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Supreme Court No. 96107-7
Court of Appeals No. 75655-9-I

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

STATE OF WASHINGTON,
Respondent,

v.

CHARLIE SHAKER HELO
Petitioners.

PETITION FOR REVIEW

Suzanne Lee Elliott
Attorney for Petitioner
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104
(206) 623-0291

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I.
IDENTITY OF PETITIONER

Charlie Helo, through his attorney, Suzanne Lee Elliott, seek review of the opinion designated in Part II.

II.
COURT OF APPEALS DECISION

On April 30, 2018 the Court of Appeals entered an unpublished decision. On June 7, 2018 the Court denied Helo's Motion to consider. Appendix 1.

III.
ISSUE PRESENTED FOR REVIEW

Did the Court of Appeals err when it found that even though defense counsel failed to present all of the available evidence the alleged victim had previously threatened Helo - to support Helo's claim that he was acting in self-defense - the result of trial would not have been different?

IV.
STATEMENT OF THE CASE

A.. PROCEDURAL HISTORY

Charlie Helo was charged with second degree assault while armed with a firearm with aggravating circumstances. CP 212-215. The case was tried to a jury. The jury convicted him as charged. CP 127-130.

Judgment and sentence were entered. CP 3-16. This timely appeal followed. RP 1-2.

B. TESTIMONY AT TRIAL

At trial, Tawfique Helo testified that Charlie Helo was his uncle. RP 69. On July 2, 2013, Tawfique had been storing his uncle's Chevy Blazer in his garage for about four years. *Id.*

About a week before, Charlie began texting Tawfique asking him to return the car. RP 70. On July 2, Tawfique was joined by his girlfriend, Ashley Newcomb, and his cousin Joseph Helo. RP 72. Tawfique pulled the car up in front of Charlie's house. RP 72. He immediately began videotaping as Charlie came out of the house. He said he did so because Charlie "had made a false statement with my sister. I did it for safety." RP 72.

Tawfique's video was admitted into evidence. It shows a verbal altercation between the two men and it shows Charlie pointing a gun at Tawfique. RP 81. Tawfique testified that he was afraid because if the gun discharged, he might get hit. RP 76.

During the altercation, Charlie called the police. Afterwards, Tawfique was stopped a short distance away. RP 79. He showed the officers the video. *Id.*

Officer Chris Farley talked with Charlie on the phone but did not go to the residence. RP 105. After viewing the video, he released Tawfique. RP 107. He could not remember if he searched Tawfique's car. RP 113.

The defense called Joseph. He said that Tawfique had a gun on his lap and they drove to Charlie's home. RP 15. Charlie instructed Tawfique to park the car away from his house because he and Tawfique had an ongoing dispute. RP 16. Instead, Tawfique just drove the car up to Charlie's house "just to agitate my uncle." RP 15.

According to Joseph, Tawfique wanted him to help him rob Charlie. 2/17/16 RP 16. He said that Tawfique was being a manipulator and "an instigator." 2/17/16 RP 20. He said Charlie had a no trespassing sign posted on his property. *Id.* He also said that Charlie told Tawfique to get off his property.

Defense counsel listed Charlie's wife, Molly, as a witness but in the end, defense counsel did not call her. 2/17/16 RP 39. He also did not call Charlie.

The trial court instructed the jury on the issue of self-defense. CP 131-155. But the jury returned a guilty verdict. CP 127-130.

C. MOTION FOR NEW TRIAL

Prior to sentencing, Charlie hired new counsel and filed a motion for new trial based upon ineffective assistance of counsel. CP 121-26, 237-255. The motion alleged that Charlie's trial counsel failed to properly investigate and present the available evidence of self-defense. Charlie asked for a new trial or, at the very least, an evidentiary hearing.

Charlie's new lawyer reinvestigated matters. She presented the declaration of Charlie's wife, Molly. Molly swore that she had watched the July 2, 2013 incident from her living room window. Supp. CP 237-255. She saw Tawfique in her front yard with a gun in his hand. She said that trial counsel never spoke to her. Instead an investigator, Mike Powers, came to the house to meet with Charlie. He spoke to Molly but did not take notes or tape the conversation. She did not know why the defense subpoenaed her but then did not call her to testify. *Id.*

Charlie said that he told his trial counsel's investigator about Thomas Milano. Apparently Milano knew that Tawfique had previously threatened to rob and kill Charlie. He could have testified that Charlie knew about these threats before July 2, 2013. *Id.* Defense counsel was seeking to locate and interview Milano. *Id.*

New counsel also obtained a copy of a threatening text message from Tawfique to Charlie. *Id.* In that message, Tawfique said:

Ok know you fucking bitch. Its over when i see you i don't give a fuck about your or the Police and trust me i will get You one by one you and my fucking uncle. I know that you are the ones who called on Ashley. Know you or your brother but its okay but now you too bitch are mine.

Id. Charlie said that before trial he had given this text message to the pretrial investigator. *Id.*

Tony Helo explained a lengthy history of conflict between Charlie and Tawfique. CP 19-23. Tony explained that Charlie had significant issues, including learning disabilities and a brain tumor. CP 22. When he could not work as a result of his illness, Tawfique took over the day-to-day management of one of Charlie's coffee stands. CP 20, 79. Charlie became dissatisfied with Tawfique's performance, so he told his brother Tony to take over. CP 20-21.

Tawfique was upset and threatened Tony on numerous occasions. Charlie then agreed to sell the coffee stands to Tawfique but he made only one of the agreed payments. CP 20-21, 79.

Tony said that he had been assisting his brother throughout the legal proceedings. He said that trial counsel met with Charlie in his office only once for a short period of time. CP 22. All of the other meetings occurred at the courthouse before or after court hearings. *Id.*

New counsel also presented evidence that during Christmas 2012, Tawfique's sister, Eva Helo, assaulted Charlie's wife, Molly. The police

were called, and Eva was arrested. After that, Tawfique made text and telephone threats to Charlie. A copy of the police report about the incident was attached to trial counsel's declaration. CP 79, 89-97.

Charlie also knew that Tawfique had been engaged in other violent acts. CP 79. In fact, he reported that Tawfique told him about shooting at another person. CP 79-80. He also knew that Tawfique had severely beaten another person and that Tawfique had reported his car stolen to cover up his involvement in the shooting. CP 80, 99-101.

New counsel stated that, had he been called to testify, Charlie would have said only that on July 2, 2013, he was deathly afraid of Tawfique. CP 83-85.

Further, new counsel attached the text messages that Charlie used to try to get information to trial counsel and the investigator. CP 112-120. But trial counsel met with him only once in his office. Every other time, he saw defense counsel was at the courthouse. Charlie also attached text messages that he sent to the investigator with the names of potential witnesses and with information about the threatening texts. He said he did not believe the investigator contacted the witnesses. *Id.*

Charlie submitted a preliminary opinion from Professor John Strait who opined that trial counsel had a duty to investigate and judge the credibility of the witnesses. CP 26-76. He also opined that a jury would

rarely accept a self-defense claim without hearing testimony from the defendant. CP 30. He notes that trial counsel called Joseph Helo to support Charlie's claim, but he had not interviewed Joseph or prepared him for trial. CP 31. He also opined that competent counsel would not delegate meaningful communication with the client to an investigator. *Id.* He also opined that an evidentiary hearing would be necessary to fully evaluate the claim of ineffective assistance of counsel. CP 32.

The State responded to the motion. It did not dispute any of the newly discovered evidence. Instead, the State said:

Additionally, the defendant and victim had known each other their entire lives. They had both a family relationship and a working relationship. The ups and downs of that were delved into a great length by defense investigation and defense interview. At trial, both defense and the prosecutor advised the court that the intent was to keep all parties focused on the events of the incident, and not have each side devolve into a tit for tat reciting of grievance going back years. In the context of the incident itself, all witnesses to whom would testify, prior messages insults, and bad behavior of the parities would have been inadmissible and not relevant.

State's Response at 10.

The trial judge heard the motion on the morning of sentencing. He took no testimony and denied the motion without an evidentiary hearing.

He said:

All right. I took everything home last night, reviewed everything again, looked at your motion, and thought back

on the trial. I did specifically inquire as to Molli Helo, whether she was going to be called, told she wasn't going to be called. I made a record of that. We had an offer of proof here today that Mr. Pandher, if he were, Mr. Pandher would represent that Mr. Helo decided himself not to testify, although there may be others who may give different evidence.

I don't see any basis for a foundation for the texts at this point from what I've seen. They appear to be screen shots with insufficient foundation to admit those texts. The court did take up the scope of evidence to be admitted in the case and pretrial motions, the motions in limine, and did narrow that scope.

Tactically, in terms of the trial, Mr. Pandher looked at two issues that were legitimate issues for the jury. Number one, was this a functioning firearm, gun? And that was a significant issue for the jury. Was this really a gun as defined by law, a firearm?

Two, was Tawfique Helo actually afraid? Did the reactions of Tawfique Helo cause fear in him, given the way he behaved and what's on the video? The video was evidence for the jury. Those were tactical decisions made by Mr. Pandher as to what issues to take up with the jury. I think those were sound decisions.

In terms of use of an investigator, Mr. Powers was the investigator in this case. He's used by a number of attorneys in Snohomish County. The court pays those costs of investigators at public expense. I'm the judge that has done the approval of those if they're over the normal amounts, just minimum amounts, and Mr. Pandher usually asks for more money for investigators in cases he tries. I don't know if he did in this case. Those are always approved if there is justification for that by the court. So there is no limitation placed on defense counsel in this county in terms of use of investigators to conduct interviews of witnesses if there is justification for it.

I'm not sure what the record in this case would show. We have that back in court administration, what was expended for investigators. I don't think that's an issue in this case.

The fact that Mr. Pandher did not personally sit in or go through this in terms of witness interviews is not particularly unusual nor do I think it is so deficient to entitle the defendant to a new trial.

So I'm going to deny the motion for hearing and for new trial at this point and proceed to sentencing.

8/12/16 RP 38-40.

On appeal Helo argued that the trial court erred in failing to grant Charlie Helo a new trial because his trial counsel was ineffective. The Court of appeals affirmed.

V.

ARGUMENT WHY REVIEW SHOULD BE GRANTED

THIS COURT SHOULD GRANT REVIEW BECAUSE THIS CASE PRESENTS A SIGNIFICANT CONSTITUTIONAL QUESTION. RAP 13.4(B)(3).

Every criminal defendant in Washington is guaranteed the effective assistance of counsel. "Both the Sixth Amendment to the United States Constitution and article I, § 22 (amendment 10) of the Washington State Constitution guarantee the right to effective assistance of counsel in criminal proceedings." *In re Pers. Restraint of Brett*, 142 Wn.2d 868, 873, 16 P.3d 601 (2001) (citations omitted). In Washington, ineffective assistance of counsel claims are evaluated under the two-pronged test set

out in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674, *review denied*, 467 U.S. 1267, 104 S.Ct. 3562, 82 L.Ed.2d 864 (1984). *State v. Thomas*, 109 Wn.2d 222, 224-26, 743 P.2d 816 (1987).

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland, 466 U.S. at 687. Both prongs of this test must be satisfied to obtain relief. *Id.*

The Court of Appeals said the trial court "held a hearing" on Helo's motion for new trial. This suggests that the trial court granted Helo's request for a full evidentiary hearing on issues raised in his motion. That is incorrect. Helo filed a motion supported by declarations and permitted his counsel to make an oral presentation. But he did not grant a hearing where defense counsel could call the witness and former counsel to question them under oath even though counsel repeatedly asked for such a hearing. See e.g. RP 8/12/16 RP at 33. Based solely upon the written record and without ever hearing from trial counsel, the trial judge held that there was no deficient performance. 8/12/16 RP at 40.

The Court of Appeals ignored Helo's complaint that he had not been given the proper opportunity to develop his claim before sentencing. Instead the Court seemed to assume that all of the evidence of counsel's

errors had been developed and presented to the trial court. That assumption was incorrect.

Second the Court of Appeals, after appearing to presume at least some deficient performance by counsel, concluded there was no prejudice to Helo. In doing so, the Court of Appeals appears to have overlooked the fact that the State had the burden of proving that Helo did not act in self-defense. The Court said: “trial counsel faced the challenge of the cell phone depiction of the incident.” But, the defense did not have to prove beyond a reasonable doubt that Helo acted in self-defense. It only had to raise a reasonable doubt about whether the short video actually reflected the true relationship between Twafique and Helo and Helo’s fears.

Because Helo only had to raise a reasonable doubt about the State’s case, the failure to present the full complement of evidence regarding Twafique’s aggression was highly prejudicial. It is true that the video captured one moment in the two men’s relationship. But the trial centered on Helo’s claim of self-defense. For the past 120 years the unequivocal rule in Washington is – and has been – that a criminal defendant claiming self-defense has the presumptive right to introduce specific instances of misconduct committed by the alleged victim and known by or communicated to the defendant as relevant to the defendant’s reasonable fear of death or serious injury. The video does not capture the lifetime relationship between Helo and Twafique and defense counsel failed to present the available evidence that would have supported Helo’s claim that he acted out of fear of Twafique.

For example, the following text standing alone and omitted by defense could have easily supplied a reasonable doubt and changed the outcome of trial. .

Ok know you fucking bitch. Its over when i see you i don't give a fuck about your or the Police and trust me i will get You one by one you and my fucking uncle. I know that you are the ones who called on Ashley. Know you or your brother but its okay but now you too bitch are mine.

CP 79, 89-97. It would have explained why Helo felt it necessary to arm himself when Twafique appeared at his home.

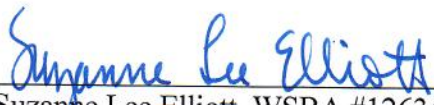
The trial court and the Court of Appeals erred failing to grant Helo a full evidentiary hearing on his claim that counsel was ineffective and in failing to find that evidence trial counsel failed to investigate and present would have changed the result of trial.

VI. CONCLUSION

The Court should accept review.

DATED this 3rd day of July 2018.

Respectfully submitted,


Suzanne Lee Elliott, WSBA #12634
Attorney for Helo

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by email
where indicated, and by United States Mail one copy of this brief on:

Appellate Division
Snohomish County Prosecutor's Office
3000 Rockefeller Avenue, MS 504
Everett, WA 98201-4061

7/3/18
Date

Suzanne Lee Elliott
Suzanne Lee Elliott

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

STATE OF WASHINGTON,)	
)	No. 75655-9-1
Respondent,)	
)	ORDER DENYING MOTION
v.)	FOR RECONSIDERATION
)	
CHARLIE SHAKER HELO,)	
)	
Appellant.)	

The appellant, Charlie Shaker Helo, has filed a motion for reconsideration. The court has taken the matter under consideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Trickey, J

3 Wash.App.2d 1041

NOTE: UNPUBLISHED OPINION, SEE WA R GEN
GR 14.1

Court of Appeals of Washington,
Division 1.

STATE of Washington, Respondent,
v.
Charlie Shaker **HELO**, Appellant.

No. 75655-9-I

FILED: April 30, 2018

Appeal from Snohomish Superior Court, 13-1-01824-6,
Honorable Thomas J. Wynne, J.

Attorneys and Law Firms

Elizabeth Anne Padula, Padula & Associates LLC, 105
14th Ave. Ste 110, Seattle, WA, 98122-7303, Suzanne Lee
Elliott, Attorney at Law, 705 2nd Ave. Ste 1300, Seattle,
WA, 98104-1797, for Appellant.

J. Scott Halloran, Snohomish Co. Prosecuting Atty-
Criminal, 3000 Rockefeller Ave. # Ms504, Everett, WA,
98201-4046, for Respondent.

UNPUBLISHED OPINION

TRICKEY, J.

*1 A jury convicted Charlie **Helo** of second degree assault with aggravating circumstances based on an incident involving his nephew, Tawfique **Helo**.¹ After trial, Charlie moved for relief from judgment, alleging ineffective assistance of counsel. The trial court denied the request and Charlie appeals. Because Charlie cannot demonstrate the prejudice required for ineffective assistance, we affirm.

FACTS

For several years, Tawfique stored one of Charlie's vehicles at his home as a favor to Charlie. In July 2013, Charlie called and sent text messages demanding that Tawfique return the vehicle. Tawfique and his cousin,

Joseph **Helo**, drove the vehicle to Charlie's house, while Tawfique's girlfriend, Ashley Newcomb, followed in his car.

When Tawfique arrived at Charlie's house, he began recording a video with his cell phone. Charlie came out of his house with a gun and a cell phone connected to the Marysville Police Department. Charlie pointed the gun at Tawfique and the two exchanged heated words. Charlie's two young children came outside and stood next to their father as he pointed the weapon and yelled at Tawfique. Molli **Helo**, Charlie's wife, did not come out of the house. Newcomb and Joseph waited nearby in Tawfique's car. Charlie and Tawfique exchanged more insults and accusations at each other before Tawfique departed in his car.

Marysville Police Officer Chris Farley was speaking to Charlie on the phone when Tawfique arrived at Charlie's house. Charlie was rambling and not making sense. Charlie told Officer Farley that he had a gun. Officer Farley heard the slide being racked on a semiautomatic pistol, which was the sound of a bullet being chambered into the gun. Officer Farley apprised dispatch and other police units of the situation so that the closest unit could respond.

Another unit was closer to Charlie's house and responded to his call. Officer Farley went to the location where a police unit had stopped Tawfique and Joseph.² Officer Farley watched the cell phone video of the incident and then released Tawfique and Joseph.

Marysville Police Officer Brad Smith contacted Charlie at his house in response to the dispatch. When Officer Smith arrived, Tawfique had already departed and Charlie was inside his house. Charlie made no mention of the events that had just occurred. Instead, Charlie talked at length about having cancer. Similarly, Molli spoke only about Charlie's cancer and "[c]ommon everyday things."³ Neither Molli nor Charlie discussed the incident or reported any information about the altercation to Officer Smith. Officer Smith felt that the discussion about Charlie's cancer was an attempt to draw his attention away from the altercation between Tawfique and Charlie.

*2 At trial, **Helo** claimed that he was acting in self-defense and that the State could not prove that Tawfique had the requisite fear to support a second degree assault

charge. The State played Tawfique's cell phone video for the jury. Charlie and Molli did not testify.

At trial, Joseph testified on Charlie's behalf. He stated that Tawfique had his firearm in his lap while driving to Charlie's house. During the altercation, Tawfique had his gun in a holster on his hip and kept his hand next to the holstered weapon. He testified that Tawfique was angry, wanted to agitate Charlie, and began yelling at Charlie as soon as they arrived at the house. According to Joseph, Tawfique was acting as a manipulator and instigator during the incident.

Joseph gave equivocal testimony about whether he saw Charlie point a gun at Tawfique. Joseph stated that Charlie initially pointed his finger to direct Tawfique to get off the property and did not point his gun at Tawfique until Tawfique failed to leave the property and continued provoking Charlie. Joseph then stated that he had not seen a gun in Charlie's hand. Based on this later testimony, Joseph only saw Charlie holding a gun when he watched the cell phone video during the police stop with Officer Farley.

Joseph testified that Tawfique had previously tried to convince him to tie up and rob Charlie, Molli, and their children. Tawfique wanted Charlie's prescription pills. Joseph said that he had informed Charlie of Tawfique's plan. Joseph reiterated several times that Tawfique was "manipulating" and "being an instigator."⁴ He testified that Tawfique's behavior had recently changed, possibly due to "supplements."⁵

Newcomb offered contradicting testimony. She testified that Charlie pointed a gun at Tawfique without provocation. According to Newcomb, Tawfique was holding only his cell phone and the keys to Charlie's vehicle in his hands during the incident. She stated that Charlie was yelling and acting crazy.

Tawfique testified that he was afraid when Charlie pointed the gun toward him because the gun could go off accidentally and shoot him or Charlie's children. Tawfique stated that he had a concealed weapons permit and owned a firearm. Tawfique testified that he did not typically take the gun out of the house, and had left his gun at his house on the day of the incident.⁶ Subsequently, Charlie elicited

testimony that Tawfique had owned another gun that had been stolen from Tawfique's vehicle.

In closing arguments, Charlie's trial counsel emphasized Joseph's testimony to support the self-defense claim. Specifically, counsel reiterated Joseph's statements about Tawfique having his hand on his belt next to a holstered gun. He also reminded the jury of Joseph's testimony that Tawfique had plans to tie up and rob Charlie and his family, and that Joseph had informed Charlie of these plans. Charlie's trial counsel highlighted this evidence to explain the context of Charlie's actions and to emphasize that Charlie was entitled to defend himself in light of this information.

The jury convicted Charlie of second degree assault. The jury also found the aggravating factors of domestic violence and commission of the crime while armed with a firearm.

*3 Following his conviction, Charlie brought a motion for relief from judgment. He requested that the trial court vacate his conviction and grant a new trial due to ineffective assistance of counsel. He argued that his trial counsel was deficient in the investigation and preparation of his case.

The trial court held a hearing on the motion. Charlie requested either a new trial or an evidentiary hearing on the issue of ineffective assistance of counsel. He argued that his counsel failed to interview and prepare witnesses, including himself, Molli, and his brother, Tony **Heló**. Charlie claims that he had wanted to testify, which might have bolstered the self-defense claim. Charlie also raised the issue of a threatening text message from Tawfique to Charlie that had been provided to trial counsel but never investigated. Charlie introduced a declaration from an anonymous source claiming to have been solicited by Tawfique to kill Charlie. Charlie cited this evidence to support allegations of insufficient investigation and presentation of evidence in his case. Finally, Charlie claimed that his attorney-client relationship with trial counsel was deficient and that counsel did not communicate with him.

The trial court stated that Charlie's trial counsel had argued viable defense theories, made strategic decisions about witness testimony, and properly relied on an investigator for witness interviews. Additionally, the trial

court determined that the text message was a screen shot with insufficient foundation for admission as evidence. The trial court denied Charlie's motion and sentenced him to 48 months of confinement.

Charlie appeals.

ANALYSIS

Ineffective Assistance of Counsel

Charlie argues that the trial court erred by failing to grant him either a new trial or an evidentiary hearing because he received ineffective assistance of counsel. Specifically, Charlie alleges that his trial counsel was deficient in investigating and presenting his self-defense claim. This allegation includes trial counsel's failure to investigate and use Molli as a witness. Charlie claims that he was prejudiced by his counsel's failure to present compelling evidence of Tawfique's history of aggressive behavior toward him, which would have presented a "materially different picture" of the incident.⁷ But even if Charlie's trial counsel's performance was deficient as argued, Charlie cannot demonstrate a reasonable probability that the additional information would have yielded a different result.

Effective assistance of counsel is guaranteed by the Sixth Amendment of the United States Constitution and article I, section 22 of the Washington Constitution. State v. Hendrickson, 129 Wn.2d 61, 77, 917 P.2d 563 (1996). To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove both deficient performance and prejudice. State v. Jones, 183 Wn.2d 327, 339, 352 P.3d 776 (2015).

Establishing deficient performance requires a showing that counsel's representation fell below an objective standard of reasonableness based on consideration of all the circumstances. State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987) (citing Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L.Ed. 2d 674 (1984)). "[S]crutiny of counsel's performance is highly deferential and courts will indulge in a strong presumption of reasonableness." Thomas, 109 Wn.2d at 226. Legitimate trial tactics do not establish deficient performance. State v. Humphries, 181 Wn.2d 708, 720, 336 P.3d 1121 (2014).

But failure to investigate or interview witnesses may support a claim of ineffective assistance of counsel. State v. Ray, 116 Wn.2d 531, 548, 806 P.2d 1220 (1991).

*4 Prejudice sufficient to support a claim of ineffective assistance of counsel occurs when counsel's errors were so serious as to deprive the defendant of a fair trial. Hendrickson, 129 Wn.2d at 78. The defendant must show a "reasonable probability that, but for counsel's errors, the result of the trial would have been different." Hendrickson, 129 Wn.2d at 78.

A claim of ineffective assistance of counsel is a mixed question of law and fact that an appellate court reviews de novo. Jones, 183 Wn.2d at 338–39.

At trial, Charlie's trial counsel presented evidence to support the self-defense claim. This included evidence to establish Tawfique's antagonistic behavior and the danger he potentially posed to Charlie. Charlie's counsel elicited testimony that Tawfique was armed with a gun and acted as an instigator during the altercation. The jury also heard about Tawfique's plan to tie up and rob Charlie and his family, and that Charlie knew of this plan. Charlie's counsel argued that Charlie was aware of these facts and acted reasonably in responding to Tawfique in light of this information. Charlie's counsel also emphasized that Tawfique did not appear frightened during the incident as illustrated by the video evidence that showed Tawfique yelling profanities and insults at Charlie, rather than leaving quickly at Charlie's request.⁸

Despite these efforts, Charlie's trial counsel faced the challenge of the cell phone video depiction of the incident. The video clearly showed Charlie coming out of his house and pointing a gun at Tawfique, without apparent provocation. Other than Joseph's testimony, the evidence presented at trial did not establish that Tawfique had a gun. Furthermore, Charlie did not mention a gun, threats, or his fear of Tawfique to Officer Smith immediately after the incident.⁹ Given the graphic video evidence of Charlie's behavior and his failure to report anything about the incident to the police, there is little probability that additional evidence of the history between Charlie and Tawfique would have changed the outcome of the trial.

*5 Given the existing evidence at trial, Charlie has not shown that any errors by his trial counsel were so serious that the result of the trial would have been

different absent the errors. See Hendrickson, 129 Wn.2d at 78. Thus, he has failed to demonstrate the prejudice required to succeed on a claim of ineffective assistance of counsel. Therefore, we conclude that Charlie did not receive ineffective assistance of counsel at trial.

Spearman, J.

Becker, J.

All Citations

Not Reported in P.3d, 3 Wash.App.2d 1041, 2018 WL 2021819

Affirmed.

WE CONCUR:

Footnotes

- 1 We will refer to members of the **Helo** family by their first names for clarity. No disrespect is intended.
- 2 Newcomb was no longer in the vehicle, having been dropped off because she had a warrant and did not want to be stopped by the police.
- 3 Report of Proceedings (RP) (Feb. 17, 2016) at 7.
- 4 RP (Feb. 17, 2016) at 18, 20.
- 5 RP (Feb. 17, 2016) at 18.
- 6 RP (Feb. 16, 2016) at 77–78.
- 7 Appellant's Opening Br. at 18.
- 8 Trial counsel argued that Tawfique did not have the necessary fear to support an assault conviction as seen by his behavior on the video recording. This argument was also bolstered by Joseph's testimony about Tawfique engaging with Charlie as an instigator and manipulator.
Charlie's trial counsel also attempted to prove that Charlie did not have a firearm. Charlie admitted to the police that he had a gun. The trial court cited the questions about the firearm as a sound argument for the jury's consideration.
- 9 Similarly, Molli's testimony would not have changed the outcome. Molli was not present outside the house during the incident between Charlie and Tawfique. Regardless of what she might have seen or heard, Molli made no mention of the incident to Officer Smith. In light of her failure to report any information to Officer Smith immediately after the incident, Molli would have faced significant challenges to her credibility when testifying. Any testimony about Charlie's fear would have been countered with questions about their failure to express any concerns to the responding officer. Therefore, trial counsel's decision not to call Molli was a legitimate trial tactic and cannot support a claim of ineffective assistance. See Humphries, 181 Wn.2d at 720.

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Transmittal Information

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Appellate Court Case Title: State of Washington, Respondent v. Charlie Shaker Helo, Appellant
Superior Court Case Number: 13-1-01824-6

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