IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,
v.
EUGENE MANUEL MORALES,
Defendant-Appellant.

Marion County Circuit Court
16CR07806; A164511

Tracy A. Prall, Judge.

Argued and submitted January 17, 2019.

John P. Evans, Deputy Public Defender, argued the cause for appellant. Also on the brief was Ernest G. Lannet, Chief Defender, Criminal Appellate Section, Office of Public Defense Services.

Jennifer S. Lloyd, Assistant Attorney General, argued the cause for respondent. Also on the brief were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before Powers, Presiding Judge, and Egan, Chief Judge, and James, Judge.

PER CURIAM

Affirmed.

PER CURIAM

Defendant challenges his first-degree theft conviction, ORS 164.055(1)(a), that arose out of his helping his brother steal two gold watches from a downtown Salem pawnshop. On appeal, defendant argues that the trial court erred in denying his motion for a judgment of acquittal and in failing to give his requested special jury instructions that would have required the jury to find that he acted with a culpable mental state with respect to the value of the stolen property. We affirm.

Defendant and his brother visited a pawnshop together to look at two gold watches that were on display. Later that day, defendant's brother returned to the pawnshop alone and asked to see the two most expensive watches. An employee allowed him to handle two solid gold watches, and defendant's brother said, "I think I'll take them both" and ran out the door. Employees gave chase, as defendant's brother ran to a waiting Cadillac driven by defendant who then "floored it" and "peeled out" as the pair fled their heist. An employee later identified the brothers using surveillance video from their earlier visit. The two watches were worth over $6,000.

The state charged defendant with first-degree theft based on the watches being valued at over $1,000. *See* ORS 164.055(1)(a) (providing that a "person commits the crime of theft in the first degree if, *** the person commits theft as defined in ORS 164.015 and *** [t]he total value of the property in a single or aggregate transaction is $1,000 or more"). The state pursued an aid-and-abet theory for defendant's facilitation of his brother's theft of the watches, the jury found him guilty as charged, and defendant appeals.

Defendant's arguments on appeal are premised on his interpretation of ORS 164.055(1)(a): he contends that that statute requires proof of, at a minimum, criminal negligence with regard to the stolen property's value. The state responds that defendant's appellate arguments differ from those before the trial court, which focused on the language of the indictment, but that, in any event, his arguments are foreclosed by *State v. Jones*, 223 Or App 611, 196 P3d 97

(2008), *rev den*, 345 Or 618 (2009), and *State v. Cole*, 238 Or App 573, 242 P3d 734 (2010), *rev den*, 350 Or 230 (2011).

Even assuming defendant preserved his arguments, we previously have held that the value of stolen property is an element that requires no mental state. *See, e.g.*, *Jones*, 223 Or App at 620 (explaining "neither the grammatical structure nor the obvious legislative purpose of the [first-degree theft] statute suggests that the culpable mental state extends to elements beyond the prohibited act"); *Cole*, 238 Or App at 574 (rejecting the defendant's argument that the trial court erred in refusing to instruct the jury that it must find a culpable mental state with respect to the value of the stolen property). Moreover, we decline defendant's invitation to overrule those cases. Defendant has not demonstrated that they were incorrectly decided, let alone that they were plainly wrong. *See State v. Civil*, 283 Or App 395, 406, 388 P3d 1185 (2017) (explaining that we will not overrule prior opinions unless they are "plainly wrong," which is "a rigorous standard grounded in presumptive fidelity to *stare decisis*").

Affirmed.