

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DANIEL BAYSDELL,

Defendant-Appellee.

UNPUBLISHED

July 11, 2000

No. 210330

Wayne Circuit Court

Criminal Division

LC No. 97-502723

Before: Jansen, P. J., and Hood and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion to quash, and dismissing the case with prejudice. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with obstruction of justice, MCL 750.505; MSA 28.773. At the preliminary examination, complainant testified that as she was waiting to testify against defendant in a separate case, defendant yelled at her, threatened to kill her, and made slashing motions across his throat. He did not specifically tell her to not testify.

The district court bound defendant over as charged, finding that the issue of what defendant intended was for the jury. The trial court granted defendant's motion to quash the information and dismissed the case with prejudice, finding that the evidence did not establish that defendant intended to intimidate complainant or to stop her from testifying.

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; 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 crime of obstruction of justice is understood to be an interference with the orderly administration of justice. It embraces a category of separate offenses. *People v Thomas*, 438 Mich 448, 455, 457; 475 NW2d 288 (1991). The coercion of a witness is a common example of the offense. *People v Ormsby*, 310 Mich 291, 300; 17 NW2d 187 (1945). The crime is complete after an attempt, via threats and coercion, to dissuade a witness from testifying. The attempt need not succeed. Words alone may be sufficient to constitute the crime. Obstruction of justice is a specific intent crime. *People v Coleman*, 350 Mich 268, 274, 278, 280-281; 86 NW2d 281 (1957).

Plaintiff argues that the trial court erred by granting the motion to quash, and dismissing the case. We agree, reverse the trial court's decision, and remand for further proceedings. Defendant did not specifically warn complainant against testifying; however, no authority holds that the requisite specific intent can be established only by such a clear statement. A defendant's words must be "unequivocally referable" to the completion of the crime. *Id.*, 278. In other jurisdictions, threats to kill, to wound, or to make a person "pay," have been held to constitute sufficient evidence of intent to intimidate a witness. *People v Tower*, 215 Mich App 318, 321-322; 544 NW2d 752 (1996) (and cases cited therein). Here, the evidence showed that when defendant appeared in court to answer a charge brought by complainant, he yelled at her, threatened to kill her, and made slashing motions across his throat. As a general rule, intent is a question of fact to be inferred from the circumstances by the trier of fact. *People v Turner*, 213 Mich App 558, 567; 540 NW2d 728 (1995). In this case, the totality of the circumstances were sufficiently strong in themselves to warrant a cautious person to believe that defendant intended to dissuade complainant from testifying. *People v Dellabonda*, 265 Mich 486, 490; 251 NW 594 (1933); *Coleman*, *supra*. The trial court erred by granting defendant's motion to quash the information. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

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/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad