

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL CLEMONS,

Defendant-Appellee.

UNPUBLISHED

December 12, 2000

No. 216566

Oakland Circuit Court

LC No. 97-150677-FH

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

The Oakland County Prosecutor appeals as of right from a circuit court order granting defendant's motion to quash an information charging him with one count of first-degree home invasion, MCL 750.110a; MSA 28.305(a). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court's review of the circuit court's analysis of the bindover process is de novo. This Court must redetermine if the magistrate committed an abuse of discretion in finding probable cause to believe that the defendant committed the offenses charged. This Court decides whether the evidence presented to the magistrate was sufficient to establish, as a matter of law, that the offenses charged had probably been committed by the defendant. There must be evidence of each element of the crime charged or evidence from which the elements can be inferred, although the evidence need not establish guilt beyond a reasonable doubt. *People v McBride*, 204 Mich App 678, 681; 516 NW2d 148 (1994). If the evidence conflicts or otherwise creates a reasonable doubt concerning defendant's guilt, the defendant should be bound over for resolution of the issue by the trier of fact. *People v Selwa*, 214 Mich App 451, 457; 543 NW2d 321 (1995).

The elements of the crime as charged are (1) the defendant broke and entered a dwelling or entered a dwelling without permission, (2) at the time he broke and/or entered the dwelling, the defendant intended to commit the crime of malicious destruction of property over \$100 (MDOP) in the dwelling, (3) while defendant was entering, present in, or exiting the dwelling, another person was lawfully present in the dwelling. MCL 750.110a(2); MSA 28.305(a)(2); CJI2d 25.2a; CJI2d 25.2c. The elements of MDOP are (1) the defendant destroyed or damaged

* Circuit judge, sitting on the Court of Appeals by assignment.

property belonging to someone else, (2) the defendant intended to damage or destroy the property knowing it was wrong to do so, and (3) the extent of the damage exceeded \$100. MCL 750.377a; MSA 28.609(1); CJI2d 32.2. The defendant's intent may be inferred from all the facts and circumstances of a case, *In re People v Jory*, 443 Mich 403, 419; 505 NW2d 228 (1993), including the nature, time, and place of the defendant's acts before and during the breaking and entering. *People v Hughes*, 27 Mich App 221, 222; 183 NW2d 383 (1970).

The evidence showed that the victim was lawfully inside a dwelling, it being her home. Her attached garage is considered a part of the dwelling. MCL 750.110a(1)(a); MSA 28.305(a)(1)(a). From the evidence that the lock on the garage door was broken and that defendant was seen exiting the garage with the tire iron, one could reasonably infer that defendant broke into the garage with the tire iron. At the very least, from the evidence that defendant was seen exiting the garage and that the victim had not given anyone permission to enter it, one could reasonably infer that defendant entered the garage without permission. From the evidence that the victim's vehicle had been in good condition before defendant appeared and had its windows broken after he was seen leaving the garage with the tire iron, one could reasonably infer that defendant damaged the vehicle, and the parties stipulated that the damage exceeded \$100. From the evidence that the victim had threatened to call the police, defendant's statement that she'd "be sorry" if she did, and the fact that he called and laughed at her immediately after she discovered the damage to her vehicle, one could reasonably infer that defendant entered the garage with the intent to damage the vehicle simply to aggravate the victim. Such evidence was sufficient to permit the district court judge to conclude as a matter of law that defendant probably committed the crime charged. Therefore, the district court did not abuse its discretion in binding defendant over for trial and the circuit court erred in quashing the information.

Reversed and remanded for reinstatement of the charge of first-degree home invasion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber