

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROGER KAY NUTTALL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80874-COA

**FILED**

**SEP 16 2020**

*ORDER OF AFFIRMANCE*

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

Roger Kay Nuttall appeals from a judgment of conviction, pursuant to a guilty plea, of unlawful taking of a motor vehicle. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

In the fall of 2019, Nuttall stole Matthew Kennedy's 2007 Dodge Durango. The day after the vehicle was stolen, police contacted Kennedy to inform him that they found his vehicle abandoned on the side of the road. When Kennedy arrived at the location where Nuttall had abandoned the vehicle, his personal items were strewn about, and the vehicle appeared inoperable. Kennedy then had it towed to H&H Auto where he could obtain a repair estimate. After inspecting the vehicle, H&H provided Kennedy with a repair estimate, totaling \$7,098.40.

Nuttall pleaded guilty to unlawful taking of a motor vehicle (NRS 205.2715), pursuant to a plea agreement, which included the standard language that Nuttall may be required to pay restitution. At Nuttall's sentencing hearing, the State elicited testimony from Kennedy regarding the damage to the vehicle and admitted into evidence the H&H repair estimate. The district court then sentenced Nuttall to a term of 364 days in jail with 137 days' credit for time served and ordered restitution in the amount of \$7,098.40. This appeal followed.

On appeal, Nuttall challenges only the district court's award of restitution, arguing that the district court abused its discretion when it ordered him to pay \$7,098.40. Specifically, Nuttall contends that the district court abused its discretion because the restitution award was not based on reliable and accurate information since H&H's estimate did not specifically state "that the engine needed to be replaced." We disagree.

Restitution is a sentencing determination that will not be disturbed on appeal absent an abuse of discretion. *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999). "[A]n abuse of discretion will be found only when the record demonstrates prejudice resulting from consideration of information or accusations founded on facts supported *only* by impalpable or highly suspect evidence." *Lloyd v. State*, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978) (emphasis added) (internal quotation marks omitted).

According to the judgment of conviction, the district court ordered Nuttall to pay restitution in the amount of \$7,098.40. In reaching this figure, the district court relied on two sources: a repair estimate from H&H Auto, and Kennedy's sentencing-hearing testimony. At Nuttall's sentencing hearing, Kennedy testified that prior to his vehicle being stolen it was reliable and without any known mechanical issues. He also testified that the police contacted him the day after the vehicle was stolen to inform him that his vehicle had been located and that it was abandoned on the side of the road about 15 miles east of Elko. When Kennedy arrived to inspect the vehicle, he noticed that large quantities of oil and coolant had poured out of the vehicle onto the road beneath it. Kennedy stated further that a friend of his, a mechanic, examined the vehicle and said that he "wouldn't try to move" the vehicle in its current condition. Based on the vehicle's

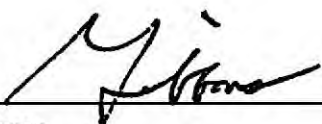
condition and his friend's recommendation, Kennedy had the vehicle towed to H&H Auto, so he could get a repair estimate.

Additionally, the State had Kennedy authenticate H&H's repair estimate, and the estimate was then admitted into evidence without objection. After the repair estimate was admitted into evidence, Kennedy verified that the costs therein were strictly to "[t]o repair the [vehicle's] engine." Moreover, the prosecutor followed up and asked whether Kennedy was "having [H&H] do extra fluffy things to it or anything," which Kennedy denied outright, stating "[a]bsolutely not." Kennedy also stated that "I just want, you know, the . . . thing fixed so we can have the car running again." And notably, the repair estimate is clearly itemized (distinguishing between parts and labor), does not appear to contain any unnecessary or unrelated expenses, and indicates a total cost of \$7,098.40, which is the precise amount the district court awarded.

Furthermore, although Nuttall's attorney superficially challenged the restitution request, arguing that "there is no indication on the estimate that the engine was damaged," he did not request a restitution hearing nor produce any contradictory evidence regarding the state of the vehicle's engine (e.g., that it worked or did not need to be replaced), nor, during cross-examination, did he impeach Kennedy's testimony regarding the vehicle's condition or the veracity of the repair estimate. Thus, for all intents and purposes, we conclude that the State's evidence was unassailed. *Cf. Martinez*, 115 Nev. at 13, 974 P.2d at 135 (affirming the district court's restitution order where appellant did not challenge the amount); *see also Lord v. State*, 107 Nev. 28, 33, 806 P.2d 548, 551 (1991) (recognizing that counsel's comments are not evidence).

In short, the district court relied on relevant and reliable information in ordering Nuttall to pay restitution. Specifically, the court relied on Kennedy's sworn testimony, which indicated the condition of the vehicle before and after the incident, and an authenticated, itemized repair estimate from H&H Auto that specified the work to be done and at what price. Therefore, based on this record, we conclude that the district court did not abuse its discretion because it did not rely on impalpable or highly suspect evidence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Alvin R. Kacin, District Judge  
Elko County Public Defender  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk