

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

AMER JAAFAR,

Defendant-Appellee.

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UNPUBLISHED

October 30, 2007

No. 272586

Wayne Circuit Court

LC No. 06-100022

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the circuit court's order affirming the district court's refusal to bind defendant over for trial on a charge of possession of counterfeit Nike shoes, MCL 750.263(3). We reverse and remand this matter to the district court with instructions that defendant be bound over for trial. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant is accused of selling counterfeit Nike shoes out of gasoline station parking lots in Detroit. Nike representatives testified that the prices defendant charged were far less than retail prices, although they were higher than wholesale prices. Wayne County Sheriff Deputies became aware of defendant's activities as they fueled their police cars at one of the stations. After a lengthy surveillance, they obtained search warrants for defendant's home, various vehicles, and a warehouse. Execution of those warrants resulted in the discovery of over 1500 pairs of shoes in defendant's possession. The search of defendant's home also uncovered approximately \$21,000. Defendant is not an authorized Nike dealer. Nike representatives determined that the shoes were counterfeits by examining details of their labels and comparing them to information stored in a database. The district court refused to bind defendant over, finding that the police investigation had been inadequate, and the prosecution provided insufficient evidence to show that defendant knew the shoes were counterfeits. The circuit court affirmed.

We review de novo the circuit court's review of the bindover process to determine whether the district court committed an abuse of discretion in determining whether there was probable cause to show that defendant committed the crime charged. *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996). For purposes of a preliminary examination, the proofs must only establish probable cause. *People v Goecke*, 457 Mich 442, 469; 579 NW2d 868 (1998). The proofs must be sufficient to cause an individual "of ordinary prudence and caution

to conscientiously entertain a reasonable belief” that the defendant is guilty as charged. *People v Justice (After Remand)*, 454 Mich 334, 343; 562 NW2d 652 (1997). “Yet, to find probable cause, a magistrate need not be without doubts regarding guilt. The reason is that the gap between probable cause and guilt beyond a reasonable doubt is broad, and finding guilt beyond a reasonable doubt is the province of the jury.” *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003) (citations omitted).

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 therefrom can be sufficient. *People v Maynor*, 256 Mich App 238, 245; 662 NW2d 468 (2003). “[W]here the evidence is conflicting, or otherwise raises a reasonable doubt with respect to the defendant’s guilt, the defendant should be bound over for trial for resolution of the issue by the trier of fact.” *People v Abraham*, 234 Mich App 640, 657; 599 NW2d 736 (1999). If probable cause is established, the magistrate must bind the defendant over for trial. MCL 766.13.

Defendant was charged under MCL 750.263, which provides in relevant part:

(2) Except as provided in subsection (3), a person who willfully delivers, offers to deliver, uses, displays, advertises, or possesses with intent to deliver any item of property or services bearing, or identified by a counterfeit mark, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.000 or 3 times the aggregate value of the violation, whichever is greater, or both imprisonment and a fine.

(3) A person who violates subsection (2) is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$50,000.00 or 3 times the aggregate value of the violation, whichever is greater, or both imprisonment and a fine, if any of the following apply:

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(b) The violation involved more than 100 items of property.

(c) The aggregate value of the violation is more than \$1,000.00.

For the district court to bind defendant over under the statute, the prosecution was required to establish that defendant knew that the shoes were counterfeits. In general, absent a confession or admission, knowledge will be established through circumstantial evidence. Here, the evidence presented by the prosecution allows for reasonable doubt of defendant’s guilt. However, defendant possessed a substantial volume of counterfeit merchandise. Even though the shoes could not readily be distinguished from genuine Nike shoes without a review of their labels by a Nike factory representative, the sheer number involved strongly suggests that defendant could not have obtained them from a Nike wholesaler or from a Nike retailer going out of business. When we additionally consider the unusual manner of making sales and the low

pricing, we find that the evidence as a whole was sufficient to support a reasonable belief that defendant knew the shoes were counterfeits.<sup>1</sup> Defendant could conceivably have acquired this merchandise innocently. However, under the circumstances, we find that the district court abused its discretion by refusing to bind defendant over. *Abraham, supra*.

We reverse the circuit court's order affirming the district court's dismissal, and remand this case to the district court with instructions to bind defendant over to the circuit court for trial. We do not retain jurisdiction.

/s/ Donald S. Owens  
/s/ Richard A. Bandstra  
/s/ Alton T. Davis

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<sup>1</sup> This finding is further bolstered by the language of MCL 750.263(5) that "Willful possession of more than 25 items of property bearing or identified by a counterfeit mark gives rise to a rebuttable presumption that the person possessed those items with intent to deliver them in violation of subsection (2)."