

No. 68854-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

PATRICK TURK,

Appellant.

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

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

In the absence of sufficient evidence the trial court deprived Patrick Turk of due process by entering convictions.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The Fourteenth Amendment Due Process Clause requires the State prove the elements of a crime beyond a reasonable doubt. A motor vehicle is a vehicle which is self-propelled. Where the State did not prove two vehicles were self-propelled, did the State present sufficient evidence to convict Mr. Turk of theft of a motor vehicle and attempted theft of a motor vehicle?

C. STATEMENT OF THE CASE

For a number of years, Lyle Schadee allowed his friend, Nathan Udd, to store a 1941 Farmall tractor in a field on his property. RP 95-6. The tractor was inoperable and did not move during that period. *Id.* Witnesses testified that one day a person, later identified as Mr. Turk, was seen driving from the property pulling a trailer on which sat the tractor. RP 85-87.

Robert Morrison stored an International track loader on property he owned. RP 134. The tractor was missing a track, had weeds growing from it, and had not been used in years. EX 9-10. Michael Canfield,

who lived next to Morrison's property, testified that one day he saw a person, whom he later identified as Mr. Turk, drive onto Mr. Morrison's property. Mr. Turk told Mr. Canfield he had the owner's permission to take the tractor. RP 100. When Mr. Canfield asked Mr. Turk what the owner's name was, Mr. Turk provided a name other than Mr. Morrison. RP 101. When told that was not the owner's name, Mr. Turk left. RP 101-02.

Mr. Canfield saw Mr. Turk on Mr. Morrison's property a second time. This time Mr. Turk had a flatbed truck and was attempting to move the tractor onto the truck. RP 106-08.

Mr. Morrison testified he had not given anyone permission to take the tractor at that time. RP 136. He did testify that he subsequently sold the tractor for scrap. RP 181-82.

The State charged Mr. Turk with one count of theft of a motor vehicle and one count of attempted theft of a motor vehicle. CP 305-06.

A jury convicted Mr. Turk of both counts. CP 230-31.

D. ARGUMENT

The State did not offer sufficient evidence to convict Mr. Turk of either theft of a motor vehicle or attempted theft of a motor vehicle.

1. The State must prove each element of the charge beyond reasonable doubt.

A criminal defendant may only be convicted if the government proves every element of the crime beyond a reasonable doubt. *Blakely v. Washington*, 542 U.S. 296, 300-01, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); *Apprendi v. New Jersey*, 530 U.S. 466, 476-77, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); *United States v. Gaudin*, 515 U.S. 506, 510, 115 S. Ct. 2310, 132 L. Ed. 2d 444 (1995); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). Due process “indisputably entitles a criminal defendant to ‘a . . . determination that he is guilty of every element of the crime beyond a reasonable doubt.’” *Apprendi*, 530 U.S. at 476-77 (quoting *Gaudin*, 515 U.S. at 510).

Here the State did not prove each element of theft or attempted theft of a motor vehicle.

2. The State did not prove either tractor was a motor vehicle.

RCW 9A.56.065(1) provides, “[a] person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle.” “‘Motor vehicle’ means every vehicle that is self-propelled.” RCW 46.04.320. “‘Vehicle’ includes 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.

Statutory construction begins by reading the text of the statute or statutes involved. If the language is unambiguous, a reviewing court is to rely solely on the statutory language.

State v. Roggenkamp, 153 Wn.2d 614, 621, 106 P.3d 196, 199 (2005). If the language is unambiguous, the inquiry ends with the plain language and the court must assume the statute means exactly what it says. *State v. Salavea*, 151 Wn.2d 133, 142, 86 P.3d 125 (2004). A court “cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.” *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792, 795 (2003). Instead, a court must assume the “the legislature ‘means exactly what it says.’” *Id.* (citing *Davis v. Dep’t of Licensing*, 137 Wash.2d 957, 964, 977 P.2d 554 (1999)).

Here, the relevant statutory language is clear: while something is a “vehicle” so long as it is capable of being moved on a public highway, it is only a “motor vehicle” if it “is self-propelled.” RCW 46.04.320; RCW 46.04.670. The definition of “motor vehicle” does not include vehicles “designed” to be self-propelled nor those that were once self-propelled. Unlike the general definition of “vehicle” which focuses broadly upon the capacity to do something, the definition of “motor vehicle” is limited to those a vehicle which **is** self-propelled. This Court must assume the legislature meant what is said when it used the term “capable” in the definition of vehicle but not in the definition of “motor vehicle.”

The State did not offer any evidence that either tractor was self-propelled. Indeed, the evidence established the contrary, that neither had been operable for years. Nathan Udd testified the Farmall tractor was not operable during the years it was stored in Lyle Schadee’s field. RP 95-96. Robert Morrison testified the track loader was last used in his landscape business “years ago.” RP 160. At the time of the attempted theft, the tractor had weeds growing from it and was missing a track. Ex 9-10. Not only was it not presently self-propelled, the evidence established it had not been for some time. The owner of the

vehicle ultimately sold it for scrap, not because of any damage caused by Mr. Turk, but because that is all the collection of metal parts was. RP 181-82. The State did not prove either tractor was self-propelled.

Instead, the State's theory seemed to be something in the line of "once a motor vehicle always a motor vehicle." RP 317-18. In response to a motion to dismiss, the State pointed to two cases which, despite the clear language of the statute, have read additional language into the statute. In *State v. Acevedo*, the trial court refused to instruct the jury in the language of the statute, specifically that that a motor vehicle "is self-propelled." 159 Wn. App. 221, 227, 48 P.3d 526 (2011). The Court of Appeals affirmed, saying the term "self-propelled" refers to the design and construction of the vehicle and not its present condition. *Id.* at 228 (citing *State v. McGary*, 37 Wn. App. 856, 859, 683 P.2d 1125 (1984)).

The conclusions of *Acevedo* and *McGary* simply ignore the plain language of RCW 46.04.320. As set forth above the legislature used the present tense verb - "is self-propelled." By using "is" rather than "was" or "designed" or "constructed" the statute plainly focuses on the present condition of the vehicle. This Court must assume the legislature meant exactly what it said, that a vehicle is only a motor

vehicle if it “is self-propelled.” That conclusion is also required by common sense.

There comes a point in the life cycle of a motor vehicle, as with any disposable good, when it no longer serves its original function. *Acevedo* and *McGary* do not explain at what point a vehicle’s inability to function as a motor vehicle overcomes the original “design” or “construction.” A vehicle chassis is certainly “designed” to be a part of a motor vehicle, so too, the wheels, or tracks, and the engine. But none of these without the others is self-propelled or even capable of self-propulsion. These cases provide no guidance as to what collection of parts must be present before those parts are to be called a “motor vehicle. But the legislature did. The legislature said a vehicle is a motor vehicle only when it “is self-propelled.”

Acevedo offers that its expansion of the definition of “motor vehicle” furthers the legislative purpose. 159 Wn. App. at 228-29. The legislature made clear what its intent was when it created the crime of theft of a motor vehicle.

Automobiles are an essential part of our everyday lives. . . . The **family car** is a priority of most individuals and families. The **family car** is typically the second largest investment a person has next to the home, so when a **car** is stolen, it causes a significant loss and inconvenience to people, imposes financial hardship, and negatively

impacts their work, school, and personal activities. . . . ;

Laws 2007, ch 199, §1 (Emphasis added). The purpose of the theft of a motor vehicle statute focuses upon the indisputable importance of cars in everyday life. And the Legislature sought to punish more harshly thefts which upset that reliance and cause a great and real inconvenience. That harm is simply not present when the item in question is not self-propelled.

The legislative intent is not frustrated in any respect if logic prevails to prevent application of the statute to rusting hulks left in a field. That is not to say this property is simply left open to theft, as a person could still be convicted of theft with the degree dependent upon the value of the item. But there is no logical reason to permit conviction of a greater offense simply because that rusting hulk was long ago, but no longer, a self-propelled vehicle.

This case does not require this Court to define precisely when a vehicle ceases to be a motor vehicle. Nor does this Court need to wrestle with the question of whether a vehicle ceases to be a vehicle when rendered temporarily inoperable due to needed repairs. Here, there was no proof that either tractor was still self-propelled. Nor was there any proof that either had been so in anything more than the distant

past. Indeed, there was no evidence that either was even capable of being self-propelled. With neither was it simply a matter of filling the fuel tank. These vehicles were not merely temporarily inoperable; they had not been used in a number of years. At the time of the theft they were not self-propelled.

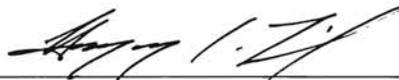
3. The court must reverse Mr. Turk's convictions.

The Fifth Amendment's Double Jeopardy Clause bars retrial of a case where the State fails to prove the crime charged. *Green*, 94 Wn.2d at 221. Because the State failed to prove either tractor was motor vehicle, the Court must reverse Mr. Turk's convictions and dismiss the charges.

E. CONCLUSION

Because there was insufficient evidence to support them the Court should reverse Mr. Turk's convictions.

Respectfully submitted this 21st day of December, 2012.



GREGORY C. LINK – 25228
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DIVISION I**

STATE OF WASHINGTON,)	
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)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 21ST DAY OF DECEMBER, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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