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State v. Flowers Appellant's Brief Dckt. 45597

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 45597**
Plaintiff-Respondent,	)	
	)	**BANNOCK COUNTY NO. CR 2017-166**
v.	)	
	)	
HALTON L. FLOWERS,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HONORABLE ROBERT C. NAFTZ
District Judge

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STATEMENT OF THE CASE

Nature of the Case

In this appeal, Halton J. Flowers asserts the State failed to present sufficient evidence to support his conviction for felony malicious injury to property, because it did not establish the value of the damage to the damaged items and the fair market value of the destroyed items exceeded $1,000. Rather than present evidence on the measure of the value of damages pursuant to *State v. Hughes*, 130 Idaho 698 (Ct. App. 1997), the State improperly relied upon the alleged victim's testimony on the original purchase price of the items.

Statement of the Facts and Course of Proceedings

The State charged Mr. Flowers by information with stalking in the first degree, felony, I.C. §§ 18-7905(1)(a) and/or (b) and 18-7906, malicious injury to property, felony, I.C. § 18-7001, and burglary, I.C. §§ 18-1401 to 18-1403. (R., pp.66-68; *see* R., pp.150-52 (amended information).) Mr. Flowers decided to represent himself, with standby counsel. (*See* R., pp.154-57, 159-66.) He pleaded not guilty to the charges. (R., p.160.) The district court granted Mr. Flowers' motion to bifurcate the trial, ruling that the stalking charge would be tried separately from the malicious injury to property and burglary charges. (*See* R., p.161.)

At the jury trial on the malicious injury to property and burglary charges, Lillian Snooks testified that, as of December 31, 2016, she and Mr. Flowers had been dating for about a month. (*See* Tr., p.39, L.20 – p.41, L.23.)[1] That day, she went to her grandmother's house for dinner. (*See* Tr., p.42, L.15 – p.43, L.5.) Ms. Snooks and Mr. Flowers had previously made plans to spend the evening together, and they were texting back and forth about that. (*See* Tr., p.43, L.13

[1] All citations to "Tr." refer to the 276-page PDF version of Additional Reporter's Transcript, which includes the Jury Trial transcripts for August 15 and August 16, 2017.

– p.44, L.5.) She changed her mind because Mr. Flowers was making her nervous. (*See* Tr., p.44, Ls.7-19.) Ms. Snooks testified Mr. Flowers was upset because she was not at her house to spend the evening with him, and he yelled at her when he called her on the phone after she left her grandmother's house. (*See* Tr., p.44, L.14 – p.45, L.6.)

Ms. Snooks testified she left her grandmother's house around 11:00 or 11:30 PM, and went to the house of a friend, Scott Lacy. (*See* Tr., p.44, L.23 – p.45, L.17.) She was at Mr. Lacy's house from before 12:00 AM until about 4:00 AM. (*See* Tr., p.45, Ls.18-19.) Ms. Snooks testified that, at that point, she did not feel comfortable being around Mr. Flowers. (*See* Tr., p.45, Ls.21-25.)

Ms. Snooks' mother testified that she was also at the grandmother's house that evening, and she left around 12:30 AM. (*See* Tr., p.181, L.23 – p.183, L.5.) She testified that Mr. Flowers contacted her at her house around 1:00 AM. (*See* Tr., p.183, L.12 – p.184, L.17.) Ms. Snooks' mother did not know Mr. Flowers, and he introduced himself as a friend of Ms. Snooks. (*See* Tr., p.184, L.18 – p.185, L.2.) Mr. Flowers stated he was very concerned about Ms. Snooks because she was supposed to meet him that night. (*See* Tr., p.185, Ls.2-4.)

Ms. Snooks' mother testified she then tried calling Ms. Snooks, but received no response. (*See* Tr., p.187, Ls.13-22.) After Mr. Flowers left, she drove over to Ms. Snooks' house. (*See* Tr., p.187, L.22 – p.188, L.7.) All the lights were on in house, but nobody answered the door. (*See* Tr., p.188, L.7 – p.189, L.2.) Ms. Snooks' mother then drove around until about 3:00 AM, looking for her daughter. (*See* Tr., p.189, L.9 – p.190, L.8.)

Next, Ms. Snooks' mother testified she went back to Ms. Snooks' house, and when she arrived, all the lights were off. (*See* Tr., p.190, Ls.12-19.) Mr. Flowers then walked up to her car and told her Ms. Snooks was not yet home, but he was trying to fix her doggy door, which

had fallen out on him. (*See* Tr., p.190, L.19 – p.191, L.7.) He asked her to follow him into the house and make sure nothing was missing or messed with. (*See* Tr., p.191, Ls.7-9.) Ms. Snooks' mother followed him into the house, and Mr. Flowers showed her broken pegs from the doggy door and stated he was going to fix the doggy door. (*See* Tr., p.191, L.12 – p.192, L.19.) She testified the kitchen area of the house looked fairly normal. (*See* Tr., p.193, L.9 – p.194, L.4.) Ms. Snooks' mother left her daughter's house after her son called and told her to go home. (*See* Tr., p.194, L.20 – p.195, L.21.)

Ms. Snooks testified that while she was at Mr. Lacy's house, she received text messages from Mr. Flowers stating he was at her house and would go into her house if she did not answer him. (*See* Tr., p.46, Ls.1-8.) She was ignoring her phone, and the phone was on silent mode. (*See* Tr., p.46, Ls.3-14.) She left Mr. Lacy's house and arrived at the house of another friend, Paul, around 4:00 to 4:30 AM. (*See* Tr., p.46, L.15 – p.47, L.2.) Once there, she received a phone call from Mr. Flowers, and she told him where she was. (*See* Tr., p.47, Ls.3-10.)

Ms. Snooks testified Mr. Flowers then drove to Paul's house and began yelling from outside. (*See* Tr., p.47, Ls.11-18.) She went outside and talked with him, and she eventually admitted to having been at Mr. Lacy's house. (*See* Tr., p.47, L.19 – p.48, L.3.) She testified Mr. Flowers then admitted he had been in her house, and pulled out two dildos he had taken from her house. (*See* Tr., p.48, Ls.4-11.) According to Ms. Snooks, Mr. Flowers stated that after she told him she had slept with Mr. Lacy, he was going to display the dildos at her work and write on the windows there how big of a slut she was. (*See* Tr., p.48, Ls.11-16.) She testified he did not have permission to be in her house or take the dildos. (*See* Tr., p.49, Ls.8-15.)

Ms. Snooks testified Mr. Flowers also slapped her face, and threatened to mess up her family's work and her relationship with her family. (*See* Tr., p.49, L.16 – p.50, L.7.) She

decided to go to her house with him, because he said at that point it would all be over. (*See* Tr., p.50, Ls.15-19.) She testified he also admitted to taking beer from her house and leaving it behind a dumpster for a homeless man to enjoy on New Year's Eve. (*See* Tr., p.50, Ls.20-25.) She had not given him permission to take the beer. (*See* Tr., p.51, Ls.1-2.)

Ms. Snooks testified that, when they arrived at her house, she did not see the beer, and noticed some clothes that had been bleached. (*See* Tr., p.51, Ls.12-19.) She testified Mr. Flowers stated he had been washing clothes and spilled some bleach. (*See* Tr., p.51, Ls.16-21, p.55, Ls.19-23.) Mr. Flowers stayed at her house until about 4:30 PM to 5:00 PM on January 1, 2017, and after he left Ms. Snooks went to the police. (*See* Tr., p.58, L.16 – p.59, L.2.)

Ms. Snooks testified her doggy door was intact when she had left her house on December 31. (*See* Tr., p.59, Ls.15-19.) When she returned to her house in the early morning hours of January 1, the doggy door had been kicked in, the bolts had been replaced by metal bolts, and there was a sticky note on the door stating, "I'm sorry, I forgot you got a new dog door." (*See* Tr., p.59, Ls.20-25.)

A couple days later, Ms. Snooks again contacted law enforcement. (*See* Tr., p.60, L.23 – p.61, L.2.) She testified she contacted law enforcement in relation to other damaged clothing and items she found in rooms in her house after January 1. (*See* Tr., p.61, Ls.2-24.) Including the bleached clothes and doggy door, Ms. Snooks testified about twenty-five items had been damaged or destroyed. (*See generally* Tr., p.61, L.25 – p.93, L.10; Appendix A.)[2] The items ranged from a wedding dress (*see* Tr., p.67, L.23 – p.71, L.24), to a laptop computer and a tablet (*see* Tr., p.83, L.17 – p.88, L.9), to an owl mug (*see* Tr., p.80, L.11 – p.81, L.2). For the majority

[2] Appendix A is a list of the damaged and destroyed items, as testified to by Ms. Snooks.

of the items, Ms. Snooks presented testimony on the purchase date and original purchase price. (*See generally* Tr., p.56, L.14 – p.58, L.15, p.61, L.25 – p.92, L.18; Appendix A.)

However, Ms. Snooks did not present testimony on the value of almost all of the items as of January 1, 2017. (*See* Tr., p.105, L.6 – p.107, L.4; Appendix A.) On cross-examination, Ms. Snooks testified, "No, I did not have the clothes appraised by anyone as of January 1st." (Tr., p.105, Ls.6-9.) Mr. Flowers asked, "do you know the used fair market value of these items as of January 1st?" and she replied, "Well, it depends on the items. Some of the items, yes." (Tr., p.105, Ls.10-13.) But when Mr. Flowers then inquired, "Ms. Snooks, do you know the used market value, fair appraisal value, for these items as of January 1st?" she answered, "No." (Tr., p.105, Ls.14-20.) Further, Mr. Flowers asked, "Did you get a repair quote from a seamstress as of January 1st?" and Ms. Snooks replied, "No, I did not." (Tr., p.105, Ls.21-23.) She also testified on cross-examination that she did not have her laptop or her tablet appraised as of January 1. (*See* Tr., p.106, Ls.5-7, p.107, Ls.2-4.)

Ms. Snooks testified on cross-examination that laptops and tablets lose value over time. (*See* Tr., p.106, L.15 – p.107, L.1.) Moreover, she testified that items in a thrift store are worth less because they are used, and clothing loses its value after being worn. (*See* Tr., p.104, L.22 – p.105, L.2.)

After the State rested, Mr. Flowers made an oral Idaho Criminal Rule 29 (Rule 29) motion for a judgment of acquittal. (*See* Tr., p.216, L.8 – p.220, L.25.) Mr. Flowers requested the district court dismiss the burglary charge for insufficient evidence. (*See* Tr., p.216, L.14 – p.217, L.20.) As for the malicious injury to property charge, Mr. Flowers asserted there was insufficient evidence connecting him to the damaged or destroyed property. (*See* Tr., p.217, L.21 – p.219, L.7.) Mr. Flowers also asserted, "the state has failed to meet the burden of proof

for the price—the fair market value of these items before they were destroyed and not the new price of when they were bought . . . ." (Tr., p.219, Ls.8-12.) He asked, "But should this go to a jury if the state has failed to provide one accurate, due diligence appraisal or a witness up there," who "has the ability and knowledge to testify to used clothing and has actually done appraisals on these items and what their condition would have been right before they were cut or look them up when they were cut and say, hey, this is what they would have been worth without the cuts?" (Tr., p.219, L.18 – p.220, L.1.) He asserted, "Because these are all used items, a couple years old. Electronics lose value immediately when you buy them." (Tr., p.220, Ls.2-4.) Mr. Flowers additionally asserted he had not been connected to the electronics. (*See* Tr., p.220, Ls.4-8.)

Mr. Flowers then asserted, "the state has failed to actually prove one significant price that is valid for meeting a thousand dollars' threshold as is required in this case." (Tr., p.220, Ls.9-12.) He asserted, "all the items except for a swimsuit top and some wax candles were used items, as testified by her. And also that used items do lose value, and they are not worth the same as when they were bought new." (Tr., p.220, Ls.12-16.) Further, Mr. Flowers asserted the values the State had produced "could be misleading the jury," and were "not usable to meet the threshold of price. And that's the key element needed for malicious injury to property." (Tr., p.220, Ls.17-22.) Mr. Flowers concluded, "There was absence of evidence, and I request to dismiss per Criminal Rule 29 of the Idaho Criminal Rules." (Tr., p.220, Ls.23-25.)

In response, the State argued it had presented sufficient evidence to send the burglary charge to the jury. (*See* Tr., p.221, Ls.4-11.) On malicious injury to property, the State argued, "The amount they're going to be giving on the property damage, they can decide whatever weight and credibility they want to give to that and come up with whatever values they think are

appropriate." (Tr., p.221, Ls.12-16.) The State contended, "So as far as burglary on the stolen items and malicious injury to the property, we meet the threshold." (Tr., p.221, Ls.16-18.)

Mr. Flowers replied, "the state just said, let the jury come up with whatever values they deem appropriate, and that is in violation of [*State v. Hughes*, 130 Idaho 698 (Ct. App. 1997)] . . . ." (*See* Tr., p.222, Ls.1-3.) Mr. Flowers asserted, "where if the state has failed to ascertain the value of the items or determine that the value is unascertainable, that they have not got any prices for a like item of the same quality or condition, under *Hughes*, that they have failed to meet their burden of proof that it was over a thousand dollars." (Tr., p.222, Ls.3-9.)

The district court determined, "The court's considered the motion and the response from the state, and I'm going to deny the motion." (Tr., p.222, Ls.16-18.)

Mr. Flowers did not testify in his defense. (*See* Tr., p.225, L.24 – p.226, L.2.) He objected to the district court instructing the jury on a lesser included offense of misdemeanor injury to property. (*See* Tr., p.229, Ls.2-8.) As Mr. Flowers requested, the district court removed the misdemeanor malicious injury to property charge from the jury instructions. (*See* Tr., p.232, Ls.16-19.)

The district court did instruct the jury that, "As used in this instruction, 'value' means the lesser of the following amounts: (A), the difference between the fair market value of the property before it was injured or destroyed and its fair market value afterward; (B), the reasonable cost of repairing the injury caused to the property." (Tr., p.238, L.23 – p.239, L.3.) The district court also instructed the jury, "The term 'fair market value' means the price that a reasonably prudent purchaser would pay for the property under the market conditions prevailing at the time." (Tr., p.239, Ls.4-7.)

In closing arguments, the State argued: "And even the most conservative calculator will assess the value well above a thousand dollars. You'll have instructions on valuation. You get to use your own experience and knowledge." (Tr., p.248, Ls.4-8.) The State discussed how used items could get donated to a thrift store, which would then sell them at a discounted rate. (*See* Tr., p.248, Ls.8-12.) The State then contended the jury should consider that Ms. Snooks "had not donated any of the items. They were still in her possession, and she still used them. They still had value to her." (Tr., p.248, Ls.13-15.) The State argued, "And when they were destroyed, they . . . no longer served their purpose and they needed to be replaced." (Tr., p.248, Ls.15-18.)

The jury found Mr. Flowers guilty of burglary and malicious injury to property. (R., p.300; Tr., p.269, L.22 – p.272, L.9.) Pursuant to a conditional plea agreement, Mr. Flowers then pleaded guilty to an amended charge of misdemeanor stalking in the second degree.[3] (*See* R., pp.354-57, pp.359-61.)

The district court imposed a unified sentence of five years, with one year fixed, for the malicious injury to property charge, a concurrent unified sentence of ten years, with four years fixed, for the burglary charge, and a concurrent unified sentence of ten months in jail for the stalking charge. (R., pp.366-70.) Mr. Flowers filed a Notice of Appeal timely from the district court's Minute Entry & Order—Judgment of Conviction. (R., pp.371-74; *see* R., pp.394-400 (Amended Notice of Appeal), pp.403-09 (Second Amended Notice of Appeal).)

[3] Mr. Flowers has waived the misdemeanor stalking issue on appeal.

ISSUE

Did the State fail to present sufficient evidence to support Mr. Flowers' conviction for felony malicious injury to property, because it did not establish the value of the damage to the damaged items and the fair market value of the destroyed items exceeded $1,000?

ARGUMENT

The State Failed To Present Sufficient Evidence To Support Mr. Flowers' Conviction For Felony Malicious Injury To Property, Because It Did Not Establish The Value Of The Damage To The Damaged Items And The Fair Market Value Of The Destroyed Items Exceeded $1,000

A. Introduction

Mr. Flowers asserts the State failed to present sufficient evidence to support his conviction for felony malicious injury to property, because it did not establish the value of the damage to the damaged items and the fair market value of the destroyed items exceeded $1,000. Mr. Flowers asserted the State has not met its burden of proof to show the value of the items exceeded $1,000. (*See* Tr., p.219, L.8 – p.220– L.25, p.222, Ls.1-9.) The district court denied Mr. Flowers' Rule 29 motion for a judgment of acquittal without explanation. (*See* Tr., p.222, Ls.16-18.) However, the State did not establish the value of the damage to the damaged items and the fair market value of the destroyed items, at the time of the incident, exceeded the threshold amount of $1,000. (*See generally* Appendix A.) Thus, the jury could not properly find that the State had proven beyond a reasonable doubt all of the elements of felony malicious injury to property.

B. Standard Of Review

Idaho Criminal Rule 29 provides, "After the prosecution closes its evidence or after the close of all the evidence, the court on defendant's motion or on its own motion, must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." I.C.R. 29(a). As part of the right to due process guaranteed by the Fourteenth Amendment to the United States Constitution, "no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a

trier of fact beyond a reasonable doubt of the existence of every element of the offense." *State v. Adamcik*, 152 Idaho 445, 460 (2012) (quoting *Jackson v. Virginia*, 443 U.S. 307, 316 (1979)) (internal quotation marks omitted).

When an appellate court determines whether a conviction should be upheld, the relevant inquiry is whether "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *See id.* (internal quotation marks omitted) (emphasis in original). Put otherwise, the inquiry is "whether there is substantial evidence upon which that the State met its burden of proving the essential elements of [the offense] beyond a reasonable doubt." *See id.* In conducting this analysis, an appellate court "is required to consider the evidence in the light most favorable to the State," and will not substitute its "judgment for that of the jury on issues of witness credibility, weight of the evidence, or reasonable inferences to be drawn from the evidence." *Id.* (citing *State v. Oliver*, 144 Idaho 722, 724 (2007)).

C. The State Did Not Establish The Value Of The Damage To The Damaged Items And The Fair Market Value Of The Destroyed Items Exceeded $1,000

Mr. Flowers asserts the State did not establish the value of the damage to the damaged items and fair market value of the destroyed items exceeded $1,000. Thus, the jury could not properly find that the State had proven beyond a reasonable doubt all of the elements of felony malicious injury to property.

The malicious injury to property statute, I.C. § 18-7001, "specifies that the offense of malicious injury to property may be either a misdemeanor or a felony, depending upon the value of the damage." *State v. Hughes*, 130 Idaho 698, 702 (Ct. App. 1997). Section 18-7001 currently provides, "Except as otherwise provided in subsection (2) of this section, every person

who maliciously injures or destroys any real or personal property not his own . . . is guilty of a misdemeanor . . . ." I.C. § 18-7001(1). Pursuant to subsection (2), "A person is guilty of a felony, if . . . [t]he damages caused by a violation of this section exceed one thousand dollars ($1,000) in value . . . ." I.C. § 18-7001(2)(a). "[U]nder this statute, when a felony violation is charged, the State bears the burden to prove beyond a reasonable doubt that the value of the property damage exceeded $1,000." *Hughes*, 130 Idaho at 702.

Here, the only evidence offered by the State addressing the severity and value of damage to the items was the testimony of Ms. Snooks. (*See generally* Appendix A.) For the majority of the damaged or destroyed items in this case, the State relied upon Ms. Snooks' testimony on the original purchase price of the items. (*See, e.g.*, Tr., p.68, Ls.16-22, p.71, Ls.11-24 (she bought the wedding dress with alterations for $800 in 2013), Tr., p.80, Ls.2-6 (she bought the black tank top for $15 in 2014).) For some other items, Ms. Snooks did not even provide testimony on the original purchase price. (*See, e.g.*, Tr., p.60, Ls.5-22 (she did not have a price for the doggy door).) However, under *Hughes* the original purchase price was not the proper means of measuring damage.

In *Hughes*, the Idaho Court of Appeals resolved the issue of "[w]hat is the proper measure of the 'value' of damages within the meaning of I.C. § 18-7001?" *Hughes*, 130 Idaho at 702. The *Hughes* Court held, "Either the diminution of the object's fair market value or the reasonable cost of repair is a fair means of measuring damage when the offender has harmed but not destroyed the property." *Id.* at 703. "If the State applies the diminution of value measure, then it must establish the fair market value of the property immediately before and after the damage." *Id.* "When the cost of repair is chosen, this measure may not exceed the market value of the item before the damage, for an 'offender cannot cause an economic loss that surpasses the

actual value of the property damaged.'" *Id.* (quoting *People v. Dunoyair*, 660 P.2d 890, 895 (Colo. 1983)).

The *Hughes* Court also held: "When property has been entirely destroyed, neither the cost of repair measure nor the diminution in value measure are applicable. The property measure of damages in such event is the fair market value of the property at the time and place of its destruction." *Id.*

Additionally, the Court of Appeals held: "In some cases the destroyed item may have no market value or the value may not be ascertainable. Therefore, upon a showing that fair market value cannot be established, the State may show the economic value of the loss caused by the defendant through such factors as original purchase price, replacement cost, the property's general use and purpose, and salvage value." *Id.* "If the State attempts to prove value through replacement cost, however, we think it incumbent upon the State to produce some evidence that the replacement item is of a quality and design comparable to that of the destroyed item." *Id.* Mr. Flowers alluded to this holding when he brought up *Hughes* before the district court. (*See* Tr., p.222, Ls.1-9.)

The *Hughes* Court held "that replacement cost evidence may be used as an indicator of value only when the State has demonstrated that the fair market value of the destroyed item is not reasonably ascertainable or that the item had no market value . . . ." *Hughes*, 130 Idaho at 703. "[W]hen replacement cost evidence is relied upon, the State must show that the replacement (whether actually purchased by the victim or not) is a reasonably close proximation of the design and quality of the destroyed item." *Id.*

In light of the *Hughes* standards, the State did not establish the value of the damage to the damaged items and the fair market value of the destroyed items exceeded $1,000. In no event

did Ms. Snooks testify as to the value of the damage to the damaged items, either through the diminution of the items' fair market value or the reasonable cost of repair. (*See* Tr., p.105, L.6 – p.107, L.4; Appendix A.) Rather, her testimony on the value of the items was based on the original purchase price of the items. (*See* Appendix A; *see also* Tr., p.100, L.17 – p.101, L.1 (describing how she told an officer the value of the items based on their original purchase price).) For example, Ms. Snooks testified she bought the slashed kitchen table as part of a used kitchen set for $40 in 2014. (*See* Tr., p.89, Ls.8-17.)

But under *Hughes*, the original purchase price was not the proper measure of value for damaged items. *See Hughes*, 130 Idaho at 703. Further, the proper measure of value was not, as the State asserted, for the jury to "decide whatever weight and credibility they want to give to that and come up with whatever values they think are appropriate." (*See* Tr., p.221, Ls.12-15). The proper measure of value was either the diminution of the items' fair market value or the reasonable cost of repairs. *See Hughes*, 130 Idaho at 703.

The State did not establish the fair market value of any of the damaged items immediately before and after the damage. (*See* Appendix A.) Nor did the State establish the cost of repair of any of the damaged items. For example, with respect to the damaged clothes, Ms. Snooks testified she did not get a repair quote from a seamstress as of January 1, 2017. (*See* Tr., p.105, Ls.21-22.) Moreover, although she described in detail what actions it would take to repair her office room floor, she did not provide a value for the cost to fix it. (*See* Tr., p.91, Ls.8-24.) Thus, the State did not establish the value of the damage to the damaged items. *See Hughes*, 130 Idaho at 703.

Similarly, the State did not establish the fair market value of the bulk of the destroyed items. With the exception of the lotion poured onto the office room floor (*see* Tr., p.90, Ls.9-

12), Ms. Snooks did not testify as to the fair market value of any of the destroyed items at the time and place of their destruction. For example, even though her laptop and tablet would not turn on, Ms. Snooks did not have those items appraised as of January 1. (*See* Tr., p.106, Ls.5-7, p.107, Ls.2-4.) While the State relied upon Ms. Snooks' testimony on the original purchase price of the destroyed items, the original purchase price measure of damage was improper because the State made no effort to show the market value of those items was unascertainable. (*See generally* Appendix A.) Thus, the State did not establish the fair market value of the bulk of the destroyed items. *See Hughes*, 130 Idaho at 703.

In sum, the evidence presented by the State was insufficient to meet the State's burden to prove, as a requisite element of felony malicious injury to property, that the property damage caused by Mr. Flowers exceeded $1,000. *See id.* at 704. The jury's determination that Mr. Flowers was guilty of felony malicious injury to property therefore cannot stand. *See id.*

Because the State did not establish the value of the damage to the damaged items and fair market value of the destroyed items exceeded $1,000, the jury could not properly find that the State had proven beyond a reasonable doubt all of the elements of felony malicious injury to property. Even considering the evidence in the light most favorable to the State, the State failed to present sufficient evidence to support Mr. Flowers' conviction for felony malicious injury to property. *See Adamcik*, 152 Idaho at 460; I.C. § 18-7001. Mr. Flowers' judgment of conviction for felony malicious injury to property should be reversed, and the matter should be remanded to the district court for the entry of a judgment of acquittal on that charge.[4] *See* I.C.R. 29(a).

[4] In *Hughes*, the jury had been instructed on the lesser included offense of misdemeanor malicious injury to property, and the Court of Appeals held, "The jury's finding that Hughes inflicted damage on the door is supported by the evidence; only valuation evidence was lacking." *Hughes*, 130 Idaho at 704. The *Hughes* Court then held, "the charge of which [Hughes] has been found guilty must be reduced to a misdemeanor." *See id.* Conversely, in this case the jury was

CONCLUSION

For the above reasons, Mr. Flowers respectfully requests this Court reverse his judgment of conviction for felony malicious injury to property, and remand the matter to the district court for the entry of a judgment of acquittal on that charge.

DATED this 2nd day of November, 2018.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

BPM/eas

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not instructed on the lesser included offense of misdemeanor malicious injury to property. (*See* Tr., p.232, Ls.16-19.) Thus, the proper relief here is reversal of the judgment of conviction for felony malicious injury to property, and remand to the district court for the entry of a judgment of acquittal on that charge.

APPENDIX A

List of Damaged and Destroyed Items

Item	Damage	Date of Purchase	Original Purchase Price	Fair Market Value on 1/1/17
Striped dress shirt	Bleached (*see* Tr., p.55, L.19 – p.56, L.20)	2014 (Tr., p.58, Ls.4-8)	$25 (Tr., p.58, Ls.4-6)	N/A
Dress pants	Bleached (*see* Tr., p.55, L.19 – p.56, L.20)	NA (*see* Tr., p.58, Ls.9-11)	$30 (Tr., p.58, Ls.9-11)	N/A
St. Patrick's Day shirt	Bleached (*see* Tr., p.55, L.19 – p.56, L.20)	NA (*see* Tr., p.58, Ls.11-13)	$15 (Tr., p.58, Ls.11-13)	N/A
Doggy door	Kicked in; bolts replaced by metal bolts (Tr., p.59, Ls.20-25)	"It had just been put in . . . . I don't remember the exact date that the construction people put it in." (Tr., p.135, Ls.15-23)	N/A (*see* Tr., p.60, Ls.5-22)	N/A
Graduation dress	Three slashes; "it was cut up." (Tr., p.62, Ls.10-14)	2012 or 2013 (*see* Tr., p.63, Ls.4-9)	$90 (Tr., p.62, L.25 – p.63, L.3)	N/A
Boots	"[T]wo big slashes on the sides" (Tr., p.63, Ls.12-13)	Spring 2016 (Tr., p.63, Ls.22-23)	$150 (Tr., p.63, Ls.14-21)	N/A
Wedding dress (with alterations)	"[C]ut up, all over"; multiple slashes in several areas (Tr., p.68, Ls.1-7)	2013 (Tr., p.68, Ls.20-22)	$800 (Tr., p.68, Ls.16-19, p.71, Ls.11-24)	N/A
White jacket	"[S]lashed on the sides of it, on both sides. And then there was a slash in the back." (Tr., p.72, Ls.2-6)	Summer 2015 (Tr., p.72, Ls.10-14)	$150 (Tr., p.72, Ls.10-16)	N/A

Item	Damage	Date of Purchase	Original Purchase Price	Fair Market Value on 1/1/17
Pink dress shirt	"[S]lashes and cuts all over it" (Tr., p.72, Ls.21-23)	2016 (Tr., p.73, Ls.3-4)	$55 (Tr., p.72, L.24 – p.73, L.2)	N/A
Designer jeans	Cut up (Tr., p.73, L.24 – p.74, L.3)	2016 (Tr., p.75, Ls.5-12)	$50 (Tr., p.75, Ls.1-3)	N/A
Jeans with flower design	Cut up (*see* Tr., p.73, L.5 – p.74, L.3)	2012 (Tr., p.75, L.25 – p.76, L.1)	$35 to $45 (Tr., p.75, Ls.20-24)	N/A
Regular jeans	"[S]lashed up" (Tr., p.76, Ls.5-6)	2014 (Tr., p.76, Ls.14-16)	$20 to $25 (Tr., p.76, Ls.10-13)	N/A
Jean shorts	"[S]liced from the bottom of the shorts up to the butt pockets" (Tr., p.78, Ls.6-7)	2016 (Tr., p.78, Ls.11-13)	$25 (Tr., p.78, Ls.16-17)	N/A
Black tank top	It "was all cut up" (Tr., p.79, Ls.22-23)	2014 (Tr., p.80, Ls.7-9)	$15 (Tr., p.80, Ls.2-6)	N/A
Candle warmer	"[C]ompletely broke in half. . . . It's not usable anywhere." (Tr., p.81, Ls.6-9)	A Christmas present, received on 12/25/16 (*see* Tr., p.80, Ls.21-23)	$30 (Tr., p.80, L.25 – p.81, L.1)	N/A
Owl mug	It "had a big V chip out of it" (Tr., p.81, Ls.10-11)	A Christmas present, received on 12/25/16 (*see* Tr., p.80, Ls.21-23)	$16 (Tr., p.81, Ls.1-2)	N/A
Owl candle	It "looked like it had been thrown. The beak and the foot were smushed in on it." (Tr., p.81, Ls.13-14)	A Christmas present, received on 12/25/16 (*see* Tr., p.80, Ls.21-23)	$16 or $16.99 (Tr., p.82, Ls.13-16)	N/A

Item	Damage	Date of Purchase	Original Purchase Price	Fair Market Value on 1/1/17
Swimsuit coverup	"It was completely torn up." (Tr., p.83, Ls.7-10)	NA (*see* Tr., p.83, Ls.1-10)	$25 (Tr., p.83, Ls.4-6)	N/A
Camo tank top	"It was slashed up as well." (Tr., p.83, Ls.15-16)	2015 or Summer 2016 (Tr., p.83, Ls.11-13)	$15 (Tr., p.83, Ls.13-14)	N/A
HP computer	"After the 3rd the computer won't even turn on now." (Tr., p.83, Ls.20-23)	"When Windows 8 had come out." (Tr., p.84, Ls.1-2)[5]	$900 (Tr., p.84, Ls.3-4)	N/A
Samsung tablet	It "would not turn on or charge" (Tr., p.86, Ls.5-12)	Ms. Snooks' ex-husband gifted it to her on Christmas 2015 (*see* Tr., p.86, L.3 – p.87, L.8)	$500 (Tr., p.86, L.17 – p.88, L.4)	N/A
Kitchen table	One slash to the top of the table (Tr., p.88, Ls.10-21)	2014 (Tr., p.89, Ls.15-17)	$40 for the full used set of table and chairs (*see* Tr., p.89, Ls.8-14)	N/A
Lotion	The lotion had been squeezed onto the floor in her office room, and poured over a lunchbox (*see* Tr., p.89, L.23 – p.90, L.6)	She started selling the lotion in 2016 (*see* Tr., p.90, Ls.13-17)	N/A (*see* Tr., p.90, Ls.8-12)	She sold bottles of the lotion for $18 each (Tr., p.90, Ls.11-12)
Office room floor	"[T]here's a big stain" in the corner; also a slash in the floor (Tr., p.91, Ls.5-6, p.92, Ls.1-2)	She bought the house in May of 2014 (*see* Tr., p.41, Ls.13-14)	N/A (*see* Tr., p.91, Ls.8-24)	N/A

[5] Microsoft released the Windows 8 operating system on October 26, 2012. *See, e.g.*, Steve Kovach, *Microsoft Will Launch Windows 8 On October 26*, Business Insider (Jul. 18, 2012 4:55 PM), https://www.businessinsider.com/windows-8-launch-date-2012-7.