

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

WILLIAM DENNIS GABRIEL,

Defendant-Appellee.

UNPUBLISHED

October 26, 2004

No. 247624

Barry Circuit Court

LC No. 02-000296-FH

Before: Griffin, P.J., and Saad and O’Connell, JJ.

PER CURIAM.

The prosecutor appeals a circuit court order granting defendant’s motion to quash the information charging defendant with larceny in a building, MCL 750.360. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At the conclusion of the preliminary examination, it is the duty of the district court judge to bind a defendant over for trial if the evidence establishes probable cause to believe both that an offense has been committed and that defendant committed it. MCR 6.110(E). See also MCL 766.13.

Our standard of review is set forth in *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000):

We review for an abuse of discretion a district court’s decision to bind over a defendant. *People v Hamblin*, 224 Mich App 87, 91; 568 NW2d 339 (1997). “The standard for reviewing a decision for an abuse of discretion is narrow; the result must have been so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias.” *People v Torres (On Remand)*, 222 Mich App 411, 415; 564 NW2d 149 (1997). 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. See, generally, *People v Reigle*, 223 Mich App 34, 36; 566 NW2d 21 (1997); *People v Neal*, 201 Mich App 650, 654; 506 NW2d 618 (1993). 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.

At the preliminary examination, there must be evidence present 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 larceny in a building are (1) the actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with felonious intent, (4) the goods or property must be the personal property of another, (5) the taking must be without the consent and against the will of the owner, and (6) the taking must occur within the confines of a building. *People v Sykes*, 229 Mich App 254, 278; 582 NW2d 197 (1998).

In the present case, a gun was stolen from its owner in 1989. The owner's insurer, Hastings Mutual Insurance Company, paid for the loss and became subrogated to the rights of the owner. The gun was found many years later and delivered to Hastings Mutual. Thomas Dunn, a property liability claims manager, delivered the gun to the State Police post for destruction. Defendant, the property room sergeant, received the gun and later removed it from the post without authority and took it home.

We conclude that the evidence establishes that the personal property of another was taken and carried away from a building. Defendant's felonious intent may be inferred from the circumstances of the case. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). The evidence also showed that defendant took the gun without consent of the owner. While defendant was charged with larceny in a building for taking the gun, the information identified the complainant as the State of Michigan, i.e., the entity that obtained possession and control of the weapon from Hastings Mutual. "Larceny is not limited to taking property away from the person who holds title to that property, but also includes taking property from a person who has rightful possession and control of the property." *People v Sheldon*, 208 Mich App 331, 334; 527 NW2d 76 (1995). Thus, the owner can be the actual owner or another person in rightful possession whose consent was required before the property could be taken. CJI2d 22.2; *People v Hatch*, 156 Mich App 265, 267-268; 401 NW2d 344 (1986). Here, the State Police did not authorize defendant to take the gun. Although Dunn voluntarily gave the gun to defendant, he did not give the gun to defendant in his individual capacity, but gave it to him as an agent of his employer, the State of Michigan. Therefore, defendant was no more than a custodian with access to the gun and did not have rightful possession. *People v Jones*, 106 Mich App 429, 432-434; 308 NW2d 243 (1981); *People v Gill*, 12 Mich App 383, 386; 163 NW2d 14 (1968).

Reversed and remanded for reinstatement of the charge. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Henry William Saad

/s/ Peter D. O'Connell