

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
September 23, 2014

v

KHALIL ABED AOUN,

Defendant-Appellee.

No. 316182
Wayne Circuit Court
LC No. 13-000960-FH

Before: RIORDAN, P.J., and CAVANAGH and TALBOT, JJ.

PER CURIAM.

The prosecution appeals as of right from the circuit court’s order dismissing a charge of bribing, intimidating, or interfering with a witness in a criminal case in violation of MCL 750.122. The court entered the order after granting defendant’s motion to quash. We reverse and remand for reinstatement of the charge against defendant.

In 2012, Ahmed Saleh purchased real property from a man identified as Aoun Aoun (“Aoun”). At the time of the purchase, Aoun apparently represented that there were no back taxes owing on the property. Despite these representations, after the sale, Saleh discovered that there existed approximately \$8,000 in back taxes. As a result of these and other events, criminal charges were brought against Aoun.

On November 7, 2012, Saleh testified at Aoun’s preliminary examination. On November 13, 2012, defendant, Aoun’s brother, appeared at Saleh’s home. During this encounter, defendant offered to pay the back taxes owed on the property. Defendant further stated, “[P]lease don’t go to the court. I don’t want my brother to be on probation.” After defendant left, Saleh immediately called the prosecutor’s office and informed it of the encounter.

Following these events, defendant was charged with bribing, intimidating, or interfering with a witness in a criminal case in violation of MCL 750.122. At defendant’s preliminary examination, in addition to the facts set forth above, Saleh, the only witness, gave the following additional testimony related to his November 13, 2012 encounter with defendant. On cross-examination, Saleh testified:

Q. All right. Now, when my client said he wanted to pay the back taxes, now he didn’t give you any money, did he?

A. No.

Q. All right. He didn't say well, let me give you this money, and you don't go to court; he never said that, did he?

A. No. He said –

Q. Excuse me. He never said that, did he; yes or no?

A. No. [PE, p 18.]

However, Saleh further testified:

Q. All right. He never said anything about I'll pay the taxes, if you don't go to court, did he?

A. No. He said please don't go to the court. I don't want my brother to be on probation.

Q. All right. Now, he never said I'm going to pay the taxes, if you don't go to court he never said that, did he?

A. He said I'm going to pay you the taxes, you don't have to go to the court.

Q. No. No. My question is: He never said I'll pay the taxes, if you don't go to court; he never said that, did he?

A. He said, please don't go to court.

Q. No. I'm asking you, he never said it the way I just asked you, did he.

A. Yes, he did. [Emphasis added.]

At the conclusion of Saleh's testimony, the prosecution moved to bind defendant over on the charged offense. Defendant requested that the charge be dismissed, asserting that there had been no showing that he offered Saleh something of value in exchange for his agreement not to testify further in his brother's case. Defendant argued that he simply offered to pay the back taxes on the property. The district court found that the prosecution had established probable cause that defendant committed the charged offense. The court concluded that there was a question of fact whether the offer to pay the back taxes was made to discourage Saleh from testifying against defendant's brother in further court proceedings.

Thereafter, defendant moved in the circuit court to quash the bindover. Defendant again argued that there was no evidence that he had interfered with, intimidated, or bribed a witness, but rather "merely offered to resolve a dispute between two parties by paying the alleged debt." The circuit court granted defendant's motion to quash and dismissed the charge. The court found that while defendant had clearly offered Saleh something of value, there was insufficient

evidence that he had done so to discourage Saleh from testifying against defendant's brother. Despite this ruling, the circuit court made the following observations:

The first prong is clearly met. There was an offer of something of value and I don't think it has to be made that, 'I'm going to hand you cash'. 'I'm going to pay off the money that my brother cheated you out of' is an offer of something of value. *Was it in exchange for hopefully dropping the case? I think so*, but I don't think that it was – he was saying, 'If I pay you this money I don't want you to go to court'. I don't think that the prongs of "A", "B": or "C" under 751.22(1) [sic] – I don't think that there was any direct attempt to discourage, direct attempt to influence the testimony or direct attempt to encourage the individual to avoid testifying. So with respect to – and I don't think that was proven. I don't think it was proven by a preponderance of the evidence and . . . while there are always issues of fact, I don't think it rises to – he left. There was no further contact and I don't think that there was an attempt to dissuade him from testifying truthfully in the other case. So I will grant the motion to quash. [Emphasis added.]

A circuit court's decision on a motion to quash a bindover is reviewed de novo. *People v Crippen*, 242 Mich App 278, 282; 617 NW2d 760 (2000). In reviewing the district court's decision to bind a defendant over for trial, a circuit court must consider the entire record of the preliminary examination, but may not substitute its judgment for that of the district court. *Id.* A district court's decision to bind a defendant over for trial is afforded great discretion and will not be disturbed absent an abuse of discretion. *Id.* An abuse of discretion occurs when the district court's decision is outside the range of reasonable and principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). Because a reviewing court applies the same standard of review to this issue as the circuit court, a circuit court's decision with respect to a motion to quash a bindover is not entitled to deference. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000).

"The purpose of a preliminary examination is to determine whether there is probable cause to believe that a crime was committed and whether there is probable cause to believe that the defendant committed it." *People v Cohen*, 294 Mich App 70, 74; 816 NW2d 474 (2011). To meet its burden at the preliminary examination stage, the prosecution must present "enough evidence on each element of the charged offense to lead a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt." *Id.*

Defendant was charged with violating MCL 750.122, which provides, in pertinent part:

(1) A person shall not give, offer to give, or promise anything of value to an individual for any of the following purposes:

(a) To discourage any individual from attending a present or future official proceeding as a witness, testifying at a present or future official proceeding, or giving information at a present or future official proceeding.

(b) To influence any individual's testimony at a present or future official proceeding.

(c) To encourage any individual to avoid legal process, to withhold testimony, or to testify falsely in a present or future official proceeding.

With respect to the first prong of the statute, the evidence clearly established that defendant offered Saleh something of value, i.e., he offered to pay the back taxes owed on the property. The principal issue is whether there was evidence that defendant offered to pay the taxes to discourage Saleh from participating in the criminal proceedings involving defendant's brother. We conclude that the prosecution presented sufficient evidence that defendant offered to pay the taxes to encourage Saleh to withhold his testimony or to discourage him from attending the proceeding as a witness.

Saleh was questioned repeatedly about the statements made by defendant. He stated several times that defendant: (1) offered to pay the back taxes, (2) asked that Saleh "not go to court" and (3) indicated that he did not want his "brother to be on probation." Defendant argues that this testimony is insufficient to establish that he offered Saleh something of value *for the purpose of* discouraging him from testifying as a witness in Aoun's criminal matter. Indeed, defendant suggests that the offer to pay the back taxes was simply an offer to satisfy his brother's outstanding debt to Saleh. To establish that a crime has been committed, a prosecutor need not prove each element beyond a reasonable doubt, but he must present some evidence of each element at the preliminary examination. *People v Henderson*, 282 Mich App 307, 312; 765 NW2d 619 (2009). Circumstantial evidence and reasonable inferences from the evidence can be sufficient. *Id.* at 312. The totality of defendant's statements, particularly defendant's specific reference to his brother's criminal case, supports a reasonable inference that defendant's offer to pay the back taxes was made to discourage Saleh from testifying against defendant's brother in the future. Indeed, this issue does not really turn on circumstantial evidence or reasonable inferences because Saleh specifically testified that defendant offered to pay the back taxes to discourage Saleh from testifying further in his brother's case.

Q. No. No. My question is: He never said I'll pay the taxes, if you don't go to court; he never said that, did he?

A. He said, please don't go to court.

Q. No. I'm asking you, he never said it the way I just asked you, did he.

A. Yes, he did.

Based upon the foregoing, there was sufficient evidence presented as to each element of the charged offense. There was evidence that defendant offered Saleh something of value for the purposes of discouraging him from testifying in Aoun's trial. At the very least, a question of fact exists whether defendant offered to pay the back taxes to encourage Saleh not to testify. "If the evidence introduced at the preliminary examination conflicts or raises a reasonable doubt about the defendant's guilt, the magistrate must let the factfinder at trial resolve those questions of fact." *Hudson*, 241 Mich App at 278.

Accordingly, the district court did not abuse its discretion when it bound defendant over on the charged offense, that is, the district court's decision did not fall outside the range of reasonable and principled outcomes. Consequently, because the bindover was warranted by the

evidence, the circuit court erred when it granted defendant's motion to quash. *Crippen*, 242 Mich App at 282. Therefore, we reverse the circuit court's orders granting the motion to quash the bindover and dismissing the criminal charge, and we remand this case to the circuit court for reinstatement of the charge against defendant.

Reversed and remanded for reinstatement of the charge against defendant. We do not retain jurisdiction.

/s/ Michael J. Riordan

/s/ Mark J. Cavanagh

/s/ Michael J. Talbot