

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARYANNE GODBOLDO,

Defendant-Appellee.

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UNPUBLISHED

May 28, 2013

No. 308459

Wayne Circuit Court

LC No. 11-009184-AR

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

The prosecution appeals by leave granted the circuit court's order affirming a district court order. The district court order denied the prosecution's motion to bind over defendant Maryanne Godboldo on charges of discharging a weapon in a building,<sup>1</sup> felonious assault,<sup>2</sup> assaulting or obstructing a police officer,<sup>3</sup> and possession of a firearm during the commission of a felony (felony-firearm),<sup>4</sup> and dismissed those charges. We reverse and remand.

**I. FACTUAL BACKGROUND**

**A. PRELIMINARY HEARING TESTIMONY**

Mia Wenk, an employee of the Michigan Department of Human Services, scheduled a permanency planning conference with Godboldo to address a Child Protective Services referral concerning Godboldo's teenage daughter. After Godboldo failed to attend the conference, Wenk petitioned the family division of the circuit court to remove Godboldo's daughter from her custody.

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<sup>1</sup> MCL 750.234b(2).

<sup>2</sup> MCL 750.82.

<sup>3</sup> MCL 750.81d(1).

<sup>4</sup> MCL 750.227b.

On March 24, 2011, the family court judge issued an order authorizing someone to enter Godboldo's home to remove the daughter. The order contained several irregularities on its face, including that (1) the line specifying who was to execute the order was left blank, (2) it was not dated, and (3) it contradicted itself concerning whether reasonable efforts to prevent the daughter's removal were made. The order was stamped with a family court judge's name, and bore both a date stamp and a raised seal.

Wenk contacted the Detroit Police Department for assistance with removing Godboldo's daughter. According to Officer Kevin Simpson, the first time he knocked on Godboldo's front door, she answered. After he asked Godboldo if he could speak with her about the order to remove her daughter, she told him that she was going to call her attorney, and closed the door. Officer Simpson retrieved the order and approached Godboldo's door again. Godboldo again answered the door, informed him that he was scaring her child, and closed the door.

Officer Simpson testified that he then spoke with Lieutenant Nied, who arrived in a marked car, approached the door, and knocked. According to Officer Simpson, Lieutenant Nied received no answer. Lieutenant Nied retrieved a crowbar from his car, approached the home's side door, yelled "police," and pried open the side door. Officer Simpson testified that Lieutenant Nied went up the stairs inside the door toward another door on a landing. After finding it locked, Lieutenant Nied attempted to kick the door. A loud noise that sounded like a gunshot came from the door's other side, and the officers retreated back down the stairs. At the bottom of the stairs, Officer Simpson noticed that there was a white powder on Lieutenant Nied's shoulder, which was later identified as plaster powder dislodged by a bullet.

Officer Simpson testified that he immediately went out to the street, where Godboldo's sister was on a cellular phone, and that he "went on the cell phone and I asked her why or I asked [Godboldo], why she shot at us. And she stated that because [sic] we came into her house." Officer Simpson testified that Godboldo never explicitly said that she fired a gun, and that he was not certain that the person he spoke with on the phone was actually Godboldo. Lieutenant Nied declared a barricaded gunman situation.

Judge Deborah Thomas testified that she was called to mediate between the officers and Godboldo. Judge Thomas testified that she spoke with Godboldo by phone. Godboldo acknowledged that the police came to her door, and stated that she was the only adult in the home and that a gun was discharged. Judge Thomas testified that Godboldo never said that she fired the gun but, on the basis of her statements, she concluded that Godboldo fired the gun.

After the barricaded gunman situation was resolved, officers William Blake and Melissa Sanchez executed a search warrant. Officer Blake testified that he found plaster covering the kitchen, the top of the landing, and the steps near the door; a bullet hole in the landing area; a revolver sitting on top of a piano; and a purse under the couch cushions that contained bullets matching the caliber of the revolver. As stated above, the prosecution charged Godboldo with discharging a weapon in a building, felonious assault, assaulting or obstructing a police officer, and felony-firearm.

## B. THE CHILD PROTECTIVE PROCEEDING DECISION

On August 1, 2011, the Wayne Circuit Court, Family Division heard arguments concerning the validity of the removal order—not the search warrant—as it pertained to the child protective proceedings case. Wayne County Chief Deputy Clerk Lynn Wade testified at that proceeding that she was not certain whether the seal was the county’s official seal, and that the time stamp was not a stamp the county used. Vikki Kapanowski, a juvenile court supervisor, testified that probation officers would use the judge’s stamp to stamp protective orders, and responded affirmatively when asked whether they would do so “without judicial input.”

The family division judge noted that the child protective proceeding “is not a criminal matter, it is not the same as a search warrant that’s executed in a criminal matter.” The family division judge determined that the removal order was valid to invoke the court’s subject matter jurisdiction, and denied Godboldo’s “motion to dismiss” the child protective proceeding. In July 2012, a panel of this Court reviewed the family division’s ruling on appeal.<sup>5</sup> We concluded that whether the removal order was valid was moot.<sup>6</sup>

## C. PROCEDURAL HISTORY OF THE CRIMINAL CASE

On August 29, 2011, the district court denied the prosecution’s motion to bind over Godboldo, and dismissed the charges. It determined that the family division judge’s finding that the removal order was valid did not resolve the Fourth Amendment issues in the criminal case. It found that the removal order was “grossly inadequate, incorrect, the mistakes on it are numerous,” and that it did not state any exigent circumstances for entering Godboldo’s home. The district court quashed the removal order, and determined that it must exclude the remainder of the evidence under the fruit of the poisonous tree doctrine.

The district court then denied the prosecution’s motion to bind over Godboldo and ordered the charges dismissed on the basis of insufficient evidence. The district court opined that, even if it was not required to exclude the evidence, it would not bind over Godboldo because there was no evidence that she, rather than her daughter, discharged the gun.

The prosecution appealed the district court’s order to the circuit court. In December 2011, the circuit court upheld the district court’s dismissal.

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<sup>5</sup> *People v Godboldo*, unpublished opinion of the Court of Appeals, issued July 17, 2012 (Docket Nos. 305858 & 308040).

<sup>6</sup> *Id.* at slip op p 2.

## II. SUPPRESSION OF EVIDENCE

### A. STANDARD OF REVIEW

This Court reviews for clear error the district court's findings of fact at a suppression hearing.<sup>7</sup> The trial court's factual findings are clearly erroneous if, after reviewing the record, we are definitely and firmly convinced that the trial court made a mistake.<sup>8</sup> This Court reviews de novo questions of constitutional law.<sup>9</sup>

### B. LEGAL STANDARDS

Both the United States and Michigan constitutions “guarantee the right of persons to be secure against unreasonable searches and seizures.”<sup>10</sup> To comply with this requirement, police officers must have a warrant to conduct a search, or must be able to establish that their conduct was “within one of the narrow, specific exceptions to the warrant requirement.”<sup>11</sup> If officers violate the Fourth Amendment while obtaining evidence, the evidence is not admissible as substantive evidence in a criminal proceeding.<sup>12</sup>

However, the trial court need not suppress evidence of crimes that the defendant commits when reacting to an illegal search or seizure:

[T]he exclusionary rule does not act to bar the introduction of evidence of independent crimes directed at police officers as a reaction to an illegal arrest or search.<sup>[13]</sup>

If a defendant commits an independent crime in the officers' presence—even during an otherwise unlawful search or seizure—the officers may lawfully arrest the defendant, and any evidence seized pursuant to that arrest is admissible.<sup>14</sup>

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<sup>7</sup> *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999); *People v Chowdhury*, 285 Mich App 509, 514; 775 NW2d 845 (2009).

<sup>8</sup> *People v Cole*, 491 Mich 325, 329; 817 NW2d 497 (2012); *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997).

<sup>9</sup> *Cole*, 491 Mich at 330.

<sup>10</sup> *People v Kazmierczak*, 461 Mich 411, 417; 605 NW2d 667 (2000); see US Const, Am IV; also see Const 1963, art 1, § 11.

<sup>11</sup> *People v Kazmierczak*, 461 Mich at 418.

<sup>12</sup> *Mapp v Ohio*, 367 US 643, 655; 81 S Ct 1684; 6 L Ed 2d 1081 (1961); *Kazmierczak*, 461 Mich at 418.

<sup>13</sup> *People v Corr*, 287 Mich App 499, 509; 788 NW2d 860 (2010), quoting *People v Daniels*, 186 Mich App 77, 82; 463 NW2d 131 (1990) (citation omitted).

### C. APPLYING THE STANDARDS

We conclude that the trial court improperly suppressed any evidence that the officers obtained after the gun was discharged. It is a felony to recklessly discharge a gun in an occupied structure.<sup>15</sup> Here, Officer Simmons testified that both the loud noise and plaster dust indicated that a gun was discharged. Godboldo and her daughter were occupying the house. At that point, the officers were entitled to lawfully arrest Godboldo, and any evidence seized related to that crime was admissible. Thus, we conclude that the district court erred when it suppressed all the evidence in this case.

Godboldo contends that this Court should affirm the district court's decision because the removal order was invalid as a warrant, and the officers violated the Fourth Amendment when they impermissibly entered her home. We decline to determine whether the removal order in this case was a warrant or warrant equivalent. The prosecution asks us to determine whether the district court improperly suppressed evidence of Godboldo's independent crime, even presuming that the police entry was illegal. Even were we to accept Godboldo's argument that the police entry was unlawful, the exclusionary rule does not bar the prosecution from admitting any evidence the officers obtained after the gun was discharged.

Godboldo also contends that we should affirm on the basis that she has a right to resist unlawful arrests with deadly force, under a combination of the Michigan Supreme Court's decisions in *People v Riddle*,<sup>16</sup> that a person may use deadly force in self-defense, and *People v Moreno*,<sup>17</sup> that a person has a common-law right to resist an unlawful arrest. *Riddle* concerns the elements of the criminal defense of self-defense.<sup>18</sup> And in *Moreno*, the Michigan Supreme Court held that the prosecution must establish that the officers' actions were lawful to properly charge a defendant with obstructing a police officer under MCL 750.81d.<sup>19</sup>

We decline to apply these decisions to affirm the district court's decision to suppress the evidence in this case. Even if we accepted that Godboldo had a right to resist an unlawful arrest with deadly force under these circumstances—which we do not—neither case requires the district court to *exclude the evidence* of a defendant's actions.

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<sup>14</sup> *Corr*, 287 Mich App at 509; see *People v Lambert*, 174 Mich App 610, 617-618; 436 NW2d 699 (1989).

<sup>15</sup> MCL 750.234b(2).

<sup>16</sup> *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002).

<sup>17</sup> *People v Moreno*, 491 Mich 38, 51-52; 814 NW2d 624 (2012).

<sup>18</sup> *Riddle*, 467 Mich at 119.

<sup>19</sup> *Moreno*, 491 Mich at 51-52.

### III. PROBABLE CAUSE TO BIND OVER

#### A. STANDARD OF REVIEW

When reviewing the district court's decision to bind over a criminal defendant, this Court reviews the district court's determination of probable cause for an abuse of discretion, and reviews de novo issues of law.<sup>20</sup>

#### B. LEGAL STANDARDS

"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."<sup>21</sup> The prosecution has established probable cause if there is "enough evidence on each element of the charged offense to lead a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of [the defendant's] guilt."<sup>22</sup> Circumstantial evidence and reasonable inferences arising from the evidence can sufficiently establish probable cause.<sup>23</sup>

#### C. APPLYING THE STANDARDS

The prosecution argues that the district court abused its discretion when it failed to bind over Godboldo on the alternative basis that there was no evidence that she discharged the gun.

We conclude that the district court would have abused its discretion when it failed to bind over Godboldo on the basis that there was no evidence that she discharged the gun. The district court determined that the prosecution did not sustain its burden of probable cause on any of the charged offenses because Godboldo's daughter, and not Godboldo, could have discharge the gun. "It is not . . . the function of the examining magistrate to discharge the accused when the evidence conflicts or raises a reasonable doubt of the defendant's guilt; that is the province of the jury."<sup>24</sup>

Here, there was sufficient circumstantial evidence that it was Godboldo who discharged the gun. Officer Simpson testified that Godboldo told him that she shot the gun. Whether he was mistaken in that belief is a question for the jury. Further, there were only two people in the house when the gun was discharged, and only one of those people—Godboldo—was an adult. A

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<sup>20</sup> *People v Thomas*, 438 Mich 448, 452; 475 NW2d 288 (1991); *People v Whipple*, 202 Mich App 428, 431; 509 NW2d 837 (1993).

<sup>21</sup> *Whipple*, 202 Mich App at 431; MCL 766.13.

<sup>22</sup> *People v Perkins*, 468 Mich 448, 452; 662 NW2d 727 (2003) (alteration in original, quotations omitted).

<sup>23</sup> *Whipple*, 202 Mich App at 432.

<sup>24</sup> *People v Goecke*, 457 Mich 442, 469-470; 579 NW2d 868 (1998).

reasonable inference from this evidence is that Godboldo discharged the gun. We conclude that a person of ordinary prudence and caution could conscientiously entertain a reasonable belief of Godboldo's guilt. Whether the facts also create a reasonable doubt concerning her guilt is for the jury, not the district court, to determine.

#### IV. CONCLUSION

We conclude that the district court erred when it determined that the exclusionary rule required it to suppress all the evidence in this case. On remand, the trial court should not exclude the evidence officers collected after the gunshot, and should determine whether to bind Godboldo over on the charges on the basis of that evidence. Further, the district court may not base a decision not to bind Godboldo over on the basis that the prosecution did not provide proof of the perpetrator's identity.

To provide the district court additional guidance on remand, we note that a defendant "may use such *reasonable* force as is necessary to prevent an illegal attachment,"<sup>25</sup> and that a person has a common law-right to resist unlawful police conduct.<sup>26</sup> However, a defendant does not generally have the right to resist an arrest with the use of deadly force.<sup>27</sup> The defendant may only use deadly force if

the defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm. . . . However, an act committed in self-defense but with excessive force or in which defendant was the initial aggressor does not meet the elements of lawful self-defense.<sup>28</sup>

The district court should consider and apply these principles to determine whether to bind over Godboldo on charges of resisting or assaulting a police officer under MCL 750.81d(1).

We reverse and remand for the district court to reinstate the charges, and for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens  
/s/ William C. Whitbeck

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<sup>25</sup> *Moreno*, 491 Mich at 47 (emphasis supplied), quoting *People v Krum*, 374 Mich 356, 361-362; 132 NW2d 69 (1965).

<sup>26</sup> *Moreno*, 491 Mich at 48.

<sup>27</sup> *People v Eisenberg*, 72 Mich App 106, 113; 249 NW2d 313 (1976).

<sup>28</sup> *People v Heflin*, 434 Mich 482, 508-509; 456 NW2d 10 (1990).