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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2075**

State of Minnesota,
Respondent,

vs.

Brian Lee Larson,
Appellant.

**Filed September 23, 2019
Affirmed
Klaphake, Judge***

Carlton County District Court
File No. 09-CR-17-1803

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Lauri A. Ketola, Carlton County Attorney, Alexander W. Saumer, Assistant County
Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Klaphake,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Brian Lee Larson challenges the sufficiency of the evidence to support his conviction for driving while impaired. He argues that his motorized, three-wheeled bicycle does not meet the statutory definition of “motor vehicle.” Because his motorized bicycle is a “motor vehicle” under Minn. Stat. § 169A.03, subd. 15 (2016), we affirm Larson’s conviction for driving while intoxicated.

DECISION

In this direct appeal from final judgment of conviction and sentence for driving while impaired (DWI), Larson argues that his conviction must be reversed because the state’s evidence showed that he was riding a bicycle and not driving a motor vehicle while he was intoxicated.

Larson argues that the state failed to prove beyond a reasonable doubt that he operated a motor vehicle when riding his three-wheeled, motorized bicycle. “Because the meaning of a criminal statute is intertwined with the issue of whether the State proved beyond a reasonable doubt that the defendant violated the statute, it is often necessary to interpret a criminal statute when evaluating an insufficiency-of-the-evidence claim.” *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). We review statutory-interpretation issues de novo. *Id.*

To determine whether the state proved beyond a reasonable doubt that Larson drove while impaired, we must first construe the relevant statutes. The first step is to “examine the language of the statute to determine if it is ambiguous.” *Dupey v. State*, 868 N.W.2d

36, 39 (Minn. 2015). “A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). “Basic canons of statutory construction instruct that we are to construe words and phrases according to their plain and ordinary meaning.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). This court reads and construes “a statute as a whole and must interpret each section in light of the surrounding sections to avoid conflicting interpretations.” *Id.* Ultimately, “our goal is to ascertain and effectuate the intention of the legislature.” *Id.* at 278. “Where the legislature’s intent is clearly discernible from plain and unambiguous language, statutory construction is neither necessary nor permitted and we apply the statute’s plain meaning.” *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007).

The DWI statutes provide:

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, within the state or on any boundary of water of this state when:

(1) the person is under the influence of alcohol

Minn. Stat. § 169A.20, subd. 1 (2016). Section 169A.03, subd. 15 defines “motor vehicle” as “every vehicle that is self-propelled The term includes motorboats in operation and off-road recreational vehicles, but does not include a vehicle moved solely by human power.” The DWI definitions point to chapter 169 for the definition of a “vehicle”: “every device in, upon, or by which any person or property is or may be transported . . . upon a highway.” Minn. Stat. § 169.011, sub. 92 (2016).

The relevant statutes are unambiguous and they are only subject to one reasonable interpretation. We therefore construe the words of the statutes according to their plain and ordinary meaning. Accordingly, chapters 169A and 169 provide that when a person under the influence of alcohol operates a device that can transport a person or property upon a highway and is self-propelled, that person commits a crime. But operation of a device that is moved solely by human power while under the influence does not result in a crime under the DWI statutes. *See, e.g., Boschee v. Duevel*, 530 N.W.2d 834, 839-40 (Minn. App. 1995) (concluding that inline skates meet the definition of “vehicle” as a device that may transport persons upon the highway), *review denied* (Minn. June 14, 1995).

Larson does not argue that the language of the statutes is ambiguous. Instead, he argues that, because his motorized, three-wheeled bicycle can be operated by pedaling, his conviction for DWI must be reversed. But, on its face, Larson’s *motorized* bicycle is a “motor vehicle” under the statutory definition.

The motor-vehicle definition provides two requirements for a motor vehicle: (1) self-propelling and (2) not moved solely by human power. Here, the bicycle’s motor, which allows the bicycle to travel up to 40 miles-per-hour, makes the bicycle self-propelling. The motor and gas tank are affixed to the bicycle, and a chain connects the motor to the rear wheel to propel it. Although the record does not support this, Larson argues that his motorized bicycle can also operate solely by being pedaled, without the motor running. Even taking this as true, Larson’s motorized bicycle meets the definition of “motor vehicle” because the motor makes it a self-propelling vehicle, and the bicycle is not *solely* moved by human power because it has a self-propelling motor.

Concluding otherwise would lead to an unjust result, especially in light of the facts of this case. Larson rode his motorized bicycle in the traffic lane on the roadway. A police officer observed Larson swerve from his traffic lane into the oncoming lane multiple times. Larson told the officer that his homemade, motorized bike could travel up to 40 miles-per-hour. He even told officers that he built the prototype himself and did not want someone to steal his design, and he accused the officer of stopping him for wanting to check out his “awesome bike.” Larson’s alcohol concentration of 0.14 confirms that he was impaired while riding his motorized bicycle. Accordingly, we affirm the district court’s ruling that Larson’s motorized bicycle falls under the “motor vehicle” definition, and therefore sufficient evidence supports his conviction.

Because we conclude that sufficient evidence supports his DWI conviction, we need not address his circumstantial-evidence argument.

Affirmed.