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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| IN RE ISAIAH T., | ) | 2 CA JV 2011-0058<br>DEPARTMENT A<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 28, Rules of Civil<br>Appellate Procedure |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17954301

Honorable Karen S. Adam, Judge

AFFIRMED

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Robert J. Hirsh, Pima County Public Defender
By Susan C. L. Kelly
Tucson
Attorneys for Minor

Barbara LaWall, Pima County Attorney
By Bunkye Chi
Tucson
Attorneys for State

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B R A M M E R, Judge.

**¶1** The juvenile court adjudicated Isaiah T. delinquent for criminal damage causing damage of at least $2,000 but less than $10,000, a class five felony, and leaving the scene of an accident causing damage, a class three misdemeanor. *See* A.R.S. §§ 13-

1602(A)(1), (B)(3); 28-665(A), (B). The court ordered Isaiah to pay restitution and be committed to the Arizona Department of Juvenile Corrections for at least twelve months. On appeal, Isaiah argues insufficient evidence supported the court's finding that the damage caused was at least $2,000. We affirm.

**¶2** We view the evidence in the light most favorable to upholding the juvenile court's adjudication. *In re Julio L.*, 197 Ariz. 1, ¶ 6, 3 P.3d 383, 385 (2000). In January 2011, then fourteen-year-old Isaiah took a 2002 Nissan Frontier pickup truck without permission and, after driving a short distance, attempted to turn around in a narrow cul-de-sac. While doing so, he crashed into a gate and damaged a gas meter and several fences. The truck sustained considerable damage from these collisions. The damage to the various structures, including the gas meter, totaled approximately $350. The owner of the truck testified she had purchased the truck in 2006, had paid about $13,000 for it, that it had not been damaged before the incident, and that the insurance company had determined the vehicle was a total loss and issued a check for $5,595.80.

**¶3** "[W]e will only reverse on the grounds of insufficient evidence when there is a complete absence of probative facts to support a judgment or when a judgment is clearly contrary to any substantial evidence." *In re Kyle M.*, 200 Ariz. 447, ¶ 6, 27 P.3d 804, 805-06 (App. 2001). Isaiah argues the owner's testimony concerning the truck did not establish the amount of damage to that vehicle. The state has the burden of proving the amount of damage caused and indicating what method it used to calculate that amount. *State v. Brockell*, 187 Ariz. 226, 229, 928 P.2d 650, 653 (App. 1996). No particular method of calculation is required; instead the amount of damage "is determined

by applying a rule of reasonableness to the particular fact situation presented." *Id.* at 228, 928 P.2d at 652. And the general rules for determining damage to property "'should be flexible guides in determining the true amount of loss.'" *Id., quoting Dixon v. City of Phx.*, 173 Ariz. 612, 620, 845 P.2d 1107, 1115 (App. 1992).

**¶4** Isaiah first argues the basis for some of the owner's testimony was a letter from an insurance company, and thus those portions of her testimony were inadmissible hearsay.[1] Isaiah filed a motion in limine to preclude that letter, but the state avowed it would not seek to admit the letter into evidence and instead would use it to refresh the owner's recollection. The court expressed no opinion as to the merits of the motion in limine, but informed Isaiah that he could object when the state "tries to elicit . . . testimony" about the letter. When the owner was questioned about the letter, however, Isaiah did not object on hearsay grounds, asserting only that the letter had not been disclosed properly. This is not sufficient to preserve this claim for review. *See State v. Lujan*, 136 Ariz. 326, 328, 666 P.2d 71, 73 (1983) ("[I]f an accused wants to rely on the objections raised in those motions he or she has the responsibility of bringing them to the court's attention and seeing that a record of the rulings makes its way to the reviewing court."). When "hearsay evidence is admitted without objection, it becomes competent evidence admissible for all purposes." *State v. McGann*, 132 Ariz. 296, 299, 645 P.2d 811, 814 (1982). But, "[w]hen hearsay evidence is the sole proof of an essential element

[1]Isaiah identifies as hearsay only the owner's testimony about the purchase price and her statement that $959.28 was owed. Nothing in the record suggests the owner referred to the letter before testifying about the purchase price.

of the state's case, reversal of the conviction may be warranted." *Id.* Thus, "[i]n Arizona, if the admission of hearsay evidence amounts to fundamental error in a criminal case, we will reverse even if the defendant has failed to object." *Id.*

**¶5** Isaiah does not argue on appeal, however, that the admission of the hearsay evidence constitutes fundamental error, nor does he adequately develop his hearsay argument. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008) (fundamental error argument waived on appeal if not argued); *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument on appeal waives claim). He cites no authority and does not address the state's position below that the letter could be used to refresh the owner's recollection. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi) (appellate brief shall contain argument containing "citations to the authorities, statutes and parts of the record relied on"). Accordingly, we do not address Isaiah's hearsay claim further.

**¶6** Isaiah next argues the state failed to establish the amount of damage because the insurance company's determination that the vehicle was a total loss, and the amount awarded the owner for that loss, did not necessarily reflect the amount of damage. He asserts that, because different insurance companies use different methods to determine whether a vehicle is a total loss and there was no evidence of the "methodology for calculating the payout" here, there is no way to determine what portion of that payout "represented actual damage." This argument is unavailing. Even assuming an insurance company's determination that a vehicle is a total loss may include

factors unrelated to the value of the vehicle or the cost of repair,[2] it necessarily includes a calculation based on those facts. *See Fed. Trade Comm'n v. CCC Holdings Inc.*, 605 F. Supp. 2d 26, 33 (D.D.C. 2009) (insurance company determination of total loss includes comparison of repair cost and replacement cost). Thus, in this case, the insurance company's decision to pay the owners of the truck $5,595.80 permitted the juvenile court to conclude the damage to the vehicle was at least comparable to that amount. It is entirely reasonable for a trier of fact to conclude that an insurance company would not pay well over five thousand dollars to an insured in compensation for damages that would cost the company less than two thousand dollars to repair. *Cf. State v. Printz*, 125 Ariz. 300, 304, 609 P.2d 570, 574 (1980) (when determining value, jury may utilize its common sense). And here, of course, it was not necessary for the court to determine the precise amount of damage to the truck—it had to determine only that the damage was at least $1,650 because, when combined with the damage to the other property, the total amount of damage would meet the $2,000 statutory threshold. *See* § 13-1602(B)(3).

**¶7** In any event, even assuming the amount paid to the owners was not competent evidence of the damage caused to the truck, a factfinder may determine the fair market value of property based on the purchase price and the item's condition when "the item is not so unique as to require expert valuation testimony." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). Here, the owner testified she had paid

[2]Isaiah asserts, without citation to evidence or authority, that the determination and payout amount may include "actuarial decisions" meant to "maximize profits" as well as amounts reflecting "gap coverage to pay[ ]off any financing contract."

$13,000 for the truck in 2006, and there is no evidence suggesting the truck was so unique as to require expert testimony as to its value. *See id.* (jury properly could infer truck worth between $750 and $1500 when purchased for $3000). Photographs of the truck admitted into evidence showed extensive damage, including that a portion of the left front bumper was missing and the left front quarter panel had been torn free. Based on those photographs and in light of the truck's value when purchased, the juvenile court readily could conclude the total damage caused by Isaiah's conduct was at least $2,000.

**¶8** For the reasons stated, the juvenile court's adjudication of delinquency and disposition are affirmed.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge