

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NEWT CAVER,

Defendant-Appellant.

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UNPUBLISHED

September 17, 1996

No. 182865

LC No. 94-00767

Before: Gribbs, P.J., and Young and W. J. Caprathe,\* JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was then convicted from the bench of habitual offender, second offense, MCL 769.10; MSA 28.1082. The trial court sentenced defendant to thirty to sixty years' imprisonment for the murder conviction, which was ordered to follow the mandatory two-year sentence for felony-firearm. Defendant's sentence for the murder conviction was vacated, and the trial court sentenced him to thirty to sixty years' as an habitual offender. Defendant appeals as of right. We affirm.

Defendant first argues that his motion to quash the information was improperly denied. We disagree. If the prosecution presents evidence at the preliminary examination that a crime was committed and that there is probable cause to believe the defendant committed the crime, the defendant must be bound over for trial. MCL 766.13; MSA 28.931; *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996). Our review of the lower court's decision as to the bindover is de novo. *Tower, supra* at 319-320. We must determine whether the magistrate abused her discretion in finding the existence of probable cause to believe that the defendant was the offender. *Id.* at 320. To support a bindover, the prosecution is not required to prove beyond a reasonable doubt each element of the charged offense. *People v Kieronski*, 214 Mich App 222, 228-229; 542 NW2d 339 (1995). Where credible evidence is presented both in support of and to negate the existence of an element of the offense, the matter should be left for the factfinder. *Id.*

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

Defendant was charged with second-degree murder. Second-degree murder is a general intent crime that encompasses all murder other than first-degree murder. The elements are a death caused by some act of the defendant, without justification, excuse or mitigation, and done with the intent to kill, intent to inflict great bodily harm or the intent to create a very high risk of death with knowledge that the act will likely cause death or great bodily harm. *People v Bailey*, 451 Mich 657, 669; \_\_\_ NW2d \_\_\_ (1996).

At the preliminary examination it was established that the victim died from four gunshot wounds to her body, which caused massive internal bleeding. The victim's body was found near a freeway, and marks around her body indicated that it had been dragged there from another location. Although her body was found on the morning of December 31, 1993, it was not positively identified until the next day. A witness testified that, sometime during the night of December 31, defendant had called her and told her that the victim had died; that he "just knew" that the body he had learned had been found was that of his girlfriend, the victim. Defendant told the witnesses that he learned of the discovery of the body from a neighbor and from police who had visited his home on December 31. However, because the body could not be identified on December 31, the police officer who had investigated the case testified that defendant was not contacted about the homicide on that day. In fact, it was not until after the body was identified by the victim's son on January 1 that the police learned of defendant's statements to the witnesses on December 31. This information then prompted the police to investigate defendant's involvement in this matter.

Police obtained a warrant and searched defendant's home on January 3, the day after taking defendant into custody. When officers executed the search warrant, they found live and spent shotgun casings. They also found a mop with dried blood on it and smeared blood on the back door. Bloody clothes were found in a garbage can in the house, together with a baseball cap filled with blood and a broken fish tank. In the backyard, the officers found a piece of green carpeting stained with blood and what the officer believed to be brain matter.

Defendant was interviewed that day. He stated that on December 31, the victim was in his house talking to another woman in the living room. Defendant stated that he went into the house and the wound he received from giving plasma burst open and he began to bleed. He ran to the bedroom to get something to clean up his blood, knocking over a glass fish tank. The victim asked defendant for some money, and defendant ran toward the back door. At first, defendant stated that while going to the back door he heard a boom. Later he stated that he was in the driveway, closing the gate when he heard the boom. Defendant stated that he left to get food and beer and when he returned the victim was not at the house. He told the officer that he proceeded to clean up his blood with a mop and rag. He put bloodied pants by the back door on a bench and indicated that he did not throw away any of the things he used to clean the blood with. Defendant stated that the green carpeting was from the back of his station wagon and that he used it to kneel on when he worked on his car.

The evidence as presented at the preliminary exam demonstrates that a crime occurred. The prosecutor also presented evidence to establish probable cause that defendant was the offender and to

raise questions of fact for the fact finder. The trial court did not abuse its discretion in denying defendant's motion to quash the information and in binding defendant over for trial.

Defendant also argues that the prosecution failed to present sufficient evidence to convict him of second-degree murder. He asserts that the circumstantial evidence and reasonable inferences drawn therefrom were insufficient to find him guilty as the offender. In reviewing a conviction for sufficiency of the evidence, this Court must consider the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact would find the essential elements of the crime to be proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences drawn from that evidence can constitute sufficient proof of the elements of the crime. *People v Reddick*, 187 Mich App 547, 551; 468 NW2d 278 (1991).

The evidence presented at the preliminary examination was presented at trial. In addition, it was established at trial that blood was found in defendant's kitchen, dining room, bedroom, and on the back door. The mop handle, a flannel shirt, two pairs of pants, and the green carpet all tested positive for blood. Although defendant claimed he popped open the wound from where he had given blood and that the blood was his, the evidence established otherwise. Rather, an expert witness demonstrated that the DNA of the blood found on the kitchen door, baseball hat, flannel shirt, mop handle and the green carpeting from the backyard matched the victim's DNA. Defendant admitted he kept a shotgun in his house, although he stated that it belonged to someone who wanted defendant to buy it.

Viewing the evidence presented at trial in a light most favorable to the prosecution, we find that sufficient evidence upon which the jury could conclude that defendant was responsible for the victim's death was presented.

Affirmed.

/s/ Roman S. Gibbs  
/s/ Robert P. Young, Jr.  
/s/ William J. Caprathe