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Court of Appeals  
Division III  
State of Washington  
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NO. 36908-1-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

MICHAEL WAYNE HELMS, Appellant.

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BRIEF OF RESPONDENT

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**I. ASSIGNMENT OF ERROR**

Mr. Helms assigns error to the trial court's ruling on the admissibility of testimony establishing the value of the property he unlawfully possessed. Mr. Helms further argues that the record contains insufficient evidence to sustain his conviction for Second Degree Possession of Stolen property when the Court suppresses the hearsay testimony regarding the value of the property unlawfully possessed.

**II. ISSUES PRESENTED BY ASSIGNMENT OF ERROR**

- A. Did the trial court err by allowing the State to present hearsay testimony regarding the value of the property unlawfully possessed by Mr. Helms; and
- B. If hearsay testimony regarding the value of the property unlawfully possessed is excluded, is the remaining evidence sufficient to support Mr. Helms' conviction for Second Degree Possession of Stolen Property under RCW 9A.56.160?

**III. STATEMENT OF THE CASE**

Because the State's review of the record and relevant case law leads it to believe that Mr. Helms is entitled to the relief he has requested, the State endorses the Statement of the Case from Mr. Helms' brief rather than preparing its own.

#### **IV. STANDARD OF REVIEW**

This Court reviews a trial court's evidentiary rulings regarding admissibility of evidence at trial for abuse of discretion. *State v. Quincy*, 122 Wn.App. 395, 398 (2004). This Court's inquiry into the sufficiency of the evidence involves ascertaining "whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt." *State v. Rempel*, 114 Wn.2d 77, 82 (1990) (citing *State v. Green*, 94 Wn.2d 216, 221 (1980)).

#### **V. ARGUMENT**

Based on its independent review of the record below and the relevant case law, the State believes that Mr. Helms has made a showing that he is entitled to the relief he requests. As such, the State asks this Court to reverse Helms' conviction for Second Degree Possession of Stolen Property under RCW 9A.56.160 and remand the matter for entry of judgment on the lesser included offense of Third Degree Possession of Stolen Property under RCW 9A.56.170. It should be noted that reversal of Helms' conviction for Second Degree Possession of Stolen Property in Count One should not affect his conviction in Count Two for Possession of Methamphetamine under RCW 69.50.4013(1).

**1. The State's Evidence Regarding Market Value of the Property was Hearsay and no Exception was Offered to Justify its Admissibility.**

Mr. Helms rightly points out that the State's only evidence regarding the value of the property he unlawfully possessed came from a postal inspector who coordinated the sting operation in which Mr. Helms was apprehended. (Amended RP 146-48). That postal inspector, over objection from Mr. Helms, testified that the property was received from Amazon and someone there had told him the prices of the items. (Amended RP 158-161). The postal inspector acknowledged that the prices of items offered by Amazon may change, but that he did not verify the prices of the items at the time of the sting. (Amended RP 159).

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ER 801(c). Hearsay is inadmissible, except as provided by court rule or statute. ER 802.

The only testimony offered which established the market value of the stolen property was based upon inadmissible hearsay. Apart from what an unnamed Amazon representative told him, the postal inspector lacked personal knowledge about the value of the items possessed by Mr. Helms. "Inadmissible evidence is not made admissible by allowing the substance of a testifying witness's evidence to incorporate out-of-court statements by

a declarant who does not testify.” *State v. Hudlow*, 182 Wn.App. 266, 281 (2014) (quoting *State v. Delamora Martinez*, 105 Wn.App. 775, 782 (2001)). The trial court should have sustained Helms’ timely objection, thereby preventing the postal inspector from testifying to the essential element of the property’s market value by repeating what an Amazon representative told him. ER 801; ER 802; *Hudlow*, at 281. When the Court strikes the hearsay testimony, there is insufficient evidence to prove that the value of the stolen property possessed by Mr. Helms was greater than \$750.00.

**2. Without the Hearsay Testimony Regarding the Value of the Property Unlawfully Possessed, there was no Evidence that the Property had a Value Greater than \$750.00, as required by RCW 9A.56.160.**

To convict a person of unlawful possession stolen property in the second degree, the State must prove beyond a reasonable doubt that the defendant possessed stolen property, other than a firearm or stolen vehicle, “which exceeds seven hundred fifty dollars in value but does not exceed five thousand dollars in value...” RCW 9A.56.160. “Value” under RCW 9A.56.160, is “the market value of the property or services at the time and in the approximate area of the criminal act.” RCW 9A.56.010(21)(a).

The evidence conclusively establishes that Mr. Helms possessed stolen property and that the property was not valueless, however, that would

only support a conviction of the lesser included offense of Third Degree Possession of Stolen Property under RCW 9A.56.170. There was no *admissible* evidence that the property unlawfully possessed by Helms had a value greater than \$750.00.

**V. CONCLUSION**

Based on the foregoing, the Court should reverse Mr. Helms' conviction for Second Degree Possession of Stolen Property under RCW 9A.56.160 in Count One and remand the matter for entry of judgment on Third Degree Possession of Stolen Property, RCW 9A.56.170. The Court should take ensure that reversal does not disturb Mr. Helms' conviction for Possession of Methamphetamine in Count Two.

Respectfully submitted this 25th day of March, 2020.

s/ Bret Roberts  
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DECLARATION OF SERVICE

I, Bret Roberts, state that on March 25, 2020, I emailed a copy of BRIEF OF RESPONDENT to Andrea Burkhart at [Andrea@2arrows.net](mailto:Andrea@2arrows.net) via the Court's filing portal.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 25 day of March, 2020, at Yakima, Washington.

s/ Bret Roberts

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**YAKIMA COUNTY PROSECUTOR'S OFFICE**

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**Transmittal Information**

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