

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

THELTON F. STUCKEY III.,

Defendant-Appellee.

UNPUBLISHED

April 30, 1999

No. 211802

Wayne Circuit Court

LC No. 98-002007

Before: Gage, P.J., and Gribbs and Hoekstra, JJ.

MEMORANDUM.

The people appeal by right from the trial court's order granting defendant's motion to quash the information charging one count of first-degree murder, MCL 750.316; MSA 28.548, three counts of assault with intent to commit murder, MCL 750.83; MSA 28.278, and one count of felony-firearm, MCL 750.227b; MSA 28.424(2). We reverse and remand for reinstatement of the charges.

Reviewing the trial court's decision de novo to determine whether the examining magistrate's bindover decision was an abuse of discretion wholly unjustified by the preliminary examination record, we conclude the trial court erred in quashing the information because the magistrate's decision is justified by competent evidence. *People v Northey*, 231 Mich App 568, 574-575; ___ NW2d ___ (1998), lv den 459 Mich 932 (1998).

With regard to the murder charge, the fact that several bullet casings at the murder scene were matched to an AK-47 gun in defendant's possession is fairly strong circumstantial evidence that defendant was involved in the shooting, especially since defendant was found with the AK-47 one block north of the murder location approximately two minutes or less after the fatal shooting occurred. While two other kinds of ammunition were also found at the murder site, an eyewitness indicated that only one AK-47 and one handgun, possibly a nine millimeter, were used in the shooting. To the extent the eyewitness' testimony indicates that two shooters were acting in concert, it is unnecessary for the prosecution to prove which shooter's weapon actually fired the fatal shots. See, e.g., *People v Brown*, 184 Mich App 567, 571; 459 NW2d 19 (1990), lv den 437 Mich 874 (1990); *People v Espinosa*, 142 Mich App 99, 105; 369 NW2d 265 (1985), lv den 424 Mich 855 (1985).

As for the assault with intent to murder charges, a police officer gave eyewitness testimony that the defendant turned and fired a couple of shots from his AK-47 at the three police officers at the location nearby the murder where defendant was apprehended. Although no spent AK-47 ammunition was found at that location to corroborate the officer's testimony, this may be viewed as a question of witness credibility for the factfinder to resolve at trial.¹ The same is true of the discrepancies in the descriptions provided by the eyewitness to the murder, as well as his admitted inability to identify defendant in court. Where competent evidence is presented both supporting and negating an inference that the defendant committed the crime, the issue should be left to the trier of fact at trial. *People v Northey, supra*.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Hilda R. Gage

/s/ Roman S. Gibbs

/s/ Joel P. Hoekstra

¹ Indeed, there are several arguable explanations for this, e.g., the police over looked the casings at that location or the gun somehow misfired.