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No. 52772-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

JAMES EATON,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF WASHINGTON  
FOR THE COUNTY OF PIERCE

---

REPLY BRIEF OF APPELLANT

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## A. ARGUMENT IN REPLY

### 1. A snowmobile is not a motor vehicle under RCW 9A.56.065, a statute designed to address the problem of automobile theft.

Under RCW 9A.56.065(1), a person is guilty of theft of a motor vehicle if they commit theft of a motor vehicle. The criminal statute does not define “motor vehicle.” The majority in *State v. Van Wolvelaere* determined that a snowmobile was not a “motor vehicle” based on *State v. Barnes*’ analysis of the legislative intent of the statute, which is to curb and deter automobile theft. *State v. Van Wolvelaere*, Wn. App.2d. 705, 440 P.3d 1005 (2019), *petition for review pending*, no. 97383-4; *State v. Barnes*, 189 Wn.2d 492, 403 P.3d 72 (2017).

This Court should adopt Division III’s well-founded reliance on *State v. Barnes* and find the legislature did not intend for snowmobiles to be included as “motor vehicles” under RCW 9A.56.065(1).

a. This Court should adopt *Van Wolvelaere*’s conclusion that a snowmobile is not a “motor vehicle” for purposes of the automobile theft statute.

The theft of a motor vehicle statute at issue here, RCW 9A.56.065, does not define “motor vehicle.” Our Supreme Court analyzed this statute to determine that a “riding lawn mower” was a not “motor vehicle” under that statute. *Barnes*, 189 Wn.2d at 495. *Barnes* was a 3-3-3 opinion. The lead and concurring opinions agreed in result. *Barnes*, 189 Wn.2d at 493

(lead opinion); *id.* at 499 (conurrence). The concurring justices in *Barnes* wrote separately “to clarify two analytical steps” of statutory construction used to interpret the undefined term “motor vehicle” in RCW 9A.56.065. *Barnes*, 189 Wn.2d. at 499.

Specifically, the lead and concurring opinions disagreed about the statutory construction framework to apply in the absence of a definition of “motor vehicle” in the theft of a motor vehicle statute. *Barnes*, 189 Wn.2d at 496, 504. Without a definition provided in the statute, the lead opinion in *Barnes* relied on the dictionary definition of the term “motor vehicle.” *Id.* at 496. Though the dictionary definition “could conceivably include riding lawn mowers,” the legislature “explicitly indicated a contrary legislative intent.” *Id.* at 497. This intent was clear: “[t]he legislature passed this bill with the explicit purpose of curbing the rising rate of auto thefts.” *Id.*

By contrast, the concurrence first considered the entirety of the statute to try to find a plain meaning of the term “motor vehicle.” *Id.* At 499. This included consideration the definition of “motor vehicle” from the civil context that was incorporated into the criminal statute. *Id.* at 504-07. Still, the definition of “motor vehicle” was ambiguous. *Id.* Because of this ambiguity, the concurrence turned to the legislature for “further

evidence of legislative intent.” *Id.* at 507. The concurrence’s reading of the legislative intent was as clear as it was for the lead opinion’s authors:

The legislature intended to punish and deter theft of automobiles according to the acknowledged impact of this crime on the lives of Washingtonians. Thus, the legislature did not intend to reclassify the punishment for stealing a riding lawn mower.

*Barnes*, 189 Wn.2d at 508. Though differing in their analyses of how to proceed without a definition of “motor vehicle,” six justices relied on the legislative intent of the statute to determine that a riding lawn mower is not a “motor vehicle” under the motor vehicle theft statute. *Id.* at 498, 508.

The Court in *Van Wolvelaere* considered the two statutory construction analyses in *Barnes*, reaching the conclusion that “between the lead opinion and concurring opinion, six justices concluded that ‘motor vehicle’ was limited to cars and other automobiles, and did not include a riding lawn mower.” *Van Wolvelaere*, 8 Wn. App.2d at 709. The decisive importance of the legislative intent adopted by the six justices in *Barnes* likewise applied to snowmobiles: “[t]o paraphrase the *Barnes* lead opinion, the legislature was responding to increased auto thefts, not increased snowmobile thefts.” *Id.*

The *Van Wolvelaere* court determined that likewise, “a snowmobile is not a car or other automobile.” *Id.* This Court should adopt this logical reading of *Barnes* and RCW 9A.56.065.

b. The State's argument that this Court should depart from *Van Wolvelaere's* reliance on *Barnes* is unpersuasive because it ignores the legislative intent adopted by the majority of the *Barnes* court.

The State asks this Court to reject *Van Wolvelaere's* and *Barnes'* reliance on the clearly stated legislative intent of RCW 9A.56.065 in favor of the State's ad hoc statutory analysis based on mere assertions about what the legislature intended in Title 46 RCW (motor vehicles), rather than the clearly stated legislative intent of the statute at issue here—RCW 9A.56.065.

*i. Because the definition of motor vehicle under RCW 9A.56.065 is either silent or ambiguous, this Court must consider legislative intent to determine whether a snowmobile is a "motor vehicle" under the statute.*

An appellate court's primary goal is to give effect to legislative intent. *City of Montesano v. Wells*, 79 Wn. App. 529, 531-32, 902 P.2d 1266 (1995) (citing *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 813, 828 P.2d 549 (1992)). If a term is defined in a statute, that definition is used. *Cowiche Canyon Conservancy*, 118 Wn.2d at 813. As recognized by the lead opinion in *Barnes*, absent a statutory definition, a term is generally accorded its plain and ordinary meaning absent contrary legislative intent. 189 Wn.2d at 495. The concurrence emphasized that in determining whether a statute conveys a plain meaning, "that meaning is

discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Id.* at 499 (citing *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). If a statute is ambiguous, courts “may look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent.” *Id.* at 499-500 (citing *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305-06, 268 P.3d 892 (2011)).

Rather than apply one of the two established methods of statutory construction laid out in *Barnes*, both of which end with analysis of the legislative intent of RCW 9A.56.065, the State extracts various portions of Title 46.10 to argue for legislative intent under that statute. BOR at 7-9.

The State cites to both RCW 46.10’s definition of a “motor vehicle” and the dictionary definition. BOR at 8. The State urges this Court to adopt these general definitions to find that because a “snowmobile is a vehicle and it is motorized” snowmobiles are thus “the proper subject of RCW 9A.56.065. BOR at 8. The riding lawnmower at issue in *Barnes* is also a vehicle and motorized. However, both the lead and concurring opinions found such definitions inadequate, and looked to the legislative intent of RCW 9A.56.065 to decide the issue. *Barnes*, 189 Wn.2d at 502, 507.

Rather than address the *Barnes* court’s decisive conclusion that the legislature intended to address only automobile theft in RCW 9A.56.065, the State argues about the meaning of Chapter 46.10, and that it would be “unreasonable” to exclude a snowmobile from the definition of motor vehicle under this chapter, based on related RCW 46.10 provisions. BOR at 9. First, even if, as claimed by the State, snowmobiles share some aspects of automobiles under Title RCW 46.10, there are just as many provisions that distinguish automobiles from snowmobiles. For instance, RCW 46.10.470 prohibits snowmobiles from being driven on public roadways except when covered in snow and “closed to motor vehicle traffic.” A few similarities between snowmobiles and automobiles in RCW 46.10 does not support the conclusion that a snowmobile is a motor vehicle based on a “plain language analysis” as argued by the State. BOR at 9. Even if that claim could be made under RCW 46.10, this would not make a snowmobile a “motor vehicle” subject to a plain language analysis under RCW 9A.56.065—the statute at issue here. *See id.* at 498 (though the definition of “motor vehicle” could be more expansive in other statutes, “the only statute at issue here is the theft of a motor vehicle statute.”).

*Barnes* was clear, RCW 9A.56.065 is either silent as to the definition of “motor vehicle,” or at best ambiguous based on definitions

from other statutes such as the civil definitions provided in RCW 46.10. *Barnes*, 189 Wn.2d at 496, 504. Under either analysis in *Barnes*, the legislative intent of the statute is decisive for this determination. *Id.* at 498, 507. The absence of contrary legislative intent in RCW 46.10, as claimed by the State, (BOR at 9), is immaterial because that is not the statute at issue here.

*ii. The State's argument for the "primary purpose" test is unpersuasive because of the legislature's clearly stated intent, and because this alternative test would not even apply in Mr. Eaton's case, where the stolen snowmobiles were not driven.*

The State claims that "no governing rule or test" came from the *Barnes* decision, so it does not control. BOR at 10. However, though differing slightly in their statutory analysis, the *Barnes* lead and concurring opinions are united in finding the legislative intent is determinative: "the law was designed to combat auto theft and associated crime." *Barnes*, 189 Wn.2d at 498; 507-08.

The State tries to advance the dissent's analysis in *Van Wolvelaere*, but its logic does not apply here and is a mere proposal by a single judge based on the specific circumstances of that case. *Van Wolvelaere*, 8 Wn. App. 2d at 711 (Korsmo, J. dissenting). First, the dissent overstates the application of *Barnes*' "governing opinion" to this case:

The governing opinion is that of Justice Owens because it embodies the two significant majority conclusions of the case:

(1) ‘motor vehicle’ is a broad term covering mechanized vehicles (a view shared with Justice Gonzalez); (2) the legislature did not intend to include riding lawn mowers in the statute (a view shared with Justice Wiggins).

*Id.*

Justice Owens’s lead opinion regarding what constitutes a “motor vehicle” under the theft statute would not include snowmobiles. Relying on the dictionary definition of motor vehicle, or an “automotive vehicle” the lead opinion defined it as “one with rubber tires for use on highways.” *Barnes*, 189 Wn.2d at 496 (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1476 (2002)). Though this definition could conceivably have included a riding lawn mower, this definition would not include snowmobiles, which have skis, not rubber tires. *Id.*; RCW 46.04.546. Thus even the *Van Wolvelaere* dissent’s rationale for including snowmobiles based on the Court’s very broad definition of “motor vehicle” would not apply to snowmobiles.

Moreover, the “primary purpose test” advanced by the State and the single dissent in *Van Wolvelaere* would require a different result in this case. *See* BOR at 14. The State highlights the “time and place” the snowmobiles were stolen in *Van Wolvelaere* as a reason for adopting this test. BOR at 11-12. Notably different from Mr. Eaton’s case, the defendant in *Van Wolvelaere* “stole a snowmobile and even operated it as

a motor vehicle while doing so.” *Van Wolvelaere*, 8 Wn. App.2d. at 710. In that case, snowmobiles were the only means of transportation. BOR at 11-12. By contrast, here, the snowmobiles Mr. Eaton took were inside a cargo trailer. CP 118. Mr. Eaton attached the cargo trailer with the snowmobiles inside to his truck and drove away with them. CP 118. It was March 2018, when there was no snow on the ground in Pierce County. CP 118. The snowmobiles were not a means of transport in Mr. Eaton’s case, and certainly not the only means of transport as in *Van Wolvelaere*.

Finally, the State argues snowmobiles should be included in the legislature’s concern for theft of motor vehicles because, as described by the State, in “more rural parts of Washington where cars cannot go,” these may be the only vehicles available. BOR at 15-16. A concern for the rare snowmobile theft during the few winter months each year in remote locations simply does not fall within the legislature’s clearly stated concern for the “rising rate of auto thefts” which it intended to address in passing RCW 9A.56.065. *Barnes*, 189 Wn.2d at 497-99, 501-03, 507-09.

The State’s reasons for departing from *Van Wolvelaere* are unpersuasive. This Court should follow the well-reasoned logic of *Barnes* and Division III to find snowmobiles are not motor vehicles under RCW 9A.56.065.

**2. Mr. Eaton’s request for a remedy is clear: the convictions lacking a factual basis must be vacated and he is entitled to specific performance of the plea agreement he entered or to withdraw his plea.**

Mr. Eaton’s claim on appeal goes to “the very power of the State to bring the defendant into court to answer the charge brought against him.” *State v. Knight*, 162 Wn.2d 806, 811, 174 P.3d 1167 (2008) (citing *Blackledge v. Perry*, 417 U.S. 21, 30, 94 S. Ct. 2098, 40 L. Ed.2d 628 (1974)). Such a challenge is not waived by guilty plea. *Id.* Mr. Eaton’s conviction for an offense without a factual basis cannot stand and must be vacated. *See* CrR 4.2(d); *Matter of Keene*, 95 Wn.2d 203, 211-13, 622 P.2d 360 (1980).

However, Mr. Eaton should not be punished for this error; he is entitled to the same agreed upon sentence, which, as noted by the State, would not change, because he has a 9+ offender score. BOR at 18. He is entitled to the same agreed upon sentence, without these four theft of a motor vehicle convictions, which must be vacated and dismissed. In the alternative, he is entitled to withdraw his plea. *State v. Walsh*, 143 Wn.2d 1, 8-9, 17 P.3d 591 (2001) (“Where a plea agreement is based on misinformation . . . generally the defendant may choose specific enforcement of the agreement or withdrawal of the guilty plea.”).

The remedy is clear. Mr. Eaton's four convictions of theft of a motor vehicle for taking snowmobiles must be vacated and he has a choice of remedy on remand, including the right to the same sentence he is currently serving minus these four felony convictions.

## **B. CONCLUSION**

Mr. Eaton's four convictions for theft of a motor vehicle lack an adequate factual basis and must be vacated. He is entitled to his choice of remedy on remand, including specific performance of the agreed upon sentence.

DATED this 20th day of September, 2019.

Respectfully submitted,

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	NO. 52772-3-II
	)	
JAMES EATON,	)	
	)	
Appellant.	)	

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# WASHINGTON APPELLATE PROJECT

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