Wis. Stat. § 971.23 (2005)

971.23. Discovery and inspection.

(1) WHAT A DISTRICT ATTORNEY MUST DISCLOSE TO A DEFENDANT.

Upon demand, the district attorney shall, within a reasonable time before trial, disclose to the defendant or his or her attorney and permit the defendant or his or her attorney to inspect and copy or photograph all of the following materials and information, if it is within the possession, custody or control of the state:

(a) Any written or recorded statement concerning the alleged crime made by the defendant, including the testimony of the defendant in a secret proceeding under s. 968.26 or before a grand jury, and the names of witnesses to the defendants written statements.

(b) A written summary of all oral statements of the defendant which the district attorney plans to use in the course of the trial and the names of witnesses to the defendants oral statements.

(bm) Evidence obtained in the manner described under s. 968.31 (2) (b) , if the district attorney intends to use the evidence at trial.

(c) A copy of the defendants criminal record.

(d) A list of all witnesses and their addresses whom the district attorney intends to call at the trial. This paragraph does not apply to rebuttal witnesses or those called for impeachment only.

(e) Any relevant written or recorded statements of a witness named on a list under par. (d) , including any videotaped oral statement of a child under s. 908.08 , any reports or statements of experts made in connection with the case or, if an expert does not prepare a report or statement, a written summary of the experts findings or the subject matter of his or her testimony, and the results of any physical or mental examination, scientific test, experiment or comparison that the district attorney intends to offer in evidence at trial.

(f) The criminal record of a prosecution witness which is known to the district attorney.

(g) Any physical evidence that the district attorney intends to offer in evidence at the trial.

(h) Any exculpatory evidence.

(2m) WHAT A DEFENDANT MUST DISCLOSE TO THE DISTRICT ATTORNEY.

Upon demand, the defendant or his or her attorney shall, within a reasonable time before trial, disclose to the district attorney and permit the district attorney to inspect and copy or photograph all of the following materials and information, if it is within the possession, custody or control of the defendant:

(a) A list of all witnesses, other than the defendant, whom the defendant intends to call at trial, together with their addresses. This paragraph does not apply to rebuttal witnesses or those called for impeachment only.

(am) Any relevant written or recorded statements of a witness named on a list under par. (a) , including any reports or statements of experts made in connection with the case or, if an expert does not prepare a report or statement, a written summary of the experts findings or the subject matter of his or her testimony, and including the results of any physi-

cal or mental examination, scientific test, experiment or comparison that the defendant intends to offer in evidence at trial.

(b) The criminal record of a defense witness, other than the defendant, which is known to the defense attorney.

(c) Any physical evidence that the defendant intends to offer in evidence at the trial.

(3) COMMENT OR INSTRUCTION ON FAILURE TO CALL WITNESS.

No comment or instruction regarding the failure to call a witness at the trial shall be made or given if the sole basis for such comment or instruction is the fact the name of the witness appears upon a list furnished pursuant to this section.

(5) SCIENTIFIC TESTING.

On motion of a party subject to s. 971.31 (5), the court may order the production of any item of physical evidence which is intended to be introduced at the trial for scientific analysis under such terms and conditions as the court prescribes.

(6) PROTECTIVE ORDER.

Upon motion of a party, the court may at any time order that discovery, inspection or the listing of witnesses required under this section be denied, restricted or deferred, or make other appropriate orders. If the district attorney or defense counsel certifies that to list a witness may subject the witness or others to physical or economic harm or coercion, the court may order that the deposition of the witness be taken pursuant to s. 967.04 (2) to (6) The name of the witness need not be divulged prior to the taking of such deposition. If the witness becomes unavailable or changes his or her testimony, the deposition shall be admissible at trial as substantive evidence.

(6m) IN CAMERA PROCEEDINGS.

Either party may move for an in camera inspection by the court of any document required to be disclosed under sub. (1) or (2m) for the purpose of masking or deleting any material which is not relevant to the case being tried. The court shall mask or delete any irrelevant material.

(7) CONTINUING DUTY TO DISCLOSE.

If, subsequent to compliance with a requirement of this section, and prior to or during trial, a party discovers additional material or the names of additional witnesses requested which are subject to discovery, inspection or production under this section, the party shall promptly notify the other party of the existence of the additional material or names.

(7m) SANCTIONS FOR FAILURE TO COMPLY.

(a) The court shall exclude any witness not listed or evidence not presented for inspection or copying required by this section, unless good cause is shown for failure to comply. The court may in appropriate cases grant the opposing party a recess or a continuance.

(b) In addition to or in lieu of any sanction specified in par. (a), a court may, subject to sub. (3), advise the jury of any failure or refusal to disclose material or information required to be disclosed under sub. (1) or (2m), or of any untimely disclosure of material or information required to be disclosed under sub. (1) or (2m)

(8) NOTICE OF ALIBI.

(a) If the defendant intends to rely upon an alibi as a defense, the defendant shall give notice to the district attorney at the arraignment or at least 15 days before trial stating particularly the place where the defendant claims to have been when the crime is alleged to have been committed together with the names and addresses of witnesses to the alibi, if known. If at the close of the states case the defendant withdraws the alibi or if at the close of the defendants case the defendant does not call some or any of the alibi witnesses, the state shall not comment on the defendants withdrawal or on the failure to call some or any of the alibi witnesses. The state shall not call any alibi witnesses not called by the defendant for the purpose of impeaching the defendants credibility with regard to the alibi notice. Nothing in this section may prohibit the state from calling said alibi witnesses for any other purpose.

(b) In default of such notice, no evidence of the alibi shall be received unless the court, for cause, orders otherwise.

(c) The court may enlarge the time for filing a notice of alibi as provided in par. (a) for cause.

(d) Within 10 days after receipt of the notice of alibi, or such other time as the court orders, the district attorney shall furnish the defendant notice in writing of the names and addresses, if known, of any witnesses whom the state proposes to offer in rebuttal to discredit the defendants alibi. In default of such notice, no rebuttal evidence on the alibi issue shall be received unless the court, for cause, orders otherwise.

(e) A witness list required under par. (a) or (d) shall be provided in addition to a witness list required under sub. (1) (d) or (2m) (a) , and a witness disclosed on a list under sub. (1) (d) or (2m) (a) shall be included on a list under par. (a) or (d) if the witness is required to be disclosed under par. (a) or (d)

(9) DEOXYRIBONUCLEIC ACID EVIDENCE.

(a) In this subsection "deoxyribonucleic acid profile" has the meaning given in s. 939.74 (2d) (a)

(b) Notwithstanding sub. (1) (e) or (2m) (am) , if either party intends to submit deoxyribonucleic acid profile evidence at a trial to prove or disprove the identity of a person, the party seeking to introduce the evidence shall notify the other party of the intent to introduce the evidence in writing by mail at least 45 days before the date set for trial; and shall provide the other party, within 15 days of request, the material identified under sub. (1) (e) , or par. (2m) (am), whichever is appropriate, that relates to the evidence.

(c) The court shall exclude deoxyribonucleic acid profile evidence at trial, if the notice and production deadlines under par. (b) are not met, except the court may waive the 45 day notice requirement or may extend the 15 day production requirement upon stipulation of the parties, or for good cause, if the court finds that no party will be prejudiced by the waiver or extension. The court may in appropriate cases grant the opposing party a recess or continuance.

(10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT DEFENDANTS.

When the state public defender or a private attorney appointed under s. 977.08 requests photocopies of any item that is discoverable under this section, the state public defender shall pay any fee charged for the photocopies from the appropriation under s. 20.550 (1) (f) If the person providing photocopies under this section charges the state public defender a fee for the photocopies, the fee may not exceed the actual, necessary and direct cost of photocopying.

CASE NOTES

Inadequate preparation for trial that results in a district attorney's failure to disclose all scientific reports does not constitute good cause for the failure if the defense is misled, but this is subject to the harmless error rule. Wold v. State, 57 Wis. 2d 344, 204 N.W.2d 482 (1973).

When a prosecutor submitted a list of 97 witnesses he intended to call, the court should have required him to be more specific as to those he really intended to call. Irby v. State, 60 Wis. 2d 311, 210 N.W.2d 755 (1973).

When a party successfully moves to have material masked or deleted from a discovery document, the proper procedure to be pursued is to place it in a sealed envelope or container, if necessary, so that it may be preserved for appellate review. State v. Van Ark, 62 Wis. 2d 155, 215 N.W.2d 41 (1974).

Under both the provisions of this section and the constitutional duty of the state to disclose to a criminal defendant evidence that is exculpatory in nature, there is no requirement to provide exculpatory evidence that is not within the exclusive possession of the state and does not surprise or prejudice the defendant. State v. Calhoun, 67 Wis. 2d 204, 226 N.W.2d 504 (1975).

Although substantial evidence indicates that the state had subpoenaed its "rebuttal" witness at least 2 weeks before he was called to testify and deliberately held him back for "dramatic" effect, no objection or motion to suppress was made on the proper ground that the witness was not a bona fide rebuttal witness hence objection to the witness' testimony was waived. Caccitolo v. State, 69 Wis. 2d 102, 230 N.W.2d 139 (1975).

The prosecutor's duty to disclose does not ordinarily extend to discovery of criminal records from other jurisdictions. The prosecutor must make good faith efforts to obtain records from other jurisdictions specifically requested by the defense. Jones v. State, 69 Wis. 2d 337, 230 N.W.2d 677 (1975).

Police officers' "memo books" and reports were within the rule requiring production of witness statements, since the books and reports were written by the officers, the reports signed by them, and both officers testified as to the incident preceding defendant's arrest. State v. Groh, 69 Wis. 2d 481, 230 N.W.2d 745 (1975).

When the state calls a witness not included in its list of witnesses, the preferable procedure is not to strike the witness but to allow a defendant, who makes a timely showing of surprise and prejudice, a continuance sufficient to interview the witness. Kutchera v. State, 69 Wis. 2d 534, 230 N.W.2d 750 (1975).

The written summary, under sub. (1), of all oral statements made by the defendant that the state intends to introduce at trial is not limited to statements to the police. Incriminating statements made by the defendant to 2 witnesses were within the scope of the disclosure statute. Kutchera v. State, 69 Wis. 2d 534, 230 N.W.2d 750 (1975).

All statements, whether possessed by direct-examining counsel or cross-examining counsel, must be produced; mere notes need not be produced. State v. Lenarchick, 74 Wis. 2d 425, 247 N.W.2d 80 (1976).

When the defendant relied solely on an alibi defense and on the day of trial the complaining witness changed her mind as to the date of the occurrence, a request for a continuance based on surprise was properly denied because the defendant failed to show prejudice from the unexpected testimony. Angus v. State, 76 Wis. 2d 191, 251 N.W.2d 28 (1977).

A generalized inspection of prosecution files by defense counsel prior to a preliminary hearing is so inherently harmful to the orderly administration of justice that the trial court may not confer such a right. Matter of State ex rel. Lynch v. County Ct. 82 Wis. 2d 454, 262 N.W.2d 773 (1978).

Under sub. (8) (d), the state must provide the names of all people who will testify at any time during the trial that the defendant was at the scene of the crime. Tucker v. State, 84 Wis. 2d 630, 267 N.W.2d 630 (1978).

The trial court erred in ordering the defense to turn over "transcripts" of interviews between defense counsel, the defendant, and alibi witnesses, when oral statements were not recorded verbatim. Pohl v. State, 96 Wis. 2d 290, 291 N.W.2d 554 (1980).

The prosecutor's repeated failure to disclose prior statements of witnesses was not prosecutorial overreaching that would bar reprosecution after the defendant moved for a mistrial. State v. Copening, 100 Wis. 2d 700, 303 N.W.2d 821 (1981).

Under the facts of the case, the victim's medical records were not reports required to be disclosed under sub. (5). State v. Moriarty, 107 Wis. 2d 622, 321 N.W.2d 324 (Ct. App. 1982).

When the defendant was not relying on an alibi defense and did not file a notice of alibi, the court did not abuse its discretion in barring alibi testimony. State v. Burroughs, 117 Wis. 2d 293, 344 N.W.2d 149 (1984).

There are 3 different situations of prosecutorial nondisclosure, each with a different standard: 1) when the undisclosed evidence shows the prosecutor's case included perjury; 2) when the defense made a pretrial request for specific evidence; and 3) when the defense made no request or a general request for exculpatory evidence. State v. Ruiz, 118 Wis. 2d 177, 347 N.W.2d 352 (1984).

A defendant charged as a "party to a crime" for conspiratorial planning of a robbery was not required to give an alibi notice regarding testimony concerning the defendant's whereabouts during planning sessions, as an alibi is a denial of being present at the scene of the crime when it was committed. State v. Horenberger, 119 Wis. 2d 237, 349 N.W.2d 692 (1984).

When blood alcohol content is tested under statutory procedures, results of the test are mandatorily admissible. The physical sample tested is not evidence intended, required, or even susceptible of being produced by the state under ss. 971.23 (4) and (5). State v. Ehlen, 119 Wis. 2d 451, 351 N.W.2d 503 (1984).

When the state impounded a vehicle but released it to a scrap dealer before the defendant's expert could examine it, the charge was properly dismissed for destruction of exculpatory evidence. State v. Hahn, 132 Wis. 2d 351, 392 N.W.2d 464 (Ct. App. 1986).

Sub. (7) requires determination by the trial court of whether noncompliance was for good cause. If it was not, exclusion is mandatory; if it was, sanction is discretionary. State v. Wild, 146 Wis. 2d 18, 429 N.W.2d 105 (Ct. App. 1988).

Criminal defendants are not required to comply with the rules of criminal procedure to obtain a record available under the open records law. State ex rel. Young v. Shaw, 165 Wis. 2d 276, 477 N.W.2d 340 (Ct. App. 1991).

When the state inferred that a complainant sought psychological treatment as the result of a sexual assault by the defendant but did not offer the psychological records or opinions of the therapist as evidence, it was not improper to deny the defendant access to the records when the court determined that the records contained nothing that was material to the fairness of the trial. State v. Mainiero, 189 Wis. 2d 80, 525 N.W.2d 304 (Ct. App. 1994).

Although of public record, it is an intolerable burden on a defendant to be required to continually comb criminal records to determine if any of the state's witnesses are subject to criminal penalty. The burden is on the state to provide this information, particularly in light of a discovery request for the criminal records of the state's witnesses. State v. Randall, 197 Wis. 2d 29, 539 N.W.2d 708 (Ct. App. 1995).

Sub. (2m) requires disclosure of relevant substantive information that a defense expert is expected to present at trial whether as to findings, test results, or a description of proposed testimony. The privilege against self-incrimination and the right to present a defense are not violated by the requirement. State v. Revels, 221 Wis. 2d 315, 585 N.W.2d 602 (Ct. App. 1998).

This section does not provide for postconviction discovery, but a defendant has a right to postconviction discovery when the sought after evidence is relevant to an issue of consequence. State v. O'Brien, 223 Wis. 2d 303, 588 N.W.2d 8 (1999).

The state's failure to disclose that it took samples but failed to have them analyzed affected the defendant's right to a fair trial, because it prevented the defendant from raising the issue of the reliability of the investigation and from challenging the credibility of a witness who testified that the test had not been performed. State v. DelReal, 225 Wis. 2d 565, 593 N.W.2d 461 (Ct. App.1999).

When an indigent defendant requests the state to furnish a free transcript of a separate trial of a codefendant, the defendant must show that the transcript will be valuable to him or her. State v. Oswald, 2000 WI App 3, 232 Wis. 2d 103, 606 N.W.2d 238.

Sub. (2m) (am) requires that any statement made by a witness named in a list under par. (a) must be disclosed. Once a party is included on the list of witnesses under par. (a), statements by the witness must be disclosed. State v. Gribble, 2001 WI App 227, 248 Wis. 2d 409, 636 N.W.2d 488.

"Plans to use" in sub. (1) (b) embodies an objective standard--what a reasonable prosecutor should have known and would have done under the circumstances of the case. The issue is whether a reasonable prosecutor, exercising due diligence, should have known of the defendant's statements before trial, and if so, would have planned to use them in the course of trial. The knowledge of law enforcement officers may in some cases be imputed to the prosecutor. Good faith alone does not constitute good cause for failing to disclose under sub. (7m). State v. DeLao, 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480.

A prosecutor has no duty to list a rebuttal witness if it is anticipated before trial that the witness will be called. The defense takes its chances when offering a theory of defense and the state can keep knowledge of its legitimate rebuttal witnesses from the defendant without violating sub. (1) (d). State v. Konkol, 2002 WI App 174, 256 Wis. 2d 725, 649 N.W.2d 300, 01-2126.

A witness's probationary status was relevant and should have been disclosed by the prosecution under sub. (7). That the defendant disclosed to the jury that the witness had been convicted of a crime did not obviate the requirement that the status be disclosed. A witness's probationary status is relevant because it and the fear of possible revocation are pertinent to the material issue of whether the witness has ulterior motives to shape his or her testimony. State v. White, 2004 WI App 78, 271 Wis. 2d 742, 680 N.W.2d 362, 03-1132.

Due process does not require the disclosure of material exculpatory impeachment information before a defendant enters into a plea bargain. However, a defendant making a statutory discovery demand may be entitled to material exculpatory impeachment evidence before entering into a plea bargain if the plea bargain is entered into within the time frame when the prosecutor would have been statutorily required to disclose the information. A defendant may withdraw a guilty plea on nonconstitutional grounds after demonstrating that withdrawal is necessary to avoid a manifest injustice. State v. Harris, 2004 WI 64, 272 Wis. 2d 80, 680 N.W.2d 737, 02-2433.

The state unconstitutionally excluded the defendant's alibi testimony for failure to comply with this section, but the error was harmless. Alicea v. Gagnon, 675 F.2d 913 (1982).

Comparison of federal discovery and the ABA standards with the Wisconsin statute. 1971 WLR 614.

HISTORY: 1973 c. 196; 1975 c. 378, 421; 1989 a. 121; 1991 a. 223; 1993 a. 16, 486; 1995 a. 27, 387; 2001 a. 16.

CASE NOTES

1. Nothing in the open records law requires a criminal defendant to comply with the rules of criminal procedure to obtain a record as to which the defendant has a right of access under Wis. Stat. § 19.35(1)(a); the right under the open records law is entirely different from the limited right under Wis. Stat. § 971.23(1). The open records law, Wis. Stat. § 19.35(4)(a), requires that a request be filled or denied as soon as practicable and without delay and right of access extends to an entire accident report, regardless of its contents, while Wis. Stat. § 971.23(1) is far more limited and permits a defendant within a reasonable time before trial to inspect and copy or photograph any written or recorded statement made by the defendant concerning the alleged crime made by the defendant. State ex rel. Young v. Shaw, 165 Wis. 2d 276, 477 N.W.2d 340, (Wis. Ct. App. 1991).

2. Where the State did not subpoena uncooperative witnesses and require them to testify under oath at a John Doe hearing or take other action to obtain the information it believed was in the witnesses' statements, it did not make the showing of good cause necessary to overcome the work product privilege protecting an attorney's investigative files, and the trial court abused its discretion in finding the attorney in contempt. Raymond v. Circuit Court (In re Finding of Contempt), 120 Wis. 2d 670, 353 N.W.2d 842, (Wis. Ct. App. 1984).

3. Trial court's order, filed pursuant to defense counsel's discovery demand under Wis. Stat. § 971.23, required the State to provide the defense with the names of all its witnesses "within a reasonable time;" because this time period was uncertain, and given the informal manner in which counsel generally exchanged witness lists, defense counsel had no notice that, instead of rushing to obtain an expert witness and being prepared for trial the next day, counsel was required to object to the lateness of the State's witness list to avoid sanctions, and thus it was improper for the trial court to have assessed the costs of impaneling the jury against counsel. State v. Murphy (In re O'Neil), 266 Wis. 2d 155, 667 N.W.2d 774, 2003 WI App 149, (2003).

4. In an action to terminate mother's parental rights a new trial was necessary, under Wis. Stat. § 752.35, where the trial court erroneously relied on the view that the criminal discovery rules of Wis. Stat. § 971.23 governed the proceedings, rather than the civil rules for discovery set forth in Wis. Stat. § 804.01(2)(d), and improperly prohibited the mother's expert from testifying. Pierce County v. Billie Jo S. (In re Evan M.S.), 223 Wis. 2d 803, 589 N.W.2d 457, (Wis. Ct. App. 1998).

5. In an action to terminate mother's parental rights a new trial was necessary, under Wis. Stat. § 752.35, where the trial court erroneously relied on the view that the criminal discovery rules of Wis. Stat. § 971.23 governed the proceedings, rather than the civil rules for discovery set forth in Wis. Stat. § 804.01(2)(d), and improperly prohibited the mother's expert from testifying. Pierce County v. Billie Jo S. (In re Evan M.S.), 223 Wis. 2d 803, 589 N.W.2d 457, (Wis. Ct. App. 1998).

6. After defendant lost an appeal of his criminal conviction, he had no right under former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23) to compel the district attorney by a writ of mandamus to provide him with the pretrial statements of witnesses who testified at his trial; former § 971.24 provided for pretrial discovery in criminal cases and did not provide

for post-trial or post-appeal discovery; in addition, mandamus was not an appropriate remedy for enforcing discovery requests made under former § 971.24. Cayo v. Cusick, 125 Wis. 2d 569, 371 N.W.2d 430, (Wis. Ct. App. 1985).

7. Trial court did not err in refusing to sanction the State, pursuant to Wis. Stat. § 971.23(7m), for a discovery violation where the State failed to disclose the name of its substitute witness until the day of defendant's second trial; the trial court found that the State had good cause for not providing the name because the State did not know which person the laboratory was going to send to testify, and because the State notified the defense that someone from the laboratory other than the original witness was going to testify, and because the testimony offered was substantially the same as the trial testimony of the original witness, the trial court properly determined that exclusion was not necessary. State v. Barber, 264 Wis. 2d 892, 664 N.W.2d 126, 2003 WI App 111 (2003), review denied by 2003 WI 91, 262 Wis. 2d 501, 665 N.W.2d 375, (2003).

8. Requiring a defendant charged with causing death by the intoxicated use of a vehicle to provide the prosecutor with a summary of his expert witness's findings and the subject matter of the witness's testimony pursuant to Wis. Stat. § 971.23(2m)(am) did not violate the defendant's due process rights because because § 971.23(2m), was a procedural rather than a substantive statute, and was not subject to a void-for-vagueness challenge, and the existence of remedial sanctions or the fact that the expert witness's statements or reports may be based on information the defendant himself provided did not effectively change § 971.23 from a procedural into a penal statute which could be challenged for vagueness. State v. Revels, 221 Wis. 2d 315, 585 N.W.2d 602, (Wis. Ct. App. 1998), review denied by 221 Wis. 2d 655, 588 N.W.2d 633, (Wis. 1998).

9. Requiring a defendant charged with causing death by the intoxicated use of a vehicle to provide the prosecutor with a summary of his expert witness's findings and the subject matter of the witness's testimony pursuant to Wis. Stat. § 971.23(2m)(am) did not violate the defendant's Fifth Amendment right to to incriminate himself because the statute did no more than "accelerate" the disclosure of information prepared by an expert witness whom the defendant intended to have testify at trial. State v. Revels, 221 Wis. 2d 315, 585 N.W.2d 602, (Wis. Ct. App. 1998), review denied by 221 Wis. 2d 655, 588 N.W.2d 633, (Wis. 1998).

10. Although admitting the statement of the deceased accomplice that implicated defendant in the commission of the armed robbery for which he was convicted violated defendant's confrontation rights because he did not have an opportunity to confront or cross-examine the accomplice as to that statement, defendant was not entitled to relief as the statement's admission was not prejudicial because the jury was carefully instructed to consider the accomplice's credibility in weighing the statement and because the statement was consistent with other evidence that was validly admitted. State v. Foster, 160 Wis. 2d 482, 466 N.W.2d 910, (Wis. Ct. App. 1991).

11. Wis. Stat. § 971.23(7m) does not violate the equal protection clause; the government has a legitimate interest in the prosecution of criminal charges, consistent with the constitutional rights afforded a criminal defendant. Allowing the State the opportunity to dismiss and refile charges when evidence has been excluded under § 971.23(7m) but might not be excluded in a new action furthers that interest in a rational way, even though the defendant does not have the same option. The defendant, like the State, has the protections in § 971.23(7m) against untimely disclosures; and the defendant has the constitutional protections of due process, speedy trial, and double jeopardy prohibition to circumscribe the State's use of its authority to decide when to file charges, when to dismiss, and when to refile. State v. Miller, 274 Wis. 2d 471, 683 N.W.2d 485, (2004), review denied by 2004 WI 123, 275 Wis. 2d 296, 687 N.W.2d 523, (2004).

12. Court, in defendant's drug case, did not err by denying postconviction relief where defendant was not prejudiced by a statement that he was unemployed where the State did not disclose the statement because defendant was carrying a large amount of cash and defendant offered his own explanation for the presence of the cash. State v. Pettis, 266 Wis. 2d 693, 667 N.W.2d 377, 2003 WI App 162, (2003), review dismissed by 2003 WI 126, 265 Wis. 2d 420, 668 N.W.2d 560 (2003).

13. During defendant's trial on a charge of intentional sale of heroin, the trial court was not required to order the production of physical evidence intended to be introduced at trial for scientific analysis by defendant nor was it required to order the production of reports or results of any scientific tests pursuant to Wis. Stat. § 971.23(5) because defendant made no motion for the trial court's action in that respect and because defendant was tried before the effective date of Wis. Stat. § 971.23. State v. Stewart, 56 Wis. 2d 278, 201 N.W.2d 754, (Wis. 1972).

14. In a drug case, where defendant knew that the court overruled his witness list objection on the basis of the counting rule, he could have objected again, informing the court of the specific basis for his objection, arguing that he was being precluded from impeaching witnesses with other acts evidence; he did not, and therefore, he waived the issue on appeal. State v. Northern, 268 Wis. 2d 844, 673 N.W.2d 411, (2003), review denied by 2004 WI 50, 271 Wis. 2d 110, 679 N.W.2d 545, (2004).

15. In a drug case, defendant waived his right to appeal the objection to the timeliness of the State's disclosure where he was given the opportunity to adjourn the trial so he could have time to review the details of a plea agreement and potential testimony; he decided rather to proceed to trial, untimeliness notwithstanding, making himself responsible for the timeline. State v. Northern, 268 Wis. 2d 844, 673 N.W.2d 411, 2004 WI App 1, (2003), review denied by 2004 WI 50, 271 Wis. 2d 110, 679 N.W.2d 545, (2004).

16. Trial court's third basis for its ineffective assistance of counsel finding was counsel's failure to give notice of an alibi under Wis. Stat. § 971.23(8); credibility was the crux of defendant's case and excluding a witness's testimony was critical to defendant's defense that she could not have been at the battery scene when the battery was committed as it would have presented an unbiased witness who the jury could reasonably conclude supported defendant's testimony. State v. Schultz, 215 Wis. 2d 323, 215 Wis. 2d 324, 572 N.W.2d 902, (Wis. Ct. App. 1997).

17. In an action in which two brothers were convicted of abducting a 14-year-old boy for immoral purposes where the State sought to introduce "other act" evidence, it was determined that actual notice before using "other act" evidence was not required, absent a request by defense counsel, prior to trial, for disclosure of all the State's witnesses under Wis. Stat. § 971.23, State v. Banks, 91 Wis. 2d 851, 284 N.W.2d 122, (Wis. Ct. App. 1979).

18. In an armed robbery case, a counsel was not ineffective for failing to give the State notice of the intent to call an alibi witness where the witness did not know where defendant was on the day of the crime; therefore, she could only have testified that he left a residence the evening before the robbery and that she did not see him again until a day or two later. State v. Britton, 213 Wis. 2d 122, 570 N.W.2d 252, (Wis. Ct. App. 1997), review denied by 215 Wis. 2d 424, 576 N.W.2d 280, (Wis. 1997).

19. Defendant was properly convicted of robbery; his alibi testimony was rightly disallowed because he did not file a notice of alibi, and his attorney's misinterpretation of Wis. Stat. § 971.23 did not constitute such "good cause" as to compel the trial court to excuse noncompliance with it. State v. Alicea, 97 Wis. 2d 759, 295 N.W.2d 835, (Wis. Ct. App. 1980).

20. In a prosecution for attempted first degree intentional homicide by use of a dangerous weapon in violation of Wis. Stat. § § 939.32(1)(a), 939.63, and 940.01(1), arising out of a defendant's allegedly slamming a car into a tree and injuring the passenger, where a prosecutor intended to have a police officer, who was a level two accident investigator, provide expert opinion testimony in addition to the personal observances set forth in the police report, the prosecutor was required pursuant to Wis. Stat. § 971.23 to inform the defendant that the officer was being called as an expert, but the defendant suffered no prejudice as a result in light of the remaining strong evidence of the defendant's guilt and where the officer's testimony was contradicted by an independent eyewitness to the incident. State v. Bledsoe, 248 Wis. 2d 981, 638 N.W.2d 393, 2001 WI App 280, (2001), review denied by 2002 WI 23, 250 Wis. 2d 556, 643 N.W.2d 93, (2002).

21. Statute which prohibited the publication of the identity of a victim of an assault, was not invalid as vague, indefinite, and uncertain where the words "publish the identity of a female" meant the name of the female should not be published. State v. Evjue, 253 Wis. 146, 33 N.W.2d 305, , 13 A.L.R.2d 1201 (Wis. 1948).

22. Former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23(1)(e)), which gave a defendant the right to written or phonographically recorded statements of witnesses that were to testify contained no requirement for discovery that the statements be made to authorities. State v. Stambaugh, 190 Wis. 2d 471, 528 N.W.2d 92, (Wis. Ct. App. 1994).

23. Where defendant was convicted of a Class A misdemeanor theft, in violation of Wis. Stat. § 943.20(1)(a), (3)(a), the facts alleged in the complaint demonstrated a single intent and design, or a single deceptive scheme, sufficient to satisfy the requirements of Wis. Stat. § 971.36(3)(a), which permitted the charging of more than one theft as a single crime; without knowing the specific dates and times of the claimed offenses, defendant could not have complied with the notice of alibi provisions of Wis. Stat. § 971.23(8). State v. Ridener, 105 Wis. 2d 766, 318 N.W.2d 24, (Wis. Ct. App. 1981).

24. In a sexual assault case, defendant's due process rights were not violated for the State's alleged failure to turn over evidence of defendant's blood draw where it was not material to his guilt or innocence. Defendant never disputed that he was with the victim when she claimed that he assaulted her, and his DNA was on her body. State v. Winston, 276 Wis. 2d 864, 688 N.W.2d 784, 2004 WI App 205, (2004), review denied by 2005 WI 21, 278 Wis. 2d 537, 693 N.W.2d 76, (2005).

25. Discovery statutes did not negate the privileged character of medical and psychological records of a mother and victims in a prosecution for sexual intercourse with a person under the age of 16; defendant's Sixth and Fourteenth Amendments' rights were not abridged by the trial court's procedure in addressing his disclosure motion by conducting an in camera proceeding. State v. Slaback, 170 Wis. 2d 342, 492 N.W.2d 187, (Wis. Ct. App. 1992).

26. State did not dispute defendant's allegation that it failed to produce the Intoxilyzer records, rather, the State asserted the failure to do so did not result in "trial by ambush," and therefore the records were properly admitted; however, the Intoxilyzer records should not have been allowed into evidence without a showing of "good cause" by the State, pursuant to Wis. Stat. § 971.23(7m), and because the trial court erroneously exercised its discretion when it failed to provide a reasonable basis for allowing admission of the records, defendant was entitled to a new trial on the charge of operating a motor vehicle while intoxicated. State v. Vanstraten, 271 Wis. 2d 820, 677 N.W.2d 733, 2004 WI App 68, (2004).

27. Defendant charged with operating a motor vehicle with a prohibited alcohol concentration did not have the right to inspect and test the breath testing device because she waited three months after the offense to make her motion and the 10-day limit for such a motion under Wis. Stat. § 345.421 was more specific and controlled. State v. Berger, 241 Wis. 2d 572, 624 N.W.2d 421, 2001 WI App 58, (2001), review denied by 2001 WI 43, 242 Wis. 2d 547, 629 N.W.2d 786, (2001).

28. Although the state violated Wis. Stat. § 971.23(4) when it failed to provide defendant with a copy of an Intoxilyzer certification report within a reasonable time before trial, even without the certification, there was evidence that the Intoxilyzer was operating correctly, and this, coupled with the testimony of the arresting officer, was sufficient to convict defendant of operating an automobile while intoxicated in violation of Wis. Stat. § 346.63 beyond a reasonable doubt. State v. Dukerschein, 173 Wis. 2d 307, (Wis. Ct. App. 1992).

29. Where there was no evidence that defendant ever specifically requested the ampoule used in his breath test, as required by Wis. Stat. § 971.23(5), the State was not obligated to provide it and the tests results were admissible. State v. Maki, 108 Wis. 2d 776, 324 N.W.2d 298, (Wis. Ct. App. 1982).

30. Where a juvenile's notice of alibi was not given 15 days prior to trial as required by Wis. Stat. § 971.23(8)(a), but the trial court had not established a timetable for notice of alibi, and did not consider whether cause existed to admit the alibi, as permitted under the statute, the exclusion of the alibi testimony was reversible error. J.C.I. v. State (In re J.C.I.), 124 Wis. 2d 775, 370 N.W.2d 293, (Wis. Ct. App. 1985).

31. Where, prior to a waiver hearing, a juvenile presented a discovery demand to the district attorney, and, after the State failed to comply with the demand, the juvenile's motion to compel discovery was properly denied, because the plain wording of Wis. Stat. § 48.293 provided no access to peace officer reports or broad discovery of the type envisioned under the criminal discovery statutes, Wis. Stat. § 971.23 and former Wis. Stat. § 971.25 (now Wis. Stat. § 971.23(1)(f), (2m)(b)), prior to a waiver hearing. However, information contained in peace officer reports had to be made available to a juvenile prior to a plea hearing if there was no petition for waiver on file or, if a waiver petition was on file, only if jurisdiction was retained following a waiver hearing. In Interest of J., 110 Wis. 2d 7, 327 N.W.2d 198, (Wis. Ct. App. 1982).

32. Where, prior to a waiver hearing, a juvenile presented a discovery demand to the district attorney, and, after the State failed to comply with the demand, the juvenile's motion to compel discovery was properly denied, because the plain wording of Wis. Stat. § 48.293 provided no access to peace officer reports or broad discovery of the type envisioned under the criminal discovery statutes, Wis. Stat. § 971.23 and former Wis. Stat. § 971.25 (now Wis. Stat. § 971.23(1)(f), (2m)(b)), prior to a waiver hearing. However, information contained in peace officer reports had to be made available to a juvenile prior to a plea hearing if there was no petition for waiver on file or, if a waiver petition was on file, only if jurisdiction was retained following a waiver hearing. In Interest of J., 110 Wis. 2d 7, 327 N.W.2d 198, (Wis. Ct. App. 1982).

33. Disclosure requirement was met under Wis. Stat. § 971.23(1) regarding a tape recording of defendant's confession to the police by informing defense counsel of the tape before trial and making it available to the defense; actual physical presentation of the tape to the defense was not required. State v. Olson, 152 Wis. 2d 773, 450 N.W.2d 255, (Wis. Ct. App. 1989).

34. Defendant was entitled to a new trial on criminal charges where he was denied the due process right to impeach prosecution witnesses with prior inconsistent statements given by them at a secret John Doe hearing. Myers v. State, 60 Wis. 2d 248, 208 N.W.2d 311, (Wis. 1973).

35. Defendant was entitled to a new trial on criminal charges where he was denied the due process right to impeach prosecution witnesses with prior inconsistent statements given by them at a secret John Doe hearing. Myers v. State, 60 Wis. 2d 248, 208 N.W.2d 311, (Wis. 1973).

36. Defendant's conviction for armed robbery, false imprisonment, and burglary was affirmed because the complaint charged defendant with all the offenses as a party to the crime, which was sufficient to apprise him of the nature and cause of the accusations pursuant to U.S. Const. amend. VI and Wis. Const. art. I, § 7; moreover, defendant was not denied due process of law and his constitutional right to present testimony in support of an alibi defense where he failed to file a notice of alibi as required by Wis. Stat. § 971.23(8) but rather sought to introduce the testimony on the eighth and last day of his trial. State v. Horenberger, 114 Wis. 2d 598, 338 N.W.2d 530, (Wis. Ct. App. 1983), affirmed by 119 Wis. 2d 237, 349 N.W.2d 692, (Wis. 1984).

37. Trial court did not err in refusing to sanction the State, pursuant to Wis. Stat. § 971.23(7m), for a discovery violation where the State failed to disclose the name of its substitute witness until the day of defendant's second trial; the trial court found that the State had good cause for not providing the name because the State did not know which person the laboratory was going to send to testify, and because the State notified the defense that someone from the laboratory other than the original witness was going to testify, and because the testimony offered was substantially the same as the trial testimony of the original witness, the trial court properly determined that exclusion was not necessary. State v. Barber, 264 Wis. 2d 892, 664 N.W.2d 126, 2003 WI App 111, (2003), review denied by 2003 WI 91, 262 Wis. 2d 501, 665 N.W.2d 375, (2003).

38. In a trial for disorderly conduct and party to a crime, the State was obligated under former Wis. Stat. § 971.24(1) (now Wis. Stat. § 971.23) to give defendant a copy of a report where the report contained written statements of a witness testifying on behalf of the State. State v. Runkel, 192 Wis. 2d 766, 532 N.W.2d 470, (Wis. Ct. App. 1995).

39. Either party may move for an in camera inspection by the court of documents for the purpose of masking or deleting any material which is not relevant to the case being tried. State v. Lenarchick, 74 Wis. 2d 425, 247 N.W.2d 80, , 99 A.L.R.3d 906 (Wis. 1976).

40. In a sexual assault case, defendant's due process rights were not violated for the State's alleged failure to turn over evidence of defendant's blood draw where it was not material to his guilt or innocence. Defendant never disputed that he was with the victim when she claimed that he assaulted her, and his DNA was on her body. State v. Winston, 276 Wis. 2d 864, 688 N.W.2d 784, 2004 WI App 205, (2004), review denied by 2005 WI 21, 278 Wis. 2d 537, 693 N.W.2d 76, (2005).

41. Determination that defendant was permitted to withdraw his guilty plea to a charge of first-degree sexual assault of a child was proper where the State failed to disclose impeachment evidence that cast doubt on the primary witness's credibility. In order for evidence to be disclosed "within a reasonable time before trial" for purposes of Wis. Stat. § 971.23, it must be disclosed within a sufficient time for its effective use; were it otherwise, the State could withhold all Brady evidence until the day of trial in the hope that the defendant would plead guilty under the false assumption that no such evidence existed. State v. Harris, 2004 WI 64, 272 Wis. 2d 80, 680 N.W.2d 737, (2004).

42. Evidence that a complainant had difficulty locating the house where she claimed defendant, her therapist, had sexually exploited her and that defendant's neighbors did not recall seeing the complainant at the house should have been disclosed to the defense as "any exculpatory evidence" under Wis. Stat. § 971.23(1)(h). State v. Thiel, 2003 WI 111, 264 Wis. 2d 571, 665 N.W.2d 305, (2003).

43. In defendant's sexual assault case, a court properly allowed defendant to withdraw his guilty plea where defendant made a statutory demand for exculpatory evidence and the State's failure to disclose the potentially exculpatory evidence of an alleged sexual assault by the victim's grandfather was a violation of Wis. Stat. § 971.23(1)(h). State v. Harris, 266 Wis. 2d 200, 667 N.W.2d 813, 2003 WI App 144, (2003), affirmed by 2004 WI 64, 272 Wis. 2d 80, 680 N.W.2d 737, (2004).

44. Wis. Stat. § 971.23(1) specifies which evidence the prosecutor must disclose to the defendant, for example, the prosecutor must disclose statements of the defendant, § 971.23(1)(a), (b), evidence which the State intends to introduce at trial, § 971.23(1)(bm), (g), a list of witnesses and their relevant statements, § 971.23(1)(d), (e), and any exculpatory evidence, § 971.23(1)(h); however, the statute does not require the prosecutor to disclose every item that he or she possesses in connection with a case. State v. Morris, 264 Wis. 2d 892, 664 N.W.2d 126, 2003 WI App 111, (2003), review denied by 2003 WI 91, 262 Wis. 2d 501, 665 N.W.2d 375, (2003), review denied by 2003 WI 91, 262 Wis. 2d 501, 665 N.W.2d 376, (2003).

45. In prosecution of the defendant for criminal damage to property where the defendant sought alleged exculpatory evidence from a private individual rather than the State, the State was not under a duty under Wis. Stat. § 971.23 or the Brady rule to provide the evidence at trial. State v. Weishar, 251 Wis. 2d 481, 640 N.W.2d 565, 2002 WI App 56, (2002).

46. The trial court erroneously denied defendant's request, without a hearing, for an in camera inspection of confidential records that possibly contained reports of abusive treatment of inmates by a correctional officer, on the basis that defendant had not demonstrated an entitlement to discover exculpatory evidence; an evidentiary hearing was to be conducted to permit defendant to demonstrate that the records he sought were material to his defense; defendant was to also specify in greater detail the nature of the records he sought. State v. Navarro, 248 Wis. 2d 396, 636 N.W.2d 481, 2001 WI App 225, (2001).

47. Test for determining if evidence should have been disclosed is not did the prosecutor know of its existence but whether or not by the use of due diligence the prosecutor should have discovered it. State v. Delao, 246 Wis. 2d 304, 629 N.W.2d 825, 2001 WI App 132, (2001), affirmed in part and modified in part by 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480, (2002).

48. Prosecution is obligated to obtain all evidence in the possession of the State's investigative agencies. State v. Delao, 246 Wis. 2d 304, 629 N.W.2d 825, 2001 WI App 132, (2001), affirmed in part and modified in part by 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480, (2002).

49. Negligence or lack of bad faith does not amount to good cause as a matter of law for a failure by the State to produce evidence pursuant to a discovery demand of the defense made under Wis. Stat. § 971.23. State v. Delao, 246 Wis. 2d 304, 629 N.W.2d 825, 2001 WI App 132, (2001), affirmed in part and modified in part by 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480, (2002).

50. Where a police interview and investigation might have targeted principally defendant's boyfriend, but defendant was a suspect and gave statements against her interest to the police regarding the charges against her, the State did not have good cause for failure to produce those statements in response to a pretrial discovery request made by defendant. State v. Delao, 246 Wis. 2d 304, 629 N.W.2d 825, 2001 WI App 132 (2001), affirmed in part and modified in part by 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480, (2002).

51. Defendant's conviction was reversed where he proved that the State violated Wis. Stat. § 971.23(1)(h) by withholding exculpatory evidence, namely transcripts of police interviews. State v. Sturgeon, 231 Wis. 2d 487, 605 N.W.2d 589, (Wis. Ct. App. 1999), review or rehearing denied by 233 Wis. 2d 85, 609 N.W.2d 474, (Wis. 2000).

52. Where defendant was convicted of second-degree reckless endangering safety with a dangerous weapon, the fact that the truck damaged when defendant opened fire on it with a semi-automatic rifle was repaired before trial did not destroy exculpatory evidence that required suppression of inculpatory evidence stemming from the shooting; Wis. Stat. § 971.23(1) applies only to evidence in the possession, custody, or control of the State, and the prosecution did not pos-

sess or otherwise control the truck, nor did defendant make a threshold showing that the truck contained exculpatory evidence. State v. Tetzner, 221 Wis. 2d 598, 586 N.W.2d 699, (Wis. Ct. App. 1998), review denied by 221 Wis. 2d 656, 588 N.W.2d 633, (Wis. 1998).

53. Given that defendant made a demand for discovery from the prosecution, and that Wis. Stat. § 971.23(1), (7) imposes a continuing duty on the prosecution to disclose exculpatory evidence after the request was made, the State's failure to fully disclose the terms of a primary witness's plea agreement was not harmless error, a defendant's homicide conviction was vacated, and the case was remanded for a new trial. State v. Tkacz, 220 Wis. 2d 715, 583 N.W.2d 673, (Wis. Ct. App. 1998).

54. Where defendant was convicted of first-degree intentional homicide, the State's failure to inform defendant of an officers' proposed testimony until sometime after opening statements of defendant's trial did not violate Wis. Stat. § 971.23(1); until the prosecutor learned of the officers' meeting with defendant, and the substance of what occurred at that meeting, and the information was reduced to writing, no "written or recorded" statement existed that would be subject to § 971.23(1). State v. Maldonado, 218 Wis. 2d 164, 578 N.W.2d 208, (Wis. Ct. App. 1998), review denied by 219 Wis. 2d 922, 584 N.W.2d 123, (Wis. 1998).

55. Where, on the day a prosecution witness testified, the prosecution turned over to the defendant information that the witness would be testifying differently from the statement the prosecution had previously disclosed to the defendant, the delayed disclosure did not violate the defendant's right to discovery under Wis. Stat. § 971.23(1)(e) because the belatedly-disclosed statement was not favorable evidence material to either the defendant's guilt or punishment. State v. Basten, 217 Wis. 2d 290, 577 N.W.2d 387, (Wis. Ct. App. 1998), review denied by 217 Wis. 2d 521, 580 N.W.2d 690 (Wis. 1998), review denied sub nomine State v. Johnson, 217 Wis. 2d 521, 580 N.W.2d 690 (Wis. 1998), review denied sub nomine State v. Moore, 217 Wis. 2d 521, 580 N.W.2d 691 (Wis. 1998).

56. In defendant's trial for sexual contact with a person under the age of 16, the trial court properly declined to disclose to defendant the complainant's records of her psychiatric treatment, where the trial court conducted an in camera inspection of the psychiatric records and determined that there was nothing in the records that would be reasonable and necessary for defendant's case, and where the court independently reviewed the records and held that the trial court's factual findings were not clearly erroneous and that the records did not contain information that probably would have changed the outcome of the trial. State v. Mainiero, 189 Wis. 2d 80, 525 N.W.2d 304, (Wis. Ct. App. 1994), review denied by 531 N.W.2d 326 (Wis. 1995).

57. Defendant argued that the State's disclosure of a theft victim's briefcase was required by Wis. Stat. § 971.23, and disclosure of the briefcase on the date of defendant's trial on charges related to a theft was untimely; but the appellate court concluded that the State's belated disclosure of the information did not prejudice defendant in that the record showed that the trial court ordered the State to disclose the police report documenting the absence of prints and told defendant that he could argue the absence of prints on the briefcase or offer the evidence through a police officer, so that defendant was accorded full opportunity to utilize any beneficial aspects of the information. State v. Miller, 183 Wis. 2d 432, 516 N.W.2d 21, (Wis. Ct. App. 1994).

58. Wisconsin's discovery and inspection statute, Wis. Stat. § 971.23, requires that exculpatory and inculpatory evidence be made available to a defendant. State ex rel. Richards v. Foust, 165 Wis. 2d 429, 477 N.W.2d 608, 19 Media L. Rep. (BNA) 1762 (Wis. 1991), limited by Nichols v. Bennett, 190 Wis. 2d 360, 190 Wis. 2d 361, 526 N.W.2d 831, (Wis. Ct. App. 1994).

59. Where evidence in the exclusive possession of the state was not clearly favorable to the accused, it was not required to be turned over to defendant as a matter of due process. State v. Gallenberger, 150 Wis. 2d 318, 442 N.W.2d 605, (Wis. Ct. App. 1989).

60. Where a defendant failed to invoke his statutory right to discovery by making a demand as required by Wis. Stat. § 971.23(1) and where the undisclosed evidence was incriminating rather than exculpatory, the trial court did not err when it allowed police officers to testify about the defendant's incriminating statements even though the district attorney did not disclose the evidence until a few minutes before trial. State v. Patterson, 145 Wis. 2d 898, 428 N.W.2d 562, (Wis. Ct. App. 1988).

61. Under Wis. Stat. § § 971.23(1) and 971.23(7), the State was required to notify defendant's attorney that a State witness modified his expected testimony and at the trial of defendant's co-defendant provided information that inculpated defendant and was exculpatory to the co-defendant, where defendant's attorney filed a pre-trial motion with the trial court seeking a written summary of all oral statements that the State intended to use in the course of trial; where the co-defendant's trial took place before defendant's trial, and where the witness was expected to testify in both trials. State v. Ruiz, 113 Wis. 2d 273, 335 N.W.2d 892, (Wis. Ct. App. 1983), reversed by 118 Wis. 2d 177, 347 N.W.2d 352, (Wis. 1984).

62. In a prosecution for second-degree sexual assault, the trial court did not abuse its discretion when it refused defendant's request that the State provide a list of all witnesses to the crime because under Wis. Stat. § 971.23(3), the State could be required to present a list of witnesses it would call but not all witnesses to the offense unless they would provide exculpatory evidence. State v. Pocan, 113 Wis. 2d 727, 336 N.W.2d 708, (Wis. Ct. App. 1983).

63. While a witness's statement to police that defendant was drunk when he committed a murder was exculpatory evidence because intoxication was a defense to first-degree murder, and while the State erred in failing to produce the witness's statement until the day of trial, the error was harmless because it resulted in no prejudice to defendant and because the trial's result would not have been different if the evidence had been disclosed at an earlier time. State v. Lamboy, 105 Wis. 2d 763, 318 N.W.2d 22, (Wis. Ct. App. 1981).

64. Where defendant was never led to believe that a witness would be called at trial and defendant did not request disclosure of his identity, the State's failure to inform defendant of the witness's identity did not prejudice him or violate Wis. Stat. § 971.23. An eyewitness's identity, standing alone, is not exculpatory. Larry v. State, 92 Wis. 2d 909, 286 N.W.2d 646, (Wis. Ct. App. 1979).

65. It was not an error for an assistant district attorney to conclude that the duty to disclose regarding a demand made by the defense did not include under statutory or constitutional law the providing of exculpatory material that was not in the exclusive possession of the state. State v. Calhoun, 67 Wis. 2d 204, 226 N.W.2d 504, (Wis. 1975), questioned by State v. Copening, 100 Wis. 2d 700, 303 N.W.2d 821, (Wis. 1981).

66. State's duty to disclose under Brady v. Maryland, 373 U.S. 83 (1963), and Nelson v. State, 208 N.W.2d 410, is limited to evidence or testimony that is in the exclusive possession of the state. State v. Calhoun, 67 Wis. 2d 204, 226 N.W.2d 504, (Wis. 1975), questioned by State v. Copening, 100 Wis. 2d 700, 303 N.W.2d 821, (Wis. 1981).

67. Where defense counsel failed to make a request to the prosecution for exculpatory evidence before or during trial and failed to move before trial in accordance with Wis. Stat. § 971.23(1) for a list of witnesses that the prosecution intended to call at trial, defendant could not claim prosecutorial suppression of alleged exculpatory evidence. Dumer v. State, 64 Wis. 2d 590, 219 N.W.2d 592, (Wis. 1974).

68. Although Wis. Stat. § 971.23(1) requires the State to disclose evidence it intends to use against a defendant at trial, the statute does not require the State to gather specific evidence or execute specific tests at the scene of a crime; defendant failed to show prosecutorial misconduct entitling him to a reversal of his substantial battery conviction because the State was not required to go to the scene where the battery occurred to search for blood evidence that might prove helpful to him. State v. Sarauer, 276 Wis. 2d 308, 686 N.W.2d 455, 2004 WI App 167, (2004), review denied by 2005 WI 1, 277 Wis. 2d 151, 691 N.W.2d 353, (2004).

69. Determination that defendant was permitted to withdraw his guilty plea to a charge of first-degree sexual assault of a child was proper where the State failed to disclose impeachment evidence that cast doubt on the primary witness's credibility. In order for evidence to be disclosed "within a reasonable time before trial" for purposes of Wis. Stat. § 971.23, it must be disclosed within a sufficient time for its effective use; were it otherwise, the State could withhold all Brady evidence until the day of trial in the hope that the defendant would plead guilty under the false assumption that no such evidence existed. State v. Harris, 2004 WI 64, 272 Wis. 2d 80, 680 N.W.2d 737, (2004).

70. Defendant's conviction for armed robbery with threat of force and the denial of his postconviction petition were both improper where the State did not timely disclose that the victim was on probation at the time of the inmate's trial, Wis. Stat. § 971.23(1); the court could not state that the failure to apprise the jury that the victim had a motive to lie was not harmless beyond a reasonable doubt. State v. White, 271 Wis. 2d 742, 680 N.W.2d 362, 2004 WI App 78, (2004), review denied by 2004 WI 114, 273 Wis. 2d 656, 684 N.W.2d 137, (2004).

71. Court erred in admitting defendant's statements in the defendant's trial where State violated the discovery statute by failing to provide the statements until after the trial began when an investigator knew of the statements and his knowledge was imputed to State. State v. Delao, 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480, (2002).

72. In defendant's trial on 20 felony counts arising from a bank robbery and a shoot-out that resulted in the death of a police officer, the trial court properly declined to supply defendant with verbatim renditions of the testimony of witnesses in his accomplice's trial pursuant to former Wis. Stat. § 971.24(1), (now Wis. Stat. § 971.23(1)(e)), where defendant did not show prejudice or show how the transcripts would have helped his case. State v. Oswald, 232 Wis. 2d 103, 606 N.W.2d 238, 2000 WI App 3, (1999).

73. Wis. Stat. § 971.23(7) requires the prosecution to respond to defense discovery demands and imposes a continuing duty to disclose additional material subject to discovery, inspection or production; like matters relating to the admission or exclusion of evidence, matters of discovery, its enforcement and sanctions for violations, are committed to the trial court's discretion. State v. Pierce, 229 Wis. 2d 254, 599 N.W.2d 667, (Wis. Ct. App. 1999), review denied by 228 Wis. 2d 176, 602 N.W.2d 761, (Wis. 1999).

74. Wis. Stat. § 971.23(7) provides that a district attorney has a duty to provide documents to a defendant only up to and during trial. State v. Donaldson, 224 Wis. 2d 936, 592 N.W.2d 318, 137 (Wis. Ct. App. 1999), review denied by 225 Wis. 2d 489, 594 N.W.2d 383, (Wis. 1999).

75. Trial court did not abuse its discretion in denying defendant's motion under Wis. Stat. § 971.23(7m) for an adjournment or continuance because defendant was not prejudiced by the State's failure to provide to him certain non-exculpatory evidence as required by Wis. Stat. § 971.23(1) before the first day of trial. State v. Wilson, 221 Wis. 2d 596, 586 N.W.2d 698, (Wis. Ct. App. 1998), review denied by 221 Wis. 2d 654, 588 N.W.2d 632, (Wis. 1998).

76. Wis. Stat. § 971.23(1)(d) requires the district attorney to supply a defendant with a witness list that is sufficiently specific in regard to whom the State actually intends to call. State v. Raasch, 220 Wis. 2d 718, 583 N.W.2d 675, (Wis. Ct. App. 1998), review denied by 220 Wis. 2d 368, 585 N.W.2d 159 (Wis. 1998).

77. Even though the State did not comply with the requirements of Wis. Stat. § 971.23(1)(d) when it orally recited to the trial court and to the jury the names of witnesses it intended to call during defendant's trial on a charge of operating a motor vehicle while intoxicated (OWI), defendant's OWI conviction was affirmed because defendant failed to make a timely objection to the State's violation of § 971.23(1)(d) and because defendant was neither surprised nor prejudiced by the admission of the evidence. State v. Raasch, 220 Wis. 2d 718, 583 N.W.2d 675, (Wis. Ct. App. 1998), review denied by 220 Wis. 2d 368, 585 N.W.2d 159 (Wis. 1998).

78. Where defendant was convicted of first-degree intentional homicide, the State's failure to inform defendant of an officers' proposed testimony until sometime after opening statements of defendant's trial did not violate Wis. Stat. § 971.23(1); until the prosecutor learned of the officers' meeting with defendant, and the substance of what occurred at that meeting, and the information was reduced to writing, no "written or recorded" statement existed that would be subject to § 971.23(1). State v. Maldonado, 218 Wis. 2d 164, 578 N.W.2d 208, (Wis. Ct. App. 1998), review denied by 219 Wis. 2d 922, 584 N.W.2d 123, (Wis. 1998).

79. Defendant's attorney did not fail to provide effective assistance of counsel where she did not demand that the State provide a written summary of defendant's oral statement to her because she was unaware that the statement had been overheard by the State. State v. Foy, 206 Wis. 2d 629, 557 N.W.2d 494, (Wis. Ct. App. 1996).

80. Prosecution in a criminal case had a statutory duty to disclose to defendant a witness' criminal record for impeachment purposes where defense counsel made a request for that information. State v. Powell, 205 Wis. 2d 112, 555 N.W.2d 410 (Wis. Ct. App. 1996).

81. Where defendant made a single inculpatory statement in the presence of a police officer and a social worker, the State's failure to disclose during discovery that the officer would give testimony regarding the inculpatory statement did not violate Wis. Stat. § 971.23(1) because the State had given notice that the officer would testify, and that the inculpatory statement would be used. State v. Koopmans, 202 Wis. 2d 385, 202 Wis. 2d 386, 550 N.W.2d 715, (Wis. Ct. App. 1996), affirmed by 210 Wis. 2d 670, 563 N.W.2d 528, 59 A.L.R.5th 781 (Wis. 1997), overruled in part by State v. Greve, 2004 WI 69, 272 Wis. 2d 444, 681 N.W.2d 479, (2004).

82. Tape recording of a telephone conversation was properly admitted into evidence at defendant's drug trial even though the State failed to comply with the notice provisions of Wis. Stat. § 971.23; although the prosecutor failed to provide formal written notice of his intent to use the tape, defense counsel had actual notice of the prosecutor's intent and the tape was available for defendant's inspection. State v. Barnes-Shaw, 179 Wis. 2d 505, 508 N.W.2d 76, (Wis. Ct. App. 1993).

83. When the district attorney learned of inculpatory statements made by defendant, charged with first degree intentional homicide, two days prior to trial and immediately informed defense counsel, the sanction of exclusion of the evidence was improper. The district attorney did not violate Wis. Stat. § 971.23(1). State v. Maass, 178 Wis. 2d 63, 502 N.W.2d 913, (Wis. Ct. App. 1993), review denied by 508 N.W.2d 424, (Wis. 1993).

84. Where witness statements in an investigative report, which were not delivered to the district attorney's office in a timely fashion, contained only evidence inculpating defendant, so that the only prejudice shown was to the prosecution, the prosecutor's violation of former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23) was harmless error. L.D.F. v. State, 170 Wis. 2d 344, 492 N.W.2d 188, (Wis. Ct. App. 1992).

85. Where the defendant alleged that his trial counsel erred in failing to file discovery motions at his preliminary hearing, the court noted that discovery in criminal proceedings was governed by Wis. Stat. § 971.23; as the section was silent as to the timing of discovery motions, the defendant's counsel did not violate a legal rule by failing to file a discovery motion at the defendant's preliminary hearing. State v. Smith, 167 Wis. 2d 489, 482 N.W.2d 670, (Wis. Ct. App. 1992).

86. Contention of a defendant convicted of burglary, party to the crime, that the trial court erred by admitting testimony subject to the discovery rule that the prosecutor furnish the defendant with a summary of all defendant's oral statement he intended to use at trial, was without merit; noting that a showing of prejudice and surprise was necessary to permit reversal for nondiscovery under Wis. Stat. § 971.23(1), the court ruled that error occurred but that defendant was not prejudiced, inasmuch as an alleged comment in an inculpatory statement was but a minor detail in the context of the partner's overall inculpatory testimony and as defendant was not surprised because he had notified under the statute concerning a similar comment he made to another witness. State v. Reiter, 163 Wis. 2d 1093, 474 N.W.2d 529, (Wis. Ct. App. 1991).

87. Where the State's offer of proof sufficiently complied with Wis. Stat. § 971.23(1) by providing a summary of oral statements previously made by defendant which it planned to use in the course of his trial, a trial court properly denied his motion for a mistrial or postconviction motion for a new trial on the basis of defendant's statements. State v. Santiago, 148 Wis. 2d 947, 437 N.W.2d 235, (Wis. Ct. App. 1988).

88. Defendant's demands for specific names and addresses within the possession of the police department were not within the purview of Wis. Stat. § 971.23; it was defendant's obligation to seek out those records, not the obligation of the police to gather and provide him with the requested information. State v. Currier, 145 Wis. 2d 898, 428 N.W.2d 562, (Wis. Ct. App. 1988).

89. Where a defendant failed to invoke his statutory right to discovery by making a demand as required by Wis. Stat. § 971.23(1) and where the undisclosed evidence was incriminating rather than exculpatory, the trial court did not err when it allowed police officers to testify about the defendant's incriminating statements even though the district attorney did

not disclose the evidence until a few minutes before trial. State v. Patterson, 145 Wis. 2d 898, 428 N.W.2d 562, (Wis. Ct. App. 1988).

90. Prior to the adoption of the code of criminal procedure, Wisconsin rejected judicial adoption of a discovery rule in criminal cases, but now the procedure code grants limited discovery under Wis. Stat. Ann. § 971.23; evidence not properly disclosed prior to trial may be subject to exclusion absent good cause shown for failure to comply. State v. Jensen, 144 Wis. 2d 952, 425 N.W.2d 40, (Wis. Ct. App. 1988).

91. Defendant was not prejudiced by the State's failure to disclose the criminal record of a defense witness; the State was only required to disclose the criminal record of a prosecution witness known to the district attorney as provided under Wis. Stat. § 971.23(1). State v. Keefe, 143 Wis. 2d 901, 423 N.W.2d 882, (Wis. Ct. App. 1988).

92. State met its continuing duty under Wis. Stat. § 971.23(7) to disclose the existence of a second blood alcohol test to defendant, and defendant was not prejudiced by the admission of the test results, because the State disclosed it as soon as it was discovered over eight months before her trial; even if the State delayed in furnishing a list of of State's witnesses, the delay was not prejudicial because defendant received the State's list more than 11 months before her trial. State v. Keefe, 143 Wis. 2d 901, 423 N.W.2d 882, (Wis. Ct. App. 1988).

93. Term "upon demand" found in Wis. Stat. § 971.23(1) must be applied to the circumstances, but denotes reasonable dispatch. State v. Van Ert, 134 Wis. 2d 452, 397 N.W.2d 156, (Wis. Ct. App. 1986).

94. Although the State violated Wis. Stat. § 971.23(1) and Wis. Stat. § 971.23(8)(d) by not timely providing defendant written summaries of oral statements defendant made to police, such procedural defect did not prejudice defendant or affect his substantial rights under Wis. Stat. § 805.18 where defendant received such summaries two days late, but before his trial began. State v. Van Ert, 134 Wis. 2d 452, 397 N.W.2d 156, (Wis. Ct. App. 1986).

95. Where defendant had requested from the State written summaries of oral statements that he made to the police, delivery of the summaries substantially complied with Wis. Stat. § 971.23(1) because the "upon demand" requirement of Section 971.23(1) was satisfied by delivery of the statements within 12 days of the notice of alibi. The district attorney had a continuing duty to provide information to defendant under Section 971.23(7), but had received no demand for the written summaries until he had the notice of alibi and the consequent need to introduce the statements for rebuttal. State v. Van Ert, 134 Wis. 2d 452, 397 N.W.2d 156, (Wis. Ct. App. 1986).

96. Where defense counsel was misled in his preparation for trial because he was led to believe a blind person would testify for the State that defendant drove a car, and instead he was confronted with his client's self-incriminating statement on a police report, and defendant's statement on a necessary element of the offense was introduced without having been disclosed to defendant, the statement fell within Wis. Stat. § § 971.23(1), (7) because there was a failure to disclose and the use of the statement at trial without prior notice to defense counsel was error. State v. Ewing, 128 Wis. 2d 556, 381 N.W.2d 621, (Wis. Ct. App. 1985).

97. Where the disclosure statute, Wis. Stat. § 971.23(1), was violated, defendant's self-incriminating statement was introduced without having been disclosed to defendant, which evidence went to the heart of a necessary element of the offense, and a conviction resulted, under Wis. Stat. § 805.18, the error was prejudicial. State v. Ewing, 128 Wis. 2d 556, 381 N.W.2d 621, (Wis. Ct. App. 1985).

98. Although the state did not present its witness list in a timely fashion, as required by Wis. Stat. § 971.23, the trial court did not abuse its discretion because defendant was not prejudiced; the trial court allowed a continuance and some of the witnesses were not merely to rebut defendant's alibi witnesses. State v. Madison, 121 Wis. 2d 697, 359 N.W.2d 181, (Wis. Ct. App. 1984).

99. Defendant's conviction for operating a motor vehicle while under the influence of an intoxicant in violation of Wis. Stat. § 346.63 was affirmed because defendant failed to establish a violation of double jeopardy under U.S. Const. amend. V or Wis. Const. art. 1, § 8; the testimony regarding defendant's uttering of a racial epithet at the time of his arrest was relevant and could have been viewed as a link in a chain of facts that made intoxication more probable; and the admission of a traffic citation, which was not produced during pretrial discovery pursuant to Wis. Stat. § 971.23(4)

did not substantially affect defendant's right to a fair trial. State v. Turner, 115 Wis. 2d 697, 339 N.W.2d 367, (Wis. Ct. App. 1983).

100. In a prosecution for second-degree sexual assault, the trial court did not abuse its discretion when it refused defendant's request that the State provide a list of all witnesses to the crime because under Wis. Stat. § 971.23(3), the State could be required to present a list of witnesses it would call but not all witnesses to the offense unless they would provide exculpatory evidence. State v. Pocan, 113 Wis. 2d 727, 336 N.W.2d 708, (Wis. Ct. App. 1983).

101. Where, prior to a waiver hearing, a juvenile presented a discovery demand to the district attorney, and, after the State failed to comply with the demand, the juvenile's motion to compel discovery was properly denied, because the plain wording of Wis. Stat. § 48.293 provided no access to peace officer reports or broad discovery of the type envisioned under the criminal discovery statutes, Wis. Stat. § 971.23 and former Wis. Stat. § 971.25 (now Wis. Stat. § 971.23(1)(f), (2m)(b)), prior to a waiver hearing. However, information contained in peace officer reports had to be made available to a juvenile prior to a plea hearing if there was no petition for waiver on file or, if a waiver petition was on file, only if jurisdiction was retained following a waiver hearing. In Interest of J., 110 Wis. 2d 7, 327 N.W.2d 198, (Wis. Ct. App. 1982).

102. Where the parties' stipulation showed that the evidence sought to be admitted by the State through medical records was the equivalent of a statement of the victim's treating physician as to the nature and extent of the victim's injuries based upon the physician's personal observation, such testimony of the physician himself on rebuttal would not have been barred by the provisions of Wis. Stat. § 971.23, because the parties expressly waived any hearsay objection when they entered into the stipulation. State v. Moriarty, 107 Wis. 2d 622, 321 N.W.2d 324, (Wis. Ct. App. 1982).

103. In defendant's prosecution for homicide by intoxicated use of a motor vehicle in violation of Wis. Stat. § 940.09, the State had no duty to produce the breathalyzer ampoule use in defendant's breathalyzer examination where defendant merely filed a general discovery motion after arraignment pursuant to Wis. Stat. § 971.23, which contained no reference to the test ampoule; the discovery request did not put the State on notice that it was required to produce the ampoule, and no request for an extension of the time for discovery was filed. State v. Humphrey, 107 Wis. 2d 107, 318 N.W.2d 386, (Wis. 1982).

104. While a witness's statement to police that defendant was drunk when he committed a murder was exculpatory evidence because intoxication was a defense to first-degree murder, and while the State erred in failing to produce the witness's statement until the day of trial, the error was harmless because it resulted in no prejudice to defendant and because the trial's result would not have been different if the evidence had been disclosed at an earlier time. State v. Lamboy, 105 Wis. 2d 763, 318 N.W.2d 22, (Wis. Ct. App. 1981).

105. State's failure to provide a witness' statement prior to the witness testifying did not of itself constitute reversible error; where it was defense counsel that moved to admit the witness' notes into evidence and defense counsel made full use of the witness' statements, there was no prejudice to the defendant. State v. Kitzman, 105 Wis. 2d 758, 317 N.W.2d 510, (Wis. Ct. App. 1981).

106. Defendant was denied a fair trial by the trial court's refusal to grant a continuance based on the State's failure, as required by Wis. Stat. § 971.23(1), to disclose a summary of defendant's prior statements that impeached the testimony of defendant and his witnesses as to his alibi defense. State v. Anderson, 99 Wis. 2d 805, 300 N.W.2d 84, (Wis. Ct. App. 1980).

107. In defendant's prosecution for one count of aiding and abetting a burglary where defendant argued that rebuttal testimony describing his prior oral inconsistent exculpatory statements should have been excluded because the statements had not been disclosed by the district attorney in response to his demand pursuant to Wis. Stat. § 971.23(1), a judgment of conviction was appropriate because the district attorney could never have "planned" to use defendant's statements in rebuttal because the district attorney had absolutely no control over whether there would be rebuttal. State v. White, 98 Wis. 2d 746, 297 N.W.2d 514, (Wis. Ct. App. 1980).

108. Former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23), is clear in that it requires the prosecution to produce witness statements prior to the time the witness testifies. State v. Copening, 95 Wis. 2d 733, 289 N.W.2d 374, (Wis. Ct. App. 1980), reversed by 100 Wis. 2d 700, 303 N.W.2d 821, (Wis. 1981).

109. It was found satisfactory where the state made a good faith effort to find the arrest record of its witness prior to trial, it was not involved in the witness's conviction, and defendant was not prejudiced by the record's production after the trial began but before the witness testified. Jones v. State, 69 Wis. 2d 337, 230 N.W.2d 677, (Wis. 1975), criticized by State v. Mitchell, 167 Wis. 2d 672, 482 N.W.2d 364, (Wis. 1992).

110. Test of whether evidence should be disclosed is not whether in fact the prosecutor knows of its existence but, rather, whether by the exercise of due diligence he should have discovered it; the prosecuting attorney's obligations extend to material and information in the possession or control of members of his staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to his office. Jones v. State, 69 Wis. 2d 337, 230 N.W.2d 677, (Wis. 1975), criticized by State v. Mitchell, 167 Wis. 2d 672, 482 N.W.2d 364, (Wis. 1992).

111. did not affect the substantial rights of the defendant.State's duty to disclose oral statements made by the defendant includes statements made to those who are not police officers; however, state's failure to disclose statements of two such witnesses was not a basis for reversing defendant's conviction because there was no showing of prejudice or surpise and the statments did not affect the substantial rights of the defendant. Kutchera v. State, 69 Wis. 2d 534, 230 N.W.2d 750, (Wis. 1975).

112. Defendant, an individual charged with first-degree murder, robbery, and arson, was not entitled to retroactive application of case law declaring former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23) and the last sentence of Wis. Stat. § 971.23(3)(a) unconstitutional, because defendant failed to satisfy the criteria necessary for retroactive application of the case law. Rohl v. State, 65 Wis. 2d 683, 223 N.W.2d 567, (Wis. 1974).

113. In an action in which a defendant was convicted of attempted first degree murder the defendant's discovery motions under Wis. Stat. § § 971.23 constituted a sufficient request for a statement made by a friend of the defendant which defendant claimed was exculpatory. Nelson v. State, 59 Wis. 2d 474, 208 N.W.2d 410, (Wis. 1973).

114. During defendant's trial on a charge of intentional sale of heroin, the trial court was not required to order the production of physical evidence intended to be introduced at trial for scientific analysis by defendant nor was it required to order the production of reports or results of any scientific tests pursuant to Wis. Stat. § 971.23(5) because defendant made no motion for the trial court's action in that respect and because defendant was tried before the effective date of Wis. Stat. § 971.23. State v. Stewart, 56 Wis. 2d 278, 201 N.W.2d 754, (Wis. 1972).

115. Where the State failed to list the name of an expert rebuttal witness during discovery, and the trial court would not allow the witness to testify, the discovery statute placed no duty on the prosecutor to list the rebuttal witness even if he or she knew before trial that the witness would be called; the defense took its chances when offering a theory of defense and the State could keep knowledge of its legitimate rebuttal witnesses from the defendant without violating Wis. Stat. § 971.23(1)(d). State v. Konkol, 256 Wis. 2d 725, 649 N.W.2d 300, 2002 WI App 174, (2002), review denied by 2002 WI 121, 257 Wis. 2d 119, 653 N.W.2d 890, (2002).

116. Court erred by denying the admission of rebuttal testimony of a State's expert witness in defendant's operating a motor vehicle while intoxicated trial on the basis of nondisclosure of the witness where the State had no duty to disclose a legitimate rebuttal witness. State v. Konkol, (Wis. Ct. App. May 1 2002), opinion withdrawn by, substituted opinion at 256 Wis. 2d 725, 649 N.W.2d 300, 2002 WI App 174, (2002).

117. In a prosecution for attempted first degree intentional homicide by use of a dangerous weapon in violation of Wis. Stat. § § 939.32(1)(a), 939.63, and 940.01(1), arising out of a defendant's allegedly slamming a car into a tree and injuring the passenger, where a prosecutor intended to have a police officer, who was a level two accident investigator, provide expert opinion testimony in addition to the personal observances set forth in the police report, the prosecutor was

required pursuant to Wis. Stat. § 971.23 to inform the defendant that the officer was being called as an expert, but the defendant suffered no prejudice as a result in light of the remaining strong evidence of the defendant's guilt and where the officer's testimony was contradicted by an independent eyewitness to the incident. State v. Bledsoe, 248 Wis. 2d 981, 638 N.W.2d 393, 2001 WI App 280, (2001), review denied by 2002 WI 23, 250 Wis. 2d 556, 643 N.W.2d 93, (2002).

118. State's expert witness was properly allowed to testify because the requirement that a written summary be given to defendant was not triggered due to the fact that the witness's reports were given to defendant. State v. Spaulding, (Wis. Ct. App. May 8 2001), review denied by 2001 WI 114, 246 Wis. 2d 172, 634 N.W.2d 319, (2001), review denied by 2001 WI 114, 246 Wis. 2d 172, 634 N.W.2d 319, (2001), review denied by 2001 WI 114, 246 Wis. 2d 172, 634 N.W.2d 319, (2001).

119. Where the prosecution did not disclose prior to trial a forensic dentist's opinion regarding the orientation of a bite mark on defendant's chest, defense counsel's failure to object to the dentist's testimony on the ground that it violated Wis. Stat. § 971.23(1)(e) did not render counsel's assistance ineffective because the orientation of the bite mark was of little importance to the case and an objection could have drawn undue attention to the testimony. State v. Rymer, 241 Wis. 2d 50, 622 N.W.2d 770, 2000 WI App 31, 2001 WI App 31, (2000), review denied by 2001 WI 15, 241 Wis. 2d 210, 626 N.W.2d 807, (2001).

120. In a prosecution for possession of child pornography, the summary of expert testimony produced during discovery satisfied the requirements of Wis. Stat. § 971.23(1)(e) where it put defendant on notice that certain terminology might come up, without explaining the terminology; failure of the State to provide defendant with a copy of a learned treatise 40 days before trial, as required by Wis. Stat. § 908.03, was harmless error because the expert could have testified to his opinion whether or not the treatise was admitted. State v. Schroeder, 237 Wis. 2d 575, 613 N.W.2d 911, 2000 WI App 128, (2000).

121. Pursuant to Wis. Stat. § 971.23(1)(e), testimony of a crime lab chemist who analyzed defendant's blood sample was not inadmissible because defendant's discovery demand did not extend to a summary of the chemist's anticipated testimony in the event he had not presented the State with a report; defendant's demand covered all reports and statements of experts, but it did not extend to a situation where the expert did not prepare a report or statement as stated in § 971.23(1)(e). State v. Greene, 234 Wis. 2d 527, 611 N.W.2d 471, 2000 WI App 94, (2000).

122. Where information provided by a jailhouse informant was disclosed to the state during trial, and the state informed the defendant the same day, the state complied with Wis. Stat. § 971.23(1) and thus the informant's testimony was properly admitted; the defendant was provided with the informant's record and background and advised that the informant regained jailhouse privileges; the defendant presented no evidence that he would have raised at trial had he been given additional notice or time to prepare for cross-examination of the informant. State v. Stumpner, 167 Wis. 2d 487, 482 N.W.2d 669, (Wis. Ct. App. 1992).

123. Neither the witness's testimony nor his statement was exculpatory evidence and delay in receipt did not prejudice defendant, where: (1) defendant was provided a copy of the witness's statement on the first day of trial; (2) as the trial court noted, the defense was aware of the witness as a potential witness because he had been subpoenaed by the prosecution for the preliminary hearing; (3) defendant was provided an opportunity to interview the witness before his testimony given on the third day of trial; and (4) the witness's testimony was equivocal and did not directly implicate defendant. State v. Price, 205 Wis. 2d 735, 557 N.W.2d 255, (Wis. Ct. App. 1996).

124. Where defendant's girlfriend testified at trial as to an incriminating statement defendant made to her, the state did not violate its disclosure obligation to defendant because she first informed police of the statement on the morning of the trial; failure of the girlfriend to inform the state regarding defendant's statement to her constituted good cause for failing to comply with Wis. Stat. § 971.23(7). State v. Warner, 166 Wis. 2d 1052, 481 N.W.2d 708, (Wis. Ct. App. 1992).

125. Where defendant's girlfriend testified at trial as to an incriminating statement defendant made to her and she first informed police of the statement on the morning of the trial, the argument that the statement should have been excluded because it came as a surprise and because it was unduly prejudicial was rejected because defense counsel never requested a recess or continuance under Wis. Stat. § 971.23(7). State v. Warner, 166 Wis. 2d 1052, 481 N.W.2d 708, (Wis. Ct. App. 1992).

126. Written or recorded witness statements in a criminal case had to be turned over to the defense prior to trial under former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23), but an agreement to turn over witness statements did not impliedly include the identity of the citizen informant referenced in a police case report because the request only asked for witness statements. State v. Wilson, 163 Wis. 2d 1092, 474 N.W.2d 528, (Wis. Ct. App. 1991), review denied by 477 N.W.2d 286, (Wis. 1991).

127. Although a state was required to provide a defendant written statements from witnesses before trial, the evidence indicated that the statements of a witness the defendant sought were oral, not written, and the trial court properly refused to strike the witness's testimony. State v. Jones, 145 Wis. 2d 904, 428 N.W.2d 646, (Wis. Ct. App. 1988).

128. Where the State had in its possession for some time prior to trial a written statement of the defendant's cellmate recounting numerous statements the defendant made about concocting an alibi defense to the armed robbery charge, but it did not give the defendant a copy of the statement until a week before trial, Wis. Stat. § 971.23(1) did not require the prosecutor to permit the defendant to inspect and copy the cellmate's written statement or provide the defendant with a written summary of the statement prior to the time the prosecutor concluded that he would introduce the defendant's statements at the time of trial. State v. Larsen, 141 Wis. 2d 412, 415 N.W.2d 535, (Wis. Ct. App. 1987).

129. Although the prosecuting attorney failed to comply with Wis. Stat. § 971.23(7) by failing to disclose a statement made by defendant, the error was deemed harmless because the error was nonconstitutional and the exclusion of the evidence would not have changed the outcome; the court noted that the case against defendant was already strong and the statement simply added one detail. State v. Ruiz, 118 Wis. 2d 177, 347 N.W.2d 352, (Wis. 1984), questioned by State v. Garrity, 161 Wis. 2d 842, 469 N.W.2d 219, (Wis. Ct. App. 1991).

130. Where the State failed to provide defendant with witness statements that were used to incriminate defendant, in violation of Wis. Stat. § 971.23(1), defendant was entitled to the reversal of his conviction and a new trial. State v. Giwosky, 117 Wis. 2d 781, 343 N.W.2d 830, (Wis. Ct. App. 1983).

131. Prosecutor's violation of former Wis. Stat. § 971.24(1) (now Wis. Stat. § 971.23(1)(e)), by intentionally withholding a witness's prior statement from defendant, while inexcusable, did not constitute prosecutorial overreaching so as to warrant the trial court's subsequent grant of defendant's motion for a mistrial and thus, the appellate court erroneously determined that a reprosecution of defendant for conspiracy to commit theft by fraud was barred due to the alleged prosecutorial overreaching. State v. Copening, 100 Wis. 2d 700, 303 N.W.2d 821, (Wis. 1981).

132. Test for determining if evidence should have been disclosed is not did the prosecutor know of its existence but whether or not by the use of due diligence the prosecutor should have discovered it. State v. Delao, 246 Wis. 2d 304, 629 N.W.2d 825, 2001 WI App 132, (2001), affirmed in part and modified in part by 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480, (2002).

133. Prosecution is obligated to obtain all evidence in the possession of the State's investigative agencies. State v. Delao, 246 Wis. 2d 304, 629 N.W.2d 825, 2001 WI App 132, (2001), affirmed in part and modified in part by 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480, (2002).

134. Negligence or lack of bad faith does not amount to good cause as a matter of law for a failure by the State to produce evidence pursuant to a discovery demand of the defense made under Wis. Stat. § 971.23. State v. Delao, 246 Wis. 2d 304, 629 N.W.2d 825, 2001 WI App 132, (2001), affirmed in part and modified in part by 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480, (2002).

135. Where a police interview and investigation might have targeted principally defendant's boyfriend, but defendant was a suspect and gave statements against her interest to the police regarding the charges against her, the State did not have good cause for failure to produce those statements in response to a pretrial discovery request made by defendant. State v. Delao, 246 Wis. 2d 304, 629 N.W.2d 825, 2001 WI App 132, (2001), affirmed in part and modified in part by 2002 WI 49, 252 Wis. 2d 289, 643 N.W.2d 480, (2002).

136. Wis. Stat. § 971.23(2) requires state prosecutors only to provide criminal defendants a copy of their criminal record upon proper demand. State v. Schroeder, 163 Wis. 2d 964, 473 N.W.2d 609, (Wis. Ct. App. 1991).

137. Wis. Stat. § 971.23(2) imposed no duty on a prosecutor to discover whether all the arrests listed in a teletype led to convictions, much less whether they were subsequently expunged, and to provide that information to the defense. State v. Schroeder, 163 Wis. 2d 964, 473 N.W.2d 609, (Wis. Ct. App. 1991).

138. At defendant's trial for attempted armed robbery, the trial court did not err in concluding that the district attorney had no duty under Wis. Stat. § 971.23 to verify the prior criminal record of defendant which was furnished to defense counsel. State v. Schroeder, 163 Wis. 2d 964, 473 N.W.2d 609, (Wis. Ct. App. 1991).

139. Wis. Stat. § 971.23(2) refers to the defendant's "criminal record" and does not limit the prosecution to supplying only convictions; the statute contains no ambiguity in this regard. State v. Schroeder, 163 Wis. 2d 964, 473 N.W.2d 609, (Wis. Ct. App. 1991).

140. Pursuant to Wis. Stat. § 971.23(1)(e), testimony of a crime lab chemist who analyzed defendant's blood sample was not inadmissible because defendant's discovery demand did not extend to a summary of the chemist's anticipated testimony in the event he had not presented the State with a report; defendant's demand covered all reports and statements of experts, but it did not extend to a situation where the expert did not prepare a report or statement as stated in § 971.23(1)(e). State v. Greene, 234 Wis. 2d 527, 611 N.W.2d 471, 2000 WI App 94, (2000).

141. While Wis. Stat. § 971.23(5) allows for pretrial discovery of scientific evidence and does not provide for post-conviction discovery of scientific evidence, a defendant has a right to post-conviction discovery when the sought-after evidence is relevant to an issue of consequence; trial court properly denied defendant's motion for post-conviction discovery because the scientific evidence sought was of no consequence to the case where the issue was whether the victim consented to intercourse. State v. O'Brien, 223 Wis. 2d 303, 588 N.W.2d 8, (Wis. 1999).

142. Discovery statutes did not negate the privileged character of medical and psychological records of a mother and victims in a prosecution for sexual intercourse with a person under the age of 16; defendant's Sixth and Fourteenth Amendments' rights were not abridged by the trial court's procedure in addressing his disclosure motion by conducting an in camera proceeding. State v. Slaback, 170 Wis. 2d 342, 492 N.W.2d 187, (Wis. Ct. App. 1992).

143. Wis. Stat. § 971.23(5) did not entitle defendant to discover the testimony of a state crime lab employee where the employee testified that she had calculated the number of cigarettes that could have been made from the marijuana seized from defendant by estimating the weight of a cigarette and dividing it into the total weight of the seized marijuana, because such a simple mathematical calculation was not discoverable as the result of a scientific test or experiment. State v. Long, 160 Wis. 2d 481, 466 N.W.2d 910 (Wis. Ct. App. 1991).

144. Although the State should have provided the used cartridges from a test shot fired at the scene of a murder to determine if a neighbor could have heard the shots fired on the night the murders were committed, the error was not prejudicial where the defense was provided with all of the test results prior to trial. State v. Derickson, 120 Wis. 2d 678, 356 N.W.2d 496, (Wis. Ct. App. 1984).

145. In defendant's trial for murder, the trial court properly allowed the State's psychiatrists to testify on rebuttal about the results of their examination of defendant concerning this ability to form the intent to kill but not to offer testimony about defendant's statements to the psychiatrists, where the State did not provide copies of defendant's statements to

defendant as required by Wis. Stat. § 971.23(7), and where the trial court's ruling was an appropriate remedy for the violation. State v. Goll, 113 Wis. 2d 725, 336 N.W.2d 707, (Wis. Ct. App. 1983).

146. Defendant was not entitled to a mistrial as a sanction under Wis. Stat. § 971.23(7) for the State's failure to produce all the documents ordered by the trial court under Wis. Stat. § 971.23(5) and former Wis. Stat. § 971.24(1) (now Wis. Stat. § 971.23(7m)) until the trial was underway, where the trial court granted a continuance to allow defendant to review the documents and interview a potential witness; where the State timely disclosed other documents, and where defendant was not prejudiced because the untimely documents did not contain any new information or surprises or differ from the information contained in the timely documents. State v. Klandrud, 110 Wis. 2d 742, 330 N.W.2d 247, (Wis. Ct. App. 1982).

147. Where there was no evidence that defendant ever specifically requested the ampoule used in his breath test, as required by Wis. Stat. § 971.23(5), the State was not obligated to provide it and the tests results were admissible. State v. Maki, 108 Wis. 2d 776, 324 N.W.2d 298, (Wis. Ct. App. 1982).

148. Defendant seeking production of a test ampoule used in a breathalyzer test had to specifically request such scientific evidence pursuant to Wis. Stat. § 971.23(5). State v. Humphrey, 104 Wis. 2d 97, 310 N.W.2d 641, (Wis. Ct. App. 1981), reversed by 107 Wis. 2d 107, 318 N.W.2d 386, (Wis. 1982).

149. In state criminal cases, the right to discovery was limited to that provided for by statute; Wis. Stat. § 971.23(3), governed the right to and procedures for discovery in criminal cases, and pretrial discovery procedures must conform to the applicable statutes and may not be decided by the courts on a case-by-case basis. State v. Davis, 101 Wis. 2d 737, 309 N.W.2d 309, (Wis. Ct. App. 1981).

150. Trial court properly granted defendant's motion to suppress evidence of the results of scientific testing of hairs, that was first presented the first day of trial, because the untimeliness was unfair to defendant and no offer of proof was made. Wis. Stat. § 971.23(4), (5). State v. Wheeler, 101 Wis. 2d 730, 306 N.W.2d 306, (Wis. Ct. App. 1981).

151. During defendant's trial on a charge of intentional sale of heroin, the trial court was not required to order the production of physical evidence intended to be introduced at trial for scientific analysis by defendant nor was it required to order the production of reports or results of any scientific tests pursuant to Wis. Stat. § 971.23(5) because defendant made no motion for the trial court's action in that respect and because defendant was tried before the effective date of Wis. Stat. § 971.23. State v. Stewart, 56 Wis. 2d 278, 201 N.W.2d 754, (Wis. 1972).

152. Circuit court did not err when it declined to consider defendant's suppression motion due to its untimeliness, and defendant had not shown that he had been surprised by the evidence of the chair that contained his fingerprints because, even though defendant did not make a pretrial demand for discovery, the State turned over the contents of its prosecution file and defendant could have inquired about the chair and whether it was collected as an item of evidence; the requirement that the State disclose physical evidence applied only when the State intended to offer such evidence at trial, pursuant to Wis. Stat. § 971.23(1)(g), and in the case at bar, the State never intended to introduce the chair into evidence and offered into evidence only the fingerprints taken from it at the scene of the burglary. State v. Harden, 266 Wis. 2d 1061, 668 N.W.2d 563, 2003 WI App 188, (2003), review denied by 2003 WI 140, 266 Wis. 2d 63, 671 N.W.2d 850, (2003).

153. Court, in defendant's drug case, did not err by denying postconviction relief where defendant was not prejudiced by a statement that he was unemployed where the State did not disclose the statement because defendant was carrying a large amount of cash and defendant offered his own explanation for the presence of the cash. State v. Pettis, 266 Wis. 2d 693, 667 N.W.2d 377, 2003 WI App 162, (2003), review dismissed by 2003 WI 126, 265 Wis. 2d 420, 668 N.W.2d 560 (2003).

154. Defendant charged with operating a motor vehicle with a prohibited alcohol concentration did not have the right to inspect and test the breath testing device because she waited three months after the offense to make her motion and the 10-day limit for such a motion under Wis. Stat. § 345.421 was more specific and controlled. State v. Berger, 241 Wis.

2d 572, 624 N.W.2d 421, 2001 WI App 58, (2001), review denied by 2001 WI 43, 242 Wis. 2d 547, 629 N.W.2d 786, (2001).

155. Theft victim's jewelry inventory and invoices were a proper subject of inquiry on cross-examination in defendant's trial where on direct, the theft victim had testified as to his estimation and opinion regarding the value of the stolen property; having given this testimony, the theft victim's own written records pertaining to a matter opened up by the State on direct examination were within the bounds of fair and proper cross-examination, and it did not follow that because the material did not have to be produced in advance of trial under the discovery statute, it was beyond the scope of cross-examination. State v. Miller, 183 Wis. 2d 432, 516 N.W.2d 21, (Wis. Ct. App. 1994).

156. State did not establish good cause, within the meaning of Wis. Stat. § 971.23(7), for its failure to comply with defendant's discovery demand for a tape of defendant's recorded statements as she allegedly participated in a sale of controlled substances, and the state's explanation, that the tape was lost, did not establish good cause because the state offered nothing of substance to show how the tape was inventoried, processed, stored or handled. State v. Martinez, 166 Wis. 2d 250, 479 N.W.2d 224, (Wis. Ct. App. 1991).

157. Nothing in the open records law requires a criminal defendant to comply with the rules of criminal procedure to obtain a record as to which the defendant has a right of access under Wis. Stat. § 19.35(1)(a); the right under the open records law is entirely different from the limited right under Wis. Stat. § 971.23(1). The open records law, Wis. Stat. § 19.35(4)(a), requires that a request be filled or denied as soon as practicable and without delay and right of access extends to an entire accident report, regardless of its contents, while Wis. Stat. § 971.23(1) is far more limited and permits a defendant within a reasonable time before trial to inspect and copy or photograph any written or recorded statement made by the defendant concerning the alleged crime made by the defendant. State ex rel. Young v. Shaw, 165 Wis. 2d 276, 477 N.W.2d 340, (Wis. Ct. App. 1991).

158. Photograph that depicted defendant without a beard that was taken six days after an armed robbery was not discoverable under Wis. Stat. § 971.23(4), because the state did not intend to rely on it at trial, and because the photograph was not introduced until it became necessary to rebut testimony presented by defendant during his defense that he was bearded at the time of the robbery. State v. Tyler, 153 Wis. 2d 774, 452 N.W.2d 586, (Wis. Ct. App. 1989).

159. Disclosure requirement was met under Wis. Stat. § 971.23(1) regarding a tape recording of defendant's confession to the police by informing defense counsel of the tape before trial and making it available to the defense; actual physical presentation of the tape to the defense was not required. State v. Olson, 152 Wis. 2d 773, 450 N.W.2d 255, (Wis. Ct. App. 1989).

160. Police detective's destruction of a handwritten memo book did not violate the discovery statute, Wis. Stat. § 971.23, where the trial court found that the detective's testimony that he transcribed all of his handwritten notes to the typed official police report was credible and where the defendant was provided with a copy of the official police report. State v. Sims, 137 Wis. 2d 647, 405 N.W.2d 83, (Wis. Ct. App. 1987).

161. Trial court's admission of the signed statement of a criminal defendant over the defendant's objection that the statement had not been disclosed to him was not an abuse of discretion under Wis. Stat. § 971.23 where, in light of the entire record, the prosecutor's alleged failure to turn the statement over to the defense did not deprive the defendant of a fair trial, especially given the fact that defense counsel had a day to examine the statement before it was admitted. State v. Sims, 137 Wis. 2d 647, 405 N.W.2d 83, (Wis. Ct. App. 1987).

162. After defendant lost an appeal of his criminal conviction, he had no right under former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23) to compel the district attorney by a writ of mandamus to provide him with the pretrial statements of witnesses who testified at his trial; former § 971.24 provided for pretrial discovery in criminal cases and did not provide for post-trial or post-appeal discovery; in addition, mandamus was not an appropriate remedy for enforcing discovery requests made under former § 971.24. Cayo v. Cusick, 125 Wis. 2d 569, 371 N.W.2d 430, (Wis. Ct. App. 1985).

163. Although the testimony of the State's chemist contradicted the State's pretrial response to defendant's discovery request that no testable quantity of a substance remained in its possession, defendant waived the violation of his Wis. Stat. § 971.23(5) right to disclosure by failing to raise the issue in the trial court and seek the appropriate remedy under

Section 971.23(7), (7m), either a continuance to permit disclosure and testing, or exclusion of the State's test results. State v. Miley, 122 Wis. 2d 775, 362 N.W.2d 447, (Wis. Ct. App. 1984).

164. Trial court properly granted defendant's motion to suppress evidence of the results of scientific testing of hairs, that was first presented the first day of trial, because the untimeliness was unfair to defendant and no offer of proof was made. Wis. Stat. § 971.23(4), (5). State v. Wheeler, 101 Wis. 2d 730, 306 N.W.2d 306, (Wis. Ct. App. 1981).

165. Suppression of the results of a breathalyzer test administered to defendant was upheld because the ampoule used was destroyed right after the test; Wis. Stat. § 971.23 provides for the production of physical evidence to allow scientific testing by the defense. State v. Booth, 98 Wis. 2d 20, 295 N.W.2d 194, , 19 A.L.R.4th 498 (Wis. Ct. App. 1980), overruled by State v. Walstad, 119 Wis. 2d 483, 351 N.W.2 d 469, (Wis. 1984), overruled by State v. Disch, 119 Wis. 2d 461, 351 N.W.2d 492, (Wis. 1984), criticized by State v. Ehlen, 119 Wis. 2d 451, 351 N.W.2d 503, (Wis. 1984), questioned by State v. Bauer, 123 Wis. 2d 444, 368 N.W.2d 59, (Wis. Ct. App. 1985).

166. Defense counsel's revelation of an eyewitness identification expert, although in compliance with Wis. Stat. § 971.23, nonetheless came at the 11th hour before trial, and through no fault of its own, the state had not had an opportunity to review the underlying data upon which the expert's testimony would rely; under those circumstances, the trial court properly exercised its discretion in granting a continuance to the state to avoid an unfair trial. State v. Wright, 268 Wis. 2d 694, 673 N.W.2d 386, 2003 WI App 252, (2003), review denied by 2004 WI 20, 269 Wis. 2d 200, 675 N.W.2d 806, (2004).

167. Requiring a defendant charged with causing death by the intoxicated use of a vehicle to provide the prosecutor with a summary of his expert witness's findings and the subject matter of the witness's testimony pursuant to Wis. Stat. § 971.23(2m)(am) did not violate the defendant's Fifth Amendment right to to incriminate himself because the statute did no more than "accelerate" the disclosure of information prepared by an expert witness whom the defendant intended to have testify at trial. State v. Revels, 221 Wis. 2d 315, 585 N.W.2d 602 (Wis. Ct. App. 1998), review denied by 221 Wis. 2d 655, 588 N.W.2d 633, (Wis. 1998).

168. Requiring a defendant charged with causing death by the intoxicated use of a vehicle to provide the prosecutor with a summary of his expert witness's findings and the subject matter of the witness's testimony pursuant to Wis. Stat. § 971.23(2m)(am) did not violate the defendant's due process rights because because § 971.23(2m), was a procedural rather than a substantive statute, and was not subject to a void-for-vagueness challenge, and the existence of remedial sanctions or the fact that the expert witness's statements or reports may be based on information the defendant himself provided did not effectively change § 971.23 from a procedural into a penal statute which could be challenged for vagueness. State v. Revels, 221 Wis. 2d 315, 585 N.W.2d 602, (Wis. Ct. App. 1998), review denied by 221 Wis. 2d 655, 588 N.W.2d 633, (Wis. 1998).

169. Given the provisions of Wis. Stat. § 911.01(2), Wis. Stat. § 906.13 applied in criminal cases, but, based on the provisions of former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23) and Wis. Stat. § 908.01(1), a trial court erroneously ordered the disclosure of a defense investigator's reports of witness interviews under Wis. Stat. § 906.13(1); because the error did not affect a substantial right of the defendant, pursuant to Wis. Stat. § 805.18(2), the error was harmless and the defendant was not entitled to reversal of his convictions. State v. Hereford, 195 Wis. 2d 1054, 537 N.W.2d 62, (Wis. Ct. App. 1995), review denied by 542 N.W.2d 154 (Wis. 1995).

170. Where the State did not subpoena uncooperative witnesses and require them to testify under oath at a John Doe hearing or take other action to obtain the information it believed was in the witnesses' statements, it did not make the showing of good cause necessary to overcome the work product privilege protecting an attorney's investigative files, and the trial court abused its discretion in finding the attorney in contempt. Raymond v. Circuit Court (In re Finding of Contempt), 120 Wis. 2d 670, 353 N.W.2d 842, (Wis. Ct. App. 1984).

171. In defendant's burglary trial, his testimony concerning a receipt, which he claimed that he had for a stolen gun, was properly excluded because he refused to produce the receipt during discovery; under Wis. Stat. § 971.23(4), (5), the State had the right to examine the receipt but for defendant's representation that he did not intend to introduce the re-

ceipt at trial, and because he had a continuing duty to make the receipt available for inspection, the trial court could properly exclude the proffered testimony as a sanction pursuant to Wis. Stat. § 971.23(7). State v. Caples, 119 Wis. 2d 896, 350 N.W.2d 739, (Wis. Ct. App. 1984).

172. Defendant's conviction for delivering heroin as a repeater was upheld where the court rejected defendant's argument that he was denied access to court records; former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23) did not require the production of police reports at a preliminary hearing. Lockhart v. State, 97 Wis. 2d 757, 295 N.W.2d 833, (Wis. Ct. App. 1980).

173. Defense counsel notes or his secretary's notes were not included within former Wis. Stat. § 971.24(1) (now Wis. Stat. § 971.23), and were not required to be produced to the state; the court noted that although there was error, the error was harmless because the witness testified consistently with the notes. Pohl v. State, 96 Wis. 2d 290, 291 N.W.2d 554, (Wis. 1980).

174. Trial court properly permitted the prosecution to review transcripts of interviews by defense counsel of alibi witnesses because the transcripts came within the mandate of former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23); the trial court determined that the statements were not an attorney's work product. Pohl v. State, 87 Wis. 2d 915, 274 N.W.2d 905, (Wis. Ct. App. 1979), affirmed by 96 Wis. 2d 290, 291 N.W.2d 554, (Wis. 1980).

175. Although Wis. Stat. § 971.23(1) requires the State to disclose evidence it intends to use against a defendant at trial, the statute does not require the State to gather specific evidence or execute specific tests at the scene of a crime; defendant failed to show prosecutorial misconduct entitling him to a reversal of his substantial battery conviction because the State was not required to go to the scene where the battery occurred to search for blood evidence that might prove helpful to him. State v. Sarauer, 276 Wis. 2d 308, 686 N.W.2d 455, 2004 WI App 167, (2004), review denied by 2005 WI 1, 277 Wis. 2d 151, 691 N.W.2d 353, (2004).

176. Court rejected defendant's argument that the State acted contrary to Wis. Stat. § 971.23 by asking for a dismissal after the trial judge excluded the State's expert's testimony and then refiled the charges. There was nothing in § 971.23(7m) to suggest that the legislature intended to prevent the offending party from introducing the same evidence in a subsequent proceeding if there was no violation in that proceeding of the party's obligations under § 971.23; similarly, there was nothing in § 971.23(7m) to suggest that the State could not obtain a dismissal of charges after evidence is excluded under this paragraph and then refile the charges. State v. Miller, 274 Wis. 2d 471, 683 N.W.2d 485, 2004 WI App 117, (2004), review denied by 2004 WI 123, 275 Wis. 2d 296, 687 N.W.2d 523, (2004).

177. Wis. Stat. § 971.23(7m) does not violate the equal protection clause; the government has a legitimate interest in the prosecution of criminal charges, consistent with the constitutional rights afforded a criminal defendant. Allowing the State the opportunity to dismiss and refile charges when evidence has been excluded under § 971.23(7m) but might not be excluded in a new action furthers that interest in a rational way, even though the defendant does not have the same option. The defendant, like the State, has the protections in § 971.23(7m) against untimely disclosures; and the defendant has the constitutional protections of due process, speedy trial, and double jeopardy prohibition to circumscribe the State's use of its authority to decide when to file charges, when to dismiss, and when to refile. State v. Miller, 274 Wis. 2d 471, 683 N.W.2d 485, 2004 WI App 117, (2004), review denied by 2004 WI 123, 275 Wis. 2d 296, 687 N.W.2d 523, (2004).

178. State did not dispute defendant's allegation that it failed to produce the Intoxilyzer records, rather, the State asserted the failure to do so did not result in "trial by ambush," and therefore the records were properly admitted; however, the Intoxilyzer records should not have been allowed into evidence without a showing of "good cause" by the State, pursuant to Wis. Stat. § 971.23(7m), and because the trial court erroneously exercised its discretion when it failed to provide a reasonable basis for allowing admission of the records, defendant was entitled to a new trial on the charge of operating a motor vehicle while intoxicated. State v. Vanstraten, 271 Wis. 2d 820, 677 N.W.2d 733, 2004 WI App 68, (2004).

179. Trial court's order gave defendant the right to an independent blood test and required the State to transfer a sample of defendant's blood from the Wisconsin State Hygiene Laboratory to an independent laboratory, and where the State never explained why it failed to comply with the court order, the trial court erroneously exercised its discretion in ordering defendant's trial to go forward without the results of the independent blood test. State v. Garcia, 268 Wis. 2d 845, 673 N.W.2d 411, 2004 WI App 1 (2003).

180. Where prosecution violated its discovery obligation by failing to fully disclose the criminal and juvenile records of prosecution witnesses, the error was found to have been harmless as the increased number of prior convictions would only have confirmed that the witnesses had criminal backgrounds; further, they were not the only witnesses to establish the elements of the crimes and there was evidence of consciousness of guilt in that defendant lied to police about his presence at the residence on the day of the crimes. State v. Lakes, 268 Wis. 2d 844, 673 N.W.2d 411, 2004 WI App 1, (2003), review denied by 2004 WI 50, 271 Wis. 2d 110, 679 N.W.2d 545, (2004).

181. Defendant's conviction of first-degree intentional homicide and intentionally pointing a firearm at a person was affirmed because the testimony of defendant's sister regarding his admission that he killed the victim was properly admitted, even without the original audiotape, in that the sister's statement was not exculpatory, defendant was not prejudiced in that his sister was available at trial, and the prosecution showed good cause for being unable to produce the original audio tape under Wis. Stat. § 971.23(7m)(a). State v. Beck, 266 Wis. 2d 1061, 2003 WI App 188, (2003), review denied by 2003 WI 140, 266 Wis. 2d 64, 671 N.W.2d 850, (2003).

182. Defendant in an operating a motor vehicle while intoxicated case was not denied due process of law where the trial court's limited discovery sanction against the State for discovery violations was not an abuse of discretion. State v. Marshall, 256 Wis. 2d 1048, 650 N.W.2d 322, 2002 WI App 193, (2002).

183. Good cause was shown by the State for noncompliance with the duty to disclose within a reasonable time before trial a list of witnesses and their addresses, other than impeachment or rebuttal witnesses, whom the district attorney intended to call at trial; although the state did not name one eyewitness to a murder until the fourth day of the trial, and the witness had been in jail for a month on two occasions prior to the trial, good cause existed for the State's violation of its duty to disclose where the pretrial investigation involved one hundred potential witnesses, the witness was actively evading the police to avoid testifying, and both the value of the witness's testimony and his identity did not become known until after the trial began. State v. Long, 255 Wis. 2d 729, 647 N.W.2d 884, 2002 WI App 114, (2002), review denied by 2002 WI 121, 257 Wis. 2d 117, 653 N.W.2d 889, (2002).

184. Trial court did not err by excluding defendant's use of photographs in his possession of a firearm prosecution where that action was a proper sanction for the defendant's discovery violation of not turning over the photographs to the prosecution. State v. Arberry, 255 Wis. 2d 833, 646 N.W.2d 855, 2002 WI App 134, (2002), review denied by 2002 WI 111, 256 Wis. 2d 65, 650 N.W.2d 841, (2002).

185. Trial court's decision whether to exclude evidence for failure to comply with discovery requirements under Wis. Stat. § 971.23 is committed to the trial court's discretion, and if there is a reasonable basis for the ruling, the appellate court does not disturb it. State v. Gribble, 248 Wis. 2d 409, 636 N.W.2d 488, 2001 WI App 227, (2001), review denied by 2002 WI 2, 249 Wis. 2d 580, 638 N.W.2d 589, (2001).

186. A trial court must exclude evidence that is not produced pursuant to a discovery demand unless good cause is shown for failure to comply State v. Nielsen, 247 Wis. 2d 466, 634 N.W.2d 325, 2001 WI App 192, (2001), review denied by 2001 WI 117, 247 Wis. 2d 1036, 635 N.W.2d 784, (2001).

187. In a criminal case, where a witness was not listed on the prosecution's witness list, contrary to Wis. Stat. § 971.23(1)(d), trial court properly permitted the witness to testify at trial because the witness was present during offense, was related to the defendant, and the defendant failed to show surprise or prejudice of testimony. State v. Clark, 238 Wis. 2d 843, 618 N.W.2d 274, 2000 WI App 214, (2000), review denied by 2001 WI 15, 241 Wis. 2d 211, 626 N.W.2d 808, (2001).

188. In an action in which defendant was convicted of armed robbery and battery, the trial court did not err in denying defendant's request for a continuance to interview and investigate a last-minute witness called on behalf of the State of

Wisconsin; even though Wis. Stat. § 971.23(7)(m) provides sanctions for discovery violations, including a continuance, the record showed that the State notified defendant of its intent to use the witness as soon as the witness was discovered, and defendant failed to identify the benefit he would have received from additional time to investigate. State v. Harvey, 221 Wis. 2d 222, 584 N.W.2d 234, (Wis. Ct. App. 1998), review denied by 221 Wis. 2d 656, 588 N.W.2d 633, (Wis. 1998).

189. Where, in a prosecution of defendant for first degree reckless homicide, the prosecutor failed to disclose the terms of a plea agreement with one of its witnesses, as required by Wis. Stat. § 971.23, and the trial court committed error by failing to order the prosecutor to respond to the defendant's request for exculpatory evidence, defendant's conviction was not reversed; a review of a claimed discovery violation under § 971.23 is subject to a harmless error analysis, and the appellate court independently determined that there was sufficient evidence, other than and uninfluenced by the inadmissible evidence, to convict the defendant beyond a reasonable doubt. State v. Tkacz, (Wis. Ct. App. Apr. 1 1998).

190. Where, pursuant to Wis. Stat. § 971.23 (1), the defendant requested the district attorney to furnish him with a written summary of all oral statements of the defendant that the district attorney planned to use in the course of defendant's trial, and the district attorney introduced in evidence an oral statement the defendant had made to a police officer regarding his willingness to act as an informant, which the district attorney had failed to provide to the defendant, the defendant waived the issue by failing to object to evidence of his willingness to act as an informant, Wis. Stat. § 901.03(1)(a). State v. Jones, 217 Wis. 2d 289, 577 N.W.2d 387, (Wis. Ct. App. 1998), review denied by 217 Wis. 2d 520, 580 N.W.2d 690 (Wis. 1998).

191. Where a resident of a house that the defendants were charged with firing a rifle into would testify that he had fired the only bullet recovered, but the statement was verbal, the State was not required under Wis. Stat. § 971.23(7) to provide the statement in discovery to the defendants. State v. Watts, 212 Wis. 2d 240, 568 N.W.2d 784, (Wis. Ct. App. 1997), review denied by 215 Wis. 2d 422, 576 N.W.2d 278, (Wis. 1997).

192. Introduction of reenactment evidence which was not disclosed to defense counsel pursuant to a discovery request was harmless error; it was not exculpatory and a new trial would not necessarily result in the evidence being suppressed. State v. Demmerly, 207 Wis. 2d 645, 559 N.W.2d 925, (Wis. Ct. App. 1996).

193. Trial court erred in finding that a defense attorney violated former Wis. Stat. § 971.25(2) (now Wis. Stat. § 971.23(2m)(b)), because the prosecutor never made a demand for the disclosure of the criminal records of the defense witnesses until the day of trial; the prosecutor's motion for an order requiring the disclosure of any defense witnesses' criminal records, which was directed to the court and which was never obtained, in no way constituted a demand on the defense attorney who had not yet been appointed. Assessment of Costs in State v. Allen(In re Assessment of Costs in State), (Wis. Ct. App. Aug. 10 1995).

194. Where the prosecution failed to disclose its witness's prior convictions despite the defendant's discovery request, the prosecution violated defendant's right to due process. State v. Walters, 192 Wis. 2d 764, 532 N.W.2d 470, (Wis. Ct. App. 1995).

195. State did not establish good cause, within the meaning of Wis. Stat. § 971.23(7), for its failure to comply with defendant's discovery demand for a tape of defendant's recorded statements as she allegedly participated in a sale of controlled substances, and the state's explanation, that the tape was lost, did not establish good cause because the state offered nothing of substance to show how the tape was inventoried, processed, stored or handled. State v. Martinez, 166 Wis. 2d 250, 479 N.W.2d 224, (Wis. Ct. App. 1991).

196. When an error is claimed amounting to noncompliance with or abuse of the witness-list requirement under Wis. Stat. § 971.23(1)(b), the error or abuse may in some cases be cured by granting the defendant a continuance so that he or she can adequately prepare for trial. State v. Patzner, 160 Wis. 2d 929, 468 N.W.2d 210, (Wis. Ct. App. 1991).

197. Defendant, who was convicted of burglary and theft, was not entitled to a new trial based on the State's failure to turn over evidence because the State did not intend to use some of it at trial and the other did not contribute to his conviction; under Wis. Stat. § 971.23, the State was not required to turn over evidence that it did not intend to introduce at trial. State v. Pontow, 153 Wis. 2d 774, 452 N.W.2d 586, (Wis. Ct. App. 1989).

198. Trial court abused its discretion in applying the sanction in Wis. Stat. § 971.23(7) and excluding medical reports that were provided to the defense after the time limit established by an earlier pretrial order when, despite the district attorney's proffered explanation for the tardy reports, the trial court never considered whether the State's noncompliance was for good cause and it refused to grant the adjournment requested by both the State and the defendant. State v. Wild, 146 Wis. 2d 18, 429 N.W.2d 105 (Wis. Ct. App. 1988), criticized by State v. Eichman, 155 Wis. 2d 552, 456 N.W.2d 143, (Wis. 1990).

199. State met its continuing duty under Wis. Stat. § 971.23(7) to disclose the existence of a second blood alcohol test to defendant, and defendant was not prejudiced by the admission of the test results, because the State disclosed it as soon as it was discovered over eight months before her trial; even if the State delayed in furnishing a list of of State's witnesses, the delay was not prejudicial because defendant received the State's list more than 11 months before her trial. State v. Keefe, 143 Wis. 2d 901, 423 N.W.2d 882, (Wis. Ct. App. 1988).

200. Court held that defendant's right to be informed of an alleged statement he made to a friend was based on a statutory duty under Wis. Stat. § 971.23(7), it was harmless because there was no reasonable possibility that the error attributed to his conviction; the standard for determining if the error was harmless was whether there was a reasonable possibility that the error contributed to the conviction. State v. Tobias, 139 Wis. 2d 857, 407 N.W.2d 567, (Wis. Ct. App. 1987).

201. The failure to disclose inculpatory evidence, contrary to Wis. Stat. § 971.23, is a non-constitutional error which may be considered harmless if the court can independently determine that there is sufficient evidence, other than and uninfluenced by the inadmissible evidence, which would convict the defendant beyond a reasonable doubt. State v. Mack, 122 Wis. 2d 775, 362 N.W.2d 447, (Wis. Ct. App. 1984).

202. Although the testimony of the State's chemist contradicted the State's pretrial response to defendant's discovery request that no testable quantity of a substance remained in its possession, defendant waived the violation of his Wis. Stat. § 971.23(5) right to disclosure by failing to raise the issue in the trial court and seek the appropriate remedy under Section 971.23(7), (7m), either a continuance to permit disclosure and testing, or exclusion of the State's test results. State v. Miley, 122 Wis. 2d 775, 362 N.W.2d 447, (Wis. Ct. App. 1984).

203. In defendant's burglary trial, his testimony concerning a receipt, which he claimed that he had for a stolen gun, was properly excluded because he refused to produce the receipt during discovery; under Wis. Stat. § 971.23(4), (5), the State had the right to examine the receipt but for defendant's representation that he did not intend to introduce the receipt at trial, and because he had a continuing duty to make the receipt available for inspection, the trial court could properly exclude the proffered testimony as a sanction pursuant to Wis. Stat. § 971.23(7). State v. Caples, 119 Wis. 2d 896, 350 N.W.2d 739, (Wis. Ct. App. 1984).

204. In a murder case, the trial court abused its discretion by excluding the testimony of a defense witness on account of failure to give alibi notice under Wis. Stat. § 971.23(8) and discovery notice under Wis. Stat. § 971.23(3) regarding that witness as, inter alia, defense counsel might not have anticipated that the witness would have corroborated trial testimony, and the status of the witness as an alibi witness was dubious. State v. McRoberts, 118 Wis. 2d 820, 346 N.W.2d 470, (Wis. Ct. App. 1984).

205. Defendant was not entitled to a mistrial as a sanction under Wis. Stat. § 971.23(7) for the State's failure to disclose the criminal record of a state witness as requested by defendant under former Wis. Stat. § 971.25(1) (now Wis. Stat. § 971.23), where the trial court barred the witness from testifying during the State's case-in-chief. State v. Klandrud, 110 Wis. 2d 742, 330 N.W.2d 247, (Wis. Ct. App. 1982).

206. Defendant was not entitled to a mistrial as a sanction under Wis. Stat. § 971.23(7) for the State's failure to produce all the documents ordered by the trial court under Wis. Stat. § 971.23(5) and former Wis. Stat. § 971.24(1) (now Wis. Stat. § 971.23(7m)) until the trial was underway, where the trial court granted a continuance to allow defendant to review the documents and interview a potential witness; where the State timely disclosed other documents, and where defendant was not prejudiced because the untimely documents did not contain any new information or surprises or differ from the information contained in the timely documents. State v. Klandrud, 110 Wis. 2d 742, 330 N.W.2d 247,(Wis. Ct. App. 1982).

207. Pursuant to Wis. Stat. § 971.23(7)(m), failure to furnish the defendant, upon demand, with a written summary of his oral statement that the State intended to use at trial required the court to exclude such evidence; however, in appropriate cases the court may grant the opposing party a recess or a continuance. State v. Wirth, 110 Wis. 2d 745, 330 N.W.2d 249, (Wis. Ct. App. 1982).

208. Where the State failed to disclose that samples of a defendant's hair was unsuitable for scientific analysis, it was determined that under Wis. Stat. § 971.23(7), failure to disclose test results in violation of a defendant's discovery motion was grounds to exclude the results. State v. O'Rear, 110 Wis. 2d 745, 330 N.W.2d 249, (Wis. Ct. App. 1982).

209. Wis. Stat. § 971.23(7) does not automatically require the exclusion of test results where a party fails to comply with a discovery order under Wis. Stat. § 971.23(5); a defendant can waive his right to claim the error relied on. State v. O'Rear, 110 Wis. 2d 745, 330 N.W.2d 249, (Wis. Ct. App. 1982).

210. Although defendant had made a discovery request pursuant to Wis. Stat. § 971.23(1), where the State failed to give a police report to defendant because the State was unaware that such a report existed, admission on rebuttal was proper, pursuant to Wis. Stat. § 971.23(7), given the lack of surprise, the duplicative nature of the evidence, and the degree of negligence of the State such that exclusion of the report entirely would have been improper. State v. Briggs, 108 Wis. 2d 773, 324 N.W.2d 297, (Wis. Ct. App. 1982).

211. While a witness's statement to police that defendant was drunk when he committed a murder was exculpatory evidence because intoxication was a defense to first-degree murder, and while the State erred in failing to produce the witness's statement until the day of trial, the error was harmless because it resulted in no prejudice to defendant and because the trial's result would not have been different if the evidence had been disclosed at an earlier time. State v. Lamboy, 105 Wis. 2d 763, 318 N.W.2d 22, (Wis. Ct. App. 1981).

212. Defendant was denied a fair trial by the trial court's refusal to grant a continuance based on the State's failure, as required by Wis. Stat. § 971.23(1), to disclose a summary of defendant's prior statements that impeached the testimony of defendant and his witnesses as to his alibi defense. State v. Anderson, 99 Wis. 2d 805, 300 N.W.2d 84, (Wis. Ct. App. 1980).

213. Where defendant's statement to the prosecutor was cumulative and inconsequential to his trial preparation, the State's omission of the statement from its discovery materials did not amount to surprise or prejudice. Matyasz v. State, 96 Wis. 2d 737, 293 N.W.2d 184, (Wis. Ct. App. 1980).

214. In a first-degree sexual assault of a child case, the trial court did not err by admitting a late-disclosed witness and did not erroneously exercise its discretion by determining that the State disclosed the witness within a reasonable time before trial; this was demonstrated by the fact that defense counsel found two witnesses he intended to call at trial to rebut the witness's testimony, interviewing them both on the evening before trial. State v. Huston, 273 Wis. 2d 785, 680 N.W.2d 832, 2004 WI App 109, (2004), review denied by 2004 WI 123, 275 Wis. 2d 296, 687 N.W.2d 522, (2004).

215. Any error in admitting testimony from a witness who was not disclosed in a timely manner was deemed harmless because defendant did not tell the court what he would have discovered if the trial court had given him more time, despite the fact that he had well over a year, prior to appeal, to look into his claims. State v. Davila -Diaz, 269 Wis. 2d 543, 674 N.W.2d 681, 2004 WI App 21, (2003), review denied by 2004 WI 20, 269 Wis. 2d 201, 675 N.W.2d 807, (2004).

216. Prosecution did not violate its discovery obligations by failing to provide, prior to the original trial date, the statement of a witness that had just been located in prison on the scheduled trial date because nearly three weeks passed after the prosecution's explanation of what the witness's potential testimony would be. State v. Pearson, 269 Wis. 2d 541, 674 N.W.2d 680, 2004 WI App 21, (2003).

217. In a drug case, where defendant knew that the court overruled his witness list objection on the basis of the counting rule, he could have objected again, informing the court of the specific basis for his objection, arguing that he was being

precluded from impeaching witnesses with other acts evidence; he did not, and therefore, he waived the issue on appeal. State v. Northern, 268 Wis. 2d 844, 673 N.W.2d 411, 2004 WI App 1, (2003), review denied by 2004 WI 50, 271 Wis. 2d 110, 679 N.W.2d 545, (2004).

218. In a drug case, defendant waived his right to appeal the objection to the timeliness of the State's disclosure where he was given the opportunity to adjourn the trial so he could have time to review the details of a plea agreement and potential testimony; he decided rather to proceed to trial, untimeliness notwithstanding, making himself responsible for the timeline. State v. Northern, 268 Wis. 2d 844, 673 N.W.2d 411, 2004 WI App 1, (2003), review denied by 2004 WI 50, 271 Wis. 2d 110, 679 N.W.2d 545, (2004).

219. Trial court's order, filed pursuant to defense counsel's discovery demand under Wis. Stat. § 971.23, required the State to provide the defense with the names of all its witnesses "within a reasonable time;" because this time period was uncertain, and given the informal manner in which counsel generally exchanged witness lists, defense counsel had no notice that, instead of rushing to obtain an expert witness and being prepared for trial the next day, counsel was required to object to the lateness of the State's witness list to avoid sanctions, and thus it was improper for the trial court to have assessed the costs of impaneling the jury against counsel. State v. Murphy (In re O'Neil), 266 Wis. 2d 155, 667 N.W.2d 774, 2003 WI App 149, (2003).

220. Wis. Stat. § 971.23(1) specifies which evidence the prosecutor must disclose to the defendant, for example, the prosecutor must disclose statements of the defendant, § 971.23(1)(a), (b), evidence which the State intends to introduce at trial, § 971.23(1)(bm), (g), a list of witnesses and their relevant statements, § 971.23(1)(d), (e), and any exculpatory evidence, § 971.23(1)(h); however, the statute does not require the prosecutor to disclose every item that he or she possesses in connection with a case. State v. Morris, 264 Wis. 2d 892, 664 N.W.2d 126, 2003 WI App 111, (2003), review denied by 2003 WI 91, 262 Wis. 2d 501, 665 N.W.2d 375, (2003), review denied by 2003 WI 91, 262 Wis. 2d 501, 665 N.W.2d 376, (2003).

221. Where the prosecutor does not call a witness at trial and does not intend to do so, any statement of the witness is not discoverable under Wis. Stat. § 971.23(1)(e), (g). State v. Morris, 264 Wis. 2d 892, 664 N.W.2d 126, 2003 WI App 111, (2003), review denied by 2003 WI 91, 262 Wis. 2d 501, 665 N.W.2d 375, (2003), review denied by 2003 WI 91, 262 Wis. 2d 501, 665 N.W.2d 376, (2003).

222. Under Wis. Stat. § 971.23(7m), the trial court did not err in allowing the State to call a witness to testify despite the fact that the witness was not listed on the State's witness list because good cause existed; the witness was being called because another witness had taken ill and this witness had only been found within two days of the trial. State v. Sincock, 224 Wis. 2d 642, 590 N.W.2d 281, (Wis. Ct. App. 1999), review denied by 228 Wis. 2d 167, 599 N.W.2d 408, (Wis. 1999).

223. Letter by the state constituted good cause because it put defendant on notice that the state's witnesses in question were possible trial witnesses; there was no violation of Wis. Stat. § 971.23 and the trial court decision was affirmed. State v. Baldwin, 206 Wis. 2d 676, 558 N.W.2d 705, (Wis. Ct. App. 1996).

224. Defendant did not have an obligation to disclose her intention to use her former attorney as an impeachment witness. State v. Cox, 193 Wis. 2d 639, 537 N.W.2d 433, (Wis. Ct. App. 1995).

225. Where defense counsel failed to object to the State cross-examination of defendant regarding defendant's failure to call two alibi witnesses, the representation was ineffective; however, because any prejudice did not render the trial fundamentally unfair, a reversal was not required. State v. Dawson, 193 Wis. 2d 641, 537 N.W.2 d 435, (Wis. Ct. App. 1995).

226. Where witness statements in an investigative report, which were not delivered to the district attorney's office in a timely fashion, contained only evidence inculpating defendant, so that the only prejudice shown was to the prosecution, the prosecutor's violation of former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23) was harmless error. L.D.F. v. State, 170 Wis. 2d 344, 492 N.W.2d 188, (Wis. Ct. App. 1992).

227. Written or recorded witness statements in a criminal case had to be turned over to the defense prior to trial under former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23), but an agreement to turn over witness statements did not impliedly include the identity of the citizen informant referenced in a police case report because the request only asked for witness statements. State v. Wilson, 163 Wis. 2d 1092, 474 N.W.2d 528, (Wis. Ct. App. 1991), review denied by 477 N.W.2d 286, (Wis. 1991).

228. Defendant was not entitled to a continuance where he requested a list of witnesses from the State pursuant to Wis. Stat. § 971.23(3) and the State responded six days late, as defendant failed to show surprise or prejudice resulting from the delay and where during the three weeks that he had the list, his counsel did not contact any of the witnesses named on it. State v. Riemenschneider, 158 Wis. 2d 351, 462 N.W.2d 550, (Wis. Ct. App. 1990).

229. Although the State failed to timely disclose a witness, the trial court did not abuse its discretion in concluding that the witness's testimony was nevertheless admissible; the State fulfilled its obligation to disclose the witness reasonably soon after learning that she had relevant information, and the content of her testimony was known to defendant, thus mitigating potential prejudice; the trial court allowed defense counsel the opportunity to interview the witness, and the witness's refusal to talk to counsel did not compel the exclusion of her testimony. State v. Pontow, 153 Wis. 2d 397, 451 N.W.2d 805, (Wis. Ct. App. 1989).

230. State had no duty to disclose that a witness was going to testify absent a request for a list of the State's witnesses and disclosure of defense witnesses pursuant to Wis. Stat. § 971.23(3)(a). State v. Smith, 145 Wis. 2d 904, 430 N.W.2d 379, (Wis. Ct. App. 1988).

231. Although the state did not present its witness list in a timely fashion, as required by Wis. Stat. § 971.23, the trial court did not abuse its discretion because defendant was not prejudiced; the trial court allowed a continuance and some of the witnesses were not merely to rebut defendant's alibi witnesses. State v. Madison, 121 Wis. 2d 697, 359 N.W.2d 181, (Wis. Ct. App. 1984).

232. In a murder case, the trial court abused its discretion by excluding the testimony of a defense witness on account of failure to give alibi notice under Wis. Stat. § 971.23(8) and discovery notice under Wis. Stat. § 971.23(3) regarding that witness as, inter alia, defense counsel might not have anticipated that the witness would have corroborated trial testimony, and the status of the witness as an alibi witness was dubious. State v. McRoberts, 118 Wis. 2d 820, 346 N.W.2d 470, (Wis. Ct. App. 1984).

233. In a prosecution for second-degree sexual assault, the trial court did not abuse its discretion when it refused defendant's request that the State provide a list of all witnesses to the crime because under Wis. Stat. § 971.23(3), the State could be required to present a list of witnesses it would call but not all witnesses to the offense unless they would provide exculpatory evidence. State v. Pocan, 113 Wis. 2d 727, 336 N.W.2d 708 (Wis. Ct. App. 1983).

234. Witness testimony that was excluded under Wis. Stat. § 971.23(3) and (7) because the witness' name was not given to defense counsel until the morning of trial was admissible as rebuttal testimony even though it was nearly identical to testimony presented in the State's case-in-chief. State v. Riese, 109 Wis. 2d 690, 326 N.W.2d 781, (Wis. Ct. App. 1982).

235. Wis. Stat. § 971.23(8)(d) did not require the State to provide defendant, who was charged with uttering a forged check and filed a timely notice of alibi, with the name of the alleged victim as a rebuttal alibi witness because the victim's name was disclosed in the complaint, she was called to establish the facts of the crime rather than to discredit defendant's alibi, and defendant should have expected her to testify. State v. Kent, 107 Wis. 2d 378, 319 N.W.2d 508, (Wis. Ct. App. 1982).

236. While the State was not required to notify defendant that it would use her telephone bill to rebut her alibi, it was required to provide the name of the telephone company representative who would testify with regard to the bill as an alibi rebuttal witness pursuant to Wis. Stat. § 971.23(8)(d). However, in the absence of any objection or other steps taken to cure the error, it was deemed waived. State v. Hoffman, 106 Wis. 2d 185, 316 N.W.2d 143, (Wis. Ct. App. 1982).

237. In defendant's prosecution for one count of aiding and abetting a burglary where defendant argued that rebuttal testimony describing his prior oral inconsistent exculpatory statements should have been excluded because the statements had not been disclosed by the district attorney in response to his demand pursuant to Wis. Stat. § 971.23(1), a judgment of conviction was appropriate because the district attorney could never have "planned" to use defendant's statements in rebuttal because the district attorney had absolutely no control over whether there would be rebuttal. State v. White, 98 Wis. 2d 746, 297 N.W.2d 514, (Wis. Ct. App. 1980).

238. Because the State did not give defendant proper notice under Wis. Stat. § 971.23, the State could not present testimony regarding threats defendant made to the victim during its case-in-chief; however, because § 971.23 specifically excepted from the disclosure of witnesses rebuttal witnesses or those called for impeachment only, the State could properly introduce rebuttal testimony for purposes of impeachment where defendant denied making the threats on cross-examination. State v. Earl, 95 Wis. 2d 734, 289 N.W.2d 374, (Wis. Ct. App. 1980).

239. In an action in which two brothers were convicted of abducting a 14-year-old boy for immoral purposes where the State sought to introduce "other act" evidence, it was determined that actual notice before using "other act" evidence was not required, absent a request by defense counsel, prior to trial, for disclosure of all the State's witnesses under Wis. Stat. § 971.23, State v. Banks, 91 Wis. 2d 851, 284 N.W.2d 122, (Wis. Ct. App. 1979).

240. Discovery under Wis. Stat. sec. 971.23(8)(d) must be reciprocal, and thus when a defendant gives the names and addresses of people who will testify that defendant was not at the scene of the crime, the state must reciprocate by providing the names of people who will testify that the defendant was at the scene of the crime, regardless of when during the trial the state's witness is called. Tucker v. State, 84 Wis. 2d 630, 267 N.W.2d 630, (Wis. 1978).

241. When an error is claimed amounting to noncompliance with or abuse of the witness-list requirement, the error or abuse may in some cases be cured by the court granting the other party a continuance so they can adequately prepare for trial, or by recessing for a period sufficient to allow counsel to interview the witness. Tucker v. State, 84 Wis. 2d 630, 267 N.W.2d 630, (Wis. 1978).

242. It was not prejudicial error for the trial court to allow three witnesses, who were not on the district attorney's list of witnesses given to the defense, to testify where the witnesses merely testified that they did not give burglary defendant permission to enter their premises because defense counsel never stated that he was either surprised or prejudiced by the state calling the witnesses at trial. Kutchera v. State, 69 Wis. 2d 534, 230 N.W.2d 750, (Wis. 1975).

243. did not affect the substantial rights of the defendant.State's duty to disclose oral statements made by the defendant includes statements made to those who are not police officers; however, state's failure to disclose statements of two such witnesses was not a basis for reversing defendant's conviction because there was no showing of prejudice or surpise and the statments did not affect the substantial rights of the defendant. Kutchera v. State, 69 Wis. 2d 534, 230 N.W.2d 750, (Wis. 1975).

244. Where defense counsel failed to make a request to the prosecution for exculpatory evidence before or during trial and failed to move before trial in accordance with Wis. Stat. § 971.23(1) for a list of witnesses that the prosecution intended to call at trial, defendant could not claim prosecutorial suppression of alleged exculpatory evidence. Dumer v. State, 64 Wis. 2d 590, 219 N.W.2d 592, (Wis. 1974).

245. Defendant was not entitled to reversal of his murder conviction on the ground that the trial court erred in refusing to conduct a hearing to discover which of the 97 witnesses on the state's witness list that the state intended to call at trial; the record did not show that defendant was surprised or prejudiced by it, so the error was harmless. Irby v. State, 60 Wis. 2d 311, 210 N.W.2d 755, (Wis. 1973).

246. Wis. Stat. § 971.23 did not require the State to furnish defendant with notice of a rebuttal witness to defendant's alibi. Okrasinski v. State, 51 Wis. 2d 210, 186 N.W.2d 314, (Wis. 1971).

247. Where defendant failed to provide notice that he intended to present evidence of an alibi until the afternoon before trial was set to commence, the trial court did not abuse its discretion when it refused to allow defendant to call an alibi witness; defendant failed to comply with the mandates of former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23), and

good cause was not shown why the trial court should have allowed the witness. Jensen v. State, 36 Wis. 2d 598, 153 N.W.2d 566 (Wis. 1967).

248. Record did not bear out defendant's contention that the State in some respect deprived him of the right to present witnesses in his behalf; defendant was given the opportunity to call witnesses and establish a defense to the crime charged, but defendant did not request the aid of the State to subpoena witnesses as allowed by former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23) and he did not request a continuance or even suggest that he was having difficulty in procuring material witnesses. Guilbeau v. State, 31 Wis. 2d 338, 142 N.W.2d 834, (Wis. 1966).

249. Where the defendant alleged that his trial counsel erred in failing to file discovery motions at his preliminary hearing, the court noted that discovery in criminal proceedings was governed by Wis. Stat. § 971.23; as the section was silent as to the timing of discovery motions, the defendant's counsel did not violate a legal rule by failing to file a discovery motion at the defendant's preliminary hearing. State v. Smith, 167 Wis. 2d 489, 482 N.W.2d 670, (Wis. Ct. App. 1992).

250. Defendant's conviction for delivering heroin as a repeater was upheld where the court rejected defendant's argument that he was denied access to court records; former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23) did not require the production of police reports at a preliminary hearing. Lockhart v. State, 97 Wis. 2d 757, 295 N.W.2d 833, (Wis. Ct. App. 1980).

251. Defendant charged with operating a motor vehicle with a prohibited alcohol concentration did not have the right to inspect and test the breath testing device because she waited three months after the offense to make her motion and the 10-day limit for such a motion under Wis. Stat. § 345.421 was more specific and controlled. State v. Berger, 241 Wis. 2d 572, 624 N.W.2d 421, 2001 WI App 58, (2001), review denied by 2001 WI 43, 242 Wis. 2d 547, 629 N.W.2d 786, (2001).

252. Where the defendant alleged that his trial counsel erred in failing to file discovery motions at his preliminary hearing, the court noted that discovery in criminal proceedings was governed by Wis. Stat. § 971.23; as the section was silent as to the timing of discovery motions, the defendant's counsel did not violate a legal rule by failing to file a discovery motion at the defendant's preliminary hearing. State v. Smith, 167 Wis. 2d 489, 482 N.W.2d 670, (Wis. Ct. App. 1992).

253. When an error is claimed amounting to noncompliance with or abuse of the witness-list requirement under Wis. Stat. § 971.23(1)(b), the error or abuse may in some cases be cured by granting the defendant a continuance so that he or she can adequately prepare for trial. State v. Patzner, 160 Wis. 2d 929, 468 N.W.2d 210, (Wis. Ct. App. 1991).

254. Pursuant to Wis. Stat. § 971.23(7), the trial court did not abuse its discretion by admitting evidence of the rug fiber analysis because defendant's counsel learned of the rug and its potential probative value as early as the preliminary hearing; the report of the analysis was received by the district attorney two weeks after the disclosure date and at that time, the district attorney was on vacation. The trial court offered to grant a continuance, but defendant's counsel rejected the offer; however, defendant was not prejudiced by the delay in disclosure, she was not surprised by the evidence, and she did not lose the opportunity to have the fibers independently tested or to marshal facts to attack its weight, such as showing that those fibers were commonly found in other products. State v. Decarlo, 133 Wis. 2d 480, 395 N.W.2d 832, (Wis. Ct. App. 1986).

255. Where the witness was a bona fide rebuttal witness, the trial court properly refused to grant defendant a continuance for a mid-trial interview of the witness under Wis. Stat. § 971.23. Lunde v. State, 85 Wis. 2d 80, 270 N.W.2d 180, (Wis. 1978).

256. Court rejected defendant's argument that the State acted contrary to Wis. Stat. § 971.23 by asking for a dismissal after the trial judge excluded the State's expert's testimony and then refiled the charges. There was nothing in § 971.23(7m) to suggest that the legislature intended to prevent the offending party from introducing the same evidence in a subsequent proceeding if there was no violation in that proceeding of the party's obligations under § 971.23; similarly, there was nothing in § 971.23(7m) to suggest that the State could not obtain a dismissal of charges after evidence is excluded under this paragraph and then refile the charges. State v. Miller, 274 Wis. 2d 471, 683 N.W.2d 485, 2004 WI App 117, (2004), review denied by 2004 WI 123, 275 Wis. 2d 296, 687 N.W.2d 523, (2004).

257. Wis. Stat. § 971.23(7m) does not violate the equal protection clause; the government has a legitimate interest in the prosecution of criminal charges, consistent with the constitutional rights afforded a criminal defendant. Allowing the State the opportunity to dismiss and refile charges when evidence has been excluded under § 971.23(7m) but might not be excluded in a new action furthers that interest in a rational way, even though the defendant does not have the same option. The defendant, like the State, has the protections in § 971.23(7m) against untimely disclosures; and the defendant has the constitutional protections of due process, speedy trial, and double jeopardy prohibition to circumscribe the State's use of its authority to decide when to file charges, when to dismiss, and when to refile. State v. Miller, 274 Wis. 2d 471, 683 N.W.2d 485, 2004 WI App 117, (2004), review denied by 2004 WI 123, 275 Wis. 2d 296, 687 N.W.2d 523, (2004).

258. Circuit court did not err when it declined to consider defendant's suppression motion due to its untimeliness, and defendant had not shown that he had been surprised by the evidence of the chair that contained his fingerprints because, even though defendant did not make a pretrial demand for discovery, the State turned over the contents of its prosecution file and defendant could have inquired about the chair and whether it was collected as an item of evidence; the requirement that the State disclose physical evidence applied only when the State intended to offer such evidence at trial, pursuant to Wis. Stat. § 971.23(1)(g), and in the case at bar, the State never intended to introduce the chair into evidence and offered into evidence only the fingerprints taken from it at the scene of the burglary. State v. Harden, 266 Wis. 2d 1061, 668 N.W.2d 563, 2003 WI App 188, (2003), review denied by 2003 WI 140, 266 Wis. 2d 63, 671 N.W.2d 850, (2003).

259. Defendant's conviction for operating a motor vehicle while under the influence of an intoxicant in violation of Wis. Stat. § 346.63 was affirmed because defendant failed to establish a violation of double jeopardy under U.S. Const. amend. V or Wis. Const. art. 1, § 8; the testimony regarding defendant's uttering of a racial epithet at the time of his arrest was relevant and could have been viewed as a link in a chain of facts that made intoxication more probable; and the admission of a traffic citation, which was not produced during pretrial discovery pursuant to Wis. Stat. § 971.23(4) did not substantially affect defendant's right to a fair trial. State v. Turner, 115 Wis. 2d 697, 339 N.W.2d 367, (Wis. Ct. App. 1983).

260. In defendant's sexual assault case, a court properly allowed defendant to withdraw his guilty plea where defendant made a statutory demand for exculpatory evidence and the State's failure to disclose the potentially exculpatory evidence of an alleged sexual assault by the victim's grandfather was a violation of Wis. Stat. § 971.23(1)(h). State v. Harris, 266 Wis. 2d 200, 667 N.W.2d 813, 2003 WI App 144, (2003), affirmed by 2004 WI 64, 272 Wis. 2d 80, 680 N.W.2d 737, (2004).

261. Where the prosecution did not disclose prior to trial a forensic dentist's opinion regarding the orientation of a bite mark on defendant's chest, defense counsel's failure to object to the dentist's testimony on the ground that it violated Wis. Stat. § 971.23(1)(e) did not render counsel's assistance ineffective because the orientation of the bite mark was of little importance to the case and an objection could have drawn undue attention to the testimony. State v. Rymer, 241 Wis. 2d 50, 622 N.W.2d 770, 2000 WI App 31, 2001 WI App 31, (2000), review denied by 2001 WI 15, 241 Wis. 2d 210, 626 N.W.2d 807, (2001).

262. In an armed robbery case, a counsel was not ineffective for failing to give the State notice of the intent to call an alibi witness where the witness did not know where defendant was on the day of the crime; therefore, she could only have testified that he left a residence the evening before the robbery and that she did not see him again until a day or two later. State v. Britton, 213 Wis. 2d 122, 570 N.W.2d 252, (Wis. Ct. App. 1997), review denied by 215 Wis. 2d 424, 576 N.W.2d 280, (Wis. 1997).

263. Where defense counsel failed to object to the State cross-examination of defendant regarding defendant's failure to call two alibi witnesses, the representation was ineffective; however, because any prejudice did not render the trial fundamentally unfair, a reversal was not required. State v. Dawson, 193 Wis. 2d 641, 537 N.W.2d 435, (Wis. Ct. App. 1995).

264. New trial was not warranted in the interest of justice on defendant's claims that he was denied effective assistance of counsel at his burglary trial because his trial counsel failed to subpoena or call key alibi witnesses to testify in defendant's behalf and also failed to give notice of alibi as required by former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23) because it was not known whether the witnesses were available or whether they would in fact have corroborated defendant's testimony; to conclude that certain witnesses did not testify because of counsel's incompetence was mere speculation, as it could just as well have been due to counsel's deliberate strategy. Jandrt v. State, 43 Wis. 2d 497, 168 N.W.2d 602, (Wis. 1969).

265. In light of the totality of the evidence, even assuming the performance of defendant's attorney was deficient for failing to develop evidence that the showup and subsequent lineup were impermissibly suggestive, defendant failed to establish that counsel's deficient performance produced prejudice. State v. Evans, 246 Wis. 2d 669, 630 N.W.2d 275, 2001 WI App 146, (2001), review denied by 2001 WI 114, 246 Wis. 2d 174, 634 N.W.2d 320 , (2001).

266. Defendant's convictions of operating a motor vehicle without the owner's consent in violation of Wis. Stat. § 943.23(3) and theft of movable property in violation of Wis. Stat. § 943.20(1)(a), and the trial court's denial of post conviction relief were affirmed because defendant's offer of proof was inadequate to show that the testimony he wanted to give was not an alibi requiring notice under Wis. Stat. § 971.23(8), there was nothing in the record showing that defendant would have been prejudiced by taking the continuance offered by the trial court in order to give proper notice of alibi testimony, and no jury instruction on territorial jurisdiction was required because the facts necessary for territorial jurisdiction over the defendant were not in dispute under the provisions of Wis. Stat. § 939.03(1)(c) in that his out-of-state acts were done with intent that they caused a crime in Wisconsin. State v. Brown, 260 Wis. 2d 125, 659 N.W.2d 110, 2003 WI App 34, (2003), review denied by 2003 WI 32, 260 Wis. 2d 753, 661 N.W.2d 101, (2003).

267. Under Wis. Stat. § 971.23(8), a defendant must file notice of an alibi 15 days before trial, but a trial court may waive that requirement for cause. Complaint stated that the sexual assaults occurred in August or September of 1985 and again in 1986 and at trial the State's witnesses stated the second assault occurred on August 18, 1986; the trial court should have determined whether good cause existed to waive the notice requirement to permit defendant to give alibi testimony. State v. Scholze, 179 Wis. 2d 502, 508 N.W.2d 74, (Wis. Ct. App. 1993).

268. Although admitting the statement of the deceased accomplice that implicated defendant in the commission of the armed robbery for which he was convicted violated defendant's confrontation rights because he did not have an opportunity to confront or cross-examine the accomplice as to that statement, defendant was not entitled to relief as the statement's admission was not prejudicial because the jury was carefully instructed to consider the accomplice's credibility in weighing the statement and because the statement was consistent with other evidence that was validly admitted. State v. Foster, 160 Wis. 2d 482, 466 N.W.2d 910, (Wis. Ct. App. 1991).

269. Trial court's third basis for its ineffective assistance of counsel finding was counsel's failure to give notice of an alibi under Wis. Stat. § 971.23(8); credibility was the crux of defendant's case and excluding a witness's testimony was critical to defendant's defense that she could not have been at the battery scene when the battery was committed as it would have presented an unbiased witness who the jury could reasonably conclude supported defendant's testimony. State v. Schultz, 215 Wis. 2d 323, 215 Wis. 2d 324, 572 N.W.2d 902, (Wis. Ct. App. 1997).

270. After defendant, a person under the age of 18, was adjudicated delinquent for kidnapping and sexually assaulting a young woman, a trial court's denial of defendant's motion for a new trial based on defendant's allegation that he was denied effective assistance of counsel was proper; his counsel's decision not to file a notice of alibi under Wis. Stat. § 971.23(8) and his decision not to present an alibi defense was reasonable because counsel was faced with alibi witnesses who gave conflicting and confusing stories. T.P. v. State (In re T.P.), 116 Wis. 2d 696, 343 N.W.2d 826, 343 N.W.2d 828, (Wis. Ct. App. 1983).

271. Where the prosecution failed to disclose its witness's prior convictions despite the defendant's discovery request, the prosecution violated defendant's right to due process. State v. Walters, 192 Wis. 2d 764, 532 N.W.2d 470, (Wis. Ct. App. 1995).

272. Defendant had no standing to complain about a possible violation of his co-defendant's privilege against self-incrimination via the requirements of former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23(8)). Welsher v. State, 28 Wis. 2d 160, 135 N.W.2d 849, (Wis. 1965).

273. Where a criminal trial had already started once with the defendant making no claim of alibi and it was not until after a mistrial had been declared and the new trial was about to begin that an alibi witness surfaced, the record indicated no abuse of discretion by the trial judge in his ruling excluding the witness after hearing the reasons for the defendant's failure to comply with former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23(8)), which the judge deemed insufficient. State v. Di Maggio, 49 Wis. 2d 565, 182 N.W.2d 466, (Wis. 1971).

274. Whether it was a violation of Wis. Stat. § 971.23(8)(a) or not, a prosecutor erred in mentioning a defendant's potential alibi defense in her opening statement, but the error was harmless. State v. Bergmann, (Wis. Ct. App. July 14 1993).

275. Defense counsel's revelation of an eyewitness identification expert, although in compliance with Wis. Stat. § 971.23, nonetheless came at the 11th hour before trial, and through no fault of its own, the state had not had an opportunity to review the underlying data upon which the expert's testimony would rely; under those circumstances, the trial court properly exercised its discretion in granting a continuance to the state to avoid an unfair trial. State v. Wright, 268

Wis. 2d 694, 673 N.W.2d 386, 2003 WI App 252, (2003), review denied by 2004 WI 20, 269 Wis. 2d 200, 675 N.W.2d 806, (2004).

276. Trial court did not abuse its discretion in denying defendant's motion under Wis. Stat. § 971.23(7m) for an adjournment or continuance because defendant was not prejudiced by the State's failure to provide to him certain non-exculpatory evidence as required by Wis. Stat. § 971.23(1) before the first day of trial. State v. Wilson, 221 Wis. 2d 596, 586 N.W.2d 698, (Wis. Ct. App. 1998), review denied by 221 Wis. 2d 654, 588 N.W.2d 632, (Wis. 1998).

277. In an action in which defendant was convicted of armed robbery and battery, the trial court did not err in denying defendant's request for a continuance to interview and investigate a last-minute witness called on behalf of the State of Wisconsin; even though Wis. Stat. § 971.23(7)(m) provides sanctions for discovery violations, including a continuance, the record showed that the State notified defendant of its intent to use the witness as soon as the witness was discovered, and defendant failed to identify the benefit he would have received from additional time to investigate. State v. Harvey, 221 Wis. 2d 222, (Wis. 1998).

278. Where defendant's girlfriend testified at trial as to an incriminating statement defendant made to her and she first informed police of the statement on the morning of the trial, the argument that the statement should have been excluded because it came as a surprise and because it was unduly prejudicial was rejected because defense counsel never requested a recess or continuance under Wis. Stat. § 971.23(7). State v. Warner, 166 Wis. 2d 1052, 481 N.W.2d 708, (Wis. Ct. App. 1992).

279. Pursuant to Wis. Stat. § 971.23(7), the trial court did not abuse its discretion by admitting evidence of the rug fiber analysis because defendant's counsel learned of the rug and its potential probative value as early as the preliminary hearing; the report of the analysis was received by the district attorney two weeks after the disclosure date and at that time, the district attorney was on vacation. The trial court offered to grant a continuance, but defendant's counsel rejected the offer; however, defendant was not prejudiced by the delay in disclosure, she was not surprised by the evidence, and she did not lose the opportunity to have the fibers independently tested or to marshal facts to attack its weight, such as showing that those fibers were commonly found in other products. State v. Decarlo, 133 Wis. 2d 480, 395 N.W.2d 832, (Wis. Ct. App. 1986).

280. Defendant was denied a fair trial by the trial court's refusal to grant a continuance based on the State's failure, as required by Wis. Stat. § 971.23(1), to disclose a summary of defendant's prior statements that impeached the testimony of defendant and his witnesses as to his alibi defense. State v. Anderson, 99 Wis. 2d 805, 300 N.W.2d 84, (Wis. Ct. App. 1980).

281. Where the State failed to list the name of an expert rebuttal witness during discovery, and the trial court would not allow the witness to testify, the discovery statute placed no duty on the prosecutor to list the rebuttal witness even if he or she knew before trial that the witness would be called; the defense took its chances when offering a theory of defense and the State could keep knowledge of its legitimate rebuttal witnesses from the defendant without violating Wis. Stat. § 971.23(1)(d). State v. Konkol, 256 Wis. 2d 725, 649 N.W.2d 300, 2002 WI App 174, (2002), review denied by 2002 WI 121, 257 Wis. 2d 119, 653 N.W.2d 890, (2002).

282. Trial court did not err in admitting testimony in violation of Wis. Stat. § 971.23(8)(9) from a police office regarding how long he had known defendant before allegedly seeing him drive a truck after the suspension of his operating privileges, which was presented after defendant's alibi testimony, because the testimony did not constitute a rebuttal to defendant's alibi. Police office's direct testimony did not mention seeing defendant or mention his whereabouts on the date in question. State v. Beggs, 90 Wis. 2d 857, 279 N.W.2d 507, (Wis. Ct. App. 1979).

283. Trial court properly permitted the prosecution to review transcripts of interviews by defense counsel of alibi witnesses because the transcripts came within the mandate of former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23); the trial court determined that the statements were not an attorney's work product. Pohl v. State, 87 Wis. 2d 915, 274 N.W.2d 905, , (Wis. Ct. App. 1979), affirmed by 96 Wis. 2d 290, 291 N.W.2d 554, (Wis. 1980).

284. Either party may move for an in camera inspection by the court of documents for the purpose of masking or deleting any material which is not relevant to the case being tried. State v. Lenarchick, 74 Wis. 2d 425, 247 N.W.2d 80, 99 A.L.R.3d 906 (Wis. 1976).

285. While Wis. Stat. § 971.23(8) precludes a prosecutor's comment about the defense's withdrawal or failure to call an alibi witness, it did not apply because defendant never gave a notice of alibi; the prosecutor's cross-examination about why defendant's girlfriend did not testify was fair impeachment because it highlighted the fact that defendant made inconsistent statements to the police about the time he arrived home and whether he went to his girlfriend's house or his parents' house. State v. Cotton, 185 Wis. 2d 710, 520 N.W.2d 111, (Wis. Ct. App. 1994).

286. Theft victim's jewelry inventory and invoices were a proper subject of inquiry on cross-examination in defendant's trial where on direct, the theft victim had testified as to his estimation and opinion regarding the value of the stolen property; having given this testimony, the theft victim's own written records pertaining to a matter opened up by the State on direct examination were within the bounds of fair and proper cross-examination, and it did not follow that because the material did not have to be produced in advance of trial under the discovery statute, it was beyond the scope of cross-examination. State v. Miller, 183 Wis. 2d 432, 516 N.W.2d 21, (Wis. Ct. App. 1994).

287. Prosecutor's violation of former Wis. Stat. § 971.24(1) (now Wis. Stat. § 971.23(1)(e)), by intentionally withholding a witness's prior statement from defendant, while inexcusable, did not constitute prosecutorial overreaching so as to warrant the trial court's subsequent grant of defendant's motion for a mistrial and thus, the appellate court erroneously determined that a reprosecution of defendant for conspiracy to commit theft by fraud was barred due to the alleged prosecutorial overreaching. State v. Copening, 100 Wis. 2d 700, 303 N.W.2d 821, (Wis. 1981).

288. Although a state was required to provide a defendant written statements from witnesses before trial, the evidence indicated that the statements of a witness the defendant sought were oral, not written, and the trial court properly refused to strike the witness's testimony. State v. Jones, 145 Wis. 2d 904, 428 N.W.2d 646 (Wis. Ct. App. 1988).

289. While Wis. Stat. § 971.23(8) precludes a prosecutor's comment about the defense's withdrawal or failure to call an alibi witness, it did not apply because defendant never gave a notice of alibi; the prosecutor's cross-examination about why defendant's girlfriend did not testify was fair impeachment because it highlighted the fact that defendant made inconsistent statements to the police about the time he arrived home and whether he went to his girlfriend's house or his parents' house. State v. Cotton, 185 Wis. 2d 710, 520 N.W.2d 111, (Wis. Ct. App. 1994).

290. In a first-degree sexual assault of a child case, the trial court did not err by admitting a late-disclosed witness and did not erroneously exercise its discretion by determining that the State disclosed the witness within a reasonable time before trial; this was demonstrated by the fact that defense counsel found two witnesses he intended to call at trial to rebut the witness's testimony, interviewing them both on the evening before trial. State v. Huston, 273 Wis. 2d 785, 680 N.W.2d 832, 2004 WI App 109, (2004), review denied by 2004 WI 123, 275 Wis. 2d 296, 687 N.W.2d 522, (2004).

291. State did not dispute defendant's allegation that it failed to produce the Intoxilyzer records, rather, the State asserted the failure to do so did not result in "trial by ambush," and therefore the records were properly admitted; however, the Intoxilyzer records should not have been allowed into evidence without a showing of "good cause" by the State, pursuant to Wis. Stat. § 971.23(7m), and because the trial court erroneously exercised its discretion when it failed to provide a reasonable basis for allowing admission of the records, defendant was entitled to a new trial on the charge of

operating a motor vehicle while intoxicated. State v. Vanstraten, 271 Wis. 2d 820, 677 N.W.2d 733, 2004 WI App 68, (2004).

292. The trial court erroneously denied defendant's request, without a hearing, for an in camera inspection of confidential records that possibly contained reports of abusive treatment of inmates by a correctional officer, on the basis that defendant had not demonstrated an entitlement to discover exculpatory evidence; an evidentiary hearing was to be conducted to permit defendant to demonstrate that the records he sought were material to his defense; defendant was to also specify in greater detail the nature of the records he sought. State v. Navarro, 248 Wis. 2d 396, 636 N.W.2d 481, 2001 WI App 225, (2001).

293. Under Wis. Stat. § 971.23(7m), the trial court did not err in allowing the State to call a witness to testify despite the fact that the witness was not listed on the State's witness list because good cause existed; the witness was being called because another witness had taken ill and this witness had only been found within two days of the trial. State v. Sincock, 224 Wis. 2d 642, 590 N.W.2d 281, (Wis. Ct. App. 1999), review denied by 228 Wis. 2d 167, 599 N.W.2d 408, (Wis. 1999).

294. Under Wis. Stat. § 971.23(8), a defendant must file notice of an alibi 15 days before trial, but a trial court may waive that requirement for cause. Complaint stated that the sexual assaults occurred in August or September of 1985 and again in 1986 and at trial the State's witnesses stated the second assault occurred on August 18, 1986; the trial court should have determined whether good cause existed to waive the notice requirement to permit defendant to give alibi testimony. State v. Scholze, 179 Wis. 2d 502, 508 N.W.2d 74, (Wis. Ct. App. 1993).

295. Although the state violated Wis. Stat. § 971.23(4) when it failed to provide defendant with a copy of an Intoxilyzer certification report within a reasonable time before trial, even without the certification, there was evidence that the Intoxilyzer was operating correctly, and this, coupled with the testimony of the arresting officer, was sufficient to convict defendant of operating an automobile while intoxicated in violation of Wis. Stat. § 346.63 beyond a reasonable doubt. State v. Dukerschein, 173 Wis. 2d 307, (Wis. Ct. App. 1992).

296. Wisconsin's discovery and inspection statute, Wis. Stat. § 971.23, requires that exculpatory and inculpatory evidence be made available to a defendant. State ex rel. Richards v. Foust, 165 Wis. 2d 429, 477 N.W.2d 608, , 19 Media L. Rep. (BNA) 1762 (Wis. 1991), limited by Nichols v. Bennett, 190 Wis. 2d 360, 190 Wis. 2d 361, 526 N.W.2d 831, (Wis. Ct. App. 1994).

297. Although the State failed to timely disclose a witness, the trial court did not abuse its discretion in concluding that the witness's testimony was nevertheless admissible; the State fulfilled its obligation to disclose the witness reasonably soon after learning that she had relevant information, and the content of her testimony was known to defendant, thus mitigating potential prejudice; the trial court allowed defense counsel the opportunity to interview the witness, and the witness's refusal to talk to counsel did not compel the exclusion of her testimony. State v. Pontow, 153 Wis. 2d 397, 451 N.W.2d 805, (Wis. Ct. App. 1989).

298. Defendant's conviction for operating a motor vehicle while under the influence of an intoxicant in violation of Wis. Stat. § 346.63 was affirmed because defendant failed to establish a violation of double jeopardy under U.S. Const. amend. V or Wis. Const. art. 1, § 8; the testimony regarding defendant's uttering of a racial epithet at the time of his arrest was relevant and could have been viewed as a link in a chain of facts that made intoxication more probable; and the admission of a traffic citation, which was not produced during pretrial discovery pursuant to Wis. Stat. § 971.23(4) did not substantially affect defendant's right to a fair trial. State v. Turner, 115 Wis. 2d 697, 339 N.W.2d 367, (Wis. Ct. App. 1983).

299. Where the State failed to disclose that samples of a defendant's hair was unsuitable for scientific analysis, it was determined that under Wis. Stat. § 971.23(7), failure to disclose test results in violation of a defendant's discovery motion was grounds to exclude the results. State v. O'Rear, 110 Wis. 2d 745, 330 N.W.2d 249, (Wis. Ct. App. 1982).

300. Wis. Stat. § 971.23(7) does not automatically require the exclusion of test results where a party fails to comply with a discovery order under Wis. Stat. § 971.23(5); a defendant can waive his right to claim the error relied on. State v. O'Rear, 110 Wis. 2d 745, 330 N.W.2d 249, (Wis. Ct. App. 1982).

301. Witness testimony that was excluded under Wis. Stat. § 971.23(3) and (7) because the witness' name was not given to defense counsel until the morning of trial was admissible as rebuttal testimony even though it was nearly identical to testimony presented in the State's case-in-chief. State v. Riese, 109 Wis. 2d 690, 326 N.W.2d 781, (Wis. Ct. App. 1982).

302. Defendant's conviction for false imprisonment was affirmed where there was no error in admitting the victim's medical records because the medical records were not subject to the provisions of Wis. Stat. § 971.23(5), because the State never intended to use the medical evidence of the victim's injuries at trial, and the question of the source of the victim's injuries were raised for the first time by the defense; thus, the records were offered only to impeach the testimony in that regard. State v. Moriarty, 107 Wis. 2d 622, 321 N.W.2d 324, (Wis. Ct. App. 1982).

303. Prosecutor's failure to preserve certain evidence did not prejudice defendants' case, as the evidence was not material to the defense in the context of the other evidence adduced at trial and as there was other sufficient evidence to convict defendants. Further, there was no bad faith on the part of the prosecutor in relation to the loss or failure to preserve the three items of evidence. Drenning v. State, 97 Wis. 2d 753, 295 N.W.2d 225, (Wis. Ct. App. 1980).

304. Defendant's request for the production of a police officer's logbook for impeachment purposes was properly denied; while official reports prepared by an officer-witness could be considered statements, the notes of an officer contained in his logbook were not considered statements of a witness that should have been turned over to the defense. Coleman v. State, 64 Wis. 2d 124, 218 N.W.2d 744, (Wis. 1974).

305. Where a defendant failed to invoke his statutory right to discovery by making a demand as required by Wis. Stat. § 971.23(1) and where the undisclosed evidence was incriminating rather than exculpatory, the trial court did not err when it allowed police officers to testify about the defendant's incriminating statements even though the district attorney did not disclose the evidence until a few minutes before trial. State v. Patterson, 145 Wis. 2d 898, 428 N.W.2d 562, 1988 (Wis. Ct. App. 1988).

306. Defendant's request for the production of a police officer's logbook for impeachment purposes was properly denied; while official reports prepared by an officer-witness could be considered statements, the notes of an officer contained in his logbook were not considered statements of a witness that should have been turned over to the defense. Coleman v. State, 64 Wis. 2d 124, 218 N.W.2d 744, (Wis. 1974).

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308. Requiring a defendant charged with causing death by the intoxicated use of a vehicle to provide the prosecutor with a summary of his expert witness's findings and the subject matter of the witness's testimony pursuant to Wis. Stat. § 971.23(2m)(am) did not violate the defendant's Fifth Amendment right to to incriminate himself because the statute did no more than "accelerate" the disclosure of information prepared by an expert witness whom the defendant intended to have testify at trial. State v. Revels, 221 Wis. 2d 315, 585 N.W.2d 602, (Wis. Ct. App. 1998), review denied by 221 Wis. 2d 655, 588 N.W.2d 633, (Wis. 1998).

309. Requiring a defendant charged with causing death by the intoxicated use of a vehicle to provide the prosecutor with a summary of his expert witness's findings and the subject matter of the witness's testimony pursuant to Wis. Stat. § 971.23(2m)(am) did not violate the defendant's due process rights because because § 971.23(2m), was a procedural rather than a substantive statute, and was not subject to a void-for-vagueness challenge, and the existence of remedial sanctions or the fact that the expert witness's statements or reports may be based on information the defendant himself provided did not effectively change § 971.23 from a procedural into a penal statute which could be challenged for vagueness. State v. Revels, 221 Wis. 2d 315, 585 N.W.2d 602, (Wis. Ct. App. 1998), review denied by 221 Wis. 2d 655, 588 N.W.2d 633, (Wis. 1998).

310. Where the parties' stipulation showed that the evidence sought to be admitted by the State through medical records was the equivalent of a statement of the victim's treating physician as to the nature and extent of the victim's injuries based upon the physician's personal observation, such testimony of the physician himself on rebuttal would not have been barred by the provisions of Wis. Stat. § 971.23, because the parties expressly waived any hearsay objection when they entered into the stipulation. State v. Moriarty, 107 Wis. 2d 622, 321 N.W.2d 324, (Wis. Ct. App. 1982).

311. Defendant argued that the State's disclosure of a theft victim's briefcase was required by Wis. Stat. § 971.23, and disclosure of the briefcase on the date of defendant's trial on charges related to a theft was untimely; but the appellate court concluded that the State's belated disclosure of the information did not prejudice defendant in that the record showed that the trial court ordered the State to disclose the police report documenting the absence of prints and told defendant that he could argue the absence of prints on the briefcase or offer the evidence through a police officer, so that defendant was accorded full opportunity to utilize any beneficial aspects of the information. State v. Miller, 183 Wis. 2d 432, 516 N.W.2d 21, (Wis. Ct. App. 1994).

312. Theft victim's jewelry inventory and invoices were a proper subject of inquiry on cross-examination in defendant's trial where on direct, the theft victim had testified as to his estimation and opinion regarding the value of the stolen property; having given this testimony, the theft victim's own written records pertaining to a matter opened up by the State on direct examination were within the bounds of fair and proper cross-examination, and it did not follow that because the material did not have to be produced in advance of trial under the discovery statute, it was beyond the scope of cross-examination. State v. Miller, 183 Wis. 2d 432, 516 N.W.2d 21, (Wis. Ct. App. 1994).

313. Where the State failed to disclose that samples of a defendant's hair was unsuitable for scientific analysis, it was determined that under Wis. Stat. § 971.23(7), failure to disclose test results in violation of a defendant's discovery motion was grounds to exclude the results. State v. O'Rear, 110 Wis. 2d 745, 330 N.W.2d 249, (Wis. Ct. App. 1982).

314. Wis. Stat. § 971.23(7) does not automatically require the exclusion of test results where a party fails to comply with a discovery order under Wis. Stat. § 971.23(5); a defendant can waive his right to claim the error relied on. State v. O'Rear, 110 Wis. 2d 745, 330 N.W.2d 249, (Wis. Ct. App. 1982).

315. Defendant's conviction for false imprisonment was affirmed where there was no error in admitting the victim's medical records because the medical records were not subject to the provisions of Wis. Stat. § 971.23(5), because the State never intended to use the medical evidence of the victim's injuries at trial, and the question of the source of the victim's injuries were raised for the first time by the defense; thus, the records were offered only to impeach the testimony in that regard. State v. Moriarty, 107 Wis. 2d 622, 321 N.W.2d 324, (Wis. Ct. App. 1982).

316. Trial court's order gave defendant the right to an independent blood test and required the State to transfer a sample of defendant's blood from the Wisconsin State Hygiene Laboratory to an independent laboratory, and where the State never explained why it failed to comply with the court order, the trial court erroneously exercised its discretion in order-

ing defendant's trial to go forward without the results of the independent blood test. State v. Garcia, 268 Wis. 2d 845, 673 N.W.2d 411, 2004 WI App 1, (2003).

317. At defendant's trial on charges against him for causing the death of a person by negligent operation of a vehicle while under the influence of an intoxicant in violation of Wis. Stat. § 940.09, defendant was not denied due process by the admission of the results of a blood test taken at the time of defendant's arrest, even though the blood sample had been destroyed, because defendant failed to show the materiality of the blood sample at the point of its destruction. The blood sample was not evidence intended, required, or even susceptible of being produced by the State under Wis. Stat. § 971.23(5) because only the results of the test were offered into evidence, which results were mandatorily admissible under Wis. Stat. § 343.305(7). State v. Ehlen, 119 Wis. 2d 451, 351 N.W.2d 503, (Wis. 1984).

318. While Wis. Stat. § 971.23(5) allows for pretrial discovery of scientific evidence and does not provide for post-conviction discovery of scientific evidence, a defendant has a right to post-conviction discovery when the sought-after evidence is relevant to an issue of consequence; trial court properly denied defendant's motion for post-conviction discovery because the scientific evidence sought was of no consequence to the case where the issue was whether the victim consented to intercourse. State v. O'Brien, 223 Wis. 2d 303, 588 N.W.2d 8, (Wis. 1999).

319. In connection with defendant's trial on charges of kidnapping and sexual assault, where the State provided defendant with its DNA report one year prior to trial and provided a supplementary report four days prior to trial, which supplementary report concluded that defendant was the source of DNA obtained from a specimen from a victim to a reasonable degree of scientific certainty, the supplementary report did not contain any new information subject to the notice requirements of former Wis. Stat. § 972.11(5) (now Wis. Stat § 971.23(9)); therefore, the State did not violate the statute by providing the report to defendant four days before trial. State v. Shuttlesworth, 241 Wis. 2d 573, 624 N.W.2d 421, 2001 WI App 58, (2001).

320. Former Wis. Stat. § 972.11(5) (now Wis. Stat. § 971.23(9)) does not require a party seeking to introduce DNA evidence to also introduce probability statistics. State v. Shuttlesworth, 241 Wis. 2d 573, 624 N.W.2d 421, 2001 WI App 58, (2001).

321. In connection with defendant's trial on charges of kidnapping and sexual assault, where the State provided evidence that defendant's DNA matched the sample found on the victim, it was not error to permit admission of the evidence without corresponding probability statistics. State v. Shuttlesworth, 241 Wis. 2d 573, 624 N.W.2d 421, 2001 WI App 58, (2001).

322. Defendant seeking production of a test ampoule used in a breathalyzer test had to specifically request such scientific evidence pursuant to Wis. Stat. § 971.23(5). State v. Humphrey, 104 Wis. 2d 97, 310 N.W.2d 641, (Wis. Ct. App. 1981), reversed by 107 Wis. 2d 107, 318 N.W.2d 386, (Wis. 1982).

323. Where a comparison of statements made by a witness prior to trial to the witness' testimony at defendant's trial revealed no material inconsistencies or variations, the prosecution's failure to provide defendant with those statements, pursuant to former Wis. Stat. § 971.24 (now Wis. Stat. § 971 23), did not constitute grounds for reversal. State v. Grimm, 95 Wis. 2d 734, 289 N.W.2d 374, (Wis. Ct. App. 1980).

324. Trial court properly permitted the prosecution to review transcripts of interviews by defense counsel of alibi witnesses because the transcripts came within the mandate of former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23); the trial court determined that the statements were not an attorney's work product. Pohl v. State, 87 Wis. 2d 915, 274 N.W.2d 905, (Wis. Ct. App. 1979), affirmed by 96 Wis. 2d 290, 291 N.W.2d 554, (Wis. 1980).

325. Defendant was not entitled to reversal of his murder conviction on the ground that the trial court erred in refusing to conduct a hearing to discover which of the 97 witnesses on the state's witness list that the state intended to call at trial; the record did not show that defendant was surprised or prejudiced by it, so the error was harmless. Irby v. State, 60 Wis. 2d 311, 210 N.W.2d 755, (Wis. 1973).

326. Defendant's conviction for armed robbery with threat of force and the denial of his postconviction petition were both improper where the State did not timely disclose that the victim was on probation at the time of the inmate's trial, Wis. Stat. § 971.23(1); the court could not state that the failure to apprise the jury that the victim had a motive to lie was not harmless beyond a reasonable doubt. State v. White, 271 Wis. 2d 742, 680 N.W.2d 362, 2004 WI App 78, (2004), review denied by 2004 WI 114, 273 Wis. 2d 656, 684 N.W.2d 137, (2004).

327. Prosecution in a criminal case had a statutory duty to disclose to defendant a witness' criminal record for impeachment purposes where defense counsel made a request for that information. State v. Powell, 205 Wis. 2d 112, 555 N.W.2d 410, (Wis. Ct. App. 1996).

328. Trial court erred in finding that a defense attorney violated former Wis. Stat. § 971.25(2) (now Wis. Stat. § 971.23(2m)(b)), because the prosecutor never made a demand for the disclosure of the criminal records of the defense witnesses until the day of trial; the prosecutor's motion for an order requiring the disclosure of any defense witnesses' criminal records, which was directed to the court and which was never obtained, in no way constituted a demand on the defense attorney who had not yet been appointed. Assessment of Costs in State v. Allen(In re Assessment of Costs in State), 1995 (Wis. Ct. App. Aug. 10 1995).

329. Where prosecution violated its discovery obligation by failing to fully disclose the criminal and juvenile records of prosecution witnesses, the error was found to have been harmless as the increased number of prior convictions would only have confirmed that the witnesses had criminal backgrounds; further, they were not the only witnesses to establish the elements of the crimes and there was evidence of consciousness of guilt in that defendant lied to police about his presence at the residence on the day of the crimes. State v. Lakes, 268 Wis. 2d 844, 673 N.W.2d 411, 2004 WI App 1, (2003), review denied by 2004 WI 50, 271 Wis. 2d 110, 679 N.W.2d 545, (2004).

330. Where the witness was a bona fide rebuttal witness, the trial court properly refused to grant defendant a continuance for a mid-trial interview of the witness under Wis. Stat. § 971.23. Lunde v. State, 85 Wis. 2d 80, 270 N.W.2d 180, (Wis. 1978).

331. Defendant was entitled to a new trial on criminal charges where he was denied the due process right to impeach prosecution witnesses with prior inconsistent statements given by them at a secret John Doe hearing. Myers v. State, 60 Wis. 2d 248, 208 N.W.2d 311, (Wis. 1973).

332. In a prosecution for first-degree reckless homicide, testimony from a private investigator was properly stricken because defendant had failed to turn over a recording made by that investigator as required by Wis. Stat. § 971.23(2m) (1999-2000). State v. Gribble, 248 Wis. 2d 409, 636 N.W.2d 488, 2001 WI App 227, (2001), review denied by 2002 WI 2, 249 Wis. 2d 580, 638 N.W.2d 589, (2001).

333. Trial court properly excluded a defense witness's testimony where defendant was aware of the witness from the date of the incident giving rise to the charges, and defense counsel spoke with the witness at least two weeks before notice of the testimony was provided to the State at a second trial; the substance of the testimony showed that it was alibi testimony, pursuant to Wis. Stat. § 911.23(8)(a), and defendant was required to comply with the notice requirements of the alibi statute. State v. Guzman, 241 Wis. 2d 310, 624 N.W.2d 717, 2001 WI App 54, (2001), review denied by 2001 WI 88, 246 Wis. 2d 166, 630 N.W.2d 219 (2001).

334. In a criminal case, where a witness was not listed on the prosecution's witness list, contrary to Wis. Stat. § 971.23(1)(d), trial court properly permitted the witness to testify at trial because the witness was present during offense, was related to the defendant, and the defendant failed to show surprise or prejudice of testimony. State v. Clark, 238 Wis. 2d 843, 618 N.W.2d 274, 2000 WI App 214, (2000), review denied by 2001 WI 15, 241 Wis. 2d 211, 626 N.W.2d 808, (2001).

335. Wis. Stat. § 971.23(8)(a) was not directly violated by a prosecutor's calling a potential alibi witness, the defendant's mother, as a witness when the defendant did not because Section 971.23(8)(a) expressly allowed the use of an alibi witness for any other purpose. State v. Bergmann, (Wis. Ct. App. July 14 1993).

336. Written or recorded witness statements in a criminal case had to be turned over to the defense prior to trial under former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23), but an agreement to turn over witness statements did not impliedly include the identity of the citizen informant referenced in a police case report because the request only asked for witness statements. State v. Wilson, 163 Wis. 2d 1092, 474 N.W.2d 528, (Wis. Ct. App. 1991), review denied by 477 N.W.2d 286 (Wis. 1991).

337. Although admitting the statement of the deceased accomplice that implicated defendant in the commission of the armed robbery for which he was convicted violated defendant's confrontation rights because he did not have an opportunity to confront or cross-examine the accomplice as to that statement, defendant was not entitled to relief as the statement's admission was not prejudicial because the jury was carefully instructed to consider the accomplice's credibility in weighing the statement and because the statement was consistent with other evidence that was validly admitted. State v. Foster, 160 Wis. 2d 482, 466 N.W.2d 910, (Wis. Ct. App. 1991).

338. Under Wis. Stat. § 971.23, the granting of a continuance or recess is to be favored over striking the witness when a party has failed to provide the witness' name to the opposing party. State v. McCann, 157 Wis. 2d 506, 460 N.W.2d 447, (Wis. Ct. App. 1990).

339. Although the State failed to timely disclose a witness, the trial court did not abuse its discretion in concluding that the witness's testimony was nevertheless admissible; the State fulfilled its obligation to disclose the witness reasonably soon after learning that she had relevant information, and the content of her testimony was known to defendant, thus mitigating potential prejudice; the trial court allowed defense counsel the opportunity to interview the witness, and the witness's refusal to talk to counsel did not compel the exclusion of her testimony. State v. Pontow, 153 Wis. 2d 397, 451 N.W.2d 805, (Wis. Ct. App. 1989).

340. If the name of a witness has not been properly disclosed before trial, as required by Wis. Stat. § 971.23(3), the court may allow the witness to testify if good cause is shown for the failure to comply; a prosecutor showed good cause when he explained that he had not furnished defendant's name because defendant had testified at a suppression hearing in which the court ruled his testimony was admissible at the trial. State v. Broesch, 120 Wis. 2d 677, 356 N.W.2d 495, (Wis. Ct. App. 1984).

341. State's failure to provide a witness' statement prior to the witness testifying did not of itself constitute reversible error; where it was defense counsel that moved to admit the witness' notes into evidence and defense counsel made full use of the witness' statements, there was no prejudice to the defendant. State v. Kitzman, 105 Wis. 2d 758, 317 N.W.2d 510, (Wis. Ct. App. 1981).

342. Where a criminal trial had already started once with the defendant making no claim of alibi and it was not until after a mistrial had been declared and the new trial was about to begin that an alibi witness surfaced, the record indicated no abuse of discretion by the trial judge in his ruling excluding the witness after hearing the reasons for the defendant's failure to comply with former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23(8)), which the judge deemed insufficient. State v. Di Maggio, 49 Wis. 2d 565, 182 N.W.2d 466, (Wis. 1971).

343. New trial was not warranted in the interest of justice on defendant's claims that he was denied effective assistance of counsel at his burglary trial because his trial counsel failed to subpoena or call key alibi witnesses to testify in defendant's behalf and also failed to give notice of alibi as required by former Wis. Stat. § 955.07 (now Wis. Stat. §

971.23) because it was not known whether the witnesses were available or whether they would in fact have corroborated defendant's testimony; to conclude that certain witnesses did not testify because of counsel's incompetence was mere speculation, as it could just as well have been due to counsel's deliberate strategy. Jandrt v. State, 43 Wis. 2d 497, 168 N.W.2d 602, (Wis. 1969).

344. Under Wis. Stat. § 971.23(7m), the trial court did not err in allowing the State to call a witness to testify despite the fact that the witness was not listed on the State's witness list because good cause existed; the witness was being called because another witness had taken ill and this witness had only been found within two days of the trial. State v. Sincock, 224 Wis. 2d 642, 590 N.W.2d 281, (Wis. Ct. App. 1999), review denied by 228 Wis. 2d 167, 599 N.W.2d 408, (Wis. 1999).

345. Defendant's convictions of operating a motor vehicle without the owner's consent in violation of Wis. Stat. § 943.23(3) and theft of movable property in violation of Wis. Stat. § 943.20(1)(a), and the trial court's denial of post conviction relief were affirmed because defendant's offer of proof was inadequate to show that the testimony he wanted to give was not an alibi requiring notice under Wis. Stat. § 971.23(8), there was nothing in the record showing that defendant would have been prejudiced by taking the continuance offered by the trial court in order to give proper notice of alibi testimony, and no jury instruction on territorial jurisdiction was required because the facts necessary for territorial jurisdiction over the defendant were not in dispute under the provisions of Wis. Stat. § 939.03(1)(c) in that his out-of-state acts were done with intent that they caused a crime in Wisconsin. State v. Brown, 260 Wis. 2d 125, 659 N.W.2d 110, 2003 WI App 34, (2003), review denied by 2003 WI 32, 260 Wis. 2d 753, 661 N.W.2d 101, (2003).

346. Trial court properly excluded a defense witness's testimony where defendant was aware of the witness from the date of the incident giving rise to the charges, and defense counsel spoke with the witness at least two weeks before notice of the testimony was provided to the State at a second trial; the substance of the testimony showed that it was alibi testimony, pursuant to Wis. Stat. § 911.23(8)(a), and defendant was required to comply with the notice requirements of the alibi statute. State v. Guzman, 241 Wis. 2d 310, 624 N.W.2d 717, 2001 WI App 54, (2001), review denied by 2001 WI 88, 246 Wis. 2d 166, 630 N.W.2d 219, (2001).

347. Where record showed witnesses had neither been pressured nor rewarded to testify against defendant, and along with witnesses' testimony he had confessed, alleged State failure to pre-trial give him witness criminal records was harmless error; as none of defendant's alibi witnesses could have stated that he was elsewhere at the time of the shooting, the trial court's refusal to permit them to testify was within its discretion under Wis. Stat. § 971.23(8). State v. Evans, 239 Wis. 2d 593, 620 N.W.2d 482, 2000 WI App 256, (2000), review dismissed by 2001 WI 1, 239 Wis. 2d 775, 621 N.W.2d 631, (2000).

348. Trial court's third basis for its ineffective assistance of counsel finding was counsel's failure to give notice of an alibi under Wis. Stat. § 971.23(8); credibility was the crux of defendant's case and excluding a witness's testimony was critical to defendant's defense that she could not have been at the battery scene when the battery was committed as it would have presented an unbiased witness who the jury could reasonably conclude supported defendant's testimony. State v. Schultz, 215 Wis. 2d 323, 215 Wis. 2d 324, 572 N.W.2d 902, (Wis. Ct. App. 1997).

349. Record did not support the trial court's judgment that defendant who was convicted of battery received ineffective assistance of counsel because her counsel failed to give notice, pursuant to Wis. Stat. § 971.23(8), of a witness he called to testify in defendant's behalf, and the appellate court reversed the trial court's judgment granting defendant's motion for a new trial. State v. Seim, 214 Wis. 2d 593, 571 N.W.2d 925, (Wis. Ct. App. 1997).

350. In an armed robbery case, a counsel was not ineffective for failing to give the State notice of the intent to call an alibi witness where the witness did not know where defendant was on the day of the crime; therefore, she could only have testified that he left a residence the evening before the robbery and that she did not see him again until a day or two later. State v. Britton, 213 Wis. 2d 122, 570 N.W.2d 252, (Wis. Ct. App. 1997), review denied by 215 Wis. 2d 424, 576 N.W.2d 280, (Wis. 1997).

351. Where defense counsel failed to object to the State cross-examination of defendant regarding defendant's failure to call two alibi witnesses, the representation was ineffective; however, because any prejudice did not render the trial fundamentally unfair, a reversal was not required. State v. Dawson, 193 Wis. 2d 641, 537 N.W.2d 435, (Wis. Ct. App. 1995).

352. While Wis. Stat. § 971.23(8) precludes a prosecutor's comment about the defense's withdrawal or failure to call an alibi witness, it did not apply because defendant never gave a notice of alibi; the prosecutor's cross-examination about why defendant's girlfriend did not testify was fair impeachment because it highlighted the fact that defendant made inconsistent statements to the police about the time he arrived home and whether he went to his girlfriend's house or his parents' house. State v. Cotton, 185 Wis. 2d 710, 520 N.W.2d 111, (Wis. Ct. App. 1994).

353. Under Wis. Stat. § 971.23(8), a defendant must file notice of an alibi 15 days before trial, but a trial court may waive that requirement for cause. Complaint stated that the sexual assaults occurred in August or September of 1985 and again in 1986 and at trial the State's witnesses stated the second assault occurred on August 18, 1986; the trial court should have determined whether good cause existed to waive the notice requirement to permit defendant to give alibi testimony. State v. Scholze, 179 Wis. 2d 502, 508 N.W.2d 74, (Wis. Ct. App. 1993).

354. Whether it was a violation of Wis. Stat. § 971.23(8)(a) or not, a prosecutor erred in mentioning a defendant's potential alibi defense in her opening statement, but the error was harmless. State v. Bergmann, (Wis. Ct. App. July 14 1993).

355. Wis. Stat. § 971.23(8)(a) was not directly violated by a prosecutor's calling a potential alibi witness, the defendant's mother, as a witness when the defendant did not because Section 971.23(8)(a) expressly allowed the use of an alibi witness for any other purpose. State v. Bergmann, (Wis. Ct. App. July 14 1993).

356. Wisconsin's alibi statute, Wis. Stat. § 971.23(8), is not designed to ensure that witnesses are interviewed near in time to the incident but, rather, to prevent surprise witnesses under circumstances where the State cannot investigate their probable testimony and rebut it if necessary. State v. Parks, 150 Wis. 2d 317, 442 N.W.2d 605, (Wis. Ct. App. 1989).

357. Trial court did not abuse its discretion when it denied defendant's motion for a mistrial based on the admission of rebuttal testimony by a witness whose name was included in a supplemental list of rebuttal witnesses that was filed more than 10 days after defendant filed a notice of alibi, even though the prosecution admitted that the supplemental list of rebuttal witnesses was not timely filed under Wis. Stat. § 971.23(8)(d), where the supplemental list was delivered 6 or 7 days before trial, and the trial court noted that adjournment to allow defendant an opportunity to interview the witness was the preferred remedy. State v. Calderio, 143 Wis. 2d 901, 423 N.W.2d 882, (Wis. Ct. App. 1988).

358. Wis. Stat. § 971.23(8)(d) only requires a district attorney to provide the names and addresses of rebuttal witnesses; it does not require the State to provide a summary of their testimony. State v. Calderio, 143 Wis. 2d 901, 423 N.W.2d 882, (Wis. Ct. App. 1988).

359. Although the State violated Wis. Stat. § 971.23(1) and Wis. Stat. § 971.23(8)(d) by not timely providing defendant written summaries of oral statements defendant made to police, such procedural defect did not prejudice defendant or affect his substantial rights under Wis. Stat. § 805.18 where defendant received such summaries two days late, but before his trial began. State v. Van Ert, 134 Wis. 2d 452, 397 N.W.2d 156, (Wis. Ct. App. 1986).

360. Where defendant had requested from the State written summaries of oral statements that he made to the police, delivery of the summaries substantially complied with Wis. Stat. § 971.23(1) because the "upon demand" requirement of Section 971.23(1) was satisfied by delivery of the statements within 12 days of the notice of alibi. The district attorney had a continuing duty to provide information to defendant under Section 971.23(7), but had received no demand for the written summaries until he had the notice of alibi and the consequent need to introduce the statements for rebuttal. State v. Van Ert, 134 Wis. 2d 452, 397 N.W.2d 156, (Wis. Ct. App. 1986).

361. Where a juvenile's notice of alibi was not given 15 days prior to trial as required by Wis. Stat. § 971.23(8)(a), but the trial court had not established a timetable for notice of alibi, and did not consider whether cause existed to admit the alibi, as permitted under the statute, the exclusion of the alibi testimony was reversible error. J.C.I. v. State (In re J.C.I.), 124 Wis. 2d 775, 370 N.W.2d 293, (Wis. Ct. App. 1985).

362. Trial-day request to call an alibi witness was properly denied for noncompliance with Wis. Stat. § 971.23(8)(a), whcih required 15 days notice to the State. State v. Williams, 121 Wis. 2d 700, 361 N.W.2d 310, (Wis. Ct. App. 1984).

363. Where defendant was charged as a party to a crime under Wis. Stat. § 939.05(2), he did not have to file a notice of alibi pursuant to Wis. Stat. § 971.23(8)(a) in order to introduce testimony rebutting allegations that he participated in planning the offense, but the exclusion of the testimony was harmless error. State v. Horenberger, 119 Wis. 2d 237, 349 N.W.2d 692, (Wis. 1984).

364. In a prosecution for sexual assault where the defendant's main defense was consent, the trial court, under Wis. Stat. § 971.23(8), properly denied the defendant's request to present alibi testimony where defendant failed to file a notice of alibi and the only reason for offering the testimony was to show a discrepancy between the defendant and the victim's version of the time of the assault. State v. Burroughs, 117 Wis. 2d 293, 344 N.W.2d 149, (Wis. 1984).

365. In a murder case, the trial court abused its discretion by excluding the testimony of a defense witness on account of failure to give alibi notice under Wis. Stat. § 971.23(8) and discovery notice under Wis. Stat. § 971.23(3) regarding that witness as, inter alia, defense counsel might not have anticipated that the witness would have corroborated trial testimony, and the status of the witness as an alibi witness was dubious. State v. McRoberts, 118 Wis. 2d 820, 346 N.W.2d 470, (Wis. Ct. App. 1984).

366. After defendant, a person under the age of 18, was adjudicated delinquent for kidnapping and sexually assaulting a young woman, a trial court's denial of defendant's motion for a new trial based on defendant's allegation that he was denied effective assistance of counsel was proper; his counsel's decision not to file a notice of alibi under Wis. Stat. § 971.23(8) and his decision not to present an alibi defense was reasonable because counsel was faced with alibi witnesses who gave conflicting and confusing stories. T.P. v. State (In re T.P.), 116 Wis. 2d 696, 343 N.W.2d 826, 343 N.W.2d 828, (Wis. Ct. App. 1983).

367. Defendant's conviction for armed robbery, false imprisonment, and burglary was affirmed because the complaint charged defendant with all the offenses as a party to the crime, which was sufficient to apprise him of the nature and cause of the accusations pursuant to U.S. Const. amend. VI and Wis. Const. art. I, § 7; moreover, defendant was not denied due process of law and his constitutional right to present testimony in support of an alibi defense where he failed to file a notice of alibi as required by Wis. Stat. § 971.23(8) but rather sought to introduce the testimony on the eighth and last day of his trial. State v. Horenberger, 114 Wis. 2d 598, 338 N.W.2d 530, (Wis. Ct. App. 1983), affirmed by 119 Wis. 2d 237, 349 N.W.2d 692, (Wis. 1984).

368. The purpose of the notice requirement of the alibi statute, Wis. Stat. § 971.23(8), is to give the State a reasonable time to investigate an alleged alibi. State v. Gavinski, 114 Wis. 2d 590, 337 N.W.2d 855, (Wis. Ct. App. 1983).

369. Wis. Stat. § 971.23(8)(d) did not require the State to provide defendant, who was charged with uttering a forged check and filed a timely notice of alibi, with the name of the alleged victim as a rebuttal alibi witness because the victim's name was disclosed in the complaint, she was called to establish the facts of the crime rather than to discredit defendant's alibi, and defendant should have expected her to testify. State v. Kent, 107 Wis. 2d 378, 319 N.W.2d 508, (Wis. Ct. App. 1982).

370. While the State was not required to notify defendant that it would use her telephone bill to rebut her alibi, it was required to provide the name of the telephone company representative who would testify with regard to the bill as an alibi rebuttal witness pursuant to Wis. Stat. § 971.23(8)(d). However, in the absence of any objection or other steps taken to cure the error, it was deemed waived. State v. Hoffman, 106 Wis. 2d 185, 316 N.W.2d 143, (Wis. Ct. App. 1982).

371. Where defendant was convicted of a Class A misdemeanor theft, in violation of Wis. Stat. § 943.20(1)(a), (3)(a), the facts alleged in the complaint demonstrated a single intent and design, or a single deceptive scheme, sufficient to satisfy the requirements of Wis. Stat. § 971.36(3)(a), which permitted the charging of more than one theft as a single crime; without knowing the specific dates and times of the claimed offenses, defendant could not have complied with the notice of alibi provisions of Wis. Stat. § 971.23(8). State v. Ridener, 105 Wis. 2d 766, 318 N.W.2d 24, (Wis. Ct. App. 1981).

372. Defendant was properly convicted of robbery; his alibi testimony was rightly disallowed because he did not file a notice of alibi, and his attorney's misinterpretation of Wis. Stat. § 971.23 did not constitute such "good cause" as to compel the trial court to excuse noncompliance with it. State v. Alicea, 97 Wis. 2d 759, 295 N.W.2d 835, (Wis. Ct. App. 1980).

373. Where defendant was convicted of first-degree sexual assault and enticing a child for immoral purposes, there was no error in refusing to allow defendant to argue an alibi defense; defendant abandoned any right to argue an alibi by failing to prepare a motion of alibi, pursuant to Wis. Stat. § 971.23(8), and specifically agreeing not to mention an alibi during closing arguments. State v. Grudzinski, 92 Wis. 2d 905, 92 Wis. 2d 906, 287 N.W.2d 853, (Wis. Ct. App. 1979).

374. In an action in which defendant was convicted of murder and armed robbery and sought to introduce an alibi, it was determined that the Wisconsin notice of alibi statute, Wis. Stat. § 971.23(8), was comparable to Fed. R. Crim. P. 12.1, the provisions of which could also be modified or suspended for good cause. Botany v. State, 91 Wis. 2d 849, 284 N.W.2d 121, (Wis. Ct. App. 1979).

375. In an action in which defendant was convicted of murder and armed robbery and sought to introduce an alibi, it was determined that Wis. Stat. § 971.23(8) did not mandate the exclusion of every unscheduled alibi witness or rebuttal witness if there was cause to relieve either defendant or the prosecution from its constraints. Botany v. State, 91 Wis. 2d 849, 284 N.W.2d 121, (Wis. Ct. App. 1979).

376. In an action in which defendant was convicted of murder and armed robbery and sought to introduce an alibi, it was determined that the purpose of Wis. Stat. § 971.23(8) was to insure mutuality of alibi discovery and to provide an opportunity to interview witnesses supporting or refuting the alibi to protect against unfair surprise at the trial. Botany v. State, 91 Wis. 2d 849, 284 N.W.2d 121, (Wis. Ct. App. 1979).

377. In an action in which defendant was convicted of murder and armed robbery and sought to introduce an alibi, it was determined that relief from the strictures of the notice of alibi statute, Wis. Stat. § 971.23(8), was evident in the provisions of § 971.23(8)(b), (c), and (d), which authorized the trial court to modify or suspend its provisions. Botany v. State, 91 Wis. 2d 849, 284 N.W.2d 121, (Wis. Ct. App. 1979).

378. Trial court did not err in admitting testimony in violation of Wis. Stat. § 971.23(8)(9) from a police office regarding how long he had known defendant before allegedly seeing him drive a truck after the suspension of his operating privileges, which was presented after defendant's alibi testimony, because the testimony did not constitute a rebuttal to defendant's alibi. Police office's direct testimony did not mention seeing defendant or mention his whereabouts on the date in question. State v. Beggs, 90 Wis. 2d 857, 279 N.W.2d 507, (Wis. Ct. App. 1979).

379. Purpose of the alibi statute, Wis. Stat. § 971.23(8), is to avoid the sudden and unexpected appearance of witnesses for the first time at trial under such circumstances that it is impossible for the State to make any investigation in respect to the alibi defense or in respect to the witnesses who intend to establish that defense; Wis. Stat. § 971.23(8) does, nevertheless, provide that evidence of alibi may be received in the exercise of judicial discretion for cause shown. McClelland v. State, 84 Wis. 2d 145, 267 N.W.2d 843, (Wis. 1978), criticized by State v. Sonnenberg, 117 Wis. 2d 159, 344 N.W.2d 95, (Wis. 1984).

380. Trial court exercised proper discretion in excluding testimony of an alibi witness at defendant's trial for armed robbery where the trial court explained that defendant had been out on bond and had an obligation to cooperate with his counsel to seek out and provide his counsel with the appropriate information for the alibi defense, that the purpose of the alibi statute, Wis. Stat. § 971.23(8), would be perverted by the allowance of the testimony of last-minute alibi witnesses, and that the prosecutor had taken into account that defense counsel was engaged in another trial and had not

unreasonably insisted on the statutory time limits. McClelland v. State, 84 Wis. 2d 145, 267 N.W.2d 843, (Wis. 1978), criticized by State v. Sonnenberg, 117 Wis. 2d 159, 344 N.W.2d 95, (Wis. 1984).

381. Defendant is personally responsible when he has not timely cooperated with his attorney to insure the production of an alibi witness; the court rejected defendant's contention that the duty to investigate and to secure alibi witnesses was an obligation of defense counsel and not of defendant personally. McClelland v. State, 84 Wis. 2d 145, 267 N.W.2d 843, (Wis. 1978), criticized by State v. Sonnenberg, 117 Wis. 2d 159, 344 N.W.2d 95, (Wis. 1984).

382. Wis. Stat. § 971.23(8) is constitutional and it satisfies the due process requirement of reciprocity because, after defendant's gives notice of alibi, the State has a duty to submit a list of rebuttal witnesses under Wis. Stat. § 971.23 (8)(d). Allison v. State, 62 Wis. 2d 14, 214 N.W.2d 437, (Wis. 1974).

383. Non-reciprocal notice-of-alibi statute contained in former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23(8)) was unconstitutional; thus, even though former Section 955.07 retroactively applied to defendant who failed to give proper notice and was not permitted by the trial court to present alibi testimony during his trial on charges of rape and sexual perversion, the trial court's refusal to allow defendant's alibi testimony error was harmless because of the volume of evidence presented at trial which supported a finding of defendant's guilt. Allison v. State, 62 Wis. 2d 14, 214 N.W.2d 437, (Wis. 1974).

384. Denial of defendant's request to give alibi testimony was not in error because no notice of the alibi was given, and good cause for the failure to give the notice was not shown. Swonger v. State, 54 Wis. 2d 468, 195 N.W.2d 598, (Wis. 1972).

385. Where a criminal trial had already started once with the defendant making no claim of alibi and it was not until after a mistrial had been declared and the new trial was about to begin that an alibi witness surfaced, the record indicated no abuse of discretion by the trial judge in his ruling excluding the witness after hearing the reasons for the defendant's failure to comply with former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23(8)), which the judge deemed insufficient. State v. Di Maggio, 49 Wis. 2d 565, 182 N.W.2d 466, (Wis. 1971).

386. Defendant was entitled to a new trial where his counsel voluntarily terminated the examination of a witness that would have corroborated defendant's account of events the day of the crime because the witness was not an alibi witness and the State was not entitled to notice under former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23). Logan v. State, 43 Wis. 2d 128, 168 N.W.2d 171, (Wis. 1969).

387. Purpose of the alibi statute, former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23(8), is to prevent the sudden "popping-up" of witnesses to prove that the accused was not at the scene of the crime at the time of its commission. State ex rel. Simos v. Burke, 41 Wis. 2d 129, 163 N.W.2d 177 (Wis. 1968), criticized by Alicea v. Gagnon, 675 F.2d 913, (7th Cir. Wis. 1982).

388. A defendant charged with rape was not allowed to offer alibi testimony where he failed to give written notice of the alibi defense to the prosecution; in default of such notice, evidence of the alibi was not to be received unless the court, for good cause shown, ordered otherwise. Gray v. State, 40 Wis. 2d 379, 161 N.W.2d 892, (Wis. 1968).

389. Where defendant failed to provide notice that he intended to present evidence of an alibi until the afternoon before trial was set to commence, the trial court did not abuse its discretion when it refused to allow defendant to call an alibi witness; defendant failed to comply with the mandates of former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23), and good cause was not shown why the trial court should have allowed the witness. Jensen v. State, 36 Wis. 2d 598, 153 N.W.2d 566, (Wis. 1967).

390. Defendant had no standing to complain about a possible violation of his co-defendant's privilege against self-incrimination via the requirements of former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23(8)). Welsher v. State, 28 Wis. 2d 160, 135 N.W.2d 849, (Wis. 1965).

391. Purposes of disclosure requirements of allowing the State enough time to properly investigate the credibility of an alibi defense and of avoiding the surprise of last minute alibis justified not allowing defendant to present evidence to

support the alibi that he first presented during his direct examination during his trial. State v. Kopacka, 261 Wis. 70, 51 N.W.2d 495, , 30 A.L.R.2d 476 (Wis. 1952).

392. In a prosecution for sexual assault where the defendant's main defense was consent, the trial court, under Wis. Stat. § 971.23(8), properly denied the defendant's request to present alibi testimony where defendant failed to file a notice of alibi and the only reason for offering the testimony was to show a discrepancy between the defendant and the victim's version of the time of the assault. State v. Burroughs, 117 Wis. 2d 293, 344 N.W.2d 149, (Wis. 1984).

393. Defendant's convictions of operating a motor vehicle without the owner's consent in violation of Wis. Stat. § 943.23(3) and theft of movable property in violation of Wis. Stat. § 943.20(1)(a), and the trial court's denial of post conviction relief were affirmed because defendant's offer of proof was inadequate to show that the testimony he wanted to give was not an alibi requiring notice under Wis. Stat. § 971.23(8), there was nothing in the record showing that defendant would have been prejudiced by taking the continuance offered by the trial court in order to give proper notice of alibi testimony, and no jury instruction on territorial jurisdiction was required because the facts necessary for territorial jurisdiction over the defendant were not in dispute under the provisions of Wis. Stat. § 939.03(1)(c) in that his out-of-state acts were done with intent that they caused a crime in Wisconsin. State v. Brown, 260 Wis. 2d 125, 659 N.W.2d 110, 2003 WI App 34, (2003), review denied by 2003 WI 32, 260 Wis. 2d 753, 661 N.W.2d 101, (2003).

394. While Wis. Stat. § 971.23(5) allows for pretrial discovery of scientific evidence and does not provide for post-conviction discovery of scientific evidence, a defendant has a right to post-conviction discovery when the sought-after evidence is relevant to an issue of consequence; trial court properly denied defendant's motion for post-conviction discovery because the scientific evidence sought was of no consequence to the case where the issue was whether the victim consented to intercourse. State v. O'Brien, 223 Wis. 2d 303, 588 N.W.2d 8, (Wis. 1999).

395. Court, in defendant's drug case, did not err by denying postconviction relief where defendant was not prejudiced by a statement that he was unemployed where the State did not disclose the statement because defendant was carrying a large amount of cash and defendant offered his own explanation for the presence of the cash. State v. Pettis, 266 Wis. 2d 693, 667 N.W.2d 377, 2003 WI App 162, (2003), review dismissed by 2003 WI 126, 265 Wis. 2d 420, 668 N.W.2d 560, (2003).

396. Defendant, who was convicted of burglary and theft, was not entitled to a new trial based on the State's failure to turn over evidence because the State did not intend to use some of it at trial and the other did not contribute to his conviction; under Wis. Stat. § 971.23, the State was not required to turn over evidence that it did not intend to introduce at trial. State v. Pontow, 153 Wis. 2d 774, 452 N.W.2d 586, (Wis. Ct. App. 1989).

397. New trial was not warranted in the interest of justice on defendant's claims that he was denied effective assistance of counsel at his burglary trial because his trial counsel failed to subpoena or call key alibi witnesses to testify in defendant's behalf and also failed to give notice of alibi as required by former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23) because it was not known whether the witnesses were available or whether they would in fact have corroborated defendant's testimony; to conclude that certain witnesses did not testify because of counsel's incompetence was mere speculation, as it could just as well have been due to counsel's deliberate strategy. Jandrt v. State, 43 Wis. 2d 497, 168 N.W.2d 602 (Wis. 1969).

398. Contention of a defendant convicted of burglary, party to the crime, that the trial court erred by admitting testimony subject to the discovery rule that the prosecutor furnish the defendant with a summary of all defendant's oral state-

ment he intended to use at trial, was without merit; noting that a showing of prejudice and surprise was necessary to permit reversal for nondiscovery under Wis. Stat. § 971.23(1), the court ruled that error occurred but that defendant was not prejudiced, inasmuch as an alleged comment in an inculpatory statement was but a minor detail in the context of the partner's overall inculpatory testimony and as defendant was not surprised because he had notified under the statute concerning a similar comment he made to another witness. State v. Reiter, 163 Wis. 2d 1093, 474 N.W.2d 529, (Wis. Ct. App. 1991).

399. Trial court abused its discretion in applying the sanction in Wis. Stat. § 971.23(7) and excluding medical reports that were provided to the defense after the time limit established by an earlier pretrial order when, despite the district attorney's proffered explanation for the tardy reports, the trial court never considered whether the State's noncompliance was for good cause and it refused to grant the adjournment requested by both the State and the defendant. State v. Wild, 146 Wis. 2d 18, 429 N.W.2d 105,(Wis. Ct. App. 1988), criticized by State v. Eichman, 155 Wis. 2d 552, 456 N.W.2d 143, (Wis. 1990).

400. District attorney did provide defendant with discovery, contrary to his argument in a pro se appeal. The record showed that defense counsel made a demand for discovery and acknowledged that he had received it. State v. Kirk, 276 Wis. 2d 309, 686 N.W.2d 455, 2004 WI App 167, (2004), review denied by 2004 WI 138, 276 Wis. 2d 28, 689 N.W.2d 56, (2004).

401. Contention of a defendant convicted of burglary, party to the crime, that the trial court erred by admitting testimony subject to the discovery rule that the prosecutor furnish the defendant with a summary of all defendant's oral statement he intended to use at trial, was without merit; noting that a showing of prejudice and surprise was necessary to permit reversal for nondiscovery under Wis. Stat. § 971.23(1), the court ruled that error occurred but that defendant was not prejudiced, inasmuch as an alleged comment in an inculpatory statement was but a minor detail in the context of the partner's overall inculpatory testimony and as defendant was not surprised because he had notified under the statute concerning a similar comment he made to another witness. State v. Reiter, 163 Wis. 2d 1093, 474 N.W.2d 529, (Wis. Ct. App. 1991).

402. Where the disclosure statute, Wis. Stat. § 971.23(1), was violated, defendant's self-incriminating statement was introduced without having been disclosed to defendant, which evidence went to the heart of a necessary element of the offense, and a conviction resulted, under Wis. Stat. § 805.18, the error was prejudicial. State v. Ewing, 128 Wis. 2d 556, 381 N.W.2d 621, (Wis. Ct. App. 1985).

403. Where, pursuant to Wis. Stat. § 971.23 (1), the defendant requested the district attorney to furnish him with a written summary of all oral statements of the defendant that the district attorney planned to use in the course of defendant's trial, and the district attorney introduced in evidence an oral statement the defendant had made to a police officer regarding his willingness to act as an informant, which the district attorney had failed to provide to the defendant, the defendant waived the issue by failing to object to evidence of his willingness to act as an informant, Wis. Stat. § 901.03(1)(a). State v. Jones, 217 Wis. 2d 289, 577 N.W.2d 387, (Wis. Ct. App. 1998), review denied by 217 Wis. 2d 520, 580 N.W.2d 690 (Wis. 1998).

404. While the State was not required to notify defendant that it would use her telephone bill to rebut her alibi, it was required to provide the name of the telephone company representative who would testify with regard to the bill as an alibi rebuttal witness pursuant to Wis. Stat. § 971.23(8)(d). However, in the absence of any objection or other steps taken to cure the error, it was deemed waived. State v. Hoffman, 106 Wis. 2d 185, 316 N.W.2d 143, (Wis. Ct. App. 1982).

405. Trial court properly exercised its discretion in permitting a psychologist to testify for the State because defendant did not raise an objection based on Wis. Stat. § 971.23(1)(e) or otherwise seek to prohibit the witness's testimony. Accordingly, any claim of error regarding written notice had been waived. State v. Rudoll, 276 Wis. 2d 864, 688 N.W.2d 784, 2004 WI App 205, (2004), review denied by 2005 WI 1, 277 Wis. 2d 153, 691 N.W.2d 354, (2004).

406. In a drug case, where defendant knew that the court overruled his witness list objection on the basis of the counting rule, he could have objected again, informing the court of the specific basis for his objection, arguing that he was being precluded from impeaching witnesses with other acts evidence; he did not, and therefore, he waived the issue on appeal. State v. Northern, 268 Wis. 2d 844, 673 N.W.2d 411, 2004 WI App 1, (2003), review denied by 2004 WI 50, 271 Wis. 2d 110, 679 N.W.2d 545, (2004).

407. In a drug case, defendant waived his right to appeal the objection to the timeliness of the State's disclosure where he was given the opportunity to adjourn the trial so he could have time to review the details of a plea agreement and potential testimony; he decided rather to proceed to trial, untimeliness notwithstanding, making himself responsible for the timeline. State v. Northern, 268 Wis. 2d 844, 673 N.W.2d 411, 2004 WI App 1, (2003), review denied by 2004 WI 50, 271 Wis. 2d 110, 679 N.W.2d 545, (2004).

408. Where the parties' stipulation showed that the evidence sought to be admitted by the State through medical records was the equivalent of a statement of the victim's treating physician as to the nature and extent of the victim's injuries based upon the physician's personal observation, such testimony of the physician himself on rebuttal would not have been barred by the provisions of Wis. Stat. § 971.23, because the parties expressly waived any hearsay objection when they entered into the stipulation. State v. Moriarty, 107 Wis. 2d 622, 321 N.W.2d 324, (Wis. Ct. App. 1982).

409. Trial court's order gave defendant the right to an independent blood test and required the State to transfer a sample of defendant's blood from the Wisconsin State Hygiene Laboratory to an independent laboratory, and where the State never explained why it failed to comply with the court order, the trial court erroneously exercised its discretion in ordering defendant's trial to go forward without the results of the independent blood test. State v. Garcia, 268 Wis. 2d 845, 673 N.W.2d 411, 2004 WI App 1, (2003).

410. Where the State failed to provide defendant with witness statements that were used to incriminate defendant, in violation of Wis. Stat. § 971.23(1), defendant was entitled to the reversal of his conviction and a new trial. State v. Giwosky, 117 Wis. 2d 781, 343 N.W.2d 830, (Wis. Ct. App. 1983).

411. Trial court's admission of the signed statement of a criminal defendant over the defendant's objection that the statement had not been disclosed to him was not an abuse of discretion under Wis. Stat. § 971.23 where, in light of the entire record, the prosecutor's alleged failure to turn the statement over to the defense did not deprive the defendant of a fair trial, especially given the fact that defense counsel had a day to examine the statement before it was admitted. State v. Sims, 137 Wis. 2d 647, 405 N.W.2d 83, (Wis. Ct. App. 1987).

412. Where the State did not subpoena uncooperative witnesses and require them to testify under oath at a John Doe hearing or take other action to obtain the information it believed was in the witnesses' statements, it did not make the showing of good cause necessary to overcome the work product privilege protecting an attorney's investigative files, and the trial court abused its discretion in finding the attorney in contempt. Raymond v. Circuit Court (In re Finding of Contempt), 120 Wis. 2d 670, 353 N.W.2d 842, (Wis. Ct. App. 1984).

413. Trial court exercised proper discretion in excluding testimony of an alibi witness at defendant's trial for armed robbery where the trial court explained that defendant had been out on bond and had an obligation to cooperate with his counsel to seek out and provide his counsel with the appropriate information for the alibi defense, that the purpose of the alibi statute, Wis. Stat. § 971.23(8), would be perverted by the allowance of the testimony of last-minute alibi witnesses, and that the prosecutor had taken into account that defense counsel was engaged in another trial and had not

unreasonably insisted on the statutory time limits. McClelland v. State, 84 Wis. 2d 145, 267 N.W.2d 843, (Wis. 1978), criticized by State v. Sonnenberg, 117 Wis. 2d 159, 344 N.W.2d 95, (Wis. 1984).

414. In defendant's trial for sexual contact with a person under the age of 16, the trial court properly declined to disclose to defendant the complainant's records of her psychiatric treatment, where the trial court conducted an in camera inspection of the psychiatric records and determined that there was nothing in the records that would be reasonable and necessary for defendant's case, and where the court independently reviewed the records and held that the trial court's factual findings were not clearly erroneous and that the records did not contain information that probably would have changed the outcome of the trial. State v. Mainiero, 189 Wis. 2d 80, 525 N.W.2d 304, (Wis. Ct. App. 1994), review denied by 531 N.W.2d 326 (Wis. 1995).

415. Where prosecution violated its discovery obligation by failing to fully disclose the criminal and juvenile records of prosecution witnesses, the error was found to have been harmless as the increased number of prior convictions would only have confirmed that the witnesses had criminal backgrounds; further, they were not the only witnesses to establish the elements of the crimes and there was evidence of consciousness of guilt in that defendant lied to police about his presence at the residence on the day of the crimes. State v. Lakes, 268 Wis. 2d 844, 673 N.W.2d 411, 2004 WI App 1, (2003), review denied by 2004 WI 50, 271 Wis. 2d 110, 679 N.W.2d 545, (2004).

416. In a prosecution for attempted first degree intentional homicide by use of a dangerous weapon in violation of Wis. Stat. § § 939.32(1)(a), 939.63, and 940.01(1), arising out of a defendant's allegedly slamming a car into a tree and injuring the passenger, where a prosecutor intended to have a police officer, who was a level two accident investigator, provide expert opinion testimony in addition to the personal observances set forth in the police report, the prosecutor was required pursuant to Wis. Stat. § 971.23 to inform the defendant that the officer was being called as an expert, but the defendant suffered no prejudice as a result in light of the remaining strong evidence of the defendant's guilt and where the officer's testimony was contradicted by an independent eyewitness to the incident. State v. Bledsoe, 248 Wis. 2d 981, 638 N.W.2d 393, 2001 WI App 280 (2001), review denied by 2002 WI 23, 250 Wis. 2d 556, 643 N.W.2d 93, (2002).

417. Appellate court's review of a claimed discovery violation is subject to a harmless error analysis. State v. Nielsen, 247 Wis. 2d 466, 634 N.W.2d 325, 2001 WI App 192, (2001), review denied by 2001 WI 117, 247 Wis. 2d 1036, 635 N.W.2d 784, (2001).

418. Given that defendant made a demand for discovery from the prosecution, and that Wis. Stat. § 971.23(1), (7) imposes a continuing duty on the prosecution to disclose exculpatory evidence after the request was made, the State's failure to fully disclose the terms of a primary witness's plea agreement was not harmless error, a defendant's homicide conviction was vacated, and the case was remanded for a new trial. State v. Tkacz, 220 Wis. 2d 715, 583 N.W.2d 673, (Wis. Ct. App. 1998).

419. Where, in a prosecution of defendant for first degree reckless homicide, the prosecutor failed to disclose the terms of a plea agreement with one of its witnesses, as required by Wis. Stat. § 971.23, and the trial court committed error by failing to order the prosecutor to respond to the defendant's request for exculpatory evidence, defendant's conviction was not reversed; a review of a claimed discovery violation under § 971.23 is subject to a harmless error analysis, and the appellate court independently determined that there was sufficient evidence, other than and uninfluenced by the inadmissible evidence, to convict the defendant beyond a reasonable doubt. State v. Tkacz, (Wis. Ct. App. Apr. 1 1998).

420. Defendant was not entitled to a mistrial after a prosecution witness testified that laboratory tests showing that contraband confiscated from had tested positive for drugs even though the lab reports had not been disclosed to defendant prior to trial because defendant refused the trial court's offer of an adjournment during which he would have been allowed to analyze the laboratory reports. State v. Givens, 217 Wis. 2d 180, 580 N.W.2d 340, (Wis. Ct. App. 1998), review denied by 217 Wis. 2d 521, 580 N.W.2d 691 (Wis. 1998).

421. Given the provisions of Wis. Stat. § 911.01(2), Wis. Stat. § 906.13 applied in criminal cases, but, based on the provisions of former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23) and Wis. Stat. § 908.01(1), a trial court erroneously ordered the disclosure of a defense investigator's reports of witness interviews under Wis. Stat. § 906.13(1); because the error did not affect a substantial right of the defendant, pursuant to Wis. Stat. § 805.18(2), the error was harmless and the defendant was not entitled to reversal of his convictions. State v. Hereford, 195 Wis. 2d 1054, 537 N.W.2d 62, (Wis. Ct. App. 1995), review denied by 542 N.W.2d 154 (Wis. 1995).

422. Whether it was a violation of Wis. Stat. § 971.23(8)(a) or not, a prosecutor erred in mentioning a defendant's potential alibi defense in her opening statement, but the error was harmless. State v. Bergmann, (Wis. Ct. App. July 14 1993).

423. Although the state violated Wis. Stat. § 971.23(4) when it failed to provide defendant with a copy of an Intoxilyzer certification report within a reasonable time before trial, even without the certification, there was evidence that the Intoxilyzer was operating correctly, and this, coupled with the testimony of the arresting officer, was sufficient to convict defendant of operating an automobile while intoxicated in violation of Wis. Stat. § 346.63 beyond a reasonable doubt. State v. Dukerschein, 173 Wis. 2d 307, (Wis. Ct. App. 1992).

424. Where witness statements in an investigative report, which were not delivered to the district attorney's office in a timely fashion, contained only evidence inculpating defendant, so that the only prejudice shown was to the prosecution, the prosecutor's violation of former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23) was harmless error. L.D.F. v. State, 170 Wis. 2d 344, 492 N.W.2d 188, (Wis. Ct. App. 1992).

425. Although the State violated Wis. Stat. § 971.23(1) and Wis. Stat. § 971.23(8)(d) by not timely providing defendant written summaries of oral statements defendant made to police, such procedural defect did not prejudice defendant or affect his substantial rights under Wis. Stat. § 805.18 where defendant received such summaries two days late, but before his trial began. State v. Van Ert, 134 Wis. 2d 452, 397 N.W.2d 156, (Wis. Ct. App. 1986).

426. The failure to disclose inculpatory evidence, contrary to Wis. Stat. § 971.23, is a non-constitutional error which may be considered harmless if the court can independently determine that there is sufficient evidence, other than and uninfluenced by the inadmissible evidence, which would convict the defendant beyond a reasonable doubt. State v. Mack, 122 Wis. 2d 775, 362 N.W.2d 447, (Wis. Ct. App. 1984).

427. Although the State should have provided the used cartridges from a test shot fired at the scene of a murder to determine if a neighbor could have heard the shots fired on the night the murders were committed, the error was not prejudicial where the defense was provided with all of the test results prior to trial. State v. Derickson, 120 Wis. 2d 678, 356 N.W.2d 496, (Wis. Ct. App. 1984).

428. Prosecutor's failure to preserve certain evidence did not prejudice defendants' case, as the evidence was not material to the defense in the context of the other evidence adduced at trial and as there was other sufficient evidence to convict defendants. Further, there was no bad faith on the part of the prosecutor in relation to the loss or failure to preserve the three items of evidence. Drenning v. State, 97 Wis. 2d 753, 295 N.W.2d 225, (Wis. Ct. App. 1980).

429. Defendant was not entitled to reversal of his murder conviction on the ground that the trial court erred in refusing to conduct a hearing to discover which of the 97 witnesses on the state's witness list that the state intended to call at trial; the record did not show that defendant was surprised or prejudiced by it, so the error was harmless. Irby v. State, 60 Wis. 2d 311, 210 N.W.2d 755, (Wis. 1973).

430. Former Wis. Stat. § 971.24 (now Wis. Stat. § 971.23(1)(e)), which gave a defendant the right to written or phonographically recorded statements of witnesses that were to testify contained no requirement for discovery that the statements be made to authorities. State v. Stambaugh, 190 Wis. 2d 471, 528 N.W.2d 92, (Wis. Ct. App. 1994).

431. Trial court properly exercised its discretion in permitting a psychologist to testify for the State because defendant did not raise an objection based on Wis. Stat. § 971.23(1)(e) or otherwise seek to prohibit the witness's testimony. Accordingly, any claim of error regarding written notice had been waived. State v. Rudoll, 276 Wis. 2d 864, 688 N.W.2d 784, 2004 WI App 205 (2004), review denied by 2005 WI 1, 277 Wis. 2d 153, 691 N.W.2d 354, (2004).

432. In an action in which two brothers were convicted of abducting a 14-year-old boy for immoral purposes where the State sought to introduce "other act" evidence, it was determined that actual notice before using "other act" evidence was not required, absent a request by defense counsel, prior to trial, for disclosure of all the State's witnesses under Wis. Stat. § 971.23, State v. Banks, 91 Wis. 2d 851, 284 N.W.2d 122, (Wis. Ct. App. 1979).

433. Because the State did not give defendant proper notice under Wis. Stat. § 971.23, the State could not present testimony regarding threats defendant made to the victim during its case-in-chief; however, because § 971.23 specifically excepted from the disclosure of witnesses rebuttal witnesses or those called for impeachment only, the State could properly introduce rebuttal testimony for purposes of impeachment where defendant denied making the threats on cross-examination. State v. Earl, 95 Wis. 2d 734, 289 N.W.2d 374, (Wis. Ct. App. 1980).

434. Where the State sent a letter to defendant's counsel maintaining that the State possessed a tape recording of a conversation between defendant and another individual, but the letter did not relate that the State intended to use the tape recording at trial, the State did not comply with Wis. Stat. § 971.23(9). State v. Hanson, 171 Wis. 2d 771, 495 N.W.2d 103 (Wis. Ct. App. 1992).

435. In an action to terminate mother's parental rights a new trial was necessary, under Wis. Stat. § 752.35, where the trial court erroneously relied on the view that the criminal discovery rules of Wis. Stat. § 971.23 governed the proceedings, rather than the civil rules for discovery set forth in Wis. Stat. § 804.01(2)(d), and improperly prohibited the mother's expert from testifying. Pierce County v. Billie Jo S. (In re Evan M.S.), 223 Wis. 2d 803, 589 N.W.2d 457, (Wis. Ct. App. 1998).

436. Defendant, an individual charged with first-degree murder, robbery, and arson, was not entitled to retroactive application of case law declaring former Wis. Stat. § 955.07 (now Wis. Stat. § 971.23) and the last sentence of Wis. Stat. § 971.23(3)(a) unconstitutional, because defendant failed to satisfy the criteria necessary for retroactive application of the case law. Rohl v. State, 65 Wis. 2d 683, 223 N.W.2d 567, (Wis. 1974).

437. Statute which prohibited the publication of the identity of a victim of an assault, was not invalid as vague, indefinite, and uncertain where the words "publish the identity of a female" meant the name of the female should not be published. State v. Evjue, 253 Wis. 146, 33 N.W.2d 305, , 13 A.L.R.2d 1201 (Wis. 1948).

438. In a disciplinary proceeding, a recommendation by a referee that appellant attorney, a county prosecutor, be publicly reprimanded for unprofessional conduct and that the attorney be required to pay the costs of his disciplinary proceeding were proper. The referee properly found that the attorney engaged in unprofessional conduct in violation of former Wis. Sup. Ct. R. 20.38(1) (now Wis. Sup. Ct. R. 20:4.2) by sending a copy of a letter criticizing a defense lawyer for "disservice" to his client to both the presiding judge and the lawyer's client, without obtaining the lawyer's a uthoriza-

tion, and for violating former Wis. Sup. Ct. R. 20.36(1)(c) (now Wis. Sup. Ct. R. 20:3.4), in failing to disclose a defendant's statement to his counsel when required to do so by Wis. Stat. § 971.23(1), (7). In re Disciplinary Proceedings against Zapf, 126 Wis. 2d 123, 375 N.W.2d 654, (Wis. 1985).

439. In a disciplinary proceeding, a recommendation by a referee that appellant attorney, a county prosecutor, be publicly reprimanded for unprofessional conduct and that the attorney be required to pay the costs of his disciplinary proceeding were proper. The referee properly found that the attorney engaged in unprofessional conduct in violation of former Wis. Sup. Ct. R. 20.38(1) (now Wis. Sup. Ct. R. 20:4.2) by sending a copy of a letter criticizing a defense lawyer for "disservice" to his client to both the presiding judge and the lawyer's client, without obtaining the lawyer's authorization, and for violating former Wis. Sup. Ct. R. 20.36(1)(c) (now Wis. Sup. Ct. R. 20:3.4), in failing to disclose a defendant's statement to his counsel when required to do so by Wis. Stat. § 971.23(1), (7). In re Disciplinary Proceedings against Zapf, 126 Wis. 2d 123, 375 N.W.2d 654, (Wis. 1985).