

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UNPUBLISHED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.

COOPER, P.J. (*dissenting*).

I respectfully dissent from the majority opinion. The prosecution in this case failed to present sufficient evidence that defendant was the shooter. While Hobbs allegedly picked defendant out of a photographic line-up and testified that defendant was the assailant, this was belied by his identification of another individual at trial as the shooter. Indeed, as noted by the trial court, Hobbs was only able to subsequently identify defendant as the shooter following a litany of leading questions posed by the prosecutor. Further, Hobbs admitted that he did not get a very good look at the shooter.

A preliminary examination is conducted to determine whether probable cause exists to show that a crime was committed by the defendant.¹ The testimony in this case was clearly insufficient to cause a reasonable person to believe that defendant was the shooter.² Accordingly, I would find that the trial court properly held that the district court abused its discretion by binding defendant over for trial.

/s/ Jessica R. Cooper

¹ *People v Fiedler*, 194 Mich App 682, 689; 487 NW2d 831 (1992).

² *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003).