

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

D. JOHNNY LEROY STANLEY,

Defendant-Appellee.

UNPUBLISHED

April 20, 2001

No. 223373

Oakland Circuit Court

LC No. 99-166149-FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LOUIS EDWARD LAWS,

Defendant-Appellee.

No. 223377

Oakland Circuit Court

LC No. 99-166148-FH

Before: Saad, P.J. and Griffin and R. B. Burns, JJ.

PER CURIAM.

In these consolidated cases, a grand jury indicted defendants Johnny Leroy Stanley and Louis Edward Laws and charged them with conspiracy to deliver and/or possession with intent to deliver 650 grams or more of cocaine and/or heroin.¹ Following a preliminary examination, the district court bound Stanley over for trial on a charge of conspiracy to deliver 650 grams or more of cocaine and/or heroin,² and bound Laws over on a charge of possession with intent to deliver 250 to 650 grams of cocaine and/or heroin.³ Defendants filed motions to quash in the circuit

¹ MCL 750.157a; MSA 38.354(1), MCL 333.7401(2)(a)(i); MSA 14.15(7401).

² MCL 750.157a; MSA 38.354(1), MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i).

³ MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii).

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

court and, here, the prosecutor appeals as of right the circuit court's orders which granted defendants' motions to quash and which dismissed both cases. We reverse and remand for further proceedings.

I. Facts and Proceedings

At the preliminary examination, Eric Lee, an admitted drug dealer, testified that he knew Stanley because Stanley lived near Eric's grandmother. Eric sold drugs provided to him by his uncle, Roderick Lee, and stated that he had personal knowledge that Stanley sold drugs between 1990 and 1998. Although Eric acknowledged that he never saw Roderick give drugs to Stanley, he testified that Stanley told him that he received cocaine from Roderick and that Stanley talked to him about drugs and about receiving lower prices for drugs. Eric also said he heard Stanley say that he sold cocaine for Roderick. Further, Eric asserted that, on one occasion, Stanley acknowledged that he received approximately twenty-four ounces of cocaine from Roderick, but that he somehow fumbled the sale. Eric also testified that he often saw Stanley at Roderick's house between 1993 and 1996 and that, for a time, Stanley lived in a house owned by Roderick.

LaMark Northern, who lived next door to Stanley, testified that he knew someone who bought drugs from Stanley and that, in 1995, Roderick told him that he "fronted" Stanley eighteen or thirty-six ounces of narcotics. Northern also testified that Roderick told him that he would profit more from fronting narcotics to Stanley than by selling them to Northern.

With regard to Laws, Eric Lee testified that, on one occasion between 1992 and 1994, he saw Laws lay money on a table at the home of Roderick Lee in exchange for drugs. Eric testified that Roderick then retrieved a large sandwich bag from a kitchen cabinet where Eric knew Roderick stored cocaine. Roderick handed Laws a bag containing approximately sixteen ounces of a powdery substance that Eric believed was cocaine. Eric recalled that Laws gave Roderick at least \$10,000 for the drugs. Eric testified that he did not know whether Laws used cocaine but that the amount he purchased suggested that he intended to sell it. On a separate occasion in 1994 or 1995, Eric testified that he saw Laws count out between \$5,000 and \$10,000 and give the money to Roderick. Eric maintained that he thought that Roderick gave Laws heroin, but said he did not see the exchange. Later that day, Eric testified that Laws told him that heroin sold for \$40 a pack in Chicago and asked if Eric wanted to go to Chicago with him.

Based on Eric Lee's testimony and statements Stanley made to Lee and Northern, the district court found probable cause to bind Stanley over on a charge of conspiracy to deliver 650 grams or more of cocaine. The district court did not find probable cause to bind Laws over for conspiring to possess 650 grams or more of cocaine; however, it found probable cause to bind Laws over on a charge of delivery or possession with intent to deliver 225 to 650 grams of a mixture containing cocaine and heroin.

In their motions to quash, Stanley and Laws both argued that the district court abused its discretion in binding them over because Eric Lee was not a credible witness⁴ and because the

⁴ Laws also argued that the possession charge was barred by the statute of limitations because Eric testified to events that occurred from 1989 through 1991, which was more than six years prior to the indictment, an issue we address *infra*.

weight and competency of the evidence was insufficient to bind them over for trial. In deciding Stanley's motion, the circuit court found insufficient evidence to bind Stanley over and further opined that the prosecutor presented evidence "of such a weak nature, that it does not suffice to meet the standard for a bindover on this very serious charge." When considering Laws' motion, the circuit court found conflicts in Eric Lee's testimony and further opined that he was not a credible witness and that a jury would not believe his testimony.

II. Motion to Quash

The circuit court erred by granting defendants' motions to quash because the district court did not abuse its discretion in binding defendants over for trial on the conspiracy to deliver and possession charges. If the prosecutor shows probable cause that a crime has been committed and shows there is probable cause to believe the defendant committed it, the district court is required to bind over the defendant for trial. *People v Baugh*, 243 Mich App 1, 5; 620 NW2d 653 (2000); 6.110(E). In reviewing a district court's bind over decision, the circuit court considers the entire preliminary examination record to determine if the district court's decision constituted an abuse of discretion. *People v Crippen*, 242 Mich App 278, 281-282; 617 NW2d 760 (2000). The circuit court "may not substitute its judgment for that of the magistrate" and may only reverse if the record reflects an abuse of discretion. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997). This Court accords no deference to the circuit court's decision and we review the record de novo to determine whether the district court abused its discretion in binding the defendant over for trial. *Crippen*, *supra*, 242 Mich App 282; *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000).

"Circumstantial evidence and reasonable inferences derived from that evidence are sufficient to support a bindover." *People v Grayer*, 235 Mich App 737, 744 n 3; 599 NW2d 527 (1999). Here, prosecution testimony established that Roderick gave Stanley narcotics to sell, Stanley sold narcotics for Roderick, and Roderick profited from Stanley's drug sales. The testimony constituted competent evidence that Stanley conspired to possess with the intent to deliver narcotics. Further, the prosecutor presented competent evidence that Laws bought large amounts of narcotics from Roderick for thousands of dollars and that he intended to sell the narcotics. Accordingly, the district court was obligated to bindover both defendants for trial. *Baugh*, *supra*, 243 Mich App 5.

The circuit court erred by reversing the district court's bindover decisions because it found Eric Lee's testimony lacked credibility and consistency. Specifically, the circuit court ruled that "in this instance, [the court] does not find [Eric Lee] to be a credible witness and that a jury could not believe him." A district court "has the duty to pass judgment on the credibility of witnesses as well as the weight and competency of the evidence." *Crippen*, *supra*, 242 Mich App 282. Further, the district court is in a superior position to assess the credibility of witnesses who appear before it and, as noted above, a circuit court may not substitute its judgment for that of the district court on those issues. *Orzame*, *supra*, 224 Mich App 557. Therefore, the circuit court erred by reversing the district court's bindover decisions based on its impression of Lee's credibility based on the written transcript.

The circuit court also observed that Eric Lee gave conflicting testimony. The inconsistency asserted by Laws' defense counsel at the motion hearing was that Eric Lee testified

that Roderick retrieved the cocaine from the kitchen, but testified at a prior hearing that Roderick retrieved the cocaine from the back yard. The district court may not discharge a defendant even if the evidence raises a reasonable doubt regarding his guilt. *Crippen, supra*, 242 Mich App 282. “Even if the evidence conflicts or reasonable doubt exists concerning the defendant’s guilt, if the prosecutor shows probable cause that the defendant committed a felony, the district court is required to bind over the defendant and leave those issues for the trier of fact.” *Baugh, supra*, 243 Mich App 5; 6.110(E). Therefore, the district court could not dismiss the charges against Laws based on this inconsistency and the circuit court erred for reversing the district court’s bindover decision on this basis.

To find an abuse of discretion, a reviewing court must decide that the result was “so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias.” *Hudson, supra*, at 276. After plenary review of the record, we find no abuse of discretion by the district court in binding defendants over for trial on the charges set forth above. Accordingly, we reverse the circuit court’s orders granting Stanley and Laws’ motions to quash and remand with instructions to reinstate the charges against them.

III. Statute of Limitations

The prosecutor argues that the circuit court erred in concluding that the six-year statute of limitations expired on the charge against Laws. We agree.

Pursuant to MCL 767.24; MSA 28.964, an indictment for possession with intent to deliver 225 to 650 grams of cocaine must be filed within six years after the commission of the offense. The prosecutor filed the indictment on September 10, 1998; therefore, pursuant to MCL 767.24; MSA 28.964, the offense must have occurred after September 10, 1992. Eric Lee’s testimony established that Laws paid at least \$10,000 for a large sandwich bag of a powdery substance he believed was cocaine. Based on the quantity of the substance, approximately sixteen ounces, Lee presumed that Laws planned to sell the substance. Lee testified that the transaction occurred in the early 1990s and later stated that he thought it occurred in 1992, 1993, or 1994. Furthermore, Lee testified that, in 1994 or 1995, Laws gave Roderick between \$5,000 and \$10,000 and that, although he did not see Roderick give Laws narcotics, Lee inferred that Laws received heroin which he intended to sell in Chicago.

This testimony established that the crime charged occurred within the statutory six-year period. Accordingly, the district court did not abuse its discretion when it bound Laws over for trial on the charge of possession with the intent to deliver 225 to 650 grams of cocaine and/or heroin, and the circuit court erred in ruling that the charge was barred by the statute of limitations.

IV. Conspiracy Charge Against Laws

The prosecutor says that the circuit court erred when it denied his motion to amend the information and to reinstate the conspiracy charge against Laws. Specifically, the prosecutor challenges the circuit court’s determination that the district court did not abuse its discretion in dismissing the charge.

As our Supreme Court has observed, “[c]onspiracy is defined by common law as a partnership in criminal purposes” in which “two or more individuals must have voluntarily agreed to effectuate the commission of a criminal offense.” *People v Justice (After Remand)*, 454 Mich 334, 345-346; 562 NW2d 652 (1997) (citations omitted). The prosecutor may establish a conspiracy through the circumstances, acts, and conduct of the parties and reasonable inferences may be drawn therefrom. *Id.* at 347-348.

Based on our review of the evidence, we conclude that the district court abused its discretion when it determined that insufficient evidence supported a finding of probable cause with regard to the conspiracy charge. The evidence gives rise to an inference that Laws and Roderick had an agreement regarding the sale of narcotics and that this agreement continued through 1994 or 1995. Given the evidence and the inferences arising from it, there was no justification for the district court’s dismissal of the conspiracy charge, and the circuit court erred by failing to reinstate the charge.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Richard A. Griffin

/s/ Robert B. Burns