FILED
Court of Appeals
Division III
State of Washington
3/9/2018 11:18 AM

No. 97283-4

NO. 35530-6-III

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent

v.

JULIA ELIZABETH TUCKER,

Defendant/Appellant

Brief of Respondent

Carole L. Highland
WSBA #20504
205 W. 5th Ave Ste. 213
Ellensburg, WA 98926
(509) 962-7520
Attorney for Respondent

TABLE OF CONTENTS

I. IDENTITY OF RESPONDENT 1

II. STATEMENT OF RELIEF SOUGHT 1

III. RESPONSE TO ISSUE PRESENTED FORREVIEW... 1

IV. STATEMENT OF THE CASE 2

V. ARGUMENT 3

VI. CONCLUSION 5

TABLE OF AUTHORITIES

Cases

Page No.

State v. Barnes, 189 Wn.2d 492, 403 P.3d 72 (2017).....1, 3

Statutes

RCW 9A.56.065.....1, 3, 5, 6

RCW 46.04.670.....3

RCW 46.10.310.....3

RCW 46.10.330.....4

RCW 46.10.400.....3

RCW 46.10.430.....4

RCW 46.10.440.....4

RCW 46.10.460.....4

RCW 46.10.470.....4, 5

RCW 46.10.480.....4

RCW 46.10.490.....4

RCW 46.10.500.....4

RCW 46.10.505.....4

I. IDENTITY OF RESPONDENT

The State of Washington appears through the Kittitas County Prosecuting Attorney's Office.

II. STATEMENT OF RELIEF SOUGHT

The State respectfully requests that this Court deny the Petitioner's request to reverse and dismiss Ms. Tucker's conviction for theft of a motor vehicle.

III. RESPONSE TO ISSUE PERTAINING TO REVIEW

State v. Barnes, 189 Wn.2d 492, 403 P.3d 72 (2017), pertained to a riding lawn mower which the Supreme Court found was not contemplated as a "motor vehicle" for purposes of RCW 9A.56.065, the Theft of a Motor Vehicle statute. Title 46 of the Revised Code of Washington, which addresses motor vehicles, does not reference riding lawn mowers even once within its chapter, it does however reference snowmobiles, a form of transportation for persons and property, and arguably logically included within RCW 9A.56.065.

IV. STATEMENT OF THE CASE

Respondent does not dispute Ms. Tucker's recitation of the facts of the case, but would also ask that the Court take note of the following additional facts. Kittitas County Sheriff's Office Deputy Nathan Foster, who was the first to respond to Mr. Nielsen's cabin, testified that he had met up with another resident of the area and taken a "snow cat" to the Nielsen cabin. RP 110, 111, 140. Mr. Nielsen testified that it took a snowmobile to get in to his cabin at the time of Ms. Tucker's trespass. RP 68. He also testified that the main road became a snowmobile road when cars couldn't make it through the area and weren't allowed. RP 79, 80. Deputy Foster testified that Forest Service Road 54, which came off of Interstate 90, became a "[b]asically groomed trail for snowmobiles that goes all the way up and would connect with the Saw Mill Flats Road."[1] RP 146. He went on to say that no other roads were accessible by anything other than a snowmobile or walking. RP 147. Mr. Nielsen stated that the groomed snowmobile path was the only way out of the snow park and that the main road hosted thousands of snowmobiles. RP 64, 65.

[1] Mr. Nielsen's cabin is located on Saw Mill Flats Road. RP 62.

V. ARGUMENT

This case can be distinguished from *State v. Barnes, supra.*, in which the Washington Supreme Court found that a riding lawn mower was not a motor vehicle for the purposes of the theft of a motor vehicle statute, RCW 9A.56.065.

RCW 9A.56.065 includes within its findings and legislative intent language specific to the automobile and family car, yet the title and text of 9A.56.065 are not so exclusively limited.

> Theft of a motor vehicle. (1) A person is guilty of theft of a motor vehicle if he or she commits theft of a motor vehicle.

Title 46 of the Revised Code of Washington addresses motor vehicles. RCW 46.04.670 defines motor vehicles, and provides for some specific exclusions. It was one argument in *Barnes, supra.*, that as riding lawn mowers were not specifically excluded, they were by logic, included. *Barnes* at 494. However riding lawn mowers are mentioned nowhere in title 46, whereas snowmobiles have a specific section, *i.e.,* chapter 46.10, which addresses, amongst other things, registration (46.10.310, 46.10.400,

46.10.430, 46.10.440, 46.10.505), accident reports (46.10.330), crossing of public roadways and highways (46.10.460), age restriction on operating (46.10.480), as well as operating violations, i.e., traffic infractions (46.10.490, 46.10.500).

Specifically RCW 46.10.470 titled Operating upon public road or highway lawful. When: states:

> Notwithstanding the provisions of 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; or
>
> When the responsible governing body gives notice that such roadway or highway is open to snowmobiles or all-terrain vehicle use; or
>
> In an emergency during the period of time when and at locations where snow upon the highway renders such impassable to travel by automobile; or
>
> When travelling along a designated snowmobile trail.

To hold that a snowmobile is not a motor vehicle would deny the protection of the legislative intent to those families who depend upon a snowmobile to access their homes or to secure necessary

food and supplies. The language of 46.10.470 *supra* could also be read to imply that a snowmobile may be synonymous with an automobile when weather and highway conditions make their use necessary in lieu of an automobile for transport of persons and/or property.

VI. CONCLUSION

As testified to by both the homeowner/victim, Niels Nielsen, as well as Deputy Foster, access to Mr. Nielsen's cabin could only be accomplished by either foot or snowmobile in the weather conditions that then existed at the time of Ms. Tucker's crime. While snowmobiles may be used for sport, as can too automobiles, they are clearly a vehicle which under the conditions that prevailed could and/or would be used to transport either people or provisions for residents in the area. RCW 9A.56.065 by its plain language does not limit itself to theft of only an automobile, and the theft of Mr. Nielsen's snowmobile is consistent with an ill that the legislature was cognizant of, and wished to address, theft of a vehicle upon which families depend.

For the foregoing reasons, the State would request that Ms. Tucker's conviction for RCW 9A.56.065, Theft of a Motor Vehicle involving Mr. Nielsen's snowmobile be upheld.

Respectfully submitted this 9th day of March, 2018.

Carole L. Highland

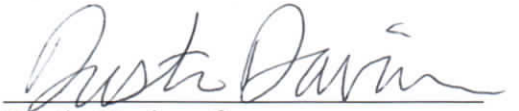
Carole L. Highland, WSBA #20504
(Deputy) Prosecuting Attorney

PROOF OF SERVICE

I, Dustin Davison, do hereby certify under penalty of perjury that on March 9, 2018, 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 the Respondent's Brief:

Attorney:
Dennis Morgan
PO Box 1019
Republic, WA 99166
nodblspk@rcabletv.com

Defendant:
Julia Tucker #367372
Mission Creek Corrections Center-Women
3420 NE Sand Hill Rd
Belfair, WA 98528



Dustin Davison for
Carole Highland, WSBA #20504
Kittitas County Prosecuting Attorney's Office
205 W. 5th Ave, Ste. 213
Ellensburg, WA 98926
509-962-7520
FAX – 509-962-7022
prosecutor@co.kittitas.wa.us

KITTITAS COUNTY PROSECUTOR'S OFFICE

March 09, 2018 - 11:18 AM

Transmittal Information

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Appellate Court Case Number:	35530-6
Appellate Court Case Title:	State of Washington v. Julia Elizabeth Tucker
Superior Court Case Number:	16-1-00082-6

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Filing on Behalf of: Carole Louise Highland - Email: Carole.highland@co.kittitas.wa.us (Alternate Email:)

Address:
205 West 5th Ave
Ellensburg, WA, 98926
Phone: (509) 962-7520

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