

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LOUISE EDWARDS,

Defendant-Appellee.

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UNPUBLISHED

March 30, 2006

No. 257295

Wane Circuit Court

LC No. 03-500088

Before: Cooper, P.J., and Jansen and Markey, JJ.

COOPER, P.J. (*dissenting*).

I must respectfully dissent from the majority opinion because I find the prosecution did not present sufficient evidence to support a finding of probable cause on all elements of the crime charged.

Defendant is charged with uttering and publishing a forged instrument, the elements of which are: “(1) defendant’s knowledge that the instrument was false, (2) an intent to defraud, and (3) presenting the forged instrument for payment.” *People v Knowles*, 256 Mich App 53, 58; 662 NW2d 824 (2003). The only witness presented at the preliminary examination was Pecola Johnson, the bank teller with whom defendant attempted to cash the check at issue. Johnson testified that the check was drawn on the account of Leroy Craig, was made out to and endorsed by defendant, and included the word “roof” written in the remitter line. She testified she was familiar with Leroy Craig and that she contacted him because she believed the signature on the check was not his. She testified that Craig told her he had not written the check, did not know defendant, and had not had any work done on his roof.

These statements are all out of court assertions offered to prove the truth of the matter asserted, and so are plainly hearsay. MRE 801(c). The only applicable exception to the rule excluding hearsay is MRE1101(b)(8), which provides “[a]t preliminary examinations in criminal cases, hearsay is admissible to prove, with regard to property, the ownership, authority to use, value, possession, and entry.” This exception may allow the hearsay statements that Craig did not sign the check or authorize defendant to cash it, as evidence relating to ownership of and authority to use property. It does not, however, support admission of the hearsay statements that Craig did not know defendant or that he had not had work done on his roof. Absent those statements, no reasonable inferences support a finding that defendant knew the instrument was false or intended to defraud when she presented it for payment. Even if these statements could be considered as evidence, they do not speak directly to what defendant knew or intended. Both

the district and circuit court correctly found the evidence presented at the preliminary hearing was therefore insufficient to support a finding of probable cause on all elements of the crime charged.

The standard of review in a case of this nature is somewhat convoluted: “This Court's review of the circuit court's analysis of the bindover process is de novo. We must redetermine if the magistrate committed an abuse of discretion in finding probable cause to believe that the defendant committed the offense charged.” *People v McBride*, 204 Mich. App. 678, 681; 516 N.W.2d 148 (1994). Rather than reviewing the circuit court decision then, we are to stand in the shoes of the circuit court and review the decision of the trial court following an abuse of discretion standard. Given that standard of review and the level of deference it implies to the original arbiter, I cannot find on these facts that the trial court erred.

I would affirm.

/s/ Jessica R. Cooper