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Supreme Court No. 93829-6  
Court of Appeals No. 33811-8-III

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON  
Plaintiff/Petitioner

v.

JOSHUA M. BARNES  
Defendant/Respondent

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**SUPPLEMENTAL BRIEF OF PETITIONER**

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## **I. PETITIONER'S ASSIGNMENTS OF ERROR**

1. The Court of Appeals erred in abandoning established case law for statutory construction by engaging in legislative intent analysis when the statute remained unambiguous on its face.
2. The Court of Appeals committed constitutional violation of Separation of Powers by usurping the executive function of prosecutorial discretion in charging.

## **II. ISSUES PRESENTED**

1. When a statute is plain on its face, is the Court Appeals in error when it engages in legislative intent analysis?
2. Did the Court of Appeals violate Separation of Powers in usurping the prosecutor's exclusive charging authority?

## **III. STATEMENT OF THE CASE**

On June 22, 2015, Joshua Barnes and an accomplice, Danielle Goodman, drove a pick-up truck to the property of Judy Fraker in Leavenworth, Washington. CP 31. Mr. Barnes exited his vehicle, mounted a gas-powered, self-propelled, riding lawnmower belonging to the homeowner and drove it up a ramp into the back of his pickup. CP 31, 36. Ms. Fraker, who was home at the time, confronted Mr. Barnes who removed the riding lawnmower from the back of the pickup as Ms. Fraker went inside

to call local law enforcement. CP 31. Mr. Barnes was charged with a Class B Felony for Theft of a Motor Vehicle under RCW 9A.56.065. CP 1-4. At the Superior Court level, the defendant sought pre-trial dismissal of the case pursuant to *Knapstad* as the riding lawnmower was not a “motor vehicle” under the Theft of a Motor Vehicle statute, RCW 9A.56.065. *State v. Knapstad*, 107 Wn2d 872, 876, 239 P.3d 360 (2010). CP 5-23. The defendant argued that while a riding lawnmower technically meets the statutory definition of “motor vehicle” under RCW 46.04.320, the legislature did not intend for the criminal statute of Theft of a Motor Vehicle to be applied to all motor vehicles. CP 13-14. The Court agreed the riding lawnmower constituted a “motor vehicle,” as defined by statute but granted the motion to dismiss based on legislative intent. CP 37. The State sought direct appeal to Washington State Court of Appeals Division III. CP 38. The Court of Appeals reviewed and upheld the lower Court agreeing that while the riding lawnmower fit the statutory definition, it was not supported by legislative intent. Slip Op. 8-9. The Court of Appeals further concluded that while the plain language of the statute is unambiguous on its face, the legislature intended only for the statute to apply to automobiles. Slip Op. 9-17. The State has delayed prosecution of the remaining charges pending discretionary review by the Washington State Supreme Court.

#### IV. ARGUMENT

##### **A. RCW 9A.56.065 IS UNAMBIGUOUS AND THE DEFINITION OF MOTOR VEHICLE IS INTENTIONALLY BROAD; RESORT TO STATUTORY CONSTRUCTION IS INAPPROPRIATE WHERE A STATUTE IS PLAIN ON ITS FACE.**

Established Washington State case law has held that when a statute is plain on its face, a court may not engage in statutory construction. "In judicial interpretation of statutes, the first rule is the court should assume that the legislature means exactly what it says. Plain words do not require construction." *City of Kent v. Jenkins*, 99 Wn. App. 287, 290, 992 P.2d 1045, review denied 141 Wn.2d 1007 (2000). As stated in *State v. Hahn*, 83 Wn. App. 825, 924 P.2d 392 (1996) at 834, when a statute is clear on its face the court "may not engage in statutory construction or consider the rule of lenity." See also *State v. Gettman*, 56 Wn. App. 51, 54, 782 P.2d 216 (1989). For a statute to be ambiguous, two reasonable interpretations must arise from the language of the statute itself, not from considerations outside the statute. *Cerrillo v. Esparza*, 158 Wn.2d 194, 203-04, 142 P.3d 155 (2006). Only an ambiguous statute is open to interpretation. *In re Estate of Jones*, 152 Wn.2d 1, 11, 93 P.3d 147 (2004).

While the Court has as duty to interpret legislative intent where the legislature has not been clear, no interpretation is required when, as here,

the legislature and prior case law have applied a broad definition of “motor vehicle” in RCW 46.04.320. When a statute is unambiguous, “there is no room for judicial interpretation ... beyond the plain language of the statute.” *State v. D.H.*, 102 Wn. App. 620, 627, 9 P.3d 253 (2000). However if, after this inquiry, the statute is susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history. *Campbell and Gwinn*, 146 Wn.2d at 11. The fact that two or more interpretations are *conceivable* does not render a statute ambiguous. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305, 268 P.3d 892 (2011).

In the Court of Appeals decision, the Court agrees the statute itself is unambiguous. Slip Op. 8-10. It further agrees that the riding lawnmower, in fact, is a motor vehicle for purposes of the statute. Slip Op. 8-9. Upon reaching its conclusion of unambiguity within the statute, no further analysis in determining legislative intent was permissible. By engaging in further analysis, the Court violated established case law.

*i. The legislature intended the statutory definition of “motor vehicle to be as broad as possible.*

From a plain reading of Title 46, it is clear the legislature meant to create the definition of “motor vehicle” to be as broad and all-encompassing as possible. Had the legislature intended to create an exception or defense

for tractors or riding lawnmowers, it certainly could have done so, especially given that exceptions have been specifically addressed in the statute defining “motor vehicle.” Because the legislature provided specific exceptions and defenses to the criminal conduct in Title 46, this court should presume that had the legislature intended to exclude additional motor vehicles within the already listed exceptions, it would have included specific statutory language to accomplish that goal. It did not do so; thus, the court should not presume it intended such a result.

The crime of Theft of a Motor Vehicle is codified at 9A.56.065. That specific statute does not include a definition of “motor vehicle.” However, RCW 9A.04.110(29) defines a “vehicle” as a “motor vehicle” as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail. We are directed to RCW 9A.04.110 (29) to determine what motor vehicles apply to the Theft of a Motor Vehicle statute.

The vehicle and traffic laws, codified in Title 46 of the Revised Code of Washington, define a “vehicle” as “*every* 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, including bicycles.” RCW 46.04.670 (emphasis added). The definitional statute excludes certain

types of “vehicles” such as golf carts, motorized wheelchairs, and bicycles from certain regulations found in Title 46.

A “motor vehicle” is defined in RCW 46.04.320 as:

*every vehicle* that is *self-propelled* and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. “Motor vehicle” includes a neighborhood electric vehicle as defined in RCW 46.04.357. “Motor vehicle” includes a medium-speed electric vehicle as defined in RCW 46.04.295. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. A golf cart is not considered a motor vehicle, except for the purposes of chapter 46.61 RCW.

(Emphasis added.)

As stated, *supra*, a “vehicle” is every device capable of being moved on a public highway, with limited exceptions, none of which includes riding lawn mowers. RCW 46.04.670.

It has been asserted that a riding lawnmower is not a motor vehicle within the meaning of the statute because it is “not capable of being moved on a public highway.” This argument fails because by its very definition it is *capable* of being moved on a public highway because it is self-propelled. The Legislature also clearly intended the definition of motor vehicle to be fluid in its application when it calls for something like a golf cart to be alternatively considered a motor vehicle for the purposes of RCW 46.61 Rules of the Road. Additionally, the Legislature has updated the language

of the statute to address technological advances such as personal mobility vehicles, Segway devices, and medium speed electric vehicles. These changes indicated the intent to update the statutory definition when new vehicles are introduced and technology advances. In 2007, when the Theft of a Motor Vehicle statute was adopted, riding lawnmowers were not a new device unknown to the legislature; therefore, if the intent was to exclude riding lawnmowers like the other mentioned exceptions, it would have explicitly done so.

The Superior Court and the Court of Appeals assert legislative history supports the conclusion that the motor vehicle theft statute was promulgated only to protect family cars from theft, so as to prevent disruption to our everyday lives. Slip Op. 4-5. However, in construing the meaning of a statute, if the statutory language is plain and unambiguous, the court's inquiry must end and it may not look at legislative intent, for a statute's meaning must be derived from the wording of the statute itself. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305, 268 P.3d 892 (2011); *State v. Von Thiele*, 47 Wn. App. 558, 562, 736 P.2d 297, *review denied*, 108 Wn.2d 1029 (1987). “The court may not rely on a statement of intent found in a legislative preamble to a statute to override the unambiguous elements section of a penal statute or to add an element not found there.” *D.H.*, 102 Wn. App. at 627 (internal citation omitted).

Moreover, there are clear examples of the Legislature's intent to distinguish "automobiles" and "motor vehicles" as separate but similar entities. RCW 9A.56.070 and .075, Taking a Motor Vehicle Without Permission in the First and Second Degree, list both automobiles and motor vehicles as vehicles to be taken under the statute. RCW 9A.56.070 Taking motor vehicle without permission in the first degree is defined as:

(1) A person is guilty of taking a motor vehicle without permission in the first degree if he or she, without the permission of the owner or person entitled to possession, intentionally takes or drives away an *automobile or motor vehicle*, whether propelled by steam, electricity, or internal combustion engine, that is the property of another, and he or she:

(a) Alters the motor vehicle for the purpose of changing its appearance or primary identification, including obscuring, removing, or changing the manufacturer's serial number or the vehicle identification number plates;

(b) Removes, or participates in the removal of, parts from the motor vehicle with the intent to sell the parts;

(c) Exports, or attempts to export, the motor vehicle across state lines or out of the United States for profit;

(d) Intends to sell the motor vehicle; or

(e) Is engaged in a conspiracy and the central object of the conspiratorial agreement is the theft of motor vehicles for sale to others for profit or is engaged in a conspiracy and has solicited a juvenile to participate in the theft of a motor vehicle.

(2) Taking a motor vehicle without permission in the first degree is a class B felony.

(Emphasis added.)

This demonstrates a clear understanding on the part of the Legislature that if it were to designate automobiles exclusively under RCW

9A.56.065 Theft of a Motor Vehicle, it would have made that distinction clear in the language of the statute. The fact that the Legislature explicitly differentiated between automobiles and motor vehicles is further proof the Court of Appeals erred when it conflated the two as being synonymous.

Here, the statutes are clear. A riding lawn mower is a motor vehicle. Resort to the legislative history of the theft of a motor vehicle statute is inappropriate.

*ii. It is a matter of public interest to broadly apply “motor vehicle” to RCW 9A.56.065 Theft of a Motor Vehicle.*

Even if this Court finds the Court of Appeals was correct in assessing legislative intent in its analysis of this case, it is a matter of broad public interest for individuals and business owners who make large investments in labor or agricultural equipment such as tractors, combines, and similar vehicles that would be considered motor vehicles under the current broad definition of motor vehicle. Much of the Court’s rationale in excluding the riding lawnmower as a motor vehicle heavily relies on the singular importance of automobiles and the hardship created when these are wrongfully taken and the value of a personal vehicle versus a motor vehicle such as a riding lawnmower. This rationale fails to consider the importance of various types of motor vehicles that provide a living to many in rural communities including tractors and combines that sometimes use public

roadways. Theft of these vehicles creates a substantial hardship for these individuals and their ability to operate their small and large enterprises. The theft of such property can be just as devastating to a business as the loss of a family automobile to a small family.

**B. THE COURT OF APPEALS VIOLATED SEPARATION OF POWERS BY USURPING THE PROSECUTOR'S EXECUTIVE FUNCTION AS WELL AS LEGISLATIVE FUNCTION.**

A fundamental principle of our American constitutional system is that governmental powers are divided among three separate and independent branches - legislative, executive, and judicial. *State v. Osloond*, 60 Wn. App. 584, 587, 805 P.2d 263, *review denied*, 116 Wn.2d 1030 (1991). Our Washington State Constitution does not contain a formal separation of powers clause. Nonetheless, separation of powers is a vital doctrine, presumed throughout our state history from the division of our state government into three separate branches. *Carrick v. Locke*, 125 Wn.2d 129, 134-35, 882 P.2d 173 (1994). The separation of powers doctrine serves mainly to ensure that fundamental functions of each branch of government remain inviolate. *Carrick*, 125 Wn.2d at 135. This doctrine is violated when " 'the activity of one branch threatens the independence or integrity or invades the prerogatives of another.' " *State v. Moreno*, 147 Wn.2d 500 , 505-06, 58 P.3d 265 (2002) (quoting *Carrick*, 125 Wn.2d at 135 ).

The decision of the Court of Appeals effectively runs afoul of statutory construction application in favor of a court created rule of application circumventing the duty of the Court. The Court has taken on the role of Legislature even when the law has been plainly stated.

The judicial prohibition on interpreting unambiguous statutes is born out of deference to the Legislature and respect for their policy-making functions. No matter how well intentioned, a court that engages in interpretation of an unambiguous statute engages in unconstitutional policymaking. For that reason, the Supreme Court has long prohibited interpretation of unambiguous statutes even when it is clear that the Legislature inadvertently omitted critical language leading to unfortunate results. *Shelton Hotel Co. v. Bates*, 4 Wn.2d 498, 508, 104 P.2d 478 (1940) (“Courts cannot correct supposed errors, omissions, or defects in legislation.”); *Millay v. Cam*, 135 Wn.2d 193, 203, 955 P.2d 791 (1998) Courts do not amend statutes by judicial construction, *Salts v. Estes*, 133 Wn.2d 160, 170, 943 P.2d 275 (1997), nor rewrite statutes “to avoid difficulties in construing and applying them.” *Applied Indus. Materials Corp. v. Melton*, 74 Wn. App. 73, 79, 872 P.2d 87 (1994) (quoting *Arkansas Oak Flooring Co. v. Louisiana & Arkansas Ry. Co.*, 166 F.2d 98, 101 (5th Cir. 1948).

Furthermore, this decision also crosses into the prosecutor's executive function in making charging decisions and usurps prosecutorial discretion in that charging. The prosecuting attorney is an officer in the executive branch of the government having great discretion to charge offenses. *State v. Lewis*, 115 Wn.2d 294, 299, 797 P.2d 1141 (1990) (prosecutors have discretion in filing charges); see also *State v. Korum*, 157 Wn.2d 614, 655, 141 P.3d 13 (2006) (J.M. Johnson, J., concurring) (prosecutor's discretion to file charges is an executive function). When the law and its accompanying definitions have been clearly prescribed, prosecutors have broad discretion in filing charges provided the charging decision falls within the statutory requirements.

The Court of Appeals presumes that the inclusion of vehicles such as tractors, lawnmowers, and other farm equipment that is capable of being moved on a public roadway results in "absurd or strained consequences." While the hyperbolic example of a cat on a Roomba would constitute an absurd result, the idea that an expensive motor vehicle such as a riding lawnmower, tractor, or combine would constitute a motor vehicle is far from absurd, especially for those whose livelihoods depend on such motor vehicles. The Court of Appeals decision has effectively taken the prosecutor's charging discretion and substituted the Court's judgment

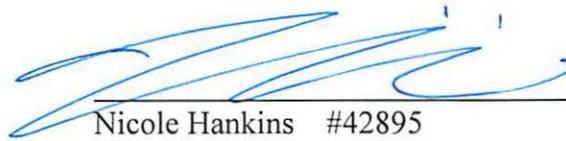
violating Separation of Powers. For the Court to impose its discretion above that of the prosecutor is plainly improper.

## V. CONCLUSION

The Court of Appeals' departure from established law regarding statutory construction was improper. The State respectfully requests that the decision of the appellate court be reversed and this case be remanded to the Superior Court for further action.

Dated this 7<sup>th</sup> day of April, 2017.

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