IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. THEAVY PO, Appellant.	No. 38725-5-II UNPUBLISHED OPINION

Bridgewater, J. — Theavy Po appeals her conviction for second degree theft. We hold that the State produced sufficient evidence of the stolen items' values to support Po's conviction. We affirm.

FACTS

On September 30, 2008, Theavy Po entered a Kohl's Department Store in Vancouver, Washington. After exiting the store, Trevor Petersen, a loss prevention officer, approached Po, identified himself, and asked Po to return to the store so that he could speak with her about some unpaid merchandise.

After returning to the store, Po handed her purse to Petersen, and Petersen pulled out

clothing from the purse. In addition to the five items of clothing retrieved from the purse, Petersen retrieved four identical necklaces; two of the necklaces contained tags and two of the necklaces lacked tags. Sonya Atherton, a Kohl's employee, witnessed Petersen take the four necklaces out of Po's purse.

Petersen totaled the value of the stolen merchandise at $274. He used a tagged necklace to value the two identical necklaces lacking tags.

The State charged Po with second degree theft. During the bench trial, Po testified that she took five shirts and two necklaces from Kohl's. Similarly, she testified that the two necklaces she took were different from each other and lacking tags.

The trial court found Po guilty of second degree theft and sentenced her within the standard range. Po appeals.

ANALYSIS

Po assigns error to the trial court's findings of fact 14, 15, 17, 19, 27, 28, 30, 31, 34 and conclusions of law 7, 8, 9, 11, and 12. Po argues that sufficient evidence does not support her conviction for second degree theft.

We examine Po's sufficiency challenge under the familiar sufficiency test of *State v. Green*, 91 Wn.2d 431, 443, 588 P.2d 1370 (1979), and *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). A person is guilty of theft in the second degree if he or she commits theft of property or services which exceeds $250 in value. Former RCW 9A.56.040(1)(a).(2008)[1] At

[1] Laws of 2009, ch. 431, § 8(1)(a) increased the monetary amounts from $250 to $750 and from $1,500 to $5,000.

trial, Po conceded that she took five shirts and two necklaces from Kohl's. Because Po stipulated to the theft, the only issue on appeal concerns the degree of the charge.

Specifically, Po contends that the State failed to prove beyond a reasonable doubt that she stole four necklaces instead of two because the testimony was inconsistent and not credible. She asserts that because the loss prevention officers gave inconsistent testimony about the color of her purse, the value of the necklaces, and whether Petersen left the loss prevention office to check the necklace's value, the trial court should not have found that she stole four necklaces and that the value of stolen property was worth more than $250. We do not review credibility determinations. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). The trial court could have believed Po's testimony that she stole only two necklaces, but instead found credible Petersen and Atherton's testimony.

Additionally, substantial evidence supports the trial court's findings of fact 14 and 27, that Po stole four identical necklaces. Petersen testified that he retrieved four identical necklaces from Po's bag. Similarly, Atherton testified that she witnessed Petersen retrieve four necklaces from Po's bag. While the trial court did not explicitly state in its oral ruling that the necklaces were identical, it did value the necklaces identically based on these witnesses' testimony. Looking at the evidence in the light most favorable to the State post-conviction, we hold that substantial evidence supports the trial court's finding of fact 14 and 27 that there were four identical necklaces.

Further, there was sufficient evidence to support the trial court's finding of fact 15, that the necklaces were valued at $32 each. The legislature defines value as "the market value of the

property or services at the time and in the approximate area of the criminal act." RCW 9A.56.010(18)(a). Furthermore, market value is defined as "the price which a well-informed buyer would pay to a well-informed seller, where neither is obliged to enter into the transaction." *State v. Coleman*, 19 Wn. App. 549, 551, 576 P.2d 925 (1978).

Trial courts can rely on price tags to determine value. *State v. Rainwater*, 75 Wn. App. 256, 261, 876 P.2d 979 (1994), *review denied*, 127 Wn.2d 1010 (1995). In this case, the trial court accepted price tags as substantial evidence of market value. Petersen testified that he retrieved four identical necklaces from Po's purse, two with tags and two without tags. Similarly, he testified that he used the tagged necklaces to price the untagged necklaces. Because Petersen's process of valuation utilized price tags from identical necklaces, substantial evidence supports the valuation.[2] Because substantial evidence supports the trial court's finding that Po stole five shirts and four necklaces worth more than $250, the findings of fact support the trial court's conclusion of law 12 that Po was guilty of second degree theft of property.

Substantial evidence supports the court's findings of fact. The findings of fact, in turn, support the conclusions of law and Po's conviction for second degree theft.

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

[2] Po does not argue how the remaining findings of fact to which she assigned error, findings of fact 17, 19, 28, 30, 31, and 34 are not supported by substantial evidence. Absent argument, an appellant waives an assignment of error. RAP 10.3(a)(6); *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). Po has waived her assignments of error to findings of fact 17, 19, 28, 30, 31, and 34.

so ordered.

Bridgewater, P.J.

We concur:

Armstrong, J.

Quinn-Brintnall, J.