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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1101**

State of Minnesota,
Respondent,

vs.

Joel Grant Waldron,
Appellant

**Filed May 7, 2018
Reversed
Worke, Judge**

Sherburne County District Court
File No. 71-CR-15-1719

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

John J. Leunig, Justin J. Duffy, The Law Office of John J. Leunig, Bloomington, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the evidence was insufficient to sustain his driving while intoxicated (DWI) conviction because operating an all-terrain vehicle (ATV) is specifically exempted from criminal liability under the charged statutes. We reverse.

FACTS

On November 1, 2015, police responded to a call that a person who had been operating an ATV was lying in the roadway and had possibly sustained a head injury. A deputy observed a man with a head injury lying on the ground. The man, later identified as appellant Joel Grant Waldron, had “an odor of an alcoholic beverage” coming from him.

Waldron was charged with two counts of DWI, in violation of Minn. Stat. § 169A.20, subds. 1(1), 1(5) (2014). At trial, the state presented evidence that Waldron operated an ATV while intoxicated. The jury found Waldron guilty as charged. Waldron moved to vacate the verdicts, arguing that there was insufficient evidence to sustain them. The district court denied Waldron’s motion and convicted him only of count II. This appeal followed.

DECISION

Waldron argues that there is insufficient evidence to sustain his DWI conviction because operating an ATV is exempted from criminal liability under the charged statutes.¹

¹ After briefs and arguments were presented to this court, the state conceded that the evidence was insufficient to sustain Waldron’s conviction and agreed that his conviction should be reversed. Although the state now agrees with Waldron, we will still conduct an independent inquiry. See *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990)

Here, the meaning of the relevant statutes is “intertwined with the issue of whether the [s]tate proved beyond a reasonable doubt that [Waldron] violated the statute[s].” *See State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). In *Vasko*, the supreme court noted that “the court of appeals had to determine what the ordinance prohibited before it could determine whether the [s]tate had proven a violation.” *Id.* The same is true here; we must interpret the relevant statutes before addressing whether the state presented sufficient evidence to sustain the conviction.

This court reviews questions of statutory interpretation de novo. *Id.* When interpreting a statute, this court “give[s] words and phrases their plain and ordinary meaning.” *State v. Nelson*, 842 N.W.2d 433, 436 (Minn. 2014) (quotation omitted). If a statute is unambiguous, then this court applies its plain meaning. *Vasko*, 889 N.W.2d at 556. If the statute is susceptible to more than one reasonable interpretation, then it is ambiguous, and this court may apply canons of statutory construction to discern its meaning. *Id.*

Waldron was charged with two counts of DWI: one count under Minn. Stat. § 169A.20, subd. 1(1) and one count under Minn. Stat. § 169A.20, subd. 1(5). For both counts, it is “a crime for any person to drive, operate, or be in physical control of any motor vehicle, as defined in section 169A.03, subdivision 15, *except for motorboats in operation and off-road recreational vehicles*,” while intoxicated. Minn. Stat. § 169A.20, subd. 1 (emphasis added). “Off-road recreational vehicle” is defined to include an “*all-terrain*

(noting that it is the responsibility of an appellate court to decide cases in accordance with the law regardless of whether a party chooses to contest an issue).

vehicle as defined in section 84.92, subdivision 8.” Minn. Stat. § 169A.03, subd. 16 (2014) (emphasis added). There is no dispute that Waldron operated an ATV.

Section 169A.20, subdivision 1 unambiguously exempts operation of an off-road recreational vehicle, including an ATV, from criminal liability. This reading of the statute is bolstered by section 169A.20, subdivision 1b (2014), which independently makes it “a crime for any person to operate or be in physical control of a[n] . . . [ATV] as defined in section 84.92, subdivision 8,” while intoxicated.

Having determined what section 169A.20, subdivision 1 prohibits, this court next considers whether the state presented sufficient evidence to prove that Waldron violated that statute. See *Vasko*, 889 N.W.2d at 558 (“Having determined what the ordinance prohibits, we now consider whether the [s]tate presented sufficient evidence to prove that Vasko violated [it].”). To evaluate a claim of insufficient evidence, we review the record “to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict.” *State v. Hayes*, 826 N.W.2d 799, 805 (Minn. 2013) (quotation omitted). This court assumes that “the jury believed the [s]tate’s witnesses and disbelieved any evidence to the contrary.” *Id.*

To prove that Waldron was guilty of the charged offenses, the state needed to prove beyond a reasonable doubt that he operated a motor vehicle that was not a motorboat in operation or an off-road recreational vehicle while intoxicated. One of Waldron’s sons testified that his father was operating an ATV when he crashed. Consistently, throughout the trial, the vehicle was identified as an ATV. During closing argument, the state argued

that Waldron “actually was on that ATV, that motor vehicle, that off-road vehicle. He sat on it, he started it, he drove it down the driveway.” Because operating an ATV while intoxicated cannot form the basis for a conviction under section 169A.20, subdivisions 1(1) or 1(5), we conclude that there was insufficient evidence to conclude that Waldron violated those statutes.

The state argues that double jeopardy does not preclude a new trial. We decline to address this argument because it is not ripe for review. *See In re Civil Commitment of Travis*, 767 N.W.2d 52, 58 (Minn. App. 2009) (stating that “[i]f an issue involves only a hypothetical possibility, then the issue is not justiciable”).

Reversed.