

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellant,

UNPUBLISHED  
December 17, 2013

v

JAY DEAIREONTA LIDDELL,  
  
Defendant-Appellee.

No. 311912  
Genesee Circuit Court  
LC No. 12-030463-FH

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Before: BOONSTRA, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

The prosecution appeals as of right the circuit court's order granting defendant's motion to quash the bindover and dismiss defendant Jay Liddell's criminal charge of carrying a concealed weapon in an automobile, MCL 750.227(2). The prosecution also appeals the circuit court's order denying its motion for reconsideration. We reverse and remand to the circuit court for reinstatement of the charge against defendant.

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

Michigan State Police Troopers Steven Skrbec and Rick Kane stopped a vehicle for speeding sometime after midnight on July 3, 2011. Defendant was a passenger in the vehicle, and the vehicle was not registered to him. A pistol was found on the floor of the vehicle in front of defendant, underneath and touching defendant's feet. Defendant was charged with carrying a concealed weapon in an automobile, MCL 750.227(2).

At the preliminary examination, Skrbec testified that during the traffic stop he discovered the handle of a gun "protruding from under [defendant's] feet." According to Skrbec, the gun was on the "floor board" of the vehicle, "directly in front of" defendant. Skrbec testified that the gun was touching defendant's feet and that Skrbec did not "see any way [that] he would not have known that it was there." The gun was not registered to defendant, and defendant did not possess any ammunition or holster at the time of the traffic stop. At the conclusion of Skrbec's testimony, the defense argued that there was not probable cause to bind defendant over because there was no evidence that defendant knew the gun was in the vehicle or that he possessed or controlled it. The district court found that Skrbec's testimony was credible and that the gun was found underneath defendant's feet. Accordingly, the district court held that the gun was "in close enough proximity that it was tantamount to constructive possession." Thus, the district

court found that the prosecution established probable cause that defendant had committed the crime of carrying a concealed weapon, and it bound the case over to the circuit court.

Defendant subsequently moved the circuit court to quash the bindover and dismiss the criminal charge on the ground that there was insufficient evidence presented at the preliminary examination to establish that defendant knew the weapon was in the vehicle and that defendant carried the weapon. The circuit court found that there was insufficient evidence that defendant carried the weapon, and it quashed the bindover and dismissed the charge, stating:

[T]he only evidence that they have is that the gun was located near [] defendant at the time that he was stopped in the car but he was not driving. The car did not belong to him. And there's—there's no other evidence submitted whatsoever to show that [] defendant had any control or possession of the gun. Whether he had constructive possession or actual possession. There's no evidence in the record one way or the other on this point. All we have is a gun that's found near his feet.

## II. STANDARD OF REVIEW

A circuit court's decision on a motion to quash a bindover is reviewed de novo. *People v Crippen*, 242 Mich App 278, 282; 617 NW2d 760 (2000). This Court reviews bindover challenges to determine whether the district court abused its discretion by finding probable cause that the defendant committed the charged offense. *Id.* We review a trial court's decision to dismiss criminal charges against a defendant for an abuse of discretion. *People v Stone*, 269 Mich App 240, 242; 712 NW2d 165 (2005). We accord no deference to the circuit court's decision with respect to a motion to quash; we therefore need not address the prosecution's argument that the circuit court applied the incorrect standard of review when deciding defendant's motion to quash. See *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000).

## III. DISCUSSION

To prove the charge of carrying a concealed weapon in an automobile, a prosecutor must present evidence that (1) there was a weapon in the vehicle at the time the defendant operated or occupied the vehicle, (2) the defendant knew that the weapon was in the vehicle, and (3) the defendant carried the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). A defendant "carries" a weapon for purposes of the crime of carrying a concealed weapon when he has actual or constructive possession of it. *People v Adams*, 173 Mich App 60, 62; 433 NW2d 333 (1988). A defendant has actual possession of an object when he knowingly has direct physical control over it. *People v Flick*, 487 Mich 1, 15; 790 NW2d 295 (2010).

At the preliminary examination, Skrbec testified that, during the traffic stop, he noticed the handle of a gun "protruding" from underneath defendant's feet. Skrbec further testified that the gun was directly in front of defendant and touching his feet. Upon further inspection, it was discovered that there was, in fact, a functional .45 caliber, semi-automatic pistol on the floor of the vehicle. Because defendant's feet were on top of the gun and touching it, Skrbec testified that he did not believe that there was any way that defendant would not have known that it was there. We find that the evidence presented at the preliminary examination was sufficient for a

“person of ordinary caution and prudence” to have a reasonable belief that defendant knew that the gun was present in the vehicle and that he carried, meaning actually possessed, the weapon.<sup>1</sup> Therefore, because the district court did not abuse its discretion by determining that probable cause existed to support the bindover, we find that the circuit court erred by granting defendant’s motion to quash the bindover. *Crippen*, 242 Mich App at 282. Accordingly, we further find that the circuit court abused its discretion by dismissing defendant’s criminal charge. *Stone*, 269 Mich App at 242. Similarly, we hold that the circuit court abused its discretion in denying the prosecution’s motion for reconsideration. See *People v Walters*, 266 Mich App 341, 350; 700 NW2d 424 (2005). We reverse the circuit court’s order quashing the bindover and dismissing defendant’s criminal charge, and we remand this case to the circuit court for reinstatement of the criminal charge.

Reversed and remanded to the circuit court for reinstatement of the charge against defendant. We do not retain jurisdiction.

/s/ Mark T. Boonstra  
/s/ Pat M. Donofrio  
/s/ Jane M. Beckering

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<sup>1</sup> We note defendant’s argument that the prosecution failed to present evidence that defendant knew that he was touching a gun. Defendant points to the fact that it was dark at the time of the stop and that there may have been debris on the floor of the vehicle. However, we find that, at most, this evidence creates a question of fact for the jury. Because, when deciding whether probable cause exists to bind a defendant over, the district court must let the factfinder resolve questions of fact, *People v Hudson*, 241 Mich App 268, 278; 615 NW2d 784 (2000), we find that the district court did not abuse its discretion by determining that the prosecution presented sufficient evidence on this element.