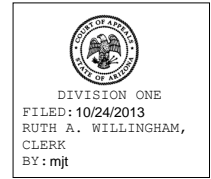


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 13-0058  
)  
Appellant, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
)  
) (Not for Publication -  
GABRIEL MARTIN RAYOS, ) Rule 111, Rules of Court  
) the Arizona Supreme)  
Appellee. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR 2011-111299-001

The Honorable Jeanne M. Garcia, Judge

**AFFIRMED IN PART; REVERSED IN PART**

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William G. Montgomery, Maricopa County Attorney Phoenix  
By Keli B. Luther, Deputy County Attorney  
Attorneys for Appellant

James J. Haas, Maricopa County Public Defender Phoenix  
By Louise Stark, Deputy Public Defender  
Attorneys for Appellee

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**N O R R I S**, Judge

¶1 The State appeals the superior court's partial denial of restitution.<sup>1</sup> Because the claimed restitution was a direct,

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<sup>1</sup>Without objection, the superior court awarded \$7,416.56 in restitution. We affirm that portion of the court's restitution order.

not a consequential, loss, we reverse.

¶12 Gabriel Martin Rayos was convicted of, *inter alia*, first-degree murder. Following Rayos's conviction, the father of the murder victim filed a claim for restitution in the amount of \$1,121.96 for money used to purchase airline tickets for the victim's aunt and uncle to attend the victim's funeral.

¶13 Following an evidentiary hearing, the superior court denied the father's restitution claim, finding "the fact that the Victim's Aunt and Uncle needed to borrow money from [the victim's father] in order to attend the Victim's funeral is a concurrent causal fact that renders the loss consequential rather than direct[.]" and therefore not compensable as restitution.

¶14 We review the court's restitution order for abuse of discretion. *State v. Lewis*, 222 Ariz. 321, 323-24, ¶ 5, 214 P.3d 409, 411-12 (App. 2009). A court abuses its discretion if it "misapplies the law or exercises its discretion based on incorrect legal principles." *State v. Slover*, 220 Ariz. 239, 242, ¶ 4, 204 P.3d 1088, 1091 (App. 2009).

¶15 Arizona law requires restitution to "the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court[.]" Ariz. Rev. Stat. ("A.R.S.") § 13-603(C) (2010); see also Ariz. Const. art. 2, §§ 2.1(A)(8), (C) (granting "spouse, parent, child or other lawful representative" of

homicide victim the right "[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury"). Economic loss is defined as any loss that would not have occurred but for the defendant's criminal offense, excluding pain and suffering, punitive and consequential damages. A.R.S. § 13-105(16) (Supp. 2012). A loss is recoverable as restitution if it meets three requirements: (1) the loss must be economic, (2) the loss must be one that the victim would not have incurred but for the criminal offense, and (3) the criminal conduct must directly cause the economic loss. *State v. Wilkinson*, 202 Ariz. 27, 29, ¶ 7, 39 P.3d 1131, 1133 (2002). Damages are consequential, and thus unrecoverable, if "the loss results from the concurrence of some causal event other than the defendant's criminal conduct[.]" *Id.*

¶16 Here, "but for [Rayos]'s criminal offense," *id.*, the victim's father would not have incurred funeral or travel-related expenses. The question is whether the father's decision to advance money to the victim's aunt and uncle to attend the funeral sufficiently broke the causal connection between Rayos's act of murdering the victim and the expenditure of the money. We hold it did not.

¶17 The superior court interpreted *Wilkinson* and other case law as prohibiting reimbursement for the advancements made by the victim's father because his decision to advance the funds

constituted an exercise of discretion sufficient to break the causal connection. However, in Arizona, money expended by a victim's family for funeral and travel expenses is considered a direct loss and generally recoverable as restitution, see *State v. Spears*, 184 Ariz. 277, 292, 908 P.2d 1062, 1077 (1996), even though the expenditure necessarily requires an exercise of discretion whether to hold a funeral for the victim.

¶18 Once a victim's family makes the decision to hold a funeral for the victim, the family is entitled to reimbursement for reasonable expenses incurred in conducting the funeral. The decision to advance money for the victim's family to attend the funeral, thus, does not, as a matter of law, render the loss

consequential. For the foregoing reasons, we reverse the superior court's order denying \$1,121.96 in restitution.

/s/  
PATRICIA K. NORRIS, Judge

CONCURRING:

/s/  
PETER B. SWANN, Presiding Judge

/s/  
JON W. THOMPSON, Judge