

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE D.D.

No. 2 CA-JV 2015-0223
Filed May 9, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JV20140695
The Honorable Geoffrey L. Ferlan, Judge Pro Tempore

AFFIRMED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for State

Emily Danies, Tucson
Counsel for Minor

IN RE D.D.
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 The state appeals from the juvenile court's order declining to require D.D., born October 1998, to pay restitution to the victim of one of his two adjudications for attempted second-degree burglary. It argues the court was required to impose restitution although the victim refused to complete her testimony at the restitution hearing. We affirm.

¶2 D.D. admitted having committed, on separate occasions, two counts of attempted second-degree burglary; two other juveniles admitted having committed second-degree burglary with D.D. on one of those occasions.¹ The juvenile court adjudicated D.D. delinquent, placed him on probation, and set a restitution hearing. At that hearing,² the victim of the attempted burglary involving all three juveniles testified about her purported losses, which included lost and damaged computer equipment and lost income. However, on the last day of the hearing, the victim did not appear. Her testimony was not complete, and she had not been cross-examined. According to the state, the victim opted not to appear because she did not want to "subject herself to any further

¹The two other juveniles are not parties to this appeal. However, the state has filed an appeal in each of those cases. As we explain, in one of those cases, we have issued a memorandum decision affirming the juvenile court's decision. *In re K.C.*, No. 2 CA-JV 2015-0225 (memorandum decision filed Mar. 31, 2016).

²On the first day of the hearing, the juvenile court ordered D.D. pay restitution to the victim of his other offense.

IN RE D.D.
Decision of the Court

stress,” “was done with the process,” and “wasn’t going to come back.”

¶3 The state proposed that the juvenile court rely on the victim’s declaration of loss and its attached documents to award restitution for some of the damaged or unreturned property. The court stated it would “take a negative inference of [the victim’s] failure to” appear. It noted that D.D. “want[s] to delve further into her testimony and the documentation that she’s produced” and could not do so in her absence. The court concluded there was insufficient evidence to justify ordering restitution. This appeal followed.

¶4 On appeal, the state argues the juvenile court was obligated to award restitution by relying on “the information that was presented at the Restitution Hearing, including testimony from the victim and numerous exhibits.” The state’s arguments are identical to those raised in its appeal from the same order under the cause number assigned to one of the other juveniles, JV20140649.³ We rejected those arguments and affirmed the court’s decision. *In re* K.C., No. 2 CA-JV 2015-0225 (memorandum decision filed Mar. 31, 2016). Because the arguments raised in this appeal are identical, we adopt our previous decision and reject the state’s arguments for the reasons explained in that decision.

¶5 The state has not demonstrated the juvenile court abused its discretion in declining to award restitution. We therefore affirm.

³Indeed, other than the cover page, the state’s briefs are identical.