

## SUPREME COURT OF WISCONSIN

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CASE No.: 00-2599-CR

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## COMPLETE TITLE:

State of Wisconsin,  
Plaintiff-Respondent,  
v.  
Lucian Agnello,  
Defendant-Appellant.

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ON CERTIFICATION FROM THE COURT OF APPEALS

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OPINION FILED: May 22, 2003  
SUBMITTED ON BRIEFS:  
ORAL ARGUMENT: December 6, 2002

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## SOURCE OF APPEAL:

COURT: Circuit  
COUNTY: Milwaukee  
JUDGE: Elsa C. Lamelas

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## JUSTICES:

CONCURRED:  
DISSENTED:  
NOT PARTICIPATING: SYKES, J., did not participate.

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## ATTORNEYS:

For the defendant-appellant there were briefs by *Jerome F. Buting* and *Buting & Williams, S.C.*, Brookfield, and oral argument by *Jerome F. Buting*.

For the plaintiff-respondent the cause was argued by *Gregory M. Weber*, assistant attorney general, with whom on the brief was *James E. Doyle*, attorney general.

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NOTICE

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

No. 00-2599-CR  
(L.C. No. 96 CF 961035)

STATE OF WISCONSIN

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IN SUPREME COURT

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**State of Wisconsin,**

**Plaintiff-Respondent,**

**v.**

**Lucian Agnello,**

**Defendant-Appellant.**

**FILED**

MAY 22, 2003

Cornelia G. Clark  
Clerk of Supreme Court

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APPEAL from a judgment of the Circuit Court for Milwaukee County, Elsa C. Lamelas, Judge. *Order granting certification vacated and cause remanded to the Court of Appeals.*

¶1 PER CURIAM. The court is equally divided on whether to affirm or reverse the judgment of the circuit court for Milwaukee County. Justice William A. Bablitch, Justice Jon P. Wilcox, and Justice N. Patrick Crooks would affirm. Chief Justice Shirley S. Abrahamson, Justice Ann Walsh Bradley, and Justice David T. Prosser would reverse. Justice Diane S. Sykes 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. Watson, 209 Wis. 2d 281, 562 N.W.2d 151 (1997) (remanding to court of appeals on a tie vote on certification); State v. Richard Knutson, Inc., 191 Wis. 2d 395, 396-97, 528 N.W.2d 430 (1995).

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

*By the Court.*—The Order granting certification is vacated and the cause is remanded to the court of appeals.

