

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

HASEAN ANDWELL JONES,

Defendant-Appellee.

UNPUBLISHED

February 5, 2008

No. 275101

Wayne Circuit Court

LC No. 06-009467-01

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

The prosecutor appeals as of right¹ a circuit court order dismissing charges of assault with intent to do great bodily harm, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The evidence at the preliminary examination showed that Antonio Strong stole two or three tires from a stolen car that his nephew had previously abandoned. When he returned to steal the remaining tire(s), defendant shot him once in the leg. Strong fell to the ground and said, “Why you shoot me, I don’t even know you.” Defendant responded, “You ain’t going to steal no cars no more.” Defendant then also shot up Strong’s car. The circuit court granted defendant’s motion to quash, reasoning that at the time the shots were fired, defendant only intended to prevent Strong from committing a crime and from fleeing, and not to inflict great bodily harm upon Strong.

At the conclusion of the preliminary examination, it is the duty of the district court judge to bind a defendant over for trial if the evidence establishes probable cause to believe both that an offense has been committed and that the defendant committed it. MCL 766.13; MCR 6.110(E). Probable cause that the defendant has committed a crime is established by evidence

¹ The trial court’s order dismissing criminal charges is a final order appealable by right. MCR 7.202(6)(b)(i); MCR 7.203(A)(1). While a dismissal without prejudice can affect the finality of an order entered in a civil case, see MCR 7.202(6)(a)(i); *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 135; 624 NW2d 197 (2000), it does not affect the finality of an order of dismissal entered in a criminal case.

sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003). To establish that a crime has been committed, the prosecutor must present evidence of each element of the crime charged or evidence from which the elements can be inferred, although the evidence need not establish guilt beyond a reasonable doubt. *People v McBride*, 204 Mich App 678, 681; 516 NW2d 148 (1994). In determining probable cause, the district court judge may consider the credibility of the witnesses. *Yost, supra* at 127-128. However, if the evidence conflicts or otherwise creates a reasonable doubt concerning the defendant's guilt, the defendant should be bound over for resolution of the issue by the trier of fact. *People v Selwa*, 214 Mich App 451, 457; 543 NW2d 321 (1995).

"A circuit court's ruling regarding a motion to quash an information and the district court's decision to bind over a defendant are reviewed to determine whether the district court abused its discretion in making its decision." *People v Hill*, 269 Mich App 505, 513-514; 715 NW2d 301 (2006). In reviewing the district court's decision, "the circuit court is limited to the entire record of the preliminary examination and may not substitute its judgment for that of the district court." *People v Christopher Green*, 260 Mich App 710, 713-714; 680 NW2d 477 (2004). The circuit court may reverse the district court's decision only for an abuse of discretion. *Yost, supra*, at 126. "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

The elements of assault with intent to do great bodily harm are "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). "Great bodily harm means a physical injury that could seriously and permanently harm the health or function of the body." CJI2d 17.7(4). This is a specific intent crime, *Parcha, supra*, and the defendant's intent may be inferred from all the facts and circumstances surrounding the crime. *People v Lugo*, 214 Mich App 699, 709-710; 542 NW2d 921 (1995). The defendant's intent can be inferred from the defendant's acts, the means employed to commit the assault itself, and the extent of the victim's injuries, although actual physical injury is not a necessary element of the crime. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992); *People v Cunningham*, 21 Mich App 381, 384; 175 NW2d 781 (1970); CJI2d 17.7(4).

An intent to do great bodily harm less than murder has been defined as "an intent to do serious injury of an aggravated nature." *People v Mitchell*, 149 Mich App 36, 39; 385 NW2d 717 (1986). Evidence that defendant deliberately shot Strong was sufficient to prove an assault and to permit an inference that he intended to inflict great bodily harm. *Parcha, supra*. The fact that defendant had an articulable reason for shooting Strong may explain why he deliberately shot him, but it does not preclude a finding that he intended to inflict great bodily harm. Therefore, the district court did not abuse its discretion in binding defendant over for trial and the circuit court erred in concluding otherwise.

We reverse and remand for reinstatement of the charges. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto