

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BERRY P. SMITH,

Defendant-Appellee.

UNPUBLISHED

November 21, 1997

No. 199648

Recorder's Court

LC No. 96-006493

Before: Griffin, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals from the Recorder's Court's order granting defendant's motion to quash the information charging defendant with one count of receiving and concealing stolen property over \$100. MCL 750.535, MSA 28.803. We reverse.

Plaintiff filed an information charging defendant with receiving and concealing stolen property in excess of \$100, to wit: a 1992 Plymouth Sundance automobile. At the preliminary examination in district court, a police officer testified that he observed the stolen vehicle traveling at a high rate of speed. After the officer activated the overhead lights of his marked scout car, the stolen vehicle accelerated, and the driver got out of the vehicle. Defendant, a passenger, attempted to exit but was unable to. The vehicle crashed into a porch. The passenger side door was "punched." The officer did not see defendant driving or otherwise having control of the vehicle. Defendant later made a statement to the police in which he indicated that he had been walking down the street when the driver, "Charlie," pulled up in the Sundance. Defendant asked for a ride and got in. Although he admitted that he knew the vehicle was stolen, defendant denied having any control of the vehicle. The district court bound defendant over for trial. Defendant then filed a motion to quash the information in Recorder's Court. The motion was granted.

"To review a circuit court's decision regarding a motion to quash an information, this Court determines if the district court abused its discretion in binding over the defendant." *People v Peebles*, 216 Mich App 661, 664; 550 NW2d 589 (1996). "To secure the binding over of a defendant, the prosecution must present to the district court sufficient evidence establishing, as a matter of law, that the

defendant probably committed the offense charged.” *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). The elements of receiving and concealing stolen property over \$100 are that

(1) the property was stolen, (2) the property has a fair market value of over \$100, (3) the defendant bought, received, possessed, or concealed the property with knowledge that the property was stolen, and (4) the property was identified as being previously stolen. [*People v Gow*, 203 Mich App 94, 96; 512 NW2d 34 (1993).]

While we have serious doubts whether the prosecutor will be able to prove his case beyond a reasonable doubt, that is a question for the jury to decide at trial. Proof beyond a reasonable doubt is not the standard for a bind-over—for a bind-over, it is only necessary that the prosecutor demonstrate probable cause. Given defendant’s admission to knowing the vehicle was stolen, the fact that he knew the driver and was not merely a hitchhiker, and defendant’s flight from the police establishes probable cause to believe that he aided the driver in the possession of the stolen vehicle. The fact that the prosecutor will have to obtain more evidence in order to successfully prosecute the case does not preclude a bind-over. In sum, the district court properly bound defendant over for trial and the Recorder’s Court erred in quashing the information.

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

/s/ Richard Allen Griffin

/s/ David H. Sawyer

I concur in the result only.

/s/ Peter D. O’Connell