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NO. 68854-5-1

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

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STATE OF WASHINGTON
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STATE OF WASHINGTON

Respondent

v.

PATRICK C. TURK,

Appellant

BRIEF OF RESPONDENT

MARK K. ROE
Prosecuting Attorney

THOMAS CURTIS
Deputy Prosecuting Attorney
Attorney for Respondent

Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, M/S #504
Everett, Washington 98201
Telephone: (425) 388-3333

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I. ISSUE

When this Court has interpreted the statute defining a motor vehicle as pertaining to the design, mechanism, and construction rather than the temporary operating condition, and the legislature has not changed that definition despite having amended the statute five times, should this Court now change the definition?

II. STATEMENT OF THE CASE

On September 17, 2010, the defendant loaded a Farmall tractor on a trailer and hauled it off another person's rural property in Snohomish County, WA. On September 18, 2010, the defendant was attempting to tow a trailer that had a track loader¹ on it off rural property that did not belong to him. A neighbor chased him away. 1 CP 303, 3/13 RP 134.

The State charged the defendant with theft of a motor vehicle and attempted theft of a motor vehicle. 1 CP 305.

The owner of property where the Farmall tractor was taken testified that he was storing the tractor and some farm implements for a friend he used to work for. The tractor was not his. 3/13 RP 69-70.

¹ The vehicle was properly called a track loader. 3/13 RP 136. It was also called a Skid Loader and a dozer loader. 1 CP 303, 3/13 RP 99.

The owner of the Farmall tractor testified that the tractor was a 1939 model he had inherited from his father. He had removed the fuel bowl and drained the fuel so the tractor could not be started. 3/13 RP 94-96. There was no evidence introduced when the tractor had run last, or its condition, other than no fuel bowl.

The defendant testified that when he saw the tractor, it was "in the sticker bushes." 3/15 RP 326.

The neighbor who chased the defendant away from the track loader identified Exhibits 9 and 10 as photos of a John Deere dozer loader. He said the photos were of the vehicle the defendant was trying to haul when he approached him. 3/13 RP 99-100. The photos show that vegetation was growing around the track loader and up through gaps in the trailer. 2 CP Exhibit 9, 10.

The owner of the track loader testified identified that Exhibits 9 and 10 "represent kind of the state of the track loader was in in 2010." 3/13 RP 140. He said that he used the loader in the excavating business he used to be in "years ago." 3/13 RP 160. There was no evidence about the last time the track loader ran or whether it would run in September, 2010. The owner said he eventually sold the track loader for scrap. 3/13 RP 181-82.

The defendant testified that when he saw the track loader, it was “off in the brush with all the sticker bushes in it.” 3/15 RP 329.

After the State rested, the defendant moved to dismiss the charges. The defendant argued “I don’t think the State here has shown that either of these devices are motor vehicles.” 3/15 RP 311. Relying on the reasoning in State v. McGary, 37 Wn. App. 856, 683 P.2d 1125, review denied, 102 Wn.2d 1024 (1984), the State argued that “just because you can’t move it — can’t drive it right now doesn’t turn it into anything other than a motor vehicle.” 3/15 RP 317.

The court ruled that “There’s a sufficient quantum of evidence with regard to both counts as to whether the items in question are motor vehicles.” It denied the motion to dismiss. 3/15 RP 320.

The defendant testified that he did not take either the Farmall tractor or the track loader. He said that when he was scrapping he wore a hat, implying that his hair would not have looked like the hair of the person who was driving the truck when the Farmall tractor was stolen. The defendant also said that he knew that his pickup was too small to haul the track loader and

trailer, so he would not have tried to take it. 3/15 RP 340, 326, 331.

The defendant said his wife, the actual owner of the truck he drives, loaned the truck to the person on whose property the Farmall tractor was found. The defendant had shown him the tractor because that person collected old tractors. He described that person as matching the description of the person who was driving the truck when the Farmall tractor was stolen. 3/15 RP 336-39.

The defendant proposed a jury instruction defining a motor vehicle. The instruction included the sentence "A device that is more than temporarily inoperable is not a motor vehicle." 1 CP 264. The court ruled it was "not satisfied that that's an accurate statement of the law." The court declined to give that definition of a motor vehicle. 3/15 RP 351.

The court defined a motor vehicle to the jury as:

"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.

1 CP 252.

The defendant argued that “above and beyond Mr. Turk’s involvement, these just simply aren’t motor vehicles” because there was no proof that they would run. 3/16 RP 386-87.

The State responded in rebuttal “To say that [the Farnall tractor] is not a motor vehicle is ludicrous.” “If this [track loader] isn’t a motor vehicle, what is it?” 3/16 RP 400, 401.

The jury convicted the defendant of both charges. 3/16 RP 418-19. 1 CP 230, 231. The court imposed a standard range sentence. 5/7 RP 456, 1 CP 16, 17.

III. ARGUMENT

A. STANDARD OF REVIEW.

“We review questions of statutory interpretation de novo.”

State v. Morales, 173 Wn.2d 560, 567 n. 3, 269 P.3d 263 (2012).

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.

State v. Salinas, 119 Wn. 2d 192, 201, 829 P.2d 1068 (1992).

B. THE VEHICLES THAT THE DEFENDANT STOLE AND ATTEMPTED TO STEAL WERE MOTOR VEHICLES.

The defendant asserts the evidence is insufficient to support his convictions for theft of a motor vehicle and attempted theft of a motor vehicle because the vehicles were no longer self-propelled.

Brief of Appellant 5. The defendant uses too narrow a definition of self-propelled.

Here, the jury was instructed that a motor vehicle is a vehicle that is self-propelled. The defendant argued that the vehicles at issue were no longer self-propelled. There was evidence that each vehicle was equipped with an engine and had clearly been self-propelled in the past. There was no evidence that either vehicle could not have been made operable again. This evidence was sufficient for a reasonable finder of fact to determine beyond a reasonable doubt that the vehicles here were motor vehicles.

To show that the evidence was insufficient, the defendant attempts to convince this Court that, as a matter of law, a motor vehicle that is not currently capable of self-propulsion is not a motor vehicle. His argument is not convincing.

“Motor vehicle’ means every vehicle that is self-propelled.” RCW 46.04.320. In a case of first impression, this Court held that the term “self-propelled” “is ‘concerned with the design, mechanism, and construction of the vehicle rather than with its temporary condition[.]’” McGary, 37 Wn. App. at 859, quoting, Parnell v. State, 151 Ga. App. 756, 757, 261 S.E.2d 481 (1979).

The motor vehicle in question in Parnell was “a 1937 Dodge.” The evidence at trial was that the vehicle “had four tires on it, an inoperative engine, and no fenders.” When the vehicle was sold after the theft, it was described as “a piece of junk.” Parnell, 151 Ga. App. at 756. The Georgia Court of Appeals held this was a motor vehicle. Id. at 757.

Two years ago, Division III reviewed the refusal of a trial court to define “a ‘motor vehicle’ as ‘any vehicle that is self-propelled.’” State v. Acevedo, 159 Wn. App. 221, 225, 248 P.3d 526 (2011). Division III described the vehicle at issue as a “1998 Acura with no front end, engine, or transmission[.]” Id. In affirming the trial court, Division III agreed with this Court’s definition of self-propelled as referring to the design, mechanism, and construction, not its condition. Id. at 228, citing, McGary, 37 Wn. App. at 859.

The legislature has amended RCW 46.04.320 five separate times since this Court decided McGary: Laws of 2002, Ch. 247, Sec. 2; Laws of 2003, Ch. 141, Sec. 2; Laws of 2003, Ch. 353, Sec. 1; Laws of 2007, Ch. 510, Sec. 1; and Laws of 2010, Ch. 217, Sec. 1. It has not changed the definition of self-propelled or in any way indicated that the definition of that term by this Court differed from its intent when it initially passed RCW 46.04.320.

the legislature “is presumed to be aware of judicial interpretation of its enactments,’ and where statutory language remains unchanged after a court decision the court will not overrule clear precedent interpreting the same statutory language.”

State v. Reanier, 157 Wn. App. 194, 204-05, 237 P.3d 299 (2010), review denied, 170 Wn.2d 1018 (2011), quoting Riehl v. Foodmaker, Inc., 152 Wn.2d 138, 147, 94 P.3d 930 (2004).

The defendant asserts that “There comes a point in the life cycle of a motor vehicle . . . when it no longer serves its original function.” Brief of Appellant 7. He then states “there is no logical reason to permit conviction of a greater offense [of theft of a motor vehicle] simply because that rusting hulk was long ago, but no longer, a self-propelled vehicle.” Brief of Appellant 8.

The defendant cites no authority for this statement.

Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.

DeHeer v. Seattle Post-Intelligencer, 60 Wn. 2d 122, 126, 372 P.2d 193, 195 (1962).

Were this Court to rule as the defendant requests, it would reverse its holding in McGary and directly contradict Division III’s holding in Acevedo. Further, it would require every case involving a non-operational motor vehicle to devote a substantial amount of

time addressing what “point” the vehicle had reached in its “life cycle.” As succinctly phrased by the Ninth Circuit, “it would be illogical to consider ‘self-propelled’ an impermanent quality[.]” U.S. v. Bibbins, 637 F.3d 1087, 1095 (9th Cir., 2011).²

This Court should adhere to its definition of self-propelled. It should find the evidence here was sufficient to affirm the convictions

IV. CONCLUSION

The judgment and sentence should be affirmed.

Respectfully submitted on March 28, 2013.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: *Kathleen Weidner 16040 for*
THOMAS CURTIS, #24549
Deputy Prosecuting Attorney
Attorney for Respondent

² Bibbins lists other jurisdictions that use a similar definition of self-propelled. Id.