STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TREVON NATHAN ROBERTS,

Defendant-Appellee.

UNPUBLISHED
March 11, 2021

No. 353280
Wayne Circuit Court
LC No. 19-008409-03-FC

Before: LETICA, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

The prosecution charged defendant with assault with intent to murder, MCL 750.83, assault with intent to inflict great bodily harm less than murder, MCL 750.84, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. After defendant's preliminary examination, the district court bound defendant over to stand trial in the circuit court. Defendant moved the circuit court to quash his information, and the circuit court granted his motion. The prosecution appeals, arguing that the evidence presented during the preliminary examination established probable cause regarding defendant's involvement in the charged offenses as an aider and abettor, MCL 767.39. We agree, reverse the circuit court's orders to quash and dismiss the charges, and remand for further proceedings consistent with this opinion.

I. BACKGROUND

This case arises from defendant's role in the shooting of Cortez Shannon (the victim). On the date scheduled for defendant's preliminary examination, weeks after the shooting, the victim remained hospitalized, and Charles Shannon Sr., the victim's father, was the only witness who testified.

On October 4, 2019, the victim called Shannon and shared that he had been in a fight with defendant.[1] Craig Hunter, another of Shannon's sons, had a child with defendant's sister. Wayne Roberts was defendant's brother and Shannon had known the Roberts brothers for nine or ten years. Shannon, however, did not know Allante Dortch.

At about 7 p.m. that evening, Shannon was home with his wife, the victim, another son and his girlfriend, and Shantell,[2] Shannon's nephew. Shannon was in the kitchen when he heard yelling and went to see what the commotion was. He found the victim arguing with defendant, Dortch, and Roberts, who had driven to Shannon's home. The victim stood in the front door frame as defendant, Roberts, and Dortch stood in the street. Roberts was taunting the victim to coax him to come out and fight. The victim wanted to go outside and fight the three, but Shannon and Shannon's wife told him to stay in the house.

Shannon, Shannon's older son, and Shantell went outside to attempt to diffuse the situation. The victim remained inside the house. Shannon asked the three men to leave, but Roberts refused. Shannon and Roberts argued. Shannon denied that the argument involved the retrieval of a telephone or a truck that belonged to Roberts's sister. Shannon had no knowledge about the telephone and maintained that Hunter purchased the truck; however, Shannon conceded he had no personal knowledge regarding the truck's registration. In any event, neither of these topics were discussed; instead, the argument involved Roberts's desire to fight and Shannon's direction that the men leave.

As Roberts and Shannon argued, Roberts pulled an object out of his pocket and handed it to Dortch. Shantell asked Roberts, "[W]hy you giving him a gun[?]" or "[W]hat y[']all come over here with this gun for[?]" Roberts replied that "he want[ed] to pop one of y[']all," which Shannon understood to mean Roberts wanted to shoot one of them. Dortch then put the gun into his pants.

As the verbal back and forth continued, defendant exclaimed, "[T]here he go right there." Although defendant did not point with his finger, "his body was pointing that way." Shannon was facing defendant, so he could not see to whom defendant was referring. Immediately after defendant's remark, Dortch fired the gun three or four times toward the side of the victim's house. Dortch stated that he "got him" and "he dead." Roberts said, "[C]ome on, come on, let's go." Defendant, Roberts, and Dortch ran to the car, but Shannon did not know if they got inside.

Instead, Shannon raced over to where Dortch had fired the gunshots and found the victim lying on the ground. The victim had gunshot wounds to his face, buttocks, and heel. Given the victim's condition, Shannon's other son and Shantell transported the victim to the hospital while Shannon and his wife remained behind to talk to the police.

After Shannon testified, defendant argued that probable cause to believe that defendant aided and abetted Roberts and Dortch was lacking. As to the assault charges, defendant contended

[1] The district court opined that Shannon's testimony regarding the alleged fight was hearsay and did not consider it in making its probable-cause determination.

[2] Shannon was not asked and did not provide a surname for Shantell.

that Shannon's testimony established that he was merely present at the shooting scene. As to the felony-firearm charges, defendant argued that there was no evidence that he carried a gun, supplied a gun, or drove individuals anywhere that may have had a gun. The district court rejected these arguments and bound defendant over for trial. The district court reasoned that defendant identified the victim for Dortch to shoot when defendant exclaimed, "[T]here he go right there." Thus, the district court determined that defendant was more than just merely present during the shooting.

In the circuit court, defendant moved to quash the information, claiming lack of probable cause. Defendant argued that the district court abused its discretion because the evidence presented at preliminary examination established only that defendant was present at the scene, not that he was a principal or that he aided and abetted the crimes he was charged with committing. The prosecution responded that defendant had said "there he go right there," using his body as a pointer, which apparently prompted Dortch to shoot the victim.

At the hearing, however, the circuit court opined that defendant was not necessarily referring to the victim when he uttered those words. The circuit court elaborated: "That's the problem, he coulda' been [pointing out the victim]. But you can't just say somebody coulda' been. He was there. He was present . . . . But you can't show he did nothin' else." The circuit court concluded that Shannon's testimony only showed that defendant was present for the shooting—nothing more.[3] The circuit court then granted defendant's motion to quash the charges, and, later, granted defendant's oral motion to dismiss the charges. The prosecution appealed the circuit court's subsequent orders granting defendant's motions to quash and to dismiss the charges. This appeal followed.

II. DISCUSSION

On appeal, the prosecution argues that the circuit court erred by granting defendant's motion to quash and dismissing the charges against defendant because the district court properly exercised its discretion in binding defendant over for trial. We agree.

This Court gives no deference to a circuit court's order to quash a district court's bindover order. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). In considering the propriety of the circuit court's order to quash a bindover, we review the district court's original order to bind over a defendant for an abuse of discretion. *Id*. "An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes." *People v Anderson*, 501 Mich 175, 182; 912 NW2d 503 (2018) (quotation marks and citation omitted). If we conclude that the district court did not abuse its discretion, we must reverse the circuit court. See *Hudson*, 241 Mich App at 276.

The primary purpose of the preliminary examination is to determine whether a felony criminal offense has been committed, and, if so, whether there is probable cause to believe that the defendant committed it. *People v Plunkett*, 485 Mich 50, 57; 780 NW2d 280 (2010). To establish probable cause, a prosecutor must present evidence to support each element of the crime charged;

[3] During the same hearing, the circuit court found no abuse of discretion in the district court's decision to bind over Roberts and Dortch.

however, the prosecutor need not prove each element beyond a reasonable doubt. *People v Henderson*, 282 Mich App 307, 312; 765 NW2d 619 (2009). As for the type of evidence necessary to establish probable cause, circumstantial evidence and the reasonable inferences drawn therefrom will do; direct evidence is not necessary. *Id*.

At the end of the preliminary examination, the district court must determine whether the evidence presented establishes probable cause to believe that the accused committed the crimes charged. *Anderson*, 501 Mich at 184. "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 Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003) (quotation marks and citation omitted). If the district court finds that the evidence establishes probable cause to believe the accused committed the crime charged, the district court must bind over the accused for trial. MCL 766.13; MCR 6.110(E); *People v Corr*, 287 Mich App 499, 502-503; 788 NW2d 860 (2010) (quotation marks and citation omitted). Even if the evidence conflicts or else leaves reasonable doubt as to defendant's guilt, the evidence may still support a finding of probable cause. *Anderson*, 501 Mich at 186 (citations omitted). See also *Henderson*, 282 Mich App at 312 ("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.").

In this case, the prosecution charged defendant as an aider and abettor. For each element of aiding and abetting, the prosecution needed to present at least some evidence. And the district court needed to determine whether the evidence provided was enough to establish probable cause to believe that defendant indeed aided and abetted Roberts or Dortch in assaulting the victim and the use of a firearm. After review of the preliminary examination transcript, we conclude that the prosecution presented evidence to support each element of aiding and abetting and that the district court properly determined that this evidence was enough to establish probable cause as to the charged offenses.

MCL 767.39 provides criminal liability for an aider or abettor, stating:

> Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense.

The elements of aiding and abetting are: (1) the defendant or some other person committed the crime charged; "(2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that [the defendant] gave aid and encouragement." *People v Moore*, 470 Mich 56, 67-68; 679 NW2d 41 (2004) (alteration in original), quoting *People v Carines*, 460 Mich 750, 768; 597 NW2d 130 (1999). On the other hand, "[m]ere presence, even with knowledge that an offense is about to be committed or is being committed, is insufficient to establish that a defendant aided or assisted in the commission of the crime." *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999).

The first element of establishing aiding and abetting is not at issue here. Neither defendant, nor the circuit court, challenged the district court's ruling that defendant's cohorts could be bound over for trial on assault with intent to commit murder, assault with the intent to commit great bodily

harm less than murder, and felony-firearm. To support a charge of assault with intent to commit murder, the prosecution must establish that: (1) the defendant committed an assault; (2) the defendant had the specific intent to kill the victim; and (3) had the assault been successful, defendant's killing would have constituted murder. *People v Jackson*, 292 Mich App 583, 588; 808 NW2d 541 (2011). A defendant's intent to kill may be inferred from all the evidence, including " 'the nature of the defendant's acts constituting the assault; the temper or disposition of mind with which they were apparently performed, whether the instrument and means used were naturally adapted to produce death, his conduct and declarations prior to, at the time, and after the assault, and all other circumstances calculated to throw light upon the intention with which the assault was made.' " *People v Taylor*, 422 Mich 554, 568; 375 NW2d 1 (1985), quoting *People v Roberts*, 19 Mich 401, 416 (1870). To support a charge of assault with intent to do great bodily harm less than murder, the prosecution must establish that: (1) the defendant attempted or threatened "with force or violence to do corporal harm to another (an assault);" and (2) the defendant intended "to do great bodily harm less than murder." *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). To support a charge of felony firearm, the prosecution must prove that the defendant carried or had in his possession a firearm when defendant was committing or attempting to commit a felony. *People v Goree*, 296 Mich App 293, 302; 819 NW2d 82 (2012). In this case, the evidence at preliminary examination showed that Dortch repeatedly shot the victim, striking him in the face and body, after taking the gun Roberts had handed him as Roberts expressed an intention to "pop one of y[']all." Thus, the testimony presented during the preliminary examination established probable cause to believe that Dortch committed all of the charged offenses.

The next question is the propriety of the district court's finding probable cause to believe that defendant aided Roberts or Dortch and that defendant either intended to do so or else knew of their intent. *Moore*, 470 Mich at 67. A defendant assists the principal when, by words or deeds, the defendant assists, encourages, supports, or incites the principal to commit the crime charged. *Id*. at 63. "[T]he amount of advice, aid, or encouragement is not material if it had the effect of inducing the commission of the crime." *Id*. at 71. To prove that the defendant assisted the commission of felony-firearm, the prosecution must show that the defendant encouraged or enticed the principal to use a gun. *Id*. at 71 ("[W]hen a defendant specifically encourages another possessing a gun during the commission of a felony to use that gun, he aids and abets the carrying or possessing of that gun just as surely as if he aided or abetted the principal in obtaining or retaining the gun.").

Applying these rules here, we conclude that the circuit court erred in concluding that defendant was merely present during the shooting. By uttering the words "there he go right there," and pointing with his body, a reasonable person could believe that defendant aided Dortch in shooting the victim. After all, immediately after defendant uttered those words, Dortch shot the victim. While defendant uttered only those five words, those five words had the effect of inducing the commission of the crime. Also, it is immaterial that Shannon could not see the person to whom defendant was referring. A reasonable person could infer defendant was referring to the victim, as defendant and his cohorts were confronting and attempting to engage the victim in a fight, and Dortch shot in the victim's direction immediately after defendant's statement. Ultimately, whether this is the correct or most likely inference to be drawn from Shannon's testimony is a question that should be left to the jury—not the circuit court. See *Henderson*, 282 Mich App at 312. There is

at least enough evidence "to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt." See *Yost*, 468 Mich at 126 (quotation marks and citation omitted).

Next, the district court did not abuse its discretion in finding probable cause to believe that defendant either intended for Dortch to shoot the victim, or else knew of Dortch's intent when he aided Dortch. See *Moore*, 470 Mich at 68. Reasonably construed, Shannon's testimony established that: (1) defendant and his cohorts had driven to the victim's house to jointly confront the victim; (2) although Shannon was not acquainted with Dortch, the Roberts brothers were long-time acquaintances of Shannon and their sister shared a child with Hunter; (3) defendant was present when Roberts handed Dortch the gun; (4) after Shantell asked why Roberts was giving the gun to Dortch or why they were there with the gun, Roberts responded that "he want[ed] to pop one of y[']all"; (5) after firing multiple rounds at the victim, Dortch said he "got him" and "he dead," and, finally; (6) after Roberts said, "let's go," defendant fled with Dortch and Roberts. From this, one could reasonably infer that defendant knew that Dortch had a gun and that Dortch intended to shoot the victim. Hence, there is reason to believe defendant knew Dortch intended to kill the victim. See *Taylor*, 422 Mich at 568 (intent to kill may be inferred from the type of instrument used in the assault); see also *People v Henderson*, 306 Mich App 1, 11; 854 NW2d 234 (2014) ("Minimal circumstantial evidence is sufficient to show an intent to kill, and that evidence can include a motive to kill, along with flight and lying, which may reflect a consciousness of guilt."), overruled in part on other grounds by *People v Reichard*, 505 Mich 81; 949 NW2d 64 (2020). Whether the prosecution will be able to satisfy the beyond a reasonable doubt standard at trial remains to be seen, but it presented enough evidence at preliminary examination to satisfy probable cause.

Finally, we briefly address defendant's contention that the district court applied an incorrect legal standard in deciding whether to bind defendant over for trial. Defendant suggests that the district court confused the law of conspiracy with the law of aiding and abetting. This issue was not addressed in defendant's motion to quash in the circuit court, and we find no plain error. *Carines*, 460 Mich at 763. Although the district court mentioned that defendant did not walk away before the shooting occurred, it also explicitly relied on defendant's statement, "[T]here he go right there," and the concerted action of defendant, Roberts, and Dortch. Thus, the district court properly addressed the charged offenses before it bound over defendant.

Because we find that the prosecution presented sufficient evidence to establish probable cause to believe defendant aided and abetted the shooting of the victim and the felony-firearm, we conclude that the district court did not abuse its discretion in binding defendant over for trial. The circuit court erred by ruling otherwise. Accordingly, we reverse the circuit court's orders granting defendant's motion to quash and dismissing the charges against defendant.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Anica Letica
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood