Proving That Larceny of a Motor Vehicle Is a Felony

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In some states, theft of an automobile is a felony regardless of the value of the vehicle. *See, e.g.,* Fla. Stat. § 812.014. Not so in North Carolina. Motor vehicles don't have any special status under our larceny statute, G.S. 14-72. Therefore, theft of an automobile is a misdemeanor unless the vehicle is worth more than $1,000, or the theft falls under one of the other felony provisions of G.S. 14-72(b).

In this post, I'll summarize the appellate cases that consider whether there was sufficient evidence that a vehicle was worth more than $1,000.

No presumption that motor vehicles are worth more than $1,000. If the State presents no evidence of a vehicle's value, that is insufficient to sustain a felony conviction. In other words, there's no presumption that a motor vehicle is worth more than $1,000. *State v. McRae*, __ N.C. App. __, 752 S.E.2d 731 (2014) (reversing a conviction based on felony larceny of a vehicle because the State introduced no evidence of the vehicle's value; the vehicle belonged to a high school student and the indictment alleged that it was worth $2500). *Cf. In re Mecklenburg County*, 191 N.C. App. 246 (2008) (vacating a juvenile adjudication based on an admission to felony larceny; while the juvenile acknowledged stealing a truck, the "prosecutor's statement of facts does not contain any statement or evidence that the pickup truck was worth more than $1,000," so there was no factual basis for the felony admission).

Evidence that an older vehicle is well-kept is not sufficient. In *State v. Holland*, 318 N.C. 602 (1986), the state supreme court found insufficient evidence of value where "the State offered no direct evidence of the [stolen] Cordoba's value," even though there was "evidence tending to show that the victim owned two automobiles and that the 1975 Chrysler Cordoba was his favorite one of which he took especially good care, always keeping it parked under a shed," and "a picture of this automobile was exhibited to the jury for the purpose of establishing the location of the automobile when discovered after its theft." Interesting aside: I checked Hemmings Motor News and a couple of other websites, and a 1975 Cordoba in good condition could be worth $10,000 today.

Evidence that a vehicle is shiny and new is sufficient. By contrast, in *State v. Dobie*, 2014 WL 3824257 (N.C. Ct. App. Aug. 5, 2014) (unpublished), the court of appeals ruled that there was sufficient evidence of felony larceny where photographs of the vehicle in question showed that it was a "late model BMW sedan that ha[d] no exterior defects." The holding makes sense on the facts presented, but I wonder how far it extends. I have a previous-generation Toyota Camry that looks pretty good except for some scuffing on the trunk lid. Does that count? How about my wife's minivan, which runs well but has several dents and is missing a hubcap?

The owner's testimony regarding the vehicle's value may be sufficient. The owner may testify to the value of a vehicle under *State v. Huggins*, 338 N.C. 494 (1994). But note *State v. Haney*, 28 N.C. App. 222 (1975), where the court made clear that value means fair market value, not the price at which the owner would be willing to sell the vehicle. The court suggested that testimony that owner would not sell a vehicle for less than $2000 was "[i]ncompetent," though sufficient given that defendant did not object to it.

Evidence of the price the owner paid for the vehicle may be sufficient. Evidence of a recent sale above the threshold amount may be adequate. *State v. Rascoe*, 170 N.C. App. 198 (2005) (evidence of purchase price months or

years before the theft may be sufficient evidence of value where there is no reason to believe that "extraordinarily rapid depreciation" had greatly reduced the vehicle's value).

Blue book value may be sufficient. Finally, under *State v. Dallas*, 205 N.C. App. 216 (2010), the NADA Guide and similar references are admissible evidence on the value of a vehicle. I glanced at cases from other jurisdictions and it appears that other states generally agree. *See, e.g., Walker v. Com.*, 704 S.E.2d 124 (Va. 2011) (rejecting Confrontation Clause argument because such guides are not testimonial); *State v. Erickstad*, 620 N.W.2d 136 (S.D. 2000) (collecting cases and ruling that such guides fall within the hearsay exception for market reports and commercial publications). This seems like a sure and simple course for the State in most cases.

On another topic, regular readers may have noticed that there was no post yesterday. I'm sorry. I was caught up in other matters and just didn't get to it. We should be back on track now.