

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ERIC CORNELIUS HOLIMAN,

Defendant-Appellee.

UNPUBLISHED

June 12, 2012

No. 304135

Wayne Circuit Court

LC No. 10-011297-FH

Before: DONOFRIO, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

The prosecution appeals by right orders granting defendant's motion to quash the information and to dismiss charges of conducting or participating in a criminal enterprise, MCL 750.159i, possessing another's financial transaction device with intent to use (four counts), MCL 750.157p, and using a computer to commit a crime, MCL 752.796. We reverse and remand to the circuit court for proceedings consistent with this opinion.

I. FACTS

The charges in the instant case arose from defendant's alleged use of the A. Phillip Randolph Career Center's Sam's Club membership and credit account. According to Lorene Rome, an employee at Sam's Club located in Southfield, Michigan, Eugenia Holimon, defendant's mother, opened a business membership at Sam's Club, on behalf of the Career Center, a Detroit Public School. Defendant's mother was a Detroit Public Schools (DPS) employee and the Career Center authorized a business credit account with Sam's Club. Defendant's mother added defendant as a user on the Career Center's Sam's Club membership and credit account. Defendant obtained a Sam's Club membership card, which displayed his name and photo as identification. The card also displayed the Career Center's name.

Rome testified that defendant's mother, as the Career Center's primary card holder, was authorized by Sam's Club to add defendant to the account. However, according to Almon

Turner, Director of Cash Management for DPS, defendant was not a DPS employee, and thus, was not authorized to use DPS's credit account at Sam's Club.¹

From August of 2008 through July of 2010 defendant made multiple purchases from several Sam's Club locations using the Sam's Club card associated with the Career Center. These purchases totaled approximately \$6,448.50, and were charged to the Career Center's Sam's Club credit account. According to Joe Jackson, of the DPS Inspector General's office, the purchases were ultimately paid for by the Career Center.

At the bindover hearing, the district court ruled that there was probable cause to believe that defendant committed the charged offenses, and bound defendant over for trial. Defendant filed a motion to quash the information, arguing that there existed no probable cause because the prosecution failed to present specific evidence that defendant knowingly or intentionally committed the crimes with which he was charged.

At the motion hearing, the circuit court found that it was undisputed that defendant's mother was authorized by DPS to open the Career Center's Sam's Club account. The circuit court reasoned that the prosecution was required to present some evidence that defendant knew that his mother did not have the authority to allow him to use the account, or that defendant knew that when making purchases with the Sam's Club Card he was committing crimes. In the circuit court's view, the prosecution failed to produce such evidence. The circuit court granted defendant's motions to quash the information and to dismiss the charges without prejudice.

II. STANDARD OF REVIEW

"This Court reviews a trial court's decision on a motion to quash the information for an abuse of discretion."² A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes.³ However, "to the extent that a lower court's decision on a motion to quash the information is based on an interpretation of the law, appellate review of the interpretation is de novo."⁴

¹ Defendant's mother was charged separately for crimes arising from the same facts which gave rise to the instant case. At oral argument, the prosecutor indicated that defendant's mother's case has been resolved separately.

² *People v Miller*, 288 Mich App 207, 209; 795 NW2d 156 (2010).

³ *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008).

⁴ *Miller*, 288 Mich App at 209.

III. ANALYSIS

The prosecution argues that the circuit court erred when it granted defendant's motion to quash. We agree.

The rules governing a district court's bindover decision are well established. "The district court must bind the defendant over for trial if, at the conclusion of the preliminary examination, the district court finds probable cause to believe that the defendant committed the crime."⁵ "Probable cause requires a quantum of evidence 'sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief' of the accused's guilt."⁶ In making the bindover determination, "the magistrate may not weigh the evidence to determine the likelihood of conviction, but must restrict his or her attention to whether there is evidence regarding each of the elements of the offense, after examining the whole matter."⁷ To that end, "[c]ircumstantial evidence and reasonable inferences arising from the evidence are sufficient to support the bindover of the defendant if such evidence establishes probable cause."⁸ Indeed, even minimal circumstantial evidence is sufficient to prove intent because of the difficulty in proving a defendant's state of mind.⁹

The circuit court's sole basis for granting defendant's motion to quash was its determination that the prosecution had not presented sufficient evidence that defendant knew he was not authorized to make purchases using the Sam's Club card.¹⁰ Accordingly, the circuit court reasoned that there was no evidence that defendant knew he may have been committing crimes when he used the card. Specifically, the circuit court found that:

⁵ *People v Orzame*, 224 Mich App 551, 558; 570 NW2d 118 (1997).

⁶ *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).

⁷ *People v Greene*, 255 Mich App 426, 444; 661 NW2d 616 (2003) (citations omitted).

⁸ *Id.*

⁹ *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

¹⁰ Regarding the dissent's concern that "there was no evidence that defendant used a computer to make any of the suspect purchases," we note that the issue of whether the "ordinary use of a modern cash register that performs to some degree as a computer" qualifies as the use of a computer within the meaning of MCL 752.796 was not raised by the parties below or on appeal. Accordingly, it is not properly raised *sua sponte*. Indeed, "the Michigan Court of Appeals functions as a court of review that is principally charged with the duty of correcting errors that occurred below and thus should decline to address unpreserved issues." *Burns v City of Detroit (On Remand)*, 253 Mich App 608, 615; 660 NW2d 85 (2002) (citations omitted). Moreover, a review of the motion hearing transcript makes clear that the circuit court believed that the prosecution had produced evidence regarding *actus reus*, and that its sole basis for granting defendant's motion to quash was its belief that insufficient evidence had been produced with regard to *mens rea*. We therefore confine our analysis to this issue.

[T]here's got to be something in the record establishing that this defendant took the card and used the card, and did that with the knowledge that that cardholder didn't have authority to give that to him. There's nothing in the record that says that. . . . [M]ens rea is not in [the bindover hearing] transcript.

However, the prosecution did present circumstantial evidence of defendant's intent. Accordingly, bindover was proper. The Sam's Club card given to defendant displayed his name, his photo, and the Career Center's name. In other words, the card itself contained an indication that when defendant made purchase with the card, those purchases would be made on behalf of the Career Center, and therefore, on behalf of DPS. Defendant was not a DPS employee; his mother was. It can therefore be reasonably inferred that defendant knew that he was not authorized to use the card, but did so anyway. Accordingly, it can be reasonably inferred that he possessed the requisite mens rea for the charged offenses. Although the prosecution's evidence of intent was minimal, minimal circumstantial evidence is sufficient to establish intent.¹¹ In short, the prosecution presented evidence "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief" of defendant's guilt.¹²

The inquiry at the bindover phase is merely whether there exists probable cause on each element of the offense to bind a defendant over for trial. Here, there was. The inquiry at the bindover phase is not whether there is sufficient evidence to convict a defendant beyond a reasonable doubt.¹³ That is a question for the jury, not for this Court or the circuit court. Indeed, "[w]here preliminary examination evidence conflicts or raises a reasonable doubt regarding the defendant's guilt, the question is properly left to the jury at trial and bindover is required."¹⁴

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Pat M. Donofrio

/s/ Kathleen Jansen

¹¹ *McRunels*, 237 Mich App at 181.

¹² *Justice*, 454 Mich at 344.

¹³ *Greene*, 255 Mich App at 444.

¹⁴ *People v Honeyman*, 215 Mich App 687, 692; 546 NW2d 719 (1996).