FILED
FIFTH DISTRICT COURT
2008 NOV 19 PM 1:17
WASHINGTON COUNTY
BY

WALTER F. BUGDEN, JR. (480)
TARA L. ISAACSON (7555)
BUGDEN & ISAACSON, L.L.C.
445 East 200 South, Suite 150
Salt Lake City, UT 84111
Telephone: (801) 467-1700
Facsimile: (801) 746-8600

RICHARD A. WRIGHT (Nevada Bar No. 886)
WRIGHT, JUDD & WINCKLER
Bank of America Plaza
300 South Fourth Street, Suite 701
Las Vegas, NV 89101
Telephone: (702) 382-4004
Facsimile: (702) 382-4800

Attorneys for Defendant

IN THE FIFTH DISTRICT COURT

WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. WARREN STEED JEFFS, Defendant.	**MOTION IN OPPOSITION TO RESTITUTION OR COSTS FOR COURTHOUSE SECURITY** **Case No. 061500526** **Judge James L. Shumate**

The Defendant, Warren S. Jeffs, by and through counsel, respectfully submits this motion in opposition to the imposition of restitution or costs requested by Washington County Sheriff's Department and the St. George Police Department. A memorandum of law in support of this motion is filed contemporaneously herewith.

DATED this 19 day of November, 2007.

BUGDEN & ISAACSON, L.L.C.

By: _____
WALTER F. BUGDEN, JR.
TARA L. ISAACSON
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on the 9 day of November, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Brock R. Belnap
Washington County Attorney
178 North 200 East
St. George, UT 84770

___ HAND DELIVERY
✓ U.S. MAIL
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✓ FACSIMILE:

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Facsimile: (702) 382-4800

Attorneys for Defendant

IN THE FIFTH DISTRICT COURT
WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. WARREN STEED JEFFS, Defendant.	**MEMORANDUM IN SUPPORT OF DEFENDANT'S TO COSTS OR RESTITUTION FOR SECURITY EXPENSES** **Case No. 061500526** **Judge James L. Shumate**

INTRODUCTION

Mr. Jeffs' recent criminal trial in this Court generated a great deal of public interest, as evidenced by the media's significant presence, both in the courtroom and around the courthouse, and during the proceedings. The high-profile nature of the case resulted in an increase in security precautions, and additional measures were instituted in order to secure the premises and ensure the safety of all those involved. The St.

George Police Department provided security outside the courthouse during the trial and has requested $56,027.00 in added security costs. The Washington County Sheriff's Office transported the defendant to and from the courthouse and provided security for the defendant's trial. Washington County has requested $55,220.01 for performing these functions. The two law enforcement agencies together are seeking a total of $111,247.01in restitution. Mr. Jeffs opposes any order that he pay restitution for these services which are an inherent part of providing an accused with his constitutionally protected right to a fair public trial.

ARGUMENT

I. The St. George Police Department Expenses Protecting the Outside of the Courthouse are Neither Costs nor Restitution Authorized by Statute

Under the Utah Code of Criminal Procedure, a "court may require a convicted defendant to pay costs." Utah Code Ann. § 77-32a-1.

> Costs shall be limited to expenses specially incurred by the state or any political subdivision in investigating, searching for, apprehending, and prosecuting the defendant, including attorney fees of counsel assigned to represent the defendant, interpreter fees, and investigators' fees. Costs *cannot* include expenses inherent in providing a constitutionally guaranteed trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

Id. § 77-32a-2 (emphasis added). In the present case, expenses incurred by the St. George Police Department to secure the courthouse cannot be ordered as costs.

First, to the extent that courthouse security was necessary to ensure and safeguard Mr. Jeffs' constitutional rights, the expenses associated with that security, under the plain language of the statute, cannot be included as "costs." Id. Mr. Jeffs, like all criminal defendants, has a right to a public trial by jury, USCS Const. Amend. 6;

Utah Const. Art. I, § 12, the right to an attorney, Id., the right to confront and compel witnesses, Id., the right to due process of law, USCS Const. Amend. 5; Utah Const. Art. I, § 7, and many other constitutionally guaranteed rights. Inherent in these rights is the need to provide a secure facility in which a jury may safely hear the case, the public may safely attend the trial, a defendant's attorneys may safely present a defense, the accused may safely confront witnesses, witnesses may safely testify, and judges may safely oversee the proceedings. Expenses incurred while securing the safety of all parties entering the courthouse, in order to appropriately safeguard the many constitutional rights necessary for a fair trial, constitute expenses that are "inherent in providing a constitutionally guaranteed trial." Accordingly, the St.George Police Department expenses are exclude as a "cost" under Section 77- 32a-2. Second, the St. George Police Department is exactly the type of government agency the expenditures of which "must be made by the public irrespective of specific violations of law." Utah Code Ann. § 77-32a-2. Because the St. George Police Department was used to secure the outside of the courthouse, there were no expenses incurred beyond the ordinary expenditures already made by the public in connection with maintaining and operating a government law enforcement agency. In other words, the St. George Police Department, in providing security around the courthouse, was performing a typical duty with which it is charged –protecting the public, the accused, and all other parties, including the judge, the attorneys and the jurors, during the course of a public trial. Under the plain language of the statute, Mr. Jeffs cannot be ordered to pay as "costs" the expenses of a publicly funded law enforcement agency for performing its duties.

Nor is the St. George Police Department entitled to reimbursement for its expenses as an order of restitution. Under the Utah Criminal Code, "'[r]estitution' means full, partial, or nominal payment for pecuniary damages to a victim, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act." Utah Code Ann. § 76-3-201(1)(d). Thus a convicted defendant must make restitution to crime victims for pecuniary damages, Utah Code Ann. § 76-3-201(4)(a), and to government agencies for transportation expenses when the defendant is convicted of a felony and has been transported from one county to another pursuant to a court order, Id. § 76-3-201(5)(a). Further, under certain circumstances, a convicted defendant must pay restitution to the county for the cost of incarceration, which means "the daily inmate incarceration costs and medical and transportation costs for the county correctional facility." Id. § 76-3-201(6)(b)(i). However, the Utah Criminal Code contains no provision that would allow the Court to order restitution of expenses associated with courthouse security. Accordingly, the St. George Police Department's costs cannot be included in any restitution amount ordered at sentencing.

In sum, the Utah Code of Criminal Procedure makes clear that a convicted defendant cannot be ordered to pay as costs "expenses inherent in providing a constitutionally guaranteed trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law." Id. § 77-32a-2. The expenses incurred by the St. George Police Department in securing the courthouse were inherent to providing a constitutionally sound trial, and, as a publicly funded law enforcement agency, the St.

George Police Department is normally, irrespective of Mr. Jeffs' trial, charged with the task of ensuring public safety. The Utah Criminal Code contains no provision allowing a court to order restitution for providing the security of a courthouse. Thus the St. George Police Department is not entitled to recover expenses for securing the outside of the courthouse as either a cost or restitutuion.

II. The Washington County Sheriff's Office Expenses Incurred Transporting Mr. Jeffs to Court and Providing Security during Court Hearings is Neither a Cost nor Restitution Authorized by Statute

Under the Utah Criminal Code, restitution includes "expenses to a governmental entity for extradition or transportation." Utah Code Ann. § 76-3-201(1)(d). More specifically, the criminal code provides that

> the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was:
>
> (i) transported pursuant to court order *from one county to another* within the state at governmental expense to resolve pending criminal charges;
>
> (ii) charged with a felony or a class A, B, or C misdemeanor; and
>
> (iii) convicted of a crime.

Id. § 76-3-201(5)(a) (emphasis added). Thus restitution of transportation expenses applies only where the defendant is transported across county lines. Further, restitution in such cases is limited to $75, $125, or $250 based on mileage. Utah Code Ann. § 76-3-201(c)(i). Under the plain language of the statute, transportation costs do not include anything beyond these mileage-based rates, and do not include expenses incurred in safely transporting a defendant to and from court hearings, regardless of the amount of security needed.

Restitution can also include "the cost of incarceration in the county correctional facility before and after sentencing...." Utah Code Ann. § 76-3-201(6)(a). "The costs of incarceration... are the daily inmate incarceration costs and medical and transportation costs *for the county correctional facility*." Id. § 76-3-201(b)(i) (emphasis added). The expenses of securely transporting Mr. Jeffs to and from the courthouse were not incurred by the correctional facility as costs of incarceration, but were incurred by the Washington County Sheriff's Department as a cost of securing Mr. Jeffs' presence at trial. The Sheriff's request also includes a request for providing security during court proceedings.

The expenses of transporting the defendant to court and providing security inside the courthouse are inherent in bringing a high profile defendant to trial. It is a cost of justice not properly passed on to the accused. Again, under the Utah Code of Criminal Procedure, a court may order "a convicted defendant to pay costs," Utah Code Ann. § 77-32a-1, but those costs

> *cannot* include expenses inherent in providing a constitutionally guaranteed trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law,

Id. § 77-32a-2 (emphasis added).

First, expenses incurred by the Washington County Sheriff's Office in transporting Mr. Jeffs and providing security at the courthouse were necessary to ensure and safeguard Mr. Jeffs' constitutional rights. Again Mr. Jeffs, like all criminal defendants, has a right to a public trial by jury, USCS Const. Amend. 6; Utah Const. Art. I, § 12, the right to confront and compel witnesses, Id., the right to due process of law,

USCS Const. Amend. 5; Utah Const. Art. I, § 7, and many other constitutionally guaranteed rights. Inherent in these rights is the need to safely transport any incarcerated defendant to the forum of the public trial, where he may confront and compel witnesses and be afforded the provisions of due process in front of a jury of his peers. However unpopular or disliked a criminal defendant may be in the eyes of the public, the expenses incurred while securing the safe transportation of the defendant to and from his trial and at his trial are the costs of ensuring justice in our society. These costs are "inherent in providing a constitutionally guaranteed trial," and under the Utah Code of Criminal Procedure, Mr. Jeffs cannot be ordered to pay those expenses as costs.

Second, the Washington County Sheriff's Office is the type of government agency the expenditures of which "must be made by the public irrespective of specific violations of law." Utah Code Ann. § 77-32a-2. Because the Sheriff's Office was used to secure safe transportation and security in the courthouse in this case, there were no expenses incurred beyond the ordinary expenditures already made by the public in connection with that agency. Essentially, the Sheriff's Office in this case was performing a typical duty with which it is charged, and for which it is paid by the public. Under the plain language of the statute, Mr. Jeffs cannot be ordered to pay as "costs" the expenses of a publicly funded law enforcement agency for doing performing its duties.

Neither Utah's restitution statute nor Utah's costs statute entitle the Washington County Sheriff's Office to reimbursement for securely transporting Mr. Jeffs to and from the courthouse and furnishing security at the courthouse. Accordingly, Mr. Jeffs

opposes the restitution request that would make him responsible to pay for his safe transport to and from the courthouse and his safety in the courtroom.

III. Under the Utah and United States Constitutions, Mr. Jeffs Cannot Be Required To Pay For Courthouse Security Expenses Or For Security Expenses Incurred During Transportation.

Under both the Utah and United States Constitutions, the State may not impose excessive fines or inflict cruel and unusual punishment. Utah Const. Art. I, § 9; USCS Const. Amend. 8. To the extent that the payment of expenses incurred in securing the courthouse for Mr. Jeffs' trial or the payment of expenses incurred in securing transportation to and from the courthouse would constitute an additional fine or punishment, Mr. Jeffs opposes any such sentence as violative of his constitutional rights.

CONCLUSION

For the foregoing reasons, Mr. Jeffs opposes any imposition of restitution or costs associated with law enforcement security expenses during his trial.

DATED this 19th day of November, 2007.

BUGDEN & ISAACSON, L.L.C.

By: Walter

WALTER F. BUGDEN, JR.
TARA L. ISAACSON
Attorneys for Defendant

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