

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL MICHAEL ETTLICH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39516

**FILED**

SEP 12 2002

ORDER OF AFFIRMANCE

JANETTE W. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is an appeal from an amended judgment of conviction, pursuant to a guilty plea, of one count of grand larceny auto. The district court originally sentenced appellant Daniel Michael Ettllich to serve a prison term of 12 to 36 months and ordered him to pay \$12,920.76 in restitution. Ettllich appealed, and this court remanded the case to allow Ettllich an opportunity to challenge the restitution award.<sup>1</sup> On March 12, 2002, the district court conducted an evidentiary hearing on the issue of restitution. Thereafter, on March 26, 2002, the district court entered an amended judgment of conviction, sentencing Ettllich to serve a prison term of 12 to 36 months and ordering him to pay \$12,920.76 in restitution. Ettllich filed the instant appeal.

Ettllich first contends that the district court erred in both awarding restitution to the Mirage Hotel and Casino and in allowing a Mirage representative to testify at the restitution hearing because the Mirage was not a victim of his crime as defined in NRS 176.015(5)(b).<sup>2</sup> In

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<sup>1</sup>Ettllich v. State, Docket No. 37938 (Order Affirming in part, Reversing in part and Remanding, October 20, 2001).

<sup>2</sup>See NRS 176.015(3) (providing that victim or victim's personal representative is allowed to speak at restitution hearing); NRS

*continued on next page . . .*

particular, Ettlich contends that the Mirage is not a victim because, in agreeing to valet park the car that was stolen, it essentially became an "insurer" of the safety of the vehicle.<sup>3</sup> We conclude that the district court did not err in ruling that the Mirage was a victim, unlike an insurance company, because the Mirage suffered a passive and unexpected loss arising from Ettlich's criminal conduct.<sup>4</sup>

Ettlich next contends that the district court abused its discretion in awarding restitution in an amount exceeding the victim's losses. We disagree. Restitution is a sentencing determination for the district court that this court will not disturb so long as it does not rest upon impalpable or highly suspect evidence.<sup>5</sup> We conclude the district court's restitution award is supported by the record, and that the evidence presented regarding losses the Mirage sustained was neither suspect nor highly impalpable.

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*. . . continued*

176.033(1)(c) (providing that district court shall set restitution for each victim).

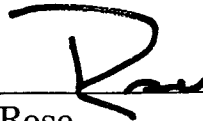
<sup>3</sup>See Martinez v. State, 115 Nev. 9, 974 P.2d 133 (1999) (holding that an insurance company is not a victim as defined in NRS 176.015(5)(b) and, therefore, it is not entitled to restitution for payment of an insured's claim).

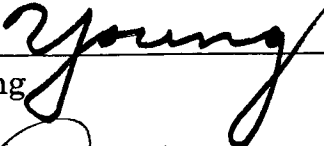
<sup>4</sup>See Roe v. State, 112 Nev. 733, 735, 917 P.2d 959, 960 (1996) (holding that a state agency was a victim for purposes of restitution because the loss was "unexpected and occurred without the voluntary participation of the agencies" and "the money expended by the agencies was for the benefit of the . . . true victims" of the criminal conduct).

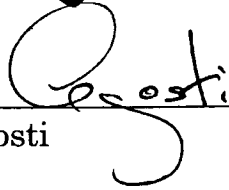
<sup>5</sup>See Martinez, 115 Nev. at 12-13, 974 P.2d at 135; see also Lloyd v. State, 94 Nev. 167, 576 P.2d 740 (1978).

Having considered Ettlich's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

cc: Hon. Michael L. Douglas, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk