

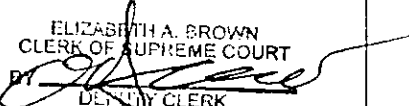
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN ALEXANDER HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89398-COA

FILED

MAR 24 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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

Kevin Alexander Hernandez appeals from a judgment of conviction, entered pursuant to a guilty plea, of attempted lewdness with a child under the age of 14 and statutory sexual seduction. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Hernandez argues the district court erred in awarding \$7,130.46 in restitution to Clark County Social Services (CCSS). Hernandez contends that the restitution award was not supported by substantial or competent evidence and that remand is warranted for a proper determination of restitution.

“We review a district court’s restitution determination for an abuse of discretion.” *Gee v. State*, 140 Nev., Adv. Op. 16, 545 P.3d 90, 93 (2024). Although “[a] sentencing judge generally has wide discretion when ordering restitution pursuant to NRS 176.033(3),” the award must be based upon “reliable and accurate information.” *Id.* (quotation marks omitted).

Because Hernandez challenged the amount of restitution sought for the victim's medical expenses, "the State was required to present evidence at sentencing to prove the amount of restitution." *Nied v. State*, 138 Nev. 275, 277, 509 P.3d 36, 39-40 (2022). "A defendant is not entitled to a full evidentiary hearing at sentencing regarding restitution, but a defendant is entitled to challenge restitution sought by the state and may obtain and present evidence to support that challenge." *Gee*, 140 Nev., Adv. Op. 16, 545 P.3d at 93 (internal quotation marks omitted).

After review, we conclude the district court's restitution award was not based upon reliable or accurate information. The only evidence presented at sentencing to support the restitution requested was a single sentence in the presentence investigation report (PSI) indicating CCSS paid \$7,130.46 "for services on behalf of the victim" and a redacted email from an unknown sender stating that CCSS paid UMC Hospital \$6,173.66 in November 2023 and Sound Physicians \$956.80 in October 2023.¹ This email did not indicate, and the State did not explain, what these payments specifically covered or how they were directly related to Hernandez's crimes. *See Nied*, 138 Nev. at 281, 509 P.3d at 42 (stating restitution "should adequately compensate the victim for economic losses or expenses directly related to the criminal offense"). Moreover, the district court did not receive any evidence indicating CCSS actually paid for the victim's medical expenses beyond the aforementioned email.

¹Although the PSI indicates there was supporting documentation for the restitution requested, no such documentation was presented at sentencing beyond the aforementioned email.

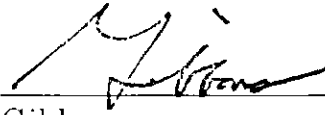
After Hernandez objected to the restitution requested, the State indicated it was unsure if there was additional documentation to support the restitution requested beyond the email. Absent any supporting documentation or testimony, the PSI and email did not, in themselves, constitute competent evidence from which the district court could base its restitution award. *See Vaughn v. State*, 141 Nev., Adv. Op. 6, 563 P.3d 295, 303 (2025) (“[I]t is difficult for us to imagine that a single notation in a PSI—presumably a hearsay statement—can constitute reliable and accurate evidence.” (internal quotation marks omitted)); *cf. Major v. State*, 130 Nev. 657, 661-62, 333 P.3d 235, 238-39 (2014) (concluding that the evidence presented at sentencing was sufficient to support the district court’s restitution award where a fiscal compliance officer for Washoe County Social Services testified to the amount of restitution requested). As such, we conclude the district court abused its discretion by awarding \$7,130.46 in restitution without first being presented competent evidence.


In light of the foregoing, we vacate the restitution award but otherwise affirm the judgment of conviction. We remand this matter to the district court with instructions to conduct a restitution hearing at which the State may present additional evidence to support the restitution requested and Hernandez may challenge the restitution sought by the State. *See Gee*, 140 Nev., Adv. Op. 16, 545 P.3d at 96 (vacating a restitution award that was not supported by competent evidence and remanding for further

proceedings); *Nied*, 138 Nev. at 277-78, 509 P.3d at 40 (same). Accordingly,² 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.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²To the extent Hernandez contends the judgment of conviction did not identify the precise amounts to be paid to specific victims, we reject this claim. The judgment of conviction states that \$7,130.46 was to be paid to CCSS. Nonetheless, for the reasons previously discussed, we vacate the district court's restitution award.