

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
November 20, 2012

v

BRETT ALAN GARY,

Defendant-Appellee.

No. 309781
Isabella Circuit Court
LC No. 12-009720-AR

Before: BORRELLO, P.J., and FITZGERALD and OWENS, JJ.

PER CURIAM.

The prosecution appeals by leave granted from the circuit court’s denial of its appeal of the district court’s order refusing to bind over defendant on the charge of interfering or attempting to interfere with the reporting of a crime through the unlawful use of physical force, MCL 750.483a(1)(b). We reverse and remand for an order reinstating the charge and binding defendant over for trial.

Defendant was charged with domestic assault, second offense, MCL 750.813, and with interfering or attempting to interfere with the reporting of a crime based on an altercation with his girlfriend. The altercation occurred at the home that the victim and defendant shared. At one point during the alleged assault, the victim ran to a neighbor’s home and banged on the outside of the residence. The persons inside came out and saw defendant forcibly taking the victim back to their home. As she was being forced back home, the victim told her neighbors “to call the cops and get her help.” The district court concluded that when the victim told the neighbor to contact the police it was a continuation of the domestic assault and was not evidence that defendant was preventing the victim from reporting a crime. The prosecution appealed to the circuit court, which denied the appeal.

We review de novo the bindover decision of a district court “to determine whether the district court abused its discretion.” *People v Henderson*, 282 Mich App 307, 313; 765 NW2d 619 (2009). “An abuse of discretion occurs . . . when the trial court chooses an outcome falling outside [the] principled range of outcomes.” *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). “[T]his Court gives no deference to the circuit court’s decision.” *Henderson*, 282 Mich App at 313.

A district court must bind over a defendant if the evidence establishes that a felony was committed and there is probable cause to believe defendant committed the crime. Circumstantial

evidence and reasonable inferences arising from the evidence may be sufficient to prove the elements of the crime. *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997).

To prove interference or attempted interference with the reporting of a crime through the unlawful use of force, the prosecution was required to establish “(1) that a defendant prevented or attempted to prevent, (2) through the unlawful use of physical force, (3) someone from reporting a crime committed or attempted by another person.” *People v Holley*, 480 Mich 222, 228; 747 NW2d 856 (2008).

“It is axiomatic that at the preliminary examination the prosecutor must show that the offense charged has been committed. *While positive proof of guilt is not required, there must be evidence on each element of the crime charged or evidence from which those elements may be inferred . . .*” *People v Doss*, 406 Mich 90, 101; 276 NW2d 9 (1979), quoting *People v Oster*, 67 Mich App 490, 495; 241 NW2d 260 (1976) (emphasis added by *Doss*; citation omitted). The testimony, and the reasonable inferences rising from it, provides some proof of each element of the crime. The evidence clearly establishes that the victim ran from her house to her neighbor’s home and tried to get the attention of those inside by banging on the outside of the home. Although the victim did not remember at the preliminary examination why she was trying to get her neighbor’s attention, the responding deputy sheriff testified that the victim stated that she was “try[ing] to get the police called.” In this context, the victim’s request to her neighbors “to call the cops and get help” as defendant was dragging her back home supports the officer’s testimony that the victim was trying to have the police summoned. This same evidence is “sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief” that defendant committed the crime. *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997). Accordingly, we conclude that the district court abused its discretion by failing to bind defendant over for trial on the charge of interfering or attempting to interfere with the reporting of a crime through the unlawful use of physical force.

Reversed and remanded to the district court for entry of an order reinstating the charges against defendant and binding defendant over for trial as charged. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens