

FILED: April 3, 2013

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

RYAN TODD JONES,
Defendant-Appellant.

Clackamas County Circuit Court
CR1002067

A148499

Ronald D. Thom, Judge.

Submitted on February 22, 2013.

Peter Gartlan, Chief Defender, and Ingrid MacFarlane, 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 for possession of a stolen vehicle and unauthorized use of a vehicle into a single conviction for unauthorized use of a vehicle and for resentencing; otherwise affirmed.

1 PER CURIAM

2 Defendant appeals a judgment of conviction for unlawful possession of
3 methamphetamine, possession of a burglary tool or theft device, unauthorized use of a
4 vehicle, and possession of a stolen vehicle. He raises two assignments of error. We
5 reject defendant's second assignment of error without discussion and write to address his
6 first assignment, in which he contends that the trial court committed plain error in failing
7 to merge the guilty verdict for possession of a stolen vehicle with the guilty verdict for
8 unauthorized use of a vehicle. *See State v. Noe*, 242 Or App 530, 256 P3d 166 (2011)
9 (guilty verdict for possession of a stolen vehicle merges with guilty verdict for
10 unauthorized use of a vehicle); *see also* ORAP 5.45; *Ailes v. Portland Meadows, Inc.*,
11 312 Or 376, 382, 823 P2d 956 (1991) (court has discretion to review unpreserved error of
12 law apparent on the face of the record). The state acknowledges our holding in *Noe* but
13 contends that *Noe* was wrongly decided. We adhere to our holding in *Noe* that all of the
14 elements of possession of a stolen vehicle are subsumed into the elements of
15 unauthorized use of a motor vehicle in a case such as this one, and, for the reasons stated
16 in *State v. Camacho-Alvarez*, 225 Or App 215, 216, 200 P3d 613 (2009), we conclude
17 that it is appropriate to exercise our discretion to correct the error in this case.

18 Reversed and remanded with instructions to merge defendant's convictions
19 for possession of a stolen vehicle and unauthorized use of a vehicle into a single
20 conviction for unauthorized use of a vehicle and for resentencing; otherwise affirmed.