

No. 71798-7-1

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

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STATE OF WASHINGTON,

Respondent,

v.

LA'RYAN HOLMES,

Appellant.

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CLERK OF COURT  
COURT OF APPEALS  
DIVISION ONE  
1000 4TH AVENUE  
SEATTLE WA 98101

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

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BRIEF OF APPELLANT

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## A. INTRODUCTION

Michael DeLaurenti, who sold illegal drugs out of his home, arranged to sell hallucinogenic mushrooms to a regular customer, Seth Matthews. When Mr. Matthews arrived at the house to make the purchase, he brought two unidentified men with him. After overhearing a heated exchange among the four men, Mr. DeLaurenti's roommate brought out his shotgun and told everyone to "be cool." One of the men with Mr. Matthews fired a handgun, striking the roommate in the leg before running from the house. Following a police interrogation in which the detective informed Mr. Matthews he could be facing criminal charges under a theory of accomplice liability, Mr. Matthews identified the shooter as La'Ryan Holmes.

During the trial Mr. Holmes's privately retained defense counsel was arrested for driving under the influence. Mr. Holmes moved for a mistrial upon learning about his attorney's arrest from the court. The trial court denied this motion, applying the wrong legal standard and violating Mr. Holmes's Sixth Amendment right to counsel of choice. In addition, during closing argument, the deputy prosecutor engaged in improper argument, denying Mr. Holmes his right to a fair trial.

## B. ASSIGNMENTS OF ERROR

1. The denial of Mr. Holmes's motion for a mistrial violated his Sixth Amendment right to counsel of choice.

2. The deputy prosecutor's misconduct during closing argument violated Mr. Holmes's right to a fair trial.

## C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. An element of the Sixth Amendment right to counsel is the right of a defendant who does not require appointed counsel to choose who will represent him. The trial court is only permitted to balance this right against the prompt and efficient administration of justice, giving consideration to the degree of delay attributable to the defendant and the extent of any additional delay that would result from the granting of the defendant's request. Where Mr. Holmes's moved for a mistrial when he discovered his attorney had been arrested for a crime after the start of trial and had failed to reveal this information to Mr. Holmes, did the trial court's denial of Mr. Holmes's motion violate his Sixth Amendment right to counsel of choice?

2. A prosecutor's misconduct is grounds for reversal if the conduct is improper and prejudicial. During closing argument, the deputy prosecutor appealed to the jurors' passion and prejudice, urging

the jurors to consider matters outside of the record. Mr. Holmes's objection to these statements was overruled. Where the prosecutor's comments were reasonably likely to have affected the verdict, did this misconduct violate Mr. Holmes's right to a fair trial, requiring reversal?

D. STATEMENT OF THE CASE

Michael DeLaurenti was a drug dealer who sold illegal substances out of his home, including marijuana and hallucinogenic mushrooms. 1/29/14 RP 119-20. A regular customer of Mr. DeLaurenti's, Seth Matthews, purchased \$20 to \$50 worth of marijuana from Mr. DeLaurenti every couple of weeks. 1/29/14 RP 121. One day Mr. Matthews called Mr. DeLaurenti and asked to arrange the purchase of a quarter of a pound of hallucinogenic mushrooms, worth approximately \$400 to \$500. 1/29/14 RP 122. Despite having never bought mushrooms from Mr. DeLaurenti in the past, Mr. Matthews implied the purchase was for himself. 1/29/14 RP 122-23.

The afternoon of the arranged sale, Mr. DeLaurenti was at home with his roommate, Derek Seibel, and two visiting friends, Christopher Adam and Madison Wilson. 1/29/14 RP 123. The group was watching a movie and Mr. DeLaurenti, Mr. Adam, and Ms. Wilson were smoking marijuana. 1/29/14 RP 32, 47, 123, 180. Mr. Matthews

arrived as expected, but surprised Mr. DeLaurenti by bringing two other men with him that Mr. DeLaurenti had never met before. 1/29/14 RP 123. Both unidentified men were African American. 1/29/14 RP 124. According to Mr. DeLaurenti, one man was larger than the other. 1/29/14 RP 124.

The three men followed Mr. DeLaurenti into his bedroom. 1/29/14 RP 14, 48. Mr. DeLaurenti handed the mushrooms to the smaller man accompanying Mr. Matthews. 1/29/14 RP 127. There was a discussion about the price for the mushrooms, and Mr. Matthews asked Mr. DeLaurenti for a quarter of a pound of marijuana. 1/29/14 RP 127, 129. Although Mr. Matthews testified that the primary purpose of the visit was to obtain marijuana, Mr. DeLaurenti testified Mr. Matthews had only arranged to purchase mushrooms. 1/29/14 RP 128; 1/30/14 RP 36. Mr. DeLaurenti told them he only had a small amount of marijuana and refused to open the safe in his room out of fear of being assaulted. 1/29/14 RP 127-28.

The men left the bedroom. 1/29/14 RP 129. Mr. DeLaurenti's roommate, Mr. Siebel, testified that he felt uncomfortable when the men came back into the living area. 1/29/14 RP 51. He went into his

bedroom and shut the door. 1/29/14 RP 51. He then picked up a loaded shotgun and listened at the bedroom door. 1/29/14 RP 51.

Mr. DeLaurenti repeatedly asked Mr. Matthews if he was going to be paid for the mushrooms and exchanged words with the smaller man who had accepted the mushrooms. 1/29/14 RP 129-30; 1/30/14 RP 37. The man with the mushrooms then struck Mr. DeLaurenti on the side or back of the head. 1/29/14 RP 130-31; 1/30/14 RP 37.

Mr. Siebel testified that when he heard someone being struck and sounds of distress from Mr. DeLaurenti, he opened the door while holding the shotgun pointed at a downward angle. 1/29/14 RP 52-53. He told everyone to “be cool,” and his plan was to scare the men and make them leave the house. 1/29/14 RP 53, 57. However, he then noticed that one of the men had a handgun pointed at him. 1/29/14 RP 54. Mr. Siebel’s leg was struck by a bullet, and he fired the one round he had in his shotgun. 1/29/14 RP 54-55. The drug buyers ran out of the house, with the shooter firing a total of five shots before exiting. 1/29/14 RP 133; 1/30/14 RP 121.

When the police arrived, Mr. DeLaurenti, Mr. Seibel, Mr. Adam, and Ms. Wilson all lied to the officers, omitting the fact that Mr. DeLaurenti invited the men into the home and instead claiming the men

had knocked on the door and immediately assaulted Mr. DeLaurenti. 1/29/14 RP 36, 80-81, 136; 2/3/14 RP 30-31. The police searched only the front three rooms of the house, which did not include Mr. DeLaurenti's bedroom. 1/30/14 RP 134; 2/3/14 RP 120. Police found a bulletproof vest and an Airsoft pistol in Mr. Seibel's bedroom. 1/29/14 RP 63-64.

Mr. DeLaurenti identified Mr. Matthews for the police, and the detective assigned to the case determined that La'Ryan Holmes might be the shooter based on the fact Mr. Holmes is the half-brother of Mr. Matthew's girlfriend. 1/30/14 RP 31; 2/3/14 RP 102. Mr. Matthews testified that the detective approached him with a photo of Mr. Holmes and told him that he could be criminally liable for the shooting as an accomplice. 1/30/14 RP 53-54. The detective told Mr. Matthews they knew Mr. Holmes was the shooter and he needed to help himself. 1/30/14 RP 55.

Mr. Matthews identified Mr. Holmes as one of the men who went with him to Mr. DeLaurenti's house but said he ran out of the home as soon as he saw the shotgun and did not see Mr. Holmes with a handgun. 1/30/14 RP 38, 57. However, he said that the other unidentified man, whom he did not know, ran out of the house with

him, and that Mr. Holmes later admitted to firing the handgun. 1/30/14 RP 39-40, 58. Law enforcement searched Mr. Holmes's home and vehicle but did not find evidence of drugs or the firearm. 2/3/14 RP 84.

At the start of the fourth day of testimony of Mr. Holmes's jury trial, which fell on a Monday, the trial court notified the parties that it had inadvertently learned defense counsel had been arrested the prior Friday evening for driving under the influence. 2/3/14 RP 3. In response to concerns that this raised a potential conflict between Mr. Holmes and his attorney, the King County prosecuting attorney notified the court it would not take any part in the filing decision against Mr. Holmes's attorney. 2/3/14 RP 6. Mr. Holmes moved to discharge his counsel and for a mistrial, explaining that he no longer had faith in his attorney. 2/3/14 RP 70-71. The trial court denied Mr. Holmes's motion. 2/3/14 RP 73.

During closing argument, the deputy prosecutor argued that the State could not have "the wrong guy" because if it did, then the "real shooter's out doing this again." 2/5/14 RP 78. Mr. Holmes's objection to the deputy prosecutor's statement was overruled. *Id.* The jury subsequently convicted Mr. Holmes of assault in the second degree and unlawful possession of a firearm in the first degree. CP 111.

E. ARGUMENT

**1. Mr. Holmes was denied his Sixth Amendment right to counsel of choice.**

- a. Having retained private counsel, Mr. Holmes was entitled to his counsel of choice.

“The Sixth Amendment provides that ‘[i]n all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence.’” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 144, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006). An element of this right is the right of a defendant who does not require appointed counsel to choose who will represent him. *Id.* The Sixth Amendment right to counsel of choice commands “not that a trial be fair, but that a particular guarantee of fairness be provided – to wit, that the accused be defended by the counsel he believes to be best.” *Id.* at 146.

Mr. Holmes retained private counsel to defend him against the very serious criminal charges of assault in the first degree<sup>1</sup> and unlawful possession of a firearm in the first degree. RP 72; CP 8. Because he did not require appointed counsel, he had a Sixth Amendment right to be defended by the counsel he believed to be best. *Gonzalez-Lopez*, 548 U.S. at 146. Mr. Holmes exercised that right

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<sup>1</sup> Although convicted of assault in the second degree, the amended information charged Mr. Holmes with first degree assault. CP 8.

when he hired private counsel who he believed would represent him well and would adhere to the rules of professional conduct.

After Mr. Holmes's discovered that his attorney had been arrested for a crime during trial and failed to reveal this information to him, Mr. Holmes moved for a mistrial, which the trial court denied. 2/3/14 RP 71-73. This Court reviews the trial court's denial of a motion for mistrial for an abuse of discretion. *State v. Emery*, 174 Wn.2d 741, 765, 278 P.3d 653 (2012). A court abuses its discretion when it bases its ruling on an erroneous view of the law or applies the wrong legal standard. *State v. Rafay*, 167 Wn.2d 644, 655, 222 P.3d 86 (2009).

- b. Mr. Holmes's right to counsel of choice was violated when the trial court applied the wrong legal standard and failed to consider this constitutional right.
  - i. *When it denied Mr. Holmes's motion for a mistrial, the trial court applied the wrong legal standard.*

The jury trial recessed for the weekend on a Thursday afternoon. 1/30/14 RP 200. The following Monday morning, the trial court inadvertently learned that Mr. Holmes's attorney, David Hancock, had been arrested Friday evening for driving under the influence. 2/3/14 RP 3, 5. The court directed Mr. Hancock to speak privately with Mr. Holmes, and Mr. Holmes indicated that he wished to consult with

independent counsel. 2/3/14 RP 3. A public defender, Carlos Gonzales, was made available to Mr. Holmes for this consultation. 2/3/14 RP 3.

The trial court was initially concerned about a conflict of interest, citing to RPC 1.7. 2/3/14 RP 5. This was a valid concern, given that Mr. Hancock had been arrested in King County. 2/3/14 RP 3. The same office that was prosecuting Mr. Holmes was also now given the task of filing charges against his defense counsel. 2/3/14 RP 3. Because of this possible conflict of interest, the trial court's assistance in arranging independent counsel for Mr. Holmes was appropriate. *State v. Sanchez*, 171 Wn. App. 518, 558-59, 288 P.3d 351 (2012) (“[u]pon notification that an actual or potential conflict of interest exists, a trial court has the obligation ‘either to appoint separate counsel or to take adequate steps to ascertain whether the risk was too remote to warrant separate counsel’”).

However, after allowing Mr. Holmes to consult briefly with Mr. Gonzales during the morning recess, the court informed the parties it had learned the charges against Mr. Hancock would be referred to a municipal court and the King County prosecuting attorney would take no part in the filing decision. 2/3/14 RP 6. Upon learning this, Mr.

Gonzales deferred to the trial court, asking, “[m]y question to you, your Honor, is, do you still think it’s a conflict then?” 2/3/14 RP 6. The trial court responded in the negative, stating “since it’s a different prosecuting authority, I don’t see that there is any conflict.” 2/3/14 RP 7-8.

When Mr. Gonzales explained that Mr. Holmes remained unsure about whether he wanted to discharge his counsel, and requested the remainder of the day to speak with his family and make a decision, the trial court denied Mr. Holmes’s request. 2/3/14 RP 8, 11. Instead, the court decided that the trial would proceed as scheduled that morning and Mr. Holmes would have two hours over lunch to speak with his family. 2/3/14 RP 11.

Before lunch, Mr. Adam and Kathy Geil, a forensic scientist for the Washington State Patrol, testified. 2/3/14 RP 16, 45. Tom Conrad, the detective who interrogated Seth Matthews, also began his testimony. 2/3/14 RP 55. After lunch, Mr. Gonzales explained that despite the fact that any potential conflict was resolved, Mr. Holmes remained concerned about his relationship with his privately retained attorney and his attorney’s ability to represent him. 2/3/14 RP 70. Mr. Gonzales engaged in the following exchange with the trial court:

MR. GONZALES: As the Court stated earlier, we don't believe – at least it's my understanding, that there is no longer a conflict on this case as the way you pointed out earlier today.

However, in talking to Mr. Holmes, he would like to – a motion to discharge counsel at this time. He had some trust concerns between himself and Mr. Hancock, and he's afraid of proceeding with Mr. Hancock with the remainder of the trial and would at this point make a motion for a mistrial.

THE COURT: I wonder what the nature of those – that would be an extraordinary thing to do.

MR. GONZALES: I understand. And what it first started out as being is why is the – why the trust issue came about was Mr. Holmes was somewhat taken aback by the fact that the Court is informing him that there is this conflict that Mr. Hancock was stopped and potentially charged with a criminal offense, and why wouldn't Mr. Hancock come to Mr. Holmes over the weekend and tell him this happened? Why did Mr. Holmes have to wait until the Court contacted Mr. Hancock? And that was the first issue that Mr. Holmes has, why he doesn't trust Mr. Hancock at this point.

The second reason why was – I wasn't here for the remainder of this morning's testimony from the State, but he feels that this issue that the Court has brought about has somewhat distracted Mr. Hancock, and he bases that on how the testimony and I believe – I wasn't here, but the cross-examination of the witnesses that took place this morning, and it seemed to Mr. Holmes that Mr. Hancock was distracted, and he has – he questions at this point Mr. Hancock's ability to go forward given this issue that's in this case.

So that's why he wants the ability to hire private counsel and –

THE COURT: He already has – I think Mr. Hancock is retained.

MR. GONZALES: He is, and he's looking to get another counsel. I think that's some of the phone calls they have made this afternoon as well.

RP 70-72.

In response, the State argued Mr. Holmes's motion should be denied because the standard for granting such relief "is a complete breakdown of communication between the... attorney-client relationship" and the evidence did not show such a breakdown had occurred here. RP 72. The trial court agreed, adopting that standard and ruling, "it does not appear to me that this relationship has broken down to the point where it would be appropriate to grant a mistrial, so the motion is denied." RP 73.

Whether a complete breakdown of communication has occurred is the appropriate standard when considering a defendant's request for a substitution of *appointed* counsel. *In re Pers. Rest. of Stenson*, 142 Wn.2d 710, 726, 16 P.3d 1 (2001). It is not an appropriate inquiry when a defendant has retained private counsel. *State v. Hampton*, \_\_\_ Wn. App. \_\_\_, 332 P.3d 1020, 1028, n.13 (2014). When the trial court denied Mr. Holmes' motion for a mistrial because it found that his

communication with Mr. Hancock had not completely broken down, it applied the wrong legal standard and necessarily abused its discretion. Because the trial court misapplied the law, this Court should reverse.

ii. *Under the correct legal standard, Mr. Holmes was entitled to a mistrial in order to secure new counsel.*

Courts are not precluded from limiting a defendant's right to retained counsel of his choice when it would unduly delay the proceedings, as a trial court is permitted to consider the demands of its calendar. *Hampton*, \_\_ Wn. App. \_\_, 332 P.3d at 1031. When balancing the defendant's right to counsel of choice against the public's interest in the prompt and efficient administration of justice, this Court has found it appropriate to consider the degree of delay that can be attributed to the defendant and what additional delay would result from the granting of the defendant's request. *Hampton*, \_\_ Wn. App. \_\_, 332 P.3d at 1028-30 (finding that other factors which the Court had previously considered regarding the legitimacy of the defendant's dissatisfaction with present counsel were invalid after *Gonzalez-Lopez*).

Here, no delay can be attributed to Mr. Holmes. He was arraigned on December 20, 2012. Supp. CP \_\_ (sub no. 6). The minutes show the case was continued by agreement once, from January 3, 2013, to January 31, 2013, before Mr. Hancock appeared on January

31, 2013, on behalf of Mr. Holmes. Supp. CP \_\_\_ (sub nos. 11, 16). Although the case was continued repeatedly by agreement after that date, Mr. Holmes retained counsel shortly after his arraignment and proceeded without issue with Mr. Hancock until he was informed that his attorney had been arrested for a crime during his jury trial.

Upon learning this information, Mr. Holmes simply asked for the remainder of the day to consider the information and consult with his family. 2/3/14 RP 8. When the trial court gave him an extended lunch recess instead, Mr. Holmes took that opportunity to speak with family, decide that he did wish to discharge Mr. Hancock, and begin contacting other attorneys. 2/3/14 RP 71-72. As in *Hampton*, where the defendant moved swiftly to obtain private counsel once he realized he was facing more serious charges, Mr. Holmes took action immediately upon learning that his attorney had been arrested for a crime. \_\_\_ Wn. App. \_\_\_, 332 P.3d at 1031.

Although Mr. Holmes's basis for dissatisfaction with his counsel is not a relevant consideration when examining the right to counsel of choice, the fact that Mr. Holmes's attorney had been arrested for a crime was no trivial matter. See *Gonzalez-Lopez*, 548 U.S. at 146;

*Hampton*, \_\_\_ Wn. App. \_\_\_, 332 P.3d at 1029. As recognized in the

Rules of Professional Conduct, it is misconduct for an attorney to:

commit any act involving moral turpitude, or corruption, or any unjustified act of assault *or any other act which reflects a disregard for the rule of law*, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not.

RPC 8.4(i) (emphasis added).

The defense attorney's arrest for driving under the influence was an act that reflects a disregard for the rule of law. In addition, as Mr. Gonzales explained to the trial court, the fact that his attorney was not forthcoming with this information, and that Mr. Holmes learned about the arrest first from the court, only compounded Mr. Holmes's concern. 2/3/14 RP 71. Mr. Holmes further expressed unease about the fact Mr. Hancock appeared distracted during the trial subsequent to his arrest, and the trial court acknowledged that it must have been "disconcerting" for Mr. Hancock, who now had to grapple with the possible consequences of his actions. 2/3/14 at 73.

The second factor to be considered under *Hampton*, regarding the additional delay that would result from the granting of Mr. Holmes's request, is unknown because when the trial court failed to apply the correct standard it did not inquire about Mr. Holmes's

attempts to obtain substitute counsel. Because this issue arose during the course of trial, additional delay was inevitable. However, there were several important State witnesses who had not yet testified when the issue was brought to the court's attention, including Mr. Adam, the lead detective on the case, two forensic scientists for the Washington State Patrol, and a police officer who was present at the scene. 2/3/14 RP 16, 45, 55; 2/4/14 RP 8, 39, 75. The parties also still needed to present closing argument.

Given that Mr. Holmes acted immediately upon learning of his attorney's alleged criminal actions, the fact that some delay was inevitable if the court granted the motion for a mistrial was not sufficient to deny Mr. Holmes's his right to counsel of his choice. The court erred when it denied his motion for a mistrial.

c. Reversal is required.

"The erroneous denial of counsel bears directly on the 'framework within which the trial proceeds.'" *Gonzalez-Lopez*, 548 U.S. 150. Thus, the wrongful denial of a defendant's counsel of choice is structural error and no showing of prejudice is required. *Id.*; *Hampton*, \_\_ Wn. App. \_\_, 332 P.3d at 1032. Because the trial court

erroneously denied Mr. Holmes his right to counsel of choice, reversal is required.

**2. Improper argument during the State’s closing denied Mr. Holmes a fair trial.**

A prosecutor is obligated to perform two functions: “enforce the law by prosecuting those who have violated the peace and dignity of the state” and serve “as the representative of the people in a quasijudicial capacity in a search for justice.” *State v. Monday*, 171 Wn.2d 667, 676, 257 P.3d 551 (2011). Because the defendant is among the people the prosecutor represents, the prosecutor “owes a duty to defendants to see that their rights to a constitutionally fair trial are not violated.” *Id.*; see also *Berger v. United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L.Ed. 1314 (1935); U.S. Const. amends. VI, XIV; Const. art. I, §§ 3, 22.

“[W]hile [a prosecutor] may strike hard blows, he is not at liberty to strike foul ones.” *Berger*, 295 U.S. at 88. “It is as much [the prosecutor’s] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.” *Id.* A prosecutor’s misconduct may deny a defendant his right to a fair trial and is grounds for reversal if the

conduct was improper and prejudicial. *State v. Swanson*, 181 Wn. App. 953, 957, 327 P.3d 67 (2014) (citing *In re Glasmann*, 175 Wn.2d 696, 703-04, 286 P.3d 673 (2012); *Monday*, 171 Wn.2d at 675).

Mere appeals to the jury's passion or prejudice during argument are improper. *State v. Pierce*, 169 Wn. App. 533, 552, 280 P.3d 1158 (2012). A prosecutor retains the duty to ensure a verdict based on reason and free of prejudice. *Id.* at 553. In addition, prosecutors commit reversible misconduct when they urge the jury to consider evidence outside the record and an appeal to passion and prejudice is based on matters outside the record. *Id.*

During closing argument, the deputy prosecuting attorney told the jury:

think about Detective Conrad's testimony. And he told you over and over and over again that he doesn't want to get the wrong guy. It doesn't do him any good to get the wrong guy. Because if we have got the wrong guy, then the real shooter's out doing this again, and nobody wants that.

2/5/14 RP 78. Mr. Holmes objected to the prosecutor's statement but the trial court overruled his objection. *Id.*

The State's suggestion to the jury that the shooter would act again, and that Mr. Holmes must be the shooter because the police would not want such a person at liberty in the community, was a pure

appeal to the jurors' emotions and therefore improper. *Pierce*, 169 Wn. App. at 552. Because Mr. Holmes objected, on appeal he must show that the comments were reasonably likely to have affected the verdict. *Id.* at 553.

When viewed in the context of the closing arguments, the issues in the case, the evidence presented, and the instructions to the jury, it is reasonably likely that the deputy prosecuting attorney's statement impacted the jury's verdict. *See State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997). As the State acknowledged, the case against Mr. Holmes was "not a perfect case." 2/5/14 RP 78. Four of the State's eyewitnesses admitted to initially telling a coordinated lie to the police. 1/29/14 RP 36, 80-81, 136, 2/3/14 RP 30-31. Only Mr. DeLaurenti identified Mr. Holmes as the shooter in a line-up, and like the other witnesses, he did not identify Mr. Holmes as the shooter in a photo montage. 1/29/14 RP 138. Although Mr. Matthews told police Mr. Holmes was one of the men who was with him that night, he did so only after the detective interrogated Mr. Matthews, told him they knew Mr. Holmes was the shooter, and threatened Mr. Matthews with charges based on accomplice liability. 1/30/14 RP 53-54.

Given the weaknesses in the State's evidence, the prosecutor's statement suggesting Mr. Holmes must be the shooter because otherwise the shooter was free to strike again was reasonably likely to have affected the jury's verdict. This Court should reverse.

F. CONCLUSION

Mr. Holmes asks that this court reverse and remand for a new trial because the court denied Mr. Holmes his Sixth Amendment right to counsel of choice and because the deputy prosecuting attorney's improper argument denied Mr. Holmes his right to a fair trial.

DATED this 20<sup>th</sup> day of November, 2014.

Respectfully submitted,

  
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Attorneys for Appellant

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 71798-7-I
v.	)	
	)	
LA'RYAN HOLMES,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 20<sup>TH</sup> DAY OF NOVEMBER, 2014, I CAUSED THE ORIGINAL **OPENING 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:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> LA'RYAN HOLMES 845234 STAFFORD CREEK CORRECTIONS CENTER 191 CONSTANTINE WAY ABERDEEN, WA 98520	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2014.

X \_\_\_\_\_ 

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