IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. J.B.† Appellant.	No. 38905-3-II UNPUBLISHED OPINION

Bridgewater, P.J. — J.B. appeals his Lewis County conviction of first degree theft, contending that (1) the trial court admitted improper hearsay testimony, and (2) the evidence of value was insufficient to support a conviction in the first degree.[1] We affirm.

FACTS

On June 30, 2008, Sarah Ballard enlisted a number of her friends, including Trinette Meijer and her son J.B., to help her move. One of the items J.B. loaded into his mother's car was a black suitcase that Ballard used to store the family's valuables.

Roughly two weeks later, Ballard reported the suitcase missing. Centralia Police Officer William Phipps responded to the call, but Ballard could not suggest a suspect, and he did not investigate further. Approximately a week later, Ballard contacted Officer Phipps again, identifying J.B. as the person who had taken the suitcase. When Phipps contacted him, J.B., insisted that he had put the suitcase on the front porch at Ballard's new house.

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† Under RAP 3.4, this court changes the title of the case to the juvenile's initials. The ruling uses initials for the juvenile and his family to protect the juvenile's rights to confidentiality.

[1] A commissioner of this court initially considered this matter and referred it to a panel of judges.

At trial, Ballard testified about the items in the suitcase, stating that they included personal papers, rolls of coins, and numerous pieces of jewelry. Much of the jewelry had been given to her children at the time of their baptisms. There was also a bracelet that Ballard said she had bought for her oldest daughter's Quinceanera (15th birthday). She said she had paid $1,000 for it. In addition, there were a necklace and bracelet belonging to her significant other and several rings belonging to her. Ballard presented an inventory list that she had made when she discovered the suitcase was missing. It included the dollar values of the items taken. The list was admitted as exhibit 1.

Ballard further testified that J.B. had telephoned her one night in August 2008, and told her, "Yes, I took your m--f--ing bag, but you better tell the cops I didn't or I'm going to put a cap in your head." VRP (Feb. 3, 2009) at 32. Ballard's 17-year-old daughter testified that she, too, had heard the call because her mother had put the phone in speaker mode. She corroborated her mother's account of the conversation.

The State also called Brandon Dolman, an acquaintance of J.B.'s. Dolman testified that J.B. had come to his house twice in the summer of 2008. The first time, he told Dolman that he was trying to get rid of some jewelry and asked if Dolman knew anyone who was buying jewelry. The second time, he showed Dolman several rolls of quarters and asked Dolman and his brother-in-law to buy alcohol for him.

J.B. admitted that he had helped move the suitcase, but again insisted that he had left it on Ballard's porch. He also admitted making a threatening phone call to Ballard, but denied that it had anything to do with the suitcase. He explained that it was motivated by disparaging remarks Ballard had made about his mother. The court noted that it did not find J.B.'s testimony credible

and convicted him as charged.

ANALYSIS

During the trial, Ballard's daughter testified that she had been at a friend's house sometime after the suitcase was stolen. A boy she did not know came up to her and said "Oh, you bought one of the necklaces Justin was selling," referring to the necklace she was wearing. She said that it was her "Guadalupe" necklace, which was similar to the baptismal necklaces that had been inside the black suitcase. VRP (Feb. 3, 2009) at 58-60. J.B.'s counsel objected, but the court overruled the objection. Booth contends that this testimony was inadmissible hearsay.

The State argued below that the testimony was not offered for the truth of the matter asserted, but has not reiterated that argument here, arguing only that the testimony was not prejudicial. We agree with the latter argument.

An evidentiary error that is not of constitutional magnitude requires reversal only if the error, within reasonable probability, materially affected the outcome of the trial, in other words, only if the appellant can show it was prejudicial. *State v. Stenson*, 132 Wn.2d 668, 709, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008 (1998); *State v. Jenkins*, 53 Wn. App. 228, 231, 766 P.2d 499, *review denied*, 112 Wn.2d 1016 (1989). In a nonjury case, in order to establish prejudice, the defendant must show that the proper evidence was insufficient to support the judgment, or that the improper evidence induced the court to make an essential finding which it would not have made otherwise. *See State v. Read,* 147 Wn.2d 238, 245, 53 P.3d 26 (2002) (citing *Builders Steel Co. v. Comm'r of Internal Revenue,* 179 F.2d 377, 379 (8th Cir. 1950)). Booth cannot make either showing.

Dolman's testimony provided the same kind of evidence as the challenged testimony,

indicating that J.B. was trying to sell jewelry and that he possessed items (rolls of coins) similar to those in the suitcase. In addition, Ballard and her daughter both testified that J.B. admitted taking the suitcase. That evidence was sufficient to support the judgment. Moreover, the trial court explicitly stated the grounds upon which it based its conviction both in its oral ruling and in its written findings of fact. It referenced Dolman's testimony and the testimony about the telephone call, but did not mention the testimony at issue here. It is clear from the record that the court's decision was based on proper evidence.

Likewise unpersuasive is the challenge to the sufficiency of the evidence of value. In order to prove first degree theft, the State had to prove that the value of the stolen property exceeded $1,500. RCW 9A.56.030 (2008).[2] J.B. focuses on Ballard's testimony assigning values of "around $1,000.00 for the most expensive items, and a few hundred dollars for the rings."[3] He ignores the existence of exhibit 1, which apparently contained explicit values for each item that Ballard claimed had been in the suitcase. It is a longstanding principle that an owner of property is presumed familiar with its value by reason of inquiries, comparisons, purchases and sales. *McCurdy v. Union Pac. R.R.*, 68 Wn.2d 457, 413 P.2d 617 (1966); *State v. Hammond*, 6 Wn. App. 459, 461, 493 P.2d 1249 (1972).

Exhibit 1 is not part of the record provided on appeal, and so we defer to the trial court's

[2] In 2009, the legislature increased the value to $5,000. Laws of 2009, ch. 431, § 7.

[3] *See* Br. of Appellant at 12. He does not assign error to the trial court's finding of fact regarding value. However, because the nature of his challenge is clear and the relevant issues are argued in the body of his brief, we will not refuse to consider the issue on this ground. *See State v. Kinneman*, 120 Wn. App. 327, 342-43, 84 P.3d 882 (2003), *review denied*, 152 Wn.2d 1022 (2004).

determination that the amounts provided by Ballard were sufficient to establish the requisite value.[4]

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.

Bridgewater, P.J.

We concur:

Armstrong, J.

Quinn-Brintnall, J.

[4] It was J.B.'s burden to provide an adequate record for review, and the trial court's decision stands when the appellant fails to meet that burden. *State v. Tracy*, 128 Wn. App. 388, 115 P.3d 381 (2005), *aff'd*, 158 Wn.2d 683, 147 P.3d 559 (2006).