

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NOLAND JOHNSON,

Defendant-Appellee.

UNPUBLISHED
February 24, 2004

No. 243655
Wayne Circuit Court
LC No. 02-008533

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s order granting defendant’s motion to quash the information and dismissing the charges without prejudice. We reverse and remand for reinstatement of the charges. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with two counts of assault with intent to commit murder, MCL 750.83, and one count of possession of a firearm during the commission of a felony, MCL 750.227b, following a shooting. At the preliminary examination a witness was asked to make an in-court identification of the person who fired the shots. The witness left the stand and pointed to a person who was not defendant. At that point defendant, who had been sitting in the spectator section of the courtroom, moved forward to take a seat at the defense table. In response to the prosecutor’s inquiries, the witness then recanted his initial identification and stated that defendant was the perpetrator. The victim was unable to identify the person who shot him. The district court bound defendant over as charged, concluding that the contradictions in the witness’s identification testimony should be resolved by the trier of fact.

In the trial court, defendant moved to quash the information on the ground that the witness could not provide an independent in-court identification of the perpetrator at the preliminary examination. The trial court granted the motion and dismissed the case without prejudice, concluding that the district court abused its discretion by binding defendant over for trial.

The purpose of a preliminary examination is to determine if probable cause exists to believe that a crime was committed and that the defendant committed it. MCL 766.13; MCR 6.110(E). During a preliminary examination, the prosecutor is not required to prove the defendant’s guilt beyond a reasonable doubt. However, the prosecutor must produce “evidence

of each element of the crime charged, or evidence from which the elements may be inferred.” *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). A magistrate should not discharge a defendant if the evidence conflicts or raises a reasonable doubt of guilt. Such questions should be left for the jury. *People v Drake*, 246 Mich App 637, 640; 633 NW2d 469 (2001). The decision to discharge or bind over a defendant is reviewed for an abuse of discretion. *People v Thomas*, 438 Mich 448, 452; 475 NW2d 288 (1991). The trial court may not substitute its judgment for that of the district court. *Drake, supra*, 639-640. We review de novo a trial court’s decision that the district court abused its discretion. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

We reverse the trial court’s order granting defendant’s motion to quash the information and dismissing the case, and remand with instructions to reinstate the charges against defendant. The witness’s identification testimony was not strong, and was contradictory in some respects. Nevertheless, the district court correctly concluded that such contradictions were for the jury to resolve, and that dismissal was not warranted simply because the evidence raised some doubt. *Drake, supra*, at 640. The trial court erred in substituting its judgment for that of the district court, *id.* at 639-640, and in concluding that the district court abused its discretion by binding defendant over for trial. *Thomas, supra*; *Orzame, supra*.

Reversed and remanded. We do not retain jurisdiction.

/s/ Peter D. O’Connell
/s/ Karen M. Fort Hood