

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

CASE NO: 2017 CF 3312

MARCUS MAY,

Defendant

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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  
Office of the State Attorney  
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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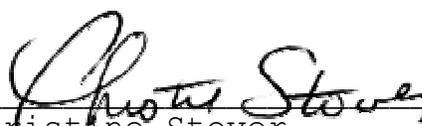
## 1 CERTIFICATE OF REPORTER

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

