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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
DEPUTY

NO. 37542-7-II

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

STATE OF WASHINGTON, Respondent

v.

RONALD JAMES CUTHBERT, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT A. LEWIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 06-1-01100-7

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

The State accepts the statement of the facts as set forth by the defendant. Where additional information is needed, it will be supplemented in the argument section.

II. RESPONSE TO ASSIGNMENT OF ERROR NO. 1

The first assignment of error raised by the defendant is a claim that the trial court committed error by not allowing the defense to obtain, at public defense, a forensic accountant. On June 8, 2007, as part of preliminary motions, the defense argued for the appointment of a forensic accountant to assist them in reviewing the discovery. The claim was that the forensic accountant would cost at least \$15,000. (RP 44). The defense attorney at trial wasn't really sure exactly what he was going to use the expert for, but to assist him in the accounting aspects of the case. As he told the court, "It may lead me nowhere, but it may not". (RP 45, L23).

The trial court, after hearing the recitation by the defense attorney, had several questions concerning the necessity for this type of witness. The guardianship that had been in place for the defendant's son and was the subject of the alleged embezzlements was handled by the defendant for a substantial period of time. After a while, he stopped giving accountings

to the court and the court then appointed a professional guardianship organization to monitor the money. This agency has been designated as Beagle Burke.

With that in mind, the court questioned the necessity for the expert.

MR. SOWDER (Defense Attorney): -- and you said, Well, maybe not, and probably not, but, you know, I at least got to take a shot – I can take a shot at it.

So that's where the use of these experts come in, to assist in that formulation.

THE COURT: Okay, well, I guess – of course, I don't see the discovery, so I may ask questions that are obvious to both counsel, but is the discovery that we're talking about that the Beagle Burke or whoever went back and looked at bank records and said this amount of money went in, and these checks went out?

MR. SOWDER: Through several different accounting departments, bank account.

THE COURT: I guess I'm not clear why – what is it about that that's so complicated that I would need to appoint an expert to – I mean, either – either the money went out by a particular check or method or it didn't.

-(RP 46, L14 – 47, L7

The State, in making its comments, mentioned that Beagle Burke took over the financial management of the guardianship and it was during the course of an investigation by them of what had happened to the guardianship funds that they discovered irregularities. The system they

used to look into this was the Quicken program, a very popular software program for personal and small business purposes. (RP 47-48). The State's concern was that it appeared that what the defendant wanted to use an expert for was nothing more than to redo what had already been done. (RP 48-49). The defense countered that because these people represent the state, that they are biased in the case. (RP 49). However, the defense attorney never offers any explanation as to why they would be biased or offers any type of evidence or substantial information to justify that claim. The court, after some further discussion, makes the comment that "I mean, I guess I've yet to read or hear that there's some dispute that this check went into this account or something". (RP 50, L8-10). The court further clarifies its position by saying:

Well, and I don't know what it is they're being called to testify to in terms of – I mean if – I don't know what they're being called to testify that the money went to particular things. They've done their accounting, but – of what they – where they believe the money went in and went out.

But I'm not here to rule on whether they can testify to a particular thing or not. I'm here to determine whether hiring someone else would give – would assist the defense, that they're necessary for a defense. And so far I'm not hearing it.

-(RP 52, L1-12)

The court finally sums up its position as follows:

THE COURT: Well, I guess that's – I'm still not understanding why that – let's say – let's say that, for example, on Count Four, it says here that on April 15th, 2004, Mr. Cuthbert's charged with taking more than \$1,500 from Ryan Cuthbert on a specific day.

I assume that – I'm just assuming, because I haven't seen all this, that they're saying, well, we put all this data in the Quicken program and it shows that on April 15th somebody made a withdrawal from x bank account that was more than \$1,500 and it went here.

What – why is it difficult to figure out whether or not that entry is right or not? That's – I guess that's what I'm – if – if it's we put in here some bank deposits and some bank withdrawals, checks and those sorts of things, and all that data is available to you, I assume they'd probably say something like, Well, check No. 3326 for \$1,600 went out on April 15th, 2004.

So you look at check No. 3326 to see whether it's for \$1,600. So I don't –

MR. SOWDER: And where it went can be important to the defendant's case if it just went to – to Ryan's benefit.

THE COURT: Well, if it says cash, let's say you get all the forensic accountants in here you want, if they see that check and it's there, \$1,600 in cash, how are they going to tell you where it went?

MR. SOWDER: Well, if you had a contemporaneous account deposit in the household business account that they use for the, you know, health and welfare of Ryan, then they – of \$1,600, then, yeah, that would be a linkup.

THE COURT: Well, I understand your argument. I'm not – I'm not convinced that the services of a forensic accountant are necessary to assist the defense based on the

evidence that I've – or the information that I've received so far. So I'm –

MR. SOWDER: Well, the – also –

THE COURT: -- denying your request –

MR. SOWDER: -- it keeps leaving the – I think I should bring all the paperwork in for you to look at the 4,000 pages and say, well, what am I supposed to do with this, Your Honor? How am I supposed to figure out how – what – what goes in and what goes out? That may have to be the next motion.

THE COURT: I appreciate your difficulty, counsel, but the problem is that anyone who wants an expert at public expense is supposed to make a preliminary showing that it's necessary, and it's not enough to come in and say it might lead to something good. That's what it requires, a finding by the court that the services you're requesting are necessary.

MR. SOWDER: Well, I've –

THE COURT: And I can't find it based on what you're telling me, that you want to have it because it might lead to something good.

-(RP 55, L12 – 57, L22)

After making this particular ruling, the court went on to ask whether or not an investigator, rather than a forensic accountant, could do the work that the defendant is talking about. He indicated that he would authorize additional money for an investigator to assist him. (RP 58-59).

The defense attorney indicated that he was not aware of any investigators who will do this “grunt work” and so declines the offer. (RP 60).

A trial court retains broad discretion regarding the admission or exclusion of evidence. State v. Swan, 114 Wn.2d 613, 658, 790 P.2d 610 (1990). As part of an indigent defendant’s constitutional right to effective assistance of counsel, the State must pay for expert services, but only when such services are necessary to an adequate defense. State v. Melos, 42 Wn. App. 638, 640, 713 P.2d 138, review denied, 105 Wn.2d 1021 (1986). The determination of whether such services are necessary for an adequate defense is a matter within the sound discretion of the trial court. State v. Mines, 35 Wn. App. 932, 935, 671 P.2d 273 (1983), review denied, 101 Wn.2d 1010 (1984). A discretionary decision of a trial court will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds or for untenable reasons. Mines, 35 Wn. App at 936.

In our situation, the trial court was willing to meet the defense halfway on this matter. It understood the problems that the defense attorney had in looking through a great deal of paperwork, but the defense was never able to articulate for the trial court a necessity for the use of a forensic accountant. As the court pointed out, it appeared more that they needed someone to organize the paperwork as opposed to trying to find

something wrong with the way the money was used. It appears that all Beagle Burke did was to track the money from one place to another. The trial court had indicated that that seems to be a relatively easy job and continually was questioning the defense as to whether or not there was some other legitimate reason for looking into this. As indicated previously, the defense was unable to provide an answer to the trial court other than it had a lot of paperwork. The trial court made an offer and the defendant did not follow through in accepting it. The State submits that there has been no clear showing of abuse of discretion here.

It's interesting in examining the argument made in the appellate brief that they concede that the defendant may not have strictly complied with the requirements of the guardianship but their claim was that he never intended to deprive his son of the guardianship funds. (Brief of Appellant, Page 14). This would appear to be the fundamental issue in the case and, as the trial court pointed out, it's hard to discern why it is that a forensic accountant would be necessary when the issue being raised is, apparently, one of intent rather than actual proof of where the money went.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2(a)

Part of the second assignment of error is a claim that the trial court erred in not approving public funds to hire a social worker, Niki Tucker, to

prepare a report on the costs of providing round-the-clock care of the disabled man. Apparently a report had been prepared and was in fact admitted at the time of trial for purposes of the record but was not given to the jury. (Exhibit 49; RP 733). A copy of the report dated October 30, 2006, by Niki Tucker, MSW (Exhibit 49) is attached hereto and by this reference incorporated herein.

The defense's position was that Ms. Tucker prepared a report indicating how much it would cost and the type of services that would be necessary to take care of the young man. (RP 351-352). The State's position was that the defendant paid himself from the proceeds of the settlement after he had been removed as guardian. Because of that, this report would have no relevance. As the State indicates if he wanted to present evidence about what he did with the money while he was the guardian, that would be relevant. (RP 353). After discussion between the parties and the court, the court noted that it appeared that the evidence would only be relevant if the defendant testified, and even at that point it may or may not be relevant. (RP 356). As it related to Niki Tucker, the trial court indicated at this stage that it was going to preclude the defendant from presenting evidence about her report without a prior offer of proof. (RP 356-357). The court was going to review the report but gave a preliminary determination that it was probably not going to be relevant

to whether or not he had converted the funds for his own or someone else's use. (RP 360-361).

After the court had had an opportunity to review the report, it gave the following ruling:

THE COURT: Alright, with regard to the last motion in limine I was dealing with, I read Ms. Tucker's report. I note that prior testimony indicates that Mr. Cuthbert was removed as guardian in the middle of 2004. Ms. Cuthbert's [sic] report relates to her study in September of 2006 related to various costs of care options for Ryan Cuthbert.

In reviewing that report, it does not appear to contain any relevant testimony to these proceedings, so I'll grant the motion.

-(RP 361, L13-22)

The defense at that time indicates it may still want to make an offer of proof and the court indicated that would be fine when Ms. Tucker was there. (RP 361-362).

This matter was again addressed to the court at the time of the offer of proof. The defense attorney indicated that his offer of proof would be based on her report and didn't think that live testimony was necessary. (RP 734). The trial court indicated that, based on that, it was going to stand by its previous ruling. (RP 734, L19-21).

An Amended Information was filed in this matter (CP 220). It set forth the timeframes involved in the various crimes. A copy of the

Amended Information is attached hereto and by this reference incorporated herein. The Amended Information alleges a timeframe of an ongoing continuous act from approximately 1994 to 2003. As the trial judge had indicated the report of Ms. Tucker is involved in a later time period and, obviously, would have nothing to do with the conversion of funds.

As indicated in the previous sections, the trial court retains broad discretion regarding the admission or exclusion of evidence. Further, the Appellate Court will not reverse a trial court's rulings absent a manifest abuse of discretion. State v. Campbell, 103 Wn.2d 1, 20, 691 P.2d 929 (1984). Even assuming there's an error in the ruling by the court, an evidentiary error is not of constitutional magnitude and is prejudicial only if within reasonable probabilities the outcome of the trial would have been materially affected had the error not occurred. State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1979). The error is harmless if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole. Nghiem v. State, 73 Wn. App. 405, 413, 869 P.2d 1086 (1994).

The trial court in our situation gave the defense every opportunity to shore up an offer of proof. This was not done by the defense. Further, the court astutely noted that the timeframe involved in Ms. Tucker's report

(October, 2006) is far outside the timeframe that the defendant served as the guardian and after removal, when he was alleged to have been misappropriating large sums of money for his own use (see Bill of Particulars (CP 61) attached hereto and by this reference incorporated herein). The objection was relevance and it appears from the records that there is very little relevance in this particular type of information.

To be relevant, evidence must meet two requirements: (1) the evidence must have a tendency to prove or disprove a fact (probative value) and (2) that fact must be of consequence in the context of the other facts and the applicable substantive law (materiality). State v. Baldwin, 111 Wn. App. 631, 638-639, 45 P.3d 1093 (2002); State v. Peterson, 35 Wn. App. 481, 484, 667 P.2d 645, review denied, 100 Wn.2d 1028 (1983). As indicated in ER 401, evidence is relevant if it tends to make “the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence”. State v. Renfro, 96 Wn.2d 902, 905-906, 639 P.2d 737 (1982).

The State submits that the evidence simply is not relevant to the issues before the jury. In the Court’s Instructions to the Jury (CP 229) the elements are set forth for each of the counts. None of the various elements instructions provided to the jury deal with the timeframe of Ms. Tucker’s report. As the court indicates, Mr. Cuthbert was removed as guardian in

the middle of 2004 and Ms. Tucker's report relates to her study in 2006. (RP 361). As the case law has previously indicated, relevance requires that there be a tendency to prove or disprove a fact. This is not the case in our situation. The information is some two years beyond the charging dates, after the guardian had already been removed, and has not substantive value in proving or disproving the issues in the case.

IV. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is a claim of instructional error by the trial court. The defendant maintains that he had a right to present the statutory defense of appropriating the property openly and avowedly under a claim of title made in good faith. (RCW 9A.56.020).

The defendant proposed a jury instruction, which the court did not give, which set forth the statutory defense. It's a modified version of WPIC 19.08 and reads as follows:

In a prosecution for theft, it shall be a sufficient defense that the property was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable.

-(Defendant's Proposed Jury Instructions, CP 212)

When the defense raised this during the period when the parties were working out the jury instructions, the court questioned the defense attorney about some of the elements of the instruction and whether or not any evidence had been presented.

THE COURT: Okay. So tell me why I should give those instruction. And more specifically, let's forget about the claim of title for a minute and tell me in what circumstance there's evidence to suggest that Mr. Cuthbert made these appropriations openly and avowedly.

MR. SOWDER: That would be the threshold question. Openly in the sense he was not hiding what he did, he did it openly, took it from the money (sic). There's no hidden activity on his part.

And avowedly, I suppose I'm not sure what that would mean. I guess –

THE COURT: I thought that his testimony was that he was hiding what he did, that he knew that – that –

MR. SOWDER: Oh.

THE COURT: -- he didn't want bureaucrats being involved in his business and so he deliberately understated the amount that he –

MR. SOWDER: He did testify to that –

THE COURT: -- was taking in support.

MR. SOWDER: --yes, he did testify to that.

THE COURT: Uh-huh.

MR. SOWDER: But it –

THE COURT: What evidence is there to the contrary, that at some point he openly told somebody, I think I'm entitled to these services and I'm taking them?

MR. SOWDER: I don't know that there's anything in the record that he did tell anybody that, but certainly the record would show that he did transfer the money with no question, it was open record in that sense.

-(RP 767, L5 – 768, L13)

After further discussion among the parties concerning this proposed jury instruction, the court made the following ruling:

THE COURT: All right, well, I've reviewed the evidence that's come in and listened carefully and read the memorandum. The defendant is not entitled to a good faith claim of title defense in this case. He hasn't presented evidence which would establish or isn't entitled to the benefit of any evidence from the prosecution which would establish either prong.

The good faith claim of title defense is for those situations where a person mistakenly believes that what they're doing is right. For example, a repossession person goes to get a car because they think they have a legal or equitable right to take that car, even though it turns out that they're wrong and they do so openly and avowedly.

It is not a way that people who, in effect, sneak around and do things can later say, Well, gee, if I'd done things openly and avowedly I might have been able to get some of these things – for example, an employee cannot steal money from the employer and then come in and say, Well, gee, if I had asked for a raise, I probably would have gotten it.

That's not what this title defense is supposed to do. In this case, the defendant at no time openly and avowedly sought additional fees for services as guardian of the person. And,

matter of fact, his testimony and the evidence establishes that he was doing exactly the opposite, he was not openly and avowedly doing things, he was actively concealing from the court that he was taking additional moneys for what he claimed were his services.

Nor did he testify or is there any evidence to suggest that he believed he was legally entitled to do what he was doing. The testimony is the opposite, that he believed that if the court were involved the petty bureaucrats would be involved and that sort of thing, and so therefore he didn't want to run that risk.

So he didn't testify that he thought he was using the proper procedures and it turns out he was wrong, so he hasn't established a legal or equitable title to the property. He hasn't established he did it openly and avowedly. So he's not entitled to claim that defense in this case.

-(RP 773, L11 – 775, L6)

A defendant in a criminal case is generally entitled to a jury instruction on the defense theory on the case. If evidence supports an instruction on the good faith claim of title defense, it is reversible error to refuse to give the instruction. State v. Hicks, 102 Wn.2d 182, 186-187, 683 P.2d 186 (1984). However, a defendant is not entitled to an instruction which inaccurately represents the law or for which there is no evidentiary support. State v. Staley, 123 Wn.2d 794, 803, 872 P.2d 502 (1994). It is error for the trial court to give an instruction which is not supported by the

evidence. State v. Hoffman, 116 Wn.2d 51, 110-111, 804 P.2d 577 (1991);
State v. Hughes, 106 Wn.2d 176, 191, 721 P.2d 902 (1986).

A defendant in an embezzlement case, who is relying on the good faith claim of title defense must do more than assert a vague right to property. The defendant must present evidence (1) that the property was taken openly and avowedly and (2) that there was some legal or factual basis upon which the defendant, in good faith, based the claim to title to the property taken, even though the claim of title may prove to be untenable. State v. Ager, 128 Wn.2d 85, 95, 904 P.2d 715 (1995).

This was a situation that the trial court was addressing in our case. He was asking the defense where was there evidence that this was taken openly and avowedly and that he had some factual basis for a good faith claim of title. As indicated in the quoted sections, the defense attorney really couldn't answer those particular questions. The conclusion reached by the trial court was that this was not done openly and avowedly.

For example:

QUESTION (Deputy Prosecutor): So were you reporting \$30,000 a year to the IRS as income during that ten-year period?

ANSWER (Defendant): No.

QUESTION: Did you report any of it?

ANSWER: I was on a cash basis, so I do not know if I reported any of it or not; probably not.

QUESTION: You indicated that there was a – well, so, bottom line is, you were taking \$2,500 a month, i.e., \$30,000 a year that you were characterizing as support, and you were telling th court only about \$5,544 of that.

ANSWER: Yes.

QUESTION: For a period of ten years.

ANSWER: No.

QUESTION: No?

ANSWER: No. For a period of about five years.

QUESTION: Which five years would that be?

ANSWER: '94 through '99.

Actually, through 2001, so it would be about seven years.

QUESTION: Okay. Seven years. So for those seven years, the interim accounting that you submitted to the court under penalty of perjury was false.

ANSWER: Only three years of that was under penalty of perjury, the rest of it was not.

QUESTION: Oh. Okay. But the interim accounting was false.

ANSWER: It was not accurate.

-(RP 723, L5 – 724, L6)

The Appellate Court reviews a trial court's decision whether to give a particular jury instruction for abuse of discretion. Bulzomi v. Department of Labor & Industries, 72 Wn. App. 522, 526, 864 P.2d 996 (1994); State v. Chase, 134 Wn. App. 792, 803, 142 P.3d 360 (2006). In the Chase case, supra, the defendant attempted to raise the claim of title. The court, very similar to our trial court, made the following observations:

Even if Chase's testimony created an issue of fact about whether he openly and avowedly took control of Snap-On's equipment, there is insufficient evidence to support an inference that he had some legal or factual basis upon which he, in good faith, based a claim of title to the equipment.

Only Chase's own trial testimony suggested he acted in good faith, and even his testimony does not demonstrate all the necessary elements of the defense. He contends he acted like someone who believed Snap-On had abandoned its property instead of someone who intended to deprive Snap-On of its property. But even after several months had passed with Chase in arrears and no contact between him and Snap-On, he still knew Snap-On had not abandoned its property because Fox and Gjersee demanded that he give the equipment back. His testimony that he would have given the equipment back if they had given him a receipt only confirms that he knew Snap-On was the rightful owner and he did not have good faith claim to the title.

-(State v. Chase, 134 Wn. App. at 805)

The State submits that the defendant had not presented enough evidence or information for the court to give a jury instruction to the jury discussing openly and avowedly claims of title. Actually, this is not really

disputed by the defendant when we examine the defense attorney's discussion with the trial court. The funds were not taken in an open and avowed manner.

V. RESPONSE TO ASSIGNMENT OF ERROR NO. 4

The fourth assignment of error raised by the defendant is a claim of insufficient evidence concerning three checks received from the Confederated Tribes of the Grand Ronde for the benefit of Ryan Cuthbert. These constituted Counts 2, 8, and 13 of the Amended Information.

Because of the large nature of documents that had to be submitted into court, summaries and stipulations were used by the parties. The parties first stipulated to the authenticity of all of the documents without the necessity of using custodian of records of any of the organizations. That included the Confederated Tribes of the Grand Ronde. The stipulation (CP 105) was discussed among the parties and with the defendant prior to trial. (RP 293-295). The Stipulation (CP 105) is attached hereto and by this reference incorporated herein. The court took some time in discussing this with the defendant to make sure he understood what was being done by this stipulation.

THE COURT: ... By stipulating to this, the authenticity of these bank records, you are in effect giving up the right as to these issues. And you won't be able to claim later that it

was a violation of your rights that those witnesses weren't called in to make that proof on authenticity.

Is that how you want to proceed?

THE DEFENDANT: Yes.

-(RP 295, L21 – 296, L3)

After offer of proofs were made during the trial (RP 544) the court found that the State had met the requirements of the foundation for summaries as set out in ER 1006. (RP 549). The only objection made to any of the documentation, which includes the documents in question in this issue, was one of relevance, which was overruled. (RP 549).

The testimony at the time of trial was that the documentation was an accurate summary of the checks from the Confederated Tribes of the Grand Ronde. This was part of Exhibit No. 40, which was admitted. (RP 558).

The significance of the Grand Ronde checks is that they were used at a time when the defendant was no longer the guardian of the estate and that they were deposited into the defendant's personal account. The matter was discussed with Mr. Beagle, the guardian of the estate who took over after the defendant was removed from that position. He testified about finding the deposit of the check, which was Count 2 of the Information

and deposited December 30, 2004 in the amount of \$5,770. As Mr. Beagle testified:

QUESTION (Deputy Prosecutor): Okay. When did you discover this, the deposit of this check?

ANSWER (Mr. Beagle): We discovered it shortly after the timeframe of when the check was issued. When we contacted the Grand Ronde regarding the medical insurance and found out that other distributions had been made to Ryan Cuthbert.

QUESTION: Now, I want to go to a document. (Pause; reviewing exhibits).

So you – you were the guardian of the estate at the time this check was issued.

ANSWER: That is correct. I – Mr. Cuthbert, Ronald Cuthbert was removed, we were appointed successor guardian of the estate on June 10, 2004.

-(RP 586, L1-14)

Of significance is the cross-examination of Mr. Beagle when he indicates what authority a guardian of the estate would have to transfer from one account to another. This was then picked up in re-direct examination by the prosecutor:

QUESTION (Deputy Prosecutor): Mr. Beagle, if I understood your answer to Mr. Sowder correctly, you were indicating that Mr. Cuthbert had the ability to transfer funds from the guardianship account to his personal account.

ANSWER (Mr. Beagle): That's incorrect. What I meant to state was that he had the ability to transfer from a

guardianship account to another guardianship account. He did not have the authority to transfer to a personal account.

QUESTION: Okay. Are you talking – I – maybe I’m confused, because I – so were you talking about Mr. Cuthbert’s authority to transfer the funds?

ANSWER: The authority under the guardian of the estate would have that authority, but it needed to be transferred into an account –

MR. SOWDER: Well, I’m going to object to him giving his opinion about what Mr. Cuthbert has authority to or not, because we have orders entered from the – from the guardianship proceeding indicating what his authority is.

QUESTION (Deputy Prosecutor): But he had – I mean, you documentation reflects – okay. So I’m clear, you’re saying that he didn’t have authority from the court to make transfers outside the guardianship funds.

ANSWER (Mr. Beagle): That is correct.

QUESTION: I just want to be clear that in terms of your documentation there are a number of transfers that occur from one account to another; correct?

ANSWER: That is correct.

-(RP 608, L19 – 609, L25)

During the testimony of the defendant, he indicated that he had an accounting background (RP 711), that when the guardianship was first set up that he needed court approval of everything and he was aware of that. (RP 712). Sometime back he decided to forego the court and avoid the “petty bureaucrats” and go ahead and handle it himself. (RP 726). He

indicated too that he had to go back and reenter some of the accounting he had done and he didn't report any income for any of this to the IRS for at least seven years (RP 723) nor had he actually been keeping track of the accounting after the boy had turned 18. (RP 713-717).

ER 1006 permits summaries of evidence when the contents of voluminous writings cannot be conveniently be examined in court. Once the foundation has been laid, ER 1006 summaries are substantive evidence. State v. Lord, 117 Wn.2d 829, 856 N.5, 822 P.2d 177 (1991), cert denied, 506 U.S. 856 113 S. Ct. 164, 121 L. Ed.2d 112 (1992).

When the defense challenges the sufficiency of evidence, the State's evidence is viewed as true and all reasonable inferences are given in favor of the State. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence is as reliable as direct evidence.

Circumstantial evidence is evidence of facts or circumstances from which the existence or non-existence of other facts may be reasonably inferred from common experience. State v. Salinas, 119 Wn.2d at 201. A trier of fact may rely exclusively upon circumstantial evidence to support its decision. State v. Kovac, 50 Wn. App. 117, 119, 747 P.2d 484 (1987). The Appellate Court defers to the trier of fact in matters of witness credibility and weight of evidence. The court will affirm if the trier of fact could have

found the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d at 201.

The State submits that it has shown sufficient evidence of the elements of the crime to allow this question to go to the jury. The evidence is clear that the defendant was exerting unauthorized control over the property of the estate when he didn't have any authority to do so. Further, he was depositing these directly into his own accounts, not complying with any court orders or procedures that had previously been established, knew that he had to do so but intentionally refused to do it because he didn't want to deal with the "petty bureaucrats". It's of significance too that he had to go back and reenter amounts in the accounts and that he wasn't reporting as he should to the IRS. Further, he was also using large amounts of the monies for his own personal purposes (for example, fixing the house up for \$56,000, and charging Ryan \$28,000 and, of course, he didn't tell the court about this). (RP 725). The stipulation establishes the authenticity of the documentation without any further testimony and the summaries accurately show the jury an overall pattern of theft. Adequate evidence was produced at the time of trial to allow these matters to go to the jury.

VI. RESPONSE TO ASSIGNMENT OF ERROR NO. 5

The fifth assignment of error raised by the defendant is a claim of cumulative errors which deprived the defendant of a fair trial. The defendant bears the burden of proving an accumulation of error of sufficient magnitude that retrial is necessary. In re Personal Restraint of Lord, 123 Wn.2d 296, 332, 868 P.2d 835, clarified by, 123 Wn.2d 738, 870 P.2d 964 (1994).

The State submits that there has been no showing by the defense here of errors that would justify the use of the cumulative error doctrine.

VII. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 29 day of Jan, 2009.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


MICHAEL C. KINNIE, WSBA#7869
Senior Deputy Prosecuting Attorney

Social Work Services

Niki Tucker, MSW

wa_msw@yahoo.com

(360) 513-3948

1
2
3
4
5
6 Name: Ryan Cuthbert
7 Age: 33
8 DOB: 02-16-73
9

10 At a court hearing held on 09-29-06, a finding was made that an independent assessment was
11 necessary to determine the care needs of Ryan Cuthbert. The undersigned was contacted and
12 made arrangements on October 24, 2006 to do the assessment. The interviews took place over
13 two home visits with Ryan, and Ron and Deborah Cuthbert, Ryan's parents, on October 27 and
14 28, and a telephone call with Jason Cuthbert, on October 29, 2006.
15

16 Ryan Cuthbert, 33, lives with his parents in Vancouver, Washington, in a two-story home in a
17 subdivision of Hearthwood. According to Mr. and Mrs. Cuthbert, Ryan was diagnosed with
18 cerebral palsy at 15 months of age. He began therapy and educational programs at that time and
19 continued until he was 21. Assessment and IQ tests conducted on Ryan place his academic,
20 emotional, and cognitive age at anywhere between five and nine years of age.
21

22 At the time of the first home visit, Ryan was watching television. The undersigned and the
23 parents met alone in the kitchen and the information that follows was either provided by Ron and
24 Deborah or directly observed by the undersigned.
25

26 Ryan is legally blind but does not wear glasses. His optic nerve was damaged at birth. Although
27 he has had glasses in the past, he usually kept them on top of his head, and when he did wear
28 them, the glasses did not improve his vision. Ryan has used a white cane in the past, but no
29 longer does so. He has difficulty seeing at night, but prefers to keep the house dimly lit. He was
30 observed by the undersigned to be sitting approximately three feet away from the TV.
31

32 Ryan has difficulty walking outside. He is afraid to walk down stairs, or on an incline. He is
33 also afraid to walk across open spaces, such as in a parking lot, and prefers to stay near the line
34 of cars as long as possible. When walking in public, he will hold on to either his parents' hand
35 or a shopping cart for support. Deborah reported that Ryan has fallen on a couple of occasions
36 and does not have very good balance, and this may be the cause of his fear. He appears to
37 ambulate fairly well around the house. The undersigned observed that Ryan "rocked" from side
38 to side as he walked, with an odd gait.
39

40 Ryan is able to heat up food in the microwave, but he is not capable of cooking on the stove or
41 using the conventional oven. He can eat without assistance but needs help with cutting meat and
42 assembling foods, such as a baked potato or a taco.
43

44 Ryan will not answer the telephone and does not know how to make calls, not even 911 in case
45 of emergencies. His parents believe that he knows to get out of the house in case of fire, but are

EXHIBIT A 1

1 unsure as to what he would for an earthquake. During previous power outages, he has remained
2 seated in his chair and on one occasion, knew where to get his flashlight.
3

4 Ryan helps out around the house by taking his clothes to the washing machine and taking out the
5 garbage. He cannot do his own laundry. While not willfully destructive, Ryan is hard on his
6 possessions and household items and rarely does a day go by without something being
7 unintentionally broken. For example, although Ryan can dress himself, he can't manage buttons.
8 He is "too stubborn" to get help, so will pull shirts over his head and has torn many buttons off
9 that way.
10

11 Ryan knows the days of the week, and dates, but can not comprehend the passage of time.
12 Thirty minutes is "like a lifetime to him." He has a set routine each day and does not like it to be
13 interrupted. According to Ron and Deborah, while previously Ryan was able to be left alone for
14 four or five hours a day, now the longest he tolerate is about an hour and he's often anxious at
15 the end of that time period. Ron and Deborah state that they rarely leave him alone, one or the
16 other is almost always there to supervise him.
17

18 Ryan was involved in a number of activities such as Special Olympics and job coaching when he
19 was younger. He worked for LA Video for a time, but since they closed, has been unable and
20 unwilling to obtain steady employment again. The only jobs that have been available to him are
21 janitorial and at night. He dislikes the work and refused to do it, as he is afraid of vacuum
22 cleaners and cannot see well at night.
23

24 Ryan is not involved in community, social, or employment activities. He has one friend, Shaun,
25 who is not developmentally delayed, and Ryan spends time with him on occasion.
26

27 Ryan enjoys watching television shows, including wrestling and children's shows; going
28 shopping, and being read to. He also enjoys an activity that is referred to as his daily activity
29 log. Ryan will write down the name of a person, usually a wrestler, on the top of a piece of
30 paper and then bring it to Deborah or Ron to add notes as Ryan thinks of them. This is done
31 continually throughout the day and when the page is full, Ron puts it in an envelope with the
32 person's name on the outside, and a new page is started. The undersigned observed this activity
33 taking place during the interview.
34

35 Ryan will not visit with family in the area. If Ron or Deborah tries to make him go, he will
36 "throw a fit." He will wave his arms around, say "NO" and refuse to go. Because of this, Ron
37 and Deborah visit their family in shifts, taking turns.
38

39 Ryan goes to counseling once a week for anger management at Columbia River Mental Health,
40 and it is reported that he enjoys these sessions. Ron and Deborah state that before the prior two
41 years, Ryan rarely had tantrums. Since court proceedings began, Ryan often has outbursts where
42 he yells and gets angry, which require regular assistance to manage and control. When told that
43 the undersigned was there to meet with him, he became agitated and would not speak. When
44 told the undersigned would return the next day, he began yelling at his father, screaming he did
45 not want that to happen.
46

1 Ryan is fairly healthy with the exception of his cerebral palsy. He sees his doctor three to four
2 times a year, and the dentist twice a year. He is not allergic to any medications or food, but is
3 allergic to cigarette smoke and is very sensitive to its smell, even on a person's clothing.
4

5 Ryan has no trouble communicating to Ron and Deborah what he needs. He is able to make
6 himself understood by them and he in turn understands directions and instructions from them. In
7 contrast, the undersigned had difficulty in comprehending Ryan's speech, and needed to have it
8 interpreted by his parents. They reported that it is the same for most outsiders who have not
9 been around Ryan very much.
10

11 The second interview was held on Saturday, October 28, 200, in order to observe a typical
12 morning routine.
13

14 7:30 to 8:30 AM.

15 Ryan takes his bath, which had been drawn for him by Deborah. When finished, Deborah
16 assisted him in getting out, and then he got dressed on his own. Afterwards, Ryan came
17 to the kitchen, where Deborah proceeded to shave him. His breakfast was prepared for
18 him by Ron, and Ryan sat down and ate it without assistance. Deborah had to prompt him
19 to use a napkin afterwards. She then assisted him with brushing his teeth while Ron
20 cleaned the kitchen. All of this was observed by the undersigned.
21

22 The following is a typical day as described by Ron and Deborah, the times are not exact, but they
23 adhere to them as closely as possible.
24

25 9:00 AM.

26 Ron and Ryan head out to Fern Prairie Market, stopping for a soda.

27 10:30 AM.

28 Back home from the market, Ryan watches television until lunch time.

29 11:00 - 12:30

30 Ryan usually fixes his own lunch, although sometimes Ron or Deborah will, and Ron or
31 Deborah will clean up.

32 12:30 to 5:00 PM

33 After lunch, Ryan will lie down for a bit, except on Tuesdays. That is his counseling day,
34 and Ron drives him to and from the appointment. This usually takes from 12:30 until
35 2:30 PM. Afternoons are spent in various ways, reading to Ryan, writing in his activity
36 log, or watching TV.

37 5:00 PM.

38 Deborah will start dinner while Ron drives Ryan over to Village Vendor for a short
39 outing.
40

41 6:00 PM.

42 Dinner is around 6:00, and Ryan will help with the clean up afterwards, and they will sit
43 and talk. Occasionally they go out to dinner at a local pizza place.

44 Following dinner, Ryan will spend more time with his activity log, getting assistance
45 from Ron or Deborah, watch TV, or Deborah or Ron will read to him. Before bed,
46 Deborah assists Ryan with brushing his teeth and cleaning up after using the toilet. Ryan
puts on his own pajamas and gets into bed.

1 Deborah estimates that she spends about two hours each day providing direct, hands-on care to
2 Ryan. This would include brushing his teeth and his hair, shaving him, applying deodorant,
3 cleaning his face, wiping his nose, clipping toenails, and assisting him in the bathroom
4 throughout the day.

5
6 Deborah estimates that she spends about three hours each day on indirect care needs, such as
7 cooking, cleaning, laundry, shopping, drawing his bath, etc.

8
9 Ron estimates that he spends about two hours each day taking Ryan to stores, and an additional
10 two hours each Tuesday taking him to counseling.

11 Both Ron and Deborah state that throughout the day they are assisting Ryan with his activity log,
12 which probably takes around an hour for each of them.

13
14 On October 29, 2006, the undersigned spoke with Jason Cuthbert, Ryan's brother. He stated that
15 he believes his parents spend at least a minimum of six hours each day, probably more, on
16 Ryan's care, cooking for him, cleaning, transporting him, and with personal hygiene.

17
18 A previously submitted report from Dr. Schneider states that Ryan should not be left home alone
19 for longer than four to five hours at a time. However, Ron and Deborah do not feel comfortable
20 leaving him alone for more than an hour, as he becomes anxious when by himself. According to
21 Ron and Deborah, Ryan needs 24 hours a day monitoring, with several hours of direct care each
22 day. While Ryan can take care of himself in terms of getting around the house, fixing simple
23 meals, etc., the fact that he can't use a phone in case of an emergency and his difficulty in
24 speech, along with his cognitive young age, would make it risky to leave Ryan alone for a long
25 period of time.

26
27 If Ryan were to be placed in an adult group home, costs would range anywhere from \$1800 to
28 \$3500 a month, according to information provided by Angel Glen family home, Blue Haven
29 home, and Green Haven home. An assessment by them would need to be completed before a
30 firm amount would be given.

31
32 If Ryan remains in his home, the cost for a caregiver varies. Addus charges \$19 an hour, with a
33 24 hour rate of \$290. CDM charges \$18.30 an hour, with a 24 hour rate of \$305, and a weekly
34 rate of \$1950. Community Home Health charges \$20 an hour, \$190 for a 12-hour sleepover rate,
35 and would not even quote a monthly rate, saying it would be too costly

36
37 I declare under penalty of perjury that the above information was either personally observed by
38 me or provided to me by the Cuthberts and other collateral contacts.

39
40
41 Signed on October 30, 2006.

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46 Niki Tucker, MSW

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FILED

JUL 26 2007

Sherry W. Parker, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

RONALD JAMES CUTHBERT,

Defendant.

No. 06-1-01100-7

BILL OF PARTICULARS

COMES NOW Plaintiff State of Washington, by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, and submits the following in response to the Order for a Bill of Particulars entered herein on or about June 19, 2007.

COUNT 1:

In Count 1 of the Information specifically alleges that Defendant, between February 1, 1994 and June 4, 2004, by a series of acts connected together as part of a common scheme or plan, wrongfully obtained or exerted unauthorized control over funds belonging to Ryan Cuthbert which Defendant had in his possession or control as guardian for Ryan Cuthbert.

More particularly, the State alleges that commencing in February, 1994, as guardian for Ryan Cuthbert, Defendant received a check for \$4,000 each month, payable to him as guardian. Defendant continued to receive the checks monthly until he was removed as guardian in May, 2004.

BILL OF PARTICULARS - 1

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

47 gm

1 The State further alleges that commencing in December, 1996, Defendant
2 received approximately 13 checks from the Confederated Tribes of the Grande Ronde
3 in varying amounts. Those checks represented distributions from trust funds and
4 gaming revenue which were due to Ryan Cuthbert as an enrolled member of the tribe,
5 which Defendant received as Guardian for Ryan Cuthbert.

6 The State further alleges that Defendant negotiated the above mentioned checks
7 either by deposit into an account in the name of the guardianship of Ryan Cuthbert, by
8 deposit into a personal account belonging to Defendant and his spouse, or by other
9 unknown means. The State alleges that the approximate dates, amounts, and to the
10 extent known, the accounts into which these checks were deposited is as indicated in
11 the attached document labeled "Exhibit V", (from the report of Beagle, Burke, and
12 Associates, substitute Guardian of the Estate of Ryan Cuthbert, submitted to the Court
13 in No. 82-4-00506-2 approximately September 6, 2005).

14 The State further alleges that of the proceeds of the checks known to have been
15 deposited into Defendant's personal accounts, totaling approximately \$227,000, was
16 commingled with Defendant's personal funds and spent by Defendant and thereby
17 converted to his own use.

18 The State further alleges that of the proceeds of the checks known to have been
19 deposited into the guardianship accounts, Defendant subsequently transferred
20 approximately \$52,000 by various means into one or more of his personal accounts,
21 commingled the funds with his personal funds and appropriated them to his own use.

22
23 Count 2:

24 The State alleges that in May, 2004 Defendant, acting as Guardian for Ryan
25 Cuthbert, applied for a distribution of benefit funds from the Grande Ronde tribe. The
26 State further alleges that on or about December 30, 2004, after having been removed
27 as Guardian for Ryan Cuthbert, Defendant obtained the distribution check, which was
payable to Ryan J. Cuthbert in the amount of \$5,770.00, and deposited it into his

1 personal account #9299 at U.S. Bank, and thereafter converted the funds to his own
2 use.

3 Count 3:

4 The State alleges that on or about May 17, 2004, Defendant received an annuity
5 distribution check from Safeco Life dated 5/17/04 and payable to him as Guardian for
6 Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said check in his
7 personal checking account #9299 at U.S. Bank, and thereafter converted the funds to
8 his own use.

9 Count 4:

10 The State alleges that on or about April 15, 2004, Defendant received an annuity
11 distribution check from Safeco Life dated 4/16/04 and payable to him as Guardian for
12 Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said check in his
13 personal checking account #9299 at U.S. Bank, and thereafter converted the funds to
14 his own use.

15 Count 5:

16 The State alleges that on or about March 29, 2004, Defendant received an
17 annuity distribution check from Safeco Life dated 3/16/04 and payable to him as
18 Guardian for Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said
19 check in his personal checking account #9299 at U.S. Bank, and thereafter converted
20 the funds to his own use.

21 Count 6:

22 The State alleges that on or about February 23, 2004, Defendant received
23 annuity checks from Safeco Life dated 2/16/04 and 1/16/04 in the amount of \$4,000
24 each, payable to him as Guardian for Ryan Cuthbert and that Defendant deposited said
25 checks in his personal checking account #9299 at U.S. Bank, and thereafter converted
26 the funds to his own use.

27 Count 7:

1 The State alleges that on or about January 15, 2004, Defendant received an
2 annuity distribution check from Safeco Life dated 12/16/03 and payable to him as
3 Guardian for Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said
4 check in his personal checking account #9299 at U.S. Bank, and thereafter converted
5 the funds to his own use.

6 Count 8:

7 The State alleges that on or about December 16, 2003, Defendant received an
8 benefit distribution check dated 12/11/03 from the Confederated Tribes of Grande
9 Ronde payable to Ryan J. Cuthbert in the amount of \$5,181.00, and that Defendant
10 deposited said check in his personal checking account #9299 at U.S. Bank, and
11 thereafter converted the funds to his own use.

12 Count 9:

13 The State alleges that on or about December 10, 2003, Defendant received an
14 annuity distribution check from Safeco Life dated 11/16/03 and payable to him as
15 Guardian for Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said
16 check in his personal checking account #9299 at U.S. Bank, and thereafter converted
17 the funds to his own use.

18 Count 10:

19 The State alleges that on or about December 1, 2003, Defendant received an
20 annuity distribution check from Safeco Life dated 9/16/03 and payable to him as
21 Guardian for Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said
22 check in his personal checking account #9299 at U.S. Bank, and thereafter converted
23 the funds to his own use.

24 Count 11:

25 The State alleges that on or about November 10, 2003, Defendant received an
26 annuity distribution check from Safeco Life dated 10/16/03 and payable to him as
27 Guardian for Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said

1 check in his personal checking account #9299 at U.S. Bank, and thereafter converted
2 the funds to his own use.

3 Count 12:

4 The State alleges that on or about October 8, 2003, Defendant received an
5 annuity distribution check dated 8/16/03 from Safeco Life, payable to him as Guardian
6 for Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said check in
7 his personal checking account #9299 at U.S. Bank, and thereafter converted the funds
8 to his own use.

9 Count 13:

10 The State alleges that on or about September 22, 2003, Defendant received an
11 benefit distribution check dated 6/23/03 from the Confederated Tribes of Grande Ronde
12 payable to Ryan J. Cuthbert in the amount of \$850.00, and that Defendant deposited
13 said check in his personal checking account #9299 at U.S. Bank, and thereafter
14 converted the funds to his own use.

15 Count 14:

16 The State alleges that on or about September 9, 2003, Defendant received an
17 annuity distribution check dated 7/16/03 from Safeco Life payable to him as Guardian
18 for Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said check in
19 his personal checking account #9299 at U.S. Bank, and thereafter converted the funds
20 to his own use.

21 Count 15:

22 The State alleges that on or about August 14, 2003, Defendant received an
23 annuity distribution check dated 6/16/03 from Safeco Life payable to him as Guardian
24 for Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said check in
25 his personal checking account #9299 at U.S. Bank, and thereafter converted the funds
26 to his own use.

27 Count 16:

1 The State alleges that on or about August 6, 2003, Defendant received an
2 annuity distribution check dated 3/16/03 from Safeco Life payable to him as Guardian
3 for Ryan Cuthbert in the amount of \$4,000, and that Defendant deposited said check in
4 his personal checking account #9299 at U.S. Bank, and thereafter converted the funds
5 to his own use.

6 Count 17:

7 The State alleges that on or about July 9, 2003, Defendant received an annuity
8 distribution check dated 4/16/03 from Safeco Life payable to him as Guardian for Ryan
9 Cuthbert in the amount of \$4,000, and that Defendant deposited said check in his
10 personal checking account #9299 at U.S. Bank, and thereafter converted the funds to
11 his own use.

12 Count 18:

13 The State alleges that on or about June 19, 2003, Defendant received an annuity
14 distribution check dated 5/16/03 from Safeco Life payable to him as Guardian for Ryan
15 Cuthbert in the amount of \$4,000, and that Defendant deposited said check in his
16 personal checking account #9299 at U.S. Bank, and thereafter converted the funds to
17 his own use.

18 DATED this 26 day of July, 2007.

19 
20 PHILIP A. MEYERS, WSBA #8246
21 DEPUTY PROSECUTING ATTORNEY
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23
24
25
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27

Ryan Cuthbert's Income
 Amounts Received by Ron Cuthbert
 February, 1994 through December, 2004

MM/YY	Check Date	Deposit Date	Check #	Account Deposited To	Type of Account					
					Guardianship	Ron's Personal	Unknown	Income From	Memo	Amount
Feb-94		2/15/1994		US Bank #5206	4,000.00			Safeco Life	Annuity	4,000.00
Mar-94		3/18/1994		US Bank #5206	4,000.00			Safeco Life	Annuity	4,000.00
Apr-94		5/5/1994		US Bank #5206	4,000.00			Safeco Life	Annuity	4,000.00
May-94		5/20/1994		US Bank #5206	4,000.00			Safeco Life	Annuity	4,000.00
Jun-94		6/17/1994		US Bank #5206	4,000.00			Safeco Life	Annuity	4,000.00
Jul-94				Unknown				Safeco Life	Annuity	4,000.00
Aug-94		8/16/1994		US Bank #3696	4,000.00			Safeco Life	Annuity	4,000.00
Sep-94				Unknown				Safeco Life	Annuity	4,000.00
Oct-94				Unknown				Safeco Life	Annuity	4,000.00
Nov-94		12/5/1994		US Bank #3696	4,000.00			Safeco Life	Annuity	4,000.00
Dec-94		12/23/1994		US Bank #3696	4,000.00			Safeco Life	Annuity	4,000.00
Jan-95		1/3/1995		US Bank #3696	4,000.00			Safeco Life	Annuity	4,000.00
Feb-95		2/17/1995		US Bank #3696	4,000.00			Safeco Life	Annuity	4,000.00
Mar-95				Unknown				Safeco Life	Annuity	4,000.00
Apr-95				Unknown				Safeco Life	Annuity	4,000.00
May-95				Unknown				Safeco Life	Annuity	4,000.00
Jun-95		7/3/1995		US Bank #3696	4,000.00			Safeco Life	Annuity	4,000.00
Jul-95				Unknown				Safeco Life	Annuity	4,000.00
Aug-95		8/25/1995		US Bank #3696	4,000.00			Safeco Life	Annuity	4,000.00
Sep-95				Unknown				Safeco Life	Annuity	4,000.00
Oct-95				Unknown				Safeco Life	Annuity	4,000.00
Nov-95				Unknown				Safeco Life	Annuity	4,000.00
Dec-95				Unknown				Safeco Life	Annuity	4,000.00
Jan-96				Unknown				Safeco Life	Annuity	4,000.00
Feb-96		2/16/1996		US Bank #3696	4,000.00			Safeco Life	Annuity	4,000.00
Mar-96				Unknown				Safeco Life	Annuity	4,000.00
Apr-96				Unknown				Safeco Life	Annuity	4,000.00
May-96				Unknown				Safeco Life	Annuity	4,000.00
Jun-96				Unknown				Safeco Life	Annuity	4,000.00
Jul-96				Unknown				Safeco Life	Annuity	4,000.00
Aug-96				Unknown				Safeco Life	Annuity	4,000.00
Sep-96				Unknown				Safeco Life	Annuity	4,000.00
Oct-96				Unknown				Safeco Life	Annuity	4,000.00
Nov-96				Unknown				Safeco Life	Annuity	4,000.00
Dec-96		12/18/1996		Unknown				Confederated Tribes	Annuity	1,000.00
Dec-96				Unknown				Safeco Life	Annuity	4,000.00
Jan-97				Unknown				Safeco Life	Annuity	4,000.00
Feb-97				Unknown				Safeco Life	Annuity	4,000.00
Mar-97				Unknown				Safeco Life	Annuity	4,000.00
Apr-97				Unknown				Safeco Life	Annuity	4,000.00
May-97				Unknown				Safeco Life	Annuity	4,000.00
Jun-97				Unknown				Safeco Life	Annuity	4,000.00

Ryan Cuthbert's Income
 Amounts Received by Ron Cuthbert
 February, 1994 through December, 2004

MM/YY	Check Date	Deposit Date	Check #	Account Deposited To	Guardianship	Ron's Personal	Unknown	Income From	Memo	Amount
Jul-97				Unknown			4,000.00	Safeco Life	Annuity	4,000.00
Aug-97				Unknown			4,000.00	Safeco Life	Annuity	4,000.00
Sep-97				Unknown			4,000.00	Safeco Life	Annuity	4,000.00
Oct-97		10/7/1997		NW National Bank		1,000.00		Confederated Tribes	Distribution	1,000.00
Nov-97		11/17/1997		US Bank #3696			4,000.00	Safeco Life	Annuity	4,000.00
Dec-97		12/17/1997		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
Jan-98				Unknown			4,000.00	Safeco Life	Annuity	4,000.00
Feb-98		2/18/1998		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
Mar-98		3/17/1998		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
Apr-98		4/16/1998		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
May-98		5/22/1998		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
Jun-98		6/17/1998		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
Jul-98				Unknown			4,000.00	Safeco Life	Annuity	4,000.00
Aug-98		7/24/1998		Unknown			1,000.00	Confederated Tribes	Distribution	1,000.00
Sep-98		8/18/1998		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
Oct-98		9/21/1998		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
Nov-98		3/2/1999		NW National Bank		1,000.00		Confederated Tribes	Distribution	1,000.00
Dec-98		10/15/1998		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
Jan-99		11/20/1998		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
Feb-99		12/18/1998		NW National #3174		4,000.00		Safeco Life	Annuity	4,000.00
Mar-99		1/20/1999		NW National #4929		4,000.00		Safeco Life	Annuity	4,000.00
Apr-99		2/19/1999		NW National #4929		4,000.00		Safeco Life	Annuity	4,000.00
May-99				Unknown			4,000.00	Safeco Life	Annuity	4,000.00
Jun-99		5/18/1999		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Jul-99		6/18/1999		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Aug-99		7/13/1999		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Sep-99		10/6/1999		US Bank #3696		1,000.00		Confederated Tribes	Distribution	1,000.00
Oct-99		8/16/1999		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Nov-99		9/15/1999		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Dec-99				Unknown			4,000.00	Safeco Life	Annuity	4,000.00
Jan-00		12/14/1999		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Feb-00		1/4/2000		US Bank #3696		2,837.50		Confederated Tribes	Distribution	2,837.50
Mar-00		1/18/2000		US Bank #1954		4,000.00		Safeco Life	Annuity	4,000.00
Apr-00		2/15/2000		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
May-00		3/17/2000		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Jun-00		4/17/2000		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Jul-00		5/17/2000		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Aug-00		6/15/2000		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Sep-00		8/9/2000		US Bank #3696		1,500.00		Confederated Tribes	Distribution	1,500.00
Oct-00		7/17/2000		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00

Kyan Cuthbert's Income
 Amounts Received by Ron Cuthbert
 February, 1994 through December, 2004

MM/YY	Check Date	Deposit Date	Check #	Account Deposited To	Guardianship	Ron's Personal	Unknown	Income From	Memo	Amount
Aug-00		8/16/2000		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Sep-00		9/22/2000		US Bank #7408	4,000.00			Safeco Life	Annuity	4,000.00
Oct-00		10/27/2000		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Nov-00		11/20/2000		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Dec-00		12/18/2000		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Dec-00		1/22/2001		US Bank #3696	3,121.00			Confederated Tribes	Annuity	4,000.00
Jan-01				Unknown			4,000.00	Safeco Life	Distribution	3,121.00
Feb-01		2/22/2001		US Bank #7408	4,000.00			Safeco Life	Annuity	4,000.00
Mar-01		3/16/2001		US Bank #7408	4,000.00			Safeco Life	Annuity	4,000.00
Apr-01		4/30/2001		US Bank #7408	4,000.00			Safeco Life	Annuity	4,000.00
May-01		5/17/2001		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Jun-01		6/15/01		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Jun-01		6/20/01		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Jul-01		7/16/01		LCCU #0155		1,000.00		Confederated Tribes	Distribution	1,000.00
Jul-01		7/25/2001		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Aug-01		8/14/2001		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Sep-01		9/15/01		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Oct-01		10/15/01		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Nov-01		11/16/01		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Dec-01		12/16/01		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Dec-01		12/17/2001		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Jan-02		1/13/2002		US Bank #9299		3,745.00		Confederated Tribes	Annuity	4,000.00
Jan-02		1/14/02		US Bank #9299		4,000.00		Safeco Life	Distribution	3,745.00
Feb-02		2/16/02		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Mar-02		3/14/02		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Apr-02		4/16/02		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
May-02		5/16/02		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Jun-02		6/18/02		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Jul-02		7/14/02		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Aug-02		8/22/2002		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Sep-02		9/16/02		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Oct-02		10/18/2002		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Nov-02		11/16/02		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Dec-02		12/30/2002		US Bank #9299		3,674.00		Confederated Tribes	Annuity	4,000.00
Dec-02		12/27/2002		US Bank #7408		4,000.00		Safeco Life	Distribution	3,674.00
Jan-03		1/16/03		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Feb-03		2/16/03		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Mar-03		3/31/2003		US Bank #7408		4,000.00		Safeco Life	Annuity	4,000.00
Apr-03		4/16/03		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
May-03		5/16/03		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Jun-03		6/16/03		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Jul-03		7/16/03		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Aug-03		8/16/03		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Sep-03		9/16/03		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00
Oct-03		10/16/03		US Bank #9299		4,000.00		Safeco Life	Annuity	4,000.00

**Ryan Cuthbert's Income
 Amounts Received by Ron Cuthbert
 February, 1994 through December, 2004**

MM/YY	Check Date	Deposit Date	Check #	To	Account Deposited	Guardianship	Ron's Personal	Unknown	Income From	Memo	Amount
Nov-03	1/16/03	12/10/2003	2209475	US Bank #9299			4,000.00		Safeco Life	Annuity	4,000.00
Dec-03	12/16/03	1/15/2004	2223834	US Bank #9299			4,000.00		Safeco Life	Annuity	4,000.00
Dec-03	12/11/03	12/16/2003	8734	US Bank #9299			5,181.00		Confederated Tribes	Distribution	5,181.00
Jan-04	1/16/04	2/23/2004	2238123	US Bank #9299			4,000.00		Safeco Life	Annuity	4,000.00
Feb-04	2/16/04	2/23/2004	2252521	US Bank #9299			4,000.00		Safeco Life	Annuity	4,000.00
Feb-04	2/16/04	4/5/2004	2252539	US Bank #7408		50,000.00			Safeco Life	Payment	50,000.00
Mar-04	3/16/04	3/29/2004	2266533	US Bank #9299			4,000.00		Safeco Life	Annuity	4,000.00
Apr-04	4/16/04	4/16/2004	2280392	US Bank #9299			4,000.00		Safeco Life	Annuity	4,000.00
May-04	5/16/04	5/17/2004	2294533	US Bank #9299			4,000.00		Safeco Life	Annuity	4,000.00
Dec-04	12/10/04	12/30/2004	11966	US Bank #9299			5,770.00		Confederated Tribes	Distribution	5,770.00

Totals **\$186,458.50** **\$233,370.00** **\$158,000.00**

\$577,828.50

FILED

MAR 06 2008

Sherry W. Parker, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

RONALD JAMES CUTHBERT

Defendant.

**AMENDED
INFORMATION**

No. 06-1-01100-7
(VPD 04-8660)

COMES NOW the Prosecuting Attorney for Clark County, Washington, and does by this inform the Court that the above-named defendant is guilty of the crime(s) committed as follows, to wit:

COUNT 01 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)

That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, between February 1, 1994 and June 30, 2003 by a series of acts connected together as part of a common scheme or plan, did wrongfully obtain or exert unauthorized control over the property or services of another, having a value exceeding \$1,500, with intent to deprive the other of said property, to-wit: having property in his possession, custody or control as guardian of the person and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount exceeding \$1,500, and in an approximate amount exceeding \$200,000, to his own use, or to the use of a person or persons other than the true owner or person entitled thereto, to-wit: Ryan Cuthbert with intent to deprive Ryan Cuthbert of said property, contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and 9A.56.010(18)(c).

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the standard sentencing range based upon the following aggravating circumstance(s):

The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

- (i) The current offense involved multiple victims or multiple incidents per victim;
- (ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;
- (iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

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1 (iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to
2 facilitate the commission of the current offense. RCW 9.94A.535(3)(d).

3 **COUNT 02 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

4 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
5 about December 30, 2004 did wrongfully obtain or exert unauthorized control over the property
6 of another, having a value exceeding \$1,500, to wit: funds in the amount of \$5,5770, with intent
7 to deprive the other of said property, contrary to Revised Code of Washington 9A.56.020(1)(a)
8 and 9A.56.030(1)(a) and 9A.56.010(18)(c).

9 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
10 standard sentencing range based upon the following aggravating circumstance(s):

11 The defendant has committed multiple current offenses and the defendant's high offender score
12 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

13 The defendant knew or should have known that the victim of the current offense was particularly
14 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

15 **COUNT 03 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

16 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
17 about May 17, 2004 did wrongfully obtain or exert unauthorized control over the property or
18 services of another, having a value exceeding \$1,500, with intent to deprive the other of said
19 property, to wit: having property in his possession custody, or control as guardian of the person
20 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
21 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
22 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
23 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
24 9A.56.010(18)(c).

25 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
26 standard sentencing range based upon the following aggravating circumstance(s):

27 The defendant has committed multiple current offenses and the defendant's high offender score
28 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

29 The defendant knew or should have known that the victim of the current offense was particularly
vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
the commission of the current offense. RCW 9.94A.535(3)(n).

COUNT 04 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)

That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
about April 15, 2004 did wrongfully obtain or exert unauthorized control over the property or
services of another, having a value exceeding \$1,500, with intent to deprive the other of said
property, to wit: having property in his possession custody, or control as guardian of the person
and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
9A.56.010(18)(c).

1 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
2 standard sentencing range based upon the following aggravating circumstance(s):

3 The defendant has committed multiple current offenses and the defendant's high offender score
4 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

5 The defendant knew or should have known that the victim of the current offense was particularly
6 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

7 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
8 the commission of the current offense. RCW 9.94A.535(3)(n).

8 **COUNT 05 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

9 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
10 about March 29, 2004 did wrongfully obtain or exert unauthorized control over the property or
11 services of another, having a value exceeding \$1,500, with intent to deprive the other of said
12 property, to wit: having property in his possession custody, or control as guardian of the person
13 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
14 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
15 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
16 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
17 9A.56.010(18)(c).

14 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
15 standard sentencing range based upon the following aggravating circumstance(s):

16 The defendant has committed multiple current offenses and the defendant's high offender score
17 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

18 The defendant knew or should have known that the victim of the current offense was particularly
19 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

20 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
21 the commission of the current offense. RCW 9.94A.535(3)(n).

21 **COUNT 06 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

22 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
23 about February 23, 2004 did wrongfully obtain or exert unauthorized control over the property or
24 services of another, having a value exceeding \$1,500, with intent to deprive the other of said
25 property, to wit: having property in his possession custody, or control as guardian of the person
26 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
27 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
28 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
29 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
9A.56.010(18)(c).

27 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
28 standard sentencing range based upon the following aggravating circumstance(s):

29 The defendant has committed multiple current offenses and the defendant's high offender score
results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

1 The defendant knew or should have known that the victim of the current offense was particularly
2 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

3 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
4 the commission of the current offense. RCW 9.94A.535(3)(n).

5 **COUNT 07 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

6 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
7 about January 15, 2004 did wrongfully obtain or exert unauthorized control over the property or
8 services of another, having a value exceeding \$1,500, with intent to deprive the other of said
9 property, to wit: having property in his possession custody, or control as guardian of the person
10 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
11 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
12 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
13 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
14 9A.56.010(18)(c).

15 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
16 standard sentencing range based upon the following aggravating circumstance(s):

17 The defendant has committed multiple current offenses and the defendant's high offender score
18 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

19 The defendant knew or should have known that the victim of the current offense was particularly
20 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

21 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
22 the commission of the current offense. RCW 9.94A.535(3)(n).

23 **COUNT 08 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

24 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
25 about December 16, 2003 did wrongfully obtain or exert unauthorized control over the property
26 or services of another, having a value exceeding \$1,500, with intent to deprive the other of said
27 property, to wit: having property in his possession custody, or control as guardian of the person
28 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
29 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
9A.56.010(18)(c).

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

The defendant has committed multiple current offenses and the defendant's high offender score
results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

The defendant knew or should have known that the victim of the current offense was particularly
vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
the commission of the current offense. RCW 9.94A.535(3)(n).

1 **COUNT 09 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

2 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
3 about December 10, 2003 did wrongfully obtain or exert unauthorized control over the property
4 or services of another, having a value exceeding \$1,500, with intent to deprive the other of said
5 property, to wit: having property in his possession custody, or control as guardian of the person
6 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
7 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
8 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
9 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
10 9A.56.010(18)(c).

11 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
12 standard sentencing range based upon the following aggravating circumstance(s):

13 The defendant has committed multiple current offenses and the defendant's high offender score
14 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

15 The defendant knew or should have known that the victim of the current offense was particularly
16 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

17 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
18 the commission of the current offense. RCW 9.94A.535(3)(n).

19 **COUNT 10 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

20 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
21 about December 1, 2003 did wrongfully obtain or exert unauthorized control over the property or
22 services of another, having a value exceeding \$1,500, with intent to deprive the other of said
23 property, to wit: having property in his possession custody, or control as guardian of the person
24 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
25 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
26 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
27 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
28 9A.56.010(18)(c).

29 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
30 standard sentencing range based upon the following aggravating circumstance(s):

31 The defendant has committed multiple current offenses and the defendant's high offender score
32 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

33 The defendant knew or should have known that the victim of the current offense was particularly
34 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

35 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
36 the commission of the current offense. RCW 9.94A.535(3)(n).

37 **COUNT 11 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

38 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
39 about November 10, 2003 did wrongfully obtain or exert unauthorized control over the property
40 or services of another, having a value exceeding \$1,500, with intent to deprive the other of said
41 property, to wit: having property in his possession custody, or control as guardian of the person
42 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater

1 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
2 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
3 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
4 9A.56.010(18)(c).

5 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
6 standard sentencing range based upon the following aggravating circumstance(s):

7 The defendant has committed multiple current offenses and the defendant's high offender score
8 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

9 The defendant knew or should have known that the victim of the current offense was particularly
10 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

11 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
12 the commission of the current offense. RCW 9.94A.535(3)(n).

13 **COUNT 12 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

14 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
15 about October 8, 2003 did wrongfully obtain or exert unauthorized control over the property or
16 services of another, having a value exceeding \$1,500, with intent to deprive the other of said
17 property, to wit: having property in his possession custody, or control as guardian of the person
18 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
19 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
20 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
21 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
22 9A.56.010(18)(c).

23 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
24 standard sentencing range based upon the following aggravating circumstance(s):

25 The defendant has committed multiple current offenses and the defendant's high offender score
26 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

27 The defendant knew or should have known that the victim of the current offense was particularly
28 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

29 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
the commission of the current offense. RCW 9.94A.535(3)(n).

COUNT 13 - THEFT IN THE SECOND DEGREE - 9A.56.020(1)(a)/9A.56.040(1)(a)

That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
about September 22, 2003, did wrongfully obtain or exert unauthorized control over the property
or services of another, having a value exceeding \$250, with intent to deprive the other of said
property, to wit: having property in his possession custody, or control as guardian of the person
and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
than \$250 to his own use, or to the use of a person or persons other than the true owner or
person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.040(1)(a).

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

1
2 The defendant has committed multiple current offenses and the defendant's high offender score
3 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

4 The defendant knew or should have known that the victim of the current offense was particularly
5 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

6 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
7 the commission of the current offense. RCW 9.94A.535(3)(n).

8 **COUNT 14 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

9 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
10 about September 9, 2003 did wrongfully obtain or exert unauthorized control over the property
11 or services of another, having a value exceeding \$1,500, with intent to deprive the other of said
12 property, to wit: having property in his possession custody, or control as guardian of the person
13 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
14 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
15 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
16 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
17 9A.56.010(18)(c).

18 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
19 standard sentencing range based upon the following aggravating circumstance(s):

20 The defendant has committed multiple current offenses and the defendant's high offender score
21 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

22 The defendant knew or should have known that the victim of the current offense was particularly
23 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

24 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
25 the commission of the current offense. RCW 9.94A.535(3)(n).

26 **COUNT 15 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

27 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
28 about August 14, 2003 did wrongfully obtain or exert unauthorized control over the property or
29 services of another, having a value exceeding \$1,500, with intent to deprive the other of said
property, to wit: having property in his possession custody, or control as guardian of the person
and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
9A.56.010(18)(c).

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

The defendant has committed multiple current offenses and the defendant's high offender score
results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

The defendant knew or should have known that the victim of the current offense was particularly
vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

1
2 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
the commission of the current offense. RCW 9.94A.535(3)(n).

3 **COUNT 16 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

4 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
5 about August 6, 2003 did wrongfully obtain or exert unauthorized control over the property or
6 services of another, having a value exceeding \$1,500, with intent to deprive the other of said
7 property, to wit: having property in his possession custody, or control as guardian of the person
8 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
9 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
10 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
11 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
12 9A.56.010(18)(c).

13 Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
14 standard sentencing range based upon the following aggravating circumstance(s):

15 The defendant has committed multiple current offenses and the defendant's high offender score
16 results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

17 The defendant knew or should have known that the victim of the current offense was particularly
18 vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

19 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
20 the commission of the current offense. RCW 9.94A.535(3)(n).

21 **COUNT 17 - THEFT IN THE FIRST DEGREE - 9A.56.020(1)(a)/9A.56.030(1)(a)**

22 That he, RONALD JAMES CUTHBERT, in the County of Clark, State of Washington, on or
23 about July 9, 2003 did wrongfully obtain or exert unauthorized control over the property or
24 services of another, having a value exceeding \$1,500, with intent to deprive the other of said
25 property, to wit: having property in his possession custody, or control as guardian of the person
26 and estate of Ryan J. Cuthbert, did secrete, withhold, or appropriate funds in an amount greater
27 than \$1,500 to his own use, or to the use of a person or persons other than the true owner or
28 person entitled thereto, to-wit: Ryan Cuthbert, with intent to deprive Ryan Cuthbert of said
29 property; contrary to Revised Code of Washington 9A.56.020(1)(a) and 9A.56.030(1)(a) and
9A.56.010(18)(c).

Further, the State of Washington notifies the Defendant that it is seeking a sentence above the
standard sentencing range based upon the following aggravating circumstance(s):

The defendant has committed multiple current offenses and the defendant's high offender score
results in some of the current offenses going unpunished. RCW 9.94A.535(2)(c).

The defendant knew or should have known that the victim of the current offense was particularly
vulnerable or incapable of resistance. RCW 9.94A.535(3)(b).

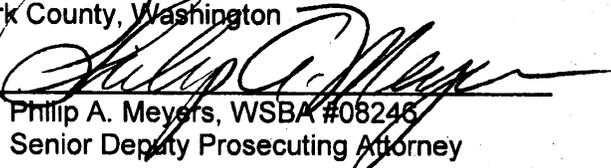
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1 The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate
2 the commission of the current offense. RCW 9.94A.535(3)(n).
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7 Date: March 6, 2008

ARTHUR D. CURTIS
Prosecuting Attorney in and for
Clark County, Washington

8 BY:


Philip A. Meyers, WSBA #08246
Senior Deputy Prosecuting Attorney

DEFENDANT: RONALD JAMES CUTHBERT			
RACE: W	SEX: M	DOB: 2/1/1944	
DOL: CUTHBRJ563CA WA		SID:	
HGT: 507	WGT: 185	EYES: BLU	HAIR: GRY
WA DOC:		FBI:	
LAST KNOWN ADDRESS(ES):			
H - 220 SE 149TH CT, VANCOUVER WA			

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FILED

FEB 29 2008

Sherry W. Parker, Clerk, Clark Co.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

STATE OF WASHINGTON,
Plaintiff,
v.
RONALD JAMES CUTHBERT,
Defendant.

No. 06-1-01100-7
STIPULATION

COME NOW Plaintiff State of Washington, by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, and Defendant Ronald J. Cuthbert in person and with his attorney James J. Sowder, and stipulate and agree as follows:

That the following documents are true and correct copies of original records made and kept in the ordinary course of business by officials and employees of the below named banks, companies and organizations, made at or about the time of the transaction which they record, and said records are admissible without the necessity of further testimony or other evidence of authenticity by a Custodian of Records or other official of said business, organization or institution:

- | | | |
|----|--|-----------------------------|
| 1. | <u>U.S. Bank Records</u> | <u>Discovery Index page</u> |
| A. | U.S. Bank Records-Account #8903
Monthly statements- May 1999 to Jul 2004 | 103-266, 796-938 |
| B. | U.S. Bank Records-Account #9299
Monthly statements- March 1999 to July 2004 | 291-431, 1032-1163 |

STIPULATION - 1

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

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- C. U.S. Bank Records- Account #7408
Monthly statements- June 1998 to June 2004 443-517, 736-779
- D. U.S. Bank Records- Account #6682
Monthly statements- February 2003 to April 2004 518-531, 781-795
- E. U.S. Bank Records- Account #1954
Monthly statements- July 1998 to July 2004 533-639, 941-1040
- F. U.S. Bank Records- Account #3-696
Monthly statements- June 1997 to June 1998 640-667
- G. U.S. Bank Records- Account opening documents 669-685
- H. U.S. Bank Records- Account #5-927
Monthly Statements September 1997 to July 1998 710-733
- I. U.S. Bank Records- Accounts #3-696/7408
Partial Deposit records – October 1998 to April 2004 1175-1325
1377-1402
- J. U.S. Bank Records- Account #9299
Deposit Records – August 2001 to May 2004 1460-1530
- K. U.S. Bank Records- Account #9299
Copies of Checks- 5044-

2. Lacamas Community Credit Union Records

- A. Lacamas Community Credit Union Records- Account #79624
Account opening documents 1535-1546
Monthly Statements- January 2001 to May 2004 1547-1659
- B. Lacamas Community Credit Union Records-Account #50155
Account opening documents 1662-1665
Monthly statements- May 1997 to May 2004 1666-1879

3. Symetra (Safeco) Life Insurance Co. Records

- A. SAFECO Annuity Contract #AA0447095
Monthly Annuity checks-July 2001 to December 2003 3720-3753
SAFECO File documents re: Annuity #AA0447095 3762-3830
Monthly Annuity checks- January 2004 to July 2004 3831-3855

STIPULATION - 2

CLARK COUNTY PROSECUTING ATTORNEY
1200 FRANKLIN STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2261 (OFFICE)
(360) 397-2230 (FAX)

Monthly Annuity checks-January 1999 to February 2001

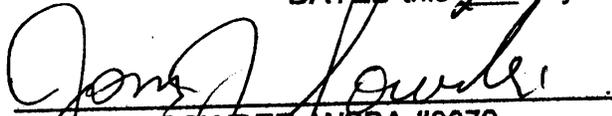
3856-3881

4. Confederated Tribes of the Grande Ronde Records

A Checks and Member Benefit Trust Withdrawal Forms
Re: Ryan J. Cuthbert, Roll No. 2207

4028-4061

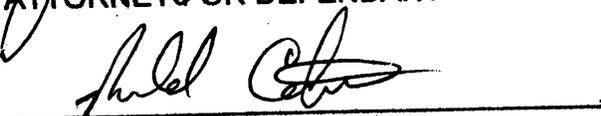
DATED this 2 day of November, 2007.



JAMES J. SOWDER, WSBA #9072
ATTORNEY FOR DEFENDANT



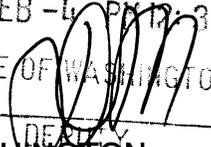
PHILIP A. MEYERS, WSBA #8246
DEPUTY PROSECUTING ATTORNEY



RONALD J. CUTHBERT
DEFENDANT

FILED
COURT OF APPEALS
DIVISION II

09 FEB - 4 PM 12:30

STATE OF WASHINGTON
BY 

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

STATE OF WASHINGTON,
Respondent,

v.

RONALD JAMES CUTHBERT,
Appellant.

No. 37542-7-II

Clark Co. No. 06-1-01100-7

DECLARATION OF
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

: ss

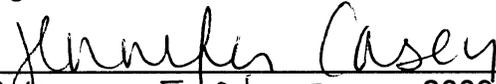
COUNTY OF CLARK)

On Feb 2, 2009, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO:	David Ponzoha, Clerk Court of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402-4454	Lisa Tubbut Attorney at Law PO Box 1396 Longview, WA 98632
	Ronald James Cuthbert c/o Appellate Attorney	

DOCUMENTS: Brief of Respondent

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


Date: Feb 2, 2009.
Place: Vancouver, Washington.