

8-28-2015

State v. Kelley Clerk's Record Dckt. 43403

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,
Plaintiff-Respondent,
vs.
THOMAS CAMPBELL KELLEY,
Defendant-Appellant.

Supreme Court Case No. 43403

LIMITED CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE TIMOTHY HANSEN

JESSICA B. BUBLITZ
ATTORNEY FOR APPELLANT
BOISE, IDAHO

LAWRENCE G. WASDEN
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

In the Supreme Court of the State of Idaho

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) ORDER AUGMENTING APPEAL
)
 v.) Supreme Court Docket No. 43403-2015
) Ada County No. CR-2013-5250
 THOMAS CAMPBELL KELLEY,)
) **Supreme Court No. 42680**
 Defendant-Appellant.)

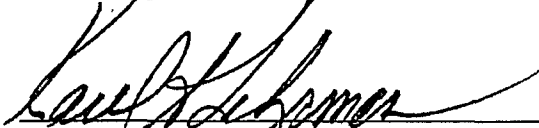
A Clerk's Record, Reporter's Transcripts and Exhibits having been filed *electronically* with this Court in appeal No. 42680, *State v. Kelley* (Ada County No. CR-2013-5250); therefore,

IT HEREBY IS ORDERED that this Record on Appeal shall be AUGMENTED to include the Supreme Court file, Clerk's Record, Reporter's Transcripts and Exhibits filed *electronically* with this Court in appeal No. 42680, *State v. Kelley* (Ada County No. CR-2013-5250).

IT FURTHER IS ORDERED that the District Court Clerk shall prepare and file the CLERK'S RECORD with this Court, which shall contain documents requested in this Notice of Appeal together with a copy of this Order and not duplicate any document included in the Clerk's Record filed in prior appeal No. 42680.

DATED this 28th day of August, 2015.

For the Supreme Court


Karel A. Lehrman, Chief Deputy Clerk for
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter
District Judge Timothy Hansen

Entered on JSI
By: kg.

State of Idaho vs. Thomas Campbell Kelley

Date	Code	User		Judge
4/19/2013	NCRF	PRSCHOKF	New Case Filed - Felony	Magistrate Court Clerk
	PROS	PRSCHOKF	Prosecutor assigned Ada County Prosecutor	Magistrate Court Clerk
	CRCO	TCMCCOSL	Criminal Complaint	Magistrate Court Clerk
	HRSC	TCMCCOSL	Hearing Scheduled (Video Arraignment 04/19/2013 01:30 PM)	Theresa Gardunia
	ARRN	TCCAMPAM	Hearing result for Video Arraignment scheduled on 04/19/2013 01:30 PM: Arraignment / First Appearance	Theresa Gardunia
	HRSC	TCCAMPAM	Hearing Scheduled (Preliminary 05/10/2013 08:30 AM)	Theresa Gardunia
	BSET	TCCAMPAM	BOND SET: at 150000.00 - (I37-2732B(a)(1) Drug-Trafficking in Marijuana)	Magistrate Court Clerk
	NOTH	MAHOLMSM	Notice Of Hearing	Magistrate Court Clerk
4/22/2013	BNDS	TCWADAMC	Bond Posted - Surety (Amount 150000.00)	Magistrate Court Clerk
4/23/2013	PROS	PRBRIGCA	Prosecutor assigned Holly A Koole	Magistrate Court Clerk
5/1/2013	NOAP	TCTONGES	Notice Of Appearance/ Bublitz	Magistrate Court Clerk
	RQDD	TCTONGES	Defendant's Request for Discovery	Magistrate Court Clerk
	RQDD	TCTONGES	Defendant's Request for Discovery/ specific	Magistrate Court Clerk
5/8/2013	PHRD	TCTONGES	Preliminary Hearing Response to Request for Discovery and Objections	Magistrate Court Clerk
	RQDS	TCTONGES	State/City Request for Discovery	Magistrate Court Clerk
	STIP	TCCHRIKE	Stipulation to Vacate and Reset Preliminary Hearing	Magistrate Court Clerk
5/9/2013	ORDR	CCMANLHR	Order to Vacate and Reset Preliminary Hearing	Magistrate Court Clerk
	CHGA	CCMANLHR	Judge Change: Administrative	Theresa Gardunia
	CONT	CCMANLHR	Continued (Preliminary 06/12/2013 08:30 AM)	Theresa Gardunia
5/29/2013	PHRD	TCTONGES	Preliminary Hearing Response to Request for Discovery and Objections / first supplemental	Theresa Gardunia
6/12/2013	HRWV	CCMANLHR	Hearing result for Preliminary scheduled on 06/12/2013 08:30 AM: Hearing Waived	Theresa Gardunia
	PHWV	CCMANLHR	Hearing result for Preliminary scheduled on 06/12/2013 08:30 AM: Preliminary Hearing Waived (bound Over)	Theresa Gardunia
	CHGB	CCMANLHR	Change Assigned Judge: Bind Over	Theresa Gardunia
	HRSC	CCMANLHR	Hearing Scheduled (Arraignment 06/28/2013 09:00 AM)	Theresa Gardunia
	COMT	CCMANLHR	Commitment	Theresa Gardunia
	NOTH	CCMANLHR	Notice Of Hearing	Theresa Gardunia
6/13/2013	INFO	TCCHRIKE	Information	Timothy Hansen
	PROS	PRMORTTF	Prosecutor assigned Jill Longhurst	Timothy Hansen

State of Idaho vs. Thomas Campbell Kelley

Date	Code	User	Judge
6/28/2013	DCAR	DCOLSOMA	Hearing result for Arraignment scheduled on 06/28/2013 09:00 AM: District Court Arraignment- Court Reporter: V. Gosney Number of Pages: less than 50
	HRSC	DCOLSOMA	Hearing Scheduled (Pretrial Conference 09/13/2013 01:30 PM)
	HRSC	DCOLSOMA	Hearing Scheduled (Jury Trial 10/07/2013 09:00 AM) 3 Days
	PLEA	DCOLSOMA	A Plea is entered for charge: - NG (I37-2732B(a)(1) Drug-Trafficking in Marijuana)
7/1/2013	ORDR	DCOLSOMA	Order Setting Pretrial Conference & Jury Trial
7/3/2013	MDQJ	TCCHRIKE	Motion For Disqualification Of Alternate Judge Pursuant to I.C.R. 25(a)(6)
	RQDS	TCCHRIKE	State/City Request for Discovery and Demand for Alibi
	ORDR	DCOLSOMA	Order for Disqualification of Alternate Judge Pursuant to I.C.R. 25(a)(6) - Judge McKee
7/18/2013	MOTS	TCTONGES	Motion to Suppress and Notice of Hearing
	MEMO	TCTONGES	Memorandum in Support of Defendant's Motion to Suppress
7/19/2013	RSDS	TCTONGES	State/City Response to Discovery
7/26/2013	AFFD	TCTONGES	Affidavit of Thomas Campbell Kelly in Support of Motion to Suppress
7/29/2013	NOHG	TCOLSOMC	Notice Of Hearing (8/19 @3pm)
	HRSC	TCOLSOMC	Hearing Scheduled (Hearing Scheduled 08/19/2013 03:00 PM)
8/16/2013	MEMO	TCTONGES	State's Memorandum in Opposition to Defendant's Motion to Suppress
8/19/2013	CONT	DCOLSOMA	Continued (Hearing Scheduled 09/11/2013 03:00 PM)
8/30/2013	OBJE	TCTONGES	Objection to the Form of the Defendant's Motion to Suppress and Motion to Limit Defendant's Motion to Suppress to Issues Identified by the Defendant in his Motion/Brief
9/4/2013	MOTS	TCTONGES	Supplemental Brief in Support of The Defendant's Motion to Suppress
9/11/2013	DCHH	DCOLSOMA	Hearing result for Hearing Scheduled scheduled on 09/11/2013 03:00 PM: District Court Hearing Held Court Reporter: V. Gosney Number of Transcript Pages for this hearing estimated: less than 100
9/12/2013	HRVC	DCOLSOMA	Hearing result for Pretrial Conference scheduled on 09/13/2013 01:30 PM: Hearing Vacated
	HRVC	DCOLSOMA	Hearing result for Jury Trial scheduled on 10/07/2013 09:00 AM: Hearing Vacated 3 Days

State of Idaho vs. Thomas Campbell Kelley

Date	Code	User	Judge
9/12/2013	HRSC	DCOLSOMA	Hearing Scheduled (Motion to Suppress 10/16/2013 09:00 AM) Timothy Hansen
	HRSC	DCOLSOMA	Hearing Scheduled (Pretrial Conference 11/15/2013 01:30 PM) Timothy Hansen
	HRSC	DCOLSOMA	Hearing Scheduled (Jury Trial 12/02/2013 09:00 AM) 2 days Timothy Hansen
	ORDR	DCOLSOMA	Order Setting Pretrial Conference & Jury Trial Timothy Hansen
10/2/2013	RSDS	TCCHRIKE	State/City Response to Discovery / First Addendum Timothy Hansen
10/16/2013	DCHH	DCOLSOMA	Hearing result for Motion to Suppress scheduled on 10/16/2013 09:00 AM: District Court Hearing Held Court Reporter: V. Gosney Number of Transcript Pages for this hearing estimated: less than 100 Timothy Hansen
10/23/2013	MISC	TCCHRIKE	Defendant's Closing Arguments Timothy Hansen
10/30/2013	MISC	TCCHRIKE	States Written Closing Statements Regarding Defendant's Motion to Suppress Timothy Hansen
11/5/2013	HRSC	DCOLSOMA	Hearing Scheduled (Hearing Scheduled 11/06/2013 04:00 PM) Closing Arguments on the Motion to Suppress Timothy Hansen
11/6/2013	DCHH	DCOLSOMA	Hearing result for Hearing Scheduled scheduled on 11/06/2013 04:00 PM: District Court Hearing Held Court Reporter: D. Cromwell Number of Transcript Pages for this hearing estimated: less than 100 Timothy Hansen
11/15/2013	CONT	DCOLSOMA	Continued (Pretrial Conference 03/05/2014 03:00 PM) Timothy Hansen
	CONT	DCOLSOMA	Continued (Jury Trial 03/17/2014 09:00 AM) 2 days Timothy Hansen
11/18/2013	ORDR	DCOLSOMA	Order Setting Pretrial Conference & Jury Trial Timothy Hansen
12/18/2013	MEMO	DCMAXWKK	Memorandum Decision and Order Timothy Hansen
3/5/2014	CONT	DCOLSOMA	Continued (Jury Trial 06/16/2014 09:00 AM) 2 days Timothy Hansen
	CONT	DCOLSOMA	Continued (Pretrial Conference 06/04/2014 03:00 PM) Timothy Hansen
3/7/2014	ORDR	TCWEGEKE	Order Setting Pretrial Conference & Jury Trial Timothy Hansen
6/4/2014	DCHH	DCOATMAD	Hearing result for Pretrial Conference scheduled on 06/04/2014 03:00 PM: District Court Hearing Held Court Reporter: S Gambee Number of Transcript Pages for this hearing estimated: 25 Timothy Hansen
	HRVC	DCOATMAD	Hearing result for Jury Trial scheduled on 06/16/2014 09:00 AM: Hearing Vacated 2 days Timothy Hansen

State of Idaho vs. Thomas Campbell Kelley

Date	Code	User	Judge
6/4/2014	HRSC	DCOATMAD	Hearing Scheduled (Sentencing 10/15/2014 03:00 PM)
	PLEA	DCOATMAD	A Plea is entered for charge: - GT (I37-2732B(a)(1) Drug-Trafficking in Marijuana)
	GPA	DCOATMAD	Guilty Plea Advisory
	PSIO1	DCOATMAD	Pre-Sentence Investigation Evaluation Ordered
	HRSC	DCOATMAD	Hearing Scheduled (Status 08/13/2014 08:30 AM)
6/20/2014	MISC	TCLANGAJ	Agreement for Conditional Plea Pursuant to ICR 11(a)(2)
8/13/2014	DCHH	DCOLSOMA	Hearing result for Status scheduled on 08/13/2014 08:30 AM: District Court Hearing Held Court Reporter: V. Gosney Number of Transcript Pages for this hearing estimated: less than 100
10/8/2014	MOTN	TCLANGAJ	Motion to Stay Sentence Pending Appeal
10/15/2014	CONT	DCOLSOMA	Continued (Sentencing 11/05/2014 03:00 PM)
11/5/2014	DCHH	DCOLSOMA	Hearing result for Sentencing scheduled on 11/05/2014 03:00 PM: District Court Hearing Held Court Reporter: V. Gosney Number of Transcript Pages for this hearing estimated: less than 100
	FIGT	DCOLSOMA	Finding of Guilty (I37-2732B(a)(1) Drug-Trafficking in Marijuana)
	JAIL	DCOLSOMA	Sentenced to Jail or Detention (I37-2732B(a)(1) Drug-Trafficking in Marijuana) Confinement terms: Credited time: 2 days. Penitentiary determinate: 1 year. Penitentiary indeterminate: 7 years.
	STAT	DCOLSOMA	STATUS CHANGED: closed pending clerk action
	SNPF	DCOLSOMA	Sentenced To Pay Fine 5280.50 charge: I37-2732B(a)(1) Drug-Trafficking in Marijuana
11/6/2014	BNDE	DCMAXWKK	Surety Bond Exonerated (Amount 150,000.00)
	JDMT	DCMAXWKK	Judgment of Conviction and Commitment
11/12/2014	RULE35	TCLANGAJ	Motion to Reduce Sentence Pursuant to ICR 35 and Request for Hearing
	APSC	TCLANGAJ	Appealed To The Supreme Court
	NOTA	TCLANGAJ	NOTICE OF APPEAL
11/13/2014	MOTN	TCLANGAJ	Motion for Exemption from Paying Fee for Preparation of Record
	AFFD	TCLANGAJ	Affidavit of Indigency
11/20/2014		TCMILLSA	Miscellaneous Payment: Clerk's Record Paid by: Kelley, Thomas Campbell Receipt number: 0120419 Dated: 11/20/2014 Amount: \$100.00 (Check)

State of Idaho vs. Thomas Campbell Kelley

Date	Code	User		Judge
11/20/2014	ORDR	DCOLSOMA	Order on Rule 35 Motion	Timothy Hansen
12/18/2014	HRSC	DCOLSOMA	Hearing Scheduled (Hearing Scheduled 01/22/2015 02:00 PM) Restitution Hearing	Timothy Hansen
1/5/2015	ORDR	DCOLSOMA	Order Denying Rule 35 Motion	Timothy Hansen
1/21/2015		DCOLSOMA	Order to Transport	Timothy Hansen
1/23/2015	ORDR	DCOLSOMA	Order for Exemption from Paying Fee for Preparation of Record	Timothy Hansen
	CONT	DCOLSOMA	Continued (Hearing Scheduled 02/06/2015 03:00 PM) Restitution Hearing	Timothy Hansen
		DCOLSOMA	Order to Transport	Timothy Hansen
1/26/2015	NOTC	TCWEGEKE	(2) Notice of Transcript Lodged - Supreme Court No. 42680	Timothy Hansen
1/28/2015	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 42680	Timothy Hansen
2/6/2015	DCHH	DCOLSOMA	Hearing result for Hearing Scheduled scheduled on 02/06/2015 03:00 PM: District Court Hearing Held Court Reporter: N. Julson Number of Transcript Pages for this hearing estimated: less than 100	Timothy Hansen
	HRSC	DCOLSOMA	Hearing Scheduled (Review 03/05/2015 02:30 PM)	Timothy Hansen
2/20/2015	OBJE	TCWRIGSA	Objection to State's Request for Restitution	Timothy Hansen
3/4/2015		DCOLSOMA	Order to Transport	Timothy Hansen
3/5/2015	DCHH	DCOLSOMA	Hearing result for Review scheduled on 03/05/2015 02:30 PM: District Court Hearing Held Court Reporter: V. Starr Number of Transcript Pages for this hearing estimated: less than 100	Timothy Hansen
4/10/2015	MEMO	DCMAXWKK	Memorandum Decision and Order	Timothy Hansen
5/11/2015	ORDR	DCOLSOMA	Order for Restitution and Judgment	Timothy Hansen
	RESR	DCOLSOMA	Restitution Recommended by the Prosecutor's office. 100.00 victim # 1	Timothy Hansen
	RESR	DCOLSOMA	Restitution Recommended by the Prosecutor's office. 2540.00 victim # 2	Timothy Hansen
6/22/2015	NOTA	TCMARKSA	NOTICE OF APPEAL	Timothy Hansen
	APSC	TCMARKSA	Appealed To The Supreme Court	Timothy Hansen
6/29/2015		TCCHRIKE	Miscellaneous Payment: Clerk's Record Paid by: Kelley, Thomas Campbell Receipt number: 0066149 Dated: 6/29/2015 Amount: \$25.00 (Check)	Timothy Hansen
9/15/2015	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 43403	Timothy Hansen

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>3:08:35 PM</u>		State v Thomas Kelly - CRFE13-5250
<u>3:08:50 PM</u>	State Attorney	Jill Longhurst
<u>3:08:55 PM</u>	Defense Attorney	Jessica Bublitz
<u>3:08:59 PM</u>	Judge Hansen	Calls case, def. is present in custody with counsel
<u>3:09:08 PM</u>	State Attorney	ready to proceed
<u>3:09:12 PM</u>	Defense Attorney	ready to proceed
<u>3:09:19 PM</u>	State Attorney	Just paper materials as an exhibit - no testimony
<u>3:09:34 PM</u>	Defense Attorney	no testimony
<u>3:09:37 PM</u>	State Attorney	hands the Court State's 1
<u>3:10:50 PM</u>	Defense Attorney	no objection to State's 1 being admitted
<u>3:10:59 PM</u>	Judge Hansen	will admit State's Ex. 1 at this time
<u>3:11:14 PM</u>	State Attorney	argues the issue of restitution
<u>3:13:06 PM</u>	Defense Attorney	argues the issue of restitution
<u>3:23:34 PM</u>	Judge Hansen	question to Ms. Longhurst as to the request for Ms. Bublitz's request for additional time to be able to respond
<u>3:24:38 PM</u>	State Attorney	no objection for additional time
<u>3:25:17 PM</u>	Judge Hansen	will grant the additional time and will give Ms. Bublitz 2 weeks until 02/20/15 at 5:00 p.m. and will set the matter for further arguement to 03/05/15 at 2:30 p.m.
<u>3:26:23 PM</u>		END CASE

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NO. _____ FILED _____
A.M. _____ P.M. **230**

FEB 20 2015

CHRISTOPHER D. RICH, Clerk
By **SARA WRIGHT**
DEPUTY

GERALD BUBLITZ – ISB# 7562
JESSICA BUBLITZ – ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH ST
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	CASE NO. CR-FE-2013-5250
)	
Plaintiff,)	OBJECTION TO STATE’S REQUEST FOR
)	RESTITUTION PURSUANT TO I.C. §37-
vs.)	2732(k)
)	
THOMAS KELLEY,)	
)	
Defendant.)	
)	

COMES NOW, the Defendant, THOMAS KELLEY, by and through his attorney of record Jessica B. Bublitz of the firm of Bublitz Law, P.C., and objects to the restitution request made on behalf of the state in this case pursuant to I.C. §37-2732(k), for the following reasons and points of law:

(1) The Defendant requests that the court deny the requested restitution amount requested in its entirety. *State v. Weaver*, at WL 3198848 (Idaho App. 2014) addressed the issue as to whether restitution claimed by the state for prosecution of a drug offense under the aforementioned statute is discretionary for the District Judge or mandatory. This case held that, because that statute was short on guidance as to the nature of this type of restitution award or its enforcement, it was proper to look to the general restitution statute, I.C. §19-5204(7) for

SW

guidance. It states that, "The decision whether to order restitution, and in what amount, is within the discretion of a trial court, guided by consideration of the factors set forth in I.C. §19-5304(7) and by the policy favoring full compensation to crime victim's economic loss..." *See Id.* Therefore, this Court has full discretion whether to order restitution in this case, and in what amount, guided by reason and the factors set forth in the restitution statute.

I.C. §19-5304(7) provides in pertinent part that, "The Court, in determining whether to order restitution and the amount of such restitution, shall consider the amount of economic loss sustained by the victim as a result of the offense, the financial resources, needs and earning ability of the defendant, and such other factors as the court deems appropriate. The immediate inability to pay restitution by a Defendant shall not be, in and of itself, a reason to not order restitution."

In this case, the Defendant is indigent; whose regular occupation is that of a bartender in Las Vegas. He has no assets or income at this time, and is currently serving a penitentiary sentence of one (1) year fixed, followed by seven (7) years indeterminate. The Defendant asks this Court to consider that the amount requested by the State is made in prosecution of the case, and will address the Constitutional appropriateness of such a request below. In addition, to the fact that the amount requested is excessive and would place a heavy burden on the Defendant that would greatly encumber his ability to function in society without extreme stress and hardship, which would ultimately result in a more difficult transition to society when he is released. In addition, *State v. Weaver*, at WL 3198848 (Idaho App. 2014), held that, while a District Court may delay the entry of a restitution order until an appropriate time, the Court does not have the discretion to dictate when or how the order is enforced after it is entered. It thus distinguished this type of restitution order from that awarded to crime victims in that, the latter

may be enforced as payments while a Defendant is placed on probation. In other words, if it were entered today, clearly the Defendant would default, and he would be subject to the civil suit and penalties, provided for in I.C. §19-4708.

(2.) The Defendant objects to the amount requested by the State as unreasonable. The state requested restitution in the amount of \$3,584.50 as of October 28, 2014. (See Addendum A.) The Prosecuting Attorney asserted that the Prosecuting Attorney's office spent 25.5 attorney hours on the case at a rate of \$145.00 per hour. I would note that this rate is higher than the current rate for State Public Defenders in Idaho, which is currently at \$45 per hour for out of court, and \$55 per hour for in court. Also, the Prosecuting Attorney indicates that they include assistant and/or paralegal time in computing this amount. At 40 hours per week, this would mean a single prosecutor and/or assistant in Ada County makes \$301,600.00 per year, which clearly taxpayers would be opposed to.

As stated in *State v. Weaver*, at WL 3198848 (Idaho App. 2014), the State has the burden of outlining time spent on the case and the reasonableness of the restitution request. In this case, the amount previously alluded to actually was raised to a total of 52 hours, for a total amount requested of \$7540, by January of 2015, *which includes time to research and request the restitution amount itself*. The unreasonableness of this is clear on its face, that the Defendant is required to pay for the state to comply with a statute which requires it demonstrates the reasonableness of restitution requested.

(3) The statute itself, I.C. §37-2732(k), upon which this request is based, is unconstitutional. Enforcement of such a statute amounts to a deprivation of the defendant's right to due process and to his Sixth Amendment right to present a defense under the United States Constitution. In addition, it violates the Equal Protection clause of the Fourteenth Amendment to

the United States Constitution.

Requiring a Defendant to pay at an hourly rate for the state to prosecute him, when he has the right to require the state to prove the case against him, could result in deterring him from asserting rights that may be deemed too costly to pursue. For example, in this case the State is requesting additional fees for the time he spent moving the Court to present evidence in the case to show there was a valid exception to the warrant requirement when his vehicle was searched. The State also is seeking fees for the time he spent asking the Court to release him pending an appeal, to review a presentence investigation report, and to provide and research the time spent on the case for its restitution request. Knowing he will be required to pay for each stage of the process will necessarily result in a chilling effect upon the assertion of his rights. Any statute which results in a chilling effect, even incidentally, of a Defendant's constitutional rights is deemed unconstitutional, as noted *United States v. Jackson*, 390 US 570, 390 US 581.

In *Fuller v. Oregon*, at 417 US 40, 94 S. Ct. 2116, 40 L. Ed. 2d 642 (1974), the Court addressed the issue as to whether an Oregon statute that provided for collection of fees from defendants who were convicted of a crime for their public defender services who had been indigent but later became able to pay, violated the Equal Protection Clause and would result in a violation of his right to counsel provided for in the Sixth Amendment of the United States Constitution. The Court held that, because the statute only applied to those who later became able to pay, it was not like statutes where provisions had no other effect than to chill the assertion of constitutional rights by penalizing those who choose to exercise them. *Id.*, at 2125.

This statute does not apply only to those defendants who become able to pay; rather, the defendant's ability to pay is merely one factor the court can look to, and the restitution statute explicitly provides that inability to pay cannot be the sole basis for denial of restitution. That

provision makes since as a requirement of restitution for victims of crimes, as the amount would be fixed based upon the suffering of the victim in the case, and not upon the amount of hours spent asserting one's constitutional rights. I.C. §37-2732(k) has the primary effect of chilling the defendant's assertion of his rights, and therefore ought to be held invalid. In cases such as *James v. Strange*, at 407 US 128, 92 S. Ct. 2027, the Court held invalid a Kansas statute that required reimbursement of public defender fees in part because it denied defendants the benefit of basic debtor exemptions.

The court in that case noted that, "In Rinaldi v. Yeager, 384 U.S. 305, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966), the Court considered a situation comparable in some respects to the case at hand. Rinaldi involved a New Jersey statute which required only those indigent defendants who were sentenced to confinement in state institutions to reimburse the State the costs of a transcript on appeal. In Rinaldi, as here, a broad ground of decision was urged, namely, that the statute unduly burdened an indigent's right to appeal. The Court found, however, a different basis for decision, holding that '(t)o fasten a financial burden only upon those unsuccessful appellants who are confined in state institutions . . . is to make an invidious discrimination' in violation of the Equal Protection Clause. Id., at 309, 86 S.Ct., at 1500." In other words, the Rinaldi case held it was a violation of the Equal Protection clause to burden an individual with a debt he cannot repay when he leaves a period of confinement, and that it does not serve society's best interest to do so. When Mr. Kelley is released, his ability to rehabilitate into the community will be key, and a requirement that he repay thousands of dollars to the state would create a huge burden.

DATED the 20th day of February, 2015.

BUBLITZ LAW, P.C.

JESSICA B. BUBLITZ
Attorney for Defendant

CERTIFICATE OF SERVICE

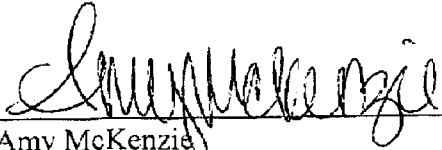
I hereby certify that on this 20th day of February 2015, I caused a true and accurate copy of the foregoing document to be served upon the following as indicated below:

Ada County Prosecutor
200 West Front Street
Boise, Idaho 83702
FAX: 287-7709

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Ada County Clerk
200 West Front Street
Boise, Idaho 83702
FAX: 287-6919

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission



 Amy McKenzie
 Legal Assistant

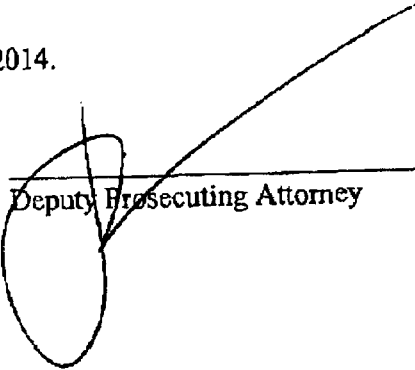
**STATEMENT OF COSTS AND
REQUEST FOR RESTITUTION IN A DRUG CASE**

Defendant: THOMAS CAMPBELL KELLEY

Case: CR-FE-2013-0005250

I, Jill Longhurst, Deputy Prosecuting Attorney for State of Idaho, County of Ada, am aware that the Ada County Prosecutor's Office keeps records regarding the attorney time spent prosecuting drug cases in anticipation of submitting a request for restitution pursuant to I.C. §37-2732(k). I have reviewed the time log in this case, which documents the prosecutor time spent prosecuting the above referenced drug case. The Ada County Prosecutor's Office spent 25.5 attorney hours at an attorney rate of \$140.00 per hour and spent .1 attorney hours at an attorney rate of \$145.00 prosecuting this case, not including preparation and argument for the sentencing hearing. Pursuant to Idaho Code §37-2732(k), the State requests restitution in the amount of \$3,584.50.

Dated this 28 day of October 2014.

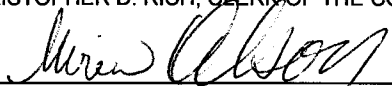

Deputy Prosecuting Attorney

Restitution Account Case History

CRFE20130005250.1		Restitution Amt	\$3,684.50
Defendant		Restitution Ctl	\$3,684.50
KELLEY THOMAS CAMPBELL	Sentence Date 1/1/1	Payment Amt	\$0.00
PO BOX 6292	Close Date 1/1/1		
INCLINE VILLAGE, NV 89450-0000			
	Received	\$0.00	
	Paid	\$0.00	
	Trust	\$0.00	
	Direct	\$0.00	
	Joint & Several	\$0.00	
Victim	Balance	\$3,684.50	
DRUG ENFORCEMENT DONATION ACCOUNT		Received	\$0.00
700 S STRATFORD DR		Due	\$100.00
MERIDIAN, ID 83642-0000		Victim Amt	\$100.00
M20131383		Status	I INACTIVE
ACPO DRUG PROSECUTION RESTITUTION		Received	\$0.00
		Due	\$3,584.50
		Victim Amt	\$3,584.50
		Status	I INACTIVE

Transactions

Date	Amount	Description	Victim	Check #	Type
------	--------	-------------	--------	---------	------

FILED
Wednesday, March 04, 2015 at 09:54 AM
CHRISTOPHER D. RICH, CLERK OF THE COURT
BY: 
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

THOMAS CAMPBELL KELLEY,

Defendant.

Case No. CR-FE-2013-0005250

ORDER TO TRANSPORT

Inmate Number:

DOB: 9/6/1982

It appearing that the above-named defendant is in the custody of the Idaho State Board of Correction, and that it is necessary that **THOMAS CAMPBELL KELLEY** be brought before this Court for:

Restitution Hearing.....Thursday, March 05, 2015 @ 02:30 PM

It is THEREFORE ORDERED That the Ada County Sheriff bring the Defendant from the Penitentiary to the Court at said time and on said date;

IT IS FURTHER ORDERED That immediately following said Court appearance the Sheriff will return the said Defendant to the custody of the Idaho State Board of Correction until the court orders otherwise;

IT IS FURTHER ORDERED That the Idaho State Board of Correction release the said Defendant to the Ada County Sheriff for the purpose of the aforementioned appearance and await further order of the court.

IT IS FURTHER ORDERED That the Clerk of this Court serve a copy hereof upon the Idaho State Board of Correction forthwith and certify to the same.

Dated Wednesday, March 04, 2015.



TIMOTHY HANSEN
DISTRICT JUDGE

mm

<u>Time</u>	<u>Speaker</u>	<u>Note</u>
<u>2:36:44 PM</u>		State v Thomas Kelly - CRFE13-5250
<u>2:36:57 PM</u>	State Attorney	Jill Longhurst
<u>2:37:00 PM</u>	Defense Attorney	Jessica Bublitz
<u>2:37:04 PM</u>	Judge Hansen	Calls case, def. is present in custody with counsel
<u>2:37:10 PM</u>	Judge Hansen	reviews file
<u>2:37:13 PM</u>	State Attorney	additional record on the issue of restitution
<u>2:48:04 PM</u>	Judge Hansen	questions to Ms. Longhurst
<u>2:49:10 PM</u>	State Attorney	response to the Court
<u>2:51:10 PM</u>	Judge Hansen	further question to Ms. Longhurst
<u>2:53:00 PM</u>	State Attorney	response to the Court
<u>2:54:32 PM</u>	Defense Attorney	argues the issue of restitution
<u>3:00:29 PM</u>	Judge Hansen	comment to Ms. Bublitz
<u>3:01:05 PM</u>	Defense Attorney	continues with argument on the issue of restitution
<u>3:03:15 PM</u>	Judge Hansen	question to Mrs. Bublitz
<u>3:03:25 PM</u>	Defense Attorney	response to the Court
<u>3:08:52 PM</u>	Judge Hansen	further question to Mrs. Bublitz
<u>3:09:12 PM</u>	Defense Attorney	response to the Court
<u>3:14:11 PM</u>	State Attorney	final comments
<u>3:17:17 PM</u>	Judge Hansen	comments - will enter a written decision
<u>3:18:27 PM</u>		END CASE

APR 10 2015

CHRISTOPHER D. RICH, Clerk
By KARY MAXWELL
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

THOMAS CAMPBELL KELLEY,

Defendant.

Case No. CR-FE-2013-0005250

MEMORANDUM DECISION
AND ORDER

BACKGROUND

On June 4, 2014, Defendant Thomas Kelley entered a guilty plea to the felony offense of Trafficking in Marijuana. Pursuant to a Judgment of Conviction and Commitment entered on November 6, 2014, Defendant was sentenced to the custody of the Idaho State Board of Correction for an aggregate term of eight years, with a minimum period of confinement of one year followed by a subsequent indeterminate period of seven years. At the sentencing hearing on November 5, 2014, the State requested an order for restitution. The Court scheduled an evidentiary hearing to address the matter of restitution.

Hearing on the State's request for restitution was held on February 6, 2015. As Defendant requested additional time to review the evidence presented by the State at the hearing, the Court set the matter for further argument and allowed the parties time to file further briefing as necessary. On February 20, 2015, Defendant filed an Objection to State's Request for Restitution Pursuant to I.C. §37-2732(k). A final hearing on the State's request for restitution was held on March 5, 2015, at which time the Court took the matter under advisement.

DISCUSSION

Whether to order restitution, and in what amount, are matters within the discretion of the trial court. *State v. Russell*, 126 Idaho 38, 39, 878 P.2d 212, 213 (Ct. App. 1994) (citations

KM

1 omitted). The court must base the amount of restitution to be awarded upon the preponderance of
2 the evidence submitted by the prosecutor, defendant, victim, or presentence investigator. *State v.*
3 *Smith*, 144 Idaho 687, 692, 169 P.3d 275, 280 (Ct. App. 2007), *citing* I.C. § 19-5304(6). The
4 determination of the amount of restitution is a question of fact for the trial court, whose findings
5 will not be disturbed if supported by substantial evidence. *State v. Hamilton*, 129 Idaho 938, 943,
6 935 P.2d 201, 206 (Ct. App. 1997) (citation omitted). Substantial evidence “is such relevant
7 evidence as a reasonable mind might accept to support a conclusion.” *State v. Straub*, 153 Idaho
8 882, 885, 292 P.3d 273, 276 (2013) (citation omitted).

9 The State is seeking an order of restitution in the amount of \$7,328.50, for attorney time
10 spent prosecuting Defendant’s case, pursuant to I.C. § 37-2372(k), which provides, in pertinent
11 part:

12 Upon conviction of a felony or misdemeanor violation under [Chapter 27 of the
13 Uniform Controlled Substances Act] . . . , the court may order restitution for costs
14 incurred by law enforcement agencies in investigating the violation. Law enforcement
15 agencies shall include, but not be limited to, the Idaho state police, county and city
16 law enforcement agencies, the office of the attorney general and county and city
17 prosecuting attorney offices. Costs shall include, but not be limited to, those incurred
18 for the purchase of evidence, travel and per diem for law enforcement officers and
19 witnesses throughout the course of the investigation, hearings and trials, and any other
20 investigative or prosecution expenses actually incurred, including regular salaries of
21 employees. . . .

22 In objecting to the State’s request for restitution, Defendant asserts that I.C. § 37-2372(k) is
23 unconstitutional because enforcement of the statute amounts to a deprivation of Defendant’s right to
24 due process and his Sixth Amendment right to present a defense under the United States
25 Constitution, and because the statute violates the Equal Protection Clause of the Fourteenth
26 Amendment to the United States Constitution. See *Objection to State’s Request for Restitution*
Pursuant to I.C. § 37-2732(k) (hereinafter Defendants’ Objection) at 3-4.

27 In support of his Equal Protection argument, Defendant cites *Rinaldi v. Yeager*, 384 U.S.
28 305 (1966). That case involved a constitutional challenge to a New Jersey statute which required
29 inmates of correctional institutions whose appeals had been unsuccessful to reimburse the county
30 for the cost of the transcripts prepared for their appeals. The United States Supreme Court
31 concluded that the statute violated the requirements of the Equal Protection Clause. 384 U.S. at
32 308. Defendant asserts the *Rinaldi* court “held it was a violation of the Equal Protection clause to
33 burden an individual with a debt he cannot repay when he leaves a period of confinement, and that

1 it does not serve society's best interest to do so." Defendant's Objection at 5. The Court disagrees.
2 The *Rinaldi* court struck down the New Jersey statute because it did not impose the financial burden
3 upon *all* persons who had been convicted and whose appeals had been unsuccessful. Rather, the
4 statute "fasten[ed] the duty of repayment only upon a single class of unsuccessful appellants – those
5 who are confined in institutions." 384 U.S. at 308. Accordingly it was due to this discriminatory
6 classification that the *Rinaldi* court concluded the statute violated the Equal Protection Clause. *Id.*
7 In the case at bar, Defendant has not identified a discriminatory classification at issue. *See, e.g.,*
8 *Bagley v. Thomason*, 155 Idaho 193, 198, 307 P.3d 1219, 1224 (2013) (stating that the first step in
9 an equal protection analysis is to identify the classification at issue, and where a party fails to
10 identify the classification as issue, the court will not further consider the claim).

11 Defendant next asserts that requiring him to reimburse the costs of the State's prosecution of
12 him deprives him of his right to due process and his Sixth Amendment right to present a defense.
13 Specifically, Defendant asserts that knowing he may be required to pay for each stage of the
14 process, such as pursuing a motion to suppress, for example, results in a chilling effect upon the
15 assertion of his rights. See Defendant's Objection at 4. According to Defendant, "[a]ny statute
16 which results in a chilling effect, even incidentally, of a Defendant's constitutional rights is deemed
17 unconstitutional, as noted [in] *United States v. Jackson*, 390 U.S. 570 [1968]." Defendant's
18 Objection at 4. However, Defendant's interpretation of *Jackson* is overly broad. As the *Jackson*
19 court noted, if a law "had no other purpose or effect than to chill the assertion of constitutional
20 rights by penalizing those who choose to exercise them, then it would be patently unconstitutional."
21 390 U.S. at 581 (emphasis added). Further, the United States Supreme Court has also observed,
22 "The cases in this Court since *Jackson* have clearly established that not every burden on the
23 exercise of a constitutional right, and not every pressure or encouragement to waive such a right, is
24 invalid." *Corbitt v. New Jersey*, 439 U.S. 212, 218 (1978). The Court cannot conclude that
25 restitution orders provided for by I.C. § 37-2372(k) have no purpose or effect other than to chill the
26 assertion of constitutional rights by defendants who are prosecuted for the crimes referenced in that
statute. For example:

A restitution requirement facilitates rehabilitation by confronting the defendant with the consequences of his or her criminal conduct and forcing the defendant to accept financial responsibility for the resulting harm. Restitution orders also promote public safety by exacting a "price" for the crime, which may deter the defendant and others from such offenses.

1 *State v. Breeden*, 129 Idaho 813, 816, 932 P.2d 936, 939 (Ct. App. 1997). Restitution is “directed
2 toward correcting a harm or paying a cost that results from the defendant’s crime.” *State v. Wardle*,
3 137 Idaho 808, 811, 53 P.3d 1227, 1230 (Ct. App. 2002).¹ For these reasons, the Court concludes
4 that I.C. § 37-2372(k) is not unconstitutional on the grounds asserted by Defendant.

5 Defendant next asserts that the Court should not award restitution in this matter because
6 Defendant is currently indigent and is serving a penitentiary sentence. See Defendant’s Objection
7 at 2. In determining whether to award restitution, the Court is guided by the factors set forth in the
8 general restitution statute, I.C. § 19-5304. See *State v. Mosqueda*, 150 Idaho 830, 833-34, 252 P.3d
9 563, 566-67 (Ct. App. 2010). Idaho Code section 19-5304(7) provides:

10 The court, in determining whether to order restitution and the amount of such
11 restitution, shall consider the amount of economic loss sustained by the victim as a
12 result of the offense, the financial resources, needs and earning ability of the
13 defendant, and such other factors as the court deems appropriate. The immediate
14 inability to pay restitution by a defendant shall not be, in and of itself, a reason to not
15 order restitution.

16 (emphasis added). Inability to pay “does not preclude, or impose a limit upon, a restitution award;”
17 rather, a defendant’s ability to pay is “only one of several factors for the court’s consideration when
18 it makes a discretionary determination on a claim for restitution.” *State v. Taie*, 138 Idaho 878,
19 880, 71 P.3d 477, 479 (Ct. App. 2003) (citation omitted) (concluding the district court did not abuse
20 its discretion in awarding restitution despite defendant’s objection that his incarceration rendered
21 him currently unable to pay restitution). Having considered the factors set forth in I.C.
22 § 19-5304(7), the Court, in its discretion, concludes that a restitution award is appropriate in this
23 matter.

24 Defendant asserts that the amount of restitution requested by the State is unreasonable for
25 several reasons. See Defendant’s Objection at 3. Initially, the Court notes that the Idaho Court of
26 Appeals has concluded the plain language of I.C. § 37-2732(k) “encompasses the salaries of
prosecutors for their time devoted to [a] particular case.” *State v. Cardoza*, 155 Idaho 889, 895, 318
P.3d 658, 664 (Ct. App. 2014). Defendant first objects on the basis that the State increased the

¹ The Court notes that in at least two decisions, the Idaho Court of Appeals has taken into consideration the policies underlying restitution orders in general when applying I.C. § 37-2732(k). See *State v. Chongphaisane*, 2013 WL 6008913 at *5 (Idaho Ct. App. Aug. 8, 2013) (unpublished) (noting the court was mindful of “the policy underlying the general criminal restitution statute that favors full compensation to crime victims who suffer economic loss”); and *State v. Weaver*, --- P.3d ---, ---, 2014 WL 3198848 at *5, n.2 (Idaho Ct. App. July 9, 2014) (stating that “I.C. § 37-2732(k) has the practical effect of making the entities it identifies victims for the purpose of the restitution awards provided for in that statute”).

1 amount of restitution sought after Defendant objected to an award of restitution and requested a
2 restitution hearing. See Defendant's Objection at 3. In a document entitled Statement of Costs and
3 Request for Restitution in a Drug Case, signed by the deputy prosecuting attorney on October 28,
4 2014, the State requested restitution in the amount of \$3,584.50. Specifically, the State indicated it
5 had spent 25.5 attorney hours on the case at a rate of \$140 per hour, and .1 attorney hours at a rate
6 of \$145 per hour. See Attachment to Defendant's Objection. At the February 6, 2015, hearing,
7 State's Exhibit 1 was admitted into evidence. That exhibit indicates the State spent 42 hours on the
8 case prior to October of 2014, at a rate of \$140 per hour, and 10 hours thereafter, at a rate of \$145
9 per hour. At the March 5, 2015, hearing, however, the State clarified that the correct calculations
10 are 42.3 hours at \$140 per hour and 9.7 hours at \$145 per hour, for a total of \$7,328.50. The State
11 asserts that the more precise accounting it prepared in light of Defendant's objection to the request
12 for restitution revealed more attorney hours spent on the case than previously estimated. In support
13 of its position, the State cites *State v. Weaver*, --- P.3d ---, 2014 WL 3198848 (Idaho Ct. App. July
14 9, 2014). In that case, the State sought restitution pursuant to I.C. § 37-2732(k) in the amount of
15 \$300, for four attorney hours spent prosecuting the defendant. At the restitution hearing, the
16 defendant challenged the accuracy of the time claimed by the State. The State admitted that four
17 hours was an estimate but argued that "spending more time precisely tracking time spent on the
18 case would actually inflate the amount, as doing so would only lead to the inclusion of additional
19 times not currently accounted for and would, in itself, require more time to accomplish." --- P.3d at
20 ---, 2014 WL 3198848 at *2. However, in *Weaver*, the State did not attempt to increase its initial
21 request of \$300, so that issue was not before the court.

22 In the case at bar, the State's initial request indicated that it had spent 25.5 attorney hours on
23 the case prior to October of 2014. In its more precise accounting, State's Exhibit 1, the State
24 indicates it spent 42.3 hours on the case prior to October of 2014. Accordingly, in its revised
25 request, the State is claiming an additional 16.8 hours of attorney time spent on the case prior to
26 October of 2014. The State bears the burden of demonstrating the amount of restitution by a
preponderance of the evidence. See, I.C. § 19-5304(6); *Weaver*, --- P.3d at ---, 2014 WL 3198848
at *2. While recognizing that a more precise accounting would likely reveal more attorney time
than previously estimated, based upon the record before it the Court cannot conclude by a
preponderance of the evidence that an increase of 16.8 hours is warranted or reasonable.

1 Accordingly, with regard to the time spent by the State on this case prior to October of 2014, the
2 Court will base its award upon the 25.5 hours originally requested.

3 As for the time spent on the case during October of 2014 and thereafter, Defendant objects
4 to the inclusion of time spent preparing for the restitution hearing. See Defendant's Objection at 3.
5 However, the Idaho Court of Appeals has determined that costs associated with a restitution hearing
6 are recoverable under I.C. § 37-2732(k). See *Mosqueda*, 150 Idaho at 834, 252 P.3d at 567. Based
7 upon the evidence presented, the Court concludes that the 9.7 hours requested by the State for this
8 time frame is reasonable and notes that this amount includes preparation and argument for the
9 sentencing hearing, which the State had not included in its initial restitution request.
10 See Attachment to Defendant's Objection. Accordingly, the Court concludes that the State is
11 entitled to restitution based upon a total of 35.2 hours of attorney time spent on the case.

12 Finally, Defendant asserts that the hourly rate requested by the State – \$140 per hour for
13 time spent prior to October of 2014, and \$145 per hour thereafter – is unreasonable.
14 See Defendant's Objection at 3. The Court agrees and concludes that \$75 per hour, which was the
15 amount awarded in *Weaver*, is a reasonable amount under the circumstances of this case.
16 See *Weaver*, --- P.3d at ---, 2014 WL 3198848 at *2, n.1. Accordingly, the Court in its discretion
17 concludes that the State is entitled to an award of restitution pursuant to I.C. § 37-2732(k) in the
18 total amount of \$2,640.

19 CONCLUSION

20 For the reasons set forth above, Defendant's Objection to State's Request for Restitution
21 Pursuant to I.C. §37-2732(k) is overruled in part. Pursuant to I.C. §37-2732(k), Defendant is
22 ordered to pay restitution in the amount of \$2,640. The State is directed to prepare an Order for
23 Restitution and Judgment consistent with this opinion.

24 IT IS SO ORDERED.

25 Dated this 10th day of April, 2015.



26
TIMOTHY HANSEN
District Judge

CERTIFICATE OF MAILING

I, Christopher D. Rich, the undersigned authority, do hereby certify that I have mailed, by United States Mail, on this 13th day of April, 2015, one copy of the ORDER as notice pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

ADA COUNTY PROSECUTOR'S OFFICE
VIA INTERDEPARTMENTAL MAIL
ATTN: JILL LONGHURST

JESSICA BUBLITZ
BUBLITZ LAW, P.C.
604 N. 16TH STREET
BOISE, IDAHO 83702

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho
- OF -
By: *[Signature]*
Deputy Clerk
DISTRICT COURT OF THE STATE OF IDAHO
CLERK AND FOR ADA COUNTY

100

RECEIVED
APR 28 2015
ADA COUNTY CLERK

MAY 11 2015

CHRISTOPHER D. RICH, Clerk
By MIREN OLSON
DEPUTY

Jan M. Bennetts
Ada County Prosecuting Attorney

Jill Longhurst
Deputy Prosecuting Attorney
200 West Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700
Fax: (208)-287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
Thomas Campbell Kelley,)
)
Defendant.)
_____)

Case No. CR-FE-2013-0005250
ORDER FOR RESTITUTION
AND JUDGMENT

WHEREAS, on the 6th day of Nov. 2014, a Judgment of Conviction was entered against the Defendant, Thomas Campbell Kelley; and therefore pursuant to Idaho Code §37-2732(k) and based on evidence presented to this Court;

IT IS HEREBY ORDERED, that the Defendant, Thomas Campbell Kelley, shall make restitution to the victim(s) and/or law enforcement agency(ies) in the following amounts of:

mw

DRUG ENFORCEMENT DONATION ACCOUNT
ACPO DRUG PROSECUTION RESTITUTION

\$100.00
\$2,540.00

TOTAL:

\$2,640.00

Post judgment interest on said restitution amount will accrue from the date of this Order and Judgment at the rate specified in Idaho Code §28-22-104.

FURTHER, pursuant to I.C. 19-5305 this Order may be recorded as a judgment against the Defendant, Thomas Campbell Kelley, and the listed victim(s) may execute as provided by law for civil judgments.

FURTHER, it is the responsibility of the Defendant to notify the Restitution Department (208-287-7700) if at any time a victim collects by means of the civil judgment.

IT IS SO ORDERED.

DATED this 11 day of May _____ 2015.



Judge

100

NO. _____ FILED _____
A.M. _____ P.M. _____

JUN 22 2015

CHRISTOPHER D. RICH, Clerk
By KATRINA CHRISTENSEN
DEPUTY

GERALD BUBLITZ – ISB# 7562
JESSICA BUBLITZ – ISB# 6649
BUBLITZ LAW, P.C.
604 NORTH 16TH STREET
BOISE, IDAHO 83702
Telephone: (208) 344-5500
Facsimile: (208) 343-6104

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO)
)
Plaintiff-Respondent,)
)
vs.)
)
THOMAS KELLEY,)
)
Defendant-Appellant.)
_____)

Case No. CR-FE-2013-5250
NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, GREG BOWER, ADA COUNTY PROSECUTOR, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant appeals against the above-named Rrespondent to the Idaho Supreme Court from the final Decision and Order entered in the above-entitled action on the 10th of April, 2015, the Honorable Hansen, District Judge presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).
3. A preliminary statement of the issues on appeal, which the Appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal, is/are:

NOTICE OF APPEAL, Page 1

Gen

- (a) Order for Restitution entered on the 11th day of April, 2015. The statute upon which this Order was entered, I.C. §37-2732(k) is unconstitutional in that enforcement of this statute amounts to a deprivation of a defendant's right to due process and to a Sixth Amendment right to present a defense under the United States Constitution.

4. The Appellant requests those portions of the transcript which are relevant to this appeal, including the hearing on Restitution which took place on February 6, 2015, *only*.

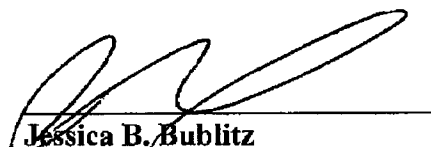
5. **Clerk's Record.** The Appellant requests only the record of the hearing on the Restitution which took place on February 6, 2015.

- (a) All items, including any affidavits, objections, responses, briefs or memorandums, offered in support of or in opposition to the State's Request for Restitution pursuant to I.C. §37-2732(k), in response to briefs lodged, by the state, appellant or the court;

6. I certify:

- (a) That a copy of this Notice of Appeal has been served on the Court Reporter,;
- (b) That the Appellant is exempt from paying the estimated fee for the preparation of the record because the Appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That Ada County will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R 20.

DATED this 22ND day of June, 2015.



Jessica B. Bublitz
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on the 22nd day of June, 2015, I faxed true and correct copies of the foregoing, **NOTICE OF APPEAL** to:

Deputy Attorney General
Criminal division
P.O. Box 83720
Boise, Id 83720-0010
Fax: (208) 854-8074

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Ada County Prosecutor
200 W. Front St.
Boise, Idaho 83702
Fax: (208) 287-7709

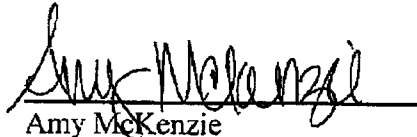
- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Ada County Court Reporter
200 W. Front St.
Boise, Idaho 83702
Fax: (208) 287-7509

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission

Ada County Clerk
200 W. Front St.
Boise, Idaho 83702
Fax: (208) 287-6919

- Hand Delivery
- U.S. Mail
- Overnight Courier
- Facsimile Transmission


Amy McKenzie

NO. _____
A.M. _____ FILED P.M. 12:01

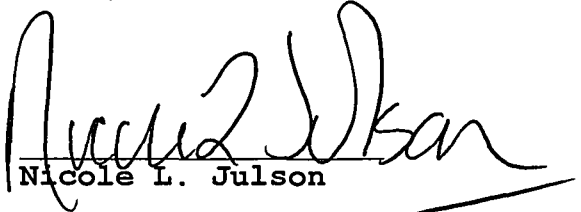
TO: CLERK OF THE COURT
IDAHO SUPREME COURT
451 WEST STATE STREET
BOISE, IDAHO 83702

SEP 15 2015
CHRISTOPHER D. RICH, Clerk
By KELLE WEGENER
DEPUTY

STATE OF IDAHO,)
Plaintiff-Respondent,) Supreme Court
v.) No. 43403
THOMAS CAMPBELL KELLEY,) Case No. CR-2013-5250
Defendant-Appellant.)

NOTICE OF TRANSCRIPT FILED

Notice is hereby given that on August 26, 2015, I
filed a transcript of 23 pages in length for the
above-referenced appeal with the District Court
Clerk of the County of Ada in the Fourth Judicial
District.


Nicole L. Julson
9-15-15
Date

HEARINGS: 2/6/15.
FINAL PDF SENT 8/26/15.

KW

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,
vs.

THOMAS CAMPBELL KELLEY,

Defendant-Appellant.

Supreme Court Case No. 43403

CERTIFICATE OF EXHIBITS

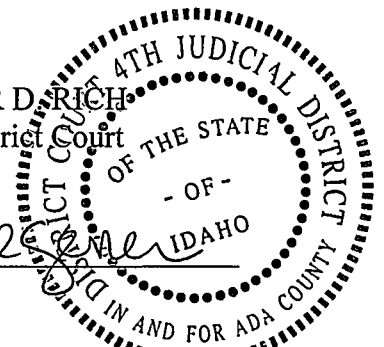
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 15th day of September, 2015.

CHRISTOPHER D. RICH
Clerk of the District Court

By KWesener
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE TIMOTHY HANSEN . February 6, 2015
CLERK: MIREN OLSON
CT REPTR: VANESSA GOSNEY

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.) Case No. CRFE13-5250
)
 THOMAS KELLY,)
) **EXHIBIT LIST**
 Defendant.)

Counsel for State: Jill Longhurst
Counsel for Defendant: Jessica Bublitz

STATE'S EXHIBITS

1. Restitution Paperwork Admit-02/06/15

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,
vs.

THOMAS CAMPBELL KELLEY,

Defendant-Appellant.

Supreme Court Case No. 43403

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

LIMITED CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

JESSICA B. BUBLITZ

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WARDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Date of Service: SEP 15 2015

CHRISTOPHER D. RICH
Clerk of the District Court
OF THE STATE
- OF -
By *K. W. Warden*
Deputy Clerk
DISTRICT COURT OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY

CERTIFICATE OF SERVICE

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,
vs.

THOMAS CAMPBELL KELLEY,

Defendant-Appellant.

Supreme Court Case No. 43403

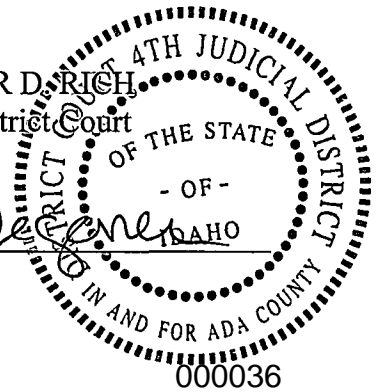
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 22nd day of June, 2015.

CHRISTOPHER D. RICH
Clerk of the District Court

By K. W. Jensen
Deputy Clerk



CERTIFICATE TO RECORD