

# Court of Appeals, State of Michigan

## ORDER

People of MI v Guadalupe Maldonado

Docket No. 317333

LC No. 12-011910-FH

Michael J. Talbot  
Presiding Judge

Kirsten Frank Kelly

Michael J. Riordan  
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the July 2, 2013, order of the Wayne Circuit Court denying the motion to amend and thereby affirming the district court's denial to bind over defendant on three counts of assault with intent to murder hereby is REVERSED. At the preliminary examination, the prosecution presented evidence regarding the elements of assault with intent to murder: "(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The requisite intent to kill may be proven by inference from the facts in evidence. *Id.* The record contains evidence suggesting that defendant fired a gun at the victims from a range close enough for one officer to hear the bullet pass close by his ear, another officer to draw his own weapon and return fire, and the third officer to check his vehicle for bullet holes after the incident. The intentional discharge of a firearm at someone within close range, done without justification or excuse, is sufficient to prove assault with intent to commit murder. *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974). Accordingly, based on the record evidence before this Court, it reasonably could be inferred that defendant intended to kill. To the extent that the record contains conflicting evidence regarding defendant's intent, 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); *People v Grayer*, 235 Mich App 737, 744; 599 NW2d 527 (1999). The district court thus abused its discretion in not binding over defendant on the assault with intent to murder charges because the record contained evidence demonstrating probable cause for a reasonable person to believe that defendant committed the charged offenses. This case is REMANDED for further proceedings consistent with this order.

The motion for stay is DENIED.

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

AUG 15 2013

Date

A handwritten signature in dark ink, reading "Jerome W. Zimmer Jr." followed by a horizontal line.

Chief Clerk