

Unlawful Use of a Vehicle

HB 2328 fix

Ryan Lufkin
Deputy District Attorney
Multnomah County

The problem

- Court of Appeals in State v Korth 269 Or App 238 (2015) and State v Shipe 264 Or App 391 (2014) held that the State must prove, beyond a reasonable doubt, that the driver of a vehicle knew it was stolen
- However, the following was considered not enough proof of that (from Korth):
 - “Dave” the transient gave me the car
 - I have no idea of his last name or where he lives
 - “Jiggle” keys used to steal cars were located in vehicle
 - Drugs in the car
 - Defendant lied to police

The problem

- Also found insufficient (in Shipe):
 - Defendant possessed meth
 - Got the vehicle from a guy named “Richey”
 - Bolt cutters, multiple keys, documents with other people’s names on them in the vehicle
 - Locked case labeled “Crime committing kit”
 - Stolen property in the vehicle
 - Considerable damage to the vehicle
 - Using the wrong key to operate the vehicle

The problem

- Downstream consequences of these decisions:
 - Judges opine from the bench the difficulty in prosecuting these offenses:
 - Judge Kantor: “They have put a shackle on the State, as far as I can tell, in trying to prove these cases.”
 - Judge Bergstrom: “The state of UUMV law may be absurd to some of us, but it is the state of UUMV law.”

Other jurisdictions

- From common law forward a person's possession of stolen property was substantial proof they were criminally involved, "We need not catalogue the large number of cases holding that the unexplained possession of recently stolen goods raises a presumption or warrants an inference of guilty possession." US v Mitchell, 427 F.2 1280 (3rd Cir 1970)

Other jurisdictions

- Washington State
 - “Once it is established that a person rode in a vehicle that was taken without the owner’s permission, ‘slight corroborative evidence’ is all that is necessary to establish guilty knowledge. Absence of a plausible explanation is a corroborating circumstance. Flight is also a corroborative factor.” State v Womble, 93 Wn. App. 599 (1999)

Other jurisdictions

- Washington State
 - “Merely being in possession of the stolen property is insufficient to support a conviction for the offense, but possession of the stolen property coupled with ‘slight corroborative evidence’ is sufficient to prove guilty knowledge.” State v Torres, 2015 Wash App Lexis 753 (2015)

Other jurisdictions

- California:
 - “Mere possession of a stolen car under suspicious circumstances is sufficient to sustain a conviction of unlawful taking. Possession of recently stolen property is so incriminating that to warrant a conviction for unlawful taking there need only be, in addition to possession, ‘slight corroboration’ in the form of statements or conduct of the defendant tending to show guilt” People v Clifton 171 Cal App 3d (1985)

Other jurisdictions

- California:
 - “Where recently stolen property is found in the conscious possession of a defendant who, upon being questioned by the police, gives a false explanation regarding his possession or remains silent under circumstances indicating consciousness of guilt, an inference of guilt is permissible.” People v Green, 34 Cal App 4th 165 (1995)

Other jurisdictions

- Idaho: “Any person who...shall have in his possession any vehicle which he knows or has reason to believe has been stolen...shall be guilty of a felony.” Idaho Code, 49-228.

The Solution: HB 2328

- A compromise bill with OCLDA to fix the problem
- Provides that a jury can consider cases where the defendant disregards a substantial risk that the vehicle is stolen
- Will solve the vast majority of cases we currently cannot prosecute successfully
- Should return to status quo that existed before these opinions