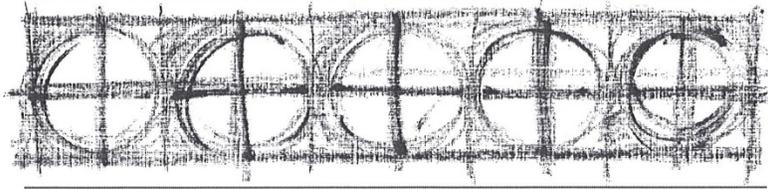


2017 IDAHO  
HIGH SCHOOL  
MOCK TRIAL CASE  
State of Idaho vs. Elliot Stewart





# IDAHO LAW FOUNDATION



*Helping the profession serve the public*

2 December, 2016

Dear Mock Trial Teams & Coaches:

Welcome to the *2017 Idaho High School Mock Trial* season! All of us at the Idaho Law Foundation look forward to working with you throughout the mock trial season.

The Mock Trial Committee is excited to provide you the opportunity to try this criminal case that includes an allegation of grand theft by possession of stolen property. Our hope is that this case will give you the chance to grapple with some interesting legal issues while getting to know some interesting characters and learning a little bit about an important Idaho artist.

Case materials were developed by the *2017 Idaho Mock Trial Committee* including Rob Adelson, Brenda Bauges, Greg Dickison, and Erika Judd. Materials were reviewed by Ritchie Eppink, Lisa Nordstrom, Tracy Oneale, Hon. Clark Peterson, and Joan Thompson. Thank you to everyone for their hard work, dedication, and invaluable assistance. You made both the process and the case very meaningful.

Mock trial could not operate without the generous contributions of our donors and volunteers. The Law Foundation would like to thank the many individuals and organizations who provide ongoing support for our program.

As you participate in the mock trial season, please remember the many people who make this competition possible. Teacher sponsors and attorney coaches will likely spend countless hours helping prepare teams for competition. You will also meet judges, coordinators, and staff members who gladly give their time to support the mock trial program. Make sure you thank all these people for their commitment to making the mock trial program a wonderful experience for you.

Please feel free to contact me at (208) 334-4500 or [cshoufler@isb.idaho.gov](mailto:cshoufler@isb.idaho.gov) with any questions or concerns at any time throughout the season. Best of luck to you and your team as you prepare for the 2017 mock trial season.

Cheers!

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## Case Background

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In the early morning hours of Tuesday, March 3, 1998, two people disguised as police officers stole six prized pieces from the James Castle Art Exhibit that had just opened the week before. For the next 15 years the theft had been investigated, tips and leads chased, with no suspects charged and no art recovered.

But then, in late November, 2015, Brooke Benjamin, an investigative reporter with the Idaho Statesman, who had grown up in Idaho Falls and followed the case since s/he was a cub reporter with the Idaho Falls Post Register, was contacted by his/her childhood friend Elliot Stewart. Elliot told Brooke s/he had uncovered something interesting and asked Brooke to get in touch next time s/he was in town.

## About James Castle

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James Castle (1899 – 1977) was an artist from rural Idaho who, despite undergoing no formal or conventional artistic training, is especially admired for his unique use of found and homemade materials, graphic skill, and the visual and conceptual range that characterized his works.

By all accounts, deaf from birth and never having acquired much verbal ability, Castle turned the production of drawn images into his primary mode of communication with the world around him.

Castle created drawings, handmade books, and other constructions for nearly seventy years. His works are collected by major museums and individuals throughout the US and Europe. His themes tell the story of a life lived in rural Idaho during the early 20th century and capture the simple beauty and mystery of ordinary places and things.

## Disclaimer

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This is a work of fiction. The names, characters, businesses, organizations, places, events, and incidents herein are the product of the authors' very vivid imaginations.

## Version Changes & Clarifications

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1. Version 1.0, dated 2 December, 2016 does not include any changes.
2. FINAL version, dated 6 February, 2017, includes the changes listed in the document titled *2017 Idaho Mock Trial Case Questions*.

## Stipulations

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1. All exhibits included in the case materials are authentic and accurate representations of the items they depict, and the proper chain of custody with regard to the exhibits has been maintained. All parties must still use the proper procedures for admitting exhibits into evidence, and all exhibits are subject to objection other than as to their authenticity.
2. The signatures and signature representations (items marked with /s/) on the witness statements and all other documents, including exhibits, are authentic. No challenges based on the authenticity of witnesses' signed documents will be entertained. Each witness was given an opportunity to update or amend his/her statement shortly before trial, and no changes were made.
3. The dates of witness statements are not relevant and are not included. No challenges based on the dates of the witness statements will be entertained. All statements were taken after the alleged incidents but before trial.
4. The jurisdiction and venue are proper.
5. All parties have agreed to the jury instructions.
6. Each witness can be portrayed by a student of either gender. Any instances where a witness is referred to as only "him" or "her" or only "he" or "she" is inadvertent.
7. It is anticipated that the trial time will not permit the use of all the exhibits provided in the following materials. Each party should select and use only those exhibits that best support and illustrate that party's theory of the case.
8. The statute of limitations for the original art theft has passed (I.C. 18-2403 (4)).
9. There is a monetary reward of \$100,000 for the return of any of the paintings.

# Indictment

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Jem Trotter  
Bingham County Prosecuting Attorney  
501 North Maple Street, #302  
Blackfoot, ID 83221  
ISB No. 013087

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO AND FOR THE COUNTY OF BINGHAM

STATE OF IDAHO,	)	
	)	Case No. IDMT2017
	)	
Plaintiff	)	
vs.	)	
	)	<b>CRIMINAL INFORMATION</b>
ELLIOT STEWART,	)	
	)	
	)	
Defendant	)	

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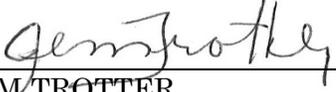
COMES NOW Jem Trotter, prosecuting attorney in and for the County of Bingham, by and on behalf of the State of Idaho, and complains and alleges that the defendant, Elliot Stewart, did commit the crime of GRAND THEFT BY POSSESSION OF STOLEN PROPERTY in violation of Idaho Code Sections 18-2403(4), a felony, as follows:

**COUNT I**

That the defendant, Elliot Stewart, on or between October 17, 2015 and January 5, 2016 did wrongfully take, obtain, or withhold property with the intent to deprive the owner of the property, and/or to appropriate the property to him/herself or a third person, to wit: the defendant retained, concealed, obtained control over, or possessed two (2) James Castle paintings which the defendant knew had been stolen from, or should have reasonably believed had been stolen from, The Art Museum of Idaho Falls, which property had a value in excess of \$1,000, with the intent to deprive the owner of the property and/or to appropriate the property to him/herself or a third person, while within the County of Bingham, State of Idaho, in violation of Idaho Code Section(s) 18-2403.

All of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Idaho.

DATED this 9th day of March, 2016

  
\_\_\_\_\_  
JEM TROTTER  
Bingham County Prosecuting Attorney

# Witness Statements

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## Prosecution Witness Statements

*Brooke Benjamin, Reporter*

1 My name is Brooke Benjamin. I'm 42 years old. I grew up in Idaho Falls and graduated  
2 from Bonneville High School in 1991. I went to Boise State University and earned a degree  
3 in Mass Communications in 1995. During my college years, it became clear to me that I was  
4 meant to be a journalist. All through college I worked at the Arbiter, the Boise State  
5 student newspaper.

6 In fact, during my senior year, when I was editor of the paper, the Arbiter won what is  
7 the student equivalent of a Pulitzer Prize for some investigative work we did on the unfair  
8 working conditions for adjunct professors. It really was a shame that some of those adjuncts  
9 ended up getting fired for talking with me and the other reporters, but it really helped me  
10 learn that sometimes you have to make sacrifices to get the story. Plus, it was that work  
11 that earned me my acceptance to the Missouri School of Journalism, arguably among the  
12 finest J-Schools in the nation. I received my MA in Journalism. Besides the fact that I still  
13 have a lot of debt from my education, I still believe that going to graduate school was the  
14 best thing I ever did. It gave me the right foundation for my career.

15 And since graduating, I have spent almost 20 years working as a reporter. In fact, I  
16 would say that trying to be a good reporter is how I got involved in this mess. That and  
17 having grown up next door to Elliot Stewart.

18 I have known Elliot Stewart most of my life, going all the way back to Hiawatha Trails  
19 Elementary School. We were neighbors when we were kids and were good friends through  
20 middle school but pretty much took different paths in high school – Elliot was really into  
21 status and wanted to hang out with all the rich kids and I was really into all my activities,  
22 like yearbook and the school newspaper. You know how that stuff goes. One day you look  
23 back and realize you've left your childhood behind.

24 I mean, Elliot and I would run into each other on occasion when I was working at the  
25 Idaho Falls Post Register and it was always cordial enough, but it's not like we were going  
26 to each other's houses for family barbeques. We really didn't run in the same circles. That's  
27 why it was a little odd when Elliot called me right before Thanksgiving in 2015, but not so

28 weird that it was out of the realm of possibility. Besides, I'm a reporter at heart, so it's  
29 really my life's work to chase a story at any cost.

30 Let me back up a little bit and fill in some of the missing puzzle pieces. One of my first  
31 jobs after graduate school was at the Idaho Falls Post Register. I was technically a beat  
32 reporter, assigned to cover metro news, but in a place like Idaho Falls, pretty much  
33 anything could be metro news. You just do whatever you need to do to get the paper to  
34 print. One day you might be covering an accident on the I-15 and the next day you might  
35 need to cover the local football game. You just go where the stories take you. And on March  
36 3, 1998, that's how I ended up at the Art Museum of Idaho Falls, covering a robbery and it's  
37 been a bit of an obsession with me ever since.

38 When you're a reporter and the phone rings in the early morning hours, you can pretty  
39 much rest assured that it's going to be big. And that night in March, it was. My editor at  
40 the time had gotten a call from the museum director that something big had happened and  
41 that the paper needed to send someone over to cover it. I know it may seem odd that  
42 someone who had been the victim of such a massive robbery would think to notify the press,  
43 but my editor and the museum director ran in the same circles, and I think she figured it  
44 would be best to have as many people investigating this as possible.

45 I'm sure Finley Gardner feels differently. S/he's always treated the press in general and  
46 me in particular like a nuisance, getting in the way of his/her case-solving glory. Suffice it  
47 to say, I was the one who cracked this case wide open, not Finley Gardner. I'm sure that's  
48 part of the reason Finley's been so keen to implicate me in this.

49 Anyway, barely awake, filling myself as quickly as I could with coffee as leaded as I  
50 could find, I show up at the Art Museum of Idaho Falls to find out that two people dressed  
51 as police officers had shown up in the middle of the night and pulled off what was certainly  
52 the biggest art heist in Idaho's history, especially given James Castle's prominence as an  
53 Idaho artist. And my small town paper was the one that got the scoop. Within a day, my  
54 account of the Castle Art Heist was picked up by every major paper in the country. It was a  
55 great story. It was also my ticket out of Smallville.

56 I'm sure most people know the story by now, but the robbers convinced the security  
57 guard, Lou Hammersmith, that they had heard reports of a disturbance in the area and  
58 were sent to check it out. Look. Lou is not the sharpest tool in the shed. If I'm being honest,

59 the robbers could have said they were aliens come to take Lou back to his/her home planet  
60 and Lou probably would have said, "OK. Come on in." But there we were; several hours  
61 later. Lou Hammersmith had spent the night duct taped to a chair while the robbers took  
62 their sweet time removing the precise paintings they came to steal. From the beginning, it  
63 was clear that this wasn't just some smash-and-grab job. Our two thieves knew exactly  
64 what they wanted.

65 Of course, it took about a week before I could get Hammersmith to talk to me. Lou  
66 insisted at the time that s/he had nothing to do with the robbery and I believed him/her.  
67 S/he was clearly shaken up by the incident and continued to express regret that s/he was  
68 fooled into letting two people commit such a heinous act. At the time, I just didn't think Lou  
69 was the kind of person who had it in him/her to do something this nefarious. And if Lou was  
70 in any way involved, it would have been more as a lackey. I can assure you, mastermind  
71 has never been a term applied to Lou Hammersmith. Besides, the police never publicly  
72 referred to Hammersmith as a suspect.

73 I spent close to three years chasing down leads on the Castle Art Heist and nothing ever  
74 came of it. No one was identified as a suspect. I was really not able to uncover any trail of  
75 evidence. Certainly, whoever had stolen the paintings was not trying to sell them on the  
76 black market. Everything I chased turned out to be a dead end. The only good thing was  
77 that it catapulted my career. I was able to leverage my good reporting into a job with the  
78 Idaho Statesman. I know. I know. It's not like the New York Times came knocking. But at  
79 least I got to move to a place with more than one Starbucks, to a job with better pay, and to  
80 a market with more opportunities.

81 So, I moved to Boise and mostly put the Castle Art Heist behind me, settling into my life  
82 as a reporter for the Idaho Statesman. Every once in a while, I would do a little digging, but  
83 for the most part, I really began to believe that the Castle paintings were lost to us forever.  
84 And then, on August 13, 2005, I got this mysterious phone call. As a reporter it's incumbent  
85 upon me not to reveal my sources, but I will say that the person I spoke with was a  
86 knowledgeable rogue antique dealer who claimed to have some information about the heist  
87 and offered to show me one of the Castle works. And down the rabbit hole I went again, just  
88 like Alice to the tea party.

89        Nothing really came of the lead – you can read all about it in the story I wrote – but I  
90 am still pretty certain that what I saw that day in August 2005 was one of the missing  
91 Castle paintings. What did come of that incident is that it put me on the wrong side of  
92 Finley Gardner. My attempts to verify the lead without contacting him/her made Gardner  
93 furious. At the time, s/he referred to me as someone who was, at best, only in it to get the  
94 reward money and, at worst, an accomplice who was interfering with the investigation. To  
95 this day, Finley still dismisses my 2005 sighting as a fraud but I’m not quite as certain as  
96 the self-assured Agent Gardner. The situation definitely hurt my reputation as a crack  
97 reporter for a while, but we live in a world where you’re only the focus of attention until the  
98 next big story comes along. And let’s face it; none of us has that long of an attention span,  
99 which for once worked to my benefit. I do suppose that this misstep could have been why I  
100 was willing to go along with Elliot Stewart on yet another lead when s/he contacted me.

101        As I mentioned earlier, I was a little surprised when Elliot got in touch with me. The  
102 voicemail s/he left seemed so cloak and dagger. Elliot said, “I have some items you’ll be  
103 interested in. I can’t tell you anything else over the phone. Call me.” I was curious so I  
104 returned the call. In that first conversation Elliot seemed to have calmed down and was  
105 pretty casual. Elliot told me that that s/he had followed my stories on the Castle Heist and  
106 said s/he’d uncovered something interesting. Elliot wouldn’t say what on the phone, but  
107 said we should meet next time I was in town. Elliot didn’t offer a lot of details at the time  
108 and frankly I didn’t press, mostly because Elliot’s tone made it seem like it was no big deal  
109 but partly because I did not want to get my hopes up again that I’d uncover something  
110 about the Castle Heist that would lead to a great story only to find out I’d been suckered  
111 once again. Fool me once. Blah, blah, blah. You know the drill.

112        But it turns out Elliot did have something big. Something huge. Could it be I would  
113 finally get my Pulitzer? That was really all that was going through my mind when I met  
114 with Elliot on December 28, 2015 and s/he took me to a storage facility in Blackfoot. Elliot  
115 said s/he had discovered the storage unit address and a key in a drawer in his/her father’s  
116 desk after his/her father died in October. Elliot said I was welcome to do whatever I wanted  
117 with what I found in the unit, but there was one condition: I could not under any  
118 circumstances tie it back to the Stewart family. Of course, I said I would not reveal my  
119 source. Elliot said, “my dad and I are much more than a ‘source.’ I need to deal with this,  
120 but I have to keep my family’s name out of it.” I agreed, and Elliot opened the door. There

121 they were; what looked like four of the six missing Castle paintings in your basic self-serve  
122 storage unit. It couldn't possibly be that they had been there all along, could it?

123 And that's probably where things started to go south. In spite of my dislike for Finley  
124 Gardner, I told Elliot that we should contact him/her to get involved with this case but I let  
125 Elliot talk me out of it. S/he said, "I know you want a story. How about a little cash, too?" I  
126 asked Elliot if s/he wanted me to return the paintings to the museum for the reward money.  
127 S/he said, "that would be one way to get it." I thought that was a strange comment, but I  
128 was so excited by the paintings that I let it pass. Elliot insisted that it would be better to  
129 get the paintings authenticated before we did anything else and claimed s/he really wanted  
130 to keep the Stewart family name out of the press with regard to the theft. And since I had  
131 been burned before, I decided it couldn't hurt to go the extra step. Of course, it also wouldn't  
132 hurt that I would get the scoop when this story broke, but that was just a side benefit.

133 So, I contacted Grayson Kennedy who I had gotten to know during my research for this  
134 case. I was sure Grayson would be discrete. Boy was I wrong on so many fronts. On the way  
135 to Grayson's gallery, I couldn't stop thinking about what a coup this was, and about my  
136 Pulitzer Prize. I was even thinking about my acceptance speech. But the more I thought  
137 about it, the less sure I was. The story up to this point wasn't very exciting – "Paintings  
138 Found in Shed: Returned to Museum" was not a great headline. So I thought up my own  
139 idea. What if I could juice it up a little bit? What if I could set the stage for a story that  
140 went behind the scenes, and exposed the dark underworld of art theft? I decided to see if  
141 there was a way to sell the paintings on the black market, and then recover them. Now that  
142 would be a story! I was sure Grayson knew some shady characters. If Grayson could set me  
143 up with a buyer, then I could call in Finley and have him/her make an arrest.

144 I contacted Grayson at his/her gallery. I wanted to feel Grayson out first, to see whether  
145 I could trust him/her. I had talked to Grayson several times about the case, so I knew it  
146 would be okay if I brought it up. I put it as a hypothetical. I said, "Just suppose that some of  
147 the Castle pieces turned up. How would someone go about selling them?" Well, Grayson at  
148 first played dumb and acted like s/he had no idea how it would work. I pushed a little more,  
149 though. "You must know people who buy stolen art," I said. "Well," said Grayson, "it would  
150 be important to know how much they're worth." I asked, "Isn't finding a buyer the best way  
151 to know what they're worth?" Grayson got quiet, and I could see s/he was thinking. Grayson  
152 said that the only way anyone would be interested was if Grayson could authenticate the

153 pieces first. Now I knew I had him/her! I told Grayson to meet me at the storage unit on  
154 January 5th at 6:00 a.m. and I would show him/her the pieces. I thought Grayson would be  
155 discreet. Little did I know how wrong I was!

156 I told Elliot about my conversation with Grayson. Well, most of it. I didn't think Elliot  
157 would be too happy with my idea to make the story better. But I did tell Elliot that Grayson  
158 was going to authenticate the pieces and tell us what they were worth. Elliot agreed to take  
159 me to the storage unit on the 5th, but insisted that s/he would stay in the car, up the road  
160 and out of sight. S/he didn't want to take any chance that s/he would be attached to the  
161 Castle pieces.

162 I met Grayson at the storage unit like we planned. I should have known something  
163 wasn't right. Grayson was acting stranger than usual. S/he kept fiddling with his/her shirt  
164 and talking kind of loudly. Once we got in the storage unit I went to the shelf where the  
165 Castles were. I couldn't believe it. There were only two pieces! I looked around but couldn't  
166 find the other two. I should have known for sure at that point that something was very  
167 wrong. Elliot must have taken the other pieces out of the unit. S/he must have double-  
168 crossed me! I think I started babbling at that point to distract Grayson and try to get  
169 him/her out of there quickly. But s/he just kept looking at the pieces. Finally, s/he looked up  
170 at me and said, "Yes, these look like the real deal."

171 At that point all hell broke loose. Cops came in from all directions with guns pointed  
172 right at me. Next thing I knew, I was being arrested and charged with possession of stolen  
173 property! I looked around for Elliot, hoping s/he'd come to the rescue, but the car was gone  
174 and s/he was nowhere to be seen. I decided I'd had enough, and I told Finley everything.  
175 S/he was much more interested in Elliot than in me.

176 Look. In the end, if I'm guilty of anything, it's being overly ambitious. When Elliot  
177 contacted me, all I could think about was finally getting that story I had been working to  
178 get for my entire career. I got Pulitzer stars in my eyes and it caused me to throw caution to  
179 the wind and not be thoughtful or careful enough about who and what I was getting  
180 involved with. That's why I took the plea agreement, not because I was a conspirator in any  
181 of this. I'm a conspirator in my own stupidity and in not letting my common sense dictate  
182 how I should have proceeded in this situation. As long as I testify truthfully at Elliot's trial,

183 I'll only have to plead to a misdemeanor charge of petit theft. I'll get no jail, and a little  
184 probation. That's better than 10 years in the slammer. Totally worth it!

185 At this point, I just want to put it behind me and move on with my life. I've lost my job  
186 but it's looking like I will get a great book deal out of all of this; certainly at least in the  
187 upper six figures, which is, ironically more than I would have gotten in reward money.

188 So, that's why I'm testifying for the prosecution, even if it means giving Finley Gardner  
189 the win after s/he arrested me, falsely accused me of a crime, and made me take a plea deal.  
190 I am being held to a higher degree of responsibility than I deserve in this situation and I  
191 want Elliot to be held responsible for his/her part in all of this too. At this point, it's still  
192 hard to believe that someone I have known most of my life is involved in such an awful  
193 crime. Elliot wasn't just involved in the theft of some pictures.

194 Elliot Stewart and the Stewart family have perpetuated a crime on the people of Idaho  
195 and a precious piece of our history. I'm just grateful that at least some of James Castle's art  
196 is unharmed and back where it belongs. History will show that I helped recover these  
197 treasures. And you know what they say? To the victor goes the spoils.

198 **WITNESS ADDENDUM**

199 I have reviewed this statement and I have nothing of significance to add at this time.  
200 The material facts are true and correct.

Signed:

  
Brooke Benjamin

### *Finley Gardner, Special Agent, Idaho State Police*

1 My name is Finley Gardner. Since 1994 I've been a special agent with the Idaho State  
2 Police (ISP). I was born in 1961 in Boise, Idaho. My parents were art dealers and operated a  
3 world-renowned art brokerage. Their extensive connections gave them access to some of the  
4 world's great treasures. I was working for them as soon as I was old enough to tote and  
5 carry. I couldn't help but develop a deep interest in and knowledge of art.

6 I graduated from Boise high school in 1979. I loved Boise, but decided to see some of the  
7 world. I got my Bachelor of Arts in Visual and Critical Studies from the School of the Art  
8 Institute in Chicago (SAIC) in 1983 and my Master of Arts in Critical and Historical  
9 Studies from the Royal College of Art in London in 1985. The art brokerage made my  
10 parents wealthy, so money was not an object. Plus, I was talented enough to earn  
11 substantial scholarships. The extra money enabled me to travel from London all over  
12 Europe to visit the incredible museums with their astounding collections.

13 The plan was that I would take over the brokerage from my parents after I was done  
14 with school, but since they were in no hurry to retire I decided to work in the world's great  
15 museums before coming home. I spent a year each at The Louvre, The Acropolis Museum in  
16 Greece, The State Hermitage in St. Petersburg, and The Prado in Madrid. I spent hours  
17 admiring the paintings and drawings of the great artists, and developed a good eye to be  
18 able to distinguish between artists based on styles, pigments, and strokes.

19 I returned to Boise in 1990 and continued to work with my parents, but my heart was in  
20 it less and less. I was still traveling the world on the pretense of looking for great art finds  
21 and broker deals, but I was really using that as an excuse to see great paintings and  
22 drawings on "the company dime."

23 My law enforcement career came, ironically, as a result of being the target of an FBI  
24 investigation. In 1992 I was approached by an FBI agent who wanted to question me about  
25 a Rodin sketch that he said was stolen! Apparently, De Profundis Clamavi disappeared  
26 from the Musée Rodin in Paris during the time I was working at The Louvre. Of course, I  
27 didn't steal anything, and I completely cooperated. Through my extensive contacts I was  
28 able to help the FBI track down the Rodin and recover it by participating in a sting  
29 operation. In fact, the agent who initially accused me of the theft said that I should consider

30 a career in law enforcement. I did enjoy the intrigue, and it gave me a chance to focus on  
31 my passion - great art.

32 My parents were disappointed when I told them. They could not understand why I  
33 wanted to be “just a cop” when I could carry on a respected family business. They felt I was  
34 sullyng myself. My father went so far as to tell me he couldn’t respect me for what I was  
35 doing, and he refused to even acknowledge it for the rest of his life. I’d always wanted to  
36 make him proud of me, but unfortunately he died in 1996, and never had the chance to see  
37 me make a name for myself. I think that old wound is still a significant part of what drives  
38 me. It’s too bad he’s not around to see me crack the Castle theft.

39 While I had to take a substantial pay cut, as law enforcement does not pay anywhere  
40 near as well as the antique business, I decided I enjoyed the intrigue enough to give it a try.  
41 I liked the rural Idaho life, so I went to work for the Idaho State Police. While I am an ISP  
42 employee and mainly work in Idaho, they freely loan me to other agencies that can use my  
43 expertise. Let’s face it; there isn’t that much great art to steal in Idaho. The opportunity to  
44 travel the country and the world keeps me sane.

45 I’m very familiar with the Castle theft that took place on March 3, 1998. I was the lead  
46 investigator at the time. The Castle exhibit was significant because it was the first public  
47 exhibition of his work since he died in 1977. Collectors and aficionados from around the  
48 world attended, and security was extra tight. At least, it was supposed to be. Lou  
49 Hammersmith was the security guard on duty on the night of the theft, and was the only  
50 person in the building. That by itself made Hammersmith the prime suspect. The museum  
51 had a sophisticated security and alarm system, at least for 1998. The security staff were the  
52 only people who knew how to deactivate it. The vast majority of museum thefts are inside  
53 jobs, with a security guard acting as either the thief or the accomplice that lets the thieves  
54 in the building.

55 When I interviewed Hammersmith, s/he told me that around 1:30 a.m. two police  
56 officers approached the entrance and knocked on the door. Hammersmith said s/he did not  
57 think twice about letting uniformed police in. They entered the museum and told  
58 Hammersmith they had a warrant for his/her arrest. They did not tell Hammersmith what  
59 the arrest was for, but Hammersmith was involved with enough shady people that it could  
60 have been any number of things. Hammersmith said the officers sat him/her in a chair and

61 handcuffed him/her, and that they put duct tape over his/her mouth and a blindfold on  
62 him/her. Hammersmith was discovered by museum staff the next morning, and by then the  
63 “officers” and the Castle works were gone. Hammersmith could not give any kind of helpful  
64 description of the “officers.” Hammersmith’s key card record showed the pattern of  
65 movement the thieves used during the heist. Hammersmith’s card and security code were  
66 used to “check in” with the alarm system, so even though the alarm was remotely connected  
67 to the police station, the system did not alert the police that there was anything wrong.

68 I was suspicious of Hammersmith’s story from the start. The only way the thieves could  
69 have obtained the code for Hammersmith’s shift was to have another accomplice who gave  
70 it to them, or they got it directly from Hammersmith. There were no signs that  
71 Hammersmith tried to free him/herself at any time during the night - s/he just sat docilely  
72 until s/he was found the next morning. Hammersmith’s connections to the Pocatello club  
73 scene gave him/her an opportunity to mingle with underworld types. I could not find any  
74 evidence to corroborate Hammersmith’s story. I was convinced s/he was in on the heist.

75 I concluded that whoever committed the theft did not work alone. The theft was  
76 expertly done. The thief knew just what to take and what not to take, and knew how to  
77 thwart the museum alarm system. Neither the thieves nor Hammersmith could have just  
78 turned it off – it was automatic, and could not be controlled by a minimum wage night  
79 watchman. Whoever stole the art knew the inner workings of the system.

80 I immediately thought of Myles Amore. Amore is the Frank Abagnale of the art world.  
81 Amore had just been released from prison and put on parole in January 1998 after serving  
82 five years for breaking and entering. I worked that case – it was not hard, as Amore got  
83 careless and was caught in the act. What proved impossible was convicting Amore of all the  
84 other thefts s/he was suspected of. They had two things in common - a full moon and the  
85 thief got around very sophisticated state-of-the-art alarm systems. Amore liked to work  
86 during a full moon, as it minimized the need for artificial light, which might attract  
87 attention - when the moon’s in the sky like a big pizza pie, that’s Amore. I checked the  
88 records, and sure enough on March 3, 1998, at 1:30 a.m. a full moon was high in the sky.  
89 Amore is a master at alarm systems, and now makes his/her living as a security consultant  
90 for museums. Not that s/he’s suddenly honest. S/he probably consults just as much for the  
91 bad guys. Once a thief, always a thief.

92 On March 7, 1998 I interviewed Amore at his/her apartment in Idaho Falls. Amore  
93 talked easily to me. S/he didn't seem to hold any grudge, and s/he was even complimentary  
94 of my work, saying that "it's always good to understand how the other side works." Amore  
95 denied any involvement with the Castle theft. S/he denied going near the museum, and said  
96 s/he'd gone straight and was looking for legitimate work. I surreptitiously scanned Amore's  
97 room while I was talking to him/her. My attention was drawn to a book on a table about the  
98 artist James Castle. It was one of those coffee table books, which included images of  
99 Castle's work. Amore said s/he was an admirer of Castle, and that it was too bad the most  
100 valuable of Castle's works had been stolen. This stood out to me because the specific works  
101 and their value had not been released to the public or the press. On top of the book I saw a  
102 business card for the Stewart Foundation. I asked Amore about that. S/he said that s/he  
103 and Monte Stewart went way back, and that Monte gave him/her a job after s/he got out of  
104 prison.

105 This struck me as suspicious, as I had discovered a Stewart Foundation business card in  
106 Hammersmith's wallet on the night of the theft. I'm familiar with the Stewart family, so I  
107 called the Foundation and Monte was willing to talk to me about Lou and Amore. According  
108 to Monte, Lou did odd jobs for him and his/her son/daughter, Elliot, so it was not surprising  
109 that the Foundation's number would be in Lou's wallet. I asked Monte what he knew about  
110 Myles Amore. Monte confirmed that he had known Myles for years – every art collector did.  
111 Monte also confirmed he helped Amore out by giving him/her a job after s/he was released  
112 from prison. Monte said he was sure that Amore was on the straight and narrow.

113 While I had no particular reason to connect Monte to the crime, the circumstances were,  
114 shall we say, intriguing. The Stewart family was very well to do, and Monte Stewart had a  
115 private collection of rare fine art works. Monte had a particular fondness for sketches of  
116 rural Idaho scenes, and James Castle's works focused heavily on that theme. After Castle  
117 died in 1977 his family locked up his works. The Idaho Falls exhibition was the first time  
118 they had seen the light of day in 20 years. During that 20 years many museum curators  
119 and private collectors, including Monte Stewart, tried to obtain access to Castle's works.  
120 Even I was strongly attracted to them and tried to get the Castle estate to at least give me  
121 a private showing. More than once I heard Monte say at art gatherings that he was  
122 desperate to see the Castles, and would even steal them if he could think of a way. He  
123 laughed when he said it, but now I had to wonder if he was really joking.

124 So I had Lou Hammersmith, the museum guard, and Myles Amore, an expert art thief,  
125 both connected to Monte Stewart, a wealthy art collector and die-hard Castle fan. From  
126 there the trail went stone cold. Usually stolen art will go underground for a few weeks or  
127 months, and then word will spread that it's for sale, or someone will come forward to claim  
128 the reward. But not the Castle works - they just disappeared. It was the disappointment of  
129 my career that I was never able to break the case for all those years. I'm just glad I am able  
130 to bring this to justice now. It certainly will help my reputation as an investigator.

131 Anyway, the case warmed up again on December 30, 2015. That's the day I got a phone  
132 call from Grayson Kennedy. Grayson is an art appraiser and dealer. S/he's a little eccentric,  
133 and s/he's been connected with some shady people, but s/he's good at what s/he does and  
134 someone whose opinion I highly value.

135 Grayson told me that s/he was contacted by Brooke Benjamin about authenticating  
136 some purported James Castle works. Brooke is a newspaper reporter whose ambitions far  
137 outweigh his/her abilities. Brooke has been obsessed with the Castle case. I can't tell you  
138 the number of times since 1998 s/he has contacted me with bogus leads and crackpot  
139 theories. I figured this was just one more, but then Grayson told me that Brooke was acting  
140 unusually strange and talking about selling the paintings on the black market. It was also  
141 odd that Brooke had not contacted me directly, so I decided to pursue it.

142 Grayson told me about his/her conversation with Brooke, and that Brooke wanted to  
143 meet Grayson at a storage unit to show him/her the art. I immediately went to work setting  
144 up a sting operation. The meeting was to take place on January 5, 2016 at 6:00 a.m. At 4:00  
145 a.m. I and several other officers took concealed positions where we could keep the storage  
146 unit in sight. Grayson went to the ISP office at 5:00 a.m. so s/he could be set up with a wire  
147 that would transmit his/her conversation with Brooke to my officers. Brooke appeared at  
148 the storage unit at 5:55 a.m., and Grayson arrived two minutes later. The entire  
149 conversation between Brooke and Grayson was recorded and transcribed. Brooke used a  
150 key s/he took from his/her pocket to unlock the storage unit and both Brooke and Grayson  
151 went inside. I lost sight of them for approximately three minutes while they were inside the  
152 unit. The conversation at that point consisted primarily of Brooke pontificating about  
153 James Castle, while I assume Grayson was examining the art. At the end of three minutes I  
154 heard Grayson give the code phrase - "real deal." That was our signal to move in.

155 As we did, a car parked approximately 100 yards up the road started, and its tires  
156 squealed as it pulled away from the curb and sped off. I placed Brooke under arrest for  
157 possession of stolen property and advised him/her of his/her rights.

158 I searched Brooke and recovered a key that fit the padlock to the storage unit, and  
159 Brooke's wallet containing Brooke's driver's license and Grayson Kennedy's business card.  
160 Brooke did not have any car keys.

161 I searched the storage shed and recovered two Castle works: Interior Stove with Coffee  
162 Grinder and Color Shapes. Also in the shed were several items of sound equipment with  
163 "Pocatello Rox" written on them in black marker. Pocatello Rox is a nightclub owned by Lou  
164 Hammersmith. The sound equipment was covered with a thick layer of dust. I recovered  
165 several pieces of luggage with the name "Elliot Stewart" on them. These were clean, and did  
166 not appear to have been in the storage shed very long. Finally, there were several old books  
167 and filing cabinets full of business records, all with Monte Stewart's name on them. The  
168 filing cabinets had dust on them, but there were marks in the dust that were clearly  
169 fingerprints. None of them were distinct enough to collect.

170 Brooke was cooperative with me, and said that s/he had only been hoping for a scoop on  
171 the Castle theft story. Brooke said the storage unit belonged to Elliot Stewart, and that  
172 Elliot had contacted him/her about getting rid of the Castle works. Brooke said it was all  
173 Elliot's idea to sell the works on the black market, and that s/he was only going to let things  
174 go far enough to make the story good enough for a Pulitzer, at which point s/he would call  
175 me to recover the paintings for the museum. Brooke said Elliot drove them both to the  
176 storage unit to meet with Grayson, but that Elliot wanted to stay out of sight. Brooke said  
177 it was Elliot who sped off when the police moved in.

178 I believed that Brooke was being honest with me, mostly because Brooke is not savvy  
179 enough to be a mastermind of anything. However, being naive is no defense to a criminal  
180 act, so we arranged with the prosecutor to cut Brooke a deal in exchange for cooperation  
181 with the case against Elliot. As long as Brooke testifies truthfully at the trial, s/he will only  
182 have to plead guilty to a misdemeanor with a suspended jail sentence and a short time on  
183 probation. Brooke will also have to donate 50% of the profits on any book deals coming from  
184 this to the museum.

185 While I did not catch Elliot in the act, I did have sufficient evidence to charge Elliot with  
186 possession of stolen property. Elliot was arrested at his/her home without incident. Elliot  
187 claimed that s/he only wanted to return the paintings without anyone knowing that his/her  
188 father had arranged to have them stolen back in 1998. Elliot blamed Brooke for any plan to  
189 sell the paintings on the black market. I asked Elliot if s/he was innocent why s/he sped off  
190 when Brooke was arrested. Why didn't Elliot stay and explain? At that point Elliot said s/he  
191 had nothing left to say.

192 **WITNESS ADDENDUM**

193 I have reviewed this statement and I have nothing of significance to add at this time.  
194 The material facts are true and correct.

Signed:



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Agent Finley Gardner

*Lou Hammersmith, Small Business Owner*

1 My name is Lou Hammersmith. I own Pocatello Rox. I used to be a security guard,  
2 which is how I got mixed up in all this. Pretty cool, huh? Rising from nothing to become the  
3 proprietor of one of Eastern Idaho's top night spots. At one point I coulda been the next big  
4 pop star. That was the plan, anyway. But I'm still working it. My nightclub is great.  
5 Amazing. Legendary. Huge.

6 I grew up in Picabo, Idaho in a ranching family. But I wanted more from life. My dad  
7 wanted me to get into the family business but I was into other things. It was the 1990s. I  
8 wanted to be in a pop band. You know, like NSync or The Spice Girls. That's what I wanted.  
9 But that wasn't how my family rolls so they kinda disowned me. I dropped out of school, got  
10 a GED, and moved to the big city – Pocatello.

11 But when I was hanging out in the Pocatello clubs I got too mixed up with the nightlife.  
12 All night parties, dancing, the rhythm of the night. It became too much and my own music  
13 career just wasn't going anywhere. So I took a part time job as a security guard at the Art  
14 Museum of Idaho Falls. This was around November of 1997.

15 From working at the museum, I learned about the Stewart family. Monte and Elliot are  
16 both well-known. They're rich and all. They were all big in the art world so they were in  
17 and out of the museum constantly. They were like serious VIPs in eastern Idaho. Elliot  
18 used to pay me to do personal stuff for him/her and Monte. Like driving people to and from  
19 the museum, helping set up at fundraisers, and serving drinks at museum parties and  
20 stuff.

21 Sometimes I did stupid stuff. Elliot came to me one night in February or early March of  
22 1998 and told me s/he had a 'special project' for me. "You've worked for my dad a few  
23 months now, Lou. He trusts you. He knows you want to do more with your life than be a  
24 security guard. He wants to give you that chance. What do you think?"

25 Well, of course I was interested. I could never open a club on minimum wage, and my  
26 family wasn't going to invest. I was surprised Monte Stewart was interested, as he'd always  
27 been pretty buttoned down. I wouldn't have guessed he would finance a hip hop club. I  
28 asked Elliot what I had to do. His/her answer surprised me.

29 "Just some favors. You know; some extra work to show you have what it takes to take  
30 risks, be smart, and be discreet. The first one is easy. In fact, you don't really have to do

31 anything – just don't do something. My dad has arranged for some VIPs to have private  
32 access to the museum on March 3, early in the morning, before the public shows up. I've  
33 arranged for you to work the night shift. All you have to do is not lock the back door to the  
34 alley.”

35 That sounded really weird to me – VIPs late at night, through an unlocked back door?  
36 But, hey, I'm not proud of it now, but if that's all I had to do to get my club going, who was I  
37 to complain? Who was I to question the Stewart's business? Anyway, Elliot gave me \$200  
38 cash on the spot, and told me there would be more to come. “And whatever happens,” s/he  
39 said, “just play along. You're smart. You'll know what to do.”

40 So I played along. I left the door open, and about 1:30 in the morning a couple of “cops”  
41 showed up. They were really acting it up, with their guns all out and stuff. It was pretty  
42 obvious. Their shirts weren't tucked in and they were wearing funny hats. They looked  
43 more like they were dressed as Canadian Mounties for Halloween. People said they saw the  
44 fake cop dudes staking out the museum for an hour – waiting in a Hyundai hatchback. Not  
45 the kind of car a real cop would drive. Anyway, they said they had a warrant for my arrest,  
46 so they put me against the wall and handcuffed me. Then I let them duct tape me to a  
47 chair. They took my security key card, and that's the last I saw of them. They apparently  
48 took a bunch of art made by a famous Idaho dude named James Castle. But I knew what  
49 was going on. I did just what Elliot told me - I played along, and that's the story I told the  
50 real cops. Well, of course I didn't let on that I knew the fake cops were fake. I had to say  
51 they looked legit so that it would make sense that I let them in. The real cops totally bought  
52 it. And, hey, what I said was technically nothing but the truth.

53 For years afterward, everyone thought my story was pretty thin, and that I was  
54 involved with the Idaho art theft people. Of course, the cops also thought I was involved  
55 'cause I was a club kid and I hung out with underworld types. But the thing of it is, I never  
56 did get caught. Questioned a couple of times, but never arrested. The lesson I learned from  
57 that is a lie is only a lie if someone can prove it.

58 Elliot Stewart turned out to be a real coward. S/he skipped town shortly after the heist,  
59 and I never heard anything at all about him/her until s/he dropped back in when Monte  
60 was dying. What an opportunist! After Elliot left I think Monte pretty much wrote him/her  
61 off. Monte came to rely more and more on me. He had me take care of a lot of personal and

62 business matters for him. Monte looked on me as sort of a replacement for Elliot - the  
63 dependable child Monte should have had.

64 My status with Monte all changed when Elliot came back. Like I say, total opportunist.  
65 Elliot played the whole prodigal child routine, and I can't blame Monte for buying it. I  
66 mean, what parent wouldn't? No one wants to die hating their own kid. I was pretty much  
67 frozen out after that. I understand how Monte felt, but there was no reason to kick me to  
68 the curb. I blame Elliot's influence for that.

69 Anyway, money-wise, Monte proved good to his word. He invested heavily in Pocatello  
70 Rox. If it wasn't for him, I'd still be a lowly security guard wanna be club owner. I wasn't in  
71 Monte's will, even after all I'd done, but I'm fine with that. Setting me up with my own club  
72 is all the reward I need.

73 It wasn't until just recently that I admitted that I was involved in the art heist. I know  
74 that the statute of limitations is way gone and they can't prosecute me, so I don't even care.  
75 I knew Elliot and his/her family were involved in the thefts since Elliot paid me to leave the  
76 door open that night. For Elliot to be playing dumb now is a joke. I never said anything  
77 since Monte was always cool with me and invested in my club - and nobody would believe  
78 me anyway. But now Elliot's trying to pin his/her stuff on Brooke Benjamin. You just don't  
79 do that. Monte never would have. You do your thing, and you keep a low profile. If you get  
80 caught, you keep your mouth shut. Nobody likes a rat, especially a lying rat who squeals on  
81 people who had nothing to do with it. I hope Elliot gets everything that's coming to him/her.

82 I don't know anything about what may or may not have been in that storage shed. Sure,  
83 my name is on the rental agreement, and I had my bookkeeper send the rent every month,  
84 but that was all for Monte. He liked to have some stashes that he could keep out of the  
85 public eye, and when his name was on something word tended to get around. I put some old  
86 sound gear in there years ago, but I haven't been in since. I don't even know if I could find  
87 the key. I had no idea priceless stolen paintings were in there, that's for sure. Why should  
88 you believe me? Because if I had known they were there we wouldn't be here now; as soon  
89 as Monte passed I would have taken them and sold them off myself.

90 Yeah, I know Myles Amore. We're not pals or anything, but s/he comes in the club now  
91 and then. See, the Pocatello Rox has lots of little nooks and crannies where you can have a  
92 private tete-a-tete. Myles and Monte used to meet there, and I also saw Myles with some of

93 the shadier sort, even after claiming to go straight. I know Myles says s/he's strictly for the  
94 good guys now, so who am I to say? It's not my business. The Pocatello Rox is my business,  
95 and any other business that goes on in my business is not my business, if you know what I  
96 mean.

97 So, I may do stupid stuff sometimes but I'm actually a refined business person. Like I  
98 totally leveraged Elliot's and his/her family's involvement in the 1998 Castle heist to  
99 encourage him/her to invest in Pocatello Rox. Information is power, you know what I mean?  
100 I have no idea where Elliot's investment funds came from but I know it wasn't his/her  
101 family money. S/he is a strictly silent investor. Those kinds of folks don't want to be publicly  
102 associated with a person like me.

103 But Elliot's family is actually not as pristine as most people think. S/he acts like his/her  
104 dad is like this paragon of virtue, but I saw with my own eyes that Monte Stewart was good  
105 friends with Myles Amore. I also overheard a conversation between Amore and Elliot that  
106 confirmed Elliot knew a lot more than s/he's letting on. Elliot was in the Rox with Amore.  
107 Elliot told Amore that when Monte died Elliot had sniffed around looking for the stolen  
108 Castle art. Elliot told Amore that s/he found what s/he was looking for in the old man's  
109 storage unit. Elliot asked Amore for help moving the stuff. At that point I had to go deal  
110 with another customer, so that's all I heard.

111 As I said, knowledge is power and I had an investor. What more did I need?

112 **WITNESS ADDENDUM**

113 I have reviewed this statement and I have nothing of significance to add at this time.  
114 The material facts are true and correct.

115 Signed:  
  
\_\_\_\_\_  
Lou Hammersmith

## Defense Witness Statements

### *Elliot Stewart, Defendant*

1 My name is Elliot Stewart. I am proud to say I am a native Idahoan, born and bred in  
2 Idaho Falls. I grew up there; graduated from high school there. Class of 1993. Go Bees!  
3 Man, I remember those days; I was such a young, wild thing. You see, growing up I never  
4 wanted for anything because we had so much money. My parents, my father in particular,  
5 were great role models and tried to steer me down the right path, but I was bull headed and  
6 thought I knew everything. Like most high school kids, right? But other kids don't have a  
7 trust fund that allows them to act on their whims. I did. I'm not proud of it looking back,  
8 but I thought I was entitled to much, much more than Idaho Falls had to offer.

9 I think my father saw that. He tried everything he could to get me on the straight and  
10 narrow. After high school, he forced me to help out with the family foundation. I am sure  
11 you don't need me to explain it, everyone from Idaho has heard of the Stewart Foundation.  
12 But I guess I will go into detail if you need me to. The Stewart Family Foundation is a  
13 charitable organization that advances Idaho's interests by providing funding to worthy  
14 causes, such as educating Idaho's youth through scholarship and providing grants to causes  
15 that advance local community interests throughout Idaho. I always knew the importance of  
16 the Foundation, but back then, like I said, I wanted to be running things.

17 My father made me a glorified personal assistant. I ran errands. I paid contractors. I  
18 was the foot soldier. "Pay so and so, Elliot." or "Arrange to pick up so and so at the airport,  
19 Elliot," my father would say. But though I was doing a ton of the running around, he  
20 wouldn't let me help with the decision making, He didn't even keep me in the loop on who it  
21 was I was picking up or what I was paying for. That is actually how I met Lou  
22 Hammersmith. S/he was a security guard at the museum. Not too bright, but my dad  
23 seemed to like him/her. I paid him/her a few times. I have no idea what for. Like I said, I  
24 was just a foot soldier. This whole story that I paid Lou to leave the door of the museum  
25 open on the night of the Castle thefts is ridiculous. Like I said, I paid him/her ALL THE  
26 TIME for random things, but I never knew what they were for. If s/he is saying I  
27 specifically told him/her what to do, you know s/he is lying because s/he didn't do anything  
28 for me. S/he answered solely to my father.

29 Looking back on it, my father was just trying to teach me what it is like at the bottom,  
30 so I could appreciate the position at the top. My father was always looking out for the little  
31 people and wanted to make sure I appreciated what it was like to be a have-not. But I  
32 didn't see it that way at the time. You can imagine how much I regret that now. My father  
33 was such a great man, and I never gave him/her much credit for it. Nope, I basically  
34 tolerated being the Foundation's stooge for about six years. In March 1998 I hit the road. I  
35 know Finley Gardner is saying I was running from the law, but that's a lie. I had nothing to  
36 do with the Castle theft. The only law I was running from was my old man. And yes I may  
37 have been running around with a rough crowd at that time, but that's no reason to think I  
38 was on the wrong side of the law. I was never charged with a crime. I had my trust fund  
39 that basically allowed me to do whatever I wanted. So I told my father I wouldn't tolerate  
40 being his lackey anymore and began travelling the world on my family's dime.

41 I was the prodigal child for practically thirteen years. I only came home for occasional  
42 holidays or other brief periods of time. I think my dad might have put a stop to it, but my  
43 mother is such a kind-hearted woman and I am her only child. She wanted to let me figure  
44 it out on my own.

45 And wow did I, in the harshest way. I was almost out of money, the terms of my trust  
46 are a bit strict about how much I can pull out during a certain period of time, and was such  
47 a floater that they had a hard time tracking me down when my father was diagnosed with  
48 cancer in 2012. I was heartbroken. I came home straight away. The doctors only gave him a  
49 year, and that put everything into perspective really quickly, let me tell you. All that lost  
50 time with my father, it still gets me. Anyway, once I got home, I got to work. My father was  
51 ill and had a fighter's spirit, he lived two years past what the doctors gave him. So I took  
52 over the Foundation operations to give my dad what he couldn't have had without me, the  
53 time and space he needed to fight that fight.

54 And boy, did that make me grow up in a whole new way, and probably in the way my  
55 father always wanted me to. Taking care of my sick father and completely distraught  
56 mother was a full-time job in itself. Not to mention all the operations that go into the  
57 Foundation. A lot of things were a mess. Apparently my dad let Lou Hammersmith do a lot  
58 of work for him over the years. Like I said, Lou is not too bright. I don't know what  
59 convinced my father Lou had any kind of head for business. When I was young I just  
60 thought it was all fun and prestige. Ordering people around and throwing events. It's not; it

61 is a lot of work, organization, and diplomacy. I understood finally the value of money to so  
62 many people that didn't have it. I got Lou out of the way, but I invested in his/her nightclub  
63 to help ease the transition. I stopped my money-wasting ways and threw myself into  
64 making the Foundation an even better vehicle for social change. My father was able to help  
65 me with the transition before he passed away. I think he was proud of me at that point. I  
66 idolized my father, I am glad I got to make him proud.

67 That is why I was so shocked when I found those two Castle paintings in his storage  
68 unit. You see, my father died on October 17, 2015, and I am the executor of my father's  
69 estate. When I was cataloguing all the property, I found an envelope with a key and the  
70 address of a storage facility in Blackfoot. I visited the site in early November because I  
71 didn't have any specifics on the paperwork I was reviewing for the probate proceedings.  
72 Anyway, like I said, I grew up in Idaho Falls and was actively working for the Foundation  
73 in 1998 when the robbery occurred. So I recognized the paintings right away. The  
74 Foundation was very involved in the museum and helped with funding. And that kind of  
75 crime gets a lot of press regardless. And let's not forget the reward money. When those  
76 paintings went missing there was a reward for their return, and the pot kept getting bigger  
77 the longer the paintings were at large. And unlike the trust fund, there were no strings  
78 attached; that is the one thing about trust-fund money, you can't just do whatever you want  
79 to with it.

80 Anyway, I had no clue what to do. I was confused and hurt. Why are these paintings in  
81 storage that belonged to my father? Was he involved in some way? I didn't want to believe  
82 it. But I knew who to talk to, right? I mean Myles Amore had gone to prison for being a  
83 high end thief. And, s/he knew my father when they were younger. I figured Myles would  
84 have the answers I needed so I called him/her. I know that probably makes me look guilty,  
85 but I had to know my father's involvement.

86 Amore told me the whole story – how back in the late 1990s, Amore was struggling  
87 financially, how my father coveted those pieces of art; how my father suggested in January  
88 of 1998 that Amore steal the Castle pieces, everything. I was crushed. I know I should have  
89 called the police to turn in the paintings after I found them, but my father was my idol, I  
90 didn't want to expose him. And the family name would have been tarnished right along  
91 with his. But I always planned on returning the artwork; I just thought I would figure out a  
92 way to do it that did not expose my father or the family name. My poor mother, she had

93 already lost the love of her life, could I put her through the knowledge that he had  
94 committed such a huge crime?

95       Anyway, I called on an old childhood friend, Brooke Benjamin. Back when I was still a  
96 kid, the Benjamins were our neighbors. The Stewarts and the Benjamins did so much  
97 together, and almost always had Sunday brunch together. My good friend from that time  
98 was Brooke, We did everything together and I trusted him/her. I also hadn't spoken with  
99 him/her for years, but a friendship like that with such a solid foundation, it was the kind of  
100 friendship that you could pick up after years and it would be just as strong as when you left  
101 it, or so I thought. Of course I now completely regret trusting Brooke, but how was I to  
102 know s/he was a no-good con-artist? All I can tell you is, the Brooke that I know now is not  
103 the Brooke I knew then.

104       So I contacted Brooke, not only because s/he was a childhood friend that I thought I  
105 could trust, but because Brooke was an investigative journalist. I figured s/he would have  
106 lots of contacts that might make it easier for me to get the artworks where they belonged  
107 without dragging the Stewart name through the mud. Don't reporters always have to  
108 protect their sources and work in clandestine ways? Anyway, that was my gamble. Plus, I  
109 knew that Brooke had a particular interest in the robbery from way back. So I figured we  
110 could figure out a way to get the art to the proper owner and Brooke could make his/her  
111 name in reporting. It would have been a win/win, if Brooke had not gotten greedy.

112       I found out too late that once Brooke got a look at those two paintings, all s/he was  
113 seeing was dollar signs for him/herself. I honestly had no idea that Brooke planned to sell  
114 them all along. I should have seen it though. There were signs. For example, I wanted to  
115 act on the paintings right away, but Brooke convinced me to wait until we could  
116 authenticate the paintings. S/he said Amore was not trustworthy and the paintings could  
117 be fakes, why face exposure if we don't have the real deal, right? It made sense so I agreed.  
118 Brooke said s/he knew someone from a previous story, Grayson Kennedy, that could  
119 authenticate the paintings. S/he even said that Grayson would be able to tell us how much  
120 the paintings were worth. I didn't know why that would be relevant, because we were just  
121 trying to figure out if the paintings were real. But I shrugged it off at the time thinking it  
122 must just be a part of the process. I was so relieved to have a plan, and blinded by my trust  
123 in my childhood friend, that I didn't look deeper.

124 After Brooke met with Grayson, s/he said s/he arranged a meeting at the storage unit. I  
125 thought that was crazy! The last thing I wanted was for anyone else to know the storage  
126 unit even existed! I told Brooke that was a dumb idea, and that I'd take him/her there but  
127 no way would I get out of the car or be anywhere that I could be seen. Brooke told me to  
128 calm down and said that would be fine. S/he assured me s/he would not tell Grayson about  
129 me. It didn't occur to me that my father's name was plastered all over the filing cabinets in  
130 there. We arrived at the unit about ten minutes early, and then Grayson showed up. Brooke  
131 met him/her at the gate and I watched them go in toward the unit. I was getting really  
132 nervous. I had no idea how long it took to authenticate a painting, but it seemed like it was  
133 taking forever.

134 Everything went nuts. The place was swarming with cops. I freaked out and got out of  
135 there fast! In hindsight that wasn't a good idea. Later that day Findley Gardner showed up  
136 to arrest me. I cooperated – I had no reason not to. But then s/he asked me where the other  
137 two paintings were. I told him/her there were no “other two paintings.” That's when I  
138 realized Brooke had turned on me.

139 I don't know why Brooke would betray me, but that is exactly what this is, betrayal. I  
140 never intended on keeping or selling those paintings. I don't know why Brooke is saying  
141 there were four pieces. That's just not true. There were only two in the storage unit, and  
142 they are back at the museum. I didn't keep any for myself. Why would I? I was always  
143 going to give them back to their rightful owner as soon as I realized what they were. What  
144 motive do I have to sell the paintings? I told you, I have stopped my spendthrift ways.  
145 Brooke is just trying to save his/her own skin by throwing me under the bus so s/he can get  
146 a plea deal.

147 It's true that after I left home my father wrote me out of his will. I don't blame him.  
148 What I did was pretty rotten. But after I came back and we patched things up, he told me  
149 he'd put me back in. I didn't ask him to or anything – I still had a little money left in my  
150 trust fund. Then he died before he could meet with the lawyers to change it. But that would  
151 not turn me into a thief!

152

153 In hindsight, I wish I had taken Amore up on his/her offer to use his/her influence and  
154 connections to help me get rid of the paintings, instead of calling Brooke. Then all the  
155 paintings would be resting safely in the museum, I'd have the reward money, and I for sure  
156 wouldn't be in the trouble I am now.

157 **WITNESS ADDENDUM**

158 I have reviewed this statement and I have nothing of significance to add at this time.  
159 The material facts are true and correct.

Signed:



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Elliot Stewart

## *Myles Amore, Consultant*

1 My name is Myles Amore. I was born in Manhattan in 1954, but when I was about 10 or  
2 so, my family moved to Jackson Hole, Wyoming, where my mother ran an art gallery. But I  
3 still consider myself a New Yorker at heart. As a child, we would take annual trips back to  
4 New York to visit my Nonna and to spend time in the city. My mom never wanted me to  
5 lose touch with my roots.

6 Maybe art is just in my blood, but I always loved the museums. I could spend days  
7 getting lost in the Met or wandering around the MoMa, the Guggenheim, or the Whitney.  
8 New York is the place to be if you have a love for art like I do. In fact, the Whitney is where  
9 I first discovered James Castle's art; they have a pretty big collection there.

10 My love of art followed me to the University of Denver, where I obtained my  
11 undergraduate degree in Art History and my Masters in International Business. The plan  
12 had always been to travel and become an art dealer; I've always loved to travel and my  
13 degree allowed me to study different regions, languages, and cultures.

14 University of Denver is where I met Monte Stewart. We bonded immediately. Monte  
15 came from money and, like me, he loved to travel. During our sophomore year, we spent the  
16 summer touring Europe visiting all the famous art museums on the Continent. It was an  
17 incredible trip and one I still remember fondly to this day.

18 Following college, Monte and I stayed in touch, though we took different paths. Monte  
19 settled down and ran the Stewart Family Foundation. Image was very important to Monte  
20 and, at least from the outside, his life always appeared perfect. My life, on the other hand,  
21 was a little more complicated. After college, I couldn't find work in my field so I took what  
22 job I could and went to work for Simplot, where I was an international business manager.  
23 My work took me around the globe and allowed me to meet many new and exciting people.  
24 So, while I was not necessarily dealing with art, I was still able to satisfy my wanderlust.

25 I ended up loving my job and put everything I had into my work until June 1987 when I  
26 was unexpectedly downsized. To think that I had dedicated my career to those people! The  
27 loss of my jet-set lifestyle was devastating. I missed the excitement of it all – the travel, the  
28 food, the culture. It took months for me to find a new job and even then, it was nothing like  
29 the job I had at Simplot.

30 As the months passed, I began to run low on money. In my travels, I had met few people  
31 dealing in fenced art and other high end items, which gave me an idea: I could steal a  
32 couple pieces and secure some additional money. I never meant it to be a career; it was just  
33 meant to tide me over until I could get back on my feet. It never occurred to me that I'd be  
34 good at being a cat burglar or that I'd like it so much.

35 My first burglary was both terrifying and thrilling. I planned each detail to perfection.  
36 The best part was the feeling of having the painting in my hands – it was so incredibly  
37 beautiful and I felt richer just holding it. I left the more obvious items, the TVs, the  
38 furniture, and jewelry as those items were less marketable on the European market where  
39 I had my contacts. I continued to burgle homes for several years, both for the money and for  
40 the thrill of holding those glorious paintings. And then one evening in August 1991, that all  
41 came to a halt. I was unexpectedly surprised by a homeowner returning home early. I spent  
42 the next five years of my life in the Idaho State Penitentiary.

43 After prison, it was difficult for me to secure a new job. I had become a pariah to the  
44 people in my old life. But, Monte was still quietly there for me, which says a lot about  
45 Monte. His public reputation really meant everything to him, and even though he would do  
46 everything to keep his image tarnish free, he still found a way to help an old friend. After a  
47 few months of trying to keep my head above water, I reached out to Monte to see if he could  
48 help. Monte was a true friend – in January 1997, he found a job for me at a warehouse he  
49 owned through the Stewart Foundation.

50 I worked for a year at the warehouse packing and delivering crates until one day, in  
51 January 1998, Monte approached me and asked if I was interested in a side-project to make  
52 a little extra money. We met for dinner at a local hole-in-the wall where Monte, to my  
53 dismay, explained that the Foundation was desperately low on funding. His father had  
54 started the Foundation and he was so afraid of what would happen if people knew that he  
55 had run the Foundation into the ground. He was scared and desperate.

56 With tears in his eyes, he told me about the James Castle Art Exhibit, set to be released  
57 for public viewing in the coming weeks. He played to my love of art and the thrill of the  
58 steal to convince me to help him. So I did. Monte was an old friend and he had helped me in  
59 my time of need so I was more than glad to return the favor. Besides, I missed that feeling  
60 of a rare painting between my fingertips.

61 I don't have any problem with telling you all about the Castle Heist. The statute of  
62 limitations was up long ago, and I've paid all my debts to society. I can tell you,  
63 unequivocally, that Elliot Stewart had nothing to do with the Castle Heist. Elliot Stewart  
64 knew nothing about it. At the time s/he was a snout nosed kid buried in his/her teen angst,  
65 worrying about prom dates. Monte would do everything in his power to protect Elliot from  
66 the seamier side of his life. That continued to until the day Monte died. And as a close  
67 friend of his I have also been very protective of Elliot.

68 I can also corroborate that Lou Hammersmith was involved in the original heist. I had  
69 an errand guy - not Elliot - pay Lou \$200 to leave a door unlocked, go along with whatever  
70 happened, and then act like s/he'd been robbed. I was a little surprised that part went as  
71 well as it did. Lou is a nice enough person, but not the brightest bulb on the Christmas tree,  
72 if you know what I mean. I mean: what kind of idiot settles for a \$200 in a theft worth  
73 hundreds of thousands? AND never thinks to ask to get in on more of the action? I don't  
74 know why Elliot decided to invest in Lou's club. That seemed like a sure way to lose money.

75 On March 3, 1998, I and an accomplice (who is long gone now) disguised ourselves as  
76 cops and went to the museum at about 1:30 a.m. I was a little surprised Lou didn't  
77 recognize me. The disguises weren't that good. It just goes to show how dumb Lou is. We  
78 duct taped Lou to a chair, I took his/her key card, and we took six of the Castle pieces.  
79 Getting around the alarm was a piece of cake. Monte and I were able to sell two of the  
80 Castle pieces: Man in Red Between Two Giant Chickens and Crayon on Cardboard with  
81 String, I think, to a private interest in Spain and split the profits. That was all both of us  
82 needed to get back on our feet and from that day on we both vowed to go straight. I really  
83 never knew what Monte planned to do with the other four pieces and I didn't ask. Not my  
84 circus. Not my monkeys. I have no idea what happened to the two that are missing. Maybe  
85 Monte sold them through someone else. Maybe Brooke wanted a piece of the action. Who  
86 knows?

87 Once I started stealing again, I couldn't stop. It finally caught up with me, though. In  
88 2002 I went back to prison where I spent the next five years. After I got out, I went straight  
89 for good. I have lots of expertise in museum security, both from personal experience and  
90 because I kept up my technical knowledge to make the prison time go faster. So now I act  
91 as a consultant for museums and law enforcement, telling them how to keep guys like me  
92 away from their stuff. I don't really know why I never anonymously tipped anyone off to the

93 heist. Probably partially out of loyalty to the Stewart family. But mostly because I treat  
94 that period of my life like someone else's history. I know the tale like a well-worn book that  
95 I've read over and over, but it just doesn't belong to me anymore. I think that's how I could  
96 move on with my life.

97 But back to the original heist. To avoid any suspicion after the heist, Monte and I went  
98 our separate ways. We remained close, but never in public. To this day, I can't believe that  
99 Finley Gardner never put two and two together and connected the Castle Heist to us. I'd  
100 say that makes the intrepid Agent Gardner not very good at his/her job. S/he couldn't break  
101 Lou Hammersmith? Really? S/he couldn't create a connection from the Castle art to Monte  
102 Stewart, who was instrumental in bringing the exhibit to a small Idaho town, to one of  
103 Monte Stewart's college friends who was a known art thief? Almost 20 years to figure that  
104 out and s/he never made the connection. I was only questioned once and never charged with  
105 anything.

106 And once again, Gardner is getting the connection wrong. S/he has let Brooke Benjamin  
107 snow him/her into thinking that Elliot is behind this. Come on, man. Wasn't it Agent  
108 Gardner who once called Brooke Benjamin an accomplice in the original crime? How can  
109 s/he keep getting this so wrong?

110 After I left prison, I was trying to move on with my life and then in 2012, I found myself  
111 pulled back into my past. Monte Stewart contacted me and told me he was sick; terminal  
112 cancer with only a few months left to live. The years we had spent together quickly flooded  
113 my memory. He stepped away from his principal role at the Foundation and Elliot took his  
114 place. I met with him and he told me that he was planning on putting the full story of the  
115 Castle Heist in his will with instructions on how Elliot could turn the paintings in. He  
116 promised to keep my name out of it. But I guess he died before he could change his will.

117 After Monte passed, I received a heart-breaking call from Elliot. S/he seemed  
118 devastated and confused. S/he was cleaning out Monte's storage unit and found the  
119 paintings. Elliot had so many questions! I didn't want to be the one to tell Elliot about the  
120 heist, but s/he would not relent and was on the verge of hysteria.

121 I couldn't lie to Elliot and I knew Monte wanted Elliot to know the truth, so I told  
122 him/her about the Foundation troubles and about the heist. S/he could hardly believe what  
123 I was saying and asked me what to do with the art without ruining the reputation of Monte

124 or the Stewart family or the Foundation. S/he wanted to know how much the art was worth  
125 and how to get rid of it without getting anyone in trouble. I told Elliot that I still had  
126 contacts in the European market if s/he really wanted to dispose of the art.

127 I told Elliot to hang tight and that I would get back with him/her after I figured out how  
128 to work this all out. I had lots of contacts and channels I could move the paintings through.  
129 To get them back to the museum, that is. Of course I was tempted. Knowing the paintings  
130 were within reach brought up the same old thrill, and I could certainly have unloaded  
131 them. But my loyalty to Monte was too strong. Selling them would have put Elliot in a bad  
132 spot. I couldn't ask him/her to be an accomplice to a crime. Besides, I didn't need the money.  
133 My current legitimate career is very lucrative. Museums will pay a lot to protect valuable  
134 art. Anyway, the next thing I knew, Elliot was working with Brooke. I knew that would go  
135 nowhere good and fast.

136 Let's recap, shall we? You have Brooke Benjamin, who has been involved with trying to  
137 figure out this heist at any cost, no matter who gets caught in the middle. You have Lou  
138 Hammersmith who admits to being involved from the beginning. And you have Grayson  
139 Kennedy who has known about these missing paintings for at least 10 years and just now  
140 suddenly decides s/he has to do something about getting them recovered? And you have  
141 Agent Gardner who hasn't been able to solve this case for over 20 years.

142 What's that add up to? You are charging the wrong person. Elliot has never had any  
143 suspicion in being involved with the stolen Castle paintings and not need to be involved in  
144 perpetuating this situation any longer. S/he was trying to do the right thing and get them  
145 returned to their rightful owner while at the same time trying to protect the Foundation  
146 and his/her family's honor.

147 **WITNESS ADDENDUM**

148 I have reviewed this statement and I have nothing of significance to add at this time.  
149 The material facts are true and correct.

Signed:

  
Myles Amore

## *Grayson Kennedy, Art Dealer*

1 My name is Grayson Kennedy. By profession, I am an historian of the arts. By trade, I  
2 am an appraiser of the arts. An historian chronicles the journey of the arts and artists. An  
3 appraiser assists the benefactors of the arts in their patronage of artists. An artist, of  
4 course, is the conduit through which life and all of its emotions are expressed. As Tolstoy  
5 wrote, art “is a means of union among men, joining them together in the same feelings, and  
6 indispensable for the life and progress toward well-being of individuals and of humanity.”

7 I was born and raised in southeastern Idaho, but my education has taken me to Paris,  
8 Prague, Vienna, Florence, Milan – the palaces of Western Civilization’s expressions of art.  
9 My formal education began with the Highland Secondary School, followed by an  
10 undergraduate education in art history from The Idaho State University. I then left my  
11 hometown and took a master’s degree in fine arts from the Rhode Island School of Design,  
12 followed by a PhD from Columbia.

13 While completing my PhD, I began a fellowship with the Florence Gould Foundation.  
14 Upon completion of my fellowship I was retained as an associate specialist, researching and  
15 writing about Foundation art that was loaned out to museums. I provided historical context  
16 and interpretation of the art for the museums to use in their exhibits. I cultivated valuable  
17 and rewarding relationships with museums all over the world.

18 In 2000, I was hired as an assistant director at the National Museum of Wildlife Art in  
19 Jackson Hole, Wyoming. As an assistant director I managed exhibit curation and played a  
20 special role in fundraising and relations. Although my skills clearly rest in historical  
21 context and explication, my relationships with other museums and foundations allowed me  
22 to perform the academic role and to leverage contacts to secure art loans that a small  
23 museum like the MWA would not normally attract.

24 By 2004, word of my success spread and I was recruited by the renowned Ivan Draahgo  
25 banking family to become director of the Musée de Klüber-Láng in Geneva. It appeared to  
26 be a dream come true. Geneva, the heart of the old world. The finest collection of art in the  
27 world – from antiquities to post-modern and contemporary. Top of the world.

28 And then came the World Jewish Restitution Organization’s report on the Swiss  
29 banking industry’s complicity with the Nazis. The WJRO uncovered documents in former  
30 East German archives proving conclusively that in 1944, Nazi SS Chief and German

31 Interior Minister Heinrich Himmler sent a train loaded with hundreds of millions of  
32 dollars' worth of gold, jewelry and art objects to Switzerland for deposit in the vaults of  
33 Swiss banks. Within a month those documents had been traced to the Draahgo family and  
34 the galleries of the Musée de Klüber-Láng itself.

35 I was horrified and immediately resigned my position and returned to southeastern  
36 Idaho. It's difficult enough staying "clean" in the art world when you reach positions of  
37 eminence such as I've held. You can't investigate Nazism's dark past without running into  
38 some very shady characters who would either like to keep their own family history hidden,  
39 or want to keep stolen works in their own private collections. When I discovered I was  
40 actually working for such people, that was the last straw. I refused to be associated with  
41 such a wretched hive of scum and villainy.

42 When I returned home to Idaho I happily took a volunteer position with the Art  
43 Museum of Idaho Falls. I've also got my own gallery here in town. It's small and general,  
44 not specialized, but occasionally I get something really unique and interesting. Both  
45 positions are very rewarding. I've been fortunate to have such a beautiful journey in the art  
46 world. I've been to the peak and I've been to the valley. I am at the peak here in Idaho  
47 Falls.

48 Of course, I know all about the famous March 3, 1998 robbery of the Castle works from  
49 the AMIF. I'd been contacted repeatedly by law enforcement over the years - Finley  
50 Gardner in particular - to discuss tips, monitor my contacts, and to consult on identification  
51 of suspicious pieces.

52 On December 29th of 2015, a journalist named Brooke Benjamin emailed me about  
53 reviewing some works s/he was tipped about that were suspected to be James Castle's. I'd  
54 known Brooke over the years as s/he researched into the Castle thefts. S/he had some kind  
55 of obsession with the Castle thefts and had been tracking the case for years. Frankly, it  
56 seemed like an unhealthy relationship between s/he and James Castle's work. In the  
57 summer of 2005, I spoke with Brooke and passed a tip I'd received about a possible location  
58 of the missing pieces on to her/him. Brooke said s/he'd gotten a tip about the heist from  
59 some antique dealer. I don't know what became of it. I tried to find out but Brooke was  
60 oddly reluctant to fill me in. I'm not sure if Brooke was trying to make a big splash in the  
61 news world or if Brooke just wanted the Castle works for him/herself. At any rate, I was

62 immediately intrigued by the new tip and made plans to meet with Brooke at my gallery  
63 the next day. That was December 30, 2015.

64 The next day, when I met with Brooke at my gallery, Brooke said s/he had “discovered”  
65 (his/her word) some of the stolen Castle works, and that “if they are real this could be the  
66 story of a lifetime.” Brooke was obviously very excited, but I was skeptical this was just  
67 another symptom of an unhealthy obsession. I asked Brooke where the paintings were, and  
68 how s/he came across them, but Brooke was very evasive. S/he would not give me any  
69 details. Brooke said, “I need to know whether these are real. I need to know what they’re  
70 worth.” I asked Brooke why the value mattered, as I assumed they were going straight back  
71 to the museum. “I have my reasons,” Brooke said. “You must know people who buy stolen  
72 art.” Well, I was shocked at such a question, and never would have thought Brooke’s  
73 obsession would go so far as to actually try to sell stolen art works. I told Brooke that the  
74 Castle pieces should be returned to the museum. I told Brooke there is a substantial  
75 reward, if money was a concern. Brooke asked, “how much is the reward up to?” I told  
76 him/her, and s/he replied, “can’t we get more money some other way?”

77 I had no idea who s/he meant by “we.” I certainly hoped s/he didn’t think I would have  
78 anything to do with his/her scheme. Although, since we were having this conversation, s/he  
79 apparently did. At the same time, I realized that if Brooke really had found the stolen  
80 Castle art, then this would be a golden opportunity to recover art that had been missing for  
81 almost 18 years. As much as it pained me, I decided to play along. I told Brooke that I  
82 would need to see the works to verify their authenticity, and that I could ascertain their  
83 value myself. Brooke was very hesitant to agree to this. “I’d really like to keep this as quiet  
84 as possible,” s/he said. “Isn’t finding a buyer the best way to know what they’re worth?” I  
85 led Brooke on, and said that my contacts would not be interested unless I could personally  
86 verify that I had seen the works and that they were authentic. You don’t just call up  
87 underworld art collectors and say you know someone who says s/he has original stolen  
88 Castles. It took some convincing, but Brooke finally agreed to let me see them. Brooke told  
89 me to meet him/her at 6:00 a.m. on January 5th at a storage shed in Blackfoot. I was  
90 surprised that Brooke gave me so much detail about the location - after all, why should s/he  
91 trust me? But I wasn’t about to object.

92 Given Brooke’s seemingly unhealthy obsession with the Castle works, I did not trust  
93 her/him and as soon as s/he departed, I contacted Idaho State Police Special Agent Finley

94 Gardner. Gardner had been investigating the Castle thefts for years. I've been a  
95 background source for Special Agent Gardner for years. S/he's become quite an effective law  
96 enforcement agent but really came from an art background. Finley has an impeccable art  
97 education so s/he doesn't need my art knowledge as much as you'd think – although we do  
98 often share our own thoughts on art, artists, and the world of art. Finley has talked with  
99 me quite a bit over the years about people in the art world – museum people, as we say, and  
100 academics, as patrons. The information I've shared with him/her has led to successful  
101 beginnings in a number of his/her investigations.

102 Special Agent Gardner suggested setting up a sting operation where I would meet with  
103 Brooke to discuss assisting him/her to find a buyer for the Castle works. The idea repulsed  
104 me initially. The thought that I would act as a fence to assist in such cruelty violated my  
105 duty as a guardian of art. Soon, though, Special Agent Gardner convinced me that it was  
106 indeed that same duty that compelled me to play a role in the operation – to join him/her in  
107 his/her journey to liberate the pieces. Gardner said it was the only way to get the evidence  
108 necessary to charge Brooke with a crime.

109 On the morning I was to meet Brooke at the storage shed, I first met with Gardner and  
110 other officers at the ISP office. I wore a wire so Special Agent Gardner and his/her  
111 confederates would know when to step in and arrest the evildoers. S/he gave me a code  
112 phrase - "real deal" - that I should say once I was satisfied that the works were in fact the  
113 stolen Castles. I then went to the address Brooke gave me, arriving about five minutes  
114 before 6:00 a.m.

115 Brooke arrived and led me to the storage unit - number 245, I believe it was. Before s/he  
116 opened it, s/he said to me, "Look Grayson, I have to know I can trust you to keep quiet. My  
117 career, my life, are on the line here. You have to keep this between us." I assured Brooke I  
118 would be discreet. At that point Brooke pulled a key out of his/her pocket, unlocked a  
119 padlock, and opened the unit. It was full of a lot of stereo equipment, travel gear, and what  
120 looked to me like old junk, and my first thought was that this was all for naught. Then  
121 Brooke pulled a sheet off some items on a shelf and stepped back. I was appalled that, real  
122 or not, anyone would be so careless with art. Brooke, or whoever put them there, did not  
123 appear to realize what they could be.

124 I inspected the pieces and immediately knew they were obviously the stolen Castle  
125 works. There was no mistaking the Castle sensitivity expressed through found items –  
126 bound together, literally, with spit and paper. They instantly revealed their authenticity.  
127 Meanwhile, Brooke wouldn't stop talking about Castle. S/he knew everything there was to  
128 know about Castle's work – materials, style, influences, technique. Brooke kept rambling  
129 about Castle's childhood in Garden Valley, then onto Star, and then Boise. S/he talked  
130 about Castle's family members as if they were friends. S/he talked about Castle's mother,  
131 Mary Scanlon, and what it must have been like to raise a deaf child with six siblings and a  
132 husband who ran a store. I'm an internationally recognized art expert and I thought Brooke  
133 was pedantic. At first I thought s/he was testing me but then I realized it was nearly  
134 pathological.

135 I had all I needed, so I told Brooke these were the "real deal." And then it came to an  
136 end. The authorities liberated Castle's long concealed works and arrested Brooke. In a rush,  
137 my senses rejoined my physical person and I was emotionally spent.

138 I don't know why Elliot Stewart is now being charged with this crime. My only contact  
139 about the Castles was Brooke Benjamin. I never had any communication with Elliot, and  
140 had no idea s/he was involved. However, I have known Finley Gardner well enough to know  
141 that s/he always gets his/her man. I don't know how Elliot Stewart is involved, but I'm sure  
142 Finley knows what s/he's doing. I'm just glad the works are back at the museum where they  
143 belong.

144 Yes, I am aware that my reputation is not above reproach but rest assured that all  
145 alleged transgressions are completely innocent. Although I did indeed work with the Gould  
146 Foundation and the Musée de Klüber-Láng I obviously had nothing to do with art stolen by  
147 the Nazis nor with the Swiss banking industry's complicity.

148 All of that happened decades before and I had no knowledge of the ties. It is also true  
149 that I was reprimanded by Columbia University for allegedly plagiarized work in my  
150 dissertation. That was all unintentional and any finding to the contrary is libelous.

151 **WITNESS ADDENDUM**

152 I have reviewed this statement and I have nothing of significance to add at this time.  
153 The material facts are true and correct.

Signed:

  
\_\_\_\_\_  
Grayson Kennedy

## Exhibits

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The subsequent pages of this section include the following exhibits:

Exhibit 1: Article Written by Brooke Benjamin for the Idaho Falls Post Register

Exhibit 2: Article Written by Brooke Benjamin for the Idaho Statesman

Exhibit 3: List of Stolen Castle Works

Exhibit 4: Letter from Columbia University to Grayson Kennedy

Exhibit 5: Myles Amore's Curriculum Vitae

Exhibit 6: Incident Report Written by Finley Gardner

Exhibit 7: Storage Unit Agreement

Exhibit 8: Bank Statement for Elliot Stewart

Exhibit 9: Plea Agreement for Brooke Benjamin

## Exhibit 1: Article Written by Brooke Benjamin for the Idaho Falls Post Register

### ***James Castle Art Stolen from the Art Museum of Idaho Falls***

By: Brooke Benjamin, Idaho Falls Post Register

March 4, 1998

IDAHO FALLS – In what was described as the biggest art theft in Idaho history, two people posing as police officers gained entry to the Art Museum of Idaho Falls early yesterday, restrained a security guard, and left with an estimated \$300,000 worth of art, police said. The stolen works were all paintings and drawings by James Castle.

In a daring, middle-of-the-night robbery, police said, the people knocked on a side door of the museum at about 1:15 a.m. and told the security guard there was a disturbance in the area, and were allowed to enter. Police officials said the thieves then overcame the guard, tied him/her with tape and spent about an hour in the museum, stealing six art objects.

The stolen items include: *Interior Stove with Coffee Grinder*, *Farm House with Yard*, *Interior with Table & Window*, *Color Shapes*, *Man in Red Between Two Giant Chickens*, and *Crayon on Cardboard with String*.

Idaho Falls Police were called to the scene shortly after a maintenance worker discovered the guard at about 7:30 a.m. Local police contacted the Idaho State Police, which has art experts on its staff.

Finley Gardner, the ISP agent in charge of the investigation, said s/he could not reveal details about the robbery, including how the security system, including alarms and cameras, was foiled.

"We will be looking at what system was in place, how it operated, if it was bypassed and how it had been bypassed," Gardner said. S/he also said that while investigators believe there were two thieves involved, "there might well be more."

The guard was questioned extensively. Law enforcement sources said investigators are trying to learn whether the robbery was staged in order to ransom back the heavily

insured objects, or to sell them to a private collector.

Said Gardner, "This is one of those thefts where people actually spent some time researching and took specific things. The job was a professional job."

Gardner would not identify the name or age of the guard, but said the museum hires and trains its own security staff.

A police source said investigators believe the crime was the most lucrative ever in Idaho. The exhibit of Castle works was the most comprehensive ever for the reclusive Idaho artist. It has been open for less than a week. "These are some of Castle's masterpieces," a museum official said. "It's a very sad feeling."

Although Gardner would not say how the works were taken, law enforcement sources said they appeared to have been cut out of their frames.

Agent Gardner said "What is very, very important right now is to let the public know what articles were taken from the museum in the event they can be recovered at a later date, or anybody having any information at all about the robbery or the art treasures, where they might be, or if an attempt is being made to sell them or pass them on, to get in touch with the Idaho State Police or the Idaho Falls Police Department as soon as possible."

S/he added, "We will be following every lead to get these art works back and solve this robbery."

## Exhibit 2: Article Written by Brooke Benjamin for the Idaho Statesman

James Castle Art Heist: 15 Years of Theories

By: Brooke Benjamin

March 3, 2013

BOISE — The hallway in the Pocatello warehouse was dark, the space cramped. But soon there was a flashlight beam, and I was staring at one of the most sought-after stolen art pieces in the United States: James Castle's *Man in Red Between Two Giant Chickens*. Or was I?

My tour guide that night in August 2005 was a rogue antiques dealer. I was a reporter at The Idaho Statesman, consumed like many people before me and since with finding any of the Castle art stolen in March 1998 from the Art Museum of Idaho Falls. The theft was big news then and remains so today as it nears its 20th anniversary. The stolen works are valued at \$275,000, making the robbery the largest art theft in Idaho history.

Which explains why I found myself in Pocatello, 50 miles from the scene of the crime, tracking yet another lead. My guide had phoned me suggesting he knew something of the robbery, and he had some street credibility because he was allied with a known thief. He took me into a storage locker and flashed his light on the painting and abruptly ushered me out. The entire visit had taken all of two minutes.

Call me Inspector Clouseau — I've been called worse in this matter, including a "criminal accomplice" by a noted art investigator — but I felt certain I was feet from the real thing, that the Castle, and perhaps all the stolen art, would soon be home. I wrote a front-page article about the furtive unveiling for The Statesman — with a headline that bellowed "We've Seen It!" — and stood by for the happy ending.

It never came. Officials did not dismiss my "viewing" out of hand, but the agents in charge back then portrayed me as a dupe. Eight years later, I still wonder whether what I saw that night was a work of art or an effort to con an eager reporter. The Idaho State Police continue to discount my

warehouse viewing. (They say they have figured out the identity of my guide, but I promised the guide anonymity.)

Such have been the vicissitudes in my coverage of the case for nearly two decades, during which I have gathered hundreds of investigative documents and photos, interviewed scores of criminals and crackpots, and met with dozens of law enforcement officials and museum executives.

Anyone who expected the art to appear rapidly on the black market or to be used for some kind of ransom was disappointed. Instead, there was dead silence. Seven years after the heist, the museum and private interests raised the reward to \$100,000 from \$50,000.

Early on, investigators focused on Myles Amore, a career thief. Information from Amore ultimately led to my dark trip through that Pocatello warehouse. Investigators have privately told me they believed there had been a second sighting of one of the stolen items, though I'm sad to say it was not the picture I encountered in the warehouse. A tipster, they said, told them in 2009 that he had seen a work resembling *Farm House with Yard* in Boise.

"At first, the stolen art was seen as too hot, and there were no takers," Agent Gardner once told me. But, what happens now? The investigators will keep looking. Gardner has rejected the notion that the art was destroyed by the thieves as soon as they realized what they had. Gardner claimed: "That rarely happens in art thefts. Most criminals are savvy enough to know such valuable paintings are their ace in the hole."

### Exhibit 3: List of Stolen Castle Works

The following list of paintings was verified by Grayson Kennedy in February, 2016 in the course of his/her business as an art appraiser.

<b>Painting</b>	<b>Value as of February 2016</b>
Interior Stove with Coffee Grinder	\$25,000
Farm House with Yard	\$35,000
Interior with Table & Window	\$40,000
Color Shapes	\$25,000
Man in Red Between Two Giant Chickens	\$100,000
Crayon on Cardboard with String	\$50,000

## Exhibit 4: Letter from Columbia University to Grayson Kennedy



September 14, 1988

Mr. Grayson Kennedy  
6214 West 62<sup>nd</sup> Street  
Apartment 2140  
New York, New York 10036

Re: Disciplinary Action 87-0014

Mr. Kennedy:

I am writing to inform you that the Office of Academic Integrity and Responsible Conduct of Research has found in the above-referenced matter that you have violated Columbia University's plagiarism policy, Columbia Code of Conduct § 5-110, in three sections of your dissertation introduction which was submitted during the Spring semester of 1987.

As you know, this an extremely serious violation that often results in revocation of your doctoral degree. In this instance, though, the Office of Academic Integrity and Responsible Conduct of Research has decided not to impose discipline because the investigation did not reveal intentional misconduct. Regardless, a finding that you have violated the University's plagiarism policy is required because it was conclusively established that you unintentionally misappropriated the intellectual property of another and submitted as your own original work. While your violation may have been coincidental, the University maintains the highest standards of academic integrity.

The Office of Academic Integrity and Responsible Conduct of Research appreciates your cooperation in this investigation.

Sincerely,



Frankie Mittens

Administrative Dean and Director of the  
Office of Academic Integrity and  
Responsible Conduct of Research

## Exhibit 5: Myles Amore's Curriculum Vitae

Myles Amore's CV, on this page and the next, are part of the same exhibit.

	<i>MYLES AMORE</i>
Myles Amore	
CURRICULUM VITAE	
MYLES AMORE, born July 4, 1954, Manhattan, New York	
<b><u>Education:</u></b>	
University of Denver – B.A. in Art History; Masters in International Business	
<b><u>Member:</u></b>	
Met Board Member – New York	
<b><u>Employment History:</u></b>	
Simplot – Boise, Idaho – International Business Manager	
Stewart Foundation – Boise, Idaho – Shipping Manager and Consultant	
Self-Employed – Art Consultation Services, Museum Security Consultant	
<b><u>Notable Cases:</u></b>	
As an art consultant, I have worked for a variety of museums providing detailed security schematics and advising on security risks and weak-points. I have also been engaged by local and national police and investigatory agencies to consult on high-end art heists. Notably, and during the last 10 years, I served as an expert on the following cases:	
<i>State v. Kenny</i> - Smithsonian Institution, Washington, D.C. – Robbery of Dorothy's ruby red slippers (Defense Expert)	
<i>State v. Evelyn</i> – the Metropolitan Museum of Art, New York City, New York – Burglary of "Adam and Eve" – a well-known engraving by Albrecht Durer (Prosecution Expert)	

*State v. Body* – The Frick Collection, New York City, New York. – Burglary of La Promenade, Renoir (Defense Expert)

*State v. Mason* – San Francisco Museum of Modern Art – Burglary of La Conversation, Henri Matisse (Defense Expert)

*State v. Highland* – Museum of Fine Arts, Boston, Massachusetts – Burglary of Paul Revere by John Singleton Copley (Prosecution Expert)

**Published Articles:**

Behind the Wires, published in the D'Orsay Digest, 2014

To Catch a Thief, published in the Manhattan Met, 2013

Of Thieves and Men, published in the Museum Monthly, 2012

## Exhibit 6: Incident Report Written by Finley Gardner

Finley Gardner's Incident Report, on this page and the next, are part of the same exhibit. This report was submitted on January 6, 2016.

On December 30, 2015 at 1340 hours I, ISP Officer Findley Gardner, received a telephone call from Grayson Kennedy. Kennedy is known to me to be an art appraiser and art dealer. Kennedy told me that earlier that day s/he had received a personal contact from Brooke Benjamin. Benjamin is also known to me as a newspaper reporter for the Idaho Statesman. According to Kennedy, Benjamin wanted Kennedy to identify and authenticate artwork that Benjamin had reason to believe was produced by James Castle (deceased), and that had been stolen from a museum on March 3, 1998.

According to Kennedy, Benjamin said s/he had found what s/he believed to be stolen Castle art works, and that Benjamin wanted to write a story about them. Kennedy said that Benjamin wanted Kennedy to authenticate the works and give an estimate of their value. Kennedy said s/he told Benjamin the works should be returned to the museum, and that there was a reward for their recovery. Kennedy said that Benjamin was reluctant to return the paintings to the museum, and instead asked Kennedy if s/he would help Benjamin sell the works on the black market.

Kennedy said Benjamin was insistent on pursuing an illegal sale, so Kennedy decided to "play along" in an effort to locate the works. Kennedy said that Benjamin agreed to meet Kennedy at a storage unit in Blackfoot, Idaho, at 6:00 a.m. on January 5, 2016. Kennedy understood from Benjamin that the artwork was located in the storage unit. Kennedy said that s/he contacted me immediately after Benjamin left his/her gallery.

After my conversation with Kennedy I assembled a team to set up a covert operation. Since the meeting was to take place on January 5th at 6:00 a.m., our plan was to be on scene and in position by 4:00 a.m. I recontacted Kennedy and asked him to be at the ISP office at 5:00 a.m. so s/he could be set up with a wire.

On January 5, 2016 the covert team took positions around the storage unit where we could remain concealed but keep the storage unit in view. At approximately 0500 on January 5th a vehicle drove slowly past the main entrance to the storage units and parked approximately 100 yards away. This was outside the perimeter established by the covert team, but officers were able to see Benjamin exit the passenger side of the vehicle and walk to the main entrance of the storage units. Benjamin arrived at the main entrance at 0555. Kennedy arrived at 0557. Kennedy was wearing a wireless transmitter, and the entire conversation between Benjamin and Kennedy was recorded and transcribed.

Benjamin and Kennedy proceeded to a storage unit, which Benjamin unlocked with a key s/he removed from his/her left front pants pocket. Both Benjamin and Kennedy went inside the storage unit. While officers could see Benjamin and Kennedy at all times while they were on the outside of the unit, we lost sight of them for approximately three minutes while they were inside the unit. While they were in the unit Benjamin talked constantly about James Castle and his artwork. The covert team had given Kennedy a code phrase - "real deal" - that s/he was to say after s/he had examined the artwork and determined they were authentic, and that they were pieces stolen from the museum on March 3, 1998. At 0605 I heard Kennedy give the code phrase - "real deal." At that point I gave the officers on the covert team the signal to move in.

As we did so, the car that Benjamin arrived in quickly pulled away and left the scene. Since the car was outside the perimeter and our immediate concern was apprehending Benjamin and recovering the artwork, I instructed officers not to pursue the vehicle.

When I arrived at the storage unit I placed Benjamin under arrest for possession of stolen property and advised him/her of his/her rights. I searched Benjamin incident to arrest and recovered a key that fit the padlock to the storage unit, and Benjamin's wallet containing Benjamin's driver's license and Grayson Kennedy's business card. Benjamin did not have any car keys.

I searched the storage unit and recovered two Castle works that Kennedy indicated. Also in the shed were several items of sound equipment with "Pocatello Rox" written on them in black marker. Pocatello Rox is a nightclub owned by Lou Hammersmith. The sound equipment was covered with a thick layer of dust. I observed several pieces of luggage with the name "Elliot Stewart" on them. These were clean, and did not appear to have been in the storage shed very long. Finally, there were several old books and filing cabinets full of business records, all with Monte Stewart's name on them.

I asked Benjamin if s/he was willing to waive his/her rights and answer questions. Benjamin was cooperative, and said that s/he had asked Kennedy to authenticate the artwork so that Benjamin could be instrumental in recovering the paintings and write a story on the Castle theft. Benjamin said the storage unit belonged to Elliot Stewart. Stewart is well known as the child of Monte Stewart, a wealthy businessman and art collector who died in October 2015. According to Benjamin, Stewart said s/he discovered the artwork while inventorying his/her father's estate. Benjamin said Stewart contacted him/her and asked for Benjamin's assistance in "getting rid" of the Castle works in a way that would not implicate the Stewart family. Benjamin said it was Stewart's idea to sell the works on the black market, and that Benjamin was only going to play along long enough to make the story good enough for a Pulitzer prize. Benjamin said his/her intent had been to contact me at some point in the future to recover the paintings for the museum. Benjamin identified Stewart as the driver of the car that brought Benjamin to the storage unit and that drove off when police moved in.

After clearing the scene and transporting Benjamin to jail I made contact with Elliot Stewart at his/her residence. I advised Stewart that s/he was not under arrest, and that I wanted to talk to him/her about his/her involvement with Benjamin and the stolen Castle works. Stewart admitted to knowing that the works were in the storage unit, and that as executor of Monte Stewart's estate s/he took possession of them. Stewart claimed that s/he wanted to return the paintings without anyone knowing that his/her father had arranged to have them stolen back in 1998. Prior to this I had not known that Monte Stewart was involved in the earlier theft. Stewart said that s/he was unaware of Benjamin's plan to sell the paintings on the black market. I asked Stewart why s/he sped off when Benjamin was arrested if Stewart was innocent? I asked Stewart why s/he didn't he stay and explain? At that point Stewart said he had nothing left to say. I placed Stewart under arrest for possession of stolen property and transported him/her to jail.

# Exhibit 7: Storage Unit Agreement

STORAGE SPACE RENTAL AGREEMENT

Landlord: Blackfoot  
Rents

Tenant: Lou Hammersmith

Description of space leased: 245

IN CONSIDERATION of the mutual covenants and agreements herein contained, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the above described property under the following terms and conditions:

1. TERM. This lease shall commence on 9 - 4, 1999, and continue until terminated as provided herein.
2. RENT. The rent shall be \$ 15.00 per month payable on or before the 15 day of each month. In the event the rent is received more than 5 days late, a late fee of \$ 5.00 shall be due. In the event a check bounces, a fee of \$ 30.00 shall be due.
3. DEFAULT. In the event Tenant fails to pay the rent due under this Agreement, Landlord may deny access until paid in full and whenever the rent is more than 30 days in arrears, Landlord may remove any property in the storage space and relet it to a new Tenant.
4. LIEN. Landlord shall have a lien on any property placed in the storage space and shall have the right to sell the property at public or private sale or as provided by law.
5. USE. Tenant shall not keep in the storage space any explosive, inflammable, hazardous or illegal substances or any animals or pets. Tenant shall not assign or sublet the storage space. Tenant shall abide by the rules and regulations of Landlord which are attached hereto. Landlord shall have the right to enter the storage space for inspection or repairs. Tenant shall make no alterations to the storage space without the written consent of Landlord.
6. LIABILITY. This Agreement is made on the express condition that, while Landlord shall exercise reasonable care in the operation of the premises, Landlord shall not be liable for any loss or damage to Tenant.
7. CASUALTY. In the event the premises are damaged by fire or other casualty, and are rendered untenable, either party may cancel this Agreement.
8. SECURITY DEPOSIT. Tenant shall deposit with Landlord the sum of \$ 50.00 to be returned upon the termination of this Agreement provided Tenant is not in default hereof.
9. TERMINATION. This agreement may be terminated by either party upon the giving of written notice at least 30 days prior to the end of any rental month.

IN WITNESS WHEREOF, the parties have executed this lease the 4 day of Sept., 1999.

LANDLORD: Mark Zemp

TENANT: Lou Hammersmith

## Exhibit 8: Bank Statement for Elliot Stewart

Statement Date: January 15, 2016

Checking Account Number: XXX-XXXX-XXX5423

Account Owner: Elliot Quimby Stewart

### Activity Summary

Current Posted Balance	\$834.21
Available Balance	\$834.21

### Activity Detail

DATE	DESCRIPTION	DEPOSITS/CREDITS	WITHDRAWALS/DEBITS
01/14/16	Visa		387.84
01/14/16	Mastercard		450.00
01/11/16	Dingle Diner		33.00
01/10/16	WinCo		378.97
01/10/16	Tony Tiger Pizza		25.00
01/06/16	Idaho Power		294.56
01/04/16	Intercontinental Gas, Co.		145.66
01/02/16	ATM Withdrawal		200.00
01/02/16	Direct Deposit – Fiduciary Inc.	5,000.00	
12/29/15	Julianne’s Cupcakery		225.54
12/29/15	Christine’s Catering		1,450.00
12/29/15	Zimbini’s Party Supplies		1,377.23
12/28/15	Target		526.01
12/28/15	Mastercard		500.45
12/23/15	Citibank		1,249.62
12/22/15	Visa		1,654.88
12/20/15	WinCo		315.89
12/20/15	Tony Tiger Pizza		35.00
12/20/15	Dingle Diner		25.00
12/15/15	Dingle Diner		25.00

## Exhibit 9: Plea Agreement for Brooke Benjamin

Brooke Benjamin's Plea Agreement, on this page and the next, are part of the same exhibit.

IN THE DISTRICT COURT OF SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN  
AND FOR THE COUNTY OF BINGHAM

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	CASE NO. MT-2017-08324
	)	
vs.	)	PLEA AGREEMENT
	)	
BROOKE BENJAMIN,	)	
	)	
Defendant.	)	

COME NOW the State of Idaho, by and through its attorney, Jem Trotter, prosecuting attorney in and for the County of Bingham, and Brooke Benjamin, individually and by through his attorney, Vincent Gambini, and do hereby agree as follows:

Benjamin is charged with the crime of GRAND THEFT BY POSSESSION OF STOLEN PROPERTY in violation of Idaho Code Sections 18-2403(4), a felony, as follows:

That the defendant, Brooke Benjamin, on or between December 18, 2015 and January 5, 2016 did wrongfully take, obtain, or withhold property with the intent to deprive the owner of the property, and/or to appropriate the property to himself or a third person, to wit: the defendant retained, concealed, obtained control over, or possessed two (2) James Castle paintings which the defendant knew had been stolen from, or should have reasonably believed had been stolen from, The Art Museum of Idaho Falls, which property had a value in excess of \$1,000, with the intent to deprive the owner of the property and/or to appropriate the property to himself or a third person, while within the County of Bingham, State of Idaho, in violation of Idaho Code Section(s) 18-2403.

The State of Idaho has offered, and Benjamin has accepted, a plea agreement on the following terms and conditions:

- A. Benjamin shall enter a guilty plea to the felony offense of grand theft as set forth above;
- B. The court shall set sentencing for a time and date after completion of the trial in State of Idaho v. Elliot Stewart, Case No. MT-2017-8323;
- C. Benjamin shall cooperate in the investigation of Elliot Stewart, and shall testify truthfully at said trial;
- D. If Benjamin fulfills the obligations described in paragraph C, above, which shall be determined in the sole discretion of the prosecuting attorney, then the State of Idaho agrees as follows:
  1. Benjamin may withdraw his guilty plea to the felony offense of grand theft;
  2. The State of Idaho shall amend the charge to petit theft, a misdemeanor;
  3. Benjamin shall enter a guilty plea to the misdemeanor charge of petit theft;
  4. The State of Idaho shall recommend a sentence which includes suspended jail time, a period of probation, and a fine; the amount of suspended jail time, the

period of probation, and the amount of the fine may be argued by the parties and shall be determined by the court;

5. If at any time Benjamin shall produce any written or motion picture account of his involvement with the theft of the Castle artworks, s/he agrees to donate 50% of the proceeds of the sale of such account to the museum.

E. If Benjamin fails to fulfill the obligations described in paragraph C, then the State of Idaho and Benjamin shall proceed to the sentencing on the felony count with no agreement on what the appropriate sentence shall be.

The State of Idaho and Benjamin agree and understand that the court is not a party to this plea agreement, and is not bound hereto.

This is the complete agreement between the parties.

Entered into this 1st day of February, 2016.

  
\_\_\_\_\_  
JEM TROTTER  
Bingham County Prosecuting Attorney

  
\_\_\_\_\_  
BROOKE BENJAMIN, Defendant

  
\_\_\_\_\_  
VINCENT GAMBINI, Attorney at Law  
Attorney for the Defendant

# Jury Instructions

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Before the commencement of the trial and at its conclusion, the judge will instruct the jury how to apply the law to the evidence. Hypothetically, if the judge in your mock trial case were to provide instructions to the jury, they would look something like these.

A copy of these instructions may not be used as an exhibit during the mock trial competition; however students may use these concepts in fashioning their case and making arguments to the jury.

## **Instruction No. 1**

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

## **Instruction No. 2:**

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence from which you are to find the facts consists of the following:

1. The sworn testimony of the witnesses;
2. Documents and other items received as exhibits; and
3. Any facts that are stipulated – that is, formally agreed to by the parties.

The following things are not evidence:

1. Arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times are included

to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;

2. Any testimony that has been excluded, stricken, or which you have been instructed to disregard;
3. Anything you may have seen or heard about this case when the court was not in session.

### **Instruction No. 3**

The production of evidence in court is governed by rules of law. At times during the trial, an objection was made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I was being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustained an objection to a question or to an exhibit, the witness could not answer the question or the exhibit could not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

### **Instruction No. 4**

Some of you have probably heard the terms “circumstantial evidence,” “direct evidence” and/or “hearsay evidence.” Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

### **Instruction No. 5**

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

### **Instruction No. 6**

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

### **Instruction No. 7**

A defendant in a criminal action is presumed to be innocent. This presumption places upon the state the burden of proving the defendant guilty beyond a reasonable doubt. Thus, a defendant, although accused, begins the trial with a clean slate with no evidence against the defendant. If, after considering all the evidence and my instructions on the law, you have a reasonable doubt as to the defendant's guilt, you must return a verdict of not guilty.

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is the state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

### **Instruction No. 8**

This criminal case has been brought by the State of Idaho. The defendant, Elliot Stewart, is charged by the State of Idaho with the crime of Grand Theft by Possession of Stolen Property. The charge against the defendant is set forth in the Indictment. The Indictment is simply a description of the charge; it is not evidence.

## **Instruction No. 9**

A person steals property and commits theft when, with intent to deprive another of property or appropriate the same to the person or to a third party, such person wrongfully takes, obtains, or withholds such property from an owner thereof.

## **Instruction No. 10**

In order for the Defendant to be guilty of Grand Theft by Possession of Stolen Property, the State must prove each of the following:

1. Between the dates of October 17, 2015 and January 5, 2016
2. In the State of Idaho
3. The defendant, Elliot Stewart, knowingly retained, concealed, obtained control over, or possessed artwork by the artist James Castle valued at over \$1,000
4. Either knowing the property was stolen by another or under such circumstances as would reasonably induce the defendant to believe the property was stolen
5. Such property was in fact stolen and
6. Any of the following occurred:
  - a. The defendant had the intent to deprive the owner permanently of the use or benefit of the property, or
  - b. The defendant knowingly used, concealed or abandoned the property in such manner as to deprive the owner permanently of the use or benefit of the property, or
  - c. The defendant used, concealed, or abandoned the property knowing that such use, concealment or abandonment would have probably deprived the owner permanently of the use or benefit of the property.

If any of the above has not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the defendant guilty.

The law makes no distinction between a person who directly participates in the acts constituting a crime and a person who, either before or during its commission, intentionally aids, assists, facilitates, promotes, encourages, counsels, solicits, invites, helps or hires

another to commit a crime with intent to promote or assist in its commission. Both can be found guilty of the crime. Mere presence at, acquiescence in, or silent consent to, the planning or commission of a crime is not, in the absence of a duty to act, sufficient to make one an accomplice.

### **Instruction No. 11**

Property is stolen when a person wrongfully takes, obtains, or withholds it from the owner with the intent to deprive the owner of the property or to appropriate it to any person other than the owner.

### **Instruction No. 12**

The phrase “intent to deprive” means:

1. The intent to withhold property or cause it to be withheld from an owner permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to such owner; or
2. The intent to dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

The phrase “intent to appropriate” means:

1. The intent to exercise control over property, or to aid someone other than the owner to exercise control over it, permanently or for so extended a period of time or under such circumstances as to acquire the major portion of its economic value or benefit; or
2. The intent to dispose of the property for the benefit of oneself or someone other than the owner.

To “obtain” property means to bring about a transfer of an interest in or the possession of the property.

“Property” means anything of value.

An “owner” of property is any person who has a right to possession of such property superior to that of the defendant.

“Person” means an individual, corporation, association, public or private corporation, city or other municipality, county, state agency or the State of Idaho.

The term “value” as used in these instructions means the market value of the property at the time and place of the alleged crime, or if the market value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the alleged crime.

### **Instruction No. 13**

It is alleged that the crime charged was committed between certain dates. If you find the crime was committed, the proof need not show that it was committed on a precise date.

### **Instruction No. 14**

Evidence has been introduced for the purpose of showing that the defendant committed crimes, wrongs, or acts other than that for which the defendant is on trial.

Such evidence, if believed, is not to be considered by you to prove the defendant's character or that the defendant has a disposition to commit crimes.

Such evidence may be considered by you only for the limited purpose of proving the defendant’s motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.