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NO. 36140-3-III

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL CARGILL,
Appellant.

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

Spokane County Cause No. 17-1-04506-4

The Honorable Raymond F. Clark , Judge

SUPPLEMENTAL BRIEF OF APPELLANT

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STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Mr. Cargill filed his Opening Brief in this case on December 26, 2018. This Court held oral argument on October 23, 2019.

On November 8, 2019, however, This Court stayed Mr. Cargill's appeal pending the Supreme Court's decision in *State v. Tucker*, which was reviewed *sub nom State v. Van Wolvelaere*, No. 97283-4. *See* 11/08/19 Ruling; *State v. Van Wolvelaere*, 195 Wn.2d 597, 600–01, 461 P.3d 1173 (2020).

The Supreme Court released its decision in *Van Wolvelaere* on April 30, 2020. *Id.* This Court lifted the stay in Mr. Cargill's case and ordered the parties to submit supplemental briefing on the effect of the Supreme Court's decision in *Van Wolvelaere*. *See* 06/18/20 Ruling.

ARGUMENT

THE SUPREME COURT'S DECISION IN *VAN WOLVELAERE* CLARIFIES THAT A VEHICLE MUST BE LEGAL TO USE ON A PUBLIC HIGHWAY IN ORDER TO QUALIFY AS A MOTOR VEHICLE. BECAUSE THE DIRT BIKE AT ISSUE IN MR. CARGILL'S CASE CANNOT BE LEGALLY OPERATED ON A PUBLIC HIGHWAY, IT IS NOT A MOTOR VEHICLE UNDER THE STATUTE CRIMINALIZING POSSESSION OF A STOLEN MOTOR VEHICLE.

In order to convict Mr. Cargill of possession of a stolen motor vehicle, the state was required to prove beyond a reasonable doubt that he knowingly possessed a stolen motor vehicle. *See* RCW 9A.56.068; *See*

also State v. Tyler, 195 Wn. App. 385, 402, 382 P.3d 699 (2016), *review granted in part*, 189 Wn.2d 1016, 404 P.3d 497 (2017), and *aff'd on other grounds*, 191 Wn.2d 205, 422 P.3d 436 (2018) (regarding the knowledge requirement)

The Supreme Court's recent decision in *Van Wolvelaere* makes clear that – because the Washington criminal code explicitly incorporates traffic laws into the definition of "motor vehicle" – a court should properly refer to those statutes in order to determine whether a mode of conveyance qualifies as a motor vehicle under the statutes related to motor vehicle theft. *Van Wolvelaere*, 195 Wn.2d at 600–01.

Washington traffic laws define "motor vehicle" as, *inter alia*, a "device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway." *Id.* at 601; RCW 46.04.670. Accordingly, a vehicle is a "motor vehicle" for purposes of the act only if it can be lawfully used "*on a public highway." Id.* at 602 (emphasis in original).

The *Van Wolvelaere* court was tasked with determining whether a snowmobile qualified as a motor vehicle under the statute criminalizing theft of a motor vehicle. *Id.* The court determined that a snowmobile was a motor vehicle because the traffic codes delineated certain circumstances in

which it could be lawfully driven on a public highway. *Id.* at 603-04; RCW 46.10.470.

The existence of this "Snowmobile Act," permitting legal use of a snowmobile in a public highway is what differentiates the snowmobile in *Van Wolvelaere* from the dirt bike in Mr. Cargill's case. As outlined in Mr. Cargill's Opening Brief, the dirt bike cannot be legally driven on a public roadway because it does not have lights, a windshield, or turn signals. *See* Ex. P1-P3; CP 20-21; RCW 46.61.705(2) (delineating the requirements for permissible operation of an off-road motorcycle on public roads); *See also* MERRIAM-WEBSTER ONLINE DICTIONARY (2018), *available at* https://www.merriam-webster.com/dictionary/dirt%20bike (last accessed 07/16/20) (defining the term "dirt bike" as "a usually lightweight motorcycle designed for operation on unpaved surfaces").

Applying the Supreme Court's statutory construction analysis in *Van Wolvelaere*, no rational jury could have found beyond a reasonable doubt that Mr. Cargill possessed a stolen "motor vehicle" when he worked on a dirt bike that could not be legal operated on a public highway. *Van Wolvelaere*, 195 Wn.2d at 603-04.

Mr. Cargill's conviction for possession of a stolen motor vehicle must be reversed. *State v. Chouinard*, 169 Wn. App. 895, 899, 282 P.3d

117 (2012) *review denied*, 176 Wn.2d 1003, 297 P.3d 67 (2013) (a conviction must be reversed for insufficient evidence if no rational jury could have found each element proved beyond a reasonable doubt even when the evidence is taken in the light most favorable to the state).

CONCLUSION

For the reasons set forth above and in Mr. Cargill's Opening Brief, the state failed to prove that he had possessed a stolen machine that qualified as a "motor vehicle." Mr. Cargill's conviction for possession of a stolen motor vehicle must be reversed for insufficient evidence.

Respectfully submitted on July 17, 2020,

Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Supplemental Brief, postage prepaid, to:

Michael Cargill/DOC#889364
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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Spokane County Prosecuting Attorney
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I filed the Appellant's Supplemental Brief electronically with the Court of Appeals, Division III, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on July 17, 2020.

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