

IN THE SUPREME COURT OF THE STATE OF NEVADA

TYLER CHASE NIED,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 78147

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RESPONDENT'S ANSWERING BRIEF

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_____/

RESPONDENT'S ANSWERING BRIEF

I. ROUTING STATEMENT

This case is an appeal from a judgment of conviction based on a plea of guilty and is presumptively assigned to the Court of Appeals. NRAP 17(b)(1).

II. STATEMENT OF THE CASE

This is an appeal from a judgment of conviction pursuant to Appellant Tyler Chase Nied's (hereinafter "Nied") guilty plea to a single felony count of Reckless Driving Resulting in Death or Substantial Bodily Harm to Another Person, a violation of NRS 484B.653(6).

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The negotiations were that the parties would be free to argue for an appropriate sentence. Appellant's Appendix (hereinafter "AA") 6. Nied also agreed to pay full restitution as determined by the sentencing court. AA 6.

The district court sentenced Nied to five (5) years of probation, with a condition that he serve thirty (30) days in jail, and ordered him to pay restitution to the victim, Patrick Holt, in the amount of \$463,825.59. AA 134-135.

Nied filed a timely notice of appeal. AA 136-138. In his Opening Brief, Nied argues that there is no rational basis to support the restitution amount and that the amount is too great because insurance proceeds should offset his responsibility.

The district court sentenced Nied to five (5) years of probation, with a condition that he serve thirty (30) days in jail, and ordered him to pay restitution to the victim, Patrick Holt, in the amount of \$463,825.59. AA 134-135.

Nied filed a timely notice of appeal. AA 136-138. In his Opening Brief, Nied argues that there is no rational basis to support the restitution amount and that the amount is too great because insurance proceeds should offset his responsibility.

III. STATEMENT OF FACTS

On May 13, 2017, around 11 pm, Reno Police Department officers responded to a report of a vehicle versus pedestrian accident. AA 13. A couple of minutes later, officers observed Nied driving the wrong way on the road. AA 13. Officers attempted to stop Nied, but were unable to do so when he ran through two red lights in downtown Reno. AA 13. A few minutes later, Nied crashed his car into a minivan occupied by Mr. Holt and subsequently fled from the scene on foot. AA 13. Police located Nied walking shirtless, with blood on his arm and scratches and blood on his ear and chest. AA 13. At the hospital, Nied admitted that he had been driving too fast and ran over the foot of another victim (identified in the Appellant's Opening Brief as "Victim #1") before driving off and crashing into Mr. Holt's van. AA 13. When asked why he ran, Nied said "I just couldn't stay there any longer." AA 13. As a result of his actions that night, Nied pled guilty to Reckless Driving Resulting in Death or Substantially Bodily Harm to Another Person on August 29, 2018.

While Nied was running from the scene, emergency medical personnel arrived and transported Mr. Holt, then unconscious, to the hospital. AA 13. Mr. Holt stayed in a coma for the next seven days. AA 13. Mr. Holt remained in the hospital for two months and was diagnosed with a

broken pelvis, a brain bleed, and face and head trauma. AA 13-14. 19 months after the crash, following months of grueling treatment and physical therapy, Mr. Holt continued to suffer from double vision, numbness on the right side of his body, and neurological problems stemming from his brain injury. AA 109, 112. At sentencing, Mr. Holt's mother, Marie Holt, testified that she was the person responsible for handling her son's medical expenses stemming from the crash. AA 95. Ms. Holt testified that her son's total medical expenses amounted to \$459,147.26. AA 21. Ms. Holt arrived at this number after obtaining a PDF from the insurance provider with all of the expenses incurred by the insurance company and adding all of the bills together. AA 95. Along with the medical expenses, Mr. Holt also suffered \$4,678.33 in vehicle damage. AA 14. After hearing argument from both sides regarding the proper restitution figure, the district court ordered Nied to pay \$463,825.59 in restitution. AA 134.

IV. STATEMENT OF THE ISSUES

- A. Did the district court abuse its discretion by imposing \$463,825.59 in restitution for medical expenses and vehicle damage based upon evidence and testimony establishing that figure?

- B. Did the district court abuse its discretion by not offsetting the \$50,000 paid to the victim by Nied's insurance company?

V. STANDARD OF REVIEW

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 palpable or highly suspect evidence. *Martinez v. State*, 115 Nev. 9, 12–13, 974 P.2d 133, 135 (1999).

VI. ARGUMENT

- A. The district court relied on accurate evidence in determining the restitution amount and a defendant's obligation to pay restitution cannot be reduced because an insurance company has made payments to the victim.

“A defendant's obligation to pay restitution to the victim may not, of course, be reduced because a victim is reimbursed by insurance proceeds.” *Martinez*, 115 Nev. at 12, 974 P.2d at 135. Evidence presented by someone who is familiar with the costs is sufficient to support a district court's restitution order. *See Major v. State*, 130 Nev. 657, 662, 333 P.3d 235, 239 (2014).

In setting restitution in this case, the district court considered the presentence investigation report (hereinafter, “PSI”), a summary spreadsheet embedded in the PSI, the testimony of Marie Holt, and a spreadsheet that Ms. Holt compiled based upon information obtained from

the insurance companies that was admitted as Exhibit 1. AA 10-24, 31-39, 94-104. None of this evidence is highly suspect or impalpable. The PSI recommended restitution in the amount of \$544,219.05. AA 14. However, Ms. Holt testified and clarified that the total medical expenses incurred by her son was \$459,147.26. AA 95-96. A “victim’s medical costs for the treatment of their injuries directly resulting from the crime are the proper subject of restitution.” *Norwood v. State*, 112 Nev. 438, 441, 915 P.2d 277, 279 (1996). The additional \$4,678.33 that was ultimately ordered came from the amount paid to Mr. Holt by his insurance company for the damage done to his family’s vehicle. AA 14. Ms. Holt utilized Exhibit 1 to explain how she calculated the total amount of her son’s medical bills. AA 94-104. Ms. Holt explained that she created the summary of the medical expenses based upon information that she obtained directly from the health insurance company and from information compiled by their civil attorney. AA 95-96. Ms. Holt explained the various entries in Exhibit 1 in painstaking detail on cross-examination by defense counsel. AA 97-104. The district court relied on accurate information and therefore did not abuse its discretion when imposing restitution in the amount of \$463,825.59.

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A defendant's obligation to pay restitution may not be reduced because a victim is reimbursed by an insurance company. *Martinez v. State*, 115 Nev. at 12, 974 P.2d at 135. Nevertheless, Nied argues, *inter alia*, that because Mr. Holt received payments from his insurance company covering his medical expenses, Nied is only obligated to reimburse Mr. Holt's out-of-pocket costs and any remaining balance the insurance company did not pay. This argument is directly contradictory to Nevada's controlling caselaw. Nied attempts to justify this argument by alleging that Mr. Holt will otherwise benefit from a double recovery. Appellant's Opening Brief, p 15. There is no double recovery in this case. All of the amounts incurred by medical providers, whether written off, paid off by insurance providers, paid off by Mr. Holt, or otherwise disposed of, are actual costs associated with Mr. Holt's medical care stemming from his being crashed into by Nied. When an insurance company pays a victim's medical bills, a defendant is not relieved of the responsibility to reimburse their victim for all costs directly associated with their crime. *See Martinez v. State*, 115 Nev. at 12, 974 P.2d at 135. Whether the victim has previously been reimbursed by an insurance company is a civil and contractual matter wholly independent of a defendant's restitution obligation. *Id.* The benefit of a victim having medical insurance does not accrue to a criminal

defendant. *Id.* If Mr. Holt is eventually reimbursed for his losses by Nied, he might be subject to a subrogation action by an insurance company pursuant to the contractual terms of his insurance policy. Regardless, Mr. Holt's insured status is not a justification to allow Nied to avoid his obligation to cover the costs of his crime.

Nied's brief notes that insurance companies are not victims and are not entitled to be paid restitution from a defendant simply because they made payments on behalf of a crime victim. Appellant's Opening Brief, p. 14 *citing Martinez, supra*. This is an accurate statement of a portion of the holding in *Martinez*. However, it ignores the rest of the holding that requires him, as a criminal defendant, to make restitution payments to Mr. Holt despite any reimbursement he may have already received from any insurance company. *Martinez*, 115 Nev. at 12, 974 P.2d at 135. As long as *Martinez* is the law in Nevada, Nied cannot avoid his obligation to pay restitution for the full amount of damages resulting from his criminal act regardless of Mr. Holt's insurance status.

B. The district court properly imposed restitution and the \$50,000 should not be offset.

"A defendant's obligation to pay restitution to the victim may not, of course, be reduced because a victim is reimbursed by insurance proceeds." *Martinez v. State*, 115 Nev. at 12, 974 P.2d at 135. "[R]estitution of medical

expenses... is not inappropriate when the payment, *regardless of reimbursement*, is ordered to be made to the victim.” *Id.* (emphasis added). *Martinez* is clear that a restitution obligation is not reduced because a victim has been reimbursed by an insurance company. *Martinez* makes no distinction about reimbursement from a defendant’s insurance policy or a victim’s insurance policy but simply and clearly holds that reimbursement by insurance proceeds does not reduce an obligation to pay restitution.

Nied’s brief notes a California case that says “settlement payouts from an insurance company can offset a defendant’s restitution obligation.” Appellant’s Opening Brief, p. 23 *citing People v. Bernal*, 101 Cal. App. 4th 155, 165-169 (2002). This is not the law in Nevada. *Martinez* is directly contrary to the cited California authority: a defendant cannot have their restitution obligation reduced because of insurance payments. *Martinez*, 115 Nev. at 12, 122 P.2d at 135. The Nevada Supreme Court has yet to reject the analysis of *Martinez*. Nied is responsible for the costs of his actions. His criminal behavior put Mr. Holt in a position where he accrued nearly half-a-million dollars in medical expenses. Nied cannot avoid or reduce his responsibility for this fact simply by having the good fortune to have struck someone who happened to have a good health insurance plan. He is on the

hook for all of the costs arising from his crime. The district court followed the law and based its ruling on the testimony and evidence received in support of the restitution figure. Because the district court did not abuse its discretion, the restitution order should be affirmed.

VII. CONCLUSION

The district court properly considered the evidence and testimony before it in support of the restitution figure. Nied cannot have his restitution obligation offset by any insurance benefits that Mr. Holt has received. As the district court did not rely on highly suspect or impalpable evidence in setting the restitution amount, the Court should affirm the district court's order and deny Nied's appeal.¹

DATED: July 26, 2019.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: Kevin Naughton
Appellate Deputy

¹ The State wishes to acknowledge Thomas Sertic, second year law student at the Boyd School of Law, for his substantial contributions to this brief.

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Georgia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: July 26, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on July 26, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Thomas E. Vilorio, Esq.

/s/ Margaret Ford
MARGARET FORD