

STATE OF MAINE
SOMERSET, ss.

SUPERIOR COURT
CRIMINAL ACTION
DOCKET NO. CR-08-507
08-507-26

STATE OF MAINE

v.

ORDER

DONALD L. GARBRECHT
LAW LIBRARY

JUSTIN TAYLOR,

APR 17 2008

Defendant

Before the court is the defendant's motion to dismiss. The State has charged the defendant with Operating Under the Influence. The defendant alleges that the defendant was operating a motorized bicycle and as such is not a motor vehicle as defined by Title 29-A. The parties stipulated to the admission of defendant's exhibits 1 and 2 which are photographs of the defendant's motorized bicycle.

Discussion

The operating under the influence statutes state that the defendant has to be operating a motor vehicle to be convicted of the crime of Operating Under the Influence. A motor vehicle is defined in Title 29-A M.R.S. § 1(42):

"Motor vehicle" means a self-propelled vehicle not operated exclusively on tracks . . .

A vehicle is defined in section 1 (91) as follows:

"Vehicle" means a device for conveyance of persons or property on a way. "Vehicle" does not include conveyances propelled or drawn by human power.

A bicycle is defined in section 1 (9) as follows:

"Bicycle" means a device primarily propelled by human power . . .

A motorized bicycle or tricycle is defined in section 1 (41) as follows:

"Motorized bicycle or tricycle" means a bicycle or tricycle that:

- A. May have pedals to permit human propulsion; and
- B. Has a motor attached to a wheel . . .

Although bicycles and motorized bicycles are defined in Title 29-A M.R.S., it does not resolve the pivotal issue in this case – are these items motor vehicles under Title 29-A.

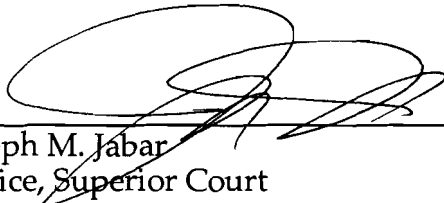
A bicycle is clearly not a motor vehicle because under the definition of a vehicle, it explicitly states that a vehicle does not include conveyances propelled or drawn by human power. A bicycle does not meet the definition of a motor vehicle.

On the other hand, a motorized bicycle is not an instrument that comes under the above exclusion referring to bicycle because it is not propelled or drawn by human power only. Under certain circumstances, it may be driven by human power, but at other times it may be propelled by a motor.

A motorized bicycle may be used as a bicycle when propelled by human power and, therefore, explicitly excluded as a vehicle. On the other hand, it may be used with a motor attached to the wheels. In that case, it becomes a self-propelled vehicle and, therefore, meets the definition of a motor vehicle.

This court concludes that if the motorized bicycle were propelled by a motor, it is a motor vehicle. If it were propelled by human power, it is not a motor vehicle. Without knowing the facts concerning the operation of this motorized bicycle in this case, the court cannot as a matter of law state that it is not a motor vehicle. The motion to dismiss is hereby denied. If the facts of this case demonstrate that the motorized bicycle in question was being propelled by human power as opposed to being self-propelled by the motor, then the court has a different issue before it. On the record before the court, it cannot say as a matter of law that the aforementioned motorized bicycle is not a motor vehicle.

Dated: February 0, 2009



Joseph M. Jabar
Justice, Superior Court

Attorney for State of Maine:

Brent Davis, Esq.
Somerset County Courthouse
Court St.
Skowhegan, ME 04976

Attorney for Defendant:

Paul Sumberg, Esq.
P.O. Box 9
Skowhegan, ME 04976

STATE OF MAINE
vs
JUSTIN E TAYLOR
639 WATERVILLE HILL RD
NORRIDGEWOCK ME 04957

SUPERIOR COURT
SOMERSET, ss.
Docket No SKOSC-CR-2008-00507

DOCKET RECORD

DOB: 03/14/1989

Attorney: PAUL SUMBERG
WRIGHT & MILLS PA
263 WATER STREET
PO BOX 9
SKOWHEGAN ME 04976-0009
RETAINED 09/18/2008

State's Attorney: JAMES MITCHELL

Charge(s)

1 OPERATING UNDER THE INFLUENCE
Seq 9878 29-A 2411(1-A) (A) Class D 09/13/2008 SKOWHEGAN
CUMMINGS / SKO

Docket Events:

12/08/2008 Charge(s): 1
TRANSFER - TRANSFER FOR JURY TRIAL EDI ON 12/08/2008 @ 18:00

TRANSFERRED CASE: SENDING COURT CASEID SKODCCR200801386
FILING DOCUMENT - NON CASH BAIL BOND FILED ON 09/16/2008

Charge(s): 1
HEARING - ARRAIGNMENT SCHEDULED FOR 11/19/2008 @ 8:30

NOTICE TO PARTIES/COUNSEL
Charge(s): 1
HEARING - ARRAIGNMENT WAIVED ON 09/18/2008

BAIL BOND - \$500.00 UNSECURED BAIL BOND FILED ON 09/16/2008

Bail Amt: \$500
Date Bailed: 09/14/2008
Charge(s): 1
SUPPLEMENTAL FILING - COMPLAINT FILED ON 10/16/2008

Party(s): JUSTIN E TAYLOR
ATTORNEY - RETAINED ENTERED ON 09/18/2008

Attorney: PAUL SUMBERG
Charge(s): 1
PLEA - NOT GUILTY ENTERED BY COUNSEL ON 09/18/2008

TRIAL - BENCH SCHEDULED FOR 01/14/2009 @ 1:00

NOTICE TO PARTIES/COUNSEL
TRIAL - BENCH NOT HELD ON 12/05/2008

TRIAL - BENCH NOTICE SENT ON 10/31/2008

TRIAL - BENCH JTR SENT ON 10/31/2008

12/08/2008 Charge(s): 1

TRANSFER - TRANSFER FOR JURY TRIAL REQUESTED ON 12/05/2008

Charge(s): 1

FINDING - TRANSFER FOR JURY TRIAL TRANSFERRED ON 12/05/2008

SKOSC

01/08/2009 TRIAL - DOCKET CALL SCHEDULED FOR 02/02/2009 @ 9:30

01/08/2009 MOTION - MOTION TO DISMISS FILED BY DEFENDANT ON 12/30/2008

01/08/2009 HEARING - MOTION TO DISMISS SCHEDULED FOR 02/04/2009 @ 8:30

NOTICE TO PARTIES/COUNSEL

02/02/2009 TRIAL - DOCKET CALL HELD ON 02/02/2009

JOSEPH M JABAR , JUSTICE

Defendant Present in Court

ER TAPE 296

02/10/2009 HEARING - MOTION TO DISMISS HELD ON 02/04/2009

JOSEPH M JABAR , JUSTICE

Defendant Present in Court

02/10/2009 MOTION - MOTION TO DISMISS DENIED ON 02/10/2009

JOSEPH M JABAR , JUSTICE

COPY TO PARTIES/COUNSEL

02/10/2009 ORDER - COURT ORDER FILED ON 02/10/2009

JOSEPH M JABAR , JUSTICE

RE: DEFENDANT'S MOTION TO DISMISS. CC: DA AND ATTY SUMBERG

A TRUE COPY

ATTEST: _____

Clerk