

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



DIVISION ONE  
FILED: 08/31/2010  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

IN RE CODY E. )  
 ) 1 CA-JV 10-0078  
 )  
 ) DEPARTMENT D  
 )  
 ) **MEMORANDUM DECISION**  
 ) (Not for Publication -  
 ) Ariz. R.P. Juv. Ct.  
 ) 103(G); ARCAP 28)  
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Appeal from the Superior Court in Maricopa County

Cause No. JV 542924

The Honorable Bernard C. Owens, Commissioner

**AFFIRMED**

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Richard M. Romley, Maricopa County Attorney Phoenix  
by Linda Van Brakel, Deputy County Attorney  
Attorneys for Appellee

Maricopa County Juvenile Public Defender Mesa  
by Suzanne Sanchez, Deputy Juvenile Public Defender  
Attorneys for Appellant

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**I R V I N E**, Presiding Judge

¶1 Cody E. appeals from the juvenile court's order that  
he pay SK restitution of \$211.85.

¶2 Cody was originally charged with two counts of non-residential burglary. He and a co-defendant were accused of entering a fenced yard and non-residential structure and taking property that did not belong to them. After doing so they allegedly rode away on a four-wheel ATV, which ultimately turned out to be stolen. The police report listed theft-means of transportation, but the actual charging petition only included the burglary charges.

¶3 Pursuant to a plea agreement, one of the charges was reduced and the other dismissed. One term of the plea indicated that Cody was pleading delinquent to solicitation to commit burglary. Another stated: "The juvenile agrees to pay restitution to all victims, for all economic loss, as described in Mesa police departmental report number 2009-2140455, in an amount not to exceed \$30,000.00." Still another term stated: "Maricopa County Attorney's Office agrees not to file Theft of means of transportation charges as related to the quad owned by [SK] described in Mesa police departmental report number 2009-214055, but can make no such agreement as to any other agency. There are no additional agreements."

¶4 At the restitution hearing, Cody objected to paying restitution to SK. The juvenile court's minute entry summarizes Cody's argument and the court's analysis, so we quote it at length.

The juvenile, Cody [], argues that [SK's] losses do not flow from any of his unlawful conduct; there is no nexus between his conduct and damage to the Honda ATV. Although he acknowledges there is evidence that he was a passenger on the Honda ATV, he maintains there is no evidence that he was responsible for any damage to the vehicle; any damage, he claims, was caused by [co-defendant] prior to the time he even knew the Honda ATV was stolen. Cody is correct; there is no evidence he caused any of the damage to the Honda ATV.

Cody entered a written plea agreement, and in that agreement he agreed to pay restitution "to all victims, for all economic loss, as described in Mesa police departmental report number 2009-2140455, in an amount not to exceed \$30,000.00." In addition, the language of the plea agreement states that the Maricopa County attorney would not file theft of means of transportation charges against Cody "as related to the quad owned by [SK] described in Mesa police departmental report number 2009-214055 ..."

THE COURT FINDS that this written plea agreement controls the issue of Cody's responsibility for [SK's] losses. [SK] was a victim described in the subject police report, and his economic loss was also described. Thus, by express, clear language in the written plea agreement, Cody agreed to pay restitution to [SK]; he bargained away his argument that a nexus did not exist between his conduct and the damage to the Honda ATV.

¶15 Cody argues that the juvenile court misread the plea agreement, and he only agreed to pay restitution to "victims" of the acts he was charged with, in this case the burglaries. He does not dispute the restitution ordered to that victim, but argues he was never charged with a delinquent act against SK. He further argues that the reference in the plea agreement to the police report was merely intended to include the victim of the two charged offenses and his insurer. We disagree, and conclude that the juvenile court correctly interpreted the plea agreement.

¶16 The police report clearly included SK as a victim and included theft-means of transportation as a potential charge. The plea agreement itself plainly addressed the potential theft of the ATV through its provision that the county attorney would not file theft charges against Cody. This was not an insignificant agreement given the statements in the police report that Cody's co-defendant told police that he obtained the ATV from Cody.

¶17 "Restitution is proper if evidence 'reasonably leads to the inference that juvenile's criminal conduct was related to victim's damage.'" *In re Andrew A.*, 203 Ariz. 585, 586, ¶ 7, 58 P.3d 527, 528 (App. 2002) (quoting *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996)). There is no dispute that Cody used the ATV. In his

plea agreement, he expressly agreed to pay restitution to the victims referred to in the police report. One of those victims was SK. Under these circumstances, we find no error in the juvenile court's determination that SK was due restitution.

¶8 Therefore, we affirm.

\_\_\_\_\_/s/\_\_\_\_\_  
PATRICK IRVINE, Presiding Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
ANN A. SCOTT TIMMER, Judge

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Judge