

NOT DESIGNATED FOR PUBLICATION

No. 125,418

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellant,

v.

PEARL JACOB HAYNES IV,
Appellee.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; BENJAMIN L. BURGESS, judge pro tem. Opinion filed March 31, 2023. Reversed and remanded with directions.

Kristi D. Allen, assistant district attorney, *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, for appellant.

Patrick H. Dunn, of Kansas Appellate Defender Office, for appellee.

Before HURST, P.J., BRUNS and SCHROEDER, JJ.

PER CURIAM: The State timely appeals from the district court's dismissal of one count of robbery against Pearl Jacob Haynes IV following Haynes' preliminary hearing. Because our de novo review of the record reflects the State established probable cause to believe a felony was committed by Haynes, the district court erred in dismissing the robbery charge. We reverse and remand for further proceedings.

FACTS

In December 2021, Haynes and his girlfriend, Crystal Twigg, visited Haynes' mother, Melinda Haynes, at her home. Haynes and Twigg had an argument, and Twigg left Melinda's home. Haynes later demanded Melinda's car keys so he could go get Twigg. Melinda did not want Haynes to take her car, but she ultimately gave him the keys. Haynes eventually left in Melinda's car, which he said he would return. Haynes had not returned the car the following morning, and Melinda contacted law enforcement to report it had been stolen.

The State charged Haynes with one count each of robbery, a severity level 5 nondrug person felony, and criminal deprivation of property, a class A nonperson misdemeanor. The district court held a preliminary hearing to determine whether there was probable cause to bind Haynes over for trial on the robbery charge. Melinda testified Haynes had "a Taser thing that he was pointing . . . [at] the curtains [in her bedroom] and at the foot of the bed." Melinda indicated this may have been around the time he was asking for her keys, but she was not certain. Melinda's car keys were in her purse, which was in a closet. Melinda took her purse out of the closet and put it on her bed with her. Melinda ultimately gave Haynes her car keys because she "wanted him gone" from her house because "[h]e was acting crazy." Specifically, Haynes "was tearing stuff up at [Melinda's] house. [And he] was upset." Melinda said Haynes never pointed the taser at her and she was not in fear for her safety when she gave him the keys. Melinda clarified Haynes did not take her keys; she gave them to him.

Wichita Police Officer Alexandria Arthur went to Melinda's home, and Melinda explained the situation. Arthur testified that Melinda told her about the argument between Haynes and Twigg. Haynes became upset when Twigg got into a car with another man and left to go buy drugs. Haynes chased after the car on foot and was gone for several hours. He subsequently returned to Melinda's home and demanded her car keys. Melinda

believed Haynes was acting erratically because he was under the influence of drugs at the time. Haynes became upset and headbutted a TV, which broke as a result; kicked a mirror, which was damaged; and swung a broom around, which also broke. Haynes also took out a taser, used it on a door, and activated it around Melinda, but he did not point it at her. Melinda told Arthur that Haynes was using the taser while asking for her keys. Haynes asked for her car keys multiple times, but each time Melinda said no, Haynes would continue yelling, jumping around, or damaging property in her home. Melinda wanted the incident to end, so she eventually gave Haynes her car keys.

At the end of the hearing, the district judge found the evidence was insufficient, stating, "I'm not completely satisfied that there was a threat that caused [Melinda] to be—a threat of bodily harm. So I am going to find that the evidence is insufficient and not bind him over on the felony charge." A significant point of concern for the district court in making its ruling was Haynes did not point the taser at Melinda and the evidence was "unclear whether he actually activated the Taser."

Following the hearing, the State filed a motion to dismiss the criminal deprivation of property charge without prejudice, which the district court granted. Additional facts are set forth as necessary.

ANALYSIS

Standard of Review

The issue on appeal arises from the district court's dismissal of the State's felony charge against Haynes following the preliminary hearing. At the preliminary hearing, the district court hears the State's evidence and determines (1) whether a felony has been committed and (2) whether there is probable cause to believe that the defendant committed the crime. On appeal from the grant or denial of a motion to dismiss filed after

the preliminary hearing, an appellate court reviews the district court's probable cause finding de novo. *State v. Washington*, 293 Kan. 732, 733-34, 268 P.3d 475 (2012).

Probable cause requires the district court to find that the evidence is "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the [defendant's] guilt." *State v. Brown*, 299 Kan. 1021, 1030, 327 P.3d 1002 (2014), *overruled on other grounds by State v. Dunn*, 304 Kan. 773, 375 P.3d 332 (2016). In determining whether this standard is satisfied, the district court must draw inferences in favor of the State. Even if the evidence is weak, the defendant should be bound over for trial if the evidence tends to establish that the offense was committed and that the defendant committed it. *Washington*, 293 Kan. at 734. Where the evidence fails to establish a felony has been committed, the district court must discharge the defendant. K.S.A. 2021 Supp. 22-2902(3).

To the extent the issue on appeal requires us to interpret K.S.A. 2021 Supp. 21-5420(a), our review is unlimited. *State v. Stoll*, 312 Kan. 726, 736, 480 P.3d 158 (2021).

Discussion

Haynes was charged with robbery under K.S.A. 2021 Supp. 21-5420(a), which defines the offense as "knowingly taking property from the person or presence of another by force or by threat of bodily harm to any person." Here, the State argues the district court erred because the evidence presented at the preliminary hearing established Haynes took Melinda's car keys and her car by threat of bodily harm.

On appeal, the State persuasively relies on *State v. Moore*, 269 Kan. 27, 33, 4 P.3d 1141 (2000), which held the relevant inquiry as to whether a threat of bodily harm occurred is "whether the defendant intended his conduct to intimidate or threaten the victim into giving up her property." There, Moore was convicted of robbery for taking

the victim's car keys and then her car under threat of bodily harm. Another panel of this court found the evidence was insufficient to show Moore threatened the victim. Our Supreme Court reversed, finding the evidence should be examined from the perspective of how the victim would have reasonably perceived Moore's actions and how Moore would have intended for her to perceive his conduct. 269 Kan. at 33.

The *Moore* court explained:

"[T]he defendant orchestrated a situation intended to intimidate the young woman into surrendering her car keys. The area of the parking lot was rather remote from the main areas of use. His car was backed diagonally toward the victim's car. He got out of the passenger's side and accosted the couple as they approached the rear of their own vehicle. He was a stranger to them and demanded the keys, presumably to take possession of the victim's car. The only other persons present were defendant's two associates, presumably ready to assist defendant if needed." 269 Kan. at 33.

Ultimately, the *Moore* court found: "A reasonable person would not ordinarily surrender his or her car to a stranger under such circumstances unless he or she feels threatened or intimidated. . . . The victim's surrender of the keys was not a voluntary act." 269 Kan. at 33. *Moore* further noted "[the] defendant did not have to add 'or else I will hurt you' to his demand for the keys in order for the charge to be submitted to the jury." 269 Kan. at 33.

Here, the circumstances are relatively analogous to *Moore*, except for the fact Haynes was not a stranger to Melinda. Still, Melinda believed Haynes was behaving erratically due to drug use and did not want him to take her car. A reasonable person observing Haynes' behavior under the apparent influence of drugs would not want him to take their car. Like *Moore*, a reasonable fact-finder could conclude Melinda would not have given Haynes her car keys unless she felt threatened or intimidated. Melinda, before giving the keys to Haynes, moved her purse from the closet into her bedroom, which

indicates she did not want Haynes to take her car. She only relented after Haynes destroyed property in her home and brandished a taser in her bedroom after she repeatedly told him he could not take her car. Just as *Moore* noted, Haynes did not have to threaten to use the taser on Melinda or threaten to kick or headbutt her in order to sufficiently threaten bodily harm. Under the totality of the circumstances, a reasonable person in Melinda's position would have felt Haynes' actions reflected a threat of bodily harm. Likewise, Haynes' angry and destructive behavior reflects an intent to threaten Melinda into relenting to his demands. See 269 Kan. at 33.

Haynes correctly notes the State has not argued on appeal that he used force to obtain Melinda's keys; therefore, any such claim is waived or abandoned. See *State v. Davis*, 313 Kan. 244, 248, 485 P.3d 174 (2021). But the State presented sufficient evidence reflecting Haynes took Melinda's keys under threat of bodily harm. Haynes' arguments to the contrary are unpersuasive as they are largely an invitation for us to weigh the evidence and draw inferences favorable to him, which is not the standard for a preliminary hearing. See *Washington*, 293 Kan. at 734.

Haynes relies on Melinda's testimony at the preliminary hearing that she did not feel threatened or scared. But this ignores *Moore's* instruction that a reasonable person standard is used to examine how the victim would have felt. 269 Kan. at 33. Regardless of Melinda's claims about her subjective reaction—a point which should be submitted to the jury to determine its credibility—a reasonable person would have felt threatened under the totality of the circumstances.

Haynes further argues the fact he had a taser is essentially irrelevant because the State did not charge him with aggravated robbery. The State's charging decisions are a matter of prosecutorial discretion. *State v. Dixon*, 60 Kan. App. 2d 100, 136-37, 492 P.3d 455 ("The discretion to decide what charges to file in any situation is an important tool reserved to the prosecutor."), *rev. denied* 314 Kan. 856 (2021). And even if a reasonable

person might question the State's discretion in prosecuting a particular case, it is not grounds to dismiss a charge if the evidence establishes probable cause. *State v. Walter*, No. 124,115, 2022 WL 1906938, at *3 (Kan. App.) (unpublished opinion) ("Still, the State's reason for bringing the case does not matter in our assessment of probable cause. We focus, instead, on whether, regardless of the State's reason for the timing of its charge against the defendant, the facts show probable cause. Even though the evidence at this stage of the proceedings may be weak as to whether [a felony was committed], it remains a fact question for a jury to determine"), *rev. denied* 316 Kan. 763 (2022).

Viewed in the light most favorable to the State, we find Haynes' behavior of yelling, brandishing a taser, and aggressively destroying Melinda's personal property through violent actions while demanding her car and the keys to it is sufficient under the lower burden of probable cause to find he threatened Melinda with bodily harm in order to obtain her car keys. Accordingly, the district court erred in dismissing the robbery charge at the conclusion of the preliminary hearing. We reverse and remand the case for the district court to bind Haynes over for arraignment.

Reversed and remanded with directions.