

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DOUGLAS BRAX HALL,

Defendant-Appellee.

UNPUBLISHED

October 3, 2006

No. 270479

Wayne Circuit Court

LC No. 06-001552-03

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiff appeals a trial court order that granted defendant's motion to quash and dismissed the case against defendant. We reverse and remand for trial on a charge of second-degree murder, MCL 750.317. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Procedural History

The prosecution charged defendant and co-defendants Derek Larabee and Kristopher Bayones¹ with first-degree premeditated murder, MCL 750.316, in the death of Jamie Colby. At the preliminary examination, the evidence showed that Colby sustained sixteen lacerations to his head, that the lacerations were caused by an elongated, heavy, likely metal object, and that the cause of death was blunt force trauma to the head. The manner of death was homicide.

Defendant and co-defendants encountered Colby in a store, and Larabee and Colby, who were acquaintances, began to argue. Later, a police officer saw Colby in a vehicle with defendant and co-defendants, but the officer found nothing amiss and made no arrests. Colby's body was discovered the next day in the picnic area of an apartment complex. He had been struck in the head numerous times, and a picnic table had been placed on his head.

Defendant spoke to the police at his home, and subsequently went to the police station and provided a written statement. Defendant indicated that he, co-defendants, and Colby went to a picnic area at an apartment complex. Defendant admitted that at that time, he thought that

¹ Larabee and Bayones are not involved in this appeal.

Larabee intended to beat Colby. Defendant offered Colby and the other men a drink, whereupon Larabee began beating Colby. Larabee struck Colby several times, and then left the area with Bayones and defendant. The three men went to Larabee's brother's apartment. Defendant had blood on his face and shirt, and so washed his face and changed his shirt. Defendant and co-defendants decided to go to defendant's home, and returned to the vehicle. Larabee left the area momentarily. He stated that when he returned, he stated that he placed a picnic table on Colby's head and jumped on the table. When the three men arrived at defendant's home, they started a fire in the yard and burned boots, a box of doughnuts Colby had purchased, and a metal rod.

The district court bound all three defendants over for trial on the charged offense of first-degree murder, finding that probable cause existed to show that Larabee physically committed the offense, and that Bayones and defendant aided and abetted the offense. The district court noted that the evidence showed that the picnic table found on Colby's head was extremely heavy, and that it was reasonable to infer that either Bayones or defendant helped Larabee move the table. Moreover, defendant knew that Larabee and Colby had argued, and that Larabee had carried a metal rod from Bayones' vehicle to the picnic area.

In the trial court, defendants moved to quash the information. The trial court denied Larabee's motion, granted Bayones' motion in part and reduced the charge against Bayones to second-degree murder, MCL 750.317, and granted defendant's motion and dismissed the case against defendant with prejudice. The trial court found that evidence showed that defendant and Bayones knew that Larabee intended to beat Colby, but not that Larabee intended to kill Colby. The trial court also found that defendant's act of offering Colby a drink while Larabee prepared to attack Colby could not be viewed as an act of assistance, and that no other evidence showed that defendant did any act to assist Larabee in committing the offense.

II. Analysis

The purpose of a preliminary examination is to determine if probable cause exists to believe that a crime was committed and that the defendant committed it. *People v Fiedler*, 194 Mich App 682, 689; 487 NW2d 831 (1992); MCL 766.13; MCR 6.110(E). Probable cause is defined as evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003).

During a preliminary examination, the prosecutor is not required to prove the defendant's guilt beyond a reasonable doubt, but must produce evidence of each element of the crime charged, or evidence from which the elements can be inferred. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). Circumstantial evidence and reasonable inferences drawn from the evidence can be sufficient. *People v Greene*, 255 Mich App 426, 444; 661 NW2d 616 (2003). A magistrate should not discharge a defendant if the evidence conflicts or raises a reasonable doubt of guilt. Such questions should be left for the jury. *People v Drake*, 246 Mich App 637, 640; 633 NW2d 469 (2001). The decision to discharge or bind over a defendant is reviewed for an abuse of discretion. *People v Vasher*, 167 Mich App 452, 456; 423 NW2d 40 (1988). The trial court may not substitute its judgment for that of the district court. *Drake, supra* at 639-640. We review the trial court's decision that the district court abused or did not abuse its discretion de novo. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997). The trial court's

decision is not entitled to deference. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000).

In order to convict a defendant of second-degree murder, the prosecution must show that the defendant killed the victim with malice and without justification or excuse. Malice requires an intent to kill, an intent to do great bodily harm, or an intent to create a high risk of death or great bodily harm with knowledge that death or great bodily harm is the probable result. *People v Neal*, 201 Mich App 650, 654; 506 NW2d 618 (1993). Malice may be inferred from evidence that the defendant intentionally set in motion force likely to cause death or great bodily harm. *People v Bulmer*, 256 Mich App 33, 36; 662 NW2d 117 (2003), quoting *People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999).

To establish aiding and abetting, the prosecution must show that: (1) the charged crime was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement which assisted the commission of the crime; and (3) the defendant intended the commission of the crime, or had knowledge that the principal intended its commission at the time the defendant gave aid or encouragement. *People v Robinson*, 475 Mich 1, 6; 715 NW2d 44 (2006). A defendant is liable for the crime he intends to aid or abet as well as for the natural and probable consequences of that crime. The prosecution must prove that the defendant aided or abetted the commission of an offense, and that the defendant intended to aid the commission of the offense, knew the principal intended to commit the offense, or, in the alternative, that the charged offense was the natural and probable consequence of the commission of the intended offense. *Id.* at 14-15.

We find that the trial court erred by dismissing the case against defendant rather than reducing the charge against him to second-degree murder, based on an aiding and abetting theory,² reverse the trial court's decision, and remand for reinstatement of a charge of second-degree murder against defendant. Defendant and co-defendants walked with Colby to the picnic area in the apartment complex. Defendant offered a drink to Colby, and as defendant was preparing the drink, Larabee launched his attack on Colby. Contrary to the trial court's finding, this evidence could be viewed by a jury as evidence of an act performed by defendant to aid Larabee. The meaning of the evidence was for the jury to determine. *Drake, supra* at 640. Furthermore, by his own admission, defendant knew that Larabee intended to beat Colby. The ferocity with which the evidence showed that Larabee beat Colby was sufficient to support an inference that Larabee acted with malice. *Bulmer, supra*. Thus, the evidence supported an inference that Larabee intended to inflict great bodily harm on Colby. An escalation of force sufficient to cause Colby's death was to have been reasonably expected as a natural and probable consequence of the intended wrong. The evidence supported a finding that defendant aided and abetted second-degree murder. *Robinson, supra* at 14-15.

² The prosecution essentially concedes that the evidence produced at the preliminary examination did not support a charge of first-degree murder against defendant, and that substitution of a charge of second-degree murder, as was done against Bayones, would have been appropriate.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette