



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT III

July 7, 2026

To:

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You are hereby notified that the Court has entered the following opinion and order:

2025AP372-CR

State of Wisconsin v. Kelly Jade Reith (L. C. No. 2024CF95)

Before Stark, P.J., Hruz, and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

The State of Wisconsin appeals from a judgment dismissing a criminal charge of stalking (domestic abuse) against Kelly Jade Reith, following the circuit court's determination that the State had failed to establish probable cause for bindover. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We agree with the State that the circuit court failed to apply the correct legal standard when it determined that the State had not established probable

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

cause for bindover. We further agree with the State that, applying the correct legal standard, the evidence introduced at the preliminary hearing was sufficient to establish probable cause to bind Reith over for trial on the stalking charge. Accordingly, we summarily reverse the judgment of dismissal and remand with directions to reinstate the stalking charge and bind Reith over for trial.

In August 2023, Reith was charged with disorderly conduct (domestic abuse; with use of a dangerous weapon) in Marathon County Case No. 2023CM715. Reith was released on bond in that case, subject to various conditions, including that he have no contact with the victim—his estranged wife, Katelyn.²

On January 31, 2024, the State filed a criminal complaint in the instant case charging Reith with stalking (domestic abuse) and misdemeanor bail jumping (domestic abuse). The complaint alleged that Reith had repeatedly contacted Katelyn in violation of his bond condition in Case No. 2023CM715 by leaving multiple letters at Katelyn’s residence. The complaint also alleged that Reith had accessed Katelyn’s personal email account without her consent.

To bind Reith over for trial on the stalking charge, the State was required to establish probable cause with respect to the following four elements: (1) Reith intentionally engaged in a course of conduct directed at Katelyn; (2) the course of conduct would have caused a reasonable person under the same circumstances to suffer serious emotional distress; (3) Reith’s acts caused Katelyn to suffer serious emotional distress; and (4) Reith knew, or should have known, that at

² Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we refer to the victim using a pseudonym.

least one of the acts constituting the course of conduct would cause Katelyn to suffer serious emotional distress. *See* WIS JI—CRIMINAL 1284; WIS. STAT. § 940.32(2).

At Reith’s preliminary hearing, Marathon County Sheriff’s Deputy Zachary Trulen testified that Katelyn had contacted law enforcement “in regards to a violation of bail” after receiving “several letters from [Reith] that went against his bond conditions.” Those letters included: (1) a “handwritten note” that Katelyn found on her bed on August 5, 2023, following Reith’s arrest on the disorderly conduct charge, after Reith had entered the parties’ residence with law enforcement in order to retrieve his personal belongings; (2) a 22-page letter that Katelyn found at the end of her driveway on August 21, 2023; (3) a handwritten note that Katelyn found in her mailbox on August 28, 2023, along with several of her swimsuits, which she believed had come from a cabin in Oneida County where Reith was staying; (4) another note that Katelyn found in her mailbox sometime between September 5 and 8, 2023, which accompanied a package containing her son’s swimsuits; and (5) an 8-page letter that Katelyn received on September 12, 2023.

Deputy Trulen testified that Katelyn told him that she found these letters from Reith to be “harassing in nature” and that she felt “extremely uncomfortable, so much to the point where she placed a lock on her mailbox to prevent any further letters or packages from showing up.” Katelyn also told Trulen that she believed Reith had “gone into” her email account because one of his letters referenced a job offer that she had received in another city, which Reith would only have known about if he had read her personal emails. Katelyn stated that she viewed Reith’s act of accessing her email account as “an extreme violation of her privacy.”

On cross-examination, Deputy Trulen acknowledged that Katelyn never told him that Reith's actions "put her in fear of bodily injury or death." Trulen also conceded that although Katelyn told him that she felt "harassed" by Reith's conduct, she also stated that she did not feel "terrified."

Following Deputy Trulen's testimony, the circuit court concluded that the State had failed to establish probable cause to bind Reith over for trial on the stalking charge. The court acknowledged that there was probable cause with respect to the first element of the stalking charge—i.e., that Reith had engaged in a "course of conduct" directed at Katelyn. The court concluded, however, that there was insufficient evidence to establish probable cause with respect to the third element of the stalking charge because although Katelyn felt that Reith's conduct "was harassing, she felt uncomfortable by it, [and] she believed it was a violation of her privacy," "she was not terrified by the actions." The court also concluded, with respect to the second element of the stalking charge, that even if Katelyn was "terrorized" by Reith's actions, the record did not establish probable cause that "a reasonable person of ordinary intelligence" would have felt that way "under the circumstances."

The State filed a motion for reconsideration of the circuit court's decision with respect to bindover, which the court denied. The court subsequently entered a judgment dismissing the stalking charge, and the State now appeals.

We independently review a circuit court's decision whether to bind a defendant over for trial. *State v. Anderson*, 2005 WI 54, ¶26, 280 Wis. 2d 104, 695 N.W.2d 731. "A defendant may be bound over for trial when the evidence at the preliminary hearing is sufficient to establish probable cause that a felony has been committed and that the defendant probably committed it."

State v. Dunn, 121 Wis. 2d 389, 393, 359 N.W.2d 151 (1984). “A preliminary hearing as to probable cause is not a preliminary trial or a full evidentiary trial on the issue of guilt beyond a reasonable doubt.” *Id.* at 396. Instead, a judge must bind a defendant over for trial “when there exists a set of facts that supports a reasonable inference that the defendant probably committed a felony.” *Id.* at 398. In making this determination, a judge may not “choose between conflicting facts or inferences” or “weigh the state’s evidence against evidence favorable to the defendant.” *Id.* “All that is needed is a believable or plausible account of the defendant’s commission of a felony.” *State v. Cotton*, 2003 WI App 154, ¶12, 266 Wis. 2d 308, 668 N.W.2d 346.

On appeal, the State argues that the circuit court failed to apply the correct legal standard when it determined that the State had not established probable cause with respect to the second and third elements of the stalking charge. We agree.

The circuit court reasoned that the State had failed to present evidence that Katelyn was “terrified”—or that a reasonable person in her position would have been terrified—by Reith’s conduct. The second and third elements of stalking, however, are satisfied by evidence showing that the defendant’s conduct would have caused a reasonable person in the victim’s position to suffer serious emotional distress and that the defendant’s conduct did, in fact, cause the victim to suffer serious emotional distress. WIS JI—CRIMINAL 1284; WIS. STAT. § 940.32(2)(a), (c). The statute defines the phrase “suffer serious emotional distress” as meaning “to feel terrified, intimidated, threatened, harassed, or tormented.” Sec. 940.32(1)(d) (emphasis added). The use of the disjunctive connector “or” indicates that each of the five emotional states listed in § 940.32(1)(d), individually, is sufficient to satisfy the requirement of “serious emotional distress.” See *Beaver Dam Cmty. Hosps., Inc. v. City of Beaver Dam*, 2012 WI App 102, ¶10, 344 Wis. 2d 278, 822 N.W.2d 491 (“The ordinary meaning of ‘or’ is disjunctive, meaning that a

category that is included in a list of categories linked by the term ‘or’ is one alternative choice.”). Consequently, the circuit court erred by concluding that the State was required to present evidence that Katelyn was terrified—and that a reasonable person in her position would have been terrified—by Reith’s conduct.

We also agree with the State that, applying the correct legal standard, the evidence introduced at the preliminary hearing was sufficient to establish probable cause to bind Reith over for trial on the stalking charge. With respect to the first element of the stalking charge, the circuit court found—and Reith concedes on appeal—that there was probable cause to believe that Reith engaged in a course of conduct directed at Katelyn. *See* WIS. STAT. § 940.32(2)(a). We agree that the five letters that Reith left for Katelyn over an approximately five-week period easily satisfied the “course of conduct” requirement. *See* § 940.32(1)(a) (stating that a “[c]ourse of conduct” means “a series of 2 or more acts carried out over time, however short or long, that show a continuity of purpose,” including “[a]ppearing at the victim’s home,” “[s]ending to the victim any physical ... material or contacting the victim by any means,” and “[p]lacing an object on or delivering an object to property owned, leased, or occupied by the victim”).

The State also presented sufficient evidence to establish probable cause with respect to the second element of the stalking charge—i.e., that a reasonable person in Katelyn’s position would have suffered serious emotional distress due to Reith’s conduct. *See* WIS. STAT. § 940.32(2)(a). Reith’s actions toward Katelyn occurred after he had been charged with disorderly conduct—as an act of domestic abuse and with use of a dangerous weapon—following an incident involving Katelyn. Reith was released on bond in that case, with a condition that he have no contact with Katelyn. According to Deputy Trulen’s testimony at the preliminary hearing, Reith ignored the no-contact condition and contacted Katelyn by leaving

five letters at her residence during an approximately five-week period. In addition, we agree with the State that Reith's conduct included "two violations of privacy that any person in Katelyn's shoes would find especially troubling"—first, Reith's act of leaving a letter on Katelyn's bed when he was allowed into her residence to remove his personal items; and second, Reith's act of accessing Katelyn's email account without her consent, which allowed him to learn that she had received a job offer in another city. All of this evidence was sufficient to give rise to a reasonable inference that Reith's conduct would have caused a reasonable person in Katelyn's position to feel harassed or intimidated, both of which would qualify as serious emotional distress.³ See § 940.32(1)(d).

As to the third element of the stalking charge, the evidence supported a reasonable inference that Katelyn suffered serious emotional distress as a result of Reith's conduct. See WIS. STAT. § 940.32(2)(c). Deputy Trulen testified that Katelyn told him that Reith's actions made her feel "harass[ed]" and "extremely uncomfortable," to the extent that she put a lock on her mailbox in an attempt to prevent Reith from leaving any additional letters or packages. Katelyn also told Trulen that she viewed Reith's act of accessing her email account as "an extreme violation of her privacy." This testimony was sufficient to establish probable cause that

³ With respect to the second element of the stalking charge, Reith contends that the only evidence in the record regarding the contents of the letters that Katelyn received is that they contained "apologies and expressions of love," which Reith contends "are not typically distressing," "[e]specially when they are communicated in writing at a distance." That is one inference that could be drawn from the evidence introduced at the preliminary hearing. For the reasons explained above, however, the evidence also supports a reasonable inference that Reith's accessing of Katelyn's email account and his repeated communications to Katelyn—in violation of the no-contact condition imposed in his other criminal case—would have caused a reasonable person in Katelyn's position to feel harassed or intimidated. When assessing whether the evidence was sufficient to support bindover, a court may not "choose between conflicting facts or inferences" or "weigh the state's evidence against evidence favorable to the defendant." *State v. Dunn*, 121 Wis. 2d 389, 398, 359 N.W.2d 151 (1984).

Reith's actions caused Katelyn to feel harassed or intimidated—i.e., to suffer serious emotional distress.⁴ See § 940.32(1)(d).

Finally, the State also established probable cause with respect to the fourth element of the stalking charge—namely, that Reith knew, or should have known, that at least one of the acts constituting his course of conduct would cause Katelyn to suffer serious emotional distress. See WIS. STAT. § 940.32(2)(b). It is reasonable to infer that Reith knew, or should have known, that accessing his estranged wife's email account and reading her personal messages, as well as repeatedly leaving letters at her residence, would cause her to feel harassed or intimidated. This inference is especially reasonable given that, at the time Reith committed these acts, he knew that he had been charged with a crime of domestic abuse against Katelyn and had been ordered to have no contact with her. A reasonable inference can also be drawn that Katelyn's act of putting a lock on her mailbox would have alerted Reith that she viewed his repeated correspondences as harassing or intimidating. Additionally, it would be reasonable to infer that

⁴ In arguing to the contrary, Reith again emphasizes that the letters contained only “apologies and expressions of love,” and he asserts it is not “plausible” that Katelyn “suffered serious emotional distress as the result of an apology or series of apologies.” Reith also appears to argue that the evidence was insufficient with respect to the third element of the stalking charge because the State did not introduce the letters themselves into evidence at the preliminary hearing. Additionally, Reith suggests that Katelyn's statement that she felt harassed by his conduct was not credible because it was not made until after she filed for divorce—and two months after she received the last letter.

These arguments are unpersuasive. Regardless of the letters' contents, Deputy Trulen's testimony supports a reasonable inference that Reith's repeated communications to Katelyn and his accessing of Katelyn's email account caused Katelyn to feel harassed or intimidated. This inference is particularly reasonable given the context in which the communications occurred—i.e., after Reith had been ordered to have no contact with Katelyn as a condition of his release on bond in a criminal case in which he had been charged with committing an act of domestic abuse against Katelyn. Furthermore, while Reith suggests that Katelyn's statement to Deputy Trulen was not credible, at a preliminary hearing, “the court cannot delve into the credibility of a witness.” *Dunn*, 121 Wis. 2d at 397. Instead, the court is limited to determining “the plausibility of a witness's story and whether, if believed, it would support a bindover.” *Id.*

Katelyn chose to accept a job in another city as a result of Reith's conduct, which would have further put Reith on notice that Katelyn found his conduct to be harassing or intimidating.⁵

In summary, we conclude that the State presented sufficient evidence at the preliminary hearing to establish probable cause with respect to each of the four elements of the stalking charge. Accordingly, we reverse the circuit court's judgment dismissing the stalking charge, and we remand with directions for the court to reinstate that charge and bind Reith over for trial.

Therefore,

IT IS ORDERED that the judgment is summarily reversed and the cause is remanded with directions. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals

⁵ Reith asserts that there is no evidence that he "should have been on notice that his actions would cause emotional distress" to Katelyn because he was simply "apologizing, expressing love and returning personal property left at [the parties'] cabin," and Katelyn never did anything to indicate "that his conduct was making [her] feel harassed" before the criminal charges in this case were filed. We reject these arguments. For the reasons explained above, the evidence supports a reasonable inference that Reith knew, or should have known, that his actions would cause Katelyn serious emotional distress.