

DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO Arapahoe County Justice Center 7325 South Potomac Street Centennial, CO 80112	DATE FILED: November 9, 2020 3:00 PM CASE NUMBER: 2017CR1625
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: SCOTT PACK	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr style="width: 20%; margin: auto;"/> Case No. 2017CR1625 Division: 407
Order re Restitution	

This matter is before the Court concerning restitution. The Court presided over a hearing on October 7 and 8, 2020. The Court takes judicial notice of its file.

Following trial and sentencing the Defendant stands convicted of Violation of the Colorado Crime Control Act, §18-17-104(3), C.R.S., Conspiracy to Commit a Violation of the Colorado Crime Control Act, §18-17-104(4), C.R.S., Conspiracy to Distribute Marihuana Concentrate, §18-18-406(2)(b)(I), C.R.S., Cultivation of Marihuana, §18-18-306(3)(a)(I), C.R.S., and two counts of Securities Fraud, §11-51-501(1)(b) and (c), C.R.S. For one of the Securities Fraud counts the jury additionally found that the Defendant made untrue statements of material facts or material omissions.

The Defendant has taken an appeal.

After trial and before sentencing the prosecution filed their Motion for Joint and Several Restitution. The seek over \$2.8 million dollars in restitution for four different individuals: Pierre Raygot (\$246,480.60), Christof Raygot (\$299,935), James Hay-Arthur (\$1,050,000), and Kyle Kolb (\$1,250,000). The Defendant objected to the restitution request and filed a Brief Opposing Restitution. The People filed a written response.

The following witnesses testified at the restitution hearing: Christoph Raygot, Pierre Raygot (“Raygot”), James Hay-Arthur (“Hay-Arthur”), Kyle Kolb (“Kolb”), Michael Stonehouse (“Stonehouse”), and Steve Bratten (“Bratten”).

Christoph Raygot

Mr. Christoph Raygot offered his testimony through an interactive audio/visual system. He also used the services of a French-language interpreter. He did not testify during the trial.

He testified that he invested over \$200,000 through his brother. He had no documents as he trusted his brother. He had no details of the investment. He received no return from his investment.

Pierre Raygot

Raygot offered his testimony through the court's interactive audio/visual system. He also testified at trial. A French-language interpreter was available during his trial testimony. He never used the interpreter. The Court found it unnecessary to provide a French-language interpreter during the restitution hearing testimony.

Raygot's testimony during the restitution hearing did not vary from the testimony he offered during the trial.

Raygot met the Defendant in 2010 and developed a close relationship with him. In 2015, the Defendant discussed the possibility of Raygot investing in a business called Harmony and Green. Raygot understood that the business had a relationship with the Colorado marijuana industry. However, the Defendant told him that his foreign citizenship would not permit him to invest directly in the cultivation and sale of marijuana, medicinal or recreational, and therefore his investment would be in real estate that would be leased or rented to marijuana growers. This point was confirmed on a number of occasions, including a visit to Colorado in 2015 when Raygot toured a warehouse in Colorado Springs. Marijuana was being grown in this warehouse. He testified that a separate entity, HGCO, was involved.

In June or July of 2015 he invested \$100,000. Exhibits 89, 90, 92, and 257 reflect aspects of the agreement and payments between Raygot and the Defendant.

Despite questions and concerns Raygot contacted his brother and convinced him to invest in Harmony and Green. An additional \$400,000 were invested with \$200,000 coming from Raygot and \$200,000 from Christoph Raygot. Payments were made through a Spanish company.

Exhibits 194, 217, 224, 232, N, and O support the testimony of Raygot concerning his on-going communications with Defendant (and a Co-Defendant). Additional documents (some of which were introduced at trial but not during the hearing and so not considered by this Court

for restitution purposes) were exchanged between the parties. The admitted documents also support Raygot's testimony concerning his understanding that he was investing in real estate and not in marihuana production. At no time was Raygot informed that Harmony and Green was involved in the out-of-state sale of marihuana.

Raygot testified that his brother relied on him and he relied upon the Defendant. He has never received a return on his investment. He is involved in a civil lawsuit with the Defendant.

James Hay-Arthur

Hay-Arthur offered his testimony through the court's interactive audio/visual system. He also testified at trial under a grant of immunity. His hearing testimony was very similar to his trial testimony.

He understood his monetary investment would be in a facility which was to provide space for the growing of legal marihuana pursuant to Colorado law. He was led by the Defendant to believe that licenses were the key to the value of his investment. Due to the represented nature of the marihuana industry the licenses were to appreciate in value. These licenses, according to information he received from the Defendant, were held by Harmony and Green. He later learned that another company may have had ownership interest in the licenses.

As at trial, during the hearing he reviewed exhibit 192 which consists of 64 pages of email communications between the Defendant, himself, a Co-Conspirator, Phillip Weisner, and Kolb (Hay-Arthur's business partner). He repeated that communications also occurred through use of the telephone and electronic texts.

Upon his initial introduction to the Defendant's business he dealt with the Defendant although a Co-Conspirator was also involved. He preferred the Defendant because he thought he was "the cleaner" of the two. Eventually, he became frustrated with the Defendant and the information provided. He limited his communications with the Defendant preferring to deal primarily with Weisner and the Co-Conspirator. The Defendant did tell him that HGCO was the company that possessed the medical and recreational marihuana licenses.

At one time Hay-Arthur (and Kolb) toured property located in Elbert county. This property has been referred to both during trial and during the restitution hearing as the Elbert farm or the Elbert ranch or the Elbert property. This tour occurred after he had already invested "a considerable amount of money." During this tour he recalls meeting Stonehouse who he thought was the gardener. He came away feeling uncomfortable about certain aspects of the

operation in Elbert county. This discomfort did not prevent him from investing more money which he believed would specifically be devoted to the Elbert county property.

Hay-Arthur was questioned by the Defendant concerning a meeting at a restaurant prior to the tour of the Elbert county property. He could not recall such a meeting and he did not recall Stonehouse ever telling him that Stonehouse “would take the fall.” He was certain that his only conversation with Stonehouse was at the Elbert county property when he asked Stonehouse about tomato plants that were growing in “hoop houses” in which marihuana was also being grown. Based upon all testimony presented during the hearing the Court finds that the meeting did occur. Otherwise, the Court credits the testimony of Hay-Arthur especially concerning his belief that the investment was legal.

Stonehouse testified during the restitution hearing. He recalls meeting Hay-Arthur and Kolb at a restaurant. The Defendant and a Co-Conspirator were also present. He understood that Hay-Arthur and Kolb would invest in the Elbert county property. He believed that both Hay-Arthur and Kolb understood that the marihuana growing on the Elbert county property was “not entirely legal.” Much of his testimony was prefaced with phrases such as “I believe they understood...” or “It appeared ...” or “It was clear to me that ...” Similarly, during the visit by Hay-Arthur and Kolb to the Elbert county property there was a discussion of one of the two investors about buying property in Elbert county upon which marihuana would be grown and Stonehouse would manage the property. Stonehouse interpreted this to mean that the investors wanted to set up an illegal grow operation. Stonehouse clearly interpreted Hay-Arthur’s and Kolb’s actions through the lens of his own deep involvement in the criminal enterprise; i.e. he assumed that Hay-Arthur and Kolb had the same or a similar level of knowledge concerning marihuana cultivation, sale, and distribution as had he.

Bratten, an Agent of the Colorado Department of Revenue, testified that, during a proffer by Stonehouse, Stonehouse said that both Hay-Arthur and Kolb were aware that the Elbert county property growing operation was illegal.

Hay-Arthur was never informed that marihuana was going out-of-state or that there was any illegality to the operation. He remembered being informed that all aspects of the operation were legal and was adamant that if he had any idea that illegal activity was occurring, he would have called law enforcement.

Incrementally, he invested \$1,050,000 or \$1,150,000. He relied upon Kolb to handle most of the money transfers. He acknowledged receiving some return and described the return as “insignificant”; either hundreds of dollars or in the low thousands.

During the restitution hearing the Defendant confronted Hay-Arthur with his response to the Defendant's efforts to serve him with a subpoena to testify. He acknowledges he was aware that a process server was attempting to contact him, but he declined to meet with her because he knew he was presenting testimony anyway. He thought the effort was an attempt to intimidate him. The Defendant submitted an Affidavit of Attempted Service detailing a process server's attempts to serve Hay-Arthur with a subpoena to testify.

Kyle Kolb

Kolb offered his testimony through the court's interactive audio/visual system. He also testified at trial under a grant of immunity. His hearing testimony was very similar to his trial testimony.

He acknowledged owning a business with Hay-Arthur. The business has nothing to do with the cultivation or marketing of marihuana. In January or February of 2016, he met the Defendant and a Co-Conspirator. The meeting occurred at his offices. He was asked to invest in the build-out of facilities which would then be leased to legal marihuana grow operations. He received the impression that both the Defendant and the Co-Conspirator had made a sizeable monetary contribution to Harmony and Green and that Harmony and Green was a marihuana or hemp company.

To aid him in determining whether to invest he acknowledged touring a warehouse. Later he also toured the Elbert county property for a similar purpose. He confirmed that the Co-Conspirator took the lead with the tour of the Elbert county property and that the Defendant had little to do with it.

On February 10, 2016, he, Hay-Arthur, and the Defendant signed exhibit 166 memorializing the investment in Harmony and Green. The investment totaled \$4,800,000. Harmony and Green was defined as "engaged in the Real Estate Acquisition, branding, cultivation of Intellectual Property, and marketing related to cannabis industry products..." Further Harmony and Green was described as "building out 70,000 SF of Medical and Recreational Marijuana Cultivation, Retail Stores, and Extraction facilities..." HGCO was designated as the entity licensing "all properties, local licenses, plant genetics, and other Intellectual Properties from" Harmony and Green. Other entities are described as related to Harmony and Green and involved in the medical and recreational cultivation of marihuana. There is no indication in exhibit 166 that Harmony and Green was acting in violation of any law although Kolb testified that he was aware that Colorado and Federal law diverged on this point.

The investment by Kolb and Hay-Arthur was accomplished through the wire transfer of funds to an account provided by either the Defendant or a Co-Conspirator.

Kolb remembers a meeting at a restaurant involving Stonehouse. The Defendant absented himself from this meeting and Kolb understood that the Defendant and Stonehouse were having “a tumultuous time.” At this meeting there were discussions concerning the Elbert county property and the possibility Kolb and Hay-Arthur could acquire the property for a discounted price. Kolb remembers no voiced concerns regarding the legality of any aspect of the Elbert county property. By this time, Kolb was concerned about the security of the investment and the purchase of the Elbert county property at a discounted price was attractive. Again, money was wired from Kolb and Hay-Arthur to an account provided by the Defendant and the Co-Conspirator.

Law and Argument

Restitution in criminal cases is mandatory to compensate crime victims and to assist in the rehabilitation of the Defendant. Restitution also acts as a deterrence to future criminal acts. Restitution is accomplished through Part 6 of Article 1.3 of Title 18.

“Restitution” means any pecuniary loss suffered by a victim and includes but is not limited to all out-of-pocket expenses, interest, loss of use of money, proximately caused by the Defendant’s conduct. The amount of restitution must be able to be reasonably calculated and recompensed in money. Section 18-1.3-602(3)(a), C.R.S.

The Defendant relies upon §18-1.3-602(4)(b), C.R.S. After broadly defining “victim” the subsection precludes “a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan as defined under the law of this state or of the United States” as a victim. He points out that the legalization of marihuana in Colorado did not legalize the substance under federal law. *People v. McKnight*, 2019 CO 36, ¶37, 446 P.3d 397, 406 and *People v. Crouse*, 2017 CO 5, ¶11, 388 P.3d 39, 41-42.

Under the plain language of subsection (4)(b) the Defendant asserts that “financiers of a marijuana business” violate federal law. This broad assertion fails to recognize that the law contains the concept of the “innocent investor.” *See e.g. People v. Yoakum*, 191 Colo. 269, 552 P.2d 291 (1976).

The Defendant also asserts that all four victims were precluded from funding retail marijuana operations. During the time of the offenses the law prohibited out-of-state investors from lawfully funding a retail marihuana business. Section 44-11-307, C.R.S. 2016, *amended* 2019.

It is the obligation of the People to request restitution. Section 18-1.3-603(2), C.R.S. The People must establish the amount of restitution owed by a preponderance of the evidence. *People v. Smith*, 181 P.3d 324 (Colo. App. 2007). When a defendant challenges restitution a court must conduct a hearing. *People v. Martinez*, 166 P.3d 223 (Colo. App. 2010).

The Court cannot order a defendant to pay restitution for losses that did not result from the conduct that was the basis of the Defendant's criminal conviction. *Cumhuriyet v. People*, 200 Colo. 466, 469, 615 P.2d 724, 726 (1980). The Court cannot award restitution for conduct underlying an acquitted charge, *Cowen v. People*, 2018 CO 96, ¶14, 431 P.3d 215, 220, or for losses caused by uncharged conduct, *People v. Roddy*, 2020 COA 72, ¶34.

The Defendant asserts that the securities fraud convictions he has suffered will not withstand appellate challenge based upon a lack of jury unanimity concerning the "multiple alleged securities transaction (sic) and alleged victims..." Alternatively, the Defendant asserts that even if the securities fraud convictions are affirmed on appeal the Court would commit error to "impose a restitution order regarding investors and transactions that were not specifically found to be criminal by a unanimous jury verdict." The chance of the appellate court's determination of error regarding a conviction will not prohibit the Court's award of restitution. *People v. Vasseur*, 409 P.3d 524 (Colo. App. 2016).

The Defendant also attacks the ability of the Court to determine restitution. Relying upon *Apprendi v. New Jersey*, 530 U.S. 466 (2000), he asserts the jury was required to unanimously determine if restitution is owing and the amount of restitution. Despite the number of published appellate opinions holding that the rule of *Apprendi* doesn't apply to restitution orders, see *People v. Knapp*, 2020 COA 107, ¶86, the Defendant argues that the two-judge dissent from a denial of certiorari in *Hester v. United States*, ___ U.S. ___, 139 S.Ct. 509, 202 L.Ed.2d 627 (2019), should control and should permit this Court to act contrary to the plain language in the Colorado appellate opinions. Trial courts have no discretion to disregard binding appellate rulings. *People v. Roybal*, 672 P.2d 1003, 1005 (Colo. 1983). The rule of *Apprendi* does not bar this Court's consideration of restitution.

Finally, the Defendant also challenges the factual support of the amount requested. On that challenge the Court has engaged in this process of hearing and ruling.

ORDER

Christof Raygot

Christof Raygot's testimony at the restitution hearing established that, at the urging of his brother, he invested \$200,000¹ in Harmony and Green. He relied exclusively on information provided by his brother. He never toured any facility or property financially related to Harmony and Green and he never met the Defendant or any Co-Defendant or employee of Harmony and Green.

Christof Raygot is entitled to restitution in the amount of \$199,935. The Court enters the lesser amount as Christof Raygot's testimony supports the conclusion that he was simply rounding up regarding his loss and the other evidence submitted support the lesser amount. The argument that §18-1.3-602(4)(b), C.R.S., bars his receipt of restitution is belied by his reliance upon others in making his investment which is mentioned in more detail related to the award of restitution for Pierre Raygot.

Pierre Raygot

Pierre Raygot's testimony at the restitution hearing established that he invested \$300,000² in Harmony and Green. He relied on information provided by the Defendant, with whom he had established a close relationship. He also toured a warehouse in which marihuana was being grown. He was concerned about the legality of the business and pressed the Defendant on this point. He received absolute assurances that his (and his brother's) investment would be in the warehouse and not the growing operation within the warehouse. As a citizen of a foreign country he was not familiar with the laws related to the growing and distribution of marihuana. Again, he relied upon assurances given by the Defendant.

Pierre Raygot is entitled to restitution in the amount of \$299,935. Again, the Court enters the lesser amount as Pierre Raygot also appeared to be rounding the amount of his loss. Section 18-1.3-602(4)(b), C.R.S., does not bar his receipt of restitution due to the assurances given by the Defendant to him that he (and his brother) were investing in the warehouse and not in the marihuana production taking place in the warehouse.

James Hay-Arthur

James Hay-Arthur's testimony at the restitution hearing established that he invested some amount in Harmony and Green. His initial investment related to space in which marihuana

¹ Exhibit 500 presented by the People as a summary indicates that Christof Raygot invested \$199,935.

² Exhibit 500 indicates the Pierre Raygot invested \$299,935.

would be grown with collateral provided by marihuana licenses. He also invested in the Elbert county property. He was clear that his investment was directly tied in with the growing and marketing of marihuana.

He was credible in this testimony that he sought and received assurances from the Defendant (and others) that Harmony and Green was not engaged in any illegal activities. He candidly testified that he was uncomfortable with aspects of the Elbert county property. The Court finds this discomfort related to his general impressions of Stonehouse and the Co-Defendant. Hay-Arthur's credibility is further supported by the testimony of his business partner, Kolb. The Court does not find Stonehouse's impressions and conclusions sufficient to so erode the credibility of Hay-Arthur to permit the Court to conclude that he should be denied restitution based upon §18-1.3-602(4)(b), C.R.S. The issue related to the service of the subpoena in any way erodes his credibility.

Hay-Arthur's pursuit and receipt of immunity does not change the Court's analysis. He was in a business relationship with the Defendant. The Defendant was criminally charged (along with many others). The relative lack of legal expertise. All these factors lead the Court to conclude that Hay-Arthur had every right to be concerned regarding criminal liability.

He testified that the initial investment was either \$1,015,000 or \$1,150,000. He also indicated he invested additional amounts. He was not certain as to the total amount and as to any amount of return he may have received. He was credible in his assertion that his partner, Kolb, was more conversant with the actual monetary investment. The People's Motion for Joint and Several Restitution listed \$1,050,000 and the People's Exhibit 500 listed \$1,250,000.

Hay-Arthur is entitled to restitution in the amount of \$1,050.00. This amount reflects the uncertainty in the total amount established through the evidence presented by the People.

Kyle Kolb

Kolb's restitution hearing testimony was similar to Hay-Arthur's testimony, but Kolb was better able to recall specifics of the financial aspects of the investments. He relied upon information given by the Defendant and Co-Defendant, and upon tours of a warehouse and the Elbert county property. He and Hay-Arthur invested "somewhere between \$200,000 and \$400,000" as an initial investment. Subsequent investments brought his personal loss to \$1,150,000 minus a \$200,000 return.

He understood that Colorado law and Federal law diverged concerning the production and distribution of marihuana. He accepted assurances by the Defendant and Co-Defendant that all aspects of the investments complied with Colorado law. He recalls the restaurant meeting and

he recalls nothing about that meeting causing him any concerns regarding the legality of his investment. The Court finds Kolb credible.

The Court makes note that it received Exhibits 83³ and 158⁴. The printed pages of exhibit 83 reveal that the Defendant and Harmony and Green received \$1,409,278.11 from this account. The printed page of exhibit 158 reveals that Michael Stonehouse received \$60,000 from this account. Based upon the testimony of Hay-Arthur and Kolb the Court finds these exhibits of little use. The amounts revealed in these two exhibits permit the Court to conclude that at least \$1,409,278.11 was paid and potentially lost by Hay-Arthur and Kolb acting as partners. But this amount is not conclusive of the overall loss as Kolb testified that some payments occurred through wire payments which may not be reflected in these exhibits.

Kolb's pursuit and receipt of immunity does not change the Court's analysis. He was in a business relationship with the Defendant. The Defendant was criminally charged (along with many others). The relative lack of legal expertise. All these factors lead the Court to conclude that Kolb had every right to be concerned regarding criminal liability.

Kolb is entitled to restitution in the amount of \$950,000. The quality of evidence presented by the People leads the Court to conclude that Kolb paid \$1,150,000 and received a return of \$200,000. As with Hay-Arthur, the Court finds that §18-1.3-602(4)(b), C.R.S., does not bar this recovery. Kolb acted on reliance of the assurances of the Defendant (and Co-Defendant and Stonehouse) that Harmony and Green and the Elbert county property complied with State law.

In summary: Judgment enters in favor of Pierre Raygot and against the Defendant in the amount of \$299,935. Judgment enters in favor of Christof Raygot and against the Defendant in the amount of \$199,935. Judgment enters in favor of James Hay-Arthur and against the Defendant in the amount of \$1,050,000. Judgment enters in favor of Kyle Kolb and against the Defendant in the amount of \$950,000. Interest shall accrue as required by law.

The Court shall issue an Amended Sentencing Order (Mittimus) reflecting this Order of Restitution.

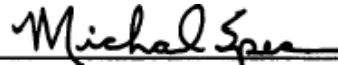
³ This exhibit consists of seven pages and a CD with the label "Wells Fargo." No information or testimony was presented that the CD should also be examined by the Court to determine restitution. The Court declines any invitation to engage in its own investigation as to whether the seven pages and the amounts set forth therein should be expanded by information in the records on the CD.

⁴ This exhibit consists of one page and a CD with the label "JP Morgan." No information or testimony was presented that the CD should also be examined by the Court to determine restitution. The Court again declines any invitation to engage in its own investigation as to whether the one page and the amount set forth therein should be expanded by information in the records on the CD.

In the event any co-defendant has a restitution order entered against him or her the Court will note the joint and several obligation of this restitution obligation.

November 9, 2020.

BY THE COURT:

A handwritten signature in cursive script that reads "Michael Spear". The signature is written in black ink and is positioned above a solid horizontal line.

MICHAEL SPEAR
District Court Judge