

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHARLES DUNBAR,

Defendant-Appellee.

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UNPUBLISHED

May 9, 2000

No. 221978

Muskegon Circuit Court

LC No. 99-043156 FY

Before: Wilder, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order granting defendant's motion to quash based on the violation of defendant's due process rights through multiple preliminary examinations. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with multiple drug crimes, and a preliminary examination was held February 10, 1999, before a retired visiting judge who was filling in for the assigned judge. The arresting officer testified that he confronted defendant based on information received from a confidential informant, and that when he asked defendant to take his hands out of his pockets, defendant dropped plastic bags containing marijuana and crack cocaine. On cross-examination, defense counsel asked the officer at what time the informant conveyed his information to the officer. The court overruled the prosecutor's objection, and found that proximity in time was relevant to an element of probable cause. When the court denied the prosecutor the opportunity to obtain authority for his position, the prosecutor dismissed the charges.

Charges were refiled immediately, and a second preliminary examination was held before a different judge on February 23, 1999. Defendant objected to the proceedings, arguing that the case should be heard by the visiting judge. Defendant declined the opportunity for a hearing before the original assigned judge. The prosecutor presented the same evidence, and cited no legal authority to support the limitation on cross-examination. Defendant was bound over as charged. The circuit court granted defendant's motion to quash, finding that the repeated preliminary examinations without new evidence deprived defendant of due process of law.

MCR 6.110(F) provides for limitations on repeated preliminary examinations only if the court determines that probable cause does not exist. If the court makes such a finding, a subsequent preliminary examination must be held before the same judicial officer and the prosecutor must present additional evidence to support the charge. This rule is inapplicable where the charge was dismissed prior to a probable cause determination.

In addition to the provisions of the court rule, subjecting a defendant to repeated preliminary examinations violates due process if the prosecutor attempts to harass the defendant or engage in judge-shopping. *People v Robbins*, 223 Mich App 355; 566 NW2d 49 (1997). Among the factors to be considered in determining whether a due process violation has occurred are the reinstitution of charges without additional, non-cumulative evidence not introduced at the first preliminary examination, the reinstitution of charges to harass, and judge-shopping to obtain a favorable ruling. *People v Vargo*, 139 Mich App 573, 578; 362 NW2d 840 (1984).

The circuit court did not clearly err in finding that defendant's due process rights were violated in this case. Where the prosecutor did not present any additional evidence, and did not cite any legal authority for his argument, he presented exactly the same case to two different judges. The circuit court could reasonably conclude that the prosecutor engaged in impermissible judge-shopping. *Id.*; *People v George*, 114 Mich App 204; 318 NW2d 666 (1982).

Affirmed.

/s/ Kurtis T. Wilder  
/s/ David H. Sawyer  
/s/ Jane E. Markey