

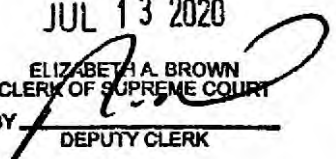
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO MIRANDA-COTA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79438-COA

FILED

JUL 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Antonio Miranda-Cota appeals from a judgment of conviction entered pursuant to a guilty plea of battery with the use of a deadly weapon causing substantial bodily harm. Eleventh Judicial District Court, Lander County; Jim C. Shirley, Judge.

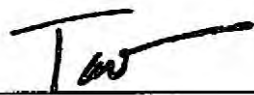
Miranda-Cota claims the district court abused its discretion by relying upon impalpable or highly suspect evidence to set the restitution award. He argues the restitution award was based on the victim's mother's testimony and he was not able to cross-examine the mother because her testimony was in the form of a victim impact statement. He argues that there was no documentation to support the amount claimed and there was no evidence as to how much of the claim would be paid by insurance. He argues the amount claimed was ambiguous because there was no way of knowing whether the expenses were a direct result of the harm caused to the victim. And he argues the district court did not allocate specific dollar amounts to each victim as required by NRS 176.033(1)(c).

We conclude Miranda-Cota did not preserve this issue for appeal for the following reasons. He did not seek to cross-examine the victim's mother after she testified about the restitution amount. See

Buschauer v. State, 106 Nev. 890, 894, 804 P.2d 1046, 1048 (1990) (“[I]f . . . the victim’s statement of the crime presents significant facts not previously raised, cross-examination and even a continuance prior to cross-examination, if requested, may be required.”). He did not request a hearing to determine the restitution amount. *See Martinez v. State*, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999) (“[A] defendant is not entitled to a full evidentiary hearing at sentencing regarding restitution, but he is entitled to challenge restitution sought by the state and may obtain and present evidence to support that challenge.”). And, although he observed that “It’s more than I expected,” he did not directly challenge the restitution amount. *See id.* at 12, 974 P.2d at 135. Consequently, we conclude he has forfeited his claim of error, and we decline to review it for plain error. *See Jeremias v. State*, 134 Nev. 46, 52, 412 P.3d 43, 49 (2018) (“[T]he decision whether to correct a forfeited error is discretionary.”), *cert. denied*, 139 S. Ct. 415 (Oct. 29, 2018). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jim C. Shirley, District Judge
Kyle B. Swanson
Attorney General/Carson City
Hy Forgeron
Lander County District Attorney
Lander County Clerk