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DISTRICT II

July 17, 2024

To:

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Circuit Court Judge
Electronic Notice

Lisa E.F. Kumfer
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
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Matthew S. Pinix
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Michael Davis Thurston
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You are hereby notified that the Court has entered the following opinion and order:

2023AP107-CR	State of Wisconsin v. Mikaela R. Skiba (L.C. #2022CF835)
2023AP108-CR	State of Wisconsin v. Ryan A. Skiba (L.C. #2022CF838)

Before Neubauer, Grogan and Lazar, 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).

In these consolidated cases, the State appeals from orders dismissing its complaints against Mikaela and Ryan Skiba. Based upon our review of the briefs and Records, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We reverse the orders and remand the matters for further proceedings consistent with this opinion.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Mikaela and Ryan Skiba (collectively, the Skibas) are the parents of twin girls, Eve and Claire.² Eve and Claire were born prematurely on July 17, 2021. They spent fifty-three days in the Newborn Intensive Care Unit (“NICU”), where they received care from numerous doctors and nurses.

Eve and Claire were discharged from the NICU on September 8, 2021. On October 20, 2021, Mikaela took Eve to the pediatrician because she had noticed blood on Eve’s spit-up rag and a cut on Eve’s tongue. The pediatrician recommended that Mikaela take Eve to the emergency room (“ER”) because of what appeared to be bruises on her arms. Mikaela followed this recommendation.

At the ER, hospital staff became concerned about the possibility that Eve had been abused, which triggered a more thorough evaluation by the hospital’s child advocacy team. That evaluation determined that, in addition to the possible arm bruising, Eve had rib and leg fractures, as well as possible bruising on her genitalia. Further investigation by the child advocacy team found that Claire also had rib fractures and possible bruising on her left shin.

Police interviewed the Skibas, who confirmed being the only caretakers for Eve and Claire since their discharge from the NICU. Given this fact, as well as the twins’ extensive and unexplained injuries, the State filed complaints against the Skibas, charging both with physical abuse of a child.

² Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use pseudonyms instead of the twins’ names.

Before any preliminary hearing could be held, the Skibas challenged the sufficiency of the complaints. The circuit court agreed that the complaints lacked probable cause and dismissed them.

Approximately one month later, the State refiled the complaints, using additional information from medical personnel. Again, the Skibas moved to dismiss. Again, the circuit court granted the motion, citing a lack of probable cause. In particular, the court noted that hospital staff had cared for the twins in the NICU from July 17, 2021, to September 8, 2021 and thus “could have” caused the injuries at issue. These appeals follow.

Whether a complaint sets forth probable cause is a legal determination that we review de novo. *State v. Reed*, 2005 WI 53, ¶11, 280 Wis. 2d 68, 695 N.W.2d 315. In evaluating probable cause, we examine the complaint to determine “whether there are facts or reasonable inferences set forth that are sufficient to allow a reasonable person to conclude that a crime was probably committed and that the defendant probably committed it.” *Id.*, ¶12.

“A complaint is sufficient if it answers the following questions: ‘(1) Who is charged?; (2) What is the person charged with?; (3) When and where did the alleged offense take place?; (4) Why is this particular person being charged?; and (5) Who says so? or how reliable is the informant?’” *Id.* (citation omitted). We evaluate the sufficiency of a complaint in a common-sense manner, rather than a hypertechnical manner. *State v. Chagnon*, 2015 WI App 66, ¶7, 364 Wis. 2d 719, 870 N.W.2d 27.

Here, the complaints plainly answer three of the above questions. That is, they explain who was charged (the Skibas), what they were charged with (two counts each of physical abuse of a child by recklessly causing great bodily harm as a party to a crime), and what reliable

informants said so (two pediatricians who opined that the twins' injuries were indicative of physical abuse/non-accidental trauma³ and one police officer who reviewed the relevant reports/records). The circuit court seemed to believe that the State did not adequately address when/where the alleged offenses took place and why the Skibas were being charged.

We agree with the State that the facts and reasonable inferences set forth in the complaints answer these additional questions. The when/where of the alleged offenses was between September 8, 2021, and October 20, 2021, in the Skibas' home. This is based on (1) when the twins were discharged from the NICU; (2) when the pediatrician observed bruises on Eve's arms; and (3) where the twins resided in the interim. The reason the Skibas were being charged was because they were the twins' sole caregivers during this time, raising a reasonable inference that they caused the injuries.

Although it is possible that hospital staff "could have" caused the injuries earlier in the NICU, that seems unlikely under the circumstances.⁴ Moreover, the mere existence of other explanations does not necessarily negate probable cause. See *United States v. Funches*, 327 F.3d 582, 587 (7th Cir. 2003); see also *State v. Grimm*, 2002 WI App 242, ¶15, 258 Wis. 2d 166, 653 N.W.2d 284 ("Where reasonable inferences may be drawn establishing probable cause to support a charge and equally reasonable inferences may be drawn to the contrary, the criminal complaint is sufficient."). In any event, on these records, we are satisfied that the complaints were sufficient for the prosecutions to go forward.

³ In reaching these opinions, the pediatricians emphasized the unusualness of finding bruises and fractures on non-mobile children who had no history of accidental trauma.

⁴ As noted by the State, bruises typically heal in far less than forty-two days, which is the period between when the twins were discharged from the NICU and when Eve was taken to the pediatrician.

We turn next to the Skibas' alternative argument for dismissal, i.e., that the State omitted material facts from the complaints necessary to a fair probable cause determination. *See State v. Mann*, 123 Wis. 2d 375, 385-86, 367 N.W.2d 209 (1985). The omitted facts include information from the twins' medical records (e.g., their diagnosis of anemia, their alleged lack of nutritional fortification, etc.), the large number of staff who saw them in the NICU, and a decision by the Waukesha County Department of Health and Human Services (Waukesha HHS) to allow them to remain with the Skibas despite the abuse allegations. We are not persuaded by this alternative argument.

To be required to be included in a complaint, "omitted facts have to be undisputed, capable of single meanings and critical to a probable cause determination." *Id.* at 388. None of the facts that the Skibas rely on meet these criteria. The notion that the twins' injuries were caused by a medical condition or nutritional deficiencies is very much disputed. Meanwhile, the large number of staff who saw the twins in the NICU arguably strengthens the State's case, as it is unlikely that so many trained professionals would have failed to notice the twins' extensive injuries before their discharge. Finally, a decision by Waukesha HHS regarding the abuse allegations is not "critical to a probable cause determination." *Id.*

For these reasons, we conclude that the circuit court erred in dismissing the complaints. Accordingly, we reverse its orders and remand the matters for further proceedings consistent with this opinion.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily reversed pursuant to WIS. STAT. RULE 809.21, and the causes are remanded for further proceedings.

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

Samuel A. Christensen
Clerk of Court of Appeals