COURT OF APPEALS
DECISION
DATED AND FILED

March 6, 2007

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2006AP1216-CR **Cir. Ct. No. 2005CF1003**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDREW WRIGHT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Remanded for further proceedings consistent with this opinion.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 CURLEY, J. Andrew Wright appeals from the judgment of conviction entered after he pled guilty to repeated acts of first-degree sexual assault of a child, and from the order partially denying his postconviction motion.

In his postconviction motion, Wright requested eighty-one days of sentence credit for time he spent in jail in Minnesota, but the trial court granted him only twenty-one days of credit on grounds that the remaining days did not result "exclusively from a Wisconsin warrant or detainer" under WIS JI—CRIMINAL SM-34A. Wright contends that the trial court erred in refusing to grant him the remaining sixty days of credit because he was arrested and held in Minnesota based in part on the complaint and warrant in the Wisconsin case and the time was thus "in connection with the course of conduct for which sentence was imposed" in Wisconsin under WIS. STAT. § 973.155(1)(a) (2003-04).[1]

¶2 We conclude that WIS JI—CRIMINAL SM-34A overstates the applicable case law and hold that a defendant is in custody "in connection with the course of conduct" in Wisconsin if the defendant is arrested and taken into custody in another state based in part on Wisconsin charges, including a Wisconsin warrant and complaint, and the defendant's charges in the other state are based on the same course of conduct as the Wisconsin charges. Because Wright was arrested and taken into custody based at least in part on a Wisconsin warrant and complaint and the Wisconsin charges were based on the same course of conduct as the Minnesota charge, Wright was in custody "in connection with" the Wisconsin charge. We therefore remand this case to the trial court and instruct the trial court to grant Wright sixty additional days of sentence credit and amend the judgment to reflect that Wright is entitled to eighty-one days of sentence credit.

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

I. BACKGROUND.

¶3 On January 6, 2005, Wright and his wife, Jennifer Wright, separated. The following day Wright left Milwaukee with his brother, Christopher Wright, and the two drove to Minnesota. Wright had with him a box containing his belongings. Upon arrival in Bemidji, Minnesota, the two placed the box in a storage locker and secured it with Christopher's lock. On January 14, 2005, Wright attempted suicide and was hospitalized. Family members, including Jennifer and Christopher, drove to Minnesota to be with Wright, who was in a coma. Two days after Wright's suicide attempt, Jennifer asked Christopher to retrieve the box from the locker. Christopher retrieved the box and brought it to his home in Mequon. On January 22, 2005, Christopher gave the box to Jennifer.

¶4 Meanwhile, Wright was recovering and was transferred to a psychiatric treatment center. From there he called Jennifer, begging her to go through the box and find and destroy certain photographs. On January 23, 2005, Jennifer opened the box in the presence of Wright's father, John Wright. Jennifer discovered a photograph of a naked child and closed the box. Jennifer and John brought the box to the West Allis Police Department and told police where Wright was. The box was later found to contain numerous sexual pictures of children, including three miniature Polaroids of an approximately eight-year-old boy seated with his legs spread. The same day a detective from the West Allis Police Department spoke with a detective in Minnesota who contacted the treatment center where Wright was staying. Wright was released because there was not enough information for an arrest.

¶5 In the meantime, charges against Wright were being prepared in Wisconsin, based on a statement by the boy depicted in the pictures found in the

box. On February 16, 2005, a detective from the West Allis Police Department informed the Bemidji Police Department that "our district attorney has issued a complaint" and that a warrant would be sent to the Bemidji Police Department.[2] The Bemidji Police Department responded that they would attempt to arrest Wright.

¶6 Wright was arrested on February 17, 2005, in Bemidji. On February 18, 2005, the State of Minnesota charged Wright with possession of photographic representations of a minor engaged in sexual conduct. This charge was based on the information that had emerged from the West Allis investigation, specifically the fact that the box containing the photographs had been in Wright's possession while it was in the storage locker in Bemidji. The same day, bail was set and Wright was placed in custody.

¶7 On February 23, 2005, based on the information provided by the boy in the pictures, the State of Wisconsin charged Wright with one count of sexual assault of a child, repeated acts, contrary to WIS. STAT. § 948.025(1); one count of second-degree sexual assault of a child, contrary to WIS. STAT. § 948.02(2); and one count of sexual exploitation of a child, contrary to WIS. STAT. § 948.05(1). The court also issued a felony warrant and authorization for extradition. Wright was booked on the Wisconsin charges in Minnesota on March 14, 2003.

[2] Although the record contains a communication between the West Allis Police Department and the Bemidji Police Department on February 16, 2005, in which a West Allis Detective informed the Bemidji police that "our district attorney has issued a complaint" and that a warrant would be sent, the only Wisconsin complaint or warrant in the record is the one dated February 23, 2005.

¶8 Meanwhile, Wright pled guilty to the Minnesota charge. On April 18, 2005, Wright was sentenced on the Minnesota conviction to twelve months' and one day's imprisonment, but the sentence was stayed and Wright was placed on probation for five years. On April 13, 2005, the Minnesota authorities filed a fugitive complaint against Wright for the Wisconsin charges.

¶9 On April 27, 2005, Wright waived extradition. He was released to be transported to Wisconsin on April 29, 2005, and arrived in Milwaukee on May 8, 2005. Wright pled guilty to count one, sexual assault of a child, repeated acts, in exchange for the State agreeing to dismiss count two (second-degree sexual assault of a child) and dismiss and read in count three (sexual exploitation of a child). On September 30, 2005, the trial court sentenced Wright to fifty years' imprisonment, comprised of thirty years' initial confinement and twenty years' extended supervision. The trial court granted him 144 days of sentence credit for the time he spent confined in Milwaukee prior to sentencing: May 9, 2005, through September 30, 2005.

¶10 Wright filed a postconviction motion requesting eighty-one days of sentence credit from the day he was arrested in Minnesota, February 17, 2005, until the day he arrived in Wisconsin, May 8, 2005, alleging that he was "in custody in connection with" this case under WIS. STAT. § 973.155(1)(a). The trial court partially granted the motion and awarded Wright twenty-one additional days of credit for the time he spent in custody after being sentenced to probation in Minnesota on April 18, 2005, until he was extradited to Wisconsin on May 8, 2005. This appeal follows.

II. ANALYSIS.

¶11 Wright contends that the trial court erred in granting his postconviction motion only partially and asserts that he should have been granted sentence credit for the sixty days he spent confined in Minnesota from his arrest on February 17, 2005, until he was sentenced to probation on April 18, 2005.

¶12 This case asks us to interpret the statute that governs sentence credit, WIS. STAT. § 973.155(1)(a). Statutory interpretation is a question of law that we review *de novo*. *See* ***State v. Stenklyft***, 2005 WI 71, ¶7, 281 Wis. 2d 484, 697 N.W.2d 769. For Wright to be entitled to sentence credit he must show both: (1) that he was in "custody" during the time for which he seeks credit; and (2) that the time he spent in custody was "in connection with the course of conduct for which sentence was imposed." Sec. 973.155(1)(a).[3] When applicable, awarding sentence credit is mandatory. ***State v. Ward***, 153 Wis. 2d 743, 745, 452 N.W.2d 158 (Ct. App. 1989) ("[A] sentencing court must give credit to a defendant for

[3] WISCONSIN STAT. § 973.155(1)(a) provides:

> A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:
>
> 1. While the offender is awaiting trial;
>
> 2. While the offender is being tried; and
>
> 3. While the offender is awaiting imposition of sentence after trial.

pre-sentence incarceration because 'a person [may] not serve more time than that for which he is sentenced.'") (citation omitted).

¶13 Wright begins by contending that dual credit must be granted for any days that can be attributed to both the Minnesota and Wisconsin sentences because the sentences are concurrent. *See* ***id.*** The State does not dispute that the sentences are concurrent and, in fact, concedes that Wright is entitled to five additional days of sentence credit from the day the Minnesota authorities filed a fugitive complaint against Wright (April 13, 2005), thus admitting that the sentences must be concurrent. It is also undisputed that the time for which Wright seeks sentence credit, the time he spent incarcerated in Minnesota following his arrest, he was "in custody" within the meaning on WIS. STAT. § 973.155. As a result, the only remaining issue is whether the trial court correctly concluded that Wright was not in custody "in connection with the course of conduct" in the Wisconsin case when he was confined in Minnesota for the additional fifty-five days. *See* § 973.155.

¶14 The trial court, as noted, determined that only the confinement from Wright's sentencing to probation, until his extradition to Wisconsin (April 18, 2005 through May 8, 2005), qualified as being "in connection with" the Wisconsin charge. In so concluding, the trial court cited WIS JI—CRIMINAL SM-34A and explained that:

> [C]redit may be granted only if he was in detention in another state *when that detention results exclusively from a Wisconsin warrant or detainer*. That is not the case here. The defendant was in custody in connection with a Minnesota case for the period February 17, 2005 to April 18, 2005 (the date he was placed on probation in the Minnesota case), and he duly received credit for this period in his Minnesota case.

(Emphasis by trial court.)

¶15 As relevant here, WIS JI—CRIMINAL SM-34A states that a person is in custody in connection with a Wisconsin case if the person is in "detention in jail in another state when that detention results exclusively from a Wisconsin warrant or detainer." ***Id.*** at 5. This statement is followed by the following footnote:

> Credit should be granted when, for example, a Wisconsin parolee is arrested in Illinois, solely because of a Wisconsin warrant. Credit should not be granted when a Wisconsin parolee, already in custody on Illinois charges, has a Wisconsin hold or warrant filed against him. This is consistent with the conclusion that filing a detainer against one already in custody in Wisconsin does not result in "custody" under § 973.155 on the charge which is the subject of the detainer.

Id. at 16 n.8. The footnote then references ***State v. Rohl***, 160 Wis. 2d 325, 466 N.W.2d 208 (Ct. App. 1991), and directs the reader to another footnote[4] that cites ***State v. Demars***, 119 Wis. 2d 19, 349 N.W.2d 708 (Ct. App. 1984), and ***State v. Nyborg***, 122 Wis. 2d 765, 364 N.W.2d 553 (Ct. App. 1985).

¶16 A second relevant portion of WIS JI—CRIMINAL SM-34A provides that a person is not in custody in connection with a Wisconsin case if the person is in "detention in another state based on an offense committed in that state, even if a Wisconsin warrant or detainer has also been filed." ***Id.*** at 6. This provision is followed by a footnote that reads:

> In State v. Rohl, 160 Wis. 2d 325, 466 N.W.2d 208 (Ct. App. 1991), the defendant claimed credit for time served in California while he was on Wisconsin parole. Rohl committed crimes in California, was detained prior to trial, and received full credit for that time on his California sentence before being returned to Wisconsin where his parole was revoked. The court of appeals held that sentence credit was not required in Wisconsin because Rohl had received full credit in California.

[4] The reader is referred to footnote 9; however, the correct footnote appears to be 15.

WIS JI—CRIMINAL SM-34A, at 16 n.13.

¶17 Wright maintains that WIS JI—CRIMINAL SM-34A misled the trial court into thinking that the relevant inquiry was whether Wright might also have been in detention in Minnesota for the Minnesota charge because it "overstates the caselaw and the rules of sentence credit." Wright argues that WIS JI—CRIMINAL SM-34A was intended to apply to a narrower situation when a defendant is already in custody in another state and not when a defendant is arrested at the same time on charges in two states. The State agrees in part and concedes that Wright's criticism of the trial court's reliance on WIS JI—CRIMINAL SM-34A "has some merit" and acknowledges that the "statement that credit is only warranted if detention results 'exclusively from a Wisconsin warrant or detainer' appears to be broader than the cited cases warrant," but claims that we need not address WIS JI—CRIMINAL SM-34A because the trial court's denial of sentence credit can be upheld without reaching WIS JI—CRIMINAL SM-34A.

¶18 Because the trial court explicitly relied on WIS JI—CRIMINAL SM-34A in applying WIS. STAT. § 973.155(1)(a), we feel compelled to address WIS JI—CRIMINAL SM-34A and reject the State's contention that we need not do so. We first examine the case law relied upon by the Wisconsin Jury Instruction Committee (Committee) in formulating WIS JI—CRIMINAL SM-34A.

¶19 First, in ***Rohl***, Rohl had been released on parole and granted permission to go to California. ***Id.***, 160 Wis. 2d at 327-28. While in California, Rohl was arrested and jailed on four new charges and, based on the new charges, a Wisconsin parole violation warrant was issued. ***Id.*** at 328. Rohl was convicted and sentenced in California and was granted sentence credit for his presentence confinement there. ***Id.*** at 328 n.2. Following his release from prison in California,

Rohl was returned to Wisconsin on the parole violation warrant and his parole was revoked. ***Id.*** at 328. Rohl sought sentence credit for all of the time he spent in custody in California, but the motion was denied and Rohl appealed. ***Id.*** at 328-29. This court affirmed on grounds that Rohl had already been granted sentence credit toward his California sentence for the days for which he was seeking credit, explaining that because his sentences were not concurrent, credit for the additional time would violate the rule against double sentence credit. ***Id.*** at 332. Because it is undisputed that Wright's sentences were concurrent, ***Rohl*** is inapplicable.

¶20 However, because the Committee cites ***Rohl*** as support for the language based on which the trial court made its determination, we must contrast ***Rohl*** to the Committee's description of the case in WIS JI—CRIMINAL SM-34A. The Committee accurately describes ***Rohl*** in a footnote when it states that "[t]he court of appeals held that sentence credit was not required in Wisconsin because Rohl had received full credit in California." WIS JI—CRIMINAL SM-34A at 16 n.13. The Committee cites to ***Rohl*** but does not explain *why* ***Rohl*** purportedly supports the corresponding propositions in the main text that a defendant is in custody if he/she is detained "in another state when that detention results exclusively from a Wisconsin warrant or detainer," WIS JI—CRIMINAL SM-34A at 5, and is not in custody if he/she is detained "in another state based on an offense committed in that state, even if a Wisconsin warrant or detainer has also been filed," ***id.*** at 6.

¶21 We agree with Wright that ***Rohl*** supports neither. The reason why Rohl could not receive additional sentence credit was because he had already received credit in California and because his sentences were not concurrent—*not* because he was held outside of Wisconsin based on an offense committed there,

and a Wisconsin warrant or detainer had been filed. The citations to ***Rohl*** are thus misleading because they insinuate that because Rohl was held outside Wisconsin on something other than "exclusively" a Wisconsin warrant or detainer, that fact precluded additional sentence credit, even though the case says nothing of the sort.

¶22 Next, WIS JI—CRIMINAL SM-34A references ***Demars***. In this case, Demars was initially jailed in Fond du Lac County and a probation hold was placed against him for absconding from probation. ***Id.***, 119 Wis. 2d at 21. Thirteen days later, unrelated charges were filed against Demars in Winnebago County, and Winnebago County filed a detainer with Fond du Lac County. ***Id.*** Demars was convicted and sentenced on the Winnebago County charges and he requested, but was denied, sentence credit for the time that had elapsed since the filing of the detainer. ***Id.*** at 22. On appeal, this court considered whether confinement from the filing of the detainer constituted "custody in connection with the course of conduct for which sentence was imposed" under WIS. STAT. § 983.155(1)(a). ***Demars***, 119 Wis. 2d at 22. We held that "custody" "must necessarily result from the occurrence of a legal event, process, or authority which occasions, or is related to, confinement on the charge for which the defendant is ultimately sentenced." ***Id.*** at 26. We concluded that the filing of a detainer did not constitute a sufficient "legal event, process, or authority," and that this did not occur until Demars was brought to Winnebago County from Fond du Lac County for arraignment on the Winnebago County charges. ***Id.*** at 26. Demars's custody from the date he was arraigned until his sentencing thus "related to the 'course of conduct for which sentence was imposed' within the meaning of sec. 973.155, Stats." ***Id.*** at 26-27.

¶23 The Committee, as noted, relies on ***Demars*** as support for the statement that sentence credit may be granted only if the defendant is detained "in

another state when that detention results exclusively from a Wisconsin warrant or detainer." This reliance is misplaced. ***Demars*** "links presentence custody of the offender with a legal event or process which triggers such custody," and teaches that the existence of legal process does not alone trigger custody. ***Id.*** at 27; *see* ***State v. Villalobos***, 196 Wis. 2d 141, 147, 537 N.W.2d 139 (Ct. App. 1995) ("The teaching of *Demars* is that the mere existence of legal process does not in and of itself, trigger custody."). ***Demars*** does not, however, discuss whether, for custody to be triggered through detention in another state, that detention must result exclusively from a Wisconsin warrant or detainer, and it certainly does not state that the custody must "result[] exclusively from a Wisconsin warrant or detainer."

¶24 Finally, WIS JI—CRIMINAL SM-34A cites ***Nyborg***. In ***Nyborg***, the defendant was held in Rock County on charges of endangering safety and resisting an officer, released on bail, but subsequently jailed in LaFayette County on an unrelated matter. ***Id.***, 122 Wis. 2d at 767. Rock County filed a detainer with LaFayette County. ***Id.*** LaFayette County later turned Nyborg over to Rock County where he pled guilty to the endangering safety charge and remained in the Rock County jail until sentencing, when he received a stayed sentence and was ordered to serve probation. ***Id.*** He was then arrested for violating his probation and confined in Rock County, ultimately resulting in his probation being revoked. ***Id.*** Nyborg argued that he was entitled to sentence credit for the time he spent detained in LaFayette County. ***Id.*** at 768. We rejected the argument holding, based on ***Demars***, that a mere detainer in LaFayette County did not constitute custody in connection with the conduct for which he was sentenced in Rock County. ***Nyborg***, 122 Wis. 2d at 768. In addition, emphasizing that the custody must be "in connection with the course of conduct for which sentence was imposed," we also concluded that the LaFayette County charges could not trigger

custody under WIS. STAT. § 973.155(1)(a) because those charges "had nothing to do with" the charges in Rock County, and were thus not based on the same course of conduct. *See* ***Nyborg***, 122 Wis. 2d at 768. ***Nyborg*** does not, however, support the proposition that the person must be held "exclusively" on a Wisconsin warrant or detainer.

¶25 It is hence evident that ***Rohl***, ***Demars*** and ***Nyborg***, the cases cited as support for the provisions whereby a defendant is in custody if he/she is detained "in another state when that detention results exclusively from a Wisconsin warrant or detainer," and is not if he/she is detained "in another state based on an offense committed in that state, even if a Wisconsin warrant or detainer has also been filed," do not in actuality support the text they accompany. This compels the conclusion that WIS JI—CRIMINAL SM-34A does not accurately portray the proper standard for when a defendant is in custody "in connection with" a Wisconsin case under WIS. STAT. § 973.155(1)(a).

¶26 Wright argues that the correct rule, based on the relevant case law, i.e., ***Demars*** and ***Nyborg***, is that: "a defendant who is arrested and taken into custody in another state based in part upon Wisconsin charges, including a Wisconsin warrant and complaint, and whose charges in that other state are based upon the same course of conduct as his charges here in Wisconsin should receive sentence credit for the time awaiting trial in that other state." The State does not respond to Wright's proposed rule or suggest and alternative rule. We agree with Wright.

¶27 ***Demars*** and ***Nyborg*** set forth the relevant rules.[5] ***Demars***, as noted, held that "custody" is "in connection with" a Wisconsin case if it is a "legal event,

[5] The Dissent zeroes in on ***State v. Tuescher***, 226 Wis. 2d 465, 595 N.W.2d 443 (Ct. App. 1999), and claims that it has been erroneously ignored by us. We disagree.

WISCONSIN STAT. § 973.155(1)(a) as noted provides in relevant part:

> A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct ….

The first sentence, as noted, is the one of relevance for purposes of this appeal and addresses when a defendant is entitled to sentence credit, whereas the second concerns when a defendant is in custody; that is, what constitutes "actual days spent in custody," and is irrelevant because it is undisputed that Wright was in custody.

The Dissent, however, appears to focus on the second sentence in WIS. STAT. § 973.155(1)(a), to argue that the sentences here did not "aris[e] out of the same course of conduct." Based on the statutory sentence from which the Dissent retrieves the language "arising out of the same course of conduct," we must assume that the Dissent is essentially arguing that the time Wright was confined does not in fact qualify as "'actual days spent in custody.'" It is unclear why the Dissent focuses on the question of whether Wright was "in custody" because, as explained, both sides agree that he was in custody.

What is clear, however, is that ***Tuescher*** is the basis for the Dissent's reasoning. ***Tuescher*** addressed the question of what "any other sentence arising out of the same course of conduct" meant within the definition of "actual days spent in custody." ***Id.***, 226 Wis. 2d at 470. Tuescher argued that because all of his sentences stemmed from the same "criminal episode," "same course of conduct" should be read broadly as meaning "same criminal episode." ***Id.*** at 471. We relied on ***State v. Boettcher***, 144 Wis. 2d 86, 423 N.W.2d 533 (1988), where the supreme court explained that the drafters of WIS. STAT. § 973.155 used the phrase "arising out of the same course of conduct" to ensure that "a defendant who was charged with rape, but convicted of assault ... get[s] his full presentence credit," and that, as such, "the phrase 'arising out of the same course of conduct' was … intended to assure that credit would be given in the case of a conviction of a different crime than that charged." ***Boettcher***, 144 Wis. 2d at 98. In ***Tuescher***, we thus concluded that "arising out of the same course of conduct" means that "a defendant earns credit toward future sentence while serving another sentence only when both sentences are imposed for the same specific acts." ***Tuescher***, 226 Wis. 2d at 479.

(continued)

process, or authority" that "occasions, or is related to confinement" on the charges on which the defendant is sentenced. ***Id.***, 119 Wis. 2d at 26. ***Nyborg***, as noted, specifies that another relevant inquiry is whether the charges in the two states are related or based on the same course of conduct. ***Id.***, 122 Wis. 2d at 768.

¶28 We therefore hold that a defendant is in custody "in connection with the same course of conduct for which sentence is imposed" in Wisconsin, within the meaning of WIS. STAT. § 973.155(1)(a), if he/she is arrested and taken into custody in another state based in part on a Wisconsin charge, including a Wisconsin complaint and warrant (as opposed to merely having a detainer placed on him/her), *see* ***Demars***, 119 Wis. 2d at 26, and the charge in the other state is based on the same course of conduct as the Wisconsin charge, *see* ***Nyborg***, 122 Wis. 2d at 768.

¶29 Applying this rule, Wright submits that he was in "custody in connection with" the Wisconsin case because he was "arrested and placed in custody in part on the Wisconsin case," and because the Wisconsin case was factually related to the Minnesota case.

¶30 The State disagrees that Wright was arrested in part on the Wisconsin charges. The State claims that verbal confirmation from the Wisconsin authorities that the district attorney had issued a complaint on February 17, 2005, was insufficient because the actual complaint was not filed until February 23,

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As noted, unlike ***Tuescher***, the issue in this appeal is not whether Wright's confinement qualified as "actual days spent in custody"; rather, it is whether his confinement in Minnesota was "in connection with" the course of conduct for which he was sentenced in Wisconsin. ***Tuescher*** does not explain the meaning of "in connection with the course of conduct for which sentence was imposed." We therefore disagree that ***Tuescher*** is relevant to this case.

2005, and that even if there was a complaint and a warrant for Wright's arrest, this is not enough under ***Demars*** to make the arrest "in part based on the warrant" because "a statement of law enforcement alone is not an occurrence of a legal event, process or authority." The State adds that the Minnesota complaint was also not sufficient to imply that the arrest was made in part on the Wisconsin charges because the affidavit in support of the complaint makes no mention of pending Wisconsin charges and because the complaint charging Wright as a fugitive was not filed until April 23, 2005.

¶31 We disagree with the State. When officers from the Bemidji Police Department arrested Wright on February 17, 2005, they did so after communicating with the West Allis Police Department and being informed that a complaint had been filed in Wisconsin against Wright. The officers apparently agreed to arrest Wright on the Wisconsin complaint and warrant. We cannot agree with the State that the verbal confirmation of a complaint was insufficient to constitute a "legal event, process or authority" under ***Demars***, making the arrest not "in part based on the warrant." The West Allis Police Department informing the Bemidji Police Department that a complaint had been filed was clearly the event that led to the arrest. The suggestion that because the communication that alerted the Minnesota officers to the existence of a complaint was verbal, the arrest was not based on that complaint is not only unsupported, but also illogical. The State cites no authority as support for its claim that an arrest that results from verbal confirmation of a complaint implies that the arrest was not in fact "based" on the complaint.

¶32 We are also not convinced by the State's focus on the fact that the Wisconsin complaint was not in fact issued until February 23, 2005, six days after the West Allis Police Department told the Bemidji Police Department that a

complaint had been filed and after Wright was arrested. The State is entirely oblivious to the effect its contention has on Wright. Wright, who was presumably unaware of the mistaken communication, cannot be faulted for the complaint not being issued on February 17, 2005. To deny Wright sentence credit on grounds that he was arrested based on an inaccurate communication, according to which a complaint had been filed when in fact it had not, is ludicrous and unjust because for him the result was the same. To allow, as the State proposes, the determining factor for what triggers custody to be whether or not the arrest was made on the basis of accurate information, is absurd and contrary to the basic purpose of WIS. STAT. § 973.155(1)(a), that a defendant "shall" receive credit for all days spent in custody. As Wright notes in his reply brief, this creates an incentive for the police to make precisely these kinds of mistakes to prematurely secure the arrest of a suspect or to increase a person's time in custody.

¶33 That the information regarding a complaint provided to the Bemidji Police Department by the West Allis Police Department was acted upon by the Bemidji Police Department and resulted in Wright's arrest is a "legal event, process, or authority" that triggers custody under ***Demars***, irrespective of the fact that the actual complaint was not filed until six days later. *See* ***id.***, 119 Wis. 2d at 26. Wright was thus arrested and taken into custody based at least in part on Wisconsin charges.

¶34 Finally, we are also satisfied that the charges were based on the same course of conduct. It is undisputed that all of the charges stemmed from the same opening of the box by Wright's father and wife that revealed that the box contained child pornography. The subsequent investigation in West Allis resulted in charges in Wisconsin for sexual assault and was also the exclusive basis for the charges for possession of child pornography in Minnesota. While at first blush the

charges may not appear to stem from the same course of conduct, a closer examination reveals that they clearly did. The victim in both instances was the same. In the course of sexually assaulting the child in Wisconsin, Wright took the photographs that were the basis for the charges in Minnesota. Thus, but for the sexual assaults in Wisconsin, Wright could not have come to possess child pornography in Minnesota. The two cases were clearly interrelated and based on the same course of conduct. *See* ***Nyborg***, 122 Wis. 2d at 768.

¶35 Consequently, Wright was in "custody in connection with the same course of conduct for which sentence is imposed" in Wisconsin, within the meaning of WIS. STAT. § 973.155(1)(a), during the sixty days he spent confined in Minnesota from his arrest on February 17, 2005, until he was sentenced to probation on April 18, 2005. We therefore remand this case to the trial court and instruct the trial court to grant Wright sixty additional days of sentence credit.

By the Court.—Judgment and order remanded for further proceedings consistent with this opinion.

Recommended for publication in the official reports.

¶36 FINE, J. (*dissenting*). I would affirm, and, therefore, respectfully dissent.

¶37 Andrew Wright was arrested in Minnesota on February 17, 2005, and, on the following day, February 18, he was charged with the possession of child pornography. As the trial court recognized, until he was released on probation in Minnesota on April 18, 2005, he was being held in Minnesota on the child-pornography charges.

¶38 Just because Wright's two discrete crimes—possession of child pornography and sexual assault of a child—stem from the same horrific perversion, and involved the same child, does not mean that the two crimes arose from the same "course of conduct for which sentence was imposed," as that phrase is used in WIS. STAT. § 973.155(1)(a). Taking pictures is a different "course of conduct" than is sexual assault—a person can sexually assault a child without taking pornographic pictures of that child; and a person can take pornographic pictures of a child without sexually assaulting that child. *See* ***State v. Tuescher***, 226 Wis. 2d 465, 475, 595 N.W.2d 443, 448 (Ct. App. 1999) ("Wisconsin cases interpreting the phrase 'course of conduct' support the State's position that under § 973.155, one sentence does not arise from the same course of conduct as another sentence unless the two sentences are based on the same specific acts.").

¶39 To conflate Wright's two separate crimes (for which there are separate penalties) by saying, as the Majority does in its opinion and again in footnote 5, that Wright's perversions mean that his "custody" in Minnesota in

connection with the possession-of-child-pornography charge was, as phrased by the first sentence of WIS. STAT. § 973.155(1)(a), "days spent in custody in connection with the [sexual-assault-of-a-child] course of conduct," not only violates ***Tuescher***'s holding, but also gives to Wright a boon (albeit minimal in the context of his overall sentence) to which he is not entitled.

¶40 I would affirm.