

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 97283-4

SUPREME COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Petitioner,

V.

JULIA ELIZABETH TUCKER,

Defendant/Respondent

**ANSWER TO THE STATE'S PETITION FOR DISCRETIONARY
REVIEW**

Dennis W. Morgan WSBA #5286
Attorney for Appellant
P.O. Box 1019
Republic, Washington 99166
(509) 775-0777

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ARGUMENT

The State filed its petition claiming that there is a question of substantial interest which must be resolved based upon a Court of Appeals decision determining that a snowmobile is not a motor vehicle. *See*: RAP 13.4 (b); *State v. Tucker, slip opinion 35530-6-III* (May 2, 2019).

The State attempts to distinguish Ms. Tucker's case from the opinion in *State v. Barnes*, 189 Wn.2d 492, 403 P.3d 72 (2017). The *Barnes* Court ruled that a riding lawn mower is not a motor vehicle.

The central question revolves around the definition of "motor vehicle."

The State's petition argues that the structure of Title 46 RCW supports its position that the Legislature intended to include snowmobiles in the term "motor vehicle." The State cites no authority in support of its argument. *See*: RAP 10.3 (a)(6); *Matter of Guardianship of Atkins*, 57 Wn. App. 771, 790 P.2d 210 (1990).

The Legislature did see fit to define the word "snowmobile." RCW 46.04.546 states:

"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 con-

tact 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.

The definition is obviously inapplicable to what is commonly understood as being a motor vehicle.

A snowmobile has no tires.

A snowmobile is steered by skis or sled type runners as opposed to a steering wheel.

Snowmobiles are not required to be registered in connection with the motor vehicle excise tax.

RCW 82.44.125 (1) specifically sets forth those vehicles subject to the tax. Subparagraph (f) of that statute references RCW 46.04.320.

RCW 46.04.320 states:

"Motor vehicle" means 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.

As can be seen, the Legislature specifically sets forth those vehicles that constitute a motor vehicle.

Since a snowmobile is a self-propelled vehicle it may seem to fit within the definition. However, RCW 82.44.125 (2) establishes that a snowmobile, like a lawn mower, is not a “motor vehicle.”

RCW 82.44.125 (2) provides, in part:

The motor vehicle excise tax authorized under this chapter does not apply to the following vehicles:

...

(c) Equipment not designed primarily for use on public highways.

The definition of “snowmobile” in RCW 46.04.546 is indicative of the fact that it is normally operated on snow and ice as opposed to roadways.

RCW 46.10.460 provides:

It shall be lawful to drive or operate a snowmobile **across** public roadways and highways other than limited access highways when:

The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing; and

The snowmobile is brought to a complete stop before entering the public roadway or highway; and

The operator of the snowmobile yields the right-of-way **to motor vehicles** using the public roadway or highway; and

The crossing is made at a place which is greater than one hundred feet from any public roadway or highway intersection.

(Emphasis supplied.)

Moreover RCW 46.10.490 (1)(f) prohibits the operation of snowmobiles on a highway. There is an exception which is set forth in RCW 46.10.470. It provides, in part:

Notwithstanding the provisions of RCW 46.10.460, it shall be lawful to operate a snowmobile upon a public roadway or highway:

Where such roadway or highway is completely covered with snow or ice and has been **closed** by the responsible governing body **to motor vehicle** traffic during the winter months.

(Emphasis supplied.)

Finally, the statutory construction of a statute must be considered when there is the potential for ambiguity. Under the doctrine of *expressio unius est exclusio alterius* the expression or inclusion of one thing in a statute implies the exclusion of other things or alternatives. *See*: Blacks Law Dictionary (9th ed.).

CONCLUSION

Ms. Tucker contends that the Court of Appeals decision is correct. There is no issue of substantial public interest involved. It is well reasoned and is supported by both caselaw and the rules of statutory construction.

Ms. Tucker respectfully requests that the State's Petition for Discretionary Review be denied.

DATED this 19th day of June, 2019.

Respectfully submitted,

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Respondent.

P.O. Box 1019

Republic, WA 99166

(509) 775-0777

(509) 775-0776

nodblspk@rcabletv.com

NO. 35530-6-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	KITTITAS COUNTY
Plaintiff,)	NO. 16 1 00082 6
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
JULIA ELIZABETH TUCKER,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 19th day of June, 2019, I caused a true and correct copy of the *Answer To The State's Petition for Dictionary Review* and to be served on:

WASHINGTON STATE SUPREME COURT
Temple of Justice
Attention: Clerk's Office
PO Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

E-MAIL

KITTITAS COUNTY PROSECUTOR'S OFFICE
Attn: Carol Highland
prosecutor@co.kittitas.wa.us

E-FILE

Julia Elizabeth Tucker
530 Hughbanks Road
Cle Elum, Washington 98922

U.S. MAIL

s/ Dennis W. Morgan
DENNIS W. MORGAN WSBA #5286
Attorney for Defendant/Appellant.
P.O. Box 1019
Republic, WA 99169
Phone: (509) 775-0777
Fax: (509) 775-0776
nodblspk@rcabletv.com

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- prosecutor@co.kittitas.wa.us

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Address:
PO BOX 1019
REPUBLIC, WA, 99166-1019
Phone: 509-775-0777

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