

NO. 34397-9

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION III

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STATE OF WASHINGTON

PLAINTIFF/RESPONDENT,

V.

FRANCISCO GUTIERREZ-VALDOVINOS

DEFENDANT/APPELLANT

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BRIEF OF RESPONDENT

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## **STATEMENT OF THE CASE**

### **1. Procedural History**

On April 23<sup>rd</sup> 2015, The Defendant/Appellant, Francisco Gutierrez-Valdovinos, was charged in Okanogan County Superior Court 15-1-00133-5 with one count of Theft in the First Degree, alleged to have occurred on or about May 11<sup>th</sup> 2015. The date of violation was later corrected in the Jury Instructions to the correct date of violation, April 19<sup>th</sup> 2015.

### **2. Explanation of Terms ‘Trial Date’ and ‘Readiness Hearing’**

In Okanogan County Superior Court, a ‘trial date’ is not necessarily the day that a trial will begin, but is rather an indicator of the earliest a trial could begin. There is one Superior Court Judge and one available courtroom for jury trials. The “trial date” marks the beginning of two business weeks when a trial could possibly proceed. Multiple cases are therefore scheduled preliminarily, to begin on a single day. A “readiness hearing” is a date, typically held the day before a “trial date” where case scheduling for the upcoming two trial weeks is discussed. When multiple cases remain scheduled for the same day, then on the morning of day of trial, the Court will conduct an additional “readiness

hearing” to further schedule cases and de-conflict trial dates. Therefore, references to “trial date” in this brief or by the trial court do not necessarily refer to a particular set date, but generally refer to the commencement of a two week trial period.

### **3. Pre-Trial Hearings**

The Defendant was arraigned on May 4<sup>th</sup> 2015, with a scheduling order setting an omnibus hearing for June 29<sup>th</sup>, 2015, a status conference date of July 6<sup>th</sup> 2015 and a trial date of July 21<sup>st</sup> 2015. The Outside Date (speedy trial expiration) was calculated at August 3<sup>rd</sup> 2016. *See Exhibit A: (5/4/15 Order Setting Dates)*

On July 6<sup>th</sup> 2016 the Defendant scheduled two status conference dates of 7/20/2015 and 8/24/2015 and waived his speedy rights. [CP 15] At the July 20<sup>th</sup> status conference, the Defendant scheduled his case for a jury trial, scheduled for a trial date of September 1<sup>st</sup> 2015 with an outside date of November 30<sup>th</sup> 2015. [CP 15]

On August 24<sup>th</sup> 2015, the Defendant failed to appear for a pre-trial status conference. The previous trial date was stricken. One week later, on August 31<sup>st</sup> 2015, the Defendant appeared, and new jury trial date was scheduled to begin on November 10<sup>th</sup> 2015 trial week, with an outside date of December 30<sup>th</sup> 2015. [CP 21]

On November 6<sup>th</sup> 2015, the jury trial date was moved within speedy trial expiration to commence on the trial week of December 1<sup>st</sup>, 2016. [CP 36] On December 1<sup>st</sup> 2015, after discussion about the Defendant's other Court obligations, the Defendant moved to continue the trial to January 5<sup>th</sup> 2017, with a new outside date of February 4<sup>th</sup> 2016. [CP 43] and *Exhibit B: (Declaration of Prosecutor Drangsholt.)*

On January 6<sup>th</sup> 2016, the court granted a State's trial continuance because of the unavailability of the investigating officer. A new trial date was set at February 6<sup>th</sup> 2016, with a new outside date of March 3<sup>rd</sup> 2016. [CP 64 and CP 66]

#### **February 10<sup>th</sup> 2016 Continuance**

On February 10<sup>th</sup> 2016, at a readiness hearing, the trial court decided to try another case where another defendant was in custody, shared the same speedy trial date, and was concurrently scheduled for February 10<sup>th</sup> 2016. This other case involved the Defendant's Attorney, Michael Prince. [RP 46:7-19] The court then, on its own motion moved the Defendant's trial to March 1<sup>st</sup> 2016, and recalculated the outside date as March 31<sup>st</sup> 2016. [CP 82] Neither the Defendant, State, or Defense Attorney objected to the new outside date calculation of March 31<sup>st</sup> 2016.

#### **Final Continuances and Trial Setting**

There was one additional State's continuance on March 7<sup>th</sup> 2016 for an unavailable witness, [CP 91 and CP 92], and an additional defense continuance on March 21<sup>st</sup> 2016. *See Exhibit C: 3/21/16 Clerk's Minutes.* The jury trial proceeded on April 5<sup>th</sup> 2016.

#### **4. Jury Trial.**

##### **A. Summary of the State's Case**

The State presented evidence that showed that the Defendant cashed a fraudulent \$6,000 check at a convenience store 'La Milpa.' That this check was an older out of circulation check that rightfully belonged to the "Alta Vista Golf Resort," and that nobody at the Golf Resort had written a check in that amount to the Defendant.

##### **B. Summary of Witness Testimony**

###### **1. Officer Michael Robbins**

Officer Robbins of the Brewster Police Department testified that he spoke with Ernesto Santos, the owner of 'La Milpa,' a convenience store in the city of Brewster. Ernesto Santos told the Officer that someone (later identified as the defendant in a photo montage) had provided La Milpa with a fraudulent \$6,000 check for cashing. After cashing the check for the Defendant, Ernesto Santos learned from Umpqua Bank that the cashed check was invalid. Officer Robbins then obtained copies of the check, which contained the Defendant's driver's license number. The

witness Ernesto Santos identified the Defendant in a photo montage. [RP 142:14 – 148:11] Officer Robbins testified further that he spoke with the rightful owner of the check, and finally, spoke with the Defendant. Officer Robbins testified that the Defendant's Department of Licensing photograph matched that of the Defendant. [RP 148:10 – 152:23]

## **2. Parker Barth**

Parker Barth testified that the Defendant was not on the payroll of the company, Alta Vista Golf Resort. Parker Barth testified that during an accounting in April of 2015, he learned that there were multiple company checks with unknown signatures that had been cashed. The cashed checks were older checks that were out of circulation, and contained signatures that were neither his, nor those of the three other employees that would be authorized to sign checks. [RP 153:20 – 158:13] Parker Barth testified that the Defendant was not on the payroll, and was not a current or past employee. [RP 158:10 – 162:8]

## **3. Jose Santos Sr. and Ernesto Santos Jr.**

Jose Santos Sr. testified that he was the individual that cashed the \$6,000 check for the Defendant. Jose Santos Sr. spoke about the procedures used in his store, La Milpa, for documenting individuals who cash checks. [RP 170:21 – 179:22]

Ernesto Santos testified that he is familiar with the fraudulent check in question. That after his father, Jose Santos cashed the check for the Defendant, that Ernesto Santos attempted to cash the check, but learned that it was fraudulent. Ernesto Santos then testified that he reported the event to the police officers. [RP 180:10 – 186:23]

#### **4. Officer Ron Oules**

City of Brewster Officer Oules testified that he conducted this investigation along with Officer Robbins. Because Officer Robbins was a new police officer and on probationary status, Officer Oules was also monitoring and assisting him during the investigation. [RP 188:10 – 189:23]

Officer Oules testified that he and Officer Robbins drove to the Defendant's home. The Defendant invited the Officers inside, and Officer Oules questioned the Defendant regarding a recently cashed check. The Defendant admitted to recently cashing a \$6,000 check. [RP 190:1 - 193:14]

Officer Oules asked the Defendant how he initially received this check. Officer Oules testified that the Defendant stated that he received the check in the mail. Officer Oules testified that the Defendant avoided

answering a number of more specific questions, but tended to answer broader questions with more of a free response. [RP 193:15- 194:9]

Officer Oules testified that the Defendant stated that the check in question came from the Alta Lake Golf Course. Officer Oules knew that the Defendant had never worked for the Golf Course. Officer Oules asked the Defendant why the Defendant received a check. The Defendant replied that he had worked there back in 2003 or 2004, and that the Golf Course must have decided to send him a check. That the Defendant had stated that he had received prior checks in the mail just like this, and that he deposited this specific check at La Milpa. Officer Oules testified that the Defendant wouldn't tell him where he cashed several other checks. That the Defendant stated that he wasn't sure why the Golf Course would send him wages, that it might be for wages, or they just felt like it. [RP 194:10 – 197:8]

Officer Oules asked the Defendant what he did with the money. Officer Oules stated that the Defendant was really evasive, and just wouldn't answer. Officer Oules asked again how the Defendant could have spent such a large amount of money in such a short time frame. The Defendant first stated that he spent it on clothing, but when pressed further admitted that he gambled the money away. [RP 197:11 – 198:3]

## ARGUMENT

A. **On December 1<sup>st</sup> 2015 The Defendant Voluntarily Waived Speedy Trial and the Court Granted a Defense Requested Continuance.**

The Defense brief indicates that the record does not support the trial court's basis to continue the trial on December 1<sup>st</sup> 2015.

The State reviewed the verbatim report of proceedings with this case, listened to an audio recording of the proceedings, and then reviewed the court docket associated with the proceeding. On this date there was a break in calling cases, and the Defendant was recalled after initially discussing scheduling conflicts with his attorney Michael Prince. After being recalled, the Defendant voluntarily waived speedy trial, and requested a continuance, which the Court granted. The State believes that this challenge on appeal is the result of a transcription error in the VRP for this case, where the complete record of December 1<sup>st</sup> 2015 was mistakenly omitted. *See Exhibit B: (Declaration of Prosecutor Drangsholt).*

B. **The February 10<sup>th</sup> 2016 Continuance was within Speedy Trial, Supported by the Record, and Did not Prejudice the Defendant.**

On Wednesday, February 10<sup>th</sup> 2016, at a readiness hearing, defense counsel Michael Prince and the court discussed case priority. The court noted that another one of Michael Prince's clients was in custody, and desired that that defendant's trial proceed first. The court indicated that it did not want to bring the Defendant (Gutierrez-Valdovinos) around in the next few days for an unnecessary hearing, because it appeared that an in-custody defendant's case would proceed to trial. The Defendant's attorney, Michael Prince noted that the other matter was not expected to settle, and would probably proceed to trial. [RP 46:1 –47:7]

1. **The Continuance from 2/10/16 to 3/1/16 was within the Defendant's time for Trial**

The trial date was rescheduled to March 1<sup>st</sup> 2016, with a new speedy trial date calculated at March 31<sup>st</sup> 2016. It is noteworthy that prior to this speedy trial calculation, the Defendant's outside date was calculated at March 3<sup>rd</sup> 2016. Defense counsel did not object to the new outside date calculation, and all parties agreed to the continuance.

2. The Basis for the Trial Continuance was Properly Stated by the Trial Court.

On appeal, a trial court's grant or denial of a motion for continuance will not be disturbed absent a showing of manifest abuse of discretion. *State v. Miles*, 77 Wn.2d 593, 597–98, 464 P.2d 723, 726 (1970).

The trial court on February 10<sup>th</sup> 2016 enquired into the likelihood of a concurrent case with the Defendant's attorney going to trial. Defense counsel indicated that it likely would. Okanogan County has only one available courtroom and judge to conduct jury trials. The trial court indicated that it was faced with a situation where there were two individuals with identical outside dates, and that priority would be given to the individual who was incarcerated. [RP 47:15 - 48:19]

Although the Defendant's trial date was not extended beyond the previous speedy trial calculation, the Defendant is arguing on appeal here that the trial courts continuance and new outside date calculation prejudiced him.

A continuance outside of speedy trial is proper, even if it extends a Defendant's time for trial if a Courtroom or party is not available. *State v.*

Cannon, 130 Wn.2d 313, 327, 922 P.2d 1293, 1300 (1996). *See also*, State v. Raper, 47 Wn. App. 530, 536, 736 P.2d 680, 684 (1987).

There is no showing that the decision by the court to try one case over another was an abuse of discretion. The court was faced with a situation where two individuals with the same outside date were scheduled for trial. Because there is a single courtroom available, only one case could proceed at that time. In addition, the Defendant's attorney Michael Prince represented both individuals, and could only be expected to appear at one trial at a time. The basis for the continuance was appropriately stated on the record per CrR 3.3 (f) (2).

3. The Defendant Suffered No Prejudice from the 2/10/2016 Trial Continuance.

During the pretrial hearings, there was no objection to trial calculations per CrR 3.3 (d) (3). The Defendant called no witnesses at trial, and had never listed any witnesses on their witness list. There was no expert testimony or alibi defense. The record is devoid of any information that suggests that the Defendant's case scheduling impacted the presentation of his defense or altered the Defendant's trial strategy. The Defendant was not prejudiced by the case scheduling.

C. **The Officer's Description of the Defendant's Responses to Questioning was not Improper**

The Defendant argues that it was impermissible opinion testimony when Officer Oules explained that the Defendant's responses to some questions appeared evasive. The Defendant argues that this was manifest Constitutional error. The Defendant is incorrect.

1. **The Officer's Characterization was not Improper Lay Witness Opinion Testimony.**

Evidence Rule 701 permits a lay witness to testify to opinions, or inferences when they are rationally based on the perception of the witness and helpful to the jury. If the opinion relates to a core element that the State must prove, then there must be a substantial factual basis supporting the opinion. *State v. Fallentine*, 149 Wn. App. 614, 624, 215 P.3d 945, 950 (2009).

In the present case, Officer Oules testified regarding a lengthy interview of the Defendant, inside of the Defendant's home. Officer Oules testified that he asked the Defendant a number of questions, and that the Defendant generally responded to all of these questions, but in varied ways. To some broad questions regarding how he acquired the check, the Defendant gave ready answers. However, to more pointed questions about

when he acquired the checks, and what he did with the money, the Defendant either did not respond, or was evasive. The Defendant initially said he used the money to buy clothing, but later said that he gambled it away. [RP 191 – RP 193]

The Officer's testimony regarding the course of the interrogation was not a comment on the ultimate issue of guilt or innocence of the Defendant. The Officer testified about questions posed to the Defendant, and the Defendant's responses to the individual questions. "A lay witness may testify as to observations gleaned from his or her senses as well as to inferences arising from those perceptions. *State v. Blake*, 172 Wn. App. 515, 519, 298 P.3d 769, 771 (2012).

Here, Officer Oules did not express his opinion to the jury regarding his opinion on the Defendant's ultimate guilt, or even an opinion on a core element that the State had to prove. The specific testimony that the Defense finds objectionable appears to be the Officer's testimony that some of the Defendant's responses appeared "evasive" regarding how the Defendant spent \$6,000 in such a short period of time. While this line of questioning, and response was probative of the Defendant's control over the money- it was not a core element that the State had to prove for the crime of theft. The Officer's explanation of the Defendant's evasive response was actually explained and clarified for the benefit of the jury.

The Defendant initially did not respond to a question, then he said he spent an unusually large amount of money on clothing, and then he finally stated that he spent the money gambling. The Officer's account of the Defendant's responses appeared to be a reasonable and full explanation of the Defendant's response to questioning, and not an opinion on the Defendant's guilt. It was not error for Officer Oules to fully explain the Defendant's statements in context, and for the Officer to explain why he asked more pointed questions, thus providing the jury with a full account of this conversation.

Deputy Oules statements were rationally based on his perceptions as a witness, they were helpful in providing the jury a clear understanding of the conversation. Specifically, these were the Defendant's responses indicating control and use of stolen funds. Deputy Oules did not cloud his statement on the Defendant's responses under the guise of scientific, technical, or specialized knowledge, he merely explained what he heard and his rational perception of the manner in which the Defendant replied.

2. The Officer's Characterization of the Defendant's Responses was not Manifest Constitutional Error

The Defense argues that Deputy Oules opinion testimony was improper, and amounts to manifest Constitutional Error. The Defense

relies heavily on *State v. Kirkman*, a case where an Officer essentially commented on indicators of truthfulness of the child victim in a sex case.

Ultimately, in that case the Washington Supreme Court found that:

“Manifest error” requires a nearly explicit statement by the witness that the witness believed the accusing victim. Requiring an explicit or almost explicit witness statement on an ultimate issue of fact is consistent with our precedent holding the manifest error exception is narrow. *WWJ Corp.*, 138 Wash.2d at 603, 980 P.2d 1257.

*State v. Kirkman*, 159 Wn.2d 918, 936, 155 P.3d 125, 135 (2007).

In our case, at most there is opinion testimony regarding whether or not the Officer believed the Defendant was answering questions as fully and directly as he could. The Defense argues that the Officer’s characterization carried special weight with the jury. The Defense argues further that the Officer’s testimony obfuscated a plausible excuse and explanation. That explanation was that the Defendant correctly received a \$6,000 check, roughly ten years after being employed. This despite no record of the Defendant’s employment at the business. *Opening Brief of Appellant*, pg. 21. The leap is too great. There were multiple witnesses that testified regarding the receipt and conversion of the stolen check, and the process of the Defendant cashing that check. Other testimony was presented from the victim, an operator of the golf course, who stated that he never paid the Defendant or had reason to. Officer Oule’s

characterization of the Defendant's responses was not an explicit statement on the ultimate issue or even a statement on the credibility of the Defendant or the credibility of his substantive explanation. His testimony was not manifest error.

D. The Defendant Received Effective Assistance of Counsel.

Our courts strongly presume that trial counsel's representation was effective. *State vs. McFarland*, 127 Wn.2d 322, 899 P.2d 1251 (1995). The burden is on the Defendant to overcome the strong presumption of competency and to show deficient representation. *McFarland* at 335. The presumption of effective assistance cannot be rebutted if trial counsel's conduct can be characterized as legitimate trial strategy or tactic. *State v. Mak*, 105 Wn.2d 692, 731, 718 P.2d 407 (1986), cert. denied, 479 U.S. 995, 107 S.Ct. 599, 93 L.Ed.2d 599 (1986); *State v. Lord*, 117 Wn.2d 829, 885, 822 P.2d 177 (1991).

The defendant must show that (1) defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced the defendant, i.e., there is a reasonable probability that, but for counsel's errors, the result of the proceedings

would have been different.” *McFarland*, 127 Wn.2d at 334-35; *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct.2052, 80 L.Ed.2d 674, reh’g denied, 467 U.S. 1267, 104 S.Ct.3562, 82 L.Ed2d 864 (1984).

The first prong requires a showing of errors so serious that counsel was not functioning as “counsel” guaranteed by the Sixth Amendment. The second prong requires a showing that counsel’s errors were so serious as to deprive the defendant of a trial whose result is reliable. *Strickland* at 694.

A defendant is not denied effective assistance of counsel where the record as a whole shows that he or she received effective representation and a fair trial. *State v. Smith*, 104 Wash.2d 497, 511, 707 P.2d 1306 (1985). Rather, the defendant must make “an affirmative showing of actual prejudice” demonstrating a manifest constitutional error. *McFarland* at 334, 338 (n. 2, citing, RAP 2.5(a)(3)).

In determining whether defense counsel was deficient, the court must make every effort to eliminate the distorting effects of hindsight and must strongly presume that counsel’s conduct constituted sound trial strategy. *Strickland 466 U.S. at 689*, see also, *State v. Brett*, 126 Wn.2d 136, 198, 892 P.2d 29 (1995).

Here, the Defense on appeal states “No sound trial strategy can explain defense counsel’s complete failure to object during the deputy’s

impermissible opinion testimony [sic] the trial court would surely have sustained objections to the testimony.” *Opening Brief of Appellant*, pg. 24.

There is no guarantee, or showing of probability that the trial court would have sustained an objection on grounds that the Officer’s testimony was impermissible opinion testimony. If such an objection was made, it is likely that the trial Court would have permitted the Officer to explain what questions the Officer asked the Defendant, what the Defendant’s responses were to those questions, and why additional questions were asked when there were incomplete or vague responses to original questions.

The Defense argues that this failure to object was particularly unreasonable because there was no cross examination of the Deputy. *Id. at 26*. However, comparing Officer Oule’s written statement with Officer Oule’s testimony at trial, it appears that the Officer actually did not fully explain to the jury all of the Defendant’s statements on direct examination. According to Officer Oule’s report, the Defendant stated that he had received previous paychecks in the amount of \$3,000 and \$4,000 from the golf course over a specific time period, over the last five months. The Defendant also apparently told Officer Oules that it was possible the golf course gave him \$6,000, sort of like a refund check from an insurance company. *See Exhibit D: (Supplemental Report from Officer Oules)*.

The Defense attorney's decision to not object to Officer Oules characterization could very well have been because it was not actually impermissible opinion testimony. If there were objections, even if sustained, it would likely invite Officer Oules to explain in greater detail the Defendant's responses. These responses would likely have included the Defendant's statement that he received several checks over a period of about five months. That kind of response could be particularly damaging because the victim testified earlier that multiple amounts of money had gone missing. This would suggest to the jury that that the Defendant was possibly responsible for multiple thefts, and would likely not have been in the best interest of the Defendant.

Objection to the characterization of the Defendant's testimony and cross examination would also likely elicit further details about the Defendant's explanation of why a company would email him a large sum of money. The Defendant's explanation to the Officer was it could be a situation akin to an insurance company giving a refund, not unlike when the Defendant received \$88 from an insurance refund check.

Trial counsel may have understood that the Defendant's explanation would appear absurd to the jury and harm overall trial strategy. Trial counsel also may have understood that cross examination of the Deputy, and sustained objections on grounds of personal opinion,

would invite the Prosecutor to elicit further details about the Defendant's explanation. Namely, that he received previous checks in the amount of \$3,000 and \$4,000 from the golf course in the last five months.

The jury had already heard that a number of thefts had likely occurred over the course of a business quarter, and could have made the inference that the Defendant was responsible for additional thefts, over the specific period of five months.

The fact that the trial attorney chose not to question Officer Oules, or make objections which would invite more detailed testimony makes rational sense when viewing the closing argument. Trial counsel argued that the Defendant, while he unquestionably used the funds of another, did so without the intent to deprive. Essentially arguing that it was a good faith mistake to cash the money. [RP 234 – 237] Cross examining Officer Oules would very possibly have had the effect of eliciting additional statements from the Defendant, which tend to show a pattern of thefts and an intent to deprive. This would undercut the strongest defense available.

A cross examination of Deputy Oules, without the ability to impeach him, would have simply allowed the Deputy to reiterate facts favorable to the State's case. In the present case, when the entire record is considered, it is apparent that trial counsel's alleged errors amounted to a consistent and competent trial strategy. An alternative trial strategy-

arguing that the Defendant was entitled to \$6,000 for services rendered ten to eleven years earlier, would probably have been less convincing.

In the present case, the Appellant has failed to demonstrate that counsel's representation was deficient in any way. Appellant argues that the volume of cross examination was not sufficient. However, Appellant fails to point out that defense counsel did conduct a more detailed cross exam of witness Parker Barth whose memory and motive could be attacked.

There is no reasonable probability that, but for counsel's decision to make a questionable objection, that the result of the trial would have been different. The Defense has failed to demonstrate that trial counsel's performance was not based on legitimate strategy or that the allegedly deficient performance prejudiced the Defendant. Both of these two prongs must be met for an ineffective assistance argument to prevail. *See State v. McFarland*, 127 Wn.2d 322, 334-335, 899 P.2d 1251 (1995).

Because the Defendant cannot demonstrate that trial counsel's actions were not based on legitimate trial strategy, or that any alleged error affected the outcome of the trial, this court should affirm the Appellant's convictions.

## CONCLUSION

For the aforementioned reasons, the State asks that this Court affirm the Defendant's conviction.

Dated this 23<sup>rd</sup> day of May, 2017

Respectfully Submitted:

  
\_\_\_\_\_  
Leif Drangskolt, WSBA #46771  
Deputy Prosecuting Attorney  
Okanogan County, Washington

Exhibit A:

5/4/15 Order Setting Dates



## Exhibit B:

### Declaration of Prosecutor Drangsholt



6. That it appears that the during the transcription of the recording, that the transcriptionist likely stopped listening to the recording after the initial break at 8:36.40, and assumed that the Defendant's case was not later recalled.

DATED this 23<sup>rd</sup> day of May, 2017.

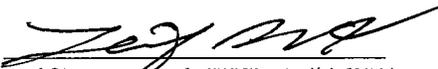
  
Leif Drangsholt WSBA #46771  
Criminal Deputy Prosecutor

Exhibit C:

3/21/16 Clerk's Minutes

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FILED  
Okanogan County Clerk  
Okanogan County, WA  
3/21/2016

IN THE SUPERIOR COURT OF OKANOGAN COUNTY

State of Washington Plaintiff	NO. 15-1-00133-5
V GUTIERREZ VALDOVINOS, FRANCISCO JAVIER Defendant	CLERK'S CRIMINAL MINUTES

Defendant:  Present  Not Present  In Custody  Out of Custody  Absence Excused

<b>JUDGE:</b> <input checked="" type="checkbox"/> C CULP <input type="checkbox"/> H RAWSON <input type="checkbox"/> _____ (VIS JUDGE) <input type="checkbox"/> _____ (PRO TEM)	<b>PRESENT PARTICIPANTS:</b> PROSECUTOR: CALDWELL, JOSEPH M. DEFENSE ATTY: PRINCE, MICHAEL STEPHEN INTERPRETER: _____ CLERK: _____
<b>COUNSEL:</b> <input type="checkbox"/> WAIVED <input type="checkbox"/> REQUESTED <input type="checkbox"/> APPOINTED <input type="checkbox"/> DENIED <input checked="" type="checkbox"/> PRESENT	<b>ON FOR:</b> _____ <b>WARRANT ID</b> _____ <input type="checkbox"/> PRELIMINARY <input type="checkbox"/> 3.5/3.6 HEARING <input type="checkbox"/> ARRAIGNMENT <input type="checkbox"/> MT TO CONT. <input type="checkbox"/> OMNIBUS <input type="checkbox"/> PLEA <input type="checkbox"/> SENTENCING <input type="checkbox"/> STATUS CONFERENCE <input type="checkbox"/> REVIEW OF: <input type="checkbox"/> BAIL HEARING _____ <input type="checkbox"/> RESET DATES _____ <input type="checkbox"/> REVIEW OF COND. _____
<b>ACTION BY THE COURT:</b> <input type="checkbox"/> ADVISED OF RIGHTS <input type="checkbox"/> PROBABLE CAUSE ESTABLISHED <input type="checkbox"/> PC NOT ESTABLISHED <input type="checkbox"/> REMANDED TO DISTRICT COURT <input type="checkbox"/> BAIL SET \$ _____ <input type="checkbox"/> PERSONAL RECOGNIZANCE AUTHORIZED <input type="checkbox"/> MOTION TO CONT <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED <input type="checkbox"/> BENCH WARRANT ISSUED-BAIL: \$ _____ <input type="checkbox"/> BENCH WARRANT QUASHED <input type="checkbox"/> AFFIDAVIT OF PREJUDICE FILED	<b>HEARING DATES SET:</b> ARRAIGNMENT: _____ OMNIBUS: _____ STATUS CONFERENCE: _____ READINESS: <u>04-04-16</u> REVIEW: _____ TRIAL DATE: <u>04-05-16</u> OUTSIDE DATE: _____ OTHER HEARING: _____

<input type="checkbox"/> DEFENDANT ENTERED NOT GUILTY PLEA TO ALL COUNTS <input type="checkbox"/> DEFENDANT ENTERED GUILTY PLEA <input type="checkbox"/> COURT ACCEPTED PLEA AGREEMENT AND STATEMENT OF PLEA ON GUILTY <input type="checkbox"/> COURT FINDS GUILTY ON PLEA <input type="checkbox"/> COURT SIGNED: <input type="checkbox"/> JUDGMENT AND SENTENCE <input type="checkbox"/> SUSPENDED SENTENCE <input type="checkbox"/> OTHER: _____
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VERBAL ORDER FROM THE BENCH: \_\_\_\_\_

SPECIAL MINUTES: leave set - 2nd week / Strike 3-29-16

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Exhibit D:

Supplemental Report from Officer  
Oules

## Supplement

### Supplemental Report

Case #: B15-0324

New Victim (s):

New Suspect (s):

New Witness (s):

New Evidence:

Investigation: I was assisting officer Michael Robbins on this investigation as his FTO. I was not involved with the first part of the investigation when this was reported as Michael was working with Lt. Hook. (See Hooks/Robbins report).

I was aware Francisco had positively been identified as the person who cashed the stolen check.

On 042115 we went to Francisco's residence to attempt to contact him, and Michael left a business card when no one answered the door. A short time later Francisco called our office saying he was home. We contacted Francisco and Michael told him we needed to talk him. Francisco stepped back inside the house from the open door and asked us to come in as he gestured with his left hand in a inward waving motion. Michael asked Francisco to step out to talk to us, and I interjected and accepted Francisco's offer to come inside. Francisco was closing the door behind himself as he was coming out, and he went back inside leaving the door open as he again gestured with his hand to come in. Once inside I told Francisco he could sit down if he wanted to, but we just needed to find out what was going on with the check he cashed for \$6,000.

Francisco sat on the couch near the front door while we remained standing. I initially talked to Francisco and then obtained a digital statement from him. (See statement for details.) The statement was very similar to the original conversation I had with Francisco. During the original conversation with Francisco the phone rang and he asked if he could get it. Francisco talked to a unknown person and was telling them in Spanish he was talking to the police, and that he had let them in the door. During the statement I sat next to Francisco on the couch while we talked. I told Francisco he was not under arrest and he did not have to talk to me and he said he understood.

Francisco claimed he had received the check in the mail recently as he had two others over the last five months. Francisco could not remember exactly when he received the last check but had cashed it within a day or two of receiving it.

Francisco claimed to have cashed the previous checks also, but would not tell me where he cashed them. Francisco said there was no note, or explanation as to why he received the checks. Francisco said he used to work at the golf course in 2003- 2004, and claimed maybe that was why they mailed him a check.

Francisco claimed it was like a insurance refund check when he cancelled his insurance he got for \$88. I pointed out that there is a big difference for a cancelled Ins. refund than a \$6,000 check for no apparent reason. Francisco said it had to be for him because it was made out to him. Francisco also agreed that it did not seem normal for him to just randomly receive a check for \$6,000 dollars with no explanation. Francisco claimed he has received two previous checks \$3,000 and \$4,000 from the golf course in the last five months.

When I asked about where that money went Francisco claimed he "Wasted it". Francisco would not tell me how he wasted it and was obviously evading where the money was and what he had spent it on. I asked Francisco several more times where all the money went he got and he would only say he "Wasted it". Francisco was very evasive and not wanting to answer how he "wasted" the latest \$6,000 in

a few days. Francisco eventually claimed he gambled it at the casino in Wenatchee and bought only a couple pair of pants and some clothes. Francisco would not show us what clothes he bought, only that they were in the closet. Francisco would not get the clothes for us and told us we could go get them. When we attempted to identify the clothes he bought with the stolen money he refused to help us and only replied "just take the whole closet". When I pointed out the fact the check was stolen, not mailed, and had not been used for years Francisco just replied "it was mailed to me in my name". I placed Francisco under arrest for Theft 1st Degree and put handcuffs on him. Michael handled the search and custody of Francisco.

Disposition: Francisco arrested and booked into OCJ for Theft 1st degree.

I certify or declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

I certify or declare that the foregoing statement is true and correct under the penalty of perjury under the laws of the state of Washington.

Date, Time, Reporting Officer

Ron Oules  
Brewster Police Department  
Wed Apr-22 10:43:13 PDT 2015

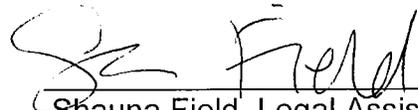


PROOF OF SERVICE

I, Shauna Field, do hereby certify under penalty of perjury that on the 24th day of May, 2017, I provided email service to the following by prior agreement (as indicated), a true and correct copy of the Respondent's Brief:

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**May 24, 2017 - 1:35 PM**

**Transmittal Information**

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**Appellate Court Case Title:** State of Washington v. Francisco Gutierrez Valdovinos  
**Superior Court Case Number:** 15-1-00133-5

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**Comments:**

Good afternoon, the prosecuting attorney handling this appeal is Leif Drangsholt, but Karl Sloan is listed as the involved attorney. Can that please be updated? Thank you!

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