STATE OF WISCONSIN

C O U R T O F A P P E A L S

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

REPLY BRIEF OF PLAINTIFF-APPELLANT

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INTRODUCTION

The circuit court erred in dismissing the false imprisonment charge because the preliminary hearing evidence supported a reasonable inference that Aguilar probably committed a felony.

Aguilar makes two main arguments in favor of the order of dismissal. First, he asks this Court to affirm on the alternative ground that the State improperly reissued the complaint because it did not present new or unused evidence at the second preliminary hearing. (Aguilar's Br. 17–20.) Next, he argues that the circuit court properly dismissed the refiled complaint because the State did not show at the second preliminary hearing that Aguilar probably committed a felony. (Aguilar's Br. 20–29.) These arguments fail.

The State presented new or unused evidence at the second preliminary hearing: the body cam footage of Officer Bennett's interviews with Aguilar, his wife Sandy, and their sister-in-law Karly.[1]

The body cam recordings and Officer Bennett's testimony told a story demonstrating that Aguilar probably committed a felony. To escape Aguilar's abusive behavior, Sandy grabbed the car keys and announced that she was going to sit out in the car. Aguilar followed her outside and took the keys. When Sandy discovered the car was unlocked and got in, Aguilar grabbed her by the hair to try to pull her out. Sandy resisted, and Aguilar continued to pull, removing her hair in clumps. Aguilar held on to Sandy's hair even as his sister-in-law tried to pull him off Sandy. Aguilar let go only when his brother Jared came outside and told him to stop.

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[1] As noted in the opening brief, Sandy and Karly are pseudonyms. *See* Wis. Stat. § (Rule) 809.86(4). Jared, the State's name for Aguilar's brother, is also a pseudonym.

The foregoing supports reasonable inferences satisfying the elements of false imprisonment. Contrary to Aguilar's arguments, the evidence shows that Aguilar restrained Sandy's liberty in two ways: (1) by preventing her from seeking refuge from his abuse in the vehicle; *and* (2) by pulling her hair to remove her from the vehicle and not letting go. Aguilar's knowledge that he lacked the legal authority both to prevent her from seeking safety from his abuse and to remove her from the vehicle by use of force can be inferred from the circumstances.

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

ARGUMENT

The State opposes Aguilar's arguments unless expressly conceded, and reasserts all arguments made in its opening brief.

I. The State properly reissued the criminal complaint by presenting new and unused evidence at the second preliminary hearing.

Aguilar first asks this Court to affirm the circuit court's order of dismissal on alternative grounds. He asserts that the State improperly refiled the false imprisonment charge by not presenting new or unused evidence at the second preliminary hearing. (Aguilar's Br. 17–20.) While this argument does not appear to have been raised at the preliminary hearing, Aguilar, as the respondent, may present alternative arguments to affirm. *See State v. Baeza*, 156 Wis. 2d 651, 657, 457 N.W.2d 522 (Ct. App. 1990) (appellate court will affirm if the trial court reaches the correct result for the wrong reason).

When a criminal complaint is dismissed for lack of probable cause following the preliminary hearing, "the

district attorney may file another complaint if the district attorney has or discovers additional evidence." Wis. Stat. § 970.04. "[A]dditional evidence" is "new or unused evidence." *State v. Johnson*, 231 Wis. 2d 58, 65, 604 N.W.2d 902 (Ct. App. 1999). Evidence that is known to the State but not used for whatever reason constitutes "unused" evidence under the statute. *State v. Brown*, 96 Wis. 2d 258, 265–66, 291 N.W.2d 538 (1980). "[N]ew or unused evidence" is not "merely cumulative or corroborative" evidence. *Johnson*, 231 Wis. 2d at 68 (quoting *Brown*, 96 Wis. 2d at 267). But a more detailed description of an incident "is not cumulative evidence, [it] is new evidence." *Id.*

Here, the district attorney plainly had "additional" "new or unused" evidence when the State refiled the complaint. *See* Wis. Stat. § 970.04; *Johnson*, 231 Wis. 2d at 65. At the first hearing, the State relied solely on the testimony of investigating officer Brian Bennett. (R. 15:2–25.) At the second hearing, the State supplemented Officer Bennett's testimony with body cam footage of the officer's interviews with Aguilar, his wife Sandy, and their sister-in-law Karly. (R. 20:13, 15, 17–18.)

These on-the-scene interviews presented a much more complete picture of the incident. *See Johnson*, 231 Wis. 2d at 68 (a more detailed account "is new evidence"). For example, Officer Bennett's original testimony omitted key statements Sandy made to the officer. (R. 15:2–25.) On the body cam footage, Sandy told the officer that Aguilar, who was drunk, gets "violent" when he drinks, and she was "scared because I've been through this" before with Aguilar. (R. 33 Video 1 at 1:55, 6:25.) She also told the officer why she went out to the car: "I wanted to sit in the car with the presents and get myself safe . . . . I was scared and I just wanted to sleep out there if I had to." (R. 33 Video 1 at 2:10, 2:30.) As discussed later, these statements were important because they

established that this was a domestic abuse incident, and Sandy was seeking safety in the car from her abuser.

Another example of new evidence: At the first hearing, the officer testified that Aguilar said he didn't want Sandy in the car because she might try to drive it, and she was drunk. (R. 15:11.) But, at the second hearing, the officer revised his testimony. (R. 20:12–13.) He said that he had reviewed the body cam footage of his interview with Aguilar and his police report, and Aguilar had said nothing about preventing Sandy from driving drunk. (R. 20:12–13.)

Though Aguilar notes that the factual basis sections of the original and refiled criminal complaints were identical, he appears to acknowledge that the State satisfies Wis. Stat. § 970.04 if it presents new or unused evidence at the subsequent preliminary hearing. (Aguilar's Br. 17.) Aguilar is correct; Section 970.04 does not require that the new or unused evidence be incorporated into the refiled complaint, only that "the district attorney has or discovers additional evidence." Because the State had new or unused evidence that was presented at the second preliminary hearing, Aguilar's argument that the State improperly reissued the complaint is without merit.

II. The evidence presented at the second preliminary hearing supported probable cause to believe that Aguilar committed a felony.

Aguilar next defends the circuit court's decision. He asserts that the State did not present evidence supporting a reasonable inference that Aguilar probably committed a felony. Aguilar maintains that the circuit court properly dismissed the complaint for lack of probably cause because the State did not present evidence sufficient to satisfy two elements of false imprisonment: (1) that Aguilar confined or restrained Sandy; and (2) that Aguilar knew that he did not

have lawful authority to confine or restrain her. (Aguilar's Br. 21–29.) The State addresses these arguments in order.

A. The evidence supported reasonable inferences that Aguilar sought to restrain or confine Sandy.

At the preliminary hearing and on appeal, the State proceeded on the theory that Aguilar falsely imprisoned Sandy by preventing her from seeking safety in the car, which included the specific restraint of pulling her hair and not letting go to remove her from the vehicle. (R. 19:6, 10–12; State's Op. Br. 17–21.)

In the Introduction above and in more detail in the opening brief, the State showed how specific evidence presented at the hearing supported reasonable inferences that Aguilar sought to restrain or confine Sandy.

Aguilar does *not* argue that these facts fail to show that he restrained Sandy—though he does appear to suggest that any restraint on Sandy was trivial by analogizing his case to various hypothetical marital disputes. (Aguilar's Br. 26.) No, his argument is that the State did not prove the first element of false imprisonment because the crime of false imprisonment, he asserts, "requires confinement," not just restraint, and the State did not present evidence that Sandy was confined. (Aguilar's Br. 24.) This argument fails because it is contrary to the plain language of the false imprisonment statute and the pattern jury instructions.

A person commits the crime of false imprisonment when he or she "intentionally confines *or* restrains another without the person's consent and with knowledge that he or she has no lawful authority to do so." Wis. Stat. § 940.30. The word "or" "should be interpreted disjunctively, in accordance with its plain meaning." *See Hull v. State Farm Mut. Auto. Ins. Co.*, 222 Wis. 2d 627, 639, 586 N.W.2d 863 (1998). Thus, the use of the word "or" in section 940.30 provides for alternate modes

of commission: the crime of false imprisonment occurs when a person *either* "confines *or* restrains" another intentionally. A person who intentionally restrains another but does not confine him or her may still commit the crime of false imprisonment. Section 940.30.

The plain meaning of Wis. Stat. § 940.30 is also reflected in the pattern jury instructions for the offense. The first element of the offense in the instructions is as follows: "The defendant confined or restrained [the victim]." Wis. JI–Criminal 1275 (2015). The recommended instructions advise jurors that they may find guilt on restraint of physical liberty alone: "If the 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." Wis. JI–Criminal 1275 at 2 (footnote omitted).

Moreover, the Wisconsin Supreme Court has recognized that a person may commit the crime of false imprisonment by restraining the physical liberty of another without confining them to a particular place. *State v. Long*, 2009 WI 36, ¶¶ 28–29, 317 Wis. 2d 92, 765 N.W.2d 557. In *Long*, the court addressed a challenge not unlike Aguilar's argument here that a defendant did not commit the offense of false imprisonment because he did not confine the victim. *Id.* ¶ 28. There, Long was found guilty of false imprisonment for hugging the victim tightly without her consent so that she could feel his penis. *Id.* ¶¶ 3, 27–29. The supreme court concluded that the evidence was sufficient to convict Long of the offense because "a reasonable jury could have determined beyond a reasonable doubt that Long restrained [the victim's] physical liberty." *Id.* ¶ 29.

To be clear, the court did not treat *Long* as a restraint-only case—it indicated that the defendant's unwanted

embrace was a form of confinement.[2] *See id.* ¶¶ 27–29. But *Long* is fully consistent with the longstanding principle 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).

Aguilar discounts this language in *Herbst*, arguing that "whatever the essence of the crime [of false imprisonment] may be, at its core, it requires confinement." (Aguilar's Br. 23–24 (citing *State v. Burroughs*, 2002 WI App 18, ¶ 19, 250 Wis. 2d 180, 640 N.W.2d 190).) But *Burroughs* cannot reasonably be read to hold that the crime of false imprisonment requires confinement, contrary to Wis. Stat. § 940.30's plain language providing that the offense is committed by confinement *or* restraint.

Rather, *Burroughs* addressed the meaning of Wis. Stat. § 940.31, *the kidnapping statute*, on a challenge to the sufficiency of the evidence on a conviction under that statute. Specifically, the Court addressed the meaning of "confines" in a part of that statute. *See* section 940.31(1)(b) ("Whoever . . . . [b]y force or threat of imminent force . . . confines another without his or her consent" with intent to hold the person against his or her will commits the crime of kidnapping). Critically, unlike the false imprisonment statute, one cannot kidnap another by either confining *or restraining* him or her. *See* section 940.31(1)(b). So, the Court consulted the false imprisonment statute and case law addressing "confines" and "confinement" to ascertain the meaning of "confines" in the

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[2] The State has argued this case under a theory that Aguilar restrained Sandy without confining her. As shown, such a theory is plainly authorized by the statute and the jury instructions. However, this Court could also conclude that the hearing evidence supports a reasonable inference that, by pulling Sandy's hair and holding on to remove her from the car, Aguilar both restrained Sandy's liberty *and* confined her, as the defendant did in *Long*.

kidnapping statute. Contrary to Aguilar's argument, *Burroughs* does not hold that evidence of *restraint* is insufficient to convict on a charge of false imprisonment—an issue not presented to the Court on Burroughs' appeal from his kidnapping conviction.

Aguilar also restates the circuit court's slippery-slope argument that, if the State is allowed to proceed in this case, it could charge false imprisonment "every time a spouse attempts to deny the use of marital property," and lists examples. (Aguilar's Br. 26.) But this focus on hypotheticals strips the case of the entire rationale for the false imprisonment charge.

This case is not a dispute over access to marital property. As Sandy's statements to the officer showed, and a factfinder could reasonably conclude, this is a case involving domestic abuse in which Sandy was seeking a safe place to escape Aguilar's abuse. Aguilar committed the crime of false imprisonment by restricting Sandy's freedom of movement to prevent her from finding safety from him,[3] and by pulling Sandy's hair and holding on to remove her from the vehicle.

This case was thus very different from the circuit court's (and Aguilar's) hypotheticals about domestic disagreements regarding access to property involving remote car locks, favorite chairs, and well-mannered couples (the judge used himself and his wife as examples)—situations in which one partner would have no reason to seek safety from the other in a locked car. (R. 19:6–7, 17–19.)

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[3] As the State argued in the opening brief, even if Aguilar's actions are construed as a failed attempt to prevent her from occupying the car, the circuit court still erred in rejecting bindover and dismissing the charge. Such evidence would still constitute probable cause to believe Aguilar committed the felony of attempted false imprisonment. (State's Br. Op. 19–20.)

The circuit court ignored reasonable, if not obvious, inferences that this was a domestic abuse situation. To the extent it viewed Aguilar's restriction on Sandy's liberty as trivial, it did not accept reasonable inferences supporting the view that Aguilar restricted Sandy's liberty to prevent her from seeking safety from his abusive behavior in the vehicle. *See State v. Dunn*, 121 Wis. 2d 389, 398, 359 N.W.2d 151 (1984) (court may not weigh the evidence at the preliminary hearing).

As shown, the State thus presented evidence at the hearing supporting reasonable inferences that Aguilar probably confined or restrained Sandy, and Aguilar fails to show otherwise.

B. The evidence supported reasonable inferences that Aguilar knew that he did not have the lawful authority to confine or restrain the victim.

Aguilar next argues that the State failed to prevent at the hearing evidence supporting a reasonable inference that he knew he lacked the legal authority to restrain or confine Sandy. (Aguilar's Br. 27–29.) Aguilar seems to suggest that, because he did not acknowledge in the moment that his conduct was objectively violent and reckless, it cannot be determined that he knew he lacked the legal authority to prevent Sandy from seeking safety in the vehicle by pulling her out by her hair. Aguilar is wrong.

Of course, the way that Aguilar attempted to remove Sandy from the car was unlawful, as any reasonable person would know. *See* Wis. Stat. § 940.19(1) (defining battery as "caus[ing] bodily harm to another by an act done with intent to cause bodily harm" without the person's consent). Aguilar pulled his wife's hair with sufficient force to attempt to pull her body out of the vehicle and held on for some time, removing hair in clumps.

Moreover, as argued in the opening brief, a factfinder would not have to accept Aguilar's assertion that he believed (mistakenly) that the new car was his alone. Again, this is not a dispute over property access. A jury could reasonably infer from the circumstances that, even if he had this belief, he must have known on some level that he had been engaging in abusive and erratic behavior toward Sandy that night. A jury could infer that he also had to know that everyone is entitled to physical safety, especially after being subject to verbal attacks, threats, and erratic behavior. In fact, Aguilar showed that he had this awareness shortly after the incident when he admitted to the officer at the stationhouse: "I was being aggressive. I shouldn't have done what I did, I know." (R. 30 Video 4 at 6:20.) Aguilar dismisses this statement as irrelevant to his state-of-mind at the time of the incident. (Aguilar's Br. 28.) But, of course, a factfinder could infer from this statement made shortly after the incident that he was aware that he lacked the legal authority to remove Sandy from the vehicle in the manner in which he did.

The hearing evidence thus supported reasonable inferences to believe that Aguilar probably committed the crime of false imprisonment. Specifically, the evidence was sufficient to show that Aguilar restrained or confined Sandy, and he knew he lacked the legal authority to do so.

CONCLUSION

The order dismissing the criminal complaint should be reversed. The case should be remanded with instructions for the court to reinstate the criminal complaint and bindover Aguilar for trial.

Dated this 9th day of May 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 2,975 words.

Dated this 9th day of May 2023.

Electronically signed by:

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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 9th day of May 2023.

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