STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL WADE CAMERON,

Defendant-Appellant.

UNPUBLISHED
June 6, 1997

No. 183324
St. Clair Circuit Court
LC No. 94 002176 FH

Before: Corrigan, P.J., and Sullivan* and T.G. Hicks**, JJ.

PER CURIAM.

Defendant appeals by right his guilty plea to unlawful assembly, MCL 752.543; MSA 28.790(3). Although defendant is now on parole, that status does not render the issues moot. *People v Briseno*, 211 Mich App 11, 17; 535 NW2d 559 (1995). We affirm.

On appeal, defendant challenges the sufficiency of the evidence at the preliminary examination. Because he entered an unconditional guilty plea and did not move to withdraw his plea, defendant has waived this issue. MCR 6.311(C); *People v New*, 427 Mich 482, 485, 495; 398 NW2d 358 (1986). Nonetheless, we briefly address the issues in the event defendant seeks further review in our Supreme Court.

Defendant challenges on appeal the sufficiency of the evidence at the preliminary examination. We review a circuit court's decision regarding a motion to quash by determining if the district court abused its discretion in binding over the defendant. *People v Peebles*, 216 Mich App 661, 664; 550 NW2d 589 (1996). To secure a bindover, the prosecution must present sufficient evidence establishing, as a matter of law, that a felony has been committed and must show probable cause that the defendant is guilty of the offense. MCL 766.5; MSA 28.923; *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). When the evidence conflicts or raises a reasonable doubt

---

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

concerning guilt, questions exist for the trier of fact and the court should bind over the defendant. *People v Fielder*, 194 Mich App 682, 693; 487 NW2d 831 (1992).

The statute on unlawful assembly, MCL 752.543; MSA 28.709(3), provides:

> It is unlawful and constitutes an unlawful assembly for a person to assemble or act in concert with 4 or more persons for the purpose of engaging in conduct constituting the crime of riot, or to be present at an assembly that either has or develops such a purpose and to remain thereat with intent to advance such purpose.

MCL 752.541; MSA 28.709(1) defines "riot" as when "five or more persons, acting in concert, . . . wrongfully engage in violent conduct and thereby intentionally or recklessly cause or create a serious risk of causing public terror or alarm."

Accordingly, the prosecutor must have presented evidence at the preliminary examination that defendant: (1) gathered with at least four others, (2) engaged in violent conduct, and (3) intentionally or recklessly created a serious risk of causing the public to be alarmed. Defendant's actions at the "beat-in" establish the above elements. Defendant congregated with at least four other young men, they beat a member of the group (albeit with the member's permission), and they did so with the intent of causing the neighborhood residents to be alarmed at the presence of their gang.

Defendant argues on appeal that the beat-in could not form a basis for the unlawful assembly charge because the group's initiation ceremony was limited to gang members. Had the gang confined its actions to a location more private than a public playground, this argument might have greater force. Moreover, defendant admitted at his plea that one purpose of the beat-in was to make residents wary of the gang. Defendant also asserts that the gang did not engage in violent conduct *toward the community*. Defendant has added a requirement to the statute that does not exist – the statute merely calls for violent conduct. The gang's attack on its member constituted such conduct. Defendant next argues that the group did not assemble unlawfully because it dispersed on its own volition. The statute is silent on this point; in any event, the statute does not require that the authorities disband the assembly. Finally, defendant's references to his conduct after the beat-in group dispersed are not relevant because the evidence against defendant related to his conduct at the beat-in.

In *People v Garcia*, 31 Mich App 447; 187 NW2d 711 (1971), a case citing the above statutes, the defendant was in a group of people who, while walking in the street, yelled and hurled rocks at a police car. Based on those facts, this Court decided that the examining magistrate correctly bound over defendant on the unlawful assembly charge. *Id.* at 452-454. *Garcia* is inapposite because the arrest in *Garcia* occurred when the defendant was with the group who was yelling and hurling rocks. When the police arrested defendant in this case, the beat-in group had left the playground and had reassembled at a basketball court, but was not, at that time, unlawfully assembling. Police officers testified, however, about defendant's conduct during the beat-in, where he was gesturing and appeared to be leading the group. That conduct supports defendant's bindover on the unlawful assembly charge.

The dissent posits that the evidence did not show that the group intended to riot. To the contrary, defendant acknowledged that the group planned to intimidate the neighborhood residents with the beat-in exhibition. Thus, the gang held their initiation in a public place for the very purpose contained in the riot statute: to cause public terror or alarm. Standing alone, alarm felt by neighborhood residents is insufficient to meet the statute's requirements. For example, the gang members would not violate the statute merely by playing softball while sporting gang identification – even if residents were alarmed by their presence. Defendant, however, admitted that the gang *intended* to frighten the residents. Admittedly, this is a bothersome case. That the group had dispersed before police arrested defendant muddied the decisional waters. Nonetheless, defendant pleaded guilty to unlawful assembly – he admitted that he assembled with at least four others, that they beat the gang member and that they did so with the intention of alarming the residents. The elements of unlawful assembly, including the purpose to riot, therefore have been meet.

Defendant next asserts that his counsel was ineffective because counsel failed to appeal the court's denial of the motion to quash and failed to condition defendant's plea on appellate review of the sufficiency of the evidence. When a defendant claims ineffective assistance of counsel in a guilty plea context, this Court examines whether the defendant tendered the plea voluntarily and understandingly. *People v Swirles (After Remand)*, 218 Mich App 133, 138; 533 NW2d 357 (1996). First, a review of the record reveals that defendant made his plea voluntarily and understandingly. *People v Garner*, 215 Mich App 218, 221; 544 NW2d 478 (1996). Second, as indicated above, sufficient evidence supported the bindover and the court did not err in denying the motion to quash. Counsel's actions in appealing the denied motion and in conditioning the plea thus would have been fruitless. Counsel is not required to make meritless motions. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

Affirmed.

/s/ Maura D. Corrigan
/s/ Timothy G. Hicks