

LAW REVIEW

Published in the Sierra Sun
September 18, 2009

By: Jim Porter

IS OWNER OF STOLEN TOW TRUCK LIABLE FOR CRASH?

If your car is stolen by a gang member parolee who immediately crashes into some innocent victims and kills them, could you be responsible?

Stolen Tow Truck

Raymond Bermudez is a gang member who served time in prison. On the very day he was paroled Bermudez took a bus to Los Angeles and wasted no time getting back into society. He got drunk.

Bermudez then walked through an open side-gate into Sopp & Son truck service center in Huntington Park, California at 5:15 in the afternoon. He climbed into a large tow truck. The keys were in the truck as it was one of several vehicles being worked on. Bermudez smashed his way out of the service center, as the tow truck was "stack parked" in a second row of vehicles. The truck took part of an awning with it.

The only employee still at work, who would normally gather the keys at the end of the day and lock them up, was washing cars and did not see Bermudez who took only three minutes to drive the tow truck out of the yard after entering.

Bermudez ran down several pedestrians at a bus stop a few blocks away in the City of Vernon, killing three people and injuring several others. He pled

guilty to three counts of murder and was sentenced to 140 years to life in state prison.

Wrongful Death

The injured and heirs of the deceased sued Sopp & Son for negligence claiming Sopp should have secured the tow truck by removing the key and/or closing the side gate to the repair yard. Sopp claimed the theft was unforeseeable and caused by the “intentional and wanton” and “superseding and intervening” acts of Bermudez.

The general rule is that absent “special circumstances” the owner of a vehicle has no duty to protect third persons against the possibility a thief will steal the vehicle and injure them with it. In other words, unless there are unique facts, if someone steals a vehicle, even with the keys in it, and injures or kills someone, the owner of the vehicle is generally not responsible.

Precedent

The leading case defining what constitutes “special circumstances” such that the owner of the stolen vehicle may be responsible is *Richards v. Stanley* where intoxicated teenagers stole a bulldozer and promptly drove it off a cliff: “The Supreme Court cases show that “special circumstances” exist when heavy vehicles are left unattended and available for use by those not accustomed to driving them.”

The trial court concluded that leaving the keys in the tow truck in the fenced-in repair yard during daylight hours when employees were present did not

amount to the “special circumstances” necessary to make Sopp & Son liable to the unfortunate victims of the stolen tow truck.

Reversal

The Court of Appeal reversed the trial court because the tow truck was a “heavy vehicle” left in a high crime area with the key in the ignition.

The Court considered public policy (and insurance coverage) and wrote, “Requiring Sopp to lock its gate or to remove keys from commercial vehicles does not constitute an ownerous burden on a business owner.”

Dissent

None of the three Justices dissented; however, I probably would have. In my simple mind, the Court of Appeal placed too much emphasis on the fact that the tow truck was a “heavy vehicle” meeting the “special circumstances” requirement, while ignoring the realities of running a vehicle repair business and the virtual impossibility of protecting from a drunken parolee sneaking through an open gate at closing hours with employees present and stealing a vehicle stacked behind other vehicles—all in three minutes. Then running down bystanders waiting at a bus stop.

Bermudez’s criminal conduct was an unforeseeable, superseding cause relieving Sopp & Son of liability. That’s how I see it.

Jim Porter is an attorney with Porter Simon, with offices in Truckee, South Lake Tahoe, Incline Village and Reno and a licensed California Real Estate Broker. He was the Governor's appointee to the Bipartisan McPherson Commission on political ethics and the California Fair Political Practices

Commission. He may be reached at porter@portersimon.com or at the firm's web site www.portersimon.com .

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