

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM LEONARD WELLS,

Defendant-Appellant.

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UNPUBLISHED

January 17, 1997

No. 191354

Washtenaw County

LC No. 95-4714FC

Before: Markman, P.J., and O'Connell and D. J. Kelly,\* JJ.

PER CURIAM.

Defendant appeals by leave granted from an order issued by the lower court denying defendant's motion to quash the complaint, warrant, and information filed against him for the crimes of open murder, MCL 750.316; MSA 28.548, and felony-firearm, MCL 750.227b; MSA 28.424(2). We affirm.

On appeal, defendant argues that the district court abused its discretion in determining that there was sufficient evidence to bind him over for trial as an aider and abettor, and that the circuit court erred in affirming that decision. More specifically, defendant contends that no evidence was presented from which one could conclude that he contributed to the victim's death by aiding an "identified" principal, nor that he possessed the requisite criminal intent. We disagree.

A magistrate's ruling that alleged conduct falls within the scope of a criminal law is a question of law which is reviewed for error, and a decision to bind over a defendant based on the factual sufficiency of the evidence is reviewed for an abuse of discretion. *People v Thomas*, 438 Mich 448, 452; 475 NW2d 288 (1991). This Court reviews a magistrate's decision de novo to determine whether the magistrate abused his discretion. *People v Flowers*, 191 Mich App 169, 174; 477 NW2d 473 (1991).

The primary function of the preliminary examination is to determine whether a crime has been committed and, if so, whether there is probable cause to believe that defendant committed it. *People v*

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\* Circuit judge, sitting on the Court of Appeals by assignment.

*Hunt*, 442 Mich 359, 362; 501 NW2d 151 (1993). Probable cause is established by a reasonable ground of suspicion, and to establish that a crime has been committed, a prosecutor need not prove each element beyond a reasonable doubt, but he must present *some* evidence of each element. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989); *People v Coddington*, 188 Mich App 584, 591; 470 NW2d 478 (1991). Furthermore, circumstantial evidence and reasonable inferences from the evidence are sufficient, *Coddington, supra*, and where the evidence conflicts or raises a reasonable doubt, the defendant should be bound over for resolution of the questions by the trier of fact, *People v Cotton*, 191 Mich App 377, 384; 478 NW2d 681 (1991); *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

In the present case, the victim died as a result of what appeared to be gang-related gunfire, and although it was apparent that defendant did not fire the deadly bullet (defendant having admitted to police that he fired a .22-caliber rifle, whereas the bullet retrieved from the victim's head was opined to be at least .25-caliber), the prosecution proceeded on the theory that defendant was an aider and abettor to the crime.

“Aiding and abetting” describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime.” *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). To support a finding that a defendant aided and abetted a crime, the prosecutor must show that:

- (1) the crime charged was committed by the defendant or some other person;
- (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and
- (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement. [*Id.*]

In satisfying the above elements, the lower court record establishes that someone committed the crime of murder (thus providing a “principal”), and that defendant took part in the shoot-out. Furthermore, we conclude that a criminal intent or reckless disregard can be inferred from the circumstances (i.e., the use of a deadly weapon). *People v Safiedine*, 163 Mich App 25, 29; 414 NW2d 143 (1987). Defendant arrived at what was to become the scene of the homicide with one of the known shooters and with full knowledge that violence was imminent. He had been told specifically that a shoot-out was expected, and he was also told the location of the rifle that was available for his use. An extended firefight ensued, during which the two factions exchanged repeated volleys of gunfire. Defendant admitted firing his weapon during this period. This admission was corroborated by witness testimony indicating that “smaller” shots were heard that apparently originated from the smaller caliber firearm possessed by defendant. While there existed some dispute regarding when defendant's participation in the shoot-out began, given the amount of evidence supporting defendant's involvement, this factual dispute only highlights the need to have the question decided by a jury, rather than by the district court. *Cotton, supra*. Accordingly, we find no abuse of discretion.

Last, we note that both the state and defendant present an exhaustive debate on appeal concerning the issue of whether defendant's statement to police was properly used, defendant arguing that the statement should not have been considered because the prosecution had not yet proven the corpus delicti of the offenses charged. However, contrary to defendant's contention, to satisfy the corpus delicti requirement, the prosecution need only show the fact of a specific loss or injury that resulted from someone's criminality, rather than putting forth evidence on each element of the charged crime (especially the tangential doctrine of aiding and abetting), *People v Sykes*, 117 Mich App 117, 120; 323 NW2d 617 (1982), citing *People v Randall*, 42 Mich App 187, 189; 201 NW2d 292 (1972). More specifically, in *Cotton, supra*, 191 Mich App 389, this Court stated:

[W]e conclude that the corpus delicti rule is satisfied in any criminal case if the prosecution shows that the specific injury or loss has occurred and that some person's criminality was the source or cause of the injury. A defendant's confession then may be used to elevate the crime to one of a higher degree or to establish aggravating circumstances.

Therefore, we conclude that because defendant's statement to the police was not considered by the court until after the prosecution had already established the fact that someone had been killed from unlawful gunfire, there was no error with respect to the admission of the statement.

Affirmed.

/s/ Stephen J. Markman  
/s/ Peter D. O'Connell  
/s/ Daniel J. Kelly