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NO. 72067-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

IVAN DANIEL LJUNGHAMMAR and
DEBORAH JEAN LJUNGHAMMAR,

Appellants.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE TIMOTHY A. BRADSHAW

BRIEF OF RESPONDENT

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B. Were appellants' Fifth Amendment rights violated by evidence and argument that they failed to provide financial records or an accounting to the victim's guardian when the guardian was not a state actor and when neither appellant asserted their right to remain silent?

C. Did the trial court err in denying appellant Ivan Ljunghammar's motion for a mistrial for violation of his right to remain silent after the State argued that appellants had failed to provide financial records or an accounting to the guardian when the comments did not implicate appellant's rights under the Fifth Amendment?

D. Should the exceptional sentences imposed be reversed because one of the two grounds for the sentence was improper when the second ground was proper and the court expressly found that either ground would support its sentence?

E. Did the trial court abuse its discretion when it ordered the appellants' restitution obligations to be joint and several when appellants acted and benefitted equally as accomplices in committing their crime?

II. STATEMENT OF FACTS

Shelarose Ljunghammar was born October 19, 1928. 2/12/14 RP 4.[1] She had four sons, Ralph, Keith, Daryl, and Ivan. 2/10/14 RP 48-49. Her husband of fifty years, Daniel Ljunghammar, died in 1998. 2/12/14 RP 74. Shelarose began showing signs of dementia in 2002 or 2003. 2/10/14 RP 55; 2/12/14 RP 77-79.

On July 13, 2007, Shelarose signed a document giving Ivan power of attorney over her property and finances. The document named Deborah Ljunghammar, Ivan's wife, as the alternate in the event Ivan was unable or unwilling to serve. The power of attorney made Ivan a fiduciary and limited his ability to make gifts or loans of Shelarose's property to himself or others. State's Exhibit 1. Ivan and Deborah did not tell Ralph or Daryl about the power of attorney. 2/10/14 RP 71-72; 2/12/14 RP 50-51, 97-98.

[1] Verbatim report of proceedings at page(s) indicated.

Shelarose owned several rental properties in either her own name or in trust, 2/10/14 RP 51-53, 2/12/14 RP 6, 72-75, and in 1996 Ivan and Deborah began helping her maintain the properties and collect the rents. 2/10/14 RP 56-58; 2/12/14 RP 76-77. After Shelarose granted Ivan power of attorney Deborah began keeping Shelarose's books and writing checks against her bank accounts. Ralph, Daryl, and Daryl's wife Kerie saw Deborah helping Shelarose with her books and writing checks from Shelarose's check book. 2/12/14 RP 4-5, 44-45, 79-81; 2/13/14 RP 29-30.

Ivan and Deborah began to isolate Shelarose from Ralph, Keith, Daryl and their families. They prevented her from attending family functions. 2/10/14 RP 65-66; 2/12/14 RP 99-101; 2/13/14 RP 27-28. They concealed information from Ralph and Daryl about her admission to the hospital after a fall. 2/10/14 RP 69-70; 2/12/14 RP 94-95; 2/13/14 RP 28-29. They changed the locks on the family home where she lived to prevent the brothers from entering. 2/10/14 RP 73-74; 2/12/14 RP 52, 101-02. They forced Keith, who was unemployed and had stayed with Shelarose at her home from time to time throughout his life, to move out of her home by demanding that he pay $600 per month in rent. 2/12/14 RP 51-52. When Daryl, Ralph or Kerie attempted to telephone Shelarose they

found their phone numbers were blocked or their calls were screened by Ivan and Deborah. 2/10/14 RP 72-74; 2/12/14 52-53, 101; 2/13/14 RP 27.

In September of 2009 Daryl and Ralph discovered that Shelarose was no longer living at her home. 2/10/14 RP 75; 2/12/14 RP 102. When Daryl asked Ivan where she was Ivan was evasive. 2/12/14 RP 102-03. Ralph contacted Adult Protective Services (APS). 2/10/14 RP 75-76. Daryl contacted the Seattle Police Department. 2/12/14 RP 103. Det. Pamela St. John went to Shelarose's home and spoke to Ivan and Deborah. After first telling Det. St. John that Shelarose was on vacation they eventually admitted that she was living with a caregiver at an apartment in Everett. 2/19/14 RP 46-51.

Heidi Wilson of APS and Det. St. John interviewed Shelarose at her home on September 29, 2009. 2/13/14 RP 41; 2/19/14 RP 69. Appellants told Det. St. John that "they" had power of attorney. 2/19/14 RP 50, 57. Deborah produced the power of attorney to show Wilson and Det. St. John. 2/13/14 RP 44; 2/19/14 RP 58. Wilson observed that Shelarose was confused and thought that Wilson was Det. St. John's sister. 2/13/14 RP 45-46. Det. St. John asked Shelarose several questions about the date, her

children, and the president. Shelarose could not answer any of her questions. 2/19/14 RP 70-71. Ivan showed Det. St. John records stored at Shelarose's home and gave her copies of Shelarose's bank statements from 2001 that Det. St. John turned over to the guardian. 2/19/14 RP 72-74.

APS petitioned to appoint a guardian for Shelarose. The court appointed Puget Sound Guardians (PSG), a private non-profit agency, and ordered Ivan and Deborah to account for the assets and expenditures of Shelarose during the time Ivan had power of attorney. 2/13/14 RP 107-10. Ivan and Deborah failed to produce an accounting despite several opportunities to do so although Ivan did produce some financial records that were too old to be useful. 2/13/14 RP 102-14; 2/18/14 RP 46. As a result, PSG conducted its own investigation of Shelarose's finances. 2/13/14 RP 53-58, 114-16. Among PSG's findings were deposits from Shelarose's accounts to Ivan and Deborah's account, cash withdrawals from Shelarose's account, checks from Shelarose's accounts payable to Ivan and Deborah, and charges made by Ivan and Deborah to Shelarose's credit card totaled $185,078.57. 2/13/14 RP 121-31; State's Exhibit 5.

On March 11, 2011, Ivan Ljunghammar signed a confession of judgment in the guardianship proceeding admitting that he breached his fiduciary duty to Shelarose Ljunghammar as her attorney-in-fact and that he unjustly benefitted by disbursing money from Shelarose's accounts to himself or to third persons for his own profit and advantage including the payment of his personal expenses in an amount equal to at least $160,000. 2/13/14 RP 131-32; State's Exhibit 6.

The State subpoenaed Ivan and Deborah's personal bank account records and summarized those records with Shelarose's financial records gathered by PSG. The summaries showed checks and deposits from Shelarose's accounts to Ivan and Deborah's joint checking account totaled $139,988.77 between September 7, 2007, and January 13, 2010. The memo lines on several of the checks described the payments as loans. The State's analysis revealed a cashier's check for $13,500 purchased from Shelarose's funds payable to and endorsed by Deborah Ljunghammar which was deposited by Deborah to Ivan and Deborah's joint account on July 8, 2008. The records also showed a $13,718.77 transfer from Shelarose's account to Ivan and Deborah's account on September 29, 2008. These deposits were

linked to the redemption of a $27,000 certificate of deposit owned by Shelarose. 2/18/14 RP 133-43, 148-52; 2/19/14 RP 3-22; State's Exhibits 7, 9, 12-18.

Finally, the State's analysis revealed a correlation between large deposits of Shelarose's money to the appellant's bank account and payments of their home loan. The appellants purchased a home on October 1, 2007. Between December 7, 2007, and October 19, 2009, they deposited $86,010.09 of Shelarose's money into their checking account. Those deposits correlate with $54,357.02 in payments they made to Wells Fargo Mortgage during that time. 2/19/14 RP 13-22; State's Exhibit 10.

The State charged Ivan and Deborah Ljunghammar with one count of theft in the first degree with aggravating factors. CP 1-6.[2] The case proceeded to trial on February 4, 2014. 2/04/14 RP 1. An attorney who had represented Shelarose testified that he prepared the power of attorney for her. He testified that a person with power of attorney is not entitled to act in their own self-interest or to use the grantor's property for their own benefit. He also testified that the power of attorney Shelarose granted Ivan only allowed Ivan to make gifts in amounts Shelarose had made in the

[2] Clerk's papers at page(s) indicated.

past. 2/12/14 RP 115-17. Ralph, Keith, and Daryl testified that Shelarose had made small infrequent gifts to them of $200 or less in the past. 2/10/14 RP 79-80; 2/12/14 RP 42-43, 92-93. The State's financial analyst, Rebecca Tyrrell, testified that she found no checks for gifts from Shelarose to Ralph, Keith, or Daryl in the records during the time period of the thefts. 2/19/14 RP 3-4. Shelarose lived in a memory care facility at the time of trial and did not testify. 2/04/14 RP 70.

During exceptions to the jury instructions Ivan objected to the State's proposed instruction on accomplice liability, WPIC 10.51. 2/19/14 RP 176-77. The court overruled the objection and gave the instruction. CP 152. The court also instructed the jury on the aggravating factors for a major economic offense and that the appellants knew Shelarose was particularly vulnerable. CP 164-69. The jury found appellants guilty as charged and found the aggravating factors proved beyond a reasonable doubt. CP 22-23, 115-16. The trial court sentenced appellants to an exceptional sentence of 10 months' work release based on both aggravating factors found by the jury, finding that:

> Each one of these aggravating circumstances is a substantial and compelling reason, standing alone, that is sufficient justification for the length of

> the exceptional sentence imposed. In the event that an appellate court affirms at least one of the substantial and compelling reasons, the length of the sentence should remain the same.

CP 57-58; 5/23/14 RP 23-27. Neither appellant objected to this finding. The court also ordered appellants to make restitution of $160,000 and ordered the restitution obligation to be joint and several. CP 52-59, 117-24, 174. They appeal their convictions and sentences.

III. SUMMARY OF ARGUMENT

A. The evidence at trial was sufficient to support appellants' theft convictions because it proved that Ivan Ljunghammar exceeded the scope of his authority over the victim's money as provided by the power of attorney and that Deborah Ljunghammar assisted him in making that unauthorized use.

B. Appellants' Fifth Amendment rights were not violated by evidence and argument that they failed to provide financial records or an accounting to the victim's guardian because the guardian was not a state actor and because neither appellant asserted their right to remain silent.

C. The trial court did not err in denying appellant Ivan Ljunghammar's motion for a mistrial for violation of his right to remain silent after the state argued in closing that appellants had failed to provide financial records or an accounting to the guardian because the comments did not implicate appellant's rights under the Fifth Amendment.

D. The exceptional sentences imposed should not be reversed on the ground that one of the two grounds for the sentence was improper because the second ground was proper and the court expressly found that either ground would support its sentence.

E. The trial court did not abuse its discretion when it ordered the appellants' restitution obligations to be joint and several because appellants acted and benefitted equally as accomplices in committing their crime.

IV. ARGUMENT

A. SUFFICIENCY OF THE EVIDENCE.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Partin, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. State v. Theroff, 25 Wn. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980).

> This inquiry does not require the reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt. "Instead the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628, 632 (1980) (citations omitted). Where evidence is conflicting or of such a character that reasonable minds may differ it is the province of the jury to weigh the evidence, determine the credibility of witnesses, and decide the disputed questions of fact. State v. Gerber, 28 Wn. App. 214, 216-17, 622 P.2d 888 (1981).

Both Ivan and Deborah claim that the evidence was insufficient to prove they exerted unauthorized control over Shelarose's property because Shelarose gave Ivan power of attorney and because the State did not prove that Shelarose did not authorize their takings. Exerts unauthorized control means:

> Having any property or services in one's possession, custody or control as . . . attorney . . . or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto;

RCW 9A.56.010(22)(b). The court gave the jury an instruction drawn from this statute. CP 154.

Here, the evidence was sufficient for a rational trier of fact to find beyond a reasonable doubt that appellants' takings were unauthorized. The power of attorney Shelarose gave Ivan limited his authority over her property by prohibiting self-dealing and allowing gifts only in amounts that were consistent with her accustomed manner of giving. The evidence proved that Shelarose had made only small gifts of cash and property to her sons on special occasions in the past. By giving Ivan power of attorney Shelarose expressly prohibited loans and gifts to Ivan and Deborah in the amounts they took from her. Finally, Ivan signed a confession of judgement in the guardianship proceeding in which he admitted he made unauthorized use of Shelarose's money.

Deborah Ljunghammar also argues that the evidence was insufficient to find that she exerted unauthorized control over Shelarose's property. However, Deborah and Ivan were charged as accomplices and evidence of Deborah's complicity was strong. A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing the crime.

RCW 9A.08.020. The court also gave the jury an instruction on accomplice liability taken from this statute. CP 151.

Ralph, Daryl, and Kerie saw Deborah helping Shelarose with her books and writing checks from Shelarose's check book. The checks in evidence appear to have been written by Deborah for Shelarose's signature. Both Ivan and Deborah isolated Shelarose from Ralph, Keith, Daryl, and their families. Ivan and Deborah told Det. St. John that "they" had power of attorney and Deborah showed Det. St. John a copy of the power of attorney she kept on her person. Deborah deposited the cashier's check for $13,500 purchased from a certificate of deposit owned by Shelarose to her joint account with Ivan that was made payable to and endorsed by Deborah. This and other evidence at trial was more than sufficient for the jury to find Deborah guilty as an accomplice.

B. APPELLANTS' FIFTH AMENDMENT RIGHTS.

A defendant's pre-arrest silence in response to police questioning may not be used as evidence of a defendant's guilt. State v. Easter, 130 Wn.2d 228, 922 P.2d 1285 (1996); State v. Lewis, 130 Wn.2d 700, 927 P.2d 235 (1996); State v. Burke, 163 Wn.2d 204, 181 P.3d 1 (2008). This rule was expanded in State v. Nason, 96 Wn. App. 686, 981 P.2d 866 (1999), to include statements made to a CPS employee investigating allegations of child abuse. The issue raised by appellants is whether this rule should be expanded further to exclude testimony by a guardian that a defendant failed to provide court-ordered financial documents in a guardianship proceeding.

The Fifth Amendment is applicable to the states through the Fourteenth Amendment. Griffin v. California, 380 U.S. 609 (1965); State v. Lewis, 130 Wn.2d 700, 705, 927 P.2d 235, 237 (1996). The Fourteenth Amendment prohibits state action. Shelley v. Kraemer, 334 U.S. 1 (1947); State v. Myers, 6 Wn. App. 557, 566, 494 P.2d 1015, 1020 (1972). There is no constitutional prohibition against the use at trial of evidence or information obtained by a private citizen, even by unlawful means, unless the actions of the private citizen were in some way "instigated, encouraged,

counseled, directed, or controlled" by the state or its officers. State v. Agee, 15 Wn. App. 709, 713-14, 552 P.2d 1084, 1087 (1976); State v. Gonzales, 24 Wn. App. 437, 440, 604 P.2d 168, 170 (1979), review denied, 93 Wn.2d 1028 (1980). The exclusionary rule does not apply to the acts of private individuals. State v. Wolken, 103 Wn.2d 823, 830, 700 P.2d 319 (1985); State v. Smith, 110 Wn.2d 658, 666, 756 P.2d 722, 727 (1988).

Appellants cite a number of federal cases to support their claim that it should. However, each of the cases they cite involve either compelled testimony or testimony about a defendant's silence by government agents. Kastigar v. United States, 406 U.S. 441 (1972), addressed the scope of immunity granted to a witness subpoenaed to testify before a grand jury. Lefkowiz v. Turley, 414 U.S. 70 (1973), addressed a statute requiring government contractors to waive immunity and testify before a grand jury. Mathis v. United States, 391 U.S. 1 (1968), involved an IRS agent questioning an incarcerated defendant. Estelle v. Smith, 451 U.S. 454 (1981), involved a court-ordered psychiatric examination. None involve production of financial documents to a private citizen.

The State's research has unearthed no Washington State cases directly on point but several reported cases are instructive:

see e.g., State v. Valpredo, 75 Wn.2d 368, 450 P.2d 979 (1969) (private retail store security guards who apprehend suspects and gather evidence are not state agents); State v. Gonzales, supra, at 441 (statutes limiting shop owner liability for the reasonable detention of suspected shoplifters do not transform owners and their employees from private citizens to state agents); and State v. Wolfe, 5 Wn. App. 153, 486 P.2d 1143 (1971), cert. denied, 80 Wn.2d 1002 (1972) (search of luggage by an airline carrier's employee is ordinarily a private action outside the scope of the Fourth Amendment).

Moreover, the burden is on the defense to show that a private citizen acted as an agent of the state before the citizen's acts can be characterized as state action:

> Unless evidence is adduced that the individual was acting as an agent of or in concert with governmental authorities, the Fourth Amendment prohibitions are inapplicable. Thus, the burden is on the defendant to present evidence that indicates collusion between the citizen informant and the police. Failing this, we must conclude that no collusion existed.

State v. Dold, 44 Wn. App. 519, 523, 722 P.2d 1353, 1356 (1986) (citations omitted).

Ms. Newland is a private citizen employed by a non-profit guardianship agency and is not a state agent. Appellants point to

no evidence that Ms. Newland was acting as an agent of the police. They have produced no authority for the proposition that the holdings in Easter, Lewis, Burke, and Nason extend to private citizens testifying that a defendant failed to provide documents in a civil matter. Their claim is without merit.

Even if Ms. Newland could be characterized as a state agent merely by her association with the courts appellants' claim fails because they failed to invoke their right to remain silent. In Salinas v. Texas, 133 S. Ct. 2174 (2013), the defendant was not in custody and did not receive Miranda warnings but voluntarily answered questions by police except one to which he remained silent. On appeal the defendant claimed that the prosecutor's comments during closing argument on his pre-arrest silence in response to the question violated his right to remain silent under the Fifth Amendment. In rejecting his claim the court held:

> Petitioner's Fifth Amendment claim fails because he did not expressly invoke the privilege against self-incrimination in response to the officer's question. It has long been settled that the privilege "generally is not self-executing" and that a witness who desires its protection " 'must claim it.' " Minnesota v. Murphy, 465 U.S. 420, 425, 427, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984) (quoting United States v. Monia, 317 U.S. 424, 427, 63 S.Ct. 409, 87 L.Ed. 376 (1943)). Although "no ritualistic formula is necessary in order to invoke the privilege," Quinn v. United States, 349 U.S. 155, 164,

> 75 S.Ct. 668, 99 L.Ed. 964 (1955), a witness does not do so by simply standing mute. Because petitioner was required to assert the privilege in order to benefit from it, the judgment of the Texas Court of Criminal Appeals rejecting petitioner's Fifth Amendment claim is affirmed.

Id. at 2178. The state constitution contains a similar provision to the Fifth Amendment that "(n)o person shall be compelled in any criminal case to give evidence against himself . . ." Const. art. I, § 9. Washington courts have held that the two provisions should be given the same interpretation. State v. Foster, 91 Wn.2d 466, 473, 589 P.2d 789, 794-95 (1979); State v. Mecca Twin Theater and Film Exchange, Inc., 82 Wn.2d 87, 507 P.2d 1165 (1973). The protection of article I, section 9 is co-extensive with, not broader than, the protection of the Fifth Amendment. State v. Earls, 116 Wn.2d 364, 374-75, 805 P.2d 211, 216 (1991); State v. Moore, 79 Wn.2d 51, 483 P.2d 630 (1971).

Neither Ivan nor Deborah told the guardian that they wanted to remain silent. They merely failed to produce financial documents and an accounting to the guardian despite a court order and multiple opportunities to do so. In fact, Ivan Ljunghammar's acts in producing some useless bank records and showing Det. St. John more records stored in Shelarose's basement strongly imply that he

did not assert his right to remain silent. Like the defendant in Salinas, appellants' decisions to remain mute in the face of requests for information was not sufficient to invoke their right to remain silent under the Fifth Amendment. Their argument that the State's comments during closing argument about their failure to provide information to the guardian violated their right to remain silent under the Fifth Amendment is without merit.

C. APPELLANT IVAN LJUNGHAMMAR'S MOTION FOR A MISTRIAL.

Appellant Ivan Ljunghammar argues that the trial court erred when it denied his motion for a mistrial during the State's closing argument. He claims that the State "invited the jury to infer guilt based on Ivan's exercise of a constitutionally protected right . . . ." Brief of Appellant Ivan Ljunghammar, p. 23. However, as discussed in part B. above, evidence of Ivan's failure to provide an accounting or relevant financial records to the guardian was not protected by either the federal or state constitutions. The court properly denied his motion for a mistrial.

D. THE EXCEPTIONAL SENTENCES.

Appellants next claim their exceptional sentences should be reversed under State v. Hayes, 182 Wn.2d 556, 342 P.3d 1144 (2015), because the trial court based their sentences in part on the major economic offense factors when they were charged as accomplices and the jury was not instructed to find that they each had knowledge of the major economic offense factors. However, Judge Bradshaw also based his sentences on the "vulnerable victim" factor found by the jury and found that either factor was sufficient to support his exceptional sentences. When a sentencing court relies on an improper aggravating factor in support of an exceptional sentence the sentence will be upheld if the court also found a proper aggravating factor and expressly stated that each of the factors would support the exceptional sentence. State v. Burkins, 94 Wn. App. 677, 973 P.2d 15, rev. denied, 138 Wn.2d 1014, 989 P.2d 1142 (1999).

Appellants attempt to circumvent the rule in Burkins by labeling the language in the findings and conclusions signed by Judge Bradshaw "boilerplate." But appellants failed to object to the court's findings and counsel for Ivan stated that the judgment and sentence accurately reflected the court's sentence. 5/23/14 RP

33-34. In his remarks prior to imposing sentence Judge Bradshaw made the following observation about appellants' crime against Shelarose:

> What is not agreed here is the extent and consistent intent of the abuse. But what was proved beyond a reasonable doubt was the taking advantage of an infirm person, who is infirm by their age and their dementia. And why? For money. For greed. That crime is repugnant. It's been said that you can tell a lot about a society based on how we treat those at the dawn of life and the dusk of, [sic] because they are vulnerable and need help . . . .

5/23/14 RP 24-25. Judge Bradshaw's comments show that he would have imposed the same exceptional sentences based on Shelarose's vulnerability even if the jury had not found the major economic offense aggravator. The record does not support appellants' claim.

E. THE RESTITUTION ORDERS.

The standard of review for a restitution order is abuse of discretion. State v. Dedonado, 99 Wn. App. 251, 255-56, 991 P.2d 1216 (2000). A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Although the authority to impose

restitution is statutory, State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008), courts must "recognize that they were intended to require the defendant to face the consequences of his or her criminal conduct." State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007). Accordingly, the court should not engage in an overly technical construction that would permit the defendant to escape from just punishment. Id. The legislature intended "to grant broad powers of restitution" to the trial court. State v. Davison, 116 Wn.2d 917, 920, 809 P.2d 1374 (1991).

Appellants both claim that the trial court erred in imposing joint and several restitution orders and claim that the court should have tailored their restitution obligations to each appellant's "individual conduct or culpability." Brief of Appellant Deborah Ljunghammar, p. 30. In their briefs on appeal both appellants claim that the other was the more culpable party.

But as the evidence at trial showed they were equally culpable. Shelarose gave Ivan power of attorney allowing him access to her bank accounts and Deborah wrote the checks and conducted most if not all of the unauthorized financial transactions that could be linked to either defendant. Most of the stolen money was deposited to Ivan and Deborah's joint bank account and much

of that was used to make payments toward their home mortgage. The evidence would have made it impossible to segregate restitution based on culpability.

Appellants offer no solution to this conundrum except to say the trial court's joint and several restitution orders were not authorized by statute. But if Judge Bradshaw had ordered each of them to repay $160,000 individually they would have complained that his orders effectively doubled the amount of their gain or the victim's loss. The joint and several restitution orders currently in place require appellants to face the consequences of their criminal conduct by imposing restitution commensurate with that conduct and providing punishment that, in these circumstances, is just. They were therefore within the court's discretion.

F. ADDITIONAL GROUNDS FOR REVIEW.

Defendant Ivan Ljunghammar filed a statement of additional grounds for review with this court on October 9, 2015. Mr. Ljunghammar's submission contains no factual or legal issues to which the State can respond.

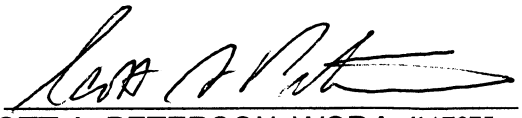
V. CONCLUSION

For these reasons, this court should affirm the judgment and sentence of the trial court.

DATED this 17TH day of November, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
SCOTT A. PETERSON, WSBA #17275
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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Jennifer Winkler, the attorney for the appellant, at Winklerj@nwattorney.net, containing a copy of the ***Brief of Respondent***, in State v. Ivan Daniel Ljunghammar, Cause No. 72067-8, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 10th day of November, 2015.

Monicka Ly-Smith
Done in Seattle, Washington

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Thomas Kummerow, the attorney for the appellant, at Tom@washapp.org, containing a copy of the ***Brief of Respondent***, in State v. Deborah Jean Ljunghammar, Cause No. 72067-8, in the Court of Appeals, Division I, for the State of Washington.

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

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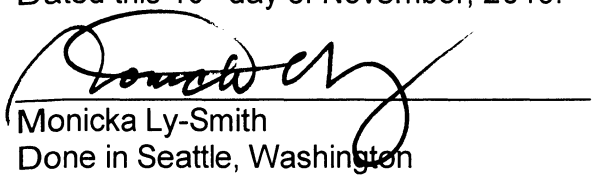

Monicka Ly-Smith
Done in Seattle, Washington