The State Docket

Deere John: Is a Riding Lawnmower–or a Roomba–a "Motor Vehicle?"

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The Supreme Court of Washington heard a mere 116 appeals in 2016. This term, it will allocate one such precious slot to a case brought by Chelan County, a scenic agricultural powerhouse of about 75,000 residents on the sunny eastern side of the Cascade Range. At issue is an unlikely question: is a riding lawnmower a "motor vehicle" under Washington State's theft laws?

The Crime: In August 2015, Wenatchee resident Joshua Michael Barnes drove to a local home, started the resident's Craftsman riding lawnmower, inched it up a ramp onto his white pickup truck and prepared to depart. He was intercepted by Judy Fraker, who demanded that he return the mower to *terra firma* forthwith. Barnes complied and sped away down Chumstick Highway. He was soon visited by local law enforcement and quickly admitted to the attempted theft.

Chelan County prosecutors did not limit their charge to garden variety second degree thievery, a Class C offense criminalizing the purloining of property worth between $750.01 and $5,000. Instead, they brought a more substantial Class B count against Barnes: attempted theft of a motor vehicle.

The Lower Court Holdings: Chelan Superior Court dismissed the motor vehicle charge, finding that a riding mower is not included within the State's vehicular theft jurisprudence. The Washington Court of Appeals arrived at the same endpoint. In *State v. Barnes*,[1] decided in October 2016, the court found that although a riding mower might plausibly fit into some definitions of "motor vehicle" along the spectrum of Washington state laws, theft statutes were not among them.

The Analysis: The Court of Appeals' analytical tour began with an examination of the legislative intent behind Washington's 2007 vehicular thievery law. That record was not helpful to the prosecution. It referenced "the family car" and "auto theft," but lawnmowers garnered nary a mention:

> (a) 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 . . . .
>
> (c) Law enforcement has determined that auto theft, along with all the grief it causes the immediate victims, is linked more and more to offenders engaged in other crimes. Many stolen vehicles are used by criminals involved in such crimes as robbery, burglary, and assault. In addition, many people who are stopped in stolen vehicles are found to possess the personal identification of other persons, or to possess methamphetamine. . . .[2]

Based on the RCW language, the Court of Appeals reasoned that although a riding lawn mower "is rarely found on a public street and is intended only for use on a lawn," it is "capable of transporting a person or property on a road." Therefore,"[i]f we read [the RCW traffic laws] literally, a riding lawn mower is a motor vehicle." Unfortunately for the prosecution, this was not the end of the journey.

Because the statute used the words "automobile," "car," "vehicle," and "motor vehicle" interchangeably, without ever defining them, the appeals court looked elsewhere to find a "plain meaning" interpretation. It found a more robust definition in the traffic law provisions of the Revised Code of Washington (RCW):

> "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. ...
>
> "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. "Vehicle" does not include power wheelchairs or devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks. Mopeds are not considered vehicles or motor vehicles for the purposes of chapter 46.70 RCW. Bicycles are not considered vehicles for the purposes of chapter 46.12, 46.16A, or 46.70 RCW or RCW 82.12.045. Electric personal assistive mobility devices are not considered vehicles or motor vehicles for the purposes of chapter 46.12, 46.16A, 46.29, 46.37, or 46.70 RCW. A golf cart is not considered a vehicle, except for the purposes of chapter 46.61 RCW.[3]

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Unfortunately for the prosecution, this was not the end of the journey. The court soon detoured from its "plain meaning" search and veered off-road on a very different path:

> We question, for at least two reasons, whether we should always follow the plain meaning principle. First, the state legislature sometimes ineptly expresses its intent . . . . If we took the plain meaning rule as an unyielding rule, we might slavishly follow the language of a statute despite knowing the legislature intended a different result. . . .
>
> Second, language can never adequately and comprehensively express the speaker's message or intent. If there can never be perfect human communication, language to some degree is always inept. If the legislature wanted to precisely and thoroughly express its objective, each enactment would comprise a book so as to identify the one and only meaning intended for each word in the statute . . . . Ludwig Wittgenstein's friend would need to instruct Wittgenstein for minutes, if not hours, as to the types of games he did not wish Wittgenstein to teach children. Although the friend could instruct Wittgenstein to teach only age appropriate games, the friend and Wittgenstein could disagree as to age appropriate games.[5]

While readers no doubt hit the brakes to ponder the relationship between Wittgenstein and internal combustion, the court sped onward, opining that "even if . . . the statute's meaning is not ambiguous, the court should still construe the statute to effect its purpose, and any unlikely, absurd, or strained consequences resulting from a plain and literal reading of the statute should be avoided."[6]

Under a literal reading of the law, the court saw vehicular absurdities up the road:

> An iRobot Roomba, a self-propelled vacuum, would be a motor vehicle, since one could transport small property on the Roomba. A jokester could place her cat on top of the vacuum and send the iRobot Roomba down her neighborhood street. Theft of a child's remote control car that includes a doll in the driver's seat would also qualify for theft of a motor vehicle if we literally read RCW 46.04.320 and .670.[7]

The State's odds waned further when the judges cited an additional guidepost: RCW's criminal code, which is structured "[t]o differentiate on reasonable grounds between serious and minor offenses, and to prescribe proportionate penalties for each.[8] The charge against Joshua Barnes conflicted with this underlying proportionality: "Theft of a motor vehicle carries a potential sentence that is twice as long as standard theft, meaning theft of a lawn mower, Segway, or iRobot Roomba could be treated the same as theft of a Ferrari."[9]

As if there was remaining doubt about the court's travel plans, it then cited the Washington Supreme Court's treatment of Willie Day, a young man charged with driving while intoxicated.[10] Day had commandeered a pickup truck and careened in circles in a field on his family's property—but never entered or even drove near a public road. While the dissent noted that the plain language of the criminal law did not require the accused to drive on a public street, the majority reversed Day's conviction: the purpose of the drunk driving law was to reduce drunk driving hazards to highway safety and the traveling public, and Day had not posed such a threat.

Thus the Court of Appeals, having started in the direction of the State, unalterably accelerated towards the defendant by the end of its journey: "We affirm the superior court's dismissal of charges against Joshua Barnes for theft of a motor vehicle. A riding lawn mower is not a motor vehicle for purposes of theft."

The Appeal. The State disagreed with this endpoint and petitioned for yet another drive. Its persistence paid off. On May 9, all nine members of the Evergreen State's Supreme Court will hear Chelan County Deputy Prosecutor Nicole Hankins' arguments that a lumbering self-propelled lawn cutting machine with a steering wheel is, for purposes of Washington's theft laws, a motor vehicle.[11] The penal consequences to Joshua Barnes are significant—the motor vehicle charge could result in 29 months' incarceration, almost a year more than the lesser theft counts.

Other Landmarks. The Washington Supreme Court will have a number of scenic overlooks to consider as it travels this juridical highway. Some may be germane; some inconsequential.

The Mirror Image: Of special relevance may be one case with seemingly identical topology. *Harris v. State*[12] concerned a Georgia man who stole a Toro riding lawn mower worth more than $500. The applicable law defined "motor vehicle" as "'any device or vehicle including automobiles, motorcycles, motor trucks, trailers, and all other vehicles operated over the public highways and streets of this state and propelled by power other than muscular power . . . ."[13]

Although lawnmowers were not excepted from the law, the Supreme Court reversed the lower court and held the riding lawn mower not to be a motor vehicle. While a riding lawn mower was capable of transporting people or property and could drive on the street for short stretches, it was "not designed for street use since streets contain little grass to mow."[14]

The Dealership: Less interesting may be the Massachusetts case considering whether the state's statutory scheme regulating the relationship between motor vehicle manufacturers and dealers applied to John Deere and one of its franchisees. Deere manufactured riding lawn mowers and other lawn equipment. The regulations applied if Deere was producing "motor vehicles." The trial court found that some of Deere's riding lawn mower models traveled in excess of 12 miles per hour and could fit within the applicable law. The reviewing court reversed, concluding that the trial court took the statutory language too literally. [15]

The Insurance Policy: Also of peripheral help are at least two cases holding that a riding lawn mower is a motor vehicle for insurance purposes,[16] although other cases disagree.[17]

The Traffic Laws: It might seem beyond peradventure that straying from one's personal plot of groomed zoysia and steering a growling lawn mower down an active roadway will invoke the full complement of traffic statutes. This assumption would be accurate in Ohio, where a Canton man riding his mower in 2013 to pick up a pizza unluckily came upon a police stop and was summarily ticketed for driving without a license. His bad fortune was compounded after the officers determined that he was wanted on outstanding warrants, resulting in his arrest and impoundment of his "vehicle."[18]

For irresponsible drivers who have lost the privilege to traverse public roadways in an automobile, the riding lawnmower can become a low-tech substitute. If inebriated and not confined to a family-owned meadow, they surely risk citation. The media abounds with articles about drunks on a Deere; one of the more colorful is the account of Tyler Anspach, 25, a three-time DUI recipient who was intercepted driving a lawnmower down a Pennsylvania highway—with a six-pack of beer under his arm.[19] Although somewhat far afield, there is also the case of the Kentuckian who received a DUI for directing his horse onto public roads while drunk (referring to the rider, not the horse).[20]

The Flexible Flyer as Vehicle. Finally, given the meandering taxonomy of motor vehicles, we would be remiss not to recount the Maryland case of the runaway sled. *Moon v. Weeks*[20] involved seven-year old Kathryn Weeks, who was sledding with her brother down ice-covered Tallahassee Street in the small town of Loch Lynn on December 2, 1966. It was after 6pm, darkness had descended and the streets were treacherous, causing Richard Weeks to drive slowly down Shenandoah Street towards its intersection with Tallahassee. Kathryn's brother noticed Weeks' headlights and called out to her as she slid into the intersection from the right. She diverted her sled but collided with Weeks' right front fender and was badly injured.

As the Maryland Court of Special Appeals phrased it, the case turned "on the

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answer to the question what, in the contemplation of the traffic laws, is a child on a sled travelling on a street a "vehicle", a "motor vehicle", or a "pedestrian."[21]

At the lower court, Moon's counsel pointed out that Maryland's Annotated Code defined a motor vehicle to be "self-propelled or propelled by electric power obtained from overhead trolley wires, but not operated upon rails." Therefore, "a sled is not within the meaning of a motor vehicle, [and] would not have any right of way over a motor vehicle upon the highway."[22]

Kathryn's counsel responded: "[I]f the sled is not a vehicle, then it's obviously a pedestrian. . . . you either have to be dealing with a vehicle case or a pedestrian case. In either case, you've got the same situation. If you want to consider it some kind of a vehicle, which the defendant argues it's not, you've got someone approaching from the right. If you want to consider it a pedestrian, then you've got an intersection then, and a pedestrian has a right-of-way at an intersection."[23]

The lower court granted Week's Motion for Directed Verdict, finding not even "one iota of testimony to hold this defendant guilty of any negligence." (It did not discuss the issue of contributory negligence by a child of tender years, which is itself a subject of great discourse in the annals of justice).

The Court of Special Appeals agreed that a sled was not a motor vehicle. "But we think it obvious that it falls squarely within the definition of 'vehicle' when a person is transported upon it upon a highway." This required reference to laws relating to right-of-way:

> Except as hereinafter provided, all *vehicles* or trackless trolleys shall have the right-of-way over other *vehicles* or trackless trolleys approaching at intersecting public roads from the left, and shall give right-of-way to those approaching from the right. (emphasis added).[24]

Thus, the judge below had erred in his application of the law: "He reached his conclusion because he did not consider that the sled was a vehicle. As a vehicle, however, it had the benefit of the right-of-way statute."[25]

Unfortunately for Kathryn and her family, this did not end the opinion. In order to qualify as a "vehicle" entitled to right of way provisions, the sled was also subject to another Maryland traffic law provision:

> Every vehicle upon a highway within this State at any time when there is not sufficient daylight to render persons, vehicles, animals and substantial objects on the highway clearly discernible at a distance of 300 feet ahead, shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles subject to exceptions with respect to parked vehicles as hereinafter stated."[26]

Kathryn's garden-variety sled was not so equipped. The lower court's directed verdict was reversed and remanded for a new trial.

Conclusion. The legal analysis surrounding moving objects bearing human beings along public thoroughfares has clearly travelled a long way, and apparently has more miles to go. An inquiry into the nuances of lawnmower theft may seem unworthy of high court consideration. But to a defendant facing an additional year behind bars depending on whether a Craftsman, Toro or Deere is a "motor vehicle," the issue is hardly trivial. We look forward to the Washington Supreme Court's upcoming journey, even if it takes us through the weeds.

Notes

1. State v. Barnes, 196 Wn. App. 261 (Wa. Ct. App. 2016).
2. *Id. at 265.*
3. *Id. at 268.*
4. *Id. at 269.*
5. *Id. at 270.*
6. *Id. at 271.*
7. *Id.*
8. Revised Code of Washington 9A.04.020
9. *State v. Barnes*, *supra* note 1.
10. State v. Day, 96 Wn.2d 646 (1981)
11. State v. Barnes, 2017 Wash. LEXIS 279 (Wash. Mar. 8, 2017).
12. Harris v. State, 286 Ga. 245, 686 S.E.2d 777 (2009).
13. Ga. Code Ann. § 10-1-31(a)(4))
14. *Id.*
15. Deere & Co. v. Ford, 434 Mass. 223, 747 N.E.2d 1208 (2001),
16. Goldstein v. Grinnell Select Insurance Co., 2016 IL App (1st) 140317, ¶¶ 33-35; Stonger v. Riggs, 85 S.W.3d 703 (Mo. Ct. App. 2002).
17. In *Lee v. Mowett Sales Co.*, 76 N.C. App. 556, 334 S.E.2d 250 (1985), aff'd, 316 N.C. 489, 342 S.E.2d 882 (1986), a child sued a parent for injuries sustained from a riding lawn mower driven by her father. A North Carolina statute removed a parent's immunity from actions brought by a child arising out of the "operation of a motor vehicle" without defining "motor vehicle." The court held that riding lawnmowers were not included.
18. http://fox8.com/2013/09/28/man-riding-mower-busted-at-checkpoint/
19. N.Y. Daily News, July 22, 2015. http://www.nydailynews.com/news/crime/pa-man-busted-drunk-driving-lawnmower-article-1.2300957
20. Huffington Post, April 17, 2015. http://www.huffingtonpost.com/2015/04/17/michael-kimmel-drunk-driving-horse_n_7087950.html.
21. Moon v. Weeks, 25 Md. App. 322, 333 A.2d 635 (Md. App. 1975).
22. *Id. at 323.*
23. *Id. at 330.*
24. *Id. at 334.*
25. *Id. at 335.*
26. *Id. at 336.*

