Tenth Circuit

Legal Advisor

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How do you know they know?

By Angela Cowden

One of the most frustrating jobs we have as law enforcement officers and prosecutors is presenting evidence to a jury about what's going on inside someone's head.

Take, for instance, Grand Theft Auto.

You know the story — the suspect has borrowed somebody else's car and had no idea it was stolen.

Or they bought it from Bubba (who everybody knows is the local car thief) for $250, no title, for parts.

Or that the car is just on their property and it doesn't belong to them, somebody's just storing it there — in fact, they don't even

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know how it got there.

Or they realy didn't even know it was back there in those palmettos behind the blue tarp, stuck in the sugar sand.

They just had no i-DE-a that it was stolen.

So, how do we show the jury that the defendant either stole it, or possessed it knowing it was a stolen car?

We either get inside their heads (by way of an admission) or we look for some other evidence to show knowledge.

Because this article focuses on knowledge, we will assume you are legally on the property where the vehicle is and have determined that it is in fact stolen.

The suspect has given you one of the above stories, or a similar version. Now you must look for signs that they knew more than they were letting on to you.

Possession of recently-stolen property gives rise to an **inference** of knowledge of its stolen nature, so compare the date the vehicle is reported stolen to the date the suspect says the vehicle mysteriously appeared on his back forty.

A few days (three or four) is considered recent.

Be advised, however, that a conviction will not stand without more evidence than just that the suspect was in possession of recently stolen property — an inference is not considered to be very strong evidence.

Knowledge must be shown by additional evidence, such as an attempt to hide the vehicle or disguise it.

The fact that the vehicle is hidden behind a blue tarp is a good piece of evidence — get photos!!

Describe the fact that it could not be seen from the road (but be able to explain your presence on the property in order to defeat a motion to suppress).

Ask to see the keys to the car. When the suspect pulls the screwdriver out from under the seat, take it into evidence.

Knowledge can now be demonstrated to the jury!

But that's easy. Assuming the suspect has the keys, ask for a

copy of the paperwork , i.e., title or

lien holder information.

Common sense tells you that if they really paid $250 for the vehicle, there is no lien holder and they should have the title. When they don't produce the title, this is other evidence that the suspect knows the car is stolen.

Common sense also tells you, and the law agrees, that paying a ridiculously low price, such as $250 for a vehicle that is worth significantly more is evidence that the purchaser knew the vehicle was stolen.

Look carefully at he public VIN on the dashboard. Is it correctly riveted or is it altered? Or is it completely missing?

Check the VIN plate on the inside of the driver's door panel. Many times it is missing.

These are indicators of an attempt to hide the true identity of the vehicle, but are not sufficient to show knowledge that the vehicle is stolen.

You may, however, be able to charge Possession of Vehicle With Removed VIN, F.S. 319.30.

If you are not sure about the VINs, enlist the help of the PCSO Auto Theft Task Force. They can assist in determining the true identity of the vehicle by locating the confidential VIN. It is important never to disclose the whereabouts of the confidential VIN.

Look for receipts in the car with the suspect's name on them. Ask the suspect about the new paint job and the after-market stereo system. Did he have them put in?

Why is the VIN on the front door panel painted over?

Do the pieces of the vehicle match each other? Get the suspect's story.

Ask to see receipts for the paint job or the stereo or the new tires. Then go to the body parts store where the car was painted and find out the story the suspect told the shop owner. Do they agree?

If the vehicle is in parts, look at the ground around the parts to see how long it's been sitting.

For example, a suspect who admitted he was working on a vehicle which was determined to be stolen, said he had no idea that the VIN, which was supposed to be etched into the metal of the

transmission casing, had been ground off.

But when the detective looked at the metal on the casing where the numbers should have been, he noticed the metal was very smooth and shiny.

He also checked the ground below the transmission casing. There were fresh metal shavings, and it had rained the night before. Had the suspect's story been true, the metal shavings would not have been lying neatly on top of the leaves just below the transmission.

Although this seems insignificant, it indicates that the suspect lied and in fact ground the numbers off in an attempt to hide the true identity of the vehicle.

There is absolutely no substitute for a simple inquiry. Ask the suspect where he or she got the car. They may realize that you know more than they gave you credit for and tell you the truth.

Do not make an arrest until you are finished questioning the suspect. If the defendant is not under arrest and has been given no reason to believe that he is under arrest, Miranda does not apply.

If you immediately make an arrest when you discover that the vehicle is stolen, you have to advise the defendant of his Miranda rights and you may never get a chance to question him.

Finally, realize that there are times when there may be nothing you can do about the stolen vehicle but retrieve it and notify the rightful owner to pick it up.

It may not be in the best condition.
The owner may be upset that you did not arrest and we will not prosecute the driver of the car.

Explain the high standard of proof necessary to show guilty knowledge and try to help them see that we have done all that could be done to help them.

You have done your job in getting the car back to the owner, even though we cannot convict the person behind the wheel.

Don't give up until you have exhausted every avenue.

If you have any questions regarding proof of knowledge, please contact Angela Cowden or Michael Cusick of the State Attorney's Office, and we will be happy to give guidance.

FROM THE COURTS

Edited by Chip Thullbery

State must show burglary tool was used in burglary

The defendant was charged with, among other things, possession of burglary tools.

At his trial, the evidence established that he was seen removing a radio from a pickup truck.

He was apprehended a short time later, and when searched incident to his arrest, he had a flashlight in his possession.

He was convicted as charged.

On appeal, the Fourth District reversed the possession conviction, holding that the State must present evidence that the alleged burglary tool was used during a burglary.

Latimore v. State, 25 FLW D657 (Fla. 4th DCA Mar. 15, 2000)

Suppression of statement required where police didn't adequately answer defendant's question

The defendant was charged with first degree murder and filed a motion to suppress his tape recorded confession.

The facts on which the motion was based were that after waiving his *Miranda* rights, the defendant gave an unrecorded confession to police.

They then asked if he would give a recorded statement.

At that point he asked them if they thought he should have a lawyer.

They told him the decision was his. He then gave them a recorded confession.

The trial court denied the motion, and the defendant was convicted as charged.

On appeal, the Fourth District reversed, holding that the officers did not fulfill their duty to give the defendant a straightforward answer to his question.

Glatzmeyer v. State, Flw 25 D589

When is aggravated battery not a battery

The defendant was charged with felony battery based on the fact that he had two prior convictions for battery.

He filed a motion to dismiss in which he asserted that one of the prior convictions the State planned to use to establish his guilt did not qualify because it was for aggravated battery.

The trial court granted the motion and on appeal the First District affirmed, holding that an aggravated battery conviction may not serve as a qualifying offense for felony battery,

State v. Warren, 25 FLW D540 (Fla. 1st DCA Feb. 28, 2000).

Officer presented probable cause for seizure of cigar tube

The defendant was charged with possession of cocaine and filed a motion to suppress.

The facts on which the motion was based were that the defendant was a passenger in a car which was legally stopped.

The officer making the stop observed a cut-down cigar tube in the defendant's lap.

He testified that based on his training and experience he believed the tube contained cocaine.

He testified that he had seen such tubes during numerous other investigations and that they always contained cocaine.

He seized the tube, and it, like the others, contained cocaine.

The trial court denied the motion, and the defendant was convicted as charged.

On appeal, the Fifth District affirmed, holding that the officer's training and experiencegave him probable cause to believe that there was cocaine in the tube.

Jenkins v. State, 25 FLW D502 (Fla. 5th DCA Feb. 25, 2000).

On self defense

The defendant, a juvenile, was charged with felony battery.

At his trial, the evidence established that the defendant and another student were involved in a fight.

The victim, a teacher, tried to intervene but was hit by the defendant as he was trying to hit the other student.

The defendant testified that his attempt to hit the other student was an act of self defense.

However, he was convicted as charged.

On appeal, the Fourth District reversed, holding that where self defense is a viable defense to a charge of battery on an intended victim, it is also a viable defense as to an unintended victim.

V. M. v. State, 25 FLW D419 (Fla. 4th DCA Feb. 16, 2000).

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