IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE A.B.

No. 2 CA-JV 2016-0131
Filed December 8, 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NOT FOR PUBLICATION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. JV20140610
The Honorable Julia Conners, Judge Pro Tempore

AFFIRMED

COUNSEL

Barbara LaWall, Pima County Attorney
By Nicolette Kneup, Deputy County Attorney, Tucson
Counsel for State

Steven R. Sonenberg, Pima County Public Defender
By Susan C. L. Kelly, Assistant Public Defender, Tucson
Counsel for Minor

MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Judge Espinosa and Judge Kelly[1] concurred.

S T A R I N G, Judge:

¶1 A.B., born December 2000, was adjudicated delinquent in December 2015, after he admitted having committed second-degree burglary, theft of a means of transportation, and possession of marijuana. The juvenile court committed him to the Arizona Department of Juvenile Corrections (ADJC) and imposed restitution totaling $13,285.24. On appeal, A.B. challenges the restitution order, claiming the juvenile court erred by requiring him to compensate the victim for the cost of installing a security system. We affirm for the reasons stated below.

¶2 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 determining the propriety of the order, we view the facts in the light most favorable to upholding the court's ruling. *Id.* "We will not reweigh evidence, but look 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).

¶3 In November 2015, A.B. entered the victim's home, stealing and damaging property.[2] He also stole and damaged the victim's truck. A.B. lived nearby and knew the victim and her late

[1]The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

[2]A.B. was, at times, accompanied by his brother, who was also ordered to pay restitution.

husband—he had spoken at the victim's husband's memorial service less than two weeks earlier and asked the victim for details about her plans to travel out-of-state for a second memorial, stating "he wanted to get together for Thanksgiving." The victim testified she had installed a security system in her home after the burglary because she "felt that I need to be secure" until A.B. turns eighteen. In concluding that restitution for the security system was warranted, the juvenile court noted the burglary "has shattered [the victim's] sense of personal safety—which is a direct consequence of [A.B.]'s decision to violate her privacy and 'just help [himself]' to her personal property during a time period [he] knew she was extremely vulnerable."

¶4 Section 8-344(A), A.R.S., provides that when a juvenile has been adjudicated delinquent and "after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, [the 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 victim is entitled to restitution for economic losses that would not have occurred but for the juvenile's delinquent conduct and that are directly caused by that conduct. *See* § 8–344(A); *State v. Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d 1131, 1133 (2002); *Andrew C.*, 215 Ariz. 366, ¶ 9, 160 P.3d at 689. Restitution does not, however, include consequential damages; the damages must "flow directly from" the juvenile's conduct, "without the intervention of additional causative factors." *Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d at 1133.

¶5 In awarding restitution for the security system, the juvenile court relied on *State v. Brady*, 169 Ariz. 447, 819 P.2d 1033 (App. 1991), and *State v. Wideman*, 165 Ariz. 364, 798 P.2d 1373 (App. 1990). In *Brady*, this court affirmed the trial court's restitution award for moving costs to a sexual assault victim who was afraid the defendant would return to her previous apartment. 169 Ariz. at 448, 819 P.2d at 1033. The defendant had threatened to return and harm her if she called the police. *Id.* The victim then moved because she "feared that her assailant might return and do her further harm, and because the memory of the incident made remaining in the apartment stressful." *Id.* We cited *Wideman*, in which we

determined that counseling expenses for the family of a homicide victim were "directly attributable" to the offense. 165 Ariz. at 369, 798 P.2d at 1378. Based on that reasoning, we stated in *Brady* that, "[i]f 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 1033. Thus, we concluded, such expenses were economic damages recoverable as restitution. *Id.*

¶6 We agree with the juvenile court that *Brady* and *Wideman* are analogous. The record supports the court's conclusion that the victim had purchased the security system as a direct result of A.B.'s actions and the system was necessary to restore her equanimity following the burglary. The holdings in *Brady* and *Wideman* require us to reject A.B.'s argument that the victim's decision to purchase the system is an intervening causative factor that renders the expense only a consequential damage. If a victim's decision to move or obtain counseling because of a defendant's criminal conduct does not render such expenses merely consequential, neither does a victim's decision to purchase a security system because her home was burglarized.

¶7 A.B. further argues *Brady* is distinguishable because he did not threaten to return, had been detained during the proceedings, and ultimately was committed to AJDC. But we do not view the reasoning in *Brady* as limited to circumstances in which there is an ongoing specific threat. Instead, the pertinent question is whether the expense is directly attributable to A.B.'s conduct. And, in any event, although A.B. has been committed to ADJC, it was not for any definite term.

¶8 A.B. additionally complains there was "no testimony . . . that the security system was necessary" to "return [the victim] to the same emotional state" as before the burglary. This argument ignores the victim's testimony that she had installed the security system because she felt unsafe as a direct result of the burglary. And, even if we believed it to be material, we find unconvincing A.B.'s suggestion that the security system would be ineffective in preventing further burglaries. Finally, we reject A.B.'s argument

that treating the security system as economic loss "creates a slippery slope that could transform virtually any consequential expense into a direct economic loss merely at the victim's urging that it was necessary to restore his or her 'equanimity,'" such as "a fully armed, personal bodyguard present twenty-four hours a day." We are confident that courts can distinguish between reasonable and unreasonable "effort[s] to restore the victim's equanimity." *Brady*, 169 Ariz. at 448, 819 P.2d at 1033.

¶9 We affirm the juvenile court's order adjudicating A.B. delinquent and its disposition.