

# **Appendix C**

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

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United States of America,	)	
	)	No. CR-14-00848-PHX-SPL
Plaintiff,	)	
	)	
vs.	)	Phoenix, Arizona
	)	May 7, 2019
Elijah Loren Arthur, Sr.,	)	1:32 p.m.
	)	
Defendant.	)	
	)	

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**BEFORE: THE HONORABLE STEVEN P. LOGAN, JUDGE**

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**MOTION HEARING**

**APPEARANCES:**

For the Plaintiff:

U.S. Attorney's Office  
By: Alexander W. Samuels, Esq.  
40 North Central Avenue, Suite 1800  
Phoenix, AZ 85004

For the Defendant:

Federal Public Defender's Office  
By: Jane L. McClellan, Esq.  
850 West Adams Street, Suite 201  
Phoenix, AZ 85007

Official Court Reporter:

Jennifer A. Pancratz, RMR, CRR, FCRR, CRC  
Sandra Day O'Connor U.S. Courthouse, Suite 312  
401 West Washington Street, Spc 42  
Phoenix, Arizona 85003-2151  
(602) 322-7198

Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared by Computer-Aided Transcription

## PROCEEDINGS

(Proceedings commenced at 1:32 p.m.)

(Defendant not present.)

THE COURTROOM DEPUTY: Criminal Case 14-848, United States of America versus Elijah Loren Arthur, Sr. This is the time set for motion hearing.

MR. SAMUELS: Good afternoon, Your Honor. Alexander Samuels on behalf of the United States.

THE COURT: Mr. Samuels, good afternoon to you.

MS. McCLELLAN: Good afternoon, Your Honor. Jane McClellan and Jon Sands appearing on behalf of Elijah Loren Arthur, Sr.

And for the record, we have spoken to Mr. Arthur regarding this hearing, and he does waive his presence.

THE COURT: Thank you very much, and good afternoon to both of you as well.

This is the time set for a motions hearing.

On September the 16th, 2015, the defendant, Elijah Loren Arthur, Sr., was convicted of first degree murder of Officer Jair Cabrera, that's J-A-I-R, Cabrera, C-A-B-R-E-R-A, the victim in the case (see Document 209).

On July the 20th, 2016, the Court issued an order, the restitution order in the case, requiring the defendant to pay restitution to the victim's estate in the amount of \$565,923 (see Document No. 283).

1           The defendant appealed his conviction and restitution  
2 order (see Document No. 285), and the Court of Appeals for the  
3 Ninth Circuit vacated the restitution order and remanded the  
4 case for reconsideration of restitution (see Document  
5 No. 303-1).

6           The government filed a motion for restitution, the  
7 motion in the case, which is Document No. 306. And, of course,  
8 we're here to talk about the issues.

9           I have a few questions. Do both parties agree that a  
10 consumption offset should be applied?

11           Mr. Samuels?

12           MR. SAMUELS: We do, Your Honor. We'd be happy to  
13 answer any specific questions about that, given that that was  
14 the main subject of the appeal and the remand.

15           THE COURT: Ms. McClellan?

16           MS. MCCLELLAN: Yes, we agree it should be applied.

17           THE COURT: Do the parties agree that the restitution  
18 amount should be \$313,931?

19           MR. SAMUELS: Yes, Your Honor.

20           MS. MCCLELLAN: Yes, Your Honor, with the caveat that  
21 we are preserving some issues on a bigger scale regarding the  
22 applicability of restitution at all. But to the extent that  
23 based on existing law -- and we agree with the calculations  
24 also of the consumption offset.

25           THE COURT: Ms. McClellan, this is your opportunity to

1 preserve your arguments against restitution for lost income on  
2 appeal, so whatever you want to place on the record, you  
3 certainly can if you would like to.

4 MS. MCCLELLAN: Your Honor, I have nothing to add to  
5 what was in our briefing. We are just preserving for the  
6 record the argument that the Victims' Rights Act does not  
7 authorize restitution for lost income based on the language of  
8 the statute and the arguments made in the pleading.

9 And secondly, we're also arguing that it  
10 unconstitutionally authorizes a judge rather than a jury to  
11 impose and set the amount of restitution.

12 We recognize there is existing case law that does not  
13 support those arguments, but for the appeal purposes and  
14 because the case law could change, we're simply preserving  
15 those arguments. I have nothing else to add to that.

16 THE COURT: Mr. Samuels, is there anything you would  
17 like to place on the record?

18 MR. SAMUELS: Your Honor, the government agrees that  
19 the Ninth Circuit cases cited in all the briefing resolve these  
20 questions, and I don't think we need to add anything beyond  
21 that.

22 THE COURT: A defendant may be ordered to pay  
23 restitution to a deceased victim's estate for various costs,  
24 including future lost income. See 18 United States Code  
25 Section 3663 and *United States versus Cienfuegos*, which is

1 C-I-E-N-F-U-E-G-O-S, which is 462 F.3d 1160 and 1163. It's a  
2 Ninth Circuit 2006 case.

3 In the restitution order, this Court initially  
4 estimated the loss to the victim's estate at approximately  
5 \$780,923 (see Document No. 283 at page No. 2 and  
6 Document No. 306 at page No. 3).

7 The government has requested that this Court apply a  
8 consumption offset to the restitution award. The government  
9 has recommended applying a consumption offset of \$466,992 to  
10 the restitution award, which would leave the defendant liable  
11 for the remaining \$313,931.

12 At an earlier hearing before the Court on July the  
13 19th, 2016, the victim's parents stated that they had received  
14 approximately \$360,000 from insurance payouts after the  
15 victim's death (see Document No. 306-2 at 39).

16 The government argues that the money received by the  
17 victim's parents should not count against the restitution award  
18 because the money was given to the victim's parents in their  
19 individual capacities and not the victim's estate (see  
20 Document No. 306 at 5).

21 The defendant argues -- I'm sorry, the defendant  
22 agrees with the government's argument that a consumption offset  
23 should be applied to a restitution award (see Document No. 309  
24 at pages 1 and 2).

25 However, while the defendant points out that the

1 victim's parents have received approximately \$360,000 in life  
2 insurance payments, \$35,000 in donations since the victim's  
3 death, the defendant takes no position on the government's  
4 argument that these amounts should not count against a  
5 restitution award (see Document No. 309 at page 2).

6 And finally, the defendant preserves certain arguments  
7 in opposition to binding precedent in the event that there is a  
8 change in the law while this case is still pending.

9 This Court, after hearing from parties and reviewing  
10 the pleadings, it appears that both parties agree and the Court  
11 agrees that a consumption offset should be applied, and the  
12 appropriate restitution amount will be \$313,931.

13 Is there anything else from the United States  
14 Government?

15 MR. SAMUELS: No, Your Honor. Thank you.

16 THE COURT: Ms. McClellan?

17 MS. MCCLELLAN: No, Your Honor. Thank you.

18 THE COURT: The hearing's adjourned.

19 (Proceedings concluded at 1:39 p.m.)

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## C E R T I F I C A T E

I, JENNIFER A. PANCRATZ, do hereby certify that I am  
duly appointed and qualified to act as Official Court Reporter  
for the United States District Court for the District of  
Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 14th day of June,  
2019.

s/Jennifer A. Pancratz  
Jennifer A. Pancratz, RMR, CRR, FCRR, CRC