

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JASON T. ROSS,

Defendant-Appellee.

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UNPUBLISHED

October 13, 2005

No. 255380

Wayne Circuit Court

LC No. 03-011267

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion to quash and dismissing the case with prejudice. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with six counts of criminal sexual conduct in the first degree (CSC I), MCL 750.520b, one count of armed robbery, MCL 750.529, one count of possession of a firearm during the commission of a felony, MCL 750.227b, one count of felon in possession of a firearm, MCL 750.224f, and one count of larceny from a motor vehicle, MCL 750.356a(1). At the preliminary examination, complainant testified that two armed Hispanic men and a Caucasian man confronted her as she exited her car, and that one Hispanic man sexually assaulted her while the other men took items from her car. Several days following the incident complainant viewed a photo line-up and identified defendant as the Caucasian perpetrator. Complainant stated that at the time she viewed the photo line-up she indicated that she was 80% sure that defendant had participated in the incident and that, at the time of the preliminary examination, she was 95% sure that defendant had participated in the incident. The district court bound defendant over for trial on the charges of CSC I, armed robbery, and larceny from a motor vehicle, and dismissed the weapons charges. The trial court granted defendant's motion to quash the information, finding that complainant's characterization of the certainty of her identification of defendant in terms of percentages was not sufficient, and concluding that the district court abused its discretion by binding defendant over on the charges.

The purpose of a preliminary examination is to determine if probable cause exists to believe that a crime was committed and that the defendant committed it. *People v Fiedler*, 194 Mich App 682, 689; 487 NW2d 831 (1992); MCL 766.13; MCR 6.110(E). Probable cause is defined as evidence sufficient to cause a person of ordinary prudence and caution to

conscientiously entertain a reasonable belief of the defendant's guilt. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003).

During a preliminary examination, the prosecutor is not required to prove the defendant's guilt beyond a reasonable doubt. However, the prosecutor must produce evidence of each element of the crime charged, or evidence from which the elements can be inferred. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). Circumstantial evidence and reasonable inferences drawn from the evidence can be sufficient. *People v Greene*, 255 Mich App 426, 444; 661 NW2d 616 (2003). A magistrate should not discharge a defendant if the evidence conflicts or raises a reasonable doubt of guilt. Such questions should be left for the jury. *People v Drake*, 246 Mich App 637, 640; 633 NW2d 469 (2001). The decision to discharge or bind over a defendant is reviewed for an abuse of discretion. *People v Vasher*, 167 Mich App 452, 456-457; 423 NW2d 40 (1988). The trial court may not substitute its judgment for that of the district court. *Drake, supra* at 639-640. We review the trial court's decision that the district court abused or did not abuse its discretion de novo. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

We reverse the trial court's decision and remand this case for reinstatement of the charges against defendant. At the preliminary examination, the prosecutor was not required to produce evidence that proved beyond a reasonable doubt that defendant was the Caucasian perpetrator. *Hill, supra*. Any doubt regarding the sufficiency of the identification evidence was for the jury to resolve. *Drake, supra* at 640. Under the circumstances, the trial court improperly substituted its judgment for that of the district court, *People v Green*, 260 Mich App 710, 713-714; 680 NW2d 477 (2004), and erred by granting defendant's motion to quash the information and dismiss the case. *Orzame*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael J. Talbot  
/s/ Helene N. White  
/s/ Kurtis T. Wilder