

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOEY MADISYN-RAELYN BOSTWICK,

Defendant-Appellee.

UNPUBLISHED

July 22, 2021

No. 355099

Livingston Circuit Court

LC No. 20-000191-AR

Before: FORT HOOD, P.J., and MARKEY and GLEICHER, JJ.

PER CURIAM.

The prosecution appeals by leave granted the circuit court order affirming the district's court's decision to dismiss a charge of resisting or obstructing arrest, MCL 750.81d(1), on the basis that the underlying arrest was unlawful. We reverse and remand for further proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

This case arises out of an altercation wherein defendant punched a police officer while the officer was attempting to arrest her. On November 16, 2019, the officer was dispatched to a home in Oakland County upon receipt of allegations of an assault. Upon arrival, the officer was informed by the victim that the victim was inside his bedroom when the bedroom window shattered. The victim ran outside to see what happened and was thereafter assaulted by defendant, who scratched the victim's face and neck. The officer personally observed the broken window and the injuries to the victim's face. Additionally, the victim's father indicated that he witnessed the event, and corroborated the victim's story to the officer.

The victim described defendant as a white female between 5'5" and 5'8" tall, with distinct tattoos on her hands and face. He provided the officer a photograph of defendant from Facebook. The victim further provided the officer with an address on Tipsico Lake Road in Fenton where the victim believed defendant might be located. Thereafter, the officer went to the home in Fenton and was greeted by defendant's father, who opened the door and allowed the officer into the house. Defendant's father indicated to the officer that defendant was not there, however, moments later, defendant and a person the officer believed to be defendant's mother came out of a back room.

The officer recognized defendant from the photograph and the victim's description. Defendant thereafter admitted that she had been at the victim's home to retrieve belongings, but denied that an altercation occurred.

The officer decided to take defendant into custody. He told defendant that he was going to place her in handcuffs, and he instructed defendant to turn away from him and put her hands behind her back. Defendant began to back away. The officer reached for defendant's wrist, but she pulled it away and continued backing up. When the officer again reached for defendant's wrist, she punched him in the right temple, drawing blood. Defendant backed into a couch and lost her balance, and both she and the officer fell over the couch and landed between the couch and a coffee table. The officer then held defendant's wrists until he could place her in handcuffs.

The officer testified that he took defendant into custody for investigative purposes. He noted that he intended to return defendant to the location of the original assault and have the victim identify defendant, and that he wanted to collect a fingernail scraping to determine whether the victim's DNA was underneath defendant's fingernails. The officer also testified, however, that on the basis of the information he had received, what he had observed, and what defendant told him, he believed that defendant assaulted the victim. The officer drove defendant to the victim's home and the victim identified defendant as his assailant. The officer then transported defendant to the station for fingerprinting and processing. Thereafter, defendant was charged in Oakland County with aggravated assault of the victim.

Meanwhile, this case was instituted in Livingston County—where the arrest occurred—and the prosecution sought to bind over defendant on the charge of resisting or obstructing. Defendant moved to dismiss the charge on the ground that an investigatory arrest is illegal, and therefore defendant was lawfully resisting an unlawful arrest. In response, the prosecution argued that the relevant inquiry was not the arresting officer's subjective statement regarding the reason for the arrest, but rather, whether the objective facts established probable cause to support the arrest. The district court sided with defendant and concluded that the arrest was unlawful because, on the basis of the officer's statement, it was made for investigative purposes. The court further noted that the officer had more than enough evidence to seek a warrant, and there was no identifiable reason to arrest defendant before doing so.

The prosecution appealed to the circuit court, arguing that the district court abused its discretion by failing to determine whether the arresting officer had probable cause to arrest defendant for assaulting the victim. The prosecution also argued that the lawfulness of the arrest was an element of the offense of resisting or obstructing, and thus was a question to be reserved for the jury. Noting that it had no basis to conclude that the district court abused its discretion, the circuit court disagreed and affirmed the district court's dismissal of the charge. The prosecution now raises the same arguments to this Court.

II. ANALYSIS

The initial decision to bind a defendant over for trial is reviewed for an abuse of discretion. *People v Fairey*, 325 Mich App 645, 649; 928 NW2d 705 (2018).¹ An abuse of discretion occurs when the decision results in an outcome falling “outside the range of reasonable and principled outcomes.” *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

A district court should bind over a defendant for trial when the prosecution presents competent evidence constituting probable cause to believe that a felony was committed and the defendant committed that felony. MCL 766.13; MCR 6.110(E); *People v Cervi*, 270 Mich App 603, 616; 717 NW2d 356 (2006). “Probable cause requires a quantum of evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused’s guilt.” *People v Anderson*, 501 Mich 175, 183; 912 NW2d 503 (2018) (quotation marks and citation omitted). Probable cause “requires sufficient evidence of each element of the crime charged, or from which the elements may be inferred.” *People v Shami*, 501 Mich 243, 250-251; 912 NW2d 526 (2018). Even if the evidence conflicts or otherwise leaves reasonable doubt as to defendant’s guilt, the evidence may still support a finding of probable cause. *Anderson*, 501 Mich at 186. See also *People v Henderson*, 282 Mich App 307, 312; 765 NW2d 619 (2009) (“If the evidence conflicts or raises a reasonable doubt, the defendant should be bound over for trial, where the questions can be resolved by the trier of fact.”).

Defendant was charged with resisting or obstructing arrest under MCL 750.81d(1). The elements of the offense require the prosecution to prove: “(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 Vandenberg*, 307 Mich App 57, 68; 859 NW2d 229 (2014) (quotation marks and citation omitted). In addition, and particularly relevant to this case, the prosecution must establish that the arrest was lawful. *Id.*, citing *People v Moreno*, 491 Mich 38, 51-52; 814 NW2d 624 (2012). See also *People v Quinn*, 305 Mich App 484, 492; 853 NW2d 383 (2014) (holding that, under *Moreno*, “the prosecution must establish that the officers acted lawfully as an actual element of the crime of resisting or obstructing a police officer under MCL 750.81d”). Because a lawful arrest is an element of the offense of resisting or obstructing arrest, the lawfulness of the arrest, which is generally is a question of law decided by the trial court, becomes a question of fact to be decided by the jury. *People v Jones*, 301 Mich App 566, 574; 837 NW2d 7 (2013), citing *People v Dalton*, 155 Mich App 591, 598; 400 NW2d 689 (1986).²

¹ A circuit court’s decision regarding a bindover order is not entitled to deference because this Court applies the same standard of review to this issue as does the circuit court. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). This Court essentially sits in the same position as the circuit court and determines whether the district court abused its discretion in deciding whether to bind over the defendant. *Id.*

² To that end, if a question existed regarding probable cause to arrest, our Supreme Court has held that when the evidence conflicts or raises a reasonable doubt as to guilt, that question is for the jury, and the magistrate may not discharge the accused. See *People v Hill*, 433 Mich 464, 469;

The record reflects that defendant assaulted the arresting officer by punching him in the temple, drawing blood. At that time, defendant knew that the officer was a law enforcement officer and that he was investigating a criminal assault on the victim. Accordingly, the first two elements of restricting or obstructing are inarguably met, which is a fact defendant has not disputed. As noted above, the issue in this case is whether the arrest was lawful. It is undisputed that resisting an unlawful arrest is not a crime. See *Moreno*, 491 Mich at 51-52.

“For an arrest to be lawful, the police officer making the arrest must have probable cause, either that a felony or misdemeanor was committed by the individual in the officer’s presence, or that a felony or specified misdemeanor (i.e., a misdemeanor punishable by imprisonment for more than 92 days) occurred outside the officer’s presence and that the individual in question committed the offense.” *Vandenberg*, 307 Mich App at 69. See also MCL 764.15.³ This Court has also held, however, that “[a]n investigatory arrest is an illegal arrest. It is an admission that probable cause to arrest does not exist.” *People v Casey*, 102 Mich App 595, 602; 302 NW2d 248 (1980). Sometimes, as in this case, it may be that both circumstances exist: an arresting officer might erroneously perform an arrest for investigative purposes that otherwise was properly supported by probable cause. In that instance, we have before held that regardless of the subjective intentions of the police, an arrest is not unlawful if the police had probable cause to believe that the defendant committed a crime and if the police were authorized by law to make a custodial arrest. *People v Haney*, 192 Mich App 207, 210-211; 480 NW2d 322 (1991); see also *People v Oliver*, 464 Mich 184, 200; 627 NW2d 297 (2001) (“[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer’s action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.”). In *Haney*, which involved a pretextual traffic stop, we noted:

Our review of the jurisprudence convinces us that the best view of which factors should be used [to determine the validity of a stop or arrest] is that expressed in *United States v Trigg*, [878 F2d 1037, 1039 (CA 7, 1989)]. This case hold that the reasonableness of an arrest depends on the existence of two objective factors. First, did the arresting officer have probable cause to believe that the defendant had committed or was committing an offense? Second, was the arresting officer authorized by state or municipal law to effect a custodial arrest for the particular offense. If these two factors are present, we believe that a stop or arrest is necessarily reasonable under the Fourth Amendment. In other words, as long as

446 NW2d 140 (1989); see also *People v Coons*, 158 Mich App 735, 738; 405 NW2d 153 (1987) (holding that it is not the function of an examining magistrate to weigh the evidence carefully and discharge the accused when the evidence conflicts). “It is not . . . the function of the examining magistrate to discharge the accused when the evidence conflicts[;] . . . that is the province of the jury.” *People v Goecke*, 457 Mich 442, 469-470; 579 NW2d 868 (1998).

³ MCL 764.15 provides: “(1) A peace officer, without a warrant, may arrest a person in any of the following situations: . . . (d) The peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it.”

the police are doing no more than they are legally permitted and objectively authorized to do, a stop or arrest is constitutional. [*Haney*, 192 Mich App at 210.]

Stated differently, an officer's improper motive for an arrest, while undoubtedly relevant, is not necessarily the dispositive factor on the lawfulness of the arrest. See, e.g., *Whren v United States*, 517 US 806, 811-814; 116 S Ct 1769; 135 L Ed 2d 89 (1996) (holding that the constitutional reasonableness of a traffic stop does not depend on the actual motivations of the individual officers involved).

This idea is further exemplified by *People v Nabers*, 103 Mich App 354; 303 NW2d 205 (1981), rev'd 411 Mich 1046 (1981), order amended 313 NW2d 284 (1981), wherein the defendant was arrested for "investigation of robbery" and this Court held that, even had there existed probable cause to arrest the defendant for robbery, since the defendant was actually arrested for "investigation of robbery," the arrest was unlawful. *Nabers*, 103 Mich App at 373. In lieu of granting leave to appeal, the Supreme Court reversed this Court's judgment that the arrest was unlawful. The Court found that there was probable cause to arrest the defendant and that the arrest was therefore valid. *People v Nabers*, 313 NW2d 284, 285 (1981).

Here, defendant's arrest was lawful because it was supported by probable cause to believe that defendant assaulted the victim shortly before the arrest was made. The victim identified defendant as his assailant, and the victim's father said that he witnessed the assault. The arresting officer saw injuries on the victim, saw the broken window in the home, and personally recognized defendant from a photograph the victim provided. That alone might have been sufficient to establish probable cause, but thereafter, defendant even admitted that she had been at the victim's home to retrieve her belongings. These facts were sufficient to permit a reasonable person to believe that defendant committed the underlying offense. And, we note that, by stating that the arresting officer had more than enough information to seek a warrant, the district court essentially reached the same conclusion. See *People v Manning*, 243 Mich App 615, 621; 624 NW2d 746 (2000) (indicating that to obtain an arrest warrant, an officer must demonstrate probable cause). That the officer perhaps could have waited to obtain a warrant was not the issue before the court; it was whether the arrest itself was lawful, which necessitates a consideration of whether probable cause supported the same. The prosecution presented competent evidence constituting probable cause to believe that defendant assaulted the victim, and on that basis, the district court abused its discretion by dismissing the charge of resisting or obstructing on the ground that defendant's arrest was unlawful.

Defendant asserts in her brief on appeal an alternative ground for affirmation: that the arrest was unlawful because the arresting officer failed to comply with MCL 764.19. That statute provides:

When arresting a person, without a warrant, the officer making the arrest shall inform the person arrested of his authority and the cause of the arrest, except when the person arrested is engaged in the commission of a criminal offense, or if he flees or if he forcibly resists arrest before the officer has time to inform him. The return of the officer making the arrest, endorsed upon the warrant upon which the accused person shall be subsequently held, affirming compliance with the

provisions herein, shall be prima facie evidence of the fact in the trial of any criminal cause. [MCL 764.19.]

Defendant provides no caselaw to suggest that a failure to strictly comply with the statute renders an arrest unlawful, but more importantly, we are not in a position on the basis of the available record to conclude that the arresting officer violated the statute in the first instance. This is particularly true in light of the fact that defendant forcibly resisted the arrest. And, to the extent that questions of fact existed as to the arresting officer's compliance with the statute, the question should have been reserved for the jury rather than the district court judge. See *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989); *People v Coons*, 158 Mich App 735, 738; 405 NW2d 153 (1987).

We reverse the district court's order dismissing the charge of resisting or obstructing, and the circuit court's order affirming that dismissal. We remand to the district court for reinstatement of the resisting or obstructing charge and for entry of an order binding the matter over to the circuit court for further proceedings. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Jane E. Markey
/s/ Elizabeth L. Gleicher