

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID WAYNE CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50340 **FILED**

FEB 07 2008

TRACIE L. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of battery with a deadly weapon resulting in substantial bodily harm. Sixth Judicial District Court, Lander County; Richard Wagner, Judge. The district court sentenced appellant David Wayne Clark to serve a prison term of 72 to 180 months and ordered him to pay \$250,000 in restitution.

Clark contends that the district court abused its discretion by ordering restitution without establishing a sufficient evidentiary basis for the restitution amount. We agree.

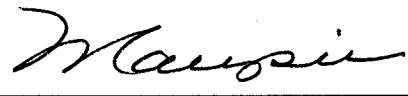
If a sentence of imprisonment is required or permitted by statute and restitution is appropriate, the district court must set an amount of restitution for each victim of the offense.¹ A district court retains the discretion "to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also

¹NRS 176.033(1)(c).


the individual defendant."² However, the district court must rely on reliable and accurate information in calculating restitution.³

Here, the district court based its restitution calculation solely on the victim's wife's unsworn statement that she had received medical bills in excess of \$250,000. Under the circumstances of this case, we conclude that the wife's unsworn statement, with nothing more, was not a reasonable basis for calculating restitution. Therefore, the restitution order must be vacated and the case remanded to the district court for a hearing to determine the proper amount of restitution. Accordingly, we

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

 _____, J.

Maupin

 _____, J.

Cherry

 _____, J.

Saitta

²Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

³Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

cc: Hon. Richard Wagner, District Judge
Lockie & Macfarlan, Ltd.
Attorney General Catherine Cortez Masto/Carson City
Lander County District Attorney
Lander County Clerk