

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

WADE GRIFFIN,

Defendant-Appellee.

UNPUBLISHED

March 6, 1998

No. 201382

Recorder's Court

LC No. 96-008091

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

The prosecutor appeals by right an order granting defendant's motion to quash an information charging defendant, a police officer, with two counts of felonious assault, MCL 750.82; MSA 28.277, and one count of injuring by discharge of a firearm pointed intentionally, but without malice, at another, MCL 750.235; MSA 28.432.. We reverse.

The Recorder's Court's finding that the district court abused its discretion in binding over defendant was premised on the Recorder's Court's conclusion that defendant was justified in shooting his gun at two men if defendant honestly thought that the two men were stealing defendant's car from the driveway of defendant's residence.¹ The question whether defendant's conduct was justified on the theory that under certain circumstances a police officer or private citizen may use deadly force to effectuate the arrest of a fleeing felon was, however, on this record, a question of fact for the jury. *People v Couch*, 436 Mich 414, 421, 430; 461 NW2d 683 (1990) (Boyle, J., with Riley, C.J., and Brickley, J., concurring) (Archer, J., with Cavanagh, J., concurring); *People v Hampton*, 194 Mich App 593, 598; 487 NW2d 843 (1992); *People v Whitty*, 96 Mich App 403; 292 NW2d 214 (1980). Thus, the district court's decision to bind over defendant for trial was a permissible exercise of the district court's discretion. *Hampton, supra*. Accordingly, we reverse the Recorder's Court's decision to quash the information and dismiss the charges against defendant, and we reinstate the district court's determination. *Id.* at 596, 598.

Reversed.

/s/ Jane E. Markey
/s/ Martin M. Doctoroff
/s/ Michael R. Smolenski

¹ The two men were actually “repo” men who were repossessing defendant’s vehicle.