71948-3

71948-3

COA NO. 71948-3-I

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL PENEUETA,

Appellant.

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

The Honorable William Downing, Judge

BRIEF OF APPELLANT

CASEY GRANNIS
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in giving a first aggressor instruction to the jury. CP 43 (Instruction 11).

2. Defense counsel provided ineffective assistance in failing to object to the aggressor instruction.

Issues Pertaining to Assignments of Error

1. The only purpose of an aggressor instruction is to remove a self-defense claim from the jury's consideration. By submitting the aggressor instruction to the jury where the instruction was not supported by the evidence, did the trial court deprive appellant of his right to present a defense and his right to have the prosecution prove the lack of self-defense beyond a reasonable doubt?

2. Was defense counsel ineffective for failing to object to the aggressor instruction because no legitimate tactic justified the lack of objection and the failure undermines confidence in the outcome?

B. STATEMENT OF THE CASE

i. *Procedural Facts*

The State charged Michael Peneueta with first degree unlawful possession of a firearm (count II) and three counts of second degree assault while armed with a firearm, committed against Theresa Strutynski

(count I), Amrico Flight (count III) and Donald Massey (count IV). CP 12-13.

The jury was given self-defense instructions in relation to the assault counts. CP 41-42. The jury also received a first aggressor instruction. CP 43. The jury found Peneueta guilty of unlawful possession of a firearm and the assaults against Strutynski and Flight, with special verdicts for being armed with a firearm. CP 21-24. The jury was unable to reach a verdict on count IV involving Massey.[1] CP 21; 5RP 92.

The court sentenced Peneueta to a total of 104 months confinement. CP 75. This appeal follows. CP 81-89.

ii. *Trial*

On May 3, 2013 shortly before 11 a.m., a shooting occurred on Rainier Avenue South in the Rainier Valley area of Seattle. 2RP 4-5, 10; 3RP[2] 105. Graham Jennings, the owner of a medical marijuana dispensary, testified that two men he knew as "Rico" and "Messy" came into his shop before the shooting. 3RP 103, 105-06. Rico made a purchase and the men left. 3RP 110. They were out in Rico's car, a silver Crown Victoria, for

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[1] The court later dismissed count IV with prejudice on the State's motion. CP 71.

[2] The verbatim report of proceedings is referenced as follows: 1RP – 3/10/14; 2RP – 3/11/14; 3RP – 3/12/14; 4RP – 3/13/14; 5RP – 3/17/14; 6RP – 5/2/14.

five minutes before driving off. 3RP 108, 110-11. Jennings then heard gunshots. 3RP 111. He looked out and saw someone wearing dark clothes and another person wearing a light top running away. 3RP 111, 114-17.

Theresa Strutynski was driving her Lexus on Rainier Avenue South when she saw two African Americans, one in a dark shirt and one in a white shirt, walking towards the street. 4RP 25-26, 32. She heard a popping noise behind her. 4RP 27. She saw the person in the white shirt holding a gun in an outreached manner. 4RP 28-29. She was scared. 4RP 29. She was unsure if the gun was pointed at her car. 4RP 39-40. She heard what sounded like her tire blowing out. 4RP 29. She then noticed a hand with a gun placed out the passenger side of the front window of a black Mercedes that was driving slowly in front of her. 4RP 29-30. She heard "two more popping sounds coming from that direction." 4RP 30. The Mercedes sped away. 4RP 34. She believed the person in the white shirt fired before the person in the Mercedes, and was shooting towards her location. 4RP 30-31. The rear bumper of Strutynski's car was struck with a bullet. 3RP 78, 82-83; 4RP 26, 30-31.

Surveillance video showed a silver Crown Victoria driving off, followed shortly by a black Mercedes. Ex. 13; 3RP 52. Strutynski's car, a gold/tan Lexus, can be seen driving directly behind the Mercedes. Ex. 13;

3RP 53-55, 78-79. Two people are seen running across the front of the marijuana dispensary, one of them firing a handgun. Ex. 13; 3RP 46, 54. The shooter wore a white t-shirt, dark colored jeans, and a cap. Ex. 13; 3RP 47. The other person wore a black jacket and dark colored jeans. Ex. 13; 3RP 47-48.

Maria Harris, who lived nearby, heard the gunshots. 3RP 123. She saw a slender African American male (between 5'10" and 6') with cornrows run by, wearing denim and a white t-shirt. 3RP 123-25. He dropped something, which made a clanking sound. 3RP 126-27. A second, heavier African American male (around 5' 10") walked behind, wearing a green hat and a white t-shirt. 3RP 124-25, 127.

Jennings, the marijuana shop owner, recovered some shell casings and a magazine from the street and handed them over to a responding officer. 2RP 12; 3RP 118-19. The officer recovered two additional casings from the street. 2RP 13. They were all .45 caliber. 2RP 28, 30.

Officer Lee, responding to the shots fired report, contacted Peneueta at about 12:30 outside a residence at 5050 42nd Avenue South. 3RP 135-40. Peneueta said "he had heard some shots being fired over on Rainier" and was running from the scene. 3RP 139. He described seeing a Crown Victoria, "the occupants shooting at a black Mercedes Benz." 3RP 140.

Police located James Perkins, who had cornrows, hiding in the backyard of a nearby residence. 2RP 49, 53; 3RP 40-41; 5RP 34. He wore a white t-shirt and dark colored jeans. 3RP 41. A black North Face jacket belonging to Perkins was found in the backyard.[3] 2RP 49-50; 3RP 39-40. A .45 caliber gun was found underneath a bucket nearby. 2RP 48-49; 3RP 43. The shell casings recovered from the street were of the same caliber as the gun and the recovered magazine would fit the gun if it were not damaged. 3RP 43-45.

Police also found a green and yellow hat on a garbage can in the vicinity. 2RP 49, 52, 64; 3RP 37. The hat was sized for a large head. 2RP 65. Peneueta is approximately 6'5" and weighs 300 pounds.[4] 2RP 33.

The silver Crown Victoria seen in the video was traced to Amrico Flight. 3RP 50, 84-85. It had no bullet damage. 3RP 85.

On May 6, Detective Neese talked to Peneueta on the phone. 3RP 64-65. Peneueta explained "I was returning to my house, on South Dawson, and we drive by and I turn around and I see this car and they hop in their car and they drive slow past us and they stop, hang out the window,

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[3] Perkins testified that he took off his jacket and set it on the ground before being found in the backyard. 5RP 33-34.

[4] Perkins testified at trial that he saw Peneueta throw his hat. 5RP 33.

and start saying something. And then shots fired. I was going to my grandma's house so I ran over there. That's all." 3RP 68.

Peneueta gave some more details of his version of events to the detective. He was with Perkins. 3RP 68. The car was a Crown Victoria. 3RP 68. The driver looked at them. 3RP 69. Peneueta did not recognize the driver, but the driver appeared to recognize Peneueta. 3RP 70. The car drove off. 3RP 70. Peneueta and Perkins walked to the marijuana dispensary on Rainier Avenue. 3RP 70. Once there, they saw the car again, followed by a black Mercedes. 3RP 70. He did not recognize anyone in the Mercedes. 3RP 74. Peneueta was sure the cars were together "because the Mercedes was the one that pulled the gun." 3RP 71.

The person from the Crown Victoria and the passenger in the Mercedes went up to the dispensary. 3RP 71. Upon leaving, one of them said something like "what you looking at?" 3RP 71. Then he drove off and "then the black car behind him took out a gun and then shots were fired." 3RP 71. The passenger in the Mercedes fired the gun. 3RP 71-72. Peneueta and Perkins ran off. 3RP 72. Peneueta denied having a gun during the incident. 3RP 73. He did not see Perkins with a gun. 3RP 73. Peneueta had a on a white t-shirt and dark colored pants. 3RP 73.

Amrico ("Rico") Flight and Donald ("Messy") Massey are affiliated with the East Union Street Gang. 4RP 70-72. Flight drives a

Crown Victoria. 4RP 70-71. The East Union Street Gang is an established Central District gang. 4RP 51-52, 59. East Union Street was in conflict with the Down With The Crew (D-Dub) gang, with retaliatory violence ongoing. 4RP 54-57, 60. The Rainier Avenue South area is in the South End and considered D-Dub territory. 4RP 60, 62-63. If a gang member is found in another gang's territory, it is cause for violence. 4RP 57-58. Rival gang members typically announce their gang affiliation before doing violence. 4RP 65. Peneueta is affiliated with D-Dub. 4RP 78. Perkins is affiliated with The Goon Squad Clique, a South End gang, as well as D-Dub. 4RP 67, 75-76.

Perkins knew Peneueta was a D-Dub member, but denied being a member himself. 5RP 22. Perkins testified that he and Peneueta were walking to the marijuana dispensary when they saw a vehicle driven by Rico.[5] 5RP 16-19. Peneueta told Perkins, "If I see him again, I'm going to shoot at him." 5RP 22. When Peneueta later saw Rico coming out of the dispensary, he yelled "D-Dub," which Perkins took to mean an announcement that this was Peneueta's turf. 5RP 22-23, 25. Rico walked to his car, a Crown Victoria, and started driving north on Rainier Avenue. 5RP 24-25, 40. Rico stopped the car a few seconds later, rolled down the

[5] Perkins was wearing a black North Face jacket and Peneueta was wearing a white T-shirt, blue jeans and a green hat. 5RP 24.

window, and pointed a gun at Peneueta and Perkins. 5RP 26-27. Perkins thought they were going to be shot. 5RP 39.

Perkins thought Rico shot first. 5RP 26. Perkins waffled toward the end of his testimony, saying he did not know if Rico actually shot the gun.[6] 5RP 42. Peneueta started shooting at Rico.[7] 5RP 26. Perkins and Peneueta then ran off. 5RP 30.

C. ARGUMENT

1. THE COURT'S UNSUPPORTED FIRST AGGRESSOR INSTRUCTION REQUIRES REVERSAL.

Aggressor instructions are disfavored. State v. Birnel, 89 Wn. App. 459, 473, 949 P.2d 433 (1998) overruled on other grounds as noted in In re Pers. Restraint of Reed, 137 Wn. App. 401, 408, 153 P.3d 890 (2007). Courts should use care in giving an aggressor instruction because it impacts a claim of self-defense, which the State has the burden of disproving beyond a reasonable doubt. State v. Riley, 137 Wn.2d 904, 910 n.2, 976 P.2d 624 (1999). Indeed, "[f]ew situations come to mind where the necessity for an aggressor instruction is warranted." State v. Arthur, 42 Wn. App. 120, 125 n.1, 708 P.2d 1230 (1985).

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[6] In an earlier interview with Detective Neese, Perkins did not say anything about Rico shooting a gun. 5RP 29-30.

[7] Perkins denied knowing Rico or Donald Massey. 5RP 19-20, 23, 26. He acknowledged seeing the black Mercedes on the video, but did not know whose it was. 5RP 27-28.

This case was not one of them. The prosecutor argued Peneueta was the first aggressor because he fired his gun first. But the act of aggression justifying the instruction cannot be the assault itself. Reversal of the assault convictions is required because the evidence does not support an aggressor instruction.

a. The court gave the first aggressor instruction without explanation and the prosecutor exploited that instruction to undermine Peneueta's claim of self-defense.

The court gave self-defense instructions.[8] CP 41-42. The court, however, also gave a first aggressor instruction. Instruction 11 read:

> A person may not, by an intentional act of physical aggression which is reasonably likely to provoke a belligerent response, create a necessity for acting in self-defense and thereupon use force upon or toward another person. Therefore, if you find beyond a reasonable doubt that the defendant was the aggressor and that his acts or conduct provoked or commenced the fight, then self-defense is not available as a defense.

CP 43.

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[8] Before the start of trial, defense counsel said he would not be arguing self-defense. 1RP 62. After evidence at trial showed Peneueta said he was shot at, counsel contended during a preliminary discussion on jury instructions that while he did not intend to argue self-defense, the State still needed to prove the absence of self-defense. 3RP 145. The court said it would ponder the quantum of evidence needed to support instruction on self-defense. 3RP 145. The court provided the proposed instructions to the parties. 2RP 2; 3RP 144; 5RP 44-45. Deeper into trial, before Perkins took the stand, the court announced that it had included self-defense instruction and a first aggressor instruction. 5RP 8.

In closing argument, the prosecutor exhorted the jury to reject Peneueta's self-defense claim because he was the first aggressor. 5RP 78-79. The prosecutor told the jury self-defense was not available if Peneueta shot first. 5RP 79.

Defense counsel argued the State failed to prove Peneueta was the shooter. 5RP 79. Counsel also argued the State failed to prove Peneueta did not act in self-defense. 5RP 79, 82, 83-84.

b. The court erred in giving the aggressor instruction because the assault itself cannot form the evidentiary basis for that instruction and there is otherwise no evidence of an act of first aggression.

"[T]he initial aggressor doctrine is based upon the principle that the aggressor cannot claim self-defense because the victim of the aggressive act is entitled to respond with lawful force." Riley, 137 Wn.2d at 912. An aggressor instruction should be given only where there is credible evidence from which a jury can reasonably determine the defendant provoked the need to act in self-defense. Id. at 909-10. Whether the evidence was sufficient to support the giving of an aggressor instruction is a question of law reviewed de novo. State v. Bea, 162 Wn. App. 570, 577, 254 P.3d 948, 951, review denied, 173 Wn.2d 1003, 271 P.3d 248 (2011).

Pointing to the first aggressor instruction, the prosecutor invited the jury to disregard Peneueta's self-defense claim because he shot first. 5RP 78-79. But the shooting cannot be considered the belligerent act entitling the State to an aggressor instruction. The law is clear. "The provoking act cannot be the actual assault." Bea, 162 Wn. App. at 577 (citing State v. Kidd, 57 Wn. App. 95, 100, 786 P.2d 847, review denied, 115 Wn.2d 1010 (1990)).

Here, there was no aggressive act – other than the assault itself – that provoked a belligerent response. This was not a situation where the defendant engaged in a provocative act, the victim responded with force, and the defendant then claimed self-defense in assaulting the victim. The intentional act reasonably likely to provoke a belligerent response must be an act separate from the charged assaultive conduct. State v. Wasson, 54 Wn. App. 156, 159, 772 P.2d 1039, review denied, 113 Wn.2d 1014 (1989); State v. Brower, 43 Wn. App. 893, 902, 721 P.2d 12 (1986). Yet, because the instruction was given, the State was permitted to argue that Peneueta was not entitled to claim self-defense. 5RP 79.

Nor is there any other evidence to justify the instruction. Peneueta yelled out his D-Dub gang affiliation to a rival gang member before the shooting. 5RP 22-23, 25. But words alone do not constitute sufficient provocation to warrant the instruction. Riley, 137 Wn.2d at 909-11.

Words do not give rise to a reasonable apprehension of bodily harm, and an individual faced with only words is not at liberty to respond with force. Id. at 910-11. If words alone were sufficient to justify use of force, the "victim" could respond to words with force against which the speaker could not lawfully defend. Id. at 911-12. Insults about gang affiliation do not justify a violent response. Id. at 912. It is error to give an aggressor instruction where words alone are the asserted provocation. Id. at 911.

The court thus erred in giving an aggressor instruction that was not supported by the evidence. Wasson, 54 Wn. App. at 161; Brower, 43 Wn. App. at 901-02. The error is constitutional in nature and cannot be deemed harmless unless the State proves it is harmless beyond a reasonable doubt. Birnel, 89 Wn. App. at 473; State v. Stark, 158 Wn. App. 952, 961, 244 P.3d 433 (2010), review denied, 171 Wn.2d 1017, 253 P.3d 392 (2011).

An improper aggressor instruction is prejudicial because it guts a self-defense claim. Birnel, 89 Wn. App. at 473; Brower, 43 Wn. App. 902. Here, the first-aggressor instruction negated Peneueta's claim of self defense, effectively and improperly removing it from the jury's consideration. Evidence showed Peneueta had a good reason to fear violence. In relation to Peneueta, Amrico Flight and Donald Massey were rival gang members. 4RP 70-72, 78. The two gangs had been fighting for

years in a never-ending cycle of retaliatory violence. 4RP 54-57, 60. Perkins testified a rival gang member pointed the gun at them first. 5RP 26-27, 39. Peneueta told police that someone in the Mercedes "pulled the gun" and then shots were fired. 3RP 71-72. Strutynski saw someone in the Mercedes put a gun out the window. 4RP 29-30. The jury may have believed that Peneueta acted in self-defense in shooting based on the evidence, but concluded from the aggressor instruction that it could not acquit him because he shot first or was otherwise the aggressor.

Essentially, the court instructed self-defense was "not available as a defense" if Peneueta was the first aggressor. CP 43. Without supporting evidence to justify giving the aggressor instruction, the court prevented Peneueta from fully asserting his self-defense theory. See Wasson, 54 Wn. App. at 160 (unjustified aggressor instruction "effectively deprived Mr. Wasson of his ability to claim self-defense."); Birnel, 89 Wn. App. at 473-74 (aggressor instruction not supported by evidence "effectively deprived [defendant] of his ability to claim self-defense."); Stark, 158 Wn. App. at 960-61 ("without supporting evidence to justify giving the aggressor instruction, the court prevented Ms. Stark from fully asserting her self-defense theory). The issuance of an aggressor instruction relieved the State of its burden of proving lack of self-defense beyond a reasonable doubt. Reversal of the assault convictions is required.

c. This challenge may be raised for the first time on appeal because the improper instruction is a manifest error affecting a constitutional right.

Defense counsel did not object to the aggressor instruction, but the error may be raised for the first time on appeal because it is a manifest error affecting a constitutional right under RAP 2.5(a)(3). A constitutional error is manifest "if it results in a concrete detriment to the claimant's constitutional rights, and the claimed error rests upon a plausible argument that is supported by the record." State v. WWJ Corp., 138 Wn.2d 595, 603, 980 P.2d 1257 (1999).

A defendant has the constitutional right "to have a jury base its decision on an accurate statement of the law applied to the facts in the case." State v. Miller, 131 Wn.2d 78, 90-91, 929 P.2d 372 (1997). In the absence of an objection at trial, "an appellate court will consider a claimed error in an instruction if giving such an instruction invades a fundamental right of the accused." State v. Becker, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997). The aggressor instruction invaded Peneueta's fundamental right to present a complete defense and the right to hold the State to its burden of proof.

The defendant has the constitutional right to defend against the State's allegations by presenting a complete defense. Crane v. Kentucky, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986); State v. Jones, 168 Wn.2d 713, 720, 230 P.3d 576 (2010); U.S. Const. amend. V,

VI and XIV; Wash. Const. art. 1, §§ 3, 22. In this case, the right to present a complete defense encompassed Peneueta's claim of self-defense.

Due process also requires the State to prove every element of the charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Smith, 155 Wn.2d 496, 502, 120 P.3d 559 (2005); U.S. Const. amend. V and XIV; Wash. Const. art. 1, § 3. When the defendant raises the issue of self-defense, the absence of self-defense becomes another element of the offense that the State must prove beyond a reasonable doubt. State v. Woods, 138 Wn. App. 191, 198, 156 P.3d 309 (2007); State v. Acosta, 101 Wn.2d 612, 615-16, 683 P.2d 1069 (1984). That is, a self-defense jury instruction "creates an additional fact the State must disprove beyond a reasonable doubt." State v. O'Hara, 167 Wn.2d 91, 105, 217 P.3d 756 (2009); see State v. McCullum, 98 Wn.2d 484, 488, 493-94, 656 P.2d 1064 (1983) (jury instruction improperly placed burden of proving self-defense on defendant; right to due process is implicated by instruction that improperly shifts the burden of proof and therefore the issue could be raised for the first time on appeal).

Based on these constitutional guarantees, Peneueta had the right to have the jury fully consider his claim of self-defense. The aggressor instruction undermined that right by directing the jury to ignore his claim of self-defense if it found that he was the aggressor. See Riley, 137 Wn.2d at

910 n.2 ("an aggressor instruction impacts a defendant's claim of self-defense, which the State has the burden of disproving beyond a reasonable doubt."). This instruction had the effect of relieving the State of its burden of proving the absence of self-defense beyond a reasonable doubt. It improperly permitted the jury to disregard his self-defense claim by finding him to be the aggressor. The misleading aggressor instruction, if applied by the jury, deprived Peneueta of fully arguing his theory of the case that he acted in self-defense. See O'Hara, 167 Wn.2d at 107 (citing State v. LeFaber, 128 Wn.2d 896, 900, 913 P.2d 369 (1996) as a case where error assigned to an ambiguous self-defense instruction was a manifest error affecting a constitutional right because it deprived the defendant of his ability to argue his theory of the case).

In determining whether actual prejudice is present under the manifest error analysis, the focus is on "whether the error is so obvious on the record that the error warrants appellate review." O'Hara, 167 Wn.2d 91 at 99-100. The instructional error in Peneueta's case is obvious. The trial court, which inserted the instruction on its own accord, could have avoided the error based on simple awareness of established law in Riley (words alone do not justify the instruction) and cases such as Bea and Kidd (the assault itself does not justify the instruction). The court took it upon itself to select appropriate jury instructions rather than relying on the parties to propose their own. 2RP

2; 3RP 144; 5RP 44-45. In that circumstance, the court had a particular reason for making an informed judgment on whether the aggressor instruction was justified. Had it applied established law to the facts before it, the court would not have given a first aggressor instruction. The court failed to use the requisite care with this disfavored instruction. The improper aggressor instruction constitutes a manifest constitutional error that may be raised for the first time on appeal.

d. In the alternative, defense counsel was ineffective in failing to object to the first aggressor instruction.

Every criminal defendant is constitutionally guaranteed the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Thomas, 109 Wn.2d 222, 229, 743 P.2d 816 (1987); U.S. Const. Amend. VI; Wash. Const. art. I, § 22. A claim of ineffective assistance of counsel is an issue of constitutional magnitude that may be considered for the first time on appeal. State v. Kyllo, 166 Wn.2d 856, 862, 215 P.3d 177 (2009).

Defense counsel is ineffective where (1) counsel's performance was deficient and (2) the deficiency prejudiced the defendant. Strickland, 466 U.S. at 687. Prejudice results from a reasonable probability that the result would have been different but for counsel's performance. Thomas,

109 Wn.2d at 226. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id.

Deficient performance is that which falls below an objective standard of reasonableness. Id. The strong presumption that defense counsel's conduct is reasonable is overcome where there is no conceivable legitimate tactic explaining counsel's performance. State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004); Kyllo, 166 Wn.2d at 869.

Counsel has a duty to research the relevant law. Kyllo, 166 Wn.2d at 862. Based on cases such as Bea and Kidd, counsel should have known the shooting itself could not justify the first aggressor instruction. Based on Riley, counsel should have known provocative words, such as gang taunts, do not alone justify an aggressor instruction. Competent counsel would have objected to the aggressor instruction on those grounds.

The aggressor instruction did nothing to advance the defense theory; it actually undermined Peneueta's defense and assisted the State in arguing its case. The jury having been instructed on self-defense, there was no point in permitting the jury to disregard the self-defense theory by permitting an instruction that essentially told the jury that the defense was unavailable. The only purpose of an aggressor instruction is to remove self-defense from the jury's consideration. Having ultimately argued that defense,

there would be no legitimate tactical reason for defense counsel not to object to the instruction.

There is a reasonable probability the outcome might have been different but for counsel's failure to object. As argued above, had counsel objected to the aggressor instruction, the trial court would have been required under the law and the evidence to reject it. The jury then at least would have had to evaluate the self-defense claim fully. There is a reasonable probability the outcome of the trial would have been different because, as discussed above, a reasonable jury could have concluded Peneueta's fear was reasonable. Because counsel did not object, however, the aggressor instruction went to the jury and permitted a finding (which was urged by the prosecutor) that Peneueta provoked the incident and was thus not entitled to his claim of self-defense. This error undermines confidence in the outcome of the trial.

D. CONCLUSION

For the reasons set forth, Peneueta requests that this Court reverse the assault convictions.

DATED this 10th day of November 2014

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC

CASEY GRANNIS
WSBA No. 37301
Office ID No. 91051
Attorneys for Appellant

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 71948-3-I
	)	
MICHAEL PENEUETA,	)	
	)	
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 10TH DAY OF NOVEMBER, 2014, 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] MICHAEL PENEUETA
DOC NO. 374778
COYOTE RIDGE CORRECTIONS CENTER
P.O. BOX 769
CONELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 10TH DAY OF NOVEMBER, 2014.

X Patrick Mayovsky