

COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY *[Signature]*

NO. 41322-1-II  
COURT OF APPEALS, DIVISION II

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STATE OF WASHINGTON,  
Respondent,  
vs.  
CAMERON M.A. BEASLEY,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR THURSTON COURT  
The Honorable Carol Murphy, Judge  
Cause No. 10-1-00809-1

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BRIEF OF APPELLANT

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*P.M. 4-29-2011*

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A. ASSIGNMENTS OF ERROR

01. The trial court erred in instructing the jury that it must be unanimous before returning a verdict on the special verdict form I.
02. The trial court erred in permitting Beasley to be represented by counsel who provided ineffective assistance by failing to object to the court's instruction 16 that the jury must be unanimous before returning a verdict on the special verdict form I and by failing to propose an accurate instruction and special verdict form.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

01. Whether the trial court erred in instructing the jury that it must be unanimous before returning a verdict on the special verdict form I finding whether any person, other than CAMERON MICHAEL ANTHONY BEASLEY or a pursuing law enforcement officer, was threatened with physical injury or harm by the actions of CAMERON MICHAEL ANTHONY BEASLEY during his commission of the crime of attempting to elude a police vehicle? [Assignment of Error No. 2].
02. Whether the trial court erred in permitting Beasley to be represented by counsel who provided ineffective assistance by failing to object to the court's instruction 16 that the jury must be unanimous before returning a verdict on the special verdict form I and by failing to propose an accurate instruction and special verdict form? [Assignment of Error No. 3].

C. STATEMENT OF THE CASE

01. Procedural Facts

Cameron Beasley (Beasley) was charged by

information filed in Thurston County Superior Court on June 2, 2010, with attempting to elude a pursuing police vehicle, count I, and making a false or misleading statement to a law enforcement officer, contrary to RCWs 9.94A.834, 9A.76.175 and 46.61.024. [CP 5].

No motions were filed nor heard regarding either a CrR 3.5 or CrR 3.6 hearing. [CP 9]. Trial to a jury commenced on September 8, the Honorable Carol Murphy presiding. Neither objections nor exceptions were taken to the jury instructions. [RP 159].<sup>1</sup>

The jury returned verdicts of guilty as charged, with a special verdict that someone other than Beasley or the pursuing law enforcement officer was threatened with physical injury or harm due to Beasley's actions during the commission of the offense of attempting to elude a police vehicle. [CP 48-50].

Beasley was sentenced within his standard range and timely notice of this appeal followed. [CP 56-67].

## 02. Substantive Facts

On May 28, 2010, at approximately 1:00 in the morning, patrol officer Russell Mize initiated a traffic stop of a vehicle driven by Beasley and occupied by a female passenger. [RP 30-33, 61].

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<sup>1</sup> All references to the Report of Proceedings are to the transcripts entitled Jury Trial – Volumes I-II.

Officer Tyler Boling and another officer arrived in separate vehicles shortly thereafter. [RP 36, 62, 78]. Beasley identified himself as William M. Hash and told Mize that he did not have his license or proof of insurance with him before driving off when informed there was no record that matched the identification he had provided. [RP 33-35, 37-39].

Mize and Boling, both of whom were in uniform and driving separate patrol vehicles equipped with lights and siren [RP 30, 76], soon followed with all emergency equipment activated. [RP 41, 86, 93]. During the pursuit, the female passenger got out of the vehicle [RP 46, 70-71, 89] before Beasley was eventually stopped after a high-speed chase reaching 90 miles per hour, in which Beasley nearly struck another vehicle, drove on and off the road and into oncoming traffic. [RP 45, 54-55, 59, 74].

Beasley was taken into custody and explained that he had driven away because he had an outstanding warrant for his arrest. [RP 138-39].

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D. ARGUMENT

01. THE TRIAL COURT ERRED IN INSTRUCTING THE JURY THAT IT MUST BE UNANIMOUS BEFORE RETURNING A VERDICT ON THE SPECIAL VERDICT FORM I FINDING THAT ANY PERSON, OTHER THAN CAMERON MICHAEL ANTHONY BEASLEY OR A PURSUING LAW ENFORCEMENT OFFICER, WAS THREATENED WITH PHYSICAL INJURY OR HARM BY THE ACTIONS OF CAMERON MICHAEL ANTHONY BEASLEY DURING HIS COMMISSION OF THE CRIME OF ATTEMPTING TO ELUDE A POLICE VEHICLE.

As instructed in court's instruction 16, the jury was told that it had to be unanimous to return a verdict on the special verdict form I. [CP 47, 49].

Because this is a criminal case, all twelve of you must agree in order to answer the special verdict form. In order to answer the special verdict form "yes," you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. If you unanimously have a reasonable doubt as to this question, you must answer "no."

[CP 47].

But this is incorrect. As explained in State v. Bashaw, 169 Wn.2d 133, 234 P.3d 195 (2010), where, as here, the trial court had instructed the jury that unanimity was required to answer "no" on the special verdict, our Supreme Court vacated two school zone drug offense sentencing enhancements, holding that such an instruction is reversible error because it requires unanimity for either finding "yes" or "no." Id. at 147. Bashaw

is directly on point, with the result that the court's imposition of the 12-month enhancement must be vacated and the matter remanded for resentencing. [CP 58, 60].

02. BEASLEY WAS PREJUDICED BY HIS COUNSEL'S FAILURE TO OBJECT TO THE COURT'S INSTRUCTION 16 THAT THE JURY MUST BE UNANIMOUS BEFORE RETURNING A VERDICT ON THE SPECIAL VERDICT FORM I AND BY FAILING TO PROPOSE AN ACCURATE INSTRUCTION AND SPECIAL VERDICT FORM.

A criminal defendant claiming ineffective assistance must prove (1) that the attorney's performance was deficient, i.e., that the representation fell below an objective standard of reasonableness under the prevailing professional norms, and (2) that prejudice resulted from the deficient performance, i.e., that there is a reasonable probability that, but for the attorney's unprofessional errors, the results of the proceedings would have been different. State v. Early, 70 Wn. App. 452, 460, 853 P.2d 964 (1993), review denied, 123 Wn.2d 1004 (1994); State v. Graham, 78 Wn. App. 44, 56, 896 P.2d 704 (1995). Competency of counsel is determined based on the entire record below. State v. White, 81 Wn.2d 223, 225, 500 P.2d 1242 (1972) (citing State v. Gilmore, 76 Wn.2d 293, 456 P.2d 344 (1969)). A reviewing court is not required to address both prongs of the test if the defendant makes an

insufficient showing on one prong. State v. Tarica, 59 Wn. App. 368, 374, 798 P.2d 296 (1990).

Additionally, while the invited error doctrine precludes review of error caused by the defendant, See State v. Henderson, 114 Wn.2d 867, 870, 792 P.2d 514 (1990), the same doctrine does not act as a bar to review a claim of ineffective assistance of counsel. State v. Doogan, 82 Wn. App. 185, 917 P.2d 155 (1996) (citing State v. Gentry, 125 Wn.2d 570, 646, 888 P.2d 1105 (1995)).

Should this court find that trial counsel waived the issue set forth in the preceding section of this brief relating to the trial court instructing the jury that it must be unanimous before returning a verdict on the special verdict form I, then both elements of ineffective assistance of counsel have been established.

First, the record does not, and could not, reveal any tactical or strategic reason why trial counsel would have failed to object to court's instruction 16 and the accompanying special verdict form I for the reasons set forth in the preceding section.

Second, the prejudice is self-evident. Again, as set forth in the preceding section, had counsel properly objected and/or proposed an accurate instruction and special verdict form, there is every likelihood that the court would have upheld the objection and the jury would have been

CERTIFICATE

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I certify that I mailed a copy of the above brief by depositing it in  
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DATED this 9<sup>th</sup> day of April 2011.

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