

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH EARL HAAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39833

FILED

OCT 15 2002

JUANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of gross misdemeanor destruction or injury to property. The district court sentenced appellant Joseph Earl Haas to serve a jail term of 1 year, and then suspended execution of the sentence and placed Haas on probation for a period not to exceed 3 years. Additionally, the district court ordered Haas to pay \$12,049.08 in restitution to the victim of his crime, the Union Pacific Railroad.

Haas first contends that the district court erred in conducting the restitution hearing without Haas being present because he did not knowingly and intelligently waive his right to be present at the hearing. Specifically, Haas contends that a restitution hearing is a critical stage of the criminal proceeding against him and, therefore, he had a constitutional right to be present at the hearing and to confront the witnesses against him.

Our review of the record reveals that Haas' right to confront the witnesses against him and right to due process were not violated. Haas pleaded guilty knowing he would be required to pay restitution for

the damage he did to Union Pacific's trains.¹ Further, at the restitution hearing, Haas' counsel failed to object to Haas' absence at the hearing and, to the contrary, affirmatively waived Haas' presence.² Additionally, Haas' counsel vigorously cross-examined the State's witness with regard to the total cost of repainting the trains. Finally, we note that the district court continued the restitution hearing until June 7, 2002, the date of Haas' sentencing. At that hearing, Haas was present and the district court afforded Haas the opportunity to present additional evidence with respect to restitution and the opportunity to be heard. Accordingly, we conclude that Haas' rights to due process and to confront the witnesses against him were not violated.

Haas next contends the district court erred in awarding an amount of restitution that exceeded the victim's losses. Specifically, Haas contends that the district court should not have awarded Union Pacific the cost of transporting the trains to Texas for repainting. 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."³ We conclude the district court's restitution award is supported by the record and that the evidence presented regarding losses the Union Pacific sustained was neither impalpable nor

¹See Schotsch v. State, 670 So. 2d 127, 128 (Fla. Dist. Ct. App. 1996) (holding that defendant's due process right not implicated where counsel affirmatively waives defendant's presence at the restitution hearing and defendant agrees to pay restitution as part of the plea bargain).

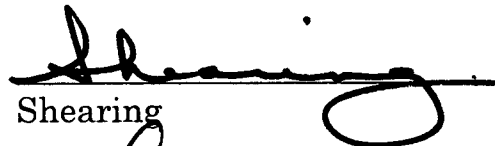
²See id.

³Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999); see also Lloyd v. State, 94 Nev. 167, 576 P.2d 740 (1978).


highly suspect. In particular, a Union Pacific representative testified that the closest facility for repainting the trains was located in Texas. Accordingly, the district court did not abuse its discretion in awarding the transportation costs.

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


ORDER the judgment of conviction AFFIRMED.

 J.

Shearing

 J.

Leavitt

 J.

Becker

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk