

2011

Utah v. David Q. Poulsen : Reply Brief of Appellant

Utah Court of Appeals

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Case No. 20110292

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

vs.

DAVID Q. POULSEN,
Defendant/Appellant

Reply Brief of Appellant

Appeal from an order of restitution from convictions for participating in a pyramid scheme, class B misdemeanors, in the Fourth Judicial District Court of Utah, Utah County, the Honorable Steven L. Hansen presiding.

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Oral Argument Requested

FILED
UTAH APPELLATE COURTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ARGUMENT	1
CONCLUSION	14
ADDENDA	
ADDENDUM A: COMPLETE TRANSCRIPT OF PLEA HEARING (R. 78)	
ADDENDUM B: COMPLETE TRANSCRIPT OF RESTITUTION HEARING, INCLUDING RESTITUTION ORDER (R. 79)	
ADDENDUM C: STATUTES	

TABLE OF AUTHORITIES

Cases

<i>People ex rel. Fahner v. Walsh</i> , 461 N.E. 2d 78 (Ill. App. 1984)	11, 12
<i>State v. Houston</i> , 9 P.3d 188, ft. nt. 3, 190 (Utah App. 2000)	11(ft. nt.)
<i>State v. Larsen</i> , 221 P.3d 277, 280 (Utah App. 2009)	9
<i>State v. Watson</i> , 987 P.2d 1289,1290 (Utah App. 1999)	9

Statutes

Utah Code Annotated § 77-38a-302	3, 5(ft. nt.), 9, 13
Utah Code Annotated § 76-2-102 (2003)	9(ft. nt.)

ARGUMENT

Like children in a playground, playing a word game, the arguments of counsel for the Defendant and counsel for the State can be summarized as saying that the perfunctory factual record¹ in this case can give rise to two polar opposite conclusions: the Defendant saying “no, it does not [support the restitution order],” and the State saying “yes, it does,” “no, it does not,” “yes, it does,” “no, it does not,” “yes, it does...” and so on. The case law identifies three issues the court of appeals must decide in reaching the *correct* resolution in this case. Those issues are whether or not the two short and simple hearings— at the time the guilty plea was entered and later at the time the restitution order was made—include facts that are clear and complete enough such that: 1) the trial court was not required to draw inferences about the crime in ordering the restitution; 2) the factual record demonstrates a causal nexus between the facts pled to and the restitution ordered; and 3) in making the restitution ordered, the defendant was afforded at least the rudimentary predicates of due process. The forgoing three issues are essentially tightly interwoven, and are really three different ways of saying the same thing: namely, that the factual record is too sparse, and the admissions too attenuated for the trier of fact to enter a \$60,000 money judgment. As a result, the three factors referred

¹ Both the plea hearing and the restitution hearing were conducted at the Court’s regular crowded weekly criminal docket where there were approximately 60 different cases appearing on the docket for each respective hearing, and the time allocated for each defendant was one or two minutes.

to above are not segregated in this reply, but all three are implicit in the arguments made in this reply.

It is Mr. Poulsen's position that somewhere between the entry of the guilty plea to participating in a pyramid scheme, and the restitution hearing nearly a year later, there was a disconnect—a short circuit, if you will—such that no facts were ever entered into the record showing that Mr. Poulsen is factually guilty of causing the loss to the victims for which he was ordered to pay restitution. There was a hearing to take his plea, and a hearing regarding his financial capacity, but there was never a discussion in between about what Mr. Poulsen said or did to the victims that caused them to lose money. Without something placed into the record that shows Mr. Poulsen made representations to the victims, which induced them to place money into a pyramid scheme, and which resulted in them losing money, the three standards referred to above can never be met.

A neutral and dispassionate review of the short record in this case will reveal that there were two hearings. One hearing was limited to taking the plea, the second hearing was limited to the Defendant's ability to pay. Lost in between is any semblance of a factual predicate for fraud or causation—for how or why the Defendant might owe money to the victims. In the plea hearing on May 11, 2010, the Defendant entered his plea, was fined \$555, and was ordered to perform 60 hours of community service. When the subject of restitution was raised briefly, the Defendant's counsel strongly stated to the Judge that there was no relationship whatsoever between what was plead to, the amounts

lost by the victims, and any nexus of the actions of the Defendant to the losses experienced by the victims. Plea Hearing, R. 78, p. 10:4-25. Addendum “A.” At the restitution hearing nearly one year later, the Court expressly limited the hearing to the amount of money the Defendant could pay. Restitution Hearing, R. 79, p. 11: 1-22; p. 4: 1-25; p. 5 1-25; p. 6 1-19. Addendum “B.” The Court actively prohibited any discussion of how the victims came to lose their money, what representations, if any, were made by the Defendant to the victims, or what the Defendant’s relationship was to the victims. *Id.* In short, there are no facts in the record from which causation could be established. This latter hearing flew directly in the teeth of Utah Code Ann. § 77-38a-302 (4), which states that: “ If the defendant objects to the imposition, amount, or distribution of the restitution, *the court shall allow a full hearing on the issue.*” There was no “full hearing.” There was at best a three-minute discussion in the midst of a 60-defendant turbo-charged criminal docket, in which the Court only permitted evidence of the Defendant’s ability to pay.

The State tries to bootstrap this truncated proceeding into an admission that Mr. Poulsen caused losses to the victims of \$168,000. Yet the record shows just the opposite. The State argues, “as a factual basis for the pleas, Defendant admitted that on or about March 14th of 2008 and September 26th, 2008, [he] solicited funds for a pyramid scheme, the total amount was ...\$168,000.” Aplee. Br. p. 12. However, such selective cherry picking of the record does not tell the whole picture. At the same three minute hearing,

the following colloquy took place:

Ms. O'Bryant: Your honor, we still need to set the restitution--.

The Judge: Yes.

Ms. O'Bryant: -- and I think its going to probably take the entire twelve months to get everything taken care of.

The Judge: Should we just set a, do you have an number now?

Ms. O'Bryant: Well, we have the total number of restitution. I don't think he has the ability to pay that. Ant that's what we wanted to discuss to see if we could come up with a stipulation as to court ordered probation.

The Judge: We'll probably put the order right now. What is the total number?

Ms. O'Bryant: The total number is \$168,400, or--

The Judge: *And you agreed to that, so we don't need a hearing on that?*

Mr. Mark Poulsen: *No, I don't agree that that's the proper amount.*

The Judge: Okay.

Mr. Mark Poulsen: That is the amount various people invested, but he didn't get that or any approaching that so a--

The Judge: *Well then that's not the amount that he should pay, is that your position.*

Ms. O'Bryant: That's, our position is not that that is the amount--

The Judge: It's not the judgment--

Ms. O'Bryant --he should have to pay.

The Judge: –against him so.

Ms. O'Bryant: That's the total loss.

The Judge: Okay.

Ms. O'Bryant: What we need to discuss is---

The Judge: How much he owes. Plea Hearing, R. 78. p. 10:4-25. Addendum "A."

[Emphasis added].

The above narrative represents all that was said about the amount the Defendant would pay the victims as a result of his plea to participating in a pyramid during his plea hearing on May 11, 2010. The court implies that the topic of "how much he owes" would occur at the restitution hearing, but it did not. Later, the defendant moved to dismiss the restitution hearing, which the judge denied without explanation or comment.² R. 31, Addendum "B." The restitution was held nearly a year later on March 29, 2011. The record is significant *for what it does not show* more than for what it does show in terms of setting forth a factual predicate for alleged bad acts which caused loss to the victims.

MR. MARK POULSEN: Your Honor, may I approach?

THE JUDGE: Yes. Uh-huh (affirmative).

² Utah Code Ann§ 77-38a-302(3) states that: "If the court determines that restitution is appropriate under this part, the court *shall make the reasons for the decisions* part of the record." The record shows that the court reached the second part of what was contemplated by the above statute under sub-part 5(c), namely the ability of the defendant to pay restitution. However, it completely ignored sub-part (5)(a) which requires a description of the criminal conduct admitted to by the defendant, or the amount to which the defendant agreed to pay as part of his plea.

MR. MARK POULSEN: I think to be clear, Your Honor, we would stipulate that the, the dollar figures that you see there are amounts that victims put into this.

I, I reiterate that there has to be a nexus between the allegations pled to, which is participating in a pyramid scheme, and the restitution in this case. And I don't believe that that 168 represents a nexus in any way, shape or form to, to the injury—

THE JUDGE: That's the argument you made to me that I denied though, isn't it?

MR. MARK POULSEN: I'm not sure if that's, if that's what the basis of your denial was, Your Honor. I'm not sure—

THE JUDGE: That was the basis—

MR. MARK POULSEN: —if that's what you said.

THE JUDGE: —of your case though, wasn't it?

MR. MARK POULSEN: My request was to dismiss the hearing.

THE JUDGE: Yes.

MR. MARK POULSEN: I think the court can still have a hearing but still make a decision as to the appropriateness of the relationship between the a...

We DON'T concede though those victims lost that at the hands of this person. There's no facts in the record to support that, Your Honor. Any facts would be hearsay to that effect.

We pled very simply to participating in a pyramid scheme. I ask the court in all earnest that the restitution order be tied to only those facts. Otherwise we wouldn't have

pled to them, Your Honor.

I would say further, had we known that we were going to be facing \$168,000 in restitution, I would rather take, try the case and have the offense, you know, dealt with in a full and fair hearing than plead to participating in a pyramid scheme and still face a \$168,000 payback. Restitution Hearing, R. 79, p. 4: 18–25; p. 5: 1–25; p. 6: 14.

Addendum “B.”

Later, the court and counsel had this exchange:

THE JUDGE: Okay. So lets make sure that you're both a, representing to me the standard of review for the court here today. You both stipulate and agree that the real purpose of the hearing is to determine not the amount of restitution, that been fixed and is full and complete at the 168,400. Right? But the order should be based on his ability to pay correct?

MS. O'BRYANT: Yes, Your honor.

THE JUDGE: Do you agree with that?

MR. POULSEN: I do agree with that.

THE JUDGE: And what you've presented to me is the only evidence that I have before me to determine his ability to pay. Correct?

MR. MARK POULSEN: Yes. As well as appropriateness. If I could state for the record, as well as the appropriateness of the payment in the nexus to the crime is, I believe, a proper standard for the court to follow.

THE JUDGE: I'm not quite sure. You keep arguing to me and I'm not sure I understand it. Because that was before me before and I, I think I denied that, that argument that you have made that there should be a restitution that, no restitution in this case because it's not appropriate to the crime that he committed.

MR. MARK POULSEN: And the only thing again I would like to say for the record on that point, it's appropriate to have a restitution hearing where both the amount of the restitution, or both the ability to pay as well as the circumstances of the restitution are appropriate. I think that that is within the scope of a restitution hearing.

Restitution Hearing, R. 79, p. 10: 11–25; p.11: 1–16. Addendum "B."

There is nothing in either the forgoing plea hearing record or the restitution hearing record that can be construed as setting forth a factual predicate for a restitution judgment of \$60,000. There is no agreement on restitution, and there are express objections to the suggestion that the defendants caused injury to the defendants. For all the court knew, the victims lost there money at a bingo game they were invited to by the Defendant, or at a raffle in which the Defendant sold them tickets, both of which would qualify as participating in a pyramid scheme.

The State's panacea for the error that occurred below is to suggest that since the Pyramid Scheme Act provides a civil remedy for a violation of the Act, the "but for" test is somehow automatically met or obviated. Appellee Brief, p. 14. The State's position seems to be that the State does not have to put anything into the record approaching

scienter or animus, *mens re* or causation, representations, or reliance as would be required to establish civil liability, because participating in pyramid schemes are *inherently deceptive*, such that for restitution purposes, there is no requirement for a factual connection between the damages sought and the plea of participating in a pyramid. Appellee Brief. pp. 17-18.

Although the argument is obscure, in essence the State seems to be saying that because pyramid schemes are “inherently deceptive” there is created some type of strict liability,³ such that there is no further requirement on the part of the State to show causation to damages, the mental intent of the participator, or what representations were made and to whom. The state seems to be saying that the fraud aspects required to show civil liability are implicit when one admits to participating in a pyramid. The problem with this reasoning is that it still ignores the Restitution Act requirement appearing at § 77-38a-302 that the criminal conduct of the Defendant *has resulted* in pecuniary damages to the victim. Case law interpreting the statute prohibits the trial court from drawing any inferences whatsoever about the connection between the crime admitted to and the losses to the victim. *State v. Watson*, 987 P.2d 1289,1290 (Utah App. 1999). (Trail court drew impermissible inferences when it tried to impose restitution for burial expenses for a murder victim, when the plea was to obstruction of justice). *State v. Larsen*, 221 P.2d

³ Contrary to the State’s suggestion that the Pyramid Act is a strict liability statute, there is nothing in the Act that “clearly indicates a legislative purpose” to impose strict liability for the crime. Utah Code Ann. § 76-2-102 (2003).

277, 280 ((Utah App. 2009). (Plea to joy riding, and the admission by the defendant that he stole a car, did not encompass enough facts for the trial court to impose restitution for damage to the car). The trial court cannot simply assume from the bare act that someone has pled guilty to a crime, such factors as that there is a victim, that there is a causal connection to the victim's loss and the acts pled to, and that the civil liability elements relating to defrauding someone are automatically part of the plea, such that the court can determine civil liability as a matter of law. Here, there was a plea hearing to participating in a pyramid where no facts were admitted to other than that the Defendant participated in a pyramid, and there was a hearing related to the Defendant's ability to pay. This court will search the record in vain for any facts which link this defendant to the losses incurred. Specifically, there are not even such rudimentary admissions that a representation occurred, to whom it was made, that there was reliance by the victims, all of which would be required to establish civil liability under the Pyramid Scheme Act, or under common law fraud.

Stated differently, a bald admission in a civil suit arising under the civil provisions of the Pyramid Scheme Act that the defendant participated in a pyramid, would not be nearly sufficient to establish causation, damages, or civil liability under the civil provisions of the Act. If liability would be wanting in a civil action arising under the Act, it follows that no criminal court governed by higher standards of proof would be within

its rights to impose restitution on such a sparse record.⁴ There is nothing unique or distinctive in the Pyramid Scheme Act that differentiates it from any other crimes arising under the penal code, such as assault, robbery, kidnaping, murder, rape, battery, or like crimes. In the context of the Restitution Act, there is still a requirement for all such crimes that before restitution can be imposed, there has to be a showing that the losses to the victims arose out of the crimes, and that civil liability must be established as a matter of law from the facts pled to or for which the defendant is convicted. If anything, the Pyramid Scheme Act relating to *participating* as opposed to *promoting*, requires greater vigilance on the part of the trial court. It may be that all acts of *promoting* a pyramid scheme include some act of fraud, such as a representation, but it does not follow that merely *participating* in a pyramid involved actions that would meet the elements of civil liability. As noted in the Appellant's initial brief, such acts as engaging in a raffle, playing bingo, or selling Amway products might meet the technical definition of participating in a pyramid, but they are light years away from the elements required to create civil liability under the common law or under the Act.

The State cites to the case of *People ex rel. Fahner v. Walsh*, 461 N.E. 2d 78 (Ill.

⁴Utah cases require that the facts supporting the crime must be sufficiently developed such that they meet the elements of a cause of action for civil damages. *State v. Houston*, 9 P.3d 188, 190 (Utah App. 2000). The concept on a collateral-estoppel-type basis is that with the proof standard of guilt in the criminal context of beyond a reasonable doubt, such a heavy and clear burden necessarily meets the lesser standards of proof for civil liability by a preponderance of evidence.

App. 1984) for the proposition that pyramid schemes are inherently deceptive, such that there is no requirement on the part of the State to prove mental intent, causation, or other elements which comprise civil fraud. Appellee Brief, p. 18. However, far from supporting the proposition that participating in pyramids does not require a showing of intent, the *Fahner* case states that the issue of whether or not a given practice is deceptive must be decided upon a case-by-case basis. *Id.* at 79. That case intricately examined the details of the defendant's conduct in order to make a determination that civil liability would attach. *Id.* Thus, the *Fahner* case cannot be used to support a suggestion that the Pyramid Scheme Act is a strict liability statute, which requires no showing of intent or damages in order to impose civil liability.

The State also contends at page 20 of its opposition brief that the trial court did not commit error when it completely omitted any findings and conclusions to support its restitution order. The State argues that “any error was harmless because defendants admissions justified restitution and additional testimony could not have altered that decision.” Appellee Brief, p. 20. The problem with this argument is that there literally were no admissions, other than to participating in a pyramid. Mr. Poulsen is of the view that the trial court mistakenly believed that causation had been established at the time of the plea hearing, when it had not been so established. This court's duty is to decide if, standing alone, the bare admission to a crime—especially one as metaphysical as participating in a pyramid—with no other facts in the record, can give rise to the

automatic imposition of a \$60,000 restitution order to the putative victims. The Restitution Act states that: “If the defendant objects to the imposition, amount or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.” Utah Code Ann. § 77-38a-302(3). The Act also requires findings supporting the order. There are none in the record except as it relates to ability to pay. Counsel’s objections to the imposition and amount of restitution are replete through the record, including his repeated efforts to try and put into evidence a showing that there was no nexus between the defendant’s actions and the loss to the defendants. Restitution Hearing, R. 79, p. 11: 1-22; p. 4: 1-25; p. 5 1-25; p. 6 1-19.⁵

The State makes this brazen statement in footnote 2, page 23 of the opposition brief: “The State acknowledges that on appeal its argument justifying restitution *is based upon additional civil grounds than those proposed or adopted below.*” [Emphasis added] The State goes on to suggest that even if the trial court did not have proper grounds for imposing civil restitution, on appeal, this court can still sustain a restitution order if there is a basis in the record. The entire point of this appeal is that there is no basis in the record. The State’s admission that the correct legal grounds for the imposition of civil restitution were not followed below should give this court cause for pause in upholding a

⁵ The court will note that the counsels repeated efforts to direct the hearing to causation of the alleged victims loss bordered on arguing with the court about that right. The trial court was steadfast in stating that the restitution hearing was limited to the determination of the defendant’s wealth.

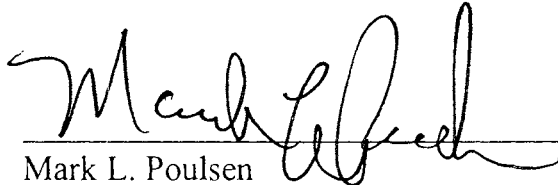
\$60,000 judgment, which the State can enforce using incarceration as a stick.

CONCLUSION

The trial court erred below in that: 1) it drew impermissible inferences about the crime in ordering the restitution; 2) the factual record does not support the restitution ordered, in that it fails to demonstrate a causal nexus between the facts pled to and the restitution ordered; and, 3) in ordering the restitution, the defendant was not afforded the rudimentary predicates of due process. Based upon the forgoing factors, the restitution order should be VACATED.

DATED this 24 day of March, 2012.

NELSON, SNUFFER, DAHLE & POULSEN, P.C.

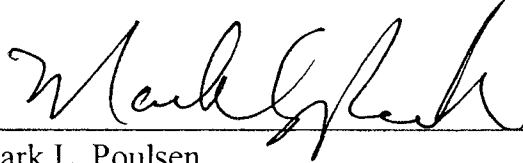


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Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 2012, I caused two separate copies of the foregoing **REPLY BRIEF OF APPELLANT** to be served on the following via United States Postal Service® First-Class Mail®, sufficient postage fully prepaid.

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Tab A

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IN THE FOURTH JUDICIAL DISTRICT - PROVO COURT
UTAH COUNTY, STATE OF UTAH

=====

STATE OF UTAH,)	INITIAL APPEARANCE
)	PLEA
PLAINTIFF,)	
)	
vs.)	
)	
DAVID Q. POULSEN,)	CASE 101401180
)	APPEAL 20110292
)	
DEFENDANT.)	JUDGE STEVEN L. HANSEN
)	

BE IT REMEMBERED that this matter came on for hearing
before the above-named court on May 11, 2010.

WHEREUPON, the parties appearing and represented by
counsel, the following proceedings were held:

OFFICIAL CERTIFIED TRANSCRIPT
(From Electronic Recording)

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A-P-P-E-A-R-A-N-C-E-S

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TABLE OF CONTENTS

=====

	PAGE	REF
DISCUSSION.	3	
PLEA.	5	
SENTENCE.	8	

1 P-R-O-C-E-E-D-I-N-G-S

2 (May 11, 2010).

3 MR. MARK POULSEN: Number 37, Your Honor?

4 THE JUDGE: Okay.

5 MS. O'BRYANT: If I may approach, Your Honor.

6 THE JUDGE: You may.

7 MS. O'BRYANT: We have an amended information.

8 Counsel has already been provided a copy.

9 THE JUDGE: Okay. You've been given a copy of
10 the information. Do you waive a formal reading of the
11 charge?

12 MR. MARK POULSEN: Yes we do, Your Honor.

13 THE JUDGE: We're here today for an initial
14 appearance and we'll go ahead and schedule his waiver
15 hearing. Is that what we are here for?

16 MR. MARK POULSEN: I think we're here to plea.

17 MS. O'BRYANT: Enter a plea to the amended
18 information.

19 MR. MARK POULSEN: Enter a plea, Your Honor.

20 THE JUDGE: Enter a plea today? Okay. Two
21 Class B misdemeanors. I see. All right.

22 MR. MARK POULSEN: Yes, Your Honor. We--

23 THE JUDGE: You've advised your client of his
24 rights?

25 MR. MARK POULSEN: I have.

1 THE JUDGE: And he understands the possible
2 consequences of his plea, the rights that he's giving up or
3 waiving, the possible sentence that could be imposed? Is
4 that right, sir?

5 DEFENDANT: Yes, sir.

6 THE JUDGE: Do you understand? Have you had an
7 adequate opportunity to talk to your lawyer about those
8 things?

9 DEFENDANT: Yes, sir.

10 THE JUDGE: Are you prepared to waive your rights
11 and enter a guilty plea to two Class B misdemeanors today?
12 Is that the plea bargain or not?

13 MS. O'BRYANT: Yes, Your Honor.

14 THE JUDGE: That is the plea bargain?

15 MR. MARK POULSEN: Yes, Your Honor.

16 THE JUDGE: May I have A factual basis to support
17 the pleas?

18 MS. O'BRYANT: Yes, Your Honor. On or about
19 about it looks like March 14th of 2008 and September 26th,
20 2008 this individual solicited funds for a pyramid scheme,
21 the total amount was a, \$168,400.

22 THE JUDGE: You've heard what's been stated.
23 Are those the essential facts that you're admitting to to
24 support the plea?

25 MR. MARK POULSEN: Yes they are, Your Honor

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ENTRY OF PLEA

THE JUDGE: They are. Okay. To the charges as contained in Count 1 and Count 2, two Class B misdemeanors, operating a pyramid scheme, what are your pleas?

MR. MARK POULSEN: Guilty, Your Honor.

THE JUDGE: I'll receive and accept your guilty plea and proceed to sentencing at a time that you request.

Do you want to be sentenced today or not?

MS. O'BRYANT: Your Honor, I think we can do everything but the restitution today. We've, we've stipulated. We're recommending that the court order some community service and an appropriate fine for the Class B misdemeanor. And we're asking for a hearing in about 30 days. We're going to try and come up with a stipulation as to the exact amount this individual is able to pay.

THE JUDGE: How much community service are you recommending?

MS. O'BRYANT: 60 hours.

THE JUDGE: Is that, is that your understanding?

MR. MARK POULSEN: That will work, Your Honor.

THE JUDGE: All right. Anything you'd like to say in your own behalf, sir?

MR. MARK POULSEN: There's something I'd like to say on his behalf if you don't mind.

THE JUDGE: Go ahead.

1 MR. MARK POULSEN: This individual is an
2 immigrant from Viet Nam.

3 THE JUDGE: Uh-huh (affirmative).

4 MR. MARK POULSEN: And a, he, although he's not
5 illiterate he's a, very very unsophisticated. He was drawn
6 into an investment scheme by his elders quorum president.
7 He put all of his assets and life savings into that and a,
8 lost it all. He was approached by his, two others about his
9 a, his deals and told them about it and it resulted in these
10 charges, Your Honor.

11 He's an extremely unsophisticated person with no
12 criminal background and no history whatsoever. He simply
13 got caught up in an, in an investment fraud scheme that he
14 was swept away in and again, lost all of his assets as a
15 result of it.

16 I, I would just urge the court's lenience on his
17 behalf. A very, again, a very unsophisticated person for
18 whom the law has just reached up and whacked in the side of
19 the head. He doesn't quite understand it all but a, we'll
20 accept the court's determination on it.

21 THE JUDGE: Anything you'd like to say in your own
22 behalf, sir?

23 THE DEFENDANT: If I may.

24 THE JUDGE: You may.

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SENTENCE

THE JUDGE: All right. It will be the judgment and the sentence of the court, Mr. Poulsen, that you serve six months in the county jail and pay \$1,000 fine. I'll suspend the sentence this morning, place you on court probation for 12 months. Keep the court advised where you live during that time. Do not the violate the law.

I'll order you serve 60 hours of community service and pay a minimum fine of \$555 for both charges, that will include the 85% surcharge. So it will be a \$300 fine and a 255 surcharge is \$555. Okay?

Is there a court security fee on a Class B misdemeanor? I don't know, I don't think so.

MR. MARK POULSEN: Do I understand you it's 500 for both charges?

THE JUDGE: Total.

MR. MARK POULSEN: Total.

THE JUDGE: Total. That will include both charges.

MR. MARK POULSEN: Okay.

THE JUDGE: One fine both Counts.

All right. All right. Now we need a time certain since you're on court probation, there were no probation officer here, when this sentence will be completed. So when will he have his 60 hours completed and

1 pay the fine? You tell me and I'll more than likely go along
2 with it but I expect it completed within that time period.
3 Okay?

4 MS. O'BRYANT: Your Honor, we still need to set
5 the restitution--.

6 THE JUDGE: Yes..

7 MS. O'BRYANT: -- and I think it's going to
8 probably take the entire 12 months to get everything taken
9 care of.

10 THE JUDGE: Should we just set a, do you have a
11 number now?

12 MS. O'BRYANT: Well, we have the total number of
13 restitution. I don't think he has the ability to pay that.
14 And that's what we wanted to discuss to see if we could come
15 up with a stipulation as to court ordered probation.

16 THE JUDGE: We'll probably put the order right
17 now. What is the total number?

18 MS. O'BRYANT: The total number is \$168,400, or--

19 THE JUDGE: And you agreed to that, so we don't
20 need a hearing on that?

21 MR. MARK POULSEN: No, I don't agree that that's
22 the proper amount.

23 THE JUDGE: Okay.

24 MR. MARK POULSEN: That is the amount that
25 various people invested, but he didn't get that or any

1 approaching that so a--

2 THE JUDGE: Well, then that's not the amount that
3 he should pay if that's your position.

4 MS. O'BRYANT: Right. That's, our position is
5 not that that is the amount that--

6 THE JUDGE: It's not a judgment--

7 MS. O'BRYANT: -- he should have to pay.

8 THE JUDGE: -- against him so.

9 MS. O'BRYANT: That's the total loss.

10 THE JUDGE: Okay.

11 MS. O'BRYANT: What we need to discuss is--

12 THE JUDGE: How much he owes.

13 MS. O'BRYANT: -- what he has the ability to pay.

14 I--

15 THE JUDGE: Okay. We'll put it 60 days down for
16 the state to submit a claim for restitution.

17 MR. MARK POULSEN: Okay.

18 THE JUDGE: And if it's not decided within that
19 time we'll have a hearing. Okay?

20 MR. MARK POULSEN: Okay.

21 THE JUDGE: Now, the 60 hours of community service
22 and the fine.

23 MR. MARK POULSEN: Now the fine he can pay within
24 a week.

25 THE JUDGE: One week? Okay.

1 **MR. MARK POULSEN:** And the community service I
2 would say 60 days. Are you okay with 60 days? 60 days, two
3 months.

4 **THE JUDGE:** That's the order then. Okay. Any
5 questions?

6 **MR. MARK POULSEN:** Thank you very much,
7 Your Honor.

8 **THE JUDGE:** Good luck. Good luck.

9 WHEREUPON, the hearing was concluded.

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REPORTER'S CERTIFICATION

STATE OF UTAH)
) SS.
COUNTY OF UTAH)

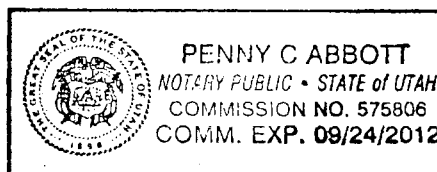
I, Penny C. Abbott, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, do hereby certify that I received the electronically recorded proceedings in the matter of State vs. Paulsen, hearing date May 11, 2010, and that I transcribed it into typewriting and that a full, true and correct transcription of said hearing so recorded and transcribed is set forth in the foregoing pages numbered 1 through 11, inclusive, including where it is indicated that the recording was inaudible.

I further certify that I am not of kin nor otherwise associated with any of the parties to this cause of action and am not interested in the event thereof.

WITNESS my hand and official seal this 5th day of May, 2011.

Penny C. Abbott

PENNY C. ABBOTT, COURT REPORTER/NOTARY
License 02-102811-7801
Notary Public, Comm Exp 9-24-12



Tab B

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IN THE FOURTH JUDICIAL DISTRICT - PROVO COURT
UTAH COUNTY, STATE OF UTAH

=====

STATE OF UTAH,)	RESTITUTION HEARING
)	
PLAINTIFF,)	
)	
vs.)	
)	
DAVID Q. POULSEN,)	CASE 101401180
)	APPEAL 20110292
)	
DEFENDANT.)	JUDGE STEVEN L. HANSEN
)	

BE IT REMEMBERED that this matter came on for hearing
before the above-named court on March 29, 2011.

WHEREUPON, the parties appearing and represented by
counsel, the following proceedings were held:

OFFICIAL CERTIFIED TRANSCRIPT
(From Electronic Recording)

COPY

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A-P-P-E-A-R-A-N-C-E-S

FOR THE STATE:

MARIANE B. O'BRYANT, ESQ.
UTAH COUNTY ATTORNEY'S OFFICE
100 EAST CENTER #2100
PROVO UT 84606

FOR DEFENSE:

MARK L. POULSEN, ESQ.
NELSON, SNUFFER, DAHLE & POULSEN
10885 SO. STATE
SANDY UT 84070

=====

TABLE OF CONTENTS

=====

PAGE REF

ARGUMENT

BY MS. O'BRYANT. 3, 9
BY MR. POULSEN 4, 10

COURT'S ORDER 11

EXHIBIT S-1 BANKRUPTCY DOC

1 P-R-O-C-E-E-D-I-N-G-S

2 (March 29, 2011)

3 THE JUDGE: Which case are we ready on?

4 MS. O'BRYANT: We're ready on David Poulsen,
5 Your Honor.

6 THE JUDGE: Okay. Number 57, David Poulsen.
7 We're here for a restitution hearing.

8 DISCUSSION BY MS. O'BRYANT

9 MS. O'BRYANT: Your Honor, we have not been able
10 to come to a resolution of this case. But we have agreed
11 rather than have testimony to, to proffer the information to
12 the court.

13 The state filed a restitution request on June 15th
14 of last year. It should be in the court's file. And that
15 restitution request has the numbers that we would proffer to
16 the court as being the full restitution that the state would
17 request. Does the court have that?

18 THE JUDGE: Full and complete restitution?
19 Let me see if I can find that. The last pleading I have is
20 January 31st.

21 MS. O'BRYANT: Right. And on June, June 15th is
22 when we filed our original request for restitution.

23 THE JUDGE: Way back. Okay.

24 MS. O'BRYANT: So it's going to be farther in the
25 file.

1 THE JUDGE: State's request for restitution, total
2 of 168,400. 82,000 to Robert Clark and 86,000 to Michael
3 Keith. Correct?

4 MS. O'BRYANT: That's correct, Your Honor. And
5 attached to that are the supporting documents for that.

6 THE JUDGE: Uh-huh (affirmative).

7 MS. O'BRYANT: And I believe that the defense
8 would stipulate that those are the numbers that are related
9 to this case.

10 THE JUDGE: Okay. All right. Let's hear from
11 the state, your proffer first and then to defense. Or you've
12 already made your proffer so--

13 MS. O'BRYANT: That, that would be our proffer,
14 Your Honor.

15 THE JUDGE: That's your.... Okay.
16 Okay. Mr. Poulsen?

17 ARGUMENT BY MR. POULSEN

18 MR. MARK POULSEN: Your Honor, may I approach?

19 THE JUDGE: Yes. Uh-huh (affirmative).

20 MR. MARK POULSEN: I think to be clear,
21 Your Honor, we would stipulate that the, the dollar figures
22 that you see there are amounts that victims put into this.

23 I, I reiterate that there has to be a nexus
24 between the allegations pled to, which is participating in a
25 pyramid scheme, and the restitution in this case. And I

1 don't believe that that 168 represents a nexus in any way,
2 shape or form to, to the injury--

3 **THE JUDGE:** That's the argument you made to me
4 that I denied though, isn't it?

5 **MR. MARK POULSEN:** I'm not sure if that's, if
6 that's what the basis of your denial was, Your Honor. I'm
7 not sure--

8 **THE JUDGE:** That was the basis--

9 **MR. MARK POULSEN:** -- if that's what you said.

10 **THE JUDGE:** -- of your case though, wasn't it?

11 **MR. MARK POULSEN:** My request was to dismiss the
12 hearing.

13 **THE JUDGE:** Yes.

14 **MR. MARK POULSEN:** I think the court can still
15 have a hearing but still make a decision as to the
16 appropriateness of the relationship between the a...

17 We DON'T concede though those victims lost that at
18 the hands of this person. There's no facts in the record to
19 support that, Your Honor. Any facts would be hearsay to
20 that effect.

21 We pled very simply to participating in pyramid
22 scheme. I asked the court in all earnest that the
23 restitution order be tied to only those facts. Otherwise we
24 wouldn't have pled to them, Your Honor.

25 I would say further, had we known that we were

1 going to be facing \$168,000 restitution I would rather take,
2 try the case and have the offense, you know, dealt with in a
3 full and fair hearing than plead to participating in a
4 pyramid scheme and still face a \$168,000 payback.

5 **THE JUDGE:** Well, if he had been found guilty you
6 would still be faced with the same consequence. They would
7 be asking for restitution for this amount.

8 **MR. MARK POULSEN:** They would be, and then, and
9 again--

10 **THE JUDGE:** We would be right here today whether
11 you pled guilty or found guilty.

12 **MR. MARK POULSEN:** But we'd probably only do it
13 to a pyramid scheme, Your Honor. That's different than
14 sticking somebody up for 168,000. They are not the same.
15 And there's not A nexus between those two, it's very very
16 crucial.

17 These people all put their money together into a,
18 pyramid scheme with, and Mr. Bosch (phonetic) who has been
19 indicted by the state--

20 **THE JUDGE:** Okay. So--

21 **MR. MARK POULSEN:** They were all victims and lost
22 on that together.

23 **THE JUDGE:** I don't mean to cut you off. But I, I
24 appreciate that argument.

25 **MR. MARK POULSEN:** Okay.

1 THE JUDGE: It's a good one and it has some
2 persuasive weight to it. I just decline to adopt it and
3 disagree.

4 So we are here today to determine the amount,
5 you've stipulated to the amount. If you have something to
6 say, you'd like to present to me as to what the amount ought
7 to be for the court.

8 MR. MARK POULSEN: Yes I do, Your Honor.

9 The, the tax statements I have here shows that the
10 victim, that the, the victim, the, the defendant in the last
11 two years has had an income of \$100,000, 99 and 101 I think
12 so--

13 THE JUDGE: Each year?

14 MR. MARK POULSEN: Each year.

15 THE JUDGE: All right.

16 MR. MARK POULSEN: That represents a, we're
17 proffering, Your Honor, that represents his effort to dig
18 out of the financial hole by working two jobs. He is an
19 X-ray technician for Intermountain Health and a, and for
20 Payson hospital. And he works two jobs. And I think it's
21 between 20 and \$25 an hour is what that would net out to
22 as a wage. Works, you know, more than a, 70, 80 hours a
23 week.

24 He has six children. One is about to leave to
25 college, another is about to leave on a mission, various

1 stages of high school and junior high and elementary.

2 He doesn't own a house. And he owns two old
3 dilapidated cars. Lives in an apartment and a, is a...

4 Again, I would represent to the court that his
5 expenses are approximately equivalent to his income. He
6 pays tithing and his other charitable contributions. And a,
7 that again he, he has a, a very little disposable income at
8 the end of, of that.

9 He's here in open court, Your Honor, you'd be free
10 to ask him questions. This is by proffer and that's what I
11 would proffer to you.

12 THE JUDGE: Okay.

13 MR. MARK POULSEN: But that a, I think that
14 he could realistically do debt service a \$10,000 obligation
15 over a period of, you know, perhaps three years. And a,
16 that that would be, that's reasonable under the
17 circumstances.

18 We're unable to, as the unusual circumstance of
19 being a, a small Class B misdemeanor with a very large a,
20 restitution amount in it, theoretically.

21 But again, I would ask the court to, to not
22 indenture this person for, for years of his life in paying
23 back an obligation, which he's already paid, lost \$300,000
24 himself and a, has done everything in his power to support
25 his family and dig out of the hole that he's in.

1 THE JUDGE: Okay. Thank you.

2 MR. MARK POULSEN: Thank you, Your Honor.

3 THE JUDGE: State's response?

4 FURTHER ARGUMENT BY MS. O'BRYANT

5 MS. O'BRYANT: If I could have just a moment to,
6 to verify the accuracy.

7 Your Honor, I don't know if you want this marked as
8 an exhibit or if I could simply submit this as part of the
9 restitution.

10 MR. MARK POULSEN: I have no objection.

11 MS. O'BRYANT: Okay. If we could have this
12 marked. This is from the bankruptcy court. Mr. Poulsen
13 filed bankruptcy in 2009. It's marked as state's EXHIBIT #1
14 and they have accepted the accuracy of this.

15 I would call the court's attention to the average
16 expenses incurred, monthly income. There's \$1,000 difference
17 there in the positive, which would seem to indicate that even
18 after all of his monthly expenses he could afford \$1,000 a
19 month payments.

20 THE JUDGE: This was dated when?

21 MS. O'BRYANT: That's I believe January of
22 2009.

23 THE JUDGE: What are the circumstances now?

24 MS. O'BRYANT: My understanding is the total
25 income that he's making is the same or greater than it was at

1 that time.

2 THE JUDGE: Do you want to respond to this?

3 FURTHER ARGUMENT BY MR. POULSEN

4 MR. MARK POULSEN: Yes. My only response,
5 Your Honor, would be that the circumstances of a, of raising
6 a family and paying, the children going to college and those
7 circumstances have, have evaporated whatever additional
8 income might be represented by that, or so-called disposable
9 income. Just the needs of a growing family, Your Honor, are
10 overwhelming in that sense.

11 THE JUDGE: Okay. So let's make sure that
12 you're both a, representing to me the standard of review for
13 the court here today. You both stipulate and agree that the
14 real purpose of the hearing is to determine not the amount of
15 restitution, that's been fixed and is full and complete at
16 the 168,400. Right? But the order should be based on his
17 ability to pay. Correct?

18 MS. O'BRYANT: Yes, Your Honor.

19 THE JUDGE: Do you agree with that?

20 MR. MARK POULSEN: I do agree with that.

21 THE JUDGE: And what you've presented to me is
22 the only evidence that I have before me to determine his
23 ability to pay. Correct?

24 MR. MARK POULSEN: Yes. As well as
25 appropriateness. If I could state for the record, as well

1 as the appropriateness of the payment in the nexus to the
2 crime is, I believe, a proper standard for the court to
3 follow.

4 **THE JUDGE:** I'm not quite sure. You keep arguing
5 that to me and I'm not sure I understand it. Because that
6 was before me before and I, I think I denied that, that
7 argument that you have made that there should be a
8 restitution that, no restitution in this case because it's
9 not appropriate to the crime that he committed.

10 **MR. MARK POULSEN:** And the only thing again I
11 would like to say for the record on that point, it's
12 appropriate to have a restitution hearing where both the
13 amount of the restitution, or both the ability to pay as
14 well as the circumstances of the restitution are
15 appropriate. I think that that is within the scope of a
16 restitution hearing.

17 **THE JUDGE:** Ms. Baldwin do you have, O'Bryant, do
18 you have anything to respond to that?

19 **MS. O'BRYANT:** Your Honor, I think the court has
20 ruled on whether restitution is appropriate in the case.
21 It's just simply the amount that needs to be addressed here
22 today

23 **COURT'S RULING**

24 **THE JUDGE:** Thank you. Okay.

25 Well, I have considered that he's working two jobs

1 and is an X-ray technician, he makes \$25 an hour. He has six
2 children. He lives in an apartment. He has no home. He
3 drives old cars.

4 That he has had income in the past two years of
5 99,000 and \$100,000 each year which is substantial income.
6 I do appreciate and find that he has little disposable income
7 but that there was a bankruptcy where he was verifying to the
8 bankruptcy court he had \$1,000 a month disposable income back
9 in January of 2009.

10 I appreciate that his expenses have gone up with
11 college and other things towards his family. But
12 restitution is an important component in this, in this case.
13 And a, some of the other luxuries of, of college educations
14 and things like that for his children, as important as that
15 is, and I don't mean to diminish that, it seems to me to be
16 a, something that he has the ability to forego, and that the
17 victims in this case should be paid before that takes place.
18 And there's an, obviously that seems to me to be an extra
19 income for him.

20 So I think that a restitution order in this case
21 from 168 ought to be a, 60,000, 30,000 to each victim, and
22 that he has the ability to pay \$1,000 a month, 500 to each of
23 those victims for five years until that's paid in full.
24 Okay?

25 **MR. MARK POULSEN:** Thank you, Your Honor.

1 **THE JUDGE:** Anything further? That's the
2 parameters of what you presented to me.

3 Is that right, Ms. O'Bryant?

4 **MS. O'BRYANT:** It is correct, Your Honor.

5 **THE JUDGE:** Mr. Poulsen? Anything else that I'm
6 missing here that that's what you wanted me to determine
7 based on the law and the facts that I have before me?

8 **MR. MARK POULSEN:** The defendant was saying he
9 can't work two jobs for five more years, he just doesn't
10 think he has the physical capacity for that.

11 **THE JUDGE:** Well he's, he's got a, he's got tax
12 returns and income of \$100,000 a year. And so I do not see
13 in any way, shape or form that I have a poverty case before
14 me here. And something is going to have to change in his
15 life-style to make sure that he maybe cuts back on a few
16 things and that this restitution is paid.

17 If his income was less than that, counsel, I'd be
18 more sympathetic with your case. But that's a substantial
19 income in this economy, many people are making far less than
20 that. So that was the most persuasive piece of evidence in
21 favor of the state in my view and justified the, especially
22 in light of the fact that his bankruptcy listed he had
23 \$6,000 a month and \$5,000 a month in expenses.

24 If he has disposable income he wants to place for
25 his children's college, that's great. But there are other

1 ways to do that, student loans, and children can work.

2 These victims need to be paid. I have reduced it
3 substantially from what was ordered in this case, what was
4 presented to me I should say in this case, based on his
5 ability today. But clearly with the facts before me today
6 he has that excess income, that income to pay this amount and
7 for this period of time to these victims.

8 Thank you.

9 **MR. MARK POULSEN:** Thank you, Your Honor.

10 **THE JUDGE:** Uh-huh (affirmative).

11 WHEREUPON, the hearing was concluded
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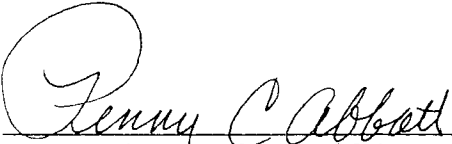
REPORTER'S CERTIFICATION

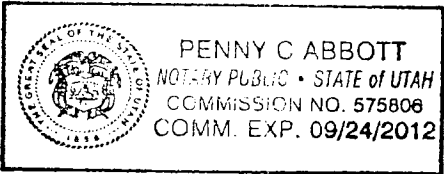
STATE OF UTAH)
) SS.
COUNTY OF UTAH)

I, Penny C. Abbott, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, do hereby certify that I received the electronically recorded proceedings in the matter of State vs. Poulsen, hearing date March 29, 2011, and that I transcribed it into typewriting and that a full, true and correct transcription of said hearing so recorded and transcribed is set forth in the foregoing pages numbered 1 through 14, inclusive, including where it is indicated that the recording was inaudible.

I further certify that I am not of kin nor otherwise associated with any of the parties to this cause of action and am not interested in the event thereof.

WITNESS my hand and official seal this 5th day of May, 2011.


PENNY C. ABBOTT, COURT REPORTER/NOTARY
License 22-102811-7801
Notary Public, Comm Exp 9-24-12



4TH DISTRICT COURT - PROVO
UTAH COUNTY, STATE OF UTAH

STATE OF UTAH, : MINUTES
Plaintiff, : RESTITUTION HEARING
 : SENTENCE, JUDGMENT, COMMITMENT
vs. :
 : Case No: 101401180 FS
DAVID Q POULSEN, : Judge: STEVEN L. HANSEN
Defendant. : Date: March 29, 2011

PRESENT

Clerk: taras
Prosecutor: OBRYANT, MARIANE B
Defendant
Defendant's Attorney(s): POULSEN, MARK L

DEFENDANT INFORMATION

Date of birth: December 16, 1969
Audio
Tape Number: 11-203 Tape Count: 10:47

CHARGES

1. PYRAMID SCHEME - Class B Misdemeanor
Plea: Guilty - Disposition: 05/11/2010 Guilty
2. PYRAMID SCHEME - Class B Misdemeanor
Plea: Guilty - Disposition: 05/11/2010 Guilty

HEARING

TAPE: 11-203 COUNT: 10:47

This matter comes before the court for a restitution hearing.

Mrs. O'Bryant proffers testimony. Mr. Poulsen proffers testimony.

Mr. Poulsen stipulates to the dollar amounts the victims have invested. Mrs. O'Bryant responds. The court orders restitution in the amount of \$60,000.00.

The court orders \$30,000.00 to be paid to Robert Clark and \$30,000.00 to be paid to Michael Keith.

SENTENCE JAIL

Based on the defendant's conviction of PYRAMID SCHEME a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s). The total time suspended for this charge is 180 day(s).

Based on the defendant's conviction of PYRAMID SCHEME a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s). The total time suspended for this charge is 180 day(s).

Case No: 101401180 Date: Mar 29, 2011

SENTENCE FINE

Charge # 1 Fine: \$1000.00
Suspended: \$1000.00
Due: \$0.00

Charge # 2 Fine: \$1000.00
Suspended: \$1000.00
Due: \$0.00

Total Fine: \$2000.00
Total Suspended: \$2000.00
Total Surcharge: \$0
Total Principal Due: \$0
Plus Interest

COMMUNITY SERVICE

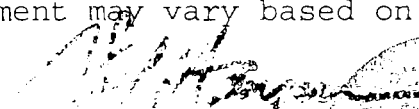
Complete 60 hour(s) of community service.
Restitution Amount: \$30000.00 Plus Interest
Pay in behalf of: ROBERT CLARK

Restitution Amount: \$30000.00
Pay in behalf of: MICHAEL KEITH

SCHEDULED TIMEPAY

The following cases are on timepay 101401180.
The defendant is to pay \$1000.00 monthly on the 29th.
The number of payments scheduled is 63 plus a final payment of \$748.75.
The first payment is due on 4/29/2011 the final payment of \$748.75 is due on 07/29/2016. The final payment may vary based on interest.

Date: 3-29-11


STEVEN L. HANSEN
District Court Judge


STAMP USED AT DIRECTION OF JUDGE

Tab C

Utah Code
Title 77
Utah Code of Criminal Procedure
Chapter 38a
Crime Victims Restitution Act
Section 302
Restitution criteria.

77-38a-302. Restitution criteria.

(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection 77-38a-102(14) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.

(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.

(5) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(iii) the cost of necessary physical and occupational therapy and rehabilitation;

(iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim;

(v) up to five days of the individual victim's determinable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense; and

(vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider the factors listed in Subsections (5)(a) and (b) and:

(i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines may make restitution inappropriate.

(d) (i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete restitution and court-ordered restitution, and shall make all restitution orders at the time of sentencing if feasible, otherwise within one year after sentencing.

(ii) Any pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole.

(e) The Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

Amended by Chapter 96, 2005 General Session

Utah Code
Title 76
Utah Criminal Code
Chapter 2
Principles of Criminal Responsibility
Section 102
Culpable mental state required -- Strict liability.

76-2-102. Culpable mental state required -- Strict liability.

Every offense not involving strict liability shall require a culpable mental state, and when the definition of the offense does not specify a culpable mental state and the offense does not involve strict liability, intent, knowledge, or recklessness shall suffice to establish criminal responsibility. An offense shall involve strict liability if the statute defining the offense clearly indicates a legislative purpose to impose criminal responsibility for commission of the conduct prohibited by the statute without requiring proof of any culpable mental state.

Amended by Chapter 90, 1983 General Session