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IN THE
COURT OF APPEALS OF INDIANA

B.L.B.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 71A04-0903-JV-170
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
Cause Nos. 71J01-0808-JD-597, 71J01-0810-JD-793, 71J01-0901-JD-026

November 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

B.L.B., a juvenile delinquent, appeals the juvenile court's order that he pay $575 in restitution for his failure to return an electronic monitoring bracelet. We affirm.

Issue

B.L.B. raises the sole issue whether the juvenile court abused its discretion in ordering him to pay restitution.

Facts and Procedural History

After B.L.B. was arrested for Theft on August 10, 2008, the juvenile court released him to his mother "on Electronic Home Monitoring." Appendix at 5. On September 23, 2008, B.L.B. was arrested for Receiving Stolen Property. The State soon alleged that B.L.B. violated home detention and filed a delinquency petition. In a hearing on October 8, 2008, the juvenile court found that B.L.B. violated the terms of the electronic monitoring program.

On October 28, 2008, B.L.B. admitted to what would be Theft and Receiving Stolen Property if committed by an adult. The juvenile court again released him to his mother on an electronic monitoring program. A dispositional hearing was scheduled for December 23, 2008, but B.L.B. did not appear. The juvenile court found that B.L.B. absconded from the electronic monitoring program and issued a warrant for his arrest.

On January 8, 2009, B.L.B. was again arrested. The juvenile court ordered him to be detained and scheduled a dispositional hearing for February 24, 2009. After the State filed another delinquency petition, B.L.B. admitted to what would be Fleeing Law Enforcement if committed by an adult.

On February 24, 2009, the juvenile court conducted a dispositional hearing on the three true findings and considered a predispositional report prepared by Lee King-Searfoss. In her report, King-Searfoss stated that the "ankle bracelet was not recovered" and recommended that B.L.B.'s mother pay $575 "to replace the unrecovered electronic monitoring bracelet." App. at 35, 37.

The juvenile court issued its dispositional decree, awarding wardship to the Department of Correction.[1] The juvenile court also ordered B.L.B. and his mother to pay $575 to replace the unreturned electronic monitoring bracelet.

B.L.B. now appeals the order that he pay $575.

Discussion and Decision

B.L.B. asserts that the juvenile court abused its discretion in ordering him to pay $575 in restitution. In support, he argues as follows:

> The State and the probation department failed to present any reasonable evidence of the loss of the electronic monitoring device. Primarily, the State did not provide any information as to the identity of the owner or victim of the electronic monitor. Nor was there any evidence presented as to how the probation department calculated the $575 loss.

Appellant's Brief at 8. We review a juvenile court's restitution order for an abuse of discretion. Crawford v. State, 770 N.E.2d 775, 781 (Ind. 2002).

"Any predispositional report may be admitted into evidence to the extent that the report contains evidence of probative value even if the report would otherwise be excluded." Ind. Code § 31-37-18-2(a). The juvenile and his parent shall be given a fair opportunity to

[1] B.L.B. does not challenge the award of wardship to the Department of Correction.

controvert any part of the report admitted into evidence. Ind. Code § 31-37-18-2(c). As part of its dispositional decree, the juvenile court may order the juvenile "to pay restitution if the victim provides reasonable evidence of the victim's loss, which the child may challenge at the dispositional hearing." Ind. Code § 31-37-19-5(b)(4).

The juvenile court reviewed the predispositional report, in which King-Searfoss stated that the ankle bracelet had not been recovered and recommended that B.L.B.'s mother pay $575 to replace it. At the beginning of the predispositional hearing, King-Searfoss reiterated that the ankle bracelet had not been recovered.

B.L.B.'s attorney acknowledged having reviewed the report with the juvenile and his family. With respect to the ankle bracelet, she argued as follows:

> I also have a concern about one of the fees they asked for, $575 to replace the unrecovered electronic monitoring bracelet. I see that there's three charges in regard to [B.L.B.'s] case, currently the fact of Receiving Stolen Property and Fleeing Law Enforcement. He never received a charge of escape or anything having to do with the recovery of the electronic monitoring device. I haven't had a chance to review the contract or terms of the electronic monitoring agreement, but at this time he would object to the imposition of the fee of $575 for the replacement of that device unless there is another specific charge relating to it.

Transcript at 5.

B.L.B. did not deny the probation officer's assertion that he failed to return the ankle bracelet – either during the predispositional hearing or in his Appellant's Brief. Instead, B.L.B. questions the ownership and value of the device. However, he acknowledged the existence of an electronic monitoring agreement, in which he and his mother agreed with the St. Joseph County Juvenile Justice Center that the replacement cost for a transmitter was

$575. In her predispositional report, the probation officer also identified $575 as the replacement cost for the device.

As to B.L.B.'s assertion that the ankle bracelet did not relate to any of the true findings, we note that he was arrested on two occasions while on home detention and subject to the electronic monitoring program. It was not necessary for him to be charged separately in order for the court to properly find that the cost of the missing ankle bracelet be charged to B.L.B. according to the predispositional report.

The issue was whether, as the State contended, B.L.B. failed to return the ankle bracelet. The juvenile never refuted this assertion. Accordingly, the trial court did not abuse its discretion in ordering B.L.B. to pay $575 in restitution for his failure to return the ankle bracelet.

Affirmed.

VAIDIK, J., concurs.

CRONE, J., dissents with opinion.

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STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

CRONE, Judge, dissenting

I respectfully dissent. The majority correctly notes that "[a]ny predispositional report *may be admitted into evidence* to the extent that the report contains evidence of probative value even if the report would otherwise be excluded[,]" Ind. Code § 31-37-18-2(a); that the juvenile and his parent "shall be given a fair opportunity to controvert any part of the report *admitted into evidence*[,]" Ind. Code § 31-37-18-2(c); and that a juvenile court may order a juvenile "to pay restitution if the victim provides reasonable *evidence* of the victim's loss, which the child may challenge at the dispositional hearing." Ind. Code § 31-37-19-5(b)(4)

(emphases added).

In this case, however, the predispositional report was *not* admitted into evidence at the dispositional hearing. In fact, no evidence of any kind was admitted, and no sworn testimony was taken. It is beyond dispute that "arguments by attorneys are not evidence that the trial court may consider when making a factual determination[.]" *El v. Beard*, 795 N.E.2d 462, 467 (Ind. Ct. App. 2003). It would have been a very simple matter for the State to offer the predispositional report (or sworn testimony regarding the report) into evidence at the dispositional hearing. For reasons unknown, it failed to do so.[2] As such, B.L.B. was not obligated to challenge the report. Based on the foregoing, I would hold that the juvenile court abused its discretion in ordering B.L.B. to pay $575 in restitution for the electronic monitoring bracelet and vacate that portion of the dispositional order.

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[2] Juvenile proceedings are often characterized as more flexible and informal than adult criminal proceedings, *see, e.g.*, *In re K.G.*, 808 N.E.2d 631, 636-37 (Ind. 2004), but they should not be conducted so flexibly and informally as to disregard statutory requirements and a juvenile's due process rights.