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6 Attorneys for Defendant
David Fitch

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,
11 Plaintiff,

12 vs.

13 DAVID K. FITCH,
14 Defendant.

Case No. 02:04-cr-0262 JCM (PAL)

**SUBMISSION OF NOVEMBER 2000
JUDGMENT OF CONVICTION IN
SUPPORT OF DEFENDANT’S
SENTENCING MEMORANDUM AND
OPPOSITION TO THE GOVERNMENT’S
MOTION FOR UPWARD DEPARTURE**

Sentencing Date: October 19, 2007

Time: 1:30 p.m.

18 The Defendant, DAVID FITCH, by and through his counsel, Lisa A. Rasmussen and
19 David R. Johnson of the law firm of Watt, Tieder, Hoffar & Fitzgerald, LLP, hereby submits the
20 attached Judgment of Conviction from his 2000 case, case number CR-00-0050 KJD (RJJ). This
21 Judgment of Conviction is submitted in support of Mr. Fitch’s Sentencing Memorandum and
22 Opposition to the Government’s Motion for Upward Departure (docket #218) on file herein.

23 Mr. Fitch specifically draws the Court’s attention to page 7 of the Judgment of Conviction
24 which states “The court adopts the factual findings and guideline application in the presentence
25 report.” (*See attached JOC, page 7.*)

26 ...

27 ...

1 Dated: October 18, 2007

WATT, TIEDER, HOFFAR & FITZGERALD, LLP

3 /s/ Lisa A. Rasmussen

4 LISA A. RASMUSSEN

5 Nevada Bar No. 007491

6 DAVID R. JOHNSON

7 Nevada Bar No. 006696

8 3993 Howard Hughes Parkway, Suite 400

9 Las Vegas, Nevada 89169

10 Attorneys for Defendant

11 David Fitch

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that I am an employee of Watt, Tieder, Hoffar & Fitzgerald, LLP, that I
14 am a person competent to serve papers and not a party to the above-entitled action and that on the
15 18th day of October, 2007, I served a copy of the foregoing:

16 **SUBMISSION OF NOVEMBER 2000 JUDGMENT OF CONVICTION IN SUPPORT OF
17 DEFENDANT'S SENTENCING MEMORANDUM AND OPPOSITION TO THE
18 GOVERNMENT'S MOTION FOR UPWARD DEPARTURE**

19 upon the following via the CM/ECF system as follows:

20 **For Plaintiff United States:**

21 TIMOTHY S. VASQUEZ

22 333 Las Vegas Blvd., South, Ste. 5000

23 Las Vegas, NV 89101

24 timothy.s.vasquez@usdoj.gov

25 /s/ Lisa A. Rasmussen

26 An Employee of Watt, Tieder, Hoffar & Fitzgerald, LLP

NOV 17 2000

LSA

UNITED STATES DISTRICT COURT

CLERK, U.S. DISTRICT COURT DISTRICT OF NEVADA

District of NEVADA

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

V.

DAVID KENT FITCH aka: David Lee Krause & Daniel Joseph O'Hare

Case Number: CR-S-00-050-KJD(RJJ)

ARTHUR ALLEN, AFPD

Defendant's Attorney

THE DEFENDANT:

X pleaded guilty to count(s) 1 thru 10 of the Superseding Indictment

pleaded nolo contendere to count(s) which was accepted by the court.

was found guilty on count(s) after a plea of not guilty.

Title & Section	Nature of Offense	Date Concluded	Count Number(s)
18 USC 1028(a)(4)	Possession of False Identification Documents with Intent to Defraud the United States	1/8/2000	1 and 2
18 USC 1542	Use of a False Passport	2/7/2000	4, 5 and 6
18 USC 922(g)(1)	Unlawful Possession of a Firearm by a Felon	2/8/2000	7 and 10
18 USC 922(g)(1)	Unlawful Possession of Ammunition by a Felon	2/8/2000	8
18 USC 922(g)(1)	Unlawful Possession of a Firearm and Ammunition by a Felon	2/8/2000	9

RECEIVED
NOV 15 2 03 PM '00
LANCASHIRE COUNTY
DEPT. OF CORRECTIONS

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s) original indictment is are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 527-37-4241

Defendant's Date of Birth: 10/4/1958

Defendant's USM No.: 34775-048

Defendant's Residence Address:

Federal Prisoner In Custody

Defendant's Mailing Address:

November 14, 2000

Date of Imposition of Judgment

Signature of Judicial Officer

KENT J. DAWSON, UNITED STATES DISTRICT JUDGE

Name and Title of Judicial Officer

NOVEMBER 15, 2000

Date

DEFENDANT: DAVID KENT FITCH aka: David Lee Krause and Daniel Joseph O'Hare
CASE NUMBER: CR-S-00-050-KJD(RJJ)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 97 months to run concurrently one with the other.

X The court makes the following recommendations to the Bureau of Prisons:
The defendant be incarcerated as near to Tyler, Texas as possible to allow for family visitation.

X The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

DEFENDANT: DAVID KENT FITCH aka David Lee Krause and Daniel Joseph O'Hare
CASE NUMBER: CR-S-00-050-KJD(RJJ)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 YEARS

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DAVID KENT FITCH aka David Lee Krause and Daniel Joseph O'Hare
CASE NUMBER: CR-S-00-050-KJD(RJJ)

ADDITIONAL SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not possess, have under his control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by Federal, state or local law.
2. The defendant shall submit to the search of his person, property, residence or automobile under his control by the Probation Officer, or any other authorized person under the immediate and personal supervision of the Probation Officer without a search warrant to ensure compliance with all conditions of release.
3. The defendant shall submit to drug testing as directed by the Probation Officer.
4. The defendant shall participate in and successfully complete a mental health treatment program, which may include outpatient counseling or residential placement, as approved and directed by the Probation Officer.
5. The defendant shall use his true name at all times and will be prohibited from the use of any aliases, false date of birth, social security numbers, places of birth, and any other pertinent demographic information.

DEFENDANT: DAVID KENT FITCH aka David Lee Krause and Daniel Joseph O'Hare
CASE NUMBER: CR-S-00-050-KDG(RJJ)

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 1,000.00	\$ 12,50.00	\$

If applicable, restitution amount ordered pursuant to plea agreement \$ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of \$ _____

The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

- The court has determined that the defendant does not have the ability to pay interest and it is ordered that:
 - The interest requirement is waived.
 - The interest requirement is modified as follows:

RESTITUTION

- The determination of restitution is deferred until _____ . An Amended Judgment in a Criminal Case will be entered after such determination.
- The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

<u>Name of Payee</u>	<u>*Total Amount of</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
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Totals:	\$ _____	\$ _____
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* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: DAVID KENT FITCH aka David Lee Krause and Daniel Joseph O'Hare
CASE NUMBER: CR-S-00-050-KJD(RJJ)

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A In full immediately; or
- B \$ _____ immediately, balance due (in accordance with C, D, or E); or
- C not later than _____ ; or
- D in installments to commence _____ days after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or
- E in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ year(s) to commence _____ days after the date of this judgment.

The defendant will be credited for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

The defendant shall pay no less than 50% of his income toward the fine and special assessment following his release, or as directed by the probation officer.

- The defendant shall pay the cost of prosecution.
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.

DEFENDANT: DAVID KENT FITCH aka David Lee Krause and Daniel Joseph O'Hare
CASE NUMBER: CR-S-00-050-KJD(RJJ)

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

OR

The court adopts the factual finding and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 26

Criminal History Category: III

Imprisonment Range: 78 to 97 months

Supervised Release Range: 2 to 3 years

Fine Range: \$ 12,500.00 to \$ 125,000.00

Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: \$ _____

Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

Partial restitution is ordered for the following reason(s):

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reasons:

OR

The sentence departs from the guideline range:

upon motion of the government, as a result of defendant's substantial assistance.

for the following specific reason(s):

I hereby attest and certify on 11/17/00
that the foregoing document is a full, true and correct
copy of the original on file in my office, and in my
legal custody.

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

By [Signature]