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NO. 53110-1-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

FIYORI BAHTA,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Judge Michael Schwartz

No. 18-1-02443-1

BRIEF OF RESPONDENT

MARY E. ROBNETT
Prosecuting Attorney

Kristie Barham
Deputy Prosecuting Attorney
WSB # 32764
930 Tacoma Ave., Rm 946
Tacoma, WA 98402
(253) 798-7400

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I. INTRODUCTION

Fiyori Behre Bahta was convicted of two counts of theft from a vulnerable adult in the first degree, three counts of theft from a vulnerable adult in the second degree, one count of theft in the third degree, and two counts of trafficking in stolen property in the first degree for stealing and reselling the rings of several residents and an employee in the memory care unit at the Weatherly Inn, where Bahta worked as a nurse. The State presented evidence that the thefts all occurred when Bahta was working, she was the only one working on all of the days the thefts occurred, she was frequently alone with the victims, and she was specifically seen around the time of and near multiple thefts. The State also presented evidence that Bahta sold the stolen rings at Gold Masters with knowledge that they were stolen. Further, Bahta admitted to reselling the stolen rings. Viewing the evidence in the light most favorable to the State, sufficient evidence proves Bahta committed the thefts.

Sufficient evidence also proves that the value of Ruby McFarland's ring exceeds \$5,000. Ruby McFarland's daughter estimated that the value of her mother's ring was approximately \$10,000. She testified she was familiar with the ring, owned diamonds herself, and was familiar with the value of diamonds. Viewing the evidence in the light most favorable to the

State, sufficient evidence proves the value of McFarland's ring well exceeded the \$5,000 value necessary to convict Bahta of the theft. Accordingly, this Court should affirm Bahta's convictions.

II. RESTATEMENT OF THE ISSUES

- A. Viewing the evidence in the light most favorable to the State, does sufficient evidence prove Bahta committed the thefts?
- B. Viewing the evidence in the light most favorable to the State, does sufficient evidence prove the value of Ruby McFarland's ring exceeded \$5,000?

III. STATEMENT OF THE CASE

A. Procedure

On June 25, 2018, the State charged Bahta with three counts of theft from a vulnerable adult in the first degree, five counts of theft in the second degree, and two counts of trafficking in stolen property in the first degree. CP 1-7. On December 05, 2018, the first day of trial, the State filed an amended information dismissing count VI and charging Bahta with two counts of theft from a vulnerable adult in the first degree, four counts of theft from a vulnerable adult in the second degree, one count of theft in the second degree, and two counts of trafficking in stolen property in the first degree. CP 15-18.

The case proceeded to jury trial before the Honorable Judge Michael Schwartz on December 5, 2018. RP 221. The State called thirteen witnesses:

Tacoma Police Department Detective Scott Yenne, Teresa Edwards (former Weatherly Inn memory care unit manager), Karen Russell (victim Helen Ettlin's daughter), Gaye Jacobs (victim Ruby McFarland's daughter), David Berryman (Gold Masters Precious Metals Dealer), John Demotica (Weatherly Inn employee), Mary Grab (victim Ferdy Kohler's daughter), Charlene Caton (Weatherly Inn employee), Ronald Bishop (victim Barbara Bishop's husband), Terry Hudson (victim MaryLu Beck's son), Desa Gese (victim Desa Gese's daughter), Bryan Pontius (Weatherly Inn general manager), and Victoria Infante (victim and Weatherly Inn employee). CP 125. Bahta testified and did not call any witnesses. RP 608-13, 662.

The State filed a second amended information at the close of its case on December 12, 2018 consistent with testimony at trial. RP 603-04, 607-10. The amended information reduced counts IV and VIII to theft in the third degree and count VI remained dismissed. RP 610-11; CP 15-18, 28-31. A total of nine counts remained: two counts of theft from a vulnerable adult in the first degree (counts II and III), three counts of theft from a vulnerable adult in the second degree (counts I, V, and VII), two counts of theft in the third degree (counts IV and VIII), and two counts of trafficking in stolen property in the first degree (counts IX and X). CP 28-31.

The jury found Bahta guilty of two counts of theft from a vulnerable adult in the first degree, three counts of theft from a vulnerable adult in the

second degree, one count of theft in the third degree, and two counts of trafficking in stolen property in the first degree. (counts I-III, V, VII-X). CP 67-75, 90-91.¹ The court sentenced Bahta to 46 months. CP 95. Bahta timely appealed. *See* CP 115.

B. Facts

On October 10, 2017, Bahta was hired as an LPN (licensed practical nurse) at the Weatherly Inn, an assisted living facility in Tacoma. RP 251, 273-74. Bahta worked the evening shift in the memory care unit. *Id.* Residents in the memory care unit suffer from memory loss, often to the degree that they are unable to remember even the names of their family members and need assistance to do everyday tasks. RP 511-12. As an LPN in the memory care unit, Bahta was a “team leader,” and her tasks included directing caregivers, administering and charting medication, scheduling appointments with doctors, and providing treatment for residents and monitoring them for any changes. RP 262, 274-75, 618. As an LPN, Bahta interacted one-on-one with patients every day. RP 535.

On October 21, 2017, Vicki Infante, a caregiver at Weatherly Inn, arrived for work at 10 PM. RP 550, 552, 556. She followed her normal routine of removing her two rings and watch and placing them in her purse,

¹ Bahta was convicted of all charges except one count of theft in the third degree (count IV). CP 70.

which she left in the medical charting room. RP 554-55. Infante noticed Bahta was standing outside of the medical charting room when she took her jewelry off and placed it in her purse. RP 559. Bahta's shift was about to end, so she was waiting for the nurse working the next shift to relieve her. RP 557. When Infante left the medical charting room, Bahta entered. RP 557-59. When Infante returned for her purse and jewelry at the end of her shift, her jewelry was missing. RP 560. She searched "everywhere" and could not find her jewelry. *Id.*

On October 22, 2017, a caregiver was helping Helen Ettlin, a 90-year-old resident with dementia, get out of bed and get dressed in the morning. RP 285, 346. Ettlin looked at her hand and said, "my wedding ring is missing." RP 286. Staff searched Ettlin's room and Teresa Edwards, the manager of the memory care unit, discussed the missing ring with Ettlin. RP 286-87. Ettlin was unable to provide any information about how her ring went missing. RP 287.

On October 24, 2017, Edwards was notified by the daughter of another memory care resident, Lisa Peterson, that her mother's ring was missing. RP 289. However, staff discovered that Peterson's daughter had taken the ring home with her months earlier, and the ring was accounted for. RP 289-90. On October 25, 2017, the daughter of Desa Gese, a resident with Alzheimer's, notified staff that her mother was missing two rings: an

emerald cut amethyst ring and a ring with seven birthstones on it. RP 290-91, 496, 499.

Next, on October 28, 2017, Richard Taylor's wedding ring went missing. RP 294. At that point, the Weatherly Inn implemented a procedure for monitoring the resident's jewelry. RP 296. All of the staff was notified about the missing rings and related procedure. RP 296, 433-34, 532. The LPNs, such as Bahta, were responsible for documenting daily whether the residents had their jewelry. RP 296, 434. If staff noticed that a ring was missing, they were instructed to notify Edwards immediately. RP 297.

On the evening of November 6, 2017, Charlene Caton, an LPN at the Weatherly Inn, was working in the dining room where she confirmed and documented that residents Barbara Bishop and Beverly Brown were both wearing their rings. RP 434-41. Shortly thereafter, Caton saw Bahta move Brown out of the dining room. RP 439. The next day, on November 7, 2017, a caregiver noticed that Bishop was missing her three rings. RP 300-01.

Also on November 7, 2017, staff notified Edwards that more rings had gone missing. RP 302-07. Mary Lu Beck, a 96-year-old resident with Alzheimer's, was missing her engagement ring and wedding band. RP 307-09, 457-59. Another resident, 89-year-old Ruby McFarland, who suffered from dementia, was missing a gold wedding ring with diamonds and a ruby

ring. *See* RP 304-07, 361-63. The ruby ring was never recovered. RP 368. McFarland's wedding ring was purchased fourteen years earlier by her second husband. RP 365-67. Gaye Jacobs, McFarland's daughter, testified that she was familiar with McFarland's wedding ring. RP 366. Although Jacobs was unaware of the purchase price of the ring, she estimated its value at about \$10,000. RP 366. Jacobs owns diamond rings herself and is familiar with their value. "depending on the clarity of it and so forth." *See* RP 367-68. Jacobs testified she believed the diamonds in McFarland's wedding ring were real. RP 367.

To investigate the wave of missing jewelry, Edwards interviewed staff and compared their work schedules with the dates the rings disappeared. RP 312, 325. She determined that Bahta was the "common denominator," meaning Bahta was working on all of the dates and times when the rings had disappeared. RP 326; *see also* RP 533. Edwards reported the missing rings to police and shared all of the information she had gathered, including Bahta's name, with Tacoma Police Detective Scott Yenne. RP 329-30; *see* RP 231-32.

Detective Yenne contacted a law enforcement database called Leads Online that documents transactions made at pawn shops and jewelry stores that buy and sell items. RP 231-33. Law enforcement uses the database to track down stolen property. RP 233. Detective Yenne discovered Bahta had

sold a number of items at a jewelry store in Tacoma called Gold Master's Precious Metals. RP 237-39.

David Berryman is a dealer at Gold Master's Precious Metals. RP 372. Gold Master's buys and sells jewelry and other items. RP 372-74. Berryman testified he typically pays jewelry sellers for gold, but not stones, because he cannot verify the authenticity of stones when they are mounted in jewelry. RP 384. Berryman assesses the current market value of the gold and pays sellers 10-40% of the estimated value of jewelry. RP 374, 391-92. For every transaction, he asks the seller for photo identification, confirms that the I.D. matches the seller, then photocopies both the I.D. and the items being sold. RP 375-76. Berryman reports all transactions to Leads Online. RP 376. On October 23, 2017, Bahta sold six rings and a gold chain to Gold Master's. RP 377-79. On November 7, 2017, Bahta sold six more rings to Gold Master's. RP 397.

After retrieving the jewelry Bahta sold at Gold Master's, Detective Yenne returned it to the Weatherly Inn. RP 245. Family members of the victims were able to identify some of the rings as those belonging to the following victims: Helen Ettlin, Desa Gese, Barbara Bishop, Ruby McFarland, MaryLu Beck, Vicki Infante, and Ferdy Kollar. RP 245-47. Staff had not realized Kollar's ring, which was engraved with his name, was

missing until it was recovered by Detective Yenne. RP 332-33. Kollar's daughter identified the ring. RP 427.

Bahta admitted to possessing and pawning the stolen rings. RP 625, 641, 645-47, 661. Bahta testified she received the rings from another employee, Crystal Tupito, shortly before October 23, 2017. RP 625, 635. Although Bahta and Tupito had only had one prior conversation, Bahta said Tupito asked her to pawn the rings because Tupito did not have her identification. RP 635-40. Bahta claims at the time, she was only aware that one ring was missing from the Weatherly Inn. RP 640. When asked whether she subsequently became aware that other rings were missing, Bahta testified, "No. We didn't have a meeting or anything. We were just told to start charting on rings." RP 644. Bahta testified that sometime before November 7th, 2017, Tupito gave her six more rings to pawn. RP 645.

"Not a one" ring went missing from the memory care unit after Bahta's last day of work at the Weatherly Inn on November 8, 2017. RP 548; *see also* RP 327-29.

IV. ARGUMENT

A. Viewing the evidence in the light most favorable to the State, sufficient evidence proves that Bahta committed the thefts and that the value of Ruby McFarland's ring exceeded \$5,000.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. Smith*, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). In evaluating a challenge to the sufficiency of the evidence, the reviewing court must not attempt to determine whether *it* believes the State has met the burden of proof. *State v. Baeza*, 100 Wn.2d 487, 490, 670 P.2d 646 (1983) (citing *State v. Green*, 94 Wn. 2d 216, 221, 616 P.2d 628 (1980)). Rather, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the State, “any rational trier of fact could have found the essential elements...beyond a reasonable doubt.” *Baeza*, 100 Wn.2d at 490 (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)) (emphasis in original). Sufficiency of the evidence is reviewed de novo. *State v. Berg*, 181 Wn.2d 857, 867, 337 P.3d 310 (2014).

When the sufficiency of the evidence is challenged, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *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 therefrom. *Id.* Direct and circumstantial evidence carry the same weight. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). Further, the specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

In considering the evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *see also State v. Bright*, 129 Wn.2d 257, 272, 916 P.2d 922 (1996) (It is the role of the jury to weigh the credibility of testimony, along with any surrounding facts and circumstances tending to support or discount two conflicting accounts.) Appellate courts defer to the trier of fact on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). Therefore, when the State has produced sufficient evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

1. Sufficient evidence proves Bahta committed the thefts.

Viewing the evidence in the light most favorable to the State, sufficient evidence proves Bahta committed the thefts in this case. “A person commits the crime of Theft from a Vulnerable Adult in the First

Degree when he or she commits theft of property or services exceeding \$5,000 in value while he or she knew or should have known that the victim was a vulnerable adult.” CP 41; RCW 9A.56.400(1)(a). “A person commits the crime of Theft from a Vulnerable Adult in the Second Degree when he or she commits theft of property or services exceeding \$750 in value while he or she knew or should have known that the victim was a vulnerable adult.” CP 51; RCW 9A.56.400(2)(a). “A person commits the crime of Theft in the Third Degree when he or she commits theft of property or services.” CP 55; *see* RCW 9A.56.050. The jury was instructed that “‘Theft’ means to wrongfully obtain or exert unauthorized control over the property or services of another, or the value thereof, with intent to deprive that person of such property or services.” CP 42.

Proof that Bahta is the person who committed the thefts was established by evidence of the time frame the thefts occurred within, coupled with Bahta’s access to the rings. All of the thefts occurred between the date Bahta was hired, October 10, 2017, and her last day, November 8, 2017. *See* RP 536; *see also* CP 23-31. “Not a one” ring went missing from the memory care unit after Bahta’s last day. RP 548, *see also* RP 327-29. After interviewing employees and comparing the dates the thefts occurred with employee schedules, Edwards determined that out of all the licensed nurses and caregivers, Bahta was the “common denominator.” RP 312, 325-

26. Bryan Pontius, the general manager of the Weatherly Inn, testified Bahta was the only person who worked all of the three or four days that the thefts occurred. RP 533.

Further, as a nurse, Bahta was frequently alone with the victims. RP 535. Bahta worked one-on-one with memory care residents on a daily basis. *Id.* The memory care unit was staffed with only four employees per shift caring for forty residents. RP 340. It would be unusual, therefore, for two employees to be in one room at the same time. *Id.* Additionally, it was uncommon to see an employee from a different unit in the memory care unit. RP 534. Accordingly, a rational trier of fact could have found that Bahta committed the thefts when she was alone with the victims.

Further proof that Bahta committed the thefts is evidenced by the fact that she was specifically seen in the areas of and around the times of multiple thefts. John Demotica, an employee in the memory care unit, was working on the night of November 6, 2017, when he called Bahta over to dress a wound on resident MaryLu Beck's leg. RP 415-16. Beck was a 96-year-old resident who suffered from Alzheimer's. RP 457-59. Demotica took notice of Beck's "very noticeable" and "really big" ring on her finger. RP 412-14. Demotica left the room and notified Bahta that she needed to dress Beck's wound. RP 414-17. The next day another employee noticed Beck's wedding ring set was missing. RP 307-08, 459. Beck's rings were

recovered by Detective Yenne from Gold Master's, where Bahta pawned them. *See* RP 246.

Victoria Infante, a victim and employee in the memory care unit, was working on the night of October 21, 2017. RP 550. At the start of her shift, Infante completed her typical routine of removing her two rings and a watch, placing them in her lunch bag, and leaving the bag in the medical charting room. RP 554. When Infante put her bag down, Bahta was standing outside the open charting room door. RP 557-59. When Infante left the charting room, Bahta entered it. *Id.* At the end of Infante's shift, she discovered her jewelry was missing. RP 560. Infante's rings were recovered by Detective Yenne from Gold Masters, where Bahta pawned them. RP 245-46, 377-79, 397, 661.

Further, it is undisputed that Bahta pawned the stolen rings at Gold Masters. RP 245-47, 373-85, 641-47, 661; *see* Br. of Appellant 8. On October 23, 2017, Bahta sold six rings and a gold chain to Gold Masters. RP 377-79. On November 7, 2017, Bahta sold six more rings to Gold Master's. RP 382-85, 397. David Berryman, a dealer at Gold Masters, identified Bahta in court as the person who sold him the jewelry in the October 23rd and November 7th transactions. RP 379, 383-84. The victims and their family members positively identified the rings belonging to Helen Ettlin, Desa Gese, Barbara Bishop, Ruby McFarland, MaryLu Beck, Vicki

Infante, and Ferdy Kollar. RP 245-47. And Bahta admitted to pawning the rings. RP 641-47, 661. Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found beyond a reasonable doubt that Bahta committed the thefts.

Bahta argues the State failed to prove she perpetrated the thefts because there was no direct evidence that anyone saw her take the rings. Br. of Appellant 11. However, direct and circumstantial evidence carry the same weight. *Goodman*, 150 Wn.2d at 781. It is reasonable that no one directly witnessed Bahta take the rings, because the victims who were residents in the memory care unit suffered from memory loss, so they would not be able to recall when Bahta stole their rings from their fingers. *See* RP 511-12, 525. Also, the Weatherly Inn does not have surveillance cameras. RP 525. Viewing the evidence in the light most favorable to the State, a rational trier of fact could have concluded Bahta committed the thefts because the thefts only occurred during times she was working, she was the only one working at all of the times the thefts occurred, she was frequently alone with the victims, she was specifically seen around the time of and near multiple thefts, and it is undisputed that she pawned the stolen rings at Gold Masters.

The evidence shows it was Bahta, not anyone else, who took the rings from the Weatherly Inn, because Bahta was the only person who was

working on all of the three or four days that the thefts occurred. RP 533. But even if this Court considers Bahta's suggestion that another employee could have initially taken the rings, the evidence shows Bahta committed the thefts because she wrongfully obtained or exerted unauthorized control over the property of another with intent to deprive that person of such property. *See* Br. of Appellant 11. "Theft" means "to wrongfully obtain *or* exert unauthorized control over the property or services of another, or the value thereof, with intent to deprive that person of such property or services." CP 42 (emphasis added); RCW 9A.56.020(1)(a).

Bahta's claim that she was never aware that more than one ring had gone missing is unpersuasive. *See* RP 644. Teresa Edwards testified she directed the LPNs to start documenting the presence of residents' jewelry when rings started going missing. RP 296. Bahta was an LPN. RP 273-74. Bryan Pontius testified that staff members were aware of the missing *rings* "all the way through the process." RP 532. Charlene Caton testified "everybody" was informed that "several residents had jewelry that had gone missing." RP 433. John Demotica testified "we were all informed." RP 409-10. The jury was free to disbelieve Bahta's testimony and believe the testimony of the other witnesses. It is the role of the jury to make credibility determinations and weigh conflicting evidence. *See Camarillo*, 115 Wn.2d at 71; *Bright*, 129 Wn.2d at 272.

Viewing the evidence in the light most favorable to the State, there is no reason to believe Bahta was oblivious to the fact that the rings she pawned were the stolen rings. The specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability. *Delmarter*, 94 Wn.2d at 638. The evidence shows Bahta knew the rings were stolen when she took them to Gold Masters and sold them, knowingly and wrongfully obtaining and exerting unauthorized control over the rings, or value thereof, with intent to deprive their owners of them. *See* CP 42. Accordingly, viewing the evidence in the light most favorable to the State, with all reasonable inferences drawn in favor of the State, a rational trier of fact could have found beyond a reasonable doubt that Bahta committed the thefts. This Court should affirm Bahta's convictions.

2. Sufficient evidences proves the value of Ruby McFarland's ring exceeds \$5,000.

Viewing the evidence in the light most favorable to the State, with all reasonable inferences drawn in favor of the State, a rational trier of fact could have found that the value of Ruby McFarland's ring (count II) exceeds \$5,000. "Value" for the purposes of theft means the market value of the property at the time and in the approximate area of the theft. RCW 9A.56.010(21)(a); *State v. Williams*, 199 Wn. App. 99, 105, 398 P.3d 1150 (2017). "Market value" is the price which a well-informed buyer would pay

to a well-informed seller, when neither is obliged to enter into the transaction. *State v. Kleist*, 126 Wn.2d 432, 434-35, 895 P.2d 398 (1995); *State v. Clark*, 13 Wn. App. 782, 787, 537 P.2d 820 (1975). Value need not be proved by direct evidence as the jury may draw inferences from the evidence. *State v. Hermann*, 138 Wn. App. 596, 602, 158 P.3d 96 (2007).

In *State v. Hammond*, 6 Wn. App. 459, 463, 493 P.2d 1249 (1972), this Court affirmed the defendant's conviction for grand larceny where the owner of the stolen ring testified to its approximate market value. Initially, the witness was reluctant to state her opinion as to the market value of the ring and admitted she "had little knowledge of the exact value" of the ring. *Id.* at 462. She subsequently estimated the value of the ring to be above \$600. *Id.* This Court interpreted her response as constituting a layman's manner of expressing market value. *Id.* at 463.

The Court explained that as the owner of the ring, "the witness was entitled to give her estimate of the value of the ring for whatever it might be worth in aiding the trier of the facts in determining the value." *Id.* The Court noted she was subject to cross-examination to bring out the basis or lack of basis for the estimate, and the jury was entitled to give little or no weight to her testimony. *Id.* The Court held the evidence was sufficient to establish the property's value exceeded \$75, as required to convict the defendant, "[e]ven assuming that the owner's estimate regarding market value was in

error by several hundred dollars” and affirmed the defendant’s conviction.
Id.

Similarly here, Gaye Jacobs, Ruby McFarland’s daughter, testified to the approximate value of the ring. RP 366. Jacobs estimated the value to be “about \$10,000.” *Id.* Jacobs testified that she was familiar with the ring and that she owned diamonds herself and was familiar with their value. RP 362-64, 366-68. She described the ring as a gold wedding band with five diamonds on it. RP 362-63. As in *Hammond*, Jacobs was entitled to give her estimate of the value of the ring and was subject to cross-examination to bring out the basis or lack thereof for the estimate. *See Hammond*, 6 Wn. App. at 462-63; *see also* RP 370. Bahta chose not to cross-examine Jacobs on any of her testimony, including her estimation of the value of the ring. RP 370.

Although Jacobs’ testimony was limited to her opinion, the jury was entitled to give Jacobs’ testimony little or no weight. Reviewing courts do not question the jury’s determinations on the credibility of witnesses and the persuasiveness of the evidence presented. *Thomas*, 150 Wn.2d at 874-75. Further, like in *Hammond*, even if Jacobs’ estimate was imprecise, it established that the ring’s value substantially exceeded the minimum \$5,000 required to convict Bahta of the theft. *See* RP 366; *see also Hammond*, 6

Wn. App. at 463. The testimony was sufficient for a rationale trier of fact to conclude the ring's value exceeded \$5,000.

In *Williams*, Division III reversed the defendant's conviction for possession of stolen property in the second degree where the owner of the property testified to a "rough estimate" of value without identifying the basis for the estimate. *Williams*, 199 Wn. App. at 111. The witness testified that a "rough estimate" value of the property was \$800, a figure close to the minimum amount required to convict of \$750. *Id.* The witness did not testify to the basis of his opinion of value. *Id.* The Court noted, "For all we know, he used the purchase price of the goods, the replacement cost of the goods, or some intrinsic value to himself." *Id.* The *Williams* Court distinguished *Hammond*, because in that case, the witness estimated a minimum fair market value well in excess of the required statutory minimum. *Id.* at 107. In *Williams*, the "rough estimate of \$800 barely exceeded the \$750 minimum." *Id.*

Here, unlike in *Williams*, the witness testified to the basis of her opinion. *See* RP 366-69. Jacobs was familiar with the ring and testified that she owns diamonds herself and is familiar with their value. RP 362-68. She even recognized that value can vary "depending on the clarity of it and so forth." *See* RP 367-68. As in *Hammond*, the value Jacobs estimated the ring at, "about \$10,000," was well over the statutory minimum of \$5,000. *See*

RP 366. That factor was missing in *Williams*. See *Williams*, 199 Wn. App. at 11. Because Jacobs testified to the basis of her opinion and gave an estimated value well above the statutory minimum, the evidence was sufficient for a rational trier of fact to conclude the ring had a value over \$5,000.

Further, although Jacobs testified to the approximate “value” of the ring, rather than “market value,” the court in *State v. Melrose*, 2 Wn. App. 824, 832, 470 P.2d 552 (1970), held similar testimony was sufficient. In that case, the theft victim testified to the purchase price of his stolen camera, but explained that he did not know its current value and that the price of cameras drops rapidly. *Id.* at 830. He testified that he did not know the value of his stolen light meter. *Id.* at 830-31. He also testified to the worn condition and reduced functionality of the items. *Id.*

The Court held the testimony was sufficient to establish the value of the stolen items exceeded the statutory minimum because the jury could consider the purchase price in conjunction with the changes in condition that could affect market value. *Id.* at 831-32. “It is not essential that there be direct evidence of value—a fact in issue—because reasonable inferences from substantial evidence may suffice.” *Id.* at 831. The Court noted that even if the State had presented expert testimony on the market value of the stolen property, the jury could have rejected such testimony and still

determined market value from the evidence in the record, using the judgment of persons of ordinary experience and knowledge. *Id.* at 832. The Court held that the evidence of market value, while sparse, was sufficient to support the conviction. *Id.* at 831-82.

Similarly, in this case, Jacobs testified to the estimated value of the ring and factors which could affect the market value. RP 365-68. She testified the ring was purchased fourteen years earlier. RP 365-66. Her estimate was based on her own knowledge of diamonds and their value “depending on the clarity of it and so forth.” *See* RP 367-68. The jury also heard testimony from Detective Yenne as to the market value of jewelry. RP 585-90. He testified that the value of diamonds typically increases over time, and in his investigations, he had never seen a diamond that depreciated over time. RP 587-88. Like in *Melrose*, the jury in this case not only considered Jacobs’ estimate of the ring’s value, but also the testimony from Detective Yenne regarding market value over time. A rational juror “could determine market value from the evidence in the record, using the judgment of persons of ordinary experience and knowledge.” *Melrose*, 2 Wn. App. at 832. Viewing the evidence in the light most favorable to the State, with all reasonable inferences drawn in favor of the State, a rational trier of fact could have found there was sufficient evidence to conclude the value of McFarland’s ring exceeded \$5,000.

V. CONCLUSION

For the reasons stated above, the State respectfully requests that this Court affirm Bahta's convictions.

RESPECTFULLY SUBMITTED this 30th day of August, 2019.

MARY E. ROBNETT
Pierce County Prosecuting Attorney



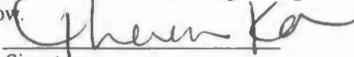
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Rule 9



KRISTIE BARHAM
Deputy Prosecuting Attorney
WSB # 32764

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The undersigned certifies that on this day she delivered by E-file or U.S. mail to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

8/30/19 
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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