

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHRISTOPHER JAMES LONG,

Defendant-Appellee.

UNPUBLISHED
February 26, 2019

No. 342877
Wayne Circuit Court
LC No. 18-000271-01-FC

Before: TUKEL, P.J., and SHAPIRO and GADOLA, JJ.

PER CURIAM.

The prosecution appeals as of right the order of the circuit court granting defendant's motion to quash the order of the district court binding defendant over on charges of first-degree murder, MCL 750.316, felon in possession of a firearm (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We reverse and remand.

I. FACTS

This case arises from the murder of Derrick Berrien, who was found shot to death on a street in Detroit in the early morning hours of November 18, 2017. On the evening of November 17, 2017, Berrien and his cousin, Demetris McGruder, were playing video games at a house on Lappin Street in Detroit. At some point, Berrien left the house while McGruder continued to play a video game. A short time later, McGruder heard seven to nine gunshots that sounded as if they were being fired immediately in front of the house. McGruder went to the door and looked outside, and saw Berrien getting up from the ground with blood on his arm. McGruder saw a silver Mercedes Benz parked in the driveway; defendant Christopher Long, also known as "Ice," was standing on the far side of the car next to the driver's door. McGruder saw a second man, Monte Kennedy, get out of the front passenger seat of the car and run toward Berrien, while stating "Ice, you a dirty nigga." As Kennedy began to help Berrien into the car, Berrien told McGruder to go inside because it was not safe, which McGruder did.

About five minutes later, McGruder went outside and saw that the car and the three men were gone. McGruder found the victim's bloodstained cell phone in the grass in front of the

house. McGruder used the phone to call the number designated as “Ice,” and Berrien answered. Berrien refused to tell McGruder where he was, but told him he was going to the hospital, and that McGruder should not tell anyone that he was with defendant, but should instead say that he didn’t know anything. A minute and a half later, Berrien called McGruder back, calling from the cell phone designated as the number for “Ice,” and they had a short conversation in which Berrien repeated what he had said in the previous conversation. Six minutes later, defendant called McGruder using the cell phone designated as the number for “Ice” that Berrien had just used. According to McGruder, defendant asked him if he was “straight” and whether he knew what had happened. McGruder said that he knew that Berrien had been shot but did not see it happen, and asked where Berrien was. According to McGruder, defendant replied that he had dropped Berrien off at the intersection of Duchess and Morang, that Berrien was “good” and was going to make it, and cautioned McGruder not to say that he had been with Berrien.

Michelle Wadley, Berrien’s mother, learned from a friend that Berrien had been shot. After Wadley was unable to locate Berrien by checking two hospitals and searching Duchess Street, she asked McGruder to call defendant. McGruder called defendant and asked where Berrien was, and defendant told him that he had dropped Berrien off on Duchess and Morang, and again emphasized that McGruder should not tell anyone that defendant had been with Berrien. Wadley then grabbed the phone from McGruder, and demanded that defendant tell her where Berrien was. Defendant answered that he had taken Berrien to the hospital. Wadley insisted that this was not true, and asked how many times Berrien had been shot, to which defendant replied that Berrien had been shot in the leg, the back, and the arm. When Wadley became upset, Berrien told her that he had dropped Berrien off at “his people’s house” and also told her that he had left him at a “safe house.” When Wadley called defendant again, defendant told her that he had left Berrien on Duchess and Moross, and told her that he had been unable to take Berrien to the hospital because he was on parole and because his car is “bold.”

Wadley called the police and together they called defendant, who refused to talk to the police and would only talk to Wadley. Wadley asked defendant to tell her where Berrien was so that she could get medical care for him. Defendant would not tell her where Berrien was, but offered to drive Wadley to the location. Wadley ended the conversation. In the early morning hours of November 18, 2017, police found Berrien’s body on Malcolm Street, just north of Olga Street, lying half on the curb, half on the street. Photographs introduced at the preliminary examination show the location to be a somewhat remote area. Near the victim’s feet was a spent casing from a gun. The report of the medical examiner concluded that Berrien had been shot seven times, six times from behind in the leg, back, and arm, and once from the front through the eye, and died as a result of the gunshot wounds.

Defendant was arrested and charged with first-degree murder, felon in possession of a firearm, and felony-firearm. A preliminary examination was held on the charges before the district court. The prosecution presented the testimony of McGruder, Wadley, Detroit police officer Jonathan Lipa, and Detroit police detective Robert Skender. Skender testified that his responsibilities include analyzing cell phone records and cell tower activity. He testified that at 8:12 p.m. on November 17, 2017, defendant’s cell phone used a cell phone tower consistent with the phone being used in the area of the house on Lappin Street. Twenty-eight minutes later, at 8:40 p.m., the phone made contact with a tower consistent with the phone being in the area where the victim’s body was later found on Malcom and Olga. Detective Skender also

confirmed the activity between defendant's cell phone and Berrien's cell phone between 8:00 p.m. and 9:00 p.m. on November 17, 2017.

At the conclusion of the preliminary examination, the district court bound defendant over to the circuit court for trial on the charges. Before the circuit court, defendant moved to quash the bindover, arguing that the evidence presented at the preliminary examination was insufficient to support the bindover. The circuit court granted defendant's motion, finding that the evidence was insufficient to support the bindover. The prosecution now appeals.

II. DISCUSSION

The prosecution argues that the district court did not abuse its discretion when it determined that sufficient evidence was presented at the preliminary examination to bind over defendant for trial on the charges, and that the circuit court erred in quashing the bindover. We agree.

A district court's decision to bind over a defendant on charges is reviewed for an abuse of discretion. *People v Shami*, 501 Mich 243, 251; 912 NW2d 526 (2018). "An abuse of discretion occurs when the district court's decision 'falls outside the range of principled outcomes.'" *People v Seewald*, 499 Mich 111, 116; 879 NW2d 237 (2016), quoting *Epps v 4 Quarters Restoration LLC*, 498 Mich 518, 528; 872 NW2d 412 (2015). A circuit court is not entitled to substitute its judgment for that of the district court, and a circuit court's decision to quash a district court's bindover is not entitled to deference; rather, we review de novo the circuit court's decision to grant or deny a motion to quash charges to determine if the district court abused its discretion in binding over a defendant for trial. *People v Norwood*, 303 Mich App 466, 468; 843 NW2d 775 (2013).

"The purpose of a preliminary examination is to determine whether probable cause exists to believe that a crime was committed and that the defendant committed it." *People v Bennett*, 290 Mich App 465, 480; 802 NW2d 627 (2010) (citation omitted). To find probable cause requires sufficient evidence of each element of the crimes charged, or evidence from which each element may be inferred, sufficient to "cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt." *Shami*, 501 Mich at 251 (quotation marks and citations omitted). Establishing probable cause does not require the prosecution to prove each element of a crime beyond a reasonable doubt, however. Rather, the level of evidence sufficient to bind over a defendant is far lower than that required to convict a defendant. *People v Greene*, 255 Mich App 426, 443-444; 661 NW2d 616 (2003). "Circumstantial evidence and reasonable inferences arising from the evidence may be sufficient to justify binding over a defendant." *People v Woods*, 200 Mich App 283, 288; 504 NW2d 24 (1993). When the prosecution has presented competent evidence sufficient to support probable cause that the felony was committed and that the defendant committed it, the district court is required to bind the defendant over to the circuit court for trial. *People v Cervi*, 270 Mich App 603, 616; 717 NW2d 356 (2006).

In this case, defendant was charged with (1) first-degree murder, (2) felon-in-possession, and (3) felony-firearm. The elements of first-degree murder are (1) the defendant intentionally killed the victim (2) with premeditation and deliberation. *People v Oros*, 502 Mich 229, 240;

917 NW2d 559 (2018). See also MCL 750.316(1)(a). “Premeditation and deliberation may be established by an interval of time between the initial homicidal thought and ultimate action, which would allow a reasonable person time to subject the nature of his or her action to a ‘second look.’ ” *Oros*, 502 Mich at 240. “Premeditation and deliberation may be inferred from all the facts and circumstances, but the inferences must have support in the record and cannot be arrived at by mere speculation.” *People v Plummer*, 229 Mich App 293, 301; 581 NW2d 753 (1998).

Here, the medical examiner’s report stated that Berrien was shot seven times and died of the gunshot wounds. McGruder testified that he heard seven to nine gunshots while at the house on Lappin, and immediately thereafter saw Berrien on the ground with blood on his arm. This evidence supports the conclusion that Berrien was shot at least once, but possibly several times, while in front of the house on Lappin. The only people seen with Berrien at the time of the shooting were defendant and Kennedy, suggesting that one of them was the shooter. Of the two men, only defendant was outside the car. McGruder testified that when Berrien attempted to stand after being shot, Kennedy emerged from the passenger side of the front seat and began to help Berrien toward the car while stating to defendant “Ice, you a dirty nigga,” suggesting that Kennedy was responding to defendant shooting Berrien.

When McGruder again looked out of the house a few minutes later, all three men and the silver Mercedes were gone. McGruder found Berrien’s cell phone on the ground and called the number designated for “Ice,” and Berrien answered. He told McGruder not to tell anyone that he was with defendant. Berrien again called McGruder a minute or two later using the same cell phone. Six minutes later, defendant called McGruder using the same cell phone that Berrien had just used. This evidence supports the conclusion that after being shot in front of the house on Lappin, Berrien left in the silver Mercedes with defendant and the two were together at the time the phone calls with McGruder occurred. The evidence also indicates that defendant was very adamant that McGruder not reveal that he and Berrien had been together.

Defendant thereafter spoke with Wadley, and again with McGruder, and gave several different accounts of where he had taken Berrien. “[C]onflicting statements tend to show a consciousness of guilt and are admissible as admissions.” *People v Unger*, 278 Mich App 210, 225-226; 749 NW2d 272 (2008), quoting *People v Cowell*, 44 Mich App 623, 625; 205 NW2d 600 (1973). Here, defendant told McGruder and Wadley that he took the victim to Duchess and Morang, but also told Wadley that he took the victim to the hospital, to Duchess and Moross, to “his people’s house,” and to a “safe house.” Defendant’s varying versions of the events support the conclusion that defendant was revealing a consciousness of guilt.

Defendant also told Wadley that Berrien had been shot in the leg, arm, and back. The medical examiner’s report indicated that Berrien had been shot seven times, including in the leg, arm, and back. Defendant’s knowledge of the location of Berrien’s wounds supports the conclusion that defendant was present when Berrien was shot.

Detective Skender testified that defendant’s cell phone records indicate that at 8:12 p.m. on November 17, 2017, defendant’s cell phone was used in the area consistent with Lappin Street. At 8:40 p.m., the phone made contact with a cell phone tower consistent with the phone being in the area where the victim’s body was later found on Malcom and Olga. This evidence

supports the conclusion that defendant was in the area where Berrien's body was found shortly after Berrien ended his phone contact with McGruder.

As noted, at the preliminary examination, the prosecutor is required only to produce evidence sufficient for a finding of probable cause that the defendant committed the offense. Again, probable cause to believe that the defendant committed the crime is established by evidence sufficient to "cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt." *Shami*, 501 Mich at 231 (quotation marks and citations omitted). In this case, the evidence presented at the preliminary examination demonstrated that defendant was with Berrien at the time Berrien was shot in front of the house on Lappin, defendant and Berrien were together while the phone calls with McGruder using defendant's cell phone occurred, defendant's cell phone was used in an area that includes where Berrien's body was later found, defendant accurately described Berrien's wounds, and defendant lied about where he had left Berrien. This evidence, taken as a whole, is sufficient to establish probable cause on the first element of first-degree premeditated murder, being probable cause to believe that defendant intentionally killed Berrien.

With regard to the specific intent element of first-degree murder, being premeditation and deliberation, this element may be inferred from the facts in evidence. *Unger*, 278 Mich App at 223. "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to establish a defendant's intent to kill." *Id.* "Premeditation may be established through evidence of (1) the prior relationship of the parties, (2) the defendant's actions before the killing, (3) the circumstances of the killing itself, and (4) the defendant's conduct after the homicide." *Id.* at 229.

In this case, defendant and Berrien knew each other well enough that defendant's cell phone number was entered in Berrien's cell phone under the nickname "Ice." Before the killing, defendant drove his car to the house on Lappin. After McGruder heard seven to nine shots fired, McGruder saw defendant standing by defendant's car while Berrien lay on the ground with at least one wound. The evidence suggests that Berrien and defendant then left in defendant's car, and Berrien was still alive for several minutes more while he used defendant's cell phone to talk to McGruder. When Berrien's body was found, he had been shot six times from behind and once in the head from the front. Photographs introduced at the preliminary examination indicate that the area where the victim's body was found was somewhat remote, and one shell casing was found near the victim's body. This evidence is consistent with the prosecution's theory that defendant purposefully shot Berrien several times, then drove the wounded Berrien to a different location before fatally shooting Berrien, on the way permitting Berrien to talk to McGruder for the purpose of instructing McGruder not to tell that Berrien was with defendant. After killing Berrien, defendant used the same cell phone to instruct McGruder not to reveal that defendant had been with Berrien, and to tell McGruder, and later Wadley, incorrect and inconsistent information about Berrien's condition and location. The evidence of defendant's behavior both before and after Berrien was killed suggests both premeditation and deliberation.

Again, at the preliminary examination, the prosecutor is required only to produce evidence sufficient for a finding of probable cause that the defendant committed the offense. "[T]he gap between probable cause and guilt beyond a reasonable doubt is broad, . . . and finding guilt beyond a reasonable doubt is the province of the jury." *People v Yost*, 468 Mich 122, 126;

659 NW2d 604 (2003) (citation omitted). Here, the evidence was sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of defendant's guilt of premeditated murder. See *Shami*, 501 Mich at 251. We conclude that the district court's decision to bind the defendant over on the charge of first-degree murder in this case did not fall outside the range of principled outcomes, and therefore was not an abuse of discretion. See *id.*

Similarly, the district court did not abuse its discretion in binding over defendant on the charges of felon-in-possession and felony-firearm. To convict a defendant of felon in possession of a firearm, the prosecution must prove that the defendant previously had been convicted of a felony and possessed a firearm. *People v Tice*, 220 Mich App 47, 50; 558 NW2d 245 (1996). See also MCL 750.224f. Here, defendant stipulated to previously having been convicted of a felony. Berrien's murder was committed with a firearm. Because there was sufficient evidence to bind defendant over on the charge of murder, the same evidence suffices to establish probable cause that defendant was in possession of a firearm.

To convict a defendant of felony-firearm, the prosecution must prove that a defendant used a firearm during the commission or attempted commission of a felony. *People v Dillard*, 246 Mich App 163, 167, 170; 631 NW2d 755 (2001). See also MCL 750.227b. First-degree murder is a felony offense, MCL 750.316(1), and it is undisputed that Berrien was killed with a firearm. Given that the evidence was sufficient to establish probable cause on the first-degree murder charge, the same evidence suffices to establish probable cause for the charge of felony-firearm.

Because sufficient evidence was presented at the preliminary examination to establish that probable cause existed to bind defendant over on the charges of first-degree murder, felon-in-possession, and felony-firearm, defendant's motion to quash the bindover and dismiss the charges was improperly granted. Reversed and remanded for reinstatement of the district court's bindover order, and for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jonathan Tukel
/s/ Douglas B. Shapiro
/s/ Michael F. Gadola