

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NATHANIEL PINKARD,

Defendant-Appellee.

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UNPUBLISHED

April 21, 2000

No. 218355

Wayne Circuit Court

Criminal Division

LC No. 98-010514

Before: Gribbs, P.J., and Doctoroff and T. L. Ludington\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion to quash the information, and dismissing the case. We reverse and remand for further proceedings.

Defendant was charged with assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. At the preliminary examination, a police officer testified that complainant, defendant's wife, appeared at the police station and stated that defendant had assaulted her. The officer indicated that complainant stated that the assault had just occurred. The officer testified that complainant had a swollen eye, and was near hysteria. Over defendant's objection, the district court admitted complainant's statement as an excited utterance, MRE 803(2), and bound defendant over as charged.

In the trial court defendant moved to quash the information, or to dismiss the case. Initially, the trial court remanded the case to district court for the testimony of complainant. Upon reconsidering the matter, the trial court granted defendant's motion to quash, and dismissed the case. The trial court concluded that the bindover was based on inadmissible hearsay, i.e., complainant's statement, and that insufficient evidence was presented to establish each element of the charged offense.

We review a trial court's determination of an evidentiary issue for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

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

An excited utterance is “[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” MRE 803(2). Three criteria must be met before a hearsay statement can be admitted into evidence as an excited utterance: (1) the statement must have resulted from a startling event; (2) the statement must have been made before the declarant had time to engage in contrivance or misrepresentation; and (3) the statement must relate to the circumstances of the startling event. *People v Straight*, 430 Mich 418, 424; 424 NW2d 257 (1988).

The purpose of a preliminary examination is to determine if probable cause exists to believe that a crime was committed and that the defendant committed it. *People v Fielder*, 194 Mich App 682, 689; 487 NW2d 831 (1992); MCL 766.13; MSA 28.931; MCR 6.110(E). During a preliminary examination, the prosecution must produce evidence of each element of the crime charged, or evidence from which the elements can be inferred. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989).

The elements of assault with intent to do great bodily harm less than murder are: (1) an assault, i.e., an attempt or offer with force or violence to do corporal harm to another, and (2) an intent to do great bodily harm less than murder. *People v Bailey*, 451 Mich 657, 668-669; 549 NW2d 325 (1996). The offense is a specific intent crime. An intent to harm the victim can be inferred from the defendant’s conduct. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). No actual physical injury is required. *People v Harrington*, 194 Mich App 424, 429; 487 NW2d 479 (1992).

Plaintiff argues that the trial court abused its discretion by holding that complainant’s statement was inadmissible as an excited utterance, and erred by granting the motion to quash and dismissing the case. We agree, reverse the trial court’s decision, and remand for further proceedings. Complainant’s statement concerned a physical assault perpetrated upon her by her husband, which undoubtedly would qualify as a startling event. The amount of time lapse between the event and the resulting statement is relevant in determining whether the declarant was still under the stress of the event, but is not dispositive. Physical factors such as shock, unconsciousness, or pain may prolong the period in which the risk of fabrication is minimal and acceptable. *People v Smith*, 456 Mich 543, 533-554; 581 NW2d 654 (1998) (ten-hour delay did not render statement regarding sexual assault inadmissible); *People v Kowalak (On Remand)*, 215 Mich App 554, 558-559; 546 NW2d 681 (1996) (forty-five minute delay did not render statement regarding death threat inadmissible). In the instant case, the officer indicated that complainant appeared at the station with a swollen eye, and reported that defendant had assaulted her. She was crying and on the verge of hysterics. We conclude that given complainant’s physical and emotional state when she made the statement, and given the relatively short period that elapsed between the incident and the statement, the trial court abused its discretion by reversing the district court’s decision and holding that complainant’s statement constituted inadmissible hearsay. *Bahoda, supra; Straight, supra; Smith, supra.*

At the preliminary examination the prosecution produced evidence from which each element of the offense of assault with intent to do great bodily harm less than murder could be inferred. *Hill, supra.* This offense does not require the use of a dangerous weapon. *Harrington, supra.* Defendant’s act of hitting complainant in the eye, an area of the body easily injured unless protected,

supported an inference that defendant intended to cause great bodily harm to complainant. The trial court erred by granting defendant's motion to quash the information.

The trial court's order quashing the information and dismissing the case is reversed, and this case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Roman S. Gibbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington