

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HARLEY LEE LISTEMAN,

Defendant-Appellant.

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UNPUBLISHED

March 2, 2001

No. 211974

Genesee Circuit Court

LC No. 97-000712-FC

Before: Saad, P.J. and Griffin and R. B. Burns\*, JJ.

PER CURIAM.

Defendant was originally charged with first-degree home invasion, MCL 750.110a(2); MSA 28.305a(2), armed robbery, MCL 750.529; MSA 28.797, and assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Following a jury trial, he was convicted of first-degree home invasion and the lesser offense of unarmed robbery, MCL 750.530; MSA 28.798, but acquitted of the separate assault charge. He was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to consecutive prison terms of twenty to forty years for the home invasion conviction, and fifteen to thirty years for the unarmed robbery conviction. He appeals as of right. We affirm.

At the preliminary examination, the magistrate initially stated that he was going to dismiss the charges because he was not persuaded that probable cause existed to bind defendant over for trial. However, after allowing the prosecutor to make further arguments, the magistrate concluded that there was sufficient probable cause to bind defendant over. Defendant subsequently filed a motion to quash in the circuit court, which was denied. Defendant now argues on appeal that he was not properly bound over to stand trial and that the circuit court abused its discretion in denying his motion to quash. We disagree.

Our review of this issue is governed by the following principles:

We review for an abuse of discretion a district court's decision to bind over a defendant. *People v Hamblin*, 224 Mich App 87, 91; 568 NW2d 339 (1997). "The standard for reviewing a decision for an abuse of discretion is narrow; the result must have been so violative of fact and logic that it evidences a

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

perversity of will, a defiance of judgment, or an exercise of passion or bias.” *People v Torres (On Remand)*, 222 Mich App 411, 415; 564 NW2d 149 (1997). A circuit court’s decision with respect to a motion to quash a bindover order is not entitled to deference because this Court applies the same standard of review to this issue as the circuit court. This Court therefore essentially sits in the same position as the circuit court when determining whether the district court abused its discretion. See, generally, *People v Reigle*, 223 Mich App 34, 36; 566 NW2d 21 (1997); *People v Neal*, 201 Mich App 650, 654; 506 NW2d 618 (1993). In other words, this Court reviews the circuit court’s decision regarding the motion to quash a bindover only to the extent that it is consistent with the district court’s exercise of discretion. The circuit court may only affirm a proper exercise of discretion and reverse an abuse of that discretion. Thus, in simple terms, we review the district court’s original exercise of discretion. [*People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000).]

Initially, defendant argues that the magistrate violated MCR 6.110(F), which provides:

**(F) Discharge of Defendant.** If, after considering the evidence, the court determines that probable cause does not exist to believe either that an offense has been committed or that the defendant committed it, the court must discharge the defendant without prejudice to the prosecutor initiating a subsequent prosecution for the same offense. Except as provided in MCR 8.111(C), the subsequent preliminary examination must be held before the same judicial officer and the prosecutor must present additional evidence to support the charges.

Defendant claims that, by permitting the prosecutor to reopen arguments, the magistrate, in effect, permitted the prosecutor to initiate a subsequent prosecution without presenting additional evidence. We disagree.

As the circuit court properly concluded, the magistrate’s initial statements indicating that he intended to dismiss the charges was not a “final” decision. The rule is well established that a court speaks through its judgments, orders and decrees, not its oral statements or written opinions. Until an order was signed dismissing the charges, the magistrate was free to change his mind and sign a different order. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977); *People v Turner*, 181 Mich App 680, 683; 449 NW2d 680 (1989). Thus, MCR 6.110(F) was not violated.

Defendant also claims that the evidence was insufficient to support the bindover decision. We disagree.

A magistrate has a statutory duty to bind a defendant over for trial if it appears that a felony has been committed and there is probable cause that the defendant committed it. MCL 766.13; MSA 28.931; *People v Etheridge*, 196 Mich App 43, 53-54; 492 NW2d 490 (1992). Circumstantial evidence and reasonable inferences arising therefrom are sufficient to support a bindover decision. *People v Whipple*, 202 Mich App 428, 432; 509 NW2d 837 (1993); *People v Woods*, 200 Mich App 283, 288; 504 NW2d 24 (1993). Where the evidence conflicts or raises a reasonable doubt as to guilt, the magistrate must not discharge the defendant. Rather, such

questions must be left for the trier of fact. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989); *Etheridge, supra* at 54.

At the preliminary examination, defendant's cousin, Denis Roberts, testified that defendant had told him about robbing a woman in a wheelchair who had money in a refrigerator and allegedly sold drugs to truckers over a CB radio. The victim, who was a paraplegic and used a CB radio, testified that one of the perpetrators searched through her refrigerator. Another witness, Robert Rider, provided testimony placing defendant at the victim's home and claimed that defendant was the instigating force behind the offense. In light of this evidence, there was sufficient probable cause to bind defendant over for trial. The credibility of the witnesses was a matter to be resolved at trial by the trier of fact. *Hill, supra*; *People v Doss*, 406 Mich 90, 103; 276 NW2d 9 (1979). Thus, the district court magistrate did not abuse his discretion in binding defendant over for trial. *People v Flowers*, 191 Mich App 169, 174; 477 NW2d 473 (1991). In any event, because sufficient evidence was presented at trial to convict defendant, error, if any, in the bindover, would be harmless. See *People v Hall*, 435 Mich 599; 460 NW2d 520 (1990).

Next, defendant claims that his sentences are disproportionate under *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). We disagree. A sentence constitutes an abuse of discretion under *Milbourn* if it is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.* This standard applies to sentences imposed on habitual offenders. *People v Alexander*, 234 Mich App 665, 679; 599 NW2d 749 (1999). The record reflects that defendant has an extensive and escalating criminal history, beginning when he was a juvenile and continuing after he became an adult. Further, the offense in question was committed against a disabled victim, who was helpless, and the evidence indicted that defendant was the person who initiated and orchestrated the crime. We conclude that defendant's sentences are proportionate to the seriousness of the circumstances surrounding the instant offense and defendant's criminal history. *Milbourn, supra*.

Affirmed.

/s/ Henry William Saad  
/s/ Richard Allen Griffin  
/s/ Robert B. Burns