

**FILED**  
**Court of Appeals**  
**Division II**  
**State of Washington**  
**8/15/2019 2:42 PM**  
**NO. 52772-3-II**

---

---

**COURT OF APPEALS, DIVISION II**  
**STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JAMES EATON, APPELLANT

---

Appeal from the Superior Court of Pierce County  
The Honorable Kitty-Ann van Doorninck

No. 18-1-01053-7

No. 17-1-04531-6

---

**Brief of Respondent**

---

MARY E. ROBNETT  
Prosecuting Attorney

By  
Teresa Chen  
Deputy Prosecuting Attorney  
WSB # 31762

930 Tacoma Avenue South  
Room 946  
Tacoma, WA 98402  
PH: (253) 798-7400

## Table of Contents

A.	INTRODUCTION.....	1
B.	ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.....	2
	1. Is a snowmobile a “motor vehicle” for the purposes of RCW 9A.56.065 where it meets the plain language of being a motorized conveyance for persons and property and where such interpretation is consistent with the statutory and legislative context?.....	2
	2. Should this Court establish a primary purpose test, holding that a vehicle which has the primary purpose of transportation is a “motor vehicle” under the meaning of RCW 9A.56.065?.....	2
C.	STATEMENT OF THE CASE.....	3
D.	ARGUMENT.....	7
	1. THIS COURT SHOULD FIND THAT A SNOWMOBILE IS A MOTOR VEHICLE FOR THE PURPOSES OF RCW 9A.56.065.....	7
	2. THE DEFENDANT HAS NOT REQUESTED ANY REMEDY.....	17
E.	CONCLUSION.....	19

## Table of Authorities

### State Cases

<i>State v. Barnes</i> , 196 Wn. App. 261, 382 P.3d 729 (2016).....	10, 11, 12, 14, 16, 17
<i>State v. Blair</i> , 191 Wn.2d 155, 421 P.3d 937 (2018).....	11
<i>State v. Harrison</i> , 148 Wn.2d 550, 61 P.3d 1104 (2003) .....	17
<i>State v. Henderson</i> , 99 Wn. App. 369, 993 P.2d 928 (2000).....	17
<i>State v. Miller</i> , 110 Wn.2d 528, 756 P.2d 122 (1988).....	17
<i>State v. Turley</i> , 149 Wn.2d 395, 69 P.3d 338 (2003).....	17, 18
<i>State v. Van Wolvelaere</i> , 8 Wn. App.2d 705, 440 P.3d 1005 (2019).....	10, 11, 12, 13, 14, 15
<i>State v. Van Wolvelaere</i> , No. 97283-4 (Wash. May 31, 2019).....	11, 15
<i>State v. Wadsworth</i> , 139 Wn.2d 724, 991 P.2d 80, 86 (2000).....	7, 8

### Statutes

Laws of 2007, ch. 199, §1(a) .....	16
Laws of 2007, ch. 199, §1(a)-(b) .....	15
Laws of 2007, ch. 199, §1(c) .....	17
RCW 46 .....	8
RCW 46.04.320 .....	8
RCW 46.04.670 .....	8
RCW 46.10 .....	2, 8, 9

RCW 46.10.400 .....	9
RCW 46.10.440 .....	9
RCW 46.10.470 .....	9
RCW 46.10.500 .....	9
RCW 46.10.530 .....	9
RCW 46.16A.....	9
RCW 46.16A.040.....	9
RCW 46.52 .....	9
RCW 9.94A.510.....	16
RCW 9.94A.589(1)(a) .....	18
RCW 9A.04.110.....	8
RCW 9A.56.065.....	1, 2, 3, 7, 8, 9, 11, 12, 15, 17
RCW 9A.56.080.....	16

A. INTRODUCTION.

In the winter of 2017-2018, Defendant James Earl Eaton went on a crime spree in which he stole four snowmobiles, a 2006 Skyline travel trailer, and three cars (1996 Honda Civic, 1997 Honda Civic, and 1994 Acura Integra). The Defendant discussed his thefts while speaking to various inmates in recorded calls. Tracker data, video, and witnesses connected him to the travel trailer and snowmobiles. Police ticketed him while he was in possession of one of the stolen cars. And he made a full confession of the thefts as well as his methamphetamine abuse.

After losing pretrial motions to suppress, the Defendant pled guilty as charged under two cause numbers to ten felonies and a gross misdemeanor: Possessing a Stolen Motor Vehicle, Theft of a Motor Vehicle (seven counts), Trafficking in Stolen Property, Theft in the First Degree, Possessing Methamphetamine, and Hit and Run. He stipulated to his criminal history and an offender score of 9+. His prior convictions include six other adult felonies and one juvenile felony.

In this appeal, the Defendant makes a single claim: challenging whether snowmobiles are motor vehicles within the meaning of RCW 9A.56.065. Under an analysis of the plain language, statutory context, and legislative intent, a snowmobile is a motor vehicle. An entire chapter of the

title on Motor Vehicles is dedicated to laws concerning snowmobiles. Chapter 46.10 RCW. A snowmobile is a motorized device primarily for the conveyance of people and property, the loss of which would be a significant financial burden. The thefts can be related to other crimes, as here, and can cause the victims significant inconvenience depending on the time of year and location. because snowmobiles may be the only means for traveling. The Defendant relies on a Division Three case which does not withstand scrutiny, misinterpreting that the concurring opinion in a 3:3:3 decision established a rule defining “motor vehicles” as “cars and automobiles.”

Because a snowmobile is a motor vehicle for the purposes of RCW 9A.56.065, there is a proper factual basis for the Defendant’s guilt. This Court should affirm Defendant’s convictions.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Is a snowmobile a “motor vehicle” for the purposes of RCW 9A.56.065 where it meets the plain language of being a motorized conveyance for persons and property and where such interpretation is consistent with the statutory and legislative context?
2. Should this Court establish a primary purpose test, holding that a vehicle which has the primary purpose

of transportation is a “motor vehicle” under the meaning of RCW 9A.56.065?

C. STATEMENT OF THE CASE.

On November 28, 2017, the Defendant James Eaton was stopped while driving a stolen vehicle. CP 1. Police placed the Defendant under arrest and read him his Miranda rights. *Id.* The Defendant told police he purchased his vehicle from “some dude,” but could not answer basic questions about the seller and did not have any paperwork related to the sale. *Id.* Police noticed the stereo was stripped from the vehicle and the ignition and steering column were severely damaged. *Id.* Defendant stated he knew how bad it looked and that a normal person would think the vehicle was stolen. *Id.* The next day, he was charged with Possessing a Stolen Motor Vehicle in Cause No. 17-1-04531-6. CP 2. He posted a bail bond shortly thereafter. CP 359-61.

On December 29, 2017, K. Manley reported her Honda Civic stolen. CP 54. It would be recovered later near Tacoma Community College, and the Defendant would confess to stealing and abandoning Ms. Manley’s Honda near the college. *Id.*

On January 12, 2018, E. Juarez reported his travel trailer stolen. CP 54-55. Police would later locate the travel trailer at Lisa Martinez’s residence, and the Defendant would admit that he stole Mr. Juarez’s travel

trailer, hooked it up to his truck, towed it, and parked it at his good friend's residence for Ms. Martinez to live in. CP 54-55.

On January 27, 2018, Mikayal Muggy reported her vehicle stolen. CP 45. Police stopped the Defendant driving Ms. Muggy's car that same day and issued an infraction notice to him. *Id.* He would later confess that he had stolen the car and abandoned it shortly after the traffic stop. *Id.*

On March 13, 2018, J. Lee-Zahir reported his Acura Integra stolen. CP 54. The Defendant would later admit to stealing the Acura. *Id.*

In February, police listened to recorded jail phone calls between the Defendant and inmates at the Pierce County Jail. CP 79-81, 97-100. In one call, the Defendant confessed to stealing a Honda Civic with a modified engine which he had removed and sold. CP 80-81, 98-100 (identified as having been stolen from Robert Ray in King County). In another call, the Defendant says, "I'm about to steal this car behind me" and then head out to Bonney Lake to steal some 4-wheelers. CP 81, 100. In yet another recorded call to the jail, the Defendant tells an inmate that he got Lisa Martinez a "brand new home," a trailer, and "took it to her mom's." CP 126-27.

On February 23, 2018, the Defendant was observed attempting to back into a parking spot, colliding with a parked vehicle resulting in \$1200

in damages, and then speeding away. CP 56-57. Both police and the owner of the damaged vehicle witnessed the hit and run. *Id.*

Police obtained judicial authorization to use a cell site simulator device and GPS tracker to track the Defendant. CP 77, 92-94, 101, 106-07, 111, 114-15. Based on the tracker and a neighbor's surveillance video, police determined that, on March 5, 2018, the Defendant backed his truck up to a cargo trailer with four snowmobiles in Bonney Lake, made off with them, and parked for several hours at 315 346<sup>th</sup> Street South before abandoning the trailer. CP 118-19. That same day, he was recorded on a jail phone call telling an inmate that he just came into some property which he would sell for bail money. CP 119, 142. Aerial video determined the snowmobiles were still at the 346<sup>th</sup> Street property. CP 119-20. Police obtained a search warrant and recovered three of the four snowmobiles stolen from Michael McMillian. CP 45, 122-23, 135. A witness advised that the Defendant had dropped off four snowmobiles and returned later to pick one up. CP 135.

Aerial surveillance determined there was a new Skyline Nomad trailer at Gloria Martinez's property, consistent with reports of a stolen travel trailer. CP 127. Police obtained a warrant and recovered the stolen trailer belonging to E. Juarez. CP 54-55, 129-30.

The Defendant was arrested and found to be in possession of methamphetamine and multiple shaved keys. CP 135, 153. He confessed to stealing the snowmobiles and selling one of them to a friend for \$400. CP 45, 135,143.

The Defendant was charged with seven counts of Theft of a Motor Vehicle (Counts I-V, VIII-IX), one count of Trafficking in Stolen Property in the First Degree (Count VI), one count of Unlawful Possession of a Controlled Substance (Count VII), one count of Theft in the First Degree (Count X), and one count of Duty in Case of Damage to Attended Vehicle or Other Property (Count XI) under Cause No. 18-1-01053-7. CP 58-62.

The Defendant filed several pretrial motions. CP 63-73, 289-91; RP (10/31/18) at 9. On October 31, 2018, the court heard and denied the Defendant's motions in the morning. CP 315-16; RP (10/31/18) at 13-14, 16-17, 19, 27-28. In the afternoon, the Defendant pled guilty as charged on all counts under both cause numbers. CP 4-13, 303-13. The Defendant provided statements reciting the factual basis for his plea. CP 12, 313. The court found a factual basis for all counts based on the Defendant's statements on his plea of guilty and accepted the plea as knowing, intelligent, and voluntary. RP (10/31/18) at 56-58.

The Defendant had six prior adult felonies, one prior juvenile felony, and there were ten other current offenses. CP 15-17. He stipulated to this

criminal history and an offender score of 9+. *Id.* The court imposed the high end with all counts running concurrent. CP 26, 331.

The Defendant subsequently appealed both cases. CP 33, 345-46. The Court of Appeals consolidated the appeals under this cause number (52772-3-II). CP 358. He raises a single claim on appeal – that his admission to stealing a snowmobile does not provide a factual basis for theft of a motor vehicle.

D. ARGUMENT.

1. THIS COURT SHOULD FIND THAT A SNOWMOBILE IS A MOTOR VEHICLE FOR THE PURPOSES OF RCW 9A.56.065.

The Defendant argues that his plea was involuntary, because he did not understand that “a snowmobile does not qualify as a motor vehicle under the statute.” Brief of Appellant (BOA) at 6. Under a plain language analysis and in statutory and legislative context, this Court should find that a snowmobile is a motor vehicle for RCW 9A.56.065 purposes.

- a. The Legislature intended to criminalize thefts of snowmobiles under RCW 9A.56.065.

It is the function of the Legislature to define the elements of a crime. *State v. Wadsworth*, 139 Wn.2d 724, 734, 991 P.2d 80, 86 (2000). In interpreting a statute, the court must ascertain and give effect to the Legislature’s intent and purpose as expressed in the statute as a

whole. *Wadsworth*, 139 Wn.2d at 734. If a statute is not ambiguous, its meaning is to be derived from the language of the statute alone. *Id.*

In RCW 9A.56.065, the Legislature found the crime self-explanatory: “A person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle.” There is no further definition of “motor vehicle” to be found in the chapter, suggesting that the plain dictionary definition applies.

The criminal title directs that vehicle and traffic laws shall define “motor vehicle.” RCW 9A.04.110. But the definitions in Title 46 RCW (Motor Vehicles) are not unlike that in Merriam Webster. RCW 46.04.320; RCW 46.04.670.<sup>1</sup> A vehicle is a device used to transport persons or things.

A snowmobile is a vehicle and it is motorized. It is the proper subject of RCW 9A.56.065.

It would be unreasonable to interpret that the legislature intended to exclude a snowmobile from the definition of motor vehicle, where an entire chapter of the motor vehicle title is dedicated to statutes concerning snowmobiles. *See* Chapter 46.10 RCW: Snowmobiles. This chapter addresses snowmobile registration, permitting requirements, uses, and violations. Snowmobiles are regulated similarly to other motor vehicles,

---

<sup>1</sup> These statutes make a few specified exclusions. Motorized wheelchairs are not subject to rules of the road. Wheelchairs and golf carts do not require vehicle or operator licenses.

such as automobiles. A snowmobile, like an automobile, is required to be registered every year and to display a decal indicating registration. RCW 46.10.400 (“The application for an original snowmobile registration has the same requirements as described for original vehicle registrations in RCW 46.16A.040.”); RCW 46.10.440 (“The decals serve the same function as license plates for vehicles registered under chapter 46.16A RCW.”). Snowmobiles may be driven on public roads and highways and ticketed for traffic infractions. RCW 46.10.470; RCW 46.10.500. Snowmobile operators are required to submit accident reports according to Chapter 46.52, which addresses accidents and reporting requirements for operators of any vehicles, including automobiles. RCW 46.10.530.

RCW 46.10.470 acknowledges that when roadways or highways are completely covered with snow as to make them “impassible to travel by automobile,” snowmobile traffic is permitted. Thus, snowmobiles serve the same function as automobiles when automobiles cannot safely travel on roadways. Accordingly, like an automobile, a snowmobile is a motor vehicle and is subject to the laws that apply to motor vehicles.

Under a plain language analysis, in the context of other definitional laws, in the context of Chapter 46.10 RCW, and in the absence of any contrary intent, it is clear that the legislature intended to define snowmobiles as motor vehicles for the purposes of RCW 9A.56.065.

b. Case law does not decide the question.

A few cases have discussed the definition of “motor vehicle” in the context of this 2007 statute.

In *State v. Barnes*, 196 Wn. App. 261, 264, 382 P.3d 729 (2016), the state appealed the superior court’s dismissal of a charge of theft of a motor vehicle following a *Knapstad* motion. The superior court had held that the evidence was insufficient as a matter of law because a lawnmower is not a “motor vehicle.” *Id.* Division Three affirmed, rejecting the plain meaning principle and looking instead to legislative context to interpret legislative intent. *Barnes*, 196 Wn. App. at 265-75. It held that a lawn mower is not a motor vehicle. *Id.* at 275. The state sought discretionary review.

The Washington Supreme Court took up the question, but split 3:3:3. *Barnes*, 189 Wn.2d 492. No governing rule or test can come out of such a decision, only a result. *State v. Van Wolvelaere*, 8 Wn.App.2d 705, 710-11, 440 P.3d 1005 (2019) (Korsmo, J., dissenting). The holding is that a riding lawn mower is not a motor vehicle for purposes of proscribing theft of motor vehicles.

But a snowmobile is not a riding lawn mower. *Id.* at 710. Therefore, the Washington Supreme Court has not expressed an opinion on the instant question.

In *State v. Blair*, 191 Wn.2d 155, 421 P.3d 937 (2018), the defendant invited the Washington Supreme Court to determine whether a snowmobile was a motor vehicle within the meaning of RCW 9A.56.065. The challenge was to the use of prior convictions in the defendant's offender score. *Blair*, 191 Wn.2d at 157-58. The court of appeals had passed on the question in an unpublished opinion. *Id.* at 159. The supreme court likewise declined to reach the question, holding instead that the sentencing court's review of prior convictions is limited to *constitutional* facial invalidity. *Id.* at 162-64. The question of whether a snowmobile is a motor vehicle under the statute is a statutory matter, not a constitutional one. *Id.* at 164.

In *State v. Van Wolvelaere*, 8 Wn. App.2d 705, 440 P.3d 1005, 1006 (2019), in a divided decision, the court of appeals attempted to resolve the question by relying upon the *Barnes* precedent. Discretionary review is being requested.

The state's petition provides the facts. Co-defendants Tucker and Van Wolvelaere broke into a cabin ten miles from Easton in Kittitas County. State's Petition for Review at 2,<sup>2</sup> *State v. Van Wolvelaere*, No. 97283-4 (Wash. May 31, 2019). They stole various items, including a snowmobile, snowmobile helmets, snow boots, snow bibs, and snow clothing. *Id.*

---

<sup>2</sup> <http://www.courts.wa.gov/content/petitions/97283-4%20Petition%20for%20Review.pdf>

It was February, and the cabin was only accessible by snowmobile. *Id.* The cabin sat three “blocks” off the main road, which is a snowmobile road – off limits to cars. *Id.* In order to reach the cabin to investigate the burglary, the deputy had to use a “snowcat” to traverse snow that was several feet deep and still falling. State’s Petition at 2-3. Mr. Van Wolvelaere said he and Ms. Tucker needed to take the snowmobile to drive up to Snoqualmie Summit and back to “civilization.” *Id.* at 3.

Ms. Tucker<sup>3</sup> appealed, and Division Three reversed her jury conviction for theft of a motor vehicle, holding that a snowmobile is not a motor vehicle under RCW 9A.56.065. *Van Wolvelaere*, 8 Wn. App.2d at 709. The majority relied upon *Barnes* for its holding, interpreting a penumbra between the lead and concurring opinions and defining a motor vehicle as “a car or other automobile.”

Between the lead opinion and the concurring opinion, six justices concluded that “motor vehicle” was limited to cars and other automobiles, and did not include a riding lawn mower. Here, a snowmobile is not a car or other automobile. To paraphrase the *Barnes* lead opinion, the legislature was responding to increased auto thefts, not increased snowmobile thefts.

*Id.*

---

<sup>3</sup> Although the case bears his name, Mr. Van Wolvelaere is not a party to the appeal.

This analysis fails in many respects. No rule can emerge from *Barnes* where there was no clear majority opinion. There were three opinions, each with three signators. As the *Van Wolvelaere* dissent explains, “the trio of opinions ... left us with a governing result (a riding lawn mower is not a ‘motor vehicle’), but not a governing rule.” *Van Wolvelaere*, 8 Wn. App.2d at 710-11 (Korsmo, J., dissenting).

It is not reasonable to interpret the *Barnes* lead opinion as adopting the reasoning of the concurring opinion as the *Van Wolvelaere* majority does. If it had adopted this reasoning, we would have a majority instead of an even division of 3:3:3.

One opinion is identified as the lead opinion, because it shares aspects of the other two.

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).

*Van Wolvelaere*, 8 Wn. App.2d at 711 (Korsmo, J., dissenting). There is no such overlap between the concurrence and dissent. Therefore, the majority is wrong to draw its rule from the concurrence.

Only the concurring opinion of Justice Wiggins concluded that the term “motor vehicle” was ambiguous. *Id.* at 507, 403 P.3d 72 (Wiggins, J., concurring). He then determined that a riding lawn mower was not a motor vehicle; his conclusion

stemmed in part from concerns about the title of the act creating the vehicle theft statute. *Id.* at 507-08, 403 P.3d 72.

*Id.*

It is not reasonable to conclude that the higher court would have defined one ambiguous term (“motor vehicle”) with two even more ambiguous terms (“car” or “automobile”). Nor is it reasonable to limit the legislative definition to wheeled vehicles or four-wheeled vehicles when the Legislature specifically identified motorized vehicles.

This Court must find that the *Van Wolvelaere* opinion is not persuasive.

c. The primary purpose test is consistent with Legislative intent.

While no rule can be said to have come from the *Barnes* opinion, the lead opinion suggested a middle ground: a primary purpose rule.

The court stated, “In the context of [RCW 9A.56.065], these definitions contemplate cars and other automobiles designed for transport of people or cargo, but not machines designed for other purposes yet capable of transporting people or cargo.” *Id.* at 496-97, 403 P.3d 72.

*Van Wolvelaere*, 8 Wn. App.2d at 708. This would define a motor vehicle as a vehicle having *the primary purpose of transportation*.

The *Van Wolvelaere* prosecutor appears to support such a test, having argued “that the stolen snowmobile should be classified as a motor vehicle because at the time and place it was stolen, a snowmobile was the

only vehicle capable of transporting people or cargo.” *Van Wolvelaere*, 8 Wn. App.2d at 709.

[T]here are homes in our state that are accessible *only* by snowmobile in the winter. To hold that a snowmobile is not a motor vehicle would only deny the protection of the laws against taking motor vehicles to those families who depend upon a snowmobile to access their homes or to secure necessary food and supplies during the winter months.

State’s Petition for Review at 6, *State v. Van Wolvelaere*, No. 97283-4 (Wash. May 31, 2019).

Judge Korsmo also approved of such a test.

My suggestion is that we look at the vehicle’s primary purpose to determine whether it is in or out of the statute. If the primary purpose of the vehicle is to transport humans and/or their goods, it is a “motor vehicle.” If it is a vehicle primarily designed for other purposes such as to till fields or mow the lawn, it is not a “motor vehicle.”

*Van Wolvelaere*, 8 Wn.App.2d at 712 (Korsmo, J., dissenting). If this Court applies the primary purpose test, it must find that a snowmobile is a motor vehicle under RCW 9A.56.065.

Such a rule respects the legislative history and context discerned by the opinions in *Barnes*.

The Legislature noted that vehicle theft was on the rise on the West Coast. Laws of 2007, ch. 199, §1(a)-(b). In the West, with its wide expanses, people depend on motor vehicles to do every essential chore, from getting to work and school to getting groceries and healthcare. *Id.* In the

more rural parts of Washington where cars cannot go, Washingtonians use all-terrain vehicles, snowmobiles, and horses. Before there were motorized vehicles, Westerners used horses. And horse theft, as they say, was a hanging offense in the Old West. Today, horse theft and theft of a motor vehicle are both class B offenses, although horse theft has higher seriousness levels. RCW 9.94A.510; RCW 9A.56.080.

The Legislature was concerned that motor vehicle thefts cause “a significant loss and inconvenience to people, imposes financial hardship, and negatively impacts their work, school, and personal activities.” Laws of 2007, ch. 199, §1(a). These same concerns attach to snowmobile theft. Skidoo snowmobiles, which is what the Defendant Eaton stole from Mr. McMillian, are high-end models comparable in cost to a motorcycle or smaller car, approximately \$15,000. *Cf. Barnes*, 189 Wn.2d at 498 (opining that a riding lawn mower is not a comparable investment to a family car.) In some communities, snowmobiles are the only means of ground transportation – used to get to work sites, school, grocery stores, and the doctor. Snowmobiles are versatile, operable on grass, mud, asphalt, and over water. A snowmobile serves the purpose of an automobile when roadways are inoperable by or too narrow for wheeled vehicles or when people live far from passable roadways.

The Legislature was concerned with the connection between vehicle theft and other crimes, including methamphetamine possession. Laws of 2007, ch. 199, §1(c). The lead *Barnes* opinion pronounced that a lawn mower theft was not likely to be connected to drug possession or gang activity. *Barnes*, 189 Wn.2d at 498. The Defendant Eaton, on the other hand, was stealing vehicles of all kinds, chopping them up, and reselling to support a 2-3 gram per day methamphetamine habit. CP 45, 135. He was convicted of possessing methamphetamine in the same charging information. CP 135. The crimes were related.

The inclusion of snowmobiles under RCW 9A.56.065 makes sense, meeting the expressed legislative goals and definitions.

2. THE DEFENDANT HAS NOT REQUESTED ANY REMEDY.

If a reviewing court determines a plea is invalid, the defendant has the initial choice of specific performance or withdrawing his plea. *State v. Turley*, 149 Wn.2d 395, 399, 69 P.3d 338 (2003) (*citing State v. Miller*, 110 Wn.2d 528, 536, 756 P.2d 122 (1988)). However, the trial court is not bound by any recommendations contained in the plea agreement. *State v. Harrison*, 148 Wn.2d 550, 557, 61 P.3d 1104 (2003); *State v. Henderson*, 99 Wn. App. 369, 376, 993 P.2d 928 (2000). Once the defendant has opted for one of the available remedies, the state may show that compelling

reasons exist not to allow the defendant's choice of remedy. *Turley*, 149 Wn.2d at 401.

Here the Defendant has failed to request any remedy. BOA at 7. This suggests that either counsel has not consulted with the client or that the Defendant has not thought through the goals of this appeal at State expense.

Even if the Court were to find error, specific performance is what the Defendant has already received. Vacating convictions on several counts will not affect the offender score. The count with the highest seriousness level, and therefore highest standard range, is Trafficking in Stolen Property. All other sentences are lesser and run concurrent to the Trafficking sentence. The Defendant stipulated to six prior adult felonies, one prior juvenile felony, and there were ten other current offenses. In other words, the standard range for the Trafficking count was based on an offender score of 16 points or, more likely, 13 points with a finding that the four snowmobile counts encompass the same criminal conduct. RCW 9.94A.589(1)(a). Because the range tops out at 9, this is represented as a score of 9+.

If a court vacated all four snowmobile counts, the Defendant would have an offender score of 12, which is still 9+. His sentence would be the same. Nor will a vacation of counts affect restitution, because there has been no restitution order entered in this case.

The Defendant's other choice, should the Court find the plea was involuntary, would be to withdraw the entire plea and proceed to trial – at which point the State could amend the information to charge theft counts for the snowmobiles. However, it would seem the Defendant has already made a knowing, intelligent, and voluntary choice not to proceed to trial. He pled guilty on the eve of trial after losing his pretrial motions. This means that all evidence obtained in the warrants is admissible against him. On top of the tracker data, video, and witnesses (lay and police), the Defendant was also captured on jail recording and subsequently confessed to each count.

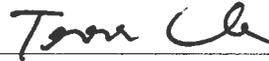
Where the Defendant has failed to opt for a remedy, the State will defer argument as to an appropriate remedy to a later date.

E. CONCLUSION.

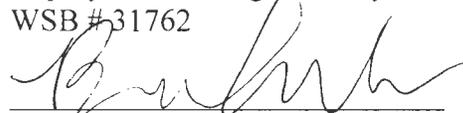
For the reasons stated above, the State respectfully requests that this Court affirm Defendant's convictions.

DATED: August 14, 2019.

MARY E. ROBNETT  
Pierce County Prosecuting Attorney



TERESA CHEN  
Deputy Prosecuting Attorney  
WSB #31762



BRENNAL. QUINLAN, Rule 9

Certificate of Service:

The undersigned certifies that on this day she delivered by Email or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

8-15-19 Heer Ka  
Date Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**August 15, 2019 - 2:42 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52772-3  
**Appellate Court Case Title:** State of Washington, Respondent v. James E. Eaton, Appellant  
**Superior Court Case Number:** 17-1-04531-6

**The following documents have been uploaded:**

- 527723\_Briefs\_20190815143805D2307572\_8937.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Eaton Response Brief.pdf*
- 527723\_Designation\_of\_Clerks\_Papers\_20190815143805D2307572\_5437.pdf  
This File Contains:  
Designation of Clerks Papers - Modifier: Supplemental  
*The Original File Name was Eaton Supp Designation.pdf*

**A copy of the uploaded files will be sent to:**

- katebenward@washapp.org
- wapofficemail@washapp.org

**Comments:**

---

Sender Name: Therese Kahn - Email: tnichol@co.pierce.wa.us

**Filing on Behalf of:** Teresa Jeanne Chen - Email: teresa.chen@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

Address:  
930 Tacoma Ave S, Rm 946  
Tacoma, WA, 98402  
Phone: (253) 798-7400

**Note: The Filing Id is 20190815143805D2307572**