

FILED: November 7, 2012

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of G. L. D., Jr.,
a Youth.

STATE OF OREGON,
Respondent,

v.

G. L. D., Jr.,
Appellant.

Petition Number
061609GLD4, 061609GLD5, 110909GLD6, 110909GLD7, 110909GLD8

Curry County Circuit Court
4488J

A145535

Cynthia Lynnae Beaman, Judge.

Argued and submitted on February 03, 2012.

Christa Obold-Eshleman argued the cause and filed the briefs for appellant.

Cecil A. Reniche-Smith, Assistant Attorney General, argued the cause for respondent. With her on the brief were John R. Kroger, Attorney General, and Mary H. Williams, Solicitor General.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

NAKAMOTO, J.

Affirmed.

1 NAKAMOTO, J.

2 Youth was adjudicated delinquent after he and two other youths broke into
3 a high school, took computers, and set a fire. Youth appeals from the juvenile court's
4 judgment determining that he was within the jurisdiction of the court for committing acts
5 that, if committed by an adult, would constitute one count of first-degree arson, ORS
6 163.325(a); one count of aggravated first-degree theft, ORS 164.057; two counts of
7 second-degree burglary, ORS 164.215; and one count of first-degree criminal mischief,
8 ORS 164.365. Youth also appeals from the juvenile court's judgment of restitution of
9 \$194,579.92, which consisted almost entirely of amounts paid by several insurance
10 companies due to damage and losses that the youths caused. Youth contends that (1) the
11 juvenile court erred in failing to merge the adjudications on his two counts of second-
12 degree burglary under ORS 161.067(3); (2) the state did not prove beyond a reasonable
13 doubt that the value of the stolen computers was in the amount of \$10,000 or more, as
14 required for aggravated first-degree theft; and (3) insurance companies are not "victims"
15 under ORS 419A.004(31) for purposes of restitution. We affirm.¹

16 We have discretion to review this case *de novo*. See ORS 19.415(3)(b)
17 ("Upon an appeal in an equitable action or proceeding other than an appeal from a
18 judgment in a proceeding for the termination of parental rights, the Court of Appeals * *

¹ Without further discussion, we also reject youth's fourth assignment of error--the juvenile court erred in denying his motion to empanel a jury trial pursuant to Article I, section 17, of the Oregon Constitution--in light of [State v. N. R. L.](#), 249 Or App 321, 277 P3d 564 (2012).

1 * may try the case anew."). Youth does not request that we review this case *de novo*, and
2 we decline to exercise that discretion. *See* ORAP 5.40(8)(c) (we exercise *de novo* review
3 "only in exceptional cases"). Accordingly, "we review the juvenile court's legal
4 conclusions for errors of law, but are bound by the court's finding of historical fact so
5 long as there is any evidence to support them." [*State v. S. T. S.*](#), 236 Or App 646, 655,
6 238 P3d 53 (2010). When the juvenile court does not make findings of fact on disputed
7 issues of fact, but there is evidence to support more than one factual conclusion, we will
8 presume that they were decided in a manner consistent with the juvenile court's ultimate
9 conclusion. *Id.*

10 I. FACTS

11 Youth was charged with acts that were committed on three successive
12 nights in October 2009 at Pacific High School, but this appeal focuses on youth's conduct
13 on only one of the nights.² On that night, youth was with TM and DW, two high school
14 friends and witnesses at youth's hearing. Youth drove them to a spot on County Shop
15 Road, north of Pacific High School, late at night. Youth parked the car, and they walked
16 along a trail that led to the high school. Once they reached the high school, they drank
17 some beers and then walked over to the school's woodshop classroom. TM kicked in the
18 classroom door, and youth went inside along with his friends. In an adjacent computer
19 lab, youth found 19 laptop computers, owned by the high school, and the woodshop

² It appears that a small amount of the restitution to the insurance companies was for repairs and losses due to youth's acts of vandalism at the school on the other nights.

1 teacher's personal laptop computer.

2 From there, TM's and DW's testimony of the events diverged. According
3 to TM, they loaded the computers into boxes, walked on the trail for 15 minutes back to
4 County Shop Road, and put the computers in the car. All three youths then walked back
5 to the woodshop classroom and poured paint thinner on the ground. Youth lit a piece of
6 paper in TM's hand, and TM threw the paper inside the classroom.

7 According to DW, he was not involved in setting the fire. He testified that,
8 after they found the computers, youth and TM loaded the computers into boxes and
9 placed them outside the classroom. Afterwards, only youth and TM went back into the
10 building and decided to set the woodshop classroom on fire to "get rid of the evidence."
11 While DW was outside, youth and TM spread papers and poured paint thinner all over
12 the classroom, and TM used a lighter to set the building on fire. Afterward, they picked
13 up the boxes of computers and ran back to the car.

14 As relevant to this appeal, the juvenile court held a hearing on a petition for
15 jurisdiction over youth based on acts that, if committed by an adult, would constitute one
16 count of arson, ORS 164.325(a); one count of aggravated first-degree theft, ORS
17 164.057; two counts of second-degree burglary, ORS 164.215; and one count of first-
18 degree criminal mischief, ORS 164.365. At the hearing, in addition to the testimony of
19 the state's witnesses concerning youth's commission of the acts alleged, the school
20 district's superintendent, Lane, testified as to the amount of property damage youth had
21 caused at the high school. Lane testified that the total cost to repair the damages to the

1 building and to replace the shop and computer lab equipment was \$193,666.91. As to the
2 stolen computers, Lane thought they were just one year old, but the manufacturer had
3 discontinued the model. The receipt for the purchase of the 19 replacement computers,
4 an upgraded model, showed that the cost was \$26,124.43, plus another \$1,981.89 for
5 peripherals. Lane stated that he did not know the value of the old computers at the time
6 they were stolen, but he estimated that the purchase price of each replacement was
7 approximately \$70 or \$80 less than the purchase price of each stolen computer.

8 After the close of the state's case, youth moved for a judgment of acquittal.
9 Youth argued that the state had failed to meet its burden to prove that he committed
10 aggravated first-degree theft because there was no evidence in the record that the market
11 value of the stolen computers was \$10,000 or more as required under ORS 164.057.
12 Youth contended that, because the state failed to establish that the market value of the
13 stolen computers could not be ascertained, the state could not rely on the value of the
14 replacement computers to meet the statutory minimum in ORS 164.057 for aggravated
15 first-degree theft. The juvenile court denied youth's motion for a judgment of acquittal,
16 ruling that the state had adduced sufficient evidence that the 19 laptops were worth "well
17 over \$10,000." The court explained that, in light of year-to-year changes in computer
18 products,

19 "just because they're not able to get the exact kind anymore doesn't mean
20 that the value is nil, and * * * the replacement value was actually less than
21 what it was to pay for those original computers, and that was \$25,000. It's
22 well over the \$10,000 mark, so the * * * motion for judgment of acquittal
23 on Petition 008 is denied as well."

1 As to the events on the night of the arson, the juvenile court ruled that
2 youth was within the jurisdiction of the court based on all acts alleged, namely, one count
3 of arson for setting the fire, one count of aggravated first-degree theft for stealing the
4 computers, two counts of second-degree burglary for entering the high school with intent
5 to commit theft and intent to commit arson, and one count of first-degree criminal
6 mischief for damaging classrooms at the school. Regarding youth's aggravated first-
7 degree theft count, youth argued that the state had failed to prove that the value of the
8 stolen computers was over \$10,000. The juvenile court disagreed:

9 "As far as the value is concerned, * * * I can reasonably ascertain the value
10 to be well over \$10,000, in fact, in the neighborhood of \$25,000, and that's
11 based on the testimony that I heard here today based on the replacement
12 value, but also the fact that the computers were just approximately a year
13 old and they're laptops and there's 19 of them and there's software that goes
14 along with them and power cords and such."

15 Youth's counsel also argued that youth's two counts for second-degree burglary should
16 merge:

17 "I didn't do research on this, but they're the same date, same incident.
18 Basically one alleges arson and one alleges theft. I know in the adult
19 system, you only get one sentence out of that * * *. And I don't know if
20 those two merge. * * * I suspect they don't because they're, you know,
21 one's to commit arson, and one's to commit theft, but I'd make the argument
22 that they do."

23 The court concluded that the two counts of second-degree burglary should not merge
24 because there was some evidence that youth "went out and went back in" the woodshop.
25 Youth challenges both of those rulings on appeal.

26 In May 2010, youth filed a memorandum regarding restitution, arguing that

1 he should not be required to pay restitution to insurance companies because they are not
2 victims for purposes of restitution. At the restitution hearing, the state pointed out that
3 youth's memorandum referenced restitution exhibits that had listed insurance companies
4 as victims, but it explained that it had revised the exhibits to designate the high school as
5 the victim. Nevertheless, the court entered a judgment of restitution designating the lion's
6 share of the money for the insurance companies, as follows: \$400 and \$1,133 to USAA
7 Insurance; \$1,000 and \$1,000 to Port Orford-Langlois School Dist. 2CJ; and \$26,341.38
8 and \$164,705.52 to Pace Liability Trust. The total restitution awarded was \$194,579.92.
9 Youth challenges the restitution awarded to the insurance companies.

10 II. ANALYSIS

11 A. *Merger*

12 We begin by addressing youth's first assignment of error that: the juvenile
13 court erred in failing to merge his two counts of second-degree burglary under ORS
14 164.215(1).³ That statute provides, in part, that "a person commits the crime of burglary

³ We reject the state's contention that youth failed to preserve the issue for appeal because he neither referred to ORS 161.067(3) nor disputed whether the sufficient pause element of the antimerger statute had been met. At disposition, although he was uncertain whether the antimerger statute applied to juvenile proceedings, youth's counsel argued that the burglary counts should merge and, although he did not cite the statute, the juvenile court understood youth to argue that his conduct involved a single violation during the course of one criminal episode against the same victim. The juvenile court considered the argument and found against youth, noting that youth went in and out of the building and then returned. That is enough for preservation of this issue. See [State v. Merrick](#), 224 Or App 471, 472, 197 P3d 624 (2008) (where the defendant argued that his two offenses should merge "for sentencing purposes," the defendant preserved his merger argument because the trial court actually considered whether the offenses should merge).

1 in the second degree if the person enters or remains unlawfully in a building *with intent to*
2 *commit a crime therein.*" (Emphasis added.) The petition for jurisdiction alleged that
3 youth unlawfully entered the high school building with the intent to commit theft (Count
4 3) and unlawfully entered the high school with the intent to commit arson (Count 4).

5 The "antimerger" statute, ORS 161.067, governs when multiple counts of a
6 punishable offense are based on the same incident. Specifically, ORS 161.067(3)
7 provides:

8 "When the same conduct or criminal episode violates only one
9 statutory provision and involves only one victim, but nevertheless involves
10 repeated violations of the same statutory provision against the same victim,
11 there are as many *separately punishable offenses* as there are violations,
12 except that each violation, to be separately punishable under this
13 subsection, must be *separated from other such violations by a sufficient*
14 *pause in the defendant's criminal conduct to afford the defendant an*
15 *opportunity to renounce the criminal intent.*"

16 (Emphasis added.) Thus, in the adult context, for multiple violations of the same
17 statutory provision during one criminal episode against the same victim to be separately
18 punishable, there must be a "sufficient pause" for the defendant to renounce the criminal
19 intent.

20 Youth contends that the record reflects grounds for his two counts of
21 second-degree burglary to merge. He argues that his acts in entering the high school
22 were part of one continuous criminal episode against the same victim. Youth further
23 argues that, contrary to the juvenile court's conclusion, the record does not support a
24 finding that there was a sufficient pause between his unlawful entry of the building to
25 commit the theft and entry to commit the arson that would have afforded him an

1 opportunity to renounce his criminal intent. Because there was conflicting testimony as
2 to whether he had left the woodshop classroom for a substantial period of time before
3 reentering to set the fire, youth contends that the juvenile court's finding of "some
4 evidence" that youth "went out and went back in" the building is not "proof beyond a
5 reasonable doubt" that there was a "sufficient pause."

6 We do not reach the state's arguments that ORS 161.067(3) does not apply
7 to juvenile delinquency proceedings or that, in any event, there were two separate
8 criminal episodes, because, even if the antimerger statute applies and there was only one
9 criminal episode, as youth contends, we would affirm based on the record in this case.
10 That is so because we presume that the juvenile court determined disputed issues of fact
11 in a manner consistent with its ultimate conclusion. *S. T. S.*, 236 Or App at 655. Here,
12 there was evidence that youth had sufficient time to renounce his criminal intent to
13 commit arson before he reentered the workshop classroom based on TM's testimony that
14 youth took the stolen computers back to the car parked on County Shop Road, which was
15 an approximately 15-minute walk, and then walked back to set the fire in the classroom.
16 Accordingly, the juvenile court did not err in determining that youth's two counts of
17 second-degree burglary were separately punishable offenses.

18 B. *Sufficiency of Evidence of Aggravated First-Degree Theft*

19 We now turn to youth's second assignment of error, in which he contends
20 that the juvenile court erred by adjudicating him delinquent for acts that, if committed by
21 an adult, would constitute aggravated first-degree theft, ORS 164.057(1). Under ORS

1 164.057(1), a person commits aggravated first-degree theft if

2 (a) The person violates ORS 164.055 with respect to property,
3 other than a motor vehicle used primarily for person rather than commercial
4 transportation; and

5 (b) *The value of the property in a single or aggregate transaction*
6 *is \$10,000 or more.*"

7 (Emphasis added.) Youth moved for a judgment of acquittal⁴ based on the ground that
8 the state failed to prove the market value of the school's computers at the time they were
9 stolen. *See* ORS 164.115(1) (for purposes of theft statutes, "value" means market value).
10 The juvenile court denied youth's motion, finding that the value of the stolen computers
11 was well over \$10,000.

12 Youth argues that the court's denial of his motion was erroneous in two
13 ways. First, youth contends that there is no evidence in the record to establish the market
14 value of the stolen computers at the time they were stolen. In youth's view, the only
15 evidence of their value was their purchase price. He casts aside the evidence of the cost
16 to replace the computers, arguing that the court could not consider it unless the state
17 proved that the fair market value of the stolen computers was unascertainable, which the
18 state did not do. Second, in the alternative, youth contends that, even if the juvenile court
19 could rely on the cost of the replacement computers to establish the market value of the

⁴ The state points out that the appropriate mechanism to challenge the sufficiency of evidence in a juvenile proceeding is a motion to dismiss rather than a motion for judgment of acquittal. *See State ex rel Juv. Dept. v. B. M. L.*, 242 Or App 414, 419 n 6, 256 P3d 132 (2011) (noting that in a juvenile delinquency proceeding, "the correct procedural mechanism to challenge the sufficiency of evidence is a motion to dismiss[]"). As in *B. M. L.*, we treat youth's motion for judgment of acquittal as a motion to dismiss. *Id.*

1 stolen computers, that evidence was still insufficient; replacement cost alone, without
2 evidence that the replacement computers were equivalent to the stolen computers, does
3 not establish the value of the stolen computers. We reach the merits of youth's
4 arguments, determining that youth preserved them for appeal, but reject them.

5 According to the state, youth only argued below that the state failed to
6 prove the value of the stolen computers was over \$10,000. As a result, the state contends
7 that youth's other arguments are not properly preserved for appeal. To preserve an issue
8 for appeal, a party's explanation of its position must be "specific enough to ensure that the
9 court can identify its alleged error." [*State v. Wyatt*](#), 331 Or 335, 343, 15 P3d 22 (2000).

10 Youth did argue that the court could not consider replacement cost without the state's
11 proof that fair market value is unascertainable. We agree, though, that youth relies on
12 one additional argument he did not expressly make to the juvenile court, namely, the cost
13 of the replacement computers cannot be equivalent to the fair market value of the stolen
14 computers unless they are equivalent equipment. However, we conclude that the juvenile
15 court adequately understood youth's position that the court should not rely on evidence of
16 the cost of the replacement computers because they were newer and an upgraded model.
17 As explained in more detail below, the juvenile court's ruling addressed those factors
18 directly.

19 Turning to the merits of youth's arguments, we first address youth's
20 argument that the state failed to prove that the value of the stolen computers was
21 unascertainable, as required by ORS 164.115(1). That statute governs the valuation of

1 property for the purposes of theft statutes:

2 "Except as otherwise specified in this section, value means the
3 *market value of the property at the time and place of the crime*, or if such
4 cannot reasonably be ascertained, the cost of replacement of the property
5 within a reasonable time after the crime."

6 (Emphasis added.) Thus, the value of stolen property is usually "market value," *i.e.*,
7 "what a willing buyer will pay a willing seller." [*State ex rel Juv. Dept. v. Deford*](#), 177 Or
8 App 555, 578, 34 P3d 673 (2001) (citing [*State v. Pierce*](#), 153 Or App 569, 575, 962 P2d
9 35, *rev den*, 327 Or 448 (1998)). But if the market value of stolen property at the time of
10 the theft cannot be reasonably ascertained, then its value can be established by "the cost
11 of replacement of the property within a reasonable time after the crime." ORS
12 164.115(1).

13 Youth contends that the juvenile court erred by relying on evidence of the
14 replacement cost of the computers before the state proved that the market value of the
15 stolen computers could not be ascertained. We disagree with the apparent premise of
16 youth's argument. Under ORS 164.115(1), if the fair market value of the stolen
17 computers was unascertainable, the court could have accepted replacement cost *in lieu of*
18 proof of fair market value. Youth assumes that the juvenile court accepted replacement
19 cost instead of determining the fair market value of the stolen computers, but that is not
20 what the court did. Instead, the court determined the fair market value of the stolen
21 computers ("well over \$10,000") using the evidence presented, including the cost of the
22 replacement computers. To the extent youth argues that ORS 164.115(1) prevented the
23 court from considering the cost of the replacement computers as a factor in determining

1 fair market value, or how much the old computers would be worth to a willing buyer, we
2 reject that argument. By its plain terms, the statute does not so limit the evidence.

3 Youth's alternative argument is that, even if the juvenile court could rely on
4 the cost of the replacements to establish the value of the stolen computers, the evidence
5 was still insufficient. In youth's view, the state failed to prove that the replacement
6 computers were equivalent to the stolen ones, and so the replacement cost of the stolen
7 computers cannot establish their value at the time of the theft as a matter of law. Youth
8 relies on [*State ex rel Juv. Dept. v. H. S.*](#), 237 Or App 385, 239 P3d 999 (2010).

9 In *H. S.*, the youth stole a cell phone from the victim's car and was charged
10 with second-degree theft. *Id.* at 387. At trial, the only evidence regarding the value of
11 the stolen cell phone was the victim's testimony that its replacement cost was \$50. We
12 noted that "[a] piece of stolen property can be 'replaced' by a piece of property of much
13 lesser or greater value"; and for the replacement property to establish the value of the
14 stolen property, "the characteristics of the properties relevant to their effectiveness or
15 utility must be similar[.]" *Id.* at 390. We concluded that the victim's testimony of the
16 replacement cost, by itself, was legally insufficient to establish that the stolen cell phone
17 was worth \$50 "because there was no evidence that the two phones were similar in ways
18 relevant to their effectiveness or utility." *Id.* In *H. S.*, we held that, to prove the value of
19 stolen property through evidence of the cost of replacement property, "the state must
20 prove that the stolen property and the replacement property are of 'equal effectiveness' or
21 have the 'same utility.'" *Id.* at 389.

1 Youth's reliance on *H. S.* is misplaced. Youth overlooks that the issue in
2 that case was whether the evidence was sufficient to establish "cost of replacement." *H.*
3 *S.*, 237 Or App at 389. This case, however, does not involve a valuation based on "cost
4 of replacement." Rather, this is a "fair market value" case, and one in which the state
5 presented other evidence of the fair market value of the stolen computers. Although
6 youth argues that the replacement computers were an upgraded model and were new,
7 those differences factor into the weight or value of the evidence concerning the
8 replacement computers but would not preclude the court from considering that evidence,
9 in conjunction with other evidence, in its determination of the fair market value of the
10 stolen computers.

11 We also conclude that there was sufficient evidence in the record for the
12 court to find that the fair market value of the 19 computers that youth stole from the
13 computer lab exceeded \$10,000. Lane explained that, because the model of the stolen
14 computers had been discontinued, the high school purchased an upgraded model from
15 Dell, with Windows XP Professional software and other accessories, which was less
16 expensive than the purchase price of the stolen computers. Lane also provided the cost of
17 the replacements, noted that the purchase price of each stolen computer was \$70 or \$80
18 higher, and testified that the stolen computers were approximately one year old. The
19 juvenile court could estimate the purchase price of the old computers, with peripherals,
20 was over \$29,000 based on Lane's testimony, and knew the cost of the new computers
21 with peripherals, approximately \$28,000. The juvenile court implicitly concluded that,

1 because of the technological advancements in the computer industry, the high school
2 replaced its computers with a different but similar model from Dell with similar
3 functionality at a slightly lower price. The court did and was entitled to conclude from
4 all of the evidence that the fair market value of the one-year old stolen computers
5 exceeded \$10,000, approximately one-third of their price when new. The juvenile court
6 did not err in concluding that youth was within the jurisdiction of the court for
7 committing acts, that if committed by an adult, would constitute aggravated first-degree
8 theft of property worth \$10,000 or more.

9 C. *Restitution to Insurance Companies*

10 Lastly, youth assigns error to the portion of the juvenile court's judgment
11 awarding restitution of \$192,579.92 to two insurance companies that paid for damages
12 and losses that youth and his companions caused.⁵ Youth contends that an insurance
13 company is not a "victim" for purposes of restitution in juvenile proceedings under the
14 juvenile code's definition of that term, and that definition rightfully applies. He argues
15 that our decision to the contrary in [State v. E. V.](#), 240 Or App 298, 302, 246 P3d 78

⁵ After youth filed his notice of appeal, the juvenile court amended its restitution judgment and ordered youth to pay restitution directly to the high school and the high school's woodshop teacher instead of to the insurance companies. We requested supplemental briefing to address the import of that amended judgment. In a joint memorandum, the parties agree that, because the juvenile court's entry of the amended judgment did not comply with the requirements of ORS 419A.200(7), the court lacked jurisdiction to enter it. *See* ORS 419A.200(7)(a) ("[T]he filing of an appeal does not * * * preclude the juvenile court *after notice and hearing* from entering such further orders relating to the ward or youth offender's custody." (Emphasis added.)). Accordingly, the original restitution judgment entered on July 28, 2010, is the operative judgment on appeal.

1 (2010), *rev den*, 350 Or 130 (2011), merits a second look and should be overruled
2 because authority not cited in that opinion, namely, [*State ex rel Juv. Dept. v. Z. D. B.*](#), 238
3 Or App 377, 242 P3d 714 (2010), undercuts *E. V.*'s holding.

4 In *E. V.*, we explicitly rejected youth's argument that the definition of
5 "victim" in the juvenile code, ORS 419A.004(31), governs for purposes of restitution in
6 juvenile proceedings. We explained:

7 "As discussed above, the Juvenile Code expressly incorporates the Criminal
8 Code's definition of 'restitution,' which, in turn, includes a special definition
9 of 'victim.' That statutory framework has been in place since 1993. Or
10 Laws 2009, ch 33, § 2. *Nothing in the text of ORS 419A.004(31), HB 2127,*
11 *or its legislative history indicates that the general definition in ORS*
12 *419A.004(31) was intended to alter our understanding that the definition of*
13 *'victim' in ORS 137.103(4) applies in this context* and, to conclude
14 otherwise, would have the effect of limiting those who could be awarded
15 restitution in juvenile delinquency cases."

16 *E. V.*, 240 Or App at 303 n 1 (emphasis added). We held that, for purposes of juvenile
17 restitution in ORS 419C.450(1)(a), the legislature, by incorporating the definition of
18 "restitution" under the Criminal Code, also incorporated the definition of "victim" under
19 the Criminal Code in ORS 137.103(4). 240 Or App at 302. Under the Criminal Code,
20 the term "victim" expressly includes an insurance carrier of a victim. ORS 137.103(4)(d)
21 (a victim includes an "insurance carrier, if it has expended moneys on behalf of a victim
22 described in paragraph (a) of this subsection").

23 Youth, however, contends that our decision in *Z. D. B.* conflicts with our
24 holding in *E. V.* Youth argues that our decision in *E. V.* was based, in part, on the
25 legislature's intention to give the term "restitution," including the definition of "victim,"

1 the same meaning in criminal and juvenile proceedings; but, in *Z. D. B.*, our holding
2 allows more victims to obtain restitution awards in juvenile cases than in criminal cases.
3 Although youth may be correct about the consequences of our holding in *Z. D. B.*, we
4 disagree with youth's suggestion that *E. V.* is in conflict with *Z. D. B.* on the question of
5 the proper definition of a "victim" for purposes of restitution.

6 In *E. V.*, we addressed whether, for purposes of restitution, the terms
7 "restitution" and "victim" have the same meaning in the criminal and juvenile codes and
8 determined that the legislature intended those terms to have the same meaning in both
9 proceedings. Our decision in *Z. D. B.* does not undercut the holding in *E. V.* on that
10 point. We addressed a different issue in *Z. D. B.*, the causation requirement in ORS
11 419C.450(1)(a) (restitution awarded when a youth offender "caused another person any
12 physical, emotional or psychological injury or any loss of or damage to property"). We
13 held, in accordance with an earlier case, *State ex rel Juv. Dept. v. Dickerson*, 100 Or App
14 95, 97, 784 P2d 1121 (1990), that the state need only show (1) criminal activity, (2)
15 pecuniary damages, not a specific loss that is alleged and adjudicated, and (3) a "but for"
16 causal relationship between the two. 238 Or App at 382-83. Accordingly, *Z. D. B.*'s
17 holding does not conflict with our holding in *E. V.* that it was the legislature's intent to
18 apply the same definitions of restitution and victim to criminal and juvenile cases, and we
19 decline to overrule *E. V.*

20 In light of our conclusion in *E. V.*, the definition of victim in ORS
21 137.103(4)(d) governs in this case, and, therefore, insurance companies are victims for

- 1 purposes of restitution in juvenile proceedings. As a result, the juvenile court did not err
- 2 in imposing a restitution award to insurance companies.
- 3 Affirmed.