State v. Doe, Docket No. 28947

Eleven-year-old Jane Doe became angry with her friend. Doe took the friend's bicycle and hid it near some bushes located behind the apartment complex where Doe and her friend lived. Sometime thereafter, the bicycle was stolen. The State filed a petition alleging that Doe operated a vehicle without the owner's consent.

An evidentiary hearing was held and, at the close of the State's evidence, Doe moved to dismiss the charge. Doe argued that the state had failed to meet its burden of proving that Doe operated the bicycle because there was no evidence that Doe actually rode the bicycle. The magistrate concluded that the term "operate," as used in Idaho Code Section 49-227, contemplated exercising dominion and control over the bicycle. The magistrate further concluded that Doe's act of moving the bicycle, regardless of whether she rode or pushed it, constituted the requisite dominion and control. Doe appeals, arguing that the bicycle is not a vehicle and that pushing the bicycle does not satisfy the statutory requirement of operating a vehicle.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	Supreme Court No. 28947
	)	
vs.	)	
	)	
JANE DOE,	)	
	)	
	)	
Defendant-Appellant.	)	
	)	

APPELLANT'S BRIEF

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada

HONORABLE D. **DUFF McKEE**

Presiding Judge

PRISCILLA NIELSON
Ada County Public Defender
200 W. Front, Suite 1107
Boise, Idaho 83702

ATTORNEY FOR DEFENDANT-APPELLANT

ALAN G. **LANCE**
Attorney General
Statehouse, Room 210
Boise, Idaho 83720

ATTORNEY FOR PLAINTIFF-RESPONDENT

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

TABLE OF CASES AND AUTHORITIES (CONTINUED)

Pages

CONSTITUTIONS, STATUTES AND RULES (cont.)

I. STATEMENT OF THE CASE

A. Nature of the Case

Eleven-year old Jane Doe was found to be within the purview of the Juvenile Corrections Act, Section 20-519, Idaho Code, because she violated Section 49-227, Idaho Code, **OPERATING A VEHICLE WITHOUT OWNERS CONSENT.** The gravamen of the offense was that Jane pushed a bicycle from point A to point B without the consent of the bicycle's owner.

B. Procedural History

On August 10, 2001, the State filed a Petition against 11-year old Jane Doe charging her with violating Section 49- 227, Idaho Code, **OPERATING A VEHICLE WITHOUT OWNERS CONSENT.** The Petition alleged that Jane "did operate a vehicle, to wit: a bicycle, the property of Amber Martin, without the consent of Amber Martin, and with the intent to temporarily deprive him/her of his/her possession of the vehicle." Jane filed a Motion to Dismiss, arguing that a bicycle is not a vehicle under Section 49-227, Idaho Code. After hearing argument on October 25, 2001, Judge Vehlow, Magistrate for the Juvenile Court, denied the motion. Trial started on November 20, 2001, and finished on November 29, 2001. At the close of the State's case, Jane again moved for a judgment of acquittal on the grounds that "pushing" a bicycle

did not amount to "operating" a vehicle as required by the statute. Again Jane's motion was denied. After hearing closing arguments, the judge found Jane operated a vehicle without the owner's consent in violation of Section 49-227, Idaho Code, and therefore fell within the purview of the Juvenile Corrections Act. Jane was sentenced on January 9, 2002. Notice of Appeal and a Motion to Stay Execution of Sentence and Payment of Restitution were filed on January 10, 2002. The District Court received briefs and on August 13, 2002, held in favor of the State, affirming the Juvenile Court's decision. Jane appeals from the District Court's order affirming the Juvenile Court's finding that she fell within the purview of the Juvenile Corrections Act.

C. Statement of Facts

Eleven-year old Jane Doe was a friend of 15-year old Amber Martin, the owner of the bicycle. The last time the two played together, a Friday evening in April of 2001, ended in hurt feelings. Amber lied to Jane and, according to the judge, engaged in "inappropriate behavior." (Tr., P. 135, 11. 3-8) Sometime that weekend Jane pushed Amber's bicycle across the grass to the back of the apartment complex where the girls lived. The judge specifically held that Jane moved the bicycle because she was mad at Amber. (Tr., P. 134, 11. 10-

11) Jane and her parents testified that Amber had left her bicycle outside the Doe apartment; Amber's mother insisted the bicycle was removed from the stairwell near the Martin apartment. Because the initial location of the bicycle was irrelevant to the resolution of the case, the judge did not determine this fact. (Tr., P. 134, 11. 2-4) Both parties, however, agree that the bicycle was left on the grass behind the apartment and that another unknown party stole the bicycle some time after Jane had moved it. Amber's father filed a criminal complaint against Jane for the missing bicycle. The Prosecutor filed a Petition alleging that Jane had violated Section 49-227, Idaho Code, the statute proscribing behavior known as "joyriding." After hearing the evidence, the Juvenile Court judge found Jane within the purview of the Juvenile Corrections Act. The District Court upheld the judge's ruling. Jane appeals from that decision.

II. ISSUES PRESENTED ON APPEAL

1. Did The Lower Courts Err In Holding That Moving A Bicycle Is A Crime?

2. Did The Lower Courts Err In Holding That The Joyriding Statute Applies To An Eleven-Year Old Who Pushes Her Friend's Bicycle Across The Back Yard Of An Apartment Complex?

STANDARD OF REVIEW

The interpretation of a statute is a question of law. *Hamilton v. Reeder Flying Service,* 135 Idaho 5687, 571, 21 P.3d 890 (2001). Questions of law are subject to free review by the appellate court. *Beard v. George,* 135 Idaho 685, 687, 23 P.3d 147 (2001). This court, therefore, is not bound by the findings of the lower courts and may draw its own de novo conclusions. *See Accomazzo v. CEDU Educational Services, Inc.,* 135Idaho 145, 147, 15 P.3d 1153 (2000).

III. ARGUMENT

A. The Lower Courts Erred In Holding That Moving A Bicycle Is A Crime.

Moving a bicycle from Point A to Point B is not a crime. The facts in this case are undisputed: eleven-year old Jane Doe pushed another's bicycle across the back yard of her apartment complex without the owner's consent. Jane did not intend to permanently deprive the owner of the bicycle, therefore theft charges are not appropriate. Jane did not damage the bicycle, therefore the crime of Malicious Injury To Property is not appropriate.

The moving of property is generally not a crime; the one exception is the Joyriding Statute, which requires the actual **operation,** not just the taking, of the vehicle. For example, if a tow truck operator mistakenly tows away a car without the

intent to steal the car, he is not guilty of joyriding or any other crime. A person who lifts a snowmobile onto a trailer and hauls it behind a truck is not guilty of joyriding. A person who drags a hot air balloon across the ground has moved a Section 49-227 vehicle, but has not operated the balloon and is not guilty of joyriding.

These analogies apply in the case at bar. Jane's moving the bicycle to another location is not a crime. Furthermore, it doesn't matter how the property is moved. If Jane's father had picked up the bicycle and moved it to the same place Jane left it, he would not be subject to criminal sanctions. Therefore, the fact that Jane's size forced her to push the bicycle, rather than lift it, is irrelevant. If Jane had placed the bicycle on a sled and dragged it over the ground, joyriding would not apply. The mere act of moving a bicycle, without either intending to permanently deprive the owner or actually damaging the bicycle, is not a crime.

B. The Lower Courts Erred In Holding That The Joyriding Statute Applies To An Eleven Year Old Who Pushes A Bicycle Across The Backyard.

The State argues that the Joyriding Statute, Section 49-227, Idaho Code, applies to Jane's actions. The Joyriding Statute criminalizes the operation of a vehicle without the owner's consent. There are two problems with the State's

position: (1) a bicycle is not a vehicle for purposes of the statute, and (2) pushing a bicycle does not satisfy the statutory requirement of "operating."

A Bicycle Is Not A Vehicle For Purposes Of The Joyriding Statute.

The Joyriding Statute states in part:

> Any person who shall operate a vehicle, not his own, without the consent of the owner, and with intent temporarily to deprive the owner of his possession of such vehicle, without intent to steal the vehicle, shall be guilty of a misdemeanor. For the purpose of this section vehicle shall include, but is not limited to vehicles defined in Section 49-123, Idaho Code, boats, airplanes, snowmobiles, three and four wheel all terrain vehicles, hot air balloons, hang gliders, jet skis and motorcycles.

Section 49-227, Idaho Code.

The Joyriding Statute specifically includes as vehicles "boats, airplanes, snowmobiles, three and four wheel all terrain vehicles, hot air balloons, hang gliders, jet skis and motorcycles;" it does not mention bicycles in the list.

The Joyriding Statute also incorporates the general definition of vehicle found in Section 49-123(2)(a)

> Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

Case law is not helpful in interpreting the definition of vehicle as all previous cases were decided under a statute that excluded human power devices but specifically included bicycles and ridden animals. *Turner v. Purdum,* 77 Idaho 130, 139, 289 P.2d 608 (1955), *overruled on other grounds, Schaub v. Linehan,* 92 Idaho 332, 442 P.2d 742 (1968) (a potato digger is not a vehicle because it is "an implement of husbandry not an instrumentality for transporting persons or things from place to place"); *Jackman v. Hamersley,* 72 Idaho 301, 304, 240 P.2d 829 (1952)(a dog drawn wagon was not a vehicle); *Franklin v. Wooters,* 55 Idaho 619, 622, 45 P.2d 804 (1935) (a push cart was not a vehicle). The issue in these cases was whether the putative "vehicle" needed to be equipped with lights, not whether the Joyriding Statute applied.

In interpreting the definition of vehicle for the purposes of the Joyriding Statute, one must first look at "the literal words of the statute, giving the language its plain, obvious and rational meanings." *In ternat' 1 Ass' n. of Firefighters, Local No. 672 v. Boise City,* 136 Id. 162, 169-70, 30 P.3d 940 *(Id.* 2001). The "plain, obvious and rational meaning" of the Joyriding Statute does not include a child's bicycle. Such an interpretation would criminalize children's squabbles: every

time a child rode another's bicycle would subject the unauthorized rider to criminal sanctions.

The legislative history indicates that the legislature never contemplated including bicycles as vehicles for the purpose of the Joyriding Statute. The statute was originally passed in 1927 as part of the UNIFORM ACT REGULATING THE OPERATION OF *MOTOR* VEHICLES. 1927 Sess. Laws, ch. 244, sec. 219 (emphasis added); *see* Message of Gov. H.C. Baldridge, Journal of the House of Representatives, 19th Sess., p. 12. Significantly, the original statute used the verb "drive," instead of "operate." One does not "drive" a bicycle. Furthermore, the original 1927 definition of "vehicle" specifically excluded "devices moved by human power." 1927 Sess. Laws, Ch. 244, Sec. l(a), p. 375. Therefore, because the original Joyriding Statute was part of the *MOTOR* vehicle act, used the verb "drive," and specifically excluded human-powered devices such as bicycles, the Idaho legislature clearly did not intend the original Joyriding Statute to apply to bicycles.

The Joyriding Statute was recodified and amended in 198 8, the same time the legislature added a definition of "bicycle" to the Idaho Code and removed the exception language pertaining to human-powered devices from the definition of vehicle. 1988 Sess. Laws, Ch. 265, Sec. 2, pp. 552, 569-70. However, this

removal of the human-powered exception from the original definition of vehicle is not enough to trigger inclusion of bicycles in the Joyriding Statute. If the Idaho Legislature had intended bicycles to be included in the Joyriding Statute, it would have changed the statutory heading from "Driving Vehicle Without Owner's Consent" to "Operating Vehicle Without Owner's Consent." Although the 1988 legislature amended the language of the Joyriding Statute, specifically removing the archaic legalese "said" and "thereof," it did not change the verb "driving." 1988 Sess. Laws, Ch. 2645, Sec. 21, p. 584. After the 1988 recodification the statute still required the **driving** of a vehicle as a predicate for the crime of joyriding. Because one does not "drive" a bicycle, bicycles were not included as vehicles subject to the Joyriding Statute in 1988.

The verb "drive" was replaced by the more general "operate" in 1992. That replacement, however, did not relate to the inclusion of bicycles, but rather was intended "to provide the crime of operat ng a vehicle without the owner's consent and to redefine the term vehicle to include boats, airplanes, snowmobiles, three and four wheel all terrain vehicles, hot air balloons, hang gliders, jet skis and motorcycles for the purpose of the section." 1992 Sess. Laws, Ch. 75, Preamble, p. 213. According to the Idaho Supreme Court, "when the legislature

enacts an amendment to an existing statute, it has done so to clarify, strengthen or make a change to an existing statute." *State v. Barnes*, 133 Idaho 378, 384, 987 P.2d 290 (1999). In this situation, the legislature clearly intended to expand the scope of the Joyriding Statute to include other vehicles that are not "transported or drawn upon a highway" as required by the general definition of vehicle in Sec. 49-123 (2) (a), Idaho Code. Boats, airplanes, hot air balloons, hang gliders and jet skis are all vehicles that are potentially dangerous to the community if an unauthorized person were to operate them. Public safety, therefore, demands that such vehicles be included in the Joyriding Statute. The inclusion of hot air balloons and hang gliders necessitated changing the verb to the more general "operate," as one does not "drive" hot air balloons or hang gliders.

The 1992 amendment is a clarification of the scope of the Joyriding Statute: the legislature intended the statute to include vehicles that are inherently dangerous. The enumerated vehicles, "boats, airplanes, snowmobiles, three and four wheel all terrain vehicles, hot air balloons, hang gliders, jet skis and motorcycles," all require learned skill and maturity to operate safely. In every case unauthorized use of such vehicles could seriously jeopardize the safety of both the public and the

operator. Bicycles, human powered devices routinely used by children, are not in the same category as the motorized vehicles, hot air balloons, or hang gliders listed in Section 49-227.

If bicycles were intended to be included under the Joyriding Statute, then the legislature would have specifically included bicycles in the Section 49-227 list, which it did not. The legislature was aware of bicycles, motorcycles and all terrain vehicles when it amended the Joyriding Statute in 1992. All three types of vehicles are defined in Title 49. Section 49-102(10) (definition of "all terrain vehicle"); Section 49- 103(1) (definition of "bicycle") ; Section 49-114 (9) (definition of "motorcycle"). But only the two more dangerous types of vehicles motorcycles and all terrain vehicles were specifically included in the 1992 list with boats, airplanes, hot air balloons and hang gliders. This silence regarding bicycles indicates that the legislature did not intend to expand the scope of the Joyriding Statute to include bicycles.

The 1992 amendment highlights the policy behind the Joyriding Statute. Vehicles enumerated by Section 49-227 are all attractive nuisances that if operated by someone not familiar with the vehicle could result in a potentially dangerous situation. The State has an interest in limiting the

operation of such potentially dangerous vehicles to only those who are responsible, *i.e.*, the owners or those whom the owners trust. Without a statute similar to Section 49-227, the State has no recourse against the impulsive joy rider who only wants to "try out" the car, the snowmobile, the jet skis, the motorcycle, the glider, the hot air balloon or any other equally risky vehicle.

Bicycles, especially children's bicycles, do not pose the same threat to the peace and welfare of society as do the vehicles enumerated in Section 49-227. Any child physically mature enough to balance on two wheels and pedal can operate a bicycle. There is nothing inherently dangerous about bicycles that would necessitate the State to promulgate a law criminalizing their unauthorized use. Indeed, the one place where the legislature addressed the status of bicycles is entitled "Pedestrians and Bicycles." Title 49, Chapter 7, Idaho Code. In other words, the legislature equated bicycles with pedestrians, not with motorized vehicles subject to joyriding. Because the legislature never intended to include bicycles as a vehicle for purposes of the Joyriding Statute, Jane has not committed a crime by moving her friend's bicycle.

Pushing A Bicycle Is Not Operating A Vehicle

The Joyriding Statute also requires the **operation** of the vehicle. Jane's actions of pushing the bicycle across the grass do not satisfy the statutory requirement of "operate." "Operate" does not include the concept of "pushing." "Operate" entails the idea of running the itern as intended, of actively taking steps to do something more than merely relocating the immobile item from one place to another.

Each of the vehicles specifically listed in Section 49-227 requires an affirmative action to operate the vehicle. In the case of motorized vehicles the operator must assert his control over the vehicle by inserting the key, causing the engine to start, then controlling the direction, speed, and destination of the vehicle. In the case of the gliders and hot air balloons, the operator again must take affirmative action to propel the vehicle into the movement for which it was intended, *e.g.,* heating up the hot air balloon then releasing the guide wires or launching the glider then steering it through the thermals.

If one has not taken the predicate steps of setting the vehicle in action, then one cannot be considered to be "operating" the vehicle. The best example of this point involves the motorcycle. Operation of a motorcycle requires the insertion of the key, the ignition of the engine, then the

steering of the vehicle. Merely pushing the motorcycle from one place to another is moving, not operating, the vehicle. The mere moving of a proscribed vehicle without the owner's consent is not tantamount to joyriding.

This analogy applies to the pushing of the bicycle. "Pushing" a bicycle, like the pushing of a motorcycle, is not considered "operating" it. To "operate" a bicycle, one must be balanced on the bicycle, be in control of its steering, and be propelling it forward, either by pedaling or by coasting after one has pedaled. The mere moving of the child's bicycle does not constitute operation.

The policy inherent in the Joyriding Statute requires the use of the vehicle in the manner for which it was intended to be used. The drafters of the Model Penal Code noted that joyriding is the taking of another's automobile without his permission, not for the purpose of keeping it but merely to drive it briefly. Such joyriding jeopardizes the vehicle itself, a considerable amount of temptingly mobile property, and, since the circumstances are conducive to irresponsible behavior in the operation of the vehicle, jeopardizes the lives of the riders and others.

Model Penal Code and Commentaries, Sec. 223.9 at 271 (1980). The purpose of the Joyriding Statute is to proscribe the use of the vehicle, not the mere moving of the property.

Because the intent of the Joyriding Statute is to prohibit the operation of the vehicle, the actions proscribed should at the very least involve operating the vehicle as it was intended to be used. One uses a bicycle by riding it, by pedaling it, by sitting on it and coasting along. One does not "operate" a bicycle by merely pushing it over a grassy back yard. Jane did not operate the bicycle; therefore the Joyriding Statute does not apply to these facts.

IV. CONCLUSION

In conclusion, the issue is whether the pushing of a bicycle across the back yard is a crime. The mere moving of a bicycle from point A to point Bis not a crime. The Joyriding Statute does not apply to these facts because (1) a bicycle is not a vehicle for purposes of the Joyriding Statute, and (2) "pushing" a bicycle across a private lawn is not "operating." Accordingly, the judgment should be reversed and this court should hold that Jane is not under the purview of the Juvenile Corrections Act.

DATED This :2 day of November, 2002.

PRISCILLA NIELSON
Attorney for Appellant

V. CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on **this;JU** day of November, 2002, I mailed a true and correct copy of the foregoing, **APPELLANT'S BRIEF** to:

ALAN G. LANCE
ATTORNEY GENERAL
STATEHOUSE ROOM 210
BOISE IDAHO 83720

By depositing the same in Interdepartmental Mail.

Stephanie Martinez

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	Supreme Court No. 28947
	)	
vs.	)	
	)	
JANE DOE,	)	
	)	
	)	
Defendant-Appellant.	)	
	)	

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada

HONORABLE D. **DUFF McKEE**

Presiding Judge

PRISCILLA H. NIELSON
Ada County Public Defender
200 W. Front, Suite 1107
Boise, Idaho 83702

ATTORNEY FOR DEFENDANT-APPELLANT

LAWRENCE G. WASDEN
Attorney General
Statehouse, Room 210
Boise, Idaho 83720

ATTORNEY FOR PLAINTIFF-RESPONDENT

The State makes two arguments: (1) bicycles are vehicles under the "plain language" of the joyriding statute; and (2) mere control satisfies the requirement of "operating" for the purposes of the joyriding statute. In making these arguments the State ignores the common sense meaning of the joyriding statute, the legislative history, and the intent of the legislature.

1. Bicycles Are Not Vehicles Under The Plain Language Of The Joyriding Statute.

Common sense clearly dictates that the Idaho joyriding statute does not apply to an 11-year old child pushing a bicycle across the back yard. The State, however, argues otherwise. It bases its argument not on the language of the joyriding statute, but on the statutory definitions of "vehicle" and "bicycle."

The crux of the State's ,argument is Sec. 49-123(2)(a), the definition of "vehicle," which states in relevant part "every device in, upon, or by which any person or property is or may be transported or drawn upon a highway." In defining "vehicle" for the purposes of the joyriding statute, the State relies on an overly broad interpretation. Under the State's analysis a baby stroller is a vehicle because it is a "device in . which any person may be transported upon a highway." Yet if Jane had moved a baby stroller instead of a bicycle, no one would

seriously argue that the crime of joyriding had been committed. Horse drawn buggies, hay wagons, tricycles, even a child's little red wagon all meet the technical definition of "vehicle," yet clearly the temporary removal of any one of those items is not joyriding.

The State also relies on the use of the word "vehicle" in the statutory definition of "bicycle." I.C. Sec. 49-103(1). The State conveniently ignores the legislature's placement of bicycles in the same category as pedestrians in Chapter 7. Clearly, the determination of whether a bicycle is a vehicle for purposes of the joyriding statute is not as "plain and unambiguous" as the State contends.

Therefore, contrary to the State's assertion, it is appropriate to look at the legislative history and intent. As discussed in the Appellant's Brief, the legislative history, the intent of the legislature, and the common sense meaning of the joyriding statute, all indicate that bicycles were never intended to be vehicles for purposes of the joyriding statute. (See *Appellant's Brief,* pp. 7-12)

2. Mere Control Is Not Operating Under The Joyriding Statute.

The State argues that "operating a vehicle" for purposes of the joyriding statute is satisfied by a mere showing of control.

According to the State, to find otherwise would give the joyriding statute an "unduly narrow meaning." *(Respondent's Brief,* p. 4) But this position ignores the purpose of the joyriding statute. Idaho Code Sec. 49-227 requires more than the temporary deprivation of the owner of his property; the vehicle must be operated. For example, the individual who stores another's car without the owner's consent and with the intent to temporarily deprive the owner of the use of the car is not guilty of joyriding. To be guilty of joyriding, one must operate the vehicle.

The State also cites the Title 49 definition of "operator" in support of its position. That definition, however, only applies to motor vehicles, not bicycles. Furthermore, even if this court were to use the definition by analogy, it still would not apply to the current facts. The Title 49 definition of "operator" only applies to those who are in "actual control of a motor vehicle upon a ***highway or private property open to pub1ic use."*** I.C. Sec. 49-116(1) (emphasis added). Jane pushed the bicycle across the private back yard, which is not open to public use.

CONCLUSION

The State's interpretation of the statute ignores the legislative intent in proscribing joyriding. The purpose is not to criminalize the temporary deprivation of another's property; there is no general crime of "criminal borrowing." Rather the danger of joyriding to society is the actual operation of the vehicle in question. The legislature made this clear by its use of the verb "drive" when the joyriding statute was first enacted, then later by the use of the verb "operate" when it amended the statute to include hot air balloons and jet skis. *(See Appellant's Brief,* pp. 9-13) Accordingly, the Defendant respectfully requests this Court to reverse the magistrate's finding and hold that Jane is not under the purview of the Juvenile Corrections Act.

DATED This 1 day March, 2003.

PRISCILLA H. NIELSON
Attorney for Appellant

CERTIFICATE OF MAILING

I **HEREBY CERTIFY,** That on the 7th day of March, 2003, I mailed a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF,** to:

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATEHOUSE ROOM 210
BOISE IDAHO 83720

by depositing the same in the Interdepartmental Mail.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	
	)	
vs.	)	**NO. 28947**
	)	
JANE DOE,	)	
	)	
Defendant-Appellant.	)	
_____	)	

_____

BRIEF OF RESPONDENT

_____

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

_____

HONORABLE DUFF D. MCKEE
District Judge

_____

LAWRENCE G. WASDEN
Attorney General
State of Idaho

MICHAEL A. HENDERSON
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

PRISCILLA NIELSON
Ada County Public Defender
200 W. Front St. Ste 1107
Boise, Idaho 83702

ATTORNEY FOR
DEFENDANT-APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF THE CASE

Nature of the Case

Jane Doe appeals from the district court's appellate ruling affirming her juvenile adjudication for the misdemeanor charge of operating a vehicle without the consent of the owner.

Statement of the Facts and Course of the Proceedings

Doe, angry at her friend Amber Martin, moved Amber's bike from the stairwell of Amber's apartment to a field by a canal. (Tr., p. 21, L. 25 – p. 32, L. 11.) Despite looking where Doe told her she had placed the bike, Amber never recovered it. (Tr., p. 11, Ls. 18-23.) The state filed a juvenile petition for the misdemeanor of operating a vehicle without the owner's consent. (R., pp. 5-6.) Following trial, the magistrate judge found Doe under the purview of the Juvenile Corrections Act. (Tr., p. 133, L. 10 – p. 135, L. 25; R., pp. 43-45.)

Doe appealed to the district court, which affirmed. (R., pp. 50-51, 58-59.) Doe appealed that decision. (R., pp. 61-66.)

ISSUE

Doe states the issue on appeal as:

1. Did The Lower Courts Err In Holding That Moving A Bicycle Is A Crime?

2. Did The Lower Courts Err In Holding That The Joyriding Statute Applies To An Eleven-Year Old Who Pushes Her Friend's Bicycle Across The Back Yard Of An Apartment Complex?

(Appellant's Brief, p. 4.)

The state rephrases the issue as:

Did Doe's act of moving Amber's bicycle to a place to, at least temporarily, deprive her of it fall within the legal definition of operating a vehicle without the owner's consent?

ARGUMENT

Doe's Act Of Moving The Bicycle To Deprive The Owner Of It Falls Within The Ambit Of Operating A Vehicle Without The Owner's Consent

A. Introduction

The juvenile court found Doe under the purview of the Juvenile Corrections Act for operating a vehicle without the owner's consent, and the district court affirmed. Doe contends that she did not commit this offense, arguing that a bicycle is not a "vehicle" and that, because the state did not provide evidence that she rode or pedaled the bicycle, she did not "operate" it. (Appellant's Brief, pp. 5-16.) A review of the applicable law, however, shows that Doe's conduct falls within the scope of the statute.

B. Standard of Review

Questions of statutory interpretation are given free review. State v. Gibson, 126 Idaho 256, 256-57, 881 P.2d 551, 551-52 (Ct. App. 1994).

C. Doe's Act Of Moving A Bicycle Without The Owner's Permission To Temporarily Deprive The Owner Of The Bicycle Falls Within The Scope Of I.C. § 49-227

It is a well-established principle of statutory interpretation that "the clearly expressed intent of the legislature must be given effect, thus leaving no occasion for construction where the language of a statute is plain and unambiguous." State v. McCoy, 128 Idaho 362, 365, 913 P.2d 578, 581 (1996) (citations omitted). The statute here in question makes it a misdemeanor to "operate a vehicle" without the consent of the owner with the intent to temporarily deprive the owner of the vehicle. "Vehicle" is defined to include, but is not limited to, the

definition of that term found in I.C. § 49-123. I.C. § 49-227. The definition of vehicle found in section 49-123 is: "Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway." I.C. § 49-123(2)(a).

The plain language of the statute makes I.C. § 49-227 applicable to Doe's conduct. A bicycle is a device upon which a person may be transported on a highway. "Bicycle" is defined under the code as "every vehicle propelled exclusively by human power upon which any person may ride, having two (2) tandem wheels . . .." I.C. § 49-103(1) (emphasis added). A bicycle is therefore a vehicle for purposes of I.C. § 49-227.

Likewise, Doe's argument that there is no evidence she operated the vehicle is without merit. She first assumes that the evidence showed she pushed the bike – but the trier of fact was not obliged to accept her testimony. Even if she pushed the bike she operated it. The statute requires intent to temporarily deprive the owner of use, which is certainly present here. Doe's reading of the statute, that one must deprive the owner of the bicycle by specifically getting on the seat and using the pedals to propel it, gives the word "operate" an unduly narrow meaning not intended in the language of the statute. Title 49 defines "operator" as "every person who is in actual control of a motor vehicle upon a highway or private property open to public use." I.C. § 49-116(1). Although not on point, this definition shows that the legislature intended operation to indicate control, not merely a limited type of use.

The facts of this case are that Doe took control of the bicycle, taking it to an area and abandoning it with intent to at least temporarily deprive its owner of its use. This exercise of control was to "operate," and a bicycle is a "vehicle" for purpose of the statute. Doe was thus properly found to have violated the prohibition against operating a vehicle without the owner's consent.

CONCLUSION

The state respectfully requests this Court to affirm the magistrate court's finding that Doe is within the purview of the Juvenile Corrections Act.

DATED this 18th day of February, 2003.

_____
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of February, 2003, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

PRISCILLA NIELSON
ADA COUNTY PUBLIC DEFENDER
200 W. FRONT ST. SUITE 1107
BOISE, ID 83702

_____
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/km