

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
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STATE OF WASHINGTON)
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 Respondent,)
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 v.)
)
 RODDY K. KARTCHNER)
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 Appellant.)
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No. 41701-4-11

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, RODDY K. KARTCHNER, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

I have been incarcerated almost continuously since February 2009. I was recently transferred from the Larch Mountain Correctional Facility to the Washington Correctional Center, in Shelton, Washington. At this time, I have limited access to a law library or other legal reference material, and I have been separated from my personal legal materials for most of my time here at the Shelton facility. For the convenience of the court, my handwritten statement was type-written by a family friend because I have no access to a computer.

ADDITIONAL GROUND 1

Lack of Sufficient Evidence of Criminal Intent

Based on mens rea, theft constitutes “intent to deprive.” Identity theft requires “intent to commit or to aid and abet any crime.” To be guilty of forgery, one must have an “intent to injure or defraud.” Similarly, for money laundering, the element of mens rea is “knowledge” that the property one is attempting to manipulate is the proceeds of unlawful activity. All of the history, circumstances, and facts in this case, as shown by the testimony at trial, is proof that at all times I was acting not with the intent to commit a crime(s), but only with the intent to help in obtaining what I honestly believed to be

legitimate business loans and financing for activities that I have pursued for most of my working life.

A. The \$470,000 Check

If I had any criminal intent, why would I have documented every detail of my activities, even to the point of writing notes all over the emails, bank receipts, bank documents, and correspondence that were admitted into evidence at trial? [Tr. 376, 1285, 1289] If I had any criminal intent, why would I take only \$6000 for myself and my partner (Tom Goodwin) according to our documented business plan *when I had immediate access to the entire \$470,000 that had been deposited in my business account?* [Tr. 1259, 1263] If I had any criminal intent, why would I have requested that the bank manager verify the legitimacy and availability of the funds deposited in my business account and have them undertake all of the security review procedures that only they could do before allowing access to those funds? [Tr. 375-76, 1240-42, 1258-60, 1276-77]

As I testified at trial, I was not willing to open an account in connection with these funds until I could personally verify the details of the transaction and contact the potential investor. [Tr. 1244] To that end, I exchanged numerous emails and had telephone conversations with both my partner Mr. Goodwin and with Mr. Moore (Mohr), all of which were painstakingly documented in every detail. [Tr. 1244] I fully expected there to be a 10-15 day waiting period before we could access the \$470,000 check, and was surprised when the branch manager informed me that there was no waiting period and that the money was immediately available to me. [Tr. 343, 1259, 1263] I assumed, mistakenly in hindsight, that this was because everything was in order. And why would I have documented all of these requests and the steps being taken on the receipts, emails, and related documents as noted above if I had the intent to commit these crimes? [Tr. 1244, 1285-86, 1289] If I had any criminal intent, why would I have used my own company, Covenant Construction and Consulting, Inc., to open the business account into which the \$470,000 check was deposited and provide the bank with all of my personal data, i.e., tax identification number, voided check, social security number, and passport, in doing so? [Tr. 1246, 1248]

The answer to all of these questions is that I believed that the money coming into my business account had been properly obtained through the same procedures I had followed for years in my business affairs.

B. The \$80,000 Alleyne Check

Similarly, there was no evidence showing that I acted with criminal intent with regard to the \$80,000 "Alleyne check." To the contrary, as shown by the testimony at trial, when I learned that a potential investor had been located for another project, I

immediately responded with an email to Mr. Andrew Schneider stating *that I could not and would not proceed with the loan arrangements* until I had received all of the necessary documentation and asking that I be put in direct contact with the potential investor. [Tr. 1341-44] When I received no response to my email, I assumed that Schneider had not complied with my request and that the matter was closed, after which I had no further contact with Schneider. [Tr. 1345] I never saw the last email from Mr. Schneider (the one in which Schneider directed me not to attempt to contact Dr. Alleyne directly), *which I never would have agreed to had I seen the email because I had expressly told Schneider that I wanted to speak to the investor before proceeding with the transaction.* [Tr. 1339-41, 1426-27, 1429] Notably, even though the email had been on the hard drive of my computer with the other emails exchanged with Schneider, there was no evidence that the last email from Schneider had ever been opened and read by me, as the other emails obviously had been.

Later, after my arrest in February 2009, I learned from my wife for the first time that someone had deposited \$80,000 in our joint checking account. [Tr. 1074, 1346] Further, the testimony at trial showed that we had actually filed a fraud report with the bank and that neither my wife nor I had ever accessed or attempted to access the money. [Tr. 1074, 1346-49] It was only later when Detective McClafferty brought up Mr. Schneider that I made the connection between Schneider and the \$80,000 deposit and realized that he (Schneider) had in fact deposited the check in our account. [Tr. 1348-49] I had never heard of Dr. Alleyne before and had absolutely no idea that his check had been forged and deposited into our account. [Tr. 1350] Clearly, there was no evidence at all that I acted with criminal intent with respect to the forged Alleyne check. To the contrary, the evidence showed that I had been seeking verification and documentation of the loan arrangements, that I believed that the transaction had fallen through when the requested verification/documentation was not received, and that I did not learn until months later that the forged check had been deposited in our personal joint checking account.

In summary, all of the convictions based on the incidents relating to the \$470,000 check and the \$80,000 check are not supported by legally sufficient evidence and should be reversed.

Additional Ground 2

Cumulative Prejudice Arising From Denial of Motion For Severance and Prosecutor's Improper Closing Argument

The issues dealing with the denial of my motion for severance and the prosecutor's improper closing argument have been discussed in the appellant's brief. While I do not intend to reargue those points here, this court should also consider the prejudicial impact of these two alleged errors together.

The denial of the motion to sever allowed the prosecutor to present evidence from four separate groups of offenses that occurred at different times and involved different types of victims. The jury ultimately acquitted me of the theft counts relating to Roseanne Cioce (Count 1), Joyce Helms (Count 2), Alan Moon (Count 3), and Don Rutherford (Counts 6-7), but convicted me of the twelve remaining counts based on the deposit of the \$470,000 check, the forged check from Dr. Alleyne, and the tampering charges.

The prosecutor's improper comments in his closing argument focused on the only element at issue in all of the offenses – criminal intent or the lack thereof. In particular, the prosecutor's statements that "society requires you to accept responsibility for your actions" and that "when it appears that you are about to do something illegal, you have an obligation to determine if that act is illegal" invited the jury to convict me even if they believed *only* that I had acted irresponsibly or had been duped into doing the things I did. Indeed, these improper comments went to the very essence of my defense to the charges for which I was convicted -- that I had been used by Moore, Schneider, perhaps even by my business partner, Tom Goodwin, and by other individuals unknown to me, who were never investigated by the police, and duped into doing the things that resulted in the charges against me.

Even if the trial court's refusal to sever the charges and the prosecutor's improper remarks could be viewed as harmless error individually, the potential for prejudicial reversible error when considered together cannot be disregarded. These errors clearly had an impact on the way the case was presented by the prosecution and the jury's consideration of the only real issue in the case – the presence or lack of intent to commit the offenses.

Conclusion

For all of the reasons discussed in the appellant's brief and in this statement of additional grounds for review, the convictions in this case should be reversed.

Date: 11/15/11

Signature: 
Roddy K. Kartchner