COURT OF APPEALS
DECISION
DATED AND FILED

December 15, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2429-CR **Cir. Ct. No. 2011CF4101**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHANNON OLANCE HENDRICKS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID L. BOROWSKI AND M. JOSEPH DONALD, Judges. *Affirmed*.

Before Lundsten, Sherman and Blanchard, JJ.

¶1 LUNDSTEN, J. Shannon Hendricks argues that the circuit court erred when it denied his postconviction plea withdrawal motion. Hendricks contends that the plea hearing transcript reveals a plea colloquy defect within the

meaning of ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). More specifically, Hendricks argues that it was error for the court to fail to inquire into Hendricks' understanding of the intent-to-have-sexual-contact alternative that was part of the charged child enticement offense. Although we question some of the law that binds us, we ultimately agree with the circuit court that, under this law, there was no plea colloquy defect. We therefore affirm.

Background

¶2 Hendricks entered a guilty plea to child enticement. It was alleged that Hendricks enticed a child to a secluded place with intent to have "sexual contact" with the child. *See* WIS. STAT. § 948.07(1).[1] The complaint alleged that Hendricks, then age 31, touched the breasts, under clothing, and the buttocks, over clothing, of a 14-year-old girl. Hendricks was the boyfriend of the child's aunt, and had known the child a long time.

¶3 Hendricks was initially charged with second-degree sexual assault. Pursuant to a plea agreement, Hendricks entered a plea to child enticement. The subsequent procedural history has some complexity. Among other events, Hendricks' postconviction counsel filed a no-merit report with this court, this court issued an order suggesting that there might be a problem with the plea colloquy, postconviction counsel moved to withdraw the no-merit report, and counsel pursued postconviction relief from the circuit court.

[1] All references to the Wisconsin Statutes are to the 2013-14 version. We cite the current version of the statutes for ease of reference. There have been no recent changes to the pertinent statutes here.

¶4 In his postconviction motion, Hendricks argued that the plea colloquy was defective because the circuit court failed to inquire into Hendricks' understanding of "sexual contact." The State filed a response, conceding that the plea colloquy was defective for the reason alleged by Hendricks, but offering to prove, at an evidentiary hearing, that Hendricks nonetheless entered a knowing plea. The court, however, denied Hendricks' motion without a hearing. The court concluded that there was no plea colloquy defect.[2]

¶5 On appeal, Hendricks continues to pursue his plea colloquy defect argument. The State, however, now agrees with the circuit court that there was no defect in the plea colloquy. We recite additional facts below as necessary.

Applicable Legal Standards

¶6 Hendricks seeks plea withdrawal under ***Bangert***. Under ***Bangert***, if a defendant makes a prima facie showing of a plea colloquy defect and alleges that he or she did not understand the information that should have been provided, the burden shifts to the State to prove by clear and convincing evidence that the defendant's plea was knowing, despite the identified defect. *See* ***State v. Brown***, 2006 WI 100, ¶¶39-40, 293 Wis. 2d 594, 716 N.W.2d 906.

¶7 Whether a defendant has established a plea colloquy defect is a question of law that we review de novo. ***Id.***, ¶21.

[2] The Honorable David L. Borowski presided over the plea hearing and entered the judgment of conviction. The Honorable M. Joseph Donald entered the order denying Hendricks' postconviction motion.

Discussion

¶8 Hendricks entered a plea to child enticement. Child enticement is committed when a person "causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place" with "intent to commit" one of six acts specified in the statute. WIS. STAT. § 948.07. Here, Hendricks was informed that the particular act the State needed to prove was that he intended to have "sexual contact ... with the child." WIS. STAT. § 948.07(1).[3]

¶9 Although the circuit court at the plea hearing ascertained that Hendricks understood that, of the six statutory options, the particular act he was

[3] The full statute provides:

> **948.07 Child enticement.** Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class D felony:
>
> **(1)** Having sexual contact or sexual intercourse with the child in violation of s. 948.02, 948.085, or 948.095.
>
> **(2)** Causing the child to engage in prostitution.
>
> **(3)** Exposing genitals, pubic area, or intimate parts to the child or causing the child to expose genitals, pubic area, or intimate parts in violation of s. 948.10.
>
> **(4)** Recording the child engaging in sexually explicit conduct.
>
> **(5)** Causing bodily or mental harm to the child.
>
> **(6)** Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

WIS. STAT. § 948.07.

alleged to have intended was having "sexual contact" with the child, the court did not inquire into whether Hendricks understood the *meaning* of "sexual contact" as that term is statutorily defined. This omission, Hendricks argues, rendered the plea colloquy defective within the meaning of ***Bangert***.

¶10 We first pause to reject a particular argument that the State makes in its effort to persuade us that the circuit court sufficiently inquired into Hendricks' understanding of child enticement. We then explain why we nonetheless agree with the State that under binding precedent we must reject Hendricks' argument that his plea colloquy was defective.

A. Whether the Circuit Court's Questioning of Counsel Was a Sufficient Inquiry Into Hendricks' Understanding of the Charged Crime

¶11 The State argues that the circuit court adequately inquired into Hendricks' understanding of child enticement based on the following exchange between the court and Hendricks' plea counsel:

> THE COURT: Counsel, you discussed with your client the elements of this offense; you attached an element sheet, correct?
>
> [COUNSEL]: Correct, Your Honor. We did go over the elements.
>
> THE COURT: And you're satisfied he understands the elements?
>
> [COUNSEL]: Yes, Your Honor.

The State's short argument on this topic does not persuade us.

¶12 The State quotes a passage from ***Brown***, explaining that one of the ways a circuit court may ascertain a defendant's understanding of the nature of a charge is to "'ask defendant's counsel whether he explained the nature of the

charge to the defendant *and request him to summarize the extent of the explanation, including a reiteration of the elements, at the plea hearing*.'" ***Brown***, 293 Wis. 2d 594, ¶47 (quoting ***Bangert***, 131 Wis. 2d at 268 (emphasis added in ***Brown***)). The State then merely asserts that, because "[t]he circuit court asked Hendricks' trial counsel if he had explained the elements of child enticement [to Hendricks]," the court satisfied the method quoted in ***Brown***. However, because the circuit court here made no inquiry into the extent of the explanation of the elements, we fail to discern why this exceedingly general inquiry satisfies ***Bangert*** or ***Brown***.

¶13 Moreover, as Hendricks points out, the "element sheet" referred to in the quoted passage above does not specify "sexual contact" or, indeed, reference any of the six child enticement alternatives. For that matter, as we shall see, sexual contact is not an element of child enticement. Thus, the mere reference to "elements" in the circuit court's question is far from a clear inquiry into whether counsel explained to Hendricks either that the charge involved intent to have "sexual contact" or the meaning of that term.

¶14 We conclude that this brief exchange does not satisfy the circuit court's obligation to inquire into Hendricks' understanding of the charged crime. *Cf.* ***State v. Hoppe***, 2009 WI 41, ¶¶32-43, 317 Wis. 2d 161, 765 N.W.2d 794 (rejecting the position that "so long as the circuit court ascertains that the defendant generally understands the Plea Questionnaire/Waiver of Rights Form, the contents of that Form may be viewed as intrinsic to the plea colloquy," and, to the contrary, explaining that reference to "the Form is 'not intended to eliminate the need for the court to make a record demonstrating the defendant's understanding' of the particular information contained therein" (quoted source omitted)).

¶15 That is not to say that the circuit court's full plea colloquy did not adequately, at least under controlling case law, sufficiently address Hendricks' understanding of child enticement. Rather, here we simply reject the State's reliance on the above exchange between the court and Hendricks' plea counsel.

¶16 As noted earlier in this opinion, on its own initiative later during the plea colloquy the circuit court verified Hendricks' understanding that the State would have to prove that he enticed the child to a secluded place *with intent to have sexual contact*. The question here is whether this latter inquiry was sufficient to satisfy ***Bangert***.

*B. Whether **Steele** Controls Here*

¶17 The parties dispute whether the result in this case is controlled by ***State v. Steele***, 2001 WI App 34, 241 Wis. 2d 269, 625 N.W.2d 595. Hendricks argues that ***Steele*** is wrongly decided and, regardless, that ***Steele*** does not bind us.

¶18 We agree with Hendricks that ***Steele***'s plea colloquy analysis is problematic. We conclude, however, that ***Steele*** *does* dictate the result in this case. We begin by summarizing ***Steele***, related case law, and the application of that law here. This sets the scene for our analysis of Hendricks' attempts to distinguish ***Steele***. We then address Hendricks' reliance on other case law that might be read to suggest that the circuit court here was required to inquire into Hendricks' understanding of "sexual contact."

*1. **Steele**, Related Case Law, and Its Application Here*

¶19 In ***Steele***, the defendant entered a plea to the crime of burglary. Burglary, as pertinent here, is committed by a person who "intentionally enters any [building or dwelling] without ... consent ... and with intent to ... commit a

felony." WIS. STAT. § 943.10(1m). Steele alleged that his plea colloquy was defective because, although he was informed that the State needed to prove that he entered with intent to commit a felony, he was not informed that the alleged intended felony was felon in possession of a firearm. *See* ***Steele***, 241 Wis. 2d 269, ¶¶3, 8. Steele argued that the particular intended felony was "an essential element" of the charged burglary and, therefore, the circuit court, during the plea colloquy, was required to inform him that the charged crime required proof that he entered with intent to commit the felony of felon in possession of a firearm. *See* ***id.***, ¶¶1, 8.

¶20 We noted in ***Steele*** the much-repeated language from ***Bangert*** requiring courts to inform defendants of, or ascertain that they have been informed of, the essential elements of the crime and then also ascertain that the defendant understands the essential elements of the crime. *See* ***Steele***, 241 Wis. 2d 269, ¶7 (citing ***Bangert***, 131 Wis. 2d at 267). In ***Steele***, the plea colloquy did not "specify the underlying [intended] felony" and the circuit court did not inquire into whether Steele understood that the State would have to prove that he entered the dwelling with the intent to commit the crime of felon in possession of a firearm. *See* ***id.***, ¶¶3, 10. Thus, the question, as we framed it in ***Steele***, was whether this omission was a plea colloquy defect because the specific felony was an "essential element" of the burglary charge. We concluded that it was not.

¶21 Our short analysis in ***Steele*** consisted of looking to a jury unanimity case addressing whether, as to a burglary charge, the underlying felony was an essential element of the crime. More specifically, in ***Steele***, we observed that in ***State v. Hammer***, 216 Wis. 2d 214, 219, 221, 576 N.W.2d 285 (Ct. App. 1997), we held that "the nature of the particular underlying felony is not an essential element of a burglary charge." ***Steele***, 241 Wis. 2d 269, ¶9. In ***Hammer***, that

meant that the defendant was *not* entitled to jury unanimity as to which felony Hammer intended when he entered a dwelling without consent; instead, it was enough if all of the jurors found that Hammer intended at least one of the following three felonies: sexual assault, armed robbery, or substantial battery. *See* ***Hammer***, 216 Wis. 2d at 217-18, 221-22.

¶22 To be clear, there is no suggestion in ***Hammer*** that the jury did not need to be instructed on which underlying felonies were alleged or on the elements of those underlying felonies. Indeed, the briefing in ***Hammer*** indicates that, in keeping with a directive in the form burglary jury instruction, the jury was instructed on the elements of the underlying intended felonies. *See* Brief and Appendix of Defendant-Appellant at 11-15, and Brief of Plaintiff-Respondent at 16 & n.3, ***State v. Hammer***, 216 Wis. 2d 214, 576 N.W.2d 285 (Ct. App. 1997) (No. 1996AP3084-CR); *see also* WIS JI—CRIMINAL 1424 (1994). Rather, as pertinent here, the sole issue in ***Hammer*** was whether the jurors all needed to agree on a single intended felony.

¶23 Returning to ***Steele***, and the plea colloquy context there, we concluded:

> It follows from our conclusion in ***Hammer*** that the nature of the particular underlying felony is not an essential element of a burglary charge and therefore need not be explained during colloquy in order to [satisfy ***Bangert***].

Steele, 241 Wis. 2d 269, ¶9. Thus, the teaching of ***Steele*** is that a circuit court inquiring into a defendant's understanding of the nature of a charged crime during a plea colloquy need not inquire into a defendant's understanding of the particular alternative intended underlying act if that act is not itself an element of the charged crime. In ***Steele***, that meant that the circuit court was not required to inquire into

whether Steele understood that the State would need to prove that he entered the dwelling in question with intent to commit the crime of felon in possession of a firearm.

¶24 The analysis in ***Steele*** dictates that our job here is to ascertain whether the particular act Hendricks allegedly intended to commit, sexual contact, is an essential element of child enticement. If the particular child enticement alternative alleged, here sexual contact, is not an element of child enticement, it follows from ***Steele*** that the circuit court, during the plea colloquy, did not need to inquire into Hendricks' understanding of the meaning of "sexual contact."

¶25 Whether the "sexual contact" alternative in the child enticement statute is an element of the crime has already been answered in ***State v. Derango***, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833. Like ***Hammer***, ***Derango*** is a jury unanimity case. And, the particular unanimity issue in ***Derango*** parallels the one in ***Hammer***.

¶26 The question in ***Derango*** was whether jurors had to unanimously agree on one of the six child enticement alternatives. That is, whether the jurors had to agree that, when Derango attempted to entice a 15-year-old girl to a secluded place, he intended (1) to have sexual contact or intercourse with the girl, (2) to expose or cause the girl to expose a sex organ, or (3) to take a picture of the girl engaging in sexually explicit conduct. *See* ***Derango***, 236 Wis. 2d 721, ¶¶1-5, 9, 11, 25. The jury instructions in ***Derango*** permitted the jurors to return a guilty verdict without agreeing on one of these three alternatives. Rather, all that was required was that the jurors all agreed that Derango intended at least one of the alternatives. *See* ***id.***, ¶25.

¶27 As in ***Hammer***, the ***Derango*** court analyzed the propriety of the jury instructions by analyzing whether the alternatives were essential elements of the crime. *See* ***Derango***, 236 Wis. 2d 721, ¶¶13-14. As in ***Hammer***, the ***Derango*** court concluded that they were not. Rather than an essential element, the alternatives were "multiple modes" of committing a single crime. ***Derango***, 236 Wis. 2d 721, ¶25; *cf*. ***Hammer***, 216 Wis. 2d at 219-22 (in the burglary context, the intent element is simply "intent to ... commit a felony," and jurors need not agree on the particular intended felony).

¶28 To sum up, in ***Steele*** we held that, during a plea colloquy, a court inquiring into a defendant's understanding of the nature of a charged burglary need not inquire into the defendant's understanding of what the State must prove with respect to the particular felony the defendant intends to commit. According to ***Steele***, the reason this inquiry is not necessary to a knowing plea is because the particular underlying felony is not an element of burglary. And, ***Derango*** teaches that the three alternatives at issue in that case, including sexual contact, are, similarly, not elements of child enticement. Thus, applying the analysis used in ***Steele*** and the not-an-element holding in ***Derango*** leads to the conclusion that the circuit court here was not required to inquire into Hendricks' understanding of the "sexual contact" alternative alleged as a part of his child enticement charge.

¶29 Before moving on, we pause to comment on the reasoning in ***Steele***.

¶30 Like Hendricks, we fail to understand why it makes sense to look only to jury unanimity law to decide what is a necessary inquiry for plea colloquy purposes. Jury unanimity cases address whether juries must agree on a single means of committing a crime. Plea colloquy law addresses what defendants must understand in order to enter a knowing plea. Generally speaking, the latter

involves an inquiry into a defendant's understanding of what the State needs to do in order to prove a crime beyond a reasonable doubt. Thus, it does not seem to logically follow that, just because jurors need not agree on alternative means of the commission of a crime, a defendant does not need to understand the alternative or alternatives the state must prove in order to enter a knowing plea. To put a finer point on it, the holding in ***Steele*** permits a defendant to enter a supposedly "knowing" plea to burglary without the defendant needing to understand which felony (or alternative felonies) the State alleges the defendant intended, much less understand the elements of the underlying felony (or alternative felonies). How can that be?

¶31 Thus, like Hendricks, we question ***Steele***'s reliance on the "elements" law in the juror unanimity context of ***Hammer***. We are not, however, at liberty to override or ignore that analysis. Thus, the only way we could avoid what we perceive to be the controlling analysis in ***Steele*** is to distinguish the case. Accordingly, we turn our attention to Hendricks' attempt to distinguish ***Steele***.

2. Hendricks' Efforts To Distinguish ***Steele***

a. "Felony"/"Any of the Following Acts"

¶32 Hendricks first appears to attempt to distinguish ***Steele*** based on the difference between the word "felony" in the burglary statute at issue in ***Steele*** and the "any of the following acts" language in the child enticement statute at issue here. Hendricks writes:

> Thus, whereas a court who explains to a defendant that the State would have to prove that he "committed a burglary with intent to commit a felony" has communicated the nature of the offense to the defendant, the same would not be true for a court who simply states: "the State would have to prove that you, with the intent to commit any of the

> following acts, caused or attempted to cause a child under 18 to go into any vehicle, building or secluded place", without explaining which of the subsections of child enticement was alleged.

As we understand the quoted argument, Hendricks contends that informing a defendant during a plea colloquy that a burglary is committed when a person intentionally enters an enclosure without consent "with intent to ... *commit a felony*" adequately, in Hendricks' words, "communicate[s] the nature of the offense to the defendant." Hendricks seems to reason that the word "felony" is generally understood, so that there is no need to list or define the possible felonies that might apply. In contrast, so the argument goes, causing a child to go into an enclosure "with intent to commit *any of the following acts*" has no meaning because "the following acts" has no meaning without actually specifying one or more of the six "following acts" set out in the child enticement statute.

¶33 That is, according to Hendricks, the phrase "intent to ... commit a felony," at issue in ***Steele***, sufficiently communicates the nature of this intent element, whereas the phrase "with intent to commit any of the following acts," at issue here, has no meaning and, therefore, does not suffice as a sufficient inquiry into Hendricks' understanding of the charged child enticement crime.

¶34 Whatever the merits of the distinction Hendricks makes above, it does not line up with what happened in this case. The circuit court here did not simply refer to "any of the following acts." Rather, the court specified the "act[]" alleged. The court told Hendricks that the requisite intent in this respect was the intent to have "sexual contact" with the child.

¶35 Indeed, Hendricks does *not* argue that the plea colloquy was defective because the circuit court vaguely referred to "intent to commit any of the

following acts." Hendricks argues that—having identified the specific "following act[]" as having "sexual contact" with the child—the court failed to inquire as to whether Hendricks understood the meaning of "sexual contact."

¶36 Thus, for purposes of distinguishing ***Steele***, the relevant comparison is the word "felony" in that case and the term "sexual contact" in the child enticement statute at issue here. In fact, Hendricks' second attempt to distinguish ***Steele*** is based on a comparison of these two terms.

b. "Felony"/"Sexual Contact"

¶37 Hendricks argues that a second distinction with ***Steele*** is that, "unlike the term 'felony,' 'sexual contact' is an obscure legal term of art." We understand Hendricks to be arguing that the failure to identify and define "felony" in ***Steele*** was not a problem because people generally know what a felony is, but that "sexual contact" is not commonly understood. We are not persuaded.

¶38 Plainly, it is commonly understood that the term "felony" refers to a relatively serious crime. But how does that common understanding help a defendant who may not know the identity of the particular felony at issue, much less understand the elements of the felony? What if the underlying alleged intended felony involves "sexual contact"?

¶39 Moreover, we think it obvious that the term "sexual contact" is no more obscure than the term "felony." On its face, the term "sexual contact"

communicates physical contact with a sexual purpose, which, on a common sense level, is at least as self-defining as "felony."[4]

¶40 As we have already observed, we fail to understand the logic in ***Steele*** that countenances a knowing plea to burglary without the defendant needing to understand which felony (or alternative felonies) the State alleges the defendant intended or to understand the elements of the underlying felony (or alternative felonies). Thus, our point here is not that there should be no need to

[4] As Hendricks points out, the particular definition of "sexual contact" applicable to child enticement in WIS. STAT. ch. 948 is found in WIS. STAT. § 948.01(5), which provides:

> **(5)** "Sexual contact" means any of the following:
>
> (a) Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant:
>
> 1. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.
>
> 2. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.
>
> (b) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.
>
> (c) For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.

inquire into a defendant's understanding of "sexual contact" in order to ensure a knowing plea to child enticement with the sexual contact alternative. Rather, our point here is that the failure to make the inquiry during a plea colloquy does not distinguish Hendricks' situation from the situation in ***Steele***.

3. Hendricks' Reliance on ***Nichelson*** *and* ***Jipson***

¶41 Apart from attempting to distinguish ***Steele***, Hendricks points to case law holding that, when a defendant is charged with sexual assault or attempted sexual assault with alleged sexual contact, the plea colloquy must include an inquiry into whether the defendant understands the meaning of "sexual contact." In this regard, Hendricks primarily relies on ***State v. Nichelson***, 220 Wis. 2d 214, 582 N.W.2d 460 (Ct. App. 1998), and ***State v. Jipson***, 2003 WI App 222, 267 Wis. 2d 467, 671 N.W.2d 18.

¶42 If we were writing on a clean slate, we would likely conclude that these cases support the proposition that, because the State's theory here was that Hendricks enticed the child with intent to have sexual contact with her, the plea colloquy needed to include an inquiry into Hendricks' understanding of the meaning of "sexual contact." But, as is clear by now, we are not writing on a clean slate.

¶43 In both ***Nichelson*** and ***Jipson***, defendants entered pleas to crimes that had, *as an element*, "sexual contact." The defendant in ***Nichelson*** entered a plea to first-degree sexual assault of a child under WIS. STAT. § 948.02(1). ***Nichelson***, 220 Wis. 2d at 217. The defendant in ***Jipson*** entered a plea to second-degree sexual assault of a child under § 948.02(2). ***Jipson***, 267 Wis. 2d 467, ¶2. Both cases rely on the proposition that the respective circuit courts were obligated to inquire into the defendants' understanding of "sexual contact" because "sexual

contact" was an element of the charged crimes. *See* ***Nichelson***, 220 Wis. 2d at 218-20 ("[a] plea is not voluntary if the defendant did not understand the essential elements of the charged offense at the time the plea was entered," and "the ... [plea] colloquy does not indicate that Nichelson knew the State had to prove beyond a reasonable doubt that his purpose in sexually touching the child was his own sexual gratification"); ***Jipson***, 267 Wis. 2d 467, ¶9 ("To understand the nature of the charge, the defendant must be aware of all the essential elements of the crime. While it is true the purpose of the sexual contact is not an element of the crime ..., but rather is a definition of the element 'sexual contact' ..., the courts have nevertheless crafted this [definition] to be an element of the offense." (citations omitted)).

¶44 In contrast, as we have indicated, we conclude that the only reasonable reading of our supreme court's ***Derango*** decision is that "sexual contact," at least as is pertinent here, is not an element of child enticement. As we have explained, the ***Derango*** court addressed whether "sexual contact" was an element of child enticement, albeit in the context of jury unanimity. The ***Derango*** court explained that jury unanimity is required as to each essential element of the crime charged. ***Derango***, 236 Wis. 2d 721, ¶13. The ***Derango*** court concluded that the "sexual contact" alternative, along with two other alternatives, in the child enticement statute were not an "essential element," but rather alternative conceptually similar "modes of commission." *See* ***id.***, ¶17 ("The act of enticement is the crime, not the underlying intended sexual or other misconduct."); *see also* ***id.***, ¶¶13, 24-25. And, ***Steele*** compels the conclusion that the ***Derango*** elements analysis applies with equal force to our plea colloquy context.

¶45 Accordingly, neither ***Nichelson*** nor ***Jipson***, nor other similar cases cited by Hendricks, required the circuit court in this case to inquire into Hendricks' understanding of the meaning of "sexual contact."

4. Hendricks' Reliance on ***Patel***

¶46 Hendricks relies on ***State ex rel. Patel v. State***, 2012 WI App 117, 344 Wis. 2d 405, 824 N.W.2d 862. According to Hendricks, ***Patel***, "albeit perhaps implicitly," holds that the definition of sexual contact is an essential element of child enticement. It follows, in Hendricks' view, that the plea colloquy here was defective because it did not address an essential element.

¶47 We agree that some language in ***Patel***, read in isolation, seemingly assumes that the "purpose of sexually degrading or humiliating the victim, or for the purpose of sexually arousing or gratifying [the defendant]," was, at least in the charging circumstances of ***Patel***, an essential element of child enticement. *See, e.g.*, ***id.***, ¶¶5-6 ("The trial court did not, however, determine that Patel acted with the purpose of sexually degrading or humiliating the victim, or for the purpose of sexually arousing or gratifying himself—an essential element of the offense pursuant to [the child enticement statute and the applicable statute defining "sexual contact"].).

¶48 However, we conclude that the better reading of ***Patel*** is that we assumed without deciding that the definition of "sexual contact" was an element of the charged child enticement offense. In ***Patel***, at least three times we referred to the absence of an inquiry into the meaning of sexual contact as an "alleged" plea colloquy defect. *See* ***id.***, ¶¶21-23. Moreover, the question before us was not whether the definition of sexual contact was an essential element of child enticement or even whether the circuit court was required to inquire into Patel's

understanding of the definition during the plea colloquy. Rather, our attention was focused on whether the alleged plea colloquy defect was discernible from the record, within the meaning of Wisconsin's writ of *coram nobis* case law. *See* ***id.***, ¶¶13, 22-23. We concluded that it was. That is, we held that the "alleged defect in the plea colloquy is undoubtedly an error appearing on the record." ***Id.***, ¶23. We interpret this statement in ***Patel*** to mean that there was no doubt that the alleged defect appeared on the record, and not that there was no doubt that there was a defect. And, for this reason, we concluded that Patel was prohibited from raising the alleged plea colloquy defect via a writ of *coram nobis*. ***Id.***, ¶20.

¶49 Therefore, we reject Hendricks' argument that ***Patel*** holds that the definition of sexual contact is an essential element of child enticement.

Conclusion

¶50 For the reasons above, we affirm the circuit court.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.