

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
January 12, 2012

v

ELAINE CLAIRE VANDERBERG,

Defendant-Appellee.

No. 299055
Benzie Circuit Court
LC No. 09-002148-FH

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

The prosecutor appeals the circuit court order quashing the information and dismissing the charge of resisting or obstructing a police officer, MCL 750.81d(1), after the district court had bound defendant over on the charge. We reverse and remand for reinstatement of the charge.

The charge against defendant arose out of a traffic violation committed by her grandson, Andrew Haas, on August 3, 2009. Frankfort Police Officer Jason Wolfe was on duty and in his police cruiser when he saw a speeding vehicle. Officer Wolfe chased the vehicle at high speeds for about five miles. The vehicle finally came to a stop outside of defendant's home, and Haas exited the car. Defendant went out to the road, waving her hands and yelling at Officer Wolfe, at which point Wolfe ordered defendant back into the yard. Defendant disobeyed, and continued walking towards Officer Wolfe, who again ordered defendant to step back. Defendant ignored the request and continued advancing towards Wolfe, waving her hands. According to the officer's testimony at the preliminary examination, defendant put her hands on his chest and arm and pushed him back. He implored defendant to "get back," but she did not comply. Officer Wolfe then sprayed defendant with pepper spray. Defendant backed away when the pepper spray took effect.

It is important to note that as Wolfe was busy attempting to get defendant to back away and cease obstructing his actions, he was also attempting to apprehend a noncompliant Haas in a chaotic situation, as indicated in the following passage from Wolfe's testimony:

I ordered [Haas] to the ground. He did not comply. He proceeded to go between my vehicle and the other vehicle towards the house, which would be to our right. The defendant was still screaming at me. I'm ordering her to get back and I went after [Haas] who went into the garage at this time, and I'm ordering

him to the ground [and] ordering [defendant] to step back. She was screaming something. I don't know – I don't recall what it was at this time. I laid hands onto [Haas] at that time, trying to get him to the ground. He pulled away, went back out to the road. The defendant was still in tow right there either to my side or just to my rear, yelling emphatically – . . . I think I remember things of you don't understand, he's innocent. [Haas] . . . went out to the road and gave me the what are you going to do sign. And I said you need to get on the ground now. And I'm hollering on the radio at this time that I need assistance, I need assistance, I need assistance. . . . [Haas] made a turn. The defendant, Ms. Vanderberg, came around in front of me waving her hands again. I said you need to back off. She proceeded to come to me, put her hands on my chest and my arm, pushing me back. I shoved back, said get back, and at this time, I could see the other suspect with the tattoos [Haas] coming towards me. So now I had two people coming at me.

Other law enforcement officers arrived at the scene and assisted Officer Wolfe in taking Haas into custody.

Defendant was charged with one count of resisting or obstructing a police officer, MCL 750.81d(1), for her actions in impeding the arrest of Haas. At the conclusion of the preliminary examination, the district court bound the case over to the circuit court. In the circuit court, defendant filed a motion to quash/dismiss the felony information. The circuit court granted the motion, finding among other things that defendant's act of grabbing or pushing Officer Wolfe was "just an emphatic way, or can be, of speaking." The circuit court also indicated that Wolfe was not injured by defendant's actions and that Wolfe could not describe the amount of force used by defendant when she shoved him. The circuit court further expressed that defendant had no intent to harm Officer Wolfe and that "she was terribly upset emotionally and concerned about her grandson." The court noted that "[t]his isn't anything that belongs in the circuit court."

The prosecutor argues that the circuit court erred in granting defendant's motion to dismiss because there was sufficient evidence to show probable cause that she resisted or obstructed Officer Wolfe. The prosecution also contends that the circuit court should not have granted the motion simply because it believed that the prosecutor should have charged defendant with a misdemeanor instead of a felony.

A circuit court's ruling regarding a motion to quash an information and the district court's decision to bind a defendant over to the circuit court are reviewed to determine whether the district court abused its discretion in making its decision. *People v Waltonen*, 272 Mich App 678, 683; 728 NW2d 881 (2006). Where the decision encompasses a question of statutory construction, i.e., whether the alleged conduct falls within the scope of a penal statute, the issue constitutes a question of law that is reviewed de novo. *Id.* at 683-684. The primary function of a preliminary examination is to determine whether a felony has indeed been committed and, if so, whether probable cause exists to believe that the defendant committed the felony. *Id.* at 684. Probable cause requires evidence that is sufficient to make a person of ordinary caution and prudence to conscientiously entertain a reasonable belief that the defendant is guilty. *Id.* The magistrate, however, need not be without doubts regarding the defendant's guilt. *Id.* If it appears to the district court after the preliminary examination that there exists probable cause to

believe that a felony was committed and that the defendant committed it, the court is required to bind the defendant over for trial. MCL 766.13; MCR 6.110(E); *Waltonen*, 272 Mich App at 684.

Here, defendant was bound over on a single felony count of resisting or obstructing a police officer in violation of MCL 750.81d(1), which provides that “an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony[.]” In *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010), this Court observed:

Under MCL 750.81d(1), the elements required to establish criminal liability are: (1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties. “‘Obstruct’ includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.” MCL 750.81d(7)(a). [Citations omitted.]

The evidence, discussed above, was sufficient to establish probable cause that defendant physically interfered with Officer Wolfe’s attempts to arrest Haas, that she assaulted Wolfe, that defendant opposed Wolfe as he tried to perform his duties, that she knowingly failed to comply with Wolfe’s lawful commands, which were repeatedly given according to the testimony, and that defendant knew or had reason to know that Wolfe was a police officer. The evidence supports the district court’s bindover decision regardless of whether Wolfe was injured, whether defendant had the intent to physically harm the officer, whether she was emotionally upset, or regardless of whether the prosecution could have charged only a misdemeanor.¹ There existed probable cause to believe that a felony was committed and that defendant committed it. In light of the record, the district court certainly did not abuse its discretion in binding defendant over for trial; the decision was a reasonable and principled outcome. See *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008).

Reversed and remanded for reinstatement of the charge against defendant. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

¹ The decision whether to bring a charge and what charge to bring lies in the discretion of the prosecutor, not the court. *People v Venticinque*, 459 Mich 90, 100; 586 NW2d 732 (1998).