

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE DEMETRIOU,

Defendant-Appellant.

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UNPUBLISHED

May 10, 1996

No. 170568

LC No. 93-000306

Before: Jansen, P.J., and McDonald and D.C. Kolenda,\* JJ.

PER CURIAM.

Following a jury trial in the Detroit Recorder's Court, defendant was convicted of burning insured property, MCL 750.75; MSA 28.270. He was thereafter sentenced to three years of probation. He appeals as of right and we affirm.

On appeal, defendant raises two issues. He first claims that the district court abused its discretion in binding him over for trial on a conspiracy charge, and he claims that there was insufficient evidence to sustain his conviction of burning insured property.

Defendant first argues that the district court abused its discretion in binding him over for trial on the charge of conspiracy to burn insured property. A district court must bind over a defendant for trial if the evidence presented at the preliminary examination establishes that a felony has been committed and that the defendant committed the crime. MCR 6.110(E); MCL 766.13; MSA 28.931. The district court's decision to bind over the defendant is reviewed for an abuse of discretion. *People v Thomas*, 438 Mich 448, 452; 475 NW2d 288 (1991). Therefore, in assessing the circuit court's decision to affirm the decision of the district court, we must determine whether the district court abused its discretion in concluding that there was probable cause to believe that defendant committed the conspiracy offense. *People v Whipple*, 202 Mich App 428, 431; 509 NW2d 837 (1993). At the preliminary examination, the prosecutor is not required to prove each element of the crime beyond a

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\* Circuit judge, sitting on the Court of Appeals by assignment.

reasonable doubt. Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to support the bindover if such evidence establishes probable cause. *Id.*, p 432.

The district court ruled that there was a preponderance of the evidence that defendant committed a conspiracy. Specifically, the district court ruled that there was evidence of defendant's participation in the conspiracy independent of the hearsay statements of the co-conspirators, Ed Bardel and James Daugherty. In this case, the evidence at the preliminary examination was unequivocal that Bardel, Daugherty, and defendant's son Andreas conspired to burn defendant's restaurant. There was also evidence that defendant met with Bardel and Daugherty on two separate occasions at a rest stop. While at the rest stop, Bardel and Daugherty acted in furtherance of the conspiracy. The district court recognized that while this evidence was certainly not overwhelming, it was sufficient to conclude that defendant was involved in the conspiracy.

Upon finding that there was independent proof of the conspiracy by a preponderance of the evidence, it was proper for the district court to consider the statements of the co-conspirators. *People v Vega*, 413 Mich 773, 780; 321 NW2d 675 (1982); MRE 801(d)(2)(E). Daugherty's testimony certainly established defendant's participation in the conspiracy. According to Daugherty, Bardel told him on two occasions that they needed to get expense money from defendant, and that defendant wanted the fire to appear accidental so that the insurance company would pay the proceeds. Defendant had also allegedly indicated that he was disappointed about the first unsuccessful fire attempt. Daugherty also testified that on the day after the first attempt to burn the restaurant, he and Bardel stopped at a rest stop where Daugherty stopped and spoke with defendant for about thirty minutes. The following week, Bardel again met with defendant at a rest stop. A few hours later, the second attempt was made to burn the restaurant.

We cannot conclude that the district court abused its discretion in binding defendant over for trial. It recognized that this presented a close case on the conspiracy charge, but that there was probable cause that a crime was committed and that defendant committed the crime.

Defendant next argues that there was insufficient evidence at trial to sustain his conviction of burning insured property. When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

There was sufficient evidence presented at trial to sustain defendant's conviction of burning insured property, mainly through the testimony of Daugherty. There were clearly credibility issues in this case, but issues of credibility were for the jury to resolve. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). The evidence at trial showed that defendant procured Bardel and Daugherty to burn the restaurant so that insurance proceeds could

be collected. Accordingly, taken in a light most favorable to the prosecution, there was sufficient evidence to establish the essential elements of burning insured property.

Affirmed.

/s/ Kathleen Jansen

/s/ Gary R. McDonald

/s/ Dennis C. Kolenda