

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

No. 148674

SHAWQUANDA BOROM,
Defendant-Appellant.

Lower Court No. 12-004559-01-FC
Court of Appeals No. 313750

APPELLEE'S SUPPLEMENTAL ANSWER IN OPPOSITION
TO APPLICATION FOR LEAVE TO APPEAL
(on direction of the Court)

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Statement of Appellate Jurisdiction

The People agree that the Court has jurisdiction.

Counter-statement of Question Presented

1.

At the preliminary examination, the People only need to establish probable cause to believe a crime was committed and defendant committed it. Defendant continued to place her son under the care and supervision of her boyfriend, who she knew had abused her son in the recent past, and her boyfriend abused the child again, causing his death. Did the district court abuse its discretion in binding defendant over for trial on first-degree child abuse and felony murder?

The People answer: No.

Defendant answers: Yes.

Counter-statement of Facts

In early July 2011, defendant's sixteen-month-old child, Davion, suffered a broken bone in his arm. 4/26, 22, 27-30; 5/1/13.¹ Within a few weeks, Davion suffered third-degree burns on the back of his head and second-degree burns across his face. 4/26, 32-36. Then, two days later, on July 26, 2011, Davion suffered massive head injuries which resulted in his death. 4/26, 11-19.

The 21-year-old defendant and Davion lived with defendant's mother, her brothers, and her 17-year-old boyfriend, Daniel McCullough. 4/26, 23-24. McCullough is not Davion's father. 4/26, 123.

Defendant hesitated before seeking or completely failed to seek medical care for her child after all three incidents. Defendant took the child to the hospital after the first incident only when her mother told her that she had to take him and drove them to the hospital.² 4/26, 27-30. Defendant never sought medical care for the burns on the day they happened. On seeing the child the next day, defendant's mother told her that a hospital visit could result in the child's removal from the home by authorities. 4/26, 42-43. After the toddler's fatal injury, defendant failed to call for an ambulance even though he was unresponsive, rigid, and having obvious trouble breathing. Defendant called her mother for advice, and even though her mother urged defendant and McCullough to call 911 immediately, the couple had yet to call for help when, fifteen or twenty minutes later, the mother again urged them to call immediately. 4/26, 45-48.

¹ Transcripts are cited throughout this brief in the following form: month/day of proceedings, page numbers.

² Defendant's mother testified that she did not tell Davion's father about the broken arm incident because she did not want him to come and exact revenge because someone was hurting his child. 4/26, 123.

Conflicting evidence exists regarding how the three injuries occurred and who was with Davion at the time. Defendant claimed that she was home when the child's arm was broken, though not in the basement when it occurred. 4/26, 164-167. Several times defendant admitted she was present when Davion received the second injury, the burns to his head and face. She told her mother that she had been bathing the child and when she left the room, Davion turned on the hot water faucet. 4/26, 39-41. While Davion was in the hospital after the incident that caused his death, defendant told the Child Protective Services worker that Davion burned himself on the bathtub hose after she left to grab a new diaper. 4/26, 264-165. Two days later, after Davion died of head trauma, the worker was at defendant's home and interviewed defendant a second time about the bathtub incident. Defendant again claimed that she was bathing the child when the burns occurred. 4/26, 167. Defendant also told Detroit Police Officer Don Dent that she was the only one with the child when the child received second- and third-degree burns to his head. 4/26, 139. Later, McCullough claimed that he was the only one with the child when he suffered the arm injury and burns.³ 5/11, 12-13, 17, 25. Defendant's mother testified that she drove defendant to Inkster on the morning of both injuries and that McCullough was left with Davion. 4/26, 50-54.

Regarding Davion's final injury, defendant claimed, at various times, that (1) nothing happened to cause the child's final injuries, the massive head trauma, (2) she was with the child and he was following her up the porch steps when he fell, (3) she was in the kitchen around 4:30 or 5:00 when she heard Davion cry outside, she ran to him, and McCullough told her that the child had fallen down the porch steps, but that the child was easily comforted and was fine the rest of the evening,

³ Defendant introduced the evidence of McCullough's statements. 5/11, 8-17, 19-26.

and (4) that she was not at home when Davion was injured. 4/26, 8 (911 call), 14-16, 82-83, 100, 115, 136-137, 163-164, 168.

When defendant finally called for an ambulance, she told the operator that her son was not moving. When asked if the child had any medical history that would explain the problems he was having, defendant said that when the child was born he had swallowed some "poop," but "that was about it," and at some point had been on the verge of bronchitis. Defendant failed to mention the earlier fall, the major burns, or the broken arm. 4/26, 8 (911 call). Defendant also failed to tell the paramedic who arrived at the house that the child had taken a fall earlier in the evening. 4/26, 9. In the emergency room, defendant first told a doctor that she put the child to bed at 7:30 and noticed the child's ill health 20 minutes later. When it was pointed out that she had arrived at the hospital at 10:00 p.m., defendant changed the bedtime to 8:00 and claimed she noticed his problems at 9:30. She did not mention that she had called her own mother at 9:00. 5/1, 64. She specifically denied that the child had suffered any head trauma that day. 5/1, 64.

McCullough claimed that he was not present at the time of the fatal injuries. 5/11, 12-13, 17, 25-26. Defendant's mother testified that she drove defendant to Inkster on the morning of the fatal injuries and that McCullough was left with Davion. 4/26, 54.

The medical examiner found that Davion had second- and third-degree burns on his forehead and both sides of his head in a band-like formation. 5/1, 11. He had third-degree burns on the top and back of his head. There was a separate healing second-degree burn on his left cheek with a finger-like pattern, which was caused by his own hand. 5/1, 11, 26. The severity of the burns decreased from back to front; the third-degree burns were in back, the second degree burns were around the front. 5/1, 25. The burn pattern was consistent with the child's face being toward the

floor and hot water being put on the back of his head and then flowing down both sides of his head.⁴
5/1, 23-25.

The medical examiner had seen the bathtub in which the child was supposedly burned. He described a hose that was fitted over the water spout. It ran directly into the drain so it had to be lifted to fill the tub. The diameter of the tube was about a finger width. The medical examiner opined that given that the water was hot enough to burn the child's head, the child would have burned his hands if he had pulled the hose over his head. But Davion had no burns on his hands. In addition, if the Davion had the hose over the back of his head while in the tub, the water would have splashed on other parts of his body. No other burns were detected on his body. 5/1, 27-31.⁵ The medical examiner also testified that the third-degree burns could have become infected and killed the child if left untreated. 5/1, 37.

The medical examiner discovered significant injuries to Davion's head and brain. The brain was swollen and there was a massive subdural hematoma (bleeding between the brain and the skull). There was also bleeding on the surface of the brain, a skull fracture, and bilateral retinal hemorrhages. In addition, the medical examiner observed a healing fracture of the left arm. 5/1, 13-24.

The medical examiner watched a video of Daniel McCullough reenacting the child's alleged fall, and opined that the massive injuries to the child's brain were not a result of the short fall from the front steps. 5/1, 14-17. The medical examiner found that the "very, very, very severe and lethal

⁴ There were also two cigarette-size burns on the child's back. 5/1, 39. Defendant told the police that she smoked but McCullough did not. 4/26, 138.

⁵ Defendant's mother testified that it took about three minutes for the water to get hot unless the hot water had been on recently. 4/26, 87.

brain injuries” could be explained if the child had been thrown against a hard object. 5/1, 17-18. The child may also have been shaken as well as thrown against a wall or floor, but a short fall would not have caused the injuries this child received. 5/1, 18. A delay in treatment could have contributed to the child’s death. 5/1, 37-38. By the time the child arrived at the hospital his condition was already extremely severe and he had no chance of survival. 5/1, 46.

The People charged defendant with three counts of first-degree child abuse and felony murder. The district court presided over a preliminary examination held on April 26, May 1, and May 11, 2012.

The prosecutor explained her theory of the case during argument on her motion to bind defendant over to trial:

The bottom line is this, the Defendant is the mother. He, Daniel McCullough, is not the father. The child’s health and safety is the Defendant’s responsibility. The evidence show that she caused and contributed to the child’s burns and head injury. She was in cahoots with Daniel McCullough to seriously injure the child. She lied over and over again about the circumstances of each injury. She protected Daniel McCullough from responsibility. She aided and abetted Daniel McCullough by allowing him to have access to her child knowing that the child had one, if not two, serious injuries while the child was in Daniel McCullough’s care during a 16-day period.

She gave the message to her Co-Defendant that she wasn’t going to stop the abuse, she wasn’t going to report the Defendant, and she would continue to give Defendant McCullough access to her child. And then when it got reported, she lied over, and over, and over again about both of their roles.

This isn’t a case where a mother simply allows a defendant to abuse a child and does nothing to stop it. Her actions in part caused the abuse.

So, our theory as to Count 1, the Felony Murder, as to the head injury, the Defendant either caused the injury herself or aided and abetted her Co-Defendant. It was an intentional act that caused death.

As to the scalding incident, she admits her involvement and she says that she was the one responsible, she makes it out to be an accident, but the Medical Examiner tells us this was no accident, this was intentionally inflicted upon the child.

Your Honor, she had lied so many different times that it’s hard to know in this case what really happened. But if you just throw up your hands and say you

don't really know what happened, that gives you probable cause to believe she's guilty because she's aiding and abetting him in keeping the truth out, and protecting him and herself with all of her lies. [5/11, 32-34.]

The district court bound defendant over for trial on Count 1, 2, and 3. On the People's motion, the Court dismissed Count 4, which stemmed from the arm injury. 5/11, 26.

Defendant moved to quash the Information in Circuit Court.

At a hearing held on November 8, 2012, the prosecutor summarized her theory of aiding and abetting:

Because it says though Ms. Borom says to the defendant, without saying it in words, I know you've been abusing my child, he has two prior injuries in the last two weeks under your care, I don't care, I'm going to continue to let you have access to my child, I'm not going to stop you from abusing him, I'm not going to protect my child from him, feel free to continue to do whatever you want to do and you can rest easy that I won't stop you and then, God forbid if something really bad happens I, will lie for you over, and over, and over again to protect you from being held responsible, that's what the defendant did. [11/8, 15.]

The circuit court denied defendant's motion in an opinion and order issued on November 16, 2012.

Argument

I.

At the preliminary examination, the People only need establish probable cause to believe a crime was committed and defendant committed it. Defendant continued to place her son under the care and supervision of her boyfriend, who she knew had abused her son in the recent past, and her boyfriend abused the child again, causing his death. The district court did not abuse its discretion in finding probable cause to believe that defendant committed first-degree child abuse and felony murder.

Standard of Review

In reviewing a circuit court's decision on a motion to quash, the Court determines whether the district court abused its discretion in binding defendant over to circuit court.⁶ A court abuses its discretion when its decision falls outside the principled range of outcomes or it makes an error of law.⁷

The court reviews issues of statutory construction and questions of law de novo.⁸ The goal of statutory construction is to ascertain and give effect to the intent of Legislature.⁹ The Court outlined the approach to determining legislative intent in *People v Waterstone*:¹⁰

The touchstone of legislative intent is the statute's language. The words of a statute provide the most reliable indicator of the Legislature's intent and should be interpreted on the basis of their ordinary meaning and the overall context in which they are used. An undefined statutory word or phrase must be accorded its plain and

⁶ *People v Goecke*, 457 Mich 442, 462-463 (1998).

⁷ *People v Swain*, 288 Mich App 609, 629 (2010).

⁸ *People v Nix*, 301 Mich App 195, 199 (2013).

⁹ *People v Bragg*, 296 Mich App 433, 446 (2012).

¹⁰ *People v Waterstone*, 296 Mich App 121, 132 (2012), quoting *People v Flick*, 487 Mich 1, 10-11 (2010).

ordinary meaning, unless the undefined word or phrase is a “term of art” with a unique legal meaning.

Discussion

This Court has directed that the parties address “whether aiding and abetting under MCL § 767.39 can be proven where the defendant failed to act according to a legal duty, but provided no other form of assistance to the perpetrator of the crime.” The People will of course do so, but first must point out that the defendant did not simply fail to act, but *acted*. The question with regard to this point is whether she is responsible for the ultimate consequences of that act under the law. The People will begin with this discussion, and then move to aiding and abetting as applied to the circumstances here.

A. Act and Consequences

Defendant here did not fail to intervene to protect her child against an abuser; rather, she did an affirmative act. She chose to place Davion under the care and supervision of Daniel McCullough, and did so. Unlike the typical failure to protect situations, McCullough was not Davion’s father and had no right to any contact with him whatsoever. And this is not a case in which a member of the household who is not allowed to care for the child seizes on the opportunity presented by his mere presence in the home to harm the child, and the custodial parent fails to intervene and protect the child.¹¹ Defendant’s mother testified that she drove defendant to Inkster on the day of the murder,

¹¹ See e.g. *People v. Rolon*, 160 Cal App 4th 1206, 1219 (2nd District, 2008), where the mother of the deceased child allowed her husband to stay in her apartment despite a court order forbidding him any contact with his children, and, while she was present, he repeatedly abused a child until he died. The court held that the “better rule is that parents have a common law duty to protect their children and may be criminally liable for failing to do so: a parent who knowingly fails to take reasonable steps to stop an attack on his or her child may be criminally liable for the attack if the purpose of nonintervention is to aid and abet the attack. . . .,” the court citing with approval a decision finding that a “parent’s failure to act may be deemed to implicitly sanction abuse of [the]

and left only McCullough and Davion at the house, and, in one of her conflicting statements, defendant maintained that she was not present at the time of the murder. A rational jury could find from that evidence that defendant left Davion in the care of McCullough, which is unquestionably an affirmative act. And as there has been no trial here, but the more truncated presentation of evidence that is presented at a preliminary examination, the finding of probable cause by the examining magistrate was not outside of the range of principled outcomes, and thus not an abuse of discretion.

This case turns, the People believe, on proximate cause, and knowledge. There is cause in fact here (at the very least, probable cause to so believe, so as to support the bindover for trial). And so the question is whether there was proximate cause under the law. MCL 750.136b(2) provides that “a person is guilty of child abuse in the first degree if the person knowing or intentionally *causes* physical or serious mental harm to a child.” Factual causation exists when but for defendant’s conduct the result would not have occurred.¹² The act need not be the sole cause of the prohibited harm in order to be the proximate cause,¹³ rather the injury be a “direct and natural result” of the defendant’s actions.¹⁴ An injury or damage is proximately caused by an act, or a failure to act, if that act or played a substantial part in bringing about or actually causing the injury or damage, and the injury or damage was either a direct result *or a reasonably probable consequence of the act or*

child.”

¹² *People v Feezel*, 486 Mich 184, 194-195 (2010).

¹³ *People v Tims*, 449 Mich 83, 118 (1995).

¹⁴ *People v Schaefer*, 473 Mich 418, 436 (2005).

omission."¹⁵ With regard to crimes arising from criminal negligence where the particular harm caused was not specifically intended, the law takes notice of the conduct of the accused if the forbidden result (death) which occurs is sufficiently similar to that which the reckless or negligent conduct created a risk of happening.¹⁶

An intervening cause—which may be the act of a third party—is a superseding cause, considered in law to break the chain of causation, where the intervening cause was not foreseeable on an objective standard of reasonableness. If it was reasonably foreseeable, then the defendant's conduct will be considered a proximate cause. Ordinarily, where the intervening act of the third party amounts to gross negligence or intentional misconduct, "then *generally* the causal link is severed and the defendant's conduct is not regarded as a proximate cause of the victim's injury or death."¹⁷ But this is the *general* rule; it is possible, as here, that a criminal act of a third party *is* reasonably foreseeable, which turns on the state of knowledge of the first actor.

Here, defendant's act of placing Davion in McCullough's care was a but-for cause of the serious physical harm he suffered. And injuries and death were also a direct and natural result—and a reasonable foreseeable one—of defendant's intentional act. A jury could easily conclude that defendant was aware that McCullough was abusing Davion, and a finding of probable cause for a bindover was within the range of principled outcomes. In a short period of time, Davion had twice suffered serious physical harm while in McCullough's care. A jury would not be bound by the testimony of defendant's mother suggesting that it was her, not defendant's, idea to forgo medical

¹⁵ Black's Law Dictionary, at 1103 (emphasis supplied).

¹⁶ 1 LaFave, *Substantive Criminal Law*, § 6.4.

¹⁷ *People v. Schaefer*, 473 Mich. 418, 437-438 (2005) (emphasis supplied).

assistance for Davion after he was severely burned. A jury could instead conclude that defendant knew that the burns were not the result of an accident and that McCullough had been abusing Davion. An examining magistrate could quite properly leave that question for trial. Under these circumstances, further serious harm was a direct and natural result—a reasonably foreseeable result, viewed objectively—of defendant’s continuing to leave Davion in McCullough’s care. A jury could therefore conclude that her act caused Davion serious harm, and the magistrate properly found probable cause.

It was not necessary that defendant have actually intended the harm to support a finding of probable cause of first-degree child abuse. In *People v Maynor*,¹⁸ this Court held that a defendant must have either intended to cause the harm *or* have known that the harm would result from her actions. A jury could find that defendant had the requisite knowledge in this case. By covering up the second incident of abuse, defendant assured McCullough that he could continue abusing Davion without repercussions. A parent who continues to place her child in the care of a known physical abuser is no different from a parent who drops her child off at the home of a known child molester to spend the night alone with him. No one would question a jury’s conclusion that the parent knew her actions would result in serious harm to the child under the second scenario. The first scenario is no different. This is not a failure to protect, but an affirmative act that is the proximate cause of the harm of the victim, and a foreseeable one, given that defendant knew of the prior abuse by her boyfriend, or should have.

¹⁸ *People v Maynor*. 470 Mich 289, 295 (2004).

B. There is no distinction between aiding and abetting and directly committing an act; defendant may be convicted as an aider and abettor

There is no distinction between a direct actor and an “aider and abettor” in Michigan. Our statute, MCL § 767.39, declares, with a statutory catch-line “Abolition of distinction between accessory and principal,” that:

Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction *shall be punished as if he had directly committed such offense* (emphasis supplied).

This statutory abolition of the common-law distinctions between accessories before the fact and principals is of ancient vintage, existing in this state for at least a century and a half.¹⁹ Under the statute, one is not charged as an “aider and abettor” or principal, as both are equally culpable.

As explained in *People v Robinson*,²⁰ “at common law, one could be guilty of the natural and probable consequences of the intended crime or the intended crime itself, depending on whether the actor was a principal in the second degree or an ‘accessory before the fact.’”²¹ These distinctions were abrogated by legislative action, and so under the statute “a defendant can be held criminally

¹⁹ See e.g. *People v. Brigham*, 2 Mich. 550 (1853), noting that “Sec. 1, chap. 161, title 30, makes an accessory before the fact to any *felony*, punishable in the same manner as may be prescribed for the punishment of the principal felon,” and *Shannon v. People*, 5 Mich 71 (1858), observing that “[T]he act of 1855, section 19 (*Laws of 1855, p. 145; sec. 6065 of Compiled Laws*), enacts ‘that the distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, may hereafter be indicted, tried, and punished as principals, as in the case of a misdemeanor.’”

²⁰ *People v Robinson*, 475 Mich. 1 (2006).

²¹ *Robinson*, 475 Mich at 7-8.

liable as an accomplice if: (1) the defendant intends or is aware that the principal is going to commit a specific criminal act; or (2) the criminal act committed by the principal is an ‘incidental consequence[] which might reasonably be expected to result from the intended wrong.’²² The legislature in abolishing these common-law distinctions, “intended for all offenders to be convicted of the intended offense . . . , as well as the natural and probable consequences of that offense. . . .”²³ While principals and accomplices may share the identical intent, “sharing the identical intent is not a *prerequisite* to the imposition of accomplice liability”²⁴

A parent’s failure to prevent injury to his or her child may support a conviction under an aiding and abetting theory. Aiding and abetting describes “all forms of assistance rendered to the perpetrator of a crime.”²⁵ Although this Court once referred in dicta to “active, overt participation” as a requirement,²⁶ the Court has since stated that “encouragement” is sufficient.²⁷ Michigan courts have also recognized the role of psychological encouragement in aiding and abetting cases,²⁸ and

²² *Robinson*, 475 Mich at 9.

²³ *Robinson*, 475 Mich at 9.

²⁴ *People v. Robinson*, 475 Mich 1 at 14.

²⁵ *People v Carines*, 460 Mich 750, 757 (1999).

²⁶ *People v Carter*, 415 Mich 558, 580 (1982).

²⁷ *Carines*, 460 Mich at 757-758.

²⁸ See *People v Smock*, 399 Mich 282, 285 (1976) (a defendant “contributed to psychological underpinnings that give strength to a ‘mob’ through the device of mutual reassurance”); *In re Thurston*, 226 Mich App 205, 220 n 16;(1998), rev’d 459 Mich 923 (1998) (noting that a jury could find that a defendant provided implicit aid and encouragement by remaining present after he assaulted the victim while others also assaulted her because his action notified the victim that she was helpless and could expect no assistance).

courts of other jurisdictions have applied those principles in holding that a parent's failure to act may aid and abet a crime.²⁹

Professor LaFave has noted that:

The common law imposes affirmative duties upon persons standing in certain personal relationships to other persons—*upon parents to aid their small children*, upon husbands to aid their wives, upon ship captains to aid their crews, upon masters to aid their servants. Thus a parent—or, indeed, another “person standing in loco parentis”—may be guilty of criminal homicide for failure to call a doctor for his sick child, *a mother for failure to prevent the fatal beating of her baby by her lover*, a husband for failure to aid his imperiled wife, a ship captain for failure to pick up a seaman or passenger fallen overboard and an employer for failure to aid his endangered employee. Action may be required to thwart the threatened perils of nature (e.g., to combat sickness, to ward off starvation or the elements); or it may be required to protect against threatened acts by third persons.³⁰

He has said also that:

it is generally true that liability will not flow merely from a failure to intervene. But, under the general principle that an omission in violation of a legal duty will suffice, one may become an accomplice by not preventing a crime which he has a duty to prevent. Thus, a conductor on a train might become an accomplice in the knowing transportation of liquor on his train for his failure to take steps to prevent the offense. Or, even in the absence of positive encouragement, the owner of a car who sat beside the driver might become an accomplice to the driver's crime of driving at a dangerous speed. *Or, a parent might become an accomplice to a crime because*

²⁹ E.g. *North Carolina v Walden*, 306 NC 466, 293 SE2d 780 (1982 (“the failure of a parent who is present to take all steps reasonably possible to protect the parent's child from an attack by another person constitutes an act of omission by the parent showing the parent's consent and contribution to the crime being committed”).

³⁰ 1 LaFave, *Substantive Criminal Law*, § 6.2(a), p, 437-438.

*of the parent's failure to intervene to prevent the crime from being committed on the parent's offspring.*³¹

A parent who fails to protect his or her child from a known abuser encourages the abuser by essentially tacitly consenting to the crime. In the companion cases of *Illinois v Stanciel* and *Illinois v Peters*,³² the Supreme Court of Illinois considered cases similar to the case at bar and determined that the defendants' failure to protect their children from abuse by their boyfriends supported their convictions of murder under an aiding and abetting theory. The court reasoned:

Although both [defendants] argue they did not aid the principals in the pattern of abuse which resulted in the death of the children, the evidence presented against both defendants is sufficient to provide the inference that they both either knew or should have known of the serious nature of the injuries which the victims were sustaining. Under the present circumstances, we hold the defendants had an affirmative duty to protect their children from the threat posed by [their boyfriends]. Rather than fulfill that obligation, the defendants entirely ignored the danger posed by these two men, and in doing so aided them in the murders of [the children].

Other courts have reached similar results; for example:

- Our analysis would be the same even if we were to classify defendant's act of standing over the bed, watching Umble molest the victim, as an "omission" rather than act "act." . . . Other "state courts have held that a failure to act can constitute aiding and abetting provided the aider and abettor has a legal duty to act. . . . we hold that the failure of a parent who is present to take all steps reasonable possible to protect the parent's child from an attack by another person constitutes an act of omission by the parent showing the parent's consent and contribution to the crime being committed."³³
- other states have recognized a duty on the part of a parent to care for and protect his or her child and have upheld the conviction of a parent for the physical and sexual abuse of a child even though that parent was not the perpetrator of the abuse. . . . there was sufficient evidence from which a jury

³¹ 1 LaFave, *Substantive Criminal Law* § 13.2(a), p, 341-342.

³² *Stanciel*, 153 Ill2d at 236-237.

³³ *People v Swanson-Birabent*, 114 Ca. App. 4th 733, 743-744 (6th Dist., 2004).

could have reasonably concluded that the appellant knew, when she left A.D. alone with her father, that her father was going to abuse her. . . . there was sufficient evidence that the appellant knew, or should have known, that there was a probability that A.D.'s father would sexually abuse her in the appellant's absence³⁴

C. Conclusion

The district court did not abuse its discretion in binding defendant over for trial on felony-murder and two counts of first-degree child abuse. Defendant's culpability for the murder flows not simply from her failure to prevent harm to her child, but her affirmative act in continuing to place her child under the supervision and care of a known child abuser who had no legal right to have any contact with the child. Her action in placing her child in her boyfriend's care caused the serious physical harm, and a finding of probable cause to bind over is within the range of principled outcomes. Defendant assisted McCullough in murdering Davion by allowing him to care for the child, and a jury could find that she acted with malice when she continued to place the child in his care.

The People's evidence established probable cause to believe that defendant committed first-degree child abuse and felony murder. While the People must present some evidence from which each element of the crime may be inferred,³⁵ the People need not prove guilt beyond a reasonable doubt at the preliminary examination stage.³⁶ The proofs adduced need "only establish probable cause to believe that a crime was committed and probable cause to believe that the defendant

³⁴ *C.G. v. State*, 841 So.2d 281, 289, 290, 291 (Ala.Crim.App.,2001). And see *North Carolina v Walden*, supra. And see Liang and Macfarlane, "Murder By Omission: Child Abuse and the Passive Parent," 36 Harv J on Legis 397 (1999).

³⁵ *Goecke*, 457 Mich at 469.

³⁶ *People v Yost*, 468 Mich 122, 126 (2003).

committed it,³⁷ and circumstantial evidence and reasonable inferences from that evidence can be sufficient to meet that burden.³⁸ “Probable cause requires a quantum of evidence ‘sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief’ of the accused’s guilt.”³⁹

The People refer the Court to the original answer filed by the People to the application for leave to appeal for arguments made there concerning sufficiency of the proofs for the bind over.

³⁷ *Id.*; see also MCR 6.110(E).

³⁸ *People v Henderson*, 282 Mich App 307, 312 (2009).

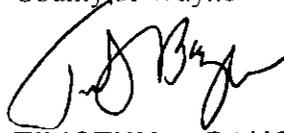
³⁹ *Yost*, 468 Mich at 126, quoting *People v Justice (After Remand)*, 454 Mich 334, 344 (1997); see also *People v Orzame*, 224 Mich App 551, 558 (1997).

Relief

WHEREFORE, the People request that this Court affirm the circuit court's decision denying defendant's motion to quash the Information.

Respectfully Submitted,

KYM L. WORTHY
Prosecuting Attorney
County of Wayne



TIMOTHY A. BAUGHMAN
Chief of Research,
Training and Appeals

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Supreme Court
No. 148674

vs.

SHAWQUANDA BOROM,
Defendant-Appellant.

Lower Court No. 12-004559-01-FC
Court of Appeals: 313750

PROOF OF SERVICE

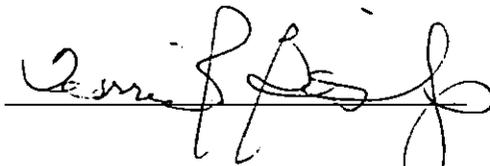
STATE OF MICHIGAN)
COUNTY OF WAYNE)^{SS}

The undersigned deponent, being duly sworn, deposes and says that [he/she] served a true copy of **Plaintiff - Appellee's Supplemental Answer in Opposition to Defendant's Application for Leave to Appeal** (On direction of the Court)

upon: Gabi Silver

the above named defendant, by / / PERSONAL SERVICE or by / X / DEPOSITING SAID PLEADING IN THE U.S. MAIL IN THE CITY OF DETROIT, ENCLOSED IN AN ENVELOPE BEARING POSTAGE FULLY PREPAID, on **August 4, 2014**, plainly addressed as follows:

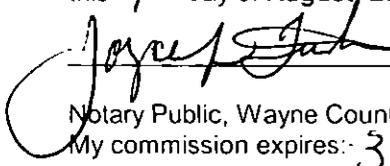
Gabi Silver
Attorney at Law
431 Gratiot Avenue
Detroit, MI 48226



said pleading was filed in the SUPREME COURT, by / X / U.S. Mail, / / PONY EXPRESS or / / PERSONAL SERVICE at the following address:

LARRY ROYSTER, Clerk
Michigan Supreme Court
2nd Floor, Law Building
925 Ottawa Street
Lansing, Michigan 48902

Subscribed and sworn to before me
this 4th day of **August, 2014**.


Notary Public, Wayne County, Michigan
My commission expires: 3/8/15

