L.L.

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

JAN RUBY CATTON,

Defendant.

_____/

Case No. 2006-1903-FH
Hon. Matthew S. Switalski

OPINION AND ORDER

Defendant has filed a motion to quash. The People request that the Court deny Defendant's motion.

On March 17, 2006, a felony warrant and complaint was filed against Defendant, charging her with maintaining a drug house, contrary to MCL 333.7405; seven counts of child abuse in the second degree, contrary to MCL 750.136b; and keeping a house of prostitution, contrary to MCL 750.452. On May 3, 2006, a preliminary examination was held before the Honorable Walter Jakubowski, Jr., of the 37th District Court, wherein Defendant was bound over for trial on all of the charges contained in the information. On June 30, 2006, Defendant filed the instant motion.

Defendant contends that she was improperly bound over without probable cause. Defendant contends that the testimony presented at the preliminary examination is insufficient to support a finding of second degree child abuse, as there was no evidence that she committed a knowing or intentional act that would most likely cause the named

2006-001903-FH
00019694098
OPNIMGCC

grandchildren harm. Defendant also contends that she did not allow drug use or prostitution in her home, and therefore the information should be quashed.

A motion to quash the information challenges the district court magistrate's decision to bind a defendant over for trial. In reviewing the district court's decision to bind over a defendant, this Court should not substitute its judgment for that of the district court and may reverse only if it appears from the record that there was an abuse of discretion. *People v Lopez*, 187 Mich App 305, 308; 466 NW2d 397 (1991). At the preliminary examination, the prosecution need not establish guilt beyond a reasonable doubt. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). However, evidence regarding each element of the crime or evidence from which the elements may be inferred must exist. *Id.* Additionally, there must be evidence sufficient to establish probable cause to believe defendant committed the charged offense. *People v Randall*, 42 Mich App 187; 201 NW2d 292 (1972). When the evidence conflicts or raises a reasonable doubt concerning guilt, there are questions for the trier of fact, and the Defendant should be bound over. *Hill*, supra; *People v Cotton*, 191 Mich App 377, 384; 478 NW2d 681 (1991).

A. Maintaining a Drug House

MCL 333.7405(1)(d) provides that a person "[s]hall not knowingly keep or maintain a . . . dwelling . . . or place, that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article." The plain language of MCL 333.7405(1)(d) requires that a person must "knowingly" keep or maintain a dwelling that is frequented by persons using controlled substances, for the

purpose of using controlled substances. To "keep or maintain" a drug house it is not necessary to own or reside at one, but simply to exercise authority or control over the property for purposes of making it available for keeping or selling proscribed drugs and to do so continuously for an appreciable period. *People v Griffin,* 235 Mich App 27, 32; 597 NW2d 176 (1999).

In the case at hand, the People presented Defendant's grandchildren, Amanda Myers, age 15, and Nicholas Sturgill, age 12 as witnesses. Amanda's testimony reveals that she lived with Defendant when she was 13 and 14 years old. Also living with Defendant were Amanda's cousins, Hanna Vuich, Macaylah Young, Jasmine Myers, Cynthia Myers, Maryanne Myers, Savannah Sturgill, Nicholas Sturgill, and Jessica Chokye, and her aunt, Janice Myers. Amanda testified that she voluntarily smoked crack cocaine with her Aunt Jackie several times (Tr., p. 22-23), and was given heroin once (Tr., p. 60). Amanda testified that Defendant had house rules of not doing drugs and drinking. (Tr., p. 94). Amanda also testified that Defendant tried to keep drugs out of her home (Tr., p. 95), and tried to stop Aunt Jackie from using drugs. (Tr., p. 105). Despite these rules and attempts to keep drugs out of her home, Amanda testified that Defendant "most likely" knew that drugs were in her house. (Tr., p. 23). Amanda testified that every day Aunt Jackie would go into the bathroom and come out high. (Tr., p. 31). Amanda testified that Defendant had knowledge of Aunt Jackie's drug use in her home every other day. (Tr. p., 32). Amanda further testified that Defendant was aware that syringes that were used for injecting drugs were around the house (Tr., p. 37), were accessible to the children if they knew where they were hidden in the bathroom (Tr., p. 39), and had Amanda, Nicholas, and Savannah throw them into the sewer. (Tr., p. 38).

The Court is satisfied that the district court did not abuse its discretion in binding Defendant over on the charge of maintaining a drug house in violation of MCL 333.7405(1)(d). The above testimony, although somewhat contradictory, is sufficient to establish that Defendant knew that drugs were being kept and/or used in her home and that she had control over the property. The above testimony is also sufficient to establish probable cause that Defendant kept her home for purposes of making it available for keeping or selling drugs. Consequently, Defendant's motion to quash the charge of maintaining a drug house should be denied.

B. Keeping a House of Prostitution

Pursuant to MCL 750.452, any person who shall keep, maintain or operate, or aid and abet in keeping, maintaining or operating a house of ill-fame, bawdy house or any house or place resorted to for the purpose of prostitution or lewdness shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 5 years or by a fine of not more than 2,500 dollars. Thus, under a plain reading of the statute, the prosecution must establish: (1) that the place in question was (a) a house of ill-fame, or (b) a bawdy house, or (c) a house or place resorted to for purposes of prostitution or lewdness, (2) that the defendant kept, maintained or operated, or aided and abetted the keeping, maintaining, or operating of the house or place, and (3) that it was resorted to for the purpose of prostitution or lewdness. MCL 750.452. The People are not required to establish that the house was commonly resorted to for purposes of prostitution, but rather prostitution was "something of a common occurrence". *People v Martin*, __ Mich App __; __ NW2d __ (2006). A house visited or resorted to by no more than one

person is not within the statute. *People v Pinkerton*, 79 Mich 110, 113; 44 NW2d 180 (1889).

In the case at hand, Amanda testified that Aunt Jackie would "sometimes" bring home "tricks". (Tr., p. 34). Amanda testified that although she never saw her Aunt Jackie being paid in exchange for sex, she knew it was happening because Aunt Jackie would not have money before having sex, and after she would. (Tr., p. 35). Amanda also testified that although Defendant would be sleeping when Aunt Jackie did her "tricks", Defendant knew that it was occurring because she would tell Aunt Jackie that "her tricks were on the phone". (Id.).

Although the above testimony is circumstantial, and not very specific, the Court is satisfied that each element of the charge of maintaining a house of prostitution has been met, and that the district court did not abuse its discretion in binding over Defendant on the charge. This Court may not substitute its judgment for that of the district court and may reverse only if it appears from the record that there was an abuse of discretion. *Lopez*, supra. Consequently, Defendant's motion to quash the charge of keeping a house of prostitution should be denied.

C. Second Degree Child Abuse – Eight Counts

Second-degree child abuse may be found where one of three possible scenarios is proved:

> (a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm to a child;
> (b) the person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results;
> (c) the person knowingly or intentionally commits an act that is cruel to child regardless of whether harm results. MCL 750.136b(3).

Second-degree child abuse is a general intent crime, and requires only the intent to perform the proscribed act. *People v Whitney* 228, Mich App 230, 254; 578 NW2d 329 (1998).

The Court is satisfied that the factual scenario in the case at hand is sufficient to establish probable cause under MCL 750.136b(3)(b), and that the district court did not abuse its discretion in binding Defendant over on the charges of second-degree child abuse. The testimony at the preliminary examination revealed that Defendant had care, custody, and guardianship over her grandchildren, Amanda Myers, Nicholas Sturgill, Savannah Sturgill, Macaylah Young, Cynthia Myers, Jasmine Myers, Jessica Chokye, and Maryanne Myers. The testimony also established that Defendant allowed drug use and prostitution in her home. Amanda testified that she, Nicholas, and Savannah were asked by Defendant to throw out used syringes that were used for drugs into the sewer. (Tr., p. 38). This clearly constitutes as an act that would qualify as second degree child abuse under MCL 750.136b(3)(b). In addition, Amanda also testified that Defendant allowed used syringes to be stored in a hole near the bathroom sink. Considering the curious nature of children, and the location of the syringes, the Court is satisfied that the remainder of Defendant's grandchildren were placed at risk to be seriously injured due to drugs and infectious diseases that could be transmitted through the syringes if found. Consequently, the district court did not abuse its discretion in binding Defendant over on all of the second-degree child abuse charges, and Defendant's motion to quash should be denied.

Based upon the reasons set forth above, Defendant's motion to quash is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

MATTHEW S. SWITALSKI

MATTHEW S. SWITALSKI
Circuit Court Judge

Date: August 17, 2006

cc: Jennifer Andary, Macomb County Prosecutor's Office
1 South Main Street, Mt. Clemens, MI 48043

Susan Chrzanowski, 176 S. Main Street, Suite 1
Mt. Clemens, MI 48043

A TRUE COPY
Carmella Sabaugh
COUNTY CLERK
BY
DEPUTY CLERK