

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DAVID JOHN CULHANE,

Defendant-Appellee.

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UNPUBLISHED

February 3, 2005

No. 251163

Isabella Circuit Court

LC No. 03-002188-AR

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

The prosecution appeals by leave granted a circuit court order affirming the district court's refusal to bind over defendant David John Culhane for trial on a charge of larceny in a building, MCL 750.360. We affirm. This case is being decided without oral argument under MCR 7.214(E).

The prosecution argues that the district court abused its discretion by refusing to bind over defendant for trial. We agree. A bindover decision is reviewed for an abuse of discretion. *People v Yost*, 468 Mich 122, 126-127; 659 NW2d 604 (2003). Probable cause to support binding over a defendant for trial requires evidence “sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief” of the defendant's guilt. *Id.* at 126, quoting *People v Justice (After Remand)*, 454 Mich 334, 344; 562 NW2d 652 (1997). Such reasonable doubt exists if a reasonable person could believe that the charged crime was committed and that the defendant “had motive and opportunity, as well as arguably incriminating actions and explanations.” *Yost, supra* at 132-133. That a district court might have reasonable doubt as to whether a defendant committed the charged crime is not a sufficient basis for refusing to bind over the defendant for trial. *Id.* at 133.

In this case, the district court indicated that it declined to bind over defendant for trial on the larceny in a building charge at issue because of a lack of probable cause that defendant intended to permanently deprive Davis of the money that he took without permission. See *People v Pratt*, 254 Mich App 425, 427; 656 NW2d 866 (2002) (larceny requires that property be taken with intent to permanently deprive the owner of possession). It is undisputed that there was adequate evidence of all other elements of larceny in a building. The complainant testified at defendant's preliminary examination that defendant told her that he only took the money to give her a reason to call him. Furthermore, defendant actually returned the money to the complainant within a short period of time. Based on these admissions by the complainant, the

district court properly found a lack of probable cause on the element of intent and refused to bind defendant over for trial.

However, the prosecution also argues that the district court erred by considering the complainant's testimony regarding defendant's stated reason for taking the money because it was inadmissible hearsay. We review a trial court's decision to admit evidence for an abuse of discretion and preliminary questions of law de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). The trial court determined that defendant's statement was admissible under the state of mind exception to the hearsay rule, MRE 803(3), which provides for the admission of "a statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design . . .)." The district court properly determined that defendant's statement shortly after he took the complainant's money was admissible under this exception to establish his intent in doing so.

Affirmed.

/s/ Janet T. Neff

/s/ Jessica R. Cooper

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ZAHRA, P.J. (*dissenting*).

I respectfully dissent. I conclude that the district court abused its discretion by refusing to bind over defendant for trial on the charge of larceny in a building, MCL 750.360.

The complainant's testimony that defendant told her he took her money so that the complainant would call her merely creates a fact question whether defendant intended to permanently deprive the complainant of her money. This fact question is to be resolved by a jury and does not authorize the district court to refuse to bind defendant over on the charge of larceny in a building. The fact that defendant took the complainant's money without authority to do so and deprived her of it for two weeks, until after the complainant reported the crime to the police, is sufficient evidence to bind defendant over on the charge of larceny in a building.

I would reverse the order of the circuit court and remand the case to the district court for entry of an order binding defendant over on the charge of larceny in a building.

/s/ Brian K. Zahra