

STATE OF WISCONSIN
COURT OF APPEALS

DISTRICT I

Appeal Case Nos. 2019AP000105-CR, 2019AP000106-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

MARVIN FRANK ROBINSON,

Defendant-Appellant.

ON NOTICE OF APPEAL FROM A JUDGMENT OF
CONVICTION AND ORDER DENYING
POSTCONVICTION RELIEF ENTERED IN THE
MILWAUKEE COUNTY CIRCUIT COURT, THE
HONORABLE MICHAEL J. HANRAHAN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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BRIEF OF PLAINTIFF-RESPONDENT

STATEMENT OF THE ISSUES

1. Was there a factual basis to establish that Mr. Robinson's offenses met the definition of "domestic abuse" as defined in Wis. Stat. §968.075?

The circuit court answered "yes."

This court should answer "yes."

2. Was the record sufficient to require Mr. Robinson to pay the domestic abuse surcharges under Wis. Stat. §973.055?

The circuit court answered “yes.”

This court should answer “yes.”

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. § (Rule) 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. § (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

On July 12, 2017, Milwaukee Police Department officers arrived at 7915 North 66th Street, #10, for a report of a battery. (6R1:2)¹ Officers met with J.R.D., who stated that she and Robinson had gotten into an argument that morning which turned physical. (6R1:3) J.R.D. stated that she had gone to her mother’s residence to get away from Robinson, and that on that morning, Robinson had walked into the apartment. (*Id.*) J.R.D. stated that Robinson said to her “you better not be cheating on me” and then he bear hugged her from the front very hard. (*id.*) J.R.D. stated that Robinson put his arms around her and grabbed her hair causing her pain, and that he pushed her to the floor and she fell on her right knee causing a small scratch. (*Id.*) J.R.D. stated that Robinson told her “if you’re cheating on me, I’ll kill you.” (*Id.*)

On July 15, 2017, Officers arrived at 7220 West Congress Street for a report of a violation of a restraining order. (*Id.*) Officers met with J.R.D. who stated that her “ex-

¹ This brief cites to the record contained in Case No. 2019AP000106-CR as “6R_” and in 2019AP000105-CR as “5R_”. When citing to documents that are contained in both files, this brief will use “6R_” as a reference.

boyfriend,” Robinson, was just at her residence ringing her doorbell. (*Id.*) J.R.D. stated that she could see Robinson through the side window, and further that she had obtained a Temporary Domestic Abuse Injunction on July 13, 2017, against Robinson, which ordered him to avoid contact with her residence. (*Id.*)

On July 18, 2017, around 12:18 am, Officers were again dispatched to 7220 West Congress Street for a report of a violation of a restraining order. (*Id.*) Again, officers met with J.R.D. who told officers that an upstairs neighbor, K.K.W., had called her around 11:50 PM on July 17, 2017 to tell her that Robinson had returned to J.R.D.’s residence. (*Id.*)

Later that day, July 18, 2017, officers were again dispatched to 7220 West Congress Street, at about 1:36 pm. Officers again met with J.R.D. (*Id.*) J.R.D. told officers that she had been in the process of changing her locks when Robinson walked into the living room at the residence. (*Id.*)

J.R.D. asked Robinson why he was there, and Robinson replied that he was there to get his stuff. (*Id.*) J.R.D. advised Robinson that he was not supposed to be at her residence and she contacted the police. (*Id.*)

Consequently, the State of Wisconsin charged Robinson in Milwaukee County Case 17CM2528 with the counts of misdemeanor battery, domestic abuse-infliction of physical pain or injury, domestic abuse assessments for conduct on July 12, 2017; knowingly violate a domestic abuse temporary restraining order, domestic abuse assessments for conduct on July 15, 2017; knowingly violate a domestic abuse temporary restraining order, domestic abuse assessments for conduct on July 17, 2017; and knowingly violate a domestic abuse temporary restraining order, domestic abuse assessments for conduct on July 18, 2017. (6R1)

As part of the probable cause for those offenses, the complaint incorporates a section titled: “Pertaining to the Violation of the Domestic Abuse Injunction” which states, “this complaint is further based upon review of the Temporary Restraining Order issued pursuant to Wis. Stat. § 813.12 on July 13, 2017, in Milwaukee County Court Case no.: 17FA4494.” (6R1:4)

On August 11, 2017, Officers were dispatched to 7220 West Congress Street, where they again met with J.R.D. (5R1: 5.) J.R.D. told officers that on that date, she had arrived home to her residence with her sister, A.L.D. (*Id.*) J.R.D. told officers that she observed the garage was open and that as she got closer, she observed Robinson walk out of her garage. (*Id.*) Robinson told J.R.D. to "get out of the car." (*Id.*) R.D. told Robinson no and that he was not supposed to be there. (*Id.*)

On August 12, 2017, police were dispatched to 7220 West Congress Street. (*Id.*) Officers spoke to J.R.D. who told them that Robinson had come to her residence and caused her to fear for her safety and damaged her property. (*Id.*)

J.R.D. told officers that she feared for her safety and that she didn't know when Robinson would show up again. (*Id.*) J.R.D. stated that there had been a history of domestic violence in the past and she wanted Robinson to leave her alone. (*Id.*)

Consequently, in Milwaukee County Case number 2017CF003763, the State charged Robinson with stalking resulting in bodily harm with domestic abuse assessments, for conduct that occurred between July 12, 2017 and August 12, 2017; bail jumping (misdemeanor) with domestic abuse assessments, for conduct on August 11, 2017; disorderly conduct, domestic abuse assessments for conduct on August 11, 2017; Criminal damage to property, domestic abuse assessments, for conduct on August 12, 2017; bail jumping (misdemeanor) domestic abuse assessment, for conduct on August 12, 2017; and disorderly conduct, domestic abuse assessments for conduct on August 12, 2017. (5R1:1-6)

As probable cause for the offenses, the complaint alleged the same conduct and actions as in Milwaukee County Case 2017CM002528. (5R1:3-5) Further, the complaint added that, while officers spoke to J.R.D., she indicated that she "feared for her safety and that she doesn't know when the defendant will show up again. [J.R.D.] indicated that there has been a history of domestic violence in the past and she wants the defendant to leave her alone" when referencing her relationship with Robinson. (5R1:6)

On November 14, 2017, Robinson pled guilty to misdemeanor battery with domestic abuse assessments and knowingly violating a temporary restraining with domestic abuse assessments order in Case 17CM2528. Also on November 14, 2017, Robinson pled guilty to misdemeanor bail jumping with domestic abuse assessments, criminal damage to property with domestic abuse assessments, and disorderly conduct with domestic abuse assessments in 17CF3763. (6R19:1-3)

During the plea colloquy on November 14, 2017, the court indicated that each count that Robinson was pleading guilty to was a charge “with domestic abuse assessments.” (6R47, 6R44:18-19) The court further indicated that it was accepting Robinson’s guilty pleas to each of the five charges “with domestic abuse assessments.” (6R44: 20-21)

On the plea questionnaire and waiver of rights form, the letters “DA,” indicating domestic abuse, were written next to each of the charges Robinson pleaded guilty to. (6R14:1; 6R11:1) Additionally, the plea questionnaire in Case 17CM2528 listed \$100 DV surcharge” under the maximum penalty section of the form. (6R14:1)

Robinson’s attorney stipulated that the court could rely on the facts in the criminal complaints to establish the factual basis for Robinson’s guilty plea, which the court did (6R44: 5-6, 12)

During the colloquy, the court asked Robinson if he was pleading guilty to the five counts with the domestic abuse assessments, and Robinson answered “yes.” (6R47)

Upon completion of the guilty plea colloquy, the court found Robinson guilty of the charges and entered a judgment of conviction. With consent of both parties, the court then proceeded to sentencing. (*Id.*)

Toward the end of the court’s sentence, the State asked if the court was imposing the five domestic abuse assessments and whether those costs were being waived. The court responded that it had imposed those, \$100 on each of the five counts. (6R47: 44) Ultimately, the Court imposed the domestic

abuse surcharges on all five counts Robinson pled guilty to. (6R 35:1; 33:1; 44:44)

The court then asked the defense if there was anything else after that exchange between the State and the Court. The defense raised no other issues. (6R47: 44)

Robinson filed a post-conviction motion asking the court to strike the reference to the domestic abuse modifier under Wis. Stat. § 968.075 in the judgment of conviction on Count 1 in 17CM2528. (6R39:5) Further, Robinson requested that the court vacate the domestic abuse surcharges under Wis. Stat. § 973.055(1)(a) in Count 1 in 17CM2528 and in all the counts in 17CF3763. (6R36:6-7) Robinson alleged that there was no factual basis to establish that he and J.R.D. were in a relationship that would qualify for the domestic abuse modifier and surcharges. (6R36: 6-7) Robinson also alleged that the court did not make a specific finding on the record at the plea and sentencing hearing that he had a qualifying relationship with J.R.D. (*Id.*)

Following arguments on December 20, 2018, the court denied the post-conviction motion in total. The court ruled that, at sentencing, it had specifically found a factual basis for the domestic abuse assessments in the cases (6R48:6) Judge Hanrahan stated that he had relied on a number of specific factors in making that finding:

- The complaint recited that JRD was changing her locks when Robinson came to her house; and that when she asked why he was there, he told her, “to get his stuff” which was inside the residence;
- At sentencing, defense counsel told the court that Robinson and JRD had been in a long term relationship; and
- The petition for the restraining order--which was attached to the complaint, --which Judge Hanrahan found was incorporated into the complaint, and which Judge Hanrahan stated he had reviewed as part of the record--contained two sworn statements by JRD that she and Robinson were or had been in a “live-in” relationship. (6R48:6-9)
- Judge Hanrahan further found that by stipulating to the facts contained in the complaint and by specifically

indicating that he was pleading guilty to the charge with domestic abuse assessments, Robinson had conceded that the facts met the necessary standard. (6R48:9-10)

Judge Hanrahan signed a written order denying the motion on December 21, 2018. (R40)

This appeal follows.

STANDARD OF REVIEW

Whether an offense qualifies for the “domestic abuse” modifier within the meaning of Wis. Stats. §§ 968.075 and 973.055 is a mixed question of fact and law. *See State v. Schmidt*, 2004 WI App 235, ¶13, 277 Wis.2d 561, 691 N.W.2d 379. This Court applies a “clearly erroneous” standard of review to a circuit court’s factual findings. *See Id.* Whether those facts qualify as “domestic abuse” under Wis. Stats. §§ 968.075 and 973.055 is a legal question subject to a *de novo* standard of review by this Court. *See Id.*

ARGUMENT

I. The record was sufficient to require Robinson to pay the domestic abuse surcharges under Wis. Stat. § 973.055

The record in this case established a proper factual basis for the imposition of the domestic abuse assessment.

Wis. Stat. § 973.055(1) provides that:

If a court imposes a sentence on an adult person or places an adult person on probation, regardless of whether any fine is imposed, the court shall impose a domestic abuse assessment surcharge under chapter. 814 of \$100 for each offense if: (a)1. The court convicts the person of a violation of a crime specified in...940.19(1) , 946.49(1)(a), 943.01(1), and 947.01(1)...; and 2. The court finds that the conduct constituting the violation under subd. 1. involved an act by the adult person ...against an adult with whom the adult person resides or formerly resided....

The plain language of the statute has two requirements: (1) a conviction under one of the listed statutes, and (2) a finding that the conduct was committed against a person identified by the statute. Both of these elements are present here, and have been shown amply in the record, most specifically when Robinson stipulated to the criminal complaints. (6R44:5-6; 12)

Robinson was convicted under Wis. Stats §§§§ 940.19(1) , 946.49(1)(a), 943.01(1), and 947.01(1), which are crimes specified under Wis. Stat. § 973.055(1)(a)(1), and Robinson's conduct was committed against J.R.D., an adult with whom he formerly or presently resided.

In 17CF3763, the relationship between J.R.D. and Robinson was established by J.R.D. identifying Robinson as "her ex-boyfriend." (6R1:4) Further, the complaint stated that J.R.D. told officers that she had a Temporary Domestic Abuse Injunction against Robinson. That injunction was referenced by a section titled "Pertaining to the Violation of the Domestic Abuse Injunction" which indicated that "This complaint is further based upon review of the Temporary Restraining Order issued pursuant to Wis. Stat. § 813.12 on July 13, 2017, in Milwaukee County Court Case no. 17FA4494." (6R1: 4)

The relationship was further established when J.R.D. described her relationship with Robinson, indicating "that there has been a history of domestic violence in the past." (5R1:5)

Robinson stipulated to the use of the complaints as a factual basis for the pleas. The complaint in the felony attached the Temporary Restraining Order and the Petition for Temporary Restraining Order. The Petition contained two sworn statements from the Petitioner, J.R.D., that the respondent, Robinson, was " a current or former live-in boyfriend." The trial court found that those statements were incorporated into the complaint. That, alone, established that the offense "involved an act by the adult person...against an adult with whom the adult person resides or formally resided." Wis. Stat. § 973.055(1)

By reciting that Robinson was JRD's ex-boyfriend (6R1:4) and that there was a history of "domestic violence" between Robinson and JRD (5R1:5), both complaints gave

additional information which met the factual requirements of Wis. Stat. § 973.055.

Applying the facts, there was a sufficient factual basis to meet the requirements of “domestic abuse” under the statute by the sentencing court.

The post-conviction court found that there had been a sufficient and factual basis for the domestic abuse assessment in the cases and cited the several factors that it relied on. (6R48: 6-10) The court stated that it relied on the restraining order that had been obtained by J.R.D., that the restraining order was referenced specifically in the second to last paragraph of the complaints, and was also attached. The court had reviewed the entire complaint including the attachments as part of the record. (6R48: 7)

The court cited that the restraining order specified the petitioner, J.R.D.’s relationship to the respondent, Robinson, as “current or former live-in relationship.” (6R48: 7-8)

The post-conviction court cited to J.R.D.’s Temporary Restraining Order, in which she identified Robinson as a person “within a dating relationship” whom she identified as being involved in a “current or former live-in relationship” (*Id.*)

Given the context of the factual basis stipulated to in the complaint, there was a sufficient factual basis for the post-conviction court to conclude that the domestic abuse assessment must be applied to Robinson’s convictions.

II. The record was sufficient to establish a factual basis for the imposition of the domestic abuse modifier under Wis. Stat. § 968.075.

The post-conviction court held that the domestic abuse modifier, and thus the assessments, were properly applied. (6R48: 8-10)

Wis. Stat. § 968.075 requires a finding of an action that satisfies the definition supplied by that statute.

The plain reading of Wis. Stat. § 968.075 requires a finding of an action that satisfies the definition supplied by that statute. Under Wis. Stat. § 968.075

“Domestic abuse” means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. § 940.225(1), (2), or (3)
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under sub. 1, 2, or 3.

Once again, there is ample evidence in the record to support that these elements were met. As discussed above, there was evidence in the record for the court to find that Robinson and J.R.D.’s relationship had met the requirement of “domestic abuse” as defined in Wis. Stat. § 968.075. (*Id.*).

Robinson pled guilty to and was convicted of conduct that met the second element. Robinson pled guilty to a “history of domestic violence” and to causing J.R.D. bodily harm by pushing her down and dragging her by the hair. (6R1:3, 6R19:1-3).

Given the context of the factual basis stipulated to in the complaint, there was a sufficient factual basis for the post-conviction court to conclude that the domestic abuse modifier must be applied to Robinson’s convictions.

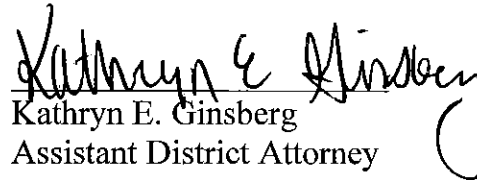
CONCLUSION

The State respectfully requests that the court uphold the post-conviction court's denial of Robinson's motion and find that the domestic abuse assessments and modifiers were properly applied.

Dated this 13 day of August, 2019.

Respectfully submitted,

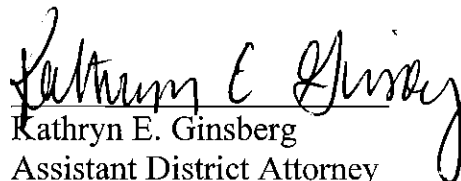
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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 2802.

8/13/19
Date


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**CERTIFICATE OF COMPLIANCE
WITH RULE 809.19 (12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

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