COURT OF APPEALS
DECISION
DATED AND FILED

March 2, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1428-CR **Cir. Ct. No. 2005CF15**

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

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JACQUELYN J. DINGELDEIN N/K/A JACQUELYN J. ANDERSON,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Marquette County: RICHARD O. WRIGHT, Judge. *Reversed and remanded.*

Before Vergeront, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. The State of Wisconsin appeals an order dismissing a criminal complaint after a preliminary hearing. The issue is whether the State showed probable cause to believe that defendant Jacquelyn Dingeldein

committed unauthorized use of personal identifying information by using the information of her husband. We reverse and remand.

¶2 The complaint charged Dingeldein with one count of intentionally using personal identifying information of another to obtain credit, contrary to WIS. STAT. § 943.201(2) (2003-04).[1] After testimony at the preliminary hearing from the alleged victim, her former husband, David Dingeldein, and from a deputy sheriff who investigated the incident, the court ordered briefing on the legal question of whether the facts shown at the hearing would result in a crime. After briefing, the court issued a written decision dismissing the charge. The State appeals.

¶3 The statute first defines the terms "personal identification document" and "personal identifying information." WIS. STAT. § 943.201(1). Specifically relevant to this case, an individual's name and social security number are personal identifying information. § 943.201(1)(b)1. and (1)(b)5. The State also asserts that the definition's "catch-all" provision "can embrace" a person's birthdate. *See* § 943.201(1)(b)15. However, the State cites no other authority for that proposition, and we do not rely on it in this opinion.

¶4 The conduct prohibited by the statute, as relevant to this case, is described in the following provision:

> (2) Whoever, for any of the following purposes, intentionally uses, attempts to use, or possesses with intent to use any personal identifying information or personal identification document of an individual, including a deceased individual, without the authorization or consent of

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

> the individual and by representing that he or she is the individual, that he or she is acting with the authorization or consent of the individual, or that the information or document belongs to him or her is guilty of a Class H felony:
>
> (a) To obtain credit, money, goods, services, employment, or any other thing of value or benefit.

WIS. STAT. § 943.201(2).

¶5 The complaint alleged that on January 14, 2005, a deputy sheriff interviewed Dingeldein's ex-husband, who told him that he received a bill in the mail from Dell Computers, that he did not order any equipment from that firm, and that the address on the notice was that of his ex-wife Jacquelyn Dingeldein. It further alleged that a detective met with Jacquelyn, who admitted that she had used her ex-husband's personal identifying information, including social security number, to order the equipment. It alleged that she further said that "she did so to get even with him because she believed that he caused her financial ruin in their divorce."

¶6 At the preliminary hearing, the ex-husband provided foundation for admission of the only exhibit, the bill. The bill, which appears to be in the form of a credit account, shows six different items purchased on four dates in December 2004, with the last date being December 14. The only name appearing on the bill is the ex-husband's. He testified that he and Jacquelyn were divorced on December 14, 2004, that he did not order this Dell equipment, and that he did not give Jacquelyn permission to use his information to order the equipment. He testified that the bill was forwarded by the postal service to his current address, due to a change-of-address he had filed. A deputy sheriff testified that he interviewed Jacquelyn, and that she had used her ex-husband's personal information, including his social security number, to order a Dell computer online

from her residence. He testified that Jacquelyn basically stated that her ex-husband had ruined her life financially and she was trying to get back at him. The deputy also testified that Dingeldein said she was going to pay for it when she got her tax refund.

¶7 The circuit court concluded the evidence failed to show probable cause on two of the elements. The first was whether Jacquelyn knew that she lacked authority or consent to use David's information, and the second was whether Jacquelyn represented that she was her ex-husband, or represented that she had authority or consent from him. The court felt that the essential information that was missing was the credit application itself, which would show what information was requested of the applicant. The court wrote: "Without seeing what information she put in the application, we cannot at all distinguish, even for probable cause purposes, between an application she misrepresented as his alone, or one in which she was applying as a married person – one last time enjoying the credit benefits of the marriage."

¶8 The parties agree that the circuit court's focus at the preliminary hearing is whether the facts and the reasonable inferences drawn therefrom support the conclusion that the defendant probably committed a felony. ***State v. Dunn***, 121 Wis. 2d 389, 397-98, 359 N.W.2d 151 (1984). When reviewing a circuit court's bindover decision, we will examine the factual record ab initio and decide, as a matter of law, whether the evidence constitutes probable cause, and therefore our review of the circuit court's bindover decision is de novo. ***State v. Anderson***, 2005 WI 54, ¶26, 280 Wis. 2d 104, 695 N.W.2d 731.

¶9 We first clarify an issue that we do *not* decide in this opinion. Lurking within Jacquelyn's arguments, and perhaps also within the circuit court's

decision, is a concern that WIS. STAT. § 943.201, if broadly read, potentially criminalizes what is often a routine part of a married person's credit transaction, namely, the furnishing of information to the creditor about the person's spouse, including the spouse's name, in response to the creditor's request, such as on an application. If that information is furnished without express authorization or consent of the applicant's spouse, a question may then arise as to whether the fact of the marriage itself, either implicitly or by operation of law, provides authorization or consent to furnish information about the non-applicant spouse on a credit application. We do not decide this question in this opinion, expressly or otherwise, or attempt to apply it to the facts alleged in this case.

¶10 In addition to this potential question about whether the fact of marriage creates actual or de facto authorization or consent, it appears that Jacquelyn and the circuit court may believe that the existence of the marriage, and various laws and practices involved in the granting of credit to married persons, may lead a married person to *believe* that he or she has authorization or consent to disclose spousal information, even if that is not a legally correct perception. Such a belief, even if erroneous, could negate the apparent requirement that the defendant *knew* she was acting without the authorization or consent of the person whose information was used. Again, any such question is premature and we do not address it further in this opinion.

¶11 We conclude the evidence was sufficient to establish probable cause for bindover in the present case. To prove this crime, the State must show that Jacquelyn obtained credit or goods by "representing that … she is the individual [or] that … she is acting with the authorization or consent of the individual." § 943.201(2). The record provides sufficient evidence to create a reasonable inference, that Jacquelyn represented herself as David. The evidence supporting

the inference is: (1) David's name, and *only* David's name, was on the bill, rather than any indication of a joint account; (2) when asked whether Jacquelyn indicated she had used David's information "rather than her own," the deputy answered affirmatively; and (3) the credit application was completed online, which it can reasonably be inferred makes it easier for a woman to pose as a man without causing a creditor to raise questions based on voice or handwriting. Reaching this conclusion makes it unnecessary to consider whether Jacquelyn represented that she was acting with David's consent or authorization. The latter element is written in the disjunctive, and probable cause on the first alternative is sufficient for bindover.

¶12 We turn next to a second element that concerned the circuit court, whether Jacquelyn *knew* she was acting without David's authorization or consent. However, having concluded that the evidence is sufficient to infer that Jacquelyn represented herself to be David, this question can now be rephrased more sharply as whether Jacquelyn knew that she did not have authorization or consent to represent herself to *be* David, rather than merely to provide information *about* David.

¶13 We are satisfied that there is sufficient evidence to reasonably infer that Jacquelyn knew she did not have authorization to represent herself as David. We are not aware of anything in the laws and practices relating to credit applications that would reasonably lead a person to believe there is implied consent or authorization to represent oneself as one's spouse. Jacquelyn has not suggested any basis on which such a belief would be reasonable. Nor did Jacquelyn present any evidence at the hearing, undisputed or otherwise, to the effect that David had previously given authorization or consent for her to represent herself as him. Furthermore, the deputy's testimony that Jacquelyn said she was

"trying to get back at him" supports an inference that she knew she was doing something outside the scope of any authorization or consent.

¶14 Whether the current record, by itself, would support the foregoing inferences beyond a reasonable doubt is not a question before us. The test is only whether the inferences would be reasonable. Having concluded that the evidence supports a finding of probable cause on the elements cited by the circuit court and Jacquelyn, we conclude that probable cause was shown, and we reverse the order dismissing the complaint.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.