

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
April 4, 2013

v

MICHAEL ANTHONY GREENE,
Defendant-Appellee.

No. 308097
Wayne Circuit Court
LC No. 11-001958-FH

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

The prosecution appeals as of right from an order of dismissal. Four separate charges had been filed against defendant: use of a computer to commit a crime, MCL 752.796; MCL 752.797(3)(d), unauthorized access of a computer, MCL 752.795; MCL 752.797(2)(a), common-law misconduct in office resulting in obstruction of justice, MCL 750.505, and common-law obstruction of justice, MCL 750.505. The prosecution argues that the circuit court’s dismissals of the four charges should be reversed because the district court had probable cause to believe that defendant committed the crimes alleged and, thus, did not abuse its discretion in binding defendant over to the circuit court for trial.¹ We agree and therefore reverse.

I. PERTINENT FACTS

This case arose out of an incident that occurred at the 22nd District Court in Inkster, involving defendant, a court officer at that court, who allegedly accessed city attorney Milton

¹ The appeal of right was taken from the December 9, 2011, final order that dismissed the case. See MCR 7.202(6)(b)(i). This order encompassed three of the dismissed charges. The fourth charge (unauthorized access of a computer) had been dismissed by way of a motion to quash that was granted on November 4, 2011. Contrary to defendant’s argument, we conclude that we have jurisdiction to consider this fourth charge because the November 4, 2011, order did not dismiss the “case” in its entirety and because “[a] party claiming an appeal of right from a final order is free to raise issues on appeal related to prior orders.” *Green v Ziegelman*, 282 Mich App 292, 301 n 6; 767 NW2d 660 (2009) (internal citation and quotation marks omitted). Although *Green* is a civil case, we find it applicable by analogy here.

Spokojny's email account from defendant's work computer and printed a sensitive document that was sent to that account. The document was a defense-strategy memorandum pertaining to a lawsuit in which the city of Inkster was a defendant and Kevin Smith, an employee of the city, was the plaintiff. The prosecution contended that defendant transmitted the document to codefendant Ronald Wade, who in turn delivered it to Smith.

II. STANDARDS OF REVIEW

In reviewing a circuit court's decision regarding a motion to quash an order to bind over a defendant, this Court "essentially sits in the same position as the circuit court" and asks whether the district court abused its discretion. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). This Court reviews the circuit court's decision de novo and does not give deference to the circuit court's decision. *Id.*; *People v Jenkins*, 244 Mich App 1, 14; 624 NW2d 457 (2000). This Court may find that the district court abused its discretion if it finds that the outcome in the lower court "falls outside the range of reasonable and principled outcomes." *People v Waterstone*, 296 Mich App 121, 131-132; 818 NW2d 432 (2012). An error of law necessarily constitutes an abuse of discretion. *Id.* "The decision whether alleged conduct falls within the statutory scope of a criminal law involves a question of law, which this Court reviews de novo." *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

III. LEGAL STANDARDS

When the prosecution demonstrates, by competent evidence, that there is probable cause to believe that (1) a felony was committed and (2) the defendant committed the crime, a district court must bind the defendant over to the circuit court for trial. *Jenkins*, 244 Mich App at 14. Evidence must be presented from which each element can be inferred, and conflicting evidence and evidence raising reasonable doubt are to be left for the factfinder to consider at trial. *Hudson*, 241 Mich App at 278. Probable cause exists where there is "evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. . . . [A] showing of probable cause may stop short of proof beyond a reasonable doubt, and evidence that leaves some doubt may yet demonstrate probable cause." *People v Justice*, 454 Mich 334, 344; 562 NW2d 652 (1997), (internal citations and quotation marks omitted).

IV. COMMON-LAW OBSTRUCTION OF JUSTICE

A prosecutor may charge a defendant with the common-law offense of obstruction of justice under MCL 750.505. *People v Meissner*, 294 Mich App 438, 454; 812 NW2d 37 (2011). Obstruction of justice involves the "interference with the orderly administration of justice," *People v Thomas*, 438 Mich 448, 455; 475 NW2d 288 (1991), and is best understood as a "category of crimes" rather than a single offense, *Jenkins*, 244 Mich App at 15. In its discussion of common-law obstruction of justice in *Thomas*, the Michigan Supreme Court quoted the obstruction-of-justice offenses listed by Blackstone; however, in *Jenkins*, this Court concluded that this list of offenses is not an exhaustive list. *Thomas*, 438 Mich at 457 n 5; *Jenkins*, 244 Mich App at 18. At any rate, the prosecution argues that defendant's conduct falls under one of Blackstone's categories: "officious intermeddling in a suit that no way belongs to one, by

maintaining or assisting either party with money or otherwise.” *Thomas*, 438 Mich at 457 n 5 (internal citation and quotation marks omitted).

The lawsuit at issue in the obstruction-of-justice count involved Kevin Smith (the plaintiff) and the city of Inkster. It is undisputed that defendant was not involved in that lawsuit. Evidence was presented showing that a defense-strategy memorandum was printed from defendant’s computer and that defendant distributed that memo to Wade, who in turn distributed the memo to Smith. Judge Sylvia James, of the 22nd District Court, testified that defendant told her he printed the document. Further, a forensic examination of defendant’s computer revealed that someone with the username “ofcmgreene” (defendant’s name is Michael Greene) logged onto “LPPolice.com” and searched for the name “Kevin Smith.” This occurred about 80 minutes before the user spent 45 minutes viewing, printing, and saving documents from Spokojny’s email account. Because the “ofcmgreene” username can fairly be attributed to defendant, it can be inferred from this evidence that it was defendant who was using the computer during the timeframe at issue. Further, Judge James testified that defendant told her he shared the printed “email” with Wade.² It can be inferred from the evidence presented that defendant gave the document to Wade in order to assist Smith because it appears he was doing research about Smith relatively close to the time the document was printed. Based on the evidence, a person of ordinary prudence could reasonably believe that defendant’s actions were for the purpose of intermeddling in the lawsuit by assisting Smith, i.e., by providing this sensitive defense-strategy document. Thus, a reasonably prudent person could find that the elements of Blackstone’s cited category of obstruction of justice were present. The district court did not abuse its discretion in binding over defendant for trial on the charge of common-law obstruction of justice.

V. MISCONDUCT IN OFFICE

We also find no error on the part of the district court with regard to the misconduct-in-office charge. Misconduct in office under the common law is “corrupt behavior by an officer in the exercise of the duties of his office or while acting under color of his office.” *People v Coutu*, 459 Mich 348, 354; 589 NW2d 458 (1999), quoting Perkins & Boyce, *Criminal Law* (3d ed), p 543. There are three elements to this offense: (1) defendant is a public officer, (2) “the misconduct occurred in the exercise of the duties of the office or under color of the office,” and (3) the misconduct “is corrupt behavior.” *People v Milton*, 257 Mich App 467, 471; 668 NW2d 387 (2003). Misconduct in office can be shown by (1) commission of a wrongful act, (2) commission of a “lawful act in a wrongful manner,” or (3) “fail[ure] to do an act required by the duties of the office.” *Id.*

² In dismissing the common-law obstruction-of-justice count, along with count one (use of a computer to commit a crime), the circuit court noted that Judge James did not testify specifically about how defendant “shared” the document with Wade, and the court noted that Wade said that defendant did not give him the document. However, Wade did not testify at the preliminary examination before the district court. (In addition, defendant appears to concede on appeal that he shared the document with Wade.)

The district court presumed that defendant, a court officer, is a public official, and defendant on appeal does not challenge this characterization.³ We next consider whether there was probable cause to believe that defendant engaged in corrupt behavior. Defendant argues that he merely printed a document that appeared on his own computer because it contained his name and that he shared that document with Wade; he argues that this did not constitute corrupt behavior. However, while defendant's act of printing a document from his own computer and giving the document to Wade may have been a lawful act, because there is evidence that defendant did not have the authority to access Spokojny's email account and that he was accessing Spokojny's email account for 45 minutes, there is evidence that the allegedly lawful act was done in a wrongful manner. *Id.* Further, because of the evidence that someone with the username "ofcmgreene" logged onto LPPolice.com and searched for the name "Kevin Smith," it can be inferred that defendant engaged in these actions to give Smith an unfair advantage in his lawsuit.

"A corrupt intent is not necessarily an intent to profit oneself; [t]he word "corruption" as an element of misconduct in office[] is used in the sense of depravity, perversion or taint." *Thomas*, 438 Mich at 461 n 6, quoting Perkins & Boyce, *Criminal Law* (3d ed), p 542. Black's Law Dictionary (9th ed) defines "taint" as "1. To imbue with a noxious quality or principle. 2. To contaminate or corrupt. 3. To tinge or affect slightly for the worse." It can be inferred from the evidence that defendant intended to taint the lawsuit by giving Smith an unfair advantage.

We must lastly consider whether there was probable cause to believe that defendant acted under the color of office. "Actions by an officer that occur because he is an officer or because of the opportunity afforded by that fact arise under the color of the office." *People v Hardrick*, 258 Mich App 238, 245 n 2; 671 NW2d 548 (2003). Defendant printed the document from his work computer, and the document was accessible on this computer because it was a court computer used by Spokojny with defendant's permission. Therefore, there was probable cause to believe that but for defendant's position as a court officer, he would not have had the opportunity to access the document.

VI. USE OF A COMPUTER TO COMMIT A CRIME

Michigan law prohibits using a "computer program, computer, computer system, or computer network to commit, attempt to commit, conspire to commit, or solicit another person to commit a crime," and this statute applies regardless of "whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense." MCL 752.796. MCL 752.797(3)(d) establishes the punishment for the offense based on the underlying felony. In this case, the predicate offense was common-law obstruction of justice, punishable under MCL 750.505. *Meissner*, 294 Mich App at 454.

³ At any rate, we note that defendant's position as a court officer is analogous, in some ways, to that of a deputy sheriff, and the Michigan Supreme Court has found a deputy sheriff to be a public official for purposes of the common-law offense of misconduct in office. *Coutu*, 459 Mich at 355.

As noted above, there was probable cause to believe that defendant committed obstruction of justice. Further, there was probable cause, based on the evidence presented at the preliminary examination, to believe that defendant used a computer in doing so. As such, the district court properly bound defendant over for trial on the charge of using a computer to commit a crime.

VII. UNAUTHORIZED ACCESS OF A COMPUTER

MCL 752.795(a) states that “[a] person shall not intentionally and without authorization or by exceeding valid authorization . . . [a]ccess or cause access to be made to a computer program, computer, computer system, or computer network to acquire, alter, damage, delete, or destroy property or otherwise use the service of a computer program, computer, computer system, or computer network.” MCL 752.792 defines certain terms:

(1) “Access” means to instruct, communicate with, store data in, retrieve or intercept data from, or otherwise use the resources of a computer program, computer, computer system, or computer network.

* * *

(3) “Computer” means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations including logical, arithmetic, or memory functions with or on computer data or a computer program and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(4) “Computer network” means the interconnection of hardware or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(5) “Computer program” means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(6) “Computer system” means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

There are two kinds of intent a criminal statute may require: general intent or specific intent. *People v Herndon*, 246 Mich App 371, 385; 633 NW2d 376 (2001). “A statute that requires a prosecutor to prove that the defendant intended to perform the criminal act creates a general intent crime. A statute that requires proof that the defendant had a particular criminal intent beyond the act done creates a specific intent crime.” *Id.* (internal citations and quotation marks omitted). The words “knowingly,” “willfully,” “purposefully,” and “intentionally” typically are included in statutes pertaining to specific-intent crimes. *People v Disimone*, 251 Mich App 605, 611; 650 NW2d 436 (2002). While the present statute does use the word

“intentionally,” nothing else in the statute indicates that the statute requires intent beyond the act itself; therefore, this is a general-intent crime.

The circuit court found that the elements of intent and lack of authorization were not met in this case because “if anybody had come by and touched that mouse or keyboard, they would have seen that document. . . . It was an accident.”⁴ However, it is not clear from the evidence presented at trial whether this is actually how defendant came across the document. To the contrary, there was evidence presented at the preliminary examination suggesting that defendant spent 45 minutes looking inside Spokojny’s email account and that documents were viewed, saved, and printed from the email account during this time. This evidence suggests that the document did not just inadvertently pop up on the screen when defendant moved the mouse but that, instead, defendant intentionally searched through Spokojny’s email account, ostensibly for the document. Further, defendant did not have authority to access Spokojny’s email account, nor did Spokojny give defendant his password. Therefore, the evidence presented established probable cause to believe that defendant intentionally and without authority accessed Spokojny’s email account to acquire the document and use the email account. The language contained in the “computer program” definition encompasses the AOL website from which Spokojny’s email account was accessed. MCL 752.792(5). In addition, the language “a set of related, connected or unconnected, computer equipment, devices, software, or hardware” in the definition of “computer system” is broad enough to encompass AOL’s server, which communicated with defendant’s computer to create access to the AOL website and Spokojny’s email account on defendant’s computer. MCL 752.792(6). Therefore, the evidence presented was sufficient to establish probable cause to believe that defendant intentionally and without authorization accessed a computer program and computer system to acquire the document at issue or, more generally, to use the service of Spokojny’s email account.

Reversed and remanded. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter

⁴ The premise was that the document was up on defendant’s computer screen and that defendant simply saw the document when he moved his mouse.