91457-5

SUPREME COURT NO. _____

NO. 71238-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ZACHARY LARSON,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Charles R. Snyder, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHER AUTHORITIES

A. IDENTITY OF PETITIONER

Petitioner Zachary Larson asks this Court to review the decision of the court of appeals referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of the published court of appeals decision in State v. Larson, COA No. 71238-1-I, filed February 17, 2015. A copy of the slip opinion is attached as an appendix to this petition.

C. ISSUES PRESENTED FOR REVIEW

Larson was charged with theft with extenuating circumstances. The applicable statute required the state to prove Larson: (1) committed theft; and at the time, (2) was in possession of "an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers[.]" RCW 9A.56.360(1)(b) (emphasis added). Where there was no dispute Larson used an ordinary wire cutter to remove the security device from the shoes he allegedly stole, did the state fail to prove he was in possession of a device designed to overcome security systems?

D. GROUNDS FOR REVIEW

In State v. Reeves,[1] Division Two held that ordinary pliers do not constitute a device designed to overcome security systems, in part because they do not have a primary purpose of facilitating retail theft.

In a split opinion in Larson's case, Division One was not persuaded by the Reeves rationale and held that because wire cutters are designed to cut wire, and because wire is used in security systems, wire cutters are "indeed designed to overcome security systems[,]" regardless that they "may be designed to achieve other results." Appendix at 7.

The dissent would have held the statute was ambiguous and would have resolved the ambiguity in Larson's favor. Appendix at 10 (phrase "device designed to overcome security systems including, but not limited to, lined bags or tag removers" is susceptible of differing meanings, one of which is that the device must be "specifically constructed to overcome a security system.") (Trickey, J., dissenting).

[1] State v. Reeves, 184 Wn. App. 154, 336 P.3d 105 (2014).

This Court should accept review to resolve this conflict between Division One and Two of the Court of Appeals. RAP 13.4(b)(2).

E. STATEMENT OF THE CASE

On March 23, 2013, the Whatcom County prosecutor charged Larson with retail theft with extenuating circumstances, allegedly committed on May 17, 2013. CP 2-3, 6-7. An individual is guilty of retail theft with extenuating circumstances if the individual commits theft of property from a mercantile establishment and at the time of the theft, is in possession of "an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers[.]" RCW 9A.56.360(1)(b) (emphasis added).

The affidavit for determination of probable cause alleged that Larson and his girlfriend stole a pair of shoes from Marshall's department store. CP 4-5. Larson reportedly used a wire cutter to remove the security device from the shoes. CP 4.

Larson filed a motion to dismiss for failure to establish a prima facie case, arguing a "wire cutter" is not a "device designed to overcome security systems." CP 10 (emphasis added). As defense counsel reasoned, "a brick can be used to drive a nail into

wood, and a book can prop open a door, but neither was designed for those purposes." CP 10.

The state agreed there was no factual dispute, but argued the statute encompasses not only items made to overcome security systems, but ordinary items used or intended to be used for such a purpose, as well. CP 89-92.

In reply, Larson argued that if the Legislature intended to include items used or intended to be used for such a purpose, despite their design, it could have done so, as it did in its definition of "burglar tools" and "drug paraphernalia." CP 46; RCW 9A.52.060;[2] RCW 69.50.102.[3]

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[2] RCW 9A.52.060 prohibits the manufacture or possession of burglary tools:

> (1) Every person who shall make or mend or cause to be made or mended, or have in his possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of making or having burglar tools.

Emphasis added.

[3] RCW 69.50.102 prohibits the use of drug paraphernalia:

> a) As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing,

In ruling on the motion to dismiss, the court noted that each side had presented a different definition of "designed" which could apply, but surmised that the state's would best effectuate what the court perceived as the Legislature's intent:

> And in that situation, it seems to me that a strict reading as being put forth here by Defendant would essentially undo the whole intent of the statute, and so when I look at the language that you both cited to me, the statute should be construed to effect their purpose and unlikely, absurd or strained consequences should be avoided. The purpose of the statute is to make it clear that there's an enhanced level of offense for a theft that occurs when a person uses something to override or disable the security system that the store has built into it.

RP 7-8 (emphasis added). The court therefore denied the motion to dismiss. RP 8-9.

Larson thereafter waived his right to a jury trial and was convicted by the court, based on the police reports. CP 51-53; 85-87.

On appeal, Larson argued the state failed to prove all elements of the offense, because the statute's plain language prohibits possession only of those items designed to thwart store security systems. As the brief pointed out, wire cutters have been

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injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance."

in existence far longer than store security systems and were designed to cut wire, not to remove tags from clothes. Brief of Appellant (BOA) at 9. Alternately, Larson argued the statute was susceptible of more than one reasonable interpretation and therefore must be interpreted in his favor. BOA at 10-15.

In a split opinion, Division One disagreed. The majority held that under the plain language of the statute, wire cutters constitute an item designed to overcome security systems:

> The plain meaning of the statute reveals the legislature's intent to punish thieves who, anticipating that the possession of a device which may be able to foil a store's security system will be expedient to their cause, commit retail theft while in possession of a device. In recognition of the fact that wire cutters are designed to cut wire, which is a common feature of security systems, we hold that, within the meaning of former RCW 9A.56.360(1)(b), wire cutters constitute a "device designed to overcome security systems."

Appendix at 3. In contrast, the dissent found the statute ambiguous and would have applied the rule of lenity in Larson's favor. Appendix at 9.

Emphasis added.

F. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

BECAUSE DIVISION ONE'S DECISION IN STATE V. LARSON CONFLICTS WITH DIVISION TWO'S DECISION IN STATE V. REEVES, THIS COURT SHOULD ACCEPT REVIEW TO RESOLVE THE CONFLICT.

In holding that the wire cutters in Larson's case qualified as an item "designed to overcome security systems," Division One recognized its decision was at odds with Division Two's recent decision in State v. Reeves:

> We are aware that the foregoing analysis is at odds with a recent Division Two decision. See State v. Reeves, __ Wn. App. __, 336 P.3d 105 (2014) (holding that "ordinary pliers" do not constitute a device designed to overcome security systems). We are not persuaded by that decision's reasoning.

Appendix at 7. This Court should accept review to resolve the conflict. RAP 13.4(b)(2). That the court was divided in Larson's case is further indication of the need for resolution by this Court.

Due process requires the state to prove every element of an offense beyond a reasonable doubt. U.S. Const. amend. XIV; In re Matter of Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). A conviction must be reversed for insufficient evidence where no reasonable fact finder would have found all the elements of the offense proven beyond a reasonable doubt. Jackson v.

Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979); see also State v. C.G., 150 Wn.2d 604, 610, 80 P.3d 594 (2003) (under the plain reading of the statute, C.G.'s conviction for felony harassment must be reversed because there is no evidence that Mr. Haney was placed in reasonable fear that she would kill him).

Under RCW 9A.56.360(1)(b):

> (1) A person commits retail theft with special circumstances if he or she commits theft of property from a mercantile establishment with one of the following special circumstances:
>
> . . .
>
> (b) The person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers[.]

Emphasis added.

The relevant question here is whether an ordinary wire cutter meets this definition. The plain language of the statute indicates it does not.

This Court reviews questions of statutory interpretation de novo. In re Det. of Williams, 147 Wash.2d 476, 486, 55 P.3d 597 (2002). When interpreting a statute, "the court's objective is to determine the legislature's intent." State v. Jacobs, 154 Wash.2d 596, 600, 115 P.3d 281 (2005). The surest indication of legislative

intent is the language enacted by the legislature, so if the meaning of a statute is plain on its face, the Court must "'give effect to that plain meaning.'" Id. (quoting Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wash.2d 1, 9, 43 P.3d 4 (2002)).

In determining the plain meaning of a provision, courts look to the text of the statutory provision in question, as well as "the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." Id. An undefined term is "given its plain and ordinary meaning unless a contrary legislative intent is indicated." Ravenscroft v. Wash. Water Power Co., 136 Wash.2d 911, 920–21, 969 P.2d 75 (1998).

If, after this inquiry, the statute is susceptible to more than one reasonable interpretation, it is ambiguous and the Court "may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent." Christensen v. Ellsworth, 162 Wash.2d 365, 373, 173 P.3d 228 (2007).

There is no statutory definition for "designed." As the court in Reeves noted, the various definitions of "designed" or "design" cited by the state and the defense could support either definition. Reeves, 336 P.3d at 108. For instance, according to the defense

definition, "design" means to construct according to plan. But according to the state's definition, "design" could be "a particular purpose held in view by an individual." Reeves, 336 P.3d at 108.

Because the statute was unclear, the Reeves court therefore looked to tools of statutory construction to resolve the ambiguity. Reeves, 336 P.3d at 108. Applying the rule that "specific words modify and restrict the meaning of general words in a sequence," the court noted the Legislature specifically listed "lined bags and tag removers" as examples of items designed to overcome security systems. The court noted these items have little utility apart from overcoming store security systems. From this, the court surmised the Legislature intended to criminalize items that have a primary purpose of facilitating retail theft, which would exclude ordinary tools, such as the pliers used by Reeves. Reeves, 336 P.3d at 108.

Division One, however, disagreed with this reasoning, based on the Legislature's inclusion of "tag removers" as among the enumerated items "designed to overcome security systems:"

> We do not agree that the devices with which the legislature was concerned were those whose primary purpose is to facilitate retail theft. While we do not have reason to doubt that the legislature acted in response to the evils presented by retail theft, the

> language that was used in the statute targeted possession of devices "designed to overcome security systems" – not devices that have a primary purpose of facilitating retail theft." By straying from the statutory text, the Reeves court formulated a test that actually excludes one of the examples – tag removers – set forth in the statute by the legislature to illustrate the types of devices it intended to cover. Indeed, as Larson's counsel acknowledged at oral argument, the primary purpose of tag removers is not to be used by thieves to facilitate retail theft but, rather, to be used by retailers to disable security systems following an exchange of currency for goods.

Appendix at 8 (emphasis added).

But tag removers – whether used to perpetrate retail theft or to facilitate a retail sale – are still *expressly* "designed to overcome security systems." The lead opinion admits as much when it writes they are "used by retailers to disable security systems." Id. So, even assuming Division Two was inartful or incorrect it holding the object must have a primary purpose of facilitating retail theft, the object must still have a primary purpose of overcoming security systems. And Division One's decision leaves the question of "designed" unanswered in many instances.

Under Division One's decision, wire cutters qualify as an item designed to overcome security systems because they are designed to cut wire, "which is a common feature of security systems." Appendix at 3. Thus, under Division One's analysis, the

Reeves court reached the correct result because pliers are not designed to cut wire.

But what about other types of security systems? Would a bobby pin qualify if the thief stole something from behind a locked sliding glass case? Would a hammer qualify if the thief stole something from a smashed glass case? When viewed against these lingering questions, Division One's decision suggests the object's actual "use" plays an important role in Division One's analysis of design – despite its protestation to the contrary in note 3. Appendix at 6.

Yet, if the Legislature had wanted to criminalize theft while possessing items *commonly used* to overcome security systems, it easily could have done so, as it did in defining burglary tools and drug paraphernalia. See note 2 and 3. Indeed, the Reeves court relied on this rationale in finding the Legislature meant something different by "designed:"

> The legislature used broad language when criminalizing the possession or use of burglar tools, defining such tools as an "implement adapted, designed or *commonly used*" for the commission of burglary. RCW 9A.52.060(1) (emphasis added). The legislature adopted identical language when defining motor vehicle theft tools in RCW 9A.56.063(1). If the legislature had intended to criminalize the possession of *any* device a defendant used to overcome security

> systems, it could have included similar broad language in former RCW 9A.56.360(1)(b). Instead the legislature used the precise word "designed" rather than the more general word "used," suggesting that it did not intend "designed" to mean "used." The State's interpretation of "designed" as synonymous with "used" is inconsistent with the legislature's use of a precise word to deliberately convey a different meaning in the burglary and theft tools statutes.

Reeves, 336 P.3d at 109.

At the very least, the statute is capable of more than one reasonable interpretation. Reeves, 336 P.3d at 109 ("Arguably, criminalizing tools specifically made to facilitate theft, such as lined bags and tag removers, is more consistent with the legislature's intent to target sophisticated thieves than with criminalizing the use of ordinary tools such as pliers"). Because the statute is ambiguous, it must be construed in Larson's favor. Reeves, 336 P.3d at 109.

G. CONCLUSION

This Court should accept review to resolve a conflict among the Divisions of the Court of Appeals on the theft with extenuating circumstances statute. RAP 13.4(b)(2).

Dated this 19th day of March, 2015.

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ZACHARY SCOTT LARSON, a.k.a. ZACH LARSON, Appellant.	)	DIVISION ONE No. 71238-1-I PUBLISHED OPINION FILED: February 17, 2015

DWYER, J. — Zachary Larson attempted to steal a pair of shoes from a retail store. The shoes were equipped with a security device that was attached to the shoes by wire. Yet, Larson, using wire cutters that he had brought into the store, severed the wire and removed the security device. When Larson tried to leave the store, he was stopped by security employees and, subsequently, was charged with one count of retail theft with extenuating circumstances, which criminalizes the commission of retail theft while in possession of a "device designed to overcome security systems." Former RCW 9A.56.360(1)(b) (2013).[1] After a bench trial resulted in his conviction, he appealed, arguing that because wire cutters do not constitute a device designed to overcome security systems, the evidence was insufficient to support his conviction. Given our contrary

[1] RCW 9A.56.360 was amended, effective January 1, 2014, so as to replace every instance of the phrase "extenuating circumstances" with "special circumstances." LAWS of 2013, ch. 153, § 1. The statutory language at issue in this matter was not altered by the amendment and remains in effect.

conclusion that wire cutters do, in fact, constitute a device designed to overcome security systems, we deny Larson's request for appellate relief and, instead, affirm his conviction.

I

On May 17, 2013, Larson and his girlfriend, Meichielle Smith-Bearden, entered a Marshalls store in Bellingham. Larson used wire cutters to sever the wire that attached the security device to a pair of Nike shoes. By doing so, he was able to remove the security device from the shoes. When the couple attempted to leave the store without paying for the shoes, they were detained by security and the police were called. Larson admitted to a responding officer that he had intended to take the shoes without paying for them.

On May 23, Larson was charged by amended information with one count of retail theft with extenuating circumstances.

> (1) A person commits retail theft with extenuating circumstances if he or she commits theft of property from a mercantile establishment with one of the following extenuating circumstances:
>
> . . .
>
> (b) The person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers.

Former RCW 9A.56.360.

On November 8, Larson filed a Knapstad[2] motion, seeking dismissal of the charge. Therein, he argued that, as a matter of law, wire cutters do not constitute a "device designed to overcome security systems." Thus, he asserted,

[2] State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986).

the facts alleged were legally insufficient to support a finding of guilt as to the charged crime.

On November 18, after a hearing, the trial court denied Larson's motion. Larson then stipulated to the admissibility and accuracy of the police reports, waived his right to a jury trial, and agreed that the trial court could decide his innocence or guilt based upon the police reports and argument of counsel.

On December 18, the trial court found Larson guilty as charged. He was sentenced to 60 days of confinement.

Larson appeals.

II

Larson's lone contention is that the State failed to adduce sufficient evidence to support his conviction. He maintains, as he did in his Knapstad motion, that wire cutters do not constitute a "device designed to overcome security systems," as required by former RCW 9A.56.360(1)(b). We disagree. The plain meaning of the statute reveals the legislature's intent to punish thieves who, anticipating that the possession of a device which may be able to foil a store's security system will be expedient to their cause, commit retail theft while in possession of such a device. In recognition of the fact that wire cutters are designed to cut wire, which is a common feature of security systems, we hold that, within the meaning of former RCW 9A.56.360(1)(b), wire cutters constitute a "device designed to overcome security systems."

It is the State's burden to prove beyond a reasonable doubt every essential element of a charged crime. In re Winship, 397 U.S. 358, 364, 90 S.

Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Vasquez, 178 Wn.2d 1, 6, 309 P.3d 318 (2013). "In a challenge to the sufficiency of the evidence, this court reviews the evidence in the light most favorable to the State." State v. Serano Salinas, 169 Wn. App. 210, 226, 279 P.3d 917 (2012), review denied, 176 Wn.2d 1002 (2013). A conviction will be reversed only in the event that no rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009).

The meaning of a statute is a question of law subject to de novo review. State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). "The purpose of statutory interpretation is 'to determine and give effect to the intent of the legislature.'" State v. Evans, 177 Wn.2d 186, 192, 298 P.3d 724 (2013) (quoting State v. Sweany, 174 Wn.2d 909, 914, 281 P.3d 305 (2012)). Where a statute's meaning is plain on its face, we must give effect to that plain meaning as an expression of legislative intent. Ervin, 169 Wn.2d at 820. "The plain meaning of a statute may be discerned 'from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.'" State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). While we may, in seeking to perceive the plain meaning of a statute, examine "'the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole,'" we "'must not add words where the legislature has chosen not to include them,'" and "must 'construe statutes such that all of the language is given effect.'"

Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010) (quoting Engel, 166 Wn.2d at 578; Rest. Dev., Inc. v. Cananwill, Inc., 150 Wn.2d 674, 682, 80 P.3d 598 (2003)). "If, after this inquiry, the statute is susceptible to more than one reasonable interpretation, it is ambiguous and we 'may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent.'" Ervin, 169 Wn.2d at 820 (quoting Christensen v. Ellsworth, 162 Wn.2d 365, 373, 173 P.3d 228 (2007)).

A person commits retail theft with extenuating circumstances if, at the time of the theft, that person was in possession of a device designed to overcome security systems.

> (1) A person commits retail theft with extenuating circumstances if he or she commits theft of property from a mercantile establishment with one of the following extenuating circumstances:
>
> . . .
>
> (b) The person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers.

Former RCW 9A.56.360(1)(b).

On appeal, Larson contends that the legislature, by using the phrase "device designed to overcome security systems," signaled an intent to criminalize the commission of retail theft while in possession of devices "conceived and manufactured for the purpose of overriding security systems." Opening Br. of Appellant at 5. Larson maintains that wire cutters are not conceived and manufactured for the purpose of overriding security systems and, thus, are not designed to overcome security systems. According to Larson, wire cutters are

designed to cut wire: an act that is not confined to the overcoming of security systems.

We agree that wire cutters are designed to cut wire, just as we perceive that tag removers (one of the two illustrative example set forth in the statute) are designed to remove tags—both are designed to perform the physical act suggested by their descriptors. However, in considering this issue, we are careful to distinguish between an act and its outcome. While the question of whether a device is designed to perform a physical act is relevant to our inquiry, it is not itself the decisive issue. The decisive issue is whether the act which the device was designed to perform is meant to effect an *outcome*—namely, a security system being overcome.

In order to determine whether a device is designed as such, it is necessary to consider not only the device itself, but also the object upon which the device, often in the hands of an individual, acts.[3] More to the point, it must be determined whether the object meant to be neutralized, disabled, or otherwise thwarted by the device is actually used in security systems. For instance, in order to determine whether the use of a tag remover is designed to overcome a security system, it is necessary to consider whether tags are used in security systems.

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[3] Our analysis does not depend upon the actual use of a device (or lack thereof) in each case. Rather, our consideration of usage on an abstract level is premised on the notion that the relationship between the device and the object upon which it acts will often suggest a design of or purpose for that device. Thus, while it is true that, in this case, Larson used wire cutters to cut the wire and thereby overcome the store's security system, our conclusion would be the same if it had been found only that he was in possession of wire cutters while committing retail theft.

The facts of this case, as well as experience, confirms that wire is used in security systems. Thus, the unremarkable observation that wire cutters are designed to cut wire, when considered together with the fact that wire is used in security systems, indicates that wire cutters are indeed designed to overcome security systems. While, in addition to overcoming security systems, wire cutters may be designed to achieve other results, the statutory provision at issue here does not restrict the devices within its ambit to those whose sole purpose is to overcome security systems.

We are aware that the foregoing analysis is at odds with a recent Division Two decision. See State v. Reeves, __ Wn. App. __, 336 P.3d 105 (2014) (holding that "ordinary pliers" do not constitute a device designed to overcome security systems). We are not persuaded by that decision's reasoning.

The Reeves court distinguished between "ordinary tools" and "tools specifically made to facilitate theft." In the former category, the court placed "ordinary pliers" and other tools "which have many purposes independent of retail theft." Reeves, 336 P.3d at 108-09. In the latter category, the court placed "lined bags and tag removers" and other "devices that have a primary purpose of facilitating retail theft." Reeves, 336 P.3d at 108.

We do not agree that the devices with which the legislature was concerned were those whose primary purpose is to facilitate retail theft. While we do not have reason to doubt that the legislature acted in response to the evils presented by retail theft, the language that was used in the statute targeted possession of devices "designed to overcome security systems"—not "devices

that have a primary purpose of facilitating retail theft." By straying from the statutory text, the Reeves court formulated a test that actually excludes one of the examples—tag removers—set forth in the statute by the legislature to illustrate the types of devices it intended to cover. Indeed, as Larson's counsel acknowledged at oral argument, the primary purpose of tag removers is not to be used by thieves to facilitate retail theft but, rather, to be used by retailers to disable security systems following an exchange of currency for goods.

Furthermore, as observed, the legislature did not limit the statute's reach to those devices designed "only" or even "primarily" for the purpose of overcoming security systems. In the absence of restrictive language to that effect, we do not presume that the legislature intended to exclude certain devices that are designed not only to overcome security systems, but to accomplish other objectives as well. Therefore, even assuming that wire cutters are designed to achieve more than one result, we decline to hold that they are, by virtue of their diverse utility, removed from the statute's coverage.

The provision at issue suggests that the legislature intended to target thieves who foresee the need for a device which may be able to overcome security systems. By providing illustrative rather than enumerative examples, the legislature signaled its intent to reach devices beyond those set forth in the statute. To exclude wire cutters from the statute's reach on the basis that wire cutters may be used in other settings to achieve different ends would frustrate the legislature's intent, while providing those inclined to commit retail theft with an unmistakable incentive to employ "ordinary devices," as characterized by the

Reeves court, to pursue their nefarious ends. Surely, the legislature did not intend such a result. We hold, therefore, that the legislature intended to include wire cutters within those devices "designed to overcome security systems." Accordingly, sufficient evidence was presented at trial to support the trial court's judgment of guilt.

Affirmed.

Dwyer, J.

We concur:

Becker, J.

No. 71238-1-I, State v. Zachary Scott Larson

TRICKEY, J. (dissenting) — I respectfully dissent. The phrase "device designed to overcome security systems including, but not limited to, lined bags or tag removers" is ambiguous. Former RCW 9A.56.360(1)(b) (2013). The phrase is susceptible of differing reasonable interpretations, one of which is that the device must be "specifically constructed to overcome a security system." State v. Reeves, __ Wn. App. ___, 336 P.3d 105, 108 (2014). Since the statute here creates a criminal offense, we must apply the rule of lenity and "strictly construe" the statute in favor of the accused. Reeves, 336 P.3d at 109. Wire cutters are built to perform many tasks other than retail theft. The trial court should have granted the motion to dismiss.

Trickey, J

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	SUPREME COURT NO. _____
v.	)	COA NO. 71238-1-I
	)	
ZACHARY LARSON,	)	
	)	
Petitioner.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 19TH DAY OF MARCH 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] ZACHARY LARSON
3131 FERRY STREET
NO. C-206
BELLINGHAM, WA 98225

SIGNED IN SEATTLE WASHINGTON, THIS 19TH DAY OF MARCH 2015.

X Patrick Mayovsky

Sanders, Laurie

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