

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

EDGAR GLOVER,

Defendant-Appellee.

UNPUBLISHED

July 29, 1997

No. 195631

Recorder's Court

LC No. 95-090002

ON REMAND

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Pursuant to the Supreme Court's order of remand for consideration as on leave granted, *People v Glover*, 451 Mich 930 (1996), the Wayne County Prosecutor asserts that the 36th District Court abused its discretion in refusing to bind defendant over for trial on a charge of arson of a dwelling. This case is being decided without oral argument pursuant to MCR 7.214(E).

The action of the 36th District Court was affirmed by the Recorder's Court in this case on the prosecutor's appeal of right. This Court's review of the Recorder's Court decision is *de novo*, requiring this Court to determine whether the district court abused its discretion in finding a lack of probable cause to believe that defendant committed the offense charged. *People v Flowers*, 191 Mich App 169, 174; 477 NW2d 473 (1991). If sufficient evidence to support a finding of probable cause that defendant set the fire in question was presented, either directly or circumstantially, the prosecutor is entitled to have defendant bound over for trial and the magistrate's refusal to do so is an abuse of discretion. *Id.*, at 179-180.

Here, a qualified expert witness testified that the fire was of incendiary origin. The apparent victim testified that defendant had threatened his life about three weeks before the incident, and when confronted and accused of responsibility shortly after the fire was extinguished, defendant responded only with name calling. Another tenant of the apartment building in question testified to hearing the victim and defendant arguing shortly before the fire started, to seeing defendant in the hallway just after the fire began, and hearing defendant state that his intent was to kill someone, although whom and in

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

reference to what being open to question. This evidence indicates that defendant had motive and opportunity to set the fire, and that, when accused of responsibility for the fire by the victim, defendant failed to deny the accusation. Such lack of denial by defendant under the circumstances is substantive evidence of culpability, to be accorded such weight as a trier of fact deems appropriate under all the circumstances. *People v Todaro (On Rehearing)*, 256 Mich 427; 240 NW 90 (1932), overruled in part (when the Fifth Amendment privilege against self-incrimination applies, which it does not in the present context involving noncustodial accusation by a civilian), *People v Bobo*, 390 Mich 355, 361-362; 212 NW2d 190 (1973); see also *People v DeBolt*, 269 Mich 39, 44; 256 NW 615 (1934); *People v Bigge*, 288 Mich 417, 420; 285 NW 5 (1939). There was, accordingly, evidence from which a rational trier of fact could conclude that defendant perpetrated this act of arson, and accordingly it was an abuse of discretion to refuse to bind defendant over for trial on that charge.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn