

# Motions

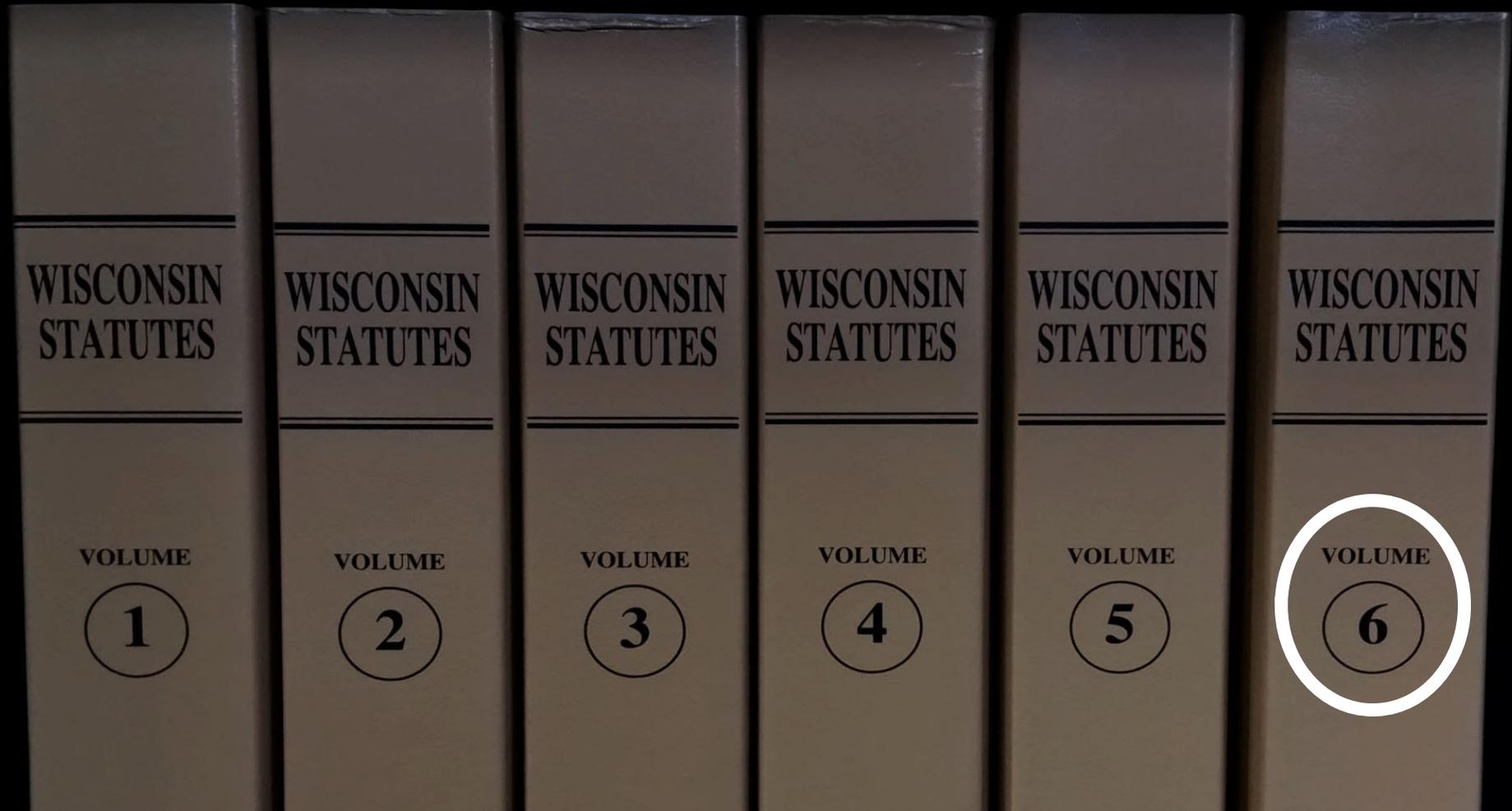
You get what you ask for (hopefully)

Atty. Eric Heywood

# Motions

- What is a motion?
- Analyze motion issues
- File motions!

# Start with the Statutes!



§ 971.30

# Motion

- § “an application for an order”
- Asking the Court to do something
- Don't let DA do all the writing

# Motion/Move

- Motion – noun
  - I file a motion to suppress.
- Move – verb
  - I move the Court to suppress.

# Early Motions

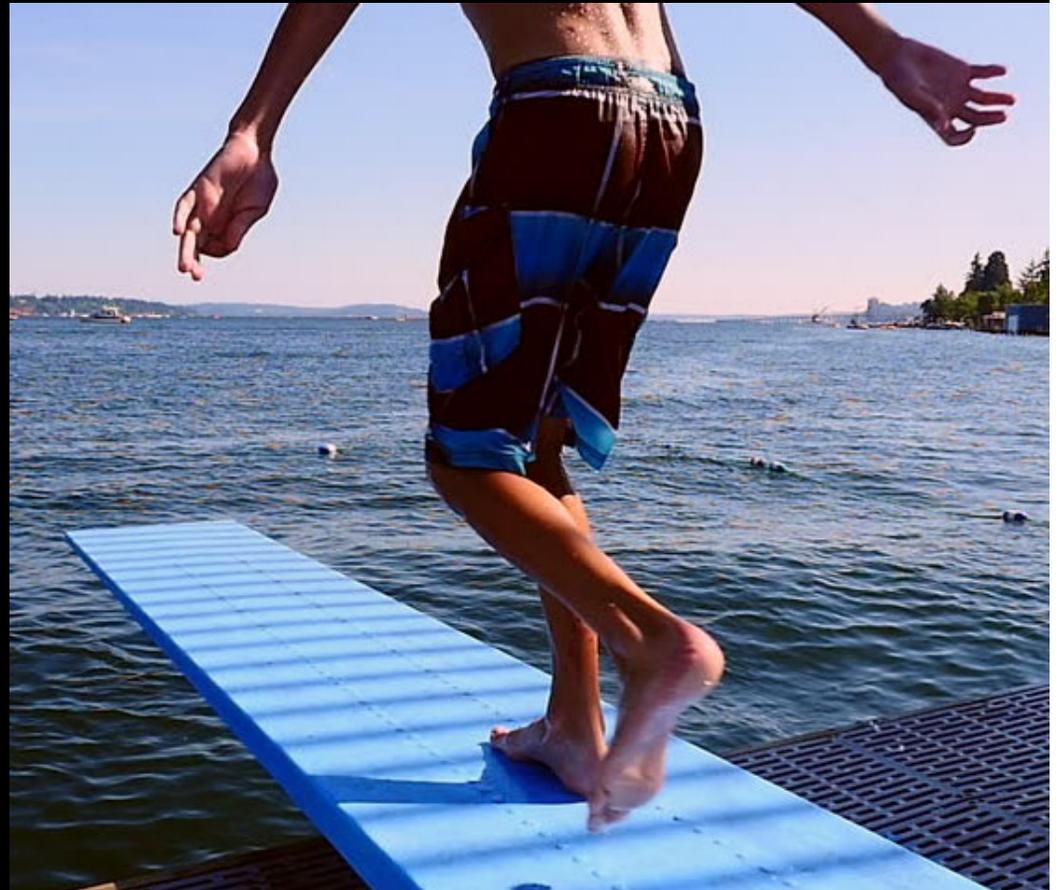
- Substitution
- Sufficiency complaint
- Bail/Bond modification
- Discovery

# Substitution

- § 971.20 before other motions AND before arraignment (not guilty)
- Judge is reassigned
- Don't get to pick judge

# Dismiss Deficient Complaint

- D.I.V.E. into case
- Date
- Identity
- Venue
- Elements



# Bail/Bond Modification

- § 969.08 Petition Court
- Reduce cash bail
- Modify conditions of bond

# Discovery

- Discovery Demand
- Motion for Discovery
- Motion for Specific Discovery

# Suppression Motions

- Stop
- Arrest
- Search
- Statement
- Identification

# Suppress Stop

- Reasonable Suspicion standard
- Specific and articulable facts
- More than a hunch

# Suppress Arrest

- Probable Cause standard
- Totality of the facts and circumstances
- Reasonably believe defendant committed or was committing a crime

# Suppress Search

- Get a warrant!



- Standard: Probable Cause AND
- Warrant exception
  - Consent, incident to arrest, plain view, exigent circumstances ...

# Suppress Statement

- *Miranda* rights
  - Custody
  - Interrogation
- Involuntary
  - Coercion
  - Personal characteristics
- Right to silence
- Right to counsel

# Suppress Identification

- Show up
- Unnecessarily suggestive
- Do photo array or lineup

# Exclusion Motions

- Evidence
  - Illegally obtained
  - Discovery violation
- Expert
  - *Daubert* standard

# Introduction Motions

- Alibi
- Character evidence
  - Other acts
- Medical records

# Examination Motions

- Competency
- NGI

# Administrative Motions

- Adjourn
- Consolidate
- Stay sentence pending appeal

# Postconviction Motions

- NO! May bar future relief
- Talk to appellate counsel
- Let appellate counsel handle it

# How to Draft Motions

- Have a template
  - Criminal defense manual
- Keep it short and simple
  - Get hearing and give notice
- Contents
  - Caption, Body, Date, Closing

# Case Problem Motions

- Stop
- Search
- Statement

Questions?