

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT DOUGLAS NILL, JR.,

Defendant-Appellee.

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UNPUBLISHED

February 12, 2008

No. 273744

Oakland Circuit Court

LC No. 2005-008332-AR

Before: Murray, P.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

This case is before us as on leave granted pursuant to order of the Michigan Supreme Court. *People v Nill*, 477 Mich 892 (2006). Plaintiff appeals from an order of the circuit court affirming the decision of the district court refusing to bind over defendant for trial on charges of intentionally making a false report of a felony, MCL 750.411(1)(b), and careless discharge of a firearm, MCL 752.862. We reverse and remand this case to the district court for entry of an order binding over defendant for trial. This case is being decided without oral argument under MCR 7.214(E).

This case arises from an incident in which defendant, who was a police officer, reported that an intruder entered his apartment and that, after defendant confronted the intruder with a rifle, a struggle ensued that resulted in the rifle being discharged. The prosecution theory is that defendant falsely reported a home invasion in an attempt to conceal his own negligent discharge of a firearm.

Plaintiff argues that the circuit court erred in failing to hold that the district court abused its discretion in refusing to bind over defendant for trial. We agree. We review the circuit court's decision affirming the district court's refusal to bind over defendant de novo to determine if the district court abused its discretion. *People v Green*, 260 Mich App 710, 713-714; 680 NW2d 477 (2004). A decision is not an abuse of discretion if it constitutes a reasonable and principled outcome. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

A district court must bind over a defendant "where the prosecutor has presented competent evidence sufficient to support probable cause to find both that a felony was committed and that defendant committed it." *People v Cervi*, 270 Mich App 603, 616; 717 NW2d 356 (2006). Probable cause requires evidence "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt." *People v Yost*,

468 Mich 122, 126; 659 NW2d 604 (2003), quoting *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997).

At a preliminary examination, the prosecution bears the burden of presenting “evidence from which at least an inference may be drawn establishing the elements of the crime charged.” *Yost, supra* at 126. However, our Supreme Court has cautioned:

Yet, to find probable cause, a magistrate need not be without doubts regarding guilt. The reason is that the gap between probable cause and guilt beyond a reasonable doubt is broad and finding guilt beyond a reasonable doubt is the province of the jury. [*Id.* (citation omitted).]

Accordingly, a magistrate should not refuse to bind over a defendant for trial merely because the evidence “raises reasonable doubt of the defendant’s guilt.” *Id.* at 128.

We conclude that the district court abused its discretion in refusing to bind over defendant for trial, because plaintiff clearly presented evidence constituting probable cause to believe that defendant falsely reported the alleged home invasion to conceal that he alone fired the gunshot. Maintenance workers in the apartment complex testified to hearing the gunshot at about noon, and a police detective testified that defendant asserted that he called 911 immediately after the intruder left. However, there was evidence that the 911 call was not made until 12:38. The evidence of the 12:38 call to 911 supports the plaintiff’s theory that defendant falsely told a police detective that he immediately reported the incident. In addition, testimony from the maintenance workers that they looked in the vicinity of the gunshot and saw no one outside defendant’s apartment provides further support for the plaintiff’s theory that there was no actual intruder. Additionally, the testimony of two police detectives, that it was difficult to believe a trained police officer such as defendant would approach an intruder so as to allow the intruder to grab the officer’s gun, as claimed by defendant, supports the plaintiff’s theory that the report of the home invasion was false. Finally, one detective testified that in response to an interrogation tactic, defendant changed his story about which door the intruder fled through. That detective also testified that it was unlikely for a gun to fire under the circumstances described by defendant.

Based on the above circumstantial evidence and expert police testimony, and because the offense of home invasion is a felony, the plaintiff met its burden to show probable cause to conclude that defendant’s report of a felony was false. See *Yost, supra* at 133 (concluding that “the expert testimony in tandem with the circumstantial evidence, which included evidence relating to motive and opportunity, was sufficient to warrant a bindover”). The district court’s holding to the contrary was not a reasonable and principled outcome. *Maldonado, supra* at 388. While it may be possible that the alleged home invasion actually occurred and that defendant’s basic account of the incident was true despite the odd nature of some of his conduct, this mere possibility is not enough to prevent a bindover because even if the evidence raised reasonable doubt as to defendant’s guilt, that is not sufficient to preclude a bindover. *Yost, supra* at 128.

The evidence supporting a bindover on the charge of false report of a felony also supports bindover on the charge of careless discharge of a firearm. The plaintiff established that a rational motive for defendant to have falsely reported a home invasion in these circumstances was to conceal that he accidentally fired a gun in his apartment. The crime of careless discharge of a

firearm consists of carelessly, recklessly, or negligently causing or allowing a firearm under one's control to be discharged so as to destroy or injure the property of another. MCL 253.862. Because an apparent motive for defendant to falsely report the home invasion was to conceal that he alone fired the relevant gunshot, it follows that there is probable cause to believe that defendant was attempting to conceal that he negligently fired a gun. Moreover, given the testimony that defendant lived in an apartment complex, there is probable cause to believe that the property damaged by the gunshot, i.e., the walls of the apartment, was property owned by a person or entity other than defendant, i.e., the landlord. Thus, contrary to the district court's conclusion, there was probable cause to bind defendant over for trial on both charges.

We reverse and remand this case to the district court for entry of an order binding over defendant for trial on the charged offenses. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder