

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 184949
Oakland Circuit Court
LC No. 93-DA5745-AR

RONALD JOHN VENTICINQUE,

Defendant-Appellant.

ON REMAND

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

BUHL, J. (dissenting).

I respectfully dissent from the majority. I would affirm the circuit court and remand.

In determining whether the circuit court erred in determining that the magistrate abused his discretion in not binding defendant over on the felony section of MCL 750.415; MSA 28.647, it should be noted that the circuit court may have applied a standard of proof higher than required under the court rule. The circuit court cited *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989):

If it appears that the felony has been committed for which there is probable cause to charge the defendant, it is the statutory duty of the magistrate to bind the defendant over for trial.

MCR 6.110(E) now governs the standard for a bindover:

Probable Cause Finding. If, after considering the evidence, the court determines that probable cause exists to believe both that an offense not cognizable by the district court has been committed and that the defendant committed it, the court must bind the defendant over for trial. If the court finds probable cause to believe that the defendant has committed an offense cognizable by the district court, it must proceed thereafter as if the defendant initially had been charged with that offense.

The issue, therefore, is whether the circuit court erred in finding that the magistrate abused his discretion in not finding both probable cause to believe that the felony was committed and

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

defendant committed it. The district court did not have to find that the felony was committed, as the circuit court opinion states. Nevertheless, the circuit court found that there was an abuse of discretion in not so ruling.

I would agree with the majority if I agreed with the interpretation given “identity of a motor vehicle” in their opinion, and if, like the magistrate, I agreed that it was Mr. Rogers, the truck owner, only, who was the object of the “intent to mislead” required by the statute.

There is little quarrel with the fact that the magistrate properly determined that the evidence demonstrated a prima facie case against defendant. He, admittedly, had possessed the engine and transmission with the numbers removed.

The magistrate found, however, that Rogers was not misled. I disagree, first, that it need be established that he was. Defendant’s *intent* is the issue, not his success. Secondly, Rogers was misled by the omission. Defendant did not disclose that he was returning Rogers’ truck with replacement parts that would, by Rogers’ possession of them, establish a prima facie case that Rogers violated MCL 750.415; MSA 28.647. Rogers certainly did not pay \$1,600 to defendant only to have his truck disassembled a year later for confiscation of his engine and transmission, and to suffer the inconvenience of giving up his truck to have defendant again replace those parts.

Rogers was misled as to his truck’s identity because the identity of a vehicle is the *sum of its parts*, not just the vehicle identification number (VIN) and appearance of its body. MCL 750.415; MSA 28.647 has little enforcement value to construe it otherwise.

It is not just the recipient of such parts to which the term “mislead” applies. The purpose of a VIN is to permit proof of ownership, and to allow law enforcement agents to track the same. Isn’t the true owner of these defaced parts, as well as the investigating police agency, “mislead” when they cannot trace Rogers’ engine and transmission? Isn’t the whole purpose of the having a VIN to be able to do so?

Using this interpretation as to the legislative purpose and meaning of the terms of MCL 750.415; MSA 28.647, and the prima facie case proven against defendant by evidence of his possession of these parts, the evidence heard by the magistrate does not demonstrate lack of intent, but removes all doubt. Defendant’s efforts to get Rogers to lie about the source of the parts, and his conflicting stories as to the origin of them demonstrates that he intended to conceal the true identity and ownership of them, and was not about to allow the police to trace them either.

For these reasons, the circuit court correctly ruled that it was an abuse of discretion for the magistrate not to find probable cause to believe defendant installed the parts with the VIN’s removed, with intent to mislead another as to the identity of the vehicle – the identity being *all* of its parts.

/s/ William C. Buhl