

STATE V. WIGGINS

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**STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
JOSHUA WIGGINS,
Defendant-Appellee.**

NO. 33,915

COURT OF APPEALS OF NEW MEXICO

December 21, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Jacqueline D.
Flores, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, M. Anne Kelly, Assistant Attorney General, Albuquerque, NM, for Appellant

Law Offices of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Tania Shahani, Assistant Appellate Defender, Santa Fe, NM, for Appellee

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: LINDA M. VANZI, Judge, M. MONICA ZAMORA, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} The State appeals from the dismissal of an indictment. The district court determined that the grand jury was not properly instructed on all of the essential elements of the offense. For the reasons that follow, we reverse.

BACKGROUND

{2} In September 2011, the State charged Defendant with the crime of receiving or transferring a stolen vehicle, contrary to NMSA 1978, Section 30-16D-4 (2009). The grand jury was instructed that in order to return a true bill, they must find probable cause as to each of the following elements: (1) the target had possession of a motor vehicle; (2) the vehicle had been stolen or unlawfully taken; and (3) the target knew or had reason to believe that the vehicle had been stolen or unlawfully taken.

{3} After Defendant was indicted he filed a motion to dismiss, arguing that the grand jury had not been properly instructed on all of the essential elements. Defendant argued that the instruction was insufficient because it “lack[ed] the element of intent to procure or pass title[.]” The district court found that the State’s instruction was insufficient, and granted Defendant’s motion to dismiss. The instant appeal followed.

STANDARD OF REVIEW

{4} “A prosecutor has a duty to advise the grand jury of the essential elements of the charges presented.” *State v. Moore*, 2011-NMCA-089, ¶ 8, 150 N.M. 512, 263 P.3d 289 (alteration, internal quotation marks, and citation omitted). This Court reviews de novo the question of whether a grand jury was properly instructed on all essential elements of a charge. *Id.*

DISCUSSION

{5} Recently, in the case of *State v. Bernard*, 2015-NMCA-089, 355 P.3d 831, *cert. denied*, 2015-NMCERT-____ (No. 35,430, Aug. 25, 2015), this Court held that the “intent to procure or pass title to a vehicle is not an essential element” of the offense in question. *Id.* ¶ 13 (internal quotation marks and citation omitted).

{6} In his brief on appeal, Defendant acknowledges the essential holding of *Bernard*, and recognizes that it is controlling for purposes of the present appeal. Nevertheless, pursuant to *State v. Franklin*, 1967-NMSC-151, ¶ 9, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029, ¶¶ 17-25, 103 N.M. 655, 712 P.2d 1, he maintains that *Bernard* was erroneously decided. Specifically, Defendant contends that we “overlooked important aspects of the history underlying the statute[.]” failed to accord due significance to the removal of a comma, gave insufficient weight to the statute’s title, and ultimately erred in declining to apply the rule of lenity. However, these matters were previously considered. See *Bernard*, 2015-NMCA-089, ¶¶ 7-13 (discussing the plain meaning of Section 30-16D-4). We decline to revisit the issue. See *Herrera v. Quality Pontiac*, 2003-NMSC-018, ¶ 15, 134 N.M. 43, 73 P.3d 181 (“We require special justification in order to depart from precedent.”); *Trujillo v. City of Albuquerque*, 1998-

NMSC-031, ¶ 33, 125 N.M. 721, 965 P.2d 305 (“Stare decisis is the judicial obligation to follow precedent, and it lies at the very core of the judicial process of interpreting and announcing law.”).

{7} Applying *Bernard*, the grand jury was duly instructed on the essential elements of the offense. We therefore conclude that the indictment was improperly dismissed.

CONCLUSION

{8} For the reasons stated, we reverse and remand for further proceedings.

{9} **IT IS SO ORDERED.**

J. MILES HANISEE, Judge

WE CONCUR:

LINDA M. VANZI, Judge

M. MONICA ZAMORA, Judge