STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON PRICKETT, RICHARD W. BUSEK and JASON B. RITCHIE,

Defendants-Appellants.

UNPUBLISHED
November 26, 1996

No. 186861
LC No. 95-003083

Before: Saad, P.J., and Holbrook and G.S. Buth,* JJ.

PER CURIAM.

The district court bound defendants over on charges of ethnic intimidation, MCL 750.147b; MSA 28.344(2), but a Recorder's Court judge thereafter quashed the information as to each defendant, finding that the actions alleged did not rise to criminal behavior under the statute. The prosecution appeals. We reverse and reinstate the charges.

I

The incidents at issue occurred on January 19, 1995, in Flat Rock. At the preliminary examination, testimony was presented that several friends (adults and children) gathered at the adjoining duplex homes of Regina Revis and Annette Himes. Early in the evening, some guests heard bottles shattering outside the duplexes, although no one went out to investigate. About an hour later, Revis heard cars honking and people yelling outside. When she went outside, she saw three vehicles in front of her house; the drivers were revving their engines and the occupants of the cars yelled at Revis and the other guests. One of the guests, Theodore Brickerson, heard defendant Prickett yell multiple racial slurs, including, "You dead motherf-----" and "You n----- lover" at Brickerson and others. Brickerson also saw Busek and Ritchie throw bottles into the driveway and parking areas, close to where guests were standing. Shawn Himes heard one of the occupants of another car yell, "Come outside, n----- lover."

* Circuit judge, sitting on the Court of Appeals by assignment.

The vehicles left, but returned approximately ten minutes later. Revis testified that Ritchie threw a bottle at the apartment and Prickett yelled, "n----- lover" "stupidity bastards [sic]" "bitch," and "n-----." Busek yelled, "Tell your bitch to come outside. I got your bitch." Revis and Brickerson both testified that the incidents intimidated them. After the third incident, the police arrived.

Defendants (and a fourth defendant, Jerry Whaley), were bound over for trial. All four filed motions to quash, and following oral arguments, all four motions were granted, upon the judge's finding that the actions did not rise to criminal behavior under the ethnic intimidation statute. The prosecutor's office appeals as to the three defendants named in this appeal.

II

A district court is required to bind a defendant over for trial if the prosecution presents evidence that a crime has been committed and that there is probable cause to believe that the defendant committed that crime. *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996). Probable cause that a defendant committed the crime is established by "a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that the accused is guilty of the offense charged." *Id.*

This Court's review of the circuit court's analysis of the bindover process is de novo. *Tower*, 215 Mich App at 320; 544 NW2d 752. We must redetermine if the magistrate committed an abuse of discretion in finding probable cause to believe that the defendant committed the offense charged. *Id.*

The ethnic intimidation statute, MCL 750.147b(1); MSA 28.344(2)(1) provides in relevant part that:

> A person is guilty of ethnic intimidation if that person maliciously, and with specific intent to intimidate or harass another person because of that person's race, color, religion, gender, or national origin, does any of the following:
>
> (a) Causes physical contact with another person.
>
> (b) Damages, destroys, or defaces any real or personal property of another person.
>
> (c) Threatens, by word or act, to do an act described in subdivision (a) or (b), if there is reasonable cause to believe that an act described in subdivision (a) or (b) will occur.

The district court found that the evidence presented at the preliminary examination provided probable cause to find that Busek, Ritchie, and Prickett violated MCL 147b(1)(c); MSA 28.344(2)(1)(c) by threatening physical contact or property damage through their conduct and words. We agree. The statute requires only an intent to *intimidate* or *harass* by threatening physical contact

or property damage, not an actual intent to *harm* the victims through physical contact or property damage. MCL 750.147b(1); MSA 28.344(2)(1).

The statute does not define what constitutes such a credible threat. However, the statutorily proscribed conduct appears to be similar to the prohibition against simple assault. A defendant commits assault where he threatens to cause a battery, despite the defendant's actual inability or lack of intent to commit the battery. See e.g., *People v Johnson*, 407 Mich 196, 215, 230-231; 284 NW2d 718 (1979) (finding that a defendant who claimed to have pointed a *toy* gun at the victim could have committed assault); *People v Robinson*, 145 Mich App 562, 566; 378 NW2d 551 (1985) (finding that the defendant committed assault by raising a knife as if to stab the victim, although there was no evidence that he actually intended to do so). The relevant inquiry in an assault charge is whether the victim was placed in "reasonable fear or apprehension of an immediate battery." *People v Lawton*, 196 Mich App 341, 349-350; 492 NW2d 810 (1992). Therefore, by analogy, defendants here need only have taken some action which could place complainants in reasonable fear that defendants would make physical contact or cause property damage.

Here, there was evidence that defendants drove past the duplexes several times over the course of three hours; that they drove in an unusual manner, slowing down and braking frequently; that they used racial epithets and challenged Revis and her friends to come outside or bring their friends outside; and that they participated in throwing bottles toward Revis' apartment. Although the bottles landed in the street, driveway and yard (and did not actually strike complainants or damage their property), this behavior could be interpreted as a threat to hit complainants, the cars parked in the driveway near where the bottles landed, or the duplex itself with the bottles. Complainants' fear of physical contact (bottles) to their person or property was reasonable given that defendants could have thrown the bottles hard enough to reach complainants or their property.

A reasonable person could also infer defendants' intent to harass or intimidate complainants because defendants drove past the duplex multiple times, moving slowly and threatening to stop by braking frequently, and shouting insults and slurs at complainants. The use of racial slurs and insults provides probable cause to believe that defendants were motivated by complainants' race (Revis is Caucasian; Brickerson is African-American).

The district court did not abuse its discretion in binding defendants over for trial. Based upon the evidence presented, the district court's probable cause finding was not "so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias." *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). The circuit court's decision to quash the information is reversed.

Reversed. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ George S. Buth