

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRELL HOWARD,

Defendant-Appellant.

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UNPUBLISHED

April 25, 2000

No. 212110

Wayne Circuit Court

Criminal Division

LC No. 97-006850

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction after a bench trial of carrying a concealed weapon in a motor vehicle, MCL 750.227; MSA 28.424. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that he was denied the effective assistance of counsel when counsel failed to move to quash the bindover after the magistrate found questions as to the credibility of the arresting officer's testimony. We disagree.

To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard or reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's assistance constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

There is no showing that defendant was prejudiced by counsel's failure to move to quash the bindover. The decision to bind a defendant over is reviewed for abuse of discretion. *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997). In a preliminary examination, a district court's function is to determine whether the evidence is sufficient to cause an individual to have a reasonable belief that the defendant is guilty. *Id.* Although the magistrate may weigh the credibility of the witnesses, if the evidence conflicts or raises a reasonable doubt, the defendant should be bound over

for resolution of the questions by the trier of fact. *People v Goecke*, 457 Mich 442, 469-470; 579 NW2d 868 (1998).

There is no showing that a motion to quash would have been successful. The magistrate may have entertained questions as to what actually happened during the incident, but the officer's testimony established that defendant possessed a concealed weapon in his car. Even if the magistrate made an erroneous conclusion that sufficient evidence was presented at the preliminary examination, that decision is rendered harmless by the presentation at trial of sufficient evidence to convict. *People v Meadows*, 175 Mich App 355, 359; 437 NW2d 405 (1989).

Defendant was not denied the effective assistance of counsel where he was not prejudiced by counsel's failure to move to quash. *Pickens, supra*.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski