

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
November 15, 2012

v

JASMINE KETERA JONES,
Defendant-Appellee.

No. 307604
Wayne Circuit Court
LC No. 11-009508-FH

Before: WILDER, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

The prosecution appeals as of right the circuit court’s order dismissing defendant’s first-degree home invasion charge, MCL 750.110a(2). We reverse.

The prosecution contends that the district court appropriately exercised its discretion, after hearing evidence presented at defendant’s preliminary examination, to bind defendant over for trial, because the prosecution had presented evidence on each element of first-degree home invasion. We agree.

“We review for an abuse of discretion a district court’s decision to bind over a defendant.” *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). “An abuse of discretion occurs when the court chooses an outcome that falls outside the range of principled outcomes.” *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). This Court “sits in the same position as the circuit court when determining whether the district court abused its discretion. In other words, this Court reviews the circuit court’s decision regarding the motion to quash a bindover only to the extent that it is consistent with the district court’s exercise of discretion. The circuit court may only affirm a proper exercise of discretion and reverse an abuse of that discretion. Thus, in simple terms, we review the district court’s original exercise of discretion.” *Hudson*, 241 Mich App at 276.

We find that the district court reached a principled outcome when it bound defendant over to the circuit court for trial. Because the district court did not abuse its discretion, its decision to bind defendant over should be reinstated.

“The purpose of a preliminary examination is to determine whether there is probable cause to believe that a crime was committed and whether there is probable cause to believe that the defendant committed it. To meet its burden of proof at the preliminary examination, the

prosecution must present enough evidence on each element of the charged offense to lead a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of [the defendant's] guilt." *People v Cohen*, 294 Mich App 70, 70; 816 NW2d 474 (2011) (internal citations and quotations omitted). MCL 766.13 outlines a magistrate's responsibility when presiding over a preliminary examination:

If it shall appear to the magistrate at the conclusion of the preliminary examination that a felony has been committed and there is probable cause for charging the defendant therewith, the magistrate shall forthwith bind the defendant to appear before the circuit court . . . for trial.

Based on the evidence presented by the prosecution at the preliminary examination, probable cause existed to charge defendant with first-degree home invasion and to bind her over for trial.

To properly establish probable cause, the prosecution was required to show evidence for each element of first-degree home invasion:

. . . . [A] person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling. [*People v Wilder*, 485 Mich 35, 42; 780 NW2d 265 (2010), quoting MCL 750.110a(2).]

In this case, under MCL 750.110a(2), the prosecution had to show evidence that defendant committed a larceny, the applicable predicate offense to first-degree home invasion. Without proof of larceny, defendant could not be bound over for trial. Larceny requires a showing of

(1) an actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with a felonious intent, (4) the subject matter must be the goods or personal property of another, (5) the taking must be without the consent and against the will of the owner. [*People v Cain*, 238 Mich App 95, 120; 605 NW2d 28 (1999).]

Notably, "[l]arceny is not limited to taking property away from the person who holds title to that property, but also includes taking property from a person who has rightful possession and control of the property." *People v Sheldon*, 208 Mich App 331, 334; 527 NW2d 76 (1995). Accordingly, an "owner" includes not only the technical titleholder but a person who has "rightful possession and control of the property" at the time the item was taken. In terms of larceny, CJI2d 22.2 defines "owner" as "the actual owner of the property or any other person whose consent was necessary before the property could be taken." See *Sheldon*, 208 Mich App at 334-335, quoting CJI2d 22.2. Possession and control over property need not be exclusive, and can be established by evidence of proximity to the article together with "indicia of control." See *People v Flick*, 487 Mich 1, 14; 790 NW2d 295 (2010). Put another way, possession of an item

can be established if the location of the item is known and it is reasonably accessible to the possessor. See *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000).

At the preliminary examination, the district court heard evidence that defendant, with the assistance of an unnamed boy, entered Dale Sanders' home at 4:30 a.m. through her dining room window. Once inside the home, defendant and the boy removed a television. The television was a gift given to Sanders' granddaughter, Dalmarshay, by her father. Dalmarshay lived with her grandmother and knew defendant from the neighborhood. At the preliminary examination, Sanders testified that she never gave defendant permission to take the television, and she explained that, prior to the incident, she told defendant that she was not welcome in her home. Dalmarshay did not testify at the preliminary examination.

The only issue before this Court is whether the district court abused its discretion when it bound defendant over on the basis that probable cause existed to support a finding that defendant took the television without the consent and against the will of the "owner" of the television. Despite defendant's characterization of the issue, the prosecution was not required to prove that Dalmarshay did not give defendant permission to take the television. Rather, the prosecution was required to proffer evidence that the property was taken "without the consent and against the will of the owner." *Cain*, 238 Mich App at 120. The district court's decision to bind defendant over on a charge of first-degree home invasion did not constitute an abuse of discretion because the court's determination was based on the correct interpretation of the underlying crime of larceny. To commit larceny, a defendant does not have to take the item exclusively without the permission of the actual titleholder. Rather, an "owner" includes someone who has "rightful possession and control of the property," or someone whose consent was required before the property could be taken. *Sheldon*, 208 Mich App at 334-335; CJI2d 22.2.

Here, it is undisputed that Sanders owned the home where Dalmarshay's television was located. As the homeowner, Sanders had rightful possession and control of her minor granddaughter's television. See *Flick*, 487 Mich at 14; see also *Burgenmeyer*, 461 Mich at 438. Sanders thus was the "owner" of the television in the context of the underlying crime of larceny. Consequently, when defendant broke into Sanders' home at 4:30 a.m. and took the television, the property was taken from its "owner." The prosecution further presented evidence that Sanders did not consent to defendant's removal of the television, and that it was taken against her will. We conclude that the district court did not abuse its discretion in binding defendant over on a charge of first-degree home invasion because the decision did not fall outside the range of principled outcomes.

Reversed.

/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra