

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

NAVELLE DARREN MORRISON,

Defendant-Appellee.

UNPUBLISHED

September 18, 2001

No. 234011

Wayne Circuit Court

LC No. 01-000371

Before: Collins, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Defendant was charged in district court with possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv). Following defendant's preliminary examination, he was bound over for trial as charged. Defendant filed a motion to quash the bindover. The circuit court granted the motion and dismissed the charge. The prosecution appeals as of right. We reverse.

We review a district court's decision to bind over a defendant for an abuse of discretion. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000).

A circuit court's decision with respect to a motion to quash a bindover order is not entitled to deference because this Court applies the same standard of review to this issue as the circuit court. This Court therefore essentially sits in the same position as the circuit court when determining whether the district court abused its discretion. In other words, this Court reviews the circuit court's decision regarding the motion to quash a bindover only to the extent that it is consistent with the district court's exercise of discretion. The circuit court may only affirm a proper exercise of discretion and reverse an abuse of that discretion. Thus, in simple terms, we review the district court's original exercise of discretion. [*Id.* (Citations omitted).]

An abuse of discretion occurs when the result is so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias. *Id.*

To support conviction of possession with intent to deliver less than fifty grams of cocaine, the prosecution must prove four elements: (1) that the recovered substance is cocaine, (2) that the cocaine is in a mixture weighing less than fifty grams, (3) that defendant was not

authorized to possess the substance, and (4) that defendant knowingly possessed the cocaine with the intent to deliver. *People v Wolfe*, 440 Mich 508, 516-517, 489 NW2d 748, amended 441 Mich 1201 (1992). At a preliminary examination, however, the proofs adduced must only establish probable cause to believe that a crime was committed and probable cause to believe that the defendant committed it. *People v Goecke*, 457 Mich 442, 469; 579 NW2d 868 (1998). The proofs must be sufficient to cause an individual marked by discreetness and caution to have a reasonable belief that the defendant is guilty as charged. *People v Justice (After Remand)*, 454 Mich 334, 343; 562 NW2d 652 (1997). To establish that a crime has been committed, a prosecutor need not prove each element beyond a reasonable doubt, but must present some evidence of each element. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). Circumstantial evidence and reasonable inferences from the evidence can be sufficient. *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997). Here, only the possession element is at issue. The prosecution argues that it presented sufficient evidence to prove the element of possession and, thus, that the magistrate did not abuse her discretion in binding defendant over for trial.

It is well settled that possession may encompass both actual and constructive possession. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000); *People v Griffin*, 235 Mich App 27, 34; 597 NW2d 176 (1999). Constructive possession may be proven by circumstantial evidence and reasonable inferences drawn from the evidence. *Nunez, supra* at 615-616. The critical question is whether the defendant had dominion or control over the substance. *Griffin, supra*. Proximity to the drugs, mere presence on the property where drugs are located, or mere association, without more, with the person who controls the drugs or the property on which they are located is insufficient to support a finding of possession. *Id.* at 35. Instead, the totality of the circumstances must indicate a sufficient nexus between the defendant and the illicit substance in order for constructive possession to exist. *Id.*

We conclude that the totality of the circumstances supports a finding of probable cause with respect to the element of possession. *Goecke, supra*. The evidence presented at the preliminary examination established that Officers Todd Messineo and Tommy Bell, along with other officers, executed a search warrant at 2480 Buena Vista in Detroit. Messineo testified that he saw defendant sitting on a loveseat in the dining room of the flat. Directly in front of defendant, on a plate sitting on a milk crate, were several ziplock bags and some large chunks of what appeared to be cocaine. Codefendant Gerald Collins and defendant both ran from the dining room. As defendant rose from the loveseat and ran, he knocked over the milk crate and the drugs fell to the floor. The officers apprehended both men and subsequently confiscated the suspected drugs, gathering thirty-eight ziplock bags of cocaine, several loose chunks of cocaine, and five paper folds of white powder. In the area where defendant had been sitting, the police seized keys to the flat, a check stub with defendant's name and Social Security number on it, and a small amount of money. The officers also seized a large stack of bills from defendant's left front pocket.

Although the police report listed defendant's address as 2670 Leslie, rather than 2480 Buena Vista, the location of the raid, we disagree with the circuit court's conclusion that this fact, combined with the absence of drugs on defendant's person, rendered the magistrate's finding of probable cause an abuse of discretion. The standard is high, and we cannot conclude

that the magistrate's decision 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*.

Reversed.

/s/ Jeffrey G. Collins
/s/ William B. Murphy
/s/ Kathleen Jansen