

MOTOR VEHICLES: The value of a motor vehicle stolen is not to be considered in determining the sentence of the one convicted of having stolen such motor vehicle.

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Mr. W. W. Graves
Prosecuting Attorney
Kansas City, Missouri

ATTENTION: Mr. Russell T. Boyle

Dear Mr. Graves:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"Please give us your interpretation of Section 7786, R. S. 1929, with regard to the penalty for stealing an automobile.

We desire to know whether your interpretation of this Section would be that the value of the automobile stolen would make no difference as to the penalty. In other words is the theft of an automobile under the value of \$30.00, a felony and punishable by penitentiary sentence or is it a misdemeanor and punishable by a jail sentence."

In the course of this opinion, we first differentiate between felonies and misdemeanors. In this respect, we direct your attention to Section 4471, R. S. Mo. 1929, which defines a felony as follows:

"The term 'felony,' when used in

this or any other statute, shall be construed to mean any offense for which the offender, on conviction, shall be liable by law to be punished with death or imprisonment in the penitentiary, and no other."

Section 4473, R. S. Mo. 1929, defines a misdemeanor as follows:

"The term 'misdemeanor,' as used in this or any other statute, shall be construed as including every offense punishable only by fine or imprisonment in a county jail or both."

In the case of State vs. Melton, 117 Mo. 618, 619, 620, 23 S. W. 889, the Supreme Court had before it for consideration an appeal taken to the St. Louis Court of Appeals and subsequently certified to it by reason of its jurisdiction over felonies. Section 12, Article VI, Constitution of Missouri. In this case, the defendant received a sentence of six months in the county jail. The Supreme Court, in passing upon its jurisdiction in "cases of felonies" said:

"The crime charged is a felony, as the offense denounced by the statute may be punished by imprisonment in the penitentiary. The fact that less punishment than imprisonment in the penitentiary was assessed in this case, does not reduce the offense to a misdemeanor."

In the case of State vs. John Underwood, 254 Mo. 469,

470, 162 S. W. 184, the court had before it for consideration what is now Sections 4471 and 4473, supra, and in passing upon these statutes said:

"The distinction between felonies and misdemeanors made by our statute renders appellant's contention without merit. As we held in State v. Woodson, 248 Mo. 705, the term 'felony,' under our code, means any offense for which the offender on conviction shall be liable to be punished with death or imprisonment in the penitentiary. (Sec. 4923, R. S. 1909.) The term 'misdemeanor' includes every offense punishable only by fine or imprisonment in a county jail or both. (Sec. 4925, R. S. 1909.)

The offense with which the appellant is charged is one for which he was liable to be punished by imprisonment in the penitentiary, but the minimum punishment for this offense was by fine or imprisonment in the county jail or both. His offense, therefore, was not changed from a felony to a misdemeanor by the assessment of his punishment at a fine and imprisonment in a county jail, * * * * "

To the same effect is a ruling in the case of State vs. Clayton, 100 Mo. 516.

From the foregoing considerations, it will be noticed that where one has been convicted of an offense and shall be liable by law to be punished by death or imprisonment in the penitentiary, such persons shall be deemed guilty of a felony, whereas, the term misdemeanor, as used in any statute, is construed to include every offense punishable only by fine or imprisonment in the county jail, or both.

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Applying the principles above announced, in construing subdivision (a) in Section 7786, R. S. Mo. 1929, which reads as follows:

"Any person who shall be convicted of feloniously stealing, taking or carrying away any motor vehicle, or any part, tire or equipment of a motor vehicle of a value of \$30.00 or more, or any person who shall be convicted of attempting to feloniously steal, take or carry away any such motor vehicle, part, tire or equipment, shall be guilty of a felony and shall be punished by imprisonment in the penitentiary for a term not exceeding twenty-five years or by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars (\$1,000) or by both such fine and imprisonment."

it will be noticed that if any person shall be convicted of feloniously stealing, taking or carrying away any motor vehicle, they shall be deemed guilty of a felony and shall be punished as aforementioned.

The value of the automobile stolen would make no difference in determining the punishment. You will note the statute is written in the alternative and when the value of the thing stolen is to be taken into consideration it only pertains to any part, tire or equipment of motor vehicles of the value of \$30.00 or more. Thus, a person convicted of the theft of any part of a motor vehicle over the value of \$30.00 could receive the maximum punishment, to-wit, twenty-five years in the penitentiary.

This construction of the statute is further substantiated in view of subdivision (b) of Section 7786, supra, wherein it reads:

"Any person who shall be convicted

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of stealing, taking or carrying away any motor vehicle tire or any part or equipment of a motor vehicle under the value of \$30.00 shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding one hundred dollars (\$100.00) or by both such fine and imprisonment."

Had the Legislature intended to make the theft of an automobile under the value of \$30.00 a misdemeanor, it is logical to assume that it would have been included in the above subdivision (b). It is obvious, therefore, that the Legislature intended that if any person should steal a motor vehicle that such person should be deemed guilty of a felony and punished as above specified in subdivision (a).

CONCLUSION

It is the opinion of this department that the value of the automobile stolen is not to be considered in determining the punishment a person is to receive, except to say that the court should instruct on the minimum amount of punishment to be received, as well as upon the maximum amount. State vs. Liston, 318 Mo. 1222, 25 S. W. (2nd) 780. Further, that the theft of an automobile under the value of \$30.00 is a felony and punishable as indicated in subdivision (a) of Section 7786, supra.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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