

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

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0030
)	DEPARTMENT A
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CARLOS ALEJANDRO FRASQUILLO,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20081600

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani and Joseph L. Parkhurst

Tucson
Attorneys for Appellee

Harriette P. Levitt

Tucson
Attorney for Appellant

HOWARD, Chief Judge.

¶1 After a jury trial, appellant Carlos Frasquillo was convicted of two counts of aggravated assault, one count of aggravated driving with an illegal drug in his system

while his driver’s license was suspended, one count of fleeing from a law enforcement vehicle, one count of criminal damage, four counts of endangerment, and one count of manslaughter. The trial court sentenced him to a combination of concurrent and consecutive, presumptive prison terms totaling twenty-three years. On appeal, Frasquillo argues the court erred in permitting the state to show a videotape at his sentencing hearing that depicted his victims. Finding no error, we affirm.

¶2 Frasquillo contends the trial court erred when it allowed the state to play what he characterizes as an “emotionally charged video” at sentencing. But Frasquillo has not included the videotape in the record on appeal. It was Frasquillo’s duty “to see that the record before us contains the material to which [he] take[s] exception.” *State v. Zuck*, 134 Ariz. 509, 512-13, 658 P.2d 162, 165-66 (1982); *see also State v. Jessen*, 130 Ariz. 1, 8, 633 P.2d 410, 417 (1981) (appellate counsel must ensure “any document necessary” to appellate argument included in record on appeal); Ariz. R. Crim. P. 31.8(a)(2). “[M]atters [that] are not included in the record on appeal . . . will be presumed to support the action of the trial court.” *Zuck*, 134 Ariz. at 513, 658 P.2d at 166; *see also State v. Brown*, 188 Ariz. 358, 359, 936 P.2d 181, 182 (App. 1997). We will not speculate on the contents of the videotape presented during the sentencing hearing and therefore affirm Frasquillo’s convictions and sentences.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

GARYE L. VÁSQUEZ, Judge