Unlawful Use of a Vehicle

HB 2794 fix

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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:
  - State v Alainz: Judgment of Acquittal by Judge Henry Kantor who said, "...if there was no additional evidence would I have any great difficulty finding the defendant guilty of these charges? Not particularly. But the COA says I can't do that, as far as I can tell. They have put a shackle on the State, as far as I can tell, in trying to prove these cases. It seems like the burden of knowledge for a stolen motor vehicle is nearly impossible for the State to meet without the defendant's own words or close to it or much more extravagant facts."

The problem

- Downstream consequences of these decisions:
  - State v Ivey: Judge Eric Bergstom found the defendant not guilty after evaluating all available case law on the subject, stating “The state of UUMV law may be absurd to some of us, but it is the state of UUMV law.”

The problem

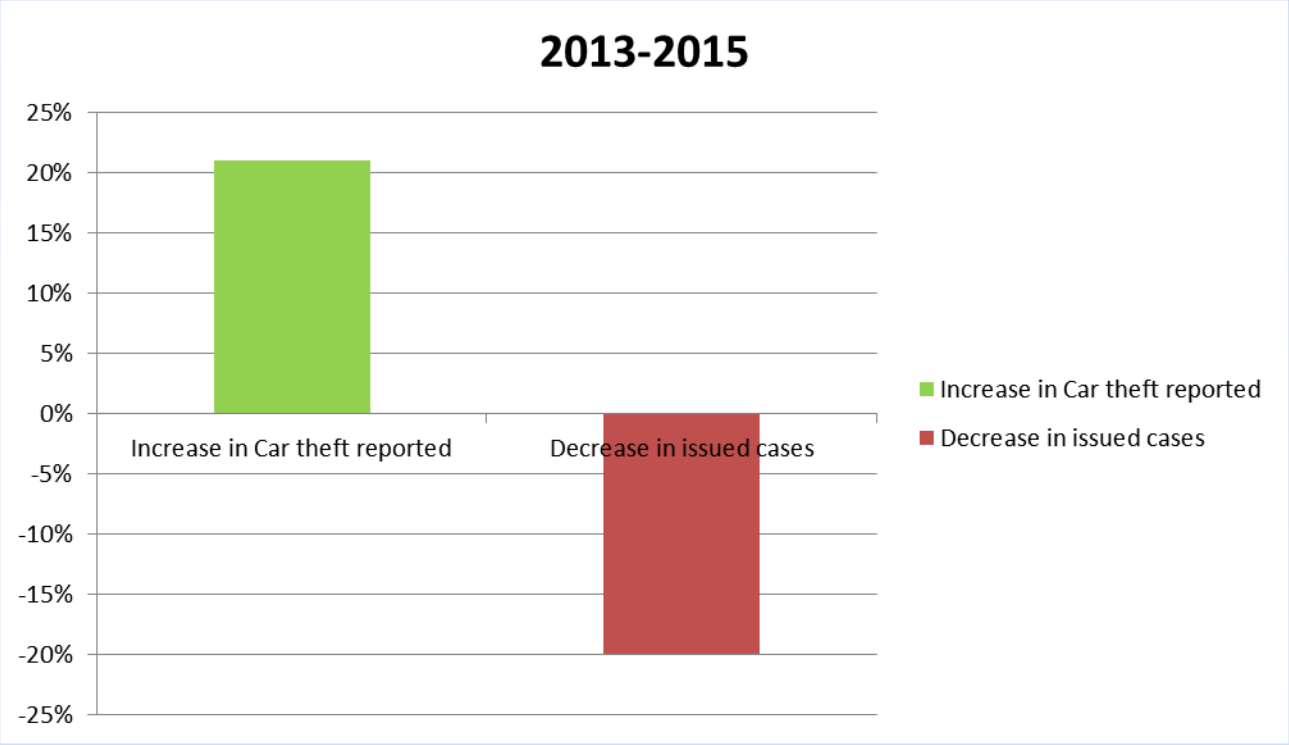
- Samples of no-complaints we could not prosecute:
  - DA 2337624: Driver of stolen vehicle said he bought the car off the internet for $500 from a stranger he had no way of contacting
  - DA 2324526: Driver of stolen vehicle said he purchased from cousin “Jerry” for $200 and was given a wad of keys to figure out which one worked

The problem

- Samples of no-complaints we could not prosecute:
  - DA 2331140: Driver of stolen vehicle lied about her name, said she obtained vehicle from “David”, a person she had no contact information for, and lied in saying she saw “David” driving the vehicle 3 weeks ago since vehicle was stolen 24 hours ago
  - DA 2337155: Driver of stolen vehicle was using switched license plates, lied about when he “bought” the vehicle since it was older than the date the vehicle was stolen. Driver was in possession of drugs and had recent prior arrest for driving a stolen vehicle

The problem

- This has led to a staggering increase in the rate of car theft but a decline in prosecution (Multnomah county)



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.

Solution

- Adopt the same standard as our sister states: Being the possessor of the stolen vehicle coupled with “slight corroborative evidence” is sufficient to prove guilt. Leave it to juries to decide on case by case basis.
- Define “slight corroborative evidence” with non-exclusive list so practitioners can apply this standard and the Court of Appeals doesn’t reverse (again).