

Is a lawn mower a vehicle? That's for Supreme Court to decide

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US Open workers riding lawn mowers cut grass at the 11th fairway the day before the golf tournament at Chambers Bay on June 17, 2015. The state Supreme Court will hear a case next month as to whether riding lawn mowers are considered to be motor vehicles. Lui Kit Wong Staff file, 2015

WENATCHEE

The case of a Wenatchee man charged with vehicle theft goes to the state Supreme Court next month, where justices must determine if a Craftsman riding lawn mower qualifies as a “vehicle” under criminal law.

After Joshua Michael Barnes was arrested for stealing the lawn mower in 2015, Chelan County prosecutors brought a charge of motor vehicle theft. His defense attorney successfully argued that the machine did not amount to a “vehicle” for purposes of the statute, and when the county sought a new ruling from the state Court of Appeals, the charge was again dismissed.

Now Chelan County deputy prosecutor Nicole Hankins will press the case May 9 before the nine high court justices in a hearing session at the Evergreen State College in Olympia. The decision might put a murky area of vehicle law to rest — and for Barnes, now 31, it could mean an extra eight to 11 months in prison if he's convicted.

Chelan County sheriff's deputies said Barnes brought a pickup onto a Chumstick Highway property June 22, 2015, and drove the lawn mower up a ramp into the bed. The property resident, who was home at the time, confronted Barnes, and he unloaded the mower and drove away. He was arrested two days later, and deputies said he admitted to the theft attempt.

Barnes was initially held on suspicion of second-degree theft and second-degree criminal trespass, but deputy prosecutor Nicole Hankins added the more strenuous motor vehicle theft charge. Defense attorney Robert Gower argued that state law excludes certain devices like power wheelchairs, mopeds and golf carts from the definition of "motor vehicle." Hankins argued for a broader reading of the statute, which refers to "every vehicle that is self-propelled."

Superior Court Judge T.W. "Chip" Small ruled in Barnes' favor and dismissed the motor vehicle count. Hankins appealed to the Spokane-based Court of Appeals, which ruled in October that a riding lawnmower is not a motor vehicle for purposes of theft.

In the three-judge panel's decision, Chief Judge George Fearing noted that lawn mower use doesn't require a license, a mower need not be registered with the state and mowers are generally towed on a trailer when moving between worksites. He also noted that Barnes never left the victim's property while maneuvering the lawnmower onto the truck.

The case against Barnes was dismissed last year pending the outcome, but Chelan County Prosecutor Douglas Shae said Monday his office will likely refile the case after the Supreme Court's decision. If convicted on the lesser theft and trespass charges, Barnes faces a likely 14- to 18-month prison sentence, based on his prior felony record of burglary, theft and trafficking stolen property. If the motor vehicle theft charge is reinstated and Barnes is convicted, he could face 22 to 29 months.

Shae said the Supreme Court likely saw a chance to clarify a muddy area of law with the appeal.

"The statute seems clear to us," he said, "and the Supreme Court decided to accept the case. They don't accept that many cases a year." The high court took on 117 appeals in 2016.

David B. Koch, the Seattle attorney who represented Barnes at the Court of Appeals and will argue the Supreme Court case as well, could not be reached for comment Monday.

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