

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

FIDAL WALEED AURI,

Defendant-Appellee.

UNPUBLISHED

October 29, 2009

No. 287838

Wayne Circuit Court

LC No. 08-004758-FH

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

In this prosecutor's appeal, plaintiff appeals as of right from the circuit court's order quashing the information charging defendant with, among other things, operating a motor vehicle while under the influence of a controlled substance and causing death, MCL 257.625(4), failing to stop at the scene of a fatal accident, MCL 257.617(3), and vehicular manslaughter, MCL 750.321. We reverse and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises from a fatal traffic accident that occurred early in the morning on New Year's Day, 2008. According to testimony given at the preliminary examination, a mother was driving with her three children northbound on I-75, in snowy weather, when she was violently struck from behind, causing her car to strike a retaining wall. One of the children died as a result. The driver of the other car did not stop at the scene, and the mother was not able to describe that other car.

Police officers observed defendant, on the morning in question, at a gas station, behind the wheel of a car with fresh and heavy damage to its front end. When the police questioned defendant, who had a fresh cut on his face, he admitted that he had been drinking, and stated that his car was headed north on I-75 when it struck another vehicle as it cut in front of his car. The gas station was within a few miles of the accident site.

The district court bound defendant over for trial on the grounds that the heavy damage to the front of defendant's car and rear of the victim's car, the proximity of the gas station where the police found defendant and the crash site, and defendant's admission to hitting someone on I-75, constituted probable cause.

Defendant challenged the bind over in the circuit court, which agreed with defendant and dismissed the case, stating that there were likely many collisions on a New Year's night in a major metropolitan area. The circuit court additionally noted that in the transcript of the preliminary examination the driver of the car that was hit estimated that the accident took place at 2:00 a.m., while one of the police officers, who first came upon defendant, estimated that the confrontation took place at approximately 1:30 a.m. that same morning. The district court had expressed some concern about the "time frame," but opined "people are difficult with time. Especially when something traumatic like this happens." The circuit court, however, observed that this testimony concerning timing rendered defendant's responsibility for the victim's accident an impossibility, and granted the motion to quash largely for that reason.

"This Court reviews for an abuse of discretion both a district court's decision to bind a defendant over for trial and a trial court's decision on a motion to quash an information." *People v Fletcher*, 260 Mich App 531, 551-552; 679 NW2d 127 (2004). A defendant must be bound over for trial if, at the conclusion of the preliminary examination, probable cause exists to believe that the defendant committed the crime. *People v Orzame*, 224 Mich App 551, 558; 570 NW2d 118 (1997). "Probable cause exists where the court finds a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person to believe that the accused is guilty of the offense charged." *Id.*, citing MCL 766.13; MCR 6.110(E). Guilt need not be established beyond a reasonable doubt, but there must be "evidence of each element of the crime charged or evidence from which the elements may be inferred." *People v Flowers*, 191 Mich App 169, 179; 477 NW2d 473 (1991).

We hold that the circuit court erred in granting defendant's motion to quash because the district court's bind over decision was not an abuse of discretion.

The relevant charges against defendant—operating a motor vehicle under the influence of a controlled substance and causing death, failing to stop at the scene of a fatal accident, and vehicular manslaughter—resulted from a fatal accident that occurred on northbound I-75 in the early morning hours on New Year's Day, 2008. The accident involved a Ford Taurus being struck from behind, which in turn caused the car to crash into the highway retaining wall, killing one of two children who were in the back seat of the car. The evidence presented to the district court showed that although the driver of the Taurus could not identify the vehicle that struck it, that same morning defendant was found at a gas station located within minutes of the accident scene with the front end of his Escalade heavily damaged. At the gas station defendant admitted to being in an accident on northbound I-75 after leaving downtown Detroit, and defendant had a fresh injury to his mouth as perceived by the police officer. This evidence was sufficient under the standard governing bindover decisions to bind defendant over on the pertinent charges.

The circuit court's rationale for granting the motion to quash was that there could have been many other accidents on a snowy New Year's Day, and that simply because defendant was driving north on I-75 does not tie him to this accident. However, as noted above, the fact that defendant was also in an accident on northbound I-75 the same morning of the accident at issue was not the only evidence tying defendant to this accident. Defendant's vehicle had significant

damage, as did the Taurus, and the Taurus was hit from behind, and the damage to defendant's vehicle was at the front end. Additionally, the record seems to suggest that defendant was in an accident at or about the same time as the victim.¹ Whether the evidence presented is sufficient to find defendant guilty beyond a reasonable doubt is not the issue. Indeed, a magistrate need not be without doubts regarding guilt and still bind over a defendant based upon probable cause. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003). Here, the evidence inferentially supports all elements of the charged crimes, *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997), and that is all that is necessary to deny the motion to quash. Whether defendant was involved in another accident, or can establish a deficiency in the timing of the accident(s), should be resolved at trial, not through a motion to quash. For these reasons, we reverse the trial court's order and remand for further proceedings consistent with this opinion.

We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Stephen L. Borrello

¹ The district court correctly noted that witnesses often have difficulty remembering the exact time when an incident occurred, particularly when a witness is involved in a significant accident. Thus, it would be for a jury to determine whether the timing was possible such that defendant was involved in this accident. Additionally, at trial the record can be clarified concerning what was actually testified to at the preliminary exam, as there is a suggestion that the transcript was inaccurate as to the time element as testified to by one of the witnesses.