

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DANIEL MATHEW BOA,

Defendant-Appellee.

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UNPUBLISHED

September 29, 2009

No. 291428

Washtenaw Circuit Court

LC No. 291428

Before: Murray, P. J., and Markey and Borrello, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order of the circuit court affirming the district court's decision not to bindover defendant on the charge of willfully and maliciously killing an animal without just cause or excuse, MCL 750.50b. We reverse and remand.

We review de novo the circuit court's review of the bindover process to determine whether the district court committed an abuse of discretion in determining whether there was probable cause to show that defendant committed the crime charged. *People v Perkins*, 468 Mich 448, 452; 662 NW2d 727 (2003). "The primary function of the preliminary examination is to determine whether a crime has been committed and, if so, if there is probable cause to believe that the defendant committed it." *People v Glass (After Remand)*, 464 Mich 266, 277; 627 NW2d 261 (2001). Probable cause that the defendant committed the crime is established by 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). "Some evidence must be presented regarding each element of the crime or from which those elements may be inferred." *People v Goecke*, 457 Mich 442, 469; 579 NW2d 868 (1998). Moreover, a magistrate should not refuse to bind over a defendant for trial merely because the evidence "raises reasonable doubt of the defendant's guilt." *Yost, supra* at 128.

Defendant was charged under MCL 750.50b(2), which provides in pertinent part:

A person who willfully, maliciously and without just cause or excuse kills, tortures, mutilates, maims, or disfigures an animal . . . is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than \$5,000.00, or community service for not more than 500 hours or any combination of these penalties. [MCL 750.50b(2).]

The circuit court and, naturally, the parties focus on the issue of malice on appeal. In *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004), we adopted a definition of malice from *People v Iehl*, 100 Mich App 277, 280; 299 NW2d 46 (1980), an animal torture case under the predecessor statute, MCL 750.377. To establish malice, the prosecutor must provide evidence that defendant “‘1) committed the act, 2) while knowing it to be wrong, 3) without just cause or excuse, and 4) did it intentionally or 5) with a conscious disregard of known risks to the property of another.’” *Fennell, supra* at 269-270, quoting *Iehl, supra* at 280 (citation omitted). Malice may be inferred from the facts and circumstances surrounding the incident. *People v Flowers*, 191 Mich App 169, 176-177; 477 NW2d 473 (1991).

Evidence was presented that defendant killed Janie Sawyer’s cat with malice. The prosecutor introduced evidence that defendant intended to shoot the cat and then killed it with a single gunshot. Defendant approached the cat, stopped approximately five feet away, and shot it once. The cat fell over and died instantly. In addition, the prosecutor introduced evidence from which one could infer that defendant knew that his actions were wrong. Defendant put the cat’s carcass into a bag and carried it away. When Sawyer confronted him, defendant tried to drive away, and when she threatened to call the police, he denied killing the cat. Malice could be inferred from the fact that defendant intentionally killed the cat and attempted to conceal killing the cat. *Fennell, supra* at 269-270. Moreover, the prosecution also introduced evidence that defendant had no just cause or excuse for his actions. Although it appears defendant asserted that he believed the cat was feral, Sawyer testified that defendant deliberately killed her cat knowing that it was her cat. Sawyer’s family and defendant were friends, and Sawyer’s daughter had taken the cat over to defendant’s deck many times. Any question regarding justification is for the trier of fact. In sum, the prosecution introduced evidence that defendant willfully, maliciously, and without just cause or excuse killed the cat, MCL 750.50b. There was sufficient evidence to cause a person of ordinary caution and prudence to entertain a reasonable belief of defendant’s guilt. *Yost, supra* at 126. For these reasons, we find that the circuit court erred in affirming the district court because the district court abused its discretion in refusing to bind over defendant.

Reversed and remanded to the district court to bind defendant over to the circuit court for trial. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Stephen L. Borrello