

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
January 9, 2018

v

DWAYNE ANDREW DEAL,
Defendant-Appellee.

No. 339107
Wayne Circuit Court
LC No. 17-003367-01-FC

Before: STEPHENS, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

The prosecution appeals by leave granted an order granting defendant’s motion to quash the felony information as to Count 1 only, first-degree premeditated murder, MCL 750.316.¹ We reverse.

This case arises from the shooting of Alexander George (George) and the fatal shooting of Broderick Ulysses Nathaniel (Nathaniel). On appeal, the prosecution argues that the district court did not abuse its discretion when it bound defendant over on a charge of first-degree premeditated murder because there was probable cause that defendant had a premeditated intent to kill George, and defendant’s intent to kill George transferred to Nathaniel when the bullet defendant fired killed Nathaniel instead of George. Therefore, the circuit court erred when it granted defendant’s motion to quash the felony information. We agree.

This Court reviews the decision of the circuit court to grant a motion to quash a felony information “de novo to determine if the district court abused its discretion in ordering a bindover.” *People v Grayer*, 235 Mich App 737, 739; 599 NW2d 527 (1999). “A district court’s bindover decision that is contingent on the factual sufficiency of the evidence is reviewed for an abuse of discretion.” *People v Norwood*, 303 Mich App 466, 468; 843 NW2d 775 (2013). “A circuit court’s review of the bindover decision involves examination of the entire preliminary examination record, and it may not substitute its judgment for that of the lower court.” *Id.* An

¹ Defendant was also charged, as a second habitual offender, MCL 769.10, with assault with intent to murder, MCL 750.83, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b.

abuse of discretion occurs when the court's decision falls outside the range of principled outcomes. *People v Perry*, 317 Mich App 589, 594; 895 NW2d 216 (2016).

During a preliminary examination, the district court determines (1) whether a crime has been committed, and (2) whether there is probable cause to believe that the defendant committed the crime. *People v Redden*, 290 Mich App 65, 83; 799 NW2d 184 (2010) (citation omitted). "Probable cause exists where the court finds a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person to believe that the accused is guilty of the offense charged." *People v Orzame*, 224 Mich App 551, 558; 570 NW2d 118 (1997). The prosecution must provide some evidence of each element of the charged crime. *Redden*, 290 Mich App at 84. "If the evidence conflicts or raises a reasonable doubt concerning the defendant's guilt, the defendant should nevertheless be bound over for trial, at which the trier of fact can resolve the questions." *Id.*

Pursuant to MCL 750.316(1)(a), the elements of first-degree premeditated murder are that (1) the defendant killed the victim, and (2) the killing was "willful, deliberate, and premeditated." *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). The defendant must have a specific intent to kill. *People v Goecke*, 457 Mich 442, 481; 579 NW2d 868 (1998). The circuit court granted defendant's motion to quash on the ground that the evidence was insufficient to show that defendant killed Nathaniel. We cannot agree.

George testified that he was standing in the middle between defendant and Nathaniel when he felt something against his stomach, looked down, saw defendant holding a gun, and heard a gunshot. As George tried to push the gun away, defendant fired it again. George only heard two gunshots fired, and he had two gunshot wounds – one to his abdomen and one to his arm. George identified defendant in a photographic lineup, with 100 percent certainty, as the man who shot him, as well as at the preliminary examination. George testified that the first shot went in and out of his "abs," and that he had an exit wound from the bullet. Immediately after George was shot, he saw Nathaniel lying on the ground with a gunshot wound. The autopsy report indicated that Nathaniel died of a gunshot wound to his chest, and the manner of death was homicide. The district court properly found that these circumstances supported a reasonable suspicion, i.e., probable cause, that it was defendant who shot and killed Nathaniel. See *Bowman*, 254 Mich App at 151; *Orzame*, 224 Mich App at 558.

The evidence at the preliminary examination was also sufficient to establish that the killing was "willful, deliberate, and premeditated." *Bowman*, 254 Mich App at 151. "Premeditation is measured in time; time to permit a reasonable person to subject the nature of his response to a second look." *People v Brown*, 137 Mich App 396, 407; 358 NW2d 592 (1984). Facts to consider in determining whether a defendant had time to take a second look at his thoughts or actions are: "(1) the previous relationship between the parties; (2) the accused's actions prior to the killing; (3) circumstances of the killing itself; and (4) the accused's conduct after the homicide." *Id.*

Defendant did not merely shoot at George from a distance; rather, he walked over to George, held a gun directly against his abdomen, and then fired two shots. Under these circumstances, as the district court held, it can be inferred that defendant intended to shoot and kill George from the number of shots fired at close range and that defendant had sufficient time

to take a second look. See *id.* Although defendant intended to shoot and kill George, this intent is transferred to Nathaniel pursuant to the doctrine of transferred intent:

In the unintended-victim (or bad-aim) situation—where A aims at B but misses, hitting C—it is the view of the criminal law that A is just as guilty as if his aim had been accurate. Thus where A aims at B with a murderous intent to kill, but because of a bad aim he hits and kills C, A is uniformly held guilty of the murder of C. And if A aims at B with a first-degree-murder state of mind, he commits first degree murder as to C, by the majority view. [*People v Youngblood*, 165 Mich App 381, 388; 418 NW2d 472 (1988) (citations omitted).]

Thus, the evidence at the preliminary examination was sufficient to establish probable cause that defendant killed Nathaniel and the killing was willful, deliberate, and premeditated. See *Redden*, 290 Mich App at 83-84; *Bowman*, 254 Mich App at 151. Accordingly, the district court did not abuse its discretion in binding defendant over on the charge of first-degree premeditated murder and the circuit court's order granting defendant's motion to quash the felony information as to Count 1 is reversed.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly