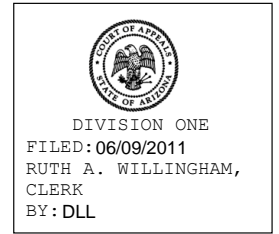


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 10-0769
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
STEVEN ALLEN LEWIS,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-108658-001SE

The Honorable Kristin C. Hoffman, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Barbara A. Bailey, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Margaret M. Green, Deputy Public Defender
Attorneys for Appellant

B A R K E R, Judge

¶1 Steven Allen Lewis ("Lewis") was charged by information with theft of means of transportation and attempt to traffic in stolen property stemming from the theft and attempted sale of a dune buggy. A jury found Lewis guilty as charged and further found the offenses were committed for pecuniary gain and while on release. At sentencing, Lewis admitted to three prior felony convictions, and the trial court sentenced him as a repetitive offender to concurrent presumptive terms of imprisonment of 8.5 years on the theft charge and 6.5 years on the trafficking charge. Lewis timely appealed. We have jurisdiction under Article VI, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and 13-4033(A)(2010).

¶2 Lewis argues that the trial court erred in denying his motion for judgment of acquittal on the charge of theft of means of transportation. Specifically, Lewis contends the State failed to prove that the stolen dune buggy was a "vehicle" under Arizona law. We review a trial court's denial of a motion for judgment of acquittal for an abuse of discretion. *State v. McCurdy*, 216 Ariz. 567, 573, ¶ 14, 169 P.3d 931, 937 (App. 2007). We review issues of statutory interpretation *de novo*. *State v. Peek*, 219 Ariz. 182, 183, ¶ 6, 195 P.3d 641, 642 (2008).

¶13 Reversible error based on insufficiency of evidence occurs only if there is a complete absence of substantial evidence to support the conviction. *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996); see also Ariz. R. Crim. P. 20(a) (requiring trial court to enter judgment of acquittal "if there is no substantial evidence to warrant a conviction"). "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). In reviewing a claim of insufficient evidence, we construe the evidence in the light most favorable to sustaining the verdicts and resolve all reasonable inferences against the defendant. *State v. Greene*, 192 Ariz. 431, 436, ¶ 12, 967 P.2d 106, 111 (1998).

¶14 A person commits the offense of theft of means of transportation if that person knowingly, and without lawful authority, "[c]ontrols another person's means of transportation knowing or having reason to know that the property is stolen." A.R.S. § 13-1814(A)(5) (2010).¹ "Means of transportation" is defined as "any vehicle." A.R.S. § 13-1801(A)(9). A "vehicle"

¹ We apply the substantive law in effect when the offense was committed. See A.R.S. § 1-246 (2002); *State v. Newton*, 200 Ariz. 1, 2, ¶ 3, 21 P.3d 387, 388 (2001). Absent material revisions after the date of an offense, we cite the statute's current version.

is in turn defined as "a device in, upon or by which any person or property is, may be or could have been transported or drawn upon a highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks." A.R.S. § 13-105(40).

¶15 In construing a statute, "our analysis begins and ends with its plain language if it is unambiguous." *State v. Streck*, 221 Ariz. 306, 307, ¶ 7, 211 P.3d 1290, 1291 (App. 2009). In *Streck*, we held a tractor clearly falls within the definition of "vehicle." *Id.* at 308, ¶ 8, 211 P.3d at 1292. Prior to *Streck*, we concluded this definition also "clearly includes golf carts." *In re Adam P.*, 201 Ariz. 289, 291, ¶ 10, 34 P.3d 398, 400 (App. 2001). Like both a tractor and a golf cart, a dune buggy is a motorized device that can transport a person. And though dune buggies, like tractors and golf carts, are designed for off-road use, they can and have been driven on highways. *See, e.g. Spelbring v. Pinal Cnty.*, 135 Ariz. 493, 494, 662 P.2d 458, 459 (App. 1983) (involving dune buggy accident on county road). As we observed in *Streck*, "nothing in the statutory definition suggests § 13-105(40) applies only to vehicles regularly traveling on highways and subject to the same regulations as automobiles." 221 Ariz. at 308, ¶ 8, 211 P.3d at 1292.

¶16 The evidence at trial was more than sufficient to permit the jury to find that the stolen dune buggy met the

statutory definition of a vehicle. The victim testified his dune buggy was a home built two-seater sandrail dune buggy valued at approximately \$6,000. It had a frame, four tires, engine, transmission, starter switch, head lights, tail lights, battery, shocks, carburetor, floor board, brake and gas pedals, fuel tank, oil tank, and fuel and oil gauges. The victim further testified that the dune buggy was running and drivable when it was stolen. Although there was no specific testimony that the dune buggy had been driven on a highway, the jury could easily conclude from the evidence it is a self-propelled device capable of transporting a person on a highway.

¶7 Contrary to Lewis's contention, the absence of proof that the victim had driven or intended to drive the dune buggy on a highway is immaterial. The definition of "vehicle" does not turn on what the owner or operator does or intends to do with the device; the issue is simply whether the device is capable of transporting a person or property upon a highway, waterway or airway. See A.R.S. § 13-105(40) (defining vehicle as device in or upon which a person "is, may be or could have been transported or drawn upon a highway"). There is no merit to Lewis's argument that construing the definition of "vehicle" in this manner will lead to absurd results such as a sled, skateboard, Radio Flyer wagon, baby buggy, or rollerblades being considered vehicles because they could be used to transport

people down the highway. All these devices are expressly excluded from the definition of "vehicle" by the unambiguous language in A.R.S. § 13-105(40) excepting "devices moved by human power."

¶18 We likewise reject Lewis's argument that a dune buggy should not be considered a "vehicle" because it fits the definition of an "off-road recreational vehicle." An "off-road recreational vehicle" is defined as "a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway." A.R.S. § 28-101(38) (Supp. 2010). Lewis is correct that a dune buggy is an "off road recreational vehicle" when it is not being "operated on a public highway." This definition, however, does not preclude operation on a highway. See A.R.S. § 28-2153(9)-(11) (Supp. 2010) (authorizing use of unregistered "all-terrain vehicle" or "off-road recreational motor vehicle" on highway in limited circumstances). Indeed, the phrase "designed *primarily* for recreational nonhighway all-terrain travel" in defining this type of vehicle clearly contemplates the possibility of uses other than nonhighway all-terrain travel. A.R.S. § 28-101(38) (emphasis added).

¶19 Moreover, Lewis's argument totally ignores that, by definition, an "off road recreational vehicle" is a "motor vehicle." Lewis fails to explain how either legally or

logically a dune buggy can be a "motor vehicle" yet not be a "vehicle." See A.R.S. § 28-101(33) (defining "motor vehicle" as a "self-propelled vehicle" with the only exceptions being "a motorized wheelchair, an electric personal assistive mobility device or a motorized skateboard").

¶10 There was no error by the trial court in denying the motion for judgment of acquittal on the charge of theft of means of transportation. Accordingly, we affirm the convictions and sentences.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

PATRICIA K. NORRIS, Judge