

2016

**State of Utah Plaintiff/ Appellee vs. Alan Wayne Strebeck
Defendant/ Appellant**

Utah Court of Appeals

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Case No. 20141190-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

ALAN WAYNE STREBECK,
Defendant/Appellant.

Brief of Appellee

Appeal from an order affecting restitution, in the Fifth Judicial
District, Washington County, the Honorable G. Michael
Westfall presiding

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Oral Argument Not Requested

FILED
UTAH APPELLATE COURTS

MAR 21 2016

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Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals from an order affecting restitution. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West Supp. 2015).

INTRODUCTION

Defendant pleaded guilty to theft and securities fraud, both second-degree felonies. Under the terms of his plea agreement, he agreed to pay \$3.8 million in full restitution. Two and a half years later he asked for a full restitution hearing, which the court denied. Defendant also asked for a determination of the current restitution amount minus the restitution payments he had already made. The court invited Defendant to present evidence on this issue, but Defendant said that he would submit a motion at a later time. The court agreed. Defendant, however, never filed his motion.

At the same hearing, the State asked the court to determine whether Defendant's monthly restitution amount should be higher. After hearing testimony from several witnesses, including Defendant and his probation officer, the court increased the monthly restitution payment from \$850 to \$1,500 a month. Defendant did not object to the increased amount.

STATEMENT OF THE ISSUES

Issue 1: Did the district court abuse its discretion in agreeing to a hearing to determine whether Defendant's monthly restitution payments were being properly credited, while denying Defendant's request for a hearing on the full restitution amount?

Standard of Review. Denial of a request for a full restitution hearing is reviewed for an abuse of discretion. *See State v. Poulsen*, 2012 UT App 292, ¶18, 288 P.3d 601.

Issue 2: Did the district court abuse its discretion when it increased Defendant's monthly restitution amount?

Standard of Review. "[I]n the case of restitution, a reviewing court will not disturb a district court's determination unless the court exceeds the authority prescribed by law or abuses its discretion." *State v. Beckstrom*, 2013 UT App 186, ¶7, 307 P.3d 677 (quoting *State v. Laycock*, 2009 UT 53, ¶10, 214 P.3d 104).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following statutes are reproduced in Addendum A:

Utah Code Ann. § 77-38A-203 (West Supp. 2013)

Utah Code Ann. § 77-38A-302 (West Supp. 2013)

STATEMENT OF THE CASE

A. Summary of facts.

Between September 2008 and November 2009, Defendant was investigated for securities fraud and theft. R7-25; 69-70. The investigation revealed that Defendant sold unregistered securities, was not licensed to sell securities, defrauded his investors, made false and misleading statements, and used his investors' money for purposes other than what he said it would be used for. R7-24, 70. The investigator calculated the total amount of theft at \$3,834,300. R72, 100-104.

B. Summary of proceedings.

Defendant was charged with one count of securities fraud, a third-degree felony, and five counts of securities fraud, six counts of theft, one count of exploitation of a disabled or elder adult, and one count of pattern of unlawful activity, all second-degree felonies. R1-5. In exchange for a guilty plea to one count each of securities fraud and theft, both second-degree felonies, Defendant agreed to "pay full restitution in the amount of

\$3,834,300," with the "[m]onthly restitution payments to be determined by Adult Probation and Parole" (AP&P). R72. *See also* R66-67; 384:2.

This plea agreement term was written into the plea affidavit, which Defendant acknowledged he had read and adopted as his own. R72; 384:4. At no time during the change-of-plea hearing did Defendant ever object to or give any hint of dissatisfaction or disagreement with his stipulation that he would pay \$3,834,300 in restitution.¹ R384:2-10.

It was no different at the sentencing hearing. Without objection from Defendant, the district court ordered the agreed-upon restitution—\$3,834,300. R97-98, 385:18. When the court queried the parties about the necessity of a restitution hearing, the prosecutor explained, "We have the dollar figure agreed, your honor." R385:15. The court then observed—without any objection from Defendant—that a restitution hearing was not necessary. R385:15. Defendant was sentenced to a suspended statutory prison term, placed on 36 months' probation, and ordered to make monthly restitution payments as determined by AP&P.² R95-98, 385:17-18.

Two and a half years later, Defendant filed a motion for a restitution hearing, and the State filed a probation revocation motion. R185, 200-04. At

¹The change-of-plea hearing transcript is attached as Addendum B.

²The sentencing hearing transcript is attached as Addendum C.

an evidentiary hearing on both motions, Defendant's counsel asserted that "the initial [restitution] amount that was ordered was either inaccurate or has been reduced. So we just want to make sure that there is an accurate determination of what the restitution truly is." R386:10. When pressed by the court, counsel explained that the "true principal amount . . . hasn't been determined yet. The 3.8 million is not an accurate reflection of what the actual restitution should be in the case." R386:10. Relying on section 77-38A-302, counsel argued that "if there's an objection to the amount then a hearing can be held on it, and so that's what we're objecting to, the amount."³ R386:11. *See also* Utah Code Ann. § 77-38A-302(4).

Counsel conceded that no objection to the restitution amount was made when restitution was ordered, but argued "that the statute itself doesn't require that the objection be given at that time." R386:11. The court rejected counsel's argument. R386:11-12. It ruled that because Defendant could have appealed the restitution amount when it was first ordered, but did not, he was not entitled to challenge it over two years later. R386:12.

Defendant then asked for an accounting of the current restitution amount minus the payments he had already made. R386:12. Because there was a dispute about whether Defendant's payments had been applied to the

³The evidentiary hearing transcript is attached as Addendum D.

accrued interest first, rather than the principal amount, the court invited Defendant to present evidence on the issue. R386:14-15. Defendant opted not to present any evidence at that time, explaining that he could "solve that problem just by filing a motion later on if . . . we want to have that application." R386:16. The district court agreed. R386:16.

Finally, the prosecutor asked the court to consider whether Defendant's current monthly restitution amount of \$850 should be raised. R386:20 (" . . . and that's again what I'm making to your Honor is that we believe that [Defendant] can pay a lot more than \$850 a month."). The court heard testimony about Defendant's financial status from two of his victims, Defendant's probation officer, and Defendant himself. R386:24-52.

The district court found that sufficient evidence had been presented to "to justify an increase in the payment. I'm going to order that the defendant pay \$1500 a month beginning with the month of November toward restitution." R386:55. The court then ordered AP&P to set a payment schedule as it had previously been ordered to do. R386:55. The court also explained that if a concern arose about the monthly payment amount AP&P established, either party could petition the court to review AP&P's actions and determine whether the monthly payment amount was appropriate. R386:55-56.

Defendant never objected to the court's decision to increase his monthly payment amount by \$650 or to the process established by the court for challenging the monthly restitution amount. Nor did Defendant seek to avail himself of that process.⁴ He filed a timely notice of appeal from the court's order. R212.

SUMMARY OF ARGUMENT

Point I. When a defendant objects to the imposition, amount, or distribution of restitution, he is entitled to a full hearing on the issue. But here, Defendant agreed to the precise amount of full restitution owed as one of the terms of his plea agreement. By doing so, he waived his statutory right to a full hearing to determine the amount. The district court therefore did not abuse its discretion when it denied Defendant's request for a full restitution hearing two and a half years after he stipulated to the restitution amount.

Defendant also asked the court for a hearing to determine whether his monthly restitution payments were being properly credited and whether the payments had reduced the full restitution amount. The court allowed

⁴Eight months after the evidentiary hearing, Defendant's probation was revoked, the stay of his sentence was lifted, and he was sent to prison. R379-80. The court again ordered full restitution in the amount of \$3,834,300 and turned the matter of restitution over to the Board of Pardons and Parole. R380.

Defendant to present evidence on this issue, but Defendant said that he would file a motion at a later date. He never did. Nevertheless, the accounting hearing he seeks is still available to him.

Point II. Defendant never objected to the district court's decision to increase his monthly restitution payment from \$850 to \$1,500. This issue is therefore unpreserved and he does not argue plain error or any other exception to the preservation rule. Even so, nothing precludes Defendant from seeking relief by using the process the district court established for challenging the monthly restitution amount.

ARGUMENT

I.

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING A HEARING TO DETERMINE IF DEFENDANT'S MONTHLY RESTITUTION PAYMENTS WERE BEING PROPERLY CREDITED, WHILE DENYING A FULL RESTITUTION HEARING ON THE AMOUNT DEFENDANT HAD AGREED TO PAY.

Defendant asserts that the district court erred when it did not grant his request for a full restitution hearing, which he made two and a half years after he stipulated to the restitution amount ordered. Apl't. Br. at 5-6; R386:10. But he stresses that he "does not desire to oppose the restitution judgment itself. He desires the hearing so that he can show subsequent

payment and receive credit for the same so that his judgment amount may be reduced.” Aplt. Br. at 8. In other words, Defendant apparently alleges only that the court erred for not giving him a hearing to determine whether his monthly restitution payments were being properly credited. Defendant has not shown any error.

As a threshold matter, because the district court agreed to give Defendant—for the asking—a hearing on the very thing he now complains he did not get, to the extent he alleges that the district court wrongfully denied him a full restitution hearing to determine the amount of restitution he agreed to, he has not shown that the court abused its discretion. A district court is required to hold a full restitution hearing only when a defendant “objects to the imposition, amount, or distribution of the restitution.” Utah Code Ann. § 77-38A-302(4). But when the full amount of restitution is agreed to in advance, a defendant waives a full restitution hearing because the restitution amount is necessarily uncontested. *See State v. Weeks*, 2000 UT App 273, ¶8, 12 P.3d 110 (defendant waived his entitlement to restitution hearing where he did not object, question, or even mention restitution at sentencing), *aff’d on other grounds*, 61 P.3d 1000 (Utah 2002). *See also State v. Keele*, 2006 UT App 119U, *2 (“Defendant waived her right to a restitution hearing by waiting almost eight years to object to the

amount and calculation of the restitution award.”).

Here, as part of a negotiated plea agreement, Defendant knowingly and voluntarily agreed to “pay full restitution in the amount of \$3,834,300.” R72. *See also* R66-67; 384:2. That term was expressly written into the plea affidavit, which Defendant acknowledged he had read and adopted as his own. R72; 384:4. The \$3,834,300 restitution figure was also included in the presentence investigation report (PSI). R86-87. At sentencing, the court ordered restitution in the agreed-upon amount, without objection from Defendant. R97-98, 385:18. And Defendant raised no objection when the court concluded that a restitution hearing would not be necessary because the parties had already agreed to a sum certain in full restitution.⁵ R385:15.

Because Defendant agreed to pay full restitution in the amount of \$3,834,300 as part of his plea agreement with the State, and raised no objection at the time of sentencing to that precise amount in the PSI or when the court ordered restitution, he waived his right to a full restitution hearing on the matter. *See* Utah Code Ann. § 77-38A-203(2)(d) (“If any party fails to challenge the accuracy of the presentence investigation report at the time of

⁵Defendant told his attorney at the evidentiary hearing held two and half years later that “he did actually object at the time of the sentencing to the [restitution] amount.” R386:13. The sentencing hearing transcript shows that Defendant’s representation to counsel was patently incorrect.

sentencing, that matter shall be considered to be waived."). Thus, to the extent that Defendant challenges the district court's denial of a full restitution hearing two and half years after he was sentenced, he has not shown any abuse of discretion.

As for Defendant's complaint that the district court refused his request for an accounting hearing, the record shows that the court agreed to hold a hearing to determine whether the monthly restitution payments he had already made were being properly credited. Defendant just never asked for one.

After Defendant's request for a full restitution hearing was denied, counsel asked for a hearing "to at least determine what the restitution amount would be now. If [Defendant has] made payments since that sentencing, then that would be at least something that could be reviewed." R386:12. The court pointed out that whether the \$3,834,300 amount was reduced by Defendant's monthly restitution payments would depend on whether the payments were applied to the accrued interest first, or the principal. R386:12. The court assumed that the monthly payments were being applied to the accrued interest first. R386:12.

But when counsel directed the court's attention to section 77-38A-401—which allows restitution payments to be credited to the principal

amount first, and the remainder to the accrued interest—a genuine dispute arose over how Defendant’s payments were being credited. R386:14-15. The court thus stated that it would “hear evidence on that if you want me to.” R386:13. The court told counsel, “if you have something for me today, I’d like to take a look at it. I don’t think my ruling today, at least as it goes forward, would preclude your presenting that, because I intend to follow whatever rules are applicable to the payment of restitution in this case.” R386:15. Counsel responded, “Your Honor, I think we could actually solve that problem just by filing a motion later on if . . . we want to have that application.” R386:16. The court agreed. R386:16.

While Defendant faults the court for not granting him a hearing to determine whether his monthly restitution payments were being properly credited, the record proves the opposite. The court told Defendant that its ruling denying him a restitution hearing on the full restitution amount did not preclude a hearing on whether Defendant’s monthly restitution payments were being properly credited and, by implication, whether that would have an effect on the principal amount. Defendant has yet to seek such an accounting in the district court, but nothing prevents him from doing so. In other words, the remedy he seeks is already available to him.

Accordingly, this Court should affirm the district court.

II.

DEFENDANT'S CLAIM THAT THE DISTRICT COURT *SUA SPONTE* INCREASED HIS MONTHLY RESTITU- TION AMOUNT IS UNPRESERVED; IN ANY EVENT, A REMEDY IN DISTRICT COURT IS READILY AVAILABLE.

Defendant argues that the district court "*sua sponte*" increased his monthly restitution payment without properly considering all relevant statutory factors. Aplt. Br. at 8 (citing Utah Code Ann. § 77-38A-302(5)(b)-(c)). He asserts that because his request for a restitution hearing was denied, he was unable to present evidence that his financial circumstances had materially changed from when restitution was first ordered. Aplt. Br. at 9. He requests "that the lower court's arbitrary increase" of his monthly restitution amount "be reversed until a full hearing, with proper statutory analysis, can be held." Aplt. Br. at 9. This claim is unpreserved and Defendant argues no exception to the preservation rule. This Court should thus not review it. But even if it does, Defendant shows no error, let alone an obvious one, because the district court's order was not arbitrary, but was based on Defendant's own testimony about his financial situation.

"As a general rule, claims not raised before the trial court may not be raised on appeal." *State v. Holgate*, 2000 UT 74, ¶11, 10 P.3d 346. "The

preservation requirement is based on the premise that, 'in the interest of orderly procedure, the trial court ought to be given an opportunity to address a claimed error and, if appropriate, correct it.'" *State v. Cruz*, 2005 UT 45, ¶33, 122 P.3d 543 (quoting *Holgate*, 2000 UT 74, ¶11). Thus, "to preserve an argument, it must be raised in such a manner as to allow the court . . . an opportunity to correct any error." *Gray v. Dep't of Workforce Servs.*, 2015 UT App 248, ¶7, 360 P.3d 802.

Here, the court's decision to increase the monthly restitution amount was not "*sua sponte*." Rather, the prosecutor asked the court to consider raising Defendant's monthly restitution amount. R386:20. Defendant did not object to considering the prosecutor's request. Indeed, Defendant himself testified about his financial circumstances. Based on the testimony it had heard, the court found that sufficient evidence had been presented to "to justify an increase in the payment. I'm going to order that the defendant pay \$1500 a month beginning with the month of November toward restitution." R386:55.

Defendant also never objected to the court's decision. He never asserted that the increase was arbitrary or inappropriate. He never argued that the court did not consider all of the relevant statutory factors. He never suggested that he needed more time to respond to the prosecutor's request.

Indeed, he never alerted the court that he in any way disagreed with or had a reason to oppose the court's decision. This failure prevented the court from correcting the alleged errors Defendant now raises. He therefore failed to preserve this issue for appeal.

"When a party raises an issue on appeal without having properly preserved the issue below, we require that the party articulate an appropriate justification for appellate review; specifically, the party must argue either plain error or exceptional circumstance[s]." *State v. Winfield*, 2006 UT 4, ¶14, 128 P.3d 1171 (citation and internal quotation marks omitted). Nowhere in Defendant's brief does he articulate a justification, such as plain error or ineffective assistance of counsel, that would permit this Court to consider his unpreserved claim. Thus, this Court should not even address it.

But if it does, this Court should reject it because Defendant already has an avenue for relief that he has yet to pursue. After the district court increased the monthly restitution amount, it ordered AP&P to set a payment schedule as it had been previously ordered to do. R386:55. The court added that if any concern arose over the monthly payment amount, either party could petition the court to review the amount to determine if it was appropriate. R386:55-56.

Defendant has never taken advantage of the district court's invitation to adjust the amount. If he now believes his monthly restitution amount is inappropriate, nothing prevents him from petitioning the district court to review it. Because a readily available mechanism for relief already exists, this Court should simply affirm the district court.

CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted on March 21, 2016.

SEAN D. REYES
Utah Attorney General

A handwritten signature in black ink that reads "Mark C. Field". The signature is written in a cursive, slightly stylized font. The "M" is large and loops around the "a", and the "F" is also large and loops around the "i". The "C" is small and sits between the "a" and the "F". The "l" is a simple vertical stroke, and the "d" is a simple loop.

MARK C. FIELD
Assistant Attorney General
Counsel for Appellee

CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(f)(1), Utah R. App. P., this brief contains 3,243 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with rule 27(b), Utah R. App. P., this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Book Antiqua 13 point.

A handwritten signature in black ink that reads "Mark C. Field". The signature is written in a cursive style with a large, stylized "F".

MARK C. FIELD
Assistant Attorney General

CERTIFICATE OF SERVICE

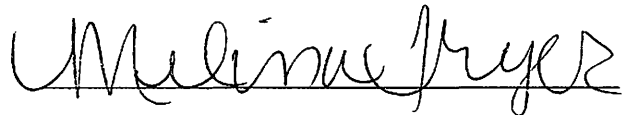
I certify that on March 21, 2016, two copies of the Brief of Appellee were ☒ mailed ☐ hand-delivered to:

Nicholas I. Chamberlain
35 South 400 West, #301
St. George, Utah 84770-4177

Also, in accordance with Utah Supreme Court Standing Order No. 8, a courtesy brief on CD in searchable portable document format (pdf):

☒ was filed with the Court and served on appellant.

☐ will be filed and served within 14 days.



Addenda

Addendum A

§ 77-38a-203. Restitution determination—Department of Corrections—Presentence investigation

(1) (a) The department shall prepare a presentence investigation report in accordance with Subsection 77-18-1(5). The prosecutor and law enforcement agency involved shall provide all available victim information to the department upon request. The victim impact statement shall:

- (i) identify all victims of the offense;
- (ii) itemize any economic loss suffered by the victim as a result of the offense;
- (iii) include for each identifiable victim a specific statement of the recommended amount of complete restitution as defined in Section 77-38a-302, accompanied by a recommendation from the department regarding the payment by the defendant of court-ordered restitution with interest as defined in Section 77-38a-302;
- (iv) identify any physical, mental, or emotional injuries suffered by the victim as a result of the offense, and the seriousness and permanence;
- (v) describe any change in the victim's personal welfare or familial relationships as a result of the offense;
- (vi) identify any request for mental health services initiated by the victim or the victim's family as a result of the offense; and
- (vii) contain any other information related to the impact of the offense upon the victim or the victim's family that the court requires.

(b) The crime victim shall be responsible to provide to the department upon request all invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss. The crime victim shall also provide upon request:

- (i) all documentation and evidence of compensation or reimbursement from insurance companies or agencies of the state of Utah, any other state, or federal government received as a direct result of the crime for injury, loss, earnings, or out-of-pocket loss; and
 - (ii) proof of identification, including date of birth, Social Security number, drivers license number, next of kin, and home and work address and telephone numbers.
- (c) The inability, failure, or refusal of the crime victim to provide all or part of the requested information shall result in the court determining restitution based on the best information available.

(2) (a) The court shall order the defendant as part of the presentence investigation to:

- (i) complete a financial declaration form described in Section 77-38a-204; and
- (ii) submit to the department any additional information determined necessary to be disclosed for the purpose of ascertaining the restitution.

(b) The willful failure or refusal of the defendant to provide all or part of the requisite information shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed information.

(c) If the defendant objects to the imposition, amount, or distribution of the restitution recommended in the presentence investigation, the court shall set a hearing date to resolve the matter.

(d) If any party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

§ 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:

(i) the factors listed in Subsections (5)(a) and (b);

(ii) the financial resources of the defendant, as disclosed in the financial declaration

described in Section 77-38a-204;

(iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

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

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

(vi) other circumstances that 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.

Addendum B

IN THE FIFTH JUDICIAL DISTRICT COURT
OF WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

ALAN WAYNE STREBECK,

Defendant.

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Case No. 111500728 FS

Hearing
Electronically Recorded on
April 9, 2012

BEFORE: THE HONORABLE G. RAND BEACHAM
Fifth District Court Judge

APPEARANCES

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1 police report, I have talked to them. They have given approval.
2 There are some other investors that it talks about having
3 invested. It doesn't specifically lay out there as far as police
4 report as to their money being directly stolen or otherwise, so I
5 haven't talked to the miscellaneous investors. The main ones
6 that are part of the 14 counts I have spoken to.

7 THE COURT: Okay. This \$3,800,000 some-odd thousand
8 figure, is that what these numbers on Exhibit A to the affidavit
9 add up to, or is it a different list?

10 MR. WEEKS: On Exhibit --

11 THE COURT: Exhibit A to the probable cause affidavit.
12 I think that's what this is, anyway. That's the only thing I saw
13 in the file. Yeah, there's an affidavit of probable cause by
14 Mr. Stewart, and an exhibit listing 1, 2, 3, 4, 5, 6, 7, 8, 9,
15 10, 11 amounts.

16 MR. WEEKS: Those are -- those are part of it. In
17 addition to those amounts the total restitution includes the
18 miscellaneous investors that I mentioned as well.

19 THE COURT: Uh-huh. Okay. Mr. Boyack, does your client
20 have a written plea agreement that's been reviewed?

21 MR. BOYACK: I do, your Honor, and I might say as to
22 restitution amount that there is an adversarial proceeding
23 judgment in the federal bankruptcy court, and I'm just kind of
24 curious as to how when we get -- are making restitution, we just
25 notify the trustee, I suppose, of whatever restitution amounts we

1 make on this case, and then they'll credit it, I assume. I
2 haven't handled that before where --

3 THE COURT: I have no thoughts on that.

4 MR. WEEKS: I haven't seen those civil proceedings held,
5 but I have spoken to the victims, and they indicate that there's
6 a clause in there that if they are paid through another source
7 that that would create credit toward the bankruptcy statement.

8 THE COURT: Uh-huh. Okay. Any other details you want
9 to mention outside the written plea agreement?

10 MR. BOYACK: No, I think we're ready to proceed, your
11 Honor.

12 THE COURT: Okay.

13 MR. BOYACK: If I may remain seating? I'm just going to
14 have Mr. Strebeck -- I've already dated and put an X where I'm
15 asking the Court to witness his signature. I would represent
16 that he has read, discussed with me and has talked about the
17 entirety of the plea agreement. May the record reflect that I am
18 now passing the agreement over to Mr. Weeks for his signature,
19 and then later on to the Court?

20 (Defendant signs statement in open court)

21 THE COURT: Mr. Strebeck, have you read all of this plea
22 agreement?

23 MR. STREBECK: Yes, sir.

24 THE COURT: Okay. The plea agreement tells you the
25 elements of the two charges that are in the amended Information

1 reduced from the very long list of 2nd Degree Felonies originally
2 filed. It says between certain dates, what the factual statement
3 regarding your case is. That's at the bottom of page 2 and over
4 onto page 3. Is that statement accurate?

5 MR. STREBECK: Yes, sir.

6 THE COURT: Okay. There's a section of the plea
7 agreement from page 3 to 4 about the constitutional rights that
8 you're waiving. Then from page 4 to 5, a section on the
9 consequences of a guilty plea, including a pre-sentence
10 investigation with Adult Probation and Parole. Do you understand
11 what that involves?

12 MR. STREBECK: Yes, sir.

13 THE COURT: Okay. Now I have informed the attorneys
14 who consulted with me last week concerning this proposed plea
15 agreement -- excuse me -- that I could accept the plea agreement
16 term to no jail or prison time only so long as the people
17 identified as victims of your crimes are in agreement with that.
18 If there is disagreement with that that occurs, what I would be
19 doing is asking you if you want to withdraw your plea, okay?

20 MR. BOYACK: He understands that, your Honor.

21 THE COURT: Okay. Now the paragraph after the sentence
22 regarding no jail or prison time is the paragraph that tells you
23 that otherwise I'm not binding myself as to what your sentence or
24 your probation order would be, and I don't think I've heard
25 enough about the case to do that. I have approved that provision

1 conditional on the victims being satisfied with it. Whatever
2 else happens, I don't know. I'd have to hear from more people
3 about their recommendations and about the circumstances. Any
4 question about what I mean?

5 MR. STREBECK: No, sir.

6 THE COURT: Okay. You did sign this here today, it
7 appears.

8 MR. STREBECK: Yes.

9 THE COURT: And it's signed by the attorneys.
10 Mr. Strebeck, do you feel like you have been pressured to do a
11 plea agreement?

12 MR. STREBECK: No.

13 THE COURT: You understand that you have not even had a
14 preliminary hearing on the charges?

15 MR. STREBECK: Yes.

16 THE COURT: We did have that scheduled last week. We
17 could reschedule a preliminary hearing if you'd rather go that
18 direction. It would be your right to do that. Do you know what
19 a preliminary hearing would involve?

20 MR. STREBECK: I don't (inaudible).

21 THE COURT: Okay. A preliminary hearing is an evidence
22 hearing, and the prosecution is obligated to provide sufficient
23 evidence for the Court to conclude that there's probable cause to
24 believe you committed the crimes. It's nothing like beyond a
25 reasonable doubt, which would be the standard at a trial.

1 For a preliminary hearing there has to be some evidence
2 that leads the Court to a reasonable belief that you committed
3 the crimes charged. If there is that kind of evidence, the
4 consequence is that the case goes on. If it does and you plead
5 not guilty, then you have a jury trial and all of the rights and
6 protections of a jury trial. If there is not enough evidence at
7 a preliminary hearing, the Court can dismiss charges or reduce
8 them to something else. That's what we do, and you're giving up
9 a preliminary hearing if you accept the plea agreement.

10 MR. STREBECK: Yes.

11 THE COURT: Okay. Do you feel like you've been rushed
12 into this and you need more time to discuss it with Mr. Boyack?

13 MR. STREBECK: No, we've had plenty of time to discuss
14 it, and I'm (inaudible).

15 THE COURT: All right. Is there anything that's being
16 promised to you that's in any way secret or not disclosed at this
17 point in time?

18 MR. STREBECK: No, there is not.

19 THE COURT: Okay. Are you currently under the influence
20 of alcohol, drugs or medications?

21 MR. STREBECK: No, I'm not.

22 THE COURT: All right. It is your choice, sir, to enter
23 the plea agreement or not. Do you want to enter these guilty
24 pleas or not?

25 MR. STREBECK: Yes, I do.

1 THE COURT: All right. The Court will accept those
2 pleas. The Court finds that they are made knowingly and
3 voluntarily upon advice of Counsel and with an understanding of
4 the consequences and potential consequences, and the fact
5 statement in the plea agreement is sufficient to support these
6 two charges. So the Court's order is executed. The plea
7 agreement will be accepted and entered, and judgment of
8 conviction will be rendered on those two pleas. With that, we'll
9 need to refer Mr. Strebeck to the Office of Adult Probation and
10 Parole for a pre-sentence investigation. The six week date for
11 sentencing would be May 24th.

12 MR. BOYACK: Is there a possibility of another day? I
13 have a -- I believe a termination of parental rights trial. It's
14 an all day affair on that day.

15 THE COURT: The following week would be the 31st of May.

16 MR. BOYACK: Thirty what?

17 THE COURT: The 31st.

18 MR. BOYACK: That's our juvenile court training in Salt
19 Lake. I'm sorry, if we could do it --

20 THE COURT: Let's see if there's another time we could
21 schedule it.

22 MR. BOYACK: On the 8th of June I'm doing a presentation
23 on a CLE at Weber State, so --

24 THE COURT: Well, the 8th would be a Friday.

25 MR. BOYACK: -- we could go a week after that.

1 THE COURT: The 7th -- the 7th would have a sentencing
2 calendar.

3 MR. BOYACK: I could -- I have some juvenile court
4 matters, but I could do the sentencing if the Court would maybe
5 give me a second call or something.

6 THE COURT: What about June 7th, Mr. Weeks? Is that too
7 long, acceptable?

8 MR. WEEKS: I believe that would work.

9 THE COURT: Okay. Let's put it on June 7th, and so that
10 it's not just bunched with the other cases, let's set it at 4
11 o'clock on June 7th.

12 MR. BOYACK: Okay.

13 THE COURT: Okay. I should be finished with the other
14 cases by then.

15 MR. BOYACK: I want the Court to know I'll have turned
16 72 on the 7th of June, so --

17 THE COURT: Really?

18 MR. BOYACK: It's my birthday that day.

19 THE COURT: Okay.

20 (Court confers with court clerk)

21 THE COURT: All right. Okay. We will schedule that
22 then for the 7th. In the meantime, the defendant needs to get in
23 touch with Adult Probation and Parole right away. There won't be
24 time to do it today, so it had better be tomorrow.

25 MR. BOYACK: Thank you, your Honor.

1 THE COURT: Okay. Anything else, Mr. Weeks?

2 MR. WEEKS: No. Thank you.

3 THE COURT: No? All right. That concludes that matter.

4 The Court's in adjournment until tomorrow.

5 (Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

I, Natalie Lake, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.

That I have been authorized by Beverly Lowe to prepare said transcript, as an independent contractor working under her court reporter's license, appropriately authorized under Utah statutes.

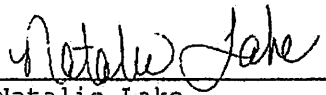
That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

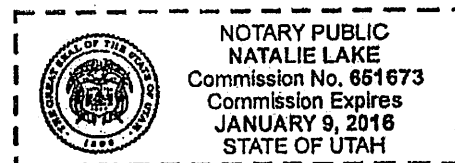
That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.


WITNESS MY HAND AND SEAL this 22nd day of August 2015.

My commission expires:
January 9, 2016



Natalie Lake
NOTARY PUBLIC
Residing in Tooele County





Beverly Lowe, RSR, CCR

Addendum C

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THE COURT: It's time for us to start the balance of the calendar. State vs. Strebeck is the last case to be heard today. It's calendered for sentencing. Mr. Strebeck is present with Counsel, Mr. Boyack. Mr. Weeks for the State.

MR. BOYACK: Your Honor, I came prepared today thinking that we were going to get quite a large amount of opposition to what the pre-sentence report indicates and what our plea agreement indicated. I have subsequently learned at the 11th hour that apparently the vast majority of the victims are on board with the plea agreement and the PSI. If that is not the case, then I'll address their individual concerns, should they raise any, to the Court --

1 THE COURT: Uh-huh.

2 MR. BOYACK: -- later, but rather than waste the Court's
3 time in a long drawn out statement, I think that the best thing
4 would be to let the Court know that I think this is a just result
5 to a very difficult and complex case, and that it is amazing to
6 me -- I had thoroughly, as I indicated to the Court in chambers
7 with Counsel, believed that the recommendation of AP&P would be
8 something far different than what we got in the final analysis.

9 So I really hadn't anticipated saying these words, I
10 would request the Court to follow the recommendations of AP&P.
11 So that's where we are is to ask the Court to follow their
12 recommendations, and of course, that is in line with the pre-
13 agreement that was reached in this matter. So I'll submit it
14 on that subject to being able to address any concerns that may
15 arise.

16 THE COURT: Okay. I do need to have Counsel make sure
17 that you remind me of any discussion we've had regarding
18 sentencing in the pre-sentence -- the expected or the anticipated
19 pre-sentence recommendations. Was there any kind of a Rule 11
20 review with me?

21 MR. WEEKS: Yes, your Honor. We talked to your Honor
22 about this, and your Honor indicated that you would be willing to
23 go along with the terms of the plea agreement as long as there
24 were no victims that came forward saying that they were opposed
25 to that.

1 THE COURT: Okay. That was my concern. Mr. Strebeck,
2 do you want to say anything before sentencing?

3 MR. BOYACK: He'll reserve it until after any statements
4 have been made by victims.

5 THE COURT: Well, I want to hear from him first.

6 MR. BOYACK: Okay.

7 MR. STREBECK: Your Honor, I too was pleasantly
8 surprised with the AP&P report. I'm glad that it went along with
9 what my plea agreement was, and that's what I've always been
10 prepared to do is to make restitution to my clients and now the
11 victims.

12 THE COURT: So how are you going to restore \$4 million?

13 MR. STREBECK: The same way that I would -- well, a
14 little bit difficult from where I am now because I've not
15 collected on the 4 million that was owed to me, but I will
16 certainly do whatever I can to make that restitution possible.

17 THE COURT: That's pretty vague.

18 MR. STREBECK: I have no -- I have nothing more than
19 that at this point in time until we finish that -- the AP&P --

20 MR. BOYACK: I just remind the Court that we had agreed
21 that the AP&P at a separate time would indicate whatever rate of
22 pay he could pay back on restitution.

23 THE COURT: Uh-huh.

24 MR. BOYACK: So I know the victims have been concerned
25 there's been no effort in any way, shape or form, and I would

1 inform them that that's because of the plea agreement that AP&P
2 was to determine what would be the logical amount for the pay
3 back.

4 THE COURT: Uh-huh.

5 MR. BOYACK: And so there isn't any way Mr. Strebeck had
6 of making restitution until that determination is made, which has
7 yet to be done.

8 THE COURT: Anything else?

9 MR. STREBECK: Well, just my regrets that my actions
10 have caused the pain and suffering to my victims. I fully
11 understand what they've gone through and --

12 THE COURT: You do?

13 MR. STREBECK: Yes, because I'm on the receiving end on
14 the other side of that. So I do understand what they're going
15 through.

16 THE COURT: Okay. Anything else?

17 MR. STREBECK: No, I just -- I'm just grateful for their
18 continued support and patience with me.

19 THE COURT: All right. Mr. Weeks?

20 MR. WEEKS: Your Honor, we have three victims that would
21 like to make statements. Richard Smith, Stan Conder and Ed
22 Keyes.

23 THE COURT: Okay. Right over here will be the place.
24 Go ahead and have a seat there, sir, and pull the microphone down
25 so it's pointed to you instead of the ceiling. Then we'll make

1 sure you're recorded. Thank you. Will you tell me your name and
2 what your connection is to this?

3 MR. SMITH: Yeah. My name is Richard Smith. My wife
4 and I were investors with Mr. Strebeck, and we invested our --
5 two of our daughters' inheritance with him. Our position is not
6 to oppose the plea bargain that's been reached. However, we want
7 to stress that the State or the appropriate authorities make sure
8 that there are teeth in the agreement as far as restitution, and
9 (inaudible) I'm sure what this AP&P analysis has concluded as far
10 as the amount and rate upon which restitution will be based,
11 but we are very concerned that this -- that the judgment -- or
12 that the agreement contain some very powerful teeth in it to
13 enforce -- enforcibility in that plea.

14 THE COURT: What do you expect?

15 MR. SMITH: That if after a given reasonable amount
16 of time if there's no restitution, that there would be some
17 reconsideration of the agreement and whether it's being
18 faithfully adhered to.

19 THE COURT: Okay. Well, that's always the case whenever
20 there's a probation order, then the terms of the probation order
21 are what are required. What I'm asking is I guess more specific.
22 Do you contemplate any circumstances under which this man would
23 ever repay anything, and if so, how would he do it?

24 I see sort of a blood from a stone analogy here. I
25 don't see that he has any ability to do anything except cheat

1 other people out of their money, and so I don't know how anybody
2 can expect to get any money back from him. If there is some way,
3 then I'd like to see what that is. Do you know of anything that
4 he is capable of doing or any resources he has that he might be
5 required to do? Because I can order him to repay \$3.8 million,
6 and I can order him to walk up the side of the building --

7 MR. SMITH: Right.

8 THE COURT: -- and I don't think he can do either one of
9 them.

10 MR. SMITH: That's certainly a challenge the Court
11 faces. We're not -- since he declared bankruptcy, we're only
12 aware that there are some proceeds that should come from that --

13 THE COURT: Uh-huh.

14 MR. SMITH: -- process, and it may take another year
15 before that is all resolved because all of the properties that
16 are owned, as we understand it, are not yet liquidated.

17 THE COURT: Yeah. Yeah. Do you have a claim made in
18 his bankruptcy?

19 MR. SMITH: Yes.

20 THE COURT: Okay.

21 MR. SMITH: Non-dischargeability.

22 MR. BOYACK: Your Honor, I think this might be
23 appropriate time to bring up the fact that there is an
24 adversarial proceeding confession of judgment. I got a call from
25 Victor Sipos who is an attorney in Salt Lake who represents five

1 victims out of Oregon, and they're concerned about
2 disproportionate restitution because of this bankruptcy.

3 My understanding without any research whatsoever is
4 that federal judgment would preempt any state court order. If
5 that is the case, then his judgment would preempt any order of
6 restitution, and I think that the intents and purposes of this
7 Court and the Utah State statutes is to treat all victims exactly
8 the same. I'm concerned that if he were to lose that federal
9 judgment that he could somehow get a priority over the other
10 victims.

11 THE COURT: Yeah. Well, I don't particularly care about
12 federal preemption of any kind if a criminal context because --
13 sir, you haven't been called. Sit down. Because Mr. Strebeck's
14 problem with this Court is prison. So if he does not comply with
15 probation, and that means pay restitution in a reasonable manner,
16 then he'll be in prison. He may be the most debt free man in
17 prison because of his bankruptcy, but he'll still be in prison
18 for up to 30 years.

19 So whatever the federal system does, I'm not -- I can't
20 be concerned with. It doesn't have anything to do with me. I
21 am just concerned as to whether the victims of this defendant
22 understand the reality that court orders are often not complied
23 with, and the only enforcement mechanism the Court has is to
24 enforce the commitment to prison. I can't make him produce
25 money.

1 MR. SMITH: I understand.
2 THE COURT: Or anybody else. Okay.
3 MR. SMITH: Thank you.
4 THE COURT: Thank you, Mr. Smith. Who is next,
5 Mr. Weeks?
6 MR. WEEKS: Stan Conder.
7 THE COURT: Okay. Let's see.
8 MR. CONDER: My name is Stan Conder. I'm the trustee of
9 my mother. It was Fern A. Conder.
10 THE COURT: Okay. I see.
11 MR. CONDER: She passed away in September.
12 THE COURT: Oh, I'm sorry.
13 MR. CONDER: It's okay.
14 THE COURT: All right. What do you have?
15 MR. CONDER: Well, I agree with all the terms. I
16 understand that we can't go back and bring back what's in the
17 past. The only thing that I'm concerned is our inheritance is
18 gone from my sisters and I, and we don't need to go into that,
19 but my only concern is at one time Mr. Strebeck mentioned about a
20 gold mine over in Africa, and I just hope that he does not be
21 given back a passport or make a trip back there, or what stops
22 him from having accounts in overseas.
23 THE COURT: Okay.
24 MR. CONDER: That's the only concern that I really have.
25 THE COURT: Okay. All right. Let me make a note.

1 Thank you.

2 MR. CONDER: Thank you.

3 THE COURT: Mr. Weeks?

4 MR. WEEKS: Ed Keyes.

5 THE COURT: Okay.

6 MR. KEYES: My name is Ed Keyes, and my wife Barbara and

7 I invested with Alan our retirement money. We'd just like --

8 we're in compliance with what's happening here, and we would just

9 like to see Alan get a job and start making payments back.

10 That's the bottom line for us. We -- that's where we stand.

11 THE COURT: What do you think he's capable of doing?

12 MR. KEYES: Well, I call him in the wintertime and he

13 was at the (inaudible) in North Dakota to try to work on that --

14 you know, the oil fines up there. Then we were emailing him when

15 he was in Africa trying to get the money from the gold mine over

16 there, that placer gold mine. Now he tells us he's making, you

17 know, a hundred phone calls a week to try to sell real estate for

18 somebody that he's working for there.

19 So the communication has always been -- he's always

20 responded to our emails and to our phone calls, and his

21 commitment to pay us back has been from day one. So he impressed

22 us enough to give us -- you know, to invest money with him, and

23 we'd like to see him, you know, just follow through with what he

24 has promised us, to get a job and start paying us back.

25 THE COURT: Utah. Is he going to live long enough to do

1 that? He's what, 52?

2 MR. KEYES: We hope so.

3 THE COURT: Okay.

4 MR. KEYES: But that's been our position that if Alan
5 were to go to jail then there is no chance, you know. There
6 would be no chance, and then --

7 THE COURT: Yeah.

8 MR. KEYES: -- how much that would set back then
9 (inaudible) we would just let go. I mean what chance --

10 THE COURT: Yeah, I understand. I understand. That's
11 often the situation in your case and the other victims. It's the
12 situation in spades, so to speak. Okay.

13 MR. KEYES: Thank you.

14 THE COURT: Thank you, Mr. Keyes. Mr. Weeks?

15 MR. WEEKS: Your Honor, I guess I take issue with what
16 Mr. Boyack said. He indicated that there is no way to start
17 making payments or start doing anything towards restitution until
18 we finalized our deal today. I would say that this situation
19 started in 2008, approximately four years ago, and we put this
20 deal together approximately four months ago, at the most.

21 So to sit here and say he's been unable to do
22 anything because of this pending situation is just not the case.
23 Mr. Strebeck has made promise after promise after promise, and
24 basically what we're here one more time is saying okay, here's
25 our promise, here's our agreement, \$3,834,300 that he's agreed to

1 as an amount of restitution. We've got the terms that he'll have
2 full-time employment, that he'll make restitution payments at an
3 amount which AP&P determines is appropriate.

4 What we're basically saying is we want to have one more
5 chance for Mr. Strebeck to fulfill his promises. He hasn't done
6 so in the past. We're hoping he will in the future. If he
7 doesn't -- if he doesn't maintain full-time employment, if he
8 doesn't make payments as determined appropriate by AP&P, then I
9 think I speak for all the victims here that if he's not going to
10 be making payments, he might as well be the most debt free person
11 in prison because he's of no use to the victims if he's not going
12 to be making restitution.

13 So if he does that, if he has a regular job, if he's
14 paying, great; we think this is appropriate. The minute that he
15 determines that he can renege on these promises as he has in the
16 past, then we believe he should go to prison, and that's the
17 recommendation.

18 THE COURT: So what are you anticipating to be required
19 of him for restitution? I certainly don't want to make some
20 order that Mr. Strebeck will make some restitution payments
21 someday and then have somebody come back and ask me to enforce
22 that.

23 MR. WEEKS: Your Honor, I would ask that he have
24 employment within two months, that AP&P would set an amount, and
25 that he'd be required to pay the amount set by AP&P. I don't

1 think AP&P is going to look at his income and put an unreasonable
2 amount on him, but the fact is he's apparently, according to him,
3 he's been unemployed for the last four years, and yet he's been
4 by all accounts living comfortably.

5 So if he can live comfortably with no employment on
6 his own, then I would think maybe he can take everything that he
7 makes from that job and pay toward restitution. He hasn't been
8 working, so once he gets a job, he should be able to maintain his
9 same life and make restitution to these victims. I can't give
10 the amount because we don't have figures to work with, but I
11 think two months to get a job is reasonable. Mr. Strebeck has
12 had four years and he hasn't done anything. I think if he
13 doesn't do anything, then the result is you're not going to have
14 employment, you're not going to make restitution, and the
15 alternative is you go to prison.

16 THE COURT: Okay. Again, it's cast in a way that makes
17 enforcement by a Court difficult because of the lack of
18 specifics.

19 MR. WEEKS: Well, your Honor, maybe I could add the
20 specific of a minimum of \$500 a month.

21 MR. BOYACK: Your Honor, we had an agreement that AP&P
22 would set the amount based upon his ability to pay, and I think
23 two months with a convicted felon of two felonies, with him
24 having -- he's been a sales promoter all of his life. He's going
25 to try to get a job. He wants to get a job. We're not trying to

1 flim-flam the Court or Mr. Weeks or anybody else. I just want to
2 have this agreement hold up so that the victims get restitution,
3 Mr. Strebeck doesn't go to prison, and everything is reasonable.
4 That's why I think AP&P would design by our agreement to be a
5 determiner as a third party, not part of the litigation, to
6 determine what is reasonable, and I thought that was our
7 agreement originally.

8 THE COURT: That's essentially the way it's stated in
9 the written plea agreement.

10 MR. BOYACK: I beg your pardon?

11 THE COURT: That's essentially the way it's stated in
12 the written plea agreement, monthly restitution payments shall be
13 determined by Adult Probation and Parole. Okay. Was there any
14 other victim who wanted to be heard?

15 MR. WEEKS: No, your Honor.

16 THE COURT: There was another man who was trying to
17 speak, and I don't know what his connection is with this.

18 MR. WEEKS: He's Mr. Smith's attorney, and I think he
19 was trying to explain something with bankruptcy.

20 THE COURT: Oh, okay. I knew you looked familiar, but I
21 couldn't place you in the sea of faces. Okay. Anything further?

22 MR. BOYACK: No objection, your Honor. We're prepared
23 to submit it.

24 THE COURT: Yeah. Okay. I don't know if Counsel are
25 aware of it, there was a letter from Thomas Smith and Sandy E.

1 Smith faxed to the Court today. Have you seen this?

2 MR. BOYACK: No.

3 MR. WEEKS: I have not.

4 THE COURT: Okay. Bailiff, we better let Counsel take a
5 look at that together.

6 (Counsel review letter)

7 MR. WEEKS: Thank you.

8 THE COURT: Okay. Now one other question, the
9 recommendation is to pay restitution in an amount to be
10 determined in a restitution hearing. Is that necessary, or do we
11 have the dollar figure already agreed?

12 MR. WEEKS: We have the dollar figure agreed, your
13 Honor.

14 THE COURT: Okay. That's what I thought. So I don't
15 think a restitution hearing is necessary. All right. If there's
16 nothing else, then, I'll tell you what the judgment of the Court
17 is.

18 First and foremost, that Mr. Strebeck is a fraud. I
19 don't believe a word he's telling me today. I don't believe his
20 intentions are sincere at all. I don't know if he deludes
21 himself into believing his own big stories, but Mr. Strebeck is a
22 fraud. I think he is tap dancing as fast as he can to avoid
23 going to prison, and in the long run, I don't think that's
24 going to work, because I don't see any reason to expect that
25 Mr. Strebeck is going to pay the restitution.

1 Big stories about things in Africa and this investment
2 and somebody owes me money comes right out of the play book of
3 Ponzi Schemes and Fraud Artists. From Bernie Madoff to Val
4 Southwick to Alan Strebeck, and they all say the same things, and
5 they all have the same absence of reality behind their stories.
6 Mr. Strebeck is a predator who used other people's money, the
7 fruits of other people's labors and spent them on his own
8 concerns, and handled them recklessly and lost them. Now he
9 wishes not to go to prison.

10 I'm not happy with my approval of the plea agreement.
11 It is my philosophy not to interfere with plea agreements made
12 by the parties unless it's just too much for me to swallow
13 altogether, and so I did give my approval to this. I expected
14 that there would be opposition to it by victims of Mr. Strebeck's
15 fraud, and there has not been.

16 What's been expressed here is perfectly reasonable to an
17 extent by people who have lost so much, hoping to get some kind
18 of recovery from this man. I don't think that's a realistic
19 expectation. I just don't think it's going to happen.

20 Now if Mr. Strebeck surprises me, I will shake his hand
21 and pat him on the back. I'm not expecting to do that. Utah has
22 an unfortunately well deserved reputation as a fraud capital in
23 the country. There are lots of speculative statements about why
24 that's so. To me it doesn't really matter why it's so, it
25 happens. It happens over and over and over, and hundreds of

1 people are defrauded of their money, are defrauded of money that
2 they obtained honorably and at some effort, and it's taken by
3 somebody who just wants to use their money to feather his own
4 nest. That's what we have here.

5 So I considered even telling the attorneys I just can't
6 swallow this, but I made an agreement with them that I'd accept
7 this, and I guess if I expect to be able to enforce other
8 people's agreement, I'd better stand by my own. I don't like it,
9 and I don't expect it to come out well.

10 Because the victims have preferred to hope for some kind
11 of recovery rather than of course the absence of any recovery
12 that results from prison sentence, at least in most of these
13 cases, then I will defer to that and hope for the best. I'm not
14 going to say I told you so if it turns out poorly, but that's my
15 expectation.

16 Now for conviction of securities fraud, a 2nd Degree
17 Felony, the sentence of the Court is commitment to the Utah State
18 Prison not less than a year, not more than 15 years. Also a
19 \$10,000 fine, a 90 percent surcharge and restitution for damages
20 to be according to the plea agreement. For conviction of theft,
21 a 2nd Degree Felony, a second commitment to the Utah State Prison
22 of not less than a year, not more than 15 years, a fine of
23 \$10,000, a surcharge of 90 percent and restitution. All the
24 restitution, of course, in one lump sum.

25 Execution of the sentence will be stayed and

1 Mr. Strebeck will begin 36 months of supervised probation. I'm
2 not going to follow the first recommendation for 90 days with
3 credit for one day and the rest of it suspended. I don't need
4 that kind of contrived term. If Mr. Strebeck fails on his
5 probation, 90 days in the county jail will be the least of his
6 concerns.

7 Mr. Strebeck will be required to sign up for supervision
8 by Adult Probation and Parole and comply with all of their
9 standard conditions for supervision. He's to report to Adult
10 Probation and Parole by this time tomorrow. There are some
11 standard terms that are recommended among the 11 in the pre-
12 sentence report that I don't need to repeat. They're part of
13 every probation. The restitution amount is \$3,830 -- or
14 \$3,834,000 -- 300 dollars. Monthly restitution payments to be
15 determined by Adult Probation and Parole.

16 We did not talk about how restitution would be
17 collected. Would that be through Adult Probation and Parole?
18 If they're going to be establishing what the amount is, they had
19 better be prepared to collect it.

20 MR. WEEKS: That was my understanding, yes.

21 THE COURT: Okay. I don't want the clerks taking it
22 in and having two different offices concerned with that. The
23 uniform requirements are the prohibitions of firearms, the court
24 security fee. The curfew really doesn't make any sense. I'm not
25 imposing a curfew, the orientation to Adult Probation and Parole

1 waiving extradition, and a general restriction from any type of
2 illegal activity rather than specific drug problems.

3 Now a concern has been expressed by one of the
4 victims -- same concern I had -- and that is to do with
5 Mr. Strebeck's passport. Was there any term of your plea
6 agreement that had to do with the passport situation?

7 MR. BOYACK: No, your Honor.

8 THE COURT: Okay. Is there any need for Mr. Strebeck to
9 have a passport? What?

10 UNIDENTIFIED FEMALE: AP&P will not allow him to leave
11 the country if he's on supervised probation.

12 THE COURT: Okay. They do that by taking his passport
13 or --

14 UNIDENTIFIED FEMALE: We've never taken a passport, so I
15 don't know.

16 THE COURT: Okay. All right.

17 UNIDENTIFIED FEMALE: That's just one of our rules.

18 THE COURT: All right. Well, if that's AP&P's policy,
19 then that will be monitored. Okay. The other term of probation
20 I want to emphasize, which is sort of tacitly involved in this,
21 restitution will be paid in full before Mr. Strebeck is off
22 probation, if he ever completes it successfully. I don't expect
23 that to happen in three years.

24 So it will be necessary for the Court to hear periodic
25 reports from Adult Probation and Parole about the status of

1 Mr. Strebeck. Again, I don't expect he'll keep up with whatever
2 payment schedule Adult Probation and Parole establishes, so I
3 imagine there will be a probation violation report at some time
4 in the not too distant future, but in any event, there will need
5 to be at least yearly reviews of the terms of probation by the
6 Court.

7 I don't intend that the Court will take over supervision
8 because that's what Adult Probation and Parole does, but I want
9 to make certain that probation does not expire without the terms
10 of probation being completed. The reason for that, to just make
11 sure everything is clear, I expect Mr. Strebeck to have the
12 jeopardy of 30 years in prison until such time as the restitution
13 is paid, or until he's just committed to the prison to go serve
14 that. Any questions, Counsel? Any details?

15 MR. WEEKS: Your Honor, did the Court order that he's to
16 maintain full-time employment?

17 THE COURT: Well, yeah, I do have a note on that. That
18 wasn't one of the recommended ones, so I missed it. Of course
19 full-time employment, and I don't want to see Mr. Strebeck
20 involved with investments or anybody else's money unless it's to
21 stand at the counter at the Maverik and put the money in the
22 till. I also want to know what the monthly restitution amount is
23 when that gets established. I need to have just a letter report
24 from Adult Probation and Parole for that, okay?

25 COURT CLERK: Did you say consecutive or concurrent?

1 THE COURT: Oh, the sentences are consecutive.
2 COURT CLERK: Okay.
3 THE COURT: Yeah. Any other questions? All right.
4 Then Mr. Strebeck, you may know already, but it's my duty to
5 advise you that you have been sentenced and you've been placed on
6 probation. This now begins the time for any appeal that you
7 might wish to take to another court. In order to appeal, you
8 have to file a written notice of appeal within 30 days.
9 Mr. Boyack, of course, would help you with that. Thank you,
10 Counsel. Good luck to those who are hoping for some recovery
11 from this tragic situation. I hope for the best for you.
12 MR. BOYACK: Thank you, your Honor.
13 THE COURT: Thank you. That concludes the case and the
14 Court is adjourned.
15 (Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

I, Natalie Lake, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.

That I have been authorized by Beverly Lowe to prepare said transcript, as an independent contractor working under her court reporter's license, appropriately authorized under Utah statutes.

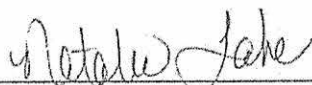
That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

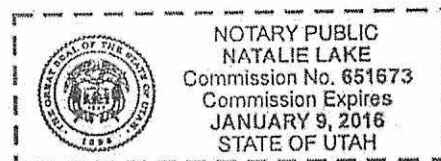
That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 22nd day of August 2015.

My commission expires:
January 9, 2016



Natalie Lake
NOTARY PUBLIC
Residing in Tooele County





Beverly Lowe, RSR, CCR

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Addendum D

IN THE FIFTH JUDICIAL DISTRICT COURT
OF WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

ALAN WAYNE STREBECK,

Defendant.

)
)
)
)
)
) Case No. 111500728 FS
)
)
)
)

Hearing
Electronically Recorded on
October 16, 2014

BEFORE: THE HONORABLE G. MICHAEL WESTFALL
Fifth District Court Judge

APPEARANCES

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1 there's some issues he wanted to address today as well. So what
2 is it you're seeking from this hearing today?

3 MR. JAEGER: Your Honor, I'm seeking an extension of his
4 probation. I do have the case law that backs my authority to
5 extend that.

6 THE COURT: Okay.

7 MR. JAEGER: It's the --

8 THE COURT: And you think it's appropriate to start that
9 now, to address the extension now instead of waiting until next
10 June?

11 MR. JAEGER: Yes, your Honor. The reason why is because
12 he owes so much money. I mean --

13 THE COURT: Okay.

14 MR. JAEGER: -- it's just absolutely clear that it's
15 just not --

16 THE COURT: Okay. So you're asking --

17 MR. JAEGER: -- going to be able to be repaid back.

18 THE COURT: -- for an extension. What else are you
19 asking for today?

20 MR. JAEGER: We would also be asking for periodic
21 reviews, and that's what Judge Beacham had actually ordered, and
22 so that the Court can make a determination as to whether the
23 defendant is paying sufficient amount towards restitution.

24 THE COURT: So periodic reviews. What you're contemp --
25 what you want me to do now is to set up periodic reviews, and

1 then you're contemplating that the defendant would then come into
2 court and we'd find out what his income is, what his expenses
3 have been to see if there should be a change in the amount of
4 restitution payments each month?

5 MR. JAEGER: That is correct.

6 THE COURT: What's he ordered to pay right now?

7 MR. JAEGER: It's \$850.

8 THE COURT: Each month?

9 MR. JAEGER: Each month, yeah.

10 THE COURT: Okay. How much is the interest that's
11 accruing on that 3 million plus restitution judgment?

12 MR. JAEGER: Well, it's over 100,000 that he owes in --

13 MR. KEHL: It's \$183,225.36.

14 THE COURT: So each month. How much is the restitution?

15 MR. KEHL: I don't know. He just came on my caseload
16 a couple of months ago, and I've been following up with
17 (inaudible).

18 THE COURT: I haven't done the math, so what --

19 MR. JAEGER: Yeah, we could break that down and
20 determine that.

21 THE COURT: What is the interest rate that --

22 MR. JAEGER: It's only 2 percent.

23 THE COURT: So it's --

24 MR. KEHL: I think it's between 2 and 4.

25 MR. JAEGER: Yeah.

1 THE COURT: It's the 2 percent. Well, but 2 percent
2 on --

3 MR. JAEGER: But because of the significant amount of
4 money, he's not even covering the --

5 THE COURT: Right.

6 MR. JAEGER: Yeah, not even covering the interest.

7 THE COURT: All right. Has he been making the \$850 a
8 month?

9 MR. JAEGER: He has been making the payments, yes.

10 THE COURT: Okay. So today what you want me to do
11 is to extend -- and you're not claiming that he's violated his
12 probation yet.

13 MR. JAEGER: No, but we do actually have to find -- in
14 order to extend it, the case law says that -- and I have here
15 again, a copy for the Court and a copy for defense Counsel.

16 THE COURT: Okay. Thank you.

17 MR. JAEGER: Basically to extend it, we have to show
18 the defendant -- that the defendant's only initiative to pay
19 restitution is a threat of incarceration, and we --

20 THE COURT: Only incentive.

21 MR. JAEGER: Yeah. To extend it, yeah. We believe that
22 is the case, and we believe -- and that's what we're going to
23 show the Court today, and we believe that that's exactly what
24 Judge Beacham ordered and -- as part of his order was that that
25 was his concern, too.

1 THE COURT: All right. You think we're okay proceeding
2 now instead of waiting until May?

3 MR. JAEGER: Your Honor, if the Court -- I would like to
4 take evidence today, and I guess ultimately the Court can --

5 THE COURT: Okay.

6 MR. JAEGER: -- decide if he wanted to give him
7 additional time, but I believe it's so clear that the defendant
8 is not going to be in a position to pay that, it --

9 THE COURT: All right. I'll allow you to present
10 evidence. I just from --

11 MR. JAEGER: Yeah. I guess if the defendant is going to
12 say that he can have it paid off, or a significant amount paid
13 off by May, then I'm not necessarily opposed to giving him until
14 May, but I believe that's not the case, and I believe that's why
15 it's appropriate to proceed today.

16 THE COURT: All right. Okay. Thank you. Now
17 Mr. Chamberlain, so -- now we all understand why we're here
18 today. Do you object to the extension of probation and the
19 request that I have periodic reviews?

20 MR. CHAMBERLAIN: Your Honor, I think to the extent that
21 probat -- that restitution and the other probation conditions are
22 correctly determined, that we can object to an extension of
23 probation. It was clear in Judge Beacham's sentence that
24 probation was not to be terminated until restitution was paid.

25 The sentence, convenient for all of us, was reduced to

1 writing. As you look at the sentence and what it states, it just
2 simply says that yes, he has to be on probation until that's
3 paid, and that if he hasn't paid at the end of the 36 months that
4 was initially ordered, that probation be extended. So I don't
5 know that it's too much of an issue that we need to argue about
6 that point. Now we're here today to talk about -- we've
7 requested that we have a hearing on the amount of restitution
8 and its imposition.

9 THE COURT: Right. I understand that, but I want to --
10 the first thing that I want to understand is whether or not you
11 object to my ordering -- I mean do I need to take evidence? Do
12 you want me to take evidence regardless of whether they stipulate
13 to what you're hearing from -- or what you're asking for?

14 MR. JAEGER: Well, your Honor, I believe the evidence
15 that I'm presenting is two part. Part one would be for the
16 extension, and part two would -- to address Mr. Chamberlain's
17 request for a change to the restitution amount.

18 THE COURT: Right, but there's a difference between your
19 bearing the burden and trying to persuade me to do something and
20 your responding to what Mr. Chamberlain wants me to do.

21 MR. JAEGER: But if he's willing to stipulate that
22 probation should be extended, then I'm fine with that, and then
23 I'd be willing to move on to the next part of his request to
24 reduce the restitution.

25 THE COURT: Okay. Let me just check one thing here.

1 I'm looking at Judge Beacham's order, and you talked about the
2 periodic reviews, and I'm not seeing that in his order.

3 MR. JAEGER: And I am prepared to address that today.
4 That's one of the things that I'm prepared to address is -- and
5 actually play Judge Beacham's ruling and then to address that
6 that was the understanding of the parties.

7 THE COURT: How often do you want the ruling -- or the
8 reviews?

9 MR. JAEGER: Originally Judge Beacham was going to set
10 it once a year, but I would actually ask for more like six
11 months, every six months.

12 THE COURT: Okay. So you want a review every six
13 months?

14 MR. JAEGER: Yes.

15 THE COURT: Do you object to that?

16 MR. CHAMBERLAIN: Yes.

17 THE COURT: All right. Then -- all right. But you
18 don't object to the request that proba -- that probation be
19 extended because it doesn't appear likely he's going to be able
20 to pay restitution before the June -- June of 2015?

21 MR. CHAMBERLAIN: That is true because that's what Judge
22 Beacham ordered initially.

23 THE COURT: Okay. All right. Let's see what this says.
24 All right. Well, that being the case, then I'm going to grant
25 your request to extend probation for 36 months beyond the date

1 that it was normally scheduled to expire, because that's --
2 there's no opposition to that, and actually there appears to be a
3 stipulation to that.

4 With regard to the request for periodic reviews, there's
5 an objection to that, so I'll hear your evidence on that, and
6 then we'll move to Mr. Chamberlain's issues. You want me to
7 reconsider what Judge Beacham did and change the restitution
8 amount?

9 MR. CHAMBERLAIN: We would just simply like the
10 defendant to be given credit for what has already been paid in
11 the restitution, and the initial amount that was ordered was
12 either inaccurate or has been reduced. So we just want to make
13 sure that there is an accurate determination of what the
14 restitution truly is.

15 THE COURT: Okay. You claim he has not been given
16 credit, so you think that he should -- that this should --
17 judgment should not accrue interest?

18 MR. CHAMBERLAIN: No, I think it should accrue interest,
19 but for the true principal amount, which hasn't been determined
20 yet. The \$3.8 million is not an accurate reflection of what the
21 actual restitution should be on the case.

22 THE COURT: But that's what Judge Beacham ordered --

23 MR. CHAMBERLAIN: Well, he also --

24 THE COURT: -- and he signed an order almost over two
25 years ago.

1 MR. CHAMBERLAIN: But the statute that I'm prepared
2 to assert now -- and do you want me to give you my argument now
3 or --

4 THE COURT: Yeah, I'd like to know where you're coming
5 from with regard to that.

6 MR. CHAMBERLAIN: Okay. Great. Great. I would direct
7 the Court's attention to Utah Code Section 77-38A-302.

8 THE COURT: Just a minute, 77-38A-302. Okay.

9 MR. CHAMBERLAIN: Specifically Section 4 of that statute
10 says if the defendant objects to the imposition amount or
11 distribution of the restitution, the Court shall allow the
12 defendant a full hearing on the issue. That's all it says.
13 There's no time requirement that is attached to that. It's
14 simply if there's an objection to the amount then a hearing can
15 be held on it, and so that's what we're objecting to, the amount.

16 THE COURT: You're saying that there was an objection?

17 MR. CHAMBERLAIN: Yes.

18 THE COURT: And that was pointed out to Judge Beacham?

19 MR. CHAMBERLAIN: Oh, at the time, no, but we would also
20 say that the statute itself doesn't require that the objection be
21 given at the time.

22 THE COURT: All right. I'm going to take care of this
23 one really quickly. You had an opportunity to appeal. You
24 didn't appeal. If that's the basis for your decision, it's
25 denied -- or your request, it's denied. You can appeal my

1 decision. Let's see what the Court of Appeals says, okay?

2 I mean you could have -- you could file -- possibly file
3 a post conviction relief claim. I don't know if that would apply
4 or not, but you can't come back to me and just simply make a
5 motion for me to overrule what Judge Beacham did two years ago
6 when you didn't appeal his decision.

7 MR. CHAMBERLAIN: Let me ask you this, your Honor.

8 THE COURT: Okay.

9 MR. CHAMBERLAIN: With that ruling being in place, if
10 there's been payments that have been applied since the sentencing
11 has been handed down, it seems that we would also be able to at
12 least determine what the restitution amount would be now. If
13 he's made payments since that sentencing, then that would be at
14 least something that could be reviewed.

15 THE COURT: That depends on whether the statute
16 indicates that the payments are to be applied first to accrued
17 interest or to the principal amount. My understanding has always
18 been that's applied first to accrued interest, and \$3.3 million
19 at 2 percent interest, I'm -- let's see, it's 3 -- 3.8, right?

20 MR. CHAMBERLAIN: It's 3.8. Let's just grab the
21 judgment amount.

22 THE COURT: That's \$6,000 a month in interest.

23 MR. CHAMBERLAIN: Okay.

24 THE COURT: So my understanding is that the payments
25 have been applied first to interest. Let me look at the Court's

1 accounting and see.

2 MR. JAEGER: Your Honor, I believe it's actually going
3 through AP&P.

4 THE COURT: Oh, that's right. Is it going through AP&P?

5 MR. JAEGER: And he does have that information, and he's
6 checked with them. That is my understanding, too, and that's why
7 it's going to the interest and that's why --

8 THE COURT: And I'll hear that with regard to whether
9 the defendant is being given proper credit for the payments that
10 he's made. I'll hear evidence on that if you want me to.

11 MR. JAEGER: Your Honor, I'm hearing from my client that
12 he did actually object at the time of the sentencing to the
13 amount, and so --

14 THE COURT: Well, then he should have appealed. He
15 could have appealed what Judge Beacham did, and he didn't. Now
16 it's just too late.

17 I'm -- quite frankly, I'm getting a little bit
18 frustrated because I get -- this didn't happen to me when I first
19 became a judge up in Cedar City. People weren't asking me to
20 change what other judges had done, and yet I am seeing --
21 frequently seeing motions for me to go back and change what Judge
22 Shumate did, and now to change what Judge Beacham did.

23 There's an appropriate procedure to do that, and that is
24 to file an appeal if you don't agree with what he did, and that
25 wasn't done. I'm not going to -- we're not going to reopen that

1 issue now two years later.

2 MR. CHAMBERLAIN: Your Honor, I would also like to
3 address the principal versus the interest payments. I have a
4 statute that I can read to the Court that might be --

5 THE COURT: Yeah, what is the statute? What's the one
6 you're looking at?

7 MR. CHAMBERLAIN: It's 77-38A-401.

8 THE COURT: Okay. I'm looking at that. Where are
9 you -- which one?

10 MR. CHAMBERLAIN: Specifically it says in Section (5),
11 "The department shall make rules permitting the restitution
12 payments to be credited to principal first and the remainder of
13 payments credited to interest in accordance with statute." So I
14 think that would be instructive as to which direction payments go
15 first.

16 THE COURT: Okay. Is that what AP&P has been doing, or
17 have they been crediting it just to princ -- to the interest?

18 MR. KEHL: It just goes to the interest. It's all one
19 lump sum.

20 THE COURT: Okay. I was not aware of this particular
21 statute. Has the department made rules permitting the
22 restitution payments to be credited principal first?

23 MR. KEHL: I don't know, your Honor.

24 THE COURT: I think that I would need to know that,
25 because if they had made rules, this authorizes them to make

1 those rules, and I just -- I don't know if they've done that. It
2 doesn't say what happens if they don't make the rules. Let me
3 just see -- let me see what else this says. Okay.

4 Well, I think that's an issue that I would need to hear
5 some -- I would need to be educated about and whether or not
6 they've made rules, because the previous section, subsection (4)
7 says that a judgment ordering restitution when entered shall have
8 the same effect and is subject to the same rules as judgments in
9 a civil action.

10 My understanding of that, that judgments in civil
11 actions, interest -- or the payments are first applied to accrued
12 interest, and only when that's paid do they start reducing the
13 principal. So I think we need to know -- I'd need to know some
14 more information about that subsection (5) and whether the
15 department did make that rule that would apply to the payments
16 first to principal and then to interest.

17 MR. CHAMBERLAIN: And that burden would be on the
18 defense.

19 THE COURT: Okay. All right. So that's certainly --
20 and if you have something for me today, I'd like to take a look
21 at it. I don't think that my ruling today, at least as it goes
22 forward, would preclude your presenting that, because I intend
23 to follow whatever rules are applicable to the payment of
24 restitution in this case. If there is a rule that says that
25 payments are first to be applied to principal, I'm going to

1 follow it.

2 MR. CHAMBERLAIN: Your Honor, I think we could actually
3 solve that problem just by filing a motion later on if --

4 THE COURT: All right.

5 MR. CHAMBERLAIN: -- we want to have that application.

6 THE COURT: Okay. So I've denied your motion to
7 reconsider Judge -- or essentially reconsider and overrule Judge
8 Beacham's ruling with regard to the amount of restitution. What
9 else did you have for me other than to respond to Mr. Jaeger's
10 motion?

11 MR. CHAMBERLAIN: We would move for bench probation
12 rather than supervised probation.

13 THE COURT: Okay. All right. I guess I can hear you
14 with regard to that, and that may be appropriate at some point.
15 I don't know. Okay. Let's proceed, Mr. Jaeger, with your
16 request that -- with regard to the periodic -- I guess the
17 periodic reviews.

18 MR. JAEGER: That is correct, your Honor.

19 THE COURT: Okay.

20 MR. JAEGER: I think in order to help your Honor make a
21 determination that I think it's important to hear from Judge
22 Beacham and actually hear what his ruling was.

23 THE COURT: Well, let me see -- what do the minutes say?

24 MR. JAEGER: Your Honor, and I actually have his actual
25 words. I think it's important to actually hear his words and

1 hear from him.

2 THE COURT: Okay.

3 MR. JAEGER: And I would ask to play that. It's about
4 10 minutes, but I think it's important to actually hear that in
5 order to make that determination as to the need, because he's
6 very clear in spelling out the need to have these reviews.

7 MR. CHAMBERLAIN: Your Honor, I think that would be
8 necessary if there were ambiguities in the sentencing, but
9 there are not. He reduced his sentence to writing. We have a
10 judgment, and a restitution judgment and sentencing. As far
11 as going back and in the words of Justice Scalia, psychoanalyzing
12 the drafters of some sort of document, we simply don't have a
13 need of that. We have the sentence in writing. Why do we need
14 to spend 10 minutes listening to that?

15 THE COURT: All right. Well, I'm looking at the
16 minutes, and the minutes say that AP&P is to furnish periodic
17 reports to the Court on defendant's status.

18 MR. JAEGER: That is correct, but he was even more
19 specific than that. He actually addressed the need to have
20 reviews.

21 THE COURT: Why wasn't it put in the order?

22 MR. JAEGER: Your Honor, it was not put in the order,
23 but still, that's why we're -- I'm addressing that today. The
24 burden is on me, and I believe it's important that we hear from
25 Judge Beacham, hear what he actually had to say about it --

1 THE COURT: All right. I'll --
2 MR. JAEGER: -- and then your Honor can make that
3 determination.
4 THE COURT: I will hear what you have to say.
5 MR. JAEGER: Okay. Thank you.
6 THE COURT: All right. I'll listen to it, and then I'll
7 hear argument with regard to whether I should -- whether the
8 order accurately reflects what Judge Beacham ordered.
9 (Recording played in open court)
10 MR. JAEGER: I'm going to fast forward just so we hear
11 the actual ruling, your Honor.
12 (Recording played in open court)
13 MR. JAEGER: I just first want to point because that is
14 actually the restitution issue.
15 (Recording played in open court)
16 MR. CHAMBERLAIN: Could we pause it so the microphone --
17 it's just hard to hear.
18 (Recording played in open court)
19 THE COURT: Can you pause it for just a second?
20 MR. JAEGER: Sure.
21 MR. CHAMBERLAIN: I just wonder if we could put it to
22 the court microphone --
23 COURT CLERK: Put the microphone down and turn it on and
24 (inaudible).
25 THE COURT: Can you put the microphone down closer to

1 that?

2 MR. JAEGER: Yeah. I thought these speakers would be a
3 little louder. They're not quite as loud as they were.

4 (Recording played in open court)

5 COURT CLERK: Is the microphone on?

6 THE COURT: Is the microphone on?

7 MR. JAEGER: There we go. I had the wrong (inaudible).

8 (Recording played in open court)

9 THE COURT: All right. What else do you have for me?

10 MR. JAEGER: Your Honor, I do have from the victims,
11 they wanted to address the Court as to why they feel there is
12 that need to have those reviews and their frustrations when it
13 comes to the payments that have been made.

14 THE COURT: Well, let me tell you what I heard Judge
15 Beacham say. I heard Judge Beacham say that AP&P is to set up a
16 payment schedule.

17 MR. JAEGER: That is correct.

18 THE COURT: Which means that I would only be involved in
19 the event there were some objection to the payment schedule that
20 AP&P provides. I think there's a presumptive validity to what
21 they direct the defendant to pay in terms of restitution, and of
22 course, that doesn't mean that -- I don't believe that the
23 intention is that their actions be without the possibility of
24 judicial review, but I don't think it starts with me in terms of
25 the payment schedule.

1 AP&P sets the payment schedule, and Judge Beacham said
2 that he wanted to be -- wanted to be informed by AP&P of the
3 amount of the payments that he's -- that the defendant is
4 required to pay. So I think that AP&P has a responsibility to
5 set the payment schedule, then notify the Court, okay? I think
6 that's resolved. That's what Judge Beacham ordered.

7 MR. JAEGER: And I agree with that, but I believe
8 that's -- that's why you need to hear from the victims because
9 that's part of the concern is that the victims are concerned that
10 that amount is not a reasonable amount, and that's part of our
11 argument that we've made prior to Judge Shumate, and that's
12 again what I'm making to your Honor is that we believe that
13 Mr. Strebeck can pay a lot more than \$850 a month.

14 THE COURT: Okay. I'm just not sure that that's what's
15 before me today. I thought that what was before me today is
16 the -- to order the periodic reviews.

17 MR. JAEGER: Well, it's to request to have reviews, yes.

18 THE COURT: The difficulty with that is that Judge
19 Beacham said -- and it was quite clear to me. He said that AP&P
20 No. 1, has a responsibility to make sure the defendant's
21 probation doesn't expire.

22 MR. JAEGER: Yes.

23 THE COURT: So they have the responsibility to bring
24 back to me when we get close to that expiration date, they better
25 let me know whether he's paid all the restitution or not. That's

1 their prob -- that's their responsibility. Secondly, they are
2 supposed -- AP&P is supposed to provide yearly -- at least yearly
3 reports to the Court with regard to the defendant's payment of
4 restitution.

5 MR. JAEGER: And I don't know whether that's been
6 happening or not with AP&P because I think part of the problem
7 was we changed judges, but that's where I got involved in trying
8 to work with the agents.

9 THE COURT: Yeah.

10 MR. JAEGER: And that's part of the reason that we're
11 bringing this to your Honor, is we are asking your Honor now to
12 have periodic reviews, and we would like to have a six -- every
13 six months --

14 THE COURT: Because as I see that, that's not what
15 Judge Beacham ordered. Judge Beacham ordered that AP&P provide
16 reviews. I understood that to mean that he wanted them to
17 provide a report to him at least annually with regard to how the
18 defendant was doing in terms of his payment of his restitution.

19 MR. JAEGER: That may be what Judge Beacham asked, and
20 that's why I'm asking your Honor though to take it a step further
21 and to give and actually have --

22 THE COURT: And your request --

23 MR. JAEGER: -- every -- reviews every six months.

24 THE COURT: -- is that I actually set a review hearing
25 at least annually or more often?

1 MR. JAEGER: Yes, at least annually or more -- yep,
2 that's exactly what I'm asking your Honor. I'd ask that you
3 heard from the victims so they can address why they feel like
4 that's a need.

5 THE COURT: All right. I'll hear from the victims. I
6 realize that this is really frustrating for them. I mean I --
7 Judge Beacham I can tell -- appeared in front of him, and I can
8 tell his frustration from his voice that he essentially felt
9 like there was -- this was a no win situation, that we had an
10 individual that essentially stole people's money, and there was
11 very little likelihood that it was ever going to be paid back.

12 MR. JAEGER: And that is the concern, absolutely. I
13 guess we'd just start with Richard Smith.

14 THE COURT: All right. Mr. Smith? Now do you want
15 him placed under oath? All right. Mr. Smith, would you come
16 forward, face the clerk, raise your right hand and take an oath,
17 please.

18 COURT CLERK: Do you solemnly swear that the testimony
19 you are about to give in this matter now pending before the Court
20 to be the truth, the whole truth, and nothing but the truth, so
21 help you God?

22 THE WITNESS: I do.

23 THE COURT: Come up here and take a seat on my left in
24 the witness box, please. Thank you. Mr. Jaeger?

25 MR. JAEGER: Thank you.

1 RICHARD SMITH

2 having been first duly sworn,

3 testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. JAEGER:

6 Q. Can you please just explain to the Court briefly --

7 THE COURT: Well, let's get his full name on the record
8 first.

9 Q. BY MR. JAEGER: All right. Let's get your full name,
10 and can you spell your last name?

11 A. My full name is Richard Clark Smith. Smith is S-m-i-t-
12 h.

13 Q. Can you just explain to the Court briefly how you know
14 Mr. Strebeck?

15 A. Mr. Strebeck was a neighbor. His father lived across
16 the street. He lived in the community that I lived in in
17 Dammaron Valley, and we had interacted. He was a member of the
18 board --homeowner's association, and we had interacted on several
19 community projects. Then I invested \$100,000 with him in a
20 company called Kensington Holdings. The promise that he made
21 was that it would be a two year investment, 1 percent per month
22 return, and I chose to rather than accept monthly interest
23 payments, to compound the interest to the completion of the two
24 years.

25 At the -- approximately a year into that I -- under the

1 terms of our contract, I asked to have the money returned in May
2 of -- so it would be an 18 month investment, which Mr. Strebeck
3 promised to do. In May of the year in question 2010 when I tried
4 to find out where he was, he was unavailable, and then finally
5 his wife told me that he was overseas.

6 I found out subsequent to that that he was in Africa,
7 and he kept promising me that as soon as certain investments were
8 cleared he would be able to return my money with interest until
9 the end of August, which was basically the completion of the 24
10 month period in which he told me he was sorry, he could not
11 return my money. So that's how I came to know him from that.

12 Q. Now in the past two-and-a-half years since Mr. Strebeck
13 was convicted and agreed to pay you back some of this money, how
14 much money have you been getting every month?

15 A. I get \$22.27 out of the \$850. One other element to this
16 is that once he filed bankruptcy, I hired an attorney and we
17 filed a non-dischargeability against the bankruptcy, and it was
18 granted and ordered because the -- obviously the -- as we know
19 now, the funds were obtained fraudulently, and that's the basis
20 upon which I was given non-dischargeability.

21 That order from the bankruptcy court was for restitution
22 to equal the original investment plus my legal fees with interest
23 accrued at 1 percent per month, which is now well over 220
24 million -- or 20 thousand dollars. That is against the periodic
25 payments that we got from the bankruptcy itself, which all of his

1 victims got, plus the \$22 a month that I receive in interest
2 payments from probation.

3 One thing, though, while we're talking about that that
4 I --

5 MR. CHAMBERLAIN: Objection, non-responsive.

6 THE COURT: Yeah. Let's -- go ahead and ask a question.

7 Q. BY MR. JAEGER: All right. When it comes to today, do
8 you believe that Mr. Strebeck can pay you more than the \$22 he
9 is?

10 A. Yes, I do.

11 Q. Why is that?

12 A. Because he lives in a home that he -- well, let me
13 clarify that. In terms of the judgment that was given by the
14 bankruptcy court, we have subpoenaed him on several occasions for
15 deposition trying to determine his financial capabilities and
16 have found that he lives in a home where the rent is -- he has
17 a five year lease on a home that he pays \$1800 a month up in
18 Diamond Valley, that is wife pays him to work for her.

19 He also currently, at least at the last deposition said
20 he was working for a Mr. Trim landscaping company full-time
21 making \$10 -- \$12 an hour, I believe, and that he also worked as
22 a licensed hypno-therapist, receiving money somewhere around \$70
23 a treatment from his clients.

24 The thing that was confusing is that we got from the
25 records that we were able to subpoena his 2012 income tax, which

1 reported an income of about \$28,000. When you -- he did not
2 include in that income tax, by the way, his money that he had
3 earned from a company named Silver Stream and another company
4 that --

5 MR. CHAMBERLAIN: Objection, non-responsive.

6 MR. JAEGER: Your Honor, I believe he's -- I know it's
7 taking awhile, but he is actually trying to respond and explain
8 why he feels like the defendant could pay more.

9 THE COURT: Yeah. The -- it's not non-responsive, it's
10 just that that kind of a narrative response is a little bit
11 difficult for Mr. Chamberlain to know whether he can -- should
12 object or not. At this point it's not non-responsive. I'm going
13 to allow him to answer the question, but I'm also going to give
14 you an opportunity to move to strike if you think he's presented
15 some evidence that would not be admissible. Although it's --

16 THE WITNESS: Mr. Chamberlain --

17 THE COURT: It's difficult to me to determine to what
18 extent the Rules of Evidence apply in this type of a hearing.
19 This is rather unique. It's not really a motion to revoke
20 probation or to -- I don't know. Does 1101 apply?

21 MR. JAEGER: It does, your Honor, and the reason why is
22 because according to the Court and according to the case law that
23 I provided you, it does still fall under that -- this is seen as
24 the -- let me make sure I get the right one -- revocation of
25 probation. It's -- an extension is still needed as a revocation

1 of probation.

2 THE COURT: Okay. All right. Well, go ahead.

3 THE WITNESS: Mr. Chamberlain is well aware of the
4 information I'm going to provide to you. He's been at every
5 deposition that we've had with Mr. Strebeck, so that's why I
6 think he's concerned. So he under reported his income tax for
7 2012.

8 The reason I raise that is my concern is how honest he's
9 being with probation relative to his actual earnings, because if
10 you're willing to lie on your federal income tax and understate
11 your income by 5 or \$6,000 on something that important, I don't
12 know how relevant his honesty with his probation department is.

13 Q. Now let's specifically focus on some of the things --
14 like you talked about his home, and that's a concern as to where
15 he lives?

16 A. Right. Well, he had -- we reviewed his business
17 expenses for 2013, and they added up to about \$11,700. So you
18 add the 21,000 that he paid in rent as a business expense. He
19 gave us utilities bills which added up to 4300, entertainment
20 which added to 1100, and his salary that he was basing his
21 restitution on, which is another \$16,000, plus he had to pay
22 25,000 -- or 2500 in taxes for 2012, all out of his 2013 income,
23 and he claimed that he only made \$48,000. We haven't even begun
24 to cover his attorney, his food he has to eat, the gasoline that
25 he has to use in his car. He bought -- he got tuition to go to

1 a -- get a certificate as a hypno-therapist and other expenses.
2 So my contention is that he is hiding money. He's -- there's a
3 lot more money there than he's willing to admit.

4 The other thing I would like to call to the Court's
5 attention is the fact that he does almost every transaction in
6 cash. He pays his rent in cash. He pays his bills -- he gets
7 cash cards and pays his utility bills through cash cards. His
8 bank account said he has for his bus -- his wife's business and
9 his, the only transactions that have occurred over the course of
10 the year are basically recovering checks that bounced. There's
11 no change in the actual amount in the account, other than
12 covering and paying the fees for returned checks. So there's
13 very little way to track the actual business dealings that he and
14 his wife had.

15 At our last deposition with his wife, she said that she
16 keeps -- she doesn't keep any books per se. She has a calendar
17 and she just lists on the date --

18 MR. CHAMBERLAIN: Objection, your Honor. While this
19 information may be relevant later on, this is not in response to
20 a question. Could we at least control the testimony and make it
21 so that we know exactly what's been asked?

22 THE COURT: The question was why do you think he's able
23 to pay more than he's ordered to pay right now.

24 MR. CHAMBERLAIN: Well, we're starting to get --

25 THE COURT: This is all responsive to that, but if you

1 think he's saying something that's inappropriate, I'll allow you
2 to interrupt, as you did. You can object, tell me the basis for
3 your objection and you can move to strike, okay? Go ahead.

4 THE WITNESS: The records that you would have on his
5 business -- his wife's business are basically kept on a calendar.
6 The one thing that probation and the Court could view is that
7 he filed his income tax for 2013, it had to be done before
8 yesterday, so that should be available to the Court to look at
9 actually what he's claiming was made at least through the wife's
10 business. Whether it includes money that Alan made through
11 Mr. Trim and other jobs he may have picked up or his wife's
12 Social Security checks that he -- that she gets is unknown.

13 The reason I mention all of this is because Judge
14 Shumate in his sentencing or in his discussions of probation when
15 he raised -- or restitution when he raised it in January of 2013
16 from 500 to 850 said that he felt that Mr. Strebeck could live
17 very comfortably on his wife's business, and that all of the
18 money he earned on his own could be turned over to restitution.

19 That is why I feel this Court and the rest -- and I'm
20 glad basically that the Court has reiterated their desire to have
21 the probation department take care of this because that makes it
22 clear that they have the authority to monitor this and seek
23 financial records that -- I'm not quite sure when the employers
24 that Mr. Strebeck has are refusing to respond, which is what they
25 did to my attorney when he tried to subpoena his salary, how you

1 get the employer to basically come forth and say what he's been
2 getting, but Mr. Strebeck is earning a lot more than what his
3 restitution payments a month are.

4 Q. BY MR. JAEGER: So just to reiterate, what you would
5 like to see done is all that Mr. -- all of Mr. Strebeck's money
6 that he earns go to restitution?

7 A. Yes.

8 Q. And then he could live off the money that his wife is
9 making?

10 A. Yes.

11 MR. JAEGER: Okay. Nothing further for this witness.

12 THE COURT: Mr. Chamberlain, you may cross examine if
13 you'd like.

14 MR. CHAMBERLAIN: Just a couple of questions, your
15 Honor.

16 CROSS EXAMINATION

17 BY MR. CHAMBERLAIN:

18 Q. Mr. Smith, you had mentioned in your testimony that the
19 fact that Mr. Strebeck is working for his wife -- he works for a
20 company called Mr. Trim, I think you mentioned -- and don't let
21 me put words in your mouth, but just -- I want to make sure this
22 is correct -- and the fact that he's paying rent for \$1800 a
23 month is somehow giving you concern? Is that why you mention
24 those things?

25 A. I think I was trying to -- first off, the first two

1 statements are that he's making more than the restitution -- than
2 the probation department is aware of. As far as the \$1800 is
3 concerned, I'm merely showing that the money that he claims that
4 he made in 2013, which was \$48,000, doesn't cover the expenses
5 that he has. So he's got money somewhere else.

6 Q. Which violation -- or which probation term has he
7 violated as you see it?

8 MR. JAEGER: Objection, your Honor. I don't know how
9 Mr. Smith would know that. That's not --

10 THE COURT: Yeah. I don't know that he would know that.
11 Sustained.

12 MR. CHAMBERLAIN: No further questions.

13 THE COURT: Thank you. All right. You may step down.

14 MR. JAEGER: Nothing further from this witness, your
15 Honor.

16 THE WITNESS: Would you like a copy of --

17 THE COURT: No, that's -- no, I -- if I'm going to
18 receive a document, it has to be marked as an exhibit --

19 THE WITNESS: Oh.

20 THE COURT: -- and the party -- opposing party given
21 an opportunity to object. So if you have something you'd like
22 me to receive, present it to Mr. Jaeger and then he can let
23 Mr. Chamberlain take a look at it and see if he wants to mark it
24 as an exhibit. That looked like a narrative report.

25 MR. JAEGER: Of what -- yeah, a lot of the things that

1 were just said.

2 THE COURT: Right. Okay.

3 MR. JAEGER: Yes.

4 THE COURT: All right. Thank you, Mr. Smith. Any other
5 witnesses, Mr. Jaeger?

6 MR. JAEGER: Yes. Stan -- is it Conder?

7 UNIDENTIFIED FEMALE: Conder.

8 MR. JAEGER: Conder. He's going to --

9 THE COURT: All right. Sir, would you come forward,
10 face the clerk, raise your right hand and take an oath.

11 COURT CLERK: Do you solemnly swear that the testimony
12 you are about to give in this matter now pending before the Court
13 will be the truth, the whole truth, and nothing but the truth, so
14 help you God?

15 THE WITNESS: Yes.

16 THE COURT: All right. Come up here and take a seat on
17 my left in the witness box, please. Thank you. Mr. Jaeger?

18 STANLEY CONDER

19 having been first duly sworn,

20 testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. JAEGER:

23 Q. Can you please state your full name and spell your last
24 name for the record?

25 A. Stanley Reid Conder, it's spelled C-o-n-d-e-r.

1 Q. Can you please just briefly explain to the Court how you
2 know Mr. Strebeck?

3 A. Mr. Strebeck and I were neighbors in our neighborhood in
4 Las Vegas. We got to know him and his wife very well. We were
5 temple ordinance workers in the LDS Las Vegas Temple and
6 neighbors also.

7 Q. At some point did you invest and --

8 A. It's my mother that --

9 Q. -- Mr. Strebeck --

10 A. -- did the investment.

11 Q. Okay.

12 A. It was -- it was -- we -- it was -- we didn't know what
13 was going on. Excuse me. I get nervous. We didn't know what
14 was going on, and so Alan was calling on my mother, and my mother
15 was in her 70's.

16 Q. All right.

17 A. I -- what she did was she took almost her complete
18 investment or trusts in the family. I never saw the paperwork.
19 I just saw a glimpse of it one time where I -- she gave him
20 approximately over \$800,000; \$300,000 of it was claimed that it
21 was lost through the stock market, and then Alan Strebeck wrote a
22 promissory note for \$422,500.

23 Q. Okay. Now at the time were you also helping your mom
24 with her finances?

25 A. She lived in our basement because of her health and all,

1 so --

2 Q. Okay.

3 A. She passed away three years ago.

4 Q. Ultimately was that money lost then?

5 A. I think it was -- it was lost. My only question was my
6 mother wrote a trust, and the trust -- that trust was -- implied
7 that she would get half of the trust and the other trust would go
8 to the grandchildren and her children. I have two sisters, and
9 how that trust was changed I don't know, because we were never
10 notified about any change in the trust. So almost all of our
11 money was invested.

12 Q. How much money are you now getting a month?

13 A. It's \$101.

14 Q. So \$101. Do you also feel like the defendant,
15 Mr. Strebeck, could pay more than that a month?

16 A. Well, I'd like to have it all in -- returned back, but
17 that's not going to happen.

18 MR. JAEGER: No further questions for this witness.

19 THE COURT: Any questions?

20 MR. CHAMBERLAIN: No questions, your Honor.

21 THE COURT: Thank you. You may step down.

22 MR. CHAMBERLAIN: Thank you.

23 MR. JAEGER: Your Honor, there were several victims
24 that could not be here today, but I did have a letter that was
25 provided -- just a brief one -- from another one that wanted me

1 to provide to the Court. I would ask that be marked as State's
2 Exhibit 1. I do have a copy for defense Counsel. I would offer
3 that in as evidence.

4 MR. CHAMBERLAIN: Your Honor, I would object to the
5 admission of this evidence as it is hearsay.

6 THE COURT: What's the basis? Well, and that's the
7 diff -- that's what I was talking about before. The 1101 of the
8 Utah Rules of Evidence indicates that proceedings for extradition
9 or rendition, sentencing or granting or revoking probation, in
10 those type of proceedings the Rules of Evidence don't apply.

11 MR. CHAMBERLAIN: Well, I would argue, your Honor,
12 that the evidence that is offered, albeit without the Rules of
13 Evidence, still has to be reliable or give some indicia of
14 reliability. As I look at this, it isn't signed. It's just
15 simply a typed document.

16 THE COURT: There's no signature on the document?

17 MR. JAEGER: There is not.

18 THE COURT: Well, I think that -- yeah, I -- without a
19 signature I'm not going to receive it.

20 MR. JAEGER: That's fine.

21 THE COURT: Okay. Without some indicia that it actually
22 comes from the person --

23 MR. JAEGER: Sure.

24 THE COURT: If it were a notarized document, I think I'd
25 receive it, despite the hearsay issues, but I'm not going to

1 receive it if it's not signed.

2 MR. JAEGER: That's understandable.

3 THE COURT: Okay.

4 MR. JAEGER: Your Honor, I would actually then just call
5 Billy Kehl who is --

6 THE COURT: All right. Agent Kehl, come forward, face
7 the clerk, raise your right hand and take an oath.

8 COURT CLERK: Do you solemnly swear that the testimony
9 you are about to give in this matter now pending before the Court
10 will be the truth, the whole truth, and nothing but the truth, so
11 help you God?

12 THE WITNESS: I do.

13 THE COURT: All right. Come up here and take a seat on
14 my left in the witness box, please.

15 WILLIAM KEHL

16 having been first duly sworn,

17 testifies as follows:

18 DIRECT EXAMINATION

19 BY MR. JAEGER:

20 Q. Can you please state your full name and spell your last
21 name?

22 A. William Craig Kehl, last name K-e-h-l.

23 Q. What is your occupation?

24 A. Adult Probation and Parole agent.

25 Q. Are you familiar with the defendant?

1 A. Yes, I am.

2 Q. How do you know him?

3 A. He is on my caseload as a probation -- I'm his probation
4 officer.

5 Q. How long -- how long have you been his probation --

6 A. Since June.

7 Q. Okay. So fairly new?

8 A. Yes.

9 Q. How much is he required right now to pay a month?

10 A. It's \$850.

11 Q. Do you believe that he could pay more than that?

12 A. Yes.

13 Q. Can you explain to the Court why you believe that?

14 A. His house, for example, that -- his rent for his house,
15 I think it's a luxury that a lot of us don't get, I mean so that
16 right there. I think if he applied himself more to find a job --
17 he's a smart man. I've talked to him. He's a smart man. He
18 could get a job. (Inaudible) probationers jobs all the time,
19 so --

20 Q. Is he working?

21 A. His employment says he works with his wife or for his
22 wife. That's what he's provided to AP&P.

23 Q. All right. What would you like to see him do?

24 A. I'd like to see him work a full-time job in the
25 community and pay his restitution.

1 MR. JAEGER: All right. No further questions at this
2 time.

3 THE COURT: Mr. Chamberlain, you may cross examination.

4 MR. CHAMBERLAIN: Thank you, your Honor.

5 CROSS EXAMINATION

6 BY MR. CHAMBERLAIN:

7 Q. Is it Kehl? Is that how you say the last name?

8 A. Kehl.

9 Q. Kehl. You testified that he can pay more; is that
10 correct?

11 A. Yes, I believe he could pay more.

12 Q. Okay. What do you base that belief on?

13 A. Like I said, just the way -- his lifestyle. He takes
14 travel permits. He was just in -- I think it was Missouri or
15 Kansas City. I can't recall the exact city he went to. He goes
16 on travel permits. He can leave the state. I mean he's -- he's
17 very capable of making this payments -- restitution payments.
18 He's very capable of getting a job. If I don't make payments on
19 my car, I lose my car.

20 Q. Has Mr. Strebeck missed any payments?

21 A. No.

22 Q. Okay. Who pays for his rent in Diamond Valley; do you
23 know?

24 A. Him and his wife.

25 Q. Okay. So is it only he that pays for his rent, or does

1 his wife help? Do you know the mixture of how that's paid?

2 A. I don't.

3 Q. Okay. So how is it that you know that he is completely
4 paying for his rent and that it's just coming from him?

5 MR. JAEGER: Objection, I don't think he said that.

6 MR. CHAMBERLAIN: Your Honor, he --

7 THE COURT: No, the -- I think the question -- the form
8 of the question is objectionable because I think it assumes facts
9 not in evidence because he didn't testify that just Mr. Kehl paid
10 for it, but I think it's a prop -- it's an appropriate area of
11 cross examination, so I'm going to sustain the objection to the
12 form of the question because it assumes facts not in evidence.
13 Proceed.

14 MR. CHAMBERLAIN: Thank you, your Honor.

15 Q. BY MR. CHAMBERLAIN: You also testified that he's
16 capable of more work. What evidence do you have of that?

17 A. My evidence for me is just my interactions with him. I
18 think he's a smart man. I see people and probationers get jobs
19 all the time. Just because he has a felony doesn't mean he can't
20 get a job. I think he's smart enough to have a really good job.

21 Q. Now have I understood your testimony earlier correctly
22 that you say that he only works for his wife; is that true?

23 A. I think he reported a tree trimming business to a
24 private agent.

25 Q. Okay. Has he also discussed the --

1 A. But I just asked him for a financial disclosure, and
2 that -- he just put the one business.

3 Q. The one business?

4 A. Yeah.

5 Q. And yet he's discussed with you before and other
6 probation officers that he works for Mr. Trim Landscaping; is
7 that correct?

8 A. Yes.

9 MR. CHAMBERLAIN: Okay. No further questions.

10 MR. JAEGER: Nothing further.

11 THE COURT: I have a question.

12 THE WITNESS: Yes.

13 THE COURT: Supervising people on probation takes a lot
14 of time.

15 THE WITNESS: Yes.

16 THE COURT: Some people take more, some people take
17 less. Are you in a position where you can spend more time on
18 his probation with regard to the issue of his income?

19 THE WITNESS: Absolutely.

20 THE COURT: All right. Thank you. Any questions based
21 on mine?

22 MR. JAEGER: No, your Honor.

23 THE COURT: Mr. Chamberlain?

24 MR. CHAMBERLAIN: No, your Honor.

25 THE COURT: Thank you. You may step down. Your next

1 witness?

2 MR. JAEGER: The State would rest at this time, your
3 Honor.

4 THE COURT: Mr. Chamberlain, any testimony or evidence?

5 MR. CHAMBERLAIN: Your Honor, I would call defendant to
6 the stand.

7 THE COURT: All right. Mr. Strebeck, come forward, face
8 the clerk, raise your right hand and take an oath.

9 COURT CLERK: Do you solemnly swear that the testimony
10 you are about to give in the matters now pending before this
11 Court will be the truth, the whole truth, and nothing but the
12 truth, so help you God?

13 THE WITNESS: Yes.

14 THE COURT: All right. Come up here and take a seat on
15 my left in the witness box, please. Thank you. Mr. Chamberlain,
16 you may proceed.

17 MR. CHAMBERLAIN: Thank you, your Honor.

18 ALAN STREBECK

19 having been first duly sworn,

20 testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. CHAMBERLAIN:

23 Q. Mr. Strebeck, could you state your full name for the
24 record, please?

25 A. Alan Wayne Strebeck.

1 Q. You've been accused of violating your probation order,
2 or at least being in danger of violating your probation in the
3 future. Have you ever missed any payments during your --

4 A. No, I have not.

5 Q. Okay. You haven't missed any payments. You've also
6 been accused of living extravagantly, I think, is a way to
7 characterize that. Is it easy for you to afford your rent
8 payments each month?

9 A. No. It's a stretch.

10 Q. How do you and your wife negotiate your finances? Who
11 pays for what?

12 A. We don't have -- it goes into a common pot. We know
13 what has to be paid. We've been married for over 25 years, and
14 we just work it out together. I put it in from my sources, she
15 puts it in from her sources, and we somehow manage to get by.

16 Q. From your sources, how much do you make a month,
17 approximately?

18 A. About 2,000.

19 Q. So 2,000 a month. From your wife's source, how much
20 does she make a month?

21 A. It varies with fluctuating clientele, but somewhere 2 or
22 3,000, 2500. It just depends on the month.

23 Q. When you say clientele, what kind of a business is she
24 engaged in?

25 A. She's an energy worker. She does foot zone therapy.

1 Q. What is foot zone therapy?

2 A. It's a modality that treats -- that deals with issues in
3 the body, and just by working with the feet, basically.

4 Q. So besides the work that you do with your wife, have you
5 made efforts to obtain any other kind of job?

6 A. Yes, many others.

7 Q. Many times, you say?

8 A. Yes.

9 Q. What sorts of efforts have you made?

10 A. I've talked to a lot of different employers. There is
11 always something that happens is real quickly they say, "Well, we
12 did a background check on you," and based on allegations that had
13 been made that are purported in the newspaper to be true, but
14 which aren't, it's out there. My name is out there on the
15 internet. Anybody can look anywhere, and I've been denied jobs
16 because of that.

17 Q. And so --

18 A. So -- I mean I'm not talking about landscaping jobs.
19 They're not as critical with someone's background if you're just
20 going to be cutting trees, but if it's something of significant
21 income, there's -- those require a position of trust, if someone
22 is going to be put in a position when they could make the kind of
23 income that the State seems to be pressing for, those kinds of
24 jobs are not -- not on my radar.

25 I'll be talking to my probation officer, Mr. Kehl, and

1 perhaps he has some ideas for me on how I can go about making the
2 kind of income that I'm being pressed to make given the history
3 that's out there on the internet about me.

4 Q. Since you have been on probation, on average per month
5 how many jobs have you applied for?

6 A. It's not that I got out there and apply for jobs all the
7 time. If I have a job, I'm not likely to go out there and be
8 applying for another job at that point in time.

9 Q. So let's explore that. Right now how many hours a week
10 do you work for Mr. Trim Landscaping?

11 A. I don't, and I've reported that to AP&P that I no longer
12 work for Mr. Trim.

13 Q. Why don't you work for them anymore?

14 A. The company basically -- when the owner of the company
15 was injured, he basically -- just he and his sons are the only
16 ones working for the company at this point in time -- kind of
17 dialed back on how many -- how much work they were doing.

18 Q. So he didn't have any work for you?

19 A. That's right.

20 Q. So you've been exclusively working with your wife since
21 then?

22 A. Correct.

23 Q. Okay. How many hours a day do you and your wife do your
24 work?

25 A. It varies. It's a full-time proposition for both of us.

1 Q. When you say it varies, what is the least amount that
2 you work per week for your wife right now?

3 A. Oh, I don't -- I don't know how to even quantify that.
4 I'm not -- we don't have a clock that we punch in and punch out.

5 Q. Just on average, though, per week, what would you say,
6 some estimates.

7 A. Well, it's more than a full-time, more than 40 hours.

8 Q. More than 40 hours a week on average?

9 A. Correct.

10 Q. Okay. What time do you usually start in the morning?

11 A. It could be 8 in the morning, it could be 10 in the
12 morning. It depends on the client load per day.

13 Q. What time do you usually stop at night?

14 A. Sometime around 5:30 or 6, typically.

15 Q. So usually between the hours of 8 to 10 or 5 or 6, you
16 have clients coming into your home to receive a treatment?

17 A. Right.

18 Q. Both of you provide the treatment?

19 A. Yes.

20 MR. CHAMBERLAIN: Okay. I don't have any questions at
21 this time.

22 THE COURT: All right. Cross examine?

23 CROSS EXAMINATION

24 BY MR. JAEGER:

25 Q. So if I understood you right, you said you made

1 approximately \$2,000 a month?

2 A. Right.

3 Q. So is that solely right now from your wife, like your

4 wife is paying you \$2,000 a month?

5 A. She -- I work for the company that she owns, yes.

6 Q. Is there any other -- are you working for any other

7 company right now?

8 A. As I disclosed to my probation officer, I have side jobs

9 from time to time that I pick up.

10 Q. Okay. What are those side jobs, and who would those be

11 with?

12 A. It just depends on who's looking for a laborer at that

13 point in time. I worked yesterday, for example, all day long.

14 Q. Who was that with?

15 A. Val Schultheis.

16 Q. I'm sorry, who?

17 A. Val Schultheis.

18 Q. It was a labor job?

19 A. Yeah.

20 Q. So what did you do as part of that?

21 A. Helped him work on his cabin.

22 Q. All right. Any other type of jobs like that? Are

23 they -- are these -- are they just labor jobs that you work?

24 A. No.

25 Q. So what other type of jobs do you work?

1 A. My wife also has another business that I'm working in,
2 working with non-profit corporations.

3 Q. What's that other business called?

4 A. It's called Path to Freedom.

5 Q. What type of non-profit businesses have -- what does it
6 do?

7 A. Discussing with non-profit organizations how they can
8 monetize their own database by offering some services to their
9 database that compliment what they're already doing.

10 Q. Well, what do you do for them?

11 A. Just introduce them to the concept and the program.

12 Q. A program?

13 A. Uh-huh.

14 Q. So it's a computer program?

15 A. It's an internet based program they would utilize.

16 Q. Any other -- so you work for this non-profit. You also
17 do labor. Anything else that you do on the side?

18 A. No, that pretty much sums it up.

19 Q. Okay. That's how you make your \$2,000 a month?

20 A. Correct. That's correct.

21 Q. Now there's been some discussion about the home you're
22 living in.

23 A. Right.

24 Q. Can you describe the square footage of that home?

25 A. I don't know the total square footage.

1 Q. Just approximately.

2 A. It's over 3,000, I'm pretty sure.

3 Q. Okay. How many bedrooms, approximately?

4 A. Five bedrooms, I think.

5 Q. Five?

6 A. Yeah.

7 Q. How many individuals live in that home?

8 A. Two of us live in the home.

9 Q. Okay.

10 A. We also have two offices in the home for our clientele

11 as well.

12 Q. How much is the rent that you pay a month in that home?

13 A. It's 1,800.

14 Q. There's been some concern discussed about you having

15 hidden money. Do you have any money hidden? Any money like in

16 your house hidden under the mattress?

17 A. Hidden money?

18 Q. Yeah, just any money stored away, stashed away.

19 A. No.

20 Q. No? So you have no money stashed away in your house

21 somewhere?

22 A. No.

23 Q. How about in bank accounts? Do you have any bank

24 accounts?

25 A. No, just the ones that have already been talked about.

1 Q. All right. Are you currently working for a radio
2 station?
3 A. No.
4 Q. Have you in the past month or two been working for a
5 radio station?
6 A. No.
7 Q. Are you currently giving financial advice?
8 A. Are you -- no, absolutely not. Absolutely not.
9 Q. So you're not giving out financial advice?
10 A. No. I can help you with your question that you've
11 worded pretty -- a better way to word your question about the
12 radio station, I do not work for a radio station. I have a
13 program on the radio, but I'm not employed by the radio station.
14 Q. Okay. Tell me about your program on the radio.
15 A. There we go. The name of the program is The Secret of
16 My Success.
17 Q. The Secret of My Success. Do you do that under a
18 different name?
19 A. I use a radio name, Alan Beck.
20 Q. Alan Beck, okay.
21 A. Uh-huh. That's correct.
22 Q. It's called The Secret of My Success?
23 A. Correct.
24 Q. Does your agent know that you have been on the radio?
25 Have you talked to your agent about that?

1 A. Yes, I have --

2 MR. CHAMBERLAIN: Objection, relevance to this line

3 of questioning. What him working on the radio has to do with

4 anything that was pled in the motion for order to show cause, I

5 don't see any relevance to that at all.

6 THE COURT: Overruled.

7 Q. BY MR. JAEGER: Now prior to this, I asked you about all

8 your money that you're making, and you never mentioned the radio

9 station.

10 A. Because I'm not making money there, sir.

11 Q. All right. So you're not paid at all from the radio

12 station?

13 A. Now you understand, that's correct.

14 Q. Okay. So it's a volunteer thing that you do for the

15 radio?

16 A. Right.

17 Q. You're not paid at all for your time?

18 A. I'm not paid at all.

19 Q. What type of advice do you give on the radio?

20 A. I don't give advice. I interview people in the local

21 community who are people of accomplishment and find out why --

22 have -- what they did to become successful. The purpose of this

23 show is to encourage people to step it up and achieve greater

24 success in their own lives.

25 Q. Do you talk about financial issues?

1 A. I do not solicit investments. I do not give financial
2 advice.
3 Q. But do you talk about financial issues on the show?
4 A. If you're talking about a financial issue that somebody
5 buys a ticket when they go to see a movie or something like that;
6 is that what you're talking about?
7 Q. Are you talking about financial ways to make money --
8 A. No.
9 Q. -- on the show?
10 A. No.
11 Q. So The Secret of My Success is not about making money?
12 A. It's about changing their perceptions about their own
13 self confidence, they can move forward and achieve success in
14 whatever they're doing. To the point of the State's direction on
15 this, it's a known fact that people who associate with people of
16 greater caliber tend to rise to that. I have the amazing
17 opportunity working with -- to associate -- not work with --
18 associate with people who are very much pillars in the community.
19 Q. Well, when was your last radio show that you had?
20 A. It was this past Monday.
21 Q. This past Monday?
22 A. Right.
23 Q. You said that you have discussed that with your
24 probation agent that you were doing this radio show?
25 A. I did disclose it to him the last time I met with him.

1 Q. Would that surprise you if he said differently?

2 A. That would surprise me to no end, because it was
3 something that we did not discuss in his office, and when I left
4 I thought, "Oh, wait a second, I better go back and tell him no,
5 it's not employment. I better disclose to him what this is," and
6 I did do that.

7 MR. JAEGER: No further questions of this witness, your
8 Honor.

9 THE COURT: Anything else?

10 MR. CHAMBERLAIN: No others from me.

11 THE COURT: I have a question. Is this --

12 THE WITNESS: Yes.

13 THE COURT: -- a weekly show?

14 THE WITNESS: It is.

15 THE COURT: What time?

16 THE WITNESS: It's on at 4 o'clock.

17 THE COURT: For what, a half an hour?

18 THE WITNESS: For half an hour.

19 THE COURT: So every Monday at 4 o'clock, Alan Beck is
20 on the show interviewing prominent people trying to find the
21 secret of their success, and you're Alan Beck?

22 THE WITNESS: Right.

23 THE COURT: All right. Thank you. Any other questions
24 based on mine? All right. Thank you, you may step down. Any
25 other testimony or evidence?

1 MR. CHAMBERLAIN: No, your Honor.

2 THE COURT: Any rebuttal?

3 MR. JAEGER: No, your Honor.

4 THE COURT: All right. Thank you. Well, I don't know
5 what Judge Beacham's philosophy was, but I assume it was similar
6 to mine, and that is we have a substantial amount of restitution
7 and the person who was convicted of the offense certainly could
8 have gone to prison -- and frankly, I compare this to attorney
9 Matt Graf up in Cedar City. I don't see where they did a whole
10 lot -- a whole lot different was done, and he's in prison still
11 as far as I know.

12 MR. JAEGER: That is correct.

13 THE COURT: But obviously there was an agreement made.
14 Judge Beacham agreed to abide by the agreement, and of course,
15 that's what we have is that agreement and that sentence.

16 I anticipate that his theory was similar to mine, and
17 that is if you're going to place somebody on probation in a
18 situation like this, one of the reasons you do that is to give
19 them the responsibility and the opportunity to try to pay back
20 and to make good what damage they did, and \$875 -- or \$850 a
21 month, it doesn't even come close. It isn't even close to that.

22 I've been told that Judge Shumate at one point indicated
23 that he -- his -- it was his intention that the defendant should
24 essentially pay all of this income. Isn't that what you told me?

25 MR. JAEGER: That is correct, your Honor.

1 THE COURT: Yeah. That essentially pay all of his
2 income toward the restitution. I realize that's a challenge for
3 Mr. Strebeck, but the reality is, that's what he ought to be
4 doing.

5 I mean Judge Beacham found that he was a liar, made that
6 specific finding on the record, and so I mean that is a finding
7 in the court that Judge Beacham made -- you know, did determine
8 that he was a liar. I'm concerned about some of the evidence
9 that I heard and some of the relationships that Mr. Strebeck had
10 developed through his ecclesiastical relationships that
11 apparently resulted in his developing the level of trust that
12 would permit him to steal \$3.8 million from other people. I'm
13 concerned about that.

14 Again, that's not in front of me either. What I'm faced
15 with right now is a -- essentially a request that I require
16 periodic reviews in the case, and then based on the evidence
17 that's been presented, apparently the State is requesting that I
18 modify the payment schedule --

19 MR. JAEGER: That's correct.

20 THE COURT: -- and change the payment schedule because
21 the amount that AP&P has been ordering -- and I don't know why
22 that was taken away from AP&P. Judge Shumate ordered an
23 increase. That was in March to \$850 a month, and I don't know
24 why AP&P hasn't taken the laboring oar here and just increased
25 the (inaudible) when they think it's appropriate.

1 I think that the evidence before me is sufficient to
2 justify an increase in the payment. I'm going to order that the
3 defendant pay \$1500 a month beginning with the month of November
4 toward the restitution.

5 I am also going to order -- and I realize this is going
6 to make more work for AP&P, but I'm going to require that AP --
7 that the defendant reports to AP&P all income received within 24
8 hours of receipt. You have a phone number. You have to call
9 them and let them know every time you receive income. If it's
10 for a part-time job, if it's for work from your wife, whatever it
11 is, you're required to report to them.

12 I tell people all the time, I don't expect probation to
13 be easy. Probation is an alternative to sitting in prison for up
14 to 30 years, and I expect it to be difficult, especially under
15 the circumstances of this case where we're trying to get some
16 money back to these folks that have been victimized by the
17 defendant's fraud. So I'm going to order that.

18 The payments are increased. I'm going to require that
19 AP&P do what Judge Beacham ordered them to do, and that is set
20 the payments. If the State believes that the -- that the
21 payments that AP&P has set are inappropriate, or if the defendant
22 believes that the payments that AP&P has set are inappropriate,
23 that's when you come back to the Court and you ask the Court
24 to take a look at what AP&P did to determine whether there --
25 there -- the amount of restitution payments that they had

1 ordered -- or they have ordered is appropriate.

2 With regard to the periodic reviews, I just don't know
3 what that's going to provide me. I think that AP&P needs to let
4 the Court know at least once a year the monthly payments that the
5 defendant is required to pay, if he's making those payments and
6 anything else that AP&P thinks would be relevant to the Court.
7 If upon -- and that report is to be provided to Mr. Chamberlain
8 and to the State.

9 Once that report is received, if either party wants to
10 file a motion, the Court's open for that, and I'll listen to
11 whatever you have to say, but I think there needs to be a motion
12 filed, if you think that AP&P is not doing or requiring the
13 defendant to do what he should be doing, or if the defendant is
14 not complying with the terms of probation. Then if he's not
15 complying, then we can proceed with an order to show cause.

16 MR. JAEGER: Sounds good.

17 THE COURT: But I think that that's how it needs to
18 proceed. In other words, the parties need to be given the
19 opportunity of notice of what AP&P claims the defendant is doing.
20 If they want to change the payment amount, then both parties
21 need to be notified and the Court of any change in the monthly
22 payment that's required, but I think that's the best way to --
23 quite frankly, I think that's the way that this ought to be
24 handled.

25 We now know that Mr. Strebeck is the Alan Beck, and so I

1 anticipate that there will probably be people in this courtroom
2 that will be listening to a new radio show every Monday at
3 4 o'clock to find out if Mr. Strebeck is violating the terms of
4 his probation in the statements that he makes on the radio. Yes?

5 MR. KEHL: What month would you like those yearly
6 reports from AP&P?

7 THE COURT: Well, let's just -- I'd like a written
8 report within 30 days, and then a written report on or prior to
9 the end of October every year. All right? Actually, let's do
10 one within 30 days, and then let's do one on or prior to the end
11 of May every year, so that's close to the anniversary date of the
12 probation. All right. If you'd prepare an order for my
13 signature?

14 MR. JAEGER: Yes, your Honor, I'll prepare.

15 THE COURT: The only other issue that I can't resolve
16 today is that issue with regard to whether the payments should
17 have been applied first to principal or to interest. Of course,
18 we can go back and fix that.

19 I am concerned about this. This is the first time I've
20 read that 78 -- 77-38A-401(5) which indicates the department
21 shall make rules permitting the restitution payments to be
22 credited principal first. Well, that indicates to me an
23 intention on the part of the legislature that perhaps payments
24 should be applied first to principal and then to interest.

25 I'd like you to research that, Mr. Chamberlain. If you

1 think there's some relief that I should grant in that regard,
2 file -- make your motion. I'd probably first look for the -- if
3 there is a rule that has been drafted, and then file that motion
4 and I'll take a look at it. That does cause me some concern. It
5 may very well be that the payments that have been applied to
6 interest should have been applied to principal, and we'll have to
7 go back and do some accounting to show the amount that's still
8 due and the amount --

9 MR. JAEGER: And if that's the case, I'm sure that we
10 can --

11 THE COURT: And the amount that should be --

12 MR. JAEGER: We can accommodate that.

13 THE COURT: -- accruing interest. That doesn't change
14 the interest that has accrued, but essentially what I understand
15 that -- what this appears to say is that the interest is the last
16 thing that's paid after the principal has been paid. All right.
17 So that's my ruling. Prepare that. Prepare the order, and
18 submit it then to Mr. Chamberlain for his approval before you
19 submit it to me for signature. All right? Thank you.

20 MR. JAEGER: I'll do that, your Honor. Thank you.

21 THE COURT: That's all in Mr. Strebeck's case today.

22 MR. JAEGER: Thanks, your Honor.

23 THE COURT: That concludes the matters on the morning
24 calendar. The Court's in recess until this afternoon.

25 (Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

I, Natalie Lake, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.

That I have been authorized by Beverly Lowe to prepare said transcript, as an independent contractor working under her court reporter's license, appropriately authorized under Utah statutes.

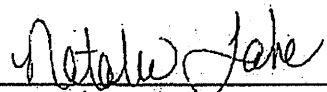
That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

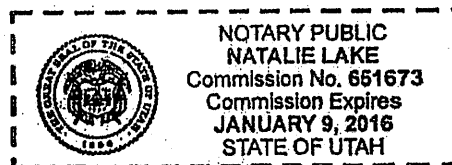
That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.


WITNESS MY HAND AND SEAL this 22nd day of August 2015.

My commission expires: -
January 9, 2016



Natalie Lake
NOTARY PUBLIC
Residing in Tooele County





Beverly Lowe, RSR, CCR

Keyword Index

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