

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: 3/26/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE ALEXUS I.)
) No. 1 CA-JV 12-0207
)
) DEPARTMENT E
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) 103(G) Ariz. R. P. Juv.
) Ct.; Rule 28 ARCAP)
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Appeal from the Superior Court in Mohave County

Cause No. S8015JV201200063

The Honorable Derek C. Carlisle, Judge *Pro Tem*

AFFIRMED

Jill L. Evans, Mohave County Appellate Defender Kingman
By Diane S. McCoy, Deputy Appellate Defender
Attorneys for Appellant

Matthew J. Smith, Mohave County Attorney Kingman
By Deborah L. Herbert, Deputy County Attorney
Attorneys for Appellee

D O W N I E, Judge

¶1 Alexis I. ("Juvenile") appeals the juvenile court's
restitution order. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Juvenile pled delinquent to two counts of shoplifting and agreed to pay restitution for "all economic loss." One of the victim stores -- K-Mart -- reported that although Juvenile had shoplifted \$127.89 in apparel, it was only seeking \$81.96 in restitution for items that could not be returned to its sales inventory.

¶3 After a contested restitution hearing, the court ordered Juvenile to pay \$81.96 in restitution to K-Mart. Juvenile timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235(A).

DISCUSSION

¶4 Juvenile claims the restitution amount was speculative. We disagree.

¶5 We review a restitution order for an abuse of discretion. *In re Andrew C.*, 215 Ariz. 366, 367, ¶ 6, 160 P.3d 687, 688 (App. 2007) (citations omitted). We will uphold a restitution order "if it bears a reasonable relationship to the victim's loss." *In re William L.*, 211 Ariz. 236, 239, ¶ 10, 119 P.3d 1039, 1042 (App. 2005). The State must prove a restitution claim by a preponderance of the evidence. *In re Stephanie B.*, 204 Ariz. 466, 470, ¶ 15, 65 P.3d 114, 118 (App. 2003) (citations omitted). "[A] victim must present evidence to establish that the victim's loss relates directly to the

juvenile's offense, and to provide a basis for setting an amount that is not speculative." *In re Alton D.*, 196 Ariz. 195, 197, ¶ 9, 994 P.2d 402, 404 (2000) (internal citation omitted). "To ensure that the victim is made whole, the court has broad discretion in setting the restitution amount based on the facts of the case," but it cannot "order restitution that would make the victim more than whole." *William L.*, 211 Ariz. at 239, ¶ 12, 119 P.3d at 1042.

¶16 K-Mart's loss prevention manager testified that shoplifted apparel totaling \$45.93 was returned to the sales inventory, leaving \$81.96 in "nonsalable merchandise." Juvenile did not dispute the dollar value placed on those items or the allegation she had damaged them by removing tags and/or packaging. The manager testified it was company policy to return damaged items to the manufacturer at the store's expense and that "[n]inety percent of the time they just send us a new one." However, she never stated that the manufacturer would provide the replacement items to K-Mart free of charge and instead testified, "[i]t still costs the store for that new item."

¶17 We disagree with Juvenile's assertion that the restitution order is inconsistent with *State v. Freeman*, 174 Ariz. 303, 848 P.2d 882 (App. 1993), and *State v. Ferguson*, 165 Ariz. 275, 798 P.2d 413 (App. 1990). In both cases, we held

