

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MELVIN W. SPENCER,

Defendant-Appellee.

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UNPUBLISHED

September 29, 2000

No. 223813

Kent Circuit Court

LC No. 99-007108-FH

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

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion to quash his bindover on a charge of larceny by conversion. MCL 750.362; MSA 28.594 We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review the circuit court's decision on a bindover challenge de novo. *People v Coutu (On Remand)*, 235 Mich App 695, 708; 599 NW2d 556 (1999). We must determine whether the district court abused its discretion in deciding whether the prosecution established probable cause to believe that the defendant committed the charged offense. *Id.* A defendant must be bound over if evidence is presented at the preliminary examination that a crime has been committed and there is probable cause to believe that defendant was the perpetrator. *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996). There must be some evidence from which each element of the crime may be inferred. *Coutu (On Remand)*, *supra* at 708.

Defendant's mother, Florence B. Cooper, died in March 1997. She owned a home at 1111 Franklin in Grand Rapids, unencumbered. Heirs to the estate were defendant, his sister, Amelia Franklin, and his brother, Alfred Gant. Defendant retained attorney Ronald C. Love, commenced probate proceedings, and had himself appointed personal representative of the estate.

Testimony at the preliminary examination included that of Tony Nelson, an employee of B & P Mortgage, who testified that defendant applied for a \$30,500 mortgage on the Franklin Street property, which had been appraised at \$61,000, and that the property was owned by defendant, Gant, and Franklin. Nelson testified that he told defendant that the property had to be in his name alone in order

to obtain the loan, and his siblings thus had to quit claim their interests in the property to him. Nelson testified that defendant brought in a man and woman whom he represented to be his brother and sister, and that they quit claimed the property to defendant. At the continuation of the preliminary examination, the district court admitted as an exhibit an excerpt of a Kent County Probate Court May 5, 1998 hearing on defendant's petition for determination of funds, at which defendant testified that he signed the mortgage documents and received about \$26,000. Defendant testified that he had not had a chance to make any of the mortgage payments on the house before he was arrested for carrying a concealed weapon in his automobile. The probate court inquired of defendant about a bank account, stating that "You've got \$13,000.00 you put in an account in your own name, \$10,000.00 written to Harvey Cadillac, and \$3,000.00 in cash withdrawn, right?" Defendant answered affirmatively. Defendant testified that the Cadillac he'd purchased for \$10,000 was repossessed when he went to jail.

Gant testified at the preliminary examination that he had been in prison since 1988, and that the signature on the quit claim deed purporting to be his was not his. Gant testified that he had not given defendant written permission to use his signature, that he had given his sister "a limited power of attorney," and that he had told his sister that defendant could utilize his name "to clear up the issues surrounding the estate," but did not give her permission to tell defendant that he could take proceeds of the estate.<sup>1</sup> Gant testified that he had received no monies. Defendant's sister did not testify.<sup>2</sup>

Defendant's former counsel, Ronald C. Love, testified at the preliminary examination that he sent defendants' siblings copies of the paperwork regarding the property and that Gant then contacted him and advised that the signature purporting to be his on the warranty deed was not his. Love testified that he then notified the probate court and petitioned to withdraw as attorney for defendant.

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<sup>1</sup> The record contains an affidavit of Gant, dated November 5, 1997, stating that he did

hereby swear [sic] that Melvin William Spencer has used forgery to gain access to the title of property located at 1111 Franklin, namely by signing my name to a waiver form for the offices of Ronald C. Love attorney at law. This forgery has put said property in danger.

The affidavit was obtained by defendant's former counsel, Ronald C. Love, who sent it and a letter from Amelia Franklin, see n 2, to the Kent County Probate Court with a letter dated November 19, 1997. Love carbon copied his letter and defendants' siblings affidavit and letter to the special fiduciary appointed to the case, attorney Daniel Kozera.

<sup>2</sup> Franklin lived in New Jersey. The record contains a letter from her to attorney Ronald C. Love, dated November 5, 1997, which stated:

This letter is to inform you that I Amelia Faye Franklin did not sign or affix my name to or agree upon any waiver consent form in reference to the Estate of Florence B. Cooper. Please advise any and all concerned parties as to this statement.

The elements of larceny by conversion are: (1) property of value of another was delivered to defendant, (2) defendant converted the property to his own use, 3) at the time of the conversion defendant intended to defraud or cheat the owner permanently, and (4) the conversion was without the consent of the owner. *People v Miciek*, 106 Mich App 659, 663-664; 308 NW2d 603 (1981); *People v Scott*, 72 Mich App 16, 19; 248 NW2d 693 (1976).

There is no dispute that defendant was not entitled to all of the proceeds of his mother's estate. Defendant had title to his mother's home placed in his name alone, mortgaged the property and then took all of the proceeds, approximately \$26,000, into his own control, and spent \$10,000 on a Cadillac for himself. Although the record contains defendant's testimony in the probate court that he used part of the money for maintenance and improvement of the house, no supporting proofs were entered into evidence, and the evidence presented also supports an inference that defendant appropriated the mortgage proceeds to his own use. One could infer from Gant's testimony at the preliminary examination that he did not give his consent to defendant to dispose of assets of the estate. Evidence was presented from which defendant's intent to defraud permanently could be inferred, including that defendant had two persons pose as his siblings and sign the quit claim deed, and that he spent \$10,000 of the money on a car for himself.

We conclude that the district court did not abuse its discretion in finding that there was sufficient evidence to find probable cause of a larceny by conversion.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White