

**FILED: February 27, 2013**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

RUSSELL LEWIS DUDLEY,  
Defendant-Appellant.

Coos County Circuit Court  
10CR0512

A147475

Michael J. Gillespie, Judge.

Submitted on January 25, 2013.

Peter Gartlan, Chief Defender, and Louis R. Miles, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

John R. Kroger, Attorney General, Anna M. Joyce, Solicitor General, and Tiffany Keast, Assistant Attorney General, filed the brief for respondent.

Before Armstrong, Presiding Judge, and Nakamoto, Judge, and Egan, Judge.

PER CURIAM

Reversed and remanded with instructions to merge defendant's convictions on Counts 2 and 6 into a single conviction for unauthorized use of a vehicle, to merge defendant's convictions on Counts 3 and 7 into a single conviction for unauthorized use of a vehicle, and for resentencing; otherwise affirmed.

1 PER CURIAM

2 Defendant was convicted, after a jury trial, of two counts of unauthorized  
3 use of a vehicle (UUV) (Counts 2 and 3), two counts of possession of a stolen motor  
4 vehicle (PSV) (Counts 6 and 7), and one count of trafficking in vehicles with destroyed  
5 or altered identification numbers (Count 9). In his first two assignments of error,  
6 defendant contends, relying on *State v. Noe*, 242 Or App 530, 256 P3d 14 (2011), that the  
7 trial court plainly erred in failing to merge (1) the UUV and PSV verdicts in Counts 2 and  
8 6, which involved the same vehicle, into a single conviction and (2) the UUV and PSV  
9 verdicts in Counts 3 and 7, which also involved the same vehicle (but a different one  
10 from that implicated in Counts 2 and 6), into a single conviction. The state acknowledges  
11 that *Noe* governs, but contends that it was wrongly decided. As we recently did in *State*  
12 *v. Joynt*, 254 Or App 415, \_\_\_ P3d \_\_\_ (2012), we reject that proposition and conclude  
13 that, as in *Noe*, all of the elements of PSV are subsumed into the elements of UUV in this  
14 case. Accordingly, each pair of defendant's convictions for PSV and UUV should have  
15 merged, and we reverse and remand for the trial court to make that correction and for  
16 resentencing. ORS 138.222(5).

17 Given that disposition, we need not address defendant's third assignment of  
18 error, in which he raises an unpreserved contention that the trial court erred in imposing  
19 restitution.

20 Reversed and remanded with instructions to merge defendant's convictions  
21 on Counts 2 and 6 into a single conviction for unauthorized use of a vehicle, to merge

- 1 defendant's convictions on Counts 3 and 7 into a single conviction for unauthorized use
- 2 of a vehicle, and for resentencing; otherwise affirmed.