

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID ANTHONY CYNAR,

Defendant-Appellant.

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UNPUBLISHED

January 12, 2006

No. 257848

Washtenaw Circuit Court

LC No. 99-011994-FH

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of ten counts of encumbering real property without lawful cause, MCL 600.2907a(2). He was sentenced to three years' probation. Defendant appeals as of right, and we affirm.

I

In 1996, defendant sued the village of Dexter and Scio Township for damages resulting from the municipalities' alleged negligent operation of the municipal sewer system, which caused the sewers to flood into defendant's basement. *Cynar v Village of Dexter*, unpublished opinion per curiam of the Court of Appeals, issued January 23, 2001 (Docket No. 218104). The jury awarded defendant \$13,475. *Id.*, slip op at 2. Shortly after trial, defendant sent the village of Dexter a document entitled "Waiver of Tort." As described in the unpublished opinion, *id.*, slip op at 5:

The document claims to create an implied contract with anyone who "VOLUNTARILY CHOOSE TO INJURE OR OTHERWISE TRESPASS ON THE PERSON OR LAWFUL PROPERTY OF" [Cynar]. It further purports to establish damages in the amount of \$1,000,000, payable in gold, for the first such trespass or injury, \$10,000,000, also payable in gold, for subsequent incidents (and \$100,000,000 if the incident results in death, dismemberment or physical injury to [Cynar]).

Several weeks later, defendant sent a letter to the president of the village of Dexter demanding \$61 million in gold. *Id.* Defendant claimed, among other things, that the village of Dexter violated the Waiver of Tort by displaying a foreign flag and passing it off as an American flag while in session, and by denying or partially denying Freedom of Information Act requests. *Id.*

In conjunction with his Waiver of Tort, defendant filed approximately two dozen liens with the register of deeds against the property of various individuals involved with the village of Dexter or Scio Township. *Id.* The trial court in that matter declared all liens arising out of the “Waiver of Tort” invalid.

Defendant was bound over on twelve counts of encumbering real property without lawful cause, MCL 600.2907(a)(2), a felony. Defendant moved to quash the bindover on the basis that defendant did not encumber the properties because defendant did not perfect the liens according to MCL 565.25. Defendant also contended that his failure to properly execute a Waiver of Tort “[did] not render his attempt to secure payment of the judgment awarded him unlawful, nor [did] it establish he intended to harass or intimidate.” The circuit court denied the motion to quash stating:

I mean, if they’re filed and the testimony at the hearing – at the preliminary exam was that they were filed, that they were accepted, that they were recorded, I think for purposes of this violation, that’s sufficient at a probable cause hearing.

On the question of whether there’s sufficient evidence at the preliminary exam as to the intent to harass, again, I think it’s a question of fact for the jury.

\* \* \*

On the question of whether there’s a lawful purpose, that will be up to the jury to decide. The evidence at the preliminary exam was at least sufficient to bind him over.

Thus, the trial court denied defendant’s motion to quash the bindover.<sup>1</sup>

## II

Defendant first contends that the prosecution failed to prove beyond a reasonable doubt that he encumbered real property in violation of MCL 600.2907a(2). Reiterating claims made below, defendant argues that he could not have encumbered the properties in violation of the criminal statute because he did not perfect the liens according to MCL 565.25, and that there was inadequate evidence that he intended to harass or intimidate. We disagree.

In reviewing a challenge to the sufficiency of the evidence, this Court must determine whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude the prosecution proved all the essential elements of the crime beyond a reasonable doubt. *People v Hicks*, 259 Mich App 518, 522; 675 NW2d 599 (2003). Questions

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<sup>1</sup> Defendant later moved for dismissal on the basis that MCL 600.2907a violated the Title-Object clause, Const 1963, art 4, § 24, of the Michigan Constitution. The circuit court granted the motion; however, this Court reversed. *People v Cynar*, 252 Mich App 82, 86; 651 NW2d 136 (2002).

of statutory interpretation are reviewed de novo. *People v Stewart*, 472 Mich 624, 631; 698 NW2d 340 (2005). “The primary goal in construing a statute is ‘to give effect to the intent of the Legislature.’” *Stewart, supra*, 472 Mich at 631, quoting *In re MCI Telecom Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999). Thus, we begin by examining the plain language of the statute. *Stewart, supra* at 631.

MCL 600.2907a(2) provides:

A person who violates section 25 of chapter 65 of the Revised Statutes of 1846, by encumbering property through the recording of a document without lawful cause with the intent to harass or intimidate any person is guilty of a felony punishable by imprisonment for not more than 3 years or a fine of not more than \$5,000.00, or both.

Section 25 of chapter 65 of the Revised Statutes of 1846, MCL 565.25, governs the entry of a document by the register of deeds, the time and notice of recording a document and the procedure for perfecting a recording. MCL 565.25 provides in pertinent part:

(1) \* \* \*

In the entry book of levies the register shall enter all levies, attachments, liens, notices of lis pendens, sheriffs’ certificates of sale, United States marshals’ certificates of sale, other instruments of encumbrances, and documentation required under subsection (2), noting in the books, the day, hour, and minute of receipt, and other particulars, in the appropriate columns in the order in which the instruments are respectively received.

(2) Except as otherwise provided in subsection (3), the recording of a levy, attachment, lien, lis pendens, sheriff’s certificate, marshal’s certificate, or other instrument of encumbrance does not perfect the instrument of encumbrance unless both of the following are found by a court of competent jurisdiction to have accompanied the instrument when it was presented to the register for entry:

(a) A full and fair accounting of the facts that support recording of the instrument of encumbrance and supporting documentation, as available.

(b) Proof of service that actual notice has been given to the recorded landowner of the land to which the instrument of encumbrance applies.

(3) Subsection (2) does not apply to any of the following:

\* \* \*

(c) The filing of a consensual agreement to encumber real property entered into between the owner of real property and the person who seeks to record an encumbrance. A consensual agreement includes

but is not limited to a mortgage, loan agreement, land contract, or other consensual or contractual agreement of whatever description entered into between the owner of real property and the person who seeks to record an encumbrance.

(4) The instrument shall be considered as recorded at the time so noted and shall be notice to all persons except the recorded landowner subject to subsection (2), of the liens, rights, and interests acquired by or involved in the proceedings. All subsequent owners or encumbrances shall take subject to the perfected liens, rights, or interests.

MCL 600.2907a(2) prohibits the encumbering of property by *recording* a document without lawful cause with the intent to harass or intimidate (emphasis added). MCL 565.25 makes a clear distinction between recording an encumbrance and perfecting one. The criminal statute unambiguously attaches criminal liability to the act of recording the encumbering document, rather than perfecting it, provided the requisite intent is present. Therefore, under the plain language of the statute, a person may violate MCL 600.2907a(2) through the recording of a document even if the recording is not perfected under the terms set forth in MCL 565.25(2).

At trial, ten property owners testified that defendant recorded liens against their real property. In addition, copies of the liens were admitted into evidence. Thus, the prosecution presented sufficient evidence from which the trial court could have concluded beyond a reasonable doubt that defendant encumbered the properties by recording the liens.

In addition, the prosecution presented sufficient evidence to prove beyond a reasonable doubt that defendant filed the liens with the intent to harass or intimidate the property owners. “Intent, like any other fact, may be proven directly by inference from the conduct of the accused and surrounding circumstances from which it logically and reasonably follows.” *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992), quoting *People v Johnson*, 54 Mich App 303, 304; 220 NW2d 705 (1974).

Defendant contends that he filed the liens in an attempt to collect a \$13,475 judgment. However, defendant filed ten liens, ranging from \$250,000 to \$1 million dollars each, against the real property of ten individuals who were not liable on the judgment. Further, some of the property owners testified to interactions with defendant that would support a finding that defendant had ill-will toward at least some of the property owners. Thus, based on the evidence presented at trial, the trial court could have concluded beyond a reasonable doubt that defendant filed the liens with the intent to harass or intimidate the property owners.

### III

Next, defendant contends that the prosecutor should have charged defendant with malicious annoyance by writing, MCL 750.390, and, thus, the prosecutor abused his discretion when he charged defendant under MCL 600.2907a(2). We disagree.

We review a prosecutor’s decision to charge a defendant under an “abuse of power” standard to determine if the prosecutor acted contrary to the Constitution or law. *People v Russell*, 266 Mich App 307, 316; 703 NW2d 107 (2005). A prosecutor has broad discretion in

bringing charges against a defendant. *People v Venticinque*, 459 Mich 90, 100-101; 586 NW2d 732 (1998). Thus, a prosecutor may proceed under any applicable statute as long as the charge is warranted by the facts. *People v Yeoman*, 218 Mich App 406, 414; 554 NW2d 577 (1996). However, “[w]here two statutes prohibit the same conduct, the defendant must be charged under the more specific, most recently enacted statute.” *People v Patterson*, 212 Mich App 393, 394-395; 538 NW2d 29 (1995).

Defendant contends that the prosecutor should have charged him under MCL 750.390, which provides:

Any person who shall knowingly send or deliver or shall make, and for the purpose of being delivered or sent, shall part with the possession of any letter, postal card or writing containing any obscene language with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark, or other designation, with the intent thereby to cause annoyance to any person, or with a view or intent to extort or gain any money or property of any description belonging to another, shall be guilty of a misdemeanor.

We conclude that the prosecutor properly charged defendant under MCL 600.2907a(2). First, MCL 600.2907a(2) [effective March 31, 1997] was enacted more recently than MCL 750.390 [effective September 18, 1931]. Second, MCL 600.2907a(2) is more specific than MCL 750.390 because MCL 600.2907a(2) specifically addresses the act of encumbering property through the recording of a lien. Moreover, the charges were warranted by the facts. Thus, defendant failed to show that the prosecutor acted contrary to the Constitution or law.

Affirmed.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Helene N. White