

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMAL TRACEY GREATHOUSE,

Defendant-Appellant.

UNPUBLISHED

December 13, 1996

No. 179679

Detroit Recorder's Court

LC No. 93-012797

Before: Jansen, P.J., and Saad and M.D. Schwartz,* JJ.

PER CURIAM.

Following a bench trial in the Detroit Recorder's Court, defendant was convicted of assault with intent to commit murder, MCL 750.83; MSA 28.278, assault with intent to rob while armed, MCL 750.89; MSA 28.284, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was thereafter sentenced to the mandatory term of two years' imprisonment for the conviction of felony-firearm, to be served consecutively with terms of six to fifteen years for both assault convictions. Defendant appeals as of right and we affirm.

Defendant's sole contention on appeal is that the district court abused its discretion in binding him over for trial on the charge of assault with intent to commit murder because there was insufficient evidence presented of an intent to murder at the preliminary examination.

The district court's decision to bind over a defendant is reviewed for an abuse of discretion. *People v Thomas*, 438 Mich 448, 452; 475 NW2d 288 (1991). The district court must bind over the defendant for trial if it determines that probable cause exists to believe that a crime was committed and that defendant committed the crime after considering the evidence. MCR 6.110(E). At the preliminary examination, the prosecutor is not required to prove each element of the crime beyond a reasonable doubt. Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to support the bindover of the defendant if such evidence establishes probable cause. *People v Whipple*, 202 Mich App 428, 431-432; 509 NW2d 837 (1993).

* Circuit judge, sitting on the Court of Appeals by assignment.

The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to commit murder, (3) which, if successful, would make the killing murder. *People v Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). The intent to kill may be proven by inference from any facts in evidence. *Id.* The only person who testified at the preliminary examination was the complainant, Tommy Hatcher. Hatcher testified that defendant entered an automotive repair center located on Gratiot in the City of Detroit with two other men. Defendant had a handgun and stuck it in the complainant's abdomen. Defendant told complainant to "give it up." Defendant then moved the barrel of the gun away from him, but defendant again tried to point it at the complainant's abdomen. One of defendant's cohorts then told defendant to "shoot that motherfucker." The complainant then grabbed the gun, and his finger got caught in the trigger. The complainant was able to disarm defendant, and held him until the police arrived.

There was sufficient evidence presented by the complainant's testimony, and reasonable inferences drawn from it, to support defendant's bindover on the charge of assault with intent to commit murder. Specifically, the complainant testified that defendant moved the gun back toward the complainant's abdomen, and he was told to shoot the complainant. Defendant's actions in moving the gun back toward the complainant's midsection support an inference that he would have attempted to shoot the gun, but that complainant's action of grabbing the gun and jamming the trigger prevented the shooting. Accordingly, there was probable cause that defendant committed the crime of assault with intent to commit murder and the district court did not abuse its discretion in binding him over for trial.

Affirmed.

/s/ Kathleen Jansen

/s/ Henry William Saad

/s/ Michael D. Schwartz