IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. K.J.C., Appellant.	No. 39679-3-II UNPUBLISHED OPINION

Hunt, J. — Juvenile KJC[1] appeals his first-degree-malicious-mischief bench trial adjudication. He argues that the evidence is insufficient to support his conviction. In a pro se statement of additional grounds (SAG), he contends that (1) he was denied his right to testify, and (2) he was denied his right to be tried by an elected judge. We affirm.

FACTS

KJC's stepfather, Glen Bair, moved out of the family residence, leaving behind a 1990 Chevrolet Suburban because it had a damaged manifold and could not be driven. In October or November 2008, KJC set off reams of firecrackers inside the Suburban several times after making

[1] Under RAP 3.4, we change the title of the case to the juvenile's initials to protect the juvenile's rights to confidentiality. *See e.g., State v. D.W.W.*, 2010 WL 2011531 *1 n.1 (2010); and *State v. J.B.*, 2010 WL 1454171 n † (2010).

multiple trips back into his house for more firecrackers. During another incident, a few days later, he smashed parts of the interior of the vehicle with a metal rod. Family friends and next door neighbors Jason and Brenda Biscay witnessed these incidents. Jason Biscay examined the car after each incident and called Glen Bair and told him about the damage. Bair called the police.

The State charged KJC with first degree malicious mischief[2] and bail jumping.[3] At his juvenile bench trial,[4] Bair and Jason Biscay testified about the damage to the vehicle: The seats had been burned in many places; "the outside was all beaten in, the inside was all beaten in," Record of Proceedings (RP) at 26; and the whole dashboard had been destroyed, including all of the gauges above the steering wheel. Jason Biscay also testified about his qualifications to provide an estimate of the repair costs based on his work in an auto repair shop before he became a truck driver, his continuing to restore cars as a hobby, and his work on Bair's Suburban in the past. Biscay estimated that it would cost $3,000 to $4,000 to repair the damage to the vehicle. The court found that KJC had committed the malicious mischief charge. KJC appeals.

ANALYSIS

I. Substantial evidence

KJC argues that the evidence is insufficient to support the juvenile court's adjudication that he committed first degree malicious mischief. We disagree.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the

[2] The first degree charge included the lesser second degree malicious mischief. *See* Clerk's Papers (CP) at 2.

[3] The trial court later dismissed the bail jumping charge for lack of evidence.

[4] Both counsel, including KJC's counsel, agreed to have a court commissioner serve as a judge pro tempore to preside over KJC's trial.

prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Montgomery*, 163 Wn.2d 577, 586, 183 P.3d 267 (2008); *State v. Salinas,* 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn there from." *Salinas,* 119 Wn.2d at 201 (citing *State v. Theroff*, 25 Wn. App 509, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980)). In determining whether the necessary quantum of proof exists, we need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. *State v. McKeown,* 23 Wn. App. 582, 588, 596 P.2d 1100 (1979) (citing *State v. Green*, 91 Wn.2d 431, 588 P.2d 1370 (1979)).

To prove that KJC committed first degree malicious mischief, the State had to prove that he "knowingly and maliciously" caused "damage to the property of another in an amount exceeding one thousand five hundred dollars." Former RCW 9A.48.170(1)(a).[5] KJC contends that the State failed to establish damages exceeding $1,500 because (1) Biscay's $3,000 to $4,000 estimate applied to both the interior and exterior of the vehicle, (2) there was no evidence that KJC caused the exterior damage, and (3) Biscay testified that it would cost only $100 to repair the interior. KJC's contentions are incorrect.

Biscay's repair estimate clearly related to the vehicle's interior damage when KJC stopped vandalizing the vehicle. The $100 figure was an estimate only for cleaning the firecrackers' superficial damage to the vehicle's interior and did not include repair of the burned seat:

> DEFENSE: The first time you looked at the vehicle can you estimate how much damage would have been caused by the fireworks?

[5] This statute was amended in 2009, raising the amount of required damages to $5,000. *See* Laws of 2009 ch. 43 § 4.

> MR. BISCAY: Well at the time it was just the seat and just to clean it up inside.
> DEFENSE: What would be the dollar amount to clean that up?
> MR. BISCAY: At that time I don't know. Probably I think anytime I've ever taken anything in to get detailed it's like $100.00 or so to clean it up. And of course they burnt the seat which is more than that. Later on when I looked at it, it was like a couple of days later when I looked at it and *everything else was busted up inside of it.*

RP at 54 (emphasis added). On re-direct, the State clarified the above testimony:

> STATE: Mr. Biscay though you were later made aware of some additional damage?
> MR. BISCAY: Correct.
> STATE: And that's what you're basing your evaluation on?
> MR. BISCAY: Correct and that's why had gone again and looked at it later yeah.

RP at 55. This testimony shows that Biscay's $3,000 to $4,000 estimate applied to repairing the interior damage.

KJC further argues that the $3,000 to $4,000 estimate should not apply because Biscay testified that the Suburban was not worth that much and the State presented no evidence about its market value. Market value, however, is not the proper standard in a malicious mischief case. The statutory definition of "physical damages" includes its "ordinary meaning." RCW 9A.48.100(1). "The ordinary meaning of damages includes the reasonable cost of repairs to restore injured property to its former condition." *State v. Gilbert,* 79 Wn. App. 383, 385, 902 P.2d 182 (1995) (citing *State v. Ratliff,* 46 Wn. App. 325, 328-29, 730 P.2d 716 (1986) *review denied*, 108 Wn.2d 1002 (1987); WAC 458-50-189(3)). Thus, the cost of repair was the proper standard in this case, not market value. And Biscay's testimony supports the $3,000 to $4,000 estimate as a reasonable cost of repairs.

II. SAG Issues

KJC's two SAG arguments also fail. His first claim—that he was denied his right to testify—involves matters that are outside the record, which we cannot review on direct appeal. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995) (citing *State v. Crane*, 116 Wn.2d 315, 335, 804, P.2d 10, *cert. denied* 501 U.S. 1237 (1991); *State v. Blight*, 89 Wn.2d 38, 45-46, 569 P.2d 1129 (1977); *State v. Stockton*, 97 Wn.2d 528, 530, 647 P.2d 21 (1982); RAP 16.11(b)). As to his second claim, KJC is correct that a judge pro tempore presided over his trial. But both attorneys for both parties agreed to that procedure as required for trial by a non-elected judge. *See State v. Robinson,* 64 Wn. App. 201, 203, 825 P.2d 738 (1992) (citing Const. art.4, § 7). Accordingly, the SAG provides no grounds for reversal.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, PJ.

We concur:

Quinn-Brintnall, J.

Worswick, J.