

FILED
05-26-2023
Clerk of Circuit Court
Brown County, WI
2022CF000363

STATE OF WISCONSIN CIRCUIT COURT BROWN COUNTY
BRANCH II

STATE OF WISCONSIN
 Plaintiff,

DA Case No.: 2022BR001645
 Court Case No.: 2022CF000363

vs.

TAYLOR DENISE SCHABUSINESS
 DOB: 11/23/1997
 Defendant.

**STATE'S REPLY TO MOTION
 TO DISMISS COUNT THREE**

For Official Use

TO: Attorney Christopher Froelich
 Attorney at Law
 125 South Quincy Street
 Green Bay WI 54301

The State of Wisconsin, by Deputy District Attorney Caleb Saunders, hereby files its response to the defendant's, Taylor Schabusiness, Motion to Dismiss Charge in Count 3. (Doc. 178.) For the following reasons, the State respectfully requests the Court deny Schabusiness' motion.

I. Schabusiness' Motion is Untimely

Despite bringing a motion "pursuant to Wis. Stats. 971.31(2) and (5) (Doc. 178, 1), if one were to actually read the statutes cited it would be patently clear that Schabusiness has forfeited any ability to challenge the sufficiency of the criminal complaint. Challenges to the sufficiency of a criminal complaint must be made prior to the preliminary hearing or a waiver of the preliminary hearing "or be deemed waived." Wis. Stat. § 971.31(5)(c); see also State v. Berg, 116 Wis. 2d 360, 365, 342 N.W.2d 258 (Ct. App. 1983).

Moreover, charges in an information need not be individually supported by probable cause. State v. Baeza, 156 Wis. 2d 651, 658, 457 N.W.2d 522 (Ct. App. 1990). The only requirement is that the charges be not "wholly unrelated" to the evidence adduced at the preliminary hearing. Id. After a preliminary hearing, the State is permitted to file "any charge in the information so long as it was based on the facts adduced at the preliminary hearing..." State v. Michels, 141 Wis. 2d 81, 88, 414 N.W.2d 311 (Ct. App. 1987) (emphasis original).

A preliminary hearing was held in this case, at which hearing the defendant was bound over for trial. Schabusiness does not challenge probable cause as to count 1 or 2, which counts are transactionally related to count 3. The "wholly unrelated" factors consider "(1) the parties involved; (2) the witnesses involved; (3) the geographical proximity; (4) the time; (5) the physical evidence; (6) the motive; and (7) intent." Baeza, 156 Wis. 2d at 658. Count 3 involves the same parties, is close in time and proximity to, involves similar evidence, and is

STATE OF WISCONSIN - VS - Taylor Denise Schabusiness

just generally part of the same course of conduct as counts 1 and 2. Count 3 plainly relates to the two counts Schabusiness does not challenge.

For the foregoing reasons, Schabusiness' present motion is an untimely challenge to the sufficiency of the complaint and information, and the Court should deny her motion on those grounds.

II. Count Three is Supported by Probable Cause

If the Court wishes to address the probable cause challenge to Count 3, Schabusiness' motion still fails. Probable cause refers to whether there are sufficient facts, along with reasonable inferences drawn from those facts, support the conclusion that the defendant probably committed the charged offenses. See, e.g., State v. Dunn, 121 Wis. 2d 389, 397–98, 359 N.W.2d 151 (1984). There is probable cause if “there exists a believable or plausible account of the defendant’s commission” of the charged offenses. Id. at 398.

Schabusiness allegedly *admitted* to having oral contact with the victim’s penis, and stated she also put a sex device in the anal opening of the victim. (Doc. 2, 5.) Both acts meet the definition of “sexual intercourse.” See Wis. JI – Criminal 1200B. Even uncorroborated confessions (which the State does not concede, as Schabusiness’ various admissions are corroborated in many ways) are sufficient for probable cause and bind over. State v. Fry, 129 Wis. 2d 301, 307, 385 N.W.2d 196 (Ct. App. 1985)

Schabusiness also asserts that the victim was not a “person” at the time of the alleged act. (Doc. 178, 3.) Schabusiness conspicuously fails to refer this Court to sub. (7) of Wisconsin’s sexual assault statute, which provides: “This section [940.225] applies *whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.*” Wis. Stat. § 940.225(7) (emphasis added). If the plain reading of the statute were not enough, Schabusiness also overlooks precedent directly on point:

In sum, by its plain terms, Wis. Stat. § 940.225 prohibits the conduct that the defendants are alleged to have attempted. Section 940.225(3) provides that “[w]hoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony,” and § 940.225(7) provides that “[t]his section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.” The language of the statute is clear on its face. A reasonably well-informed person would understand the statute to prohibit sexual intercourse with a dead person

State v. Grunke, 2008 WI 82, ¶ 37, 311 Wis. 2d 439, 752 N.W.2d 769.

In sum, the charges in both the complaint and information in this case are sufficiently based upon probable cause. Schabusiness motion should also thus be denied on the merits.

STATE OF WISCONSIN - VS - Taylor Denise Schabusiness

III. State's Position on Sealing Document 178

Schabusiness apparently filed Document 178 under temporary seal. The State finds nothing in the motion itself that would warrant a sealing order. And while it is not ideal that Schabusiness is attaching these specific discovery materials to her motion, the State takes no position on sealing Exhibits A and B to her motion.

However, the State is utterly at a loss why the defense felt it necessary to attach Exhibit C to this motion. It is inflammatory, irrelevant, unnecessary, and potentially violative of the crime victims' rights to be treated "with dignity, respect, courtesy, sensitivity, and fairness." Wis. Const. art. I, § 9m(2)(a). While Wisconsin has a "strong presumption in favor of openness for judicial proceedings and records," that presumption can be overcome "by specific statutory or constitutional rights." Doe 1 v. Madison Metropolitan School District, 2022 WI 65, ¶ 19, 403 Wis. 2d 369, 976 N.W.2d 584. Based on Wis. Const. art. I, § 9m, and Chapter 950 of the Wisconsin Statutes, the State would respectfully ask the Court maintain the seal at least with respect to Exhibit C.

Respectfully submitted this 26th day of May, 2023.

Date Signed: 05/26/23

Electronically Signed By:

Caleb J Saunders

Deputy District Attorney

State Bar #: 1094077