

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS ALEXIS CERVANTES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76778-COA

FILED

APR 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jesus Alexis Cervantes appeals from a judgment of conviction entered pursuant to a guilty plea of grand larceny. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Cervantes claims the district court abused its discretion by basing its restitution award on an impalpable and highly suspect victim impact statement. "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).

The victim testified that he and his wife own a business that sells Hermes handbags. While they were visiting Las Vegas, thieves entered their hotel room and stole their valuable watches, collectable handbags, and two lap-top computers. He provided receipts and detailed descriptions of the stolen property to the police. The police were unable to recover a diamond Cartier watch, two Hermes handbags, and the two

computers, resulting in a loss of \$126,000. He filed a claim with his homeowners' insurance company. The insurance company thoroughly researched the claim and the value of the missing property, and it capped the payout at \$60,000 because the loss occurred away from the home. The victim offered to provide receipts for the missing property. The district court found the victim's testimony to be credible and ordered Cervantes to pay the victim \$126,000 in restitution.


On appeal, Cervantes argues that the victim was repeating things that his wife told him, there was no documentation to prove the existence or value of the missing watch and handbags, and the victim was selling the same kinds of handbags that he claimed were missing. Cervantes cross-examined the victim regarding these issues at the sentencing hearing, and the district court found that the victim's testimony was entirely credible. We conclude the district court relied upon evidence that was reasonably reliable to set the restitution amount, *see Stephans v. State*, 127 Nev. 712, 716, 262 P.3d 727, 731 (2011) ("An owner of property may testify to its value, at least so long as the owner has personal knowledge, or the ability to provide expert proof, of value." (internal citation omitted)), and, therefore, Cervantes has failed to demonstrate the district court erred in this regard.


Cervantes also claims this court should adopt the reasoning in *People v. Bernal*, 123 Cal.Rptr.2d 622 (Ct. App. 2002), and offset the restitution award by the amount of the insurance proceeds the victims received. However, the Nevada Supreme Court has expressly ruled that a defendant's obligation to pay restitution to the victim of a crime pursuant

to NRS 176.033 may not be reduced because the victim has been reimbursed by insurance proceeds, *Martinez*, 115 Nev. at 12, 974 P.2d at 135, and the Nevada Supreme Court's decisions are binding on this court.

Having concluded Cervantes is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen E. Delaney, District Judge
Pitaro & Fumo, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

Docket Number - 75329-COA



75329-COA

Document Year - 2019



2019

Document Number - 16687



16687

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RONALD EUGENE ALLEN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75329-COA

FILED

APR 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Ronald Eugene Allen, Jr. appeals from a judgment of conviction, entered pursuant to a jury verdict, of battery of a protected person causing substantial bodily harm. Eighth Judicial District Court, Clark County; Mark B. Bailus, Judge.


Allen argues the State committed prosecutorial misconduct during closing rebuttal argument by disparaging defense counsel and his theory of defense. Specifically, he claims the State erred by arguing, "folks, defense counsel comes up here and tells you what, when you have an overwhelming amount of evidence in this case and the defendant is absolutely boxed into a corner, that is what happens. Defense counsel does this, blames everyone other than the defendant. Right?"

Because Allen did not object to this statement at trial, he is not entitled to relief absent a demonstration of plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Even assuming, without deciding, the prosecutor's comments were improper, Allen failed to

demonstrate any error affected his substantial rights. *See id.* Accordingly,
we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk