

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN STAPLES,

Defendant-Appellant.

UNPUBLISHED

November 30, 1999

No. 208835

Recorder's Court

LC No. 96-007192

Before: Cavanagh, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his jury-trial conviction of receiving and concealing stolen property over \$100, MCL 750.535; MSA 28.803. Defendant was sentenced to three years' probation. We affirm.

Defendant, a Detroit police officer, and his partner were accused of taking money from a person during a traffic stop. The victim claimed that defendant's partner took \$700 from him. When defendant and his partner were later searched at the end of their shift, \$333 was found on defendant and \$353 was found on his partner.

Defendant first argues that the trial court erred when it denied his motion to quash the information. Defendant alleged that the prosecution failed to present evidence that the money found in defendant's possession was, in fact, the same currency allegedly stolen from the victim. We review the trial court's decision whether to grant a motion to quash a felony information de novo to determine whether the district court abused its discretion in binding defendant over for trial. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999). The district court must bind a defendant over for trial if, at the end of the preliminary examination, it concludes that probable cause exists to believe that a felony has been committed and that the defendant committed it. *Id.* at 655; MCR 6.110(E); MCL 766.13; MSA 28.931.

We conclude that the district court did not abuse its discretion in binding defendant over for trial. At the preliminary examination, the victim testified that he was pulled over by defendant and his partner for excessive noise and that defendant patted him down, discovered money in his front pocket,

removed the money from the victim's pocket and then replaced the money. The victim also testified that defendant's partner then patted him down again, removed his money, and placed him in the back of the police car. Defendant's partner went to the victim's vehicle, and when he returned, gave the money back to the victim. The victim immediately noticed that the money had been sorted and was in a different order than when it had been taken from him. After the officers left, the victim counted the money and noticed that a substantial amount was missing. He then followed and confronted the officers, when defendant's partner threatened to take him to jail. The victim then filed a complaint at the officers' precinct, claiming that they took \$700 from him, and he identified them as they returned from their shift. Defendant and his partner were both searched, and \$333 was found on defendant and \$353 on his partner. This evidence presented at the preliminary examination was sufficient to establish probable cause to bind defendant over for trial on the charged offense. Defendant argues that the prosecution did not establish that the money seized was the money allegedly stolen. However, evidence was presented from which it could be inferred that the money seized was the money stolen from the victim. See *People v Goecke*, 457 Mich 442, 469-470; 579 NW2d 868 (1998) (holding that, in order to have probable cause to bind over for trial, some evidence must be presented from which each element of the crime may be inferred). Defendant cites *People v Martinovich*, 18 Mich App 253, 257-258; 170 NW2d 899 (1969), for the proposition that the prosecution must prove that the identity of the property seized is the same as the property allegedly stolen. However, when the stolen property is money, exact identification of specific bills of currency is not required. Indeed, it would be absurd to require such a level of proof in a fungible item, such as cash. The statute provides that it is a felony to receive and conceal "stolen, embezzled, or converted *money*, goods, or property" MCL 750.535(1); MSA 28.803(1) (emphasis added). The evidence presented was sufficient to find probable cause that the money defendant had in his possession was indeed that which was stolen from defendant, regardless of whether the exact bills of currency remained intact or whether defendant had exchanged the bills at a bank. We find no error in the denial of defendant's motion to quash.

Defendant next argues that the trial court erred when it denied his motion for a directed verdict at the close of the prosecution's case-in-chief. In reviewing a trial court's ruling on a motion for a directed verdict, we must view the evidence presented by the prosecution up to the time the motion was made in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Crawford*, 232 Mich App 608, 615-616; 591 NW2d 669 (1998). Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

The elements of receiving and concealing stolen property over \$100 are (1) that the property was stolen, (2) that the property had a value over \$100, (3) that the defendant bought, received, possessed, or concealed the property with knowledge that it was stolen, and (4) that the property was identified as that which was stolen. *People v Gow*, 203 Mich App 94, 96; 512 NW2d 34 (1993). Defendant specifically contends that inferences were improperly drawn upon inferences and that the prosecution failed to prove that defendant had knowledge that the money was stolen.

Defendant correctly states that an inference may be drawn from established facts, but that an inference may not be built on another inference. *People v Atley*, 392 Mich 298, 315; 220 NW2d 465 (1974). Here, if the jury believed the testimony of the victim and the investigating officers, reasonable inferences can be drawn from the evidence to establish defendant's guilt. From the nearly equal amounts of money confiscated from defendant and his partner and the fact that, when combined, the money seized almost exactly totaled the amount stolen from the victim, a reasonable inference could be drawn that defendant's partner stole the money from the victim and shared it with defendant. This is not an unreasonable inference drawn upon an inference, but rather, a reasonable inference drawn from facts established by the testimony of witnesses.

An essential element of the crime of receiving and concealing stolen property over \$100 is knowledge that the property was stolen. *People v Watts*, 133 Mich App 80, 82; 348 NW2d 39 (1984). However, the guilty knowledge that will support a conviction for receiving stolen goods does not mean only actual knowledge, but includes constructive knowledge through notice of facts and circumstances from which guilty knowledge may fairly be inferred. *People v Tantenella*, 212 Mich 614, 621; 180 NW 474 (1920); *People v Laslo*, 78 Mich App 257, 263; 259 NW2d 448 (1977). In this case, defendant was clearly aware that the victim was in possession of a large sum of money. Defendant had patted down the victim and noticed the large sum of money in his pocket. Defendant was present when his partner patted down the victim a second time and removed the money from his pocket. Defendant also witnessed his partner exit the patrol car and briefly lean into the victim's vehicle before returning the money to the victim. The victim also later confronted both officers about the missing money. If, as the evidence suggests, defendant received a large sum of money from his partner later in their shift, defendant clearly would have known that it was money stolen from the victim. Accordingly, the trial court did not err in denying defendant's motion for a directed verdict.¹

Defendant next argues that the trial court erred in denying defendant's motion to suppress the seized money. Defendant specifically contends that while he was detained, but before he was arrested, an internal-affairs officer requested defendant to empty his pockets. Following defendant's refusal, the officer ordered defendant to empty his pockets. Defendant contends that the \$333 seized was the result of an illegal search.

Both the United States and the Michigan Constitutions guarantee the right to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Generally, a warrant is required, and a search conducted without a warrant is unreasonable, subject to specifically established exceptions. *People v Borchard-Ruhland*, 460 Mich 278, 293; 597 NW2d 1 (1999). Each of the exceptions also requires reasonableness and probable cause. *In re Forfeiture of \$176,598*, 443 Mich 261, 266; 505 NW2d 201 (1993). One of the exceptions to the warrant requirement is where exigent circumstances exist that mandate that an immediate search without a warrant is necessary. *Id.*; *People v Blasius*, 435 Mich 573, 582; 459 NW2d 906 (1990). The exigent-circumstances exception applies where the police have probable cause to believe that an immediate search will produce evidence of the crime and that an immediate search without a warrant is necessary in order to protect the officers or others, to prevent the destruction or loss of evidence, or to prevent the escape of the suspect. *People v Harris*, 95 Mich App 507, 510; 291 NW2d 97 (1980).

Here, the trial court concluded, after an evidentiary hearing, that the investigating officers had probable cause to search defendant and that exigent circumstances existed because an immediate search was needed to prevent the loss or destruction of evidence. We review the trial court's findings of fact for clear error, but we review questions of law regarding the motion to suppress de novo. *People v Marsack*, 231 Mich App 364, 372; 586 NW2d 234 (1998).

At the evidentiary hearing, the internal-affairs officer testified that the victim had stated that the officers took his money and had identified the officers as they returned from their shift. The officer also noted that the log book confirmed that defendant and his partner had stopped the victim and found a large sum of money on him. The officer testified that he had probable cause to believe that defendant and his partner had indeed taken money from the victim, and that he believed that if a search was not immediately conducted, the evidence would be discarded and lost. The trial court found that the internal-affairs officer had probable cause to believe that evidence would be destroyed or lost if an immediate search without a warrant was not conducted. The trial court relied on the ease with which the cash could be discarded, and concluded that the limited search of defendant's pocket during his detention was reasonable under the circumstances. We do not find the court's findings regarding the likelihood that the evidence would be lost without an immediate search to be clearly erroneous. Therefore, the search was reasonable under the exigent-circumstances exception to the warrant requirement, and the trial court did not err in denying defendant's motion to suppress the seized evidence.

Defendant next argues that the trial court erred when it denied defendant the opportunity to impeach the victim regarding the source and amount of his money. We review the trial court's decision whether to admit or exclude evidence for an abuse of discretion. *People v Howard*, 226 Mich App 528, 551; 575 NW2d 16 (1997). Also, the scope of cross-examination is within the trial court's discretion. *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). We find no abuse of discretion in this case.

The trial court may limit the scope of cross-examination to prevent inquiry into irrelevant matters or collateral matters bearing only on general credibility. *Id.* The trial court did not abuse its discretion in preventing inquiry into the source of the victim's money because the source was irrelevant to the question whether defendant received and concealed money stolen from the victim. Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. The source of the money stolen from the victim does not have any bearing whatsoever on whether defendant and his partner took the money from him or whether defendant received and concealed the stolen money. To the extent that the source of the money pertained to matters of general credibility, this was a collateral matter such that the trial court could allowably prevent cross-examination into the matter. *Canter, supra* at 564. Defendant's argument that he was denied the ability to cross-examine and impeach the victim regarding the amount of the money is without merit because the trial court did in fact allow defense counsel to cross-examine the victim regarding the amount of the money.

Finally, defendant argues that he was denied a fair and impartial trial as a result of repeated instances of prosecutorial misconduct and ineffective assistance of counsel for failing to object to the alleged instances of misconduct. Our task in reviewing claims of prosecutorial misconduct is to determine whether defendant was denied a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995). Where defendant fails to object to alleged instances of prosecutorial misconduct, the claims are unpreserved, and we will not review them unless defendant demonstrates that a curative instruction could not have eliminated the prejudicial effect of the remarks, or that failure to review the claims would result in a miscarriage of justice. *People v Messenger*, 221 Mich App 171, 179-180; 561 NW2d 463 (1997). We have reviewed the record and find no miscarriage of justice. Defendant was not denied a fair trial. We also conclude that defendant was not denied the effective assistance of counsel because he has not demonstrated that counsel's performance fell below an objective standard of reasonableness or that the representation so prejudiced him as to deny him a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell

¹ To the extent that defendant argues that the motion for a directed verdict should have been granted because evidence was not presented to establish the identity of the money as that which was stolen from the victim, we note that the evidence presented at trial was substantially the same as that presented at the preliminary examination. As discussed in analyzing defendant's motion to quash, the evidence sufficiently established that the money seized was money stolen from the victim. We reject defendant's contention that the exact identity of the bills themselves must be established.