

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CORNELIUS DEONTA COX,

Defendant-Appellee.

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UNPUBLISHED

October 21, 2010

No. 292012

Wayne Circuit Court

LC No. 09-002589-FH

Before: MURRAY, P.J., and K. F. KELLY and DONOFRIO, JJ.

PER CURIAM.

The prosecution appeals as of right from a circuit court order granting defendant's motion to quash the information and dismissing two counts of possession with intent to deliver less than 50 grams of a controlled substance (heroin and cocaine), MCL 333.7401(2)(a)(iv). We reverse and remand for reinstatement of the charges.<sup>1</sup>

**I. BASIC FACTS**

On February 9, 2008, an emergency room technician prepared for treatment a gunshot wound victim and found eight grams of heroin and approximately nine grams of cocaine in his jean's pocket; the heroin was packaged in approximately 30 individual foil wrappers and the cocaine was split into four or five rock-like chunks. The victim, a black male in his late twenties, had been shot in the lower abdomen; two other men had also been shot. The technician gave the contraband to a security officer who was present when she discovered it. The security officer later gave the contraband to Sergeant Richard Tucker, who had gone to the hospital to investigate the shootings. The security officer indicated to Tucker that the drugs had been taken from defendant and Tucker observed defendant while he was being treated for a gunshot wound to the lower abdomen.

After the preliminary examination, the district court found probable cause to believe defendant committed the crimes and it bound defendant over for trial on two counts of possession of less than 50 grams of a controlled substance with intent to deliver. Defendant moved to quash the information and the circuit court reversed, finding that the district court

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<sup>1</sup> This appeal has been decided without oral argument consistent with MCR 7.214(E).

abused its discretion because no evidence of knowledge was presented during the preliminary examination. This appeal followed.

## II. ANALYSIS

The prosecution argues that the circuit court erred by concluding that the district court abused its discretion by binding defendant over on the crimes charged. We agree with the prosecution. We review a magistrate's decision whether to bind a defendant over for trial for an abuse of discretion. *People v Starks*, 473 Mich 227, 233; 701 NW2d 136 (2005). This Court gives no deference to the circuit court's decision. *People v Henderson*, 282 Mich App 307, 313; 765 NW2d 619 (2009).

"A magistrate has a duty to bind over a defendant for trial if it appears that a felony has been committed and there is probable cause to believe that the defendant committed the felony." *Starks*, 473 Mich at 233 (citation omitted). As explained in *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003), probable cause requires

a quantum of evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. 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 reasonable doubt is the province of the jury. [Quotation marks and citations omitted.]

To establish probable cause, the prosecution must present direct or circumstantial evidence of each element of the crime. *People v Goecke*, 457 Mich 442, 469; 579 NW2d 868 (1998). "If the evidence conflicts or raises a reasonable doubt, the defendant should be bound over for trial where the questions can be resolved by the trier of fact." *Henderson*, 282 Mich App at 312.

As noted, the district court bound defendant over on two counts of possession with intent to deliver less than 50 grams of a controlled substance. To prove that a defendant committed this crime, a prosecutor must show: (1) that the substance was a controlled substance, (2) that the substance is in a mixture weighing less than 50 grams, (3) that the defendant was not authorized to possess the substance, and (4) that the defendant knowingly possessed the substance with the intent to deliver. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

After our review of the preliminary hearing transcript, we cannot conclude that the district court erred. The prosecution presented direct evidence that two controlled substances in amounts and packaging consistent with intent to deliver were found at the hospital. Specifically, eight grams of heroin and 9.2 grams of cocaine were recovered from defendant in quantities and packaging consistent with drug trafficking. The prosecution also presented circumstantial evidence that defendant committed the crimes. Although the lab technician could not identify defendant at the preliminary examination as the gun shot wound victim she prepared for treatment on which she found the drugs, she treated only one gunshot wound victim on the evening in question and her description of the victim as a black male in his late twenties with a gunshot wound to the lower abdomen matches defendant. Further, Tucker testified that he observed defendant receive treatment at the hospital for a gunshot wound to the lower abdomen

and that the security guard had indicated to him that defendant was that same gunshot wound victim on which the drugs were found. Moreover, circumstantial evidence also shows that defendant knowingly possessed the drugs. It can be inferred from the fact that the drugs were found in defendant's pockets that defendant knew he had them and knew what they were. The possibility that the drugs may have been surreptitiously planted in defendant's pocket does not extinguish the reasonable probability that defendant knowingly possessed the drugs. Any conflicts or doubts about the evidence are to be resolved by the trier of fact. *Henderson*, 282 Mich App at 312.

Given the foregoing, the district court did not abuse its discretion in determining that there was probable cause to believe that defendant had committed the crimes charged. Accordingly, the circuit court erred when it concluded otherwise.

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

/s/ Christopher M. Murray  
/s/ Kirsten Frank Kelly  
/s/ Pat M. Donofrio