

MOTOR VEHICLE [REDACTED] be transfer of title at the
time of sale.
CRIMINAL PROCEDURE: [REDACTED] tions regarding jurisdiction
of offenders.

March 1, 1946



Honorable James P. Hawkins
Prosecuting Attorney
Buffalo, Missouri

Dear Sir:

We are in receipt of your request for our official
opinion, as follows:

"I have filed 19 felony charges against
two brothers, and in six of those charges
I have also joined two of their other
brothers. Some of the charges are bur-
glary and larceny while most of them are
for grand larceny of automobiles - in every
car case the boys stole the cars, drove
them awhile, stripped some of them, but
abandoned all of them. I believe that the
facts are such that the felonious intent to
steal can be sustained.

"I would like your opinion of the following
instances as to how to produce sufficient
proof of the ownership of the car:

"(1) The owner had purchased the car the
day that it was stolen - had paid for it but
the title had not been assigned to him, but
he had taken possession of it.

"(2) The owner had the title at the time of
the theft but later sold it and delivered the
title thereto, and, of course, does not have
the title now.

"I would also like your opinion of the means
of procedure in the following cases as per-
tains to two of the defendants who are juve-
niles:

"(1) There was not any showing that they were juveniles, they waived their preliminaries and were bound over to the Circuit Court.

"(2) There was a showing made that they were juveniles; the cases as against them (they being joined under one charge with the others of age); the cases were transferred to the juvenile court; preliminary had as to the other two brothers and they were bound over to Circuit Court."

Your questions will be considered in the order appearing above, and your first question relates to the ownership of motor vehicles in this state.

Section 8382, R. S. Mo. 1939, provides the manner in which title to motor vehicles must be obtained in this state, and after describing the certificate of ownership required, provides:

" * * * It shall be unlawful for any person to buy or sell in this state any motor vehicle or trailer registered under the laws of this state, unless, at the time of the delivery thereof, there shall pass between the parties such certificate of ownership with an assignment thereof, as herein provided, and the sale of any motor vehicle or trailer registered under the laws of this state, without the assignment of such certificate of ownership, shall be fraudulent and void. * * * "

The above provision has been the subject of several decisions by the courts of this state, and has been consistently held to be mandatory. In *Drown v. Tough*, 38 S. W. (2d) 736, the Kansas City Court of Appeals, in construing the above quoted statute, said, l. c. 738:

" * * * It is true the statute relative to the sale or exchange of an automobile is mandatory and must be strictly construed. * * * "

To the same effect is *State ex rel. Connecticut Fire Ins. Co. v. Argus Cox et al.*, Judges of Springfield Court of Appeals,

306 Mo. 537, a decision by the Supreme Court of Missouri, which, in referring to the above quoted statute, states, l. c. 552:

"Keeping in mind the fact that the Act of 1921, under consideration, is intended primarily as a typical police regulation for the benefit of the public, why should its plain provisions be dispensed with, and something else substituted in its place by judicial construction? When the Act of 1921 became effective, it declared in express terms that a sale of an automobile shall be declared fraudulent and void, unless the vendor attaches his signature to the assignment on the back of his certificate of title, etc. * * * "

In considering the first example contained in your request, in which the owner had purchased the car but had not yet received the assignment of the title to same, it becomes necessary to consider the meaning of the words "at the time of the delivery thereof," contained in the quoted portion of Section 8382, supra. This phrase was discussed in *Saffran v. Rhode Island Ins. Co. of Providence, R. I.*, 141 S. W. (2d) 98, in which the ownership of an automobile was in issue. Portions of that decision which bear on the question at hand are quoted, l. c. 100:

"In the case of *State ex rel. v. Cox et al.*, 306 Mo. 537, 268 S. W. 87, 37 A.L.R. 1456, the court held the sale of a motor vehicle was not effective unless the provisions of the statute, now section 7774, R.S. 1929, Mo. St. Ann. sec. 7774, p. 5193, were complied with. That section provides, among other things, that the certificate of title, duly assigned, shall be delivered to the purchaser 'at the time' the motor vehicle is delivered. The phrase 'at the time' has not been, so far as we are advised, construed by any court in this jurisdiction.

* * * * *

"It has been ruled the phrase 'at any time' does not mean *eo instanti*, 'but the act ought to be done in a convenient time, considering the surrounding circumstances affording evi-

dence of reasonable excuse for delay.'
United States v. Buchanan, D. C., 9 F.
689, 691; Hunter v. Wetsell, 84 N. Y. 549,
38 Am. Rep. 544."

On the authority of this case, it would appear that if the owner referred to by you in your first question procured proper assignment of the title within a reasonable time thereafter, then he may be considered to have been the owner of the motor vehicle referred to at the time of the theft.

Your second question refers to the question of proof of ownership where the owner is no longer in possession of the certificate of title issued by the Secretary of State, as provided in Section 8382, R. S. Mo. 1939, in portions not quoted above because of their extreme length.

We believe this question to be fully answered by the decision of the Supreme Court of this state in State v. Wahlers, 56 S. W. (2d) 26. In that case, which was a criminal prosecution involving the motor vehicle laws, the question of sufficiency of the evidence on ownership of the vehicle concerned was the issue, and we find the following in the opinion of the court, 1. c. 27:

"Defendant's contention, as to the insufficiency of the evidence to sustain a conviction, is mainly based upon the theory that the ownership of the automobile should have been proven by the records of the motor registration department of the state. In other words the ownership should have been proven by a certificate of title issued by the state department. C. E. Bodine testified that the Master Six Buick in question was his property. This evidence was sufficient to establish the fact of ownership. * * * "

This appears to fully answer your question regarding the manner of proving ownership of the vehicles concerned.

The second part of your request relates to criminal procedure affecting juveniles, and in your first example the juveniles involved waived preliminary hearings before a magistrate and were bound over to the circuit court, apparently before it was learned that they were under the age of twenty-one years. In the second example given it was apparently learned that juveniles were involved in a hearing before the magistrate and they were immediately transferred to the juvenile court.

The age of the juveniles involved in the above examples is not given, and it is necessary to consider all the statutes which might apply.

Section 9705, R. S. Mo. 1939, is applicable to Dallas County and provides the method of procedure when a child under the age of seventeen years is charged with a criminal offense. That section is as follows:

"When in any such county a child under the age of seventeen years is arrested with or without warrant, such child shall, instead of being taken for trial before a justice of the peace, or police magistrate, or judge of any other court now or hereafter having jurisdiction of the offense charged, be taken direct before the circuit court; or if the child shall have been taken before a justice of the peace or a police magistrate or judge of such other court, it shall be the duty of said justice or police magistrate or judge to transfer the case to the circuit court, and of the officer having the child in charge to take such child before said court, and the said court shall proceed to hear the case. Nothing in this article contained shall be construed as depriving any court or magistrate of such counties of the powers now given them by the law to file complaints and issue warrants, but all subsequent proceedings shall be had in the circuit court. The circuit court shall proceed to hear and dispose of such cases in the same manner as if the proceedings had been instituted in said circuit court upon petition, as hereinbefore provided."
(Emphasis ours.)

From the emphasized portion of the foregoing section, if it is brought to the attention of the magistrate that the child involved is under the age of seventeen years, said child shall immediately be transferred to the circuit court (no mention is made of the juvenile court).

Section 9700, R. S. Mo. 1939, fixes discretion in the circuit court as to whether children under the age of seventeen years will be tried in the juvenile court or under the general laws in a court of general criminal jurisdiction. That section is as follows:

"In the discretion of the judge of any court having jurisdiction of delinquent children under the provisions of articles 9 or 10, chapter 56, R. S. 1939, any petition alleging a child to be delinquent may be dismissed and such child prosecuted under the general law, and any motion, petition or application, made to any court or judge having general jurisdiction of criminal causes, to transfer the case of or charge against any delinquent child to a court having jurisdiction of delinquent children under the provisions of said articles 9 and 10, may be denied in the discretion of the judge, when in the judgment of the judge such child is not a proper subject to be dealt with under the reformatory provisions of either said article 9 or said article 10."

Briefly stated, under the above statute, children of the age of sixteen years or less may be either tried under the general criminal statutes or in the juvenile court under a petition alleging the delinquency of the child involved.

A general discussion of the effect of Section 9700, supra, may be found in State ex rel. Wells v. Walker, 34 S. W. (2d) 124. In that case the relator, charged with the crime of burglary in the Circuit Court of Howard County, was fourteen years of age, and the court below found that he was not a proper person to be dealt with under the juvenile law, granting the State leave to prosecute him under the general criminal law. This finding below was upheld in the following portion of the opinion, l. c. 133:

"It is clear, therefore, that the respondent judge of the circuit court of Howard county has jurisdiction to proceed with this case in the manner contemplated by his order, or jurisdiction to conduct the case against relator as a delinquent child, and whether he may conduct it one way or the other is to be determined by him."

If the person charged with a crime was over the age of seventeen years at the time the alleged crime was charged to have been committed, none of the provisions relating to juvenile courts apply. This principle is announced in State v.

Damico, 4 S. W. (2d) 424, which was a decision by the Supreme Court of Missouri. We find the following in the opinion, l. c. 425:

" * * * According to the court's own finding, set out supra, this appellant was over the age of 17 years, when the alleged offense of manslaughter was committed. The juvenile court was wholly without jurisdiction to make any order in the case, or to enter any judgment therein. * * * "

CONCLUSION

It is, therefore, our conclusion that:

(1) There must be a transfer of the certificate of title to a motor vehicle in this state at the time of the sale and delivery of such vehicle, although some latitude may be allowed, according to the conditions surrounding the sale, for the actual transfer of said certificate of title.

(2) The owner of a motor vehicle may ordinarily testify to such ownership without the production of the certificate of title issued by the Secretary of State, although such title would be the best evidence if the ownership were in issue.

(3) When it appears that any child under the age of seventeen years is before a magistrate charged with the commission of a crime, it is the duty of such magistrate to immediately transfer the case to the circuit court having jurisdiction.

(4) A child under the age of seventeen years charged with the commission of a crime, in counties with a population of fifty thousand or less, may be proceeded against in the juvenile court by petition charging delinquency, or, in the discretion of the judge, where no request has been made for transfer to the juvenile court, may be tried under the general criminal laws.

(5) The juvenile court has no jurisdiction over the person of any minor over the age of seventeen years at the time of

Honorable James P. Hawkins - 8

the commission of the alleged offense for which he is to be tried.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RLH:HR