

08369-1

08369-1

No. 68369-1-I

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

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STATE OF WASHINGTON,

Respondent,

v.

JEFFREY T. HUYNH,

Appellant.

---

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

The Honorable Susan K. Cook

---

BRIEF OF APPELLANT

---

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A. ASSIGNMENTS OF ERROR

1. The State failed to prove Mr. Huynh intended to “manufacture” cocaine, an alternative means of committing the offense of possession of a controlled substance with intent to manufacture or deliver, as charged in Count I, and an alternative means of committing the offense of conspiracy to possess a controlled substance with intent to manufacture or deliver, as charged in Count II.

2. The State failed to prove “the circumstances of the offense reveal that the defendant occupied a high position in the drug distribution hierarchy” or “the offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of distribution,” alternative means of committing a major trafficking violation, as charged as an aggravating circumstance.

3. The trial court erred in denying Mr. Huynh’s motion to sever the two counts from each other and to sever his case from that of his co-defendant and thereby allowed admission of confusing, irrelevant, and highly prejudicial evidence against him.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where an offense may be committed by alternative means and the State fails to elect which means it is relying on for a conviction, a defendant’s constitutional right to jury unanimity and to due process of

law requires substantial evidence to support all means presented to the jury. Here, the State failed to elect whether it was relying on evidence of intent to deliver or evidence of intent to manufacture to support convictions for the offenses as charged and the jury was instructed on both alternative means. Must Mr. Huynh's convictions for possession with intent to manufacture or deliver cocaine and conspiracy to possess with intent to manufacture or deliver cocaine be reversed for insufficient evidence of the alternative means "manufacture"? (Assignment of Error 1)

2. Where an aggravating circumstance may be committed by alternative means and the State fails to elect which means it is relying for an enhanced sentence, a defendant's constitutional right to jury unanimity and to due process of law requires substantial evidence to support all means presented to the jury. Here, the State failed to elect which of three means it was relying on for the aggravating circumstance and the jury was instructed on three alternative means. Must Mr. Huynh's sentence above the standard range be reversed for insufficient evidence to support each alternative means presented to the jury? (Assignment of Error 2)

3. A defendant's constitutional right to a fair trial and CrR 4.4 require severance of counts and of defendants when necessary to promote a fair determination of the guilt or innocence of a defendant. Must Mr.

Huynh's convictions be reversed when the trial court denied his repeated motion to sever and thereby allowed admission of confusing theories of criminal liability, as well as irrelevant and highly prejudicial evidence of "manufacture"? (Assignment of Error 3)

C. STATEMENT OF THE CASE

In January 2011, Border Patrol Agent Seim DeLaCruz was undercover posing as a dealer in kilogram quantities of cocaine. 5RP 61.<sup>1</sup> On January 26, 2011, Jeffrey T. Huynh contacted Agent DeLaCruz and indicated he knew a buyer who wanted to purchase large quantities of cocaine and he wanted to broker a deal between the buyer and Agent DeLaCruz. 5RP 61-62.

On February 10, 2011, Mr. Huynh and Agent DeLaCruz met at a restaurant in Mount Vernon, Washington. 5RP 66-67. 5RP 68. Agent DeLaCruz arrived at the restaurant with two kilograms of cocaine that he was purporting to sell. 5RP 68, 71-72, 122, 124. Mr. Huynh arrived with

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<sup>1</sup>The Verbatim Report of Proceedings consists of eight separately paginated volumes, several which include multiple dates. The volume reporting proceedings on July 28, 2011, August 16, 2011, September 8, 2011, September 22, 2011, October 14, 2011, November 23, 2011, and January 13, 2012 will be referred to as "1RP." The volume reporting proceedings on December 1, 2011 and February 10, 2012 will be referred to as "2RP." The volume reporting proceedings on December 4, 2011 will be referred to as "3RP." The volume reporting proceedings on January 4, 2012 will be referred to as "4RP." The volume reporting proceedings on January 23 2012 and January 24, 2012 will be referred to as "5RP." The volume reporting proceedings on January 25, 2012 will be referred to as "6RP." The volume reporting proceedings on January 26, 2012 will be referred to as "7RP." The volume reporting proceedings on January 27, 2012 will be referred to as "8RP."

an unidentified individual who was the potential buyer. 5RP 75, 90. The unidentified buyer waited inside the restaurant while Mr. Huynh looked at the cocaine in Agent DeLaCruz's car. 5RP 77, 126. Mr. Huynh and Agent DeLaCruz returned to the restaurant, Mr. Huynh spoke with the buyer and then told Agent DeLaCruz that the buyer needed several days to decide whether to complete the purchase. 5RP 79-80. The deal with the unidentified purchaser did not occur.

From February to May 2011, Mr. Huynh and Agent DeLaCruz were in regular contact to discuss possible purchases with different buyers. 5RP 81, 114-15; 6RP 108. According to Agent DeLaCruz, Mr. Huynh's "entire motive" was to collect a broker's fee, and he "always" mentioned that he wanted \$2,000 for each kilogram for which he provided a buyer. 5RP 81; 6RP 110, 168. For example, when Agent DeLaCruz offered to sell a kilogram of cocaine for \$19,000, Mr. Huynh proposed to tell the buyer the price was \$21,000, and he would keep the extra \$2,000 as his fee. 5RP 81-82; 6RP 115.

On May 20, 2012, Mr. Huynh contacted Agent DeLaCruz and indicated he was with a buyer who wanted to purchase two kilograms of cocaine for \$42,000, and they arranged to meet several hours later at the same restaurant as previously. 6RP 115, 121. Mr. Huynh also indicated that he wanted a sample of cocaine, apparently for his personal use. 7RP

24. Mr. Huynh, Raymond Mak, and Jai Lin,<sup>2</sup> were at the restaurant when Agent DeLaCruz arrived. 6RP 126. Agent DeLaCruz had two kilograms and a one-ounce “sample” of cocaine in the trunk of his undercover vehicle. 6RP 133. Mr. Huynh walked outside the restaurant with Agent DeLaCruz and again asked about his broker’s fee. 6RP 126-27. Mr. Huynh also mentioned possible future transactions for which he expected to receive the broker’s fee. 6RP 127-28. Then the two men returned inside. 6RP 128.

Inside the restaurant, Mr. Huynh and Mr. Mak went to the restroom, followed shortly thereafter by Agent DeLaCruz. 6RP 129-30. In the restroom, Mr. Huynh showed Agent DeLaCruz bundled \$100 bills in the sleeve of a jacket he was carrying. 6RP 130.

The men returned to the table where Mr. Lin was waiting. 6RP 132. Mr. Mak and Agent DeLaCruz then went to the undercover vehicle and Mr. Mak looked at the cocaine in the trunk of the car. 6RP 134. As they returned to the restaurant, Mr. Mak discussed possible future transactions arranged directly with Agent DeLaCruz, and without Mr. Huynh as an intermediary. 6RP 135, 141.

Everyone left the restaurant together, and Mr. Lin waited in front while Agent DeLaCruz, Mr. Huynh, and Mr. Mak went to his undercover

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<sup>2</sup>Mr. Lin was prosecuted separately and was not a party at trial.

vehicle behind the restaurant. 6RP 142; 7RP 35. Mr. Mak took the cocaine from the trunk, went to his car, and drove away, while Agent DeLaCruz gave Mr. Huynh his broker's fee. 6RP 144; 7RP 37. Mr. Huynh and Mr. Lin were arrested outside the restaurant. 6RP 145; 7RP 41. Within minutes, Mr. Mak was arrested several blocks away from the restaurant and the cocaine was found in his car. 7RP 82, 106.

Mr. Huynh was charged with unlawful possession of cocaine with intent to manufacture or deliver, contrary to RCW 69.50.401(1) and (2)(a), and with conspiracy to possess cocaine with intent to manufacture or deliver, contrary to RCW 69.50.407 and 69.50.401(1) and (2)(a). CP 281-82. The State sought an enhanced sentence, pursuant to RCW 9.94A.535(3)(e), based on its allegation that the offenses were a major trafficking violation of the Uniform Controlled Substances Act.

Prior to trial, Mr. Huynh moved to sever the counts and the defendants, pursuant to CrR 4.4(c) and Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), on the grounds Mr. Mak made a statement incriminating Mr. Huynh, the defendants had antagonistic defenses, and the evidence regarding accomplice liability and conspiracy was complex. 1RP 72-75; 4RP 21-26; CP 165-74. Mr. Mak's statement was redacted and the motion was denied. 1RP 75. Mr. Huynh's repeated

motions to sever during trial were also denied. 5RP 39-40; 6RP 86; 8RP 46-47.

At trial, Washington State Patrol Detective John Belanger testified regarding cocaine distribution. Detective Belanger testified that cocaine is commonly diluted with a food supplement during each transaction, such that it is approximately 5 percent to 15 percent purity at street level. 6RP 28. He further testified that a kilogram of cocaine contains 1000 grams and street-level dose is one-quarter of a gram, and a heavy user consumes two grams per day. 6RP 21, 28, 32. According to Detective Belanger, a kilogram of cocaine sells for \$19,000-\$25,000 in Skagit County. 6RP 26. The same amount can be resold in Canada for \$30,000-\$45,000. 6RP 25.

Following the testimony, Mr. Huynh objected to instructing the jury regarding "manufacture," an alternative means of committing the offenses. 8RP 63. His objection was overruled. 8RP 63. Mr. Huynh was convicted as charged and he received an exceptional sentence above the standard range based on the jury's finding that the offenses were major trafficking violations of the Uniform Controlled Substances Act. CP 111-20, 121-24.

D. ARGUMENT

**1. The State failed to prove each alternative means of committing the underlying offenses and the aggravating circumstance, in violation of Mr. Huynh's constitutional right to due process.**

- a. When a crime may be committed by alternative means, due process requires that substantial evidence support each alternative means of committing the offense as charged.

The constitutional right to due process requires the State to prove beyond a reasonable doubt every essential element of a crime charged.

U.S. Const. amend. XIV; Wash. Const. art. I, sec. 3, 21, 22; In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Hundley, 126 Wn.2d 418, 421, 895 P.2d 403 (1995). Any element included in a "to convict" instruction becomes the law of the case and must be proved beyond a reasonable doubt. State v. Hickman, 135 Wn.2d 97, 101-02, 954 P.2d 900 (1998).

In a criminal prosecution, a conviction cannot stand in the absence of jury unanimity that the State proved every essential element of the offense. State v. Smith, 159 Wn.2d 778, 783, 155 P.3d 873 (2007). A defendant similarly has the constitutional right to jury unanimity on any aggravating circumstance that elevates the punishment for the underlying offense. U.S. Const. amend. VI; Wash. Const. art. I, sec. 21; Blakely v. Washington, 542 U.S. 296, 313-14, 124 S.Ct. 2531, 159 L.Ed.2d 402

(2004); Apprendi v. New Jersey, 530 U.S. 490, 120 S.Ct. 2348, 1347 L.Ed.2d 435 (2000).

An “alternative means” case involves “a charge under a statute which contains several alternative ways of committing one crime.” State v. Crane, 116 Wn.2d 315, 326, 804 P.2d 10 (1991). “In an alternative means case, where a single offense may be committed in more than one way, there must be jury unanimity as to guilt for the single crime charged. Unanimity is not required, however, as to the means by which the crime was committed so long as substantial evidence supports each alternative means.” State v. Kitchen, 110 Wn.2d 403, 410, 756 P.2d 105 (1988) (emphasis in original). Where substantial evidence supports each of the alternative means submitted to the jury, jury unanimity is presumed. State v. Ortega-Martinez, 124 Wn.2d 702, 707-08, 881 P.2d 231 (1994). Where the evidence is not sufficient to support each alternative means, however, the conviction must be reversed absent a statement of unanimity in the form of a special verdict. Ortega-Martinez, 124 Wn.2d at 708.

- b. The State did not present substantial evidence to prove Mr. Huynh intended to “manufacture” cocaine, an alternative means of committing possession of cocaine with intent to manufacture or deliver and of committing conspiracy to possess cocaine with intent to manufacture or deliver, as set forth in the “to convict” instructions.

Mr. Huynh was charged with possession with intent to **manufacture or deliver** a controlled substance – cocaine, as well as conspiracy to possess with intent to **manufacture or deliver** a controlled substance – cocaine. CP 281-82 (emphasis added). The two alternative means of committing the offenses, “manufacture” or “deliver,” were submitted to the jury in the “to convict” instructions and became the law of the case. CP 43 (Instruction No. 12); CP 51 (Instruction No. 20), attached as Appendix A.

The jury was provided a definition for “deliver.”

Deliver or delivery means the actual or constructive or attempted transfer of a controlled substance from one person to another.

CP 48 (Instruction No. 17). Over defense objection, the jury was separately provided a definition for “manufacture.” 8RP 63.

Manufacture means the direct or indirect production, preparation, compounding, conversion, or processing of any controlled substance.

Manufacture also means the packaging or repackaging of any controlled substance or labeling or relabeling of the controlled substance container.

CP 47 (Instruction No. 16).

There was no evidence Mr. Huynh, either as a principle or as an accomplice, intended to “manufacture” the cocaine. Rather, Agent DeLaCruz consistently characterized Mr. Huynh simply as a broker who “always” mentioned his fee, and whose “entire motive” was to earn a fee for producing a buyer. 5RP 61, 81, 110, 168, 174. Mr. Huynh and Mr. Mak arrived in separate cars and Mr. Mak took the cocaine with him when he drove from the restaurant. 6RP 144, 162. Clearly, Mr. Huynh had no further interest in the cocaine after he received his fee. Significantly, no repackaging material or other evidence of “manufacture” was found in either car.

Moreover, Agent DeLaCruz testified, “Ultimately it was always understood [the drugs] were going to end up in Canada,” although he did not elaborate on how he reached that understanding. 6RP 110. Detective John Belanger testified a kilogram of cocaine generally sells for \$30,000 to \$45,000 in Canada. 6RP 25. Therefore, Mr. Mak could earn a significant profit simply by reselling the cocaine without “manufacturing” it.

In State v. Fernandez, the defendants were convicted of operating a drug house, in violation of RCW 69.50.402(a)(6), which prohibited maintaining a dwelling where people either (1) use drugs or (2) sell or

store drugs. 89 Wn. App. 292, 299-300, 948 P.2d 872 (1997). The State did not elect which alternative means it was relying upon for a conviction. Therefore, even though there was sufficient evidence to find the defendants maintained a house to sell or store drugs, the Court reversed the convictions because there was insufficient evidence to find the defendants maintained the house for drug use. 89 Wn.2d at 300. The Court ruled:

The State did not elect between the alternative means, and the general verdict form does not reveal which prong the jury used to convict. Because it may have convicted the defendants under the unsupported use prong, we must reverse the defendants' convictions and remand for retrial on the drug house charges.

Id.

Similarly, in State v. Gillespie, the defendant was convicted of theft, when he was charged in the alternative of theft by deception and theft by embezzlement, in violation of RCW 9A.56.020(1)(a) and (b). 41 Wn. App. 640, 642, 705 P.2d 808 (1985). Even though the State proved theft by deception, the Court reversed the conviction due to the lack of substantial evidence of the alternative means of theft by embezzlement. 41 Wn. App. at 645-46.

Here, as in Fernandez and Gillespie, the State did not produce substantial evidence of each alternative means presented to the jury.

Rather, in closing argument, the prosecutor discussed both “manufacture” and “deliver.” 8RP 84-87. However, the State did not produce substantial evidence to establish Mr. Huynh intended to “manufacture” the cocaine. In the absence of either a particularized statement of unanimity or substantial evidence to support each alternative means of committing the offenses, the convictions must be reversed. Accord State v. Kinchen, 92 Wn. App. 442, 452, 963 P.2d 928 (1998).

- c. The State did not present substantial evidence to prove each alternative means, which formed the basis of the special verdict on an aggravating circumstance, as set forth in the special verdict instructions.

The State sought an exceptional sentence above the standard range, based on its allegation that the offenses were major trafficking violations of the Uniform Controlled Substances Act, contrary to RCW 9.94A.535(3)(e). CP 282. The jury was instructed on three alternative means of committing a major trafficking offense.

A major violation of the Uniform Controlled Substances Act is one which is more onerous than the typical offense. The presence of any of the following factors may identify the offense charged in Count I as a major trafficking :

Whether the offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

Whether the circumstances of the offense reveal that the defendant occupied a high position in the drug distribution hierarchy; or

Whether the offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of distribution.

Instruction No. 27. Instruction No. 28 was identical other than the substitution of "Court I" with "Count II." The jury was also provided a Special Verdict Form that did not require the jury to be unanimous as to what was the basis for the finding of a major violation, but rather, merely asked the jury to answer the question "was the crime a major violation of the Uniform Controlled Substances Act" with either "yes" or "no." CP 83, 84, attached as Appendix B.

In closing argument, the prosecutor discussed all three alternative aggravating circumstances. 8RP 91-95. However, substantial evidence supported only that the offenses involved quantities of cocaine substantially larger than for personal use. See 6RP 21-32. There was no evidence Mr. Huynh "occupied a high position in the drug distribution hierarchy." In fact, there was no evidence at all regarding a "distribution hierarchy." Similarly, there was no evidence the offense was highly sophisticated or occurred over a lengthy time period. On the contrary, Agent DeLaCruz testified the meeting was hastily arranged in a matter of hours and he portrayed Mr. Huynh as unsophisticated, such as asking whether he could fax photographs of money, asking whether Agent DeLaCruz brought the two kilograms of cocaine into the restaurant, and

insisting on a sample of cocaine for his personal use. Finally, the jury was provided no guidance as to the meaning of “a broad geographic area.” Agent DeLaCruz testified vaguely, “Ultimately it was always understood [the drugs] were going to end up in Canada,” although he did not elaborate where in Canada, who was going to transport the cocaine over the border, or otherwise specify how he reached that understanding. 6RP 110. Even assuming the cocaine was ultimately destined for Canada, the United States/Canadian border is only 50 miles north of Mount Vernon, Washington. <http://google.com/maps>. Without any guidelines for determining a “broad geographic area,” it cannot be said that 50 miles is particularly “broad” in this context.

In the absence of either a particularized statement of unanimity or substantial evidence to support each alternative means of committing the aggravating circumstance, the enhanced sentence must be reversed. Accord State v. Kinchen, 92 Wn. App. 442, 452, 963 P.2d 928 (1998).

**2. The trial court erroneously denied Mr. Huynh's motion for severance of the two counts and severance from his co-defendant, thereby allowing admission of confusing, irrelevant, and highly prejudicial evidence, in violation of Mr. Huynh's constitutional right to a fair trial.**

- a. A defendant is entitled to severance of counts and of co-defendants where joinder prevents a fair determination of guilt or innocence.

A defendant has the constitutional right to a fair trial. U.S. Const.

Amend. XIV; Wash. Const. art. I, sec. 3. To this end, CrR 4.4 provides for severance of counts and of co-defendants if joinder prevents a fair trial.

CrR 4.4 provides, in pertinent part:

(b) Severance of Offenses.

The court, on application of the prosecuting attorney, or on application of the defendant other than under section (a), shall grant a severance of offenses whenever before trial or during trial with consent of the defendant, the court determines that severance will promote a fair determination of the defendant's guilt or innocence of each offense.

(c) Severance of Defendants.

...

(2) The court, on application of the prosecuting attorney, or on application of the defendant ... should grant a severance of defendants whenever:

(i) if before trial, it is deemed necessary to protect a defendant's right to a speedy trial, or it is deemed appropriate to promote a fair determination of the guilt or innocence of a defendant; or

(ii) if during trial upon consent of the severed defendant, it is deemed necessary to achieve a fair determination of the guilt or innocence of a defendant.

CrR 4.4(b) includes the term “shall,” creates a mandatory duty. State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994). Severance is appropriate where it prevents undue prejudice. State v. Bythrow, 114 Wn.2d 713, 717, 790 P.2d 154 (1990). Undue prejudice includes the risk that a single trial invites the jury to cumulate evidence or to infer a guilty disposition. State v. Watkins, 53 Wn. App. 264, 268, 766 P.2d 484 (1989); State v. Ramirez, 46 Wn. App. 223, 228, 730 P.2d 98 (1986).

In State v. Russell, the Court set forth the following factors for determining prejudice: 1) the strength of the State’s evidence on each count; 2) the clarity of defenses as to each count; 3) the court’s instructions to consider each count separately; and 4) the admissibility of evidence of other charges even if not joined for trial. 125 Wn.2d 24, 63, 882 P.2d 747 (1994); accord State v. Rodriguez, 163 Wn. App. 215, 228, 259 P.3d 1145 (2011). Washington courts have articulated four specific concerns regarding improper joinder: 1) a defendant may be confounded or embarrassed in presenting separate defenses; 2) the jury may use evidence of one crime to improperly infer a defendant’s criminal disposition; and 3) the jury may cumulate evidence of several crimes to find guilt when if considered separately, it would not find guilt. State v. Smith, 74 Wn.2d 744, 754-55, 446 P.2d 571 (1968), vacated in part, 408

U.S. 934, 92 S.Ct. 2852, 33 L.Ed.2d 747 (1972), overruled on other grounds in State v. Gosby, 85 Wn.2d 758, 539 P.2d 680 (1975).

A trial court's decision on a motion to sever is a question of law and reviewed de novo for manifest abuse of discretion. State v. Bryant, 89 Wn. App. 857, 864, 950 P.2d 1004 (1998).

b. Mr. Huynh was entitled to severance of both the counts and the defendant.

The foregoing factors and concerns weigh in favor of severance of the counts. In Count I, the State alleged Mr. Huynh was responsibly for Mr. Mak's conduct as an accomplice. To defend against this charge, Mr. Huynh needed either to rebut the allegations against Mr. Mak or to establish he had a separate intent. On the other hand, in Count II, the State alleged he was responsible for his own conduct. These very different theories of criminal liability likely confused the jury as to Mr. Huynh's defenses on the two counts, made it difficult to compartmentalize the specific facts necessary for a determination of guilt or innocence on each separate count, and invited the jury to use the evidence of one offense to infer Mr. Huynh had a criminal disposition to commit the other offense.

The foregoing factors and concerns similarly weigh in favor of severance of co-defendants. The State presented no evidence that Mr. Huynh intended to "manufacture" the cocaine. Therefore, Detective

Belanger's generalized testimony regarding repackaging and diluting cocaine would not have been admissible at a trial involving Mr. Huynh only.

A court abuses its discretion where it fails to exercise any meaningful discretion. State v. Grayson, 154 Wn.2d 333, 335-36, 111 P.3d 1183 (2005). Here, the trial court failed to address the above factors and concerns in its rulings. In the absence of any meaningful exercise of its discretion, the denial of Mr. Huynh's repeated motions to sever was an abuse of discretion.

c. The proper remedy is reversal.

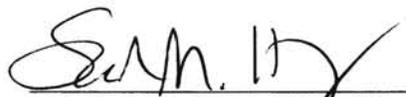
Where a trial court erroneously denies a motion to sever, the proper remedy is reversal, unless the error was harmless. Bryant, 89 Wn. App. at 864; Ramirez, 46 Wn. App. at 228. Here, as discussed, given the lack of evidence against Mr. Huynh regarding "manufacture," the confusing theories of criminal liability, and the difficulty in compartmentalizing the evidence relevant to each count and to each defendant, the error was not harmless. Reversal is required.

E. CONCLUSION

The State failed to present substantial evidence that Mr. Huynh intended to “manufacture” cocaine, an alternative means of committing the offenses of possession with intent to manufacture or deliver cocaine and conspiracy to possess with intent to manufacture or deliver cocaine. The State similarly failed to present substantial evidence to establish Mr. Huynh occupied a high position in a drug distribution hierarchy, the offenses involved a high degree of sophistication, occurred over a lengthy period of time, or involved a broad geographic area of distribution. Moreover, the trial court abused its discretion in denying Mr. Huynh’s motion to sever the counts and the co-defendant. For the foregoing argument, Mr. Huynh respectfully requests this Court reverse his convictions, or, in the alternative, reverse his exceptional sentence above the standard range.

DATED this 11<sup>th</sup> day of October 2012.

Respectfully submitted,

  
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## APPENDIX A

INSTRUCTION NO. 12

To convict the defendant, JEFFREY T. HUYNH, of the crime of possession with intent to manufacture or deliver a controlled substance, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about May 20, 2011, the defendant, JEFFREY T. HUYNH, or an accomplice, possessed a controlled substance - Cocaine;

(2) That the defendant, JEFFREY T. HUYNH, or an accomplice, possessed the substance with the intent to manufacture or deliver a controlled substance - Cocaine;

and

(3) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 20

To convict the defendant, JEFFREY T. HUYNH, of the crime of conspiracy to commit possession with intent to manufacture or deliver a controlled substance, each of the following elements of the crime of conspiracy must be proved beyond a reasonable doubt:

(1) That on or about May 20, 2011, the defendant agreed with one or more persons other than the undercover agent, to engage in or cause the performance of conduct constituting the crime of possession with intent to manufacture or deliver a controlled substance;

(2) That the defendant made the agreement with the intent that such conduct be performed;

(3) That any one of the persons involved in the agreement took a substantial step in pursuance of the agreement; and

(4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

APPENDIX B

FILED  
SKAGIT COUNTY CLERK  
SKAGIT COUNTY, WA

2012 JAN 27 PM 8:41

SUPERIOR COURT OF WASHINGTON  
COUNTY OF SKAGIT

STATE OF WASHINGTON,  
Plaintiff,

v.

JEFFREY T. HUYNH,

Defendant.

NO. 11-1-00512-6

SPECIAL VERDICT FORM A

We, the jury, having found the defendant guilty of Possession With Intent to Manufacture or Deliver a Controlled Substance – Cocaine, as charged in Count 1, as defined in Instruction(s) 24, return a special verdict by answering as follows:

QUESTION 1:

Was the crime a major violation of the Uniform Controlled Substance Act?

ANSWER: Yes (Write "yes" or "no")

DATED this 27 day of January, 2012.

[Signature]  
PRESIDING JUROR

FILED  
SKAGIT COUNTY CLERK  
SKAGIT COUNTY, WA  
2012 JAN 27 PM 8:44

SUPERIOR COURT OF WASHINGTON  
COUNTY OF SKAGIT

STATE OF WASHINGTON,  
Plaintiff,

v.

JEFFREY T. HUYNH,  
Defendant.

NO. 11-1-00512-6

SPECIAL VERDICT FORM B

We, the jury, having found the defendant guilty of Conspiracy to Possess With Intent to Manufacture or Deliver a Controlled Substance – Cocaine, as charged in Count 2, as defined in Instruction(s) 20, return a special verdict by answering as follows:

QUESTION 1:

Was the crime a major violation of the Uniform Controlled Substance Act?

ANSWER: Yes (Write "yes" or "no")

DATED this 27 day of January, 2012.

[Signature]  
PRESIDING JUROR

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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 68369-1-I
v.	)	
	)	
JEFFREY HUYNH,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 18<sup>TH</sup> DAY OF OCTOBER, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] RICHARD WEYRICH, DPA SKAGIT COUNTY PROSECUTOR'S OFFICE COURTHOUSE ANNEX 605 S THIRD ST. MOUNT VERNON, WA 98273	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] JEFFREY HUYNH 355898 COYOTE RIDGE CORRECTIONS CENTER PO BOX 769 CONNELL, WA 99326	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

2012 OCT 18 PM 4:53  
COURT OF APPEALS  
STATE OF WASHINGTON

**SIGNED** IN SEATTLE, WASHINGTON THIS 18<sup>TH</sup> DAY OF OCTOBER, 2012.

X \_\_\_\_\_ 

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
☎(206) 587-2711