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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 06/05/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0173
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
SEAN KELLY DOLAN,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-006284-001 DT

The Honorable Joseph Kreamer, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Matthew H. Binford, Assistant Attorney General
Attorneys for Appellee

Natalee Segal Phoenix
Attorney for Appellant

B R O W N, Judge

¶1 Sean Kelly Dolan appeals from his conviction and sentence for manslaughter. The sole issue on appeal is whether

the trial court erred in ordering him to pay restitution to the victim's mother. For the following reasons, we affirm.

BACKGROUND

¶2 Dolan shot and killed HZ in the early morning hours of September 20, 2006, after the two engaged in a physical altercation. As a result of the fight, Dolan sustained serious physical injuries requiring two to three days of in-patient hospital care.

¶3 The State charged Dolan with second-degree murder. At trial, Dolan argued he shot HZ in self-defense. The jury found Dolan not guilty of the charged crime but returned a guilty verdict on manslaughter, a lesser-included offense. The court sentenced Dolan to a mitigated term of seven years' incarceration. The court also ordered Dolan to pay \$2900 in restitution to cover costs incurred by HZ's mother to transport HZ's body to Washington. This timely appeal followed.

DISCUSSION

¶4 Dolan argues that HZ's family is not entitled to restitution because HZ initiated the altercation that "resulted in [Dolan's] retaliation." Alternatively, he contends the restitution award should be offset by the amount Dolan expended on medical care for treating the injuries inflicted by HZ.

¶5 At sentencing, Dolan expressly agreed that \$2900 was the correct amount for a restitution award; therefore, we review

for fundamental error only. See *State v. Velazquez*, 216 Ariz. 300, 309, ¶ 37, 166 P.3d 91, 100 (2007); see also *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). "Before we may engage in a fundamental error analysis, however, we must first find that the trial court committed some error." *State v. Lavers*, 168 Ariz. 376, 385, 814 P.2d 333, 342 (1991). We find no error, fundamental or otherwise.

¶6 Arizona law required the court to order restitution. See Ariz. Const. art. II, § 2.1(A)(8) ("To preserve and protect victims' rights to justice and due process, a victim of crime has a right . . . [t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury."); *State v. Zaputil*, 220 Ariz. 425, 428, ¶ 10, 207 P.3d 678, 681 (App. 2008) ("The trial court has the affirmative duty to require a defendant convicted of a crime to make full restitution for the economic loss sustained by the victim.") (quoting *State v. Zierden*, 171 Ariz. 44, 45, 828 P.2d 180, 181 (1992)). Arizona Revised Statutes ("A.R.S.") section 13-603(C)(2010) states:

If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is 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[.]

¶17 Dolan has not presented any authority, and we are aware of none, that precludes restitution payable to a victim's immediate family based on the victim's purported culpability in the charged offense.¹ We note that the guilty verdict in this case shows the jury believed the State proved beyond a reasonable doubt that Dolan was not justified in killing HZ. A determination that restitution is unavailable to HZ's mother on the theory that HZ initiated the fight would be inconsistent with the jury's verdict. Dolan simply was not, for purposes of restitution, a victim of HZ's arguable criminal behavior because HZ was not convicted of a crime stemming from the fight with Dolan.

¶18 We also reject Dolan's argument that the restitution award should be offset by the cost of his medical care. Dolan presumes that he suffered an "economic loss" for purposes of concluding he is entitled to restitution. But Arizona law expressly prohibits such an expansive definition of the term. A.R.S. § 13-105(16) (West 2012) ("'Economic loss' means any loss incurred by a person as a result of the commission of an

¹ The cases Dolan relies on do not support his position. As Dolan concedes, they involved court determinations that crime victims who were possible suspects were nonetheless afforded the protections of Arizona's Victims' Bill of Rights because they were not "in custody for the offense" or "the accused." *Knapp v. Martone*, 170 Ariz. 237, 239, 823 P.2d 685, 687 (1992); see also *State v. Clinton*, 181 Ariz. 299, 300, 890 P.2d 74, 75 (App. 1995) (noting "victim fault is not an issue in the restitution phase of a criminal case").

offense. . . . *Economic loss does not include losses incurred by the convicted person[.]*" (emphasis added). Dolan does not otherwise challenge the court-ordered amount of restitution.

CONCLUSION

¶19 Based on the foregoing, we affirm Dolan's conviction and sentence.

/S/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/S/

MARGARET H. DOWNIE, Judge

/S/

RANDALL M. HOWE, Judge