

NO. 71014-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

KEITH P. HAMMOND,

Appellant.

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COURT OF APPEALS DIV I
STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARIANE C. SPEARMAN

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. A mistrial based on juror misconduct is warranted when it affirmatively appears that a substantial right of the defendant was materially affected. Here, an extremely engaged juror, Juror 10, asked some innocuous questions during the witnesses' testimony, and expressed some frustrations to the trial court in private. As a result of his level of engagement, the trial court excused Juror 10 mid-trial, at which time he reassured the court that no conversations had taken place in the jury room about the case. Did the trial court act properly by not declaring a mistrial sua sponte?

2. In order to establish ineffective assistance of counsel, a defendant must show deficient performance of his attorney and resulting prejudice. Hammond's defense attorney asked that Juror 10 be allowed to explain the dynamics that had taken place in the jury room as he was being excused. Juror 10 said that he did not talk with the rest of the jurors about the case. Because defense counsel did not have a legal basis to move for a mistrial was his performance adequate?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged the defendant, Keith P. Hammond, with one count of second degree assault – domestic violence, and one count of misdemeanor violation of a no contact order – domestic violence. CP 53-54. A jury trial was held in June of 2013 before the Honorable Mariane Spearman. At the conclusion of the trial, the jury convicted Hammond of both counts as charged. CP 55-59. The trial court imposed a standard range sentence. CP 136-47; 11RP 34-35.¹ Hammond now appeals.

2. SUBSTANTIVE FACTS

Greg Sullivan is 52 years old. 5RP 20-21. Keith Hammond is Sullivan's younger brother. 3RP 10; 5RP 21. In November of 2012, Sullivan moved to Hammond's residence, where they shared a bedroom. 5RP 21, 24. At the time, Hammond was renting the lower unit of a triplex owned by Robert Catton. 3RP 5-6; 5RP 23; 8RP 23-24. On December 1, 2012, Sullivan met Hammond at the

¹ The Verbatim Report of this jury trial consists of eleven volumes referred to in this brief as: 1RP (June 21, 2013); 2RP (June 24, 2013); 3RP (June 25, 2013); 4RP (June 26, 2013); 5RP (June 27, 2013); 6RP (July 1, 2013, morning proceedings); 7RP (July 1, 2013, afternoon proceedings); 8RP (July 2, 2013); 9RP (July 3, 2013); 10RP (July 30, 2013); and 11RP (October 1, 2013).

Lake City Bar and Grill for dinner. 5RP 24-25; 6RP 25; 8RP 26. Catton joined the two brothers. 3RP 11-12, 68. Sullivan had a couple of beers and a screwdriver. 5RP 26; 6RP 26. Hammond had two or three drinks of hard alcohol. 5RP 27. The three men ate dinner and played pool. 3RP 14; 5RP 27.

Approximately an hour later, Catton and Hammond left, thinking Sullivan would follow them soon. 3RP 14-15; 5RP 28; 8RP 30. However, Sullivan did not leave right away and instead, stayed to play pool. 5RP 28. Hammond was very angry and upset because Sullivan had stayed at the bar. 5RP 29. Hammond was doing some work in the residence and wanted Sullivan's help. 8RP 30, 32, 63-64.

A while later, since Sullivan had not returned home, Hammond and Catton went back to the bar to look for him. 3RP 15, 17; 5RP 28. Sullivan felt like he was on curfew but left at that time nonetheless. 5RP 29. Sullivan went back to the house and went to bed. 5RP 29-30. Sullivan fell asleep and was woken up when Hammond started to play loud music. 5RP 30; 8RP 35-36. This caused Sullivan and Hammond to start arguing. 5RP 30; 8RP 35-36. Hammond started yelling and demanded that

Sullivan leave because he was "no longer welcome here." 5RP 31.

Sullivan indicated he would leave the next morning. 5RP 31.

Hearing the two men arguing, Catton went downstairs. 3RP 18-19; 5RP 31. When Catton opened the door, Sullivan was still lying on the bed, and Hammond was by the foot of the bed. 3RP 22; 5RP 31. Sullivan felt threatened so he got out of bed. 5RP 32.

According to Sullivan, after he stood up, Hammond said, "I'm going to hit my brother," to which Sullivan responded, "You better not do that." 5RP 34. According to Catton, Hammond clinched his fist and said, "I really want to hit you," to which Sullivan responded, "You better not do that." 3RP 27-28. And according to Hammond, all he said was, "I feel like hitting you." 8RP 39. After Hammond uttered those words, he struck Sullivan on his left eye, extremely hard, causing Sullivan to fall backwards on the bed and his eye to bleed. 3RP 28; 5RP 34. Sullivan's left eye was completely shut. 5RP 34.

According to Sullivan, after the first strike, Sullivan rolled over to grab his phone to call 911. 5RP 37, 39. Sullivan's call was disconnected because Hammond wrestled for the phone trying to break it. 5RP 37. It was at this time that Hammond struck Sullivan

a second time. 3RP 32; 5RP 37, 39. As Sullivan was trying to call 911 and was crying for help, Hammond kept trying to take Sullivan's cell phone and break it. 5RP 40-41. Hammond admitted he wrestled Sullivan for the phone because, "I was defending myself against him at that moment, and I wanted him out of the house." 8RP 44, 82.

The two men continued to wrestle on the floor. 3RP 29, 77; 5RP 38. Hammond was on top of Sullivan. 3RP 29, 77; 5RP 38. Eventually, Catton intervened and got Hammond off Sullivan. 3RP 29; 5RP 42.

Seattle Police Officers Whicker, Herrera and Lemberg responded to the residence. 3RP 42-43. Sullivan had a very swollen and bruised eye, and a ripped shirt with blood on it. 3RP 44; 6RP 70; 7RP 22. According to the officers, Hammond's level of intoxication was greater than Sullivan's. 3RP 47-48; 6RP 71-72; 7RP 25, 27.

Officer Herrera spoke with Hammond. 6RP 71-72. Hammond admitted he had been drinking that night. 6RP 72. Hammond told Herrera he was angry with Sullivan for not carrying his weight in the house. 6RP 72. Hammond also admitted that he had woken Sullivan up and started yelling at him. 6RP 72-73.

Hammond told the officer that when Sullivan got out of the bed Sullivan walked towards him, but contrary to his testimony at trial, Hammond never described a lunge or any “sudden moves” to the officer. 6RP 73. At trial, Hammond admitted he struck Sullivan twice on the face with a closed fist, but he claimed he was acting in self-defense. 8RP 42, 44, 46, 82, 124.

As a result of Hammond having struck Sullivan twice on the left eye with a closed fist, Sullivan was taken to the hospital by ambulance. 4RP 43; 5RP 68. When Sullivan arrived at the hospital, the doctors noted he had a significantly swollen face, and his eye was almost swollen shut. 4RP 42. Sullivan suffered a blowout fracture of the left orbit and extensive facial fractures. 4RP 19, 22-23, 29. Sullivan also had a contusion to the left upper lip. 4RP 48.

As a result of this incident, the court issued an order prohibiting Hammond from having direct or indirect contact with Sullivan. CP 151. The order prohibited Hammond from being within 500 feet of Sullivan. CP 151.

On March 7, 2013, Sullivan was at Fred Meyer shopping for groceries. 5RP 72. As Sullivan was approaching the cash register, he heard Hammond call out his name. 5RP 72. Hammond walked

past Sullivan, stopped, backed up and then pulled in right behind Sullivan. 5RP 72. Sullivan told him, "You just best keep going." 5RP 72. Sullivan moved away to a different cashier. 5RP 73.

3. ALLEGED JUROR MISCONDUCT

The trial court noted that this was a very interactive jury. 5RP 59. On the first day of trial, during Catton's testimony, one juror asked if the jury was going to receive a disc that had been marked as an exhibit.² 3RP 21. The court indicated that the exhibit had not been admitted, and that only admitted exhibits would go to the jury room. 3RP 64. On the second day of trial, at the conclusion of Doctor Joseph's testimony, a juror asked, "Are we ever going to get the official law that is alleged to have been broken in writing for us to compare?" 4RP 34. The trial court answered that at the conclusion of the case the jury would receive the jury instructions that would set forth all of the elements of each crime. 4RP 34-35. The juror asked if that would include the "RCW or whatever it is" because "I just wanted to make sure I'd have the letter of the law in front of me." 4RP 35. The trial court replied,

² The record does not indicate which juror asked the question about the disc. However, given a later reference that Juror 10 was very involved, it is reasonable to infer it was Juror 10. 4RP 64-65.

“You will” and no further exchanges with respect to jury instructions took place.³ 4RP 35.

Later in the day the bailiff notified the trial court that as she was leading the jury into the jury room, Juror 10 said something about whether there will be evidence of alcohol. 4RP 64. The bailiff told the jurors, “We’re not supposed to be talking about this.” 4RP 64. The trial court then indicated she would remind the jury that they should not be discussing the testimony before beginning deliberations. 4RP 64.

Once the jury returned, the trial court gave them the following admonition:

I do want to remind the jurors though, however, that the admonition is not to discuss the case. That includes any of the testimony you’re hearing. So I know you probably have questions and may have concerns, or you know, about the testimony and what’s going to be coming up with future witnesses, but it is not appropriate to discuss the evidence until it’s –you’ve heard all the evidence and you get to the jury room.

4RP 65.

³ The record does not specify which juror asked this question. However, given a later reference that Juror 10 was very involved, and the exchange that took place when Juror 10 was excused – about not knowing the definition of assault – it is reasonable to infer it was Juror 10 who made the inquiry. 4RP 64-65; 6RP 8-9. Hammond characterizes this question as Juror 10 asking the judge for a copy of the jury instructions or a definition of assault. App. Br. 5.

Later in the day, during the testimony of Catton, the trial court sustained an objection and stated, “The last statement of the witness is stricken.” 4RP 89. A juror asked, “When you say ‘strike,’ does that mean that we are not supposed to remember that statement?” 4RP 89. The court replied, “That’s exactly right. Do the best you can.” 4RP 89.

On the third day of trial, during Sullivan’s testimony, Juror 10 asked the trial court if the jury would be able to see the illustrative exhibits during deliberations.⁴ Another juror also stated it would be important for the jury to have the exhibits during deliberations rather than their own drawings. 5RP 65.

In light of two jurors’ questions about the illustrative exhibits, at the end of the day, the court asked the lawyers if they had any thoughts on whether the two drawings should go back to the jury room, or whether the court should allow the jury to see them again so that they could make their own sketches. 5RP 79. It was at this time that the prosecutor raised her concern that the jurors were placing a lot of emphasis on the diagrams, which were only meant to be illustrative. 5RP 79-80. The defense attorney shared the

⁴ The details of this interaction between Juror 10 and the trial court are discussed more fully in section C.1 of this brief, infra.

same concern. 5RP 80. Defense counsel then noted that because these two jurors had voiced their concern independently of each other, he had a hunch that the jury might have been talking about the diagrams in the jury room during breaks. 5RP 81. The trial court echoed that concern.⁵ 5RP 81.

The trial court noted that nobody was asking for Juror 10 to be excused. 5RP 83. The parties recessed for the weekend to think about what was the best course to follow. 5RP 83-84. On Monday, the State, joined by Hammond, requested that Juror 10 be excused. 6RP 3. The trial court excused Juror 10 outside of the presence of the other members of the jury.⁶ 6RP 4. The trial court informed the jury that Juror 10 was unable to continue and had been excused. 6RP 22-23. Hammond did not request a mistrial.

⁵ Hammond erroneously states that the prosecutor indicated that given the substance and timing of the disruptions, and the fact they were coming from multiple jurors, "she believed the jurors may have looked up information and were discussing the evidence during breaks." App. Br. 6. The prosecutor never made any such statement. Rather, the prosecutor was concerned with juror number 10 because *he* was the more vocal and *his* comments were beginning to alarm her. 5RP 82. "I instantly thought, 'oh my gosh, have you looked up something' I'm getting a little worried about what *he* might be doing with the jury back there." 5RP 82. (emphasis added). Neither party, nor the trial court, ever raised any concerns that the *jurors were* "looking up information." In fact, defense counsel noted, "It's my understanding that one of the first things juror candidates hear in the jury assembly room is to not go looking at extraneous sources for information." 5RP 82.

⁶ The detail of the conversation that took place when Juror 10 was excused is discussed more fully in section C.1 of this brief, infra.

C. ARGUMENT

Hammond argues that the trial court erred by failing to declare a mistrial sua sponte based on one juror's conduct. Alternatively, he argues that the trial court failed to fully investigate the extent to which the conduct of such juror, who was excused, may have tainted the remaining jury panel. Lastly, Hammond argues that his counsel was inefficient for failing to move for a mistrial as a result of juror misconduct. Hammond's arguments have no merit.

Juror 10 was very outspoken and active, but the record clearly establishes that Juror 10 expressed his frustrations with the process outside the presence of the other jurors. The record also shows that the trial court was reassured by Juror 10 that the jurors had not discussed the evidence or the case during recess or breaks. Consequently, in light of the juror's assurance to the trial court that he had not discussed the case or the evidence with the other jurors, and no indication that any of the jurors had done any independent research, defense counsel had no basis to move for a mistrial. Lastly, Hammond cannot show prejudice. Thus, Hammond's claims should be rejected and his convictions affirmed.

1. JUROR 10'S BEHAVIOR DID NOT AMOUNT TO MISCONDUCT REQUIRING A MISTRIAL.

As a general rule, trial courts have wide discretion in conducting a trial and dealing with irregularities that arise. State v. Gilcrist, 91 Wn.2d 603, 612, 590 P.2d 809 (1979). To determine whether a trial was fair, the court should look to the trial irregularity and determine whether it may have influenced the jury. State v. Weber, 99 Wn.2d 158, 165-66, 659 P.2d 1102 (1983). A mistrial should be granted only when "nothing the trial court could have said or done would have remedied the harm done to the defendant." Gilcrist, 91 Wn.2d at 612. In other words, a mistrial should be granted only when the defendant has been so prejudiced that nothing short of a new trial can insure that the defendant will be tried fairly. Only those errors that may have affected the outcome of the trial are prejudicial. Id.

A trial court may grant a new trial based on juror misconduct when it affirmatively appears that a substantial right of the defendant was materially affected. State v. Tandecki, 120 Wn. App. 303, 310, 84 P.3d 1262 (2004). The appellate court reviews the trial court's refusal to grant a mistrial based on juror

misconduct for an abuse of discretion. State v. Briggs, 55 Wn. App. 44, 60, 776 P.2d 1347 (1989).

In support for his argument, Hammond claims that one juror who was very expressive during the court proceedings and was excused mid-trial, “expressed these frustrations with other jurors and discussed the case with them during recesses.” App. Br. 1. Hammond further asserts in his assignment of error that, “multiple jurors began expressing concerns about the evidence and outside research similar to those expressed by Juror 10.” App. Br. 2. These assertions misstate the record. There is no evidence that Juror 10 expressed his frustrations or spoke with other jurors about the case during recess. Nor is there any evidence in the record that any other jurors expressed concerns about outside research.

Although there is no doubt that Juror 10 was engaged, his behavior did not amount to misconduct. Instead, the record shows that Juror 10 followed the trial court’s instructions.

During Sullivan’s testimony Juror 10 asked the trial court if the jury was going to have access to the illustrative exhibits, referring to the drawings that were being made in the course of testimony. 5RP 34. The trial court simply answered, “no.” 5RP 34. During the following recess, the court addressed her concern with

respect to the illustrative exhibits as she noticed that when she informed the jury that the illustrative exhibits were not going back to the jury room, some of the jurors sighed, and one juror expressed to the bailiff that he or she had not drawn anything from the exhibit, thinking they were going to receive the illustrative exhibits during deliberations. 5RP 57-58.

Following the recess, Juror 10 wrote down a note for the court because there was something he wanted to discuss "in private." 5RP 61. The trial court spoke with Juror 10 outside the presence of the other jurors. 5RP 61. Juror 10 began by saying, "I didn't know if it was appropriate to say that in front of everyone." 5RP 62. It was at this time that Juror 10 expressed his opinions about not having illustrative exhibits during deliberations and commented that children in school are allowed to look at books when doing their homework, but yet, jurors cannot use the exhibits when deciding the case. 5RP 62. The trial court explained the difference between admitted exhibits and illustrative exhibits, and elaborated that illustrative exhibits are not to scale, thus not accurate. 5RP 63.

The presumption is that the jury will follow the court's instructions. State v. Foster, 135 Wn.2d 441, 472, 957 P.2d 712 (1998); State v. Warren, 165 Wn.2d 17, 29, 195 P.3d 940 (2008) (holding jury is presumed to follow the instruction that counsel's arguments are not evidence); State v. Hayes, 73 Wn.2d 568, 570, 439 P.2d 978 (1968) (holding jurors are presumed to have reached a verdict from the evidence the court permits them to consider, unless it is apparent from the record they would have not reached verdict had inadmissible evidence been kept from their knowledge).

Here, the court had already instructed the jury to not discuss the case prior to deliberations. 4RP 65. Nonetheless, in a continuing effort to maintain the integrity of the trial, the following exchange took place after the trial court explained to Juror 10 why illustrative exhibits would not be used during deliberations

Court: Please, if things come up about the evidence, please don't share it with anyone in there, the other jurors. Be careful about that. Be careful, too, if you're asking questions about evidence, if you're addressing them to the bailiff and she's in the room with all the others, be aware it's probably best not to. I would be more than happy to talk to you.

Juror 10: That's why I wrote a letter originally, and asked her [the bailiff] to give it to you, or give you a note.

5RP 64.

The record establishes that the jury here was following the trial court's instructions. Even though Juror 10 had questions and concerns about the exhibits, he did not share those comments with the other jurors as Hammond claims. Instead, Juror 10 wrote a note for the bailiff to give to the judge because he did not know if it was "appropriate to say it in front of everyone." 5RP 62.

Similarly, after Juror 10 was excused, he told the court he was frustrated because the court never gave the jury the definition of assault: "I still don't know what the legal definition is, because I was also told that I'm not supposed to research the case. I don't know if that means I can't even look up the definition of assault." 6RP 8-9. This is indicative that Juror 10 did not conduct any research and followed the trial court's instructions. Hammond argues that "multiple jurors began expressing concerns about the evidence and outside research." App. Br. 2. However, aside from this comment in which the juror said he did not know what assault was because he was told to not conduct any research about the

case, the record is silent as to any other instances in which other jurors expressed concerns about “outside research.”

Even though Juror 10 was excused, Hammond argues that this was not enough and that the trial court should have investigated the situation more thoroughly and instructed the jury that the type of discussions that “had been occurring within the jury room were inappropriate and should not be engaged in.” App. Br. 7. To further his argument, Hammond erroneously claims that improper conversations had taken place because at the time Juror 10 was removed from service, he “told the judge that he had stopped sharing his comments on the case with the other jurors.” App. Br. 8. This is not accurate. A review of the record clearly demonstrates that Juror 10 did not have a conversation about the case with the jurors during the breaks or in the jury room.

When the trial court excused Juror 10, it very politely indicated that maybe a civil case would be a better fit for the juror given his desire to engage and ask questions. 6RP 4-6. The trial court explained it was concerned about the dynamics in the jury room because the previous week one of the jurors said to the bailiff that “Juror 10 asks all the questions we’re thinking about” or

something to that effect. 6RP 6. Then the following exchange took place:

Juror 10: I feel like I don't have much leeway to pull for my end of the story, but for the integrity of the case, I can tell you that...

Prosecutor: ...your Honor, I don't want to know about anything that might be happening in the jury room.

Court: It's really – I understand.

Prosecutor: It's just really touchy. I'm sorry.

Defense: Your Honor, I would ask that he be given a chance to explain himself, without getting into any detail of the case.

Court: Presumably, they're not supposed to be deliberating anyway.

Juror 10: My detail was literally *we are not talking about the case*. I go back and I watch video game replays with my headphones on. That's literally what I was going to say, is for the integrity of the case, *we are not discussing*. I think it was an empathetic comment, I don't know, because *I don't talk to anybody back there*. I hope me saying that didn't just ruin everything.

6RP 7 (emphasis added).

Thus, contrary to Hammond's assertions, Juror 10 never told the trial court that he had "stopped sharing his comments on the case with the other jurors." Instead, Juror 10 said that he had never discussed the case with the remaining jurors, and in fact reassured the trial court that no improper conversations had taken place. Juror 10 did not commit misconduct.

But even if this Court believes that Juror 10 committed misconduct because he was engaged during the witnesses' testimony, not all instances of juror misconduct merit a new trial. State v. Barnes, 85 Wn. App. 638, 669, 932 P.2d 669 (1997). The defendant has the burden to show that the alleged misconduct occurred, and there must be prejudice. Id. When determining prejudice, the particular misconduct must be compared with all of the facts and circumstances of the trial. Id. Thus, when asking whether prejudice occurred, the inquiry is objective rather than subjective. Briggs, 55 Wn. App. at 55.

Hammond cannot show prejudice. The questions that Juror 10 asked during the proceedings – “Are we ever going to get the official law that is alleged to have been broken in writing for us to compare?” or clarifying what “strike” means or asking if illustrative exhibits go back to the jury room – were innocuous. Despite Hammond’s attempts to imply that the jury somehow started deliberating prior to the conclusion of the case, the record does not support such a claim.

In sum, the actions taken by Juror 10 of providing a note to the trial court when questions arose and wanting to speak privately are indicative that this jury followed the trial court's instructions. Furthermore, when the trial court removed Juror 10, the trial court was reassured that Juror 10 had not shared his thoughts with the rest of the jurors. There is no evidence that Juror 10 tainted the remaining jurors, or that the jury discussed the case prior to deliberations or that any outside research was done. Thus, this Court should hold that the trial court properly exercised its discretion by removing Juror 10, and that there was no need to declare a mistrial sua sponte.

2. HAMMOND'S COUNSEL WAS NOT DEFICIENT.

Ineffective assistance of counsel claims present a mixed question of law and fact. In re Pers. Restraint of Brett, 142 Wn.2d 868, 873, 16 P.3d 601 (2001). As a result, they are reviewed *de novo*. Id. In order to establish ineffective assistance of counsel, the defendant must show (1) that his attorney's performance fell below a minimum objective standard of reasonable conduct, and

(2) that but for his counsel's errors, there is a reasonable probability that the results at trial would have been different. State v. West, 139 Wn.2d 37, 42, 983 P.2d 617 (1999) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). In other words, a defendant must show both deficient performance and resulting prejudice. State v. Turner, 143 Wn.2d 715, 730, 23 P.3d 499 (2001). If the defendant fails to establish either prong, the court should reject the claim. State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987).

The failure to object or move for a mistrial after allegations of juror misconduct is generally strategic or tactical, and cannot form the basis for a subsequent claim of ineffective assistance of counsel. See State v. Alires, 92 Wn. App. 931, 939, 966 P.2d 935 (1998). Numerous strategic reasons exist for trial counsel's decisions. For example, the attorney may believe a juror is defense oriented, or the alternative juror is more likely to convict. Counsel may believe the State's case has a weakness that would likely be corrected at a new trial. See State v. Dickerson, 69 Wn. App. 744, 748, 850 P.2d 1366 (1993).

Here, the test for whether Hammond was denied effective assistance of counsel is if, after considering the entire record, it can be said that Hammond was afforded effective representation and a fair and impartial trial. Alires, 92 Wn. App. at 938 (citing State v. Thomas, 71 Wn.2d 470, 471, 429 P.2d 231 (1967)). This Court must keep in mind that the defendant is not guaranteed successful assistance of counsel. Alires, 92 Wn. App. at 938. Hammond's defense counsel made the necessary inquiry to ensure he was receiving a fair trial. When Juror 10 was being excused, defense counsel asked that the juror be permitted to explain himself about the dynamics in the jury room. 6RP 7. At that time, Juror 10 indicated in no uncertain terms that he had not discussed the case with the jury. 6RP 7. The fact that Hammond did not prevail in his claim of self-defense is not sufficient to make an ineffective assistance of counsel claim. A close review of the entire record shows that his defense counsel vigorously represented him throughout the trial.

In conclusion, Hammond has not shown either deficient performance or prejudice. Hammond's convictions should be affirmed.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Hammond's convictions

DATED this 29th day of May, 2014.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Elaine L. Winters, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. JUAN CRUZ-GRIJALVA, Cause No. 70419-2 -I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 29 day of May, 2014

A handwritten signature in black ink, consisting of a large, stylized initial 'E' followed by a series of loops and a long horizontal stroke extending to the right.

Name
Done in Seattle, Washington