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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-1856**

State of Minnesota,  
Respondent,

vs.

Rebecca Ann Powers,  
Appellant.

**Filed November 23, 2020  
Affirmed  
Florey, Judge**

St. Louis County District Court  
File No. 69HI-CR-18-804

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Tyler J. Kenefick, Assistant St. Louis County  
Attorney, Hibbing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Hooten, Judge; and Gaitas,  
Judge.

## UNPUBLISHED OPINION

**FLOREY**, Judge

Appellant challenges her conviction for first-degree criminal damage to property arguing that the state failed to prove that damage to the door reduced its value by more than \$1,000 based on the actual cost of repair and replacement. We affirm.

### FACTS

On August 18, 2018, a witness saw two women attempting to break into the front door of a house and then drive away in an orange car parked on the road next to the house. The witness recognized one of the women as appellant Rebecca Ann Powers with whom she was acquainted. The next day, the witness told the homeowners about what she had observed. They called the police.

The investigating officer observed pry marks on the door and frame as well as a crack in the frame. He also spoke with the witness, who provided a partial license-plate number of the orange car. The officer discovered the license plate was registered to Rebecca Ann Powers. Powers was subsequently charged with first-degree criminal damage to property.

At trial, the homeowner testified that he obtained an estimate for a replacement door from Lowe's. The door was old and could not be replaced with an exact replica, so the homeowner asked the clerk at Lowe's "to find the door that matche[d]" the original. The clerk provided him with an estimate for a "Craftsman 36 x 85 inch fiberglass entry door" for \$1,173.00. The homeowner testified that repairing and replacing the door would take him three and a half hours at his repair rate of \$69.00 per hour for a total of \$241.50. After

including the costs for the other items needed to repair and replace the door as well as the labor costs, the total came to \$1,589.05.

After hearing the evidence, the jury returned a verdict finding Powers guilty of first-degree criminal damage to property.

## **D E C I S I O N**

Powers argues that there was insufficient evidence to support her conviction of first-degree criminal property damage. When reviewing a case for sufficiency of the evidence, our review “is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). We will not reverse a conviction for insufficient evidence if the jury, acting with due regard for the presumption of innocence and the necessity of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

The jury found Powers guilty of first-degree criminal damage to property. Minn. Stat. § 609.595, subd. 1(4) (2018). Under the statute, a person is guilty of first-degree criminal damage to property if she “intentionally causes damage to physical property of another without the latter’s consent” and “the damage reduces the value of the property by more than \$1,000 measured by the cost of repair and replacement.” *Id.*

Powers challenges neither the jury's findings that she intentionally damaged the door in question nor that she lacked consent to do so. Instead, the sole issue raised on appeal is whether the state failed to submit sufficient evidence to support the jury's verdict that she caused more than \$1,000 in damages. Powers contends that the evidence presented at trial failed to prove the "actual cost to repair and replace the front door" because it only presented "the estimated" replacement value.

We reviewed a similar situation in *State v. DeYoung*, 672 N.W.2d 208 (Minn. App. 2003). There, the appellant argued that the evidence was insufficient to support a conviction of criminal damage to property because the victim paid exactly the threshold amount of \$500 to repair her vehicles damaged by appellant. *Id.* at 209. The victim testified that she kept the cost of the repairs down by doing part of the repair work herself. *Id.* at 210. The court concluded that "when the victim of criminal damage to property performs the work necessary to repair the property, the value of the victim's labor can be considered in calculating the reduced value of the damaged property." *Id.* at 213. Accordingly, because the \$500 spent to repair both vehicles did not include any labor costs, the total cost of repair and replacement would be more than \$500 if the victim's labor was included. *Id.*

In *DeYoung*, we relied on the principles underlying the criminal-property-damage statute as well as the theft statute in reaching our conclusion. In particular, we recited the policy underlying the criminal-damage-to-property statute, which states that the "gravity of the crime should turn upon the extent of the property damaged." *Id.* (quoting Minn. Stat. Ann. § 609.595, 1963 advisory comm. cmt. (West 2003)). We also relied on the definition

of “value” for purposes of theft, which is defined as “the retail market value at the time of the theft.” *Id.* (quoting Minn. Stat. § 609.52, subd. 1(3)).

While the criminal-damage-to-property statute does not define the word “value,” this definition, borrowed from the theft statute, informed our understanding of the meaning of Minn. Stat. § 609.595. Consequently, we determined that adopting the appellant’s position “would make the defendant’s culpability determined upon the victim’s ability and inclination to repair the damaged property,” which would be contrary to the statutory intent. *DeYoung*, 672 N.W. 2d. at 213.

In *State v. Sayers*, No. A09-1578, 2010 WL 3304308, at \*3 (Minn. App. Aug. 24, 2010), we applied the holding of *DeYoung* to a similar situation. Although not precedential, we found the reasoning in *Sayers* to be persuasive, and we adopt it here. *See* Minn. Stat. § 480A.08, subd. 3 (2018); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993) (noting unpublished opinions may be persuasive). In *Sayers*, the defendant was convicted of first-degree criminal damage to property for damages he caused to two different vehicles belonging to two different victims. 2010 WL 3304308, at \*1-2. At trial, the state entered into evidence a total estimated repair cost for both vehicles of \$1,065.13, which placed the amount above the \$1,000 threshold. *Id.* The estimated cost was based on the combined estimates given to the victims by an auto-repair shop. *Id.* However, one of the victims had his vehicle repaired by a third party for less than the auto-repair-shop estimate, making the actual total cost of repairs less than \$1,000. *Id.* The defendant argued that the “true cost of the property damage” should be determined based

on “what the victim actually paid to repair or replace the property.” *Id.* at \*3. Relying on *DeYoung*, we rejected the appellant’s argument, and noted:

[T]he policy of section 609.595 would be underserved if [this court] were to adopt appellant’s interpretation of the statute and hold that a defendant’s punishment for this crime is dependent on whether the victim elects to minimize his or her costs for repair or replacement.

*Id.*

Because the theft statute relies on the market value of the property at the time of the theft, and because the policies underlying the statute and the criminal-damage-to-property statute are similar, we reject Powers’s argument that the actual cost of repair of the door should be used to calculate damages, rather than the estimated cost of repair. As in *DeYoung* and *Sayer*, the policy of section 609.595 would be underserved if we were to adopt Powers’s interpretation of the statute and hold that her punishment for this crime is dependent on whether the victim elected to minimize his costs for repair or replacement of the damaged property. Instead, consistent with prior decisions and the policy of section 609.595, we conclude that a jury may properly consider the market value of the repair or replacement of the damaged property.

Powers also argues that, because the state failed to prove that the homeowner actually repaired the door, her conviction cannot be sustained. Based on the policy stated above, whether or not the homeowner actually repaired or replaced the door has no bearing on the amount of damage Powers caused, nor does it reduce her criminal liability for that damage.

As to the sufficiency of the evidence proving the amount of loss element for criminal damage to property, the state submitted an estimate, supported by the testimony of the homeowner, indicating that the market value of repairing his door would be \$1,589.05. The homeowner obtained this estimate from Lowe's after explaining to the clerk that he wanted a door that matched the damaged door as closely as possible. This estimate also included the estimated labor costs the homeowner expected to incur when replacing the door, which totaled \$241.50 (calculated at rate of \$69 per hour for three-and-a-half hours). Just as it was reasonable for the victim in *DeYoung* to include the value of labor in the total cost to repair and replace parts of the vehicle, it was also reasonable for the homeowner to include the estimated cost of his labor in the total cost of repairing and replacing the door. Moreover without including the labor costs, the estimated price for the door alone exceeded the \$1,000 threshold. Therefore, the evidence was sufficient to support Powers's conviction for first-degree criminal damage to property.

**Affirmed.**