

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RAUL SALAZAR,

Defendant-Appellee.

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UNPUBLISHED

May 9, 1997

No. 195112

Saginaw Circuit Court

LC No. 95-011370-FH

Before: McDonald, P.J., and Griffin and Bandstra, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order quashing the information against defendant, a psychologist. Count I of the information charged defendant with extortion for threatening to accuse Joseph Stricker of failing to appear for court-ordered counseling with defendant with the intent to thereby extort money from Stricker, MCL 750.213; MSA 28.410. The court found no evidence of a threat. Count II charged defendant with attempting to obstruct justice by preventing Stricker's probation agent from accurately reporting on the status of Stricker's court-ordered counseling, MCL 750.505; MSA 28.773. The court found no common law basis for this offense. We affirm.

The prosecutor first argues that there was sufficient evidence to bind over defendant for trial on the extortion charge because defendant threatened to report to Stricker's probation agent that Stricker was not attending the court-ordered counseling sessions unless Stricker paid defendant money. We disagree. To bind over for trial, the evidence must establish that a crime was committed and that there is probable cause to believe that the defendant committed it. *People v Pitts*, 216 Mich App 229, 232; 548 NW2d 688 (1996). "Probable cause is defined as a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged." *People v Waters*, 118 Mich App 176, 183; 324 NW2d 564 (1982). To bind over on a charge of extortion, there must be probable cause to believe that the following had occurred: "1) a communication, 2) threatening accusation of any crime or offense or any injury to the person or property or mother, father, husband, wife, or child of another, 3) with intent thereby to extort money or pecuniary advantage as to compel the person so threatened to do or refrain from doing an act against his will." *People v Krist*, 97 Mich App 669, 675; 296 NW2d 139 (1980).

The record shows that Stricker was to attend and pay for counseling sessions with defendant. Stricker told defendant that he did not want to attend the sessions, ostensibly because he could not afford them but also because he did not have time to attend them. Defendant and Stricker then entered into an agreement whereby defendant would not report Stricker's nonattendance to probation agent James Bush if Stricker chose not to attend, so long as payment was made. This arrangement was an accommodation to Stricker, for his benefit. There was no threat against Stricker that secured a benefit for defendant. These circumstances are not sufficiently strong in themselves to warrant the belief that defendant is guilty of the charged offense. *Waters, supra*.

The prosecutor also argues that there was sufficient evidence to bind over defendant for trial on the attempted obstruction of justice charge because defendant filed a false or misleading report to James Bush. At common law, obstruction of justice was not a single offense, but a "category of offenses that interfered with public justice." *People v Thomas*, 438 Mich 448, 456-457; 475 NW2d 288 (1991). A charge of attempted obstruction of justice pursuant to MCL 750.505; MSA 28.773 must be based on an underlying common law offense. *Id.* at 457-458. The trial court held that as a matter of law, unless the underlying common law offense by which defendant was charged with obstructing justice was included in Blackstone's Commentaries, it was not actionable under MCL 750.505; MSA 28.773. In *Thomas, supra* at 456-457, the Michigan Supreme Court recognized the twenty-two offenses listed by Blackstone as a basis for an obstruction of justice charge. However, this Court has held that the Supreme Court's reference to Blackstone in *Thomas* was not meant as a limitation, but was "merely to illustrate the point that at common law, 'obstruction of justice' is not a single offense, but a category of offenses ...." *People v Vallance*, 216 Mich App 415, 419; 548 NW2d 718 (1996).

While it was error for the trial court to base its ruling on a narrow reading of *Thomas*, it was not error requiring reversal where there was no evidence of an underlying common law offense otherwise demonstrated in this case. The record shows that the reports defendant filed with Stricker's probation agent, James Bush, were not misleading. Stricker kept only his initial appointment with defendant in November. Thereafter, he failed to appear and defendant reported Stricker's noncompliance. Following a probation violation hearing, Stricker attended one time in the month of January. Defendant's reports covering the months of November through January accurately depict Stricker's inadequate attendance record. The only other report defendant sent to James Bush covered the month of February and it stated that Stricker's attitude was improving and that Stricker was beginning to follow up on the court-ordered counseling. In fact, Stricker had begun to attend more regularly in February, although it appears from the record that Stricker was motivated to do so by the fact that he was tape recording his sessions with defendant in an attempt to incriminate defendant. The tape recordings of the March sessions show defendant's complicity in the scheme, but defendant filed no report to Bush for the month of March because Bush was removed from Stricker's case before defendant could report to him after Stricker also began taping his conversations with Bush. These circumstances are not sufficiently strong in themselves to warrant the belief that defendant is guilty of the charged offense. *Waters, supra*.

The order quashing both counts of the information is affirmed.

/s/ Gary R. McDonald  
/s/ Richard Allen Griffin  
/s/ Richard A. Bandstra