

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOSEPH SALAMEY,

Defendant-Appellee.

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UNPUBLISHED  
February 1, 2000

No. 213723  
Recorder's Court  
LC No. 98-002137

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ELIAS RAYYAN, MAJED RAYYAN and ALI  
SABRA,

Defendants-Appellees.

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No. 213724  
Recorder's Court  
LC No. 98-002144

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NADIA CHAMMOUT and SAM SALAMEY,

Defendants-Appellees.

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No. 213725  
Recorder's Court  
LC No. 98-001361

Before: White, P.J., and Sawyer and Griffin, JJ.

PER CURIAM.

The prosecution appeals as of right from six separate orders of dismissal. On July 15, 1998, defendants Joseph Salamey's, Elias Rayyan's, Majed Rayyan's, Ali Sabra's, Nadia Chammout's and Sam Salamey's motions to dismiss were granted without prejudice. We reverse and remand.

The prosecution first argues that the circuit court erred when it granted defendants' motions to dismiss after they had waived their rights to a preliminary examination. We agree. Our review of a circuit court's ruling on a motion to dismiss is for an abuse of discretion. *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44 (1998).

In *People v White*, 147 Mich App 31, 36; 383 NW2d 597 (1985), this Court was presented with a factual scenario which is similar to the present case. The defendant waived his right to a preliminary examination and then moved to dismiss in the circuit court. The circuit court dismissed most of the pending charges against the defendant. However, this Court reversed:

We find that the trial court erred in dismissing the conspiracy count . . . . First, the trial court had no evidence to review since defendant White waived the preliminary examination. The record of [the] codefendant[s] preliminary examination could not be used in ruling on White's motion to dismiss. [*Id.* at 36.]

Applying the holding in *White* to the present case, the circuit court abused its discretion when it granted defendants' motions to dismiss based on the insufficiency of the evidence to support the charges. Similar to *White*, the circuit court in the present case had no evidence to review because defendants had waived their rights to a preliminary examination. Furthermore, when it ruled on the motions to dismiss, the circuit court could not use the preliminary examination testimony of a codefendant that chose to have a preliminary examination when defendants waived their rights to a preliminary examination. *White, supra*. The prosecutor's statement that the preliminary exam evidence would be substantially the same does not constitute an admission that the evidence was identical or that the waiving defendants would be able to challenge the bindover by relying on the record that was made at the other defendant's preliminary exam. Therefore, the circuit court abused its discretion when it granted defendants' motions to dismiss.

The prosecution also argues on appeal that the circuit court erred when it found that application of the Tobacco Products Tax Act, MCL 205.421 *et seq.*; MSA 7.411(31) *et seq.*, to defendants was unconstitutional. We agree. Our review of the circuit court's decision reveals that it was confused as to the crimes with which defendants were charged. The circuit court's ruling demonstrates that it believed defendants had been charged with failing to pay a tax on cigarettes. However, a review of the felony information demonstrates that defendants were charged with either conspiracy to violate the Tobacco Products Tax Act, MCL 750.157a; MSA 28.354(1); MCL 205.428(2); MSA 7.411(38)(2), and/or with possession of tobacco which was improperly marked and without the proper invoices or licenses, MCL 205.428(2); MSA 7.411(38)(2); MCL 205.426(6); MSA 7.411(38)(2). Defendants were never charged with failing to pay a tax. Therefore, the circuit court's finding that the statute, as applied

to defendants, was unconstitutional is erroneous because defendants were never charged under the statute upon which the circuit court apparently ruled.

Reversed and remanded.<sup>1</sup> We do not retain jurisdiction.

/s/ Helene N. White

/s/ David H. Sawyer

/s/ Richard Allen Griffin

<sup>1</sup> The issues raised by defendant Salamey in his brief were not raised below and therefore are not preserved for appellate review. *People v Hoffman*, 205 Mich App 1, 14; 518 NW2d 817 (1994).