

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY B. DEGIOVANNI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45980

FILED

FEB 09 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Reade*
CHIEF DEPUTY CLERK


ORDER AFFIRMING IN PART, VACATING IN PART, AND
REMANDING


This is an appeal from a judgment of conviction, pursuant to a guilty plea, of two counts of causing the death of another by driving a vehicle while under the influence of intoxicating liquor. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Jeffrey B. Degiovanni to serve two consecutive prison terms of 36-120 months and ordered him to pay a fine of \$10,000.00 and restitution in the amount of \$134,998.84.

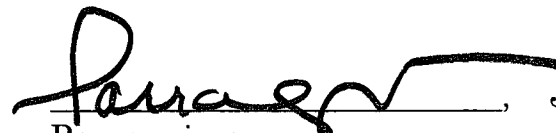
Degiovanni's sole contention is that the district court erred in its determination of the restitution award. Specifically, Degiovanni claims that his insurance company already paid the victims' hospital expenses and funeral costs, and therefore, the restitution award should be reduced by that amount. The State concedes that the amount of restitution "should have been reduced by the amount paid to the victims by appellant's liability insurer." The State argues, however, that "actual evidence of payment and the source of that payment is not wholly shown by the record."

We conclude that the district court erred in its determination of the restitution award.¹ Accordingly, we vacate the restitution award and remand this case to the district court for the limited purpose of conducting a hearing to determine how much Degiovanni's insurance company paid to cover the victims' hospital expenses; after that determination, the restitution Degiovanni was ordered to pay must be reduced by that amount. Additionally, the district court must determine whether Degiovanni was given credit for any restitution paid to the victims prior to sentencing. Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

¹Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999) (holding that a district court must rely on reliable and accurate information in calculating a restitution award).

cc: Hon. Jerome Polaha, District Judge
Arrascada & Arrascada, Ltd.
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk