

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)

Respondent,)

v.)

RAMEL E. HAWKINS
(your name))

Appellant.)

No. 34731-8-II

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

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I, RAMEL HAWKINS, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

HAWKINS WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL
WHEN HIS TRAIL ATTORNEY FAILED TO REQUEST A
LESSER DEGREE OF SECOND DEGREE ASSAULT.

Additional Ground 2

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A
FINDING THAT 'GREAT BODILY HARM' WAS INFLICTED
UPON MR. THOMAS.

If there are additional grounds, a brief summary is attached to this statement.

Date: 11/01/06

Signature: [Handwritten Signature]

No. 34731-5-II

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

STATE OF WASHINGTON

Respondent,

V.

RAMEL HAWKINS,

Appellant.

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

The Honorable Brian Tollefson, Judge

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

RAMEL E. HAWKINS PRO SE
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1830 Eagle Crest Way
Clallam Bay, WA 98326

Table of Contents

Page

A. Assignment of Error Issues Pertaining To Assignment
of Error.....1

B. Arguments

1. HAWKINS WAS DENIED EFFECTIVE
ASSISTANCE OF COUNSEL WHEN HIS
TRIAL ATTORNEY FAILED TO REQUEST A
LESSER DEGREE OF SECOND DEGREE ASSAULT.

2. THE EVIDENCE WAS INSUFFICIENT TO
SUPPORT A FINDING THAT
"GREAT BODILY HARM" WAS
INFLECTED UPON MR. THOMAS.

C. Conclusion.....5

TABLE OF AUTHORITIES

Page

Washington Cases

State v. Berlin

133 Wn. 2d 541, 548, 947
P.2d 700 (1997).....2

State v. Brett

126 Wn. 2d 668, 705, 940 P.2d 1239 (1997), 126 Wn. 2d 136,
198-99, 892 P.2d 29 (1995).....2

State v. Ferreira

69 Wn. App. 465, 850 P.2d
541 (1993).....2-3

State v. Rodirquez

121. Wn. App. 180, 87
P.3d 1202 (2006).....2-4

State v. Thomas

109 Wn. 2d 222, 226, 743 P.2d
816 (1987).....2

State v. Ward

125 Wn. App. 243
(2005).....3

State v. Workman

90 Wn. 2d 443, 447-48, 584
P.2d 382 (1978).....2

Federal Cases

Strickland v. Washington

446 U. S. 668, 104 S. CT. 2052, 80 L. ED.

2d 674 (1984).....3

TABLE OF AUTHORITIES (CONT'D)

UNITED STATE SUPREME COURT CASE

Keeble v. United State

412 U. S. 205, 212, 93 S. CT. 1993 36 L. ED 2d 844

(1973).....3

RULES, STATUES AND OTHER

RCW 9A.04.110 (4) (C).....4

RCW 9A.08.010 (1) (C).....3-4

RCW 9A.36.011 (1) (A).....4

RCW 9A.36.021 (1) (A).....4

A. ASSIGNMENTS OF ERROR

1. APPELLANT WAS HIS CONSTITUTIONAL RIGHT TO EFFECTIVE REPRESENTATION AND FAIR TRIAL WHEN HIS TRIAL ATTORNEY FAILED TO REQUEST A LESSER DEGREE OF SECOND DEGREE ASSAULT.

2. APPELLANT WAS DENIED DUE PROCESS WHEN THE STATE FAILED TO PROVE EVERY ELEMENT OF FIRST DEGREE ASSAULT.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. AT TRIAL APPELLANT ATTORNEY FAILED TO REQUEST A LESSER DEGREE OF SECOND DEGREE ASSAULT THAT EXPOSED THE APPELLANT TO SUBSTANTIAL RISK. WAS THE APPELLANT DENIED HIS RIGHT TO EFFECTIVE REPRESENTATION AND A FAIR TRIAL?

2. AT TRIAL STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT GREAT BODILY HARM WAS INFLICTED UPON MR. THOMAS. WAS THERE SUFFICIENT EVIDENCE TO SUPPORT GREAT BODILY HARM?

B. ARGUMENTS

1. HAWKINS WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS TRIAL ATTORNEY FAILED TO REQUEST A LESSER DEGREE OF DEGREE ASSAULT.

I plan to show that counsel's performance was deficient; and the deficient performance prejudiced Mr. Hawkins. State v. Thomas 109 Wn. 2d 222, 226, 743 P.2d 816 (1987) Quoting STRICKLAND v. WASHINGTON, 466 U. S. 668, 104 S. CT. 2052, 80 L. ED. 2d 674 (1984) deficient performance occurs when counsel's performance falls below an objective standard of reasonableness. State v. Brett, 126 Wn. 2d 668, 705, 940 P. 2d 1239 (1997). (Quoting State v. Brett, 126 Wn. 2d 136, 198-99, 892 P. 2d 29 (1995). Prejudice occurs when but for the deficient performance, the outcome would have been different.

In order to prove counsel was deficient, Hawkins must demonstrate He was entitled to a lesser included offense instruction a lesser included exist when each of the elements of the lesser offense is a necessary element of the offense charged, and the evidence supports an inference that the lesser crime was committed. State v. Berlin, 133 Wn. 2d 541, 548, 947 P. 2d 700 (1997). (Quoting State v. Workman 90 Wn. 2d 443, 447-48, 584 P. 2d 382 (1978).

All evidence in this case supports the evidence of a lesser included.. Hawkins testified that He never tried to shoot Mr. Thomas and that the gun was fired towards the ground RP 370. Thomas also testified that Hawkins was not trying to shoot Him and that the bullet that did strike to Mr. Thomas, Struck Him at a downward trajectory. RP 68-69.

If it was counsel trial strategy for an 'All-or-Nothing choice to force the jury to acquit on the greater charge and prevent conviction on the lesser. However the United State Supreme Court has held that it cannot be argued a defendant may be better off without a lesser included offense instruction. Keeble v. United State, 412 U. S. 205, 212, 93 S. CT. 1993, 36 L. ED 2d 844 (1973). A defendant is entitled to a lesser offense instruction precisely because one should not be exposed to the substantial risk that the jury practice will diverge from theory. Keeble, 412 U. S. at 212. Stating this there can be no tactical reason for not requesting a lesser degree and the evidence State v. Ward 125 Wn. App. 243 (2005) the jury could of rationally concluded Mr. Hawkins shot Mr. Thomas in reckless disregard of the substantial harm that could occur. RCW 9A.08.010 (1) (C). Which is an element of second degree assault.

In addition, drive- by shooting is not a lesser included offense of first degree assault. State v. Ferreira, 69 Wn. App. 465, 850 P. 2d 541 (1993) Defense counsel deprived Hawkins of His right to effective representation and a fair trial. This court should reverse His convictions on count I.

2. THE EVIDENCE WAS SUFFICIENT
TO SUPPORT A FINDING THAT 'Great
Bodily Harm' WAS INFLICTED
UPON MR. THOMAS.

In order to convict Mr. Hawkins of first degree assault, the jury had to find that he intended to inflict 'Great Bodily Harm' assaulted Mr. Thomas and inflicted 'Graet Bodily Harm.' RCW 9A.36.011 (1) (A) as the jury was so instructed. State v. Rodriguez 121 Wn. App. 180, 87 P. 3d 1202 (2004).

A person commits first assault when He assault another and intentionally inflicts 'Great Bodily Harm' or Death. RCW 9A.36.011 (1) (A) Great Bodily Harm is Defined as 'Bodily injury, which creates a probability of death, or which cause significant serious permanent loss or impairment of the function of any Body part or organ. RCW 9A.04.110 (4) (C).

Second degree assault requires proof an intentional assault, in which the defendant recklessly inflicts substantial Bodily Harm RCW. 9A.36.021 (1) (A). A person act recklessly when He knows of and disregards a substantial risk that a wrongful act may occur, and the disregard is a gross deviation from conduct that a reasonable person would excerise in the same situation. RCW 9A.08.010 (1) (C) substantial loss or impairment of the function of any Body part or organ or with causes a fracture of any Body part RCW 9A.04.110 (4) (B).

All the evidence presented at trial points to substantial harm at the most. According to officer Imtiaz Norling the wound was little and He has seen wounds equaling permanent disfigurement. He testified this was nothing like that. RP 162-164 Joey Gutjahr testified that it was also a simple gun shot wound. RP 217 & 218 Mr. Thomas himself testified that the wound didn't even cause Him to even shed a tear. RP 72. No other medical expert testimony was presented by the State.

In light of all the evidence presented. It becomes very apparent that the injury inflicted did not amount to 'Great Bodily Harm'. In fact the jury could of rationally concluded that Mr. Thomas injuries amounted to a temporary but substantial impairment, as is required for substantial Bodily Harm under second degree assault, RCW 9A.36.021 (1) (A) Thus Hawkins conviction on count I should be reversed and dismissed.

C. Conclusion

Mr. Hawkins counsel was ineffective by failing to request a lesser degree of second degree assault when Hawkins meet all the requirements of Washington Supreme Court there prong test. Also, Hawkins was deprived of His right to due process when the State failed to show sufficient evidence that Great Bodily Harm was inflicted. These harmful errors, alone or together. At the least, require reversal of Hawkins assault conviction.

Dated this _____ day of November, 2006

Respectfully Submitted,

RAMEL HAWKINS, PRO SE

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 34731- 8 II
)	
RAMEL HAWKINS,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 9TH DAY OF NOVEMBER 2006, I CAUSED A TRUE AND CORRECT COPY OF THE **STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] KATHLEEN PROCTOR
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- [X] RAMEL HAWKINS
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CLALLAM BAY CORRECTIONS CENTER
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CLALLAM BAY, WA 98326

SIGNED IN SEATTLE WASHINGTON, THIS 9TH DAY OF NOVEMBER, 2006.

x *P. Mayovsky*

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COURT OF APPEALS
NOV 13 2006
STATE OF WASHINGTON
BY _____