

Court of Appeals, State of Michigan

ORDER

People of MI v Don Andre Brown

Docket No. 316128

LC No. 12-011841-AR

Michael J. Talbot
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the April 18, 2013, order of the Wayne Circuit Court affirming the dismissal hereby is REVERSED. Circumstantial evidence, coupled with the reasonable inferences derived therein, may support a bindover. *People v Gray*, 235 Mich App 737, 744 n 3; 599 NW2d 527 (1999). The prosecution is not required at that point to prove the elements of the crime beyond a reasonable doubt. *Id.* Testimony at the preliminary examination established that the police officer saw defendant accept money on the street. The officer, who had observed hundreds of narcotics transactions, believed that defendant was involved in such a transaction. The officer also was aware that defendant previously had been arrested for drug offenses, a fact that the district court failed to consider. When defendant saw the officers' partners exit the marked patrol car, he ran. Based on the circumstances, the officer was entitled to draw specific reasonable inferences regarding criminal activity. *Terry v Ohio*, 392 US 1, 27; 88 S Ct 1868; 20 L Ed 2d 889 (1968). The totality of the circumstances supports the officer's reasonable belief that criminal activity was afoot and that provided a basis for the officer to detain defendant, see *People v Jenkins*, 472 Mich 26, 32-33; 691 NW2d 759 (2005). As the officer physically restrained defendant, defendant hit him in the chest, contrary to MCL 750.81d(1). The evidence thus was sufficient to create logical inferences to show probable cause for a reasonable person to believe that the felony of resisting and obstructing a police officer was committed and that defendant committed that felony. To the extent that the record contains conflicting evidence, where credible evidence exists to support and negate the elements of a crime, a jury must decide the resulting questions of fact. *People v Goecke*, 457 Mich 442, 469-470; 579 NW2d 868 (1998). Accordingly, the district court erred in declining to bind over defendant. The case is REMANDED for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

NOV 12 2013

Date


Chief Clerk