

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN MARTIN MALONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80646-COA

FILED

DEC 08 2020

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

*ORDER AFFIRMING IN PART, VACATING IN PART AND
REMANDING*

Brian Martin Malone appeals from a judgment of conviction entered pursuant to a guilty plea of burglary, two counts of identity theft, establishing or possessing a financial forgery laboratory with the intent to commit an unlawful act, possession of a document or personal identifying information to establish a false status or identity, and grand larceny of a motor vehicle. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Malone asserts the district court abused its discretion by awarding restitution amounts that were not supported by reliable and accurate evidence. "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.2d 133, 135 (1999). However, the district court must rely on reliable and

accurate information in calculating the restitution amount. *Id.* at 13, 974 P.2d at 135.

First, Malone claims that, beyond Patricia Nishkian's testimony, there was no competent evidence to support her assertion as to the value of her unrecovered paintings. However, in Nevada, "[a]n 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." *Stephan v. State*, 127 Nev. 712, 716, 262 P.3d 727, 731 (2011) (internal citation omitted). Here, Nishkian testified as to her personal knowledge of the value of the unrecovered paintings.¹ We conclude her testimony constituted competent evidence and the district court did not abuse its discretion by ordering Malone to pay \$296,600 for her loss.

Second, Malone claims that, beyond the written victim impact statement Refugio Robles submitted to the Division of Parole and Probation, there was no competent evidence to support Robles' assertion as to the value of his unrecovered truck and tools. We conclude that Robles' brief written victim statement, with no supporting documentation or testimony to justify the dollar amount requested, was not sufficient basis for determining a reasonable amount of restitution. Therefore, the district court's \$18,000 restitution award for Robles' loss must be vacated and the

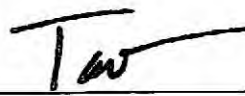
¹We note the State presented Nishkian's testimony *after* Malone objected to the restitution amount, Malone did not request to cross-examine Nishkian, and he did not present any further objections to the restitution amount sought by the State.

case remanded to the district court for a hearing to determine the proper amount of restitution.

For the foregoing reasons, 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.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk