

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD JOHN VENTICINQUE,

Defendant-Appellant.

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UNPUBLISHED

May 30, 1997

No. 184949

Oakland Circuit Court

LC No. 93-DA5745-AR

ON REMAND

Before: Jansen, P.J., and Reilly and W.C. Buhl,\* JJ.

PER CURIAM.

Defendant was originally charged with the felony of misrepresenting the identity of a motor vehicle with intent to mislead, MCL 750.415(2); MSA 28.647(2). Following the preliminary examination, the district court declined to bind defendant over on that felony charge, and instead bound him over on the misdemeanor charge of misrepresenting the identity of a motor vehicle without intent to mislead. MCL 750.415(1); MSA 28.647(1). The prosecutor appealed the district court's ruling to the circuit court. The circuit court reversed and remanded the case to the district court for bindover on the felony charge. Defendant applied for leave to appeal in this Court, and this Court denied the application. Defendant applied to the Supreme Court for leave to appeal. The Supreme Court remanded the case to this Court as on leave granted. We reverse and remand.

Kenneth Rogers paid defendant to replace the engine and transmission in Rogers' pickup truck. Rogers paid defendant between \$1600 and \$1700 for this service. Defendant told Rogers that the replacement engine was a used engine with approximately 46,000 miles on it. When the repair was complete, the truck was returned to Rogers. Approximately one year later, police officers discovered that the identification numbers on the engine and transmission in Rogers' truck had been removed. The police confiscated those parts. Rogers returned the truck to defendant, who replaced the confiscated parts at no charge. Defendant asked Rogers to lie about where the parts were obtained, which Rogers refused to do, and then defendant provided inconsistent stories to the police regarding the source of the parts.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

MCL 750.415; MSA 28.647 states in pertinent part:

(1) A person who, *without the intent to mislead another as to the identity of the vehicle*, conceals or misrepresents the identity of a motor vehicle or of a mechanical device, by removing or defacing the manufacturer's serial number or the engine or motor number on the motor vehicle, or by replacing a part of the motor vehicle or mechanical device bearing the serial number or engine or motor number of the vehicle with a new part, upon which the proper serial number or engine or motor number has not been stamped, is guilty of a misdemeanor.

(2) A person who, *with the intent to mislead another as to the identity of a vehicle*, conceals or misrepresents the identity of a motor vehicle or of a mechanical device, by removing or defacing the manufacturer's serial number or the engine or motor number on the motor vehicle, or by replacing a part of the motor vehicle or mechanical device bearing the serial number or engine or motor number of the vehicle, with a new part, upon which the proper serial number or engine or motor number has not been stamped, is guilty of a felony, and if the person is a licensed dealer the license shall be revoked.

(3) In all prosecutions under this section, possession by a person of a motor vehicle, or of a mechanical device with the manufacturer's serial number or the engine or motor number removed, defaced, destroyed or altered or with a part bearing the number or numbers replaced by one on which the proper number does not appear, shall be prima facie evidence of violation of this section. [Emphasis added.]

Criminal statutes are to be strictly construed, absent a legislative statement to the contrary. *People v Boscaglia*, 419 Mich 556, 563; 357 NW2d 648 (1984).

In this case, there is simply no evidence that defendant intentionally attempted to mislead anyone about the identity of a vehicle. The only vehicle in question belonged to Rogers. It belonged to Rogers when he brought it to defendant for repairs, and defendant returned it to Rogers when the repairs were complete. It was not the vehicle itself whose identity defendant intended to conceal or mislead. Although the evidence suggests that defendant attempted to conceal the illegitimate source of the engine, subsection (2) requires an intent to mislead as to the identity of the *vehicle*. Because the facts of this case do not suggest that defendant in any way intended to mislead anyone with regard to the identity of Rogers' vehicle, defendant could not be bound over for the felony charge proscribed in subsection (2).

The prosecution argues that subsection (3) creates a statutory presumption of defendant's intent to mislead. See *People v Battle*, 161 Mich App 99; 409 NW2d 739 (1987). Even if we assume that the prosecution's argument is correct, the presentation of a prima facie case does not automatically establish probable cause or require that a defendant be bound over for trial. *People v King*, 412 Mich 145; 312 NW2d 629 (1981); *People v Tower*, 215 Mich App 318; 544 NW2d 752 (1996). In light of the evidence presented at the preliminary examination, the district court did not abuse its discretion by

binding defendant over on the misdemeanor charge of misrepresenting the identity of a motor vehicle without intent to mislead, MCL 750.415(1); MSA 28.647(1). The circuit court erred in reversing the district court's decision. *People v Brannon*, 194 Mich App 121; 486 NW2d 83 (1992).

Reversed and remanded to the district court for trial on the misdemeanor charge. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Maureen Pulte Reilly