

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAVID JAMES CYNAR,

Defendant-Appellee.

UNPUBLISHED

January 29, 2002

No. 235897

Washtenaw Circuit Court

LC No. 00-000301-FH

Before: Sawyer, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion to quash the charge of fourth-degree fleeing and eluding, MCL 750.479a(1) and (2). 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 fourth-degree fleeing and eluding and operating a vehicle without a valid license, MCL 257.301. At the preliminary examination, Deputy Piatt testified that he followed a car carrying a passenger fitting the description of a participant in a bank robbery, and a U-Haul truck believed to be traveling with the car. The vehicles traveled on I-94 at forty-five to fifty miles per hour. Piatt observed the drivers of the car and the truck gesturing to one another. Twelve to fourteen police vehicles joined the pursuit. The car and the truck slowed when the police vehicles activated their lights and sirens. The truck pulled halfway onto the shoulder of the road, but then accelerated and continued on I-94 at approximately forty-five miles per hour. Several police vehicles followed the car when it left the freeway. Piatt continued to follow the truck. He identified defendant as the driver. Defendant looked at Piatt in the rear view mirror of the truck, but did not follow Piatt's commands, broadcast over the public address system of the police vehicle, to stop the truck. Defendant continued on the freeway for approximately two miles, then exited the freeway, turned left against a red light, and entered a U-Haul rental facility. The police followed and arrested defendant.

The district court bound defendant over as charged, finding that the issue of defendant's intent was for the jury to resolve. The trial court granted defendant's motion to quash the charge of fleeing and eluding, finding that no evidence showed that defendant made any attempt to elude the police.

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). 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). 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). We review the trial court's decision that the district court abused or did not abuse its discretion on a de novo basis. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

If a police or conservation officer, acting in the lawful performance of his duty while in uniform and driving a marked vehicle, gives a visual or audible signal to the driver of a vehicle to bring the vehicle to a stop, the driver may not willfully fail to obey the direction by increasing the speed of the vehicle, extinguishing the lights of the vehicle, or otherwise attempting to flee or elude the officer. A person who willfully fails to obey the direction is guilty of fourth-degree fleeing and eluding. MCL 750.479a(1) and (2). The terms "flee" and "elude" connote the intent to take affirmative action to avoid capture, and not merely a failure to obey an officer's directions. *People v Grayer*, 235 Mich App 737, 741-742; 599 NW2d 527 (1999).

Plaintiff argues that the trial court erred by granting defendant's motion to quash the charge of fleeing and eluding. We agree, reverse the trial court's decision, and remand for further proceedings consistent with this opinion. Defendant's intent was the only element of the charged offense at issue. The evidence showed that after the police activated their lights and sirens defendant slowed the truck and pulled it halfway off the road, but did not bring the truck to a complete stop. He accelerated and continued driving. No evidence showed that defendant exceeded the speed limit; however, the statute does not limit the offense of fleeing and eluding to high-speed chases. *Id.*, 745. Other evidence established that defendant looked at Piatt in his rear view mirror but ignored Piatt's broadcast commands to stop the truck, and made a left turn against a red light after leaving the freeway. The evidence supported an inference that defendant knew that the police were pursuing his vehicle, and that he intended to take affirmative action to elude the police and avoid capture. *Id.*, 741-742. When reviewing a district court's decision to bind a defendant over the trial court should consider the entire record, but should not substitute its judgment for that of the district court. *Orzame, supra*. Conflicts in the evidence should be resolved by the jury. *People v Laws*, 218 Mich App 447, 452; 554 NW2d 586 (1996).

Reversed and remanded. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Brian K. Zahra