

FILED: December 27, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

RYAN PATRICK JOYNT,
Defendant-Appellant.

Multnomah County Circuit Court
080733257

A144693

Janice R. Wilson, Judge.

Submitted on June 27, 2012.

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 Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

PER CURIAM

Reversed and remanded with instructions to merge guilty verdicts on Counts 3 and 7 into a single conviction for first-degree theft, guilty verdicts on Counts 1 and 5 into a single conviction for unauthorized use of a vehicle, guilty verdicts on Counts 8 and 11 into a single conviction for unauthorized use of a vehicle, and guilty verdicts on Counts 12 and 15 into a single conviction for unauthorized use of a vehicle; remanded for resentencing; otherwise affirmed.

1 PER CURIAM

2 Defendant was convicted of, among other things, four counts of first-degree
3 theft, ORS 164.055, three counts of possession of a stolen vehicle (PSV), ORS 819.300,
4 and three counts of unlawful use of a vehicle (UUV), ORS 164.135. He raises ten
5 assignments of error. His first five assignments of error concern the denial of his motion
6 for judgment of acquittal on each count. We reject those assignments without discussion.
7 In his sixth assignment of error, defendant contends that the trial court erred when it
8 instructed the jury that it could reach a nonunanimous verdict. We also reject that
9 assignment without discussion. See [State v. Cobb](#), 224 Or App 594, 596, 198 P3d 978
10 (2008), *rev den*, 346 Or 364 (2009) (rejecting argument that the trial court erred in
11 instructing the jury that it could reach a nonunanimous verdict). We write only to briefly
12 discuss defendant's remaining assignments of error concerning merger.

13 In defendant's seventh assignment of error, he contends that the trial court
14 erred in failing to merge two counts of first-degree theft based on his theft of a truck and
15 his theft of the parts of the truck. The state concedes that the trial court erred in failing to
16 merge those two first-degree theft counts. The state's concession is well-taken, and we
17 accept it. ORS 161.067(1); [State v. Noe](#), 242 Or App 530, 532, 256 P3d 14 (2011)
18 (merger of convictions required where one offense was based on the theft of a truck and
19 another offense based on the theft of the parts of that truck, the same property in different
20 form).

21 In defendant's eighth, ninth, and tenth assignments of error, he argues that

1 the trial court erred by failing to merge the three pairs of UUV and PSV convictions.
2 Defendant illegally towed three cars, and, for each car, the state charged defendant with
3 PSV and UUV. Defendant argues that PSV is a lesser-included offense of UUV, and, as
4 a result, his three convictions for PSV must merge into his three convictions for UUV.
5 *See Noe*, 242 Or App at 532-33 (convictions for PSV and UUV must merge because PSV
6 does not contain an element that UUV does not; to establish unauthorized use of a vehicle
7 that the defendant took, the state must prove that the defendant took the vehicle without
8 the owner's consent, the equivalent of the defendant having stolen it). The state
9 acknowledges that our holding in *Noe* applies to this case, but contends that *Noe* was
10 wrongly decided and asks that we overrule it. We decline the state's invitation and
11 adhere to the holding in *Noe* that all the elements of PSV are subsumed into elements of
12 UUV in a case like this one. Accordingly, defendant's convictions for PSV and UUV
13 merge.

14 Reversed and remanded with instructions to merge guilty verdicts on
15 Counts 3 and 7 into a single conviction for first-degree theft, guilty verdicts on Counts 1
16 and 5 into a single conviction for unauthorized use of a vehicle, guilty verdicts on Counts
17 8 and 11 into a single conviction for unauthorized use of a vehicle, and guilty verdicts on
18 Counts 12 and 15 into a single conviction for unauthorized use of a vehicle; remanded for
19 resentencing; otherwise affirmed.