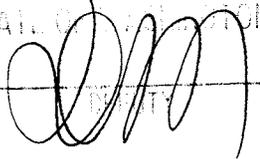


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STATE OF WASHINGTON
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No. 39972-5-II

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

STATE OF WASHINGTON,

Respondent,

v.

HAMZAI TERIK AKEEM RUDOLPH,

Appellant.

Clark County Superior Court

No. 09-1-00189-1

The Honorable Robert Harris, Judge

Appellant's Opening Brief

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A. ASSIGNMENTS OF ERROR

1. The trial court improperly commented on the evidence in giving a written response to a jury question.

2. The trial court's improper response to the jury question deprived Mr. Rudolph a fair trial.

3. The trial court erred in finding that both the second degree assault and the witness tampering were domestic violence offenses.

4. The trial court erred in entering a judgment finding that Mr. Rudolph and A.C.¹ were family or household members as of the time the incident occurred.

5. The prosecutor misstated the law when he argued to the jury that the charges were domestic violence offenses.

6. The trial court had no authority to impose a domestic violence fine and erred in doing so.

7. The trial court had no authority to enter a 10-year domestic violence no contact order and erred in doing so.

8. Defense counsel was ineffective when he failed to challenge the finding that these were domestic violence offenses.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A judge denies a criminal defendant a fair trial when he tells the jury what he believes the facts to be or comments on the credibility of a witness. During deliberation, Mr. Rudolph's jury sent the judge a question. The judge's response to the question interpreted the facts and expressed doubt about a key defense witness's credibility. Was Mr. Rudolph denied a fair trial? [Assignments of Error 1 and 2]

2. Before a trial court can find that a crime is a domestic violence offense, there must be evidence that at the time of the offense, the relationship between the defendant and the complaining party was that of

¹ Because the subject of both the criminal charges is a minor, her initial are used throughout this brief.

family or household member. That definition applied to the facts of this case means that both Mr. Rudolph and A.C. had to have been 16 years old when the incident occurred. Is there sufficient evidence that the charges were domestic violence offenses when A.C. was only 15 years old? [Assignments of Error 3, 4, and 5]

3. The court can impose certain sentencing consequences to a crime only if the crime meets the definition of a domestic violence offense. The consequences include a domestic violence fine and a domestic violence no-contact order. When the crime does not meet the definition of domestic violence, is it error to impose domestic violence consequences at sentencing? [Assignments of Error 6 and 7]

4. The Sixth and Fourteenth Amendments guarantee an accused person the right to effective assistance of counsel. Here, defense counsel failed to object to a judgment finding that second degree assault and tampering with a witness were domestic violence offenses. It is only because of the domestic violence judgment that Mr. Rudolph is subject to a domestic violence fine and a 10-year domestic violence protection order. Did counsel's failure deny Mr. Rudolph his Sixth and Fourteenth Amendment right to the effective assistance of counsel? [Assignment of Error 8].

C. STATEMENT OF THE CASE

(i) Procedural history.

Hamzai Rudolph was tried and convicted of second degree assault and tampering with a witness. CP 4, 5, 27, 28; RP 23-268. The subject of Mr. Rudolph's assault and tampering was his girlfriend, 15 year old A.C. CP 4-5; RP 66, CP 30.

During their deliberation, the jury sent the court a written question. The judge responded to the jury with specific information including its interpretation of certain facts. CP 30.

The jury returned with a special verdict finding that Mr. Rudolph and A.C. were family or household members engaged in a dating relationship. CP 29. As such, the trial court entered a finding that both offenses were domestic violence offenses. CP 32. The court imposed a standard range sentence that included sentencing conditions unique to domestic violence convictions. CP 31-40. For instance, the court imposed a domestic violence assessment and a 10-year domestic violence no contact order. CP 35; Supplemental Designation of Clerk's Paper, Domestic Violence No-Contact Order (sub. nom. 86). Defense counsel did not object to the domestic violence finding. RP 324-336.

Mr. Rudolph appealed all portions of his judgment and sentence. CP 41.

(ii) Trial testimony.

A.C. and Hamzai Rudolph dated for two and a half to three years. RP 34. Shortly after A.C.'s jaw was broken on November 14, 2008, A.C. ended her relationship with Mr. Rudolph. RP 34-35, 461. At that time, A.C. was 15 and Mr. Rudolph was 17. RP 66.

A.C. told various stories about how her jaw got broken. One version was that she was jumped by girls at a party. RP 52, 53, 55, 56, 67. In another version, she said that Mr. Rudolph punched her while they

argued at a party. RP 41-46. In the version where A.C. said Mr. Rudolph hit her, she said that she was hit on the left side of her jaw. RP 46.

The story A.C. told during trial was that Mr. Rudolph punched her. RP 39-47. They were at a party with Mr. Rudolph's family and friends. Everyone was drunk. Everyone at the party but A.C. was African-American. Mr. Rudolph wanted her to give him some money so he could buy some weed. She refused to give him any money. They started to argue and push each other. A mail partygoer taunted Mr. Rudolph about the way A.C. was talking. Mr. Rudolph hit A.C. once on the jaw. She started to bleed heavily from her mouth. A.C. was thrown out of the apartment afterwards when she called Mr. Rudolph a "nigger." RP 36-47.

Not long afterwards, Mr. Rudolph and A.C. left the area together and went to Mr. Rudolph's uncle's home to wash A.C.'s clothes and otherwise clean up. RP 49-53. A.C. remained away from her home and with Mr. Rudolph for a few days. RP 53-57. During that time, Mr. Rudolph encouraged her to blame others for breaking her jaw. RP 59.

A.C. eventually returned home to her mother who took A.C. to the hospital. A.C. had surgery to wire her jaw shut. RP 57-60.

Mr. Rudolph's sister, Larissa Winfrey, age 14, testified at trial that it was she who fought with A.C. at the party, punching A.C. and breaking her jaw. RP 211-16.

D. ARGUMENT

1. THE TRIAL JUDGE'S WRITTEN OPINION OF THE EVIDENCE IN A RESPONSE TO A JURY QUESTION DEPRIVED MR. RUDOLPH A FAIR TRIAL.

It is reversible error for a judge to give a deliberating jury his opinion on the evidence. Yet, that is what happened in Mr. Rudolph's case when the judge gave a written response to the jury's written question about the value of the evidence presented at trial. Because of the error, Mr. Rudolph is entitled to a new trial.

(i) The trial court shall not add facts, interpret facts, comment on the facts, or disparage the credibility of a presenter of facts.

Article IV, Section 16 of the Washington State Constitution provides: "Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law." Wash. Const. Article IV, Section 16. The purpose of Article IV, Section 16, is to prevent the jury from being influenced by knowledge conveyed to it by the court as to the court's opinion of the evidence submitted. State v. Elmore, 139 Wn.2d 250, 275, 985 P.2d 289 (1999), cert. denied, 531 U.S. 837 (2000).

An improper communication between the court and the jury is an error of constitutional dimensions. State v. Rice, 110 Wn.2d 577, 613, 757 P.2d 889 (1988), cert. denied, 491 U.S. 910 (1989). Once a defendant raises the possibility that he was prejudiced by an improper

communication between the court and jury, the State bears the burden of showing that the error was harmless beyond a reasonable doubt. State v. Caliguri, 99 Wn.2d 501, 509, 664 P.2d 466 (1983).

CrR 6.15(f)(1) dictates how jury questions during deliberation should be handled.

(f) Questions from Jury During Deliberations.

(1) The jury shall be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated and submitted in writing to the bailiff. The court shall notify the parties of the contents of the questions and provide them an opportunity to comment upon an appropriate response. Written questions from the jury, the court's response and any objections thereto shall be made a part of the record. The court shall respond to all questions from a deliberating jury in open court or in writing. In its discretion, the court may grant a jury's request to rehear or replay evidence, but should do so in a way that is least likely to be seen as a comment on the evidence, in a way that is not unfairly prejudicial and in a way that minimizes the possibility that jurors will give undue weight to such evidence. Any additional instruction upon any point of law shall be given in writing.

(ii) The trial court did everything it should not do when it answered the deliberating jury's written question.

During deliberation, the jury submitted, and the court responded (see in bold) the following two questions on a single jury question form.

JURY QUESTION

(1) Was there any documented message from [A.C.] when she dialed 911?

None in evidence that can be consiper [sic].

(2) Do we know what dominant hand Homsy [sic] is, left or right?
Is Larissa left or right handed?

No evidence.

CP 30.

Mr. Rudolph does not complain about the answer to the first question. Based on the record, it is a correct statement of fact.

The problem is with the court's answer to the second question. The answer is reversible error for three reasons. First, the answer is untrue. Second, to answer untruthfully, the court had to interpret the evidence thereby commenting on the evidence. And third, the answer is an explicit judgment by the court on the veracity of Larissa Winfrey, a key defense witness.

Based upon the charges and the evidence, there were two issues in the case: (1) who broke A.C.'s jaw?, and (2) did Mr. Rudolph tamper with witness A.C. by encouraging her to lie about how her jaw was broken? The credibility of defense witness Larissa Winfrey was key to both questions. The court's answer to the second jury question damaged Miss Winfrey's testimony beyond repair.

A.C. had credibility problems. After her jaw was broken, she gave various stories about how the jaw was broken: she was jumped by some white girls at a party; she was jumped by some black girls at a party; Mr.

Rudolph hit her and broke her jaw while she was at a party. The defense theory of the case was that A.C., a storyteller, could not be believed.

Mr. Rudolph did testify. The only statement directly attributed to Mr. Rudolph by anyone other than A.C. was a statement made in a phone call to A.C. and overheard by Detective Bachelder. He heard Mr. Rudolph tell A.C., "I told you I was sorry." 2RP at 129.

Larissa testified that she was at a party with Mr. Rudolph and A.C. Everyone had been drinking including herself. She got in between Mr. Rudolph and A.C. when they were arguing. A.C. was spitting in Mr. Rudolph's face and calling him a "nigger." RP at 215. Larissa punched A.C. in the face hitting her several times. RP at 216. During cross-examination, Larissa demonstrated how she hit A.C.

LARISSA: I swing at her. I know I swung at her.

PROSECUTOR: Okay. Can you describe those to us?

LARISSA: They was -- I mean, I hit her and --.

PROSECUTOR: Can you show us with your hands?

LARISSA: Do you want me to come down and show you or?

PROSECUTOR: No, just -- if you could just maybe lean back in the chair or scoot the chair back and show us like you showed us last week.

LARISSA: Okay. Well, she swung and she went like this to reach over me and she hit me, and I went like this and I hit her in the face.

PROSECUTOR: Okay. So exactly like that?

LARISSA: Yep. RP at 222-23.

In making this demonstration, any person who was paying attention, jurors included, could have determined if Larissa was right or left handed. In punching A.C., it was natural for Larissa to strike with her dominant hand. So when the court wrote to the jury that there was *no evidence* to show whether Larissa was right or left handed, the answer was untrue. Furthermore, to reach the conclusion that Larissa's demonstration was not evidence-worthy, the court had to interpret what it saw when Larissa demonstrated the punching motion. After putting its own interpretation on the punching motion, the court told the jury that demonstration revealed no evidence. And finally, the court commented on Larissa's credibility. In essence, the court told the jury that because Larissa's demonstration had no evidentiary value it could not be believed.

(iii) The trial court's error was not harmless.

Whether Larissa was right or left handed was a very important piece of evidence in the case. A.C. testified that she was hit on the left side of her jaw. A right handed person throwing a punch would most likely hit a person on the left side of the face. If the evidence showed that

Larissa was right handed, it would corroborate her testimony that she punched A.C.

A judicial comment on the evidence can have devastating consequences on a defendant's right to a fair trial. In City of Seattle v. Arensmeyer, 6 Wn. App. 116, 491, P.2d 1305 (1971), the court reversed a conviction for hindering or delaying a police officer because the trial judge improperly commented on the evidence. In that case, it was undisputed that the defendant was in a crowd of demonstrators near the federal building in Seattle. Arensmeyer, 6 Wn. App. at 117. At issue was whether the defendant was a relatively uninvolved bystander caught up in the crowd or whether he was taking an active part in the demonstration and against the police who were trying to control the crowd. Arensmeyer, 6 Wn. App. at 117. The police testified the defendant took aggressive physical and verbal action against them. Id. The defendant testified that he was turning away from the crowd and walking away from the police when he was poked from behind and hit on the head. After that, he remembered little else. Id. at 117-18. The defendant disputed the truth of the officers' testimony. Id. at 118. Defendant argued in his defense that the officers hit and beat demonstrators, including himself, without provocation. Arensmeyer, 6 Wn. App. at 118.

During closing argument, defendant challenged the experience of the officers who testified. Arensmeyer, 6 Wn. App. at 119. The trial judge interrupted the defendant and said, in the presence of the jury, that “wasn’t the evidence” and then explained what the evidence was from the court’s perspective. Id. at 119-20. At the time of the interruption, the defendant was reciting the evidence from the defense perspective and asking the jury to infer that the officers were inexperienced and reacted to the crowd in a heavy-handed inexperienced manner. Id. at 121. The court challenged the defendant’s lack of experience argument and told the jury that the officers had been officers longer than as represented by the defendant. Arensmeyer, 6 Wn. App. at 120.

On review, the court found that the experience of the officers was an issue. Arensmeyer, 6 Wn. App. at 20-21. The court’s stated belief about the officers’ more extensive experience negatively impacted the defendant’s argument that the officers’ inexperience caused the incident rather than the defendant’s supposedly aggressive behavior. Id. at 122.

Similar to Arensmeyer, the trial court undermined Mr. Rudolph’s defense by denying certain evidence existed contrary to what was actually presented by Larissa’s demonstration. And in denying that the evidence existed, the trial court undermined Larissa’s credibility.

Larissa's credibility, in turn, was not only essential to the second degree assault charge, but was also essential to the witness tampering charge. A.C. testified that Mr. Rudolph encouraged her to tell others that her jaw was broken by other girls at a party. But if Larissa was telling the truth, that she broke A.C.'s jaw, Mr. Rudolph would have had no incentive to tell A.C. to make up a story deflecting blame away from himself.

It is anticipated that the State will argue the court's answer to the jury question had no impact on the case and, as such, any error was harmless. A constitutional error is harmless if the untainted evidence is so overwhelming that it necessarily leads to a finding of guilt. State v. Guloy, 104 Wn.2d 412, 426, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020 (1986). In cases involving judicial comment on the evidence, the focus is on whether the comment could have influenced the jury. State v. Lane, 125 Wn.2d 825, 839, 889 P.2d 929 (1995).

Even if the evidence commented upon is undisputed or "overwhelming," a comment by the trial court, in violation of the constitutional injunction, is reversible error unless it is apparent that the remark could not have influenced the jury. State v. Bogner, 62 Wn.2d 247, 252, 382 P.2d 254 (1963). Here, the jury had a specific question. The judge had a specific answer. The jury reached a verdict only after the judge gave them an answer. As such, the jury could only have been

influenced by the testimony of the trial judge. The appropriate remedy is retrial on both the assault and the witness tampering.

2. MR. RUDOLPH'S CONVICTIONS ARE NOT DOMESTIC VIOLENCE OFFENSES.

Neither of Mr. Rudolph's convictions qualify as a "domestic violence" conviction because A.C. was 15 years old when her jaw was broken and when she ended her relationship with Mr. Rudolph. Because the convictions do not qualify as domestic violence, Mr. Rudolph's convictions must be remanded with an order to strike the domestic violence language and to resentence him without any domestic violence-related conditions.

(i) Both A.C. and Mr. Rudolph had to be at least 16 years old at the time of the offense for the charges to qualify as domestic violence.

For a crime to qualify as domestic violence, it must be committed by one family or household member against another family or household member. RCW 10.99.020(5). "Family or household member" has a very specific statutory definition.

"Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, *persons sixteen years of age or older with*

whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

RCW 10.99.020(3) (emphasis added).

When A.C.'s jaw was broken on November 14, 2008, she and Mr. Rudolph, age 17, had dated for two and a half to three years. There is no question that they had a dating relationship.² However, as of November 14, 2008, A.C. was only 15 years old and too young to qualify as a family or household member as defined by statute. Within days of the incident, A.C. ended her relationship with Mr. Rudolph. A.C. did not turn 16 until January 20, 2009.

(ii) The evidence established that A.C. was only 15 years old when her jaw was broken.

The jury disregarded the evidence and answered "yes" to a special verdict asking if Mr. Rudolph and A.C. were family or household members. CP 29. The jury was given the following definitional instruction:

For purposes of this case, "family or household members" means a person sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship.

² RCW 26.50.010(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties. See also RCW 10.99.020(4) (dating relationship has the same meaning as in RCW 25.50.010)

“Dating relationship” means a social relationship of a romantic nature. In deciding whether two people had a “dating relationship,” you may consider all relevant factors, including (1) the nature of any relationship between them; (b) the length of time that any relationship existed and (c) the frequency of any interaction between them.

CP 22 (Instruction No. 15).

The State creatively argued at trial that because A.C. had turned 16 by the time she testified, that her prior dating relationship with Mr. Rudolph now qualified as a family or household member relationship. “So pay attention, this is the Court’s instructions, has or had had a dating relationship. We heard their ages, Ashley’s 16, and Mr. Rudolph is 18.” RP at 293.

But this is a misstatement of the law. It is error for the prosecutor to mis-state the law. State v. MacMaster, 113 Wn.2d 226, 778 P.2d 1037 (1989) (counsel should not argue a legal theory not supported by the instructions, even where the instructions are found to be erroneous on appeal). A.C.’s age at the time of trial was irrelevant. The relevant age to use for determining when a person is a “family or household member” is at the time of the offense, not at the time of trial.

(iii) The relevant statute is unambiguous on the age requirement.

Statutory interpretation is subject to de novo review. State v. Azpitarte, 140 Wn.2d 138, 140-41, 995 P.2d 31 (2000). Absent

ambiguity, the court relies on the plain language of the statute to derive its meaning. *Id.* at 142. State v. Garnica is illustrative. 105 Wn.App. 762, 20 P.3d 1069 (2001). There, as a matter of first impression, the court was called on to decide if the rape of a 15 year old girl by her brother-in-law was a domestic violence crime. In interpreting former RCW 10.99.020(1), which is identical to the current RCW 10.99.020(3), the court looked to the language defining family or household members as *adult persons related by blood or marriage*. *Id.* at 773-74. In finding the rape was not a domestic violence crime, the court looked to the plain language of the statute and found that although the defendant and the victim were related by marriage, at 15, the victim was a child, not an adult. *Id.* at 773.

Similarly, a plain reading of the applicable section of RCW 10.99.020(3) in this case leads to the same result: the meaning of the section is clear and unambiguous.

"Family or household members" means . . . *persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship.*

This section means that once a 16 year old establishes a dating relationship with another person who is at least 16 years old, any crime committed by one against the other is subject to a possible designation as a domestic violence offense. RCW 10.99.020(3) read in full, demonstrates that a domestic violence label does not, with two exceptions, apply until

both parties are at least 16. The only two exceptions are (1) a parent/step-parent/grandparent and child relationship and (2) a couple under 16 who make the adult decision to have a child together.

(iv) The erroneous domestic violence findings harmed Mr. Rudolph.

A trial court's finding that a crime is a domestic violence offense creates harmful direct consequences. For instance, the trial court imposed a \$100 domestic violence assessment under RCW 10.99.080.³ Because Mr. Rudolph's conviction is not a domestic violence offense, that assessment is inapplicable. Also because this is not a domestic violence offense, the trial court had no legal authority to impose a 10-year domestic violence no contact order between Mr. Rudolph and A.C. (See Supplemental Designation of Clerk's Papers, Domestic Violence No-Contact Order, sub no. 86.) Because of errors such as these, Mr. Rudolph's case must be remanded for resentencing.

³ RCW 10.99.080 Penalty assessment. (1) All superior courts, and courts organized under Title 3 or 35 RCW, may impose a penalty assessment not to exceed one hundred dollars on any person convicted of a crime involving domestic violence. The assessment shall be in addition to, and shall not supersede, any other penalty, restitution, fines, or costs provided by law.

3. MR. RUDOLPH WAS DENIED HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL BY HIS COUNSEL'S FAILURE TO OBJECT TO THE FINDING THAT THE SECOND DEGREE ASSAULT AND WITNESS TAMPERING WERE DOMESTIC VIOLENCE OFFENSES.

The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense.” U.S. Const. Amend. VI. This provision is applicable to the states through the Fourteenth Amendment. U.S. Const. Amend. XIV; Gideon v. Wainwright, 372 U.S. 335, 342, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). Likewise, Article I, Section 22 of the Washington Constitution provides, “In criminal prosecutions, the accused shall have the right to appear and defend in person, or by counsel....” Wash. Const. Article I, Section 22. The right to counsel is the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (quoting McMann v. Richardson, 397 U.S. 759, 771 n. 14, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970)). It is “one of the most fundamental and cherished rights guaranteed by the Constitution.” United States v. Salemo, 61 F.3d 214, 221-222 (3rd Cir. 1995).

An ineffective assistance claim presents a mixed question of law and fact, requiring de novo review. In re Fleming, 142 Wn.2d 853, 865, 16 P.3d 610 (2001); State v. Horton, 136 Wn. App. 29, 146 P.3d 1227 (2006). An appellant claiming ineffective assistance must show (1) that defense counsel's conduct was deficient, meaning that it fell below an objective standard of reasonableness; and (2) that the deficient performance resulted in prejudice, meaning "a reasonable possibility that, but for the deficient conduct, the outcome of the proceeding would have differed." State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004) (citing Strickland); see also, State v. Pittman, 134 Wn. App. 376, 383, 166 P.3d 720 (2006)).

There is a strong presumption of adequate performance; however, this presumption is overcome when "there is no conceivable legitimate tactic explaining counsel's performance." Reichenbach, 153 Wn.2d at 130. Any trial strategy "must be based on reasoned decision-making..." In re Hubert, 138 Wn. App. 924, 929, 158 P.3d 1282 (2007). Furthermore, there must be some indication in the record that counsel was actually pursuing the alleged strategy. See, e.g., State v. Hendrickson, 129 Wn.2d 61, 78-79, 917 P.2d 563 (1996) (the State's argument that counsel "made a tactical decision by not objecting to the introduction of evidence of... prior convictions has no support in the record.")

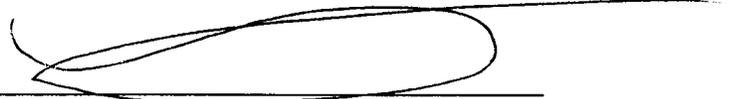
As argued under Issue 2 above, neither of Mr. Rudolph's convictions met the definition of a domestic violence offense. It was error for the trial court to enter a judgment with a domestic violence label attached to each charge. Defense counsel fell below the standard of reasonable counsel when he failed to challenge the domestic violence label. Further, Mr. Rudolph was prejudiced by defense counsel's failure. At the very least, the trial court should not have imposed a \$100 domestic violence assessment and a 10-year domestic violence no-contact order.

Accordingly, the domestic violence label attached to Mr. Rudolph's convictions should be stricken and his case remanded for resentencing.

E. CONCLUSION

Mr. Rudolph's convictions should be reversed and his case remanded for retrial because of the trial court's improper comment on the evidence. Alternatively, Mr. Rudolph's case should be remanded to the trial court to strike the domestic violence language and for resentencing to delete any inapplicable consequences associated with the domestic violence finding.

Respectfully submitted this 24th day of May, 2010.



LISA E. TABBUT, WSBA #21344
Attorney for Hamzai Rudolph

CERTIFICATE OF MAILING

I certify that on May 24, 2010, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to (1) Daniel Gasperino, Clark County Prosecutor's Office, P.O. Box 5000, Vancouver, WA, 98666-5000; (2) Hamzai Rudolph, 10818 NE. 48th Circle, Vancouver, WA 98682; and (3) the original plus one copy to the Court of Appeals, Division II.



LISA E. TABBUT, WSBA #21344

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