

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

FRANCIS J. SPADAFORE,

Defendant-Appellee.

---

UNPUBLISHED  
November 6, 1998

No. 209772  
Recorder's Court  
LC No. 97-009022

Before: Markman, P.J., and Bandstra and J.F. Kowalski\*, JJ.

MEMORANDUM.

Plaintiff appeals by right the Recorder's Court order granting defendant's motion to quash the information, and dismiss the case. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with assault with intent to commit murder, MCL 750.83; MSA 28.278, after an altercation with police. At the preliminary examination, Detroit Police Officer Chet Gardner testified that he responded as back up to a reported shooting. Defendant was a neighbor who was uninvolved in the shooting incident. As the officers were leaving, defendant was loudly complaining about their failure to do their job, and stated that he was going to the precinct station to file a report. Defendant got in his van, and drove through a neighbor's yard to get to the street. Officer Gardner testified that defendant accelerated as he drove at the officer. Officers yelled for defendant to stop, and Gardner fired two shots when he feared he would be run over. Gardner testified that defendant swerved toward him as he approached.

Defendant was bound over as charged after the preliminary examination. The Recorder's Court granted defendant's motion to quash the information, finding no evidence that defendant intended to kill the officer.

This Court's review of the Recorder's Court analysis of the bindover is de novo. *People v Reigle*, 223 Mich App 34, 36; 566 NW2d 21 (1997). The Court must determine if the magistrate

---

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

committed an abuse of discretion in determining whether there was probable cause to believe that the defendant committed the offense charged. *Id.* at 36-37.

A defendant must be bound over for trial if evidence is presented at the preliminary examination that a crime has been committed and there is probable cause to believe that defendant was the perpetrator. *Id.* at 37; *People v Tower*, 215 Mich App 318, 319-320; 544 NW2d 752 (1996). The prosecution is not required to prove every element of the crime beyond a reasonable doubt. If there is credible evidence to support and negate the existence of an element of the crime, a factual question exists that should be left for the jury. *People v Kieronski*, 214 Mich App 222, 228-229; 542 NW2d 339 (1995).

The elements of assault with intent to commit murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Guy Taylor*, 422 Mich 554, 567-568; 375 NW2d 1 (1985). A trier of fact may draw reasonable inferences from the evidence in determining the existence of an intent to kill. *Id.* at 568.

The magistrate did not abuse her discretion in binding over defendant for trial. Where there was testimony that defendant accelerated and swerved toward the officer, the trier of fact could find intent to kill. The Recorder's Court erred in quashing the information.

We reverse and remand for trial. We do not retain jurisdiction.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski