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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 9/19/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)	1 CA-CR 12-0339
)	
Appellee,)	DEPARTMENT E
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication -
)	Rule 111, Rules of the
CHRISTIAN JESUS MOLINA,)	Arizona Supreme Court)
)	
Appellant.)	
)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-006257-001

The Honorable Michael D. Jones, Judge

AFFIRMED

Thomas C. Horne, Attorney General	Phoenix
by Joseph T. Maziarz, Section Chief Counsel,	
Criminal Appeals Section	
and Myles A. Braccio, Assistant Attorney General	
Attorneys for Appellee	

James J. Haas, Maricopa County Public Defender	Phoenix
by Joel M. Glynn, Deputy Public Defender	
Attorneys for Appellant	

T H U M M A, Judge

¶1 Christian Jesus Molina appeals from a restitution order arising out of his assault conviction. Finding no error on the limited record provided, the restitution order is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Following the beating and resulting death of G.G., Molina and his co-defendants were charged with aggravated assault (causing "serious physical injury"), a Class 3 dangerous felony.¹ The jury was instructed on aggravated assault, the lesser included offense of assault (causing "physical injury") and accomplice liability. The jury did not find Molina guilty of aggravated assault as a principal or an accomplice, but found him guilty of the lesser included offense of assault, a class 2 misdemeanor. Molina was placed on probation for one year and does not appeal from his conviction or probation grant.

¶3 At a restitution hearing, G.G.'s surviving sister testified about expenses totaling \$43,227.95 that the family incurred as a result of G.G.'s injuries and death. According to Molina's brief, that request represented expenses "incurred coming to and from court appearances; attending [G.G.'s] funeral; automobile tune-ups and tires; restaurant expenses; and

¹ Initials are used to protect the victim's privacy. *State v. Maldonado*, 206 Ariz. 339, 341 n.1, 78 P.3d 1060, 1062 n.1 (App. 2003). One co-defendant also was charged with first degree murder of G.G. and aggravated assault of J.C. arising out of the same incident.

lost wages for" family members attending court hearings. Although ledgers documenting these expenses apparently were received at the restitution hearing, no such exhibits were provided on appeal.

¶14 After receiving evidence and hearing argument, the superior court ordered Molina to pay \$41,921.51 in restitution, jointly and severally with his co-defendants. The court found that amount was "necessary and reasonable and must be ordered by the court pursuant to A.R.S. § 13-603(C)." The court stated medical evidence at trial (which was not provided on appeal) established that G.G. "suffered severe, life-threatening injuries . . . [that] were contributing factors to his death," and that these injuries were due to the "concerted actions" of Molina and his co-defendants during the assault.

¶15 Molina timely appeals from the order of restitution; this court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4031 and -4033(A)(2013).²

DISCUSSION

¶16 This court reviews a restitution award for an abuse of discretion, viewing all facts and reasonable inferences in the light most favorable to sustaining the award. *State v. Slover*,

² Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

220 Ariz. 239, 242, ¶ 4, 204 P.3d 1088, 1091 (App. 2009); *State v. Lewis*, 222 Ariz. 321, 323, ¶ 2, 214 P.3d 409, 411 (App. 2009). Where, as here, the appellate record is incomplete, "missing portions of the record will be presumed to support the action of the trial court." *State v. Zuck*, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982).

¶7 In finding Molina guilty of assault, the jury determined he physically injured G.G. Based on the evidence received, the superior court found Molina acted in concert with his co-defendants in assaulting G.G., and that while one of the co-defendants later shot G.G., the assault in which Molina participated inflicted "severe, life-threatening injuries . . . [that] were contributing factors to [G.G.'s] death."

¶8 The fact that Molina was not convicted of aggravated assault does not preclude a restitution award resulting from the victim's injuries suffered during or as a result of the assault.

[R]estitution is not an element of the offense nor punishment exacted by the state. It . . . does not require proof beyond a reasonable doubt. The determination of the amount of restitution is part of the sentencing function of the court and is bound by different rules than the adjudication of guilt.

State v. Fancher, 169 Ariz. 266, 268, 818 P.2d 251, 253 (App. 1991) (citation omitted).

¶9 Molina failed to provide transcripts or exhibits from the trial or restitution hearing that he argues refute the superior court's findings. Although claiming the court ordered him to pay restitution for funeral expenses, these gaps in the record preclude any real analysis of that claim. Therefore, the court's findings are presumed to be supported by the record. See *Zuck*, 134 Ariz. at 513, 658 P.2d at 166. Moreover, in holding Molina responsible for restitution, the court properly considered both Molina's individual criminal conduct and his criminal conduct "undertaken in concert with others." *Lewis*, 222 Ariz. at 327, ¶ 18, 214 P.3d at 415. On this record, Molina has shown no abuse of discretion.

CONCLUSION

¶10 The superior court's restitution order is affirmed.

/S/_____
SAMUEL A. THUMMA, Presiding Judge

CONCURRING:

/S/_____
JON W. THOMPSON, Judge

/S/_____
KENT E. CATTANI, Judge