

Court of Appeals, State of Michigan

ORDER

People of MI v Anthony Smith

Docket No. 348449

LC No. 18-009201-01-FC

Thomas C. Cameron
Presiding Judge

Kirsten Frank Kelly

Michael J. Riordan
Judges

Pursuant to MCR 7.205(E)(2), the Court orders that in lieu of granting the delayed application for leave to appeal, the circuit court's February 19, 2019 order is REVERSED IN PART, and the matter REMANDED for further proceedings. The question before the grand juror was whether there was probable cause to believe that defendant committed certain crimes. *People v Green*, 322 Mich App 676, 687; 913 NW2d 385 (2018). "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). Even if a trial judge disagrees with the grand juror's decision, the trial judge cannot substitute his or her "judgment for that of the magistrate except in a case of an abuse of discretion." *People v Bommarito*, 33 Mich App 385, 389; 190 NW2d 359 (1971). Evidence was presented to the grand juror establishing probable cause to believe that defendant pointed a gun at the victim. This established probable cause to believe that defendant committed one act of felonious assault, MCL 750.82, and also possessed a firearm during the commission of a felony, MCL 750.227b. See *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Contrary to the circuit court's decision, there is evidence beyond defendant's statement to police supporting these charges, specifically, surveillance footage. As such, the *corpus delicti* rule is not implicated. See *People v Burns*, 250 Mich App 436, 438; 647 NW2d 515 (2002). The grand juror's decision to indict defendant on these two counts was not an abuse of discretion, and the circuit court erred in holding otherwise. The matter is REMANDED for reinstatement of these two counts, and for further proceedings consistent with this order.

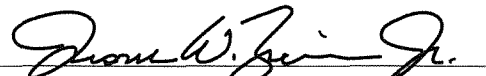
This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 17 2019

Date


Chief Clerk