

67776-4

NO. 67776-4-I

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

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STATE OF WASHINGTON,

Respondent,

v.

BRYCE HUBER,

Appellant.

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

The Honorable Gregory P. Canova, Judge

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BRIEF OF APPELLANT

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FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2013 FEB 25 PM 4:21

REC'D  
FEB 25 2013  
King County Prosecutor  
Appellate Unit

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A. ASSIGNMENT OF ERROR

Ineffective assistance of counsel denied the appellant a fair trial.

Issue Pertaining to Assignment of Error

Defense counsel failed to propose lesser degree instructions despite his client's express wishes to the contrary. Was defense counsel ineffective for adhering to an all-or-nothing approach against his client's wishes and based on a misunderstanding of the facts and the law?

B. STATEMENT OF THE CASE<sup>1</sup>

1. Procedural facts

The State charged Bryce Huber and codefendants Brandon Chaney, John Sylve, and Danny O'Neal with premeditated first degree murder with a firearm enhancement, as well as conspiracy to commit first degree murder. The charges stemmed from the February 1, 2009 shooting of Steve Bushaw outside a West Seattle bar. CP 1-24. Sylve and O'Neal eventually pled guilty to lesser charges, and the State dropped the conspiracy charge. CP 63; 4RP 2; 8RP 3-4; 18RP 134-35. Huber and

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<sup>1</sup> This brief refers to the verbatim reports as follows: 1RP – 5/24/10; 2RP – 5/25/10; 3RP – 6/1/10; 4RP – 1/18/11; 5RP – 1/19/11; 6RP – 1/24/11; 7RP – 1/25/11; 8RP – 7/18/11; 9RP – 7/19/11; 10RP – 7/20/11; 11RP – 7/21/11; 12RP – 7/25/11; 13RP – 7/27/11; 14RP – 7/28/11; 15RP – 8/1/11; 16RP – 8/2/11; 17RP – 8/3/11; 18RP – 8/4/11; 19RP – 8/8/11; 20RP – 8/9/11; 21RP – 8/10/11; 22RP – 8/11/11; 23RP – 8/17/11; 24RP – 8/18/11; 25RP – 8/22/11; 26RP – 8/23/11; 27RP – 8/24/11; 28RP – 8/30/11; and 29RP – 9/16/11.

Chaney were tried before a jury on the first degree murder charge. CP 63; 16RP 10.

Chaney testified, but Huber did not. 25RP 12. The jury found Huber guilty as charged but deadlocked as to Chaney, and the court declared a mistrial as to him. CP 101; 28RP 2-12.

The court sentenced Huber to the high end of the standard range plus a 60-month firearm enhancement for a total of 380 months. CP 103-10. He timely appealed.<sup>2</sup> CP 112-13.

2. Trial testimony

Steve Bushaw left home shortly after 11 p.m. the night of the Super Bowl. 16RP 16-17. Before leaving, Bushaw told his parents he planned to meet a friend named Bryce at a bar in a part of West Seattle known as the Junction. 16RP 16-17. .

Earlier that evening, Brandon Chaney picked up John Sylve at SeaTac airport as a favor to friend and former roommate Sage Mitchell, a marijuana dealer. 18RP 113, 151; 25RP 19-20.

Sylve had taken a shuttle bus from Yakima and had a long layover before a planned flight to Texas in the morning. 18RP 137, 144-45.

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<sup>2</sup> This appeal was stayed pending Huber's motion for a new trial. The motion was transferred to this Court as a Personal Restraint Petition (case no. 69299-2-I) and the two cases have been consolidated by this Court's January 31, 2013 order.

According to Sylve, who testified for the State pursuant to a plea agreement,<sup>3</sup> Mitchell asked Sylve to supply him with a gun. 18RP 138-39, 144, 147. Mitchell wanted the gun for protection because he had been robbed and severely injured in his home two weeks earlier. 18RP 76-78, 144.

Chaney arrived at the airport with O'Neal and another man, Lonshay Hampton. 18RP 154. The men drove to a nearby barbershop that Chaney owned to wait for Mitchell, who arrived with his young daughter in tow. 18RP 159-60. Sylve offered to give Mitchell a revolver and ammunition. 18RP 159, 164. He and Mitchell had known each other since high school. Despite a past falling out, they had rekindled their friendship. 18RP 160-63.

The four men next went to the Riverside Casino for drinks. 18RP 164. Sylve spent some time inside the bar with Chaney and Hampton, but eventually took drinks out to Mitchell, who remained in his car with his daughter. 18RP 166. In the car, Mitchell shared some details of the robbery that left him injured. 18RP 167.

The next stop was O'Neal's apartment. The men smoked marijuana while Mitchell's daughter slept in a back bedroom. 18RP 167.

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<sup>3</sup> 18RP 134-36; 19RP 70-71. The jury heard testimony that the State agreed to recommend a sentence of 230 months for second degree murder, and that Sylve could receive time off for good behavior. 19RP 127-28.

The men discussed the Super Bowl at first, but, according to Sylve, talk turned to the robbery. 18RP 172. Hampton, in particular, was “hyper” and stated he could not believe the robbers were going to be allowed to “get away with it.” 18RP 173; 19RP 11. Mitchell informed the other men he suspected who had orchestrated the robbery.<sup>4</sup> 18RP 173; 19RP 16.

Sylve testified that everyone was “on board for retaliation.” 18RP 173; 19RP 8, 10-11, 83-84. Retaliation, according to Sylve, was going to be a drive-by shooting. 19RP 21. The consensus was that Mitchell could not be involved because he was the robbery victim. 19RP 11. Mitchell eventually returned Sylve’s revolver and left with his daughter. 19RP 17.

According to Sylve, Chaney called an unknown person who knew the person suspected of orchestrating the robbery. 19RP 18. After the phone call, Chaney told the others the plan was a “go,” and the unknown person would get the robbery suspect to a certain place at a certain time for the planned shooting. 19RP 18-19. Sylve watched O’Neal organize and wipe down ammunition for a semi-automatic handgun. 19RP 13-14. The four left in O’Neal’s car, which Chaney was driving. 19RP 26, 103.

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<sup>4</sup> According to investigating police officers, the residents said the masked robbers were on the phone with someone who seemed to be directing the robbers where to look for valuable items. 18RP 14-15; 24RP 90.

The next stop was a convenience store. Huber, whom Sylve had not met before, arrived in a separate car and spoke to Chaney through the open car window for about 10 minutes. 19RP 28-30, 121. Sylve overheard Huber ask, "Are we really going to do this?" Chaney responded, "[Y]es." 19RP 29-30. But Huber objected to the drive-by plan because he feared he would be injured. 19RP 31-32. The group thus changed the plan. Huber would get Bushaw, the man suspected of orchestrating the robbery, to go outside the bar, Talarico's, where the others would "take care of it." 19RP 31-32. According to Sylve, the plan remained to shoot the suspect; Huber and Chaney never discussed a fistfight or a "beat-down" as an alternative. 19RP 32; 20RP 37. Huber told Chaney he would call him when Bushaw was going outside. 19RP 32.

Chaney followed Huber's car and parked in a nearby lot that was connected to the street that Talarico's was on by an open passageway. 19RP 33-34. Sylve, O'Neal, and Hampton surveyed the area while Chaney remained in the car. 19RP 36-37. Hampton was sent back to the car at some point. 19RP 40; 20RP 16. Sylve and O'Neal waited on a sidewalk across the street from Talarico's while Huber and Bushaw crossed the street to Bushaw's car. 19RP 38.

Huber and Bushaw remained in the car for 15 minutes. 19RP 39. Eventually, Bushaw got out and began to cross the street. 19RP 39-42.

When Bushaw was in the middle of the street, Sylve asked him for a light. As Bushaw hesitated, Sylve and O'Neal fired on Bushaw at close range. 19RP 44-25; 20RP 24. Bushaw spun around as if he planned to run to his car, then ran across the street to Talarico's. 19RP 47. Sylve shot once more as Bushaw ran toward the bar. 19RP 47, 57.

During the shooting, Huber remained on the sidewalk near Bushaw's car. 20RP 30. Before Sylve ran away, he heard Huber say, "You have to make sure he's dead." 19RP 47-48, 57; 20RP 25. Sylve lost track of Huber after that. 19RP 49.

Sylve slipped and fell as he was trying to run through the passageway to get back to the car. 19RP 48-49. He saw the bloody Bushaw on his knees near the Talarico's entrance. 19RP 52. After Sylve and O'Neal got back in the car with Chaney and Hampton, O'Neal said he feared they had missed Bushaw; Sylve, on the other hand, was more confident Bushaw had been hit. 19RP 52.

Following a lengthy investigation, police arrested Sylve in Texas in December 2009. 19RP 66; 24RP 72-73. The other three co-defendants were arrested around the same time in the Seattle area. 24RP 110.

In addition to Sylve's testimony, the State presented the testimony Huber's friends who spoke to him before and after the night in question. Huber's friend Cara Anderson was visiting from Idaho the weekend

Bushaw was shot. 16RP 38. Anderson and a friend, Jennifer Razmus, made plans to meet up with Huber after the Super Bowl. 16RP 37-38. After the three met at Huber's condominium on the north side of Seattle, Huber drove the women to West Seattle in Razmus's car. 16RP 42, 46-47, 79; 20RP 61.

Huber used Anderson's phone frequently that night; he explained his phone could receive calls but could not call out.<sup>5</sup> 16RP 45, 50. Anderson overheard Huber arranging to meet someone at the West Seattle bar. 16RP 45, 50. Once at Talarico's, Huber and the women selected a booth near the back. 16RP 47. A young man soon joined them. 16RP 48. After about five minutes, Huber and the other man went out to smoke. 16RP 50. They never returned. 16RP 50.

Ten minutes later, there was a "commotion" at the front of the bar. The women eventually learned there had been a shooting. 16RP 50-52, 69-70. Rather than returning to Razmus's car, the women called a taxi and returned to Razmus's residence. Huber returned Razmus's car later that night. 16RP 55, 82-83; 20RP 78-82. Huber visited Anderson in

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<sup>5</sup> Phone records indicate Anderson's phone made calls to both Chaney and Bushaw the night in question. 21RP 102-22. Chaney also made a single two-minute call to Huber's own phone that night. 21RP 121-22.

Idaho within a few days of the shooting but never talked about what happened. 16RP 58.

Huber's friend Joy Vanderpool lived with her parents in Arlington in February of 2009. 22RP 42. Vanderpool texted Huber after the Super Bowl to ask if she could stay at his condominium rather than driving home. 22RP 49. Huber didn't have his car but said she could stay over. 22RP 50. They met near Rasmus's apartment and drove back to Huber's condominium in Vanderpool's car. 22RP 52.

Huber seemed stressed and distracted. 22RP 75. Rather than parking in his assigned spot, he parked down the block where he could observe the back entrance to the condominium. He told Vanderpool he was afraid people were after him. 22RP 54, 59. He later said he and his friends had "taken care of" someone and that the person had been shot but did not die. 22RP 63.

Stephanie Cossalter, Huber's former roommate, lived in Pasco in February of 2009. 23RP 120-23. Cossalter recalled Huber was upset after the robbery and assault at Mitchell's home; he blamed himself because he had introduced some named "Steve" to Mitchell. 23RP 125-26, 145, 149-50.

The day after the Super Bowl, Huber called Cossalter and told her he needed to get out of town and wished to visit her. 23RP 129. During

the visit, Huber said, "We took care of it." 23RP 149. He said he had met "Steve" for a beer and they sat on a patio at a restaurant. When Huber saw a car pull up, he told Steve it was time to go. Steve got "popped" as he walked out and Huber walked away. 23RP 129, 146. Cossalter and Huber later began a romantic relationship, but they eventually broke up and Cossalter contacted police. 23RP 131-40.

Brandon Chaney testified and contradicted Sylve's version of events. He lived with Mitchell briefly and was also injured when Mitchell's home was robbed. 25RP 15-21. Although Mitchell suspected someone named "Steve," Chaney believed a former roommate who had been kicked out was responsible for the robbery. 25RP 21-22. Chaney was so frightened by the robbery he moved out of Mitchell's house immediately. 25RP 24.

Chaney watched the Super Bowl at O'Neal's house. 25RP 25-28. He was looking to socialize and also contacted Huber about his plans for the night. 25RP 26. At some point that evening, Mitchell called and asked Chaney to pick up Sylve at the airport because Mitchell could not make it in time. 25RP 35-36.

Chaney picked up Sylve but did not know he had a gun. 25RP 38, 46-47. Chaney drove to his barbershop near the airport and Mitchell arrived shortly thereafter. 25RP 39-42. Sylve and Mitchell talked

privately in Mitchell's car. 25RP 44. Sylve and Mitchell spent more time alone while the others were inside the casino and rode together to O'Neal's house. 25RP 49-50. At O'Neal's, Chaney heard nothing about a retaliation plan. 25RP 55. Mitchell asked Chaney to take Sylve back to the airport later, and Chaney agreed. 25RP 55.

Meanwhile, Sylve said he wanted to go out, so Chaney called Huber, who usually knew which bars and nightclubs were popular. 25RP 55-56. Huber told Chaney he and two women were going to a bar in West Seattle. 25RP 55-56. En route, Huber called and said "Steve" was coming to the bar and he planned to ask Steve about his involvement in the Mitchell robbery. 25RP 59-60. Chaney told the others Steve was going to be at the bar. 25RP 60. Lonshay Hampton indicated he was eager to interrogate Steve, but, according to Chaney, no one else said much. 25RP 60.

Chaney took the wrong exit off the West Seattle Bridge and got lost. After speaking with Huber again, they agreed to meet at 7-Eleven. 25RP 61. Once there, Huber pointed out where the bar was and suggested where to park. 25RP 61. Huber confirmed the man he suspected of involvement in the robbery was going to be inside the bar. 25RP 62,

After Chaney parked, the others headed through the passageway while Chaney remained in the car talking to his girlfriend and charging his

phone. 25RP 62, 65-66, 68. Shortly after Hampton returned to the car, Chaney heard shots. 25RP 69. Sylve and O'Neal ran back to the car and ordered Chaney, "[G]o. Get out of here." 25RP 70.

Sylve said they had shot a man, although, as Sylve also testified, O'Neal was skeptical. 25RP 71-72. Chaney was flabbergasted Sylve and O'Neal had shot the man, since Mitchell had already given the man's name to police. 25RP 72-74. Afterward, Sylve reminded Chaney he had to take him to the airport. 25RP 86-87. Leaving Sylve at the airport, Chaney told him, "[D]on't ever call me again." 25RP 86-87.

Bushaw was pronounced dead at Harborview. 21RP 14-16. Further investigation revealed that "Bryce" was Huber. 24RP 26.

Police arrested Huber a week later for driving on a suspended license and interviewed him regarding the Bushaw murder. 24RP 47-49, 52. Huber disclosed he knew the police wanted to talk to him but he didn't come forward because he was scared. 24RP 55. Huber insisted Bushaw was not a friend but merely a coworker. 24RP 52-53. Huber had an article about the Mitchell robbery in his wallet at the time of his arrest. 24RP 65-66, 141.

### 3. Discussion of lesser offense instructions

After the parties rested, they discussed jury instructions. 25RP 182-85; 26RP 43-86. The prosecutor noted that neither Chaney nor Huber

had submitted instructions for a lesser offense; the prosecutor asked that both defense counsel confirm that such omission was strategic. The prosecutor also said he would not object to instructions on second degree murder. 26RP 78.

Chaney's counsel, James Roe, confirmed that he and Chaney had discussed the matter and that Chaney did not want lesser degree instructions. 26RP 79.

Huber's counsel, Tony Savage, disclosed his client wanted jury instructions for second degree murder and first degree manslaughter. Nevertheless, Savage explained he was not requesting the lesser instructions because if the State's evidence was believed, the crime was clearly premeditated. Savage went so far as to call the instructions "facetious," "unmeritorious," and "frivolous." 26RP 79-80, 83. The court did not instruct the jury on lesser offenses. CP 74-99.

C. ARGUMENT

DEFENSE COUNSEL WAS INEFFECTIVE FOR ADHERING TO AN ALL-OR-NOTHING APPROACH THAT WAS AGAINST HIS CLIENT'S WISHES AND BASED ON A MISUNDERSTANDING OF THE FACTS AND THE LAW.

The federal and state constitutions guarantee the right to effective representation. U.S. Const. amend. 6; Const. art. 1, § 22 (amend. 10); Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674

(1984); State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987). An accused receives ineffective assistance when (1) counsel's performance is deficient, and (2) there is a reasonable probability the deficient representation prejudiced him. Strickland, 466 U.S. at 687; State v. Aho, 137 Wn.2d 736, 745, 975 P.2d 512 (1999). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Thomas, 109 Wn.2d at 226 (quoting Strickland, 466 U.S. at 693-94). This is a separate question from whether there was sufficient evidence to convict. State v. Jury, 19 Wn. App. 256, 268, 576 P.2d 1302, review denied, 90 Wn.2d 1006 (1978). A claim of ineffective assistance of counsel presents a mixed question of fact and law that is reviewed de novo. State v. Sutherby, 165 Wn.2d 870, 883, 204 P.3d 916 (2009).

The decision to forgo an instruction on a lesser included offense is not ineffective assistance if it can be characterized as part of a legitimate trial strategy. State v. Hassan, 151 Wn. App. 209, 218, 211 P.3d 441 (2009). The decision to request lesser offense instructions, however, is a decision that requires input from both the accused and defense counsel. State v. Grier, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011). In Grier, the Supreme Court ultimately found counsel was not ineffective for failing to request the instructions on the lesser crime. The Court held that if counsel consulted with his client before pursuing an "all or nothing" approach, a court should

not second-guess that tactic. 171 Wn.2d at 39; cf. State v. Breitung, 173 Wn.2d 393, 400, 267 P.3d 1012 (2011) (lack of showing of such consultation did not necessarily require different result from Grier, noting “there is no evidence in the record to show consultation did not occur”).

An accused has authority to make certain fundamental decisions, such as whether to plead guilty, waive the right to a jury, or testify at trial. In re Personal Restraint of Jeffries, 110 Wn.2d 326, 333-34, 752 P.2d 1338, cert. denied, 488 U.S. 948 (1988); RPC 1.2 (a). Although the client decides the goals of litigation and whether to invoke certain rights, the choice of trial tactics, the action to be taken or avoided, and the methodology to be used are matters within the attorney’s judgment. In re Personal Restraint of Stenson, 142 Wn.2d 710, 735, 16 P.3d 1 (2001).

Here, Savage disregarded Huber’s preference that the jury be instructed on lesser offenses. This is in itself problematic; Washington courts have characterized the decision to request an instruction as a “joint” one. Grier, 171 Wn.2d at 39-40. It also distinguishes this case from Breitung, where the record was largely silent as to whether such consultation occurred. 173 Wn.2d at 400-01.

But even assuming such complete disregard of a client’s wishes is permitted, an attorney’s refusal to request a lesser on *legal* grounds is justified only if it is based on a correct understanding of the law. See State v.

Kyllo, 166 Wn.2d 856, 868-69, 215 P.3d 177 (2009) (failure to research and apply relevant law cannot be considered reasonable tactics). Here, it was not. Rather, the decision was based on the mistaken belief that a lesser instruction could not have been given because the State had presented evidence of premeditation. 26RP 79-80. Contrary to defense counsel's remarks, however, that was not the test.

An accused is entitled to jury instructions not only on the charged offense, but also on all inferior degree offenses. RCW 10.61.003. An accused is entitled to such instructions if:

- (1) the statutes for . . . the charged offense and the proposed inferior degree offense "proscribe but one offense;"
- (2) the information charges an offense that is divided into degrees, and the proposed offense is an inferior degree of the charged offense; and
- (3) there is evidence that the defendant committed only the inferior offense.

State v. Fernandez-Medina, 141 Wn.2d 448, 454, 6 P.3d 1150, 1153 (2000) (quoting State v. Peterson, 133 Wn.2d 885, 891, 948 P.2d 381 (1997)). Similarly, a defendant is entitled to an instruction on a lesser included offense if each element of the lesser is a necessary element of the offense charged and the evidence supports an inference that the lesser crime was committed. State v. Nguyen, 165 Wn.2d 428, 434-35, 197 P.3d 673 (2008) (citing State v. Workman, 90 Wn.2d 443, 584 P.2d 382 (1978)).

Such evidence need not be produced by the defense. Instead, a court may consider all evidence presented at trial. Fernandez-Medina, 141 Wn.2d at 456. Indeed, to warrant an instruction on a lesser crime, the evidence need not be consistent with the accused's primary defense. Id. at 457-60.

Here, Huber notified the court that he wished the jury to be instructed on second degree murder; that is, intentional murder without premeditation. RCW 9A.32.050(1)(a).

He also wished for the jury to be instructed on first degree manslaughter. First degree manslaughter requires the State to prove the defendant "recklessly cause[d] the death of another person." RCW 9A.32.060(1)(a). Behavior is "reckless" when the actor "knows of and disregards a substantial risk that a wrongful act may occur" and his disregard is a gross deviation from conduct that a reasonable person would exercise in the same situation. RCW 9A.08.010(c).

The State's theory was one of premeditation: a planned murder in retaliation for previous acts of violence. In the light most favorable to the State, there was evidence of premeditation. But this is not the test for whether a lesser instruction may be given. The test is, rather, whether given all the evidence presented at trial, such an instruction is warranted. Fernandez-Medina, 141 Wn.2d at 456. But even in the light most favorable

to the State, much of the conduct showing premeditation occurred before Huber was present or even in contact with the other men. Sylve never spoke with Huber before Bushaw's death. 19RP 28-30. Nor was there evidence O'Neal or even Mitchell spoke with Huber that night.

Moreover, although Huber did not testify, a theory of second degree murder was arguably consistent with Chaney's testimony and with Sylve's acknowledgement that Chaney would have little interest in killing the suspected mastermind before he could be questioned.<sup>6</sup> Fernandez-Medina, 141 Wn.2d at 457-60. Under this theory, Huber -- whose point of contact was Chaney -- could have realized the severity of the planned retaliation only at the last minute, but decided to go through with the plan anyway, rendering the killing intentional but not premeditated.

For similar reasons, a jury could have found Huber guilty of first degree manslaughter<sup>7</sup> based on an inference that Huber, like Chaney, did not understand the full extent of the retaliation Sylve was planning. Huber's behavior and statements to friends after the murder were consistent with some level of involvement in Bushaw's death, but did not necessarily indicate Huber shared the intent to murder Bushaw.

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<sup>6</sup> 19RP 86.

<sup>7</sup> First and second degree manslaughter may be lesser included offenses of premeditated murder. State v. Sublett, \_\_\_ Wn.2d \_\_\_, 292 P.3d 715, 728 (2012).

In summary, counsel's insistence that such lesser instructions could not be requested was legally unsound, as well contrary to his client's express wishes. Counsel's performance was thus deficient.

This deficient performance prejudiced Huber. For the reasons set forth above, it is likely the trial court would have given the lesser offense instructions. The State even conceded a second degree murder instruction was warranted. 26RP 78-73.

It is also reasonably likely the failure to give the instructions affected the jury's verdict. The jury knew the man who fired the fatal bullet had pled guilty to second degree murder. 18RP 134-36; 19RP 70-71, 127-28. In rebuttal argument, the prosecutor even urged the jury to consider acquitting Huber and Chaney of the firearm enhancement to make the penalty more comparable to what Sylve was facing for second-degree murder.<sup>8</sup> 27RP 130-31. After all, the jury deadlocked on Chaney's verdict. See Wiggins v. Smith, 539 U.S. 510, 537, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (2003) (test for "reasonable probability" of prejudice is whether it is reasonably probable that, without the error, at least one juror would have reached a different

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<sup>8</sup> The prosecutor informed the jurors it was "in [their] power" to acquit Huber of the firearm enhancement if the jury believed Huber, like Sylve, deserved a "deal." 27RP 130-31. But jurors were repeatedly instructed to disregard any argument, such as this one, that was inconsistent with the instructions. E.g. CP 77 (Instruction 1).

result). Under Chaney's version of events, apparently accepted by at least one juror, Huber was not privy to the plan to kill the robbery suspect.

In summary, defense counsel's illegitimate pursuit of an all-or-nothing strategy, contrary to his client's express wishes, was ineffective and denied Huber a fair resolution of the charges against him.

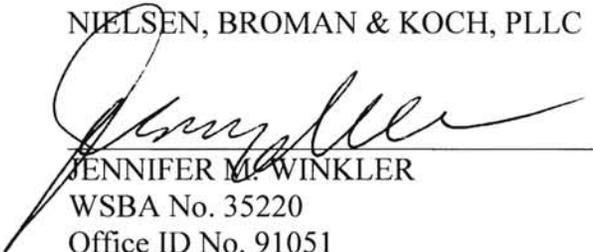
D. CONCLUSION

For the foregoing reasons, this Court should reverse Mr. Huber's conviction and remand for a new trial.

DATED this 25<sup>th</sup> day of February, 2013.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER M. WINKLER

WSBA No. 35220

Office ID No. 91051

Attorneys for Appellant

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

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|                     |   |                   |
|---------------------|---|-------------------|
| STATE OF WASHINGTON | ) |                   |
|                     | ) |                   |
| Respondent,         | ) |                   |
|                     | ) |                   |
| v.                  | ) | COA NO. 67776-4-I |
|                     | ) |                   |
| BRYCE HUBER,        | ) |                   |
|                     | ) |                   |
| Appellant.          | ) |                   |

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**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 25<sup>TH</sup> DAY OF OCTOBER 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SUZANNE ELLIOT  
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- [X] BRYCE HUBER  
DOC NO. 352455  
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SIGNED IN SEATTLE WASHINGTON, THIS 25<sup>TH</sup> DAY OF OCTOBER 2012.

x Patrick Mayovsky

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