

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PHILLIP DOMINIC CANDELLA,

Defendant-Appellee.

UNPUBLISHED

December 26, 2000

No. 225153

Macomb Circuit Court

LC No. 99-001553-FH

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion to dismiss. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with making a false police report of a bombing under MCL 750.411a; MSA 28.643(1), after falsely reporting to a school security guard that he intended to plant a bomb and blow up the school. The circuit court ruled that while defendant's statement was false, it was not a report of a commission of a crime and dismissed the charge. We review the circuit court's ruling de novo on appeal. *People v Hamblin*, 224 Mich App 87, 91; 568 NW2d 339 (1997); *Markillie v Livingston Co Bd of Rd Comm'rs*, 210 Mich App 16, 21; 532 NW2d 878 (1995).

The statute at issue provides as follows:

(1) Except as provided in subsection (2), a person who intentionally makes a false report of the commission of a crime to a member of the Michigan state police, a sheriff or deputy sheriff, a police officer of a city or village, or any other peace officer of the state knowing the report is false is guilty of a crime as follows:

(a) If the report is a false report of a misdemeanor, the person is guilty of a misdemeanor punishable by imprisonment ... or a fine ... or both.

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

(b) If the report is a false report of a felony, the person is guilty of a felony punishable by the lesser of the following:

(i) The penalty for the felony falsely reported.

(ii) Imprisonment for not more than 4 years or a fine ... or both.

(2) If the false report of a crime relates to a bombing, attempted bombing, or threat to bomb and the report is intentionally communicated to an individual described in subsection (1) or to any other person knowing the report is false, the person making the false report is guilty of a crime punishable by the lesser of the following:

(a) The penalty for bombing, attempted bombing, or threat to bomb falsely reported.

(b) Imprisonment for not more than 4 years or a fine ... or both. [MCL 750.411a; MSA 28.643(1).]

Section 411a(1) prohibits falsely reporting the commission of a crime. Because the class of the offense and the extent of the punishment depend upon the nature of the offense reported, the crime must involve the report of a statutory offense, which report is known to be false. See *People v Lay*, 336 Mich 77, 82; 57 NW2d 453 (1953). The only differences between subsections (1) and (2) of the statute are that under § 411a(1), the defendant must make a false report of the commission of a crime to the police, whereas under § 411a(2), the defendant must make a false report of the commission of a crime relating to a bombing, attempted bombing, or threat to bomb, but the report can be made to any person. Again, because the class of the offense and the extent of the punishment depend upon the nature of the offense reported, the crime must involve the report of a statutory offense which report is false. That is, there must be a crime relating to a bombing, attempted bombing, or threat to bomb which the defendant falsely reports has been committed.

MCL 750.209a; MSA 28.406a makes it a felony to possess an explosive substance or device in a public place with the intent to terrorize, frighten, intimidate, threaten, harass, or annoy another person. Defendant's statement that he was at the school to plant a bomb, coupled with the presence of the box in the front seat of his car, implied that defendant was in possession of an explosive device. His statement that he intended to blow up the school is evidence of an intent to terrorize or frighten. Therefore, had defendant actually been in possession of a bomb, he would have committed a violation of § 209a. Because defendant's statement, which was made to another person, was false, defendant made a false report of the commission of a crime related to a bombing and thus could properly be prosecuted under § 411a(2). Accordingly, we find that the trial court erred in granting the motion to dismiss.

We reverse and remand for reinstatement of the charge. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber