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### Nied v. State of Nevada, 138 Nev. Adv. Op. 30 (May 5, 2022)

Servando Martinez

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**COMPUTATION OF RESTITUTION DAMAGES IN CASES REGARDING SUICIDE  
ATTEMPTS AND PROJECTED BILLING CHARGES**

**Summary**

This is an appeal from a judgment of conviction, arising from a guilty plea of reckless driving resulting in substantial bodily harm. The question considered is whether one could be charged to pay restitution based on initial billings that were not ultimately charged. The court also considered whether treatment for suicide attempts connected to an injury are applicable in computing restitution damages.

The court concluded that the restitution awarded was not supported by competent evidence and thus ordered that the restitution portion of the judgment of conviction be vacated. The court further remanded the case to the district court for further restitution proceedings, stating that “restitution is intended to compensate the victim for costs and losses caused by [a] defendant” with the provision that “restitution for a victim’s medical costs is limited to the amount that the medical provider accepts as payment in full rather than the amount initially billed by the medical provider.”

**Facts and Procedural History**

This case arises from an incident where Nied drove a vehicle at high speed through the downtown Reno area, where Nied evaded police officers, ran red lights and drove in the wrong direction of the street prior to crashing into the victim’s car causing serious bodily injury to the victim. Nied pled guilty to reckless driving and agreed to pay restitution. However, prior to sentencing, both the district court and Nied were provided a victim impact letter and presentence

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<sup>1</sup> Servando Martinez.

investigation report that indicated that the victim had remained in a coma for a week after being transported to a hospital. Due to the crash, the victim had a broken pelvis, a brain bleed and head trauma, all of which required two months of hospital treatments and six weeks of rehabilitation treatment. The impact statement further detailed that the victim had lasting physical injuries, brain damage and was forced to resign from his previous job, which all contributed to his depression and a suicide attempt exactly one year after the accident. Prior to this incident, the victim's medical costs amounted to around \$600,000.

The presentence report made a recommendation that Nied be ordered to pay \$459,147.26 in restitution for the victim's medical costs with an additional \$4,678.33 to cover vehicle damage. The report failed to include medical documentation such as bills and receipts, prompting Nied to file an objection arguing that no documentation supported the recommended restitution rate and that the final amount was improperly calculated.

At the hearing, the victim's mother did provide printouts of the victim's medical claims from June 2017 to September 2018, as well as a spreadsheet that contained a summary of total medical costs and the victim's out-of-pocket costs, which expressed that the victim's insurance was billed \$277,503.43 for the hospitalization costs incurred from the accident and subsequent suicide attempt. The victim's insurance paid \$87,242.79 with the victim paying \$6,052.87 out of pocket. The document also showed that the victim received Nied's automobile policy limit of \$50,000 with 33 percent of this amount going toward attorney fees. The remaining costs were written off by medical providers. The district court ordered Nied to pay \$463,825.59 in restitution and sentenced Nied to 30 days in jail with 5 years of probation. Nied only objects to the restitution amount.

## **Discussion**

Nied argues that the restitution award is not based on accurate information and that the restitution for medical costs should not have included costs from the victim's suicide attempt, costs paid by the victim's insurance provider, or the amounts initially billed by the medical providers that weren't actually charged. Nied also contends that his automobile insurer's payments should offset the restitution amount.

### ***Sufficiency of evidence***

The Court begins their analysis by reviewing the standard for restitution, detailing that a sentencing judge must use "reliable and accurate information" when calculating a restitution award per NRS 176.033(3).<sup>2</sup> The Court recognized that district court relied on the presentence report's computation of costs. Because Nied challenged the restitution amount, the State was required to present evidence at sentencing to prove the amount of restitution.<sup>3</sup> The court then concludes that the district court abused its discretion in relying on that amount to calculate restitution and vacated the district court's restitution award because it is not supported by competent evidence, remanding for further proceedings on the restitution calculation.

### ***Calculation of restitution***

The remaining challenges to the restitution award are also addressed to provide guidance in ordering restitution.

#### ***Costs related to the victim's suicide attempt***

Nied contends that the medical costs from the victim's suicide attempt were not a proper subject of restitution because no competent evidence supported the conclusion that the suicide attempt was a direct result of the crash. The court referred to their precedent stating that

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<sup>2</sup> *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999).

<sup>3</sup> *Id.* at 13, 135.

restitution may include a victim's medical costs for the treatment of his injuries directly resulting from the crime, ruling that the victim's wife's testimony about his suicidal attempt and the timing of the victim's suicide attempt directly connected the victim's mental health issues to Nied's reckless driving offense. The court further stated that Nied failed to demonstrate that restitution would be inappropriate.

### ***Computation of medical costs***

Nied argues that (1) restitution for medical costs is limited to the victim's out-of-pocket costs and does not include costs that the victim's insurance company paid and (2) that the restitution for medical costs should be based on the negotiated amounts that the victim and the victim's insurance provider actually paid, rather than the higher amounts the medical providers initially bill. On the first count, the court disagreed and referred to their ruling in *Martinez*, which states that "a defendant's restitution obligation for a victim's medical costs is not to be reduced by the amount the victim's insurance company pays."<sup>4</sup> On the second count, the court agreed, stating that the "primary purpose of restitution 'is to compensate a victim for costs arising from a defendant's criminal act.'"<sup>5</sup>

### ***Offset by payments from Nied's insurer***

Nied argued that the restitution amount should have been reduced by the amount Nied's automobile insurance provider paid the victim, but the Court detailed that Nevada statutes are silent on this issue. On the other hand, the State contended that *Martinez* precludes the reduction of a defendant's restitution obligation based on insurance payments to the victim. However, the Court also acknowledges that the collateral source doctrine does not apply to compensation that a

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<sup>4</sup> *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999).

<sup>5</sup> *Major v. State*, 130 Nev. 657, 660, 333 P.3d 235, 238 (2014).

victim receives from a defendant.<sup>6</sup> The Court uses this rationale to remand the case back to the district court stating that they “should determine what amount of offset is appropriate based on Nied’s insurance settlement.”

## **Conclusion**

Justice Silver wrote an opinion affirming that a district court should offset payments to the victim by the defendant’s insurance provider to avoid duplicating payments and creating a windfall for the victim. This opinion, joined by concurrences from Justice Cadish and Justice Pickering, vacated the restitution portion of the judgment of conviction and remanded for further proceedings on restitution consistent with their decision.

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<sup>6</sup> See 2 Stuart M. Speiser et al., *American Law of Torts* § 8:16 (2022) (quoting “The authorities are well agreed that payments from the tortfeasor himself or herself or through or by the defendant’s insurer are not subject to the collateral source rule and may be shown in mitigation or reduction of recovery.”)