

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEANN DENISE ETCHISON,

Defendant-Appellant.

UNPUBLISHED

January 10, 2012

No. 300705

Macomb Circuit Court

LC No. 2010-000044-FH

Before: SAAD, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals her jury trial conviction of resisting or obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant to two years' probation and community service. The court also ordered defendant to undergo a psychological evaluation and to pay fees and costs. For the reasons set forth below, we affirm.

Defendant argues that she should not have been bound over on the resisting or obstructing charge. The circuit court reviews the district court's decision to bind over a defendant for an abuse of discretion. *People v Beasley*, 239 Mich App 548, 552; 609 NW2d 581 (2000). "This Court reviews the circuit court's decision de novo to determine whether the district court abused its discretion." *Id.* Also, this Court reviews de novo whether the Fourth Amendment was violated and whether the exclusionary rule applies. *People v Hyde*, 285 Mich App 428, 438; 775 NW2d 833 (2009).

"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." *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010). The statute states that "[o]bstruct" 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). "The district court must bind over a defendant if the evidence presented at the preliminary examination establishes that a felony has been committed and there is probable cause to believe that the defendant committed the crime." *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997); MCL 766.13.

Here, defendant concedes that the evidence presented at the preliminary examination and at trial established that the crime of resisting or obstructing a police officer occurred and that there was probable cause to believe she committed the crime. However, defendant maintains that Officer Corey Bonner's entry into her home violated the Fourth Amendment and that, therefore, she had the right to resist or obstruct the officer.

"[B]oth the United States and the Michigan Constitutions guarantee the right against unreasonable searches and seizures." *People v Snider*, 239 Mich App 393, 406; 608 NW2d 502 (2000), citing US Const, Am IV; Const 1963, art 1, § 11. The exclusionary rule is a remedy designed to penalize and deter police misconduct where it has resulted in a constitutional rights violation and should only be used as a last resort. *Corr*, 287 Mich App at 508. However, "the exclusionary rule does not act to bar the introduction of evidence of independent crimes directed at police officers as a reaction to an illegal . . . search." *People v Daniels*, 186 Mich App 77, 82; 463 NW2d 131 (1990); See *Corr*, 287 Mich App at 509. "Any other conclusion would effectively give a person who has been the victim of an illegal seizure the right to employ whatever means available, no matter how violent, to elude capture." *Daniels*, 186 Mich App at 82.

Officer Bonner testified at the preliminary examination that, on September 13, 2009, he received information that a missing 16-year-old girl was located at defendant's home at 19297 Gaynon Road. Officer Bonner had seen a photograph of the missing girl and, as he approached the residence, he saw the girl through a window. Wearing a blue uniform with his name visibly displayed on his shirt, Officer Bonner knocked on defendant's front door and defendant's son opened the door. Because he had seen the missing child in the house, Officer Bonner placed one foot inside the door and held it open. He identified himself and stated that he saw the missing girl in the residence and needed to take her back. After several minutes, defendant came down the stairs from the second floor. Officer Bonner described the ensuing events as follows:

Basically what it was is [defendant said] get the f*** out of my house. What's your f***** name? I advised her what my name was. She approached me, grabbed me by my arm and said what the f*** did you say? I said ma'am if you touch me one more time you're going to be placed under arrest. You're assaulting an officer, step back.

Though Officer Bonner told defendant that he saw the missing girl inside the house, defendant denied that she was there. Officer Bonner further testified that defendant attempted to slam the door on him twice. Shortly thereafter, the missing girl was located on the roof of the residence and she was returned to her parent.

We hold that the evidence from the preliminary examination supports the conclusion that defendant resisted or obstructed Officer Bonner after the officer entered her home to recover a missing child. Thus, defendant committed the crime of resisting or obstructing Officer Bonner subsequent to and independent of Officer Bonner's entry into her home. Therefore, regardless whether Officer Bonner properly entered defendant's home, the exclusionary rule would not apply to evidence related to defendant's crime and her claim is without merit.

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause