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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Case No. 2022AP1826-CR

STATE OF WISCONSIN,
Plaintiff-Appellant,

v.

CARLOS AGUILAR,
Defendant-Respondent.

APPEAL FROM AN ORDER DISMISSING THE
CRIMINAL COMPLAINT ENTERED IN GREEN COUNTY
CIRCUIT COURT, THE HONORABLE THOMAS J. VALE,
PRESIDING

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT

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INTRODUCTION

One night before Christmas 2021, Carlos Aguilar and his wife Sandy¹ were at home with Aguilar's brother and his wife, who were living with them at the time. Aguilar's and Sandy's children were at Sandy's parents. Aguilar was drunk and in a foul mood, and his wife Sandy knew that Aguilar could be violent when he was drunk.

It was late, and Sandy was up talking with their sister-in-law, someone Aguilar did not get along with. Aguilar wanted Sandy to end the conversation and come to bed. He yelled insults at Sandy and threatened that, if she didn't come to bed on the count of ten, she "would see what happens." Soon after, Aguilar tore apart Sandy's purse and began tossing about the children's Christmas presents. Scared and upset, Sandy picked up a few presents to salvage, grabbed the keys to the new car, and headed for the door. She told Aguilar that she was going to go sit out in the car, and that she would be leaving him the next day.

Aguilar followed Sandy outside and took the keys from her. Sandy still got in the car (it was unlocked), but Aguilar opened the door and forcibly grabbed her to pull her out. Sandy resisted, even as Aguilar grabbed her by the hair, pulling it out in clumps. The sister-in-law came outside and tried to pull Aguilar off Sandy, to no avail. Aguilar finally relented when his brother came out and told him to stop. The police were called, and Aguilar told the investigating officer that he was the sole owner of the car, and he did not want Sandy in it. Aguilar was charged with one count of false imprisonment.

* * * *

¹ Sandy is a pseudonym used to protect the victim's identity. See Wis. Stat. § (Rule) 809.86(4).

This account was taken from the investigating officer's interviews with Sandy, Aguilar, and the sister-in-law at the scene. These interviews were recorded on the officer's body cam and played at the preliminary hearing. Following the hearing, the circuit court concluded that the State had not shown probable cause for bindover and dismissed the false imprisonment count. The court said that allowing false imprisonment to be charged on these facts would turn "domestic disputes" over the right to access property into "felony crimes." The court added that it knew of no cases in which an act of false imprisonment was committed by restricting a victim's access to a place rather than confining him or her to a place.

Under Wisconsin law, a defendant must be bound over for trial when facts exist supporting *a reasonable inference* that the defendant probably committed a felony. Anyone who intentionally and without consent confines *or* restrains another with knowledge that he or she has no authority to do so commits the crime of false imprisonment. Wis. Stat. § 940.30. The "essence of false imprisonment" is "restraint by one person of the physical liberty of another."²

The evidence presented at the preliminary hearing showed that Aguilar restrained Sandy's physical liberty. Aguilar did so by preventing her from seeking refuge from his abuse in the car. This general effort included the specific restraint of grabbing and pulling Sandy's body and hair to remove her from the car. The facts presented at the preliminary hearing more than adequately support reasonable inferences satisfying the elements of false imprisonment. The facts showed that Aguilar (1) restrained Sandy; (2) intentionally; (3) without her consent; (4) without legal authority; and (5) while knowing that he lacked legal

² *Herbst v. Wuennenberg*, 83 Wis. 2d 768, 774, 266 N.W.2d 391 (1978).

authority to restrain her. Wis. JI–Criminal 1275 (2015). This Court should reverse the order and remand with instructions for the circuit court to reinstate the charge and bind Aguilar over for trial.

ISSUE PRESENTED

Did the State present sufficient facts at the preliminary hearing supporting probable cause to believe that Aguilar committed the crime of false imprisonment, requiring that he be bound over for trial on the charge?

The circuit court answered no.

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests publication. The crime of false imprisonment is committed by confining *or* restraining another. *See* Wis. Stat. § 940.30. Here, the State showed that Aguilar restrained the victim. But the circuit court dismissed the false imprisonment charge because, in part, Aguilar did not confine her, and the court was unaware of any false imprisonment case in which the victim had not been confined. Publication of this Court’s opinion would provide a clear and useful example in case law for a prosecution under section 940.30 based on unlawful restraint of another without confinement.

STATEMENT OF THE CASE

In early 2022, the State charged Carlos Aguilar in Green County Case No. 2022CF2 with false imprisonment and multiple misdemeanors. *State v. Carlos Aguilar*, Green County Case No. 2022CF2, court record, wcca.wicourts.gov (accessed Jan. 30, 2023). Following the preliminary hearing in No. 2022CF2, the circuit court dismissed the false

imprisonment charge. *Id.* The record in No. 2022CF2 is not part of the record on appeal.

The State re-charged Carlos Aguilar in May 2022 with the count of false imprisonment, contrary to Wis. Stat. § 940.30, with a domestic abuse assessment under Wis. Stat. § 968.075(1)(a), in Green County Case No. 2022CF79. (R. 2:1.) According to the complaint, in the early morning hours of December 12, 2021, Aguilar, drunk and belligerent, yelled at his wife Sandy, destroyed her property, and began to toss about their children's Christmas presents. (R. 2:2–4.) The children were not at the house that night.³ (R. 2:4.) Sandy grabbed the car keys and what presents she could and went to stay in the car, but Aguilar followed her and grabbed the keys. (R. 2:4.) Sandy got in the unlocked car, and Aguilar, determined to remove her from the car, grabbed Sandy by the hair and violently pulled her out. (R. 2:4.)

Aguilar's and Sandy's sister-in-law Karly and her husband Jared,⁴ Aguilar's brother, were living with Aguilar and Sandy at the time, and Karly witnessed the incident. (R. 2:3, 5–6.) Karly called the police, and the investigating officer, Brian Bennett of the City of Broadhead Police Department, interviewed Aguilar, Sandy, and Karly. (R. 2:1–6.)

The circuit court, the Honorable Thomas J. Vale, held the preliminary hearing on July 20, 2022. (R. 20:1.) This time, the State supplemented Officer Bennett's testimony with the

³ The couple have one child together, a son. Aguilar has a daughter from a prior relationship. (R. 33 Video 1 at 4:25.)

⁴ Karly and Jared are also pseudonyms. It is unclear whether either are victims under Wis. Stat. § (Rule) 809.86(3) for purposes of the remaining misdemeanor charges in Case No. 2022CF2, but not using their real name further protects Sandy's identity. The State did not use Karly's real name in the criminal complaint. (R. 2:5–6.)

full body cam recordings of the officer's field interviews with Aguilar, Sandy, and Karly. (R. 20:35.)

Officer Bennett testified that, when he arrived on the scene, he spoke with Aguilar at the residence. (R. 20:9–10.) The State asked Bennett about Aguilar's purported statement in the complaint that he followed Sandy out to the car because he was "worried where [Sandy] may go since she had been drinking." (R. 2:7.) The court apparently relied, in part, on this statement in the first preliminary hearing in concluding that Aguilar had not falsely imprisoned Sandy; he removed her from the car to prevent her from driving drunk. (R. 2:7.) But Officer Bennett admitted that, upon reviewing the body cam recording, Aguilar actually said nothing at all about being concerned that Sandy might drive drunk. (R. 20:12–13; 30 Videos 1 and 2.)⁵

Rather, the body cam recording of the interview at the scene showed that Aguilar initially told the officer that he did not want Sandy in the car because, he claimed, the car was his and he "thought she was going to leave with my car." (R. 30 Video 1 at 1:10.) Aguilar's explanations moments later suggested that he understood Sandy intended only to sit in the car. Aguilar said he told her: "I don't want you in the car, because it's cold out there. Not even that, it's like, don't be in the car because I don't want you in the car." (R. 30 Video 1 at 2:15.)

On the recording of Office Bennett's interview of Aguilar at the station, Aguilar said that he and Sandy had

⁵ Record 30 is a DVD containing four video files of Officer Bennett's body cam recordings of his contact with Aguilar at the scene, in the squad car, and at the police station in the early morning hours of December 12, 2021. Video 1, named on the disc as 2021-12-12_03-35-44_00_00_00-00_07_58, is the officer's interview with Aguilar at the scene. (R. 20:19) Video 4, named 2021-12-12_04-40-42, shows the officer's interview of Aguilar at the station later that morning. (R. 20:20–23.)

argued over how much the couple would be spending on Christmas. (R. 30 Video 4 at 5:20.) When the officer began to ask him about pulling Sandy from the car, Aguilar admitted, “I was being aggressive. I shouldn’t have done what I did, I know.” (R. 30 Video 4 at 6:20.)

The State next played the body cam recording of Officer Bennett’s interviews with Sandy. (R. 20:24; 33 Videos 1 and 3.) Sandy, visibly distraught, said at first that she didn’t want to talk and get her husband in trouble. (R. 33 Video 1 at :05, 1:00.) But she explained that she had been talking with Karly and Jared when Aguilar came into the room and started “yelling” and her and calling her “retarded.” (R. 33 Video 1 at 1:15.) Aguilar then said that if Sandy didn’t come to bed on the count of ten, she would “see what would happen.” (R. 33 Video 1 at 1:20.) Sandy said that she soon found that Aguilar had dumped out the contents of her purse and “ripped it to shreds,” and that the Christmas presents she had bought their son “were scattered everywhere.” (R. 33 Video at 1:30, 5:40.) She said she was “scared because I’ve been through this, I know how he gets . . . when he’s been drinking.” (R. 33 Video 1 at 1:55.) She said he gets “violent” when he drinks. (R. 33 Video 1 at 6:25.)

Sandy said she then “grabbed what I could of my son’s presents, to salvage them” and the keys to the “new car”—the keys to the “old car” weren’t there, she said—“and I wanted to sit in the car with the presents and get myself safe.” (R. 33 Video 1 at 2:10.) She continued: “I was scared and I just wanted to sleep out there if I had to . . .” (R. 33 Video 1 at 2:30.) Sandy said that she told Aguilar that she “was going to go sit in the car.” (R. 33 Video 3 at :10.) “I told him I was going to leave him tomorrow,” she said, “but tonight I was going to go sleep in the car.” (R. 33 Video 3 at :10.) She said that this statement “is what escalated the situation.” (R. 33 Video 3 at :10.)

She said that when she got to the car she turned around and Aguilar “was right behind me screaming at me and he took the keys from my hand.” (R. 33 Video 1 at 2:45.) She said the car was unlocked, so she got in. (R. 33 Video 1 at 2:50.) But Aguilar then opened the door and “grabbed me by my hair and pulled.” (R. 33 Video 1 at 2:55.) Through tears, Sandy said “he pulled me hard,” and she found “clumps” of hair on the floor of the car. (R. 33 Video 1 at 3:10.) She said that she thought Aguilar was trying to get her out of the car and to come inside, “but I didn’t want to come inside.” (R. 33 Video 1 at 4:10.)

The State also played the recording of Karly’s account of the incident. (R. 20:26–27; 33 Video 2.) Karly told Officer Bennett that she saw Sandy seated in the car’s passenger seat of the car, telling Aguilar, “Just leave me alone!” (R. 33 Video 2 at :10.) Aguilar then started pulling on Sandy to remove her from the car, and Sandy called out for help. (R. 33 Video 2 at :15.) Karly came outside and tried pulling Aguilar off Sandy, to no avail. (R. 33 Video 2 at :30.) The altercation finally ended when Aguilar’s brother Jared came out and told Aguilar to stop. (R. 33 Video 2 at :35.)⁶

Karly called the police, over Sandy’s objections. (R. 33 Video 2 at :45.) Karly said that, after the incident, Sandy was crying and holding her head and showed Karly some clumps of hair that Aguilar had pulled out. (R. 33 Video 2 at 1:45.)

On cross-examination, Officer Bennett said that the car at issue was parked on the street near the residence. (R. 20:36.) The officer agreed that, based on the witness’s statements, Sandy was not prevented from leaving the house, and she succeeded in entering the car. (R. 20:44–45.) The officer testified that, despite Aguilar’s efforts, Aguilar was

⁶ Jared declined to speak with the officer. (R. 33 Video 1 at 10:40.)

unable to remove Sandy from the car. (R. 20:45.) The officer acknowledged that not all his interactions with the witnesses and Aguilar were recorded on the body camera. (R. 20:38.)

The parties subsequently briefed the issue of whether the State had shown probable cause to bind Aguilar over for trial on the false imprisonment charge. (R. 16:1–8; 17:1–9; 18:1–5.) The State highlighted facts showing that Sandy was a victim of domestic abuse, and that Aguilar prevented her from seeking refuge from him in the car. (R. 16:1–3, 6.) The State argued that it had met its burden at the preliminary hearing by presenting evidence that Aguilar forcefully and violently restrained Sandy’s freedom of movement “by chasing her outside, taking the keys, and pulling her out of the car.” (R. 16:6.) The State noted that Sandy said that she believed Aguilar was pulling her from the car because he wanted her back in the house. (R. 16:6–7.)

In response, Aguilar argued that he did not commit the crime of false imprisonment because he believed that he had lawful authority to remove Sandy from the vehicle—he maintained that he was its sole owner—and the evidence, Aguilar argued, did not support a plausible inference that he knew that he lacked this authority. (R. 17:4–5.) Aguilar also argued that the State had failed to show that he had confined or restrained Sandy. (R. 17:6.) He never tried to prevent Sandy from moving or tried to keep her in one place. Further, Sandy was not restrained by Aguilar’s forcible efforts to remove her from the car because, he argued, she could have avoided Aguilar’s response by not entering his car, or by stepping out when he asked her to. (R. 17:6.)

On August 24, 2022, the court issued a bench ruling dismissing the false imprisonment charge for lack of probable cause. (R. 19:5, A-App. 7.) “What is clear,” the court began, “is that the defendant told the victim he did not want her in the car. She understood that. She went in the car.” (R. 19:5, A-App. 7.) “The defendant did not prevent his wife from leaving

the house. He followed her to the car.” (R. 19:5, A-App. 7.) The court added that, once the altercation at the car ended, “[t]here is no evidence that [Aguilar] prevented [Sandy] from leaving the premises or forced her in any direction.” (R. 19:5, A-App. 7.) The court noted that, when asked if Aguilar “prevent[ed] you from leaving anywhere,” Sandy said no, “because I wasn’t going to leave.” (R. 19:5, A-App. 7.)

The court then asked the State a hypothetical question: Would it have been false imprisonment if Aguilar had “just used the remote lock to lock the doors on the car” to prevent Sandy from entering? (R. 19:6, A-App. 8.) “Possibly,” the State responded, noting that locking the door would have restricted Sandy’s freedom of movement. (R. 19:6, A-App. 8.) The court said that it had not found “any cases” of false imprisonment in which the defendant had limited the victim’s access to a place, “as opposed to holding you in.” (R. 19:17–18, A-App. 19–20.)

The court repeatedly referred to the incident as a “domestic dispute.” (R. 19:10, 17–19, A-App. 12, 19–21.) In the court’s view, this dispute was primarily about access to property. (R. 19:10, A-App. 12.) At issue was whether Aguilar was the sole owner of the vehicle, and the court expressed concern about escalating “a marital domestic dispute” about access to property “to a felony crime.” (R. 19:10, A-App. 12.) “It’s a domestic dispute here,” the court said. (R. 19:17, A-App. 19.) “They are disputing who has a right to control this vehicle.” (R. 19:17, A-App. 19.)

Returning to the hypothetical, the court concluded: “If I use the remote and I lock the doors to this car, and I have limited my spouse from having access to the car[,] by my reading here I don’t think that is a loss of freedom.” (R. 19:17–18, A-App. 19–20.) The court then introduced another hypothetical: “[Suppose] I have limited access to a specific location, a chair in the house.” (R. 19:18, A-App. 20.) “What if we both want to sit in the chair,” the court continued, “and I

pull you out of the chair and you pull me out of the chair . . . which is essentially what is happening here. Have I committed false imprisonment at that point? I now have a felony charge because of this.” (R. 19:18, A-App. 20.) The court then dismissed the false imprisonment count for lack of probable cause. (R. 19:1, 19–20, A-App. 3, 21–22.)

The State appeals.

STANDARD OF REVIEW

Review of a circuit court’s decision about whether to bind a case over for trial is *de novo*. *State v. Anderson*, 2005 WI 54, ¶ 26, 280 Wis. 2d 104, 695 N.W.2d 731. When reviewing a circuit court’s bindover decision, an appellate court “will examine the factual record ab initio and decide, as a matter of law, whether the evidence constitutes probable cause.” *Id.* (citation omitted). The reviewing court “will search the record for any substantial ground based on competent evidence to support” bindover. *Id.* (citation omitted).

ARGUMENT

The circuit court erred in dismissing the false imprisonment charge because facts presented at the preliminary hearing supported probable cause to believe that Aguilar committed the offense.

A. Legal principles

- 1. When the facts support a reasonable inference that the defendant committed a felony, the court should bind the defendant over for trial.**

If, upon the preliminary hearing, “the court finds probable cause to believe that a felony has been committed by the defendant, it shall bind the defendant over for trial.” Wis. Stat. § 970.03(7). The defendant must be bound over when

facts exist supporting a reasonable inference that the defendant probably committed a felony. *Anderson*, 280 Wis. 2d 104, ¶ 25. Probable cause is satisfied when there exists “a believable or plausible account” of the defendant’s commission of a felony. *State v. Williams*, 198 Wis. 2d 479, 493, 544 N.W.2d 400 (1996).

At a preliminary hearing, the court may not choose between competing facts and inferences, and it may not weigh the state’s evidence against evidence favorable to the defendant. *State v. Schaefer*, 2008 WI 25, ¶ 34, 308 Wis. 2d 279, 746 N.W.2d 457. If a reasonable inference supports probable cause and an equally reasonable inference supports innocence, the court should bind the defendant over for trial. *Anderson*, 280 Wis. 2d 104, ¶ 24; *State v. Dunn*, 117 Wis. 2d 487, 489–90, 345 N.W.2d 69 (Ct. App. 1984).

“[T]he preliminary hearing ‘is intended to be a summary proceeding to determine essential or basic facts’ relating to probable cause, not a ‘full evidentiary trial on the issue of guilt beyond a reasonable doubt.’” *State v. Stuart*, 2005 WI 47, ¶ 30, 279 Wis. 2d 659, 695 N.W.2d 259 (quoting *State v. Dunn*, 121 Wis. 2d 389, 396–97, 359 N.W.2d 151 (1984)).

2. A defendant may commit false imprisonment by either confining another *or* restraining his or her physical liberty.

A person who “intentionally confines *or* restrains another without the person’s consent and with knowledge that he or she has no lawful authority to do so is guilty” of false imprisonment. Wis. Stat. § 940.30 (emphasis added). The Wisconsin Supreme court has stated that “[t]he essence of false imprisonment is the intentional, unlawful, and unconsented restraint by one person of the physical liberty of another.” *Herbst v. Wuennenberg*, 83 Wis. 2d 768, 774, 266

N.W.2d 391 (1978) (citing *Dupler v. Seubert*, 69 Wis. 2d 373, 381, 230 N.W.2d 626 (1975)). *Herbst* was a civil case involving an action for the tort of false imprisonment, but its statement about “restraint . . . of the physical liberty of another” being the “essence of false imprisonment” has also been applied to the crime of false imprisonment. See Wis. JI–Criminal 1275 comment 5 at p. 4 (2015) (quoting *Herbst*, 83 Wis. 2d at 774); *State v. Burroughs*, 2002 WI App 18, ¶ 18, 250 Wis. 2d 180, 640 N.W.2d 190 (same).

The elements of false imprisonment are as follows:

- (1) The defendant confined or restrained [the victim].
- (2) The defendant confined or restrained [the victim] intentionally.

This requires that the defendant had the mental purpose to confine or restrain [the victim].
- (3) [The victim] was confined or restrained without (his) (her) consent.
- (4) The defendant had no lawful authority to confine or restrain [the victim].
- (5) The defendant knew that [the victim] did not consent and knew that (he) (she) did not have lawful authority to confine or restrain [the victim].

Wis. JI–Criminal 1275 (2015).

The pattern jury instruction for false imprisonment addresses the meaning of “confined” or “restrained” as follows: “Although [the crime] requires genuine restraint or confinement, it does not require that it be in a jail or prison.” Wis. JI–Criminal 1275 at 2. “If a defendant deprived [the victim] of freedom of movement, or compelled [him or her] to remain where [he or she] did not wish to remain, then [the victim] was confined or restrained.” *Id.* (footnote omitted).

In *State v. Long*, 2009 WI 36, ¶ 28, 317 Wis. 2d 92, 765 N.W.2d 557, the Wisconsin Supreme Court rejected the view that false imprisonment is limited “to situations where the defendant locks another person in some sort of structure.”

Rather, the court held that evidence that the defendant hugged the victim tightly without her consent was sufficient to convict the defendant of false imprisonment for restraining the victim's physical liberty. *Long*, 317 Wis. 2d 92, ¶¶ 28–29.

B. Probable cause existed for bindover because the facts showed that Aguilar intentionally restrained Sandy's freedom of movement by forcibly preventing her from seeking refuge from Aguilar in the parked car during a domestic abuse incident.

As noted, to meet its burden for bindover, the State need only present a “plausible account” at the preliminary hearing in which the evidence supports a reasonable inference that the defendant committed a felony. *See Williams*, 198 Wis. 2d at 493. Here, the State charged false imprisonment, contrary to Wis. Stat. § 940.30, and it has not suggested (and does not suggest) that the facts constitute any other felony. As noted, a person may commit false imprisonment by “confine[ing] or restrain[ing]” another; a person who does not “confine[]” another but does “restrain[]” him or her may still be guilty of false imprisonment. Wis. Stat. § 940.30 (emphasis added).

As shown below, the State presented facts at the preliminary hearing supporting probable cause to believe that Aguilar intentionally restrained or attempted to restrain Sandy's freedom of movement without her consent and with knowledge that he lacked the legal authority to do so. Aguilar preventing her from seeking refuge in the parked car during a domestic abuse incident.

Aguilar restrained Sandy's freedom of movement or physical liberty. Officer Burnett's testimony and the extensive video evidence presented a detailed picture of the incident and the context in which the incident occurred. This context

showed that Sandy was a victim of domestic abuse, and she was seeking refuge in the car away from her abuser.

Sandy's statements to Officer Bennett demonstrate that this was not the first time that Sandy had been verbally and physically abused by Aguilar. She said, "I've been through this [before], I know how he gets . . . when he's been drinking." (R. 33 Video 1 at 1:55.) When the officer asked how Aguilar "gets," Sandy said, "violent." (R. 33 Video 1 at 6:25.)

Sandy said she was "scared" because she knew what Aguilar was capable of. (R. 33 Video 1 at 2:30.) So, when a drunk Aguilar started hurling insults, tore up Sandy's purse, and tossed about the children's presents, Sandy knew that she needed to get out for her own safety. (R. 33 Video 1 at 2:10–2:40.) But her options were limited. She couldn't drive, as she later told the officer—she had been drinking, too⁷—and it was after 3 in the morning. (R. 20:8, 43; 33 Video 3 at :30.)

Sandy decided to rest out in the car away from Aguilar: "I just wanted to sleep out there if I had to . . ." (R. 33 Video 1 at 2:30.) She grabbed a few presents to salvage and the keys to the "new car," the only keys that were there. At some point, Sandy told Aguilar that she "was going to leave him tomorrow, but tonight I was going to go sleep in the car." (R. 33 Video 3 at :10.) This statement, she said, "is what escalated the situation." (R. 33 Video 1 at 2:10.)

The domestic abuse context—Aguilar had previously abused Sandy and Sandy was now seeking to escape an active domestic abuse incident—shows that Aguilar's restraint on Sandy to prevent her from seeking safety in the car was not, as the circuit court appeared to suggest, a *de minimis* restraint.

⁷ A PBT taken at the scene showed that Sandy's blood alcohol concentration was .114, beyond the .08 legal limit for driving. (R. 20:43.)

Turning to those efforts to restrain Sandy's freedom of movement, the record shows that Aguilar followed her out to the car, took the car keys, opened the car door once she got in, and violently pulled on her body and hair to remove her from the car. (R. 33 Video 1 at 2:45–3:10; Video 2 at :10–:30.) Collectively, these actions demonstrate that Aguilar restrained Sandy's physical liberty by preventing her from seeking safety from him in the car during a domestic abuse incident.

Additionally, the act of forcibly grabbing and pulling Sandy's body and hair was, by itself, a restraint of Sandy's physical liberty constituting false imprisonment under Wisconsin law. In *Long*, the defendant was convicted of second-degree sexual assault and false imprisonment. *Long*, 317 Wis. 2d 92, ¶ 1. The false imprisonment count was based on evidence that he hugged the victim tightly without her consent so that she could feel his penis. *Id.* ¶¶ 3, 27–29. Rejecting Long's sufficiency challenge, the court held that the evidence demonstrated a restraint on the victim's physical liberty and thus constituted false imprisonment. *Id.* ¶¶ 27–29. Aguilar similarly (if more violently) restrained Sandy's physical liberty by persistently grabbing and pulling Sandy's body and hair to remove her from the car.

Thus, under these two related theories, the preliminary hearing evidence showed that Aguilar completed an act of false imprisonment by restraining Sandy's physical liberty. He did so by taking multiple actions to prevent her from taking refuge in the car. And he did so by grabbing and pulling Sandy's body and hair, an act that was, itself, such a restraint.

Alternatively, Aguilar at the very least committed an act of attempted false imprisonment. As noted, the standard for bindover is whether "there is probable cause to believe a felony has been committed by the defendant." Wis. Stat. § 970.03(1). "The statute does not require the circuit court to state the specific felony it believes the defendant committed,

nor does it limit the circuit court to considering only whether the defendant probably committed the specific felony charged in the complaint.” *State v. Burke*, 153 Wis. 2d 445, 456, 451 N.W.2d 739 (1990). “Once probable cause has been found, the purpose of the preliminary examination has been satisfied and further criminal proceedings are justified.” *Id.* at 457. Under Wis. Stat. § 971.01(1), “it then becomes the duty of the prosecutor to examine the transactions or facts considered or testified to at the preliminary examination to determine the charges to be brought in the information.” *Burke*, 153 Wis. 2d at 457. As noted, this Court reviews *de novo* the record of the preliminary hearing to determine whether probable cause exists to believe that a felony was committed. *Anderson*, 280 Wis. 2d 104, ¶ 26.

Attempted false imprisonment requires proof that Aguilar “did acts toward the commission of the crime of [false imprisonment] which demonstrate unequivocally . . . that [he] intended to and would have committed the crime of [false imprisonment] except for the intervention of another person or some other extraneous factor.” Wis. JI–Criminal 580 at 2 (2013); Wis. Stat. § 939.32.

Here, Aguilar failed to stop Sandy from entering the car, and he failed to extract her from it, despite his violent efforts. If Aguilar’s restraint on Sandy’s liberty is viewed narrowly as a failed effort to keep her from occupying the car—and not as a completed effort of either preventing her from finding refuge in the car or grabbing and pulling her body and hair—then the hearing evidence showed that Aguilar is guilty of attempted false imprisonment. Thus, at the very least, Aguilar attempted to restrain Sandy’s physical liberty by excluding her from the car as she was trying to avoid his abuse, and Aguilar would have completed this act but for Sandy’s resistance.

But whether the evidence supported the completed offense or merely an attempt, the circuit court erred in

concluding that probable cause did not exist to believe that Aguilar committed a felony. *See Burke*, 153 Wis. 2d at 456. The court largely ignored the actual domestic violence context of this case detailed above. Instead, it focused on inapt hypotheticals about “domestic disputes” involving remote car locks, chairs, and situations in which one spouse would have no reason to seek safety from the other in a locked car. In fact, the court faulted *Sandy* for not following her husband’s order to stay out of the car: “What is clear is that the defendant told the victim he did not want her in the car. She understood that. She went to the car.” (R. 19:5, A-App. 7.) To the extent the court ignored a reasonable reading of the facts that would support probable cause, it erred in denying bindover. *See Schaefer*, 308 Wis. 2d 279, ¶ 34 (court may not weigh evidence at preliminary hearing).

To the extent the court denied bindover because it was skeptical that Aguilar could commit the crime of false imprisonment without confining Sandy, it erred in this respect as well. As noted, the crime may be committed by restraining another without confining him or her,⁸ *see Long*, 317 Wis. 2d 92, ¶¶ 28–29, and the facts from the hearing and reasonable inferences supported bindover on the charge of false imprisonment for Aguilar restraining Sandy’s physical liberty.

Aguilar restrained Sandy intentionally and without her consent. The State addresses these two elements briefly and jointly because the hearing evidence easily supports reasonable inferences that both elements were satisfied.

Lack of consent is shown by Sandy’s resistance to Aguilar’s violent efforts to remove her from the car, and by

⁸ “I don’t see any cases discussing the case of limiting access as opposed to holding you in.” (R. 19:17–18, A-App. 19–20.)

Sandy's absence of consent in fact for Aguilar to violently grab and pull her body and hair. *See Wis. JI-Criminal 1275 at 2.*

Aguilar's intent to restrain Sandy—by both seeking to prevent her from seeking safety in the car and by persistently grabbing and pulling Sandy's body and hair—can easily be inferred by the purposeful and violent nature of his actions. *See Wis. JI-Criminal 1275 at 3.* Aguilar had multiple plausible motives for seeking to remove Sandy from the car with the intent to restrain her physical liberty. He almost certainly wanted her back in the house—he wouldn't even allow her to be adjacent to the property in the car—to reassert control over her, particularly after she announced she was leaving him; to heap more verbal and possibly physical abuse on her; or even to apologize and try to convince her to stay.

Aguilar may argue that his intent was merely to enforce his right to remove Sandy from the car, which he told police was his. Other arguments based on Aguilar's belief that the vehicle was his alone are addressed in the next section. Suffice to say, no matter the suggestion that Aguilar's purpose was to enforce his property rights, the facts support a reasonable inference that Aguilar intended to restrain his wife's physical liberty at the time.

Evidence supports reasonable inferences that Aguilar had no lawful authority to restrain Sandy's physical liberty and he knew he had no such authority. Despite Aguilar's personal insistence that the car was his, Aguilar did not have the legal authority to violently remove Sandy from the car. And Aguilar's actions and statements support a reasonable inference that he knew that he lacked the authority to remove her from the vehicle. *See Wis. JI-Criminal 1275 at 3.*

In fact, Aguilar did not argue in his circuit court brief that he, in fact, had sole ownership of the vehicle and that his ownership of the vehicle gave him the legal authority to remove Sandy from it. (R. 17:4.) This is unsurprising: Aguilar

and Sandy were married, and Wisconsin is a community property state. *See State v. Muth*, 2020 WI 65, ¶ 47, 392 Wis.2d 578, 945 N.W.2d 645. Moreover, Aguilar did not produce documentation to support a claim of sole ownership, and thus he could not argue that he had the legal authority to remove Sandy on this basis. Aguilar therefore conceded for purposes of the preliminary hearing that he lacked the legal authority to forcibly remove Sandy from the car, and he cannot argue otherwise on this record.⁹

Instead, Aguilar asserted in his brief that he *believed* he owned the car, and that he also *believed* that his ownership gave him the authority to remove Sandy “to protect his vehicle.” (R. 17:4.) Because he held these beliefs, Aguilar argued, the hearing evidence does not support a reasonable inference that he knew that he lacked the authority to remove her from the car. (R. 17:4–5.) To this end, Aguilar asserted that Wis. Stat. § 939.49(1),¹⁰ which privileges the intentional, reasonable use of force against another to prevent unlawful interference with property, provided Aguilar with “a legal

⁹ Even if Aguilar had produced documentation supporting an assertion of sole ownership of the car and a defense of legal authority to remove Sandy from the car, resolution of these matters would likely turn on questions of fact for a jury to resolve. They would not be grounds on which to deny bindover.

¹⁰ Wisconsin Stat. § 939.49(1) provides as follows:

A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with the person’s property. Only such degree of force or threat thereof may intentionally be used as the actor reasonably believes is necessary to prevent or terminate the interference. It is not reasonable to intentionally use force intended or likely to cause death or great bodily harm for the sole purpose of defense of one’s property.

basis for [his] belief that he had the legal authority to remove” Sandy from the car. (R. 17:4.)

Again, Aguilar did not argue in the circuit court that Wis. Stat. § 939.49 gave him the actual legal right to remove her. To do so, he would have needed to show that he was, in fact, the vehicle’s sole owner, and that the degree of force used to remove Sandy was reasonable. *See* Section 939.49(1). Aguilar did not try to show at the hearing that he was the vehicle’s sole owner. Nor did he try to show that the degree of force he used was reasonable. Indeed, there was nothing reasonable about the level of force Aguilar used against Sandy, who was merely sitting in the car (to escape Aguilar’s abuse) and had not threatened to damage it.

A court could reasonably infer from the facts and circumstances that Aguilar knew that he lacked the legal authority to remove Sandy from the car in the manner he did. The court was not bound to accept Aguilar’s assurances that he did not know that he lacked the lawful authority to violently grab Sandy and pull her body and hair in seeking to remove her from the car. In fact, Aguilar admitted to the officer at the station house: “I was being aggressive. I shouldn’t have done what I did, I know.” (R. 30 Video 4 at 6:20.) A court could reasonably infer from this statement and other circumstances that Aguilar knew he lacked the legal authority to restrain Sandy’s physical liberty at the time.

* * * *

As shown above, the evidence presented at the preliminary hearing was more than adequate to show probable cause to believe that Aguilar committed the crime of false imprisonment. Alternatively, the evidence was, at a bare minimum, sufficient to show probable cause to believe that Aguilar committed the crime of attempted false imprisonment. Because the evidence supported probable

cause to believe that Aguilar committed a felony, the circuit court erred in dismissing the charge and denying bindover.

CONCLUSION

The order dismissing the charge of false imprisonment should be reversed, and the case remanded with instructions to reinstate the criminal complaint and to bind Aguilar over for trial.

Dated this 14th day of February 2023.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 6,289 words.

Dated this 14th day of February 2023.

Electronically signed by:

Jacob J. Wittwer
JACOB J. WITTWER

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 14th day of February 2023.

Electronically signed by:

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