# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL RICHARD BRAY,

Defendant-Appellee.

UNPUBLISHED
November 20, 2007

No. 278374
Oakland Circuit Court
LC No. 2007-212383-FH

Before: Saad, P.J., and Jansen and Beckering, JJ.

PER CURIAM.

After a preliminary examination, defendant was bound over to the circuit court on four counts of second-degree criminal sexual conduct (CSC), MCL 750.520c(1)(b)(iii) (victim at least 13 but less than 16 years of age and defendant in position of authority), and four alternative counts of fourth-degree CSC, MCL 750.520e(1)(a) (victim at least 13 but less than 16 years of age and defendant five or more years older than the victim). Defendant filed a motion to quash the second-degree CSC charges, alleging there was no evidence that defendant actually used his position of authority to coerce the complainant to submit to sexual contact. The circuit court granted the motion to quash, and the prosecution appeals by leave granted the circuit court's order. We reverse and remand.

We review a circuit court's decision to grant or deny a motion to quash charges de novo to determine whether the district court abused its discretion in binding the defendant over for trial. *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002). The circuit court may reverse the district court's bindover decision only if it appears on the record that the district court abused its discretion. *People v Crippen*, 242 Mich App 278, 281-282; 617 NW2d 760 (2000). An abuse of discretion occurs when a court chooses an outcome that is outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

A court must bind a defendant over for trial if, after a preliminary examination, there exists probable cause to believe that the defendant committed a felony. *People v Cervi*, 270 Mich App 603, 616; 717 NW2d 356 (2006); MCL 766.13. Probable cause requires "evidence 'sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief' of the accused's guilt." *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003), quoting *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997). The court need not, however, be without doubts regarding guilt. *Id*. The prosecution must

present admissible evidence regarding each element of the crime or evidence from which those elements may be reasonably inferred. *People v Goeke*, 457 Mich 442, 469; 579 NW2d 868 (1998). Finding guilt beyond a reasonable doubt is the province of the jury. *Id*. at 469-470.

A person is guilty of second-degree CSC if the victim is at least 13 but less than 16 years of age, the person is in a position of authority over the victim, and the person "used this authority to coerce the victim to submit." MCL 750.520c(b)(iii); *People v Knapp*, 244 Mich App 361, 368; 624 NW2d 227 (2001).

In this case, the complainant testified to numerous sexual encounters during his early teenage years with defendant, who was an adult associate pastor of his church. The sole issue on appeal is whether defendant used his position of authority to coerce the complainant to submit. The coercion required under MCL 750.520c(1)(b)(iii) "can be shown through evidence of the exploitation of a victim's special vulnerability," or by showing that "the defendant abuse[d] his position of authority to constrain a vulnerable victim by subjugation to submit to sexual contact." *Id.* at 369-370, citing *People v Reid*, 233 Mich App 457, 469-472; 592 NW2d 767 (1999) and *People v Premo*, 213 Mich App 406, 410-411; 540 NW2d 715 (1995).

We conclude that the complainant was in a position of special vulnerability by virtue of his parishioner-pastor relationship with defendant, and because of evidence that his parents entrusted their minor son with defendant based upon his position with the church. Defendant was as an associate pastor at the complainant's church for four years. The complainant's parents were actively involved in the church during that time, and were friends with all of the church leaders. Complainant's mother performed janitorial services at the church, and often brought her son with her or dropped him off at the church when defendant was the only person there. The complainant testified that he trusted and respected defendant as a pastor and called him "Pastor Mike." Complainant thought highly of defendant and asked him, as a pastor, for advice. Thus, there is sufficient evidence to find that the complainant was in a position of special vulnerability with respect to defendant and susceptible to abuse.

Regarding whether defendant exploited the complainant's vulnerability, we observe that the abuse occurred on church property when defendant and the complainant were alone. Some of the abuse occurred after the complainant visited defendant in his office to ask for his advice as his pastor and some of it occurred when defendant found the complainant alone in other parts of the church. On many occasions, defendant wrestled with the complainant, showed photographs of himself in his bathing suit and talked about his body, or made sexually provocative comments to complainant before initiating the sexual contact. Furthermore, the complainant testified that he masturbated defendant because defendant physically pushed his hand down to defendant's penis, and the complainant was confused. He "didn't know, like, what was okay in the situation," and "didn't know whether it was right or not or whether it's what we should've been doing." It could reasonably be concluded that defendant on the other hand, as an adult pastor, knew whether his actions with the minor parishioner were right or wrong. Thus, there is probable cause to believe that defendant used his position of authority to exploit the complainant's special vulnerability and coerce him to submit to sexual contact.

Defendant relies on our Supreme Court's summary decision in *People v Usman*, 428 Mich 902; 406 NW2d 824 (1987), in which the Court reversed the defendant's second-degree CSC conviction "because there was no evidence that the defendant used a position of authority to

coerce the 14-year old complainant to submit to sexual contact." We are unpersuaded by defendant's argument. As this Court articulated in *Reid*, *supra* at 473:

> . . . the brief summary discussion in *Usman* does not include factual background concerning the allegations in that case and, thus, does not explain *why* the evidence in that case was insufficient to support a finding that the defendant used a position of authority to coerce submission to sexual contact.

In reviewing the district court's bindover decision for an abuse of discretion, the circuit court must consider the entire record of the preliminary examination. *Crippen*, *supra* at 281. We find that the circuit court failed to consider the entire record of the preliminary examination in concluding that defendant did not use his position of authority to coerce submission. The circuit court opined that there was no evidence that "[d]efendant had any sort of counseling or mentoring role with respect to the complainant," but the complainant testified that the sexual contact sometimes occurred when he was in defendant's office asking him for advice. While the complainant testified that defendant was not his *primary* mentor at the church, the fact that the complainant respected defendant as his pastor, called him "Pastor Mike," and asked him for advice demonstrates that defendant had a mentoring role with respect to the complainant.

The evidence presented at the preliminary examination was sufficient for a person of ordinary prudence to entertain a reasonable belief that defendant used his position of authority to coerce the complainant to submit. Accordingly, we find that the district court's decision to bind over defendant on second-degree CSC charges was within the range of reasonable and principled outcomes and, therefore, that the circuit court erred in quashing the second-degree CSC charges.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane M. Beckering