

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

-----  
In Re: ) Chapter 7  
 ) Case No. 03-61450  
Jerry Walker and Jamie Walker )  
 )  
 ) Adversary No. 4-6014  
Debtors. )  
----- )  
 )  
Can-Am Express, Inc., )  
 )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Jerry S. Walker, )  
 )  
 )  
Defendant. )  
-----

TO: DEFENDANT, JERRY S. WALKER AND HIS ATTORNEY OF RECORD, GENE  
DOELING, P.O. BOX 423, FARGO, ND 58107-0423

**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

YOU ARE HEREBY NOTIFIED that Can-Am Express, Inc., hereby  
motions the Court for summary judgment on its adversary complaint against the  
Defendant, Jerry S. Walker.

YOU ARE HEREBY NOTIFIED that the hearing regarding Can-Am's  
motion for summary judgment will be heard by the Court on July 27, 2004, at 10:30  
o'clock a.m., before the Honorable Dennis D. O'Brien, United States Bankruptcy Court,  
204 U.S. Courthouse Building, 118 South Mill Street, Fergus Falls, Minnesota.

For its motion, Can-Am relies upon its brief, attachments to its brief, and  
pleadings of record.

Respectfully submitted this 14<sup>th</sup> day of June, 2004.

/s/

---

Brad A. Sinclair (MN #161652) of  
SERKLAND LAW FIRM  
10 Roberts Street  
P.O. Box 6017  
Fargo, ND 58108-6017  
(701) 232-8957  
ATTORNEYS FOR PLAINTIFF

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

-----  
In Re: ) Chapter 7  
 ) Case No. 03-61450  
Jerry Walker and Jamie Walker )  
 ) Adversary No. 4-6014  
Debtors. )  
----- )  
 )  
Can-Am Express, Inc., ) **PLAINTIFF’S BRIEF IN SUPPORT**  
 ) **OF ITS MOTION FOR SUMMARY**  
Plaintiff, ) **JUDGMENT**  
 )  
vs. )  
 )  
Jerry S. Walker, )  
 )  
Defendant. )  
-----

I. INTRODUCTION

Plaintiff, Can-Am Express, Inc. a North Dakota corporation, (“Can-Am”) submits this Brief in Support of its Motion for Summary Judgment. Can-Am commenced an adversary proceeding against Jerry S. Walker (“Walker”), pursuant to a Complaint dated March 2, 2004. Can-Am now seeks summary judgment that Walker’s obligation outstanding to Can-Am is not dischargeable pursuant to Title 11 U.S.C. § 523(a)(3), 11 U.S.C. § 523(a)(4) and 11 U.S.C. § 523(a)(6).

II. FACTUAL BACKGROUND

In 2002 or early 2003, Can-Am hired ASP of Moorhead Inc. to investigate a possible internal employee theft operation occurring within the Company. Virgil Anderson of ASP did background investigation on Can-Am’s employees and discovered that there were two possible employees who may be converting company assets into their own.

On or about February 20, 2003 Virgil Anderson contacted the Cass County Sheriff's Department and spoke with Officer Dean Wawers to request assistance in a criminal investigation.

Officer Dean Wawers and Virgil Anderson met with representatives of Can-Am who provided documentation indicating that there were several invoices that were written up but no work had ever been performed. These questionable invoices were created by the shop foreman, Raymond Radke and a mechanic Jerry S. Walker.

Officer Dean Wawers and Virgil Anderson interviewed Raymond Radke who confessed to stealing approximately \$250,000.00 worth of Can-Am's property. Radke also implicated Jerry S. Walker as being his accomplice in the theft. A copy of Raymond Radke's Statement is attached hereto as Exhibit A.

Officer Dean Wawers and Virgil Anderson interviewed Jerry S. Walker who also confessed to stealing property from Can-Am. Walker estimated that he took \$70,000.00 worth of property from Can-Am. A copy of Jerry S. Walker's Statement is attached hereto as Exhibit B and a copy of Officer Wawers' report is attached hereto as Exhibit C.

That on or about October 27, 2003, the State of North Dakota entered a Criminal Judgment and Commitment against Raymond Radke for Conspiracy to Commit Theft and Dealing in Stolen Property. A copy of the Criminal Judgment and Commitment is attached hereto as Exhibit D.

That on January 22, 2003, the State of North Dakota entered a Criminal Judgment and Commitment against Jerry S. Walker for Conspiracy to Commit Theft and Dealing in Stolen Property. A copy of the Criminal Judgment and Commitment is attached hereto as Exhibit E.

Can-Am commenced a State Court action against Radke and Walker. Walker was served with Can-Am's Summons and Complaint in State Court on December 11, 2003. A

copy of the Summons, Complaint and Affidavits of Service are attached hereto as Exhibit E.

On or about December 26, 2003, Walker filed an Answer to Can-Am's Complaint. A copy of Walker's Answer is attached hereto as Exhibit G.

On or about February 23, 2004 Can-Am received notice of Walker's Bankruptcy filing which occurred on November 14, 2003 and was subsequently discharged on February 17, 2004. Walker did not make any indication in his December 26, 2003 Answer to Can-Am's Complaint that he had filed bankruptcy or was currently in bankruptcy.

Can-Am was never provided notice of Walker's filing for bankruptcy relief until after Walker obtained a discharge. Upon notice of Walker receiving a discharge in his Chapter 7 bankruptcy proceedings, on or about March 3, 2004 Can-Am filed an Adversary Complaint against Walker. Walker has filed an answer to the Complaint dated April 2, 2004.

Can-Am contends that there is no genuine issue of material fact and as a matter of law, Can-Am should be granted summary judgment for its Complaint against Walker.

### III. LAW AND ARGUMENT

THIS COURT SHOULD GRANT CAN-AM'S MOTION FOR SUMMARY JUDGMENT IN ITS FAVOR AND AGAINST WALKER IN THE AMOUNT OF \$70,000.00.

#### **A. Standard for Summary Judgment**

Bankruptcy Rule 7056 provides that Rule 56 of the Federal Rules of Civil Procedure applies in adversary proceedings in bankruptcy cases. Rule 56 states:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admission on the file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Rule 56(c), Federal Rules of Civil Procedure.

Summary judgment plays a very important role in the judicial proceedings by allowing the judge to “pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.” Fed. R. Civ. P. 56, Advisory Committee note. Summary judgment is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the federal rules as a whole, which are designed “to secure the just, speedy and inexpensive determination of every action.” Celotex Corp. v. Catrett, 477 U.S. 317,327 (1986).

The initial burden is on the party seeking summary judgment. To that end, the movant discharges its burden by showing that the record does not contain a triable issue and by identifying that part of the record, which supports the moving party’s assertion. Id., 477 U.S. at 323; City of Mt. Pleasant, IA v. Assoc. Electric Co-op, Inc. 838 F.2d 268, 273 (8<sup>th</sup> Cir. 1988). Once the movant has made its showing, the burden of production shifts to the non-moving party. The non-moving party, the debtor, must present specific, significant and probative evidence supporting its case, Johnson v. Enron Corp., 906 F.2d 1234, 1237 (8<sup>th</sup> Cir. 1990), which is sufficient enough “to require a judge to resolve the parties’ different versions of the truth at trial.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986) (quoting First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 288-89 (1968)).

Pursuant to case law and the confession signed by Walker, there is no genuine issue of material fact and as a matter of law, Can-Am should be granted judgment of its Adversary Complaint against Walker in the amount of \$70,000.00.

**B. Walker's obligation outstanding to Can-Am is not dischargeable as pursuant to Title 11 UC Section 523(a)(4).**

Title 11 Section 523(a)(4) of the United State Code provides:

A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

The case of Fleet Bank of Massachusetts v. Lavita (In Re Lavita), 150 B.R. 3 (Bkrtcy. D. Mass. 1993), provides that “under bankruptcy law, larceny as used in Section 523(a)(4) of the Bankruptcy Code means common law larceny.

Larceny, as discussed in State of New York v Kelly (In Re Kelly), 155 B.R. 75, 78 “is proven for nondischargeability purposes, by a showing that the debtor has willfully taken property with fraudulent intent. Case law further provides that, “in order for larceny to be grounds of nondischargeability, “the original taking of the property (must be) unlawful”. Citing 2 Collier on Bankruptcy ¶523.14(20, p. 523-106 (1980). Spurgeon v Adams (In Re Adams), 24 B.R. 252, 264 (Bkrtcy. Mo. 1982).

Walker was found to be in violation of N.D.C.C. § 12.1-06-04 criminal conspiracy, N.D.C.C. § 12.1-23-02, theft of property and N.D.C.C. § 12.1-23-08.3(1(a), dealing in stolen property.

N.D.C.C. § 12.1-23-02 states that a person is guilty of theft if he:

1. Knowingly takes or exercises unauthorized control over or makes an unauthorized transfer of any interest in, the property of another with intent to deprive the owner thereof;
2. Knowingly obtains the property of another by deception or by threat with

intent to deprive the owner thereof, or intentionally deprives another of his property by deception or by threat; or

3. Knowingly receives, retains, or disposes of property of another which has been stolen, with intent to deprive the owner thereof.

The federal common law definition of larceny and N.D.C.C. § 12.1-23-02 are similar in their language. Therefore, there is not a question that Walker's criminal conviction of theft constitutes larceny, for the purpose of nondischargeability as defined by the Bankruptcy Code.

Pursuant to case law, Walker's obligation outstanding to Can-Am is nondischargeable pursuant to Title 11 UC Section 523(a)(4) because Walker has committed fraud, or defalcation while acting in fiduciary capacity, embezzlement, and larceny.

In Borstad v. La Roque, 98 N.W.2d. 16, 26 (N.D. 1959) the North Dakota Supreme Court stated that a "defendant's plea of guilty to a criminal charge arising out of the same [action] of the civil case constitutes an admission in the civil action and may be received in evidence in a civil trial as proof of the alleged wrongful conduct upon which liability is predicated." In Borstad, the plaintiff brought an action for injuries received as a passenger in the defendant's automobile. See Id at 19. The Defendant was driving at a reckless rate of speed while under the influence of intoxicating liquor at the time of the Plaintiffs was injured. See Id. The Defendant plead guilty to the criminal charges of driving while intoxicated and that evidence was entered at trial. The trial court gave the jury an instruction limiting the admissibility of the guilty plea. Id at 27.

The Supreme Court of North Dakota explained that the trial courts limiting of the evidentiary effect of the defendant's plea of guilty was clearly erroneous and prejudicial. Id. The Borstad court held that a guilty plea to a criminal charge may be admitted as evidence in a civil case where the guilty plea was based upon wrongful conduct upon which liability is predicated in the civil matter. See Id.

In Dahlen v. Landis, 314 N.W.2d. 63, 72 (N.D. 1981) the North Dakota Supreme Court explained that, "it has long been the law in North Dakota that a guilty plea in a prior criminal case is admissible as an admission in a subsequent civil suit arising out of the same factual situation." In Dahlen, plaintiff brought a lawsuit for injuries received after becoming involved in a physical altercation with defendant. See Id at 66. Defendant subsequently plead guilty to what was initially a Class C felony assault charge that was later reduced to a Class B misdemeanor. The Defendant's criminal conviction was admissible at the civil trial to demonstrate the defendant's actions. See Id at 73.

In the present cause of action, Walker plead guilty of one count of conspiracy to commit theft, a Class B felony, occurring between September 1, 2001 and February 21, 2003 and one count of dealing in stolen property, a Class B felony, occurring between September 1, 2001 and February 21, 2003. Walker was sentenced to 180 days imprisonment . Walker was incarcerated in the Cass County Jail, Fargo, North Dakota. Walker has admitted that he took at least \$70,000.00 of property from Can-Am. See Exhibit A, written confession of Walker. In light of the admissions by Walker and the admissibility of Walker's criminal admissions in the present civil case, this case is ripe for

summary judgment. This Court should enter judgment in favor of Can-Am and against Walker decreeing that Walker's obligation outstanding to Can-Am that he plead guilty to, \$70,000.00, is nondischargeable in Walker's bankruptcy proceedings.

**C. The Defendant's Debt Outstanding to the Plaintiff should not be Discharged since the Debt is a Product of Willful and Malicious Injury.**

Title 11 U.S.C. § 523(a)(6) provides:

A discharge under Section 727, 1141, 1228(a), 1228(b) or 1328(b) of this Title does not discharge an individual debtor from any debt for willful and malicious injury by the debtor to another entity or to the property of another entity.

"Willful and malicious are separate concepts that must be present for nondischargeability under Section 523(a)(6)". Sielschott v Reimer (In Re Reimer), 182 B.R. 816 (E.D. Mo. 1995). In addition, in order to except a debt from discharge under Section 523(a)(6), a creditor must prove that its injury resulted from the debtor's conduct that was both willful and malicious.

In order to determine whether Walker's actions were both willful and malicious, we must look to case law to define their meaning.

The case of United States v. Vandrovec (In Re Vandrovec), 61 B.R. 191 (D.N.D. 1986) states, "maliciousness; however, goes beyond mere willfulness and requires proof that the action was done with the knowledge that it almost certainly would cause harm to the creditor."

Walker's actions were clearly malicious in their nature. Additionally Walker willfully injured Can-Am by stealing from Can-am.

"The fact that the conduct or act of the debtor was voluntary or intentional is a

necessary element of the statutory requirement that there be a willful injury. However, to be “willful” the conduct must also be “headstrong and knowing’.” American Charter Federal Savings and Loan Association v Harris (Matter of Harris), 107 B.R. 210 (D. NE 1989).

By committing theft Walker knowingly took property from his employer, Can-Am without Can-Am’s knowledge or authorization. Walker admitted to stealing property valued in the amount of \$70,000.00. Due to the excessive amount of property stolen, Walker willfully and maliciously caused financial injury to Can-Am.

Although the standards are high to determine whether a debt arose from willful and malicious actions, they do “not require a showing of spite, ill will, personal animosity, or a subjective intent to injury”. Sateren v Sateren (In Re Sateren), 183 B.R. 576 (D.N.D. 1995).

In determining whether Walker’s criminal conviction of theft of property pursuant to North Dakota statutory law constitutes willful and malicious actions. We must look to the case of, Erickson v Roehrich (Inv. Roehrich), 196 B.R. 941 (D.N.D. 1994).

The case of Roehrich is very similar to the facts of this case. In Roehrich, the debtor stole property from a third party and sold the property for his own gain. The debtor was eventually arrested in connection with the theft. The debtor plead guilty to the crime of theft. Based upon the debtor’s plea the district court entered a judgment against the debtor convicting him of the crime of theft pursuant to N.D.C.C. § 12.1-23-02. The debtor subsequently filed for bankruptcy relief.

In reviewing the facts and law the Roehrich court found that, “based upon an analysis of the intent requirement necessary to sustain a conviction for theft of property

under § 12.1-23-01 of the North Dakota Century Code, there can be no doubt that the definition of “willful” and “malicious” under the Bankruptcy Code is encompassed by the requirement of criminal intent under the state theft statute. Accordingly, the elements of a § 523(a)(6) were unambiguously and conclusively established when the debtor pled guilty to, and was convicted of, theft of property under the aforementioned section. *Id.* at 945.

For the reasons cited here within, this Court should grant Can-Am summary judgment on its Complaint decreeing that Walker’s obligation outstanding to Can-Am in the amount of \$70,000.00 is nondischargeable.

**D. The Defendant’s Debt Outstanding to the Plaintiff Should Not Be Discharged Since the Debt Was Not Listed or Scheduled.**

Title 11 U.S.C. § 523(a)(3), provides:

A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed in the time to permit.

Walker failed to list Can-Am as a creditor or give any form of notice of the bankruptcy to Can-Am until after discharge occurred. Walker even filed an Answer to Can-Am’s civil Complaint, which was served on Walker after he filed for bankruptcy but before Walker was granted a discharge in his bankruptcy proceedings. Walker’s Answer failed to indicate that Walker was in bankruptcy. Therefore, Can-Am had no notice or actual knowledge of the bankruptcy filing until after the discharge had occurred.

The purpose of Section 523(a)(3), “is designed to protect only the creditor who is completely absent from the debtor’s schedules, and who does not receive actual notice of

the bankruptcy case.” Bowen v. Residential Financial Corp. (In re Bowen), 89 B.R. 800 (D. Minn. 1988).

There is no question that Walker failed to list Can-Am as a creditor or give Can-Am notice of his bankruptcy. Therefore, Walker’s obligation outstanding to Can-Am is nondischargeable. This Court should enter a judgment in favor of Can-Am and against Walker decreeing that Walker’s obligation outstanding to Can-Am in the amount of \$70,000.00 is nondischargeable.

**E. The Defendant is liable to the Plaintiff in the amount of \$70,000.00.**

Walker has contested in his Answer to Can-Am’s Adversary Complaint that he is not liable to Can-Am in the amount of \$70,000.00.

“The accepted rule is that “[w]hen the nondischargeable nature of the debt is established by collateral estoppel or otherwise, a prior default judgment fixing the extent of the debt is accorded a binding effect to prevent relitigation of the amount of the debt.””

At the time that Walker’s criminal judgment was entered, Walker had the opportunity to contest his confession or make a statement to the court. Walker failed to contest the judgment or statement. Therefore, Walker should be barred from contesting the amount owing to Can-Am.

For the reasons cited herewithin, this Court should enter judgment in favor of Can-Am and against Walker in the amount of \$70,000.00 and decreeing the same is nondischargeable in Walker’s Chapter 7 bankruptcy proceedings.

**IV. CONCLUSION**

Walker’s actions have caused Can-Am financial injury that, pursuant to the United

States Bankruptcy Code, is nondischargeable. It is clear Walker committed larceny as defined by Federal common law. The larceny was willful and malicious. Further, Walker failed to give Can-Am any notice or provide actual knowledge of the bankruptcy filing despite having several opportunities to do so. The amount of Walker's nondischargeable debt owing to Can-Am should be premised upon the amount that Walker confessed that he stole from Can-Am, \$70,000.00. Can-Am should be granted a judgment in the identical amount that Walker has confessed in his criminal proceedings, \$70,000.00. There is no genuine issue of fact regarding this matter. Walker's confession in the criminal proceedings satisfies all of the elements in the present litigation.

For the foregoing reasons Can-Am respectfully requests that this court enter judgment in favor of Can-Am and against Walker in the nondischargeable amount of \$70,000.00.

Respectfully submitted this 14<sup>th</sup> day of June, 2004.

/s/

---

Brad A. Sinclair (MN #161652) of  
SERKLAND LAW FIRM  
10 Roberts Street  
P.O. Box 6017  
Fargo, ND 58108-6017  
(701) 232-8957  
ATTORNEYS FOR PLAINTIFF

STATEMENT OF: RAYMOND RADICE

1 I started work at Con My Express June 4  
 2 2001. A few months after that my whole  
 3 world came to an end. A 8.5 day disaster  
 4 started giving heavy duty grief thanks  
 5 to a good friend he helped out by  
 6 finishing the job. After that things only  
 7 got worse. I did some thing that  
 8 I am not happy about. Money bills  
 9 to pay running a hard time. I got  
 10 very up set. Nothing I did was right.  
 11 Started taking some drugs. Short  
 12 of money and things were getting  
 13 really bad to deal with. So I started  
 14 taking a few things from the Company  
 15 It was small in the beginning but  
 16 got bigger. I got tires, fuel, parts  
 17 some car parts, and other misc.  
 18 things. It didn't start until some  
 19 time early in 2001. My estimate  
 20 about 1250.00 in company that  
 21 was taken by me.

2 Q. WAS THIS A VOLUNTARY STATEMENT?

3 A. YES

4 Q. WERE ANY PROMISES OR THREATS MADE TO  
 5 ME TO GET THIS VOLUNTARY STATEMENT?

6 A. NO

Don Powers 2-21-03  
 Dwight Hubert 2-21-03

X Raymond J. Hubert 2-21-03

EXHIBIT A

STATEMENT OF:

Date 2-21-03 Page No. 2

Q. ARE YOU UNDER THE INFLUENCE OF ALCOHOL OR DRUGS RIGHT NOW?

A. NO.

Q. IS THERE ANYTHING YOU WISH TO ADD OR REMOVE FROM THIS STATEMENT?

A. NO... EXCEPT I'D LIKE TO SAY I'M VERY SORRY FOR THIS.

~~Large section of the page is crossed out with multiple diagonal lines.~~

X - Raymond F. Bredle 2-21-03  
Dean Wagoner 2-21-03  
Craig Anderson 2-21-03

STATEMENT OF: JERRY WALKER

1 I started working for Con An Express in Sept. 01, 2001, while  
 2 I worked @ Con An Express I have stolen stuff from Con An Express. These  
 3 items consist of Tires, Batteries, ~~parts~~<sup>new</sup> shocks, Brakes, filters, & personal parts  
 4 for my own vehicle & I also help put parts on works order's that I didn't install  
 5 on the Truck or TRL that it ~~starts~~<sup>is</sup> out next day. I also have some tools  
 6 that do not belong to me they belong to Con An Express ~~I <sup>do</sup> not have~~  
 7 I also help in getting stuff for Ray Locke that he took home I estimate  
 8 my dollar amount @ \$7000.00 doll's that I took from Con An Express

9  
 10 ~~\_\_\_\_\_~~

11 Q. Were any promises or threats made to you for  
12 this voluntary statement?

13 A. NO

14 Q. Are you under the influence of any drugs or alcohol?

15 A. No

16 Q. Is there anything you wish to add or  
17 remove from this statement?

18 A. NO.

19 Q. Was this statement freely & voluntarily given?

20 A. Yes

21  
 22  
 23  
 24  
 25  
 26

~~\_\_\_\_\_~~

*[Signature]* 2-21-03  
 x *[Signature]* 2-21-03

*[Signature]* 2-21-03

EXHIBIT B

1

CASS COUNTY SHERIFF'S OFFICE  
211 9th St S - Fargo, ND 58107-0488  
Phone (701) 241-5800 Fax (701) 241-5805

OFFICER: WAWERS  
UNIT NO: 3547

DATE: 02/24/03  
CASE: I-03-000194

## THEFT

On 02/20/03, at approximately 1300 hours, this officer, DEAN WAWERS, received a telephone call from VIRGIL ANDERSON. MR. ANDERSON is the owner/operator of A.S.P. of Moorhead, Inc. That organization is a private detective organization and does internal security investigations for various clients in the F/M area. MR. ANDERSON had been contacted by the owner/operator of Can-Am Express which is a truck transport company located at 2719-40th Avenue North, Fargo, North Dakota, and is run and operated by ROBERT L. NELSON. MR. NELSON just moved to a new address listed as Cormorant Lake, Minnesota. His work number is 293-5670, extension 107.

MR. NELSON had contacted MR. ANDERSON because he had reason to believe that he had some internal theft problems going on at his business. He owns and operates over 130 tractor-trailer semis, routinely called 18 wheelers, out of Fargo, North Dakota and another terminal in Texas. He had reason to believe that some of his employees were stealing his inventory that he uses to maintain his trucks and converting those parts to their own personal use. He indicated that from a normal year in which he bought 350 to 370 tires for his tractor trailers last year he bought 1,948 tires and he hasn't increased his fleet. That, to him, was a huge red flag. Not to mention the fact that his in-house service and sales manager had been doing some checks on some invoices and had been following up and discovered that work that was being reported done on some of his trucks was not being done. However, invoices were sent through anyway and property and replacement parts were being purchased on a routine basis. For example, a truck would come in and the work order would indicate that three new batteries and eight of the tires were replaced on a truck. They would go find that truck and discover that the batteries in the truck were five years old and the tires were thread bare. Nevertheless, the work order would come out of the shop and they would be paid because those parts would have to be replaced in inventory. They began to suspect that things were happening so they did a three month audit and found out that they were missing literally thousands and thousands of dollars in missing parts from inventory.

They hired MR. ANDERSON. He did some background investigation and discovered that probably two main individuals in the plant at Can-Am Express in Fargo were the culprits. He contacted SHERIFF DON RUDNICK and requested that this officer, DEAN WAWERS, be assigned to assist him in what now was a criminal investigation. SHERIFF

EXHIBIT C

000004

RUDNICK directed me to contact MR. ANDERSON and assist him in the theft investigation that was occurring on a regular basis at the Can-Am Express Depot located at 2719-40th Avenue North, Fargo, North Dakota.

On 02/21/03, this officer, DEAN WAWERS, met with MR. ANDERSON at his company office, 1012-18th Avenue North, Moorhead, Minnesota, phone number 287-1637. Present during that meeting were MR. ANDERSON, a corporate representative identified as JAMES SHOREY, and also three employees from Can-Am Express to show this officer, DEAN WAWERS, the three month audit on inventory that had been prepared. The three employees from Can-Am Express are identified as KURT R. BANCROFT, from Building Maintenance; JANICE M. GERDES, from Sales and Service; and KARLA R. BANCROFT, Director of Safety. They had a three ring binder with them that was about 2½ inches thick with paperwork. It indicated that trucks owned by Can-Am had been serviced in their shop in Fargo. It had the work order and the invoices for parts and all the paperwork necessary to prove that a truck owned by Can-Am Express was worked on in the Fargo Depot by employees of Can-Am Express, including but not limited to the shop foreman, who is identified as RAYMOND RADKE, and the mechanic working in the shop, identified as JERRY WALKER.

The invoices were obviously doctored up. In other words, an invoice that showed clearly that it had been written up to detail work on a truck had added parts on it after the thing had already been completed or the work was never done, but the invoice was sent through anyway. Also the paperwork detailing the amount of tires that Can-Am Express had purchased in 2000, 2001 and 2002 for those years were also added. The other paperwork was only prepared for three months, but the tire information was for the last three years. It shows that tire consumption by the company went from 350 tires a year to almost 1,950 tires a year without an increase in mileage on the trucks and without an increase of trucks on the road. This meant only one thing, either the tires were of very poor quality and wore out very rapidly, or they were being stolen or not put on the trucks as per the work orders that were being handed in by MR. RADKE and MR. WALKER. This would leave one to believe that MR. RADKE and MR. WALKER were either not doing the work and walking off with the parts, selling the parts to other independent operators and making Can-Am Express pay for the parts, or simply stealing the parts out of the shop and selling them to whoever they could sell them to.

The weight of the evidence produced by the three month audit and the three year audit of tires, clearly pointed to MR. WALKER and MR. RADKE, the reason being those are the only names that appeared on any of the work orders and they are the ones who turned the work orders into the main office, indicating that the articles had been used and the repairs had been completed. If they were not involved, it would be a very short time before they would notice that when

they went to get parts, the parts were always gone or they always had to order extra parts when, in fact, the inventory list showed that there were a number of parts on the shelves, but when he actually went over to the shelf, it did not exist. So without MR. WALKER and MR. RADKE being at the top of the chain, they certainly would have reported the information early on to MR. NELSON, the owner of the company.

It was decided to proceed from MR. ANDERSON'S office in Moorhead to Glyndon, Minnesota, and interview JERRY WALKER. Upon arriving at his residence at 15695 Highway #10, Glyndon, Minnesota, we were met by his wife who said he was out doing a private job hanging a lowered ceiling in a residence and he wouldn't be home until later that evening.

We decided then to proceed to Can-Am Express and interview RAYMOND RADKE, the shop foreman. MR. RADKE was asked to come up to the office by the owner which he did. He was then asked to come into the conference room next to the owner's office. MR. RADKE did come into the conference room and at that point in time I identified myself to him as a deputy sheriff with the Cass County Sheriff's Department, I showed him my credentials. I then introduced him to MR. ANDERSON and advised him that he was privately employed by Can-Am Express to do an internal investigation, and that he would be sitting in on the interview. MR. RADKE agreed and sat down at the conference table.

Before he was asked any questions, he was advised that although the door to the conference room was closed, it was closed for privacy reasons only, that it was not locked, that he was free to leave at any time he chose to, that no one would stop him from leaving the building or the property belonging to Can-Am Express. He was further advised that he was not in a custodial situation and a custodial situation was explained to him, indicating that he was not under arrest, he was free to leave. Furthermore, he was free to leave at any time during the conversation. He was also advised that he could have an attorney present if he chose. He was further advised that he was not going to be arrested at the completion of the interview on the evening of 02/21/03, that he was going to be free to return to his home in Dilworth, Minnesota.

Having indicated that he understood all that information, the interview then began by taking general information such as addresses, phone numbers, descriptions, etc. I then advised MR. RADKE that the reason I was there was because a number of pieces of truck equipment, repair parts, washing equipment, various solvents, tires, batteries, tools and other things were missing from Can-Am Express, and that I had reason to believe he was involved in the removal of those articles. After a brief couple of minutes when MR. RADKE seemed to be quite stunned by the revelation of the missing property, MR. RADKE agreed that, indeed, he was involved, and that,

indeed, he was very sorry for what he had done. That about two years ago he had undergone a fairly grievous divorce, and because of that divorce, he said he began using drugs. Because of his drug usage, he started stealing property from his employer. He estimates in the last two years he has stolen from Can-Am Express about \$250,000.00 worth of property, including all the articles listed above.

He indicated that for the most part, his accomplice in this theft was a mechanic working in the shop identified as JERRY WALKER. He said he would tell JERRY to add certain parts onto work orders that were never used. He advised that JERRY WALKER would go out and pick up parts for him and deliver them to his house in Dilworth, Minnesota. He advised that he would give JERRY WALKER tires that belonged to the company. JERRY WALKER would sell the tires and split the money with him. He advised that they were in close contact and accomplices for about two years concerning the theft of all this property from Can-Am Express. He wasn't exactly sure, but he thought it was at least \$250,000.00 that was taken by him.

I asked if at that point he would give me a voluntary statement. He did write out a voluntary statement in his own handwriting. When that statement was completed, I wrote an additional four questions on the bottom which he agreed to answer.

Question #1: Was this a voluntary statement?

Answer: Yes.

Question #2: Were any promises or threats made to me to get this voluntary statement?

Answer: No.

Question #3: Are you under the influence of alcohol or drugs right now?

Answer: No.

Question #4: Is there anything you wish to add or remove from this statement?

Answer: No. Except I'd like to say I'm very sorry for this.

His boss, in fact, brought him back to the company, actually sought him out and rehired him because he had been a former employee and his boss thought enough of him to find him again and hire him and give him a responsible position with the company. Little did his boss know he was stealing thousands and thousands of dollars worth of products from the company and converting them to his own use or

5

selling them to other truck drivers or other truck companies. He also said that he sold a lot of tires, maybe 80 or 100, to a guy named CONKLIN who lives in Becker County, Minnesota. He also sold maybe 50 or 60 tires to another guy who lives in Clay County named JEFF HUCKERIDE.

He also admitted how the plans would work. He would either take the tires and sell them, give them to JERRY WALKER and have him sell them, pad invoices, not do work that was required, simply take the products home and sell them to various people. Again, he repeated that he was very sorry for this and wanted to show his cooperation by giving a statement, both verbal and written. A copy of MR. RADKE'S statement is attached to this report for the information of the reader.

I then asked MR. RADKE if he would contact MR. WALKER at his home phone number and have him come to the plant. He agreed and a short time later JERRY SCOTT WALKER showed up at Can-Am Express Truck Depot. I introduced myself to MR. WALKER when he came into the shop, showed him my credentials and asked if he would be willing to talk to me in the conference room near the main office. He agreed.

We rode together in his pickup from the shop area to the main door. We went up to the second floor into the conference room and sat down. I advised him that he was not under arrest, he was free to leave at any time, that he was not in a custodial situation. I explained to him what a custodial situation was. I advised him the door was closed, but it was not locked, it was closed for privacy reasons, he was free to leave at any time. I further explained to him that he was not going to be arrested at the end of the interview and that he could have an attorney present any time he wanted even though he was not in a custodial situation. He indicated he understood all this and wanted to proceed.

I then got some basic information from MR. WALKER. He was correctly identified as:

NAME:	JERRY SCOTT WALKER		
ADDRESS:	15695 Highway 10, Glyndon, Minnesota		
H PHONE:	(218)498-0317	C PHONE:	(218)790-0225
DOB:	09/20/72		
HGT:	5'10"	WGT:	160
HAIR:	BLK	EYE:	GRN

He has the initials USMC and a head of an eagle tattooed on his right shoulder. On his back he has a tattoo of a rose with his mother's name written across it.

I advised him that myself and VIRGIL ANDERSON from A.S.P. of Moorhead were going to interview him concerning missing products from the Can-Am Express inventory, including batteries, tires,

000008

tools and all kinds of parts that fit on diesel trucks and trailers. He indicated he understood and wanted to proceed. I advised him we had already interviewed MR. RADKE. I showed him MR. RADKE'S statement wherein he indicates he has stolen about a quarter of a million dollars worth of products from Can-Am Express over the last couple of years. I said I had reason to believe that he was also involved and wanted to know his involvement. MR. WALKER began to cooperate almost immediately. I advised him his cooperation would be noted in my report.

He said it is his best estimate that in the last year and a half or so he has been involved in the theft of about \$70,000.00 worth of property from Can-Am Express from which he directly profited. He obviously didn't get \$70,000.00, but from the amount that he took from the company to what was converted to his use, he believes it equaled about \$70,000.00. He said all the things that MR. RADKE had advised on how the thefts occurred were correct. Sometimes MR. RADKE would send him out to go pick up stuff and drop it off at RADKE'S house. Sometimes they would have a work order, sometimes they would sell to independent truckers, sometimes he would do tune-up's for independent truckers using Can-Am Express inventory and then charge the truck driver a cut rate for the parts and labor. All those things were being done through him and MR. RADKE toward the loss of a huge sum of money by Can-Am Express. He said that he still had some property left at his place and he would be willing to turn that in. He also said that MR. RADKE had some property at his place and he would probably turn it in also.

We told these two gentlemen that this is an ongoing investigation and we would meet them Monday morning in Dilworth to pick up the stolen property. They both agreed. They then rode home together from Can-Am Express in MR. WALKER'S truck. MR. RADKE didn't get to ride home alone because he drove a company truck and, of course, he had to leave it there because both he and MR. WALKER were fired from their jobs at Can-Am Express on the evening of 02/21/03.

On Monday morning, 02/24/03, at approximately 9:30 a.m., this officer, DEAN WAWERS, and VIRGIL ANDERSON arrived at 307 Second Avenue Southwest, Dilworth, Minnesota, the home of RAYMOND RADKE. Already parked out by MR. RADKE'S garage was MR. WALKER'S pickup truck. On that pickup truck were loaded the following articles

1. Eight Bridgestone truck tires
2. A two ton "yellow jack" motor hoist
3. A Lincoln Arc Welder
4. A commercial-sized truck battery
5. Eight cans containing truck cleaner, truck starter and truck washing aerosols

While there, MR. RADKE opened his garage and hauled out:

1. A service directory book
2. Three company T checks used by over-the-road truckers
3. A Jensen Satellite Radio Phone
4. Total of 16 semi-truck size brake shoes
5. An Alliance brand truck battery
6. A smaller Strike Force Battery
7. Eight brake kits for semis
8. Three reefer fiberglass doors, about 3' x 3'
9. Four cases of brake cleaning liquid, totaling 48 bottles

Those articles were all hauled over to Can-Am Express and an inventory of those articles was made by this officer, DEAN WAWERS. They list articles 1-14. The slip, upon its completion, was signed by this officer, DEAN WAWERS, and dated 02/24/03. It was signed by MR. VIRGIL ANDERSON, RAYMOND RADKE and JERRY WALKER, indicating that this property had been stolen from Can-Am Express by JERRY WALKER and RAYMOND RADKE and was being returned to Can-Am Express on 02/24/03. A copy of that list is attached to this report along with the statements.

Mentioned earlier, the interview with JERRY WALKER was completed by him giving a written statement in his own handwriting. After he finished writing, it indicates that he stole about \$70,000.00 worth of property, I also asked him four questions, as follows:

Question #1: Were any promises or threats made to you for this voluntary statement?

Answer: No.

Question #2: Are you under the influence of any drugs or alcohol?

Answer: No.

Question #3: Is there anything you wish to add or remove from this statement?

Answer: No.

Question #4: Was this statement freely and voluntarily given?

Answer: Yes.

As mentioned, those statements and the evidence inventory receipt are attached to the report.

In talking with MR. RADKE after the property was returned to Can-Am Express on 02/24/03, he indicated during that interview that the main two individuals involved in passing and getting tires were MR.

8

CONKLIN and MR. HUCKERIDE. This officer will make attempts to interview those individuals, get statements from them and ascertain what their involvement was concerning the thefts and either use or resale of the stolen property from Can-Am Express. Supplements will follow those interviews.

Additionally, MR. ANDERSON, on behalf of his position as a private investigator being hired by Can-Am Express, will file his report. A copy of that report will be sent to the State's Attorney's Office along with this report, requesting arrest warrants for JERRY WALKER and RAYMOND RADKE for felony theft of property in excess of \$320,000.00.

Requests for warrants for other individuals involved in this case may develop after further investigation. However, at this time, the two main individuals involved and the individuals who started this whole process have been interviewed, property has been recovered, statements have been received and at this time there is no further need to interview these individuals. Therefore, it is requested that the warrants for those individuals be issued at this time. This case will be considered active.

DETECTIVE DEAN WAWERS  
Investigation Division

DW/sp

cc: Cass County State's Attorney's Office

000011

# ORIGINAL

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

State of North Dakota, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Raymond Frederick Radke, )  
 )  
 Defendant. )

CRIMINAL JUDGMENT  
 AND COMMITMENT  
 09-03-K-00915  
 SA# 03-CR-00603

On this 27<sup>th</sup> day of October, 2003, came Lisa K. Fair McEvers, Assistant State's Attorney, and the above-named defendant appearing in person with Richard J. Linnerooth counsel; this being the date fixed by the Court for pronouncement of judgment upon a plea of guilty to the offense(s) of:

COUNT ONE: CONSPIRACY TO COMMIT THEFT in violation of N.D.C.C. § 12.1-06-04 and 12.1-23-02, a Class B Felony, occurring between September 1, 2001 and February 21, 2003,

COUNT TWO: DEALING IN STOLEN PROPERTY in violation of N.D.C.C. § 12.1-23-08.3(1)(a), a Class B Felony, occurring between September 1, 2001 and February 21, 2003,

as charged in the Criminal Information heretofore filed against said Defendant in this Court; and the said Defendant having been asked by the Court whether the Defendant had any statement to make on the Defendant's own behalf or wished to present any information in mitigation of punishment or which would require the Court to withhold pronouncement of judgment and sentence, having considered the same, and no sufficient cause to the contrary having been shown why judgment should not be pronounced,

IT IS THE JUDGMENT AND SENTENCE OF THE COURT:

COUNT ONE:

1. The defendant be committed to the custody of the North Dakota Department of Corrections and Rehabilitation for a period of ten (10) years commencing on the day of sentencing; the defendant first serve a period of imprisonment of two (2) ~~years~~ <sup>months</sup>

FILED CLERK OF DISTRICT COURT

OCT 27 2003

EXHIBIT D

*5 years*

and the balance of ~~eight~~ *(5)* years be suspended for a period of eight ~~(8)~~ *(5)* years commencing after the period of incarceration; during the suspended period, the defendant shall be placed on supervised probation subject to the supervision, management and control of the North Dakota Division of Parole and Probation and subject to the terms and conditions of probation set forth in the attached Appendix A. Upon any revocation of probation the court may impose any other sentence that was available at the time of the initial sentencing.

COUNT TWO:

2. The defendant be committed to the custody of the North Dakota Department of Corrections and Rehabilitation for a period of ~~two~~ *(5)* years commencing on the day of sentencing; the defendant first serve a period of imprisonment of ~~two~~ *(3 1/2 months)* and the balance of ~~two~~ *(5)* years be suspended for a period of eight *(5)* years commencing after the period of incarceration; during the suspended period, the defendant shall be placed on supervised probation subject to the supervision, management and control of the North Dakota Division of Parole and Probation and subject to the terms and conditions of probation set forth in the attached Appendix A. Upon any revocation of probation the court may impose any other sentence that was available at the time of the initial sentencing.

3. Credit of 0 days shall be given for previous custody time.

4. The sentences imposed in Counts One and Two above shall run concurrently with each other.

IT IS FURTHER ORDERED, unless otherwise stated in this Judgment, the Defendant is committed to the custody of the North Dakota Department of Corrections and Rehabilitation or the Sheriff of Cass County or the Sheriff's authorized representative for incarceration at hard labor in accordance with the Judgment until expiration of the sentence or until discharged by proper authority.

IT IS FURTHER ORDERED, the Clerk of this Court deliver a certified copy of this Judgment and Commitment to the Sheriff or other appropriate officer as a commitment of the Defendant.

Dated this 27<sup>th</sup> day of October, 2003.

By the Court:

  
\_\_\_\_\_  
Hon. Michael O. McGuire  
District Judge

APPENDIX "A"  
CONDITIONS FOR SENTENCE TO PROBATION,  
DEFERRED OR SUSPENDED SENTENCE

PURSUANT TO THE ORDER OF THE COURT,

The Defendant herein is placed under the supervision and management of the North Dakota Department of Corrections and Rehabilitation.

The Defendant shall:

1. Not commit another criminal offense during the period for which the probation remains subject to revocation.
2. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the Defendant for suitable employment.
3. Inform the probation officer immediately in the manner that the officer directs of changes of residence, employment, or other pertinent activities.
4. Answer truthfully all reasonable inquiries of the probation officer. The information shall be provided to the probation officer by written report, telephone, or a personal visit to the probation office as directed.
5. Permit the probation officer to visit at reasonable times at your home or elsewhere.
6. Report within one (1) working day (Monday-Friday) after release from incarceration or being placed on probation to the North Dakota Parole and Probation at 115 North University Drive, Suite 1, Fargo, North Dakota. Telephone Number 239-7272.
7. Report to a probation office as directed by the Court or a probation officer.
8. Not leave the State of North Dakota or Clay County, Minnesota, without permission from the probation officer.
9. Not own, purchase, borrow, possess, use or carry any type of firearm, destructive device, or dangerous weapon unless granted written permission by the Court.
10. Support any dependants.

FILED-CLERK OF DISTRICT COURT

OCT 27 2003

  
CASS COUNTY, ND

11. Not gamble or enter any gaming sites without written permission by the probation officer, unless no money is owing in this case.
12. Not use or possess alcoholic beverages nor enter any liquor, beer or wine establishment without written permission from the probation officer.
13. Not use or possess any controlled substance, except as prescribed by a licensed physician.
14. Not knowingly associate with users or traffickers in narcotics, marijuana, or other controlled substances.
15. Submit to a medical examination or other reasonable testing to include breath, blood, or urine samples for the purpose of determining the use of alcohol or controlled substances whenever requested by any probation officer.
16. Submit the Defendant's person, place of residence and vehicle, or any other property to which the Defendant has access, wherever they may be found, to search and seizure, with or without a search warrant, at any time of day or night by: 1) any parole or probation officer; or, 2) any law enforcement officer at the direction of a parole or probation officer; or, 3) any law enforcement officer with a reasonable suspicion of criminal conduct.
17. Pay a fine to the Clerk of District Court and restitution and Court appointed attorney's fees through the office of the State's Attorney of Cass County, North Dakota, in the amount(s) shown in Paragraph 21, below. Said amounts shall be paid in equal periodic installments beginning one month after release from incarceration or being placed on probation, unless a different payment schedule has been specifically ordered by the Court. The equal periodic installments shall consist of 30% of net income. Net income is defined as Defendant's total gross monthly income less deductions for federal income tax, state income tax, FICA, cost of individual health/hospitalization coverage or actual medical expenses, and child support or spousal maintenance obligations actually being paid. In no event, shall the equal periodic installments be less than \$50.00 per month. The total amount owed shall be paid not later than three months prior to the end of probation. Restitution shall be paid in full prior to attorney's fees and fines, if any. An Order that a Defendant make restitution or reparation as a

- sentence or condition of probation may, unless the Court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments pursuant to N.D.C.C. § 12.1-32-08(1).
18. Pay a probation supervision fee during the period of probation pursuant to N.D.C.C. § 12.1-32-07 of the North Dakota Century Code to the Division of Parole and Probation. If the criminal offense was committed before July 1, 1999, then the supervision fee shall be \$30.00 per month throughout the supervision period. If the criminal offense was committed on July 1, 1999, or thereafter, then the supervision fee shall be \$30.00 per month for fees due before January 1, 2001, and \$36.00 per month for fees due after January 1, 2001. If the Court ordered a pre-sentence investigation in this matter, you are hereby ordered to pay \$50.00 to the Department of Corrections and Rehabilitation pursuant to N.D.C.C. § 12.1-32-02(10).
19. Undergo any or all of the following agreed-to community constraints and conditions as intermediate measures of the Department of Corrections and Rehabilitations to avoid revocation pursuant to N.D.C.C. § 12.1-32-07(4) (p):
- a. Community Service - 240 hours of uncompensated hours worked within the community;
  - b. Day Reporting - Report to probation office daily for 90 days;
  - c. Curfew - At their residence from 10:00 p.m. to 6:00 a.m. for 180 days;
  - d. Home Confinement - Required to be at residence 12 hours a day for 90 days;
  - e. House Arrest - Required to be at residence 24 hours a day for 90 days;
  - f. Electronic Monitoring (EMS) - Electronically monitor the Defendant's compliance with curfew, home confinement or house arrest at the Defendant's expense for 90 days;
  - g. Residential/Half-Way House - Contracted housing that provides structures and programming for 120 days;
  - h. Intensive Supervision Program (ISP) - A restrictive program which may include all of the previously stated sanctions for 180 days;
20. Perform the number of community service hours shown in Paragraph 21, below through Restore. Community service

hours are to be completed at the rate of 20 hours every month until the entire obligation is fulfilled, unless otherwise ordered by the Court.

21. The following amounts apply to this case:

Fine \$-0-

Restitution \$\_\_\_\_\_ (To be determined)

*open for 30 days*

Attorney Fees \$-0-

Comm. Serv. Hours NONE

22. The following conditions of probation are deleted and do not apply to this case:

23. The following additional conditions of probation apply to this case:

Dated this 27<sup>th</sup> day of October, 2003.

By the Court:

*Richard J. Myers*  
\_\_\_\_\_  
District Judge  
East Central Judicial District

State v. Raymond Frederick Radke  
09-03-K-00915  
SA# 03-CR-00603

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

State of North Dakota, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Jerry Scott Walker, )  
 )  
 Defendant. )

CRIMINAL JUDGMENT  
 AND COMMITMENT  
 09-03-K-00917  
 SA# 03-CR-00604

On this 22nd day of January, 2003, came Lisa K. Fair McEvers, Assistant State's Attorney, and the above-named defendant appearing in person with Steve Light counsel; this being the date fixed by the Court for pronouncement of judgment upon a plea of guilty to the offense(s) of:

COUNT ONE: CONSPIRACY TO COMMIT THEFT in violation of N.D.C.C. § 12.1-06-04 and 12.1-23-02, a Class B Felony, occurring between September 1, 2001 and February 21, 2003,

COUNT TWO: DEALING IN STOLEN PROPERTY in violation of N.D.C.C. § 12.1-23-08.3(1)(a), a Class C Felony, occurring between September 1, 2001 and February 21, 2003,

as charged in the Criminal Information heretofore filed against said Defendant in this Court; and the said Defendant having been asked by the Court whether the Defendant had any statement to make on the Defendant's own behalf or wished to present any information in mitigation of punishment or which would require the Court to withhold pronouncement of judgment and sentence, having considered the same, and no sufficient cause to the contrary having been shown why judgment should not be pronounced,

IT IS THE JUDGMENT AND SENTENCE OF THE COURT:

COUNT ONE:

1. The defendant be committed to the custody of the North Dakota Department of Corrections and Rehabilitation for a period of five (5) years commencing on the day of sentencing; the defendant first serve a period of imprisonment of ~~two hundred ten~~

EXHIBIT E

JAN 22 2004

CASS COUNTY, ND

*MD hi*

180  
(210) days in the Cass County Jail and the balance of four (4) years and ~~one hundred fifty-five (155)~~<sup>185</sup> days be suspended for a period of five (5) years commencing after the period of incarceration; during the suspended period, the defendant shall be placed on supervised probation subject to the supervision, management and control of the North Dakota Division of Parole and Probation and subject to the terms and conditions of probation set forth in the attached Appendix A. Upon any revocation of probation the court may impose any other sentence that was available at the time of the initial sentencing.

COUNT TWO:

2. The defendant be committed to the custody of the North Dakota Department of Corrections and Rehabilitation for a period of five (5) years commencing on the day of sentencing; the defendant first serve a period of imprisonment of ~~two hundred ten~~  
180 (210) days in the Cass County Jail and the balance of four (4) years and ~~one hundred fifty-five (155)~~<sup>185</sup> days be suspended for a period of five (5) years commencing after the period of incarceration; during the suspended period, the defendant shall be placed on supervised probation subject to the supervision, management and control of the North Dakota Division of Parole and Probation and subject to the terms and conditions of probation set forth in the attached Appendix A. Upon any revocation of probation the court may impose any other sentence that was available at the time of the initial sentencing.

3. Credit of 0 days shall be given for previous custody time.

4. The sentences imposed in Counts One and Two above shall run concurrently with each other.

IT IS FURTHER ORDERED, unless otherwise stated in this Judgment, the Defendant is committed to the custody of the North Dakota Department of Corrections and Rehabilitation or the Sheriff of Cass County or the Sheriff's authorized representative for incarceration at hard labor in accordance with the Judgment until expiration of the sentence or until discharged by proper authority.

IT IS FURTHER ORDERED, the Clerk of this Court deliver a certified copy of this Judgment and Commitment to the Sheriff or other appropriate officer as a commitment of the Defendant.

Dated this 22nd day of January, 2003.

By the Court: K-00917

Michael O. McGuire  
Hon. Michael O. McGuire  
District Judge

COPIES TO:  
SA  JAIL   
PROBATION  RESTORE   
DEFENSE  DEFENDANT   
CITY

APPENDIX "A"  
CONDITIONS FOR SENTENCE TO PROBATION,  
DEFERRED OR SUSPENDED SENTENCE

PURSUANT TO THE ORDER OF THE COURT,

The Defendant herein is placed under the supervision and management of the North Dakota Department of Corrections and Rehabilitation.

The Defendant shall:

1. Not commit another criminal offense during the period for which the probation remains subject to revocation.
2. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the Defendant for suitable employment.
3. Inform the probation officer immediately in the manner that the officer directs of changes of residence, employment, or other pertinent activities.
4. Answer truthfully all reasonable inquiries of the probation officer. The information shall be provided to the probation officer by written report, telephone, or a personal visit to the probation office as directed.
5. Permit the probation officer to visit at reasonable times at your home or elsewhere.
6. Report within one (1) working day (Monday-Friday) after release from incarceration or being placed on probation to the North Dakota Parole and Probation at 115 North University Drive, Suite 1, Fargo, North Dakota. Telephone Number 239-7272.
7. Report to a probation office as directed by the Court or a probation officer.
8. Not leave the State of North Dakota or Clay County, Minnesota, without permission from the probation officer.
9. Not own, purchase, borrow, possess, use or carry any type of firearm, destructive device, or dangerous weapon unless granted written permission by the Court.
10. Support any dependants.

Feb 2, 2004

10:10

MB

11. Not gamble or enter any gaming sites without written permission by the probation officer, unless no money is owing in this case.
12. Not use or possess alcoholic beverages nor enter any liquor, beer or wine establishment without written permission from the probation officer.
13. Not use or possess any controlled substance, except as prescribed by a licensed physician.
14. Not knowingly associate with users or traffickers in narcotics, marijuana, or other controlled substances.
15. Submit to a medical examination or other reasonable testing to include breath, blood, or urine samples for the purpose of determining the use of alcohol or controlled substances whenever requested by any probation officer.
16. Submit the Defendant's person, place of residence and vehicle, or any other property to which the Defendant has access, wherever they may be found, to search and seizure, with or without a search warrant, at any time of day or night by: 1) any parole or probation officer; or, 2) any law enforcement officer at the direction of a parole or probation officer; or, 3) any law enforcement officer with a reasonable suspicion of criminal conduct.
17. Pay a fine to the Clerk of District Court and restitution and Court appointed attorney's fees through the office of the State's Attorney of Cass County, North Dakota, in the amount(s) shown in Paragraph 21, below. Said amounts shall be paid in equal periodic installments beginning one month after release from incarceration or being placed on probation, unless a different payment schedule has been specifically ordered by the Court. The equal periodic installments shall consist of 30% of net income. Net income is defined as Defendant's total gross monthly income less deductions for federal income tax, state income tax, FICA, cost of individual health/hospitalization coverage or actual medical expenses, and child support or spousal maintenance obligations actually being paid. In no event, shall the equal periodic installments be less than \$50.00 per month. The total amount owed shall be paid not later than three months prior to the end of probation. Restitution shall be paid in full prior to attorney's fees and fines, if any. An Order that a Defendant make restitution or reparation as a

sentence or condition of probation may, unless the Court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments pursuant to N.D.C.C. § 12.1-32-08(1).

18. Pay a probation supervision fee during the period of probation pursuant to N.D.C.C. § 12.1-32-07 of the North Dakota Century Code to the Division of Parole and Probation. If the criminal offense was committed before July 1, 1999, then the supervision fee shall be \$30.00 per month throughout the supervision period. If the criminal offense was committed on July 1, 1999, or thereafter, then the supervision fee shall be \$30.00 per month for fees due before January 1, 2001, and \$36.00 per month for fees due after January 1, 2001. If the Court ordered a pre-sentence investigation in this matter, you are hereby ordered to pay \$50.00 to the Department of Corrections and Rehabilitation pursuant to N.D.C.C. § 12.1-32-02(10).
19. Undergo any or all of the following agreed-to community constraints and conditions as intermediate measures of the Department of Corrections and Rehabilitations to avoid revocation pursuant to N.D.C.C. § 12.1-32-07(4) (p):
  - a. Community Service - 240 hours of uncompensated hours worked within the community;
  - b. Day Reporting - Report to probation office daily for 90 days;
  - c. Curfew - At their residence from 10:00 p.m. to 6:00 a.m. for 180 days;
  - d. Home Confinement - Required to be at residence 12 hours a day for 90 days;
  - e. House Arrest - Required to be at residence 24 hours a day for 90 days;
  - f. Electronic Monitoring (EMS) - Electronically monitor the Defendant's compliance with curfew, home confinement or house arrest at the Defendant's expense for 90 days;
  - g. Residential/Half-Way House - Contracted housing that provides structures and programming for 120 days;
  - h. Intensive Supervision Program (ISP) - A restrictive program which may include all of the previously stated sanctions for 180 days;
20. Perform the number of community service hours shown in Paragraph 21, below through Restore. Community service

hours are to be completed at the rate of 20 hours every month until the entire obligation is fulfilled, unless otherwise ordered by the Court.

21. The following amounts apply to this case:

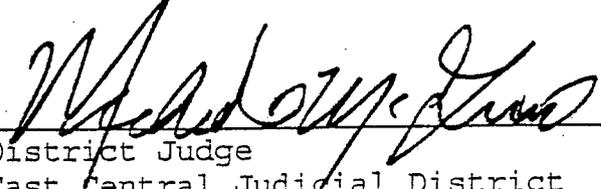
Fine \$-0-  
Restitution \$\_\_\_\_\_ (To be determined)  
Attorney Fees \$-0-  
Comm. Serv. Hours NONE

22. The following conditions of probation are deleted and do not apply to this case:

23. The following additional conditions of probation apply to this case:

Dated this 2nd day of February, 2003.

By the Court:

  
District Judge  
East Central Judicial District

State v. Jerry Scott Walker  
09-03-K-00917  
SA# 03-CR-00604

J:\SATINFO\GENERAL\LLKM\2003 Judgments\WalkerJerry.wpd

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

-----  
Can-Am Express, Inc.

Plaintiff,

vs.

Raymond F. Radke and Jerry S. Walker,

Defendants.  
-----

) Civil No. \_\_\_\_\_  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**SUMMONS**

THE STATE OF NORTH DAKOTA TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to appear and defend against the Complaint in this action, which is herewith served upon you, by serving upon the undersigned an answer or other proper response within twenty (20) days after the service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

Dated this 21<sup>st</sup> day of December, 2003.

  
\_\_\_\_\_  
Brad A. Sinclair (ND #04225)  
SERKLAND LAW FIRM  
10 Roberts Street  
P.O. Box 6017  
Fargo, ND 58108-6017  
(701) 232-8957  
ATTORNEYS FOR PLAINTIFF

**EXHIBIT F**

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

-----  
Can-Am Express, Inc. ) Civil No. \_\_\_\_\_  
 )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. ) **COMPLAINT**  
 )  
 ) Raymond F. Radke and Jerry S. Walker, )  
 )  
 ) Defendants. )  
-----

Can-Am Express, Inc., hereinafter referred to as "Can-Am", for its complaint against the Defendants, Raymond F. Radke, hereinafter referred to as "Radke", and Jerry S. Walker, hereinafter referred to as "Walker", respectfully states and alleges to the court as follows:

I.

Can-Am is a corporation organized under the laws of the State of North Dakota having its principal office located Fargo, North Dakota.

II.

That Radke is believed to be incarcerated by the State of North Dakota, and was previously employed by Can-Am within the State of North Dakota.

III.

That Walker is believed to be a resident of the State of Minnesota and was previously employed by Can-Am within the State of North Dakota.

IV.

This court has jurisdiction over the parties.

V.

That between September 1, 2001 through February 21, 2003, Radke and Walker to some extent, acted together and converted to their own use, an amount in excess of \$320,000.00 worth of the Plaintiff's property.

VI.

That on or about February 21, 2003 the Defendant, Raymond Radke, admitted to Detective Dean Wawers that he has stolen property from the Plaintiff in an amount in excess of \$250,000.00. A copy of this admission is attached hereto as Exhibit A.

VII.

That on or about February 21, 2003 the Defendant, Jerry Walker, admitted to Detective Dean Wawers that he had converted property from the Plaintiff in an amount in excess of \$70,000.00. A copy of this admission is attached hereto as Exhibit A.

VIII.

That on October 27, 2003 the Defendant Raymond Radke was convicted on one count of Conspiracy to Commit Theft and one count of Dealing in Stolen Property. A copy of the Criminal Judgment and Commitment is attached hereto as Exhibit B.

IX.

**COUNT I – RADKE**

Can-Am realleges paragraphs I through VI and paragraph VIII of the Complaint. Can-Am seeks a judgment against Radke in the amount of

\$250,000.00 plus pre-judgment interest at the rate of 6% per annum commencing from February 21, 2003, until the time of entry of judgment.

X.

**COUNT II – WALKER**

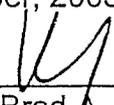
Can-Am realleges paragraphs I through V and paragraph VII of the Plaintiff's Complaint. Can-Am seeks a judgment against Walker in the amount of \$70,000.00 plus pre-judgment interest at the rate of 6% per annum from February 21, 2003, until the date of entry of judgment.

XI.

WHEREFORE, Can-Am Express, Inc., in its favor and against Defendant:

1. Against Radke in the amount of \$250,000.00 plus interest at the rate of 6% per annum after February 21, 2003, until the time of entry of judgment;
2. Against Walker in the amount of \$70,000.00 plus interest accruing at the rate of 6% per annum after February 21, 2003, until the time of entry of judgment against all Defendants;
3. Award Can-Am its costs, disbursements, and if applicable, statutory attorney's fees against all Defendants;
4. Award Can-Am such other and further relief as the Court deems appropriate.

Dated this 9<sup>th</sup> day of December, 2003.

  
\_\_\_\_\_  
Brad A. Sinclair (ND #04225)  
SERKLAND LAW FIRM  
10 Roberts Street  
P.O. Box 6017  
Fargo, ND 58108-6017  
(701) 232-8957  
ATTORNEYS FOR PLAINTIFF

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

EAST CENTRAL JUDICIAL DISTRICT

State of North Dakota, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Frederick Raymond Radke, )  
 )  
 Defendant(s). )

INFORMATION  
 09-0 -K-  
 SA #03-CR-00603

The Cass County State's Attorney charges that the above-named defendant(s) committed the following offense in Fargo, Cass County, North Dakota:

Count 1: CONSPIRACY TO COMMIT THEFT in violation of N.D.C.C. § 12.1-06-04 and 12.1-23-02, in that between September 1, 2001 and February 21, 2003 the above-named defendant agreed with one or more persons to engage in or cause conduct which, in fact, constituted the offense of theft, and any one or more of such persons committed an overt act to effect an objective of the conspiracy, to-wit: that during said time period, the defendant, **FREDERICK RAYMOND RADKE**, agreed with Jerry Scott Walker and/or others to knowingly take property valued in excess of ten thousand dollars from their employer, Can-Am Express, said property including, but not limited to, tires and automotive parts, and thereafter altered work orders to hide the theft, said acts occurring in Fargo, Cass County, North Dakota.

Count 2: DEALING IN STOLEN PROPERTY in violation of Section 12.1-23-08.3(1)(b), N.D.C.C. in that between September 1, 2001 and February 21, 2003, the above-named defendant initiated, organized, planned, financed, directed, managed or supervised the theft and trafficking in the property of another that has been stolen, such "trafficking" meaning to a) sell, transfer, distribute, dispense or otherwise dispose of to another person, or b) buy, receive, possess, or obtain control of, with intent to sell, transfer, distribute, dispense or otherwise dispose of to another person, to-wit: that during said time period, the defendant, **FREDERICK RAYMOND RADKE**, initiated, planned, directed, and/or supervised the theft and trafficking of the property of Can-Am Express, ~~by directing Jerry Scott Walker to~~ pick up tires and automotive parts from Can-Am Express, deliver them to another location, and to add those tires or parts onto altered work orders, and thereafter these tires and automotive parts were sold to others, said acts occurring in Fargo, Cass County, North Dakota.

EXHIBIT **A**

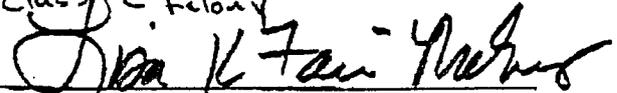
Against the peace and dignity of the State of North Dakota.

State's Witnesses:

Dated: March 13, 2003

Detective Dean Wawers  
Virgil Anderson  
Robert L. Nelson  
Kurt R. Bancroft  
Janice M. Gerdes  
Karla R. Bancroft

Penalty Section:  
Count 1: 12.1-06-04  
12.1-23-02  
Class B Felony  
Count 2: 12.1-23-08.3(2)(b)  
~~Class B Felony~~  
Class C Felony



Lisa K. Fair McEvers,  
NDID #5396  
Assistant State's Attorney

1

CASS COUNTY SHERIFF'S OFFICE  
211 9th St S - Fargo, ND 58107-0488  
Phone (701) 241-5800 Fax (701) 241-5805

OFFICER: WAWERS  
UNIT NO: 3547

DATE: 02/24/03  
CASE: I-03-000194

## THEFT

On 02/20/03, at approximately 1300 hours, this officer, DEAN WAWERS, received a telephone call from VIRGIL ANDERSON. MR. ANDERSON is the owner/operator of A.S.P. of Moorhead, Inc. That organization is a private detective organization and does internal security investigations for various clients in the F/M area. MR. ANDERSON had been contacted by the owner/operator of Can-Am Express which is a truck transport company located at 2719-40th Avenue North, Fargo, North Dakota, and is run and operated by ROBERT L. NELSON. MR. NELSON just moved to a new address listed as Cormorant Lake, Minnesota. His work number is 293-5670, extension 107.

MR. NELSON had contacted MR. ANDERSON because he had reason to believe that he had some internal theft problems going on at his business. He owns and operates over 130 tractor-trailer semis, routinely called 18 wheelers, out of Fargo, North Dakota and another terminal in Texas. He had reason to believe that some of his employees were stealing his inventory that he uses to maintain his trucks and converting those parts to their own personal use. He indicated that from a normal year in which he bought 350 to 370 tires for his tractor trailers last year he bought 1,948 tires and he hasn't increased his fleet. That, to him, was a huge red flag. Not to mention the fact that his in-house service and sales manager had been doing some checks on some invoices and had been following up and discovered that work that was being reported done on some of his trucks was not being done. However, invoices were sent through anyway and property and replacement parts were being purchased on a routine basis. For example, a truck would come in and the work order would indicate that three new batteries and eight of the tires were replaced on a truck. They would go find that truck and discover that the batteries in the truck were five years old and the tires were thread bare. Nevertheless, the work order would come out of the shop and they would be paid because those parts would have to be replaced in inventory. They began to suspect that things were happening so they did a three month audit and found out that they were missing literally thousands and thousands of dollars in missing parts from inventory.

They hired MR. ANDERSON. He did some background investigation and discovered that probably two main individuals in the plant at Can-Am Express in Fargo were the culprits. He contacted SHERIFF DON RUDNICK and requested that this officer, DEAN WAWERS, be assigned to assist him in what now was a criminal investigation. SHERIFF

000004

2

RUDNICK directed me to contact MR. ANDERSON and assist him in the theft investigation that was occurring on a regular basis at the Can-Am Express Depot located at 2719-40th Avenue North, Fargo, North Dakota.

On 02/21/03, this officer, DEAN WAWERS, met with MR. ANDERSON at his company office, 1012-18th Avenue North, Moorhead, Minnesota, phone number 287-1637. Present during that meeting were MR. ANDERSON, a corporate representative identified as JAMES SHOREY, and also three employees from Can-Am Express to show this officer, DEAN WAWERS, the three month audit on inventory that had been prepared. The three employees from Can-Am Express are identified as KURT R. BANCROFT, from Building Maintenance; JANICE M. GERDES, from Sales and Service; and KARLA R. BANCROFT, Director of Safety. They had a three ring binder with them that was about 2½ inches thick with paperwork. It indicated that trucks owned by Can-Am had been serviced in their shop in Fargo. It had the work order and the invoices for parts and all the paperwork necessary to prove that a truck owned by Can-Am Express was worked on in the Fargo Depot by employees of Can-Am Express, including but not limited to the shop foreman, who is identified as RAYMOND RADKE, and the mechanic working in the shop, identified as JERRY WALKER.

The invoices were obviously doctored up. In other words, an invoice that showed clearly that it had been written up to detail work on a truck had added parts on it after the thing had already been completed or the work was never done, but the invoice was sent through anyway. Also the paperwork detailing the amount of tires that Can-Am Express had purchased in 2000, 2001 and 2002 for those years were also added. The other paperwork was only prepared for three months, but the tire information was for the last three years. It shows that tire consumption by the company went from 350 tires a year to almost 1,950 tires a year without an increase in mileage on the trucks and without an increase of trucks on the road. This meant only one thing, either the tires were of very poor quality and wore out very rapidly, or they were being stolen or not put on the trucks as per the work orders that were being handed in by MR. RADKE and MR. WALKER. This would leave one to believe that MR. RADKE and MR. WALKER were either not doing the work and walking off with the parts, selling the parts to other independent operators and making Can-Am Express pay for the parts, or simply stealing the parts out of the shop and selling them to whoever they could sell them to.

The weight of the evidence produced by the three month audit and the three year audit of tires, clearly pointed to MR. WALKER and MR. RADKE, the reason being those are the only names that appeared on any of the work orders and they are the ones who turned the work orders into the main office, indicating that the articles had been used and the repairs had been completed. If they were not involved, it would be a very short time before they would notice that when

000005

they went to get parts, the parts were always gone or they always had to order extra parts when, in fact, the inventory list showed that there were a number of parts on the shelves, but when he actually went over to the shelf, it did not exist. So without MR. WALKER and MR. RADKE being at the top of the chain, they certainly would have reported the information early on to MR. NELSON, the owner of the company.

It was decided to proceed from MR. ANDERSON'S office in Moorhead to Glyndon, Minnesota, and interview JERRY WALKER. Upon arriving at his residence at 15695 Highway #10, Glyndon, Minnesota, we were met by his wife who said he was out doing a private job hanging a lowered ceiling in a residence and he wouldn't be home until later that evening.

We decided then to proceed to Can-Am Express and interview RAYMOND RADKE, the shop foreman. MR. RADKE was asked to come up to the office by the owner which he did. He was then asked to come into the conference room next to the owner's office. MR. RADKE did come into the conference room and at that point in time I identified myself to him as a deputy sheriff with the Cass County Sheriff's Department, I showed him my credentials. I then introduced him to MR. ANDERSON and advised him that he was privately employed by Can-Am Express to do an internal investigation, and that he would be sitting in on the interview. MR. RADKE agreed and sat down at the conference table.

Before he was asked any questions, he was advised that although the door to the conference room was closed, it was closed for privacy reasons only, that it was not locked, that he was free to leave at any time he chose to, that no one would stop him from leaving the building or the property belonging to Can-Am Express. He was further advised that he was not in a custodial situation and a custodial situation was explained to him, indicating that he was not under arrest, he was free to leave. Furthermore, he was free to leave at any time during the conversation. He was also advised that he could have an attorney present if he chose. He was further advised that he was not going to be arrested at the completion of the interview on the evening of 02/21/03, that he was going to be free to return to his home in Dilworth, Minnesota.

Having indicated that he understood all that information, the interview then began by taking general information such as addresses, phone numbers, descriptions, etc. I then advised MR. RADKE that the reason I was there was because a number of pieces of truck equipment, repair parts, washing equipment, various solvents, tires, batteries, tools and other things were missing from Can-Am Express, and that I had reason to believe he was involved in the removal of those articles. After a brief couple of minutes when MR. RADKE seemed to be quite stunned by the revelation of the missing property, MR. RADKE agreed that, indeed, he was involved, and that,

indeed, he was very sorry for what he had done. That about two years ago he had undergone a fairly grievous divorce, and because of that divorce, he said he began using drugs. Because of his drug usage, he started stealing property from his employer. He estimates in the last two years he has stolen from Can-Am Express about \$250,000.00 worth of property, including all the articles listed above.

He indicated that for the most part, his accomplice in this theft was a mechanic working in the shop identified as JERRY WALKER. He said he would tell JERRY to add certain parts onto work orders that were never used. He advised that JERRY WALKER would go out and pick up parts for him and deliver them to his house in Dilworth, Minnesota. He advised that he would give JERRY WALKER tires that belonged to the company. JERRY WALKER would sell the tires and split the money with him. He advised that they were in close contact and accomplices for about two years concerning the theft of all this property from Can-Am Express. He wasn't exactly sure, but he thought it was at least \$250,000.00 that was taken by him.

I asked if at that point he would give me a voluntary statement. He did write out a voluntary statement in his own handwriting. When that statement was completed, I wrote an additional four questions on the bottom which he agreed to answer.

Question #1: Was this a voluntary statement?

Answer: Yes.

Question #2: Were any promises or threats made to me to get this voluntary statement?

Answer: No.

Question #3: Are you under the influence of alcohol or drugs right now?

Answer: No.

Question #4: Is there anything you wish to add or remove from this statement?

Answer: No. Except I'd like to say I'm very sorry for this.

His boss, in fact, brought him back to the company, actually sought him out and rehired him because he had been a former employee and his boss thought enough of him to find him again and hire him and give him a responsible position with the company. Little did his boss know he was stealing thousands and thousands of dollars worth of products from the company and converting them to his own use or

5

selling them to other truck drivers or other truck companies. He also said that he sold a lot of tires, maybe 80 or 100, to a guy named CONKLIN who lives in Becker County, Minnesota. He also sold maybe 50 or 60 tires to another guy who lives in Clay County named JEFF HUCKERIDE.

He also admitted how the plans would work. He would either take the tires and sell them, give them to JERRY WALKER and have him sell them, pad invoices, not do work that was required, simply take the products home and sell them to various people. Again, he repeated that he was very sorry for this and wanted to show his cooperation by giving a statement, both verbal and written. A copy of MR. RADKE'S statement is attached to this report for the information of the reader.

I then asked MR. RADKE if he would contact MR. WALKER at his home phone number and have him come to the plant. He agreed and a short time later JERRY SCOTT WALKER showed up at Can-Am Express Truck Depot. I introduced myself to MR. WALKER when he came into the shop, showed him my credentials and asked if he would be willing to talk to me in the conference room near the main office. He agreed.

We rode together in his pickup from the shop area to the main door. We went up to the second floor into the conference room and sat down. I advised him that he was not under arrest, he was free to leave at any time, that he was not in a custodial situation. I explained to him what a custodial situation was. I advised him the door was closed, but it was not locked, it was closed for privacy reasons, he was free to leave at any time. I further explained to him that he was not going to be arrested at the end of the interview and that he could have an attorney present any time he wanted even though he was not in a custodial situation. He indicated he understood all this and wanted to proceed.

I then got some basic information from MR. WALKER. He was correctly identified as:

NAME: JERRY SCOTT WALKER  
ADDRESS: 15695 Highway 10, Glyndon, Minnesota  
H PHONE: (218)498-0317 C PHONE: (218)790-0225  
DOB: 09/20/72  
HGT: 5'10" WGT: 160  
HAIR: BLK EYE: GRN

He has the initials USMC and a head of an eagle tattooed on his right shoulder. On his back he has a tattoo of a rose with his mother's name written across it.

I advised him that myself and VIRGIL ANDERSON from A.S.P. of Moorhead were going to interview him concerning missing products from the Can-Am Express inventory, including batteries, tires,

000008

tools and all kinds of parts that fit on diesel trucks and trailers. He indicated he understood and wanted to proceed. I advised him we had already interviewed MR. RADKE. I showed him MR. RADKE'S statement wherein he indicates he has stolen about a quarter of a million dollars worth of products from Can-Am Express over the last couple of years. I said I had reason to believe that he was also involved and wanted to know his involvement. MR. WALKER began to cooperate almost immediately. I advised him his cooperation would be noted in my report.

He said it is his best estimate that in the last year and a half or so he has been involved in the theft of about \$70,000.00 worth of property from Can-Am Express from which he directly profited. He obviously didn't get \$70,000.00, but from the amount that he took from the company to what was converted to his use, he believes it equaled about \$70,000.00. He said all the things that MR. RADKE had advised on how the thefts occurred were correct. Sometimes MR. RADKE would send him out to go pick up stuff and drop it off at RADKE'S house. Sometimes they would have a work order, sometimes they would sell to independent truckers, sometimes he would do tune-up's for independent truckers using Can-Am Express inventory and then charge the truck driver a cut rate for the parts and labor. All those things were being done through him and MR. RADKE toward the loss of a huge sum of money by Can-Am Express. He said that he still had some property left at his place and he would be willing to turn that in. He also said that MR. RADKE had some property at his place and he would probably turn it in also.

We told these two gentlemen that this is an ongoing investigation and we would meet them Monday morning in Dilworth to pick up the stolen property. They both agreed. They then rode home together from Can-Am Express in MR. WALKER'S truck. MR. RADKE didn't get to ride home alone because he drove a company truck and, of course, he had to leave it there because both he and MR. WALKER were fired from their jobs at Can-Am Express on the evening of 02/21/03.

On Monday morning, 02/24/03, at approximately 9:30 a.m., this officer, DEAN WAWERS, and VIRGIL ANDERSON arrived at 307 Second Avenue Southwest, Dilworth, Minnesota, the home of RAYMOND RADKE. Already parked out by MR. RADKE'S garage was MR. WALKER'S pickup truck. On that pickup truck were loaded the following articles

1. Eight Bridgestone truck tires
2. A two ton "yellow jack" motor hoist
3. A Lincoln Arc Welder
4. A commercial-sized truck battery
5. Eight cans containing truck cleaner, truck starter and truck washing aerosols

While there, MR. RADKE opened his garage and hauled out:

1. A service directory book
2. Three company T checks used by over-the-road truckers
3. A Jensen Satellite Radio Phone
4. Total of 16 semi-truck size brake shoes
5. An Alliance brand truck battery
6. A smaller Strike Force Battery
7. Eight brake kits for semis
8. Three reefer fiberglass doors, about 3' x 3'
9. Four cases of brake cleaning liquid, totaling 48 bottles

Those articles were all hauled over to Can-Am Express and an inventory of those articles was made by this officer, DEAN WAWERS. They list articles 1-14. The slip, upon its completion, was signed by this officer, DEAN WAWERS, and dated 02/24/03. It was signed by MR. VIRGIL ANDERSON, RAYMOND RADKE and JERRY WALKER, indicating that this property had been stolen from Can-Am Express by JERRY WALKER and RAYMOND RADKE and was being returned to Can-Am Express on 02/24/03. A copy of that list is attached to this report along with the statements.

Mentioned earlier, the interview with JERRY WALKER was completed by him giving a written statement in his own handwriting. After he finished writing, it indicates that he stole about \$70,000.00 worth of property, I also asked him four questions, as follows:

Question #1: Were any promises or threats made to you for this voluntary statement?

Answer: No.

Question #2: Are you under the influence of any drugs or alcohol?

Answer: No.

Question #3: Is there anything you wish to add or remove from this statement?

Answer: No.

Question #4: Was this statement freely and voluntarily given?

Answer: Yes.

As mentioned, those statements and the evidence inventory receipt are attached to the report.

In talking with MR. RADKE after the property was returned to Can-Am Express on 02/24/03, he indicated during that interview that the main two individuals involved in passing and getting tires were MR.

8

CONKLIN and MR. HUCKERIDE. This officer will make attempts to interview those individuals, get statements from them and ascertain what their involvement was concerning the thefts and either use or resale of the stolen property from Can-Am Express. Supplements will follow those interviews.

Additionally, MR. ANDERSON, on behalf of his position as a private investigator being hired by Can-Am Express, will file his report. A copy of that report will be sent to the State's Attorney's Office along with this report, requesting arrest warrants for JERRY WALKER and RAYMOND RADKE for felony theft of property in excess of \$320,000.00.

Requests for warrants for other individuals involved in this case may develop after further investigation. However, at this time, the two main individuals involved and the individuals who started this whole process have been interviewed, property has been recovered, statements have been received and at this time there is no further need to interview these individuals. Therefore, it is requested that the warrants for those individuals be issued at this time. This case will be considered active.

DETECTIVE DEAN WAWERS  
Investigation Division

DW/sp

cc: Cass County State's Attorney's Office

000011

# ORIGINAL

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

State of North Dakota, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Raymond Frederick Radke, )  
 )  
 Defendant. )

CRIMINAL JUDGMENT  
 AND COMMITMENT  
 09-03-K-00915  
 SA# 03-CR-00603

On this 27th day of October, 2003, came Lisa K. Fair McEvers, Assistant State's Attorney, and the above-named defendant appearing in person with Richard J. Linnerooth counsel; this being the date fixed by the Court for pronouncement of judgment upon a plea of guilty to the offense(s) of:

COUNT ONE: CONSPIRACY TO COMMIT THEFT in violation of N.D.C.C. § 12.1-06-04 and 12.1-23-02, a Class B Felony, occurring between September 1, 2001 and February 21, 2003,

COUNT TWO: DEALING IN STOLEN PROPERTY in violation of N.D.C.C. § 12.1-23-08.3(1)(a), a Class B Felony, occurring between September 1, 2001 and February 21, 2003,

as charged in the Criminal Information heretofore filed against said Defendant in this Court; and the said Defendant having been asked by the Court whether the Defendant had any statement to make on the Defendant's own behalf or wished to present any information in mitigation of punishment or which would require the Court to withhold pronouncement of judgment and sentence, having considered the same, and no sufficient cause to the contrary having been shown why judgment should not be pronounced,

IT IS THE JUDGMENT AND SENTENCE OF THE COURT:

COUNT ONE:

1. The defendant be committed to the custody of the North Dakota Department of Corrections and Rehabilitation for a period of ten (10) years commencing on the day of sentencing; the defendant first serve a period of imprisonment of two (2) ~~years~~ months

FILED-CLERK OF DISTRICT COURT

OCT 27 2003

EXHIBIT B

and the balance of ~~eight~~ <sup>5 years</sup> (8 ~~years~~ <sup>years</sup> be suspended for a period of eight (8 ~~years~~ <sup>years</sup>) commencing after the period of incarceration; during the suspended period, the defendant shall be placed on supervised probation subject to the supervision, management and control of the North Dakota Division of Parole and Probation and subject to the terms and conditions of probation set forth in the attached Appendix A. Upon any revocation of probation the court may impose any other sentence that was available at the time of the initial sentencing.

COUNT TWO:

2. The defendant be committed to the custody of the North Dakota Department of Corrections and Rehabilitation for a period of ~~two~~ (5) years commencing on the day of sentencing; the defendant first serve a period of imprisonment of ~~two~~ (18 months) and the balance of ~~two~~ (8) years be suspended for a period of eight (8) years commencing after the period of incarceration; during the suspended period, the defendant shall be placed on supervised probation subject to the supervision, management and control of the North Dakota Division of Parole and Probation and subject to the terms and conditions of probation set forth in the attached Appendix A. Upon any revocation of probation the court may impose any other sentence that was available at the time of the initial sentencing.

3. Credit of 0 days shall be given for previous custody time.

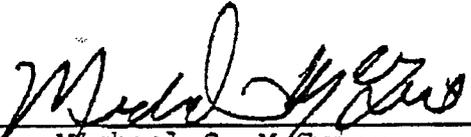
4. The sentences imposed in Counts One and Two above shall run concurrently with each other.

IT IS FURTHER ORDERED, unless otherwise stated in this Judgment, the Defendant is committed to the custody of the North Dakota Department of Corrections and Rehabilitation or the Sheriff of Cass County or the Sheriff's authorized representative for incarceration at hard labor in accordance with the Judgment until expiration of the sentence or until discharged by proper authority.

IT IS FURTHER ORDERED, the Clerk of this Court deliver a certified copy of this Judgment and Commitment to the Sheriff or other appropriate officer as a commitment of the Defendant.

Dated this 27<sup>th</sup> day of October, 2003.

By the Court:

  
\_\_\_\_\_  
Hon. Michael O. McGuire  
District Judge

APPENDIX "A"  
CONDITIONS FOR SENTENCE TO PROBATION,  
DEFERRED OR SUSPENDED SENTENCE

PURSUANT TO THE ORDER OF THE COURT,

The Defendant herein is placed under the supervision and management of the North Dakota Department of Corrections and Rehabilitation.

The Defendant shall:

1. Not commit another criminal offense during the period for which the probation remains subject to revocation.
2. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the Defendant for suitable employment.
3. Inform the probation officer immediately in the manner that the officer directs of changes of residence, employment, or other pertinent activities.
4. Answer truthfully all reasonable inquiries of the probation officer. The information shall be provided to the probation officer by written report, telephone, or a personal visit to the probation office as directed.
5. Permit the probation officer to visit at reasonable times at your home or elsewhere.
6. Report within one (1) working day (Monday-Friday) after release from incarceration or being placed on probation to the North Dakota Parole and Probation at 115 North University Drive, Suite 1, Fargo, North Dakota. Telephone Number 239-7272.
7. Report to a probation office as directed by the Court or a probation officer.
8. Not leave the State of North Dakota or Clay County, Minnesota, without permission from the probation officer.
9. Not own, purchase, borrow, possess, use or carry any type of firearm, destructive device, or dangerous weapon unless granted written permission by the Court.
10. Support any dependants.

FILED-CLERK OF DISTRICT COURT

OCT 27 2003  
*[Signature]*  
CASS COUNTY, ND

11. Not gamble or enter any gaming sites without written permission by the probation officer, unless no money is owing in this case.
12. Not use or possess alcoholic beverages nor enter any liquor, beer or wine establishment without written permission from the probation officer.
13. Not use or possess any controlled substance, except as prescribed by a licensed physician.
14. Not knowingly associate with users or traffickers in narcotics, marijuana, or other controlled substances.
15. Submit to a medical examination or other reasonable testing to include breath, blood, or urine samples for the purpose of determining the use of alcohol or controlled substances whenever requested by any probation officer.
16. Submit the Defendant's person, place of residence and vehicle, or any other property to which the Defendant has access, wherever they may be found, to search and seizure, with or without a search warrant, at any time of day or night by: 1) any parole or probation officer; or, 2) any law enforcement officer at the direction of a parole or probation officer; or, 3) any law enforcement officer with a reasonable suspicion of criminal conduct.
17. Pay a fine to the Clerk of District Court and restitution and Court appointed attorney's fees through the office of the State's Attorney of Cass County, North Dakota, in the amount(s) shown in Paragraph 21, below. Said amounts shall be paid in equal periodic installments beginning one month after release from incarceration or being placed on probation, unless a different payment schedule has been specifically ordered by the Court. The equal periodic installments shall consist of 30% of net income. Net income is defined as Defendant's total gross monthly income less deductions for federal income tax, state income tax, FICA, cost of individual health/hospitalization coverage or actual medical expenses, and child support or spousal maintenance obligations actually being paid. In no event, shall the equal periodic installments be less than \$50.00 per month. The total amount owed shall be paid not later than three months prior to the end of probation. Restitution shall be paid in full prior to attorney's fees and fines, if any. An Order that a Defendant make restitution or reparation as a

sentence or condition of probation may, unless the Court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments pursuant to N.D.C.C. § 12.1-32-08(1).

18. Pay a probation supervision fee during the period of probation pursuant to N.D.C.C. § 12.1-32-07 of the North Dakota Century Code to the Division of Parole and Probation. If the criminal offense was committed before July 1, 1999, then the supervision fee shall be \$30.00 per month throughout the supervision period. If the criminal offense was committed on July 1, 1999, or thereafter, then the supervision fee shall be \$30.00 per month for fees due before January 1, 2001, and \$36.00 per month for fees due after January 1, 2001. If the Court ordered a pre-sentence investigation in this matter, you are hereby ordered to pay \$50.00 to the Department of Corrections and Rehabilitation pursuant to N.D.C.C. § 12.1-32-02(10).
19. Undergo any or all of the following agreed-to community constraints and conditions as intermediate measures of the Department of Corrections and Rehabilitations to avoid revocation pursuant to N.D.C.C. § 12.1-32-07(4)(p):
  - a. Community Service - 240 hours of uncompensated hours worked within the community;
  - b. Day Reporting - Report to probation office daily for 90 days;
  - c. Curfew - At their residence from 10:00 p.m. to 6:00 a.m. for 180 days;
  - d. Home Confinement - Required to be at residence 12 hours a day for 90 days;
  - e. House Arrest - Required to be at residence 24 hours a day for 90 days;
  - f. Electronic Monitoring (EMS) - Electronically monitor the Defendant's compliance with curfew, home confinement or house arrest at the Defendant's expense for 90 days;
  - g. Residential/Half-Way House - Contracted housing that provides structures and programming for 120 days;
  - h. Intensive Supervision Program (ISP) - A restrictive program which may include all of the previously stated sanctions for 180 days;
20. Perform the number of community service hours shown in Paragraph 21, below through Restore. Community service

hours are to be completed at the rate of 20 hours every month until the entire obligation is fulfilled, unless otherwise ordered by the Court.

21. The following amounts apply to this case:

Fine \$-0-

Restitution \$ \_\_\_\_\_ (To be determined)

*open for 30 days*

Attorney Fees \$-0-

Comm. Serv. Hours NONE

22. The following conditions of probation are deleted and do not apply to this case:

23. The following additional conditions of probation apply to this case:

Dated this 27<sup>th</sup> day of October, 2003.

By the Court:

*Richard J. Myers*  
\_\_\_\_\_  
District Judge  
East Central Judicial District

State v. Raymond Frederick Radke  
09-03-K-00915  
SA# 03-CR-00603

COUNTY OF CLAY

CERTIFICATE OF SERVICE - CLAY COUNTY SHERIFF

I hereby certify and return that at 1520 hrs. on the 11 day of December, 2009, in the Township of Rice, I attempted service of the within and attached:

- Summons and Complaint, Eviction Summons, Eviction Action Complaint, Eviction Action-Decision and Order, Writ of Recovery, Statement of Claim, Summons, Petition for Child in Need of Protection or Other Services, Notice of Default and Right to Cure Default, Request For Hearing, Supporting Affidavit, Notice of Department of Economic Security Income Information, Your Privacy Rights, Important Statement of Rights, Summons and Petition, Notice of Motion, Motion, Summons, Cancellation Of Contract For Deed, Debt validation Notice, Subpoena, Subpoena Duces Tecum, Notice, Affidavit, Garnishment-Notice to Defendant, Garnishment Summons, Garnishment Disclosure

Other

UPON THE FOLLOWING PARTY: Jerry S. Walker

By Personally Leaving a copy with

By leaving a copy at the place of his usual abode with Jamie Walker a person of suitable age and discretion then residing therein.

I left with personally the sum of \$ garnishment fees.

I left with personally the sum of \$ witness fees for attendance and mileage.

Leaving a true and correct copy with of the Defendant.

By posting a copy on the following location

I have made diligent Search and Inquiry, and am unable to find said Defendant within said County.

Unable to get a response. Notes:

At 15695 Hwy 10 Wenden, Clay County, State of Minnesota

Sheriff's Fees \$ 22.00

Travel \$ 16.00

Total \$ 38.00

Bill Bergquist, Sheriff of Clay County

By David Johnson Deputy Sheriff

Date: 12/11/09

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF CASS

CAN-AM EXPRESS, INC.

PLAINTIFF(S)

VS.

SHERIFFS RETURN

RAYMOND F. RADKE AND JERRY S.  
WALKER

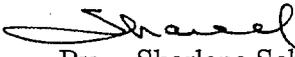
DEFENDANT(S).

-----  
STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

Date received:	December 10, 2003
Action:	Summons and Complaint
Type of Service:	Personal
On whom served:	Raymond Radke
Date & Time served:	December 10, 2003 1:15 PM
Location:	MRCC, Bismarck, ND
Today's date:	December 16,, 2003

Service Fee-----\$	10.00
Mileage Fee-----\$	8.00
Total Fee-----\$	18.00

Steve Berg, Sheriff

  
By Sharlene Schuh  
Deputy Sheriff

IN DISTRICT COURT, COUNTY OF CASS, STATE OF NORTH DAKOTA

Can-Am Express, Inc.,	)	
	)	ANSWER
	)	
Plaintiff,	)	
	)	
vs.	)	FILE NO.
	)	
Raymond F. Radke and Jerry	)	
S. Walker,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, the above-named Defendant, Raymond F. Radke, by and through his attorney, Richard J. Linnerooth, and for his Answer states and alleges as follows:

I.

Denies each and every material allegation contained in the Plaintiff's Complaint except as in hereafter specifically admitted, qualified or otherwise explained.

II.

Defendant admits paragraphs I, II, IV, and VIII.

III.

Defendant is without information or belief regarding the allegations set forth in paragraph III, VII, and X.

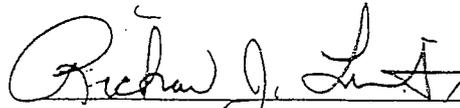
WHEREFORE, Defendant prays for judgment as follows:

1. That the Complaint against Defendant, Raymond F. Radke be dismissed in its entirety.
2. For such other and further relief as the Court may deem

EXHIBIT G

just and fair.

Dated this 20<sup>th</sup> day of January, 2004.



Richard J Linnerooth  
Attorney for Raymond F. Radke  
921 Second Avenue South  
Fargo, North Dakota 58103  
(701) 298-9090

STATE OF NORTH DAKOTA     )     AFFIDAVIT OF SERVICE  
  ) ss     BY MAIL  
COUNTY OF CASS             )

RE: Can-Am Express, Inc. v. Raymond F. Radke and Jerry S. Walker  
File No.

I, Shaila Fife, being first duly sworn and under oath, deposes and states: I am of legal age, a citizen of the United States and not a party to the action herein; that on the 20<sup>th</sup> day of January, 2004, I served the attached:

1.     ANSWER

and by placing a true and correct copy thereof in an envelope addressed as follows:

Mr. Brad A. Sinclair  
Attorney at Law  
10 Roberts Street  
PO Box 6017  
Fargo, ND 58108-6017

and deposited the same with postage fully prepaid in the United States Mails at Fargo, North Dakota for delivery by the United States Post Office Department as directed on the envelope; that there is regular mail service between the place of mailing and the address as directed on the envelope.

  
\_\_\_\_\_  
Shaila Fife

Subscribed and sworn to before me this 20<sup>th</sup> day of January, 2004.

  
\_\_\_\_\_  
Notary Public

RICHARD J LINNEROOTH  
Notary Public  
State of North Dakota  
My Commission Expires Oct. 19, 2007



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

-----  
In Re: ) Chapter 7  
) Case No. 03-61450  
Jerry Walker and Jamie Walker )  
)  
) Adversary No. 4-6014  
Debtors. )  
----- )  
)  
Can-Am Express, Inc., )  
)  
)  
Plaintiff, )  
)  
vs. ) **ORDER**  
)  
Jerry S. Walker, )  
)  
)  
Defendant. )  
-----

Can-Am Express, Inc., having filed with this Court a motion for summary judgment in the adversary proceeding, Walker having objected to the same, a hearing having been held on July 27, 2004, the Court having reviewed the file, the pleadings and being otherwise advised;

IT IS HEREBY ORDERED for all of the reasons contained in Can-Am's brief in support of its motion for summary judgment, this Court hereby enters a non-dischargeable judgment in favor of Can-Am and against Walker in the amount of \$\_\_\_\_\_.

LET JUDGMENT BE ENTERED ACCORDINGLY.

\_\_\_\_\_  
Dennis D. O'Brien