisdiction over juveniles who are alleged to have committed certain offenses, including first-degree intentional homicide.

Although the criminal court has exclusive original jurisdiction, Wis. Stat. section 970.032(2) allows the accused juvenile to seek transfer of the case to juvenile court through the reverse-waiver procedure as follows. First, the criminal court must find probable cause to believe that the juvenile has committed the violation that provided the court with original jurisdiction. If it does, the criminal court proceeds to a reverse-waiver hearing. The criminal court must retain jurisdiction unless the juvenile proves each of the

following criteria by a preponderance of the evidence: 1) the juvenile, if convicted, could not receive adequate treatment in the criminal justice system; 2) transferring jurisdiction to the juvenile court would not depreciate the seriousness of the offense; and 3) retaining jurisdiction is not necessary to deter the juvenile or other juveniles from committing the same violation as the accused. See Wis. Stat. § 970.032(2) (see ¶ 21).

In this case the circuit court denied the defendant's motion for reverse waiver, and the court of appeals granted his petition for leave to appeal this nonfinal order. In an opinion authored by Judge Geenen, the court of appeals reversed.

The defendant argued that the statutory factors set forth in Wis. Stat. section 970.032(2) are unconstitutionally incomplete and violate due process because they do not require the circuit court to consider, before deciding whether to transfer jurisdiction to juvenile court, the unique attributes of youth identified by the U.S. Supreme Court. See *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that imposing death penalty on an individual for crimes committed before age 18 con-

stitutes cruel and unusual punishment).

Roper highlighted three general differences between juveniles and adults: a lack of maturity and an underdeveloped sense of responsibility are more frequently found in juveniles; juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and the character of a juvenile is not as well formed as that of an adult (see ¶ 24). See also *Graham v. Florida*, 560 U.S. 48 (2010) (holding that sentences of life in prison without the possibility of parole for juveniles convicted of crimes other than homicide constitute cruel and unusual punishment); *Miller v. Alabama*, 567 U.S. 472 (2012) (holding that a mandatory life sentence of life in prison without the possibility of parole for a homicide committed by a juvenile constitutes cruel and unusual punishment). It is well settled that the distinctions drawn between juveniles and adults in *Roper*, *Graham*, and *Miller* have application in areas other than criminal sentencing (see ¶ 32).

In the present case, the court of appeals agreed with the defendant. Said the court: “[W]e conclude that the stan-

dard set forth in Wis. Stat. § 970.032(2) for determining whether reverse waiver is appropriate, is unconstitutional to the extent it does not require circuit courts to consider the unique attributes of youth identified by the United States Supreme Court. These attributes include: (1) the juvenile's chronological age related to immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile's family and home environment that surrounds him or her; (3) the circumstances of the offense, including the extent of participation in the criminal conduct; (4) the impact of familiar and peer pressures; (5) the effect of the offender's youth on his or her ability to navigate the criminal justice process; and (6) the possibility of rehabilitation. These factors may take on more or less significance based on the juvenile offender's chronological age, in recognition of the fact that not all juveniles are equally impacted by these unique attributes of youth” (¶ 46) (citations omitted).

Accordingly, the appellate court remanded this case to the circuit court to consider the reverse-waiver issue anew applying the correct standard of law. (see ¶ 47).



MINNESOTA LAWYERS MUTUAL
INSURANCE COMPANY



**Lawyers' professional liability insurance is all we do.
As a result of doing one thing, we do that one thing well.**

Get a no-obligation quote today!

*At MLM "here today, here tomorrow"
is more than just a motto and
our financial strength is your best defense.*



Chris Siebenaler, Esq.
612-373-9641
chris@mlmins.com
www.mlmins.com

Protecting Your Practice is Our Policy.®

Suppression Motions – Evidentiary Hearings

State v. Mire, 2026 WI App 16 (filed Feb. 4, 2026) (ordered published March 25, 2026)

HOLDING: The circuit court did not err when it denied the defendant’s motion to suppress without conducting an evidentiary hearing.

SUMMARY: The defendant was convicted of attempting to flee or elude an officer. He had been stopped for speeding by sheriff’s deputies [hereinafter “law enforcement officers”]. After repeated refusals to “exit” his vehicle, he drove off at a high rate of speed. The law enforcement officers chased him but later terminated the pursuit, observing that the defendant was traveling at or over 135 miles per hour “while passing other vehicles in heavy rain” (¶ 2). The defendant contended that the law enforcement officers had unlawfully extended the duration of the traffic stop as a basis for his motion to suppress evidence. The circuit court denied his motion to suppress evidence without conducting an evidentiary hearing.

The court of appeals affirmed in an opinion authored by Judge Gundrum. Case law settled the question. “Mire appears to be under the mistaken belief that he had carte blanche authority to use any criminal means he wished in order to ‘escape’ from the traffic stop once – if – law enforcement crossed over the line from a lawful detention to an unlawful one. That is not the law” (¶ 7). The government did not seek to use any “primary” or “derivative” evidence stemming from the stop. “Rather, [Mire] created new criminal evidence when he committed th[ese] new crime[s] ... separate from’ the allegedly unlawful detention” (¶ 11).

In sum, the circuit court properly denied the defendant’s motion to suppress without conducting an evidentiary hearing.

Insurance

Motor Vehicles – Underinsured Motorist Coverage – “Occupying” Vehicle

Gohlke v. West Bend Ins. Co., 2026 WI App 18 (filed Feb. 4, 2026) (ordered published March 25, 2026)

HOLDING: The circuit court properly dismissed the plaintiff’s claim that he was covered by his employer’s underinsured motorist (UIM) policy.

SUMMARY: The plaintiff was struck by

an automobile while he was cutting concrete on a roadside with a saw that he had unloaded from a truck and trailer [hereinafter “truck-trailer”] parked about 15 feet away. The truck was owned by his employer and insured by West Bend Insurance Co. under a policy that covered anyone “occupying” a covered vehicle. The truck-trailer was covered; the saw was not (see ¶ 5). The plaintiff claimed UIM coverage under the West Bend policy, but the circuit court ruled against him.

The court of appeals affirmed in an opinion authored by Judge Gundrum. The plaintiff claimed he occupied the truck because the saw was physically connected to the truck-trailer by a hose that carried water to the saw (see ¶ 6). The opinion canvassed three prior cases, concluding that none of them helped the plaintiff.

“This is not even a close call. Unlike the plaintiff in [one case], [the plaintiff] was not in very close physical contact with either the truck or trailer at the time he was struck and injured; he was 15 feet from the trailer and 20 feet from the truck.... Indeed, the only physical connection at all between him and the truck or trailer at the time he was struck was by way of a one-inch-thick hose carrying water to the saw he was operating. [He] [c]learly ... was not [in or getting in, on, out, or off] the [truck or trailer] at the time of the accident. Neither could it be said that he was ‘upon’ either the truck or trailer at the time he was struck. He instead was focused on performing his duties of cutting concrete on the road, which was especially [true] at the time that his injury occurred.... No insured could reasonably expect he or she would be covered under the policy in light of its language and the facts of this case” (¶ 13) (internal quotations omitted).

Motor Vehicle Law

OWI – Collateral Attack on Prior Convictions Used to Enhance Penalties for Current OWI Charge

State v. Christianson, 2026 WI App 14 (filed Feb. 12, 2026) (ordered published March 25, 2026)

HOLDING: Of three prior operating while intoxicated (OWI) convictions the defendant was collaterally attacking, two can be used to enhance the penalties the defendant faces in the current OWI prosecution.

SUMMARY: Under Wisconsin’s OWI penalty scheme, the penalty for an OWI offense depends on the number of the

defendant’s prior OWI convictions. See Wis. Stat. § 346.65(2)(am). Defendant Christianson pled no contest to one count of eighth-offense OWI. He then appealed the circuit court’s rejection of his collateral challenges to three of his prior OWI convictions.

Christianson argued that the three convictions (a 1999 conviction in Minnesota, a 2000 conviction in La Crosse County, Wis., and a 2001 conviction in La Crosse County, Wis.) are invalid because in each of the three prior cases 1) he did not have legal counsel; 2) he did not knowingly, intelligently, and voluntarily waive his right to counsel; and 3) the court handling the case failed to find that he was competent to proceed without counsel. As a result, he argued, he was denied his constitutional right to counsel in each of the prior cases and, accordingly, the convictions in those cases cannot be counted as prior convictions to enhance his sentence in the present case under Wis. Stat. section 346.65(2)(am). In an opinion authored by Judge Kloppenburg, the court of appeals affirmed in part and reversed in part.

A defendant may collaterally challenge a prior conviction that is being used as a predicate offense for sentence enhancement under Wis. Stat. section 346.65 only on the ground that the defendant was denied the constitutional right to counsel in the prior case. One way for a defendant to demonstrate such a denial is to show that the defendant was not represented by counsel and did not knowingly, intelligently, and voluntarily waive the right to counsel (see ¶ 13).

In Wisconsin, to succeed on a collateral challenge on this ground, the defendant must first make a prima facie showing that the defendant was denied the constitutional right to counsel in the prior case when the defendant proceeded to plead guilty or no contest without counsel. To satisfy that burden, the defendant must point to facts that demonstrate that the defendant did not know or understand the information that should have been provided relevant to a decision to waive counsel in the previous proceeding and, thus, did not knowingly, intelligently, and voluntarily waive the right to counsel (see ¶ 14).

The Wisconsin Supreme Court has mandated that, before permitting a defendant to proceed without counsel, a circuit court must conduct a colloquy (known as the *Klessig* colloquy) designed to ensure that the defendant 1) made a deliberate choice to proceed without counsel, 2) was aware of the difficulties

and disadvantages of self-representation, 3) was aware of the seriousness of the charge or charges against the defendant, and 4) was aware of the general range of penalties that could have been imposed on the defendant. See *State v. Klessig*, 211 Wis. 2d 194, 564 N.W.2d 716 (1997).

If the prior case was a Wisconsin case, and if a transcript of the relevant hearing at which the defendant waived the right to counsel is provided, the defendant's prima facie case can include a showing that a *Klessig* colloquy was not performed. In all Wisconsin cases in which there is a transcript of the relevant hearing, the defendant must "point to facts" showing that the defendant did not understand the information that should have been provided in the *Klessig* colloquy (¶ 15).

For a defendant to make a prima facie showing that the defendant was denied the constitutional right to counsel in a prior *non-Wisconsin* case when the defendant proceeded to plead guilty or no contest without counsel, the defendant must show that the defendant was not apprised of and did not understand the information held to be constitutionally sufficient for a valid waiver of counsel in *Iowa v. Tovar*, 541 U.S. 77 (2004). *Tovar* requires that the court inform the defendant of the nature of the charges, the right to be counseled regarding a plea, and the range of allowable punishments attendant upon the entry of a guilty plea (see ¶ 18).

Once the defendant makes a prima facie showing that the defendant was denied the right to counsel in a prior case, the burden shifts to the state to prove by clear and convincing evidence that, notwithstanding the deficient colloquy and the defendant's asserted lack of knowledge of the missing information, the defendant was not denied the constitutional right to counsel because the defendant's waiver of counsel was knowing, intelligent, and voluntary. This requires that the state prove by clear and convincing evidence that the defendant knew and understood the information required by *Tovar* (see ¶ 17).

In this case, the appellate court concluded that in each of the three prior cases, the defendant made a prima facie showing that he was denied his constitutional right to counsel. As for the prior Minnesota case, the state failed to meet its burden to show that the defendant nonetheless knowingly, intelligently, and voluntarily waived his right to counsel.

Therefore, that conviction cannot be counted as a prior conviction to enhance his current sentence (see ¶¶ 21-35).

However, as to the two prior Wisconsin cases, the appellate court held that the state met its burden to show that Christianson knowingly, intelligently, and voluntarily waived his right to counsel (see ¶ 2). The court that handled the case in 2000 specifically informed Christianson of his right to counsel; Christianson understood and signed the waiver-of-counsel questionnaire indicating that he had a right to counsel and deliberately and voluntarily chose to waive that right; and the 2000 court informed Christian-

son of the nature of the charge against him and the attendant penalties if he were to plead guilty or no contest (see ¶ 53). The state showed that in the 2001 case, Christianson read, understood, and signed the waiver-of-counsel questionnaire indicating that he understood that he had a right to counsel and deliberately and voluntarily chose to waive that right; and Christianson told the circuit court that he had no questions regarding waiving his right to counsel.

Based on these showings, as well as the fact that Christianson was informed of his right to counsel by the 2000 court only eight months before the 2001 plea hear-

PD-APPOINTED ATTORNEY?



GET PAID NOW

(888) 872-7884

You shouldn't have to wait to get paid for your public defender cases.

We've been providing advance funding to attorneys across the country since 1998. With our help, your business can run more smoothly - which means you get to do the things that matter most.

Get paid faster with Daniels Capital. Call 1-888-872-7884

 Daniels Capital Corporation
A Finance Company Serving Attorneys

www.danielscapital.com

ing, the appellate court concluded that the state met its burden to show by clear and convincing evidence that Christianson was informed of his right to receive legal advice regarding his plea and, therefore, knowingly, intelligently, and voluntarily waived his right to counsel in the 2001 case (see ¶ 66). [Editors' Note: The lengthy appellate opinion in this case includes detailed factual descriptions of each of the plea proceedings under scrutiny.]

Lastly, when a defendant seeks to proceed without counsel, the circuit court must ensure that the defendant is competent to proceed with self-representation (¶ 11). In this case the appellate court concluded that the circuit court did not err in determining that Christianson was competent to proceed without counsel in the 2000 and 2001 Wisconsin cases that may be used to enhance the penalties in the present prosecution (see ¶¶ 69-75).

Protective Placements Jurisdiction – Continuation – Petition and Report – Timeliness *Department of Aging v. J.J. (In re Guardianship & Protective Placement of J.J.), 2026 WI App 13 (filed Feb. 10, 2026) (ordered published March 25, 2026)*

HOLDING: The circuit court had jurisdiction to order the continuation of the respondent's protective placement despite the county's delay in filing a required report and petition.

SUMMARY: The circuit court ordered the continuation of "Josie's" Wis. Stat. chapter 55 protective placement following its annual review of the placement. Josie contended that the court lacked competency to proceed because the county's petition and report had not been timely filed. The county in turn had objected that Josie's challenge itself was untimely.

In an opinion authored by Judge Geenen, the court of appeals rejected Josie's challenges. It held "that the language requiring the County to file the petition and report by a certain date is directory, not mandatory, and therefore despite the late filing, the circuit court did not lose the competency to proceed with the annual review of Josie's protective placement" (¶ 2). "Although we agree that Josie failed to preserve the competency issue, we decline to find that the argument was forfeited and conclude that the County's noncompliance with the time period under § 55.18(1)(a) did not result in a loss of competency" (¶ 8).

Turning to the merits of Josie's argu-

ment, the court held "that the statute's use of 'shall' in defining the precise timing of the annual review is directory" (¶ 11). The governing statute "makes clear that the legislature intended to ensure that an annual review of protective orders occur as close to every twelve months as practically possible. Sec. 55.18(1)(a). However, in implementing the annual review process, the legislature did not impose any penalties on a county department that untimely files the annual petition and report, which supports that the time period is directory" (¶¶ 18-19).

The court emphasized that its conclusion should not be interpreted to provide support for county departments to shirk their responsibilities under Wis. Stat. section 55.18 by regularly filing untimely annual petitions and reports (see ¶ 28).

Zoning Challenges to Zoning Ordinances – Associational Standing *Wisconsin Realtors Ass'n v. Polk Cnty., 2026 WI App 12 (filed Feb. 3, 2026) (ordered published March 25, 2026)*

HOLDING: The plaintiff lacked associational standing to bring all but one of the claims challenging changes to the Polk County zoning ordinances.

SUMMARY: The Wisconsin Realtors Association (WRA) is a Wisconsin nonstock corporation comprised of over 17,500 real estate professionals throughout the state who work as residential and commercial realtors, brokers, inspectors, appraisers, property managers, and so on. In this case, the WRA filed a declaratory-judgment action with six causes of action (each described in detail in the court's opinion), presenting a facial challenge to several amendments to Polk County's zoning ordinances related to high density use, common open space, short-term rentals, easements, condominiums, and the sale or exchange of parcels between abutting property owners.

The circuit court concluded that the WRA lacked associational standing to bring this lawsuit, and it dismissed the complaint. In an opinion authored by Judge Stark, the court of appeals affirmed in part and reversed in part.

The question before the appellate court was whether the WRA had associational standing (standing to bring suit on behalf of one or more of its members) to challenge the zoning changes. Associational standing requires that the association demonstrate the following: 1) at least one

of its members would have had standing, 2) the interests at stake in the litigation are germane to the organization's purpose, and 3) neither the claim asserted nor the relief requested requires an individual member's participation in the lawsuit (see ¶ 20). Standing, including associational standing, must be established on a claim-by-claim basis (see ¶ 27).

With the exception of the change to the short-term-rentals ordinance, the court concluded that the record "contains no factual allegations suggesting that any of the WRA's members are directly affected by the remaining amendments to the Ordinances, let alone demonstrating that the members have or will suffer pecuniary loss or the risk of any substantial injury to their interests" (¶ 29). The court agreed with Polk County that the record in this case fails to support the assertion that at least one member of the WRA has standing in the member's own right on *each* claim in the complaint (see ¶ 26).

Said the court: "Because the WRA did not demonstrate that at least one identified member has standing to challenge each amendment to the Ordinances and that the interests at stake with regard to those amendments are germane to the WRA's purpose, it failed to meet the requirements for associational standing" (¶ 41). With the exception of the decision to dismiss the claim relating to short-term rentals, the circuit court's dismissal of all remaining claims was therefore affirmed.

Regarding the challenge to the short-term-rentals ordinance, the appellate court reversed the circuit court's dismissal of the WRA's claim. The outcome here was governed by a very recent decision involving associational standing in the context of short-term rentals (*Wisconsin Realtors Ass'n v. City of Neenah*, 2025 WI App 49, 418 Wis. 2d 78, 25 N.W.3d 663), which "rested on a narrow and well-supported factual record..." (¶ 41). Among other reasons for the reversal, the appellate court agreed with Polk County's apparent concession that "the WRA members' affidavits in the record – averring property ownership in the County or an agreement to purchase property in the County that the member 'intend[s] to license as a "Short Term Rental"' or 'desire[s] to use ... as a short-term rental,' respectively – establish a personal stake in the outcome that will be directly affected by the issue in controversy" (¶ 28). **WL**