

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

SHEDRICK LEE,

Defendant-Appellee.

UNPUBLISHED
October 31, 2000

No. 223376
Oakland Circuit Court
LC No. 99-166152-FC

Before: McDonald, P.J., and Sawyer and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion to quash, and dismissing the case without prejudice. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with conspiracy to possess with intent to deliver more than 650 grams of a substance containing heroin and/or cocaine, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i); MCL 750.157a; MSA 28.354(1). At the preliminary examination Eric Lee, an unindicted co-conspirator, provided extensive testimony regarding trafficking of narcotics and his involvement with various persons, including defendant, in that enterprise.

The district court bound defendant over as charged, and found that Lee's testimony was credible. The trial court granted defendant's motion to quash and dismissed the case without prejudice, finding that Lee's testimony was not credible and that therefore his testimony did not establish probable cause to believe that defendant committed the charged offense.

The purpose of a preliminary examination is to determine if probable cause exists to believe that a crime was committed and that the defendant committed it. *People v Fiedler*, 194 Mich App 682, 689; 487 NW2d 831 (1992); MCL 766.13; MSA 28.931; MCR 6.110(E). During a preliminary examination, the prosecution must produce evidence of each element of the crime charged, or evidence from which the elements can be inferred. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). The decision to discharge or bind over a defendant is reviewed for an abuse of discretion. *People v Vasher*, 167 Mich App 452, 456; 423 NW2d 40 (1988). We review the trial court's decision that the

district court abused or did not abuse its discretion on a de novo basis. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

Plaintiff argues that the trial court erred by granting defendant's motion to quash, and dismissing the case. We agree, reverse the trial court's decision, and remand for further proceedings. When conducting a preliminary examination the district court may weigh the credibility of witnesses. However, the district court should not act as the ultimate finder of fact. Conflicts in the evidence should be resolved by the jury. *People v Laws*, 218 Mich App 447, 452; 554 NW2d 586 (1996). When reviewing a district court's decision to bind a defendant over for trial, the trial court should not substitute its judgment for that of the district court. *Orzame, supra*. Specifically, the credibility of a witness is not an issue for the trial court to resolve when reviewing a bindover. *People v Northey*, 231 Mich App 568, 577; 591 NW2d 227 (1998). Here, the trial court granted defendant's motion to quash on the ground that probable cause did not exist to believe that defendant committed the charged offense because it did not believe the testimony of Eric Lee. Lee's credibility was not an issue for the trial court to resolve once the district court found Lee's testimony credible and sufficient to support a bindover. *Id.*

The trial court's order quashing the information and dismissing the case is reversed, and this case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White