

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE K.C.

No. 2 CA-JV 2015-0225
Filed March 31, 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NOT FOR PUBLICATION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. JV20140649
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

Aguilar Law PLLC, Tucson
By Edwin Aguilar
Counsel for Minor

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MEMORANDUM DECISION

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

STARING, Judge:

¶1 The state appeals from the juvenile court’s order declining to require K.C., born February 1998, to pay restitution to the victim. It argues the court was required to impose restitution although the victim refused to complete her testimony at the restitution hearing. We affirm.

¶2 After K.C. and two other juveniles¹ admitted having committed attempted second-degree burglary, the juvenile court adjudicated K.C. delinquent, placed him on probation, and set a restitution hearing. At that hearing, the victim 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 was not cross-examined. According to the state, the victim opted not to appear because she did not want to “subject herself to any further 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 K.C. “want[ed] to delve further into her testimony and the documentation that she’s produced” but could not do so in her absence. The court concluded there was

¹The two other juveniles are not parties to this appeal. However, the state has filed an appeal in each of those cases.

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insufficient evidence to justify ordering restitution. This appeal followed.²

¶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.” “We review a juvenile court’s delinquency restitution order for an abuse of discretion.” *In re Richard B.*, 216 Ariz. 127, ¶ 12, 163 P.3d 1077, 1080 (App. 2007). The state is correct that crime victims in Arizona are constitutionally entitled to restitution.³ Ariz. Const. art. II, § 2.1(A)(8). Thus, a juvenile court “shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent.” A.R.S. § 8-344(A). The state is also correct that, pursuant to § 8-344(B), a court may determine the amount of restitution based on “a verified statement from the victim . . . concerning damages for lost wages, reasonable damages for injury to or loss of property.”

¶5 However, a juvenile has a due process right to “contest the information on which the restitution award was based, to present relevant evidence, and to be heard.” *In re Andrew A.*, 203 Ariz. 585, ¶ 12, 58 P.3d 527, 529 (App. 2002). The state has not explained how permitting the juvenile court to rely on the victim’s testimony at the restitution hearing would be consistent with that

²K.C. has not filed an answering brief. But in our discretion, we decline to treat that failure as a confession of error. See *In re Pinal Cty. Juv. Action No. S-389*, 151 Ariz. 564, 565, 729 P.2d 918, 919 (App. 1986).

³We note, however, that the state’s reliance on *In re Joe S., Jr.*, 193 Ariz. 559, 975 P.2d 149 (App. 1999), is misplaced. The state asserts that case stands for the proposition that a court has a “duty . . . to impose restitution,” based on the evidence presented. But we held only that a juvenile court could not foreclose without notice a victim’s right to present statements of loss. *Id.* ¶ 14. We did not suggest, as the state apparently does, that a court must impose restitution despite any deficiencies in the presentation of evidence.

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right given that the juvenile had no opportunity to cross-examine the victim. See *Volk v. Brame*, 235 Ariz. 462, ¶ 24, 333 P.3d 789, 796 (App. 2014) (“In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.”), quoting *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). Even assuming a juvenile court would be permitted to rely on such testimony, it would not be required to accept it. Cf. *State ex rel. La Sota v. Ariz. Licensed Beverage Ass’n*, 128 Ariz. 515, 521, 627 P.2d 666, 672 (1981) (“The trial judge has authority to reject the testimony of an interested witness and to determine credibility.”).

¶6 For similar reasons, we reject the state’s suggestion that the juvenile court was required to award restitution based solely on the loss statement and other documents submitted by the victim. First, the state has not explained how K.C. could, consistent with his due process rights, meaningfully challenge documents created by the victim without having had the opportunity to examine her. Even assuming, without deciding, that procedure was consistent with due process, the court was well within its discretion in finding those documents insufficient to support a restitution award, particularly in light of the victim’s refusal to testify. Cf. *Id.*; *Melissa W. v. Dep’t of Child Safety*, 238 Ariz. 115, ¶ 5, 357 P.3d 150, 152 (App. 2015) (negative inference appropriate when party refuses to testify).

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