STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARICE PARKER and SHANNON BAKER,

Defendants,

and

CHARLES PAYNE, GLENN CARTER, ROBERT DUESETTE, LESTER PHILLIPS, DWIGHT REED, FRANK SHEPHERD, CURTIS SMITH, CARL WESLEY and ANDRE GUN,

Defendants-Appellees.

UNPUBLISHED
October 5, 1999

No. 201002
Detroit Recorder's Court
LC No. 96-004661

Before: Doctoroff, P.J., and Holbrook, Jr. and Kelly, JJ.

PER CURIAM.

After a preliminary examination, defendants-appellees were bound over on the charge of knowingly attending an animal fight, MCL 750.49(2)(f); MSA 28.244(2)(f). In addition to the charge of knowingly attending an animal fight, defendant-appellee Payne was also bound over on a charge of knowingly organizing, promoting, or collecting money for the fighting of an animal, MCL 750.49(2)(e); MSA 28.244(2)(e).[1] After addressing a motion to suppress evidence brought by defendant Parker, who was bound over on seven counts related to dogfighting, the trial court not only granted the motion to suppress, but granted the motions to quash the information brought by Parker and defendants-appellees, and dismissed the case. The prosecution now appeals as of right from the order granting defendants-appellees' motions to quash[2] and dismissing the charges against them. We reverse and remand for trial.

The charges in this case arose after two police officers arrived on the scene of what appeared to the officers to be a dogfight in progress or just commencing. A crowd of about twenty people scattered upon their arrival – some people were arrested outside, while others fled into the house. When a sergeant and two backup officers arrived, the police officers entered the home and arrested the home's occupants. Based on information obtained during this entry, a search warrant was issued and more evidence was seized. The owner of the house, defendant Parker, successfully moved for the suppression of the evidence on the basis that the initial entry of the home by the police was illegal.

The prosecution contends that the trial court erred by granting the motions to quash the information, and by dismissing the charges against defendants-appellees. We agree.

The district court must bind over a defendant for trial if, after the preliminary examination, the district court finds probable cause to believe that a crime was committed and that the defendant committed it. *People v Goecke*, 457 Mich 442, 469; 579 NW2d 868 (1998); *People v Orzame*, 224 Mich App 551, 558; 570 NW2d 118 (1997). Probable cause exists where the court finds a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person to believe that the accused is guilty of the charged offense. MCL 766.13; MSA 28.931; MCR 6.110(E); *Orzame, supra*. Some evidence must be presented regarding each element of the crime or from which those elements may be inferred. *Goecke, supra*. "It is not, however, the function of the examining magistrate to discharge the accused when the evidence conflicts or raises a reasonable doubt of the defendant's guilt; that is the province of the jury." *Id.* at 469-470.

When reviewing a district court's decision to bind over a defendant for trial, the circuit court must consider the entire record of the preliminary examination. *Orzame, supra* at 557. The circuit court may not substitute its judgment for that of the magistrate, and reversal is appropriate only if it appears on the record that the district court abused its discretion. *Id.* This Court reviews the circuit court's decision de novo to determine whether the district court abused its discretion. *Id.*

Here, the trial court's holding that "there is no evidence of a dogfight occurring on the night in question" cannot be reconciled with the evidence adduced at the preliminary examination.[3] Officer Diaz testified that, when he arrived at the scene, he heard dogs yelping and growling. He observed approximately twenty people huddled around dogs that appeared to be fighting, and he heard comments from the crowd of people such as, "get that m----- f-----, kill him, get him, make him dead, make daddy some money." The crowd dispersed when the officer turned on a spotlight on his scout car. Officer Diaz also observed a truck parked at the house containing two caged dogs. Officer Pizana gave similar testimony regarding his observations when he arrived on the scene. In addition, Officer Pizana testified that he observed defendant Smith leading a dog on its hind legs toward another dog. When the crowd noticed the officers and began to disperse, Smith chained the dog to a fence.[4] The officers identified defendants as those present on the night in question.

Shirene Cece-Clements, the supervising veterinarian for the Michigan Humane Society Central Clinic, testified that she examined two dogs, which she identified as pit bulls, taken from the scene. Both dogs had multiple fresh bite wounds on their muzzles and front legs. Cece-Clements explained that the bite wounds on one of the dogs were oozing blood and were "very severe." The dog was euthanized as a result of his injuries. Cece-Clements concluded that the dogs' injuries were caused by

dogfighting. Two other dogs taken from the scene had healed wounds on their faces and front legs that could have been caused by dog bites.

The testimony of the officers and Cece-Clements clearly supported a finding that there was probable cause to believe that the charged crimes were committed and that defendants committed them. *Goecke, supra* at 469. While the testimony of the officers conflicted with that of other witnesses, such conflicts are to be resolved by the jury. *Id.* at 469-470. Similarly, although certain defendants argue that there was no evidence that they were present as spectators, their presence as spectators is a fair inference from the circumstances, and reasonable doubt to the contrary is an issue to be resolved by the jury. *Id.* Under these circumstances, the district court did not abuse its discretion in binding over defendants-appellees on the charges of attending an animal fight, and the trial court erred when it granted defendants-appellees motions to quash the information and dismissed the charges against them.

Several defendants challenge the constitutionality of the statute at issue with regard to attending an animal fight, claiming that it is vague and appears to punish mere presence at an animal fight. This Court has previously determined that the language at issue is neither vague nor overbroad, and provides adequate notice of the conduct proscribed. *People v Cumper*, 83 Mich App 490, 494; 268 NW2d 696 (1978). Furthermore, the statute does not prohibit the mere witnessing of a dogfight, but "punishes attendance as a spectator at an event legitimately prohibited by law." *Id.*

Finally, with respect to defendant Payne, who was also charged with collecting money from an animal fight, the money recovered from his person, which was stained with dog blood, gives rise to a fair inference that he collected money in association with a dogfight, most likely the fight that left the two caged animals suffering from multiple, severe bite wounds. Thus, the trial court erred in granting defendant Payne's motion to quash with respect to the charge of collecting money from an animal fight. Defendant Payne asserts on appeal that the money must be suppressed because there was no probable cause to arrest and search him. Defendant Payne raised this argument in his motion to quash, but the argument was not addressed by the trial court. Thus, the issue is not preserved for appellate review, and we decline to address it. *People v Connor*, 209 Mich App 419, 422; 531 NW2d 734 (1995).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

[1] The relevant portions of the statute read:

> (2) A person shall not knowingly do any of the following:
>
> * * *

(e) Organize, promote, or collect money for the fighting, baiting, or shooting of an animal as described in subdivisions (a) to (d).

(f) Be present at a building, shed, room, yard, ground, or premises where preparations are being made for an exhibition described in subdivisions (a) to (d) [i.e., the fighting, baiting or shooting of an animal as a test of marksmanship], or be present at the exhibition, knowing that an exhibition is taking place or about to take place. [MCL 750.49(2)(e) and (f); MSA 28.244(2)(e) and (f).]

[2] Defendants-appellees Duesette and Phillips did not file motions to quash.

[3] We note that the fact that the trial court granted defendant Parker's motion to suppress evidence seized as a result of the police entry into his house does not mean that such evidence cannot be used against the remaining defendants, as the trial court's opinion suggests. "For a defendant to attack the propriety of a search and seizure, the search must have infringed a constitutionally protected interest." *People v Parker*, 230 Mich App 337, 339; 584 NW2d 336 (1998). A mere visitor does not have an expectation of privacy sufficient to support standing to challenge the entry of a residence by the police. *Id.* at 340-341.

[4] Certain defendants point to Officer Pizana's testimony that the dogs on the ground "were chained up" to argue that the dogs were not engaged, or about to be engaged, in a fight. When read in context, however, it is clear that when the officer testified that "the dogs were chained up," he was describing the fact that, upon noticing the police, someone took the two dogs and chained them to the fence -- not that the dogs had been chained to the fence prior to that time.