

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LOUIS LEE BRIGGINS, JR.,

Defendant-Appellee.

UNPUBLISHED

July 20, 2006

No. 268226

St. Clair Circuit Court

LC No. 05-002197-FH

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted the trial court's order granting defendant's motion to quash the charge of assault with intent to do great bodily harm less than murder, MCL 750.84, and remanding the case to the district court for trial on a charge of aggravated assault, MCL 750.81a. We reverse and remand for reinstatement of the charge of assault with intent to do great bodily harm less than murder. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with assault with intent to do great bodily harm less than murder as a result of an incident in which complainant Karen Burgett suffered multiple fractures to her jaw. At the preliminary examination, Burgett testified that she returned home to find a vehicle blocking her driveway. The vehicle belonged to a person who was visiting at the home of her neighbor. Burgett's neighbor refused to rectify the situation. Defendant, who was also visiting at the home of the neighbor, approached Burgett. Burgett and defendant argued briefly, and defendant hit her once in the face with his closed fist. Burgett's bottom jaw was broken on both sides. She underwent two surgeries, had metal plates inserted in her jaw, and still had her mouth wired shut at the time of the preliminary examination.

The district court bound defendant over for trial on the charge of assault with intent to do great bodily harm less than murder. Defendant moved to quash the bindover and remand the matter to the district court for trial on a charge of aggravated assault. The trial court granted the motion, finding that no evidence showed that defendant had the specific intent to do great bodily harm. Rather, the evidence produced was sufficient to support a finding that defendant committed only an aggravated assault.

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 Fiedler*, 194

Mich App 682, 689; 487 NW2d 831 (1992); MCL 766.13; MCR 6.110(E). Probable cause is defined as evidence 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).

During a preliminary examination, the prosecutor is not required to prove the defendant's guilt beyond a reasonable doubt. However, the prosecutor 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). Circumstantial evidence and reasonable inferences drawn from the evidence can be sufficient. *People v Greene*, 255 Mich App 426, 444; 661 NW2d 616 (2003). A magistrate should not discharge a defendant if the evidence conflicts or raises a reasonable doubt of guilt. Such questions should be left for the jury. *People v Drake*, 246 Mich App 637, 640; 633 NW2d 469 (2001). The decision to discharge or bind over a defendant is reviewed for an abuse of discretion. *People v Vasher*, 167 Mich App 452, 456; 423 NW2d 40 (1988). The trial court may not substitute its judgment for that of the district court. *Drake, supra* at 639-640. The trial court's decision that the district court abused or did not abuse its discretion is reviewed de novo. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or threat with force or violence to do great bodily harm to another, i.e., an assault; and (2) an intent to do great bodily harm less than murder. Assault with intent to do great bodily harm less than murder is a specific intent crime. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). The requisite intent can be inferred from the surrounding facts and circumstances. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). Minimal circumstantial evidence is sufficient to prove that an actor had the requisite intent. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985).

We reverse the trial court's order granting defendant's motion to quash, and remand this matter with instructions that the charge of assault with intent to do great bodily harm less than murder be reinstated against defendant. An actor need not use a weapon to perpetrate the offense of assault with intent to do great bodily harm less than murder. The use of bare hands is sufficient. *People v VanDiver*, 80 Mich App 352, 356; 263 NW2d 370 (1977). The presence of injuries, without direct or circumstantial evidence of intent to do great bodily harm, is not sufficient to sustain a charge of assault with intent to do great bodily harm less than murder. See, e.g., *People v Emerson*, 319 Mich 225, 227-228; 29 NW2d 161 (1947). However, in this case, evidence existed from which defendant's specific intent to do great bodily harm could be inferred. Defendant struck Burgett in the face with his closed fist. This single blow struck Burgett with such force that her bottom jaw was fractured on both sides. Burgett was required to undergo two surgeries, to have metal plates inserted in her jaw, and to live with her mouth wired shut for several months. This evidence supported the inference that defendant had the specific

intent to cause great bodily injury to Burgett. *Parcha, supra; Strange, supra.* Any doubt as to defendant's guilt was for the jury to resolve. *Drake, supra* at 640.

Reversed and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Brian K. Zahra