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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE BREANNA G.	)	2 CA-JV 2010-0148 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JV201000260

Honorable Stephen F. McCarville, Judge

AFFIRMED

Mary Wisdom, Pinal County Public Defender
By Mary Dreyer
Florence
Attorneys for Appellant

James P. Walsh, Pinal County Attorney
By Kate E. Milewski
Florence
Attorneys for Appellee

H O W A R D, Chief Judge.

¶1 Breanna G. was adjudicated delinquent in July 2010 after she admitted having committed criminal damage, a class one misdemeanor. On appeal she challenges the restitution order, claiming the juvenile court erred by requiring her to compensate the victim for the cost of installing a home security system. We affirm for the reasons stated below.

¶2 In June 2010, twelve-year-old Breanna G. and her co-defendant Miranda M., who was just a few weeks from turning twelve, entered an unoccupied residence and painted graffiti throughout the house on appliances, the carpet, tile, fixtures and walls. Both girls were charged by delinquency petition with second-degree burglary and criminal damage. Pursuant to a plea agreement, Breanna admitted to an amended charge of criminal damage, a class one misdemeanor, and the burglary charge was dismissed. Following admission and disposition hearings, the juvenile court placed her on probation for a period of six months, imposing various conditions of probation. The court subsequently ordered Breanna and Miranda to pay restitution in the amount of $4,127.80, specifying "pursuant to A.R.S. § 12-661, that each juvenile and their parents are jointly and severally liable for the damage suffered in this case."

¶3 We review a restitution order for an abuse of discretion. *In re Andrew C.*, 215 Ariz. 366, ¶ 6, 160 P.3d 687, 688 (App. 2007). In reviewing the order and assessing its propriety, we view the facts in the light most favorable to upholding the juvenile court's ruling. *Id*. We do not reweigh the evidence, reviewing the record "only to determine if there is sufficient evidence to sustain the juvenile court's ruling." *In re Andrew A.*, 203 Ariz. 585, ¶ 9, 58 P.3d 527, 529 (App. 2002). And in determining the

propriety of the court's order, we are mindful that an abuse of discretion includes a misapplication of the law or a legal principle. *In re Maricopa County Juv. Action No. JV-128676*, 177 Ariz. 352, 353, 868 P.2d 365, 366 (App. 1994). "We review questions of law *de novo*." *In re Ryan A.*, 202 Ariz. 19, ¶ 7, 39 P.3d 543, 545 (App. 2002). We note, too, that the evidence must establish by a preponderance the amount of restitution the court orders the minor to pay. *See In re Stephanie B.*, 204 Ariz. 466, ¶ 15, 65 P.3d 114, 118 (App. 2003).

¶4 Section 8-344(A), A.R.S., provides that when a minor has been adjudicated delinquent, the juvenile court must award the victim restitution. The statute is consistent with a crime victim's constitutional right to restitution under article II, § 2.1(A)(8) of the Arizona Constitution. *See In re Ryan A.*, 202 Ariz. 19, ¶ 18, 39 P.3d 543, 547-48 (App. 2002) (acknowledging mandatory obligation to pay full or partial restitution to victim of offense committed by juvenile). A victim is entitled to restitution for economic losses that would not have occurred but for the juvenile's delinquent conduct and that are the direct result of that conduct. *See* § 8-344(A); *Andrew C.*, 215 Ariz. 366, ¶ 9, 160 P.3d at 689 (citing test articulated in *State v. Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d 1131, 1133 (2002), to determine appropriate amount of restitution). In the adult sentencing context, economic loss is defined as "any loss incurred by a person as a result of the commission of an offense," and includes "losses that would not have been incurred but for the offense." A.R.S. § 13-105(16). It does not include consequential damages. *Id.*; *State v. Baltzell*, 175 Ariz. 437, 439, 857 P.2d 1291, 1293 (App. 1992).

¶5 At the restitution hearing, Breanna joined in Miranda's objection to including the cost of a security system, arguing it is a consequential damage and cannot be part of the restitution award. Rejecting that idea in its minute entry order, the juvenile court relied on *State v. Brady*, 169 Ariz. 447, 819 P.2d 1033 (App. 1991). In *Brady*, this court affirmed the trial court's inclusion in the restitution award to a sexual assault victim who was afraid the defendant would return to her previous apartment, the cost of moving to another apartment. 169 Ariz. at 448, 819 P.2d at 1034. The court stated here, "Based on that decision, the court finds that the installation of an alarm system is equivalent to moving expenses and is therefore allowed." We agree and reject Breanna's argument that *Brad*y is distinguishable on the grounds the defendant there had threatened the victim and the offense had been violent, resulting in emotional stress and disturbing memories that her apartment made more difficult to overcome. *See id.* We do not find these factors meaningfully distinguish that case from this one, particularly in light of the record before us, which sufficiently supports the court's ruling.

¶6 The court noted in *Brady* that the defendant had threatened to return to the victim's apartment and harm her if she called the police. *Id.* And, the court pointed out, the victim had moved not only because "she feared that her assailant might return and do her further harm" but also "because the memory of the incident made remaining in the apartment stressful." *Id.* The court found the expense was an economic loss within the meaning of the statute and not consequential damages, relying on *State v. Wideman*, 165 Ariz. 364, 369, 798 P.2d 1373, 1378 (App. 1990). *Id.* In *Wideman*, the court had found counseling expenses for a homicide victim's family "directly attributable" to the offense.

165 Ariz. at 369, 798 P.2d at 1378. The court in *Brady* concluded, "If the cost of psychological counseling for the victim of a violent crime is directly attributable to the crime, so are moving expenses incurred in an effort to restore the victim's equanimity." 169 Ariz. at 448, 819 P.2d at 1034. The juvenile court did not abuse its discretion in implicitly finding the same is true with respect to the cost of the security system in this case.

¶7 The record before the juvenile court established the home that Breanna and Miranda had invaded belonged to husband and wife victims from Canada; the wife testified at the restitution hearing they had purchased the home intending to use it as "a vacation home" and as a place to live when they retire. They also intended to rent the recently remodeled home "to help with expenses until we can enjoy some time there ourselves." The victims submitted a victim impact statement and a series of receipts in which they itemized all costs they were requesting as part of the restitution claim; the wife testified specifically about those expenses. Among the costs was the security system and the wife explained at the hearing, "we're asking for $1,000 towards a 3-year [security system] setup plan which we need to get," adding that they "would like [it] immediately."

¶8 The property was being managed by a friend of the family who testified at the restitution hearing and provided a statement that was included in the victim impact statement. She explained at the hearing how she typically watched over the property, inspecting inside once a week and driving by as well. Neighbors had contacted the victims and had told them some kids were in the backyard; the victims had contacted the manager, and she went there to investigate; after discovering the extensive damage, she

called the police. During her previous inspection of the home, she had made sure the doors were locked, and she described generally what she did to secure the home in the past. In her written statement, she explained the front door deadbolt was unlocked, which was unusual. Somehow the girls had broken into the home, possibly by breaking an exterior door, given that the door was among those items listed as damaged, with a cost for repairing it. At least one interior door lock had to be replaced as well.

¶9 At the end of the victim impact statement, the victims made clear that the incident had left them feeling vulnerable and unable to protect their home. They stated they "felt helpless and discouraged." They also stated they were concerned about the inconvenience the invasion had caused them and the amount of time they would need "to restore [their] house back to normal." They stated they were "[e]xtremely nervous about retaliation," adding they would not feel "at peace in this neighbo[]rhood with this young girl still living right across the street from us" and that they were "a little unsettled about welcoming renters to our home knowing one criminal is right across the street."[1]

¶10 The juvenile relies on *Maricopa County Juvenile Action No. JV-128676*, 177 Ariz. 352, 868 P.2d 365, to support her claim. But in that case, this court determined that the damage to the vehicle did not result from the delinquent act of criminal trespass, which only required that the juvenile ride in the stolen vehicle. *Maricopa County No. JV-128676*, 177 Ariz. at 355, 868 P.2d. at 368. Here, the purchase of the security system is a

[1]It appears that Miranda had lived across the street from the vandalized home. At the disposition, counsel tried to allay some of these fears by informing the court Miranda and her family had since moved. Nevertheless, that does not mean the victims no longer would fear retaliation, nor would it necessarily ensure the security of their home.

result of the delinquent act, the question being whether the causation is sufficiently attenuated to make the security system a consequential damage as a matter of law.

¶11 Based on the evidence before the juvenile court, it reasonably could find, as we presume it did, that the property as it stood could not be protected adequately and that this incident caused the victims to feel unprotected and insecure. The record supports the conclusion that the cost of the system is not part of consequential damages but rather an economic loss resulting from the offenses because it is a reasonable expense designed to help "restore the victim's equanimity." *Brady*, 169 Ariz. at 448, 819 P.2d at 1034. Although the minors did not threaten the victims, the incident itself made them feel threatened. Thus, like the victim in *Brady*, the incident clearly had disturbed their sense of security and equanimity, which an alarm system could help restore, much like moving could assist the victim in *Brady* in coping with disturbing memories and emotional distress. The court therefore did not abuse its discretion by including the cost of the system in the restitution award.

¶12 In a footnote in her brief, Breanna points out there is a nearly ten-dollar discrepancy between the total amount of restitution the court awarded and the total based on the items the court specified in its minute entry order. We agree; the total amount the court awarded is $4,127.80, but the sum of the items the court specified in the order is $4,117.88. We believe the discrepancy is primarily the result of an error in the court's order with respect to the amount of the bank charges. The victim testified the bank charges were $37.50, not the $27.50 listed in the minute entry. The total amount the court ordered is, therefore, supported by the record.

¶13 For the reasons stated, the adjudication, disposition, and order of restitution are affirmed.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge