

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

CASE NO: 2017 CF 3312

MARCUS MAY,

Defendant

_____ /

Digitally recorded proceedings held in the above-styled cause before the Honorable Thomas V. Dannheisser, Circuit Judge, on the 11th day of November 2018, at the M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola, Florida 32502.

APPEARANCES:

FOR THE STATE: RUSS EDGAR, ESQUIRE
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1st Judicial Circuit
190 Governmental Center
Pensacola, FL 32501

FOR THE DEFENDANT: JOSEPH C. FLYNN, ESQUIRE
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NOVEMBER 13, 2018

SENTENCING HEARING.....3

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P R O C E E D I N G S

1
2 THE COURT: All right. So, we're here for
3 sentencing in case 2017CF-3312, State versus Marcus
4 May.

5 Mr. Edgar.

6 MR. EDGAR: Your Honor, good afternoon.

7 I have a scoresheet that I've provided to
8 counsel.

9 If I could approach?

10 THE COURT: Yes.

11 MR. FLYNN: Your Honor, Defense has no
12 objection to the scoresheet. We reviewed it, and
13 it's accurate.

14 THE COURT: 129 points, no objection, which
15 scores a presumptive 75.7 months, is that correct?

16 MR. EDGAR: Yes.

17 THE COURT: All right.

18 MR. EDGAR: Judge, I also have -- have
19 submitted letters from Hillsborough County,
20 Pinellas County, and Escambia County, together with
21 a restitution schedule and a cost schedule.

22 THE COURT: Let me ask you: I saw on the PSI,
23 Mr. Thomas was quoted as saying most of the funds
24 came from state and federal grants that were part
25 of this case. That's not my recollection of the

1 evidence, that a significant portion of funds
2 were -- I mean, it's all state money -- it's all
3 taxpayer money, but that it was -- FTE funds were a
4 significant portion.

5 MR. EDGAR: Let me take a look at that, Judge.
6 I don't --

7 THE COURT: I mean, just from the general
8 budgets -- and I don't know if he was quoted -- it
9 wasn't quotes. It was a reference in the PSI. It
10 seemed to be a representation that basically school
11 board funds weren't involved.

12 MR. EDGAR: Do you recall --

13 THE COURT: It's at the end of the PSI --

14 MR. EDGAR: Okay.

15 THE COURT: -- and the restitution part.

16 MR. EDGAR: I have the letter.

17 THE COURT: Let's see. Page 11, per
18 Superintendent Thomas, most of what was stolen was
19 taken was from, quote, state and federal grants. I
20 don't know what difference that makes. It goes
21 through the school board, nevertheless. But,
22 anyway, that just seemed to be not consistent with
23 what I recall, although a good portion were, quote
24 grant money.

25 MR. EDGAR: I'm looking at page 11, Judge. Is

1 that the -- just a moment. Hold on. 1, 2, 3 --

2 THE COURT: Page 11, on the victim's
3 statement.

4 MR. EDGAR: -- 4, 5, 6, 7, 8, 9, 10, 11.

5 THE COURT: Victim impact and victim
6 statement.

7 MR. EDGAR: Page 11, Judge, is a -- is a
8 university --

9 THE COURT: Let me show you what I've got, if
10 you want to approach, on the PSI.

11 MR. EDGAR: Yes, sir.

12 MR. FLYNN: I show it on page 11, our PSI
13 copy, Your Honor.

14 THE COURT: You show it on yours?

15 MR. EDGAR: That's the pre-sentence officer,
16 is saying --

17 THE COURT: I know. I said I didn't know --

18 MR. EDGAR: What he said in his letter to the
19 Court that he provided does not say that.

20 THE COURT: Okay.

21 MR. EDGAR: But it does say that those funds
22 were involved, but it does not say a significant
23 portion of the moneys obtained from Escambia County
24 were from those funds. Now, that may be the case,
25 but --

1 THE COURT: Anyway, I interrupted you, so go
2 ahead.

3 MR. EDGAR: Yes, sir.

4 So, Judge, as to the restitution schedule, I
5 don't think the Defense objects to it, but would
6 like sufficient time for him to address that, to
7 review that, so State would ask that restitution be
8 ordered, but I understand he would make a request
9 to have it reserved --

10 MR. FLYNN: Yes.

11 MR. EDGAR: -- until such time as he could go
12 through that.

13 MR. FLYNN: Yes, Your Honor. The only thing
14 is -- and with all candor to the Court, I was out
15 of the country when this was filed, and so I have
16 not had a chance to thoroughly review it, compare
17 it, to make sure the numbers are correct, and add
18 it up.

19 We understand that restitution is going to be
20 ordered. We don't have an objection to restitution
21 in the appropriate amount. We just want to make
22 sure it's the appropriate amount before we agree to
23 a number.

24 THE COURT: Do you want certain time to be
25 able to request a hearing, if necessary, or do you

1 want to --

2 MR. FLYNN: Yes, sir.

3 THE COURT: Okay.

4 MR. FLYNN: And I think this is something that
5 we might be able to hammer out with Mr. Edgar
6 without a hearing.

7 THE COURT: So, what is the total of the
8 State's restitution amount?

9 MR. EDGAR: \$5,216,856.15.

10 THE COURT: Okay. In which the Defense
11 wants -- after we pronounce sentence, Defense is
12 going to want 60 days --

13 MR. FLYNN: 60 days is plenty of time, Your
14 Honor.

15 THE COURT: -- to reserve to request a
16 hearing?

17 MR. FLYNN: Yes.

18 THE COURT: Okay.

19 MR. EDGAR: And the cost, Your Honor, are in
20 the schedule we filed. These are our cost,
21 \$93,357.73.

22 MR. FLYNN: And on the cost of prosecution,
23 Defense has no objection to that amount.

24 MR. EDGAR: And that would be to -- in part to
25 the Statewide Prosecutor's Office and in part to

1 the State Attorney's Office, First Judicial
2 Circuit.

3 THE COURT: Is it broken down?

4 MR. EDGAR: Yes, it is, in the schedule.

5 THE COURT: And what will be the practical
6 impact of this restitution and cost order in the
7 judgment?

8 MR. EDGAR: Well, the --

9 THE COURT: I mean, I know the statute
10 authorizes the Court to direct the Clerk to collect
11 it, but I don't know if that's typically
12 implemented.

13 MR. EDGAR: You know, we had one case once
14 where -- actually, a fellow did pay it all back,
15 \$300,000, but that's pretty rare, you're right. I
16 mean, if that's --

17 THE COURT: Well --

18 MR. EDGAR: It will be ordered to be paid as a
19 condition of probation, if the Court imposed
20 probation, after serving an incarcerated sentence,
21 or it could be ordered and reduced to civil
22 restitution liens, that the State then could try to
23 enforce and collect.

24 Now, by statute, of course, we're -- we're
25 authorized at three times that much under the RICO

1 law.

2 We're asking for the restitution, and if it's
3 not practical, to try to collect it during any
4 period of probation that the Court might order,
5 then we would ask that it be reduced to civil
6 restitution lien, which is an option.

7 THE COURT: Let me say, in light of the jury's
8 verdict, it seems that the evidence established,
9 there are assets --

10 MR. EDGAR: Yes.

11 THE COURT: -- that are present.

12 MR. EDGAR: There are assets, yes.

13 THE COURT: Considerable assets.

14 MR. EDGAR: Yes.

15 THE COURT: Okay. Go ahead, please.

16 MR. EDGAR: Your Honor, the State agrees with
17 the pre-sentence officer, who aptly noted that the
18 nature of the scheme the Defendant employed, the
19 victim -- victims, and the type of property that
20 was taken is so, so extremely aggravated in this
21 case, that I agree, that the 20 years should be
22 imposed on this Defendant.

23 It is fundamentally an essential part of any
24 free and democratic society to have a good public
25 education system, one that's available to everyone,

1 because that's what brings us all to the same level
2 that we can work from. Whatever choices we make
3 after our education, you know, we can probably take
4 some solace, it might be our fault or our credit,
5 whatever things we have given to us in those
6 opportunities while we are young and we are
7 children, to be educated, cannot and should not be
8 taken away for pure greed.

9 And I don't gainsay the Defendant has a family
10 that really cares about him, and I don't really,
11 though, know how much weight this Court can give to
12 that when those same family members were
13 beneficiaries of his greed. I feel --

14 THE COURT: I think that the evidence
15 established, that one member, essentially, got half
16 of the net worth.

17 MR. EDGAR: His mother received a house that
18 was obtained and purchased, the proceeds from
19 theft.

20 His wife received tremendous amounts of
21 assets, or half of what he gained.

22 The bank records that we introduced shows that
23 his daughter was involved in and received family --
24 received money for a business she was engaged in
25 that was stolen from the uniform and lunch moneys,

1 from that account.

2 Other daughters and family members received
3 moneys from various checking accounts, were seeded
4 and set up with moneys and funds that were obtained
5 from his activities.

6 THE COURT: I mean, there wasn't any evidence
7 that the daughters had any specific knowledge.

8 MR. EDGAR: No, I don't -- I don't believe so.

9 THE COURT: The wife, different, because she
10 was involved in the business.

11 MR. EDGAR: Yes, sir, and I -- I have a sense
12 of compassion for those children. I have children
13 myself and I -- it's not a good thing. It's bad.
14 And he has not been a good role model in that
15 respect. It's not my business to talk about him as
16 a father. I'm just saying that we should temper
17 the -- credit that you give to his position in the
18 family of being such a poor role model and allowing
19 these family members to be beneficiaries of this
20 scheme.

21 He's a very smart man and he used it for a
22 very, very bad purpose, and he should be held
23 accountable for that reason.

24 He is one of the characters in the books he
25 likes so much, and that's got --

1 THE COURT: Which one?

2 MR. EDGAR: Huh?

3 THE COURT: Which one?

4 MR. EDGAR: It's the fellow that says he's
5 not -- he's not embarrassed by his wealth, that
6 he's proud of it.

7 THE COURT: Well, all the entrepreneurs in Ayn
8 Rand novels earn their money. Rearden Metal
9 (phonetic) was a product created by Mr. Rearden.
10 It wasn't taken from the government.

11 MR. EDGAR: Well, they earned it in a
12 philosophical sense.

13 THE COURT: He earned it with his sweat.

14 MR. EDGAR: Well, that's a -- it is a
15 fiction --

16 THE COURT: We won't debate Ayn Rand.

17 MR. EDGAR: It is a fictional story, yeah.

18 THE COURT: We won't debate Ayn Rand.

19 MR. EDGAR: Yes.

20 The State asks that the Court impose a
21 sentence recommended by the pre-sentence officer,
22 followed by a period of probation.

23 THE COURT: Okay. All right.

24 Mr. Flynn.

25 MR. FLYNN: Yes, Your Honor.

1 Thank you.

2 Your Honor, I want to start by saying I -- I
3 submitted several letters to the Court. I
4 encourage the Court -- I hope you read all those
5 letters --

6 THE COURT: I have.

7 MR. FLYNN: -- submitted by friends and family
8 of Mr. May.

9 Just addressing what Mr. Edgar said, we
10 understand those letters aren't meant to say you
11 need to give Mr. May a better sentence because
12 he's -- he's got a family, or anything like that.
13 It's just to show his character outside of the four
14 corners of this courtroom.

15 We all went through this trial. We saw for
16 four weeks the evidence that was submitted, the
17 evidence that was presented, and the arguments in
18 the end.

19 I know Your Honor knows the facts in and out
20 of this case. You've been through this trial
21 twice. And, so, I just submitted letters, numerous
22 letters, to show what other people outside of the
23 four corners of this courtroom thought of Mr. May.

24 The sentencings guidelines scoresheet that's
25 been submitted shows that Mr. May scores 75.7

1 months in the department of corrections. That's a
2 little over seven years, using lawyer math.

3 The pre-sentence investigation ask for 20
4 years, followed by 20 years.

5 I want to point out that Mr. May has no
6 criminal history prior to this. He has not even
7 been arrested, according to the records that I have
8 seen. That's important. And the reason that
9 that's important is that his co-defendant,
10 Mr. Kunkemoeller, who was convicted by a jury,
11 sentenced before this Court, received the lowest
12 recommended sentence -- or lowest sentence based on
13 his scoresheet, and he had a prior charge in the
14 federal court system back in 1984. Now, granted,
15 that was very, very distant and a very, very
16 obscure-type charge, but he did have a prior
17 charge.

18 In this case we've talked about restitution
19 here. That's not something that we're going to be
20 contesting. We're going to try and make due and
21 pay what we can on that end. I think that Mr. May
22 understands that restitution is something that's
23 ordered in this Court, and will assist in providing
24 that.

25 The length of the recommended sentence by

1 pre-sentence investigation report, Defense believes
2 is -- is very long. It won't allow restitution to
3 be paid back in an appropriate manner. I know the
4 Court has already expressed concerns about whether
5 restitution can actually be paid, but if it's made
6 a condition of probation, then it has to be paid in
7 some aspect -- I see -- in some aspects. You
8 can --

9 THE COURT: Right.

10 MR. FLYNN: -- violate somebody for not paying
11 restitution.

12 THE COURT: Not for not paying 5 million.

13 MR. FLYNN: I understand that that amount of
14 money -- I agree with the Court on that, however, a
15 payment plan in some sort of aspect has to be
16 recognized and placed before the Defendant. And if
17 they're unable to pay and it's willful, then that's
18 a violation, and that's subject to resentencing at
19 that point.

20 As I said before, Mr. May, his history is
21 empty. He is an educated man. He has two degrees.
22 He has worked several jobs over his lifetime, and I
23 think was made apparent during the trial. Those
24 jobs were listed out by the State and elicited
25 through myself, through testimony and evidence that

1 was presented in there.

2 Defense is asking for the Court to consider
3 the 75.7 months incarceration, followed by a very
4 lengthy period of probation, and potentially
5 community control, if the Court feels that, to pay
6 back the restitution that is owed based on the
7 jury's verdict.

8 Thank you.

9 MR. EDGAR: Well, Judge, what I didn't hear
10 was that, you know, I actually do have at least \$5
11 million and I can pay that now if the Judge would
12 reduce my sentence from what the PSI -- would not
13 sentence what the PSI officer recommends, but just
14 what the minimum guidelines are. I didn't hear
15 that.

16 Thank you, Your Honor, for your patience
17 throughout these proceedings, and I just urge the
18 Court to bear in mind who the victims were in this
19 case.

20 THE COURT: The victims were the taxpayers.

21 MR. EDGAR: Yes, sir, and the children.

22 THE COURT: Yes.

23 MR. EDGAR: I should point out, it's very
24 recently understood that these so-called high-tech
25 schools are, you know --

1 THE COURT: I know the pretext of what, quote,
2 high-tech means, you have dumb terminals and
3 computers and some tablets, which every school --

4 MR. EDGAR: Without actual human interaction
5 is not what we see as good for educating children.

6 But, in any event, thank you, Your Honor.

7 THE COURT: Did Mr. May or anyone else want to
8 speak?

9 MR. FLYNN: Your Honor, on the advice of
10 counsel regarding the appeal, we've asked Mr. May
11 not to make any statements today.

12 THE COURT: All right. Well, I just want to
13 say a few things, and I want to be deliberative
14 about it.

15 And everyone may not agree that's your right
16 as a citizen, but I've observed over two trials
17 some rather shocking series of events. In this
18 case the evidence established a shocking pattern of
19 fraud and theft on a massive and pervasive scale,
20 totaling millions of dollars, ranging from hundreds
21 of thousands of dollars of blatant criminal
22 kickbacks, to dollars and pennies of lunch money
23 from children, all enabled by the complicity of
24 several vendors, and the shocking negligence and
25 malfeasance of numerous public officials in this

1 state, who demonstrated a callous disregard for
2 their fiduciary duty to safeguard the public funds.

3 None of this should have been able to happen.

4 Public employees, under oath, testified that
5 they had, quote, limited ability to monitor the
6 millions of dollars entrusted in their care, and to
7 develop meaningful charter application review,
8 despite the crystal clear language in the charter
9 school law to the contrary, crystal clear.

10 Let's start -- the statute says, the district
11 shall monitor the revenues and expenditures of the
12 charter school. It says, they may request any
13 additional information they want in charter school
14 applications.

15 Public employee after public employee
16 testified, some with embarrassment, some with
17 shocking indifference, that they were supposedly
18 legally prohibited from providing meaningful
19 oversight. However, this claim was belied by the
20 fact that despite no change in the law required
21 certain officials, including the department of
22 education, relayed that they, quote, tightened
23 their procedures after the publicity of this case
24 became public.

25 The districts could have provided or required

1 any reasonable application review they wished or
2 any oversight they wished to implement. Their
3 hands were not tied by the law.

4 Charter school boards were -- and I can only
5 assume to this very day, were recklessly, untrained
6 for their duties of stewards of millions of dollars
7 of public funds, which made the fraud and theft
8 much easier, if not inevitable.

9 Charter board member after board member
10 testified that, essentially, they had not a clue
11 what their legal authority was, how much money they
12 had, what bank accounts they had, who signed the
13 checks, where the millions of dollars they were
14 responsible for went. In fact, their training
15 consisted of a meager online test dealing with
16 public records, Sunshine, and rudimentary ethics.

17 Shockingly, checking accounts in the names and
18 ownership of the public charter schools had
19 signature cards not in the name of the officers of
20 the nonprofit boards, but a Newpoint Partner, LLC,
21 employee, Carla Lovett, and a vendor selected by
22 Newpoint, LLC, Mr. Scott, of School Financial
23 Services, as the authorized signatories.

24 There was zero oversight, zero accountability.

25 How could each charter school board and the

1 common, quote, independent auditor not catch this
2 glaring financial impropriety? Perhaps it was
3 because all the charter schools were suggested a
4 common auditor in an apparent complete violation of
5 the lawful auditor selection process, which under
6 218.391 requires, like every other local
7 government, every charter school to set up an
8 independent auditor selection committee to solicit
9 proposals and make recommendations.

10 The testimony in this trial is that the
11 recommendations came straight from Newpoint
12 schools, or suggested.

13 There was no charter school committee
14 advertised, open to the public.

15 The charter school boards didn't know what
16 they didn't know. They were wholly unprepared for
17 their duties.

18 We even had a Broward County employee, quote,
19 portfolio manager, Leslie Brown, testify that she
20 was, quote, not allowed by state statutes to look
21 at anything other than what's in the application
22 when it comes to approving a charter school, we're
23 very, shall we say, controlled as to we're not
24 allowed to add any extra research. We're only
25 allowed to review applications on the face value of

1 what's in the actual document.

2 There was no evidence presented that this
3 bizarre claim is true.

4 So, a Bernie Madoff or a Charles Ponzi made an
5 application, they couldn't do further research to
6 determine the appropriateness of the entity
7 applying?

8 In fact, the evidence established, and correct
9 me if I'm wrong, that in Florida the Newpoint
10 scheme was first birthed in Florida by the granting
11 of a charter application by Bay County.

12 Wasn't that the first one?

13 MR. EDGAR: That is the first one, yes.

14 THE COURT: Okay. After receiving the
15 positive recommendation from a staff review
16 committee, with one school staff member of that
17 committee, Carla Lovett, actually solicited a job
18 with Newpoint while the application was still
19 pending.

20 The scheme was ethically challenged from the
21 start.

22 Carla Lovett then went on to be a major member
23 of the Newpoint management.

24 The evidence established that numerous
25 vendors, including but not limited to the owners of

1 School Financial Services, the president of Apex
2 Software Company, and even one marginal victim, a
3 Newpoint partner co-owner, knowingly facilitated
4 the improper purchasing and financial transactions
5 in this whole procedure.

6 In fact, I can only remember one honest broker
7 among the vendors who stood out in the employees,
8 and that was Stacey Albrecht, who courageously
9 resigned her job as bookkeeper instead of
10 continuing to participate in an obviously
11 fraudulent enterprise.

12 There was evidence clearly presented that
13 local school district after -- even experiencing a
14 previous massive financial fraud with the charter
15 school, continued to grant millions of dollars in
16 public funds to charter schools with next to no
17 oversight. This is despite the fact that district
18 the had a brilliant internal auditor and fraud
19 expert who testified in this trial meticulously and
20 expertly spent hundreds, if not probably thousands
21 of hours, tracing and reconstructing records after
22 the fact to determine the nature of the fraud.

23 It appears clear that if the district had
24 dedicated five percent of that effort upfront to
25 provide basic rudimentary checks and balances, that

1 none of this would have been likely to happen.

2 Districts throughout the state failed to
3 monitor expenditures, failed to check basic
4 checking account structures, failed to provide any
5 meaningful training to the nonprofit charter
6 schools, failed to conduct any meaningful inventory
7 of public-funded purchases until the scheme
8 collapsed on itself.

9 It seemed that the common philosophy was, who
10 cares, it's just the taxpayers money.

11 As Mr. Edgar states, the PSI, which was very
12 thorough and, frankly, rather to the point as
13 opposed to most PSIs I read, says, the Defendant's
14 elaborate scheme to defraud was cunning and
15 premeditated. The Defendant's actions victimized
16 whole communities, as well as federal and local
17 agencies. The level of selfishness and greed shown
18 by the Defendant shows no regard for those whom he
19 purported to serve.

20 Well, it certainly was premeditated, but not
21 especially cunning. The Defendant knew that he had
22 a good thing going, multiple governmental
23 bureaucracies that were willing to hand out
24 millions of taxpayer dollars, and who would never
25 bother so much as to hardly lift a finger to detect

1 the larceny. He knew that the bank guards were
2 asleep, so he walked right into the vaults and
3 helped himself to the millions. In fact, if his
4 greed was not so enormous, he might still be
5 getting away with his actions.

6 Even though he was charging twice the market
7 rate, as testified by School Financial Services,
8 for his management services, of which the evidence
9 established many districts do without -- completely
10 with no ill effect. He only failed because his
11 massive greed and incompetence caused his scheme to
12 collapse, not because of any responsible protective
13 oversight by public officials.

14 The Defendant put together charter boards with
15 friends and out of area members with zero ties to
16 the community before parachuting in unaware local
17 members after the scheme was in place.

18 When the eventual charter school board members
19 got an office, they entered into an environment
20 that they didn't know any different. It was just
21 the world as they knew it. They didn't know their
22 powers. It was just the laws of physics existed as
23 they found it.

24 He stole in every imaginable way possible. He
25 stole from the taxpayers, from the schools, from

1 the students, from the parents, even his business
2 partners. The scope of the criminality is,
3 frankly, breathtaking.

4 The criminal conduct that the jury found you
5 guilty of would justify the maximum sentence
6 allowed by law, but in light of the evidence, the
7 PSI recommendation, the fact that you do not have a
8 prior record, and, hopefully, is a deterrent to
9 prevent such behavior in the future, I'm going to
10 adjudicate you guilty on each counts, sentence you
11 to 20 years state prison for each count concurrent,
12 credit for -- do we have any --

13 THE CLERK: 42 days.

14 THE COURT: 42 days time served.

15 What are the fines for this case?

16 THE CLERK: It's 518 court cost, Your Honor.

17 MR. EDGAR: The fines are three times the
18 amount that he sought to obtain or obtain.

19 THE COURT: That's the 518 plus that -- well,
20 court cost are 518.

21 MR. EDGAR: No. It's 5 million times three.

22 THE COURT: No, I understand.

23 MR. EDGAR: Yeah. Yeah.

24 THE COURT: The court cost of 518 --

25 MR. EDGAR: Right. Right.

1 THE COURT: -- you're saying the statute
2 requires --

3 MR. EDGAR: No, it doesn't require it.

4 THE COURT: -- the fine to --

5 MR. EDGAR: It authorizes a triple fine under
6 RICO.

7 Normally a first degree fine would be \$10,000
8 for each count, but RICO statutes do authorize the
9 Court, in its discretion, to triple the amount of
10 money he -- assess as damages as the amount of
11 money he -- the fines of amount of money he
12 obtained or sought to obtain.

13 THE COURT: Does the characterization as a
14 fine in addition to the restitution make any
15 practical impact on his future collectability?

16 THE CLERK: No, sir.

17 THE COURT: Well, I can't -- I mean, I'm going
18 to order restitution. If I order a fine, it
19 wouldn't be double collected.

20 MR. EDGAR: Maybe I misunderstood the Court.
21 I'm just responding to what the fine could be.

22 THE COURT: Right.

23 MR. EDGAR: I'm not saying what I'm -- the
24 State is asking.

25 THE COURT: Well, if the fine is in anyway

1 legally more collectible than, quote,
2 restitution --

3 MR. EDGAR: I don't think so, Judge. I don't
4 think it's any more -- let me assess it just a
5 minute here. Let me make double sure.

6 MR. FLYNN: While he's looking, may -- may I
7 respond?

8 The fine, as it is under the RICO statute, can
9 be triple. It's in the Court's discretion. What I
10 would ask, though, is if the Court is going to
11 impose a fine, reserve on the fines, so we can
12 figure out if the restitution amount is right
13 before issuing a fine that could go above the
14 triple amount.

15 THE COURT: That make sense.

16 MR. EDGAR: Well, that would cut the Court
17 off -- the State off, and the Court from collecting
18 because they're going to file a notice of appeal in
19 30 days and you can't do anything with it then, you
20 lose jurisdiction.

21 THE COURT: Okay.

22 MR. EDGAR: So, you have the position now --

23 THE COURT: So, what does the State request on
24 the fine?

25 MR. EDGAR: Fine him the amount of money that

1 he could be imposed for restitution now, because
2 there's evidence that either he obtained or sought
3 to obtain it, and you could do that up to three
4 times of whatever gross value gained or three times
5 the gross loss caused. You could do that. And I
6 think that might be quicker than -- we can do that
7 now and restitution can be ordered later.

8 THE COURT: Well, there can be a modification
9 if the restitution determines it's less.

10 MR. EDGAR: Uh-huh.

11 THE COURT: So, I'm going to order fines in
12 the amount of 5 million -- I'm not going to
13 multiply it.

14 MR. EDGAR: Yes, sir.

15 THE COURT: \$5,216,856.15, understanding
16 that's the evidence submitted so far as to the
17 amount of the funds involved. Court cost of
18 \$93,357.73, in addition to 518 court cost.

19 Does the statute require a five percent
20 surcharge on that fine?

21 THE CLERK: Yes, Your Honor, on the fines.

22 THE COURT: So, a five percent surcharge is
23 required on all fines, including this one.

24 I don't believe a period of probation is
25 necessary or appropriate. I think any restitution

1 that isn't retrieved through attacking assets has
2 little chance of effort being recovered through a
3 probationary sentence.

4 MR. EDGAR: Well --

5 THE COURT: Are there any other items to
6 address?

7 And I'm going to reserve jurisdiction for --
8 you want 60 days?

9 MR. FLYNN: 60 days is appropriate, Your
10 Honor.

11 THE COURT: So, if the Defense wants a hearing
12 on the restitution, file the request within 60
13 days, otherwise, the restitution will be as
14 announced.

15 MR. FLYNN: As announced by State, Mr. Edgar,
16 already, yes.

17 THE COURT: Correct.

18 MR. EDGAR: No, sir.

19 MR. FLYNN: And, Your Honor, I typically, as a
20 rule of thumb, will notify both parties if we're
21 not going to contest it, just -- so, it doesn't
22 lapse.

23 THE COURT: Okay. All right. And that's
24 the -- and the 5,216,856.15 included basically
25 damages to governmental bodies, not the

1 corporation, Newpoint Partners, LLC.

2 MR. EDGAR: Correct.

3 THE COURT: Okay. I think that's appropriate.

4 That's the judgment and sentence of the Court.

5 You have 30 days to appeal the sentence. If you
6 can't afford an attorney, one will be appointed for
7 you.

8 MR. FLYNN: Your Honor, the only thing I would
9 ask is that Mr. May remain local through any
10 potential restitution hearing, and any other
11 motions that might be filed post trial. The only
12 other thing, Your Honor, is that we did file a
13 motion for a new trial. It's just form. I expect
14 the Court to deny that motion. We're not asking
15 for a hearing on it. It's the same objections we
16 raised during the trial.

17 THE COURT: Okay. I'll deny the motion for a
18 new trial.

19 MR. FLYNN: Thank you, Your Honor.

20 THE COURT: Do you want to set a restitution
21 date or just get a schedule with my judicial -- or
22 hearing --

23 MR. FLYNN: Let me get a schedule on mine
24 because I -- I've got to figure out what I have
25 available, but --

1 THE COURT: Or any other further motions you
2 want or --

3 MR. FLYNN: Yes, Your Honor.

4 THE COURT: Okay. And, Mr. Edgar, you don't
5 see any need to set any date right now for any
6 matter?

7 MR. EDGAR: No. We're --

8 THE COURT: Okay.

9 MR. EDGAR: Thank you.

10 THE CLERK: What was the cost of restitution,
11 93 thousand --

12 THE COURT: \$357.73.

13 THE CLERK: Thank you.

14 MR. EDGAR: Thank you, Your Honor.

15 THE COURT: All right. We're adjourned.

16 THE BAILIFF: All rise.

17 (THEREUPON, the proceedings conclude at 3:33 p.m.)

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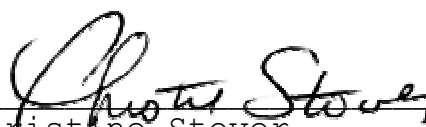
1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF ESCAMBIA

4
5 I, Christine Stover, transcriptionist, First
6 Judicial Circuit, do hereby certify that the foregoing,
7 being pages numbered 1 through 31, inclusive, is a true
8 and correct transcript of the digitally recorded
9 proceedings held in the case of STATE OF FLORIDA vs.
10 MARCUS MAY, Case No. 2017 CF 3312, on the 13th day of
11 November 2018, before the Honorable Thomas V.
12 Dannheisser, Circuit Judge, at 190 Governmental Center,
13 Pensacola, Florida.

14 IN WITNESS WHEREOF, I have hereunto set my hand,
15 this the 4th day of March, 2019.

16
17
18 
Christine Stover
19 TRANSCRIPTIONIST - FIRST CIRCUIT

