

SUPREME COURT OF WISCONSIN

Case No.: 95-1067

Complete Title
of Case:

State of Wisconsin,
Petitioner-Appellant,
v.
John J. Watson,
Respondent-Respondent,

CERTIFICATION FROM THE COURT OF APPEALS

Opinion Filed: May 2, 1997
Submitted on Briefs:
Oral Argument: April 10, 1997

Source of APPEAL
COURT: Circuit
COUNTY: Dane
JUDGE: Angela B. Bartell

JUSTICES:
Concurred:
Dissented:
Not Participating: Steinmetz, J., did not participate.

ATTORNEYS: For the petitioner-appellant the cause was argued by *Mary E. Burke*, assistant attorney general, with whom on the briefs was *Sally L. Wellman*, assistant attorney general and *James E. Doyle*, attorney general.

For the respondent-respondent there was a brief and oral argument by *Richard D. Martin*, state public defender.

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

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STATE OF WISCONSIN

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IN SUPREME COURT

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FILED

MAY 2, 1997

Marilyn L. Graves
Clerk of Supreme Court
Madison, WI

APPEAL from an order of the Circuit Court for Dane County, Angela B. Bartell, Judge. *Order granting certification vacated and cause remanded to the Court of Appeals.*

¶1 PER CURIAM. The court is equally divided whether to affirm or reverse the order of the circuit court. Chief Justice Shirley S. Abrahamson, Justice William A. Bablitch and Justice Ann Walsh Bradley would affirm. Justice Jon P. Wilcox, Justice Janine P. Geske and Justice N. Patrick Crooks would reverse. Justice Donald W. Steinmetz did not participate.

¶2 When a certification or bypass results in a tie vote by this court, the better course of action is to vacate our decision to accept certification or bypass and remand the cause to the court of appeals. State v. Richard Knutson, Inc., 191 Wis. 2d 395, 396-97, 528 N.W.2d 430 (1995) (remanding to court

of appeals on a tie vote on certification); State v. Elam, 195 Wis. 2d 683, 684-85, 538 N.W.2d 249 (1995) (restating rule; declining to remand to court of appeals on a tie vote on bypass because court of appeals had previously decided issue).

¶3 Accordingly, we vacate our order granting certification and remand to the court of appeals.

