

NOT DESIGNATED FOR PUBLICATION

No. 125,773

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellant,*

v.

DONALD ROTTINGHAUS,  
*Appellee.*

MEMORANDUM OPINION

Appeal from Johnson District Court; TIMOTHY P. MCCARTHY, judge. Opinion filed December 15, 2023. Reversed and remanded with directions.

*Jacob M. Gontesky*, assistant district attorney, *Stephen M. Howe*, district attorney, and *Derek Schmidt*, attorney general, for appellant.

*Mark E. Hartman*, of Bath & Edmonds, P.A., of Leawood, for appellee.

Before ATCHESON, P.J., MALONE and PICKERING, JJ.

PICKERING, J.: The State appeals the district court's finding that probable cause did not exist to bind over Donald Rottinghaus for trial on charges of aggravated domestic battery and aggravated battery, great bodily harm. Because our review finds probable cause did exist, we reverse the district court and remand for further proceedings.

## FACTS

The State initially charged Donald Rottinghaus with one felony and two misdemeanors: aggravated domestic battery, a severity level 7 person felony; criminal restraint, a class A person misdemeanor; and domestic battery, a class B person misdemeanor. Before the conclusion of the preliminary hearing, the State filed an amended complaint, which maintained the first two counts from the original complaint but amended count III from domestic battery to aggravated battery, a severity level 5 felony. At the conclusion of evidence, the district court held that the State had not established probable cause as to either felony count charged in the amended complaint and dismissed them. The State then dismissed the remaining misdemeanor count without prejudice and appealed the district court's dismissal of the felony counts.

The State's case against Rottinghaus began on November 21, 2021, when he and his girlfriend, T.B., took T.B.'s 8-year-old daughter and the daughter's friend to a Kansas City Chiefs game. At the game, T.B. had three drinks. After the game, the couple dropped off the daughter's friend and went to Sugar Creek, Missouri. Although Rottinghaus and T.B. lived together at his home in Stilwell, Kansas, T.B. maintained a lease on a house in Sugar Creek, Missouri. T.B. had heard that people were staying at her Sugar Creek home without her authority. She had become concerned and wanted to check on her leased residence on their way home.

When they arrived, T.B. found people inside that she described as "squatters" at the residence. This upset her, so she contacted police. Officer Randall Norris of the Sugar Creek Police Department was dispatched to the residence and investigated T.B.'s complaint. He later testified at the preliminary hearing about his body cam footage of the incident.

Upon Norris' arrival at the home, T.B. was standing near the curb with her daughter next to her. At the time, T.B. was yelling at a different officer already on scene, stating, "These people are fucked up, and I want them out of my house." After listening to T.B. cry and carry on about who was inside the home and why she wanted them out, Norris asked T.B. to remain outside while he went inside the residence. He went inside to address T.B.'s concerns and determine whether the occupants had a legal right to be there.

Once the officers entered the home, a man inside explained to them that it was T.B.'s idea for him to move in to keep squatters out. T.B. had told him that if he packed up her belongings, she would allow him to stay at the residence until the end of her lease.

Two minutes later, despite police previously asking her to remain outside, T.B. walked in the home. T.B.'s daughter begged T.B., "[P]lease can we just go?" but T.B. continued to cry, yell, and argue with police officers. After several minutes of T.B. yelling at the officers about how her name was on the lease and officers telling her to stop talking and listen, Rottinghaus walked to the doorway where T.B. was standing and said, "There's a time and a place, and right now is not either. Let's go." T.B. then walked outside but remained upset.

The officers encouraged T.B. to get inside Rottinghaus' truck, but T.B. kept yelling, "This is fucked up! He has no right to this house! He has no lease, no nothing! And you guys are not willing to keep these people out of my house!" Norris then told T.B. to leave, warning her that if she kept screaming, he would have to arrest her for a disturbance. After two more minutes of Rottinghaus and T.B.'s daughter begging T.B. to get in the truck, she finally got in.

The State's case against Rottinghaus stems from what happened next. T.B. testified that Rottinghaus "flew off the handle and [was] screaming" at her. She said Rottinghaus told her how stupid she was and how she never should have stopped by the house. "This

is how stupid hoes lose their children," T.B. testified Rottinghaus told her. According to T.B., the couple continued to argue, and she told Rottinghaus she wanted him to let her out of the truck. T.B. tried to call 911 because she wanted to be let out of the truck, but as she was trying to call for help Rottinghaus took her phone away from her. Rottinghaus, still holding T.B.'s phone, started choking her and struck her in the face.

T.B.'s testimony further elaborated about Rottinghaus making physical contact with her. "It happened very fast. I know that I was hit in my face and the cell phone was in his hand. Now, I don't know if he was trying to really hit me or what, but he wouldn't let me out. He did—he did choke me." She added, "He said I tried to jump out of the car. No, I wanted out of the car. I would never leave my daughter. I would never traumatize her like that." When asked to be more specific about how the hit happened, she said, "It was kind of just, like, a hit and the slap and I had to get stitches right here. There is a scar. It was more the phone hit me."

And when asked to describe what she meant by Rottinghaus "choking" her, T.B. responded, "Well, I mean, he—I just had red marks all over my neck and—I really didn't notice choking until the cops took the pictures. I was more concerned with my whole face was just covered in blood and I have an eight-year-old with me." She then testified affirmatively that Rottinghaus applied pressure to her neck "no more than twice."

T.B. testified that when the traffic slowed, she was able to look over to another driver—later identified as Nathaniel Brown—and said, "[P]lease help me." Brown testified that at the intersection of Metcalf and College, in Johnson County, he saw T.B. saying "help."

T.B.'s cry for help prompted Brown's wife to call 911. The couple followed Rottinghaus' truck to get a license plate number for police. Soon after, Rottinghaus stopped the truck at a stoplight between College and 119th Street. At the time, Brown

was slightly behind Rottinghaus, and he noticed that T.B. "jumped out [of] the pickup and a child rolled down the window and said can you guys help me?"

Brown then motioned for them to get in his car, which they did. Rottinghaus continued driving south on Metcalf while Brown drove to a nearby Quik Trip. Brown's wife remained on the phone with 911 dispatchers. Brown then proceeded to drive into the gas station and was able to receive help from a nearby police officer. Brown testified that T.B.'s face was bloody. Police requested medical assistance, and T.B. was taken by ambulance to the hospital for treatment.

Meanwhile, officers stopped Rottinghaus on a nearby highway. The officers observed blood on his shirt and in his truck, and he was ultimately arrested. Rottinghaus' version of what occurred inside the truck contradicts T.B.'s testimony. His statements were captured by the body cam footage of Overland Park Police Officer Deandre Andersen, who had stopped Rottinghaus. According to Rottinghaus, it was T.B. who flew off the handle in the truck because he did not stand up for her during her interactions with the Sugar Creek police officers.

Rottinghaus told police that T.B. "clung onto [the steering wheel]. I mean, she literally had her whole body up on top of the console with both arms on the steering wheel hanging onto it." When officers asked Rottinghaus about the injury to T.B.'s face, he said it could have occurred as T.B. dove her body across the front seat during which he tried to brush her off him as he drove the truck on the highway.

At the conclusion of evidence, the district court ruled on the State's charges listed in the amended complaint. Without elaboration, the district court concluded probable cause was not established, finding, "I do not believe that probable cause has been met by the State on that—on the Count No. I, the aggravated domestic battery." The district court also found probable cause had not been established on Count III, aggravated battery.

## ANALYSIS

The State argues the district court erred when it dismissed the felony charges against Rottinghaus after the preliminary hearing. As an appellate court, we exercise de novo review over a district court's probable cause determination at a preliminary hearing. *State v. Fredrick*, 292 Kan. 169, 171, 251 P.3d 48 (2011).

At a preliminary hearing, the district court "examines evidence to determine (1) whether a crime has been committed and (2) whether there is probable cause to believe that the accused committed the crime." *State v. Washington*, 293 Kan. 732, 733, 268 P.3d 475 (2012). As the Kansas Supreme Court explained in *Washington*, when reviewing the evidence at the preliminary hearing, the district court must draw inferences favorable to the State from the evidence presented. 293 Kan. at 734.

In terms of a court binding over a defendant at a preliminary hearing, K.S.A. 2022 Supp. 22-2902(c) dictates the defendant is bound over "[i]f from the evidence it appears that a felony has been committed and there is probable cause to believe that a felony has been committed by the defendant." The evidence presented at a preliminary hearing, moreover, need only show probable cause, not guilt beyond a reasonable doubt. *Washington*, 293 Kan. at 733-34. Probable cause is "evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt." *State v. Berg*, 270 Kan. 237, 238, 13 P.3d 914 (2000). As such, even if the evidence is weak, the defendant should be bound over for trial if the evidence tends to establish that the offense was committed and that the defendant committed it. *Washington*, 293 Kan. at 734.

To bind over Rottinghaus for aggravated domestic battery under K.S.A. 2021 Supp. 21-5414(b)(1), the State needed to establish probable cause that Rottinghaus knowingly impeded the breathing or circulation of the blood by applying pressure to

T.B.'s neck or throat in a rude, insulting, or angry manner and that Rottinghaus and T.B. had been involved in a dating relationship. At the preliminary hearing, T.B. testified that Rottinghaus flew off the handle and choked her, applying pressure to her neck. And the couple admitted they were in a dating relationship. Drawing inferences in the light most favorable to the State, this evidence establishes probable cause of aggravated domestic battery.

To bind over Rottinghaus for aggravated battery, causing great bodily harm or disfigurement, under K.S.A. 2021 Supp. 21-5413(b)(2)(A), the State needed to establish probable cause that Rottinghaus recklessly caused T.B. great bodily harm or disfigurement. T.B. testified that Rottinghaus hit her with a cellphone in his hand and that she had blood all over her face. Brown also testified that T.B.'s face was bloody, and T.B. was taken to the hospital by ambulance for her treatment. Her cut required several stitches and left a scar on her face. Drawing inferences in favor of the State, this evidence establishes probable cause of aggravated battery.

Here, the State presented evidence that supported its position, although T.B.'s and Rottinghaus' statements contradict each other. Nevertheless, there was evidence supporting the State's contention that there was probable cause to bind over Rottinghaus on the charges. A serious physical altercation occurred, and, if the State's contentions were accepted, there was evidence to support a finding of probable cause.

In conclusion, there was probable cause that the crimes charged were committed by Rottinghaus. We therefore reverse and remand the case to the district court with directions to reinstate the criminal complaint charging Rottinghaus with aggravated domestic battery and aggravated battery, great bodily harm, and to bind Rottinghaus over on the charges for arraignment and further proceedings.

Reversed and remanded with directions.