

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CASSIUS FARRELL EAKEN-USSERY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69559

FILED

JUN 22 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of unlawful contact with a child. First Judicial District Court, Carson City; James E. Wilson, Judge.

Appellant Cassius Eaken-Ussery claims the district court erred by basing its restitution award on unreliable evidence and improperly shifting the burden to prove the restitution amount to the defense. He argues the victim's guardian was not entitled to restitution for lost wages because she failed to present documentary evidence that she had not worked for a month, was unable to work while caring for the victim, and her inability to work was the direct result of the crime. He further argues the victim was not entitled to restitution for counseling because her guardian failed to present documentary evidence that she required the counseling as a direct result of the criminal acts or conduct. And he asserts the person requesting restitution should have the burden of proving he or she is entitled to the amount of restitution being requested.

"Restitution under NRS 176.033(1)(c) is a sentencing determination. On appeal this court generally will not disturb a district court's sentencing determination so long as it does not rest upon

impalpable or highly suspect evidence.” *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.3d 133, 135 (1999).

Eaken-Ussery filed a sentencing memorandum in the district court in which he argued the victim’s guardian was not entitled to restitution for lost wages because the crime was not directed towards her and the lost wages were not a direct result of the crime. The memorandum further stated, “If the court orders restitution for future counseling, the defense would request additional time and funds to obtain an expert to verify the necessity and cost of the proposed future treatment.” Eaken-Ussery later indicated he did not request discovery, contact the victim, or meet with an expert regarding the restitution issues.

The victim’s guardian testified at sentencing. She stated the victim and the victim’s brother had suffered a terrible childhood, both of them were receiving psychological treatment, the victim received treatment once a week at a cost of \$100, the victim needed an additional year of counseling to address issues arising from the crime, and the victim’s psychologist has agreed to provide the court with any information it needed. She further stated she was self-employed, has a corporation, and uses a paycheck service. She did not get paid \$1900 for the month of December because she was home taking care of the victim and dealing with the detectives and doctors in this case, and she could prove the pay loss. Eaken-Ussery did not object to any of the guardian’s testimony, he did not ask her any questions, and he did not dispute the amount of restitution she sought.


The district court found the guardian’s testimony was sufficiently reliable and accurate to support the restitution amounts for the loss of wages and counseling, stated it was unclear as to who had what burden to produce evidence, noted the defense had filed a sentencing

memorandum but had not made any requests for information regarding restitution, and ruled the guardian's testimony regarding restitution made a separate restitution hearing or continuance unnecessary.

We conclude the district court relied upon evidence that was reasonably reliable and accurate to set restitution and did not impermissibly shift the burden for proving the restitution amount. See *generally id.* at 13, 974 P.2d at 135 ("Sentencing courts are cautioned to rely on reliable and accurate evidence in setting restitution. A defendant is not entitled to a full evidentiary hearing at sentencing regarding restitution, but he is entitled to challenge restitution sought by the state and may obtain and present evidence to support that challenge."). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James E. Wilson, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk