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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 08/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE ROBERT M.)
) No. 1 CA-JV 12-0069
)
) DEPARTMENT C
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 103(G) Ariz. R.P.
)
) Juv. Ct.; Rule 28 ARCAP)

Appeal from the Superior Court in Maricopa County

Cause No. JV177413

The Honorable Jo-Lynn Gentry Lewis, Judge

AFFIRMED

William G. Montgomery, Maricopa County Attorney Phoenix
By E. Catherine Leisch, Deputy County Attorney
Attorneys for Appellee

Christina Phillis, Maricopa County Public Advocate Mesa
By Suzanne W. Sanchez, Deputy Public Advocate
Attorneys for Appellant

B R O W N, Judge

¶1 Robert M. ("Robert") appeals the juvenile court's order requiring him to pay restitution in the amount of \$1,069.91. For the following reasons, we affirm.

BACKGROUND

¶12 The State filed a petition in the juvenile court alleging that Robert committed one count of resisting arrest and one count of aggravated assault against a peace officer. On the date scheduled for the adjudication hearing, Robert admitted the charge of disorderly conduct,¹ a class one misdemeanor, in exchange for dismissal of the charges listed in the petition. For a factual basis for the admission, the State asserted that Robert "engaged in seriously disruptive behavior" and "ran from the police during a detention and caused a commotion that would have disturbed the peace of anybody in the neighborhood or area." As to restitution, the plea agreement provided as follows:

The juvenile shall pay restitution not to exceed \$1,500 to all victims (and/or their insurance companies) for all economic losses resulting from the events described in Phoenix Police Department Report Number 2011-01353229, regardless of whether the juvenile or another person directly caused such losses.

¶13 Prior to accepting the plea agreement, the court advised Robert of the rights he would be giving up and also warned him that he could be ordered to pay a fine and

¹ "A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person: 1. Engages in fighting, violent or seriously disruptive behavior[.]" Arizona Revised Statutes ("A.R.S.") section 13-2904(A)(1) (2010).

restitution as a result of his admission. The court found there was a factual basis and that he was aware of and had made a "knowing, intelligent and voluntary waiver of his rights." The court then entered its order "finding and adjudicating the juvenile to be delinquent."

¶4 Testimony given at the ensuing restitution hearing established that on the evening of August 6, 2011, Officer Rivas and other City of Phoenix ("City") police officers investigated an alleged graffiti incident near 1700 West Atlanta Avenue. The officers stopped Robert and three other juveniles because they resembled the description of the reported suspects.

¶5 The officers asked the suspects several questions and then requested permission to search for "spray cans or anything like that." The suspects did not "seem to have a problem with it" and Robert initially complied with Rivas's request to place his hands on his head. However, Robert quickly pulled away from Rivas's control and ran. Rivas chased Robert and caught up with him in a dimly lit alley. Rivas then tried to gain control of Robert. During the ensuing struggle, Rivas saw Robert "put his hands up toward [his] face" and Rivas did not know if Robert "was going to throw a swing or not." Rivas then punched Robert in the forehead "to make him gain compliance so he didn't try to attack me." Once Robert was on the ground, Rivas was able to turn him over and place him in handcuffs.

¶16 When paramedics arrived, Rivas complained of pain in his swollen right knuckle. He sought medical attention at an emergency room that same night and he visited a hand specialist at a later date. Rivas subsequently filed a claim with Avizent, the entity that administers the City's worker's compensation benefits. Avizent paid Rivas's medical bills on behalf of the City in the amount of \$1,069.61.

¶17 According to Robert, when Rivas started to search him, Robert lowered his arms and then Rivas started swinging his fists. Rivas hit Robert in the side of his face, so Robert panicked and took off running. Rivas tackled him and "started socking [him] in [his] face" at least three or four times, kneed him in the ribs, and then elbowed him in the back of the head.

¶18 During closing arguments, Robert's counsel acknowledged that his client "took a plea and it says he has to pay restitution" but contended it was "not appropriate" and "not equitable to have Robert pay [a] thousand dollars because he got punched in the face by the officer." Robert's counsel requested that the court order only partial restitution, in the amount of ten dollars.

¶19 Following the hearing, the court ordered Robert to pay the City \$1,069.61 as restitution for the medical bills incurred for Rivas's injuries. Robert timely appealed.

DISCUSSION

¶10 We review a restitution order for an abuse of discretion, viewing the evidence in the light most favorable to sustaining the order. *In re Andrew C.*, 215 Ariz. 366, 367, ¶ 6, 160 P.3d 687, 688 (App. 2007). Robert does not challenge the enforceability of the plea agreement, its factual basis, or the court's finding that he knowingly, intelligently, and voluntarily entered into the agreement. Nor does Robert challenge the City's status as a victim or the amount of restitution it requested. Instead, he argues that the juvenile court cannot lawfully award restitution because the State failed to prove that Rivas's injuries flowed directly from Robert's unlawful conduct.² Robert acknowledges that he agreed to pay restitution, but contends he "did not agree to pay for expenses that do not qualify as restitution."

¶11 The Arizona Constitution provides that a victim has a right "[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury." Ariz. Const. art. 2, § 2.1(A)(8). "Arizona's statutory scheme requiring restitution in criminal

² The State asserts that because Robert failed to make this argument in the juvenile court, he has waived it on appeal. We recognize that Robert did not make this precise argument in the juvenile court but he did generally contest the restitution award. In our discretion, we address Robert's argument on the merits.

cases is based on the principle that the offender should make reparations to the victim by restoring the victim to his economic status quo that existed before the crime occurred." *In re William L.*, 211 Ariz. 236, 239, ¶ 11, 119 P.3d 1039, 1042 (App. 2005). A juvenile offender is required to make "full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent." A.R.S. § 8-344(A). Thus, even without his express agreement to pay restitution, Robert was obligated to pay for economic losses incurred by the victim. See *In re Andrew C.*, 215 Ariz. at 369, ¶¶ 15-18, 160 P.3d at 690 (citing A.R.S. § 13-105(14)). "Economic loss" means "any loss incurred by a person as a result of the commission of an offense." A.R.S. § 13-105(16).

¶12 Robert argues that the State failed to prove by a preponderance of the evidence that all three prongs of the *Wilkinson* test were satisfied. See *State v. Wilkinson*, 202 Ariz. 27, 29, ¶ 7, 39 P.3d 1131, 1133 (2002) (holding that (1) "[t]he loss must be economic," (2) "the loss must be one that the victim would not have incurred but for the [juvenile's] criminal offense," and (3) "the criminal conduct must directly cause the economic loss," that is, the damage must not be consequential.). Specifically, Robert focuses on the third prong of the test, asserting the State failed to prove that the City's "loss flows directly from the unlawful conduct that was

the subject of the investigation set forth in Phoenix Police Department Report Number 2011-01353229." We need not reach this issue, however, because we resolve this appeal based on Robert's specific agreement to pay restitution.

¶13 "A defendant may be ordered to pay restitution only for an offense that he has admitted, upon which he has been found guilty, or on which he has agreed to pay restitution." *State v. Ferguson*, 165 Ariz. 275, 277, 798 P.2d 413, 415 (App. 1990) (emphasis added). Robert admitted that he committed the crime of disorderly conduct and he specifically agreed to pay restitution "for all economic losses resulting from the events described in Phoenix Police Department Report Number 2011-01353229, regardless of whether the juvenile or another person directly caused such losses." The police report, reflecting Rivas's statement to another officer as a crime victim, described in part the circumstances leading to Rivas's injured hand:

When Officer Rivas grabbed a hold of Robert by his shoulders Robert then made another aggressive turn toward Officer Rivas with one hand clenched in a fist and the other reached back in an attempt to throw a punch. In response to Robert's actions[,] Officer Rivas delivered one [linear] fist strike with his right hand directed toward Robert's upper torso/head region causing Robert to fall to the ground. While on the ground Officer Rivas was able to grab Robert's hands and take him into custody. It should be noted that the alley had no

light and there were several obstructions. Officer Rivas sustained an injury to his right hand during the altercation while taking Robert into custody.

¶14 Based on Rivas's statement, expressly agreed to by Robert through the plea agreement, the juvenile court properly ordered Robert to pay restitution in the amount requested by the City. Robert agreed to pay for all economic losses flowing from his conduct, which was described in detail in the police report. See Ariz. R. Crim. P. 17.4(a) ("The parties may negotiate concerning, and reach an agreement on, any aspect of the case."); see also *State v. Taylor*, 158 Ariz. 561, 564, 764 P.2d 46, 49 (App. 1988) (construing a plea agreement and noting that "a court must give effect to the contract as it is written, and the terms or provisions of the contract, where clear and unambiguous, are conclusive.") (citations omitted.)

¶15 In sum, Robert cannot retreat from the conscious and informed decision he made at the change of plea hearing that he would pay restitution regardless of whether he or another person "directly caused the losses." Therefore, the juvenile court did not abuse its discretion by ordering Robert to pay restitution to the City. See *Matter of Appeal in Maricopa County Juvenile Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996) (juvenile admitted to "theft of victim's car and

acknowledged that he would be held responsible for restitution by executing the plea agreement.").

CONCLUSION

¶16 Based on the foregoing, we affirm the juvenile court's restitution order.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Judge

/s/

JOHN C. GEMMILL, Judge