

FILED
December 9, 2015
Court of Appeals
Division I
State of Washington

No. 72067-8-I

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

STATE OF WASHINGTON,

Respondent,

v.

DEBORAH JEAN LJUNGHAMMAR,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

Pursuant to RAP 10.1(g)(2), Deborah adopts assignment of error 3, related issue 3, and the argument set forth at pages 21 to 23 of Ivan's opening brief.

1. Deborah's constitutional right to be silent was violated.

The State contends Deborah did not have a Fifth Amendment right to be silent simply because the guardian was not a "state agent." SRB at 16-17. But as argued in the opening brief, the guardian was acting as an "officer of the court" under the circumstances of this case. AOB at 17-18. Also, Deborah was under direct compulsion from the guardianship court to answer the guardian's questions. AOB at 18-19. Finally, Deborah had a right not to answer the guardian's questions because of the reasonable possibility that any information she provided would be used against her in a criminal trial. AOB at 18-19.

The State also argues Deborah did not invoke her right to silence by remaining silent in response to the guardian's requests for information. SRB at 17-19. But as argued in the opening brief, Deborah had a right to invoke her right to silence by remaining silent in response to the guardian's requests for information because responding

to the guardian's requests might have involved the admission of criminal activity. AOB at 20-21.

2. The exceptional sentence must be reversed.

The State apparently concedes that the trial court erred in imposing an exceptional sentence based upon the "major economic offense" aggravating factor. SRB at 20-21. Contrary to the State's argument, the exceptional sentence must be reversed because the court placed significant weight on that improper factor and the sentence imposed deviated significantly from the standard range. AOB at 28.

3. The restitution order must be vacated.

The State argues the joint and several restitution award was proper because both appellants were equally culpable. SRB at 22-23. But the facts presented at trial, as discussed in the statement of the case in Deborah's opening brief, demonstrate that the parties were *not* equally culpable. After all, it was Ivan, and not Deborah, who was authorized to act as power of attorney and entered an agreed settlement in the guardianship proceeding. Moreover, the State does not address the argument that joint and several restitution is not authorized by the plain language of the statute and is inconsistent with the SRA's

emphasis that punishment must be based upon individual culpability.

AOB at 32-36.

B. CONCLUSION

For the reasons provided above and in the opening brief, the conviction must be reversed because the State did not prove the elements of the crime beyond a reasonable doubt and the prosecutor violated Deborah's constitutional right to silence by urging the jury to view her decision to exercise her right to silence as evidence of guilt. The exceptional sentence must be reversed because an aggravating factor relied upon by the court was improper. The restitution order must be vacated because the court was not authorized to impose joint and several restitution.

Respectfully submitted this 9th day of December, 2015.

s/ Maureen M. Cyr

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Respondent,)	
)	NO. 72067-8-I
v.)	
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DEBORAH LJUNGHAMMAR,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 9TH DAY OF DECEMBER, 2015, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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