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COURT OF APPEALS, STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	
El Paso County Honorable Kirk S. Samelson, District Court Judge Division 14 Case No. 08CR272	▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff-Appellant, v. MFT, Defendant-Appellee.	Case No.: 08CA1479
DANIEL H. MAY, District Attorney GENE TIELL, DOYLE BAKER Deputy District Attorney 105 East Vermijo Ave., Suite 500 Colorado Springs, CO 80903 (719) 520-6000 Registration Numbers: #11379 (May), #38493 (Tiell), #22277 (Baker)	

APPELLANT'S REPLY BRIEF

REPLY

I. The record demonstrates that the district court dismissed all charges against defendant after the preliminary hearing. In these circumstances this appeal is not interlocutory.

At the end of defendant's preliminary hearing, defense counsel asked the district court to dismiss "the charges" against defendant or, in the alternative, lower his bond and set arraignment two weeks in the future. Transcript, p. 37, lines 10-19. The district court granted defense counsel's first request, stating that "I'm going to order Mr. MFT to be released on these charges. And I'm going to dismiss these charges." Transcript, p. 38, lines 2-5. The court did not alter defendant's bond or set an arraignment date. There was no need for the court to do these things, because it granted defendant's request to dismiss the entire case.

The record of this case on Lexis-Nexis Courtlink confirms that the district court dismissed every pending charge against defendant on the day of the June 2, 2008, preliminary hearing. See Court File, pp. 27-28.

Given the evidence in the record, defendant's claim at pages six through ten of his answer brief that the entire case has not been dismissed must fail. The June 2, 2008, order of dismissal was a final order because it disposed of all counts against defendant. Therefore, under C.A.R. 4(b)(2), the People had forty-five days from June 2, 2008, in which to file their notice of appeal.

People v. Severin, 122 P.3d 1073 (Colo. App. 2005), does not lead to a contrary conclusion, and defendant's reliance upon it is misplaced. In Severin, the district court reduced a felony charge in a single-count indictment to a misdemeanor. The court's order, which was interlocutory because it did not dispose of the entire case, remained in place for thirty-two days before the People successfully moved to dismiss the misdemeanor and then filed an untimely notice of appeal from the interlocutory order (i.e., not within ten days of the entry of the order as required by C.A.R. 4[b][3]) . Here, unlike in Severin, all counts in the charging document were dismissed at the same hearing.

The People filed their notice of appeal in this case on July 16, 2008, which was within the forty-five day deadline required for an appeal from a final order. See Court File, p. 18. Thus, this appeal was timely filed, and this court has jurisdiction to consider its merits.

II. The evidence presented at preliminary hearing, viewed in the light most favorable to the People, established probable cause to believe that defendant was the person who committed the crimes charged. That other conclusions may be drawn from that evidence is irrelevant to the probable cause determination.

The People dispute defendant's claim that review of this appeal is limited to whether the district court abused its discretion in determining that probable cause

was not established at the preliminary hearing. Although the court enunciated the correct legal standard in its bench ruling (Transcript, p. 37, lines 20-21), it did not apply that standard correctly because it did not view the victim's testimony in the light most favorable to the People. Moreover, the court's ruling was erroneous because it completely ignored the testimony of the police detective who testified at the hearing. Transcript, p. 37, line 20 to p. 38, line 1. See People v. Jensen, 765 P.2d 1028, 1030-1031 (Colo. 1988) (finding of no probable cause reversed based in part on trial court's disregard of the testimony of prosecution witnesses).

Given the district court's errors in applying the law governing preliminary hearings, this court should review the record and determine for itself if probable cause exists, i.e., if the facts, viewed in the light most favorable to the prosecution, would induce a reasonably cautious and prudent person to entertain a belief that the defendant committed the crimes charged. People v. Hall, 999 P.2d 207, 221 (Colo. 2000).

As argued at pages eleven through twelve of the opening brief, the evidence at the preliminary hearing (including the victim's relationship with defendant, her identification of defendant as the robber, and the circumstances of the robbery) was sufficient to meet the standard set forth in Hall. Defendant points to a number of perceived weaknesses in the evidence, including: the victim's inconsistent

testimony about her belief that defendant was the robber (answer brief, pp. 13-14); the inconsistencies in the victim's descriptions of the robber's eye color and defendant's eye color (answer brief, p. 14); and the fact that the circumstantial evidence linking defendant to the robbery "does not necessarily" establish his identify as the robber (answer brief, p. 15).

Defendant makes the same mistake in his answer brief that the district court made at the preliminary hearing: instead of viewing the evidence in the light most favorable to the prosecution, he weighs it and finds it insufficient. But the weighing of the evidence is a task for the fact finder at trial. See People ex rel. VanMeveren v. District Court, 195 Colo. 1, 5, 575 P.2d 405, 408 (1978).

There was evidence presented at the preliminary hearing that identified defendant as the person who committed the crimes charged. The district court's conclusion that this evidence was inconsistent and therefore insufficient to establish probable cause is reversible error.

CONCLUSION

For the reasons stated in the opening brief and this reply brief, the district court's order dismissing the charges against the defendant should be reversed, and this case remanded with instructions to reinstate all counts for trial.

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CERTIFICATE OF SERVICE

I certify that a copy of this Reply Brief has been mailed by United States Postal Service mail, or delivered as indicated below to:

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Date