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97283-4

(COA No. 35530-6-III)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner/Respondent,

vs.

JULIA E. TUCKER,

Defendant/Appellant.

Petitioner's Supplemental Brief

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A. INTRODUCTION

Petitioner State of Washington asks this Court to overturn the Court of Appeals decision in *State v. Van Wolvelaere*, 8 Wn.App. 2d, 705 (2019)¹, and find that a snowmobile is a motor vehicle for purposes of the Theft of a Motor Vehicle statute, RCW 9A.56.065.

Both parties have previously briefed this issue in some detail, so Petitioner's supplemental brief will be brief.

B. ARGUMENT

RCW 46.04.320(1) defines "motor vehicle," as follows:

"Motor vehicle" means a vehicle that is self-propelled or a vehicle that is propelled by electric power obtained from overhead trolley wires but not operated upon rails. (Emphasis added.)

RCW 46.04.546 defines "snowmobile," as follows:

"Snowmobile" means a self-propelled vehicle that is capable of traveling over snow or ice that (1) utilizes as its means of propulsion an endless belt tread or cleats, or any combination of these or other similar means of contact with the surface upon which it is operated, (2) is steered wholly or in part by skis or sled type runners, and (3) is not otherwise registered as, or subject to, the motor vehicle excise tax in the state of Washington. (Emphasis added.)

¹ Mr. Van Wolvelaere and Ms. Tucker were charged as co-defendants. Mr. Van Wolvelaere entered a plea agreement and his case is not part of either the appeal or the State's motion for discretionary review.

Respondent argues that the fact that a snowmobile is not subject to the motor vehicle tax negates its categorization as a motor vehicle. However its exclusion is not because it's not a motor vehicle, but rather that it is a vehicle that does not travel on public highways unless those highways are closed to motor vehicle traffic. RCW 46.10.470. The State would argue that the type of highway closure contemplated which allows snowmobile access is an inaccessibility by a stream of automobile traffic, and does not negate the identity of a snowmobile as a motor vehicle.

The Elizabeth Nowak Act which increased the severity of the crime of theft of a motor vehicle was concerned with a family's need for transportation, as well as the use of motor vehicles in criminal acts. The Legislature noted that individuals who stole motor vehicles often committed additional crimes, and that the motor vehicle enabled the perpetrator to flee quickly, while posing a physical danger to those who tried to stop them. Laws of 2007, ch. 199, §29. Snowmobiles can easily reach speeds similar to automobiles, and with their maneuverability can become weapons for a fleeing felon. *See Brown v. State*, 830 NE 2d 956 (Ind. 2005), defendant Brown, while fleeing from police, stole a snowmobile and struck one officer with the snowmobile, knocking him down.

Defendant then dragged another officer with the snowmobile, and led police on a chase over roads, through fields, cemeteries, and along tree lines. *Brown* 830 NE 2d at 960. And while the Nowak act speaks to the family auto, it chose to use the term “motor vehicle” in entitling and writing RCW 9A.56.065, rather than limiting its terms to “automobile.” If RCW 9A.56.065 were to be so strictly construed, thefts of motorcycles, trucks, or motorhomes would not constitute the crime of theft of a motor vehicle.

Additionally, the comments which speak to the increasing number of auto thefts in King, Pierce, and Snohomish counties ignore the transportation realities in rural counties in the winter months. Search and rescue, medical assistance, ranchers, surveyors, and those who reside in isolated areas, rely on snowmobiles for transportation analogous to automobiles. While they may serve the purpose of recreation, they also have transportation as a primary purpose, and as such, should be found to be motor vehicles for purposes of RCW 9A.56.065, the Theft of a Motor Vehicle statute.

C. CONCLUSION

For the reasons as previously and herein stated, Petitioner State of Washington asks that the decision of the Court of Appeals finding that a snowmobile is not a motor vehicle for purposes of RCW

9A.56.065 be reversed, and Ms. Tucker's conviction for such be reinstated.

Respectfully submitted this 5th day of December, 2019.

/s/
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PROOF OF SERVICE

I, Carole L. Highland, do hereby certify under penalty of perjury that on 5th day of December, 2019, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of Respondent's Brief:

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