

IN THE UTAH COURT OF APPEALS

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State of Utah,) MEMORANDUM DECISION
) (Not For Official Publication)
 Plaintiff and Appellant,) Case No. 20090912-CA
)
 v.) F I L E D
) (December 23, 2010)
 Patrick Robert Ramirez,)
)
 Defendant and Appellee.) 2010 UT App 373

Fifth District, St. George Department, 091501000
The Honorable G. Rand Beacham

Attorneys: Mark L. Shurtleff and Laura B. Dupaix, Salt Lake
City, for Appellant
Ryan D. Stout, St. George, for Appellee

Before Judges McHugh, Orme, and Thorne.

ORME, Judge:

"To bind a defendant over for trial, the State must show probable cause at a preliminary hearing by present[ing] sufficient evidence to establish that the crime charged has been committed and that the defendant has committed it." State v. Clark, 2001 UT 9, ¶ 10, 20 P.3d 300 (alteration in original) (citation and internal quotation marks omitted). While the quantum of evidence required to support a finding of probable cause for bindover is "relatively low," id. ¶¶ 10, 16, "to prevail at a preliminary hearing, the prosecution must . . . produce believable evidence of all the elements of the crime charged," id. ¶ 15 (citation and internal quotation marks omitted). To determine whether the evidence supports a reasonable belief that the defendant committed each element of the charged offense, "'the magistrate must view all evidence in the light most favorable to the prosecution and must draw all reasonable inferences in favor of the prosecution.'" Id. ¶ 10 (alteration in original) (citation omitted).

To bind over on possession of a controlled substance and possession of drug paraphernalia, the State must present evidence sufficient to support a reasonable belief that Defendant knowingly and intentionally possessed a controlled substance and

drug paraphernalia, respectively. See Utah Code Ann. § 58-37-8(2)(a)(i) (Supp. 2010) (possession of a controlled substance); id. § 58-37a-5(1)-(2) (possession of drug paraphernalia). In this context, "possession" is defined as "the joint or individual ownership, control, occupancy, holding, retaining, belonging, [or] maintaining" of contraband. Id. § 58-37-2(1)(ii).

In this case, the State failed to present sufficient evidence "to support a reasonable belief that [Defendant] committed the charged crime," State v. Virgin, 2006 UT 29, ¶ 17, 137 P.3d 787. Because Defendant was in jail at the time officers searched his motel room, the State, as the magistrate concluded, "would have to establish probable cause to believe that Defendant had constructive possession of the contraband." Although the magistrate found "probable cause to believe that Defendant had dominion and control over the motel room at some point in time before the officers searched the room," he nevertheless concluded--and the emphasis is his, not ours--that "[e]very reasonable inference from the evidence . . . [indicated] that Defendant did not know of the presence of the drug residue and paraphernalia."

The critical piece missing from the State's presentation was evidence showing the nature and character of the motel, or of Defendant's room in particular, and the exclusivity of his control and access.¹ The motel manager was not called as a witness, and when the prosecutor sought to ask one of the detectives about information he had learned from the manager--presumably concerning such matters--Defendant objected and the prosecutor withdrew the question. Without such evidence in the record, the State's contentions about the exclusivity of Defendant's control of and access to the room, at all points in time when the contraband might have found its way into the garbage sack, are speculations--albeit plausible ones--rather than inferences logically drawn from the evidence actually before the magistrate. Cf. State v. Layman, 953 P.2d 782, 791 (Utah Ct. App. 1998) (stating that, in a case "[w]here the State fails to present evidence establishing a pivotal fact[,] . . . we must take special care to ensure that our review of the evidence does not encourage the indulging of 'inference upon inference,' or, worse, the indulging of inference upon assumption"), aff'd, 1999 UT 79, 985 P.2d 911. See also State v. Hester, 2000 UT App 159, ¶ 16, 3 P.3d 725 ("While it is sometimes subtle, there is in fact a difference between drawing a reasonable inference and merely

¹Indeed, one of the detectives conceded the likelihood of the manager and the housekeeping staff having unfettered access to the room.

speculating about possibilities."), cert. denied, 9 P.3d 170 (Utah 2000); id. (defining "inference" and "speculation").

Therefore, because the evidence presented to the magistrate fails to support a reasonable belief that Defendant knowingly and intentionally possessed the methamphetamine residue and drug paraphernalia found in his motel room, we cannot say that the magistrate erred by refusing to bind Defendant over.

Affirmed.

Gregory K. Orme, Judge

I CONCUR:

Carolyn B. McHugh,
Associate Presiding Judge

THORNE, Judge (dissenting):

I respectfully dissent from the majority's affirmance of the magistrate's decision to not bind Defendant over on charges of possession of a controlled substance and possession of drug paraphernalia. I do not agree with the majority's determination that because the prosecution failed to present evidence showing the nature and character of the motel or of Defendant's lodgings and the exclusivity of his control and access, the facts of this case fail to support a reasonable belief that Defendant knowingly and intentionally possessed the methamphetamine residue and drug paraphernalia found in his motel room. See supra paras. 4-5.

Here, the facts give rise to two reasonable alternate inferences. One inference from the evidence would be that because Defendant gave permission to search the motel room, which others such as the manager and housekeeping staff may have had access to, Defendant did not know of the presence of the drug residue and paraphernalia. However, an alternative reasonable inference from other facts, such as the state of Defendant's

motel room,¹ that nobody had accessed his room without his permission, and that Defendant lived alone in the room, is that Defendant indeed knew of the drug residue but thought that the residue would not be discovered because he had properly discarded it prior to leaving his room.

When faced with conflicting evidence and inferences, "the magistrate must view all evidence in the light most favorable to the prosecution and must draw all reasonable inferences in favor of the prosecution." State v. Clark, 2001 UT 9, ¶ 10, 20 P.3d 300 (internal quotation marks omitted). Furthermore, the evidence required to show probable cause is relatively low, see id., and the bindover standard is intended to leave the principal fact finding of the issues, which the majority identifies as the nature and character of the motel room and the exclusivity of Defendant's control and access, to the jury. See State v. Virgin, 2006 UT 29, ¶ 21, 137 P.3d 787. As such, I disagree with the majority that the absence of exclusivity evidence renders any other inferences speculative. Although sometimes subtle, "there is in fact a difference between drawing a reasonable inference and merely speculating about possibilities." State v. Hester, 2000 UT App 159, ¶ 16, 3 P.3d 725.

An inference is a conclusion reached by considering other facts and deducing a logical consequence from them. Stated another way, an inference is a deduction as to the existence of a fact which human experience teaches us can reasonably and logically be drawn from proof of other facts. On the other hand, speculation is defined as the act or practice of theorizing about matters over which there is no certain knowledge.

Id. (citations and internal quotation marks omitted). It is not necessary that there be only one most likely inference. It is, instead, enough if an inference is reasonably available which supports the prosecution's case. Cf. Clark, 2001 UT 9, ¶¶ 20-21 (identifying two alternate inferences, an inference that the defendants may have been unaware the checks were stolen and an inference that the defendants had an intent to defraud; viewing all reasonable inferences in a light most favorable to the state);

¹The officers found the pipe where Defendant said it would be on Defendant's bed under some covers. The officers also found paperwork and a prescription bottle with Defendant's name on it. The search revealed nothing in the motel room belonging to anyone other than Defendant.

and finding that despite the conflicting alternate inferences the state had shown probable cause). The evidence in this case provides a logical basis from which to deduce that Defendant knowingly and intentionally possessed a controlled substance and drug paraphernalia. Accordingly, I would reverse the magistrate's decision.

William A. Thorne Jr., Judge