

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07/03/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE ANDREW E.) 1 CA-JV 11-0187
)
) **DEPARTMENT B**
)
) MEMORANDUM DECISION
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 88(G);
) ARCAP 28)
)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. JV175742

The Honorable Jo Lynn Gentry-Lewis, Judge

AFFIRMED

William G. Montgomery, Maricopa County Attorney Phoenix
By Linda Van Brakel, Assistant County Attorney
Attorneys for Appellee

Jamie R. Jones Phoenix
Attorney for Appellant Andrew E.

T H O M P S O N, Judge

¶1 Andrew E. (juvenile) appeals the court's restitution order of \$9,496.15. Finding no abuse of discretion, we affirm.

¶2 Juvenile was charged with one count of second degree burglary and one count misdemeanor trespass related to the breaking and entering of an elderly victim's home and fenced yard. A petition was filed. Juvenile pled responsible to a

lower charge of criminal trespass in the first degree, a class six designated felony, in exchange for count two to be dropped. The plea agreement signed by juvenile included a term for restitution up to \$10,000.

¶3 Victim was present at the change of plea, and testified to the severe emotional trauma of the burglary, including that she was now afraid to have her grandkids come to visit and to her general financial loss. Victim testified at the disposition hearing that she had over \$10,000 in losses including stolen jewelry and repairs to the house; she testified to \$960 in lost wages. Victim's verified victim statement showed \$11,147.44 in losses, including \$960.68 in lost wages, \$150.00 in medical expenses, \$10,063.76 in property damage (including \$3,408.22 for home repair) and other losses. Attached to her verified statement were twenty pages of documents to substantiate her claims including valuation of some of her lost jewelry, a couple of receipts for jewelry and receipts or estimates for home repairs. One jewelry receipt was from 1993 for the purchase of three gold pendants for \$156.55; the three pendants were stolen along with victim's entire sixty-piece collection of airplane-related jewelry. At the restitution hearing, the victim detailed her claims and was heavily cross-examined about them, including how and when she

received each piece of jewelry and/or coin and its purchase price and current value. Juvenile did not cross-examine the victim on either her lost wage claim or her medical expenses. At the close of the restitution hearing, the court found juvenile, his parents and potentially juvenile's co-conspirators joint and severally liable for \$9,496.15 in restitution to victim for losses related to the crime.

¶4 Juvenile argues on appeal that the court abused its discretion in determining the amount of restitution for the jewelry because it was "speculative", in ordering restitution for lost wages and medical expenses, and in failing to consider juvenile's age or earning capacity.

¶5 In Arizona, the purpose of restitution is rehabilitation of the offender and reparation to the crime victim. *State v. Iniguez*, 169 Ariz. 533, 536, 821 P.2d 194, 197 (App. 1991). Restitution is proper if evidence "reasonably leads to the inference that juvenile's criminal conduct was related to victim's damages." *Maricopa Cnty. Juv. Action No. J-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996); *State v. Lindsley*, 191 Ariz. 195, 198, 953 P.2d 1248, 1251 (App. 1997) ("Recoverable economic losses are those that flow directly from or are a direct result of the crime committed."). A juvenile can be ordered to pay restitution for all losses resulting from

criminal conduct of which he has been convicted. See *Lindsley*, 191 Ariz. at 197, 953 P.2d at 1250. This court upholds restitution awards if they bear "a reasonable relationship to the victim's loss." *In re William L.*, 211 Ariz. 236, 239, ¶ 10, 119 P.3d 1039, 1042 (citation omitted).

¶6 The court properly determines the credibility of witnesses and the authenticity of a victim's documented damages. *J-132905*, 186 Ariz. at 609, 925 P.2d at 750. This court clearly found the victim credible and ordered restitution on the stolen jewelry and coins "based on the testimony of the victim that those are estimates or replacement costs of each." Given the victim's testimony that the 1993 receipt in the amount of \$156.55 represented the purchase of just three of the sixty missing fourteen-carat airplane pendants, we find no error in the award of \$469.65 for those pieces. As to the award for lost wages and medical expenses, the court may properly consider the victim's verified statement of damages for lost wages, property loss and medical expenses. See A.R.S. § 8-344(B). Where, as here, evidence supported a restitution order greater than the \$10,000 plea agreement cap, an award of less than \$10,000 is clearly sustainable.

¶7 As to juvenile's assertion that this court did not consider such factors as his age or his earning capacity as

required by A.R.S. § 8-344(A) before ordering restitution, we disagree. We note that the court ordered only partial restitution from the original request of over \$11,000 and that the evidence in the record also demonstrates that the court was intimately familiar with juvenile and his history. In response to juvenile's claim at his disposition hearing that he had learned his lesson, the court stated:

Well, Andrew, if you truly have learned your lesson, I don't know what took you so long. You were placed on probation initially back in December of 2009. That was for the shoplift charge. At that time you told me you wanted to be an architect. I told you that then that if you continued down the path of stealing and committing other crimes, becoming an architect was going to be a very difficult task for you. That was December of '09. Then in October of 2010, you admitted that you were shoplifting again. Then November 2010 you had the assault. You were placed on intensive probation in February, then you came up with these two new charges, the violation and the criminal trespass.

The court also ordered juvenile's mother to be joint and severally liable with the juvenile. See A.R.S. § 8-344(C).

¶8 On appeal, we affirm the juvenile court's restitution order.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

DIANE M. JOHNSEN, Judge