

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
May 17, 2012

v

LEE ADAM BYNUM,

Defendant-Appellee.

No. 304004
Jackson Circuit Court
LC No. 11-004017-FH

Before: OWENS, P.J., and TALBOT and METER, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion to quash the information and dismiss the charges of first-degree home invasion, MCL 750.110a(2) and armed robbery, MCL 750.529. We reverse and remand for reinstatement of the charges.

Plaintiff argues that the circuit court erred in finding that the district court abused its discretion when it bound defendant's case over. We review the circuit court's decision de novo in determining whether the district court abused its discretion. *People v Beasley*, 239 Mich App 548, 552; 609 NW2d 581 (2000). Where probable cause exists to believe that a felony was committed and that the defendant committed it, the district court must bind the defendant over for trial. MCL 766.13; *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997). Probable cause is established by evidence "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt." *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003) (citation and quotation marks omitted).

In this case, the only issue before the district and circuit court was whether there was probable cause for the belief that defendant was one of the victim's assailants. At the preliminary examination, the victim testified that she could not identify defendant as an assailant in the courtroom and she made a series of equivocal statements that called into question the credibility of her prior identification of defendant in a photographic lineup. However, the district court also heard testimony from Detective Brett Stiles that the victim was 100 percent certain of her prior identification of defendant at the time of the photographic lineup. Stiles' third-party testimony concerning the victim's prior statement of identification was admissible as substantive evidence because the victim was subject to cross-examination at the preliminary examination. *People v Malone*, 445 Mich 369, 377; 518 NW2d 418 (1994).

In its holding that quashed defendant's information, the circuit court largely ignored Stiles' testimony concerning the victim's prior identification. Instead, the circuit court repeated a series of statements the victim made at the preliminary examination that called into question her prior identification of defendant. However, the victim's testimony at the preliminary examination concerned the credibility of her prior identification of defendant, and the credibility of her prior identification is for the trier of fact to resolve. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Also, while the victim's testimony at the preliminary examination certainly raised doubt about defendant's identity as an assailant, the conflicting evidence required the district court to bind the case over for trial for a resolution of the issue. *People v Abraham*, 234 Mich App 640, 657; 599 NW2d 736 (1999). There was sufficient evidence of defendant's identity to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of defendant's guilt. *Yost*, 468 Mich at 126. The district court did not abuse its discretion in binding defendant's case over for trial. MCL 766.13; *Terry*, 224 Mich App at 451.

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

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Patrick M. Meter