

2016

**Aaron d.t. Needham, Petitioner/Appellant, v. State of Utah,  
Appellee**

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

---

**Recommended Citation**

Reply Brief, *Utah v. Needham*, No. 20140483 (Utah Court of Appeals, 2016).  
[https://digitalcommons.law.byu.edu/byu\\_ca3/3569](https://digitalcommons.law.byu.edu/byu_ca3/3569)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007– ) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

## UTAH COURT OF APPEALS

Aaron D.T. Needham  
petitioner / appellant

Reply Brief of Appellant

vs.

State of Utah  
Appellee

CASE NO 20140483-CA

### Statement of the Issues

#### Issues

1. The egregious mismanagement of petitioners case by prosecutorial misconduct and ineffective counsel compels a presumption of prejudice that infected proceedings making them fundamentally unfair.

Standard / Preservation: This court reviews questions regarding the admissibility of evidence for abuse of discretion and the legal determination underlying the evidential ruling for correctness.

State v. McCullar 2014 UT App 215 ¶¶ 19, 21-22, 335 P.3d 900

This issue is preserved.

2. Whether petitioners incarceration violates the Utah Constitution Double Jeopardy Clause?

FILED  
UTAH APPELLATE COURTS

MAR 22 2016

Standard / Preservation: This issue is reviewed for correctness.

State v. Kell 2002 UT 106 ¶ 55, 61 P.3d 1019

This issue is preserved.

To the extent this court disagrees, the issue may be reviewed for plain error.

3. Whether petitioner's rights to the Confrontation Clause and right to a face to face violated Utah's Constitution?

Standard / preservation: This issue is reviewed for correctness.

State v. Kell 2002 UT 106 ¶ 55, 61 P.3d 1019

This issue is preserved.

4. Whether the trial court should have disqualified Washington County Attorney's office concurrent "Conflict of Interest" by  
① defense counsel's Association with opposing counsel within the same firm created rebuttable presumption of wrongfully shared confidences and ② defense counsel's solicitation to work for Union County attorney's office to prosecute petitioner for allegedly violating a plea in abeyance directly attacked by ineffective assistance of counsel?

Standard / Preservation: This issue reviewed for correctness.

Taylor v. State 2007 UT 12 ¶ 13, 156 P3d 739

This issue is preserved. If this court disagrees, the issue may be reviewed for plain error.

5. Whether Cumulative error's required reversal?

Standard / Preservation: A claim of cumulative errors require [this Court] to apply the standard of review applicable to each underlying claim.

Badman v. Flanders Corp 2007 UT App 351 ¶ 4, 172 P.3d 466

## Table of Contents

I	Statements of the Issues	1-2
II	Table of Contents	3
III	Table of Authority	4-7
	(a) Federal Statutes	Appendix
	(b) State Rules	
	(c) Utah Rules of Professional conduct	24
IV	Addendum	
V	Argument I prosecutorial misconduct / ineffective counsel	10
VI	Argument II Double Jeopardy Violation	14
VII	Argument III Confrontation Clause / face to face	19
VIII	Argument IV rebuttable presumption of prejudice	22
IX	Argument V Cumulative errors	27
X	Conclusion	28
XI	Appellant Brief	31
XII	U.S. Constitution	Appendix
	V Amendment	
	VI Amendment	
	XIV Amendment	
	Article IV	
	(3/30)	



## Table of Authority

1. <u>U.S. v. Agurs 427 U.S. 97, 107-11 (1976)</u>	11,
2. <u>U.S. v. Bader 678 f.3d 858, 884-85 (10<sup>th</sup> Cir 2012)</u>	11,
3. <u>U.S. v. Bagley 473 U.S. 667, 676 (1985)</u>	11, 17
4. <u>U.S. v. Balderama-Tribe 490 f.3d 1199, 1204</u>	22,
5. <u>U.S. v. Bleechman 657 f.3d 1052, 1063-64 (10<sup>th</sup> Cir 2011)</u>	14,
6. <u>U.S. v. Gingley 213 f.3d 509, 516 n.2 (10<sup>th</sup> Cir 2000)</u>	22,
7. <u>U.S. v. Lopez-Medina 596 f.3d 1270, 716, 738 (10<sup>th</sup> Cir 2010)</u>	14,
8. <u>U.S. v. Marcus 130 S.Ct 2159, 2164 (2010)</u>	22,
9. <u>U.S. v. Olano 507 U.S. 732 (1993)</u>	14,
10. <u>U.S. v. Scull 321 f.3d 1270, 1277 (10<sup>th</sup> Cir 2003)</u>	14,
11. <u>U.S. v. Weidmer 437 f.3d 1023, 1049-50 (10<sup>th</sup> Cir 2000)</u>	22,
12. <u>US Dist Ct v. Kerr 426 U.S. 399, 400 (1976)</u>	28,
13. <u>State v. Brown 853 P.2d 851, 856-58 (UTAH 1992)</u>	23,
14. <u>State v. Crowley 2014 UT App 33 ¶ 17, 320 P.3d 677</u>	28
15. <u>State v. De Booy 2000 UT 32 ¶ 12, 996 P.2d 546</u>	14,

16. State v. Harris 2004 UT 103 ¶ 24 14
17. State v. Kell 2002 UT 106 ¶ 55, 61 P.3d 109 2,
18. State v. Litherland 2000 UT 716 ¶ 116, 12 P.3d 92 20,
19. State v. Kohl 2000 UT 35 ¶ 17, 999 P.2d 7 28,
20. State v. McClellan 2008 UT App 48 ¶ 22, 179 P.3d 825 23  
2009 UT 50 S.Ct 27
21. State v. McCullar 2014 UT App 215 ¶ 19, 21-22, 335 P.3d 900 1,
22. State v. Perea 2013 UT 68 ¶ 97, 322 28,
23. State v. Stewart 544 P.2d 477, 479 19
24. State v. Wagstaff p 990 21,
25. State v. Wamosik 31 P.3d 615, 1674 (UT Ct App 2001) 20,
26. Abramson v. Griffin 693 f.2d 1009, 1010-11 (10<sup>th</sup> Cir 1982) 15, 19
27. Battenfield v. Gibson 236 f.3d 1215, 1235 (10<sup>th</sup> Cir 2001) 17,
28. Brady v. Md 373 U.S. 83, 87 (1963) 11,
29. Brecht v. Abrahamson 507 U.S. 619, 637-38 n.9 (1993) 20,
30. Bullock v. Carver 297 f.3d 1036, 1047-48 (10<sup>th</sup> Cir 2002) 14,
31. Cone v. Bell 556 U.S. 449, 469 (2009) 14,  
 (5/80)

32. Gardner v. Galetka 568 F.3d 862, 885-86 (10<sup>th</sup> Cir 2009) 10,
33. Groseclose v. Bell 130 F.3d 1161, 1170 11,
34. Hammann v. Ward 466 F.3d 919, 927-31 (10<sup>th</sup> Cir 2006) 22,
35. Heath v. Alabama 474 U.S. at 88 15,
36. Hunt v. Uphoff 199 F.3d 1220, 1222 (10<sup>th</sup> Cir 1999) 29
37. Helling v. McKinney 509 U.S. 28, 35-36 (1993) 29,
38. Kyles v. Whitley 514 U.S. 419, 435 (1995) 11,
39. Lux v. Virginia 484 SE 2d 145, 150 (Va Ct App 1997) 25,
40. McNair v. Hayward 666 P.2d 321 (UT 1983) 29
41. Michigan v. Davenport 760 N.W. 2d 743, 750 (Mich Ct App 2008) 26,
42. Mel v. Craig 497 U.S. 836, 846 (1990) 21,
43. Murray v. Carrier 477 U.S. 478, 496 (1986) 11
44. Nebraska v. Kinkennan 747 N.W. 2d 437, 444 (Neb 2008) 25,
45. New Mexico v. Pennington 851 P.2d 494, 498 (NM Ct App 1993) 25,
46. Pa v. Richie 480 U.S. 39, 60 (1987) 12,
47. Radman v. Flanders Corp 2007 UT App 351 ¶ 4, 172 P.3d 668 2,

	Pages
48. <u>Saini v. Ciarpagine 352 f.3d 328, 330 (7th Cir 2003)</u>	29,
49. <u>Schlup v. Delo 513 U.S. 298, 327 (1995)</u>	10,
50. <u>Strickler v. Greene 527 U.S. 263, 281-82 (1999)</u>	14, 17
51. <u>Strickland v. Washington 466 U.S. 668, 690, 104 S.Ct 2052, 2066 80 L Ed 2d 674, 695 (1984)</u>	11, 17
52. <u>Taylor v. State 2007 UT 12 ¶ 13, 156 P.3d 739</u>	2
53. <u>Talamante v. Ramero 620 f.2d 784, 788 (10th Cir 1980)</u>	12,
54. <u>Trammell v. McKane 485 f.3d 546, 551 (10th Cir 2007)</u>	12,
55. <u>Williams v. Taylor 529 U.S. 362, 120 S.Ct 1495 146 L Ed 2d 389 (2000)</u>	10,
56. <u>Ziegler v. Milkens 583 P.2d 1175 (Ut 1978)</u>	29,
57. <u>re R.B 583 N.W. 2d. 839, 842</u>	25.
<u>Additional</u>	
58. <u>Fey v. Piller 551 U.S. 112, 119-20 (2007)</u>	18,
59. <u>Kin Kennon 747 N.W 2d at 443</u>	25

### Federal Statutes

U.S Const. amend V

28 U.S.C § 1651 (a)

U.S. Const. amend VI

28 U.S.C § 1951 (a)

29

Utah Const. Art I § 12

14

U.S. Const. Article IV Full Faith and Credit Clause

Appendix

U.S. Const. Amend XIV

Appendix

State Rules

Utah Const. Art I § 12

14

Section § 76-1-403 Double Jeopardy Clause

15

Rule 27a (2) UTAH RULES CIVIL Procedure

20

Rule 30 UTAH RULES CIVIL Procedure

21

Utah Rules of Prof'l Conduct

Rules 1.9 (a)

24

Rules 1.10(a)(1)

24

Rules 1.10(a)(2)

24

Rules 1.7(a)

24

Rules 1.9(c)

24

Rules 1.10(c)(1)

24

APPENDUMS

1 Joint Venture Agreement

2 Joint Venture Addendum

(8/38)

3. Letter to Wayne Hollman Division of professional licensing
4. Nevada State Property tax notice
5. Transcript of John Tebb's and Rulon Mussan
6. Audio Recording on CD of Tebb's and Mussan
7. Rulon Affidavit
8. Closing Huds: 1a. Scale 26 and 27, Bloomington Ranches 78B  
White Mesa 125 + 131, River Hollow 28 and 29
9. Witness List
10. Copy of Clem Tebb's Deposition
11. Doug Terry and LaMar Winward address
12. John Gresham letter
13. Docket listing case no. 101500067
14. Wade Faraway letter
15. Complaint DOPL 2003 license renewal 2005
16. Complaint DOPL 2006 license renewal 2007
17. John Tebb's Trial testimony
18. Jolie Bown Trial Testimony
19. BAGT lis pendens filing October 31, 2006
20. Needham lis pendens release November 30, 2006
21. Iron County lis pendens release
22. Appellate Brief
23. Evidentiary Hearing

## Argument I

The Egregious mismanagement of petitioner's case by prosecutorial misconduct and ineffective counsel compels a presumption of prejudice that infected proceedings making them fundamentally unfair.

1. To support reversal on a finding of error, the court requires a showing of prejudice. The courts have held a petitioner could demonstrate actual innocence by showing that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence and requires the petitioner to show actual innocence by clear and convincing evidence. Schup v. Delo 513 U.S. 298, 327 (1995).
2. The factual material presented in this reply brief was provided to prosecution in 2006, Mark Schuttler, 2008, Terry Powell and 2011, Wade Farnoway and State appointed counsel in 2012 Aric Gramer / Brock Karrington, 2012, Candice Reid / Doug Terry, 2013, Ben Gordon, 2014 Gary Kuhlman / Nicolas Turner.
3. Prosecution and appointed counsel's strategy to withhold evidence made proceedings fundamentally unfair warranting an acquittal. see State v. Stewart 544 P.2d 477, 479. This "claim of counsel's 'Conflict of Interest' reviewed on appeal only where 'Actual Conflict of Interest' adversely affected attorney's performance. Gardner v. Galetka 568 F.3d 812, 855-86 (10th Cir. 2009). Also citing Williams v. Taylor 529 U.S. 362, 120 S. Ct. 1495 1461 Ed. 2d 389 (2000). "petitioner was denied his constitutionally guaranteed right to effective assistance of counsel when his attorney failed to investigate and present substantial mitigating evidence." that ineffective counsel claimed the evidence had "no evidentiary value." see Evidentiary Hearing page 201 lines 5-7. The withholding of Exculpatory material and witnesses by counsel at the deposition and at trial fell below the professional standard for lawyers.

See Strickland v. Washington 466 U.S. 668, 690 104 S.Ct 2052, 2066, 80 L Ed 2d 674, 695 (1984). Also citing U.S. v. Bagley 473 U.S. 667, 676 (1985) "Evidence favorable to an accused includes exculpatory evidence and evidences that impeaches a governmental witness is material." "The relevant question is not whether counsel were strategic but whether they were reasonable." Bullock v. Carter 297 F.3d 1036, 1047-48 (10<sup>th</sup> Cir 2002).

4. There is no reasonable analysis to the withholding of impeachable material by effective counsel. Therefore, effective assistance of counsel... may in a particular case be violated by even an isolated error of counsel if that error is sufficiently egregious and prejudicial. see Murray v. Carrier 477 U.S. 478, 496 (1986) also citing Groseclose v. Bell 130 F.3d 1161, 1170 counsel's failure to interview witnesses, conduct any legal research or obtain and review any records was Ineffective assistance. Also, "prosecution constitutional duty to disclose favorable evidence governed by materiality standard". U.S. v. Agurs 427 U.S. 97, 107-11 (1976).
5. Therefore, prosecution and Ineffective counsel withholding of factual material violates Brady, "Evidence is material and requires reversal of conviction when there is a reasonable probability that disclosure would have altered the result of the trial, a mere possibility is not enough." Brady v. Md 373 U.S. 83, 87 (1963) also citing U.S. v. Bagley 473 U.S. 667, 682 (1985). "Once materiality of suppressed evidence and unconstitutional suppression error found, no need for harmless error review." see Kyles v. Whitley 514 U.S. 419, 435 (1995).
6. "Prosecution's constitutional duty to disclose favorable evidence governed by materiality standard and not limited to situations where defendants request favorable evidence." see U.S. Bagley 473 U.S. 667, 682 (1985) also citing Kyle v. Whitley 514 U.S. 419, 433 (1995). "Regardless of request, favorable evidence is material..."



A reasonable probability under Bagley is a probability sufficient to undermine confidence in the outcome. Also, when assessing evidence materiality, the court must take into account the cumulative effect of the suppressed evidence."

7 "Governments constitutional duty to disclose continues throughout the proceedings". See Pa. v. Ritchie 480 U.S. 39, 60 (1987). Thus, the States refusal to disclose their knowledge of the factual material violates their constitutional duty to disclose.

8 This obligation of material evidence and their "affirmative duty to learn of and disclose any exculpatory or impeachment evidence known to other government agents, including any agents or officers involved in the investigation." Kyle v. Whitley 514 U.S. 431 (1995). This includes the hand delivered letter and documentation to Wayne Hollman, Investigator for the Division of professional licensing that resides in the same building as the Attorney Generals office.

9 The fact that prosecutor have a constitutional duty to disclose, "the good or bad faith of prosecutor may play a role in materiality determination for brady purposes." Talamante v. Romero 620 f.2d 784, 788 (10<sup>th</sup> Cir 1980). also citing Trammell v. McKane 485 f.3d 546, 551 (10<sup>th</sup> Cir 2007). "Brady violation occurs because cumulative impact of suppressed evidence would have bolstered defendants actual innocence."

10 The charges in this case are based on transactions in connection with properties started in October 2004 thru July 2005 that is preserved on page 199 Evidentiary Hearing for Addendum #23 for Blennington Ranches 78B, River Hollow 28-29, 1a. Scala 26-27 and White Mesa 125-131 identified in Addendum #8. The State improperly states that these properties in 2004-05 are related to the DOPL complaint in 2003. Addendum #15 and #16 identify the 2003 and 2006 complaints.

(12/30)

11. These projects identified by State prosecution are also identified on Addendum #2 dated June 28, 2005, the Joint-Venture Agreement, Addendum #1 are assigned together. It is unreasonable to assume that a complaint filed in 2003 is for properties acquired in 2005. This logic assumes that the State can charge entities for offenses committed in the future, assuming violations before they happen.
12. But prosecution's and appointed counsel's failure to present the addendums before this court at the Deposition or trial proceedings were both substantial and injurious errors. The impeachable material of these Addendums proves Clem Tebbis gave false testimony. On page 52 of Deposition Clem Tebbis identifies himself as the only signer for BACT, therefore, it's reasonable to assume Clem Tebbis was aware of each transaction.
13. Clem misrepresents advancing funds to petitioner and companies that are identified on each closing documents on pages 46-47 of Deposition and on Addendum #8. Clem confirms on pages 48-52 that Jolie Bown took over auditing starting with White Mesa: 125-131 that closed in October 2004 and contradicts these exhibits and advancing funds on page 55 of Deposition. On page 60 of Deposition, Clem claims no working relationship with Leonard McKnelly prior to August 2005, yet on closing statement for Bloomington Ranches 78B both Clem Tebbis-BACT and Leonard McKnelly-LMM Construction are listed on the documents and check. On page 62, Clem refuses to address the results of BACT filing of Lis pendens that was released in December 2006 identified in Addendums #19, #20, #21 recognized by Iron County Records office.
14. The Addendum to challenge Clem's testimony were withheld by prosecution confirming materiality. "When the State withholds from a criminal defendant evidence that is material to his guilt

or punishment it violates his rights to due process of law in violation of the 14<sup>th</sup> Amendment". Strickler v. Greene 527 U.S. 263, 281-82 (1999).

Also citing Cone v. Bell 556 U.S. 414, 419 (2009). "Atrageous government conduct first raised on appeal reviewed for plain error."

"Claim of prosecutorial misconduct reviewed for plain error because no objection made at trial." U.S. v. Scull 321 F.3d 1270,

1277 (10<sup>th</sup> Cir 2003) also citing U.S. v. Lopez-Medina 594 F.3d 716,

138 (10<sup>th</sup> Cir 2010) State witnesses "here say is preserved because

party need not review courts definitive ruling on admissibility."

U.S. v. Bleechman 657 F.3d 1052, 1063-64 (10<sup>th</sup> Cir 2011).

- 15 Thus, the "Appellate courts may exercise discretion to correct an error seriously affecting fairness, integrity or public reputation of judicial proceedings." U.S. v. Oland 807 U.S. 732 (1993).

By reversing the trial courts ruling.

### Argument II

Whether petitioners incarceration violates the Utah Constitution Double Jeopardy Clause?

- 16 Utah's Double Jeopardy Clause states that no person "shall be twice ... put in jeopardy for the same offense." Utah Const. Art I § 12. Although the U.S. and Utah constitution contain similar content, this court "will not hesitate to give the Utah Constitution a different construction where doing so will more appropriately protect the rights of this states citizens" State v. De Booy 2000 UT 32 ¶ 12, 996 P.2d 546

- 17 By its terms, the double jeopardy clause prevents the State from putting a person in jeopardy for the same offense. This provision protects a defendant from "multiple punishment for the same offense." State v. Harris 2004 UT 103 ¶ 24. Given that the Double Jeopardy clause guarantees afforded defendants under the Utah Constitution are different from and greater protection than

those afforded by the United States Constitution," the clause may be interpreted to prohibit re-punishment of a defendant for a past acquittal or conviction." *Id*

18 In Heath v. Alabama, the Supreme Court held that two entities seeking to prosecute a defendant for the same criminal act must be separate sovereigns that derive their authority from distinct sources of power": 474 US at 85. The Division of Professional Licensing (DPL) and the Attorney General's office of the State of Utah "derive their authority from distinct sources of power, but local governments are not considered sovereigns for double jeopardy purposes. Consequently, successive prosecution by a local government and a State in which it is located, or by two local governments in the same state is prohibited." In Abramson v. Griffin 693 F. 2d 1009, 1010-11 (10th Cir 1982) "after dismissal of city reckless driving charge, State prosecution for aggravated assault stemming from the same incident barred by double jeopardy."

19 The State of Utah has defined double jeopardy protection in Section § 76-1-403

(1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if:

- (i) The former prosecution
- (i) resulted in acquittal or
- (iv) was terminated by a final order or judgment for the defendant that has not been reversed, set aside or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

20 Prosecution continues to mislead the court by directing this current case to a DPL complaint in 2003 for homes and projects under

construction in or prior to 2003. The projects listed by prosecution: White Mesa 125-131, la Scala 20-27 in Mesquite Nevada, Bloomington Ranches 76B, River Hollow 28-29 are identified in Addendum #2- Joint Venture Addendum dated June 28, 2005 and Addendum #8 Closing Huds by Mesquite Title and fidelity title in Nevada and Southern Utah title from closings in October 2004 to July 2005.

21 Bact filed their complaint against petitioner in June 2006.

On July 2, 2006, petitioner was contacted and threatened by Wayne Hollman of the Division of Professional Licensing to turn in his general's contractors licensing or spend 60-90 days in prison. Petitioner and his attorney's met with Wayne Hollman, Kris Owen and Jordan Summers at a meeting in September 2006 that can be defined by Addendum #3, the hand delivered letter to Hollman with all associated documents on that day in September 2006.

22 On October 31, 2006, Bact filed their law suit and filed a lis pendens on Seven million dollars of projects on 18 homes in Iron County.

23 On November 30, 2006 petitioner's attorney Brad Parson filed for release of lis pendens.

24 In December 2006, the fifth District Court ordered release in Iron County which is reflected in Addendums #19, #20 #21. The level of contempt upon the court is reflected by the States reply brief Addendum C that shows a contradiction to two different law firms filing and iron county recorder's office that recognizes the courts ruling to release the lis pendens.

25 In September 2005, Rullon Mussar, a mutual contractor, recorded a phone conversation between himself and John Terbs identified in Addendum #5, #6 and #7. This recording confirms that (1) John Terbs wanted to change the joint venture agreement and have petitioner return the \$200,000 provided

to petitioner and Mc Knelly as part of the joint venture agreement and Addendum identified in Addendum #1 and #2. This amount is testified again by John Tebb's trial testimony confirming the \$200,000.- two hundred thousand on page \_\_\_\_\_. This amount is far different than Julie Bown, BACT controller that testified the amount to be \$716,000.- on page \_\_\_\_\_.

(2) John Tebb affirms the profitability of the project organized by petitioner that Tebb is in first position as owner and refused to sell any of the projects because of their value.

(3) John Tebb confirms the existence of the joint venture agreement and addendum and identifies the contracts by alleging they were not signed.

(4) The signing of the Joint Venture agreement and Addendum are confirmed by Addendum #4 that shows petitioner's business P.O. Box address and BACT as owner on a Nevada State Property tax notice that the State of Utah should recognize under U.S. Constitution Article IV, Full Faith and Credit Clause.

26 The State prosecutor with held this information from the courts to obtain a conviction. "When the State with holds from a criminal defendant evidence that is material to his guilt or punishment, it violates his due process of law rights in violation of the 14<sup>th</sup> Amendment." Strickler v. Greene 527 U.S. 263, 281-82 (1999). In U.S. v. Bagley 473 U.S. 667, 682 (1985). "prosecution's constitutional duty to disclose favorable evidence governed by materiality standard and not limited to situations where defendants request favorable evidence." Also, "claim of ineffective assistance of counsel must show that counsel's performance was deficient and errors prejudiced defense to extent that petitioner was deprived of a fair trial." Strickland v. Washington 476 U.S. 668, 687 (1984). also citing Battenfield v. Gibbons 236 F.3d 1215, 1235 (10<sup>th</sup> Cir 2001). Prosecution and Ineffective assistance of counsel's constitutional errors that

structural errors and constitutionally significant trial errors that had substantial and injurious effect upon proceedings, especially egregious errors. Warrant reversal as required under Brady. "Brecht remains the correct standard of review is assessing the prejudicial impact of federal constitutional error in a criminal trial in State court." Fay v. Plater 551 U.S. 112, 119-20 (2007).

27 State prosecutions egregious errors are presented by Wade Forroway, assistant attorney general whom requested a plea deal instead of trial in Addendum #14 after June 9<sup>th</sup>, 2012 preliminary hearing. The plea deal suggested by Forroway was offered after the June 9<sup>th</sup> hearing and petitioners counsel with Forroway agreed to review all of petitioners material identified in the Wayne Hollman letter.

28 After offering the plea deal, Forroway was substituted by Jacob Taylor, assistant attorney general whom ~~is~~ alleged in conspiring with state appointed counsel Aric Cramer, Brook Beannington, Candice Reed, Doug Terry, Ben Gordon, Gary Kuhlman and Nic Turner to withhold the presentation of the Wayne Hollman letter and documentation in Addendum #3.

29 Petitioners protest letter to Wayne Hollman of DGPL was never presented to trial court with petitioners attempt blocked by counsel and the court under State v. Wareham. Defense counsel clearly has a duty, as well as prosecutor to provide the Wayne Hollman letter and documentation in defense behalf in proving Double Jeopardy violation.

30 Presenting the factual material to this court, this issue can be addressed in determining plain error in prosecution and counsel with holding this material. Kim Quon does confirm in her trial testimony that DGPL renewed petitioners license in November 2007, after the investigation and meeting in September 2006. DGPL's concession to renew petitioners license is complimented by the 5<sup>th</sup> District Courts ruling.

recognized by Iron County's Records Office where the release of his pendens is filed. The negligence of this civil case and the release of the lis pendens by BACT after petitioner's attorney filing for release. Is that DOPL's decision to renew petitioner's license in 2007 and the release of the lis pendens in 2006 support double jeopardy violation as both cases are "final orders, or judgments for defendant that has not been reversed, set aside or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution." Since, the Division of Professional Licensing never reversed the renewal of petitioner's license and the lis pendens release was never reinstated, Double Jeopardy error stands. see Abramson v. Griffin 693 F.2d 1009, 1010-11 (10th Cir 1982).

### Argument III

Whether petitioner's rights to the Confrontation Clause and right to a face to face violated the Utah Constitution?

31 The trial court erred in not assessing the contention of plain error by prosecution and ineffective assistance of counsel by withholding exculpatory material and witnesses from the deposition prejudiced the petitioner. Therefore, the appellate court should reverse the conviction with both prosecutor and ineffective counsel violating the Adversarial process and "the constitutional rights violated by plain error that impaired the defendant's rights and harmed the integrity of the proceedings." U.S. v. Bader 678 F.3d 858, 884-85 (10th Cir 2012).

32 The denial of the right to be at the deposition and the withholding of material evidence that contradicted Clem Tebb's testimony by prosecution and defense counsel "had substantial and injurious effect or influence in determining the jury's verdict or otherwise



infected the integrity of the proceedings." Brecht v. Abrahamson  
507 U.S. 619, 637-38 n.9 (1993) thus, granting habeas relief

- 33 Petitioner claims that the entire deposition was pre arranged by prosecution and defense counsel to deceive petitioner in not appearing at the deposition due to health issues.

Under rule 27a(2) UT Rules Civil P.

The petitioner shall thereafter serve a notice upon each person named in the petition as an expected party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein...

At least 20 days before the date of hearing the notice shall be served...

- 34 Brock Karrington calls petitioner at the end of May 2012 to provide (4) four dates for petitioner to choose to hold the deposition. Petitioner choose June 26<sup>th</sup>, 2012 to hold the Deposition. But on June 12<sup>th</sup>, 2012 Karrington calls to notify petitioner that the deposition is on June 14, 2012.

- 35 The prejudicial error is that on May 24, 2012 the court approved June 14, 2012 to hold the deposition that contradicts Karrington motives at the end of May 2012 and Karrington's request to choose a date that was already set.

- 36 Petitioner was upset at Karrington for not arranging petitioner to be there nor any opportunity to review the deposition before or at trial. Petitioner saw the deposition for the first time at trial and received a copy after trial. Petitioner claims his absence at the deposition was involuntary.

- 37 In State v. Wanosik 31 P.3d 415, 624 UT. CT App (2001) "Voluntariness of absence may not be presumed by the trial court, rather an inquiry into the defendants ability to appear at the proceeding is required"... on page 624 "voluntariness of a defendants absence

from a proceeding is determined by considering the totality of the circumstances." Id. Petitioner has been sick with coxciemyocosis since 2007 and been in and out of the hospital. Petitioner's current incarceration keeps him in imminent danger as multiple infections continue to develop due to the infectious conditions. The flesh eating bacteria exposed bone resulting in bone infection that threatens amputation of petitioner's right foot.

38 In State v. Wagstaff on page 910, "A defendant who voluntarily left the State but was arrested the day before trial for drunken driving in that other state and was in custody in that State was found to have been involuntarily absent." Also, A defendant who did not appear at trial upon the mistaken advice of counsel not to be there, was not deemed to be voluntary absenteeism. So advice of counsel not to be there is involuntary absence and not a waiver of the confrontation clause.

Under rule 30 UT R. Civ. P.

(b)(1) The party deposing a witness shall give reasonable notice in writing to every other party. The notice shall state the date, time and place for the deposition...

39 Under petitioner current and past medical conditions and challenges to travel, the improper notification by counsel and the limitations to travel 300 miles on less than 48 hours violates rule 30 Id.

Defense counsel improper notification and petitioner's involuntary absentee of the deposition was plain error by the court. The 6<sup>th</sup>

Amendment violation preventing discovery not harmless because case was not circumstantial and defendant prevented from developing potentially exculpatory evidence.

also citing Mo. v. Craig 497 U.S. 836, 844 (1990). "face to face confrontation enhances the accuracy of fact finding by reducing the risk that a witness will wrongfully implicate an innocent person."

40 Petitioner alleges prosecution and counsel strategically manipulated petitioner to deliberately miss the deposition. Counsel's failure to assert that trial counsel operated under a prejudicial conflict of Interest was Ineffective counsel because issue was obvious and would have resulted in reversal on Appeal. Hammon v. Ward 416 F.3d 919, 921-31 (10<sup>th</sup> Cir 2006). "The court may review ineffective assistance claim on direct Appeal because record was sufficiently developed" U.S. v. Bogley 213 F.3d 509, 516 n.2. (10<sup>th</sup> Cir 2000). The "Appellate court may exercise discretion to correct an error seriously affecting the fairness, integrity or public reputation of judicial proceedings". U.S. v. Balderama-Tribe 490 F.3d 1199, 1204 (10<sup>th</sup> Cir 2007). also citing U.S. v. Marcus 130 S.Ct 2189, 2194 (2010). "Appellate courts plain error review discretionary and should be exercised when it seriously affects the fairness, integrity or public reputation of judicial proceedings." Thus, plain error required reversal because prosecutor's misconduct seriously affected fairness, integrity or reputation of proceedings". U.S. v. Weidner 437 F.3d 1023, 1049-50 (10<sup>th</sup> Cir 2006). Petitioner's involuntary absentee warrants reversal for structural error of trial courts denial of petitioner's right to attend the deposition.

#### Argument IV

41 Whether the trial court should have disqualified Washington County's Attorney's office concurrent "Conflict of Interest" by (1) defense counsel's Association with opposing counsel within the same office created rebuttable presumption of wrongfully shared confidences and (2) defense counsel's solicitation to work for Iron county attorney's office to prosecute petitioner for allegedly violating a plea in abeyance directly attacked by this case results in an un rebuttable presumption of prejudice?

42 The limited issue of whether an entire county attorney's office must be disqualified from a defendant's prosecution when that defendant's former defense counsel becomes employed by the county attorney's office is a question of first impression in Utah. The Court of Appeals has a premise that a more flexible rule better reflects Utah's rules, precedent and policy. The rule formulated by the court of Appeals

43 To ensure faith in the impartiality and integrity of the criminal justice system, and to prevent a chilling effect on a defendant's willingness to confide in defense counsel, the entire prosecutor's office or defense office will be assumed to be privy to the confidences obtained by the former defense lawyer. The prosecutor or defense counsel may rebut this presumption by showing that effective screening procedures have been used to isolate the defendant's former counsel from the prosecution of the substantially related criminal charges. State v. McClellan 2008 UT App 48 ¶122, 179 P.3d 825

44 The consequences of defense counsel's association with the prosecuting entity during the course of prosecution, the concerns underlying this issue are not new. In State v. Brown, this court adopted a rule prohibiting a city's prosecutor from assisting in the defense of an accused, emphasizing that such dual representation would jeopardize the vital interests of the criminal justice system, and that fairness and impartiality in the adjudication process must be diligently maintained in order to ensure public faith in the impartiality and integrity of the justice system. 853 P.2d 851, 856-58 (UTAH 1992). These same policy considerations are at issue in this case. A presumption of shared confidences between <sup>(1)</sup> the former defense counsel and the county attorney's office and <sup>(2)</sup> defense counsel association

with opposing counsel in the same office in a related case. This un rebutted presumption of wrongfully shared confidences results in an un rebuttable presumption of prejudice.

45 In adopting this rule, the court is guided by the Utah Rules of professional conduct. Clearly, under rule 1.9 (a) a former defense attorney is prohibited from participating in the prosecution of his or her former client in the same or a substantially related matter absent that client's informed consent, confirmed in writing. "UTAH RULES of Prof'l Conduct R. 1.9 (a) ~~2000~~. Ordinarily, such a conflict of Interest is attributed to all members of a disqualified attorney's firm." Id R. 1.10 Also, Except as provided in paragraph (b) a lawyer shall not represent a client if the representation involves a concurrent conflict of Interest. A concurrent conflict of Interest exists if:

(a)(1) The representation of one client will be directly adverse to another client or

(a)(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Id rule 1.7 (a) also citing rule 1.9 (c)

A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter Id rule 1.9 (c)

46 However, the rules of Professional Conduct contemplate that the conflict need not be generally attributed if "the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom" Id R. 1.10 (c)(1) While these rules apply specifically only to

Attorney's working in the private sector, it demonstrates "the courts" preference for screening over per se disqualification of an entire group of associated attorney's.

47 Other courts are divided over whether per se disqualification of the entire defense's office is necessary to adequately protect the rights of the accused. lux v. Virginia 484 SE 2d 145, 150 (Va. Ct App 1997).

However, the majority of jurisdictions that have addressed this issue have rejected the inflexibility of a per se rule and have held instead that "the entire staff ordinarily need not be disqualified from prosecuting the defendant if the staff member who had previously worked for the defendant is isolated from any participation in the prosecution of the defendant." New Mexico v. Pennington 851 P.2d 494, 498 (NM Ct App 1993)

See also Nebraska v. Kinkennon 747 N.W 2d 437, 444 (Neb 2008)

"When the disqualified attorney is effectively screened from any participation in the prosecution of the defendant, the defense offense may, in general, proceed with the defense. In re R.B. 583 N.W 2d 839, 842. "Based upon the extensive efforts made to screen former defense counsel from any communication with anyone in the States Attorney's Office about this case after her employment with office..., we find no error in the trial courts denial of defendants motions to dismiss or recuse the entire office.

48 The rebuttable presumption of shared confidences which the court adopts avoids the drastic result of disqualifying an entire county attorney's office based on only the appearance of impropriety, without regard to whether any confidences was actually breached or any prejudice to the defendant actually resulted, while at the same time ensuring the rights of the accused are protected. see Kinkennon 747 N.W 2d at 448. The rebuttable presumption allows "the trial court to

evaluate the circumstances of a particular case and then determine whether disqualification of the entire office is appropriate." Id. In order to rebut the presumption, the burden rests with the prosecutor's office to demonstrate that necessary and effective steps have been taken to prevent the transfer of any confidential information between defense counsel and opposing counsel, and former defense counsel and those conducting the prosecution. The county attorney office "must show that it has implemented sufficient measures to screen former counsel and that it has consistently followed through with those measures." see Michigan v. Dauzempont, 760 N.W. 2d 743, 750 (Mich Ct App 2008).

A The Washington County Attorney's office did not Rebut the Presumption of shared confidences.

49 A defendant bears the burden of ensuring an adequate record on which to prove ineffective assistance of counsel on appeal. see State v. Latheland 2000 VT 716 ¶¶ 16, 12 P. 3d 92. In this case, the with holding of exculpatory material confirms alleged prejudice and Doug Terry's testimony at the Evidentiary hearing on page 32-33 shows that their office "did not" implement measures to screen shared confidences but violated those confidences as a matter of convenience.

50 The State Attorney general office discovered a contract between the State and one of their witnesses that was not disclosed at trial. The Attorney general office faxed the contract to Lamar Winwards fax, who happens to represent the investor involved in the illegal foreclose of petitioners home. Doug Terry says "We have our own fax numbers and fax machines; however there were times when one of either mine wasn't working

or we would use this or vice versa." Id p. 33

51 Based upon Doug Terry "30 years of criminal defense experience, do you think it likely that the existence of this letter, knowledge of this letter would have possibly created a different outcome in the trial?" Terry's response, I do have an opinion as to whether or not it might have affected the outcome. Based on your years of experience as a criminal defense attorney, as to whether or not the lack of this letter having been presented to the jury, affected the overall fairness of the trial? Doug Terry responded, Yes Id p. 35-37 Doug Terry finds the John breakfast letter important but claims the Addendum's "A" thru "D" were not evidentiary. So Doug Terry, Candice Reid with held the addendums from the court that was prejudicial in substantially and injurious effect on the fairness and integrity of the proceedings.

52 Petitioner learned at a proceeding case no. 071500692 that was directly attacked by this case that Candice Reid was hired by Iron County Attorney's office that prosecuted petitioner for allegedly violating a plea in abeyance. Both Candice Reid and Doug Terry presumption of impermissibly shared confidences was not rebutted, and consequently stands. The trial court was under obligation to disqualify the entire Washington County Attorney's office. Its failure to do so was error. State v. McClellan 2009 UT 50 S.Ct

V

### Argument V

Whether cumulative errors requires reversal?

53 Generally, this court will reverse a conviction based on an erroneous evidentiary ruling "if, absent the error, there is reasonable likelihood that there would have been a more



favorable result for the defendant." State v. Kohl 2000 UT 35 ¶ 17, 999 P.2d 7. "However, 'where the error results in the deprivation of a constitutional right, this court applies a higher standard of scrutiny, reversing the conviction unless it finds the error harmless beyond a reasonable doubt.'" State v. Crowley 2014 UT App 33 ¶ 17, 320 P.3d 671.

54 The cumulative error doctrine requires reversal when multiple errors considered collectively undermine confidence in the fairness of a trial". State v. Perea 2013 UT 66 ¶ 97, 322 P.3d 624. In this case the state and ineffective counsel withheld evidence to violate their constitutional duty to infect trial proceedings by their improprieties, counsel's misrepresentation of his rights to attend the deposition and assure the presentation of factual material violated the Confrontation clause and right to a face to face. Prosecution misrepresentation of material evidence and the complaint by BACT in 2006 that initiated a (14) fourteen month investigation that resulted in acquittal and renewing of petitioner's license violates double jeopardy clause. Also, State appointed counsel and prosecution internal violations of professional conduct as their actions prejudiced defendant by the unrebutted presumption of wrongfully shared confidential results in an unrebuttable presumption of prejudice.

### Conclusion

55 Appellant claims the right to a writ of Habeas Corpus for the Writ is clear and indisputable see 28 U.S.C § 1651 (a) and the issuance of writ is extraordinary remedy U.S Dist Ct v. Kerr 426 US 394, 400 (1976). "The right to release from confinement on charges for which a petitioner could not be tried without a violation of Double jeopardy by habeas corpus

under this rule." Mc Nair v. Hayward 666 P.2d 321 (UT 1983)

"Habeas corpus may be used to test alleged violations of basic rights such as prohibition against cruel and unusual punishment." Ziegler v. Milikens 583 P.2d 1175 (UT 1978).

56 While Appellant has been incarcerated, appellant has suffered + multiple injuries that are identified in Addendum #23. The medical records show that petitioner requires twice a day bandage change to control the infection. But the latest X-ray shows that the infection reached the bone and amputation is being considered.

57 "Imminent danger exception satisfied by allegations that prison officials wrongfully discontinued prisoner's medication." 28 U.S.C. § 1915 (g) Saini v. Garapala 352 F.3d 328, 330 (7th Cir 2003)

And "Imminent danger exception satisfied by alleged failure to provide adequate medical care for serious condition." Hunt v. Uphoff 199 F.3d 1220, 1222 (10th Cir 1999). There fore, "Injunction may be proper if inmates can show he continues to face an unreasonable health risk..." Helling v. Mc Kinney 509 U.S. 25, 35-36 (1993).

58 Petitioner prays this court will see the miscarriage of justice and reverse the conviction and issue a Writ releasing petitioner from Incarceration. The State Appointed Counsel with held exculpatory material and witnesses conspiring with State officials to violate rights of due process. "appointed counsel may have acted under color of State law when he conspired with State officials to deprive client of constitutional rights." Tower v. Glover 467 U.S. 914, 919-20 (1984). State witnesses misrepresented factual material in violation of the constitution. "Private party acted under color of state law when she conspired with state actors to deprive another of constitutional rights." Abbott v. Latsch 164 F.3d 141, 147-48 (3d Cir 1998).

Petitioner reserves the right to present additional material to the court at the hearing. There are witness testimonies that were collecting affidavits on to present to the court.

I Envoke prison Mail Box rule 21(F)

March 19, 2016

CDJH

• Aaron David T. Needham  
UTAH STATE PRISON #211547  
P.O. Box 250  
Draper UT 84020  
CG-2-212

• APPELLATE COURTS  
POSTMARKED

AUG 06 2015

---

## UTAH COURT OF APPEALS

---

Aaron D.T. Needham  
Appellant/petitioner

vs

State of Utah  
Resident

Brief  
rule 24 UT R. App P.

Case no: 20140483

---

I, Aaron Needham, petitioner prose submit this Brief per rule 24 UT R. App P. To present issues, why appellants conviction is in violation of constitutional rights and a miscarriage of justice. Appellant claims entitlement to the issuing of a Writ of Habeas Corpus. Appellant alleges his incarceration is a Double Jeopardy violation under "Dual-Sovereignty protection." Appellant claims the Standard of review is plain error because of the outrageous conduct of the government prejudiced the case that the entire proceedings were infected. The trial errors with constitutional violations had substantial and injurious effect on the verdict. The guaranteed rights of effective assistance of counsel without government intrusion and prosecutorial misconduct were violated to a level that they violated rights of due process. Petitioner claims factual innocence and that the incarceration is a miscarriage of justice.

The following events are an outline of the relation between Clem Tibbs / ISACT and Needham with court proceedings.

## Issue I.

Appellant claims the right to a Writ of Habeas Corpus for the writ is clear and indisputable per 28 U.S.C § 1651(a) and the issuance of writ is extraordinary remedy. U.S. Dist Court v. Kerr 426 U.S. 394, 400 (1976). "The right to release from confinement on charges for which a petitioner could not be tried without a violation of Double Jeopardy can be raised by habeas Corpus under this rule." McNair v. Hayward, 464 F.2d 321 (9th Cir 1973). "Habeas Corpus may be used to test alleged violations of basic rights such as prohibition against cruel and unusual punishment." Ziegler v. Milikens 583 F.2d 1175 (9th Cir 1978).

While appellant has been incarcerated, medication for cercarial dermatitis was withheld from petitioner for the first 40 plus days of incarceration and for ten days on each court proceeding on six different trips. Resulting with multiple boils and sores on petitioner's legs and feet that was numbered at over a hundred sores.

Because of petitioner's weak immune system, a new infection has formed starting in January 2015 to present that ate away flesh and tissue exposing bones and tendons. "Imminent danger exception satisfied by allegations that prison officials wrongfully discontinued prisoner's medication... 28 U.S.C § 1915(a) Saini v. Ciarpaglini 352 F.3d 328, 336 (7th Cir 2003) and "Imminent danger exception satisfied by alleged failure to provide adequate medical care for serious condition." Hunt v. Uphoff, 199 F.3d 1220, 1222 (10th Cir 1999). Therefore, "Injunction may be proper if inmates can show he continues to face unreasonable health risk..." Helling v. McKinney, 509 U.S. 25, 35-36 (1993).

"An ineffective assistance of counsel claim can be raised for the first time via habeas Corpus when the allegedly incompetent counsel handled the trial and the Direct Appeal." Fernandez vs. Cook 783 P.2d 547 (UT 1989). "A Writ for Habeas Corpus cannot be denied

which allegations if true would constitute a violation of constitutional rights of due process." Chess v. Smith 617 P.2d 341 (Ut 1980)

Issue II. Appellant claims in June 2006, BACT / John and Clem Tebbis filed a complaint with the Division of Professional Licensing. Appellant met with Wayne Hollman, Mr. Borden and Kim Quon of DPL in September 2006 with Counsel, Lance Thaxton and hand delivered a letter with appropriate documentation to Hollman. After a fourteen month investigation by DPL, jeopardy attached in favor of Appellant with no financial obligation owed to BACT and no penalty assessed to appellant in November 2007.

BACT claims that appellant owed \$800,000.<sup>00</sup> to the joint venture were denied by the Fifth District Court - Washington County from a complaint filed on Oct 31, 2006. Appellant attorney Brad Pearson filed for release of (18) eighteen properties appraised over \$7 million dollars on November 30, 2006. In December 2006, the courts ordered for release of all properties with no financial obligation owed to BACT.

The Supreme Court has articulated policy justifications for each protection conferred by the Double Jeopardy Clause. The prohibitions against second prosecution after acquittal or conviction protect individuals from the continued embarrassment, anxiety and expense of second prosecution, while decreasing the risk of an erroneous conviction or an impermissibly enhanced sentence. "Ohio v. Johnson 467 U.S. 493, 498-99 (1984). If a defendant is sentenced to both a fine and imprisonment under a criminal statute allowing for only one of the two punishments, jeopardy attaches upon the completion of the first punishment." Ex Parte Lange 85 U.S. 174

jeopardy attached to punitive drug tax as soon as defendants bank accounts seized, not with standing fact that state later returned money because defendants punishment was complete once state took title to assets. "Dye v Frank 355 F.3d 1102, 1108 (7th Cir 2004)"; "Double jeopardy attached to hung counts that shared key elements with acquitted counts" U.S. v. Coughlin 610 F.3d 89, 96-98 (DC Cir 2010). Appellant claims that the charges and conviction be vacated and the case can not be sent back to the trial court on grounds that jeopardy attached in November 2007 with the Division of Professional Licensing investigation of all transactions between BACT/Clem Tebbbs and Appellant awarding no financial penalty owed to BACT and issuing no penalty to Appellant. Even though, DPL is a subordinate of lesser standing than the Attorney General's office in the State of Utah, the fourteen month investigation and ruling by DPL precludes the Attorney General Office from prosecution. The fact that both prosecution and public defenders intentional with held this material from the court, affirms its status of factual innocence.

Double jeopardy bars to government appeal of bench acquittal because government evidence insufficient to sustain conviction. "U.S. v. Dyless, 440 F.3d 1095, 1104 (9th Cir 2006); Double jeopardy bars to government appeal of bench acquittal because government failed to prove facts sufficient to establish elements of charge. "U.S. v. Hunt 212 F.3d 539, 543-44 (10th Cir 2000).

Double jeopardy barred successive racketing prosecutions where the charges shared substantially the same facts. "U.S. v. BasCiano 599 F.3d 184, 203-05 (2d Cir 2010); "Whether offense is lesser-included offense determined by textual comparison of statutory elements because such test lends itself to certain and predictable outcomes." U.S. v. Carter 530 U.S. 255, 260-61 (2000).

Therefore, if Double jeopardy clause prohibited successive prosecutions by different sovereigns, sovereigns with lesser interest might proceed first and preclude prosecution by sovereigns with greater interest. U.S. v. Rinaldi 434 U.S. 22, 28 (1977). In Heath v. Alabama, the Supreme Court held that two entities seeking to prosecute a defendant for the same criminal act must be separate sovereigns that derive their authority from distinct sources of power. 494 U.S. at 88 (1985). Acquittal of crime under D.C. law bars subsequent prosecution for same crime under federal law and vice-versa because both codes were adopted by Congress. U.S. v. Weathers, 187 F.3d 948, 951 n.3 (D.C. Cir. 1999). Town barred from prosecuting defendant for car theft following prosecution by another town for joyriding because charges constituted same offense. Brown v. Ohio U.S. 161, 169-70 (1977). After dismissal of city's reckless driving charge, state prosecution for aggravated assault stemming from same incident barred by double jeopardy. Abramson v. Griffen 693 F.2d 1009, 1010-11 (1st Cir. 1982).

Local governments are not considered sovereigns for double jeopardy purposes. Consequently, successive prosecutions by a local government and a state in which it is located, or by two local governments in the same state are prohibited. George Law Journal p. 511. The dual sovereignty doctrine has two limitations.

First although mere cooperation between federal and state or federal and foreign agents will not preclude a subsequent federal prosecution, the Supreme Court has suggested that federal and state or federal authorities may not manipulate a system to achieve the equivalent of a second prosecution.

George Law Journal p. 511. Several circuits have cited BARTKUS and considered whether the sham prosecution exception exists.



or was applied in that case. BARTKUS v. ILL 359 U.S. 121, 122-24 (1959).

Appellant alleges that Wayne Holtman of the Division of Professional Licensing (DPL) and Mark Shurtliff, Attorney General of the State of Utah manipulated judicial proceedings with the assistance of fifth District Court case managers and prison staff to prosecute Appellant and maintain his incarceration by blocking or delaying mail delivery, refusing to provide adequate medications that have forced Appellant to attend daily medical treatment every day of incarceration, except rape 5 days in nearly two years.

... Even when a defendant failed to assert a double jeopardy claim at the start of the trial, the claim is reviewable under a plain error standard. U.S. v. Tamm 577 F.3d 533-35 (3d Cir 2009). The court may vacate earlier findings of no prior jeopardy if new evidence at trial later supports reviewed motions, U.S. v. Stricklin 591 F.2d 1112, 1119 (5th Cir 1979). Appellant claims plain error review because failure to brief and argue witness's possible perjury is not intentional abandonment of known right. U.S. v. Ferguson 653 F.3d 61, 82-84 (2d Cir 2011); Plain error review because failure to make timely objection. U.S. v. Campbell 259 F.3d 293 300-01 (4th Cir 2001); Plain error review because defendant did not object to witness testimony at time it was offered. U.S. v. Maxwell 643 F.3d 1096, 1099-1100 (8th Cir 2011); Plain error review because defendant failed to object to judges comments during trial. U.S. v. Rodriguez 627 F.3d 1372, 1380 (11th Cir 2010); plain error where defendants convicted of 2 crimes on same facts in violation of 5th Amendment right to be free from duplicative prosecutions and punishment. U.S. v. Jackson 443 F.3d 293, 301 (3rd Cir 2006); Plain error because

prejudicial effect of hearsay testimony outweighed evidence against defendant. "U.S. v. Baker, 432 F.3d 1189, 1231 (1<sup>st</sup> Cir 2005)  
Because of the collusion developed by Mark Shurtleff and Wayne Holliman all the material and witnesses were withheld from the court.

Issue III Errors that under mine structural fairness may be structural errors even when lesser violation of some constitutional right is subject to harmless error review. "U.S. v. Gonzales 110 F.3d 936, 946 (2<sup>nd</sup> Cir 1997). "Error that falls between structural and trial error is presumptively prejudicial" U.S. v. Harbin 250 F.3d 532, 544 (7<sup>th</sup> Cir 2001); The defendant should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee's. "Ariz. v. Fulminante 499 U.S. at 310 (1991) and Waller v. Georgia 467 U.S. 39, 49 (1984).

A structural discovery error occurs when the government with holds material evidence favorable to the defendant. "Brady vs Md 373 U.S. 83, 87 (1963) and U.S. v. Bagley 473 U.S. 667, 682 (1985). Evidence is material and requires reversal of conviction when there is a reasonable probability that disclosure would have altered the result of the trial, a mere possibility is not enough. "U.S. v. Agurs 427 U.S. 97, 112-13 (1976); The Supreme Court held that the proper standard for collateral review of constitutional trial errors was not the reasonable doubt standard applicable to nonconstitutional trial errors. Thus, instead of only demonstrating a reasonable possibility the trial error contributed to the verdict, Chapman, 386 U.S. at 24, a defendant must show that the error had substantial and injurious effect or influence in determining the jury's verdict. "Kotteakos v. U.S 328 U.S. 750, 776 (1946)

Petition gave to Mark Shurtleff, Attorney General of the State of Utah a copy of the letter and documentation ~~and~~ delivered to Wayne Holman of DPL in 2006. A copy was given to Terry Powell, investigator for Attorney General's office in 2008. A Third copy was given to Wade Faraway, assistant attorney general to whom attempted to work out a plea deal, but was removed and substituted by Jake Taylor, prosecutor and assistant attorney general - State of Utah. Jake Taylor and appointed counsel Aric Kramer, Candice Reid, Doug Terry and Ben Borden manipulated Appellant and court proceedings that substantially and injuriously infected the case.

"The confrontation clause violation not harmless because of governments reliance on tainted evidence." U.S. v. Jackson 636 f.3d 687, 697 (5<sup>th</sup> Cir 2011). "Confrontation clause violation not harmless when improper testimony was prosecution's chief evidence of defendant's guilt." Dorchy v. Jones 398 f.3d 783, 791 (6<sup>th</sup> Cir 2005). "Confrontation Clause violation not harmless because jurors otherwise could have found reasonable doubt on element of crime." U.S. v. Santos 449 f.3d 93, 100 (2<sup>d</sup> Cir 2005). "Confrontation clause violation not harmless because credibility of witnesses essential to government case." U.S. Chandler 326 f.3d 210, 224-25 (3<sup>rd</sup> Cir 2003). "Confrontation Clause not harmless because little effective cross examination was permitted, prosecution case was not terribly strong and testimony at issue important to prosecution's case." Vasquez v. Jones 496 f.3d 564, 577-78 (6<sup>th</sup> Cir 2007). "The 6<sup>th</sup> Amendment violation preventing discovery not harmless because case was not circumstantial and defendant prevented from developing potentially exculpatory evidence." U.S. vs Steyer 603 F.3d 747, 757 (9<sup>th</sup> Cir 2010).

Appellant alleges that the denial of attendance at the Deposition was planned and executed between prosecution and Counsel in violation of the adversarial system of justice. Therefore, I respectfully motion the court to take an inquisitorial system of analysis to affirm the improper acts and allegations to hide the truth.

face to face confrontation enhances the accuracy of fact finding by reducing the risk that a witness will wrongfully implicate an innocent person." Indv. Craig 497 U.S. 836, 846 (1990). "Appellant preserves the right for review of exculpatory evidence withheld by ineffective assistance of counsel and prosecution's Brady violation under plain error." Claim reviewed for plain error because defendant failed to object during trial to witness testimony. U.S. v. Written 610 F.3d 1168, 1190 (2<sup>nd</sup> Cir 2010). "Claimed reviewed for plain error because defendant failed to object at trial to government's presentation of new theory of prosecution during closing arguments." U.S. v. Vosburgh 602 F.3d 512, 531 (3d Cir 2010); "claimed review for plain error because defendant did not object at trial to sentence." U.S. v. Rodriguez-Gomez 608 F.3d 919, 972-73 (7<sup>th</sup> Cir 2010) and U.S. v. Lawrence, 612 F.3d 551, 556-57 (D.C. Cir 2011).

Claim preserved if 1) issue not raised because of exceptional circumstances; 2) issue caused by change in law after trial or 3) issue purely one of law and opposing party would suffer no prejudice by litigation. U.S. v. Flores-Montano 424 F.3d 1044, 1047 (9<sup>th</sup> Cir 2005) and "claim about sufficiency of evidence preserved because raised at trial by court," U.S. v. Todd 446 F.3d 1062, 1066 (10<sup>th</sup> Cir 2006).

"The objection not necessary when trial court ruled on record." U.S. v. Lynn 592 F.3d 572, 579 n.4 (4<sup>th</sup> Cir 2010) and "Objection sufficient

because defendant's issue of lack of notice at trial was adequately presented. U.S. v. Moran 573 F.3d 1132, 1137-38 (11<sup>th</sup> Cir 2009).

The claim reviewed for plain error because objection to admission of testimony not raised at trial. U.S. v. Dancy 640 F.3d 455, 462 (1<sup>st</sup> Cir 2011). "The objection to admission of testimony preserved though objection not made at every possible instance." Koster v. TWA, 181 F.3d 24, 33 n.3 (1<sup>st</sup> Cir 1999).

The claim that prosecutor drew false testimony from witness reviewed for plain error because claim not raised at trial. U.S. v. Ferguson 676 F.3d 260, 281-82 (2d Cir 2011).

"Claim of prosecutorial misconduct reviewed for plain error because no objection made at trial. U.S. v. Lee 612 F.3d 170, 193-94 (3d Cir 2010). The claim of prosecutorial misconduct preserved despite defendant failure to raise issue at trial because misconduct deprived defendant of real opportunity to object." U.S. v. Blueford 312 F.3d 962, 974 (9<sup>th</sup> Cir 2002); The claim of prosecutorial misconduct preserved because defense counsel objected to many, though not all, instances of alleged misconduct. U.S. v. Wilson 149 F.3d 1298, 1302 n.5 (11<sup>th</sup> Cir 1998).

"Claim reviewed for plain error because defendant failed to object at trial to judges allegedly inappropriate questioning of witness. U.S. v. Messina 131 F.3d 34, 38-39 (2d Cir 1997). "Claim reviewed for plain error because defendant failed to object at trial to judges questioning of defendant. U.S. v. Morgan 376 F.3d 1002, 1008 (9<sup>th</sup> Cir 2004). "Claim reviewed for plain error because defendant did not object at trial to jury's instructions." U.S. v. Delgado 672 F.3d 320, 340-41 (5<sup>th</sup> Cir 2012).

The claim of ineffective counsel reviewed on appeal only if district court established record of counsel's ineffectiveness or if dismissing claim would result in miscarriage of justice. U.S. v. Anderson 570 F.3d 1025, 1032 n.4 (8<sup>th</sup> Cir 2009). "Claim of Ineffective assistance of counsel not reviewable when first raised on appeal unless actual 'Conflict of Interest' affected lawyers performance." Gardner v. Galetka 568 F.3d 862, 885-86 (10<sup>th</sup> Cir 2009).

Issue IV "The right to effective assistance applies to both retained and appointed counsel." Cuyler v. Sullivan 446 U.S. 335, 344-45 (1980). "The Due Process Clause of the Fourteenth Amendment guarantees the right in state court." Evitts v. Lucey 469 U.S. 387, 396-99 (1985). "Counsel's failure to investigate possible defense was ineffective assistance." Dugas v. Coplan 428 F.3d 317, 332 (1<sup>st</sup> Cir 2005). "Counsel's failure to investigate possible defense and present mitigating evidence was ineffective assistance." Johnson v. Mitchell 585 F.3d 923, 945 (6<sup>th</sup> Cir 2009).

"Counsel's failure to subpoena crucial witness request was ineffective counsel." Goodman v. Bertrand 467 F.3d 1022, 1023-31 (7<sup>th</sup> Cir 2006). "Prejudice presumed if counsel actively represents conflict of interest in manner affecting adequacy of representation." Cuyler v. Sullivan 446 U.S. 335, 349-50 (1980). "Prejudice presumed when there are various kinds of state interference with counsel's performance." Strickland 466 U.S. at 692 also Granic 466 U.S. 648, 658 (1984). "Counsel's choice not to present any mitigating factors or objections and to remain silent at sentencing hearing

for no apparent reason warranted presumption of prejudice." Muller v. Martin 481 F.3d 468, 473 (7th Cir 2007). "Counsel's failure to conduct any pretrial discovery and file timely suppression motion was prejudicial because counsel was remnant of law and below prevailing professional norm." Kimmeelman v. Morrison 471 U.S. 365, 385 (1986). "Counsel's failure to investigate whether to call witness important to defendant's case was ineffective assistance because counsel abandoned decision to call that witness for no reason." English v. Romanowski 602 F.3d 714, 728-31 (1st Cir 2010). "Counsel's failure to assert timely claim of double jeopardy violation was ineffective assistance of counsel because there was reasonable probability that defendant would have prevailed on merger argument and neglecting to challenge duplicitous counts was not objectively reasonable tactical decision." U.S. v. Weathers F.3d 229, 230-31 (D.C. Cir 2007). "Appellant Counsel's failure to assert that trial counsel operated under a prejudicial conflict of interest was Ineffective Assistance because issue was obvious and would have resulted in reversal on appeal." Hammon v. Ward 466 F.3d 919, 927-31 (10th Cir 2006).

The court may review ineffective assistance claim because claim was clearly contradicted by the record. U.S. v. Hasan 586 3d 161, 169-71 (2d Cir 2009). "The court may review ineffective assistance claim on direct appeal because record was sufficiently developed." U.S. v. Bigley 213 F.3d 509, 516 n.2 (10th Cir 2000). "The court may review ineffective assistance claim on direct appeal if trial court record alone shows defendant is either conclusively entitled to relief or to no relief." U.S. v. Toms 136 F.3d 176, 182 (D.C. Cir 1998).

Appellant alleges appellant counsel was withholding evidence and intentionally failed to send petitioner court transcripts for day (4) Four and (5) five of trial. These two days verify that Kim Quon and Mr. Gordon of IDPL reaffirm that petitioner's general contractors license was renewed in November 2007, confirming Double Jeopardy.

"The conflict of Interest affected performance because counsel failed to pursue plausible alternative strategy." U.S. v. Schwarz 283 F.3d 716, 94 (2d Cir 2002). "Conflict of Interest affected performance because counsel took no action on behalf of defendant." Blankenship v. Johnson 118 F.3d 312, 318 (5th Cir 1997). "Conflict of Interest affected performance because counsel failed to push harder for admission of testimony from witness whom counsel also represented." U.S. v. Elliot 463 F.3d 858, 816-67 (9th Cir 2006). "Conflict of Interest affected performance because counsel prevented from raising reasonable defenses in defendant favor." Reynolds v. Chapman 253 F.3d 1337, 1347 (4th Cir 2001).

The court's inquiry into potential conflict of Interest did not satisfy rule 44(c) because judge failed to investigate whether defendant fully understood potential conflict of Interest and its implications." U.S. v. Osborne 402 F.3d 626, 131, 34 (6th Cir 2005). "Because the obligations placed upon the court by rule 44(c) is a continuing one, further inquiry and action may be necessary if new developments suggest a potential of conflict of Interest at any point of the trial." Fed R Crim P. 44(c)(2).



"The Supreme court has held that even a deliberate government intrusion into the attorney client relationship does not warrant dismissal of the indictment in the absence of demonstrable prejudice or substantial threat thereof." Weather v. Bersey, 429 U.S. at 557 (1977); "Intentional intrusion into attorney-client relationship warrants careful scrutiny but does not require automatic reversal unless conduct of government was manifestly and avowedly corrupt." U.S. v. Morrison 449 U.S. 361, 365 (1981). "Intentional intrusion into attorney-client relationship because government intentionally undermined defendants confidence in attorney client relationship by disparaging defense counsel." U.S. v. Ann Lami 111 F.3d 705711 (9<sup>th</sup> Cir 1997). In this case, defense worked with prosecution disparaging petitioners previous counsel and material that prosecution tried to assign counsel to petitioner from the attorney general's office after petitioner discovered conflict.

Issue V Cumulative errors violate due process guarantee of fundamental fairness and necessitate new trial. Taylor v. Ky 436 U.S. 478, 488 n.15 (1978). "Cumulative effect of 3 claims required reversal of conviction because individually claims warranted relief." Breakiron v. Horn 642 F.3d 1216, 131-32 n.5 (3d Cir 2011). Errors of prosecutorial misconduct, improper jury instructions and deficient transcripts of proceedings required reversal because concerned central legal and factual issues of case and rendered trial fundamentally unfair. U.S. v. Delgado 631 F.3d 685, 710-11 (5<sup>th</sup> Cir 2011).

The Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right... to have compulsory process for obtaining witnesses in his favor. U.S. Const. Amend VI. This right is held applicable to the states through the fourteenth Amendment, "Washington v. Texas 388 U.S. 14, 17-18 (1967). Compulsory process violated when court refused to admit testimony of character witness because credibility central issue of case... "U.S. v. Turning-Bear 357 F.3d 730, 735 (8<sup>th</sup> Cir 2004). "Compulsory process violated when court refused to aid defendant in securing witness who allegedly would have provided exculpatory testimony." U.S. v. Simpson 992 F.2d 1224, 1236 (D.C. Cir. 1993).

The defendant denied fair trial because states hearsay rules prevented him from calling witnesses who would have offered reliable exculpatory testimony." Chambers v. Mississippi 410 U.S. 284, 300-02 (1973). Defendant's right to fair opportunity to present defense, whether rooted directly in the Due Process Clause of the fourteenth Amendment... or in the compulsory process or confrontation clauses of the Sixth Amendment is violated by trial courts exclusion of competent, reliable evidence bearing credibility of confession because that evidence was central to defendant claim of innocence. Grane v. Ky 476 U.S. 1683, 1690-91 (1986).

Issue VI. The compulsory process violated when court excluded expert testimony for failure to comply with production order because sanctions too severe and harmful to defense. Perensic v. Birkett 501 F.3d 4169, 480 (6<sup>th</sup> Cir 2007). The compulsory process violated when court excluded testimony because defendant's failure to comply with regulations not willful and witness crucial to defense." U.S. v. Bahamonde 445 F.3d 1225, 1231-32 (9<sup>th</sup> Cir 2006)

## Conclusion:

The defendant's defense was completely withheld from the court by prosecution and ineffective assistance. "The defendant must show government's involvement in creating crime so great that criminal prosecution for the crime violates the fundamental principles of due process." U.S. v. Blood 435 F.3d 612, 629 (6<sup>th</sup> Cir 2006). "Outrageous conduct by government..."

U.S. v. White 519 F.3d 342, 346 (7<sup>th</sup> Cir 2008). "Defense of outrageous government conduct first raised on appeal reviewed only for plain error." U.S. v. Seall 321 F.3d 1276, 1277 (10<sup>th</sup> Cir 2003). "Review permitted despite no objection during trial because Supreme Court decision changed applicable law during direct appeal."

U.S. v. Spells 537 F.3d 743, 748 (7<sup>th</sup> Cir 2008). Jake Taylor proved that he was in position of the Wade farroway file, assistant attorney general when he faxed the witness contract between farroway to la Mar Windward. To whom happens to share an office with Doug Terry and la Mar Windward just happen to be the lawyer who assisted an investor in the buying of petitioner's personal home at the wrongful foreclosure recognized by Fannie Mae. Review not precluded by failure to raise due process claim before trial because information on which motion was based unavailable to defendant until eve of trial. U.S. v. Gonzales 927 F.2d 139, 144 (3<sup>rd</sup> Cir 1991).

Review not precluded by failure to specifically request order for production of documents... U.S. v. McKensie 768 F.2d 662, 669 (5<sup>th</sup> Cir 1985).

(Unreasonable application means that a state court (1) identifies the correct legal rule but unreasonably applies it to the facts of the case or (2) unreasonably applies and extends the legal principle to a new context to which it should not

apply or unreasonably refuses to extend the principle to a new context 28 U.S.C. § 2254 (d)(1)

"Habeas Corpus relief may be afforded to a state prisoner only if his confinement also violates federal law." 28 U.S.C. § 2254 (d)(2). Brecht remains the court standard of review in assessing the prejudicial impact of federal constitutional error in a criminal trial in state court. Fay v. Miller 551 U.S. 112, 119-20 (2007). Introduction of testimonial statements against defendant in violation of Confrontation Clause created grave doubt on reliability of verdict. Ocampo v. Vail 649 F.3d 1098, 1117 (9<sup>th</sup> Cir 2011). "Prosecutions reliance on knowing presentation of false testimony created grave doubt on reliability of verdict." Guzman v. Sec. Dept of Corr 663 F.3d 1336, 1356 (11<sup>th</sup> Cir 2011).

Kyles rule requiring prosecution to disclose evidence favorable to accused even when evidence only known to police not new rule of criminal procedure because consistent with Brady. Jackson v. Brown 513 F.3d 1057, 1072-73 (9<sup>th</sup> Cir 2008). "An old rule applies both on direct and collateral review while a new rule, unless it falls within an exception under Teague, is applicable only to cases still pending on direct review." Griffith v. Ky 479 U.S. 314, 328 (1987).

A watershed procedural rule is one that raise(s) the possibilities that someone convicted with use of the invalidated procedure might have been acquitted otherwise." Teague v. Lane 489 U.S. at 311 (1989).

To qualify under this exception, the procedural rule must not only improve accuracy, but also alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding. Schirco v. Summerlin 542 U.S. at 352 (2004). Watershed exception satisfied by Crawford rule because it implicated confrontation Clause. Fulcher v. Motley 444 F.3d 791, 820-21, 830 (6<sup>th</sup> Cir 2006).

States withholding of exculpatory evidence at trial constituted cause for petitioner's failure to present evidence to support his federal claim in state court. Banks v. Dretke 540 U.S. 668, 698 (2004). The presumption of correctness overcome by clear and convincing evidence in exculpatory defense affidavit. Norton v. Spencer 351 F.3d 1, 6-8 (1<sup>st</sup> Cir 2003) and presumption of correctness overcome because clear and convincing evidence of defects in fact finding process. Taylor v. Maddox 366 F.3d 992, 1008 (9<sup>th</sup> Cir 2004). "The court held that a petitioner could demonstrate actual innocence by showing jurors would have convicted him in the light of new evidence." 513 U.S. 798, 827 (1995)

Petitioner alleges that the state of Utah kept petitioner on lock down in the infirmary for (9) nine months upon arrival. Sergeant Skinner and officer Jordan with case manager Elizabeth Lewis prevented petitioner for those nine (9) months in having any access to counsel or the court. There was no fundamental constitutional right to effective counsel or the courts or any legal counsel or law library.

It took the prison eleven months to setup phone privileges but they continue to this day to violate the 1<sup>st</sup> Amendment and access to mail service without interference. Bounds v. Smith, 430 U.S. 817, 828 (1977) prisoners have fundamental constitutional right to adequate, effective and meaningful access to the courts to challenge violations of constitutional rights. "Prisoners right of access to courts may not be denied or obstructed." Lewis v. Casey, 518 U.S. 343 (1996) and Johnson v. Avery, 393 U.S. 483, 485 (1969). "Right of access violated by regulations that unjustifiably obstruct availability of professional representation." Benjamin v. Fears 264 F.3d 175, 184 (2<sup>d</sup> Cir 2001). "Right of access violated because prison officials opened, read, and confiscated letter and photo contents marked legal mail." Jenson v. Dugger 931 F.2d 1465, 1467-68 (11<sup>th</sup> Cir 1991). "Claim stated by prisoner alleging that prison officials confiscated and destroyed legal material." Carter v. Hutto 781 F.2d 1028, 1031-32 (4<sup>th</sup> Cir 1986). "Imminent danger found where alleged lack of medical screening process for new inmates led to inmate infected with contagious disease." Andrew v. Cervantes, 493 F.3d 1047, 1051-57 (9<sup>th</sup> Cir 2007). "Claim stated when prisoner alleged retaliatory transfer." Davis v. Kelly 1160 F.3d 917, 920 (2<sup>d</sup> Cir 1998).

Petitioner alleges that the incarceration was a set up by the Attorney General's office of the State of Utah by using State actors who would withhold material and give false testimony in support of the collusion developed by Mark Shurtleff and Wayne Holman.

### Factored events / Constitutional violations

Petitioner entered into a business relationship with Clement Tebbs of BACT to borrow \$100,000. to complete approximately 9 homes in St. George Utah. They gave petitioner a loan taking a second position on each of the 9 homes. Upon completion of each home, funds were paid back to BACT, Clement Tebbs through Southern Utah Title. Petitioner was partial owner in the White Mesa subdivision in Mesquite, Nevada and was licensed as a general contractor, which, BACT offered to finance the construction of homes in the project. Petitioner was building in Nevada since the Division of professional licensing, refused to renew petitioner's general contractors license in Utah, which required the assistance of Leonard McKenelly and Clement Tebbs to complete (9) more homes in 2003.

BACT, Clement Tebbs assisted in financing (5) five homes in white mesa subdivision in 2003-04.

Petitioner failed to pay fine to DOPL for working on the (9) nine homes he owned and started before DOPL refused to renew petitioner's contracting license.

DOPL of Utah contacted DOPL of Nevada to inform them of the fine in Utah of which Nevada instigated an investigation. The investigation ended after an audit by DOPL of Nevada of subcontractors and vendors working with petitioner. A fine was assessed and paid by subcontractor who was licensed to do cabinet tops in formica but not solid surface, thus ending the investigation.

DOPL of Utah demanded petitioner pay off fine in Utah or they would continue to harass petitioner.

Petitioner went to Clement Tebbs to acquire help as a financial adviser. Tebbs showed how petitioner could acquire funds he needed to pay off fine by doing double closings.

This was different than how petitioner closed on the first five homes in Mesquite, Nevada with no lot advancement. In October 2004, Clement Tebbbs closed on two lots in White Mesa lots 125 and 131 at Mesquite Title and the title company forwarded the funds to petitioner after Clement Tebbbs signed and funded the closing.

According to Clement Tebbbs cash flow, Tebbbs forwarded funds on lot 27 of La Scala at fidelity Title, but not on La Scala 24 La Scala and Lakeridge #1 of Mesquite, Nevada.

Clement Tebbbs requested petitioner return to Utah and get his license renewed once the fines were paid. Petitioner contacted Leonard McKnelly to assist in this venture as Clement Tebbbs requested petitioner to organize and acquire new projects. McKnelly would use his license in Utah and petitioner's would use his license in Nevada. Petitioner and McKnelly met with Clement Tebbbs at BACT office where Clement Tebbbs offered to purchase two lots from Leonard McKnelly in Bloomington Ranches 78B and 62. Funds were advanced to petitioner on 78B but not lot 62.

Petitioner acquired two more lots in Ruzerhallow on lots 28 and 29 that Southern Utah Title forwarded funds to petitioner after Clement Tebbbs finalized the transactions.

These (6) six lot closings took place at three different title companies in two different states over approximately 10 months.

Clement Tebbbs offered a joint venture agreement with an addendum in June 2005 to define a new relationship and address Leonard McKnelly involvement and the projects acquired by petitioner.

In July 2005, Clement Tebbbs opened a checking account at Zions Bank to handle the financial transaction for the joint venture.

In August 2005, Petitioner met with Clement Tebbbs



and staff with McKnelly at BACT office in which John Tebbs announced that John wanted to change the joint venture agreement and required petitioner to return all funds advanced or given to petitioner. Petitioner declined, BACT owned multiple properties identified on the addendum, petitioner suggested they sell a property to repay funds. John Tebbs declined.

In September 2005 this disagreement is recognized on a phone conversation recording between John Tebbs and Rulon Meuser, which John admits he wants money and to keep all the projects and that the amount of money advanced was \$200,000.<sup>00</sup>

On July 2, 2006, petitioner receives a call from Wayne Holman of the Division of Professional Licensing (DPL) that a complaint had been filed by BACT, Clement Tebbs and threatened petitioner that he could turn in his license or spend the next 20 years in prison.

Petitioner's attorney contacted Wayne Holman and arranged a meeting at DPL in September 2006. A letter to Wayne Holman with supporting documentation was hand delivered by Lance Thexton, petitioner's counsel. Holman contacted Brad Person of Kent Faux and associate to acquire a second copy for Mark Shurtleff, Attorney General of the State of Utah in 2006.

On October 31, 2006, BACT filed a lis pendens on 18 properties owned by petitioner financed from other investors.

Brad Person, petitioner's attorney contacted BACT attorney and the court with Judge Shumate of the Fifth District Court, St George, Washington County in the State of Utah to present petitioner's documentation under sworn testimony that was notarized and letters from investors. They filed for release of the lis pendens, claiming petitioner owed no funds to BACT on November 30, 2006.

Upon Judge Shumate's review of documentation submitted to the court with sworn testimony from both petitioner and BAET, Clement Tebb. Judge Shumate ordered the release of the les pendens with petitioner having no financial obligation to BAET in December 2006, case NO. 060501877.

DOPL of Utah renewed petitioner's general contractors license in November 2007 after reinstating it in November 2005.

Petitioner meets with Terry Powell, investigator for Attorney General of the State of Utah, Mark Shurtleff around March 2008. Powell is given a copy of the Wayne Hollman letter and information packet with Judge Shumate's order of release of the les pendens, the audio recording between John Tebb and Pullen messer and a copy of the Nevada State property tax notice on parcel no. 001-08-312-004.

Attorney general of the State of Utah files charges against petitioner for communication fraud and taking \$800,000.00.

Petitioner entered the hospital with extreme medical issues in November 2008.

Petitioner recovers enough to attend court in July 2011 and acquires new counsel, Nathan Reeves whom appears before Judge Walton with Wade Farroway, assistant attorney general and Terry Powell. Reeves and Farroway agree that if petitioner would relinquish his rights to a preliminary hearing, Farroway would reinvestigate the case and review petitioner's documentation in July 2011.

In August 2011, Farroway sent a letter to Reeves requesting a plea deal short of dismissed. Reeves asked why not dismiss, Farroway responded that someone at DOPL wanted the petitioner out of business.

Before arrangements could be finalized, Farroway was removed and substituted by Jacob Taylor as prosecutor.

Petitioner's illnesses hospitalized him in December 2011, not to be released till about February 2012.

Petitioner loses Reeves as counsel due to medical expense and Jacob Taylor replaces judge Walton with Judge Payne.

Aric Cromer and Brock Karrington are assigned as counsel and state investigator. Petitioner meets with both at Cromer's office to hand deliver the copy of Wayne Holman's letter with supporting documentation that included Judge Shumatz's order of release of the US Pendens Case No. 060501877, the Nevada State Property Tax notice of late ridge lot 1 parcel No. 601-08-312-001 and a copy of the audio recording and transcript with John Tibbs and Rullen Musser.

Cromer arranged a deposition upon Jacob Taylor's request and gave no right to petitioner to object. Karrington gave petitioner less than two day notification to appear in Salt Lake City, Utah on June 14, 2012, but no specific time or location.

Petitioner was denied right of confrontation and was charged with claims that violated Double Jeopardy, Collateral ~~estoppel~~ protection. Cromer and Karrington addressed some of the issues of defense but failed to develop material that was exculpatory evidence in support of defense that violated due process. Counsel's ~~procedural~~ defects in not providing required procedural mitigation disclosures were substantial and injurious to defense, that had they presented exculpatory evidence in their position, the outcome reasonably could have been different.

Cromer showed knowledge of the Wayne Holman letter and documentation with highlights of the US pendens, and tax notice, but failed to develop their factual bases.

The exculpatory evidence was misrepresented by ineffective counsel with specific intent of being misfeasance in the violation

of due process that prejudiced the petitioner and harmed his credibility. Gramer and Kammington misrepresented procedural notification informing petitioner less than (2) two day notification instead of the 20 minimum days required. Counsel failed to educate petitioner's right to object to the deposition. Therefore, it must be concluded that Gramer and Kammington were acting as state actors that provided ineffective assistance of counsel that failed to present exculpatory evidence, follow procedural notification and challenge misrepresentation of transactions that violated due process.

Aric Gramer withdrew as counsel in response to petitioner's email that displayed frustration for the lack of professional conduct not allowing petitioner to attend the deposition.

Petitioner is assigned Candace Reid and Doug Terry as public defender counsel. Petitioner delivers the Wayne Holmman letter with supporting documents prepared by Brad Pansen and Nathan Reeves and emails a witness list to support the documentation to Candace Reid. Reid meets with Doug Terry and they submit a condensed list to the courts without meeting with petitioner. Reid and Terry refused to meet with petitioner till the Friday before the trial and provided no arguments at the preliminary hearing other than to decide the date of the trial.

Reid and Terry met with petitioner on the Friday before the trial to discuss the case for one hour.

Petitioner is admitted to hospital emergency with a kidney and bladder infection but is released on oral and IV antibiotics the Saturday before trial.

Reid and Terry informed petitioner that they had not met with any of the witnesses nor subpoena any of the witnesses for trial.

Petitioner sought daily medical care to survive the proceedings by receiving IV treatments and fluid for the nausea that caused petitioner to vomit during breaks. Reid and Terry told Petitioner that he did not need to attend the jury selection and they would handle it because petitioner kept vomiting, but petitioner had to notify the judge. Petitioner told the judge and went to the hospital for treatment.

Petitioner believes that the misrepresentation of the compulsory process was wrong and biased the jury selection in the Voir Dire process. This action was caused by misrepresentation of Ineffective Counsel that violated the petitioner's rights in the jury selection by allowing counsel acting as State actors to do the selection of jury that would be bias towards petitioner by taking advantage of his illness.

The trial proceeds with Reid and Terry with holding the Wayne Holman letter and supporting documentation, Judge Shumaker orders of release of the respondents claiming no financial liability to BAET on case No. 060501872 on the Nevada State Tax Notice on Lake Ridge lot 1 on parcel no. 601-08-312-004 or John Tebb and Rullon Mussels audio recording and transcript. No witnesses submitted by Reid and Terry witness not appeared. Thus, Petitioner is convicted.

Petitioner is admitted to hospital a few days after the trial with multiple infections. Petitioner hospitalized for over a week.

After release from hospital, Doug Terry calls petitioner to inform him of a Brady/Biglio violation by prosecution. Family members obtain new counsel to address violation.

Herschel Bullon is retained as counsel and he files with the court addressing the Brady / Giglio violation of the letter that offered support for one of the witnesses testimony that had been arranged on a deal by Wade Gensoway, also, Herschel addressed the 6<sup>th</sup> amendment right to confront the witness, Clement Tekros at the Deposition. But Herschel's services were lost due to the discovery of a conflict.

Petitioner is assigned new counsel, Ben Gordon as public defender # 4. The courts hold an evidential hearing but the prison refuses to allow the petitioner to have any access to Ben Gordon as counsel. The prison has refused to allow any contact with counsel and kept petitioner on lock down in the infirmary with no outside access, being allowed out of cell only to shower attend doctor appointments and change bandages. Therefore, petitioner was on 24/7 lock down for eight months till the proceedings concluded.

Petitioner was not allowed to prepare for trial with counsel to present exculpatory evidence and witnesses.

Petitioner is moved to general population where he obtains little legal material to learn the importance of the documentation deliberate with held by prosecution and public defenders.

Petitioner puts in multiple requests for access to phones and is denied any communication from any outside source for the first 60 days on lock down in the infirmary being told by case workers and Sargent that it was a probational adjustment period for prisoners. Prisoner not allowed to mail attorney or family for 90 days.

Petitioner sent a number of letters demanding to speak with counsel with no response and no phone privileges have been allowed. Thus, counsel Ben Gordon only addresses the 6<sup>th</sup> amendment confrontation clause but fails to develop factual bases. Counsel refuses to admit the Wayne Holtzman letter and

(27/29)

information packet that included Judge Shumates ruling order to release the Lis Penders with no ~~financial~~ liability owed to BACT. In December 2006 case no. 060501877, the Nevada State Property Tax Notice on Lakeridge 1 parcel no 061-08-312-004 validating the joint venture agreement and a copy of the audio recording between John Tetts and Bullon Musser with affidavit from Bullon Musser confirming his role on the phone conversation.

Judge Payne declines new trial motion but States in his response had he received the Wayne Hollmann letter and information packet items he could consider granting a new trial, but, since they were withheld by prosecution and public defenders. The Judge Payne could not grant a new trial on grounds that the only evidence to contradict conviction was joint venture agreement and petitioners testimony.

Petitioner claims that state actors deprived petitioner of due process with ineffective counsel with specific intent to withhold exculpatory evidence and witnesses. State actors collusion has resulted in petitioners incarceration and defrauding petitioner of profits from the joint venture agreement recognized by the State of Nevada.

Petitioner believes that the presentation of this documentation proves beyond a reasonable doubt actual innocence and its admission voids the conviction and incarceration.

Petitioner has been assigned appellate counsel, Nicholas Turner who refuses to address the illegal incarceration by submitting a docketing statement and brief with no consultation of context. Petitioner requested that claims of constitutional violations be addressed, appellate counsel declined and claimed "Marshall law" in what is submitted to Appellate Court.

Petitioner prays that the Utah Court of Appeals will allow petitioner opportunity to exercise his constitution rights. Petitioner claims the State of Utah had to violate the constitution to get Meedham incarcerated, therefore, petitioner is exercising his rights to the Constitution to achieve freedom.

I. Envoke Prison Mail Box rule 21(f)

Aug 16<sup>th</sup>, 2015

DATE

Al D. H.

NAME



## U.S. Constitution

### Amendment V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense.

### Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

US Constitution

Article IV

Section 1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states

APPELLATE COURTS  
POSTMARKED

MAR 19 2016

# Certificate of Service

I hereby verify that a true and correct copy of  
the Reply Brief and Motion for Deviations was mailed  
by prepaid mail to

Jeanne B. Inouye  
Assistant Attorney General  
160 East 300 South 6<sup>th</sup> Floor  
P.O. Box 140854  
Salt Lake City UT 84114

March 19, 2016

R. D. J. Al.  
Name

# EXHIBIT 1

## Joint Venture Agreement

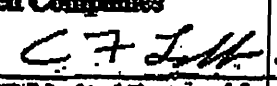
**JOINT VENTURE AGREEMENT  
BETWEEN  
AARON NEEDHAM AND HIS DESIGNATED COMPANIES  
AND  
THE BACT LIMITED PARTNERSHIP AND ITS DESIGNATED COMPANIES**

It is agreed that The BACT Limited Partnership and or its designated companies will buy and take title to joint venture properties. These funds will be at an interest rate of one percent (1%) per month, payable at the time the property is sold. The costs of constructing the buildings and the administrative costs of construction of the properties will also be provided by The BACT Limited Partnership and or its designated companies.

At the time of each properties' sale, all of the construction costs will be repaid including interest, the land purchase costs including interest, the administrative costs advanced including interest. The balance of the proceeds will be divided one-half (1/2) to Aaron Needham and or his designated companies and one-half (1/2) to The BACT Limited Partnership and or its designated companies.

In order to assist Aaron Needham with his personal cash flow, The BACT Limited Partnership and or its designated companies will advance to Aaron Needham the minimum amount required to cover his personal expenses until the first closing, after which, it is assumed Aaron Needham will be capable of funding his own personal expenses.

 6-13-05  
Aaron Needham and or  
Designated Companies

 6/13/05  
The BACT Limited Partnership and or  
Designated Companies

# **EXHIBIT 2**

## **ADDENDUM TO JOINT VENTURE AGREEMENT**

HP Officejet 72XX Series  
Personal Printer/Fax/Copier/Scanner

Log for  
Aaron & Trudy Needham  
435-628-9767  
June 28, 2005 1:42PM

Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
28-Jun	1:42PM	Fax Received	18012631426	1:07	2	OK

**ADDENDUM**

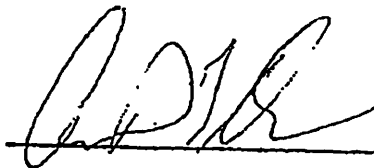
**JOINT VENTURE AGREEMENT**

To Identify Aaron Needham and his designated companies that will be recognized as part of the Joint Venture Agreement are D.T. Development Inc., and Kilauea properties LLC.

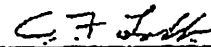
Aaron Needham will be liable for all funds from La Scala 26 and La Scala 27 given to LMM Construction, Leonard Mc Knelly, as his partner in the construction of said homes. Any financial obligations to LMM Construction are the liability of Aaron Needham. The associated projects to the Joint Venture are:

1. White Mesa 125
2. White Mesa 131
3. La Scala 26
4. La Scala 27
5. Lake Ridge I
6. Bloomington Ranches 78B
7. La Scala
8. La Scala

9. Bloomington Ranches 66
10. Sullivan Property (Little Valley)
11. Equistrian Pointe 9
12. Equistrian Pointe 12
13. River Hallow 28
14. River Hallow 29
15. Equistrian Pointe
16. Equistrian Pointe



Aaron Needham and or  
Designated Companies



The B.A.C.T. Limited Partnership and or  
Designated Companies

# **EXHIBIT 3**

**Copy of Letter Hand  
Delivered to Wayne Holman  
of  
Department of Professional  
Licensing**



Kurt C. Faux \*  
Jamieson N. Pog \*\*  
W. Bradley Parsons IV  
Jennifer Hodge \*\*\*

\* Also Licensed in Utah  
\*\* Also Licensed in Arizona, Hawaii  
and Washington  
\*\*\* Also Licensed in California

## Faux & Associates

Attorneys At Law

A Professional Corporation  
2785 East Desert Inn Road, Suite 270  
Las Vegas, Nevada 89121

Telephone  
(702) 488-8780

Facsimile  
(702) 488-8794

www.fauxlaw.com

September 1, 2006

### Via Hand Delivery

Wayne Holman, Investigator  
Utah Division of Occupational and Professional Licensing  
P.O. Box 146741  
Salt Lake City, Utah 84114

RE: Submission of Documents Regarding BACT

Dear Mr. Holman:

Please find enclosed the documents requested regarding Mr. Needham's work with BACT, LLP. BACT, LLP and DT Development had been doing business together for nearly two years when BACT, LLP and DT Development entered into a Joint Venture Agreement wherein BACT, LLP agreed to cover personal expenses and bills to allow Mr. Needham and DT Development to get reestablished in the construction community of Southern Utah. The profit on each project would be split between the parties equally. However, due to the conduct of BACT, LLP, the first closing never took place. The documents found within are organized by subdivision and lot, along with some additional items. The binder contains documents divided into 15 sections as described below,

Tab 1: Contains the Joint Venture Agreement, various letters, contracts, earnest money checks, and correspondence.

IN The Joint Venture Agreement and two letters to BACT, LLP (Clement Tebbs) are key to show the relationship between the parties. BACT, LLP and DT Development were partners on many of the projects listed below. The relationship became strained and Mr. Needham offered to buy BACT, LLP out of the Agreement and to resolve the strain. BACT, LLP refused the offer and continued to act against the interests of Mr. Needham and DT Development. BACT, LLP, in order to assist Mr. Needham and DT Development, opened a business checking account in the name of DT Development with Clement Tebbs as the sole signator on the account. BACT, LLP was taking over DT Development's financial accounting for all projects and all transactions. This action by BACT, LLP was taken in July and August 2005.

Also enclosed in Tab 1, are copies of a GeoTech bill and a Soils Engineer bill that were sent to DT Development and Mr. Needham after BACT, LLP refused to pay the bills invoiced to BACT, LLP as an expense on the project. BACT, LLP is attempting to push all billing responsibility to Mr. Needham while keeping the property for itself.

Wayne Holman  
September 1, 2006  
Page 2

Tab 1 also contains earnest money checks that BACT, LLP now seeks to hold against DT Development and Mr. Needham as earnest money lost, and seek to charge Mr. Needham for said loss. However, it was the responsibility of BACT, LLP to close on the homes that it now claims it lost earnest money on. Furthermore, the document prepared by BACT, LLP on November 1, 2005 contained in Tab 1, found immediately following the GeoTech bill in Tab 1, claims that Mr. Needham skimmed money from five projects with BACT, LLP. However, these projects were begun prior to the time BACT, LLP and DT Development entered into the Joint Venture Agreement and the money allegedly skimmed by Mr. Needham was given as a loan by BACT, LLP. In fact, the loan money was repaid to BACT, LLP at closing as shown by the closing HUD's contained in each of the relevant sections. This is true for all projects except those that BACT, LLP ordered construction to stop. Furthermore, BACT, LLP alleges that a payment of \$28,732.77 was taken by Mr. Needham on the La Scala, Lot #26 project. First American Title acknowledges that no payment of \$28,732.77 was ever made to Mr. Needham per a facsimile message to Mr. Needham contained in Tab 5 as well as the closing HUD for the La Scala, Lot #26 project in Tab 5.

Mr. Needham continued, despite the strained relationship, to make payments to BACT, LLP for money given to DT Development. In November 2005, BACT, LLP alleges that it attempted to cash a check from Mr. Needham that would not clear due to insufficient funds. Mr. Needham quickly responded via email to BACT, LLP informing BACT, LLP that Mr. Needham's accountant confirmed that there were sufficient funds to cover the check. In addition, Mr. Needham responded to BACT, LLP, providing BACT, LLP with an account statement that showed sufficient funds to cover the check.

Tabs 2-13 contain documents including, but not limited to, checks, lien and/or labor releases, Buyer's Settlement Statements, Draw Requests, and documents regarding payment to subcontractors, Deeds of Trust, and may include closing HUD's. Tabs 2-13 cover the following lots and are briefly described below:

Tab 2:	Bloomington Ranches, Lot #78B.
Tab 3:	River Hollow, Lot #28.
Tab 4:	River Hollow, Lot #29.

Bloomington Ranches, Lot #78B; River Hollow, Lot #28; and, River Hollow, Lot #29, were not completed by Leonard McKnelly when BACT, LLP, ordered the projects to stop construction. Bloomington Ranches, Lot #78B was stopped after framing was complete. River Hollow, Lot #28 and River Hollow, Lot #29 were stopped after footings completed. Mr. Needham was in charge of organizing the Draw Requests on these projects for Leonard McKnelly and BACT, LLP. These projects were not DT Development projects but are included because BACT, LLP provided loan funds to Mr. Needham for these projects.

I WANT THIS included in our law suit

Tab 5: La Scala, Lot #26.  
Tab 6: La Scala, Lot #27.

*L.H.M.*  
La Scala, Lot #26; and La Scala, Lot #27, were started by Mr. Needham and DT Development but were taken over by Leonard McNelly as acting superintendent at the request of BACT, LLP to allow Mr. Needham to focus on organizing projects for the Joint Venture between BACT, LLP and DT Development. With the knowledge and authorization of BACT, LLP, Mr. Needham and Leonard McNelly of LMM Construction utilized small amounts of money to pay off outstanding bills. These funds were paid directly by BACT, LLP, to the subcontractors and were shown by BACT, LLP as job cost expenses. This money was deducted from DT Development and Leonard McNelly's gross profit on each project. A Deed of Trust was signed by LMM Construction and Leonard McNelly to secure BACT, LLP's interests in the funds used.

Tab 7: White Mesa, Lot #125.  
Tab 8: White Mesa, Lot #131.

Mr. Needham and DT Development completed stucco work, finish work, and roofing tile. BACT, LLP then ordered Mr. Needham to stop work on the projects and placed Leonard McNelly on as superintendent. Mr. Needham remained in charge of organizing the Draw Requests on these projects. BACT, LLP authorized Mr. Needham to utilize certain funds from these projects to pay off fines by DOPL as well as outstanding bills.

Tab 9: White Mesa, Lot #101.  
Tab 10: White Mesa, Lot #103.

White Mesa, Lot #101; and White Mesa, Lot #103 were completed by Mr. Needham and DT Development. With the knowledge and authorization of BACT, LLP, Mr. Needham utilized small amounts of money to pay off outstanding bills. The money was shown by BACT, LLP as advanced profit to DT Development and was listed as overhead expense.

Tab 11: White Mesa, Lot #102.  
Tab 12: White Mesa, Lot #104.  
Tab 13: White Mesa, Lot #135.

White Mesa, Lot #102; White Mesa, Lot #104; White Mesa, Lot #135 were completed by Mr. Needham and DT Development. With the knowledge and authorization of BACT, LLP, Mr. Needham utilized small amounts of money to pay off outstanding bills. The money was shown by BACT, LLP as advanced profit to DT Development and was listed as overhead expense.

Tabs 14-15 are described generally as follows:

Wayne Holman  
September 1, 2006  
Page 4

Tab 14: Contains contracts with John Grealish.

John Grealish introduced Mr. Needham to BACT, LLP. Mr. Grealish was co-signing with Mr. Needham on each of the White Mesa projects. When Mr. Needham prepared to begin the River Hollow, Bloomington Ranches, and the La Scala projects, Mr. Grealish was not be a co-signor on the projects, BACT, LLP did not want to deal with Mr. Grealish any further. Mr. Needham agreed with Mr. Grealish to provide Mr. Grealish a finders fee on the River Hollow, Bloomington Ranches, and La Scala projects due to Mr. Grealish's support on the White Mesa projects. The agreement between Mr. Needham and Mr. Grealish did not impact BACT, LLP in the least as the funds were to be paid by Mr. Needham were to have come from his own profit.

Tab 15: Contains documents regarding repayment of the \$100,000 Deed of Trust in favor of BACT, LLP, as well as payments to BACT, LLP.

When Mr. Needham was first introduced to BACT, LLP, Mr. Needham borrowed \$100,000 from BACT, LLP to consolidate bills. BACT, LLP attached a Deed of Trust Note listed on the projects listed in Tab 15. At each closing, BACT, LLP was given partial payment of the \$100,000 until paid in full. This agreement took place prior to the Joint Venture Agreement.

Please note that on White Mesa, Lot #125 and White Mesa, Lot #131, BACT, LLP sold the homes for \$349,900 and \$305,000, respectively. The money given for job cost expense plus overhead did not exceed the sales price of these homes as outlined by the Joint Venture Agreement, yet all profit was retained by BACT, LLP.

BACT, LLP's goal in filing the complaint with DOPL<sup>1</sup> is to discredit Mr. Needham and DT Development. The actions by BACT, LLP have harmed Mr. Needham and DT Development by forcing Mr. Needham out of the Joint Venture Agreement and allowing BACT, LLP to retain all of the profits from the projects that were put together by Mr. Needham all while making Mr. Needham and DT Development liable for advances paid to DT Development. These actions have resulted in financial loss for Mr. Needham as well as emotional strain. Mr. Needham intends to fully defend himself and DT Development and is preparing to prosecute an action against BACT, LLP for its actions.

It is our client's goal to do everything necessary to comply with the requirements of

<sup>1</sup>It has come to the attention of Mr. Needham that BACT, LLP has made a similar complaint with the Nevada State Contractors Board ("NSCB"). Mr. Needham will work with the NSCB and with DOPL to resolve all issues dealing with BACT, LLP and will show that the allegations by BACT, LLP are meant only to harm the interests of Mr. Needham and DT Development.

Wayne Holman  
September 1, 2006  
Page 5

DOPL to satisfy the inquiry into the baseless allegations raised by BACT, LLP. If anything is missing or you require additional information, please contact us immediately so that we can remedy the problem.

As you know, Mr. Needham is also working with legal counsel in Murray, Utah, who has been in contact with you regarding the current inquiry by DOPL. Mr. Lance D. Thaxton, Esq., at the law firm of Smart, Schofield, Shorter & Luncsford can be reached at 5295 South Commerce Drive, Suite 200, Murray, Utah 84107. Mr. Thaxton can be reached via telephone at 801-747-0647, or via facsimile at 801-747-1049.

If you have any questions or would like to discuss this further, please contact our office.

Sincerely,

FAUX & ASSOCIATES, P.C.



W. Bradley Parsons, IV, Esq.

Enclosure (one binder as described above)

cc: Client

Lance D. Thaxton, Esq.

# **EXHIBIT 4**

**Copy of Nevada State  
Property Tax Notice**



Laura B. Fitzpatrick  
Clark County Treasurer  
500 S Grand Central Pkwy  
P O Box 551220  
Las Vegas NV 89155-1220

First-Class Mail  
U.S. Postage  
PAID  
Clark County  
89311

## Important Real Property Tax Information



0012933 01 MB 0.401 \*\*AUTO T4 0 0003 84791-039797



001-08-312-004

BACTLP

P O BOX 910397

ST GEORGE UT 84791-0397





Office of the Clark County Treasurer

PAST DUE NOTICE OF  
REAL PROPERTY TAXES

0012933 01 MB 0.401 \*\*AUTO T4 0 0003 84791-0397

001-08-312-004  
BACTLP  
P O BOX 910397  
ST GEORGE UT 84791-0397

October 19, 2012

PARCEL NUMBER: 001-08-312-004  
LOCATION: 535 GREENS WAY

Our records indicate that there were past due taxes on the above property as of the date of this letter.

Past Due Amount	\$	327.22 Due Immediately
Next Installment Amount	\$	152.90 Due by 1/7/2013
	\$	480.12
To Pay in Full	\$	633.02

**Please pay Past Due Amount IMMEDIATELY to avoid additional penalties.  
If a payment was recently made it may not be reflected in this amount.**

You may check the status of taxes or request a duplicate bill 24 hours a day at  
[www.clarkcountynv.gov/treasurer](http://www.clarkcountynv.gov/treasurer) or by calling 702-455-4323.

Customer service representatives are available by phone to answer your questions weekdays  
(excluding holidays) from 8 a.m. to 5 p.m.

If you are the owner of this property and currently in bankruptcy and have not provided evidence of  
your bankruptcy filing to this office please do so immediately.

Tear here

CLARK COUNTY TREASURER

Please return this portion with your payment

Fiscal Year 2012-2013

Statement Date: October 19, 2012

Parcel Number	Minimum Due	Minimum with Next Installment	To Pay in Full	Amount Enclosed
001-08-312-004	327.22	480.12	633.02	

Tear here

BACTLP  
P O BOX 910397  
ST GEORGE UT 84791-0397

Make checks payable to:

Clark County Treasurer  
500 S Grand Central Parkway  
PO Box 551220  
Las Vegas NV 89155-1220



0010831200413300000327220000015290000004801200000633029



# **EXHIBIT 5**

**Transcript of John Tebbs  
and  
Rulon Musser  
Telephone Conversation**

Yes, and I am just wondering, what would help satisfy you as far as what you're looking for from him.

I need a, I mean, I need some money, I need a money now, and then a payment for him to have to pay off the rest, and I don't have either one of those. Did he admit that he had a loss or some real estate?

No, and uh and in talking with him, you know, and I was gonna actually go through with him and go through all that, and you know just try just to narrow it down and see what and, you know, if there is an amount left and I can say where did that go, and just see, basically kinda do an audit on him. I mean,

Yeh.

But, I mean, here he feels comfortable with me doing it. And that being the case, you know, I don't know without actually getting into it.

Yeh.

But.

Yeh.

But I think it's worth it for you and him. But then he was asking me, you know, he said that he had proposed to actually buy back the project and pay you back.

Right. Yeh, and he.

Would that be an option?

No, he offered that to me, he said well I have investors that'll buy you out and they're not willing to pay full retail price. They want to buy us out at the price we paid. So our opportunity to make money is far greater right now as it is, cause we can sell the property ourselves. Him buying the property versus us selling the property are the same thing. I think all of these properties would be easy to sell. What he doesn't keep in mind and he has proposed that several times. And I keep... And I finally pinned him down and I said, Aaron I didn't come down here to divest out of several projects in Salt Lake and reinvest in St. George just to sit down here for two years and get my money back. And I'm basically at ground zero, and I've divest myself of several things up in Salt Lake. So that's insanity. It was never our objective, never what we wanted to do, never what was planned to do by either party. But you know that the property that we have invested in has appreciated some, and um these investors want the same thing, and they want to turn and sell it and make some profit. So all you're doing is taking the profit opportunity and shifting it to someone else so they can enjoy the profit, and all we do is we get our money back. That's what our original investment is. I said, why would I do that Aaron, when I can sell it myself and make some money. The problem is you don't really know how much money could be made from all these; and this is a totally different agreement if we did this. This is not the agreement we had at all when we came down here.

Yes, that's so,

This is Aaron's new agreement just to try to get us off his back. And uh, he needs to pay the money that he took. He needs to pay it back.

OK, one thing that he proposes.

That's all there is to it.

One thing he proposes is how could he do that if the lots can't close.

Uh, they are closing. We've got a sale happening in ah, in ah Mesquite right now. I could give him a full accounting, again, all I'm looking for is the money we paid him that was supposed to go to subcontractors, and he didn't pay the subcontractors and he kept it for himself. He needs to pay that back. Cause we had to repay the subcontractors cause he didn't pay them with the money we gave him. That's all I'm asking.

Do you know which subs weren't paid, cause I was asking him, I says, Aaron which subs weren't paid.

I've given him some accounting in the past. I could give him an updated accounting. But my friend, I'm sure that every time I go through this with him, he turns up with empty balls. He has no money to pay anybody. He just wants to see if he could buy me out with other investors, and have them enjoy the profit, and also just go home with the money we came down with. And I said, what about the cost of us having to just sell the properties we did in Salt Lake. What's that cost, what's the cost of the hundreds of hours of myself and Greg and our office staff, put in trying to find out what you did to us. How do we cover that. He doesn't have any answers. An investor would not pay full retail for our lots because then they couldn't make any profit off of it. They're wanting to make the profit that we were supposed to make. That's why they're interested.

K. And you know, he showed me the contract that he made with Clem,

Yeh.

The Joint, what's it called, where they partnered up, basically.

U-Huh.

And, he's saying that that was made after he had already done all these projects this far, and so....

That was right before we found out about the disaster of what had happened.

But what ....

We were moving right along and that's where . . . and right about that same time we started developing some questions as what was going on. And, I don't believe that deal was ever signed. I think it was proposed, but it was ever signed.

There was a signed copy.

What it signed by him and Clem, both?..

Yes. And, but... and I only ask these questions just to clarify in my mind, and I'm trying to help both of you.

Well I just, Aaron, the money you took for yourself that was supposed to go to subs, that's illegal, and that's fraud right there. And that has to be paid back. Legally, that has to be paid back. Now, if we're going to restructure the agreements to something else after that's paid back, I'm fine. But we need to start by getting paid back what was paid to him that was supposed to go to the subs. That's the first thing that needs to happen. If he can do that, then, I'll ah, then I'll reconsider restructuring the deal.

OK

But he wants to restructure the deals now and get the money off of a new deal, and then go back and pay the money that he took a year ago. It doesn't make any sense. That agreement took place before we bought the subdivision here but it had nothing to do with anything else. The subdivision is just sitting it; it's not improved, I don't believe it's increased in value. We've got to get to the city with everything else. There's really no profit there right now.

Uh-huh.

Again, he wants to claim future profits now. He thinks it's going to sell for this; and he wants to take that profit right now and try to clear up his mess. I feel like I'm talking to a kindergartener when I talk to him. It is so frustrating. I would be totally prudent and acting with complete uh professionalism when I say, Aaron you took the money that was supposed to be paid to the subs, pay that back, pay that back so we can get back on terms, and we can re-arrange the agreements from there.

OK

He can't do it. At least he says he can't.

Well, and you know he may have it here, I don't know. But if he doesn't, if I help him try to get this to a situation where it can be solved, then would you be able to tell him which subs aren't paid. Because you know, what's he's saying is that he said they are paid.

No, we went and paid the subs the second time; he had to, to close the houses out. Yeh, they're all paid now. They are now, because we paid them twice. We paid him once that was supposed to go to the subs, then we paid the subs directly.

OK

But, I've got to hop on the plane, here.

OK

If he can come up with some money, I can talk. But he never comes up with any money...He has empty palms. He just wants to take whatever opportunity is left down here and give it to other people to try and get out of this. He's got to find some cash and restore what he took. That's part of repentance, is restoration. He doesn't want to do that. He wants to redo deals, restructure it. And it's not going to run here.

OK

I'll see you.

# **EXHIBIT 6**

**CD Audio Recording  
of Conversation between  
John Tebbs  
and Rulon Musser**

# **EXHIBIT 7**

## **Rulon Musser's Affidavit Attesting To The Conversation**

Roger Sanders (2859)  
Benjamin S. Ruesch (12646)  
Nathan C. Reeve (13090)  
Sanders Ruesch & Reeve, PLLC  
55 South 300 West, Ste 1  
Hurricane, UT 84737  
(435) 635-7130 tel  
(435) 635-7100 fax  
Attorneys for Defendant.

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

THE STATE OF UTAH

Plaintiff

vs.

AARON DAVID TRENT NEEDHAM.

Defendant.

AFFIDAVIT OF RULON MUSSER

Civil No. 101500067

Judge John J. Walton

STATE OF UTAH            )  
                                  :  
County of Washington    )

I, Rulon Musser, first being duly sworn and under oath, depose and state the following:

1. I have personal knowledge of the facts and am prepared to testify as to the same.
2. On or around January 25, 2006, I recorded a telephone conversation I had with John Tebbs.
3. The attached and initialed transcript is a true and accurate written transcript of the conversation that I had with John Tebbs.

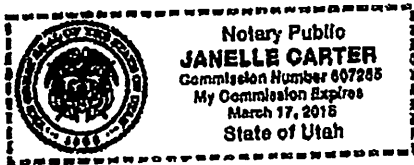


4. The CD marked as Defendant's Exhibit and initialed by myself is a true copy of that recording that I had with John Tebbs.

DATED this 8<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
Rulon Musser

On this 8 day of June 2011, personally appeared before me Rulon Musser, signer of the within and foregoing document, who duly acknowledged before me that he executed the same.



  
\_\_\_\_\_  
Notary Public

## **EXHIBIT 8**

**Copy of Six Closing HUDS  
Of Distribution of Funds to  
Needham by  
Clem Tebbs through  
Title Company**

6. Yundt, John  
 7. Loan Type: Comm. Unempl.  
 8. File Number: 103-2191575  
 9. Loan Number:  
 10. Maritime National Cash Number:

Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
Gross Amount Due From Borrower		400. Gross Amount Due To Seller	
Contract Sales Price		401. Contract Sales Price	700,000.00
Personal Property		402. Personal Property	
Settlement charges to borrower (line 1400)		402. Total Deposits	
		404.	
		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
City/town taxes		406. City/town taxes	
County taxes		407. County taxes 03/17/05 to 07/01/05 @ \$1072.76/yr	393.84
		408. Assessments	
		409. HOA-Macquel Vistas Creek	35.00
		410. Association Dues 02/17/05 to 03/01/05 @ \$28.00/mo	11.14
		411. Association Dues 03/17/05 to 03/01/05 @ \$100.00/mo	42.85
		412.	
		413.	
		414.	
		415.	
B. Gross Amount Due From Borrower		420. Gross Amount Due To Seller	700,486.84
C. Amounts Paid By Or In Behalf of Borrower		500. Reductions In Amount Due to Seller	
1. Deposit of earnest money		501. Excess deposit (see instructions)	
2. Principal amount of new loan(s)		502. Settlement charges (line 1400)	14,565.00
3. Existing loan(s) taken subject		503. Existing loan(s) taken subject to	
4.		504. Payoff of first mortgage loan - Wells Fargo Bank	112,274.15
5.		505. Payoff of second mortgage loan	
6.		506. Tax Installment Amount to Clark County Treasurer Office	267.73
7.		507.	
8.		508.	
9.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
10. City/town taxes		510. City/town taxes	
11. County taxes		511. County taxes	
12. Assessments		512. Assessments	
13.		513.	
14.		514.	
15.		515.	
16.		516.	
17.		517.	
18.		518.	
		519.	
19. Total By/For Borrower		520. Total Reduction Amount Due Seller	127,106.97
Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
Amount Due From Borrower (line 120)		601. Gross amount due to Seller (line 420)	700,486.84
20. Less amounts taken by/for Borrower (line 220)		602. Less reductions in amounts due to Seller (line 520)	127,106.97
21.		603. Cash (X To) / (For) Seller	73,579.97

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.	
Settlement Agent	Date

\* See Supplemental Page for details.

Date \_\_\_\_\_

## A. Settlement Statement

# First American Title Company of Nevada Settlement Statement

1-5. Term of Loan  
Type Conv. Units.

6. File Number 103-2191675

7. Loan Number

8. Mortgage Insurance Case Number

C. Note: This statement is provided to you as a statement of actual settlement costs. Amounts, which are not the settlement agent's amount, but are marked "N/A" with a plus sign, are not to be included in the settlement costs.

D. Name of Borrower: The BACT Limited Partnership  
4885 South 900 East, Suite 208, Salt Lake City, UT 84117

E. Name of Seller: Jerome F.X. Naradzay, Michele L. Naradzay  
501 Cindy Sue Mesquite, NV 89027

F. Name of Lender: Wells Fargo Bank  
2324 Overland Avenue P.O. Box 31557 MAC B6955-01B  
Billings, MT 59102-6401

G. Property Location: 680 La Scala, Mesquite, NV 89027

H. Settlement Agent: First American Title Company of Nevada  
Address: 315 Calais Drive, Suite A, Mesquite, NV 89027

Place of Settlement Address: 315 Calais Drive, Suite A, Mesquite, NV 89027

I. Settlement Date: 02/17/2005

Print Date: 08/19/2005, 3:44 PM

Disbursement Date: 02/17/2005

## J. Summary of Borrower's Transaction

100. Gross Amount Due From Borrower

101. Contract Sales Price

102. Personal Property

Settlement charges to borrower (line 1400)

105.

Adjustments for items paid by seller in advance

106. City/county taxes

107. County taxes

108. Assessments

109.

110.

111.

112.

## K. Summary of Seller's Transaction

400. Gross Amount Due To Seller

401. Contract Sales Price

402. Personal Property

403. Total Deposits

404.

405.

Adjustments for items paid by seller in advance

406. City/county taxes

407. County taxes 02/17/05 to 07/01/05 @ \$1072.76/yr

408. Assessments

409. HOA-Mesquite Vistas Credit

410. Association Dues 02/17/05 to 03/01/05 @ \$26.00/mo

411. Association Dues 02/17/05 to 03/01/05 @ \$100.00/mo

412.

200,000.00

393.84

39.00

11.14

42.86

112		413	
114		414	
115		415	
120. Gross Amount Due From Borrower		420. Gross Amount Due To Seller	200,486.84
200. Amounts Paid By Or In Behalf of Borrower		500. Reductions In Amount Due to Seller	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges (line 1400)	14,565.00
203. Existing loan(s) taken subject		503. Existing loan(s) taken subject to	
204		504. Payoff of first mortgage loan - Wells Fargo Bank	112,214.19
205		505. Payoff of second mortgage loan	
206		506. Tax installment: Amount to Clark County Treasurer: Other	267.73
207		507	
		508	
		509	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes		510. City/town taxes	
211. County taxes		511. County taxes	
212. Assessments		512. Assessments	
213		513	
214		514	
215		515	
216		516	
217		517	
218		518	
219		519	
Total Paid By/For Borrower		620. Total Reduction Amount Due Seller	127,106.92
Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross amount due from Borrower (line 120)		601. Gross amount due to Seller (line 420)	200,486.84
302. Less amounts paid by/for Borrower (line 220)		602. Less reductions in amounts due to Seller (line 520)	127,106.92
303.		603. Cash (X to) ( From) Seller	73,379.92
The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.			
Settlement Agent:		Date:	

1300	Government Recording and Transfer Charges			
1301	Recording less Deed \$15.00 Mortgage \$6.00 Release \$1.00			
1302	City/County tax/stamps Deed \$10.00 Mortgage \$0.00			1,020.00
1303	State tax/stamps.			
1304				
1305				
1306				
1307	Additional Settlement Charges			
1308	Survey to			
1309	Post Inspection to			
1310	Association Dues for March, 2005 to Mesquite Villas			
1311	Transfer Fee to Association Management Services			100.00
1312	Association Dues for March, 2005 to La Scala HOA			
1313	Capital Contribution to La Scala HOA			80.00
1314	Transfer Fee to Association Management Services			100.00
1315	Inspection to Real Estate Inspection Services of Mesquite			
1316				
1317				
1318				
1319				
1320				
1321				
1322				
1323	Supplemental Summary			
1400	Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			14,565.00

\* See Supplemental Page for details.

Supplemental Page  
HUD-1 Settlement Statement

File No.  
103-2151675

First American Title Company of Nevada  
Settlement Statement

Loan No.

Settlement Date:  
02/17/2005

Borrower Name & Address: The BACT Limited Partnership  
4885 South 900 East, Suite 208, Salt Lake City, UT 84117

Seller Name & Address: Jerome F.X. Naradzay, Michele L. Naradzay  
501 Cindy Sue Mesquite, NV 89027

Section L. Settlement Charges continued

		Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
1105. Supplemental Summary	965.00		
a) Plain Language Policy - First American Title Company of Nevada			965.00
1201. Supplemental Summary	15.00		
a) Grant Deed - First American Title Company of Nevada			
Supplemental Summary	1,020.00		
Real Property Transfer Tax-Courtesy - First American Title Company of Nevada			1,020.00

Section K. Summary of Seller's Transaction continued

		Seller Charges	Seller Credits Credits/Debits
Gross Amount Due To Seller			
500. Reductions In Amount Due to Seller			
504. Supplemental Summary	112,274.19		
a) Principal Balance of Payoff Loan - Wells Fargo Bank		111,573.85	
Interest on Payoff Loan 02/17/05 to 02/23/05 @ \$21.320000/day		125.12	
Interest on Payoff through 02/16/2005 @ \$20.000000/day		545.41	
Recording Fee		15.00	
Statement Forwarding Fee		10.00	

The following Section is restated from the Settlement Statement Page 1

300. Cash At Settlement From/To Borrower	600. Cash At Settlement To/From Seller
301. Gross amount due from Borrower (line 120)	601. Gross Amount due to Seller (line 420)
302. Less amounts paid by/for Borrower (line 220)	601. Less reductions in amounts due to Seller (line 520)
303.	603. Cash (X To) (From) Seller
	200,486.84
	127,106.92
	73,379.92



# Fidelity National Title

AGENCY OF NEVADA, INC.

12 W. Mesquite Blvd., Suite 113 • Mesquite, NV 89027  
(702) 346-7474 • FAX (702) 346-7469

## FACSIMILE TRANSMISSION

ATTN: Aaron

435-674-4049

FROM: Trisha

DATE: October 26, 2005

NO. OF PAGES: 0 - Including coversheet

ESCROW NO: 05-707429-JM

Final HUD

NOTE: If there are any questions concerning this transmission please call at (702) 346-7474

PLEASE NOTE: In the event any of these pages require an ORIGINAL SIGNATURE, please copy the fax transmittal page(s) and sign on the PHOTO COPY and return to us with the original signature.

THANK YOU.

## CONFIDENTIALITY NOTICE

The information contained in this facsimile is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the address above via the United States Postal Service. Thank you.



04/20/2005 12:35 FAX 702 346 74

FIDELITY NATIONAL TITLE

0003



**Fidelity National Title**  
**AGENCY OF NEVADA, INC.**

12 W Mesquite Blvd., Suite 113 • Mesquite, NV 89027  
(702) 346-7474 • FAX (702) 346-7489

**ADDITION AND/OR AMENDMENT TO ESCROW INSTRUCTIONS**

To: Fidelity National Title Agency of Nevada, Inc.  
Date: April 12, 2005  
Escrow No: 05-707429-JM  
Property Address: 674 Lascales, Mesquite, NV 89027

The instructions in this escrow are hereby modified, amended and/or supplemented in the following particulars only:

Buyer/Borrower vesting to read as follows:  
Bact Limited Partnership

All other terms and conditions remain the same.

Bact Limited Partnership  
BB Management 1, LLC, general partner

by: Clement F. Tabbs

Donna Leabert  
A handwritten signature in black ink, appearing to read "Aaron Needham", is written over a horizontal line.  
Aaron Needham

Escrow Using Amendment Instruct.pdf


**Fidelity National Title**  
**AGENCY OF NEVADA, INC.**

 12 W. Mesquite Blvd., Suite 113 • Mesq., NV 89027  
 (702) 348-7474 • FAX (702) 348-7488

 DATE: April 20, 2005  
 ESCROW NO: 05-707429-JM  
 ESCROW OFFICER: Janie Montero

TIME: 13:42:44

CLOSING DATE: April 22, 2006

**MASTER STATEMENT**
 SELLER(S): Donna Lambert  
 BUYER(S): Sact Limited Partnership  
 PROPERTY: 674 Lascafa, Mesquite, NV 89027

SELLER		BUYER	
\$ DEBIT	\$ CREDIT	\$ DEBIT	\$ CREDIT
			<b>FINANCIAL:</b>
	200,000.00	200,000.00	Total Consideration
			Deposit - Aaron Neddum
			Deposit - Sact Limited Partnership
			5,000.00
			235,000.00
			<b>PRORATIONS/ADJUSTMENTS:</b>
	191.60	191.60	Prepaid County Taxes at \$985.39 Annually
			from 04/21/05 to 07/01/05
	233.33	233.33	HOA Dues at \$100.00 Month from 04/21/05
			to 07/01/05
	8.67	8.67	HOA Dues at \$28.00 Month from 04/21/05
			to 05/01/05
			<b>TITLE CHARGES:</b>
787.20			ALTA Residential Owners Policy (6-1-87)
			for 200,000.00
510.00		510.00	Real Property Transfer Tax
15.00			Recon Tracking Fee
100.00			Reconveyance Fee
		20.00	Recording Deed
15.00			Reconveyance(s)
			<b>ESCROW CHARGES</b>
237.50		237.50	Escrow Fee
20.00		20.00	Doc Prep Fees
25.00			Draw Deed
18.50		18.50	Courier Fees
			<b>PAYOFFS - Paul DeHart and Vickie DeHart</b>
			Total Payoff \$100,712.33
100,000.00			Principal Balance
712.33			Interest Fr. 03/01/05 To 04/22/05
			<b>COMMISSIONS:</b>
4,000.00			Listing Brokers Commission to Realty
			Executives 2.00%
8,000.00			Selling Brokers Commission to RE/MAX
			Ridge Realty 4.00%
			<b>HOA CHARGES:</b>
100.00			Transfer Fee
31.00			Dues for April + late charge
52.00			Capital Contribution
		25.00	May HOA dues
			<b>HOA CHARGES:</b>
100.00			Transfer Fee
140.00			Capital Contribution
			<b>MISCELLANEOUS CHARGES:</b>
253.56			Clark County Treasurer for 4th quarter
1,000.00			Limit cost inspections, survey, soils or

Thursday, August 11, 2005, 23:05

Escrow: 05-07-05-707429-JM

## ATTACHMENT TO RESPA

BUYER SELLER

## DEPOSITS TO ESCROW

Aaron Needum

5,000.00

## DEPOSITS TO ESCROW

Bact Limited Partnership

235,000.00

## PAYOFF CHARGES FOR Paul DeHart and Vickie DeHart

Principal Balance

100,000.00

Interest Fr. 03/01/05 To 04/22/05

712.33

## CHARGES FROM LINE NO. 1311

Demand of DT Development 35,000.00 less closing costs fees

33,734.40

Deposit due Bact LLP

5,000.00

I have carefully reviewed this Settlement Statement and to the best of my knowledge and belief, it is true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of this Settlement Statement.

I hereby authorize the Settlement agent to make expenditures and disbursements as shown above and approve same for payment.

BORROWER(S):

Date: \_\_\_\_\_

SELLER(S):

Date: \_\_\_\_\_

I have caused or will cause the funds to be disbursed in accordance with the HUD-1 Statement which I have prepared.

Fidelity National Title Agency of Nevada, Inc.

By: \_\_\_\_\_  
Escrow Officer

Date: \_\_\_\_\_

Date: April 20, 2005  
Escrow No: 06-707429-JM

Page 2

certs  
Demand of DT Development 35,000.00 less 33,734.40  
closing costs fees  
Deposit due DT Development 5,000.00

\$ 84,316.51			BALANCE		
\$ 200,433.60	\$ 200,433.60		TOTAL	\$ 240,000.00	\$ 240,000.00

PLEASE RETAIN FOR YOUR ESCROW FILE



**FIDELITY NATIONAL TITLE AGENCY  
OF NEVADA, INC.**  
ESCROW TRUST-MESQUITE BRANCH 295-07  
12 W. MESQUITE BLVD., SUITE 113  
MESQUITE, NV 89027  
(702) 346-7474

BANK OF AMERICA  
GLOBAL CLERK SERVICES  
333 SOUTH BEAULAY AVENUE  
LOS ANGELES, CA 90017-1466  
11-35/1210

066331

ESCROW NO.

05-707429-001 DATE April 21, 2005

PAY

FIVE THOUSAND AND 00/100 \*\*\*\*\* 15,000.00\*

TO  
THE  
ORDER  
OF

THE RACT Limited Partnership

ESCROW TRUST ACCOUNT - VOID AFTER 90 DAYS

**NON-NEGOTIABLE**

066331

TWO SIGNATURES REQUIRED

K.B.

\*066331\* 05210003080 12332\* 13518\*

**FIDELITY NATIONAL TITLE AGENCY  
OF NEVADA, INC.**  
ESCROW TRUST-MESQUITE BRANCH 295-07  
05-707429-001

DETACH AND RETAIN THIS STATEMENT  
THE ATTACHED CHECK IS IN PAYMENT OF THE ITEMS DESCRIBED BELOW.  
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

066331

County #/Branch #: 0014/0007  
Date: 04-21-05  
Buyer : Ract Limited Partnership  
Seller : Donna Lambert  
Property: 674 Lascaia, Mesquite, NV 89027

Check No: 066331  
Amount: \$5,000.00

**NON-NEGOTIABLE**

**RIVER HOLLOW**  
**LOT 28**

## SOUTHERN UTAH TITLE COMPANY

40 South 100 East  
St. George, Utah 84770

## BUYER'S SETTLEMENT STATEMENT

<b>Seller</b>
Raymon Dale Cox
Susan Jean Cox

<b>Buyer</b>

<b>Property Address</b>
1330 SOUTH 2780 EAST ST GEORGE, UTAH 84790

<b>Buyer Address</b>
4885 SOUTH 900 EAST #208 SALT LAKE CITY, UTAH 84117

<b>Settlement Date</b>	<b>Settlement Number</b>
05/06/2005	125192

<b>SALES PRICE</b>		199,900.00	
Down Payment to	Re/max First Realty		5,000.00
<b>EXPENSES:</b>			
Title Insurance Premium			
Recording fee		15.00	
Lodging Fee		150.00	
Escrow Closing Fee			
Federal Express and Processing Fees		30.00	
Additional Documents			
<b>PRORATIONS: As of</b> 05/07/2005 <b>To</b> 12/31/2005			
Taxes for the year 2005 - 12 Mo. @		1,225.00	
Buyers are responsible for insurance as of date of closing.			
Southern Utah Title Company will not be held liable.			
<b>PAYOFF FEE TO KILAUEA PROPERTY</b>		28,777.82	
Home Owners Association Dues FROM 5/6-6-30 @ \$125/QT		77.48	
Home Owners Association Transfer Fee		50.00	
NOTE: Sellers portion of 2005 taxes		\$338.07	
paid directly to Washington County Treasurer by Southern Utah Title at Closing.		\$0.00	\$0.00
<b>Sub-Totals</b>		\$230,000.00	\$8,000.00
<b>Balance Due from Buyer</b>			\$225,000.00
<b>TOTALS</b>		\$230,000.00	\$230,000.00

Southern Utah Title Company

Approved by:

BY:   
JENNIFER L. BAILEY

THE SOUTHERN UTAH TITLE COMPANY, A UTAH LIMITED PARTNERSHIP  
 CLEARENCE T. TAYLOR, MANAGING MEMBER OF SB MANAGEMENT, L.P. DATED  
 LIMITED LIABILITY COMPANY (GENERAL PARTNER)

Dated

**SOUTHERN UTAH TITLE COMPANY**  
 40 South 100 East  
 St. George, Utah 84770

**BUYER'S SETTLEMENT STATEMENT**

<b>Sellers</b>
Raymon Dale Cox
Susan Jean Cox

<b>Buyer</b>
THE EAST UNITED PARTNERSHIP, A UTAH LIMITED PARTNERSHIP

<b>Seller's Address</b>

<b>Buyer's Address</b>
4885 SOUTH 900 EAST #208 SALT LAKE CITY, UTAH 84117

<b>Property Address</b>
1330 SOUTH 2780 EAST. ST. GEORGE, UTAH 84780

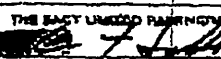
<b>Transaction Date</b>	<b>Account Number</b>
05/06/2005	126192

<b>SALES PRICE</b>	100,000.00	
Down Payment to	Re/max First Realty	5,000.00
<b>EXPENSES:</b>		
Title Insurance Premium		
Recording fee	18.00	
Closing Fee	150.00	
Escrow Closing Fee		
Federal Express and Processing Fees	30.00	
Additional Documents		
<b>PRORATIONS:</b> As of 05/07/2005 To 12/31/2005		
Taxes for the year 2005 - 12 Mo. @	1,223.00	
Buyers are responsible for insurance as of date of closing. Southern Utah Title Company will not be held liable.		
<b>PAYOFF FEE TO KILAUEA PROPERTY</b>	29,777.52	
Home Owners Association Dues FROM 8/1-8-30 @ \$125/QTR	77.48	
Home Owners Association Transfer Fee	60.00	
NOTE: Sellers portion of 2005 taxes \$338.07		
paid directly to Washington County Treasurer by Southern Utah Title at Closing.	\$0.00	\$0.00
<b>Sub-Totals</b>	\$230,000.00	\$5,000.00
Balance Due from Buyer		\$225,000.00
<b>TOTALS</b>	\$230,000.00	\$230,000.00

Southern Utah Title Company

Approved by:

By:   
 JENNIFER L. BAILEY

THE EAST UNITED PARTNERSHIP, A UTAH LIMITED PARTNERSHIP  
  
 CLEMENT F. TERDS, MANAGING MEMBER OF EE MANAGEMENT, L.L.C.  
 UNITED LUXURY COMPANY, GENERAL PARTNER

Dated



**BLOOMINGTON  
RANCHES  
LOT 78B**

**SOUTHERN UTAH TITLE COMPANY**  
Custodial Escrow Account  
40 South 100 East, St. George, UT 84770

Memo: HIGH CLIFF HOMES, INC., A UTAH CORPORATION / CLEMENT  
Lot 28 River Hollow

Wells Fargo Bank, N.A.  
ONE SOUTH MAIN ST. GEORGE, UTAH 84770  
31-1/1240

161541

5/12/05

AMOUNT  
\$ 29,807.52

PAY: Twenty Nine Thousand Eight Hundred Seven and 52/100 Dollars\*\*\*\*\*

Pay to the Order of: Kilacua Properties

Southern Utah Title Company  
File Copy

MAY 9 2005 5:55PM

SOUTHERN UTAH TITLE

NC. 5787 P. 16

## SOUTHERN UTAH TITLE COMPANY

40 South 100 East  
St. George, Utah 84770

## BUYER'S SETTLEMENT STATEMENT

Sellers
Raymon Dale Cox
Susan Jean Cox

Sellers' Addresses

Property Address
1330 SOUTH 2780 EAST ST. GEORGE, UTAH 84788

Buyer's Name
THE BACT UNITED PARTNERSHIP, A UTAH LIMITED PARTNERSHIP

Buyer's Address
4885 SOUTH 900 EAST #208 SALT LAKE CITY, UTAH 84117

Closing Date	Escrow Number
05/06/2005	126182

<b>SALES PRICE</b>		199,800.00	
Down Payment to	Re/max First Realty		5,000.00
<b>EXPENSES:</b>			
Title Insurance Premium			
Recording fee		15.00	
Closing Fee		150.00	
Escrow Closing Fee			
Federal Express and Processing Fees		30.00	
Additional Documents			
<b>PRORATIONS:</b> As of 05/01/2005 To 12/31/2005			
Taxes for the year 2005 - 12 Mo. @	1,223.00		
Buyers are responsible for insurance as of date of closing. Southern Utah Title Company will not be held liable.			
<b>PAYOFF FEE TO KILAUEA PROPERTY</b>			
		29,777.52	
<b>Home Owners Association Dues FROM 5/5-8-30 @ \$125/QTR</b>			
Home Owners Association Transfer Fee		77.48	
		50.00	
<b>NOTE: Sellers portion of 2005 taxes \$338.07</b>			
paid directly to Washington County Treasurer by Southern Utah Title at Closing.		50.00	50.00
Sub-Totals		\$230,000.00	\$5,000.00
Balance Due from Buyer			\$225,000.00
<b>TOTALS</b>		<b>\$230,000.00</b>	<b>\$230,000.00</b>

Southern Utah Title Company

Approved by:

By: JENNIFER L. BAILEY

THE BACT UNITED PARTNERSHIP, A UTAH LIMITED PARTNERSHIP  
 CLEMENT F. FETZ, MANAGING MEMBER OF SB MANAGEMENT  
 LIMITED LIABILITY COMPANY GENERAL PARTNER

Dated

[ ] Preliminary [X] Final

**SOUTHERN UTAH TITLE COMPANY**  
Custodial Escrow Account  
40 South 100 East, St. George, UT 84770

Wells Fargo Bank, N.A.  
ONE SOUTH MAIN ST. GEORGE, UTAH 84770  
31-1/1240

162490  
5/20/05

Memo: ERR

126192

Fee for Lot 28

AMOUNT  
\$ 29,777.52

**PAY: Twenty Nine Thousand Seven Hundred Seventy Seven and 52/100 Dollars\*\*\*\*\***

Pay to the Kilauea Properties  
Order of:

Southern Utah Title Company  
File Copy

**RIVER HOLLOW**  
**LOT 29**





**SOUTHERN UTAH TITLE COMPANY**

Custodial Escrow Account

40 South 100 East, St. George, UT 84770

Wells Fargo Bank, N.A.

ONE SOUTH MAIN ST. GEORGE, UTAH 84770

31-1/1240

**156118**

4/7/05

Memo: THE BACT LIMITED PARTNERSHIP, / LMM DEVELOPMENT, INC 128083

Payoff 3539 S Solano Way

AMOUNT

\$ 41,548.26

**PAY: Forty One Thousand Five Hundred Forty Eight and 26/100 Dollars\*\*\*\*\***

Pay to the Needham Homes, Inc.  
Order of:

Southern Utah Title Company

File Copy



**WHITE MESA**  
**LOT 131**

**GENERAL INFORMATION**

PARCEL NO. 001-17-611-025  
OWNER AND MAILING ADDRESS PROPER REUBEN R & CHARLEEN A  
167 WOODBURY LN  
MESQUITE NV 89027-8141

LOCATION ADDRESS CITY/TOWNSHIP 167 WOODBURY LN  
MESQUITE

ASSESSOR DESCRIPTION WHITE MESA SUB PHASE 1  
PLAT BOOK 109 PAGE 15  
LOT 125

RECORDED DOCUMENT NO. 20060627:05641  
RECORDED DATE 06/27/2006  
TESTING JOINT TENANCY

\*Note: Only documents from September 15, 1999 through present are available for viewing.

**ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE**

TAX DISTRICT 901  
APPRAISAL YEAR 2005  
FISCAL YEAR 06-07  
SUPPLEMENTAL IMPROVEMENT VALUE 0  
SUPPLEMENTAL IMPROVEMENT N/A  
ACCOUNT NUMBER

**REAL PROPERTY ASSESSED VALUE**

<u>FISCAL YEAR</u>	2005-06	2006-07
<u>LAND</u>	16100	17500
<u>IMPROVEMENTS</u>	0	49530
<u>PERSONAL PROPERTY</u>	0	0
<u>EXEMPT</u>	0	0
<u>GROSS ASSESSED</u>	16100	67030
<u>TAXABLE VALUE LAND+IMP</u>	46000	191514

**ESTIMATED LOT SIZE AND APPRAISAL INFORMATION**

ESTIMATED SIZE 0.29 Acres  
ORIGINAL CONST. YEAR 2005  
LAST SALE PRICE 349900  
MONTH/YEAR 06/06  
LAND USE RESIDENTIAL SINGLE FAMILY  
DWELLING UNITS 1

**PRIMARY RESIDENTIAL STRUCTURE**

<u>TOTAL LIVING SQ. FT.</u>	1880	<u>CARPORT SQ. FT.</u>	0	<u>ADDN/CONV</u>	NONE
<u>1ST FLOOR SQ. FT.</u>	1640	<u>STORIES</u>	TWO STORY	<u>POOL</u>	NO
<u>2ND FLOOR SQ. FT.</u>	240	<u>BEDROOMS</u>	4	<u>SPA</u>	NO
<u>BASEMENT SQ. FT.</u>	0	<u>BATHROOMS</u>	2 FULL	<u>TYPE OF CONSTRUCTION</u>	FRAME STUCCO
<u>GARAGE SQ. FT.</u>	462	<u>FIREPLACE</u>	0	<u>ROOF TYPE</u>	CONCRETE TILE



I. SETTLEMENT		CHARGES		Escrow: 13776	
700. Total Sales/Broker's Commission:					
Based On Price \$				@	% =
Division of Commission (line 700) As Follows:					
701 \$	to			Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
702 \$	to				
703 Commission paid at settlement					
704.					
800. Items Payable In Connection With Loan:					
801. Loan Origination fee %					
802. Loan Discount %					
803. Appraisal fee to:					
804. Credit report to:					
805. Lender's inspection fee					
806. Mortgage insurance application fee to					
807. Assumption fee					
808.					
809.					
810.					
811.					
812.					
813.					
814.					
815.					
816.					
900. Items Required By Lender To Be Paid In Advance:					
901. Interest from to @ \$ /day					
902. Mortgage insurance premium for mo. to					
903. Hazard insurance premium for yrs. to					
904. Flood insurance premium for yrs. to					
905.					
906.					
1000. Reserves Designated With Lender:					
1001. Hazard insurance 0 months @ \$ 0.00 per month					
1002. Mortgage insurance 0 months @ \$ 0.00 per month					
1003. City property taxes 0 months @ \$ 0.00 per month					
1004. County property taxes 0 months @ \$ 0.00 per month					
1005. Annual assessments 0 months @ \$ 0.00 per month					
1006. Flood insurance 0 months @ \$ 0.00 per month					
1007. 0 months @ \$ 0.00 per month					
1008. Aggregate Adjustment					
1009.					
1100. Title Charges:					
1101. Settlement or closing fee to Mesquite Title Company					459.00
1102. Abstract or title search to					
1103. Title examination to					
1104. Title insurance binder to					
1105. Document preparation to Mesquite Title Company					50.00
1106. Notary fees to					
1107. Attorney's fees to (includes above item Numbers: )					
1108. Title insurance to Mesquite Title Company (includes above item Numbers: )					229.00
1109. Lender's coverage \$					
1110. Owner's coverage \$ 75,900.00 Premium \$ 229.00					
1111. Courier Fee to Mesquite Title Company					60.00
1112. Wire/Express Mail to Mesquite Title Company					50.00
1113. Miscellaneous Charge RPTT to Mesquite Title Company					295.80
1114.					
1200. Government Recording and Transfer Charges:					
1201. Recording fees: Deed \$ 30.00 Mortgage \$ 0.00 Release \$ 0.00					30.00
1202. City/county tax/stamps: Deed \$ 31.60 Mortgage \$ 0.00					317.60
1203. State tax/stamps: Deed \$ 1.00 Mortgage \$ 0.00					
1204.					
1205.					
1300. Additional Settlement Charges:					
1301. Survey to					
1302. Pest inspection to					
1303.					
1304.					
1305.					
1306.					
1307.					
1308.					
1309.					
1310.					
1311.					
1312.					
1313.					
1400. Total Settlement Charge (Enter on line 103, Section I - and - line 102, Section K)					1,561.40

SELLER'S AND/OR BORROWER'S STATEMENT

Escrow. 13776

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent

*Pam Slippy*

Date:

*8/25/06*

for Robert C. Sherratt, Mesquite Title Company

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

# **EXHIBIT 9**

**Copy of Witness List  
Admitted to Court  
By Counsel  
(Already on File)**

# **EXHIBIT 10**

**Copy of  
Clem Tebbs  
Deposition**

# COPY OF TRANSCRIPT

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,  
Plaintiff,

vs.

AARON DAVID TRENT  
NEEDHAM,  
Defendant.

Videotaped Deposition of:

CLEMENT TEBBS

Civil No. 101500067FS

Hon. John J. Walton

June 14, 2012 \* 9:24 a.m.

Location: Utah Attorney General's Office  
5272 South College Drive, Suite 200  
Murray, UT 84123

Reporter: Sharon Morgan, RPR, CRR  
Notary Public in and for the State of Utah



**CITICOURT**

THE REPORTING GROUP

236 South 300 East  
Salt Lake City, Utah 84111

PH: 801.532.3441 FAX: 801.532.3414 TOLL FREE: 877.532.3441



A P P E A R A N C E S

FOR THE PLAINTIFF:

Jacob S. Taylor  
UTAH ATTORNEY GENERAL  
Attorney at Law  
5272 South College Drive, Suite 200  
Murray, UT 84123  
Tel: 801.281.1221  
Fax: 801.281.1224  
jacobstaylor@utah.gov

FOR THE DEFENDANT:

ARIC M. CRAMER  
Attorney at Law  
249 E. Tabernacle, Suite 102  
St. George, UT 84770  
Tel: 801.299.9999  
Fax: 801.298.5161  
ariccramer@qwestoffice.net

ALSO PRESENT:

Scheree Wilcox  
Brooke Karrington  
Kevin Player, Videographer

I N D E XCLEMENT TEBBSPAGE

Examination By Mr. Taylor	8
Examination By Mr. Cramer	37
Further Examination By Mr. Taylor	59

E X H I B I T SNUMBERDESCRIPTIONPAGE

1	Limited Joint Venture Between Aaron Needham (and his company DT Development, Inc.), John P. Grealish and the BACT Limited Partnership for Lot 125	14
2	Limited Joint Venture Between Aaron Needham (and his company DT Development, Inc.), John P. Grealish and the BACT Limited Partnership for Lot 26	16
3	Limited Joint Venture Between Aaron Needham (and his company DT Development, Inc.), John P. Grealish and the BACT Limited Partnership for Lot 27)	17
4	Limited Joint Venture Between Aaron Needham (and his company DT Development, Inc.), John P. Grealish and the BACT Limited Partnership for Lot 78	18
5	Construction and Purchase Agreement, Aaron Needham (and his Company DT Development, Inc.), John P. Grealish and the BACT Limited Partnership for Lot 29	18

1	6	Memorandum of Obligation	29
2	7	Joint Venture Agreement Between Aaron	35
3		Needham and His Designated Companies	
4		and the BACT Limited Partnership and	
5		its Designated Companies	
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

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

2 THE VIDEOGRAPHER: This is the videotaped  
3 deposition of Clement Tebbs in the matter of the  
4 State of Utah versus Needham being held in the law  
5 offices of the Attorney General in Murray, Utah on  
6 June 14th, 2012. The time is 9:24.

7 Will the court reporter please swear in  
8 the witness.

9  
10 CLEMENT TEBBS,

11 called as a witness, being first duly sworn,  
12 was examined and testified as follows:

13  
14 THE VIDEOGRAPHER: Will counsel please  
15 state their names and who they represent for the  
16 video.

17 MR. TAYLOR: Jacob S. Taylor for the  
18 State.

19 MR. CRAMER: Aric Cramer, Washington  
20 County Public Defender's Office for Aaron Needham.

21 THE VIDEOGRAPHER: Counsel may proceed.

22 MR. TAYLOR: Before we start with the  
23 examination, I do wish to put a few things on the  
24 record. First of all, the defendant, Aaron Needham,  
25 is not present here today and it was our

1 understanding that he would be. If we had known that  
2 he was not going to be present, we would have  
3 arranged for some kind of a closed circuit or some  
4 sort of a way for him to appear electronically so  
5 that he could see the proceedings here today.

6 The rule -- the way that I understand it,  
7 the rule says that the defendant shall be present.  
8 Upon learning yesterday that he was not going to be  
9 present, we made the decision to go ahead with this  
10 deposition.

11 MR. CRAMER: That's correct. I spoke  
12 with counsel over the phone. I indicated to him as  
13 well that I had not been made aware until counsel's  
14 call that Mr. Needham was not available. I indicated  
15 to him that we would, if we had a question, contact  
16 him by phone and that of necessity I would waive any  
17 objection under the rule since it could be argued by  
18 the state that Mr. Needham absented himself. So we  
19 stipulated to continue forward despite that fact, and  
20 I think that that accurately represents our position.

21 MR. TAYLOR: Thank you.

22 THE WITNESS: What was his reason for not  
23 coming?

24 MR. TAYLOR: Hold on. I'll answer that.  
25 We'll get to that during a break.

1 THE WITNESS: Sorry.

2 MR. TAYLOR: But a few more things I wish  
3 to put on the record. Mr. Cramer, you mentioned  
4 objections. I would just propose that we reserve all  
5 objections.

6 MR. CRAMER: Okay.

7 MR. TAYLOR: That will streamline this  
8 process, and at a later time if you have -- if  
9 there's anything that I seek to introduce as evidence  
10 at any trial, if there's anything that comes out here  
11 today that you think is objectionable, we can bring  
12 that before the court.

13 MR. CRAMER: Fair enough.

14 MR. TAYLOR: Okay. And if there's nothing  
15 else, I'll go ahead and start.

16 Q. (By Mr. Taylor) And then, Mr. Tebbs, if  
17 at any time you need to take a break, please let us  
18 know.

19 A. I may have to. In fact, I probably will.

20 Q. Okay. You want to take a break right now?

21 A. No.

22 Q. Are you okay with me starting?

23 A. Yes.

24 Q. Okay. I'll go ahead and start and then  
25 after I finish, Mr. Cramer will ask you some

1 questions.

2 A. That's fine.

3  
4 EXAMINATION

5 BY MR. TAYLOR:

6 Q. I think -- you got sworn in, but can you  
7 just tell us your name again?

8 A. Clement Fullmer Tebbs.

9 Q. And can you please spell that?

10 A. C-l-e-m-e-n-t, F-u-l-l-m-e-r, T-e-b-b-s.

11 Q. Mr. Tebbs, what do you do for a living?

12 A. I'm a CPA. I manage companies and I'm  
13 essentially a financial manager.

14 Q. What kind of education background do you  
15 have?

16 A. I have a background in accounting,  
17 management, law.

18 Q. When you say law, did you go to law  
19 school?

20 A. Yes, I did.

21 Q. Did you ever practice law?

22 A. No.

23 Q. Have you ever worked in real estate?

24 A. Yes. I own a real estate company.

25 Q. I'm sorry?

1 A. I own a real estate company.

2 Q. Okay. Have you ever worked in or -- in  
3 construction or worked with a construction company?

4 A. I own a construction company.

5 Q. What's it called?

6 A. Bonneville Builders.

7 Q. Okay. You mentioned that you're a CPA.  
8 Do you still do accounting work?

9 A. Yes.

10 Q. And do you have a company called BACT?

11 A. Yes.

12 Q. Is that spelled B-A-C-T?

13 A. Right.

14 Q. Can you tell us about that?

15 A. Tebbs Family Limited Partnership has a  
16 general partner and the general partner is B-A-C-T,  
17 BACT.

18 Q. What does BACT do?

19 A. It's a general partner in that entity, and  
20 it, in essence, manages the partnership.

21 Q. Okay.

22 A. And I'm the managing partner.

23 Q. Does BACT have any employees?

24 A. No.

25 Q. In a few moments I'll get into some



1 agreements that you entered into on behalf of BACT.  
2 Does BACT ever have anything to do with providing  
3 finances for construction?

4 A. BACT, the entity, is an administrative  
5 entity of the partnership and the partnership does a  
6 lot of it, but it's just a general partner manager of  
7 that entity. It owns no assets other than its  
8 one-percent general partnership interest in the other  
9 entity.

10 Q. Let me shift gears here. Do you know an  
11 individual named John Grealish?

12 A. Yes.

13 Q. How do you know him?

14 A. He came to me quite a few years ago with  
15 some financial problems, and then we entered into  
16 some arrangements where he did some things and I  
17 helped him with them. We worked together for a  
18 while.

19 Q. When do you recall first meeting him?

20 A. Oh, I can't be real accurate. Maybe 2000.  
21 I don't know.

22 Q. Have you had any contact with him  
23 recently?

24 A. No.

25 Q. Did you ever enter into any agreements

1 with him regarding the construction of homes in  
2 Mesquite, Nevada and St. George, Utah?

3 A. Not directly.

4 Q. Can you tell us about that?

5 A. He brought Aaron Needham to me and said  
6 that he felt that he was a good contractor and he  
7 felt that he could do a good job on some homes in  
8 those areas, and he was partnering with him. But the  
9 agreement that I had was never with him. The  
10 agreement that he had was with Aaron Needham  
11 directly. But he did agree that if I did that, he  
12 would inspect everything that he did and also approve  
13 the invoices. We did in that more direct thing about  
14 five houses which we called phase I, and then --

15 Q. Let me stop you right there. Before  
16 entering into these agreements for phase I, had you  
17 done any prior work with John Grealish?

18 A. No.

19 Q. Before entering into these phase I  
20 agreements, had you ever done any work with Aaron  
21 Needham?

22 A. Yes.

23 Q. Can you tell us about that?

24 A. I don't remember particularly. I remember  
25 some houses that I did and some other things, just a

1 number of financial things.

2 Q. Okay. But was it through John Grealish  
3 that you met Aaron Needham?

4 A. Yes.

5 Q. Okay. You mentioned phase I. Can you  
6 tell us approximately when that took place?

7 A. I'm going to say 2003, approximately.

8 Q. Do you know how many houses were built?

9 A. I think there were five.

10 Q. Did BACT provide financing?

11 A. Yes.

12 Q. How did things go?

13 A. Reasonably well. BACT was mostly relying  
14 on Grealish to review it and the invoices seemed to  
15 be generally reasonable. Not real good, but not bad.

16 Q. From what you can recall, how did the  
17 agreements work? Did you provide -- or BACT provided  
18 financing, and did those houses get sold?

19 A. Yes.

20 Q. So did you get paid back the money that  
21 you provided?

22 A. Reasonably, yes.

23 Q. And did you make a profit?

24 A. Yes.

25 Q. Okay. And when I say you, I mean BACT.

1           A.     Yes. Well, profit in the sense that we  
2 got interest on the money and a mild participation in  
3 the game.

4           Q.     Did BACT at some later point under your  
5 direction enter into subsequent agreements with Aaron  
6 Needham and John Grealish?

7           A.     Yes.

8           Q.     Can you recall when that was?

9           A.     I'm going to say '04, '05. '04.

10          Q.     Okay. '04?

11          A.     I think so.

12          Q.     And were those agreements similar to the  
13 ones that you entered into regarding phase I?

14          A.     Generally so, yes.

15          Q.     And were those agreements also for the  
16 construction of houses in St. George and Mesquite?

17          A.     Yes.

18          Q.     Can you recall what types of houses these  
19 were?

20          A.     Nice homes, higher-end homes. Not luxury  
21 homes, but higher-end homes. I think the homes,  
22 \$500,000 size -- price, maybe six.

23          Q.     Did -- did you enter into -- were these  
24 agreements in writing?

25          A.     Yes.

1 Q. Were the phase -- well, let me -- who --  
2 did you discuss the terms with John Grealish and  
3 Aaron Needham for phase II?

4 A. Yes.

5 Q. And how did the agreements get put into  
6 writing? Did someone under your employment put them  
7 together?

8 A. I wrote them. My girl typed them and I  
9 probably sent them to the attorney for review.

10 Q. When you say "my girl," is that an  
11 employee?

12 A. Yes, an employee of mine.

13 Q. Okay.

14 A. That would be Jamie Spangle.

15 Q. Jamie Spangle?

16 A. Yeah.

17 (Exhibit No. 1 marked.)

18 Q. (By Mr. Taylor) I'm going to show you  
19 what has been pre-marked as Exhibit 1. Do you  
20 recognize what that is?

21 A. Yes. This was an agreement that I had  
22 with him for lot 125.

23 Q. Does that agreement -- when it was first  
24 typed up, did you review it?

25 A. Yes.

1 Q. Does that appear to be the same agreement?

2 A. Yes.

3 Q. And at the bottom there, there's a  
4 signature. Is your signature on the bottom?

5 A. No.

6 Q. Do you recall signing this at a later  
7 time?

8 A. Yes, I did. This was done in '04.

9 Q. Okay. Thank you. I'll take that back  
10 from you. Actually, before I take it back from you,  
11 let me just ask, is this agreement regarding a  
12 specific lot?

13 A. Yes, it is.

14 Q. Or actually --

15 A. Two lots.

16 Q. -- two lots. Is that lot 125 and 131?

17 A. Yes, it is.

18 Q. At White Mesa?

19 A. Yes.

20 Q. Is White Mesa -- do you know where that  
21 is?

22 A. Not specifically.

23 Q. If I told you it was in Mesquite, would  
24 that sound right?

25 A. Yes, that's right -- sounds right.

1 Q. Okay. Thank you.

2 A. I haven't ever seen them.

3 Q. Okay. And I'll hand this to the court  
4 reporter.

5 (Exhibit No. 2 marked.)

6 Q. (By Mr. Taylor) Let me show you another  
7 agreement which has been pre-marked as State's  
8 Exhibit 2. Do you recognize what this is?

9 A. This appears to be the same thing. It's a  
10 reliance to lot 26.

11 Q. When you say the same thing, do you  
12 mean --

13 A. Same kind of an agreement.

14 Q. Part of phase II?

15 A. Uh-huh (affirmative).

16 Q. Does that document appear to be one of the  
17 documents that you -- one of the agreements that you  
18 entered into for phase II?

19 A. Yes.

20 Q. And is your signature on that document?

21 A. Yes, it is.

22 Q. Thank you. I'll take that back from you.  
23 Actually, before I take it back, I think you said  
24 that's regarding lot 26?

25 A. Let's just see here. Yeah.

1 Q. And is that lot 26 at Lascalla?

2 A. Yes.

3 Q. Is that in Mesquite?

4 A. Yes.

5 Q. Okay. Thank you.

6 (Exhibit No. 3 marked.)

7 Q. (By Mr. Taylor) Another agreement which  
8 has been pre-marked as State's Exhibit 3. I'm  
9 showing this to you. Do you recognize what that is?

10 A. That's a similar agreement on lot 27.

11 Q. Does it appear to be the same agreement  
12 that you previously entered into?

13 A. Yes.

14 Q. And you said lot 27. Is that also at  
15 Lascalla?

16 A. Yes, it is.

17 Q. In Mesquite?

18 A. Yes.

19 Q. Is your signature on that document?

20 A. No.

21 Q. I'm sorry?

22 A. No, it is not.

23 Q. Okay. Next page. Can you turn the page  
24 over?

25 A. Yes, it's on this one.



1 Q. Okay. On the second page?

2 A. I have a hard time seeing this, but yes.

3 Q. Okay. Thank you.

4 (Exhibit No. 4 marked.)

5 Q. (By Mr. ~~Cramer~~ <sup>Taylor</sup>) And then Exhibit 4. I'm  
6 showing you Exhibit 4. Can you please tell us what  
7 that is?

8 A. That's lot 78, a subdivision in  
9 St. George. Essentially the same agreement.

10 Q. Essentially the same agreement?

11 A. Uh-huh (affirmative).

12 Q. Is that -- do those documents -- there's a  
13 page 2. What is page 2?

14 A. It's the same agreement, only I've signed  
15 that one.

16 Q. Does that appear to be the same agreement  
17 that you entered into?

18 A. Yes.

19 Q. Thank you.

20 A. The agreement I entered into, yes.

21 (Exhibit No. 5 marked.)

22 Q. (By Mr. Taylor) One more agreement. I'm  
23 showing you what has been marked as State's Exhibit  
24 5. Can you tell us, please, what that is?

25 A. It's on lot 29, River Hollow Subdivision.

1 in St. George, and I think that's essentially the  
2 same as well.

3 Q. Okay.

4 A. And I did sign that.

5 Q. And you said it's the same?

6 A. Yes.

7 Q. Thank you. So far I've shown you --  
8 sorry. So far I've shown you agreements for six  
9 lots. Are you aware of a seventh lot that was a part  
10 of phase II?

11 A. I can't answer that. I don't know.

12 Q. Are you familiar with a lot 28 at River  
13 Hollow?

14 A. Not particularly. That could be.

15 Q. Okay. I might come back to that. But let  
16 me move on by asking you how was it supposed to work  
17 where you provided the money? What did you, if  
18 anything, require from Aaron Needham and John  
19 Grealish?

20 A. I've done this with a lot of people and it  
21 was, number one, the land would be acquired at the  
22 lowest possible cost and be put in the name of BACT.  
23 Then permits would be obtained -- permits and plans  
24 and everything would be obtained for a house on that  
25 particular property. Then subcontractors would be

1 hired to construct the house. And as soon as a  
2 performance existed, a bill would come from the  
3 materialman or subcontractor which would be reviewed  
4 by John Grealish, supposedly, Aaron Needham, and then  
5 it would come to me for payment with the  
6 understanding I would get a lien waiver release, and  
7 that would happen through the period of time. And I  
8 would receive, when it concluded, an interest rate  
9 for the money that was out and then a participation  
10 in the profit at the end, unless there was a  
11 violation of the terms.

12 Q. So would they bring these lots to your  
13 attention?

14 A. Yes.

15 Q. Would you buy the lot?

16 A. Yes.

17 Q. And after the house was to be constructed,  
18 what would happen?

19 A. It would be sold or they would buy it.  
20 They had the choice.

21 Q. Okay. Was there a time frame associated  
22 with that?

23 A. Yes, there was.

24 Q. Can you recall what that was?

25 A. No.

1 Q. Are they set forth in these agreements?

2 A. Yes, it is.

3 Q. Okay. You mentioned that John Grealish  
4 and/or Aaron Needham was to provide -- did you say  
5 invoices?

6 A. Yes.

7 Q. Were those also referred to as draw  
8 requests?

9 A. Yes.

10 Q. In your mind, what is a draw request?

11 A. It's a request for funds and it should be  
12 supported by details.

13 Q. Would those details include invoices?

14 A. Yes.

15 Q. And how would it work? Would BACT receive  
16 these draw requests?

17 A. Yes.

18 Q. And who would look at them?

19 A. Well, in the first phase I had my real  
20 estate girl look at them.

21 Q. Who was that?

22 A. Brydie Platt. Then when I got more  
23 concerned about it, I moved to my construction  
24 accountant, Jolie Bown, and she looked at them  
25 then --

1 Q. When you say --

2 A. -- to make sure everything was correct.

3 Q. When you say you got more concerned, what  
4 do you mean by that?

5 A. We got some feeling that work was not  
6 being done that was being billed for. I had a man go  
7 down there and look and it wasn't done. So I  
8 immediately felt that that was a problem.

9 Q. Okay. Before getting into that some more,  
10 let me just ask some more questions regarding the  
11 draw requests. You mentioned that Brydie Platt --  
12 did you say that Brydie Platt would receive them?

13 A. Yes.

14 Q. Would she review the draw requests?

15 A. She would rely on John Grealish as a  
16 review. He was supposed to review them all. She's  
17 not really an accountant, so she was a little casual  
18 in looking at those and some of them were not  
19 documented as they should have been. So that's why  
20 it was moved to the other girl.

21 Q. Now, was Brydie Platt involved in  
22 reviewing draw requests during phase I?

23 A. Yes.

24 Q. Again, things went well during phase I?

25 A. Reasonably.

1 Q. Okay. During phase II, before these  
2 concerns that you mentioned arose, would -- you  
3 mentioned that she would review these draw requests.  
4 Would she then seek your approval for payment?

5 A. Yes.

6 Q. Okay. Did you look at the draw requests?

7 A. Not to any degree. I have tons of things  
8 that I do. I rely on other people to look at them  
9 for me. That's why I moved it to the other  
10 accountant who was much more equipped, and she  
11 immediately saw that there were problems.

12 Q. Okay. Give me just a second here.

13 A. Would you mind if I took some pills?

14 Q. Go ahead. If you want, we can take a  
15 break.

16 A. Okay.

17 Q. Do you need to use the restroom?

18 A. No. I'm okay. I just need to take these  
19 pills right now.

20 Q. Okay. Can I ask you some more questions?

21 A. Sure.

22 Q. Mr. Tebbs, you mentioned some concerns  
23 that arose. I want to ask you some more questions  
24 about that.

25 A. Okay.

1 Q. You mentioned that Jolie Bown took charge  
2 of investigating these concerns?

3 A. Yes.

4 Q. Who is Jolie Bown?

5 A. She's a construction accountant that works  
6 for Bonneville who I'm a 70-percent owner.

7 Q. Now, when you say Bonneville, is that  
8 your --

9 A. Bonneville Builders.

10 Q. That's your construction company?

11 A. Yes.

12 Q. Is she -- how long has she worked for you?

13 A. Now, 12 years maybe.

14 Q. Has that all been doing accounting work?

15 A. Yes. She is an accountant.

16 Q. Okay. And you directed her to investigate  
17 these draw requests?

18 A. Well, I asked her to keep the -- when I  
19 started getting a little concerned, I asked her to do  
20 a full bookkeeping, not just a review of things but a  
21 full bookkeeping, which she did do, and within two  
22 weeks she discovered there was impropriety.

23 Q. Okay. Let me fast-forward a little bit.

24 At any time did you have a meeting that included

25 Aaron Needham where these draw requests were

1 discussed?

2 A. I don't recall.

3 Q. Do you recall Aaron Needham admitting  
4 anything to you?

5 A. Oh, absolutely, but that was not early.  
6 That was later. We had him -- he came up to the  
7 office after Jolie had gone through and come up with  
8 about three-quarters of a million dollars of items  
9 that appeared that were improperly determined, and we  
10 also had a confession from another gentleman that was  
11 involved with him on it. He came into the office.  
12 We were in conference and he said he was extremely  
13 sorry and admitted to the fact that he had, my words,  
14 stolen the money.

15 Q. Can you recall who that was?

16 A. In the meeting?

17 Q. The other gentleman.

18 A. Yeah, McKneeley.

19 Q. McKneeley, Leonard McKneeley?

20 A. Yes. He had had money that was given for  
21 a job that supposedly was done transferred over to  
22 him on his job that we knew nothing about at all.  
23 And he admitted to all of that, confessed, and to my  
24 knowledge he's been convicted of that felony.

25 Q. Prior to this meeting with Leonard



1 McKneeley or what you found out from Leonard  
2 McKneeley -- excuse me, was that prior to the meeting  
3 you had with Aaron Needham?

4 A. I think there were several. And I  
5 think we had one with him and then another one after  
6 McKneeley.

7 Q. Okay. At any time did Aaron Needham admit  
8 anything to you?

9 A. Oh, yes.

10 Q. What did he admit?

11 A. He said he had stolen the money.

12 Q. Was there an amount discussed?

13 A. \$775,000, I think.

14 Q. Okay. Was that an amount that Jolie  
15 calculated?

16 A. Yes.

17 Q. Okay. Can you recall when that took  
18 place?

19 A. Not exactly.

20 Q. Was it in 2005?

21 A. That sounds right.

22 Q. August of 2005?

23 A. Sounds right.

24 Q. Can you recall who was present during this  
25 meeting?

1 A. Not really. Jolie was there. I think  
2 John might have been there.

3 Q. Let me ask. Who is John?

4 A. John Tebbs. He's my son. He's president  
5 of Bonneville Builders. Very educated man.

6 Q. Does he have an accounting background?

7 A. No. He's a contractor.

8 Q. Contractor?

9 A. He has four college degrees.

10 Q. Okay. Does he work in the same office?

11 A. Yes.

12 Q. But he works for Bonneville?

13 A. He's the president of Bonneville.

14 Q. Does he normally do anything for BACT?

15 A. Yes, he does, yeah. He has 10-percent  
16 ownership, limited partnership interest in BACT and  
17 he's my son, both.

18 Q. Did you ask him to help out with this  
19 matter?

20 A. Yeah.

21 Q. And did he?

22 A. Yes. He went down, inspected the  
23 properties.

24 Q. Was that under your direction or at your  
25 request?

1           A.     We discussed it and he did it. We had  
2 another man in the office that went down prior to him  
3 and saw it as well. We also had John Grealish tell  
4 us that there was not work done and substantial bills  
5 had been presented.

6           Q.     Was this prior to Aaron Needham's  
7 admission?

8           A.     Yes. Grealish was the first thing and  
9 then we had another man did it and John did it, and  
10 it was about that time that he admitted to it. He  
11 was completely open and said I'm extremely sorry.

12          Q.     You mention that this was -- or you  
13 acknowledged that this was in August of 2005?

14          A.     That sounds right to me.

15          Q.     Was this in Salt Lake?

16          A.     In my office.

17          Q.     Is your office in Salt Lake?

18          A.     Well, it's in -- yes.

19          Q.     Okay. And you mentioned that Jolie was  
20 present?

21          A.     Yes.

22          Q.     John was present. Can you think of anyone  
23 else who was present?

24          A.     There were some other people there.  
25 Jolie's husband might have been there. I'm not sure.

1 Q. What was your reaction?

2 A. Enragement. I think there's -- I'm a  
3 person that lives in a world of integrity. I had  
4 done a lot to make this work, and for him to  
5 manipulate, take money that he said was this and go  
6 out and do that with it, it enraged me.

7 Q. Let me ask you, did -- for these projects,  
8 to construct these houses in St. George, Mesquite,  
9 did you ever approve any costs that were maybe not  
10 intended for the construction?

11 A. Well, I loaned him some money or gave him  
12 about \$21,000 for personal items. That was it.

13 Q. Let me ask you about that. What were the  
14 circumstances surrounding that?

15 A. He came to me and he said he had extreme  
16 personal problems and asked me if I would help him.  
17 I had some concern about his integrity at that point,  
18 but my nature is to help people. So I agreed to pay  
19 \$21,000 of bills, but it was on the condition that  
20 Jolie write the checks and they be sent directly to  
21 these people and that's what happened.

22 Q. The people to whom he owed money?

23 A. Yes.

24 Q. Did you --

25 (EXHIBIT NO. 6 MARKED.)

1 Q. (By Mr. Taylor) Let me show you what has  
2 been marked as State's Exhibit 6. Does that look  
3 familiar to you?

4 A. Yeah, that's the agreement.

5 Q. And --

6 A. Yes, that's it.

7 Q. Does that reflect the agreement that you  
8 had with him?

9 A. Yes. That's all there was to it.

10 Q. Okay. And there's some other pages  
11 attached. Do you know what those are?

12 A. Those are the checks that were written.  
13 Jolie wrote these checks, said what they were, loans,  
14 and she sent them out.

15 Q. Okay.

16 A. There's six checks. I think they amount  
17 to that amount.

18 Q. Do these pages look the same as when you  
19 first saw them?

20 A. Yes. I'm very comfortable with this.  
21 This is exactly right, because these were done by  
22 Jolie.

23 Q. Did you see all these pages at the time  
24 that they were created?

25 A. I saw the checks.

1 Q. Okay. And the Memorandum of Obligation?

2 A. Oh, absolutely. That's notarized, Julie  
3 Call, one of my people.

4 Q. Okay. And that looks to be the same  
5 document?

6 A. It is, yes.

7 Q. Let me take that back from you.

8 So this is in the amount of \$21,111?

9 A. Yes.

10 Q. And did you loan him any other amount?

11 A. Not intentionally. I didn't loan him  
12 anything, no. This was it. He said he had an  
13 emergency. It was probably foolish for me to even do  
14 this understanding all that happened, but I was  
15 trying to help him.

16 Q. The checks on here are dated July 11th,  
17 2005. Does that sound like the time when you loaned  
18 him the money?

19 A. Yes..

20 Q. Okay.

21 A. That's the very time.

22 Q. I'm sorry?

23 A. Isn't that the time of the agreement too?

24 Q. Does that sound like the time of the  
25 agreement?

1 A. Yes, yes.

2 Q. Okay. With regard to the houses that were  
3 being constructed and the money that BACT was  
4 providing, was there ever a time when you told Aaron  
5 Needham you can use this money for something else?

6 A. Under no circumstance. That would be  
7 contrary to everything I believe.

8 Q. Okay. Was there ever a time when he told  
9 you I'm going to use this money for something else?

10 A. Absolutely not or I wouldn't have allowed  
11 it.

12 Q. Okay. Was it your intention that this  
13 money was direct costs for the construction of these  
14 houses?

15 A. Yes. It did not include any fees for him  
16 or his overhead. It would be external costs, is what  
17 I term it as.

18 Q. If you had known at the time that he was  
19 going to use this money for other projects or other  
20 purposes, what would have been your reaction to that?

21 A. I would have stopped immediately and taken  
22 legal action against him.

23 Q. Okay.

24 A. Because that's a lie. That's dishonest  
25 and I'm very, very opposed to that. This right here

1 was generosity. Here's a guy -- I never got a dime  
2 of that back, the \$21,000.

3 Q. Did Aaron Needham ever -- did you ever ask  
4 him about his qualifications to build houses?

5 A. That was represented through Grealish that  
6 he was qualified. I typically in my construction  
7 company verify all of that, but it was represented to  
8 me through Grealish that he was qualified.

9 Q. Okay. Did Aaron Needham ever tell you --  
10 did you ever ask Aaron Needham directly if he was  
11 qualified?

12 A. I don't think so.

13 Q. Okay. Did Aaron Needham ever tell you  
14 that he was not a licensed contractor?

15 A. No.

16 Q. Did he ever tell you that his contractor's  
17 license had been suspended or revoked?

18 A. In the later stages of our conversation it  
19 came up, but not during the initial stages.

20 Q. If you had known that he did not have a  
21 license, that he was not a licensed contractor, would  
22 you have entered into these agreements?

23 A. Absolutely not. That's a violation of the  
24 law.

25 Q. Were you aware or did he ever make you



1 aware that he owed an amount exceeding \$100,000 to  
2 the Department of Professional Licensing?

3 A. Only toward the end. Not during the -- in  
4 the early periods.

5 Q. If you had known that, what would have  
6 been your reaction?

7 A. It would end it.

8 Q. I'm sorry?

9 A. I would have ended my relationship with  
10 him, because I would be dealing with a person that  
11 was substandard, and I don't do that.

12 Q. Okay. Did he ever say anything to you  
13 about having been sanctioned by the Department of  
14 Professional Licensing?

15 A. Absolutely not.

16 Q. Did he ever say anything about getting  
17 sanctioned by the licensing authorities in the State  
18 of Nevada?

19 A. No.

20 Q. If he had, what would have been your --

21 A. It would have been the end.

22 Q. Okay.

23 A. I can't deal with people like that.

24 Q. You would not have done business with him?

25 A. No. It would have ended immediately.

1 Q. Okay.

2 A. Your risks are way too great. If a person  
3 isn't properly licensed, you become responsible for a  
4 whole bunch of things. I wouldn't have done it.  
5 Don't do it. We get -- in our construction company,  
6 we require all of these to exist before we even start  
7 with anybody. That's just normal.

8 Q. Just give me a minute here. I think I'm  
9 almost done.

10 Are you familiar with a company called DT  
11 Development?

12 A. Yes.

13 Q. Is that a company connected with Aaron  
14 Needham?

15 A. That's what he represented.

16 Q. Okay.

17 (Exhibit No. 7 marked.)

18 Q. (By Mr. Taylor) Let me show you what has  
19 been pre-marked as State's Exhibit 7. Does that look  
20 familiar to you?

21 A. Well, since it's been presented to me now,  
22 but this is not an agreement that I ever saw and I  
23 checked back through my sources internally. We never  
24 wrote this. It appears that it's my signature, but  
25 the dates here are not right and it's something I

1 would never have agreed to. What I did at this  
2 approximate same time is I loaned him the money.  
3 There's an agreement there. I would never give him a  
4 generalized comment. That would be inappropriate.

5 Q. This document -- the top of it is titled  
6 Joint Venture Agreement between Aaron Needham -- it's  
7 a little bit hard to read -- Aaron Needham and his  
8 Designated Companies and the BACT Limited Partnership  
9 and its Designated Companies.

10 A. That's not terms I would use.

11 Q. Yeah, I was just going to ask, in loaning  
12 someone money, would you ever title --

13 A. You saw how I loaned it.

14 Q. You're referring to the Memorandum of  
15 Obligation?

16 A. Yes.

17 Q. Next to your signature -- next to both  
18 signatures, there's the date 6/13/05. Is it your  
19 practice to date your signatures like this?

20 A. Never.

21 Q. Okay. I'll hand this to the recorder.

22 I'm going to just stop here for a minute.  
23 I don't think I have anymore questions, but I'm just  
24 going to step outside and confer with my colleagues.  
25 Let's go off the record.

1 THE VIDEOGRAPHER: We're going off the  
2 record. The time is 9:59.

3 (Recess.)

4 THE VIDEOGRAPHER: We are back on record.  
5 The time is 10:10.

6  
7 EXAMINATION

8 BY MR. CRAMER:

9 Q. Mr. Tebbs, my name is Aric Cramer. I  
10 think we've talked a little bit off the record. I  
11 just want to get a little bit more about your  
12 background, because we have been talking about your  
13 background.

14 A. Okay.

15 Q. Now, you have a law degree?

16 A. No. I didn't finish law school.

17 Q. Oh, okay. But you went for how many  
18 years?

19 A. Three years.

20 Q. Three years? Did you graduate?

21 A. Yes.

22 Q. Okay. But you didn't take the bar or  
23 exam?

24 A. No. That was not of interest to me.

25 Q. Okay. And did you get your CPA before or

1 after that?

2 A. After. You had to have two years'  
3 experience. I got that after I graduated. I went to  
4 school for five years, went in the Air Force for two  
5 years, came back for two more years, went to work for  
6 a regional CPA firm, then a national CPA firm. When  
7 I went to work for the regional CPA firm, that's when  
8 I became a CPA.

9 Q. Oh, all right.

10 A. As a national firm, I was the regional  
11 manager and the coordinator of legal problems.

12 Q. Wow.

13 A. Back in those days you had to have a legal  
14 background or they wouldn't hire you.

15 Q. I see. So that's why you got your law  
16 degree?

17 A. I didn't get a degree. I wanted the  
18 background. I never had a skill in litigation, but  
19 what I wanted to be sure of is that the contract law  
20 I was competent. And if you were dealing with an  
21 attorney, they were not anything but supporting you.

22 Q. Okay. I understand. So you've had a --

23 A. And I have an actuarial background too.

24 Q. Oh. Tell me a little bit about that.

25 A. I used to audit insurance companies for.

1 the State of Utah when I was working for Peat  
2 Marwick. That was a national firm and they had  
3 actuaries that came in and did part of the work, and  
4 it became simple to me to just gain that skill. I  
5 only took three of the seven tests, but it was enough  
6 to gain the understanding. And that's how I think.  
7 I think actuarially.

8 Q. Okay.

9 A. Do you know what an actuary is?

10 Q. I do.

11 A. What is it?

12 Q. Well, it's my turn to ask the questions.

13 I want to go forward and we'll chat about it after  
14 we're off the record.

15 A. No, that's okay.

16 Q. Okay. So you have a great deal of  
17 background in finance and law and accounting, then?

18 A. I think so.

19 Q. Yeah, I think you have quite an impressive  
20 resume. I would like to go to the point in time  
21 where you met Mr. Needham. Do you recall  
22 approximately when -- what year that was?

23 A. Approximately '04. I'm not sure.

24 Q. 2004? Okay. All right. And then we  
25 talked a little bit on prior -- counsel for the state

1 talked about this, as you called it, phase I set of  
2 homes that you worked with for Mr. Needham. Do you  
3 recall how much money you invested in that project?

4 A. No.

5 Q. Okay. Does \$100,000 sound about right?

6 A. Oh, no, way more than that.

7 Q. More than that. Okay. How many homes  
8 were involved in that?

9 A. I think in the first phase there was about  
10 five.

11 Q. Five homes. And, as I recall, those were  
12 St. George homes, to your recollection?

13 A. I can't represent that, but that sounds  
14 right. I'm not sure. I don't go down and  
15 investigate them. I have people that do this for me.

16 Q. Right. Do you recall at what point you  
17 came into that phase I? Were you the initial money  
18 person or was the construction already underway?

19 A. I was the initial.

20 Q. You were the initial?

21 A. Uh-huh (affirmative).

22 Q. Okay. Now, you indicated that at some  
23 point Mr. Needham had had some problems as a general  
24 contractor and his licensing here in Utah. Do you  
25 recall if that was during phase I?

1 A. I don't think so.

2 Q. Okay.

3 A. You're talking about my knowledge, not  
4 when he had the problem?

5 Q. Correct, to your knowledge.

6 A. I had no knowledge of it in phase I. I  
7 didn't, in fact.

8 Q. Okay. And that's fine. We're interested  
9 in what you recall and your understanding for today.  
10 Do you recall Mr. McKneeley assisting on phase I, a  
11 Leonard McKneeley?

12 A. I don't think it was in phase I, no.

13 Q. Okay. So your recollection is he was not  
14 in phase I?

15 A. That's right.

16 Q. Okay. Do you recall ever meeting  
17 Mr. McKneeley?

18 A. Yes.

19 Q. Okay. Do you recall when that was?

20 A. No.

21 Q. Okay. What was his role in phase I?

22 A. I told you, he wasn't.

23 Q. Okay. He was not in phase I?

24 A. That I know of.

25 Q. Okay. So your perception is you didn't



1 meet him until later?

2 A. The first time I met him was when we found  
3 out that he had been receiving money that -- for his  
4 project that was designated for something that  
5 supposedly was being done by somebody else, and then  
6 we -- I had my people get in touch with him and he  
7 admitted that it was improper. He knew from the  
8 beginning it was improper.

9 Q. So this is a phase II issue where you met  
10 him?

11 A. Well, I didn't meet him initially. It was  
12 later on he talked to my son John and my other  
13 people.

14 Q. Okay.

15 A. I saw him right at the end.

16 Q. I see. So your only interaction with him  
17 was that --

18 A. Was through other people.

19 Q. Okay. So you never met with him  
20 one-on-one?

21 A. Well, I did at the end.

22 Q. At the end. Okay. And that's that  
23 meeting you discussed?

24 A. There may have been more than that, but,  
25 yes, that one.

1 Q. Okay. Now, on phase I --

2 A. Prior to that meeting, the key thing to  
3 all of it was a conversation that he had with John or  
4 some other people of mine where he fully admitted to  
5 everything.

6 Q. Okay.

7 A. My understanding is he was later  
8 convicted.

9 Q. Okay. Now, going back to phase I, you  
10 said that you had invested more than \$100,000.

11 A. Oh, yeah.

12 Q. You did get repaid on all of that?

13 A. Reasonably.

14 Q. Okay. When you say reasonably, what do  
15 you mean by reasonably?

16 A. The profit that you would have normally  
17 had or thought you had wasn't necessarily achieved,  
18 but it was not -- I don't recall any fraudulent  
19 conduct of any material nature in phase I.

20 Q. Right. What was the profit margin you  
21 were hoping for to achieve in that?

22 A. I don't recall.

23 Q. Okay. But whatever it was --

24 A. Well, it was an interest rate on the money  
25 and then a percentage of the profit at the end. I

1 don't remember. It was something like that.

2 Q. All right. You don't recall the specific  
3 interest rate --

4 A. No.

5 Q. -- or the specific --

6 A. No.

7 Q. But you --

8 A. It would be what would be normal at that  
9 time.

10 Q. Okay.

11 A. This is just one of many things that I was  
12 involved with.

13 Q. Oh, I understand that you had a great  
14 number of business dealings at the time and you were  
15 supervising a lot of different areas.

16 A. Yes.

17 Q. I just need to know what you recall and  
18 what you don't, and that's all.

19 Now, do you recall if Mr. Needham paid you  
20 back on that phase I investment?

21 A. I don't remember a problem of any  
22 substance.

23 Q. Okay.

24 A. I can't -- I don't have a technical memory  
25 of that. I don't have a memory of any problem

1 material.

2 Q. My question was inartful. Let me rephrase  
3 it. Do you recall the entity that repaid you on  
4 phase I?

5 A. No.

6 Q. Okay. And you didn't know during phase I  
7 that Mr. Needham was in trouble with the Department  
8 of Public Licensing or DOPL?

9 A. That's right.

10 Q. Okay.

11 A. I was relying on John Grealish's  
12 representations of what he was, and my dealings with  
13 him were kind of indirect.

14 Q. Okay.

15 A. It came up a few times, but they were not  
16 of technical substance.

17 Q. Okay. So Mr. Grealish, did he work with  
18 you as well in phase II in those homes?

19 A. The understanding that I had is that he  
20 had an agreement with Aaron. I did not know what the  
21 agreement was, but the understanding I had with him  
22 is that he was going to be doing some monitoring and  
23 giving me some reliable judgments on what had been  
24 done and the correctness of that, and I had reason to  
25 believe that he would do that, but I didn't know what

1 his arrangement was.

2 Q. All right. You were aware that phase II  
3 was primarily buildings in Nevada and Mesquite?

4 A. Uh-huh (affirmative).

5 Q. Okay. And you were in a first position on  
6 the properties in phase II as well?

7 A. First position in the sense that I owned  
8 them.

9 Q. Yes. If something went wrong, the  
10 properties were yours?

11 A. They already were.

12 Q. Oh, they already were?

13 A. Yeah. We had title.

14 Q. You had already purchased them?

15 A. Yes.

16 Q. Now, we talked a little bit about --

17 A. Now, let me add to that. When you say  
18 that, I thought that I had purchased them at hard  
19 cost. I found out later that he had done an internal  
20 scam on how he bought them.

21 Q. Okay. Now, what do you mean by hard cost?

22 A. Well, hard cost was third-party outside  
23 cost.

24 Q. I see.

25 A. He did a double closing, which I think is

1 unethetical, where he purchased some of the properties  
2 and then represented to me that they were this. That  
3 is a fraudulent conduct because I thought this was  
4 the external price.

5 Q. Okay.

6 A. I found that out later.

7 Q. So your perception was that he purchased  
8 them at a lower price and then resold them to you --

9 A. He did, in fact.

10 Q. -- at a higher price?

11 A. That was proven that he did do that. What  
12 was represented to me was that this was the external  
13 price. The whole theory of all of this was we tried  
14 to minimize all the costs through, lowest price of  
15 property, lowest price for everything, and then at  
16 the end he could take it.

17 Q. Right.

18 A. And if he had done this, he's going to pay  
19 interest on more and then run a risk at the end. And  
20 because he never did anything, it doubled what he  
21 did.

22 Q. I see.

23 A. Very fraudulent.

24 Q. Okay. Now, we talked a little bit about  
25 the draws and how those were processed through and

1 what your perception of those draws' purposes were.  
2 The draws you indicated would come not to you, of  
3 course, because you had someone to do that. Do you  
4 recall anyone saying that the draws included money  
5 for overhead?

6 A. No.

7 Q. Okay.

8 A. That was not intended.

9 Q. Okay. Now, you talked about, early on,  
10 Byrdie -- is that --

11 A. Brydie.

12 Q. Brydie. I'm sorry.

13 A. She's a realtor.

14 Q. Okay. Was she the one that processed the  
15 initial set?

16 A. She was essentially responsible for  
17 stage I because I thought it was not requiring of the  
18 technical skill of my other girl.

19 Q. I see.

20 A. When I started getting concerned, I didn't  
21 even tell her there was a problem. I gave it to her  
22 to do the accounting. Within a week, she saw what  
23 was happening.

24 Q. Okay. So Brydie did the draws in phase I.  
25 Then you felt that there was something not right?

1           A.     I was of concern because I hadn't seen --  
2     it was reported to me that the work was not in place  
3     that had been requested to pay for.

4           Q.     Who reported that to you?

5           A.     Two different people, one of the employees  
6     that I had plus my son.

7           Q.     Okay. What was that employee's name? Do  
8     you recall?

9           A.     I did know it a while back. I don't  
10    remember right now. He used to work for us.

11          Q.     Okay. So your son reported to you as well  
12    as this other employee that --

13          A.     Actually, John Grealish was the first  
14    person to tell me that there was a problem.

15          Q.     Okay.

16          A.     And then this employee of mine and then  
17    John, and it was very obvious that he was playing a  
18    game.

19          Q.     All right. When did Mr. Grealish report  
20    this to you?

21          A.     I don't recall.

22          Q.     Okay. Somewhere between phase I and phase  
23    II?

24          A.     Yeah. It was after phase I.

25          Q.     After phase I. Okay. If there were a



1 have any cost in that. My time, I didn't get paid  
2 for that.

3 Q. Right.

4 A. My employees didn't get paid anything.

5 Q. Yours was on the interest and the  
6 percentage of profit at the end?

7 A. It was the profitability of the job. So  
8 all of my costs, and theoretically if he had any  
9 administrative costs, were not part of the  
10 understanding. It was external, and that is typical.

11 Q. Okay. What was the breakdown of profit at  
12 the end, assuming the project as you laid it out was  
13 minimized costs all the way up until sale and it was  
14 sold to a third party outside? Was there a rule of  
15 thumb as to how much percentage your company would  
16 receive and Mr. Needham would receive?

17 A. Yes. It's in the contract.

18 Q. Okay. So those were the contracts --

19 A. Yeah.

20 Q. -- and those were the percentages laid  
21 out?

22 A. Whatever it said, that's what was done.

23 Q. And you've always had those in writing?

24 A. Yes.

25 Q. Because there's so many businesses --

1 A. That's right.

2 Q. -- and deals that you're doing?

3 A. This is just one of several. I wrote the  
4 agreements and they were reviewed by an attorney,  
5 probably. Not necessarily these, but the format. So  
6 I felt that they were appropriate.

7 Q. Okay.

8 A. And I had one person type everything.  
9 That was Jamie Spangle.

10 Q. Okay. And that was the only person who  
11 was authorized to type documents for you?

12 A. Yes. I don't want to say that in an  
13 absolute sense of everything everywhere, but it would  
14 be very unlikely to have anybody else unless it was  
15 an emergency.

16 Q. All right. I understand. Who would sign  
17 checks coming out of BACT?

18 A. It's only me.

19 Q. Only you?

20 A. I'm the only one that had authority.

21 Q. Okay. So when these draws were approved,  
22 then one of those persons would fill out the check  
23 and give it to you for your signature?

24 A. That's correct.

25 Q. Okay. They wouldn't give you any

1 supporting documentation?

2 A. Oh, they might and probably would.

3 Q. Okay. So you would see perhaps on some  
4 occasions, at least, the underlying draw request?

5 A. Yes.

6 Q. Okay.

7 A. It depended on who I was using and what  
8 the nature of the things were. Typically I do.

9 Q. Okay. So as a general rule, you would  
10 review the draw request as well just as a back stop  
11 just so you knew what the money was for?

12 A. When you say draw request, this was simply  
13 a summary of the incurred costs.

14 Q. I see.

15 A. The draw request has a bigger implication  
16 than what I was intending to pay.

17 Q. Okay.

18 A. I would pay property taxes. I would pay a  
19 lot of things that related to it, any utilities, any  
20 common area costs and all of these things relating to  
21 the property. They would present to me -- like Jolie  
22 would understand that she has to get all these  
23 documents, get the lien waiver release and all of  
24 that, and when she brings it to me I would look at it  
25 in a cursory manner.

1 Q. Okay.

2 A. It's just one of a hundred things I would  
3 be doing.

4 Q. Okay. But you did that as a check to make  
5 sure that the money was appropriately spent?

6 A. I made a general review of what came to  
7 me, not a specific review, necessarily.

8 Q. No, I understand.

9 A. If I had a reason I would, but not  
10 necessarily. Towards the end, a very careful review  
11 when I determined that it was fraudulent.

12 Q. Okay. Do you recall, and I know you have  
13 a lot of investments and did at that time, how many  
14 projects after phase I that you did with Mr. Needham  
15 that BACT did? When I say you, I meant BACT.

16 A. It was just those four or five properties.

17 Q. Okay.

18 A. And I'm not interested in discussing what  
19 BACT did.

20 Q. Okay.

21 A. In general.

22 Q. All right. Do you recall what the  
23 approximate value of those phase II projects would  
24 have been at market value?

25 A. No. That was done by other people.

1 Q. Was there a section in those contracts  
2 that if Mr. Needham was removed, what would happen to  
3 his share of any profits that would have been his had  
4 he not been removed?

5 A. You would have to read the contracts.

6 Q. Okay.

7 A. It's specified there.

8 Q. All right. In your recollection --

9 Oh. (Witness almost spilled drink.)

10 A. Nice.

11 Q. Artfully done.

12 Do you recall ever paying Mr. Needham in  
13 advance on any projects or increasing the lot value  
14 on the lots or the homes?

15 A. No. That would be contrary to the  
16 understanding.

17 Q. Correct.

18 A. I'm sorry, I'm going to have to interrupt.

19 Q. Oh, do you need --

20 A. I've got to go to the bathroom.

21 Q. Okay. Let's take a recess now.

22 A. I'm sorry.

23 THE VIDEOGRAPHER: Going off the record.

24 The time is 10:32.

25 (Recess.)

1 THE VIDEOGRAPHER: We are back on record.  
2 The time is 10:36.

3 Q. (By Mr. Cramer) Did you -- and I know we  
4 talked about it a little bit before. I just want to  
5 make sure that I'm clear. Did you have any  
6 conversations with Mr. Leonard prior to your  
7 in-person meeting with him that you detailed here  
8 today?

9 A. He came up a few times.

10 Q. Okay.

11 MR. TAYLOR: Did you mean Leonard  
12 McKneeley?

13 MR. CRAMER: Yes.

14 MR. TAYLOR: Okay.

15 A. That's what I assumed you meant.

16 Q. (By Mr. Cramer) I'm sorry. I should have  
17 been more specific.

18 Did you terminate John Grealish?

19 A. No.

20 Q. What was your perception of the  
21 relationship between Mr. Grealish and Mr. Needham?

22 A. Both personal and business friends.

23 Q. Okay. And how were they to work together  
24 on this project?

25 A. I don't know.

1 Q. Okay. In the preliminary hearing, the  
2 State laid out a series of seven financial  
3 transactions that were in the State's, and I take it  
4 your, perception fraudulent on draws that were sent,  
5 checks that were written and money paid to  
6 Mr. Needham for work that was to be done on specific  
7 projects. Are you aware of those seven specific --

8 A. Not specifically, but I know of the  
9 circumstances you're referring to.

10 Q. Okay. The allegation is that that money  
11 was diverted that was supposed to have been used to  
12 pay for a certain item or set of work done on those  
13 properties. It was used for something else.

14 A. That's correct.

15 Q. Was the work ever completed for those  
16 issues that the money was diverted from?

17 A. No.

18 Q. Okay. So those amounts, whatever they  
19 were to be paid for, did not get paid?

20 A. That's correct.

21 Q. Okay.

22 A. That's my understanding.

23 Q. Okay. And you and Mr. Needham have both  
24 sued each other civilly in noncriminal --

25 A. I think my people did file civil charges.

1 Q. All right. Do you recall if those  
2 lawsuits were settled?

3 A. They were never settled.

4 Q. Are they still pending, to your knowledge?

5 A. I don't know.

6 Q. Do you recall if any lis pendens were ever  
7 filed on those properties?

8 A. I don't know.

9 Q. Okay. Now, the properties in Mesquite  
10 eventually did get completed; is that correct?

11 A. We still have some lots there that were  
12 never finished. I can't answer that.

13 Q. Okay. So you don't know if they were ever  
14 finished and there was any --

15 A. I think there were three or four lots that  
16 are still just sitting there.

17 Q. Okay.

18 A. And I don't think they were finished.

19 Q. All right. So there was no profit made on  
20 any of those properties --

21 A. No, no.

22 Q. -- that we are discussing?

23 A. Oh, no.

24 Q. Okay. If I could have just a second.  
25 (Off-the-record discussion.)



1 Q. (By Mr. Cramer) Now, I know that in your  
2 perception today that those projects were never  
3 finished. Is there someone within your organization  
4 that would have the details on those? I know you  
5 don't do the day-to-day --

6 A. They were not finished, period.

7 MR. CRAMER: Okay. All right. I think  
8 that's all the questions I have. If you have some  
9 follow-up.

10 MR. TAYLOR: I have just one or two  
11 follow-up questions.

12 MR. CRAMER: So let's trade spots.

13 MR. TAYLOR: I think I can ask it from  
14 here. Is that okay?

15

16 FURTHER EXAMINATION

17 BY MR. TAYLOR:

18 Q. Mr. Tebbs, earlier in response to  
19 Mr. Cramer's questions you were saying that you  
20 graduated law school, but --

21 A. No, I did not say I graduated. I did not.

22 Q. Okay. But you attended law school?

23 A. I went three years, but I never took a  
24 degree.

25 Q. Okay. And you never became licensed by

1 the bar?

2 A. I couldn't be.

3 Q. Right. And then you were asked about  
4 Mr. Leonard McKneeley just a moment ago. Prior to  
5 learning about Mr. McKneeley -- excuse me, prior to  
6 learning about what had happened regarding  
7 Mr. McKneeley, had you ever done any work with him?

8 A. No.

9 Q. Had you ever agreed to finance any  
10 project --

11 A. I didn't know him.

12 MR. TAYLOR: Okay. That's all I have.

13 Thank you.

14 MR. CRAMER: No recross.

15 MR. TAYLOR: Okay. We're done.

16 MR. CRAMER: Thank you for your time.

17 THE WITNESS: Thank you for --

18 MR. CRAMER: It's been good to meet you.

19 THE WITNESS: You were courteous. Thank  
20 you.

21 THE VIDEOGRAPHER: This concludes the  
22 deposition. The time is 10:42.

23

24

25

REPORTER'S CERTIFICATE

STATE OF UTAH )  
 ) : ss  
COUNTY OF SALT LAKE )

I, Sharon Morgan, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That prior to being examined, CLEMENT TEBBS, was by me duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in stenotype on June 14, 2012, at the place therein named, and was thereafter transcribed and that a true and correct transcription of said testimony is set forth in the preceding pages;

I further certify that, in accordance with Rule 30(e), a request having been made to review the transcript, a reading copy was sent to the witness to read and sign and then returned to me for filing with Mr. Taylor.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND this 22th day of June, 2012.

Sharon Morgan  
Sharon Morgan, RPR, CSR  
Residing in Salt Lake County

Case: State of Utah vs. Needham  
Case No.: 101500067FS  
Reporter: Sharon Morgan  
Date Taken: June 14, 2012

**WITNESS CERTIFICATE**

I, CLEMENT TEBBS, HEREBY DECLARE:  
That I am the witness in the foregoing transcript;  
that I have read the transcript and know the contents  
thereof; that with these corrections I have noted  
this transcript truly and accurately reflects my  
testimony.

PAGE-LINE	CHANGE/CORRECTION	REASON
10		
11		
12		
13		
14		
15		
16		
17		
18		

No corrections were made.

I, CLEMENT TEBBS, HEREBY DECLARE UNDER THE  
PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES  
OF AMERICA AND THE LAWS OF THE State OF UTAH THAT THE  
FOREGOING IS TRUE AND CORRECT.

CLEMENT TEBBS

# **EXHIBIT 11**

**Addresses and  
Phone Numbers  
For Legal Counselors  
Doug Terry and  
Lamar J. Winward**

## **Douglas D Terry & Associates**

**Address:** 132 Tabernacle St, St George, UT 84770

**Phone:**(435) 628-4411

**FAX:** 435-682-9260

**LaMar J. Winward**

**Address:** 150 N 200 E, St George, UT 84770

**Phone:**(435) 628-1191

**FAX:** (435) 628-5341

# **EXHIBIT 12**

## **John Grealish Confession Letter**

**(To Be Presented at Court)**

# **EXHIBIT 13**

**Docket Listing**

**Case #: 101500067**



FIFTH DISTRICT COURT-ST GEORGE  
WASHINGTON COUNTY, STATE OF UTAH

APPEALED: CASE #20140483

STATE OF UTAH ATTORNEY GENERAL vs. AARON DAVID TRENT NEEDHAM

CASE NUMBER 101500067 State Felony

---

CHARGES

Charge 1 - 76-10-1801 - COMMUNICATIONS FRAUD 2nd Degree Felony

Offense Date: April 30, 2008

Plea: May 08, 2012 Not Guilty

Disposition: January 15, 2013 Guilty

Charge 2 - 76-10-1801 - COMMUNICATIONS FRAUD 2nd Degree Felony

Offense Date: April 30, 2008

Plea: May 08, 2012 Not Guilty

Disposition: January 15, 2013 Guilty

Charge 3 - 76-10-1801 - COMMUNICATIONS FRAUD 2nd Degree Felony

Offense Date: April 30, 2008

Plea: May 08, 2012 Not Guilty

Disposition: January 15, 2013 Guilty

Charge 4 - 76-10-1801 - COMMUNICATIONS FRAUD 2nd Degree Felony

Offense Date: April 30, 2008

Plea: May 08, 2012 Not Guilty

Disposition: January 15, 2013 Guilty

Charge 5 - 76-10-1801 - COMMUNICATIONS FRAUD 2nd Degree Felony

Offense Date: April 30, 2008

Plea: May 08, 2012 Not Guilty

Disposition: January 15, 2013 Guilty

Charge 6 - 76-10-1801 - COMMUNICATIONS FRAUD 2nd Degree Felony

Offense Date: April 30, 2008

Plea: May 08, 2012 Not Guilty

Disposition: January 15, 2013 Guilty

Charge 7 - 76-10-1801 - COMMUNICATIONS FRAUD 2nd Degree Felony

Offense Date: April 30, 2008

Plea: May 08, 2012 Not Guilty

Disposition: January 15, 2013 Guilty

Charge 8 - 76-10-1801 - COMMUNICATIONS FRAUD 2nd Degree Felony

Offense Date: April 30, 2008

Plea: May 08, 2012 Not Guilty

Disposition: January 15, 2013 Guilty

Charge 9 - 76-10-1601 - PATTERN OF UNLAWFUL ACTIVITY 2nd Degree Felony

CASE NUMBER 101500067 State Felony

---

Offense Date: April 30, 2008

Plea: May 08, 2012 Not Guilty

Disposition: January 15, 2013 Guilty

CURRENT ASSIGNED JUDGE

G MICHAEL WESTFALL

PARTIES

Defendant - AARON DAVID TRENT NEEDHAM

Represented by: DAVID V FINLAYSON

Plaintiff - STATE OF UTAH ATTORNEY GENERAL

Represented by: JACOB S TAYLOR

Represented by: DANIEL W BOYER

Represented by: SCHEREE E WILCOX

Also Known As - JAKE TAYLOR (NEEDHAM, AARON DAVID TRENT)

DEFENDANT INFORMATION

Defendant Name: AARON DAVID TRENT NEEDHAM

Offense tracking number: 30673289

Date of Birth: May 12, 1968

Jail Booking Number:

Law Enforcement Agency: ATTORNEY GENERAL

LEA Case Number:

Prosecuting Agency: ATTORNEY GENERAL

Agency Case Number:

Sheriff Office Number: 0320216

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	60.50
	Amount Paid:	60.50
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: COPY FEE

	Amount Due:	50.50
	Amount Paid:	50.50
	Amount Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

	Amount Due:	10.00
--	-------------	-------

CASE NUMBER 101500067 State Felony

---

Amount Paid:	10.00
Amount Credit:	0.00
Balance:	0.00

CASE NOTE

ATTORNEY GENERAL

PROCEEDINGS

10-09-08 Filed: Information	TRANSFERED
10-09-08 WARRANT for Case 081907727 ID 11642885	TRANSFERED
10-09-08 Warrant Ordered	TRANSFERED
10-09-08 Warrant Issued	TRANSFERED
10-09-08 Case filed by laniv	TRANSFERED
10-09-08 Filed: Information	
10-10-08 INITIAL APPEAR/WARRANT/AGOFF 10/17/2008	TRANSFERED
10-16-08 INITIAL APPEAR/WARRANT/AGOFF 10/24/2008	TRANSFERED
10-20-08 INITIAL APPEAR/WARRANT/AGOFF Modified	TRANSFERED
10-20-08 INITIAL APP/SURRENDER on 10/24/2008	TRANSFERED
10-24-08 Filed: ORDER FOR SUPERVISED RELEASED TO	TRANSFERED
10-24-08 Minutes for Initial Appearance	TRANSFERED
10-24-08 ROLL CALL set on 12/11/2008	TRANSFERED
10-24-08 Filed: Waiver for right to speedy trial	TRANSFERED
10-24-08 Warrant Recalled	TRANSFERED
10-29-08 Filed: Supervised Release Agreement	TRANSFERED
12-05-08 Filed: Stipulation for Continuance	TRANSFERED
12-11-08 ROLL CALL set on 03/25/2009	TRANSFERED
12-11-08 Minutes for Roll Call	TRANSFERED
12-11-08 Filed: Order Judge: rhilder	TRANSFERED
12-12-08 ROLL CALL resched:	TRANSFERED
03-18-09 ROLL CALL set on 03/26/2009	TRANSFERED
03-26-09 Minutes for Roll Call	TRANSFERED
03-26-09 ROLL CALL set on 08/06/2009	TRANSFERED
03-26-09 ROLL CALL resched:	TRANSFERED
08-06-09 Minutes for Roll Call	TRANSFERED
08-06-09 STATUS CONFERENCE set on 10/23/2009	TRANSFERED
09-08-09 Filed: Order re hearing 8/6/09	TRANSFERED
10-16-09 Filed: Appearance of Counsel (ATD-Brock	TRANSFERED
10-16-09 Filed: Formal Request for Discovery Purs	TRANSFERED
10-21-09 Filed: Plaintiff's Response to Defendant	TRANSFERED
10-23-09 STATUS CONFERENCE set on 01/15/2010	TRANSFERED

CASE NUMBER 101500067 State Felony

---

10-23-09 Minutes for STATUS CONFERENCE	TRANSFERED
01-15-10 Filed: Motion to Change Court Venue	TRANSFERED
01-15-10 Filed: Order to Change Court Venue	TRANSFERED
01-15-10 Minutes for STATUS CONFERENCE	TRANSFERED

01-15-10 Case filed

01-15-10 Filed: From an Information

01-15-10 Note: Case transferred from Salt Lake City District. Case  
081907727

01-15-10 Judge JOHN J WALTON assigned.

02-10-10 Filed: Copy of Order to Change Court Venue

02-19-10 Notice - NOTICE for Case 101500067 ID 12774941

STATUS HEARING is scheduled.

Date: 03/02/2010

Time: 02:00 p.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

02-19-10 STATUS HEARING scheduled on March 02, 2010 at 02:00 PM in  
Courtroom 3C with Judge WALTON.

03-02-10 Minute Entry - Minutes for STATUS REVIEW

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Prosecutor: CHARLENE BARLOW

Defendant not present

Defendant's Attorney(s): VAN DE KAMP, BROCK A

Audio

Tape Number: FTR-3C Tape Count: 2:30/2:31

HEARING

Both counsel on phone with Judge Walton for phone conference.

Defense counsel not ready to proceed. Case reset for review.

PHONE CONFERENCE/REVIEW is scheduled.

Date: 04/13/2010

Printed: 03/21/16 08:21:36

Page 4

Time: 02:00 p.m.

Location: Courtroom 3C  
St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770

Before Judge: JOHN J WALTON

03-04-10 PHONE CONFERENCE/REVIEW scheduled on April 13, 2010 at 02:00 PM  
in Courtroom 3C with Judge WALTON.

04-13-10 Minute Entry - Minutes for PHONE CONFERENCE/REVIEW

Judge: JOHN J WALTON

PRESENT

Clerk: karenbm

Prosecutor: CHARLENE BARLOW

Defendant

Defendant's Attorney(s): BROCK A VAN DE KAMP

Audio

Tape Number: 3 C Tape Count: 2.44/2.48

HEARING

TAPE: 3 C COUNT: 2.44/2.48

Counsel for the Attorney General's office and the defense appear  
by telephone.

Issues of conflict with witnesses is discussed.

Matter is continued to 5-4-10 at 2:00 a.m.

PHONE CONFERENCE/REVIEW HR is scheduled.

Date: 05/04/2010

Time: 02:00 p.m.

Location: Courtroom 3C  
St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770

Before Judge: JOHN J WALTON

04-13-10 PHONE CONFERENCE/REVIEW HR scheduled on May 04, 2010 at 02:00  
PM in Courtroom 3C with Judge WALTON.

05-04-10 Minute Entry - Minutes for TELEPHONIC REVIEW HEARING

Judge: JOHN J WALTON

PRESENT

Clerk: karenbm  
Prosecutor: CHARLENE BARLOW  
Defendant  
Defendant's Attorney(s): BROCK A VAN DE KAMP

Video  
Tape Number: 3 C Tape Count: 2.12/2.39

HEARING

Mr. Van De Kamp motions to withdraw as counsel.  
Prosecutor does not object.  
Mr. Van De Kamp may withdraw.  
Travis Christiansen is appointed as counsel for the defendant.  
Review hearing is set on 8/10/10 at 2:00 p.m.  
REVIEW HEARING is scheduled.

Date: 08/10/2010

Time: 02:00 p.m.

Location: Courtroom 3C  
St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770

Before Judge: JOHN J WALTON

05-04-10 REVIEW HEARING scheduled on August 10, 2010 at 02:00 PM in  
Courtroom 3C with Judge WALTON.

05-05-10 Filed: Notice of Appearance of Counsel & Request for Discovery

08-10-10 Minute Entry - Minutes for Review Hearing

Judge: JOHN J WALTON  
PRESENT  
Clerk: jeaneneh  
Prosecutor: JAEGER, JERRY D  
Defendant  
Defendant's Attorney(s): LASTOWSKI, MICHAEL V

Audio  
Tape Number: 3C Tape Count: 2:06/2:10

HEARING

Defendant present with counsel. Case to be reset for possible resolution.

RESOLUTION/REVIEW is scheduled.

Date: 08/31/2010

Time: 02:00 p.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

08-11-10 RESOLUTION/REVIEW scheduled on August 31, 2010 at 02:00 PM in Courtroom 3C with Judge WALTON.

08-31-10 Minute Entry - Minutes for Resolution Hearing

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Prosecutor: MCCONKIE, J. MARSHALL

Defendant

Defendant's Attorney(s): ARIC M CRAMER

Audio

Tape Number: 3C Tape Count: 2:24/2:26

HEARING

Defendant present with counsel. Case reset for resolution hearing  
RESOLUTION HEARING.

Date: 10/19/2010

Time: 02:00 p.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

09-01-10 RESOLUTION HEARING scheduled on October 19, 2010 at 02:00 PM in Courtroom 3C with Judge WALTON.

09-01-10 Filed: Notice of Substitution of Counsel

09-08-10 Filed: Motion for Appointment of Defense Investigator

Filed by: NEEDHAM, AARON DAVID TRENT

09-30-10 Filed: Request to Submit

10-19-10 Minute Entry - Minutes for Resolution Hearing

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Prosecutor: MCCONKIE, J. MARSHALL

Defendant not present

Defendant's Attorney(s): CRAMER, ARIC M

Audio

Tape Number: 3C Tape Count: 2:30/2:31

HEARING

Defendant not present. Case continue for resolution.

RESOLUTION HEARING.

Date: 12/07/2010

Time: 02:00 p.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

10-21-10 RESOLUTION HEARING scheduled on December 07, 2010 at 02:00 PM  
in Courtroom 3C with Judge WALTON.

10-21-10 Filed: Request to Submit

11-01-10 Filed order: Order Appointing Defense Investigator

Judge JOHN J WALTON

Signed October 28, 2010

11-15-10 Filed order: Order Appointing Defense Investigator

Judge JOHN J WALTON

Signed November 08, 2010

12-07-10 Minute Entry - Minutes for Resolution Hearing

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Defendant not present

Defendant's Attorney(s): CRAMER, ARIC M



Audio

Tape Number: 3C Tape Count: 2:43/2:45

HEARING

Defendant not present. New counsel has been appointed to case for AG's office. Resolution hearing reset.

RESOLUTION/REVIEW is scheduled.

Date: 02/08/2011

Time: 02:00 p.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

12-08-10 RESOLUTION/REVIEW scheduled on February 08, 2011 at 02:00 PM in

Courtroom 3C with Judge WALTON.

02-08-11 Minute Entry - Minutes for Resolution Hearing

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Prosecutor: WEILAND, ZACHARY J

Defendant

Defendant's Attorney(s): CRAMER, ARIC M

Audio

Tape Number: 3C Tape Count: 2:30/2:31

HEARING

Defendant present with counsel. Defendant has hired new counsel and request continuance. Case set for preliminary hearing  
PRELIMINARY HEARING is scheduled.

Date: 04/11/2011

Time: 09:00 a.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle  
St. George, UT 84770

Before Judge: JOHN J WALTON

02-09-11 PRELIMINARY HEARING scheduled on April 11, 2011 at 09:00 AM in  
Courtroom 3C with Judge WALTON.

03-31-11 Filed: Stipulated Motion to Continue Preliminary Hearing

03-31-11 Filed: Stipulated Motion to Continue Preliminary Hearing

04-07-11 PRELIMINARY HEARING rescheduled to April 25, 2011 at 09:00 AM  
in Courtroom 3C with Judge WALTON.

04-07-11 Notice - NOTICE for Case 101500067 ID 13701095

PRELIMINARY HEARING.

Date: 04/25/2011

Time: 09:00 a.m.

Location: Courtroom 3C

St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770

Before Judge: JOHN J WALTON

The reason for the change is Stipulation of counsel

04-20-11 Note: Attorney Nathan Reeves called and stated he was just  
retained by the defendant and he is requesting a  
continuance for the Preliminary hearing on 4/25/11 before  
Judge Walton and he wanted a phone conference with  
counsel and the Judge. I advised that

04-20-11 Note: the Judge is in Cedar City today and tomorrow and we need  
a written stipulated motion/order per our new cont.  
policy. He will be emailing/scanning me the pleading and  
I'll let Judge Walton know as well.

04-20-11 Filed: Substitution of Counsel (Nathan Reeve for Aric Cramer)

04-20-11 Filed: Stipulated Motion to Continue

Filed by: REEVE, NATHAN C

04-20-11 Filed: Memorandum in Support of Stipulated Motion to Continue

04-21-11 PRELIMINARY HEARING Cancelled.

Reason: Stipulation of counsel

04-29-11 Filed order: Order to Continue

Judge JOHN J WALTON

Signed April 21, 2011

04-29-11 PRELIMINARY HEARING scheduled on June 09, 2011 at 09:00 AM in  
Courtroom 3C with Judge WALTON.

05-06-11 Filed order: Order to continue

Judge JOHN J WALTON

Signed April 21, 2011

06-09-11 REVIEW HEARING scheduled on October 25, 2011 at 02:00 PM in  
Courtroom 3C with Judge WALTON.

06-09-11 Minute Entry - Minutes for Preliminary Hearing

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Defendant

Audio

Tape Number: 3C Tape Count: 9:03/9:11

HEARING

Defendant present with counsel. Discussion is held. Defendant  
waives preliminary hearing. Case set out for review

REVIEW HEARING is scheduled.

Date: 10/25/2011

Time: 02:00 p.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

09-19-11 Filed: Substitution of Counsel for the State of Utah

09-23-11 Note: telephone conf regarding this issue before the 10/25/11  
hearing.

09-23-11 Note: Sheree from Jacob Taylor's (AG's Office) called and said  
the deft may enter into a stipulated agreement to  
withdrawl of his waiver of the preliminary hearing and  
request a 2 day special setting for a preliminary hearing  
nd they would like to have a

09-30-11 Filed: Joint Motion for Preliminary Hearing

09-30-11 Notice - NOTICE for Case 101500067 ID 14060452

STATUS CONFERENCE.

Date: 10/11/2011

Time: 02:00 p.m.

Location: Courtroom 3C  
St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770

Before Judge: JOHN J WALTON

The reason for the change is Stipulation of counsel

09-30-11 STATUS CONFERENCE rescheduled to October 11, 2011 at 02:00 PM  
in Courtroom 3C with Judge WALTON.

10-11-11 Filed: Objection to Substitution of Counsel

10-13-11 Minute Entry - Minutes for STATUS CONFERENCE

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Prosecutor: JACOB S TAYLOR

Defendant not present

Defendant's Attorney(s): NATHAN C REEVE

Sheriff Office#: 0320216

Audio

Tape Number: 3C Tape Count: 2:15/2:24

HEARING

Discussion held, ATD objects to substitution of counsel for AG's office. Objection denied. Case set for 2 day Preliminary hearing  
PRELIMINARY HEARING is scheduled.

Date:

Date: 12/08/2011

Time: 09:00 a.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge JOHN J WALTON

Date: 12/09/2011

Time: 09:00 a.m.

Location: Courtroom 3C

St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770

before Judge JOHN J WALTON

10-13-11 PRELIMINARY HEARING scheduled on December 08, 2011 at 09:00 AM  
with Judge WALTON.

10-13-11 PRELIMINARY HEARING scheduled on December 09, 2011 at 09:00 AM  
in Courtroom 3C with Judge WALTON.

10-13-11 Notice - NOTICE for Case 101500067 ID 14086380  
PRELIMINARY HEARING is scheduled.

Date: 12/08/2011

Time: 09:00 a.m.

Location: Courtroom 3C

St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770

before Judge JOHN J WALTON

Date: 12/09/2011

Time: 09:00 a.m.

Location: Courtroom 3C

St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770

before Judge JOHN J WALTON

10-13-11 Notice - NOTICE for Case 101500067 ID 14087551  
PRELIMINARY HEARING is re-scheduled.

Date: 12/08/2011

Time: 09:00 a.m.

Before Judge: JOHN J WALTON

The reason for the change is Notice did not print.

10-13-11 Note: PRELIMINARY HEARING calendar modified.

11-18-11 Filed: Motion to Continue Hearing

Filed by: NEEDHAM, AARON DAVID TRENT

11-18-11 Filed: Memorandum in Support of Motion to Continue Hearing

11-29-11 Filed: Affidavit of Kaye Lynn Wootton

11-29-11 Filed: Memorandum in Opposition to Motion to Continue Hearing

11-29-11 Filed: Reply Memorandum in Support of Motion to Continue  
Hearing

11-29-11 Minute Entry - Minutes for PHONE CONFERENCE

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): NATHAN C REEVE

Sheriff Office#: 0320216

Audio

Tape Number: 3C Tape Count: 3:55/4:03

HEARING

COUNT: 3:55

Attorney's present by phone. ATD, Nathan Reeve, address' court stating defendant will not be able to appear to prelim due to medical issues. ATP, Jacob Taylor, gives argument and objects to reply memorandum.

COUNT: 3:59

Court finds there is good cause to continue prelim. Case will be reset and notice sent.

11-30-11 Filed: Notice of Hearing

11-30-11 PRELIMINARY HEARING Cancelled.

Reason: Def requested continuance via phone/written req

11-30-11 2 DAY PRELIMINARY HEARING scheduled on March 01, 2012 at 09:00 AM in Courtroom 3C with Judge WALTON.

11-30-11 2 DAY PRELIMINARY HEARING scheduled on March 02, 2012 at 09:00 AM in Courtroom 3C with Judge WALTON.

11-30-11 Notice - NOTICE for Case 101500067 ID 14181732

2 DAY PRELIMINARY HEARING is scheduled.

Date: 03/01/2012

Time: 09:00 a.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

2 DAY PRELIMINARY HEARING.

Date: 03/02/2012

Time: 09:00 a.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

12-01-11 Filed order: Order to Continue

Judge JOHN J WALTON

Signed December 01, 2011

01-10-12 Filed: State's Notice of Intent to Provide rule 1102 Declaring  
in Lieu of Personal Testimony

02-09-12 Filed: Rule 1102 Affidavits in Lieu of Personal Testimony

02-09-12 Filed: First Amended Criminal Information

02-09-12 Filed: Affidavit of: John Tebbs

02-09-12 Filed: Declaration of: Leonard McKneely

02-09-12 Filed: Affidavit of: Jolie Brown

02-09-12 Filed: Affidavit of: John Grealish

02-09-12 Filed: Affidavit of: Jamie Spangle

02-09-12 Filed: Affidavit of: Brydie Platt

02-23-12 Filed: Affidavit of Clement Tebbs

03-01-12 Minute Entry - Minutes for Preliminary Hearing

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Defendant

Defendant's Attorney(s): REEVE, NATHAN C

Sheriff Office#: 0320216

Audio

Tape Number: 3C Tape Count: 9:00/11:52

HEARING

9:00 Court reviews file. 9:06 State calls Terry Powell to give  
testimony, witness sworn in. 9:12 State Offers exhibit #7 &  
8(photos) Received. 9:20 States exhibit #1 (certificate)  
offered/received. 9:24 States exhibit #2 (stipulation and

order/Div.

of Commerce) offered/received. 9:26 States exhibit #3  
(License/disciplinary action) offered/received. 9:35 States  
exhibit #4 (Bank analysis) offered/received.

9:57 States exhibit #5 (deposit) offered/received 9:59 States  
exhibit #6 (declaration) offered/received. 10:00 State rest.  
Attorney for defendant examines witness. 10:14 Defense request  
exhibit be admitted. State objects, Court sustains objections.  
10:38 Defense rest. 10:41 State rest. Witness excused. State  
summarizes affidavits. 11:13 State rest. Court in recess 11:29  
Back on record. Defense calls Mr. Needham, witness sworn in.  
11:30 Side bar held.

11:39 Defense counsel withdraws request to allow defendant to  
testify. 11:40 Defense exhibit #1 (affidavit of audio recording)  
offered/received. 11:43 Discussion held. 11:50 Defense rest.  
Court finds probable cause.

Case bound over and set for felony arraignment  
CASE BOUNDOVER

This case is bound over. An Arraignment hearing has been set on  
4/10/2012 at 2:00 PM in courtroom 3C before Judge JOHN J WALTON.

03-02-12 ARRAIGNMENT scheduled on April 10, 2012 at 02:00 PM in  
Courtroom 3C with Judge WALTON.

03-02-12 Note: Case Bound Over

03-02-12 Note: PRELIMINARY HEARING minutes modified.

03-02-12 ARRAIGNMENT Modified.

03-02-12 FELONY ARRAIGNMENT scheduled on April 10, 2012 at 02:00 PM in  
Courtroom 3C with Judge WALTON.

03-13-12 Filed: Rule 1102 Affidavit in Lieu of Personal Testimony (  
Additional)

03-15-12 Filed: Application for Order Allowing Deposition of Clement F.  
Tebbs

04-03-12 Filed: Objection to Application for Order Allowing Deposition  
of Clement F Tebbs

04-09-12 Filed: Reply to Objection to Application for Order Allowing  
Deposition of Clement F Tebbs

04-11-12 Minute Entry - Minutes for FELONY ARRAIGNMENT  
Judge: JOHN J WALTON

PRESENT



Clerk: jeaneneh  
Prosecutor: RYAN E CHRISTIANSEN  
Defendant

Sheriff Office#: 0320216

Audio

Tape Number: 3C Tape Count: 2:07/2:14

HEARING

Defendant present with counsel. Defendant is unable to afford counsel. Court allows counsel to withdraw and appoints A. Cramer.

Case reset for felony arraignment  
FELONY ARRAIGNMENT.

Date: 05/08/2012

Time: 02:00 p.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

04-11-12 FELONY ARRAIGNMENT scheduled on May 08, 2012 at 02:00 PM in  
Courtroom 3C with Judge WALTON.

04-13-12 Filed order: Affidavit of Indegency and Order

Judge JOHN J WALTON

Signed April 12, 2012

04-30-12 Filed: Request to Submit for Decision

05-08-12 Minute Entry - Minutes for Change of Plea

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Defendant

Defendant's Attorney(s): CRAMER, ARIC M

Sheriff Office#: 0320216

Audio

Tape Number: 3C Tape Count: 2:32/2:39

A copy of the Information is given to the defendant.

Defendant waives the reading of the Information.

Court advises defendant of rights and penalties.

Change of Plea Note

Defendant present with counsel, A. Cramer. Defendant enters not guilty pleas to all counts. Attorney General moves for deposition to be held in Salt Lake. Court Grants motion. Case set for review to discuss trial time

The defendant is advised that this offense may be used as an enhancement to the penalties for a subsequent offense.

REVIEW HEARING is scheduled.

Date: 07/10/2012

Time: 02:00 p.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

05-09-12 Filed order: Courts ruling on Request to Submit dated 4/30/2012

- Per JJW, Motion GRANTED - Counsel for State to prepare Order

Judge JOHN J WALTON

Signed May 01, 2011

05-15-12 Filed: TRANSCRIPT for Hearing of 03-01-2012

05-16-12 Filed: Transcript of Preliminary Hearing March 1, 2012

(Transcript on shelf)

05-18-12 Charge 1 Plea is Not Guilty

05-18-12 Charge 2 Plea is Not Guilty

05-18-12 Charge 3 Plea is Not Guilty

05-18-12 Charge 4 Plea is Not Guilty

05-18-12 Charge 5 Plea is Not Guilty

05-18-12 Charge 6 Plea is Not Guilty

05-18-12 Charge 7 Plea is Not Guilty

05-18-12 Charge 8 Plea is Not Guilty

05-18-12 Charge 10 Plea is Not Guilty

05-18-12 Charge 11 Plea is Not Guilty

05-18-12 Charge 9 Plea is Not Guilty

05-18-12 Charge 12 Plea is Not Guilty

05-18-12 REVIEW HEARING scheduled on July 10, 2012 at 02:00 PM in

Courtroom 3C with Judge WALTON.

05-24-12 Filed order: Order Granting Application for Order Allowing

Deposition of Clement F. Tebbs

Judge JOHN J WALTON

Signed May 24, 2012

05-29-12 Filed: Notice re: Deposition Testimony for Clement Tebbs

06-26-12 Filed: Substitution of Counsel

07-10-12 Minute Entry - Minutes for Review Hearing

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): CANDACE N REID

Sheriff Office#: 0320216

Audio

Tape Number: 3C Tape Count: 2:30/2:38

HEARING

Defendant present with counsel. Discussion held regarding time needed to try case. Clerk to check possibility of a senior judge hearing the case as an 8 day jury setting requested.

Counsel for Attorney General request status review be set 2 weeks before jury trial date.

08-07-12 Filed: Order of Assignment (Honorable A. Lynn Payne)

08-07-12 Judge A. LYNN PAYNE assigned.

08-09-12 Filed: Notice of Judicial Assignment of Senior Judge (Honorable A. Lynn Payne)

08-16-12 Notice - NOTICE for Case 101500067 ID 14699523

SCHEDULING TELEPHONIC CONF is scheduled.

Date: 08/23/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: A LYNN PAYNE

08-16-12 SCHEDULING TELEPHONIC CONF scheduled on August 23, 2012 at 09:00 AM in Courtroom 3B with Judge PAYNE.

08-16-12 Filed: Notice of Scheduling Telephonic Conference

08-21-12 SCHEDULING TELEPHONIC CONF scheduled on August 23, 2012 at  
08:30 AM in Courtroom 3B with Judge PAYNE.

08-23-12 Minute Entry - Minutes for SCHEDULING CONFERENCE

Judge: A LYNN PAYNE

PRESENT

Clerk: michellh

Prosecutor: JACOB S TAYLOR

Defendant not present

Defendant's Attorney(s): CANDACE N REID

Sheriff Office#: 0320216

Audio

Tape Number: Telephonic Tape Count: Off Record

HEARING

TIME: 8.30 Parties are present telephonically.

Pretrial motions are due 9/5/12.

Responses to pretrial motions are due 9/12/12.

Jury Instructions (Agreed and Disputed) are due 9/12/12

Reply to pretrial responses are due 9/17/12.

Witness identification is due 9/14/12.

Cut-off for any plea agreement is 9/28/12.

Jury questionnaires are due to the court 20 days before the trial.

Pretrial conference is 9/19/12 at 1:00 P.M.

Jury Trial is scheduled 10/23 through 11/2/12.

PRETRIAL CONFERENCE is scheduled.

Date: 09/19/2012

Time: 01:00 p.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

JURY TRIAL.

Date:

Date:

Date:

Date:

Date:

Date:

Date:

Date:

Date: 10/23/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 10/24/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

08-23-12 PRETRIAL CONFERENCE scheduled on September 19, 2012 at 01:00 PM  
in Courtroom 3C with Judge PAYNE.

08-23-12 Notice - NOTICE for Case 101500067 ID 14712460

PRETRIAL CONFERENCE is scheduled.

Date: 09/19/2012

Time: 01:00 p.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

JURY TRIAL.

Date: 10/23/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 10/24/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 10/25/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 10/26/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 11/01/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 11/02/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 10/29/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 10/30/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 10/31/2012

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

08-23-12 JURY TRIAL scheduled on October 23, 2012 at 09:00 AM in Courtroom 3B with Judge PAYNE.

08-23-12 JURY TRIAL scheduled on October 24, 2012 at 09:00 AM in Courtroom 3B with Judge PAYNE.

08-23-12 JURY TRIAL scheduled on October 25, 2012 at 09:00 AM in Courtroom 3B with Judge PAYNE.

08-23-12 JURY TRIAL scheduled on October 26, 2012 at 09:00 AM in Courtroom 3B with Judge PAYNE.

08-23-12 JURY TRIAL scheduled on November 01, 2012 at 09:00 AM in  
Courtroom 3B with Judge PAYNE.

08-23-12 JURY TRIAL scheduled on November 02, 2012 at 09:00 AM in  
Courtroom 3B with Judge PAYNE.

08-23-12 JURY TRIAL scheduled on October 29, 2012 at 09:00 AM in  
Courtroom 3B with Judge PAYNE.

08-23-12 JURY TRIAL scheduled on October 30, 2012 at 09:00 AM in  
Courtroom 3B with Judge PAYNE.

08-23-12 JURY TRIAL scheduled on October 31, 2012 at 09:00 AM in  
Courtroom 3B with Judge PAYNE.

08-23-12 Filed: Notice of Pretrial Conference and Jury Trial

08-31-12 Filed: Motion for Admission of Evidence  
Filed by: TAYLOR, JACOB S

09-05-12 Filed: Motion for Admission of Evidence  
Filed by: TAYLOR, JACOB S

09-06-12 Filed: Notice of Substitution of Counsel

09-14-12 Filed: Memorandum in Opposition to Motion to Continue

09-14-12 Filed: Request to Submit for Decision

09-14-12 Filed: Plaintiffs Proposed List of Witnesses to Testify at  
Trial

09-19-12 Minute Entry - Minutes for Pretrial Conference  
Judge: A LYNN PAYNE

PRESENT

Clerk: jeaneneh

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): CANDACE N REID

Sheriff Office#: 0320216

Audio

Tape Number: 3C Tape Count: 1:07/1:44

HEARING

1:08 Court address' motion to continue with attorney for defense,  
Candice Reid.

1:17 Defendant sworn in, court questions defendant.

1:30 Court allows continuance. Court expresses concern over  
number of times case has been continued. Due to counsel being new



to case court will allow continuance but with a strong reminder that case will not be continued again.

1:37 Discussion held regarding ATD ability to give adequate defense as she has just received her license to practice. Court appoints another public defender to assist with case. Court orders experienced counsel to sit as first chair.

Case to be reset for 8 day jury trial. Conference call set for 9/25/2012 at 12:30. Judge Payne and Mr. Taylor will appear by phone. Defendant and counsel to appear in court. Schedule will be set at that time.

CONFERENCE CALL/PRETRIAL is scheduled.

Date: 09/25/2012

Time: 12:30 p.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: A LYNN PAYNE

09-19-12 Note: PRETRIAL CONFERENCE calendar modified.

09-21-12 CONFERENCE CALL/PRETRIAL scheduled on September 25, 2012 at 12:30 PM in Courtroom 3B with Judge PAYNE.

09-21-12 JURY TRIAL Cancelled.

09-25-12 Minute Entry - Minutes for STATUS CONFERENCE

Judge: A LYNN PAYNE

PRESENT

Clerk: michellh

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): DOUGLAS D TERRY

Sheriff Office#: 0320216

Audio

Tape Number: 3B Tape Count: 12:52/1:32

#### HEARING

Mr. Taylor and Judge Payne appear telephonically. The plaintiff, Mr. Terry and Ms Reid appear in person. Mr. Terry is appointed as lead counsel and jury trial is continued. Pretrial is set for

12/6/12 in Courtroom 3C at 1:00 p.m.

Expert witnesses for the defense need to be named by 11/7/12 and from the state by 12/6/12. Ten day jury trial to be set 1/7/12 through 1/18/12.

1:21 PM Mr. Aaron David Trent Needham is sworn and testifies.

Defendant is to report all income to Mr. Terry. The state agrees to extend their offer of settlement to 11/7/12. All offers are to be in writing with acknowledgment of acceptance to be on the record.

State monies to assist with defense counsel to be discussed. PRETRIAL CONFERENCE is scheduled.

Date: 12/06/2012

Time: 01:00 p.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

JURY TRIAL.

Date:

Date:

Date:

Date:

Date:

Date:

Date:

Date:

Date:

Date: 01/07/2013

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 01/08/2013

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

09-25-12 JURY TRIAL scheduled on January 07, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

09-25-12 JURY TRIAL scheduled on January 08, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

09-25-12 JURY TRIAL scheduled on January 09, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

09-25-12 JURY TRIAL scheduled on January 10, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

09-25-12 JURY TRIAL scheduled on January 11, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

09-25-12 JURY TRIAL scheduled on January 14, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

09-25-12 JURY TRIAL scheduled on January 15, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

09-25-12 JURY TRIAL scheduled on January 16, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

09-25-12 JURY TRIAL scheduled on January 17, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

09-25-12 JURY TRIAL scheduled on January 18, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

10-10-12 Notice - NOTICE for Case 101500067 ID 14806028

PRETRIAL CONFERENCE is scheduled.

Date: 12/06/2012

Time: 01:00 p.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

JURY TRIAL.

Date: 01/07/2013

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 01/08/2013

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 01/09/2013

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 01/10/2013

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 01/11/2013

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

before Judge A LYNN PAYNE

Date: 01/14/2013  
Time: 09:00 a.m.  
Location: Courtroom 3B  
St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770  
before Judge A LYNN PAYNE

Date: 01/15/2013  
Time: 09:00 a.m.  
Location: Courtroom 3B  
St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770  
before Judge A LYNN PAYNE

Date: 01/16/2013  
Time: 09:00 a.m.  
Location: Courtroom 3B  
St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770  
before Judge A LYNN PAYNE

Date: 01/17/2013  
Time: 09:00 a.m.  
Location: Courtroom 3B  
St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770  
before Judge A LYNN PAYNE

Date: 01/18/2013  
Time: 09:00 a.m.  
Location: Courtroom 3B  
St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770

before Judge A LYNN PAYNE

10-10-12 PRETRIAL CONFERENCE scheduled on December 06, 2012 at 01:00 PM  
in Courtroom 3B with Judge PAYNE.

10-10-12 Filed: Notice of Pretrial Conference & Jury Trial

10-17-12 Filed: Appearance of Counsel and Request for Discovery

10-24-12 Filed: Petition for Writ of Habeas Corpus Ad Testificandum

10-24-12 Issued: Writ of Haveas Corpus Ad Testificandum

Judge A. LYNN PAYNE

10-29-12 Filed: Plaintiff's Response to Defendant's Request for  
Discovery

11-07-12 Filed: Defendant's Proposed List pf Witnesses to Testify at  
Trial

11-09-12 Filed: Defendants Amended Proposed List of Witnesses to Testify  
at Trial

11-21-12 Filed: Plaintiff's Motion for Reciprocal Discovery Under Rule  
16(c) with Memorandum in Support  
Filed by: TAYLOR, JACOB S

11-28-12 Filed: Formal Notice of Rejection of Plea Offer

12-06-12 Minute Entry - Minutes for PRETRIAL CONFERENCE  
Judge: A LYNN PAYNE

PRESENT

Clerk: jamieap

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): DOUGLAS D TERRY

Sheriff Office#: 0320216

Audio

Tape Number: 3D Tape Count: 1:05/1:42

HEARING

TIME: 1:05 PM This is the time for Final Pretrial Conference.  
There are various motions pending. The first Motion to be heard is  
the Motion for Admission of Evidence Concerning Testimony of  
Clement Tebbs.

Court grants Motion for Admission of Evidence Concerning  
Testimony Clement Tebbs based upon no objection from Defense  
counsel.

TIME: 1:09 PM Defendant is finally present. The next motion pending is the Motion for Reciprocal Discovery Under Rule 16(c).

TIME: 1:11 PM Court grants Motion for Reciprocal Discovery Under Rule 16(c). Court reviews the preliminary jury instructions and questionnaires with counsel. Neither party have any objection to the preliminary jury instructions and questionnaires.

Court and counsel discuss the jury number to be called and procedures in dealing with jury questionnaires.

TIME: 1:31 PM The parties are to exchange finalize the stipulated questionnaire at least 10 days prior to the date of trial.

TIME: 1:37 PM The Court questions the Defendant and counsel about the status of offers presented.

12-06-12 Filed: Defendant's Amended Proposed List of Witnesses to Testify at Trial

12-06-12 Filed order: Order Granting Reciprocal Discovery Under Rule 16(c)

Judge A. LYNN PAYNE

Signed December 06, 2012

12-20-12 Filed: Jury Questionnaire from Attorney General

12-24-12 Filed: Plaintiffs Amended List of Witnesses to Testify at Trial

01-07-13 Filed: Randomized List of Jurors Summoned for Trial

01-07-13 Minute Entry - Minutes for JURY TRIAL DAY ONE

Judge: A. LYNN PAYNE

PRESENT

Clerk: judymb

Defendant

Defendant's Attorney(s): TERRY, DOUGLAS D

Sheriff Office#: 0320216

Audio

Tape Number: 3B/jb Tape Count: 9.38-10.18

Defendant is present with Doug Terry and Candace Reid to represent him. Jacob Taylor, Counsel for State is present with his

assistant, Sheree Wilcox, Certified Paralegal.

9:45 Roll Call of jurors summonsed. Court assign identifying numbers to each potential juror.

9:50 Oaths 1 and 2 are administered to jurors present. 9:58 Admonition by the Court as to electronic devices and discussion of case.

Further instructions regarding the Voir Dire questionnaire distributed to jurors. Upon completion of the questionnaire, jurors are excused with instructions regarding their return time. Clerk will prepare copies for both Counsel for their review and further selection.

10:18 Court is in recess. Jury will reconvene tomorrow morning or afternoon as instructed for in-chambers voir dire.

Off record.

01-08-13 Minute Entry - Minutes for JURY TRIAL DAY TWO

Judge: A LYNN PAYNE

PRESENT

Clerk: judymb

Defendant not present

Defendant's Attorney(s): TERRY, DOUGLAS D

Sheriff Office#: 0320216

Audio

Tape Number: 3B/jb Tape Count: 9.10-6.18

TRIAL

9.10 On record in chambers with Court, Counsel and Defendant, who chooses to not be present for this morning's voir dire.

9:20 Voir Dire commences in chambers, until 12:37...lunch recess.



1:36 On record in courtroom; Counsel and prospective jurors present. Court excuses some of the selected jurors to return tomorrow morning. 1:37 Recess

1:47 Voir Dire continues in chambers until recess at 3:25. 3:35 On record/voir dire in chambers.

6:11 On record in courtroom. Court addresses remaining jurors as 22 jurors have been seated. Those remaining are excused with thanks of the Court. The 22 selected will return at 9 am tomorrow morning for pre emptory challenges.

Off record.

6:19pm

1-09-13 Minute Entry - Minutes for JURY TRIAL DAY THREE

Judge: A LYNN PAYNE

PRESENT

Clerk: judymb

Defendant

Defendant's Attorney(s): TERRY, DOUGLAS D

Sheriff Office#: 0320216

Audio

Tape Number: 3B/jb Tape Count: 9.05-4.55

TRIAL

9:05 Court and Counsel on record, in chambers until 9:17

9:28 On record in courtroom, all are present for pre emptory challenges.

9:47 Court requests off record status while pre emptories are completed btwn Counsel.

10:03 On record; the final jury has been selected and is seated in order by the Court. This jury is confirmed by Counsel.

Oath #3 is given to jurors impaneled to try this case. Preliminary jury instructions are read to the jury. These instructions include the elements of the charge as well as the not guilty pleas entered. 10:36 Recess.

11:05 On record; State's opening statements. 11:16 Jury exits the courtroom for Court & Counsel confer.

11:22 Jury returns. Witness Grealish is sworn; testimony is heard until lunch recess at 12:05.

1:28 On record; Court and Counsel present. Exclusionary rule invoked. Jury enters. Mr. Grealish continues with testimony on the stand until 2:20, recess off record.

3:07 On record; all present to view the video deposition of Clement Tebbs. The Court has this DVD marked as exhibit 24. This is also considered sworn testimony as stipulated by Counsel so this exhibit 24 will NOT be included for deliberation.

4:30 Tebbs testimony concludes.

4:32 Witness Byrdie Platt is sworn/testifies untill 4:54, to resume in the morning.

Jury is now excused to jury room to review exhibits 6-10. Court will reconvene at 9:00am tomorrow.

4:55 Off record.

01-09-13 Filed: Preliminary Jury Instructions

01-10-13 Minute Entry - Minutes for JURY TRIAL DAY 4

Judge: A LYNN PAYNE

PRESENT

Clerk: judymb

Defendant

Defendant's Attorney(s): TERRY, DOUGLAS D

Sheriff Office#: 0320216

Audio

Tape Number: 3B/jb Tape Count: 9.02-4.59

TRIAL

Def Counsel raises and Court addresses with jurors, the issue of media exposure to article in local newspaper. There are no affirmative responses from jurors when asked.

9:03 Previously sworn, witness Byrdie Platt retakes the stand to continue her testimony until 9:56.

Witness Jolie Bown is sworn. 9:58 Off record as counsel both meet briefly w/previous witness.

10:00 On record. Byrdie Platt retakes the stand for addt'l testimony until 10:03, then Ms. Bown provides testimony until recess at 10:28. Jurors are excused to review exhibits during their break.

11:05 On record/Ms. Bown's testimony continues until lunch recess at 12:06. Off record. A discussion as to timing of case is held at this time btwn Court and Counsel until 12:16

1:46 All present in the courtroom. Witness Greg Adamson is sworn and provides testimony until 2:57 recess. 3:13 Witness John Tebbs is sworn to provide testimony until he is excused at 4:58.

The jury is also excused for the day. Clerk gather exhibits for secure retention.

4:59 Off record

01-11-13 Minute Entry - Minutes for JURY TRIAL DAY 5

Judge: A LYNN PAYNE

PRESENT

Clerk: judymb

Defendant

Defendant's Attorney(s): TERRY, DOUGLAS D

Sheriff Office#: 0320216

Audio

Tape Number: 3B/jb Tape Count: 9.02-12.27

TRIAL

9.02 Jury, Counsel and Defendant are present. State's witness, Kim Quach is sworn and provides testimony until 9:29, when she is excused. 9:30 Witness Gordon Summers is sworn/testifies until 9:59. Jury excused w/exhibits review.

Further record btwn Court & Counsel determining pace of the case. 10:36 Record moves to chambers w/Court & Counsel to address a question raised by a juror. 10:40 Off record

10:48 On record, all present as State's next witness, Terri Powell, is sworn & testifies, until excused at 12:11. Witness Kurt Sawyer is sworn/testifies until 12:25, when excused.

Jury is now excused with further exhibits for review and upon completion of their review, they are free to leave. The jury is due back for the record at 9:30am Monday. 12:27 Off record.

01-14-13 Minute Entry - Minutes for JURY TRIAL DAY SIX

Judge: A LYNN PAYNE

PRESENT

Clerk: judymb

Defendant

Defendant's Attorney(s): TERRY, DOUGLAS D

Sheriff Office#: 0320216

Audio

Tape Number: 3B/jb Tape Count: 9.14-4.50

TRIAL

On record in chambers for Court and Counsel to briefly review final jury instructions. 9:16 Off

9:40 Jury, Defendant, Court and Counsel for both sides: Doug Terry, Candace Reid, Jacob Taylor are all present. Prosecution formally rests it's case. Mr. Terry offers opening statements to the record.

9:43 Defendant is sworn & his day long testimony begins. Defense exhibits are rec'd. Jury is afforded breaks, as well as time to review exhibits rec'd.

12:03 Lunch recess. 1:44 On record/Defendant's testimony continues. Addt'l Def exhibits are rec'd for jury review as determined by the Court.

3:26 Mr. Taylor begins cross exam of Def. 4:01 Jury excused.  
4:02 Recess. 4:25 On record.

Testimony continues until 4:45 when the Defense rests it's case. Evidence is closed.

4:46 Jury is excused for the day.

Discussion as to exhibits, outline of tomorrow's instructions and closing arguments.

4:50 Off record.

01-15-13 Charge 76-10-1801 Sev F2 was amended to 76-10-1801 Sev F2  
01-15-13 Charge 76-10-1801 Sev F2 was amended to 76-10-1801 Sev F2  
01-15-13 Charge 76-10-1801 Sev F2 was amended to 76-10-1801 Sev F2  
01-15-13 Charge 76-10-1801 Sev F2 was amended to 76-10-1801 Sev F2  
01-15-13 Charge 76-10-1801 Sev F2 was amended to 76-10-1801 Sev F2  
01-15-13 Charge 76-10-1801 Sev F2 was amended to 76-10-1801 Sev F2  
01-15-13 Charge 76-10-1801 Sev F2 was amended to 76-10-1801 Sev F2  
01-15-13 Charge 76-10-1801 Sev F2 was amended to 76-10-1801 Sev F2  
01-15-13 Charge 76-10-1801 Sev F2 was amended to 76-10-1601 Sev F2  
01-15-13 Charge 76-10-1801 Sev F2 was removed.  
01-15-13 Charge 76-10-1801 Sev F2 was removed.  
01-15-13 Charge 76-10-1601 Sev F2 was removed.  
01-15-13 Note: Refer to Amended Information docketed 02/9/12.  
01-15-13 Minute Entry - Minutes for JURY TRIAL DAY SEVEN

Judge: A LYNN PAYNE

PRESENT

Clerk: judymb

Defendant

Defendant's Attorney(s): REID, CANDACE N

Sheriff Office#: 0320216

Audio

Tape Number: 3A/jb Tape Count: 9.13-4.30

TRIAL

All are present on record in courtroom as final jury instructions are given by the Court.

9:53 Jury is excused for Court and Counsel to review closing argument issues. 9:57 Recess

10:17 On record/all present as closing arguments are heard.

11:41 Two alternate jurors are excused. 11:42 Oath to Bailiff.

Jury is excused to deliberate. 11:47 Off record.

3:01 On record in chambers with Court and Counsel to address question from jury, still deliberating.

3:16 The Court reads the response as agreed by Counsel. 3:18 Off record.

3:52 All present in courtroom as jury affirms a verdict has been reached.

3:57 Defendant is found Guilty on all charges as Clerk reads verdict. Jury is excused with thanks from the Court and Counsel.

PSI is ordered and referral is provided. Defendant will report to OMS for monitoring services prior to Sentencing. 4:12 off record

4:21 On record. Defendant is to report to AP&P by Friday, 1/18/13, by 5:00pm, via telephone, at a minimum. The Defendant was also made aware of his responsibility to OMS/Chuck Marshall pending sentencing, which is set:

SENTENCING/PSI is scheduled.

Date: 03/13/2013

Time: 01:30 p.m.

Before Judge: A LYNN PAYNE

01-15-13 Charge 1 Disposition is Guilty

01-15-13 Charge 2 Disposition is Guilty

01-15-13 Charge 3 Disposition is Guilty

01-15-13 Charge 4 Disposition is Guilty

01-15-13 Charge 5 Disposition is Guilty

01-15-13 Charge 6 Disposition is Guilty

01-15-13 Charge 7 Disposition is Guilty

01-15-13 Charge 8 Disposition is Guilty

01-15-13 Charge 9 Disposition is Guilty

01-15-13 Filed: Question Raised by Jury During Trial

01-15-13 Filed: Jury List

01-15-13 Filed: Exhibit List State and Defense

01-15-13 Filed: Verdict

01-15-13 Filed: Jury Instructions

01-15-13 Filed: Agency Referral Form

01-16-13 Received: January 16, 2013

Container: Statement dtd 6/20/05 w/copies of cks Location:

01-16-13 Received: January 16, 2013  
Container: Ltd Partnership Agreement Location:

01-16-13 Received: January 16, 2013  
Container: SoUt Title Co Closing Docs RH28 Location:

01-16-13 Received: January 16, 2013  
Container: 1st Am Title Co NV Final Stmt Location:

01-16-13 Received: January 16, 2013  
Container: Fidelity Natl Title Closing Docs LaScala Location:

01-16-13 Received: January 16, 2013  
Container: Joint Venture Agreeemt dtd 6/13/05 Location:

01-16-13 Received: January 16, 2013  
Container: TD signed by Grealish dtd 6/25/03 Location:

01-16-13 Received: January 16, 2013  
Container: Settlement Stmt/White Mesa #104 Location:

01-16-13 Received: January 16, 2013  
Container: Copy of fax to Brydie 9/10/03 Location:

01-16-13 Received: January 16, 2013  
Container: Copy of fax to Brydie 5/15/04 Location:

01-16-13 Received: January 16, 2013  
Container: Copy of fax to Brydie 3/12/05 Location:

01-16-13 Received: January 16, 2013  
Container: Copy of fax to Brydie 3/15/05 Location:

01-16-13 Received: January 16, 2013  
Container: Copy of fax to Brydie 3/17/05 Location:

01-16-13 Received: January 16, 2013  
Container: Copy of fax to Brydie 5/12/05 Location:

01-16-13 Received: January 16, 2013  
Container: Copy of fax to Brydie 6/29/05 Location:

01-16-13 Received: January 16, 2013  
Container: Copy of Lis Pendens Location:

01-16-13 Received: January 16, 2013  
Container: Copy of Release of Lis Pendens Location:

01-16-13 SENTENCING/PSI scheduled on March 13, 2013 at 01:30 PM with  
Judge PAYNE.

01-16-13 Notice - Final Exhibit List

01-16-13 Filed: Final Exhibit List

01-18-13 Filed: OMS - Activation Report

02-22-13 \*\*\*\* PRIVATE \*\*\*\* Filed: Pre Sentence Investigation Report

03-07-13 Filed: Affidavit of Aaron D Needham

Printed: 03/21/16 08:21:47 Page 39

03-08-13 Filed: Appearance of Counsel

03-08-13 Filed: Defendant's Motion to Continue Sentencing

03-08-13 Filed: Defendant's Motion to Arrest Judgment or New Trial

Filed by: BULLEN, HERSCHEL P

03-08-13 Filed: Defendant's Motion in Arrest of Judgment and for New Trial

03-13-13 SENTENCING/PSI continued to July 03, 2013 at 09:00 AM with Judge PAYNE.

03-13-13 Minute Entry - Minutes for SENTENCING continued

Judge: A LYNN PAYNE

PRESENT

Clerk: charityj

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): DAVID V FINLAYSON

Sheriff Office#: 0320216

Audio

Tape Number: 3C Tape Count: 1:45-2:26

CONTINUANCE

Whose Motion:

The Defendant's counsel DAVID V FINLAYSON.

Reason for continuance:

Conflict in attorney schedule

New counsel retained.

The motion is argued.

The motion is granted.

HEARING

TIME: 1:45 All parties present. Mr. Finlayson informed the court he has been retained as counsel to defendant. He reported he has filed a Notice of Appearance, Motion to Arrest Judgment, Ineffectiveness of Counsel and Motion to Continue today's hearing. However, it is not in the docket and Judge Payne has not received them.

Mr. Finlayson informed the court of the defendant's significant



medical needs at the present time.

TIME: 1:57 PM Mr. Taylor addressed the court regarding defense counsel's request to continue sentencing on this case. The State of Utah opposes the request to continue.

TIME: 2:00 PM The court addressed defense counsel's Motion to Arrest Judgment. The court denied this motion.

Regarding the issue of Ineffectiveness of Counsel should be dealt with post judgment.

The court grants the motion to continue to allow new counsel to adequately prepare. However, counsel was informed if DEF switches counsel again he will likely be placed in jail pending sentencing.

Mr. Taylor raised concern regarding Mr. Terry is still counsel of record and has not filed a withdrawal and that the defendant had him as court appointed counsel but has now retained Mr. Finlayson.

The court now recognizes Mr. Finlayson as the attorney of record.

Counsel has been given permission to conduct a deposition of Mr. Tebbs.

The court continued sentencing until July 3, 2013 at 9:00 AM.

Mr. Taylor requested a motion deadline. The court finds this is a reasonable request and set the deadline for 45 days from today (April 29, 2013). Mr. Taylor will respond to all motions no later than the May 29, 2013.

SENTENCING/PSI is scheduled.

Date: 07/03/2013

Time: 09:00 a.m.

Before Judge: A LYNN PAYNE

03-15-13 Filed: TRANSCRIPT for Hearing of 01-09-2013

03-15-13 Filed: TRANSCRIPT for Hearing of 01-10-2013

03-15-13 Filed: TRANSCRIPT for Hearing of 01-11-2013

Printed: 03/21/16 08:21:47

Page 41

03-18-13 Filed: Reporter's Transcript of Jury Trial - January 9, 2013  
03-18-13 Filed: Reporter's Transcript of Jury Trial - January 10, 2013  
03-18-13 Filed: Reporter's Transcript of Jury Trial - January 11, 2013  
03-19-13 Filed: Notice of Withdrawal of Counsel (D Terry)  
03-28-13 Filed: Motion to Impose Sentence  
Filed by: TAYLOR, JACOB S  
04-01-13 Filed: Motion to Impose Sentence  
Filed by: TAYLOR, JACOB S  
04-04-13 Fee Account created Total Due: 50.50  
04-04-13 COPY FEE Payment Received: 50.50  
Note: COPY FEE, Mail Payment;  
04-09-13 Filed: Defendant's Response to State's Motion to Impose Sentence  
04-29-13 Filed: Defendant's Amended Motion to Arrest Judgment and for New Trial re: John Grealish  
Filed by: BULLEN, HERSCHEL P  
04-29-13 Filed: Defendant's Supplemental Memorandum in Support of Defenadnt's Motino in Arrest of Judgment and for New Trial re: Sixth Amendment  
04-29-13 Filed: Supplemental Affidavit of Aaron D. T. Needham  
05-28-13 Filed: Memorandum in Opposition to: 1) Defendant's Motion in Arrest of Judgment and for New Trial 2) Defendant's Supplemental Memorandum in Support of Defendant's motion in Arrest of Judgment and for New Trial Re: Sixth Amendment  
05-28-13 Filed: Memorandum in Opposition to: 1) Defendant's Motion to Arrest Judgment of for New Trial 2) Defendant's Amended Motion to Arrest Judgment and for New Trial  
06-17-13 Filed: Motion to Withdraw as Counsel for Defendant  
Filed by: BULLEN, HERSCHEL P  
06-17-13 Filed: Co-Counsel's Motion to Withdraw  
Filed by: BULLEN, HERSCHEL P  
06-18-13 Filed: Motion to Withdraw as Counsel for Defendant  
Filed by: BULLEN, HERSCHEL P  
06-26-13 Filed: Objection to Motion to Withdraw  
06-26-13 Filed: Request to Submit Defense counsel's Motion to Withdraw as counsel for Defendant  
06-27-13 Filed: Motion to Withdraw as Co-counsel  
06-27-13 Filed: Request to Submit Defense Counsel's Motion to Withdraw as Counsel for Defendant

06-28-13 Filed: Objection to Motion to Withdraw

07-01-13 Filed: Defense Counsel's Response to State's Objection to  
Counsel's Motion to Withdraw

07-02-13 Filed: Response to the Attorney General of Utah and Denial of  
Herschel Bullen and David Finlayson Withdrawal

07-02-13 Filed: Response to the Attorney General of Utah and Herschel  
Bullen and David Finlayson Request to Withdraw Aaron D T  
Needham

07-02-13 Filed: Affidavit of Aaron D T Needham

07-03-13 Minute Entry - Minutes for continued

Judge: A LYNN PAYNE

PRESENT

Clerk: michellh

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): BULLEN, HERSCHEL P

Sheriff Office#: 0320216

Audio

Tape Number: 3A Tape Count: 9:18/11:17

CONTINUANCE

Whose Motion:

The Stipulation of counsel.

Reason for continuance:

Court grants continuance as stipulated by Counsel.

Court grants continuance as stipulated by Counsel.

The motion is granted.

HEARING

9:18 AM On the Record. All parties are present with counsel.

9:21 AM Recess. Mr Bullen speaks with client regarding Mr.  
Bullen's request to withdraw.

TIME: 9:41 AM Back on the record. All parties are present with  
counsel. Mr. Bullen states the defendant will not waive the  
confidentiality between counsel/client. The court questions the

defendant. Mr.

Taylor presents case law to the court for review that due to dilatory conduct the court could rule the defendant has implied waiver of counsel.

TIME: 9:54 AM Off the record. Mr. Bullen and the defendant discuss the defendant's waiver of issues to continue with Mr. Bullen's representation of the client.

TIME: 10:22 AM Back on the record. Parties are present with counsel. Reasons to withdraw have been fully disclosed to the defendant. The court asks the defendant if he fully understands Mr. Bullen's conflict and his need to withdraw.

TIME: 10:26 AM The Defendant states he has no objection to Mr. Bullen to withdraw. Mr. Taylor makes his statement regarding his frustration with moving the case forward. The court states it is fully aware of the issues involved.

10:34 AM Mr. Bullen states there may be 6th amendment post sentencing issues.

TIME: 10:36 AM Mr. Bullen is allowed to withdraw.

TIME: 10:43 AM Mr. Needham is sworn.

TIME: 10:39 AM The court feels the all the issues are post sentencing. County Administrator, Dean Cox, will be alerted to the need for conflict counsel. The court will sign an order to forward to the County.

TIME: 10:53 AM Mr. Needham is ordered by the court to provide names, phone numbers, and addresses of everyone he has contracted with over the past year to Mr. Taylor by the end of today.

TIME: 11:03 AM Defendant is given one week to hire an attorney.

TIME: 11:06 AM The court finds the defendant indigent and will appoint an attorney through County Administrator. Defendant's

address and phone numbers are updated.

Sentencing continued to 8/5/13 at 9:00 a.m. If there is any further disruption or delay in the sentencing, the court will consider the defendant has waived his right to counsel and will serve pro se.

TIME: 11:13 AM The court finds the defendant capable of understanding the pitfalls of being pro se.

SENTENCING/PSI is scheduled.

Date: 08/05/2013

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: A LYNN PAYNE

07-03-13 SENTENCING/PSI rescheduled to August 05, 2013 at 09:00 AM in Courtroom 3B with Judge PAYNE.

07-08-13 Filed order: Minute Entry Order Deteriming Defendent Indigent Judge A. LYNN PAYNE  
Signed July 08, 2013

07-08-13 Filed: Notice of Non-Receipt of Information from Defendant

07-08-13 Filed: Notice of Non-Receipt of Information from Defendant

07-09-13 Filed: Affidavit of Aaron D. T. Needham

07-11-13 Filed: Reporting to the Courts Aaron Needham

07-11-13 Filed: Reporting to the Courts Aaron D. T. Needham

08-01-13 SENTENCING/PSI scheduled on September 10, 2013 at 09:30 AM in Courtroom 3B with Judge PAYNE.

08-02-13 STATUS CONFERENCE scheduled on August 02, 2013 at 01:30 PM in Courtroom 3D with Judge PAYNE.

08-02-13 Minute Entry - Minutes for STATUS CONFERENCE  
Judge: A LYNN PAYNE

PRESENT

Clerk: kellym

Prosecutor: SCHEREE E WILCOX

JACOB S TAYLOR

Defendant

Defendant's Attorney(s): BENJAMIN D GORDON

Sheriff Office#: 0320216

Audio

Tape Number: 3D Tape Count: 1:39/1:49

HEARING

TIME: 1:39PM TIME: 1:39 PM Defendant is present, with counsel, Ben Gordon, in the courtroom. Mr. Taylor and Ms. Wilcox for the plaintiff, are present via telephone conference.

TIME: 1:42 PM The parties are here for a status conference. Mr. Gordon has been appointed to represent Mr. Needham. The Court indicates that Mr. Gordon will be the attorney of record unless Mr.

Needham appears for Sentencing with his own attorney who is prepared to represent Mr. Needham at Sentencing on 9-10-13 at 9:00 a.m. No continuance will be allowed based upon a privately retained attorney not being prepared for sentencing at that time.

TIME: 1:45 PM The court has declined defendant's motion to set aside the jury verdict. Mr. Gordon will review the court record to become familiar with the case. Sentencing is set for 9-10-13 at 9:00 a.m. A PSI report has been prepared.

AP&P should submit a new report if there is new information that would be relevant at the time of Sentencing.

TIME: 1:47 PM The parties may hold another conference prior to Sentencing, if necessary.

TIME: 1:49 PM Off Record  
SENTENCING is scheduled.

Date: 09/10/2013

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: A LYNN PAYNE

08-02-13 SENTENCING scheduled on September 10, 2013 at 09:00 AM in

Printed: 03/21/16 08:21:48

Page 46

Courtroom 3B with Judge PAYNE.

08-02-13 SENTENCING/PSI Cancelled.

08-02-13 \*\*\*\* PROTECTED \*\*\*\* Filed: Agency Referral Form

08-02-13 Filed: Defendant's Contracts in Meeting the Courts

08-05-13 Filed: Appearance of Counsel

08-26-13 Filed: Letter regarding updated PSI

09-09-13 Filed: Motion to Arrest Judgment and Motion for Competency  
Hearing

Filed by: NEEDHAM, AARON DAVID TRENT

09-09-13 Filed: Return of Electronic Notification

09-10-13 Minute Entry - Minutes for SENTENCING

Judge: A. LYNN PAYNE

PRESENT

Clerk: michellh

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): GORDON, BENJAMIN D

Sheriff Office#: 0320216

Audio

Tape Number: 3C Tape Count: 9:18/9:41

HEARING

The court states the presentence has been received. Defense counsel states a motion has been filed for a competency review. Arguments are made by Mr Taylor.

9:22 a.m. The court grants the motion and has defendant taken into custody without bond until the time of sentencing. Counsel states the motion will stand as the defense counsel's certificate of good faith. A mental health evaluation is ordered.

Defense counsel to prepare the order.

Telephonic conference with the Judge and counsel on 9/19/13 at 8:30 a.m. on the record to determine the status of this matter. CASE STATUS REVIEW is scheduled.

Date: 09/19/2013

Time: 08:30 a.m.

Location: Courtroom 3B  
St. George Courthouse  
206 West Tabernacle  
St. George, UT 84770

Before Judge: A. LYNN PAYNE

09-10-13 CASE STATUS REVIEW scheduled on September 19, 2013 at 08:30 AM  
in Courtroom 3B with Judge PAYNE.

09-19-13 Minute Entry - Minutes for CASE STATUS REVIEW

Judge: A. LYNN PAYNE

PRESENT

Clerk: michellh

Prosecutor: JACOB S TAYLOR

SCHEREE E WILCOX

Defendant

Defendant's Attorney(s): GORDON, BENJAMIN D

Sheriff Office#: 0320216

Audio

Tape Number: 3B Tape Count: 8:42/9:13

HEARING

The defendant and his counsel appear in the courtroom; Judge Payne, Mr. Taylor and Ms Wilcox appear telephonically.

8:44 a.m. Mr Gordon after conferring with his client makes a motion to withdraw the competency motion. Arguments are presented.

8:50 a.m. Mr. Aaron David Trent Needham is sworn and questioned by the court.

8:52 a.m. The court feels the evaluation should move forward. Defense requests a limited evaluation conducted on the record. The motion is granted. Defense counsel proceeds to question the defendant. Mr Taylor declines to cross-examine.

Discussion ensues.

9:10 a.m. The court is satisfied that sentencing may go forward and grants defense motion to withdraw the motion for a competency



evaluation.

Sentencing is set for 10/2/13 at 9:00 a.m.

SENTENCING is scheduled.

Date: 10/02/2013

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: A. LYNN PAYNE

CUSTODY

The defendant is present in the custody of the jail.

09-19-13 SENTENCING scheduled on October 02, 2013 at 09:00 AM in  
Courtroom 3B with Judge PAYNE.

09-19-13 Note: AARON DAVID TRENT NEEDHAM DEF Custody Location Jail

10-02-13 Filed order: Order of Bail, Commitment, or Release

Judge A. LYNN PAYNE

Signed October 02, 2013

10-02-13 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITME

Judge: A. LYNN PAYNE

PRESENT

Clerk: jeaneneh

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): BENJAMIN D GORDON

Sheriff Office#: 0320216

Audio

Tape Number: 3B Tape Count: 9:23/10:05

SENTENCE PRISON

Based on the defendant's conviction of COMMUNICATIONS FRAUD a 2nd  
Degree Felony, the defendant is sentenced to an indeterminate term  
of not less than one year nor more than fifteen years in the Utah  
State Prison.

Based on the defendant's conviction of COMMUNICATIONS FRAUD a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

Based on the defendant's conviction of COMMUNICATIONS FRAUD a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

Based on the defendant's conviction of COMMUNICATIONS FRAUD a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

Based on the defendant's conviction of COMMUNICATIONS FRAUD a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

Based on the defendant's conviction of COMMUNICATIONS FRAUD a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

Based on the defendant's conviction of COMMUNICATIONS FRAUD a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

Based on the defendant's conviction of COMMUNICATIONS FRAUD a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

Based on the defendant's conviction of PATTERN OF UNLAWFUL ACTIVITY a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

To the WASHINGTON County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

Counts to run concurrent to each other. Defendant sentenced forthwith

ALSO KNOWN AS (AKA) NOTE

JAKE TAYLOR

SENTENCE FINE

Charge # 1            Fine: \$500.00  
                      Suspended: \$0.00  
                      Surcharge: \$243.24  
                      Due: \$500.00

Charge # 2            Fine: \$500.00  
                      Suspended: \$0.00  
                      Surcharge: \$243.24  
                      Due: \$500.00

Charge # 3            Fine: \$500.00  
                      Suspended: \$0.00  
                      Surcharge: \$243.24  
                      Due: \$500.00

Charge # 4            Fine: \$500.00  
                      Suspended: \$0.00  
                      Surcharge: \$243.24  
                      Due: \$500.00

Charge # 5            Fine: \$500.00  
                      Suspended: \$0.00  
                      Surcharge: \$243.24  
                      Due: \$500.00

Charge # 6            Fine: \$500.00  
                      Suspended: \$0.00  
                      Surcharge: \$243.24  
                      Due: \$500.00

Charge # 7            Fine: \$500.00  
                      Suspended: \$0.00  
                      Surcharge: \$243.24  
                      Due: \$500.00

Charge # 8            Fine: \$500.00  
                      Suspended: \$0.00  
                      Surcharge: \$243.24  
                      Due: \$500.00

Charge # 9            Fine: \$500.00  
                      Suspended: \$0.00  
                      Surcharge: \$243.24  
                      Due: \$500.00

Total Fine: \$4500.00

Total Suspended: \$0

Total Surcharge: \$2189.16

Total Principal Due: \$4500.00

Plus Interest

Pay fine to The Court. This can be paid online at:  
[www.utcourts.gov/payments](http://www.utcourts.gov/payments).

Defendant to pay fine of \$4500 plus \$776,783.00 in restitution.

Defendant sentenced, right to appeal given

10-09-13 Filed order: Sentence, Judgment, and Commitment

Judge A. LYNN PAYNE

Signed October 09, 2013

10-16-13 Filed: Motion: Ex Parte Motion for Leave to File Overlength  
Memorandum

Filed by: NEEDHAM, AARON DAVID TRENT

10-16-13 Filed: Ex Parte Order (Proposed): (Proposed) Order Granting Ex  
Parte Motion for Leave to File Overlength Memorandum

10-16-13 Filed: Return of Electronic Notification

10-18-13 Filed order: Ex Parte Order: Order Granting Ex Parte Motion  
for Leave to File Overlength Memorandum

Judge A. LYNN PAYNE

Signed October 18, 2013

10-18-13 Note: Signed at the email direction of Judge A. Lynn Payne

10-18-13 Filed: Return of Electronic Notification

10-18-13 Filed: Motion for New Trial and Memorandum in Support

Filed by: NEEDHAM, AARON DAVID TRENT

10-18-13 Filed: Return of Electronic Notification

10-29-13 Filed: Motion for Telephone Conference to Set Briefing Schedule

Filed by: TAYLOR, JACOB S

11-20-13 TELEPHONIC REVIEW scheduled on November 22, 2013 at 08:30 AM in  
Courtroom 3B with Judge PAYNE.

11-22-13 EVIDENTIARY HEARING scheduled on January 13, 2014 at 09:00 AM  
in Courtroom 3B with Judge PAYNE.

11-22-13 Notice - NOTICE for Case 101500067 ID 15603880

EVIDENTIARY HEARING is scheduled.

Date: 01/13/2014

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: A. LYNN PAYNE

11-22-13 Filed: Notice for Case 101500067 ID 15603880

11-22-13 Minute Entry - Minutes for TELEPHONIC REVIEW

Judge: A. LYNN PAYNE

PRESENT

Clerk: michellh

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): GORDON, BENJAMIN D

Sheriff Office#: 0320216

Audio

Tape Number: 3B Tape Count: 8:37/8:58

HEARING

Defendant's counsel has made a motion for a new trial. The State requests either an evidentiary hearing or a waiver signed by the defendant allowing the State to speak with the defendant's previous counsel.

Affidavits will be submitted by defense counsel showing the letter was not received.

Evidentiary hearing to be set 1/13/14 at 9:00 am with Judge Payne. Counsel to be notified of witnesses by 12/20/13.

12-20-13 Filed: Motion for Order Compelling Defendant's Former Counsel to Disclose Attorney-Client Communications

Filed by: TAYLOR, JACOB S

12-20-13 Filed: Memorandum in Opposition to Motion for New Trial

12-20-13 Filed: Notice of Witnesses for Evidentiary Hearing

12-20-13 Filed: Certificate of Service

01-02-14 Filed order: Order Compelling Defendant's Former Counsel to Disclose Attorney-Client Communications

Judge A. LYNN PAYNE

Signed January 02, 2014

01-13-14 Minute Entry - Minutes for Review Hearing

Judge: A. LYNN PAYNE

PRESENT

Clerk: michellh

Prosecutor: JACOB S TAYLOR

SCHEREE E WILCOX

Defendant not present

Defendant's Attorney(s): BENJAMIN D GORDON

Sheriff Office#: 0320216

Audio

Tape Number: 3B Tape Count: 8:43/9:02

HEARING

The evidentiary hearing has been continued and a telephonic review has been set. Judge Payne, Mr. Taylor and Scheree Wilcox are present by phone and Mr. Gordon appears.

The Court feels the issue guiding the request for the new trial is did the defendant voluntarily absent himself from the proceedings.

There is case law to support the fact that if Mr Needham did indeed voluntarily absent himself, a new trial would not be required.

All parties agree there needs to be an Evidentiary Hearing set for this matter. Mr. Gordon intends to reply to the State's memorandum. The evidentiary hearing to set for 3/17/14 at 9:00 a.m. for a full day. The court states Mr.

Gordon has until 1/31/14 to respond to the State's memorandum and all parties have until 1/31/14 to file any additional motions.

Courtesy copies of documents filed are to be sent directly to Judge Payne's home address.

CUSTODY

The defendant is present in the custody of the Department of Corrections.

01-13-14 Note: AARON DAVID TRENT NEEDHAM DEF Custody changed from Jail to Prison

01-24-14 EVIDENTIARY HEARING scheduled on March 17, 2014 at 09:00 AM in Courtroom 3B with Judge PAYNE.

01-24-14 Notice - NOTICE for Case 101500067 ID 15716084

EVIDENTIARY HEARING is scheduled.

Date: 03/17/2014

Time: 09:00 a.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: A. LYNN PAYNE

01-24-14 Filed: Notice for Case 101500067 ID 15716084

01-24-14 Note: EVIDENTIARY HEARING calendar modified.

02-27-14 Filed: Motion: Ex Parte Motion for Transport Order

Filed by: NEEDHAM, AARON DAVID TRENT

02-27-14 Filed: Order (Proposed): Order of Transportation

02-27-14 Filed: Return of Electronic Notification

02-28-14 Filed order: Order: Order of Transportation

Judge A. LYNN PAYNE

Signed February 28, 2014

02-28-14 Filed: Return of Electronic Notification

03-17-14 EVIDENTIARY HEARING continued to April 09, 2014 at 09:00 AM in  
Courtroom 3B with Judge PAYNE.

03-17-14 Note: Reason: Discovery problems. Defendant not transported  
from prison Court motion.

03-24-14 Filed: Motion: Ex Parte Motion for Transport Order

Filed by: NEEDHAM, AARON DAVID TRENT

03-24-14 Filed: Request/Notice to Submit - Ex Parte Motion for Transport  
Order

03-24-14 Filed: Order (Proposed): Order of Transportation

03-24-14 Filed: Return of Electronic Notification

03-31-14 Filed order: Order: Order of Transportation

Judge A. LYNN PAYNE

Signed March 31, 2014

03-31-14 Filed: Return of Electronic Notification

03-31-14 Note: TRANSPORT ORDER emailed to Prison transport and counsel.

04-09-14 Minute Entry - Minutes for EVIDENTIARY HEARING

Judge: A. LYNN PAYNE

PRESENT

Clerk: tippyl

Defendant

Defendant's Attorney(s): GORDON, BENJAMIN D

Sheriff Office#: 0320216

Audio

Tape Number: 3A Tape Count: 10:12-5:27

HEARING

This matter comes before the court for an Evidentiary hearing.



Mr. Needham appears in custody of the Utah State Prison via the Washington County Jail with his counsel, Mr. Ben Gordon.

Mr. Jacob Taylor appears on behalf of the State.

Mr. Gordon addresses the Court regarding Mr. Needham filing a complaint with the ACLU against past counsel including himself. At the request of the Court, Mr. Gordon reads the allegations specifically against himself.

Mr. Needham is sworn in under oath and addresses the Court's questions and states things have changed and he is fine with Mr. Gordon now. He does not think it affects Mr. Gordon's ability to represent him today.

The Court makes his findings after Mr. Needham waives his claim against Mr. Gordon and the Court will allow Mr. Gordon to proceed as counsel for Mr. Needham.

Counsel is still waiting for a couple of witnesses to appear because of delays on the road so the Court allows the witnesses to go out of order to accommodate for time.

Scheree Wilcox is sworn in and testifies on direct by Mr. Wilson. Cross Examination by Mr. Gordon.

Exhibits #1 and #2 are marked/offered/received.

Douglas D. Terry is sworn in and testifies on direct by Mr. Gordon. Cross examination by Mr. Taylor.

Exhibits #3 and #4 are marked/offered/received.

Aric Cramer is sworn in and testifies on direct by Mr. Taylor and Mr. Cramer identifies Mr. Needham for the record. Cross examination by Mr. Gordon.

Brook Karrington is sworn in and testifies on direct by Mr. Taylor and Ms. Karrington identifies Mr. Needham for the record. Cross examination by Mr. Gordon.

Exhibit #5 marked/offered/received.

12:28 PM Break for Lunch

1:48 PM Back on record, Ms. Karrington continues with testimony.  
Exhibit #6 marked/offered/received.

Aaron David Trent Needham is sworn in and testifies on direct by  
Mr. Gordon. Cross examination by Mr. Taylor. Exhibit #7  
marked/offered/received. Re-direct and Re-cross examination.

Mr. Taylor stipulates to testimony from Naomi Bell proffered by  
Mr. Gordon.

Both counsel state closing argument and rebuttal.

The Court makes his findings and denies the Rule 24/Brady issue  
and takes the other issue of ineffective counsel under advisement.

Discussion is held with Court and counsel.

Counsel to submit proposed order from today's hearing.  
CUSTODY

The defendant is present in the custody of the Department of  
Corrections.

04-14-14 Filed: Order (Proposed) Order Denying Motion for New Trial on  
Brady Issue

04-14-14 Filed: Return of Electronic Notification

05-27-14 Filed order: Ruling on the Defendant's Motion for a New Trial  
Judge A. LYNN PAYNE

Signed May 26, 2014

05-27-14 Filed: Other - Unsigned Order (Proposed) Order Denying Motion  
for New Trial on Brady Issue

05-27-14 Note: Ruling on Defendant's Motion for New Trial signed and  
entered.

05-27-14 Filed: Return of Electronic Notification

06-05-14 Filed: Notice of Appeal - Criminal

06-05-14 Filed: Return of Electronic Notification

06-06-14 Filed: Letter from Court of Appeals

06-06-14 Filed: Letter from Court of Appeals

06-09-14 Filed: Substitution of Counsel

06-09-14 Filed: Return of Electronic Notification

08-11-14 Filed: TRANSCRIPT for Hearing of 01-07-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 01-08-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 01-09-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 01-14-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 01-15-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 03-13-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 07-03-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 08-02-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 09-10-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 09-19-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 10-02-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 11-22-2013

08-11-14 Filed: TRANSCRIPT for Hearing of 01-13-2014

08-11-14 Filed: TRANSCRIPT for Hearing of 04-09-2014

11-20-14 Note: Appealed: Case #20140483

11-21-14 Filed: Clerk's Certificate/Judgment Roll and Index

11-21-14 Note: Transcripts sent to Utah Court of Appeals per request

11-28-14 Filed: Certified Mail Receipt - Court of Appeals

12-04-14 Filed: US Postal Service Certified Return Receipt

12-08-14 Filed: Clerk's Certificate/Judgment Roll and Index

01-15-15 Filed: Letter from Court of Appeals regarding appointed counsel

01-16-15 Note: Judicial assignment returned to original case Judge per  
TCE instruction.

01-16-15 Judge JOHN J WALTON assigned.

02-03-15 Filed order: Order and Notice of Case Referral to Original  
Judicial Assignment

Judge JOHN J WALTON

Signed February 03, 2015

02-18-15 15 MINUTE MOTION HEARING scheduled on February 26, 2015 at  
01:00 PM in Courtroom 3B with Judge WALTON.

02-18-15 Filed: Notice for Case 101500067 ID 16491883

02-18-15 Notice - NOTICE for Case 101500067 ID 16493367

15 MINUTE MOTION HEARING is scheduled.

Date: 02/26/2015

Time: 01:00 p.m.

Location: Courtroom 3B

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: JOHN J WALTON

02-18-15 SCHEDULING TELEPHONIC CONF Modified.

02-18-15 15 MINUTE MOTION HEARING scheduled on February 26, 2015 at  
01:00 PM in Courtroom 3B with Judge WALTON.

02-18-15 Filed: Notice for Case 101500067 ID 16493367

02-26-15 Minute Entry - Minutes for MOTION HEARING

Judge: JOHN J WALTON

PRESENT

Clerk: jeaneneh

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): NICOLAS D TURNER

Sheriff Office#: 0320216

Audio

Tape Number: 3B Tape Count: 1:00/1:21

Counsel present. Defendant appearing via video from Utah State  
Prison. Discussion held regarding counsels motion to withdraw due  
to conflict of interest. State points out that defendant has had  
numerous attorneys assigned to his case. Court denies motion to  
withdraw counsel. Court does not find counsel has or is doing  
anything wrong. Court finds based on Mr. Needham's history it  
would be futile to change counsel. Mr. Turner to file order

03-02-15 Filed: Motion to reject appointed counsel due to conflict of  
Interest and Motion to proceed Pro Se

04-16-15 Filed: Request for Hearing

04-16-15 Filed: Request/Notice to Submit for Decision

04-16-15 Filed: Return of Electronic Notification

04-16-15 Filed order: Order of Judicial Assignment

Judge JOHN J WALTON

Signed April 16, 2015

04-16-15 Judge G MICHAEL WESTFALL assigned.

Printed: 03/21/16 08:21:51

Page 60

04-29-15 Notice - NOTICE for Case 101500067 ID 16647952

MOTION HEARING is scheduled.

Date: 05/07/2015

Time: 09:00 a.m.

Location: Courtroom 3C

St. George Courthouse

206 West Tabernacle

St. George, UT 84770

Before Judge: G MICHAEL WESTFALL

The above Motion Hearing is set to hear the Motion to Reject Appointed Counsel Due to a Conflict of interest and Motion to Proceed Pro Se filed by defendant, pro se on March 2, 2015.

04-29-15 MOTION HEARING scheduled on May 07, 2015 at 09:00 AM in Courtroom 3C with Judge WESTFALL.

04-29-15 Filed: Notice for Case 101500067 ID 16647952

04-29-15 Filed: Court's Ruling re: Deft's Motion to reject appointed counsel due to conflict of Interest and Motion to proceed Pro Se. Per Judge Westfall - set for hearing on 5/7/15 at 9:00am and send notice.

05-06-15 Filed: Request Upon The Court That a Copy of Appellate Counsel Withdrawal Petition Be Available For Court Hearing

05-07-15 Minute Entry - Minutes for MOTIONS HEARING

Judge: G MICHAEL WESTFALL

PRESENT

Clerk: tippyl

Prosecutor: JACOB S TAYLOR

Defendant

Defendant's Attorney(s): NICOLAS D TURNER

Sheriff Office#: 0320216

Audio

Tape Number: 3C Tape Count: 9:30-10:01

This matter comes before the Court to hear the motion to reject appointed counsel due to a conflict of interest and motion to proceed pro se filed by the Defendant.

Mr. Needham appears in custody of the Utah State Prison with Mr.

Nic Turner as counsel.

Mr. Jacob Taylor appears on behalf of the State of Utah.

The Court addresses a manilla envelope was delivered to his desk late yesterday afternoon. The Court has not opened the envelope but opens it now and states there is paperwork regarding a civil case which does not belong to the case that is before the Court today.

Mr. Needham states he wanted to hear those issued today also. Mr. Turner addresses the last hearing before Judge Walton where he ordered the attorney appointment and having Mr. Needham proceed with Mr. Turner as counsel.

Mr. Needham responds and addresses the a particular witness.

Mr. Taylor responds and states Mr. Needham is talking about the civil law suit with this witness.

The Court addresses Mr. Needham regarding the civil case being dismissed and the current case we are here today for being prosecuted by the State of Utah.

Mr. Turner addressed some issues/claims Mr. Needham wants to present to the Court of Appeals that was not addressed at the trial so it will not be considered along with the appeal in this case.

The Court agrees and notifies Mr. Needham if he continues to file things that are knowingly filed wrong in the Court of Appeals they may sanction him and/or his counsel.

The Court denies the removal of Mr. Turner as court appointed counsel and Mr. Turner to remain on the case.

Mr. Turner notifies the Court he will file an Andres brief and he is willing to file anything for Mr. Needham as long he understands he is filing the Andres brief. Mr. Turner notifies Mr. Needham briefly about the Andres brief, if Mr. Needham wants to file

something but I have advised him not to do so. Mr. Turner is concerned the defendant will continue to file a conflict with counsel and try to postpone the issues further.

Mr. Needham responds that he understands that counsel may and will advise him throughout the appeal and the completion of the case, that they may not agree with each other.

The Court inquires of Mr. Taylor if there is anything today that has been done or said that may conflict with the proceedings with the Court of Appeals?

Mr. Taylor responds he can't take any position either way.

Mr. Needham requests the manilla envelope with the civil case #060501877 papers be kept as record in this case. Mr. Needham requests if they are kept in this case that is is only part of this hearing not a part of the record for the Court of Appeals.

The Court grants the request and the envelope will be entered in as Defendant's exhibit #1.

The Court

#### CUSTODY

The defendant is present in the custody of the Department of Corrections.

05-07-15 Filed: Exhibit List

05-13-15 Filed: Order (Proposed) Denying Defense Counsels Motion to Withdraw

05-13-15 Filed: Return of Electronic Notification

05-18-15 Notice - Final Exhibit List

05-18-15 Notice - Final Exhibit List

05-28-15 Filed order: Order Denying Defense Counsels Motion to Withdraw

Judge G MICHAEL WESTFALL

Signed May 28, 2015

05-28-15 Filed: Return of Electronic Notification

06-02-15 Fee Account created Total Due: 10.00

06-02-15 AUDIO TAPE COPY Payment Received: 10.00

06-16-15 Filed: Order (Proposed) to Proceed with Appointed Counsel and

Denying Motion to Proceed Pro Se

06-16-15 Filed: Return of Electronic Notification

06-19-15 Filed order: Order to Proceed with Appointed Counsel and

Denying Motion to Proceed Pro Se

Judge G MICHAEL WESTFALL

Signed June 19, 2015

06-19-15 Filed: Return of Electronic Notification

07-21-15 Filed: Notice of Withdrawal of Counsel

07-21-15 Filed: Return of Electronic Notification

07-29-15 Filed: Motion on Hearing to Proceed

Filed by: NEEDHAM, AARON DAVID TRENT

07-29-15 Filed: Witness List

07-29-15 Filed: CounterClaim to Dismissal of Recusal Motion

10-27-15 Filed: Court of Appeals - DEF's request for a supplemental record with exhibits.

11-05-15 Filed: Clerk's Certificate Judgment Roll Index re Supplemental Record (beginning with document 1163)

11-05-15 Note: Files sent to Court of Appeals via certified mail Tracking 7010 1670 0001 9407 3374. (1 supplemental red file, 3 exhibit envelopes)

11-16-15 Filed: Certified Mail Return Receipt - Court of Appeals  
11-13-15

12-01-15 Filed: Motion for Release of Record and Transcripts

Filed by: STATE OF UTAH ATTORNEY GENERAL,

12-01-15 Filed: Order (Proposed) Releasing Record and Transcripts

12-01-15 Filed: Return of Electronic Notification

12-07-15 Filed order: Order Releasing Record and Transcripts

Judge G MICHAEL WESTFALL

Signed December 07, 2015

12-07-15 Filed: Return of Electronic Notification

01-22-16 Note: Called Daniel Boyer (AG) and left a message that the file has been sent to the Court of Appeals.



# EXHIBIT 14

Wade Farroway's  
Letter to  
Nathan Reeve

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF  
ATTORNEY GENERAL

JOHN E. SWALLOW  
Chief Deputy

*Protecting Utah • Protecting You*

KIRK TORGENSEN  
Chief Deputy

August 23, 2011

Nathan Reeve, Esq.  
SANDERS, RUESCH & REEVE  
55 South 300 West, #1  
Hurricane, UT 84737

*Re: State of Utah vs. Aaron Needham*

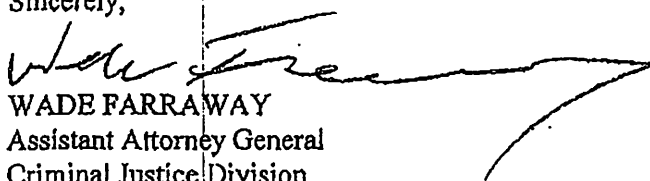
Dear Nathan:

Given our upcoming status hearing on October 25, 2011 before Judge Walton, the time required to prepare this case for a possible two-week trial, as well as the time required for Agent Terry Powell to continue with the further investigation of this matter as we had agreed, leads me to believe that settlement may be a proper option.

In looking at a two week trial and the expense involved for both your client as well as the State, little will be gained given your client's current disability and ability to pay. As a result, I would be willing to consider any proposed settlement you believe to be fair, short of dismissal.

If you could respond to this letter on or before September 1, 2011, it would be much appreciated. You can contact me or Scheree at the following email addresses:  
[sewilcox@utah.gov](mailto:sewilcox@utah.gov) or [wfarroway@utah.gov](mailto:wfarroway@utah.gov).

Sincerely,

  
WADE FARRAWAY  
Assistant Attorney General  
Criminal Justice Division

WF/sw

# **EXHIBIT 15**

**Complaint from DOPL**

**Filed 2003**

**2005 License**

**(To Be Presented in Court)**

# **EXHIBIT 16**

**Complaint from DOPL**

**Filed 2006**

**2007 License**

D. T. Development  
P.O. BOX 910397  
St. George, Utah 84791  
Phone: 435-674-9220  
Fax: 435-674-4049

facsimile transmittal

To: Kurt Faux

Fax: (702) 458-5794

From: AARON

DATE: 6/29/04

Re:

Pages: (8) including this pg

CC:

☒ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

Notes

Here's a copy of the  
joint venture contract Bonneville  
had prepared & the DOPC stipulation  
agreement.

Thank  
you  
Aaron

L. MITCHELL JONES #5979  
Assistant Attorney General  
MARK L. SHURTLEFF #4666  
Heber M. Wells Building - 5<sup>th</sup> floor  
160 East 300 South - P.O. Box 140872  
Salt Lake City, Utah 84114  
Telephone: (801) 366-0310

**BEFORE THE CONSTRUCTION SERVICES COMMISSION**  
**OF THE DEPARTMENT OF COMMERCE**  
**OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF  
D. T. DEVELOPMENT, INC.  
TO ACT AS A CONTRACTOR  
IN THE STATE OF UTAH

)  
)  
)  
)

**STIPULATION AND ORDER**  
Case No. DOPL-2003-230

**STIPULATION**

D. T. DEVELOPMENT, INC. ("Respondent"), and the **CONSTRUCTION SERVICES COMMISSION** ("Commission") of the Department of Commerce stipulate and agree as follows:

1. Respondent admits the jurisdiction of the Commission over it and over the subject matter of this action.
2. Respondent is a Utah Corporation. AARON D. T. NEEDHAM is its president and is authorized to act on its behalf.
3. Respondent acknowledges it enters into this Stipulation knowingly and voluntarily.

4. Respondent understands that it may be represented by an attorney in this matter. By signing this Stipulation Respondent acknowledges it has consulted with legal counsel or has waived its right to do so.

5. Respondent understands it is entitled to a hearing before the Commission at which time it may present to the Commission evidence on its behalf, present its own witnesses and confront adverse witnesses. Respondent acknowledges that by executing this document, it waives: (1) the right to a hearing before the Commission, (2) the right to present evidence on its behalf, (3) the right to present its own witnesses, and (4) the right to confront adverse witnesses, together with such other rights to which it may be entitled in connection with said hearing.

6. Respondent waives the right to issuance of a Notice of Agency Action.

7. Respondent acknowledges this Stipulation and Order, if adopted by the Commission, will be classified as a public document and may be released to other persons and entities.

8. Respondent admits it violated Utah Code Ann. §68-55-501 (1). In particular, Respondent admits the following:

a. Respondent's license as a (R-100) Residential Small Commercial Building Contractor expired July 31, 2003 for failure to renew the license. From August 1, 2003 to August 26, 2003 respondent acted as a contractor without a current license by performing construction work on the following job locations:

- 1) West Terrace Lot #12
- 2) Huntington Lot #109
- 3) Sage Hollow Lot #18
- 4) Red Mesa Lot #1
- 5) Red Mesa Lot #2
- 6) Red Mesa Lot #10

Subject was issued citation #14880 which included a \$200.00 fine and a Cease and Desist Order.

b. On September 22, 2003, at Red Mesa Lot #7, Respondent's employees were found installing footings and foundation for a new home to be built on that location. Respondent was issued citation #15335 which included a \$600 fine and a Cease and Desist Order.

c. On October 23, 2003 Respondent's employees were found at Red Mesa Lot #2 performing finish work and painting. Respondent had Nielson Door and Hardware, a sub-contractor at this location installing hardware. Respondent was issued a Stop Work Order by the Santa Clara City Building Inspector.

9. Respondent, therefore, acknowledges a basis exists to act against its license pursuant to Utah Code Ann. 58-1-401(2)(a) and (b), which provides:

(2) The division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases:

- (a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title; [or]
- (b) engaged in unlawful conduct as defined by statute or rule under this title[.]

10. Respondent agrees, therefore, that the Commission may enter an Order providing for the following:

- and  
2/2/05
- a. The residual right to Respondent's expired license is revoked and Respondent shall pay a civil fine to the Division in the amount of \$60,000.00. However, the Revocation of the license shall be stayed and \$57,000.00 of the fine shall be suspended conditioned upon strict compliance with the following terms and conditions:



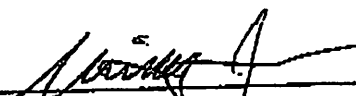
- i. The remaining \$3,000.00 of the fine shall be paid in full 30 days of the date of this Order.
- ii. Respondent shall Cease and Desist from acting as a contractor until such time as he becomes licensed to do so in the State of Utah.
- iii. Respondent is in the process of attempting to renew its license as a contractor in Utah. Upon successful completion of the renewal process, Respondent agrees its license shall be placed on probation until the end of the renewal cycle ending July 31, 2007, conditioned upon strict compliance with the terms and conditions contained herein.
- iv. If respondent's license is renewed Respondent must maintain a current license at all times during the period of probation.
- v. Respondent shall obey all statutes and rules of the Utah Construction Trades Licensing Act and the construction industry.
- vi. Should Respondent be arrested or charged with a criminal offense by any law enforcement agency for any reason, Respondent agrees to cause the Division to be notified immediately.
- vii. Should Respondent not be engaged in its licensed profession during its probationary period for a consecutive period of more than sixty (60) days, that period shall not apply to the reduction of probation, though the terms of probation shall remain applicable.
- viii. Respondent shall immediately notify the Division, in writing, of any changes of address.
- ix. In the event Respondent violates or fails to fulfill any terms or conditions as contained in this Stipulation above, Respondent will owe the suspended portion of the above-mentioned fine. The Division may, in addition to taking action as provided for herein, after giving Respondent notice and the opportunity to be heard, revoke probation and impose any sanction stayed thereby, and otherwise proceed against Respondent under applicable law. If a complaint or petition to revoke probation is filed against Respondent during probation, the period of probation and all relevant probationary terms and conditions shall be extended until the matter is final.

11. This Stipulation and Order is effective upon the signature of the Respondent and is the final compromise and settlement of this matter. Respondent acknowledges that the Commission and Director are not required to accept the terms of this Stipulation and Order and that if they do not do so, the Stipulation will cease to be in effect. The Respondent hereby waives any claim of bias or prejudgment it might have with regard to the Commission and Director by virtue of having reviewed this Stipulation.

12. This document constitutes the entire agreement between the parties and supersedes any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements, which modify, interpret, construe or affect this Stipulation.

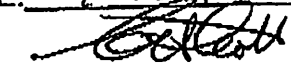
DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING

DATE: 31 Oct 2003

BY:   
L. Mitchell Jones

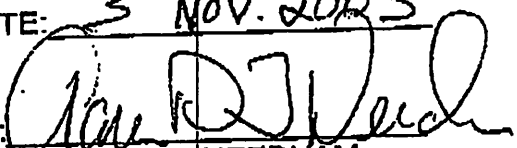
Assistant Attorney General

DATE: 10/31/03

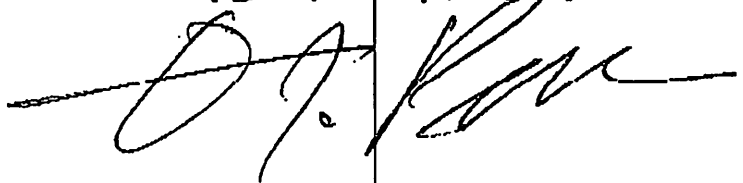
BY:   
Craig Cottle  
Bureau Manager

RESPONDENT

DATE: 3 Nov. 2003

BY:   
AARON D. T. NEEDHAM,  
President  
D. T. DEVELOPMENT, INC.

SIGNATURE WITNESSED  
BY ORAN J. PECK 11-3-03



**ORDER**


THE STIPULATION ABOVE, in the matter of D. T. DEVELOPMENT, INC., is approved by the Construction Services Commission and constitutes its Findings of Fact and Conclusions of Law in this matter. The terms and conditions of the Stipulation are incorporated herein and constitute the Commissions final Order in this case.

DATED this 26<sup>TH</sup> day of NOVEMBER, 2003.

  
\_\_\_\_\_  
COMMISSION

I concur with the above Stipulation and Order, dealing in the matter of which has been approved by the Construction Services Commission

DATED this 26<sup>TH</sup> day of November, 2003.

  
\_\_\_\_\_  
J. CRAIG JACKSON, Director  
Division of Occupational  
and Professional Licensing

# **EXHIBIT 17**

**John Tebbs  
Trial Testimony  
Regarding  
\$200,000**

**\$200,000 Statement**  
**Page 256 Lines 1-15**  
**Page 257 Lines 1-10**

1 closed on, the Cedar City lots and a few things. No profit,  
2 just the money we had in, we'd get it back. I said, How does  
3 that solve anything? That doesn't generate new or additional  
4 money to pay the \$200,000. It just gets us divested.

5 Q And when you say the \$200,000, what are you  
6 referring to?

7 A The \$200,000 that he stole from the La Scala lots  
8 and gave to Leonard McKneely.

9 Q And what about the other funds that - concerning  
10 other lots?

11 A Well, we had - when I say we, excuse me, talking in  
12 behalf of my father. These couple of lots in Cedar City, he  
13 had - my dad had closed on those and had closed on two lots  
14 in River Hollow here in St. George. And there's another lot  
15 in Bloomington Hills that he'd closed on. And he had under  
16 contract 13 acres in Little Valley. These are all - we've  
17 got a plan going, we're moving ahead, trying to get some lots  
18 out ahead of the plan, and Aaron came and said, Well, I can  
19 get you some money. I'll have somebody come buy all those  
20 lots that you've bought that we were going to do stuff off,  
21 and you can have that money. Well, that doesn't - that just  
22 gives us the money that we invested in back out. It doesn't  
23 find new moneys to pay us back for the \$200,000. It was a  
24 senseless plan. He thought if we got some money back from  
25 money we'd invested, we'd feel good. And that's why I was

1 going to chal - I was trying to explain to him, we need to  
2 make a profit. You need to make a profit, extra money  
3 somewhere to pay back the \$200,000 you stole from us and gave  
4 to Leonard.

5 Q The 200 -

6 A And he was having a hard time getting that. And I  
7 - I think selectively, he didn't like me saying that, because  
8 it really - it really called it the way it was.

9 Q I think you testified to this, but did he  
10 previously promise to pay back that \$200,000?

11 A Yes. "Don't worry about it, everything will be  
12 fine." He has a very nice personality, but it's deceiving.

13 Q I want to ask you just a few more questions based  
14 on questions that Mr. Terry asked you, and one of the things  
15 that he said to you was, You're cutting the checks to Leonard  
16 McKneely. Did you or Bonneville ever cut checks, prepare  
17 checks, and give them to Leonard McKneely?

18 A Well, did we ever? I mean these checks were all  
19 written by Brydie.

20 Q Right.

21 A On BACT's side.

22 Q Besides -

23 A But -

24 Q Besides those checks and those documents?

25 A Because I have an expertise in this, some of the

**\$776,000 Statement**

**Page 92 Line 8**



# **EXHIBIT 18**

**Jolie Bown  
Trial Testimony  
Regarding  
\$776,000**

1 money.

2 Q And was this - where was the meeting?

3 A At the BACT office.

4 Q And did Aaron Needham admit anything - admit  
5 anything more, or - what did he say at the meeting?

6 A He said that - I told him that I had figured out an  
7 amount that I thought was missing, and knew that was missing,  
8 and I wanted to know what he did with the \$776,000.

9 Q Okay, so up until this point, had - had - what had  
10 you been doing between the August 11<sup>th</sup> meeting and this  
11 meeting on October 24<sup>th</sup>?

12 A I was putting everything together on the computer.

13 Q And when you say everything, what -

14 A All the accounting.

15 Q Okay.

16 A What money had been spent on the jobs.

17 Q Is this in addition to calling subcontractors?

18 A Oh, yes. Yeah.

19 Q Okay. By the way, were letters also sent to  
20 subcontractors?

21 A Yes.

22 Q So how much of a project - if you could describe,  
23 how much of a project was it to undertake all this?

24 A It was three months. Two months.

25 Q Okay, how much -

# **EXHIBIT 19**

**Copy of  
Lis Pendens  
2006**

To Brad Hansen  
702-488-5794

4  
2nd  
206

Michael D. Roberts (7607)  
MICHAEL D. ROBERTS, P.C.  
310 East 4500 South, Suite 100  
Salt Lake City, Utah 84107  
Telephone: (801)355-4800  
Fax: (801)747-1667  
Attorney for Plaintiff  
File No. 606009.03

00541105

Lis Pendens #: 1851 F; 1834 Fee \$35.88  
Patty Cutler, Iron County Recorder Page 1 of 4  
11/2/08 2:54 PM By MICHAEL D. ROBERTS

FIFTH DISTRICT COURT, ST. GEORGE DEPARTMENT  
WASHINGTON COUNTY, STATE OF UTAH

BACT, a Limited Partnership,

Plaintiff,

v.

AARON NEEDHAM,  
JOHN P. GREALISH,  
DT DEVELOPMENT, INC.,  
NEEDHAM HOMES, INC.,  
NEEDHAM HOMES & DEVELOPMENT,  
INC.,  
KILAUEA PROPERTIES, LLC,  
LMM DEVELOPMENT, INC.,  
CHERYL A. MOUNT,  
BILLY MOUNT, and  
JOHN DOES I - 100,

Defendants.

LIS PENDENS

Case No. 060501877

Judge James D. Shumate

TO WHOM IT MAY CONCERN:

Please take notice that the above-captioned case has been filed in the Fifth District Court of Washington County, State of Utah, against the above-named defendants. The object and purpose of this suit is to quiet title to real property, including that described below. Other causes of action asserted in the lawsuit are breach of contract, unjust enrichment, breach of implied



covenant of good faith and fair dealing, conversion, breach of fiduciary duty, constructive trust, equitable lien, accounting, deceit and civil conspiracy, fraud, and punitive damages.

Any and all parties seeking to acquire or alienate any interest in the above-described property should take notice of the pendency of this action.

The parcels of real property affected by this action located in Iron County are described as follows:

3D Parcel One: Lot 3, Block D, West View Estates Subdivision, Phase III.

Tax Parcel D-1209-D-3.

McC Parcel Two: Lot 16, Block "C", West View Estates Subdivision, Phase III.

Tax Parcel D-1209-000C-0016.

ED Parcel Three: Lot 8, Block "D", West View Estates Subdivision, Phase III.

Tax Parcel D-1209-000D-0008.

lephio Parcel Four: Lot 6, Equestrian Points Subdivision, Phase 10.

Tax Parcel B-1813-0006.

3E Parcel Five: Lot 3, Block E, West View Estates Subdivision.

Tax Parcel D-1209-000E-0003.

18F Parcel Six: Lot 18, Block F, West View Estates Subdivision, Phase 3.

Tax Parcel D-1209-000F-0018.

2E Parcel Seven: Lot 2, Block E, West View Estates Subdivision, Phase III.

Tax Parcel D-1209-000E-0002.

9 SC Parcel Eight: Lot 9, Sunset Canyon Estates, Phase 4.

Tax Parcel B-1858-0009-0000.

00541105

Lia Pendora B/ 1881 P: 1835 Fee 336.00  
Patsy Cutler, Iron County Recorder Page 2 of 4  
11/27/08 12:54 PM By MICHAEL D ROBERTS



2F

Parcel Nine: Lot 2, Block "F", West View Estates Subdivision, Phase III.

Tax Parcel D-1209-000X-0002.

8 PH 10

Parcel Ten: Lot 8, Equestrian Points, Phase 10. Tax Parcel B-1813-008.

Parcel Eleven: Lot 21, Block B, Westview Estates Subdivision, Phase III.

Tax Parcel D-1209-B-21.

lot 2 D

Parcel Twelve: Lot 2, Block D, West View Estates Subdivision, Phase III.

Tax Parcel D-1209-D-2.

9 PH 12

Parcel Thirteen: Lot 9, Equestrian Points Subdivision, Phase 10.

Tax Parcel B-1813-0009.

6D

Parcel Fourteen: Lot 6, Block D, Westview Estates Subdivision, Phase III.

Tax Parcel D-1209-D-6.

10SC

Parcel Fifteen: Lot 10, Sunset Canyon Estates, Phase 4.

Tax Parcel B-1858-0010-0000.

16C

Parcel Sixteen: Lot 16, Block "C", West View Estates Subdivision, Phase III.

Tax Parcel D-1209-000C-0016.

8F

Parcel Seventeen: Lot 8, Block "D", West View Estates Subdivision, Phase III.

Tax Parcel D-1209-000D-0008.

4A

Parcel Eighteen: Lot 4, Block A, West View Estates Subdivision, Phase II.

Tax Parcel D-1207-A-4.

Parcel Nineteen: Lot 27, The Trails at Navajo Subdivision, Phase 2-A.

Tax Parcel A-1184-27.

00541105

Lin Penders R: 1881 P: 1838 Fee \$38.00 Page 1 of 4  
PATEY CUBBER Iron County Recorder  
11/27/85 12:54 PM By MICHAEL G ROBERTS

Parcel Twenty: Lot 36, The Trails at Navajo Subdivision, Phase 2-A.

Tax Parcel A-1184-0036-0000.

Parcel Twenty-one: The West 6 rods of Lot 4, Block 3, Plat A, and the West 6 rods of Lot 1, Block 1 South, Plat B, Parowan City Survey. Tax Parcel A-0051-0000-0000.

Dated this 31 day of October, 2006.

MICHAEL D. ROBERTS, P.C.

*Michael D. Roberts*

Michael D. Roberts

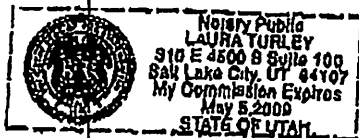
STATE OF UTAH }

COUNTY OF SALT LAKE }

On the 31 day of October, 2006, personally appeared before me Michael D. Roberts, the signer of the foregoing Lis Pendens who duly acknowledge to me that he execute the same.



*[Signature]*  
NOTARY PUBLIC



00541105

Lis Pendens R: 1081 P: 1037 Fee \$38.00  
Paley Cutler, Iron County Recorder Page 4 of 4  
11/2/06 12:54 PM By MICHAEL D ROBERTS



FIFTH DISTRICT COURT-ST GEORGE  
WASHINGTON COUNTY, STATE OF UTAH

BACT LP vs. AARON NEEDHAM

CASE NUMBER 060501877 Contracts

CURRENT ASSIGNED JUDGE  
JAMES L SHUMATE

PARTIES

Plaintiff - BACT LP  
Represented by: MICHAEL D ROBERTS

Defendant - AARON NEEDHAM

Defendant - DT DEVELOPMENT INC

Defendant - NEEDHAM HOMES INC

Defendant - NEEDHAM HOMES AND DEVELOPMENT

Defendant - KILAUEA PROPERTIES INC

Defendant - LMM DEVELOPMENT INC

Defendant - CHERYL A MOUNT

Defendant - BILLY MOUNT

Defendant - JOHN DOES 1-100

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	155.00
	Amount Paid:	155.00
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: COMPLAINT 10K-MORE	Amount Due:	155.00
	Amount Paid:	155.00
	Amount Credit:	0.00
	Balance:	0.00

CASE NOTE



Printed: 11/14/06 12:44:21

Page 1

CASE NUMBER 060501877 Contracts

---

PROCEEDINGS

10-10-06 Case filed

10-10-06 Judge SHUMATE assigned.

10-10-06 Filed: Complaint 10K-MORE

10-10-06 Fee Account created

Total Due: 155.00

10-10-06 COMPLAINT 10K-MORE

Payment Received: 155.00

Note: Code Description: COMPLAINT 10K-MORE, Mail Payment:

10-11-06 Tracking started for Other. Review date Apr 06, 2007.

Printed: 11/14/06 12:44:21

Page 2 (last)

# **EXHIBIT 20**

## **Filing of Release Of Lis Pendens**

Kurt C. Faux, Esq.  
Utah Bar No. 4977  
FAUX & ASSOCIATES, P.C.  
2785 East Desert Inn Road, Suite 270  
Las Vegas, Nevada 89121  
(702) 458-5790  
Attorneys for Defendants  
AARON NEEDHAM, NEEDHAM HOMES, INC.,  
KILAUEA PROPERTIES, LLC AND DT DEVELOPMENT, INC.

IN THE FIFTH DISTRICT COURT, ST. GEORGE DEPARTMENT,  
WASHINGTON COUNTY, STATE OF UTAH

ASSOCIATES, P.C.

EAST DESERT INN ROAD  
270  
VEGA, NEVADA 89121  
TEL: (702) 458-5790  
FAX: (702) 458-5794

BACT, A Limited Partnership,

Plaintiff,

vs.

AARON NEEDHAM,  
JOHN P. GREALISH,  
DT DEVELOPMENT, INC.,  
NEEDHAM HOMES, INC.,  
KILAUEA PROPERTIES LLC,  
LLM DEVELOPMENT, INC.  
CHERYL A. MOUNT  
NEEDHAM HOMES & DEVELOPMENT  
BILLY MOUNT AND JOHN DOES 1-100

Defendants.

CIVIL NO. :060501877  
JUDGE :James D. Shumate

AFFIDAVIT OF AARON NEEDHAM IN SUPPORT  
OF RELEASE OF LIS PENDENS

STATE OF UTAH )  
COUNTY OF WASHINGTON ) : ss

AARON NEEDHAM, being first duly sworn upon oath, deposes and says that:

1. On behalf of DT Development I entered in to business relationship wherein

Clement Tebbs representing Plaintiff BACT, LLP.

2. While a business relationship existed in the past between Affiant representing DT Development and BACT, LLP, the properties that are listed on Plaintiff's Lis Pendens have absolutely no relationship to BACT, LLP. Development of all of these properties began well after the relationship with BACT, LLP ended on or about November 8, 2006.

2. As President of DT Development Inc. and Needham Homes, Inc., Affiant is familiar with the construction projects and lenders for the various projects and the funding sources.

3. Plaintiff BACT LLP attached a Lis Pendens to numerous properties in which it never contributed any amount of funding towards and has no claim to title or proceeds from the sale of said properties. True and correct copies of the lending documents are attached hereto as Exhibit "1". The properties/projects subject to the Lis Pendens did not even originate until well after BACT LLP ended.

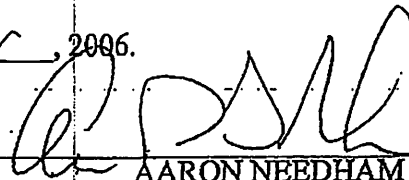
4. Affiant has already been irreparably damaged by Plaintiff's Lis Pendens which clouded title and forced a buyer to rescind a sales transaction. Numerous other impending sales transactions also will not go through because of the Lis Pendens.

5. It has been necessary for Affiant to obtain the services of an attorney to defend my claim and to expend costs necessary to release the Lis Pendens.

8. Affiant specifically requests that Judgment be entered as set forth in the Affidavit of Kurt C. Faux In Support of Release of Lis Pendens together with interest at the legal rate.

Further Affiant sayeth naught.

DATED this 30 day of November, 2006.

  
AARON NEEDHAM

SUBSCRIBED and SWORN to before me  
on this 30th day of November, 2006.

ASSOCIATES, P.C.

EAST WILSON ROAD

270

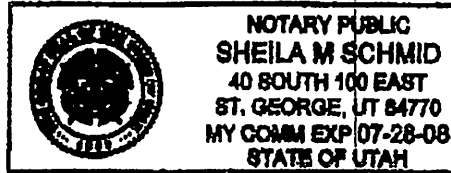
VEG. 89121

TEL. (602) 458-5790

F. (602) 458-5794

*Sheila M. Schmid*

NOTARY PUBLIC



: ASSOCIATES, P.C.

EAST DESERT INN ROAD

270

VEG. NVADA 89121

TEL: (702) 458-5790

FAX: (702) 458-5794

# EXHIBIT 21

Judge Shumate's  
Order  
Ruling to Release  
Lis Pendens

P 4  
206

KENNETH B. GRIMES (6555)  
Attorney for Plaintiff  
4885 South 900 East, Suite 211  
Salt Lake City, Utah 84117  
Telephone: (801) 266-6816  
File No. 606009.03

00544219

Rel of Lis Pendens B: 1089 P: 0652 Fee \$36.00  
Patsy Cutler Iron County Recorder Page 1 of 4  
12/29/05 10:42 AM By KENNETH B GRIMES



FIFTH DISTRICT COURT, ST. GEORGE DEPARTMENT

WASHINGTON COUNTY, STATE OF UTAH

\*\*\*\*\*

BACT, a Limited Partnership,

:

RELEASE OF LIS PENDENS

Plaintiff,

:

vs.

:

AARON NEEDHAM; JOHN P.  
GREALISH; DT DEVELOPMENT,  
INC.; NEEDHAM HOMES; INC.  
NEEDHAM HOMES &  
DEVELOPMENT, INC.; KILAUEA  
PROPERTIES, LLC; LMM  
DEVELOPMENT, INC.; CHERYL  
MOUNT; BILLY MOUNT; and  
JOHN DOES 1-100,

:

:

:

:

Case No. 060501877

Defendants.

:

Judge James D. Shumate

\*\*\*\*\*

TO WHOM IT MAY CONCERN:

The above-named Plaintiff, by and through its undersigned attorney of  
record, hereby releases and discharges the Lis Pendens, dated October 31, 2006

and filed in the office of the Iron County Recorder on November 2, 2006, as entry No. 00541105.

The parcels of real property affected by this action located in Iron County are described as follows:

**Parcel One: Lot 3, Block D, West View Estates Subdivision, Phase III.**

**Tax Parcel D-1209-D3.**

**Parcel Two: Lot 16, Block "C", West View Estates Subdivision, Phase III.**

**Tax Parcel D-1209-000C-0016.**

**Parcel Three: Lot 8, Block "D", West View Estates Subdivision, Phase**

**III. Tax Parcel D-1209-000D-0008.**

**Parcel Four: Lot 6, Equestrian Pointe Subdivision, Phase 10. Tax Parcel**

**B-1813-0006.**

**Parcel Five: Lot 3, Block E, West View Estates Subdivision. Tax Parcel**

**D-1209-000E-0003.**

**Parcel Six: Lot 18, Block F, West View Estates Subdivision, Phase 3. Tax**

**Parcel D-1209-000F-0018.**

**Parcel Seven: Lot 2, Block E, West View Estates Subdivision, Phase III.**

**Tax Parcel D-1209-000E-0002.**

**Parcel Eight: Lot 9, Sunset Canyon Estates, Phase 4. Tax Parcel B-1858-**

**0009-0000.**

**Parcel Nine: Lot 2, Block "F", West View Estates Subdivision, Phase III.**

**Tax Parcel D-1209-000F-0002.**

**00544219**

Rel of Lia Pendens B: 1069 P: 0653 Fee \$36.00  
Patsy Cutler, Iron County Recorder Page 2 of 4  
12/29/06 10:42 AM By KENNETH B GRIMES





Parcel Ten: Lot 8, Equestrian Pointe Subdivision, Phase 10. Tax Parcel B-1813-008.

Parcel Eleven: Lot 21, Block B, Westview Estates Subdivision, Phase III. Tax Parcel D-1209-B-21.

Parcel Twelve: Lot 2, Block D, West View Estates Subdivision, Phase III. Tax Parcel D-1209-D-2.

Parcel Thirteen: Lot 9, Equestrian Pointe Subdivision, Phase 10. Tax Parcel B-1813-0009.

Parcel Fourteen: Lot 6, Block D, West View Estates Subdivision, Phase III. Tax Parcel D-1209-D-6.

Parcel Fifteen: Lot 10, Sunset Canyon Estates, Phase 4. Tax Parcel B-1858-0010-0000.

Parcel Sixteen: Lot 16, Block "C", West View Estates Subdivision, Phase III. Tax Parcel D-1209-000C-0016.

Parcel Seventeen: Lot 8, Block "D", West View Estates Subdivision, Phase III. Tax Parcel D-1209-000D-0008.

Parcel Eighteen: Lot 4, Block A, West View Estates Subdivision, Phase II. Tax Parcel D-1207-A-4.

Parcel Nineteen: Lot 27, The Trails at Navajo Subdivision, Phase 2-A. Tax Parcel A-1184-27.

Parcel Twenty: Lot 36, The Trails at Navajo Subdivision, Phase 2-A. Tax Parcel A-1184-0036-0000.

**00544219**

Rel of Lis Pendens B: 1069 P: 0654 Fee \$36.00  
Patsy Cutler, Iron County Recorder Page 3 of 4  
12/25/05 10:42 AM By KENNETH B GRIMES



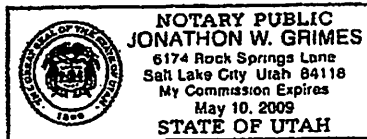
Parcel Twenty-One: The West 6 rods of Lot 4, Block 3, Plat A, and the  
West 6 rods of Lot 1, Block 1 South, Plat B, Parowan City Survey. Tax Parcel A-  
0051-0000-0000.

Dated this 26<sup>th</sup> day of December, 2006.

Kenneth B. Grimes  
Kenneth B. Grimes  
Attorney for Plaintiff

STATE OF UTAH }  
COUNTY OF SALT LAKE }

On the 26 day of December, 2006, Kenneth B. Grimes personally  
appeared before me and signed and acknowledged the foregoing Release of Lis  
Pendens.



[Signature]  
NOTARY PUBLIC, residing in:  
Salt Lake County, Utah

**00544219**

Rel of Lis Pendens B: 1069 P: 0655 Fee \$38.00  
Patsy Cutler, Iron County Recorder Page 4 of 4  
12/29/06 10:42 AM By KENNETH B GRIMES



# **EXHIBIT 22**

**Iron County  
Release**

**December 2006**

(To be Presented in Court)

# EXHIBIT 23

## Appellate Brief

# UTAH COURT OF APPEALS

Appellate Brief

Case NO 101500067

Appellate Case NO: 20140483

LAURA B DUPAIX  
Assistant Attorney General  
1160 EAST 300 South 6<sup>th</sup> Floor  
P.O. Box 140854  
Salt Lake City UT. 84114

Araceli David Trent Needham-21154  
UTAH STATE PRISON  
P.O. Box 250  
Draper UT. 84020  
OG - 2-212

## Table of Context

FOR the Defendant

ARROW D.T. Needham  
pro se

FOR the Plaintiff

laure B Dupaix  
ASSISTANT Attorney General

## Index

	pages
I Table of Authorities	1
II Statement of case	5
III Related and or prior appeals	7
IV Other (UT. R App P 24(F))	7
V Stand of Appellate review	8
VI Appellate Jurisdiction (UT. R. App P 24(c)(2))	9
VII Underlying Criminal Conviction (UT. R. App P 24(c)(6)(A))	9
VIII Statement of Issues and Standard of Review (UT. R. App P 24(c)(8))	10
IX Conclusion	34
X Certificate of Compliance	
XI Proof of Service	

## Table of Authority

1. Wilson Supply Inc v. Freedom Mfg Corp 2002 UT 9491 11,54 P.3d 1177 page 8
2. Orton v. Carter 970 P.2d 1254, 1256 (UTAH 1998) page 8
3. Newspaper Agency Corp v. Auditing Divi of State Tax Com 938 P.2d 266, 267 (UT 1997). page 8
4. State v. Wimberly 2013 UT App 160 ¶ 6, 305 P.3d 1072 page 8
5. State v. Kulpack, 2008 UT 49 ¶ 18, 191 P.3d 17 page 8.
6. State v. Owens 753 P.2d 976, 978 (UT App 1988) page 10
7. U.S. v. Begay 937 f.2d 515 (10<sup>th</sup> Cir 1991) page 11.
8. Coy v. Iowa 487 U.S. 1012 page 11
9. Pomier v. Texas 380 U.S. 400, 404 (1965) page 12
10. Ohio v. Johnson 4167 U.S. 493, 498-99 (1984). page 13
11. U.S. v. Coughlin 610 f.3d 89, 96-98 (D.C. Cir 2010). page 13
12. U.S. v. Carter 530 U.S. 255, 260-61 (2000) page 14
13. U.S. v. Brindley 434 U.S. 22, 28 (1977). page 14
14. Georgetown Law Journal p.511 (2013) page 14

15. *Abramson v. Griffen* 693 F.2d 1009, 1010-11 (10<sup>th</sup> Cir 1982) page 15
16. *Brown v. Ohio* U.S. 161, 169-70 (1977) page 15
17. *BARTKUS v. ILL* 359 U.S. 121, 122-24 (1959) page 16
18. *U.S. v. Stricklin* 591 F. 2d 1112, 1119 (5<sup>th</sup> Cir 1979) page 16
19. *U.S. v. Jackson* 443 F. 3d 293, 301 (3d Cir 2006) page 17
20. *U.S. v. Tann* 577 F. 3d 533-35 (3d Cir 2009) page 17
21. *U.S. v. Harbin* 250 F. 3d 532, 544 (7<sup>th</sup> Cir 2001) page 17
22. *Brady v. Md* 373 U.S. 83, 87 (1963) page 17
23. *U.S. v. Cigurs* 427 U.S. 97, 112-13 (1976) page 17
24. *U.S. v. Santos* 449 F. 3d 93 100 (2d Cir 2005) page 18
25. *U.S. v. Dancy* 640 F. 3d 455, 462 (1<sup>st</sup> Cir 2011) page 18
26. *U.S. v. Ferguson* 676 F. 3d 260, 281-82 (2d Cir 2011) page 18
27. *U.S. v. Lee* 612 F. 3d 170, 193-94 (3d Cir 2010) page 18
28. *U.S. v. Blueford* 312 F. 3d 962, 974 (9<sup>th</sup> Cir 2002) page 18
29. *Strickland v. Washington* 446 U.S. 688 (1984) page 19



30. State v. Eyre 2008 UT 16 (UT 2008) page 19
31. Kimmel v. Morrison 477 U.S. 363, 385 (1986) page 20
32. U.S. v. Cronie 416 U.S. 648, 659-60 (1984) page 21
33. State v. Classon 935 P.2d 524, 533 (UTAH App 1997) page 22
34. State v. Templin 805 P.2d 188 page 22
35. State v. Smith 65 P.3d 648, 656 (UTAH App 2003) page 27
36. State v. Knight 734 P.2d 913, 920 (UTAH 1987) page 27
37. State v. Russell 917 P.2d 557, 560 (UTAH App 1986) page 27
38. Arizona v. Fulminante 499 U.S. 279, 310 (1991) page 27-28
39. Johnson v. U.S. 520 U.S. 461, 468-69 (1997) page 28
40. Campbell v. Rice 302 F.3d 892, 900 (9th Cir 2001) p. 28
41. State v. Garcia-Contreras, 953 P.2d 535, 540-41 (Arizona 1998) p. 28
42. State v. Calderon 13 P.3d 871, 878-79 (Kansas 2000) page 28
43. Crawford v. Washington 541 U.S. 36 (2004) page 28
44. State v. Villareal, 889 P.2d 419, 425 (UTAH 1995) page 30

45. State v. Hackford 737 P.2d 200, 204 (UTAH 1987). page 30
46. Chapman v. California 386 U.S. 18, 24 (1967). page 30
47. Coleman v. Thompson 501 U.S. 722, 753-54 (1991) page 30
48. Wagstaff v. Barnes 802 P.2d 774, 778 (UT App 1990) page 31
49. Hamilton v. Alabama 368 U.S. 52, 55 (1961). page 31
50. Flores-Ortega, 528 U.S. 470 at 483 page 32
51. Menzie v. Baletka 150 P.3d 440 (UTAH 2006). page 32
52. State v. Wasamick 31 P.3d 615, 624 (UTAH App 2001). page 33
53. U.S. v. Bigley 213 F.3d 509, 516 n. 2 (10<sup>th</sup> Cir 2000) page 33
54. Hammon v. Ward 416 F.3d 919, 927-31 (10<sup>th</sup> Cir 2006) page 33
55. U.S. v. Weathers f. 3d 229, 230-39 (D.C. Cir 2007). page 34
56. Taylor v. Ky 436 U.S. 478, 488 n. 15 (1978). page 34
57. Breakiron v. Horn 642 F.3d 126, 131-32 n. 5 (3<sup>rd</sup> Cir 2011) page 34
58. U.S. v. Delgado 631 F.3d 685, 701-11 (5<sup>th</sup> Cir 2011) page 34
59. Teague v. Lane 489 U.S. at 311 (1989) page 34

60. Norton v. Spence 351 F.3d 1, 4-8 (1<sup>st</sup> Cir 2003) page 35

61. 28 U.S.C § 1651(a)

62. U.S. Dist. Court. v. Kerr 426 U.S. 394, 400 (1976) page 35

63. McHair v. Hayward 666 P.2d 321 (UT 1983) page 35

64. Ziegler v. Milikins 583 P.2d 1175 (UT 1978) page 35

65. Qwest Communication Int Inc 450 F.3d 1179, 1182-84 (10<sup>th</sup> Cir 2006)

66. U.S. v. Carpenter 494 F.3d 13, 25 (1<sup>st</sup> Cir 2007) page 34

67. State v. Winfield (2006) 4 P.19, 128 P.3d 1171

---

Addendum rule 24(a)(11)

The addendum is being copied to disc and will be hand delivered to the court of appeals and Attorney General Office, State of Utah. Petitioner is greatly challenging on the admittance of exhibits to the court due to proceeding pro se without counsel.

II

## Statement of Case

Rule 24(a)(7) UTR App P

Needham was wrongfully convicted of nine (9) counts of communication fraud and (1) one count of pattern of unlawful conduct. This case was first brought before the fifth District Court - Washington County on October 31, 2006. Needham attorney responded to the civil suit for approximately \$800,000.00 and the lis pendens filed on 18 properties owned by Needham on November 30, 2006. After review of sworn testimony and documentation admitted to the court, the lis pendens was released on all (18) eighteen properties in December 2006 in case NO. 060501877. Affidavit #

A complaint was filed at the Division of Professional Licensing in June 2006. Needham and counsel met with Wayne Holman of DPL in September 2006 to admit sworn testimony and documentation. On November 2007, DPL removed Needham's license after a fourteen month investi-

gation finding no financial obligation owed to Clement

Tebbs. Kim Quon testimony at trial. The court and counsel have

refused to provide day 4 and day 5 of the trial that contain

Kim Quon testimony.

Both of these filings were withheld by prosecution

and appointed counsel that has been substantially and

injurious to Needham in violation of due process. Needham

respectfully request an opportunity to admit to the court the

exculpatory material eluded to in the trial but never factually

developed due to ineffective counsel.

Claims of confrontation clause, double jeopardy, ineffective

assistance of counsel and their cumulative effect have been

preserved on trial record.

Claims of Imminent danger exception, wrongful search

and seizure and cruel and unusual punishment have not been

preserved in trial record or under rule 23 B motion and

affidavit. Needham will address these issues at the hearing

to affirm the threats to life living under the conclusions at

the State Prison of Draper.

### III. Related and or prior appeals:

There are no prior appeals. There is case NO. 07150092

and 20140658 and

that represent a case that

has been collaterally attacked by case NO. 101500067 and

20140483-CA. The case NO. 07150092 is a plea in abeyance

that was violated by defendant by the wrongful conviction.

### IV. OTHER UT R. App P.24(c)

Given that defendant, Needham is proceeding pro se,

Needham reserves the right to raise additional issues in his

opening brief after full review of the record that the court

or appellate counsel has yet to provide a full copy.

## V. Standard of Appellate review (UT, R. App. P. 24(a)(5)) :

Generally, we review a trial court's legal conclusions for correctness according to the trial court no particular deference." *Wilson Supply Inc. v. Freedom Mfg. Corp.* 2002 VT 94 ¶ 11, 54 P.3d 1177 citing *Orton v. Carter* 970 P.2d 1254, 1256 (UTAH 1998) also *Newspaper Agency Corp. v. Auditing Div. of State Tax Com* 938 P.2d 266, 267 (VT 1997). Further, whether a trial court has properly interpreted and applied a statute is a question of law reviewed for correctness.

## Standard of Appellate Review (UT, R. App. P. 24(a)(5)) :

We review the trial court's imposition of sentence for an abuse of discretion." *State v. Wimberly* 2013 VT App 160, ¶ 16, 305 P.3d 1072 citing *State v. Killpack*, 2008 VT 49, ¶ 18, 191 P.3d 17 (explaining that an appellate court will overturn a sentencing decision only if it is clear that the actions of the trial court were so inherently unfair as to constitute an abuse of discretion).

This appeal is from a final judgement, Sentence, Order Referring Outstanding fine to the Office of Debt Collection, and commitment, defined more particularly post, of the fifth DISTRICT Court in and for Washington County, State of Utah.

Defendant ARON Needham (hereinafter "Needham") submits the following in accordance with the requirements set forth in Utah R. App. P. 24.

VI. APPELLATE JURISDICTION (UT R. App. P24(c)(2): This court

has jurisdiction in this matter pursuant to Utah Code Ann. § 78A-4-103(2)(c).

VII. UNDERLYING CRIMINAL CONVICTION (UT R. App. P24(c)(6)(A):

Judgement, Sentence, ORDER Referring Outstanding Fine

to the office of Debt Collection, and commitment, filed

June 5<sup>th</sup>, 2014 that Needham would serve nine concurrent

terms of not less than one year and not more than fifteen

years in the Utah State Prison.



### VIII. Statement of Issues and Standard of Review, rule 24(a)(5)

#### UT. R. App. P. showing issues preserved in Trial Court

A motion for new trial generally is permitted for correctiv errors made in trial court... or for reviewing a conviction

obtained by unfair or unlawful methods." State v. Owens

753 P.2d 976, 978 (UT App. 1988).

The Defendant, Needham was denied his right to confront

witnesses against him and his counsel provided ineffective

assistance of counsel. The right of confrontation is embodied

in the Sixth Amendment of the United States Constitution

and Article I, section 12 of the Utah Constitution. The

Confrontation clause of the Sixth Amendment, made applicab

to the States through the fourteenth Amendment, provides

that "In all criminal prosecutions, the accused shall enjoy

the right... to be confronted with the witnesses against

Utah Const. Art I, § 12, emphasis added. The Utah Constitution

expressly provides that the accused is entitled to an actual

"face to face" confrontation. Sixth Amendment jurisprudence

establishes that the United States Constitution also requires

such confrontation. See e.g. U.S. v. Begay, 937 F.2d 515 (10th Cir. 1991)

(holding that the confrontation clause provides defendants

with both "the right to face physically" the government's

witnesses and the right of cross-examination.") The

rationale behind the face-to-face rule is discussed in Cay v. Iowa

487 U.S. 1012 rooted in the concept that it is exceedingly

more difficult for a man to tell a lie while he is looking

into the eyes of the one about whom he is talking.

The Supreme Court stated: The Sixth Amendment guarantees

of face to face encounter between witness and accused

serves ends related both to appearances and to Reality. This

opinion is embellished with references to and quotations from antiquity in part to convey that there is something deep in human nature that regards face to face confrontation between accused and accuser as essential to a fair trial in a criminal prosecution." Pattner v. Texas 380 U.S. 400, 404 (1965)

In this case, due to the combination of Mr. Cramer's conduct which deprived Needham of the opportunity to be physically present at the deposition of Tebbs and Ms. Reid and Doug Terry's failure to object to the admission of Tebbs deposition into evidence, Needham was entirely deprived of his rights to confront Tebbs face to face. This deprivation was deeply compounded by Cramer's failure to discuss or address the material and questions prepared by Needham in cross-examining Tebbs at the deposition, which, Cramer was in possession some material given to Attorney General's office.

III. Needham was denied his rights under "Double Jeopardy - Dual Sovereignty" protection that the Supreme Court has articulated policy justifications for each protection conferred by the Double Jeopardy Clause. The prohibition against second prosecution after acquittal or conviction protect individuals from the continued embarrassment, anxiety and expense of second prosecution, while decreasing the risk of an erroneous conviction or an impermissibly enhanced sentence." Ohio v. Johnson, 467 U.S. 493, 498-99 (1984).

"Double jeopardy attached to hung counts that shared key elements with acquitted counts." U.S. v. Campbell, 610 F.3d 89

96-98 (D.C. Cir. 2010). Needham claims that the charges are conviction be adjudicated on grounds that Double Jeopardy

attached in September 2006 when the Division of Professional (DOP) began reviewing the sworn testimony, then,

concluded that Needham had done no wrong and was acquitted of all charges in November 2007. This can be verified in court transcripts, Kim Quion of DOP Corp.

"Whether offense is lesser-included offense determined by textual comparison of statutory elements because such test lends itself to certain and predictable outcomes." U.S. v. Carter

530 U.S. 255, 260-61 (2000). Double jeopardy clause prohibited

successive prosecutions by different sovereigns, sovereigns

with lesser interest might proceed first and preclude

prosecution by sovereigns with greater interest. U.S. v.

Rinaldi 434 U.S. 22, 28 (1977). Local governments are not

considered sovereigns for double jeopardy purposes.

Consequently, successive prosecutions by a local government

and a state in which it is located, or by two local governments

in the same state are prohibited. Georgetown Law Journal, 511 (2013)

After dismissal of city's reckless driving charge, state prosecution for aggravated assault stemming from same incident barred by double jeopardy." Abramson v. Griffen, 693 F.2d 1009,

1010-11 (10<sup>th</sup> Cir 1982). "Town barred from prosecuting defendant

for car theft following prosecution by another town for joy riding because charges constituted same offense." Brown v. Ohio, U.S. 1161,

169-70 (1977). "The Supreme Court has suggested that federal and

State or federal authorities may not manipulate a system to achieve the equivalent of a second prosecution." Georgetown Law Journal 2013

p. 511. Prosecution misrepresented to the court that DOPL's decision

to renew Needham's license was to earlier in the investigation, when

in fact it had been over an ~~four~~ fourteen month period. In Support

of DOPL's decision, Terbo filed a lawsuit and his pendens

on eighteen properties worth seven million dollars on October 31,

2006. Needham's attorney, Brad Paison filed for release on

November 30, 2006, The Fifth District Court - Washington County

in case NO 060501877 order release of all properties with no

financial obligation owed to BART after reviewing documenta-

ion submitted to DOPL in September 2006 & in December 2006.

The letter to DOPL and supporting documents were given

to the Attorney General office of State of Utah in 2006, 2008, 2011.

Therefore, by withholding exculpatory material, the state

was able to manipulate court proceedings affirming "Sham

prosecution." "Several circuits have cited Bartkus and considered

whether the Sham prosecution exception exists or was applied

in that case". BARTKUS v. IL 359 U.S 121, 122-24 (1959). "The court

may vacate earlier findings of no prior jeopardy if new evidence

at trial later supports reviewed motions". U.S. v. Stecklin 991 F.

2d 1112, 1119 (5<sup>th</sup> Cir 1979).

Under Plain Error where defendant convicted of two crimes

on same facts in violation of 5<sup>th</sup> Amendment right to be free from duplicate prosecution and punishment. U.S. v. Jackson

443 F.3d 293, 361 (3<sup>rd</sup> Cir. 2006). "Even when a defendant failed to

assert a double jeopardy claim at the start of the trial, the

claim is reviewable under a plain error standard." U.S. v. Tamm 571

F.3d 533-35 (3<sup>rd</sup> Cir. 2009). "Error that falls between structural and

trial error is presumptively prejudicial." U.S. v. Harbin

250 F.3d 532, 544 (7<sup>th</sup> Cir. 2001). "A structural disclosure error

occurs when the government withholds material evidence

favorable to defendant." Brady v. Md 373 U.S. 83, 87 (1963).

Evidence is material and requires reversal of conviction when

there is a reasonable probability that disclosure would have

altered the results of the trial, "a mere possibility is not

enough." U.S. v. Agurs 427 U.S. 97, 112-13 (1976). "Confrontation

Clause violation not harmless because jurors otherwise could



have found reasonable doubt on element of crimes US v. Santos

449 f.3d 93, 100 (2d Cir 2015). "The claim reviewed for plain error

because objection to admission of testimony not raised at trial."

US v. Dancy 640 f.3d 455, 462 (1st Cir 2011). "The claim that

prosecutor drew false testimony from witness reviewed for plain

error because claim not raised at trial." U.S. v. Ferguson 676

f.3d 760, 781-82 (2d Cir 2011). "Claim of prosecutorial misconduct

reviewed for plain error because no objection made at trial."

U.S. v. Lee 612 f.3d 170, 193-94 (3d Cir 2010). "Claim of prosecutive

misconduct preserved despite defendant's failure to raise issue

at trial because misconduct deprived defendant of real

opportunity to object." U.S. v. Blueford 312 f.3d 962, 974 (9th Cir 200

Needham alleges prosecutorial misconduct and ineffective

assistance of counsel with holding of exculpatory material and

deceptive arrangements of scheduling of deposition, violated

Double Jeopardy - Dual Sovereignty protection and rights of Confrontation clause.

#### IV Ineffective Assistance of counsel.

The question of ineffective assistance of counsel is governed by the two part test set forth in Strickland v. Washington, 466

U.S. 688 (1984). Assistance of counsel is ineffective if (1) counsel's

performance was deficient, and (2) the deficient performance prejudiced

the defense". State v. Eyre 2008 UT 116 (UT 2008), quoting Strickland

at 687. As to the first prong of Strickland, "the seriousness of

those errors is measured by whether counsel's representation

fell below an objective standard of reasonableness." Id A

convicted defendant, ... must identify the acts or omissions of

counsel that are alleged not to have been the result of reason-

able professional judgment. Id at 688.

If counsel was unaware of the right to confrontation ramifi-

...eations, as was said in one case where the attorney was unaware of the statute, then his decision not to cross-examine [the witness] can not be accorded the same presumption of reasonableness as is accorded most strategic decisions because it was not based on strategy but rather on a startling ignorance of the law."

Kimmelman v. Morrison, 477 U.S. 365, 385 (1986). It is clear that Mr. Cramer failed in his obligation to provide the defendant an opportunity to be present during Mr. Tebb's deposition. Further, it is clear from the trial record that Mr. Tebb, as the principal of BAET, was a key witness for the State. Without the testimony through his deposition, the government would have had little or no basis for prosecution. As such, his credibility was pivotal to the State's case. In some circumstances, the Supreme Court of the United States has found that ineffective assistance of counsel and prejudice therefrom are presumed. Such

Circumstances include (1) when there is a complete denial of counsel, (2) when counsel "entirely fails to subject the prosecution's case to meaningful adversarial testing" and (3) when it is unlikely that any attorney could provide effective assistance under the circumstances. U.S. v. Cronin 466 U.S.

648, 659-60 (1984). In this case, Mr. Cramer did not subject

Mr. Tebbs testimony at deposition to meaningful adversarial

testing, because he did not prepare with defendant for the

deposition to know appropriate avenues of cross-examination

and his conduct prevented the defendant from attending the

deposition, depriving Mr. Needham of right to face to face

confrontation. Based solely on that factor, the assistance

provided to Needham is presumed to be ineffective and

prejudicial.

Unfortunately, Mr. Terry and Ms. Reid failed to exercise

the skill, expertise, diligence and professional judgement of a reasonable attorney in failing to ascertain whether

Mr. Needham had knowingly and intelligently waived his right to confront Tebb during the deposition. The

Supreme Court has emphasized that the fairness of a proceeding is challenged by a claim of ineffective assistance of counsel because

the right to counsel plays a crucial role in the adversarial system

embodied in the Sixth Amendment, since access to counsel's skill

and knowledge is necessary to accord defendants the ample opport-

unity to meet the case of the prosecution to which they are entitled

State v. Classen, 935 P.2d 524, 533 (Utah App. 1997), quoting

Strickland, *supra*. Worse, Mr. Terry and Ms Reid failed even

to investigate the reason for Needham's failure to confront Tebb.

See State v. Templin, 805 P.2d 188 (holding that if defense counsel

fails to adequately investigate the underlying facts of a case,

Counsel's performance can not be viewed as reasonable. At a minimum, Mr. Terry or Ms. Reid should have inquired of Needham as to the reason for his absence from the critical deposition of Tebbs. Additionally, Mr. Terry and Ms. Reid were given the same documentation given to DOP and Fifth District Court Washington County that had indicated any financial obligation to BACT or Tebbs, and refused to admit any of the documents alleging it "was little to no evidentiary value." Exigentia hearing April 9, 2014 p. 41, was the question by Mr. Gordon and Mr. Terry response, "That is correct" (p. 41 id.)

Mr. Terry answer of his evaluation of the exhibits presented in the rule 23B demand affidavit, that Needham wanted to present: "Yeah, even though Aaron Needham had an on going concern that he was not present at the deposition I did not feel that those concerns or that the reason

he was not there was any grounds to not have the deposition be used in trial pursuant to the stipulation". "I never really thought about trying to keep the deposition out of the trial." -  
Id p 43

Mr. Terry and Ms. Reid submitted to the court a witness list

on November 2012 that supported the Exhibits in the

Affidavit of the rule 23B demand and modified petitioners

the day of the trial that they had subpoena none of the

witnesses, "I will tell you that all of the witnesses and

potential witnesses that we have intended to call during

our case, it won't be necessary to call them because that

information will either come forward through Mr. Needham

testimony or has already come out in the testimony the State's

witnesses." So the only witness that we will have, the only

witness for the defense will be Mr. Needham, himself.

Trial date January 14, 2013 - Sixth Day p. 3 and Terry identified

at the April 9, 2014 hearing on page 36 that he had been

a criminal defense attorney for "Thirty years last year."

The exhibit 7 of the evidential hearing was also submitted to the court on April 26, 2013 by paid counsel Herschel

Bullon that identified six transactions performed at the title companies of funds issued to Needham by the title

companies after Clement Terbs signed on the dockets that

contradicts Terbs statements on the deposition page 46-47.

Ms. Reid and Mr. Terry claim this evidentially material

is not evidential and refused to present it to the court or

bring a single witness to testify in support of the exhibits

presented in the remand affidavit. Additionally, if, as indicated

by the handwritten note on the breaks letter, it was provided

to defense counsel, it would have been grossly insufficient for

trial counsel to have entirely failed to cross-examine



Mr. Grealish about it. Such a failure would have amounted to entirely failing to subject Grealish testimony to meaningful adversarial testing.

By the State admitting to the court the John Grealish agreement with the State that was prepared by Wade Farroway, assistant attorney general. It does show that Jake Taylor was in possession of the documents emailed to Scherie Wilcox for Mr. Farroway review after the preliminary hearing in July 2011. Upon completion of Farroway's review of the documents, he proposed a plea deal be arranged in August 2011 on remand affidavit exhibits. Shortly after offering the plea deal, Farroway was substituted by Jake Taylor, assistant attorney general to whom admitted some of the documents admitted to Scherie Wilcox and Wade Farroway except the John Grealish letter. Also, some of the appointed counsel

When testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation. Id. at 68-69.

Unfortunately, the type of confrontation, face to face and by well prepared counsel, contemplated by the Constitution did not occur in this case. As a consequence, an egregious Sixth Amendment violation occurred, which amounted to a structural defect, requiring reversal regardless of whether the court believes the error may have been harmless. If an error is structural, it defies analysis by harmless error standards by affecting the entire adjudicatory framework.

Fulminante, supra at 309. Finally, when "the error in question amounts to a violation of a defendant's right of confrontation guaranteed by the Sixth Amendment to the United States Constitution, its harmlessness is to be judged by a higher standard, i.e. reversal is required unless the error is harmless beyond a reasonable doubt."

State v. Villareal, 889 P.2d 419, 425 (UTAH 1995) quoting State v. Hackford, 737 P.2d 200, 204 (UTAH 1987). If a constitutional error has occurred, the burden shifts to the state to show that the error was harmless beyond a reasonable doubt. See Chapman v. California, 386 U.S. 18, 24 (1967). finally, it should be noted that "when there is a constitutional requirement of effective assistance of counsel and a public defender's acts or omissions constitute ineffective assistance, the error is imputed to the State because the State is required to provide effective assistance of counsel to indigent criminals defendants". Coleman v. Thompson, 501 U.S. 722, 753-54 (1991). The de facto exclusion of Mr. Needham from Mr. Terros deposition, combined with trial counsel's failure to object to the admission of the deposition into evidence at trial was deeply prejudicial to Needham. Moreover it amounted to a significant deprivation of State and federal constitutional rights, which shifts

the burden to prove harmless beyond a reasonable doubt to the State.

This the state cannot do. As noted herein, the testimony of Teno's

was the cornerstone upon which the State case rested. To assert

that a failure to subject it to meaningful cross-examination was

harmless is laughable. However, the use of the deposition of Teno's

at trial, under the circumstances under which it was taken, without

objection from trial counsel, was structural error. Under both the Utah

Constitution and the United States Constitution, a defendant has the

right to the assistance of counsel at all critical stages of his

criminal proceeding." *Wagstaff v. Barnes* 802 P.2d 774, 778

(Utah app 1990). "Critical stages of a criminal proceeding include

arraignment, preliminary hearing, and trial. See *Hamilton v.*

*Alabama* 368 U.S. 52, 55 (1961). The instances of ineffective

assistance of counsel in this case during a critical stage of the

proceedings amount to a constructive denial and thus a complete

deprivation of the right to counsel amounting to a double violation of Weedham's right to confrontation under the Sixth

### Amendment

If a litigant is constructively denied the assistance of counsel in a proceeding in which he is entitled to counsel, the adversarial process itself is rendered inherently unreliable and prejudice is

legally presumed. See Flores-Ortega, 528 U.S. 470 at 483. A litigant

can be constructively denied counsel in several ways, a constructive

denial of counsel occurs if counsel completely fails to subject the

oppositions case to meaningful adversarial testing" Menzie v

Bale+Ka 150 P 3d 480 (UTAH 2006). "Voluntariness of absence may

not be presumed by the trial court, rather an inquiry into the

defendants ability to appear at the proceeding is required and"

Voluntariness of a defendant's absence from a proceeding is determined

by considering the totality of the circumstances." State v. Wascamack

31 P. 3d 615, 624 (UTAH App 2001). Tebb's testimony was so integral to the States case, and because the defendant was so thoroughly denied the effective assistance of counsel, he was constructively denied assistance of counsel in the fullest sense enunciated by the Menges Court. This structural error, prejudice presumed demands for a new trial. Therefore, the court may review ineffective assistance of counsel claim on direct appeal because record was sufficiently developed. "U.S. v. Giguere 213 F.3d 509 516 n.2 (10<sup>th</sup> Cir 2000). "Counsel's failure to assert that trial counsel operated under a prejudicial conflict of interest was Ineffective Assistance because issue was obvious and would have resulted in reversal on appeal." Hammon v Ward 466 F.3d 919, 927-31 (10<sup>th</sup> Cir 2006). "Counsel's failure to assert timely claim of double jeopardy violation was ineffective assistance of counsel because there was reasonable probability that defendant would have

prevalent on merger argument and neglecting to challenge

explicitous counts was not objectively reasonable tactical decision.

U.S. v. Weathers 3d 229, 230-31 (DC Cir 2007). The cumulative error

violate due process guarantee of fundamental fairness and

necessitate a new trial. Taylor v. Ky 436 U.S. 478, 488 n.15 (1978)

"Cumulative effect of 3 claims required reversal of conviction

because individually claims warranted relief." Breakiron v

Horn 642 F.3d 126, 131-32 n.5 (3rd Cir 2011). Errors of prosecutorial

misconduct, improper jury instructions and deficient transcripts

of proceedings required reversal because concerned central legal

and factual issues of case and rendered trial fundamentally

unfair. U.S. v. Delgado 631 F.3d 685, 710-11 (5th Cir 2011). The water

shed procedural rule is one that raise(s) the possibilities that someone

convicted with use of the invalidated procedure might have been

acquitted otherwise. Teague v. Lane 489 US at 311 (1989)

The presumption of correctness overcome by clear and convincing evidence in exculpatory defense affidavit. Norton v. Spencer 351

[3d 1, 6-8 (1<sup>st</sup> Cir 2003)]. Needham "claims the right to a writ of Habeas

Corpus for the writ is clear and indisputable per 28 U.S.C. § 1651(a)

and the issuance of writ is extraordinary remedy." US District

v. Kerr 426 U.S. 394, 400 (1976). The right to release from confine-

ment on charges for which a petitioner could not be tried

without a violation of Double jeopardy can be raised by habeas

corpus under this rule." McNair v. Haywood 466 P.2d 321 (UT 1983).

Habeas corpus may be used to test alleged violations of basic rights

such as prohibition against cruel and unusual punishment.

Ziegler v. Milikens 583 P.2d 1175 (UT 1978). The denial of the

court's decision to grant a new trial by not recognizing the

right of confrontation clause. A writ granted because district

court abused its discretion in erroneously deciding a legal issue."



Quest Communications Int Inc 455 F.3d 1179, 1182-84 (10<sup>th</sup> Cir 2006).

Also, the denial of motion to dismiss on double jeopardy claim

immediately appealable under collateral order doctrine U.S. v.

Carpena 494 F.3d 13, 25 (1<sup>st</sup> Cir 2007). Double jeopardy preserved

by the statements and testimony of Kim @ von of DOPL who

affirmed at the trial that DOPL did in fact have a invest-

igation that resulted in Needhams licence being renewed in

November 2007.

IX

Conclusion rule 24(a)(10) UT R App P.

Because the cumulative errors of the state's failure  
to disclose exculpatory impeachment evidence and the gross

denial of Needhams fifth amendment Constitutional rights of

Double Jeopardy protection, the sixth amendment constitutional

rights to confrontation and effective assistance of counsel, and

the fourteenth amendment rights of due process, the proceedings

herein were manifestly unfair. The cumulative effect of violating rights of Confrontation Clause, Double Jeopardy, effective assistance of counsel, rights of due process that were all violated by prosecutorial misconduct at a level of contempt on the court. Needham respectfully request of the court to issue a writ of Habeas Corpus and grant the Writ to protect Needham with relief from further injury. The multiple injuries inflicted qualify for an injunction under the "imminent danger exception." The State actors appointed by the court acted under conflict of Interest by withholding exculpatory material and inflicting multiple injuries that Needham has had to seek medical care everyday of incarceration.

I Enclave prison mail Box rule 21 (F)

August 27, 2015

Date

Peron JJ Nuh

NAME

(37/37)

X

## Certificate of Compliance

The number of lines from page 1 thru 37 is 558 of  
text per rule 24 (f) (A)

August 26, 2015

Date

Adam D. Nish

Name