No. 93829-6

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Court of Appeals
Division III
State of Washington

No. 33811-8-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

Chelan County Superior Court
Cause No. 15-1-00383-7

STATE OF WASHINGTON,
Plaintiff/Appellant,

v.

JOSHUA M. BARNES,
Defendant/Respondent.

BRIEF OF APPELLANT

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I. STATEMENT OF THE ISSUE

Whether the Chelan County Superior Court erred by holding that as a matter of law, the defendant, Mr. Barnes, was not in violation of the Theft of a Motor Vehicle statute because a riding lawnmower does not qualify as a motor vehicle.

II. STATEMENT OF THE CASE

On June 22, 2015, Mr. Joshua Barnes and an associate were allegedly outside of the home of Judith Fraker attempting to remove Ms. Fraker's riding lawnmower from her property. CP20. Mr. Barnes was seen riding the lawnmower up a ramp into the bed of a truck parked on Ms. Fraker's property. CP20. Ms. Fraker confronted Mr. Barnes who then indicated he was picking up the lawnmower for another individual. CP20. Ms. Fraker proceeded to call law enforcement to report the theft. CP20. A supplemental report indicated the make and model of the lawnmower as well as the fact that it is gas-powered and self-propelled. CP36. Mr. Barnes was subsequently arrested and charged with Criminal Trespass in the Second Degree and Theft of a Motor Vehicle. CP 1-4. On August 20, 2015, Mr. Barnes filed motion to dismiss the Theft of a Motor Vehicle charge. CP 5-23. The State filed a

response on August 24, 2015. CP 24-36. On August 27, 2015, Chelan County Superior Court Judge T. W. Small heard argument and dismissed the charge of Theft of a Motor Vehicle against Mr. Barnes on the basis that a riding lawnmower did not qualify as a motor vehicle for purposes of the Theft of a Motor Vehicle statute. CP 37. The State contends this to be an error of law.

III. ARGUMENT

A. Standard of Review

The standard of review with regard to issues involving statutory construction is set forth in State v. Hahn, 83 Wn. App. 825, 831, 924 P.2d 392 (1996), *review denied,* 131 Wn.2d 1020 (1997). "An appellate court reviews issues regarding statutory construction de novo" (reviewing construction of Theft of a Motor Vehicle and application of definitions of "vehicle" and "motor vehicle").

B. RCW 9A.56.065 Theft of a Motor Vehicle, RCW Motor Vehicle 46.04.320, and RCW 46.04.670 Vehicle are Clear in Their Definitions and Application.

The court's prior ruling insists that the riding lawnmower in question does not qualify as a motor vehicle under the statute by

reviewing legislative intent. RCW 9A.56.065 defines Theft of a Motor Vehicle as, "a person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle." RCW 46.04.320 defines a motor vehicle as, "every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated on rails." The statute also mentions very specific and narrowly tailored exceptions to this definition that include electric personal assistive mobility devices, power wheelchairs, and golf carts (except for purposes of RCW 46.61).

As stated in City of Kent v. Jenkins, 99 Wn. App. 287, 290, 992 P.2d 1045, *review denied,* 141 Wn.2d 1007 (2000), "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." As stated in State v. Hahn, 83 Wn. App. 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), in which the court held that "[w]hen the language is clear and unambiguous, there is no need for judicial interpretation." In this case the language of the statute is clear. The legislature intended for the definition of "motor vehicle" to be broad and all-

encompassing requiring a plain language interpretation of the statute. It is very clear from a plain reading of the language of the statute that the definition is meant to be broad in that the only defining factor as to whether an object is to be considered a motor vehicle is whether or not it is self-propelled. The statute goes so far as to state "every" vehicle that is self-propelled. The court continues on to review the definition of "Vehicle" under RCW 46.04.670 which is equally broad. RCW 46.04.670 defines "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." Again, it is very clear that the statutory construction is meant to be broad and inclusive rather than exclusive as court so determined.

If, however, the court determines that the statute is ambiguous or unclear, then the court's primary goal in construing a statute is to "ascertain and give effect to the Legislature's intent." State v. Kuhn, 74 Wn. App. 787, 790, 875 P.2d 1225 (1994). "In doing so, the court should avoid unlikely, absurd, or strained results." Hahn, 83 Wn. App. at 831, citing State v. Stannard, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987). The court's interpretation of

a statute should be in a manner that utilizes the ordinary dictionary meaning of the statutory terms. State v. Friend, 59 Wn. App. 365, 366-67, 797 P. 2d 539 (1990). *See also,* Martinelli v. Dep't of Revenue, 80 Wn. App. 930, 912 P.2d 521 (1996) (interpreting definition of "carbonated beverage" and relying upon State v. Sunich, 76 Wn. App. 202, 206, 884 P.2d 1 (1994) (construing "maximum possible" sentence)).

If the court determines that the language of any of the applicable statutes are not clear, the court will look to legislative history, if available, to aid the court in determining intent:

> To determine legislative intent, we first look to the language of the statute. If it is plain and unambiguous, we need go no further . . . . However, where the statute is ambiguous on its face, we review other sources of legislative intent . . . . If, with the aid of these other sources, we still are unable to determine the legislative intent, we apply the rule of lenity.

State v. Pierce, 78 Wn. App. 1, 4-5, 895 P.2d 25 (citations omitted), *review denied*, 127 Wn.2d 1025 (1995).

In this case, because the statutory definition is intentionally broad and unambiguous, the court was not required to look to legislative intent in terms of statutory application. "If the intent of the Legislature is not clear from the words of the statute, resort to

legislative history and other aids of construction is appropriate." State v. McKinley, 84 Wn. App. 677, 681, 929 P.2d 1145 (1997).

IV. CONCLUSION

The ultimate issue in this case is whether the lower court committed any errors of law when applying the definition of motor vehicle to this case and its application to the Theft of a Motor Vehicle statute. The problem with the defendant's argument and the trial court's finding is that it requires the court to inquire as to legislative intent for a non-ambiguous statute. Accordingly, the lower court's dismissal of the charge of Theft of a Motor Vehicle was improper and should be reversed.

DATED this 14th day of December, 2015.

Respectfully submitted,

Douglas J. Shae
Chelan County Prosecuting Attorney

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Deputy Prosecuting Attorney

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

STATE OF WASHINGTON, Plaintiff/Appellant, vs. JOSHUA M. BARNES, Defendant/Respondent.	No. 33811-8-III Superior Court No. 15-1-00383-7 DECLARATION OF SERVICE

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 14th day of December, 2015, I electronically transmitted to:

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said electronic transmission and envelopes containing true and correct copies of Brief of Appellant.

Signed at Wenatchee, Washington, this 14th day of December, 2015.

Cindy Dietz

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