

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0850**

State of Minnesota,
Respondent,

vs.

Samantha Mary Jo Provost,
Appellant.

**Filed April 26, 2021
Affirmed
Hooten, Judge**

Stearns County District Court
File No. 73-CR-19-1004

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

Janelle P. Kendall, Stearns County Attorney, River D. Thelen, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten,
Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this direct appeal from her conviction for first-degree damage to property, appellant argues that the evidence was insufficient to prove beyond a reasonable doubt that the damage reduced the property's value by more than \$1,000. We affirm.

FACTS

In 2018, B.D.O. was self-employed as a disc jockey (DJ) and karaoke provider. As he prepared to provide entertainment at a bar in St. Cloud on November 23, 2018, B.D.O. set his own laptop on a bar-height table, which was placed off to the side of the room. At some point that evening, B.D.O. noticed two women in the corner of the bar. After B.D.O. recognized one of the women, E.L., and noticed her holding onto the bar and swaying, he walked up to the other woman, appellant Samantha Mary Jo Provost, and said, “You guys are, like, too drunk to be here. You should probably get [E.L.] home.” According to B.D.O., Provost later approached him and said, “You have a big attitude for being just a DJ.” B.D.O. and Provost continued to argue, but eventually Provost walked away and returned to the bar.

B.D.O. testified that he then observed E.L. fall off of a bar stool, so he yelled to the bartender, “I told you these people need to get out of the bar. It’s just going to be problems.” B.D.O. testified that he also yelled, “They need to leave. They need to get out of the bar.” According to B.D.O., “some time went by” before he saw Provost order a glass of water from the bartender and then watched her dump “very intentionally, the entire glass of water on [his] laptop.”

After receiving a report of property damage at the bar, St. Cloud Police Officer Jeffrey Atkinson responded to the incident. Officer Atkinson spoke with B.D.O., who stated that Provost had dumped water on his computer.

B.D.O. tried to turn on the laptop the next day, and the screen flickered, but the laptop was otherwise unresponsive. B.D.O. testified that the laptop—a 2015 MacBook Pro

with a 13-inch retina display—was in “[e]xcellent condition” before the water incident, but afterward, it was “[d]estroyed.”

To replace his damaged laptop, B.D.O. purchased an “older used” model from a Craigslist seller for \$800, and he sold his damaged laptop to the Craigslist seller for \$100. B.D.O later testified that the replacement laptop was an “older model” that was “not in as good of condition and not as nice” as the laptop that was damaged by appellant. According to B.D.O., he had originally purchased the damaged laptop for approximately \$2,576 in 2015. Officer Atkinson also testified that he “believe[d]” B.D.O’s computer was a “Mac Pro” and explained that, according to his Google search, those laptops range in price from \$1,500 to \$1,800.

In February 2019, the state charged Provost with first-degree criminal damage to property in violation of Minn. Stat. § 609.595, subd. 1(4) (2018). According to the complaint, Provost dumped water on B.D.O’s laptop while they were both at a bar in St. Cloud, Minnesota, and the laptop was a total loss. At trial, B.D.O. and Atkinson testified, but Provost did not. After the state rested, Provost moved for judgment of acquittal based on the state’s failure to prove that the damage reduced the value of the laptop by more than \$1,000. Provost argued that the state never established that the 2015 laptop was worth more than \$1,000. The district court denied the motion.

The jury was instructed on the elements of first-degree damage to property and the lesser-included offense of third-degree damage to property. The jury found Provost guilty of first-degree damage to property and not guilty of third-degree damage to property. The

district court then sentenced Provost to a stay of imposition and placed her on probation for up to five years with numerous conditions. Provost appeals.

DECISION

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 Provost guilty of first-degree criminal damage to property in violation of Minn. Stat. § 609.595, subd. 1(4). 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.*

“[T]he owner of [personal] property . . . is presumptively acquainted with its value and may testify as to its value.” *Lehman v. Hansord Pontiac Co.*, 74 N.W.2d 305, 309 (Minn. 1955). However, this rule is not without qualification. “[I]f there is an apparent lack of knowledge on the part of the owner as to value of his property,” that lack of

knowledge “goes to the weight of the testimony given but not to the competency of that testimony.” *Id.* at 309–10. Any lack of foundation in the property owner’s testimony goes to the weight, rather than the admissibility, of the testimony. *Jackson v. Buesgens*, 186 N.W.2d 184, 186–87 (Minn. 1971).

Provost challenges neither the jury’s findings that she intentionally damaged the laptop in question nor that she lacked consent to do so. Instead, the sole issue raised on appeal is whether the state submitted sufficient evidence to support the jury’s verdict that Provost caused more than \$1,000 in damage to B.D.O.’s laptop. Provost contends that the evidence presented at trial failed to prove beyond a reasonable doubt that either the value of the laptop at the time of the offense or the cost to repair the laptop was more than \$1,000.

In this case, both B.D.O. and Atkinson testified about the value of the damaged MacBook Pro in terms of dollar amounts. B.D.O. testified that he had originally purchased the MacBook Pro for approximately \$2,576 in 2015. He also testified that he paid \$800 to purchase a replacement laptop that was older, less nice, and in worse condition than the damaged laptop. Further, B.D.O. explained that he was unable to afford a replacement laptop that was the same quality as the damaged laptop. “A jury can properly accept an owner’s testimony as to the value of his or her own property.” *State v. Clipper*, 429 N.W.2d 698, 700 (Minn. App. 1988). The jury could therefore accept B.D.O.’s testimony as to the purchase prices of both laptops and reasonably infer that, because the \$800 replacement laptop is lower quality, older, and in worse condition than the original laptop, the current replacement value of the damaged laptop exceeded \$1,000.

In addition, the jury heard Officer Atkinson testify that he conducted an internet search to determine the replacement value of the damaged laptop and concluded that the current value of B.D.O.'s laptop was approximately \$1,500 to \$1,800. Officer Atkinson also testified that he was aware that the damaged laptop was a specific model—a “silver Mac Pro.”

On appeal, Provost argues that the district court erred in admitting Officer Atkinson's testimony regarding the value of the damaged laptop. Provost contends that Officer Atkinson's testimony was inadmissible hearsay and that there was not sufficient foundation establishing that Officer Atkinson had personal knowledge of the damaged laptop's value. However, Provost did not object to Officer Atkinson's testimony on this issue at trial.

In order for a trial court to fully exercise its discretion to admit or exclude evidence, it is imperative that a party wishing to challenge the admissibility of the evidence object to the evidence. *See State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). In *Pieschke*, the supreme court concluded that while the record did not “indisputably” establish that an out-of-court statement fell within a hearsay exception, the district court did not abuse its discretion because “defense counsel's failure to object . . . denied the trial court the opportunity to evaluate his objection and denied the state the opportunity to provide additional foundation for admitting the testimony if the court had deemed it necessary.” *Id.* Therefore, we conclude that here, as in *Pieschke*, the district court did not abuse its discretion by admitting the now-challenged testimony.

Provost also contends that the state failed to present any evidence about the cost to repair the laptop, arguing that Minn. Stat. § 609.595, subd. 1(4), requires the state to establish both the cost of repair *and* the cost of replacement in order to prove beyond a reasonable doubt that the damage reduced the original laptop’s value by more than \$1,000. Provost’s argument on this point involves an issue of statutory interpretation that we review de novo. *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019). “Under the de novo standard, we do not defer to the analysis of the courts below, but instead we exercise independent review.” *Wheeler v. State*, 909 N.W.2d 558, 563 (Minn. 2018). Our goal in statutory interpretation is to “ascertain and effectuate the intent of the Legislature.” *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018). We presume that “the legislature does not intend a result that is absurd . . . or unreasonable.” Minn. Stat. § 645.17(1) (2020). Thus, we may interpret statutes “in a sensible manner” to avoid such results. *See Minn. Mining & Mfg. Co. v. Nishika Ltd.*, 565 N.W.2d 16, 20 (Minn. 1997).

Minn. Stat. § 609.595, subd. 1(4), requires that “the damage reduces the value of the property by more than \$1,000 measured by the cost of repair and replacement.” Adopting Provost’s interpretation of the statute by requiring the state to establish both the cost of repair *and* the cost of replacement would create an absurd result, since property that is repaired is not generally replaced, and property that is replaced is not generally repaired. Additionally, it would contradict our decision in *State v. DeYoung*, where we sustained a conviction based on evidence of the cost of repair, despite the absence of any evidence regarding the cost of replacement. 672 N.W.2d 208, 213 (Minn. App. 2003). Accordingly, we interpret the conjunction “and” in Minn. Stat. § 609.595, subd. 1(4) to mean that the

state is allowed to use evidence of both the cost of repair and the cost of replacement to establish the value of damaged property.

Ultimately, the jury heard admissible testimony that the purchase price of the original laptop was approximately \$2,576, that an equivalent replacement laptop would cost between \$1,500 and \$1,800, and that the purchase price of a less-nice model in worse condition was \$800. The jury determined the weight and credibility of this testimony, and we defer to the jury, which is “generally in the best position to weigh the credibility of the evidence and thus determine which witnesses to believe and how much weight to give their testimony.” *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011) (quotation omitted). B.D.O.’s testimony as to the approximate purchase price of the original laptop and a non-equivalent replacement, coupled with Officer Atkinson’s testimony as to the present value of an equivalent replacement, was sufficient to support the jury’s conclusion that the water damage reduced the value of the original laptop by more than \$1,000, measured by the cost of repair and replacement.

Affirmed.