

72468-1

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FILED  
March 25, 2015  
Court of Appeals  
Division I  
State of Washington

NO. 72468-1-I

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

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STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER ERVIN,

Appellant.

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

The Honorable Monica J. Benton, Judge

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BRIEF OF APPELLANT

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MARY T. SWIFT  
Attorney for Appellant

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

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in refusing to instruct the jury on voluntary intoxication.

2. Counsel was ineffective for failing to elicit sufficient evidence of appellant's intoxication at trial.

Issues Pertaining to Assignments of Error

1. Where the evidence showed appellant was intoxicated and it affected his ability to form the requisite intent to commit the charged offenses, did the trial court err in refusing to give the defense-proposed voluntary intoxication jury instruction?

2. Where appellant's intoxication was well-established at a CrR 3.5 hearing, was defense counsel ineffective in failing to elicit that same evidence at trial, thereby guaranteeing the intoxication instruction?

B. STATEMENT OF THE CASE

The State charged Christopher Ervin with one count of third degree assault and one count of first degree malicious mischief. CP 1. The State alleged Ervin intentionally assaulted Deputy Jeff Hancock while performing his official police duties, contrary to RCW 9A.36.031(1)(g). CP 1. The State also alleged Ervin knowingly and maliciously caused impairment of a public service by physically damaging a police vehicle, contrary to RCW 9A.48.070(1)(b). CP 1.

The evidence was largely undisputed. On April 9, 2014, Fariborz Tavakkolian was driving home on Vashon Island. 2RP 152.<sup>1</sup> He called 911 when he saw Ervin standing in the middle of the road with a beer can in his hand, yelling at cars and “weaving in and out of the traffic.” 2RP 152. Tavakkolian was concerned for the Ervin’s safety, “guessing that he might have had too much to drink” based on his “erratic behavior” and “drunk walking in traffic.” 2RP 152-53.

Deputy Hancock received the 911 dispatch around 9:15 p.m. reporting Ervin was jumping in and out of traffic on Vashon Highway. 3RP 9-12. Hancock arrived at the scene soon after and observed Ervin for a few moments. 3RP 14, 31. Ervin was standing in the road with his friend, Andy Fuller, yelling profanities at cars. 1RP 7-8; 3RP 14, 33, 38. Hancock also saw Ervin hide in doorways and then dart out at cars as they passed. 3RP 17. At one point Ervin picked up a beer can and aimed to throw it at a passing vehicle. 3RP 14, 33. Hancock heard the can hit the ground and Ervin swear. 3RP 15. Ervin then continued to yell “F you” at cars from the middle of the road. 3RP 16. Hancock radioed his partner, Deputy Joel Anderson, to report he had probable cause to arrest Ervin for disorderly conduct. 3RP 17, 35-36.

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<sup>1</sup> This brief refers to the verbatim reports of proceedings as follows: 1RP – July 10, 2014; 2RP – July 14, 2014; 3RP – July 15, 2014; 4RP – July 16, 2014; 5RP – August 15, 2014; 6RP – September 12, 2014.

When Ervin saw Hancock and Anderson approaching, he ran into an outdoor beer garden attached to the nearby Red Bicycle bar. 3RP 12, 18. Hancock parked his car in the alley behind the bar and Anderson drove around to the front of the bar so Ervin could not get past them. 3RP 18. When Ervin came out the front door of the bar, Anderson ordered him to show his hands and put them on the hood of the patrol car. 3RP 40. Agitated, Ervin instead just sat on the pavement in front of Anderson's car. 3RP 40. Hancock walked around the building, handcuffed Ervin, and put him in the back of Anderson's vehicle. 3RP 18, 40.

Hancock and Anderson then heard a loud noise and saw Ervin kicking the driver's side back seat window of Anderson's patrol car. 3RP 19-20, 40; Ex. 2, 3. The window eventually popped out of its frame. 3RP 19, 41; Ex. 2, 3. The vehicle needed to be repaired and was out of service for one day as a result. 3RP 21, 41-42. This was the basis for the malicious mischief charge. 3RP 103-04.

The deputies had Ervin step out of the car. 3RP 21. Hancock testified Ervin was very loud and upset, yelling "fuck you" over and over. 3RP 22. Ervin repeatedly told Hancock he would pay for his crimes and his children and grandchildren would wake up in hell. 3RP 22. He also told Hancock he had the right to spit in Hancock's face, and began clearing his throat as if getting ready to spit. 3RP 22.

Anderson, too, remembered Ervin “yelling about having Deputy Hancock’s children perish, the grandchildren go to hell . . . that he was a corrupt cop, that he was crooked, and that he would spit at him.” 3RP 43. Anderson said Ervin yelled “gibberish” throughout the encounter. 3RP 57. The State played a brief recording from Anderson’s police radio, where Ervin can be heard screaming in the background. Ex. 4 (from 3:29 to 3:45); 3RP 23-24, 43-44. Anderson said Ervin yelled at the top of his lungs just like in the recording throughout their contact. 3RP 44. Onlooker Adalaar Deruyter also testified Ervin was ranting about “all kinds of things from religion to corrupt police officers to saying that he was being beat up but that was not happening.” 3RP 77.

As Hancock and Anderson put a spit mask over Ervin’s face, Ervin lowered his shoulder into Hancock, and the three of them bounced off a nearby chain link fence. 3RP 24, 44. Ervin then wrapped his leg around Hancock’s leg in a leg hold. 3RP 45. Immobilized, Hancock eventually broke free by lowering his leg to the ground. 3RP 25-26, 45.

Hancock and Anderson then sat Ervin on the curb, and Ervin told them he would not resist anymore. 3RP 26-27, 45-46. But soon Ervin began to yell and rant again, and kicked Hancock in the leg, causing Hancock to stumble backwards. 3RP 26-27, 45-46. The deputies then forcibly wrestled Ervin to the ground, where they held him until Deputy Melvin Dickson

arrived for backup. 3RP 28-29, 64. Dickson placed Ervin in his patrol car and transported him to jail. 3RP 65-69. The kick and leg hold were the bases for the third degree assault charge. 3RP 106.

Before trial, the court held a CrR 3.5 hearing to consider the admissibility of Ervin's statements. 1RP 6. At the hearing, Hancock testified Ervin and his friend, Fuller, "both appeared to be really intoxicated" during the incident. 1RP 8. Ervin also admitted he had been drinking beer and whiskey that day, as well as smoking methamphetamine and marijuana. 1RP 63-64. The court admitted Ervin's statements because they were not made in response to police questioning. CP 58-61.

Ervin's primary defense at trial was he lacked the requisite intent to commit the offenses because he was intoxicated. See 3RP 107-14. During voir dire, defense counsel asked the prospective jurors about their experience with substance abuse. 2RP 70-71. She also asked if they believed an individual's ability to form intent could be impaired by drugs or alcohol. 2RP 108-16. Similarly, the theme of defense counsel's opening statement was context: "Nothing can be heard you'd consider in a vacuum. Everything happens in a certain context and circumstances need to be taken into consideration." 2RP 148. She continued:

I don't expect that there's going to be any dispute that Mr. Ervin was absolutely behaving in a manner that is not consistent with an individual who was in their right faculties.

And this is the context that you'll hear about. This is the context in which you will evaluate the crime that's been charged, whether or not the standard or proof has been met.

2RP 149-50.

After the State rested, defense counsel requested the standard jury instruction on voluntary intoxication:

No act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition. However, evidence of intoxication may be considered in determining whether the defendant acted intentionally.<sup>2</sup>

CP 18-21; 3RP 84-85. She argued there was sufficient evidence of Ervin's intoxication based on the 911 caller who reported he saw an intoxicated man in the roadway. 3RP 84. Hancock also saw Ervin holding a can of beer. 3RP 84. Ervin's behavior was also indicative of intoxication: he was belligerent and speaking gibberish. 3RP 84. This was evident from the deputies' testimony, as well as the recording played for the jury. 3RP 84; Ex. 4 (from 3:29 to 3:45).

The court balked, asking defense counsel, "[t]here's no evidence that he was intoxicated, is there? There's no evidence of smelling alcohol on his breath, bloodshot watery eyes, any of the traditional descriptions we often see." 3RP 85. Despite counsel's disagreement, the court declined to give the intoxication instruction, finding "it requires a jury to speculate." 3RP 85-

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<sup>2</sup> 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 18.10, at 282 (3d ed. 2008); see also RCW 9A.16.090.

86. The court explained, "I mean the only time the word intoxication is ever used is from the 911 call and those individuals didn't have the defendant in close proximity to smell alcohol but only just saw bizarre behavior by jumping in and out of cars." 3RP 86.

After the court denied the voluntary intoxication instruction, the defense rested without calling any witnesses. 3RP 90-91.

In closing argument, defense counsel asked the jury to consider whether Ervin could form intent to commit the crimes given his bizarre demeanor and altered state of mind:

And I want to remind you that Mr. Ervin is not on trial for resisting arrest. He's not on trial for disorderly conduct. He's on trial for intentionally -- the allegation is that he intentionally assaulted a law enforcement officer. And I would ask you in evaluating whether or not that burden has been met to consider these circumstances, the chaos of that night, his demeanor, how he was acting, what you heard on that record, the man you heard on that recorder, what Mr. Deruyter said he saw and what the deputies said that they experienced . . . .

. . . .

Mr. Ervin was in an altered state from the moment that the 911 caller saw him through the time that Deputy Anderson and Deputy Hancock interacted with him, put this bag over his head. And those are circumstances that you have to consider, that you need to consider, because when you evaluate someone's intention, intention being why someone does what they do, you must evaluate the circumstances of their actions.

3RP 110-13.

The jury found Ervin guilty as charged. CP 46-47. After trial, one of the jurors approached Ervin's counsel and said she was very impacted by Ervin's situation because her brother died from a methamphetamine overdose. 5RP 11. The juror wrote Ervin a touching letter offering her support, recognizing "this was obviously an issue." 5RP 11.

The court sentenced Ervin to nine months confinement. CP 51. The court also imposed one year of community custody, ordering Ervin to undergo substance abuse evaluation and treatment. CP 51, 56. The court found Ervin's chemical dependency contributed to the offenses and treatment was reasonably related to the circumstances of the crimes. CP 56; 4RP 12-14. This appeal followed. CP 62.

C. ARGUMENT

1. THE COURT'S REFUSAL TO INSTRUCT THE JURY ON VOLUNTARY INTOXICATION DEPRIVED ERVIN HIS RIGHT TO PRESENT A DEFENSE.

The trial court erred in refusing to give the defense-requested voluntary intoxication instruction. There was substantial evidence of Ervin's intoxication, as well as its impact on his actions and state of mind. Without the supporting instruction, Ervin was unable to effectively argue his intoxication defense, rendering the verdict unreliable. This Court should reverse and remand for a new trial.

a. The trial court erred in refusing Ervin's voluntary intoxication instruction.

The defense is entitled to a jury instruction on its theory of the case when that theory is supported by substantial evidence. State v. Kruger, 116 Wn. App. 685, 693, 67 P.3d 1147 (2003). Evidence of intoxication and its effect may be used to negate the element of intent. RCW 9A.16.090; State v. Carter, 31 Wn. App. 572, 575, 643 P.2d 916 (1982). "Intoxication" means "an impaired mental and bodily condition which may be produced either by alcohol, which is a drug, or by any other drug." State v. Dana, 73 Wn.2d 533, 535, 439 P.2d 403 (1968).

The trial court must instruct on voluntary intoxication when (1) the charged crime includes a mental state, (2) there is substantial evidence of intoxication, and (3) there is evidence the intoxication affected the individual's ability to form the requisite intent or mental state. Kruger, 116 Wn. App. at 691. A trial court's refusal to give a proffered voluntary intoxication instruction is reversible error when these three elements are met. State v. Rice, 102 Wn.2d 120, 123, 683 P.2d 199 (1984).

In evaluating whether substantial evidence supports a defense-proposed instruction, the trial court must interpret the evidence "most strongly" in the defendant's favor and "must not weigh the proof, which is an exclusive jury function." State v. Douglas, 128 Wn. App. 555, 561-62,

116 P.3d 1012 (2005). Refusal to give a defense-proposed instruction is reviewed de novo. Id. at 562.

The first factor is met here. Intent is an element of third degree assault. CP 33-34; RCW 9A.36.031(1)(g); State v. Finley, 97 Wn. App. 129, 135, 982 P.2d 681 (1999). First degree malicious mischief requires knowingly and maliciously damaging an emergency vehicle. CP 38; RCW 9A.48.070(1)(b). Knowledge is a particular mental state. State v. Lottie, 31 Wn. App. 651, 653-54, 644 P.2d 707 (1982).

The second factor is also met. Tavakkolian called 911 when he saw Ervin with a beer can in his hand “drunk walking in traffic.” 2RP 152-53. Tavakkolian believed Ervin to be intoxicated based on his erratic behavior. 2RP 152-53. Hancock likewise observed Ervin with a beer can in his hand. 3RP 14, 33. A reasonable inference from this evidence is Ervin had drunk the beer in the cans he was holding. Furthermore, Hancock saw Ervin hiding in doorways and then darting out at cars to make them swerve. 3RP 17. This bizarre, dangerous behavior is also indicative of intoxication.

Hancock and Anderson also testified to Ervin’s erratic, belligerent behavior once they attempted to arrest him. Both recalled Ervin screaming about Hancock being a corrupt cop and that his children and grandchildren would perish and wake up in hell. 3RP 22, 43. Anderson said Ervin yelled “gibberish” throughout their encounter. 3RP 57. Deruyter also said Ervin

spouted bizarre things “from religion to corrupt police officers to saying that he was being beat up but that was not happening.” 3RP 77. The recording from Anderson’s police radio also gave the jury an opportunity to hear Ervin’s crazed ranting first hand. Ex. 4.

The effects of alcohol are commonly known and “all persons can be presumed to draw reasonable inferences therefrom.” State v. Smissaert, 41 Wn. App. 813, 815, 706 P.2d 647 (1985). There was no need for an expert to testify regarding Ervin’s intoxication—it was obvious to onlookers and obvious to the jury. Kruger, 116 Wn. App. at 692-93. Viewing the evidence and reasonable inferences in Ervin’s favor, there is substantial evidence of his intoxication.

Finally, the third factor is met here. Division Three has recognized the case law is inconsistent on this factor. State v. Walters, 162 Wn. App. 74, 83, 55 P.3d 835 (2011). An intoxication instruction was necessary where the defendants drank beer all day, ingested several Quaaludes, spilled beer and were uncoordinated while playing ping pong, and one defendant felt no pain when he was hit by a car. Rice, 102 Wn.2d at 122-23. By contrast, the defendant was not entitled to an instruction where he was obviously intoxicated and angry, but there was no sign of the alcohol’s impact on his reasoning abilities. State v. Gabryschak, 83 Wn. App. 249, 253-55, 921 P.2d 549 (1996). Similarly, in State v. Priest, the defendant’s intoxication did not

affect his mental state where he was able to operate a motor vehicle, communicate with a state trooper, purposefully provide false information, and attempt to reduce his charges by becoming an informant. 100 Wn. App. 451, 455, 997 P.2d 452 (2000).

Comparing these cases, the Walters court concluded that “physical manifestations of intoxication provide sufficient evidence from which to infer that mental processing also was affected, thus entitling the defendant to an intoxication instruction.” 162 Wn. App. at 83.

Here, Ervin exhibited several physical manifestations of intoxication. Tavakkolian’s testimony indicated Ervin was staggering in traffic from intoxication. 2RP 152. Ervin also yelled gibberish and profanities at cars and at Hancock and Anderson. Ervin told Hancock he had the right to spit in Hancock’s face. 3RP 22. Ervin can also be heard screaming incoherently and slurring his words on the police radio recording. Ex. 4.

Ervin acted consistently belligerent from the time Tavakkolian called 911 until the deputies were able to subdue him, suggesting his intoxication impeded his ability to understand the significance of the situation. Throughout the incident, Ervin never indicated he felt any pain, despite being handcuffed and forcibly wrestled to the ground by two deputies. This also shows Ervin’s disregard for his own safety, consistent with intoxication. These physical manifestations support the inference that Ervin’s mental state

was significantly altered as a result of his intoxication. In fact, it is the most reasonable explanation for his bizarre, erratic, and aggressive behavior.

As a result, the trial court erred in several ways. First, the court did not view the evidence and reasonable inferences in Ervin's favor, as is required by law. Second, the court overlooked obvious signs of intoxication from alcohol, such as staggering in the street, belligerent behavior, and slurred speech. See 3RP 85-86. And, third, the court erred in only considering Ervin's intoxication from alcohol, and not other drugs, too. His aggressive, erratic behavior was also typical of someone high on methamphetamine. Indeed, the juror who approached defense counsel after trial correctly identified Ervin's methamphetamine use. 5RP 11. Given all the evidence of Ervin's intoxication and its impact on his mental state, the trial court erred when it refused the voluntary intoxication instruction.

b. The error was prejudicial.

Instructional errors are presumed prejudicial. Walters, 162 Wn. App. at 84. An instructional error is harmless only if it had no effect on the final outcome of the case. Rice, 102 Wn.2d at 123.

The State cannot rebut the presumption of prejudice here. Lack of an intoxication instruction cut the legs out from under the defense. In closing, defense counsel argued Ervin's erratic demeanor indicated he lacked intent to commit the offenses. 3RP 110-13. She emphasized he "was in an altered

state” throughout the incident. 3RP 113. She asserted this was “perfectly a permissible place of inquiry, and I would submit to you that it’s a necessary place of inquiry. You cannot deliberate and discuss what occurred without talking about why, what were the circumstances.” 3RP 113. But, without the instruction, the jury had no guidance for how to examine Ervin’s lack of intent due to intoxication. Nor was the jury instructed it could even consider Ervin’s intoxication in determining his intent. The defense “is entitled to a correct statement of the law and should not have to convince the jury what the law is.” State v. Thomas, 109 Wn.2d 222, 228, 743 P.2d 816 (1987). Therefore, counsel was unable to effectively argue the intoxication defense.

In similar cases where the defense was hamstrung by lack of instruction, Washington courts found prejudice. See, e.g., Rice, 102 Wn.2d at 123; Walters, 162 Wn. App. at 84; Kruger, 116 Wn. App. at 694-95. The Walters court held, “[d]espite the absence of the instruction, the parties in closing argued whether or not Mr. Walters was too drunk to act intentionally. This strongly suggests that the error was not harmless because the jury lacked direction on how to apply the intoxication information to the law.” 162 Wn. App. at 84. Likewise, in Kruger, the court held “the defense was impotent” without the instruction. 116 Wn. App. at 695. Given that lack of intent due to intoxication was the sole defense, the same is true here.

The outcome of Ervin's trial might well have been different had the jury been properly instructed on voluntary intoxication. Defense counsel would have been able to effectively argue intoxication and the jury would have been able to take it into account when considering Ervin's mental state. The error was not harmless. This Court should reverse and remand for a new trial. Walters, 162 Wn. App. at 84.

2. IF COUNSEL FAILED TO ELICIT SUFFICIENT EVIDENCE OF INTOXICATION, THEN ERVIN WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

If this Court holds there is insufficient evidence of Ervin's intoxication, then Ervin's counsel was ineffective in failing to elicit enough evidence or call witnesses to establish his intoxication.

Every accused person enjoys the right to effective assistance of counsel. U.S. CONST. amend. VI; WASH. CONST. art. 1, § 22; Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Thomas, 109 Wn.2d at 229. That right is violated when (1) the attorney's performance was deficient and (2) the deficiency prejudiced the defense. Strickland, 466 U.S. at 687; Thomas, 109 Wn.2d at 225-26. Appellate courts review ineffective assistance claims de novo. State v. Shaver, 116 Wn. App. 375, 382, 65 P.3d 688 (2003).

Counsel's performance is deficient when it falls below an objective standard of reasonableness. Thomas, 109 Wn.2d at 226. If counsel's

conduct demonstrates a legitimate trial strategy or tactic, it cannot serve as a basis for an ineffective assistance claim. Strickland, 466 U.S. at 689; State v. Yarbrough, 151 Wn. App. 66, 90, 210 P.3d 1029 (2009). Prejudice occurs when there is a reasonable probability that but for counsel’s deficiency, the result would have been different. Thomas, 109 Wn.2d at 226. A reasonable probability is one sufficient to undermine confidence in the outcome. Id.

At the CrR 3.5 hearing, Hancock testified Ervin and his friend, Fuller, “both appeared to be really intoxicated.” 1RP 7-8. Defense counsel therefore knew Hancock perceived Ervin to be intoxicated, but failed to cross-examine him about it at trial or call him as a defense witness. See 3RP 29-35 (Hancock’s cross-examination); 3RP 91 (defense rests).

Likewise, Ervin testified at the CrR 3.5 hearing that he drank beer and whiskey, and smoked methamphetamine and marijuana “all day long.” 1RP 64-65. Ervin explained “we had kind of a party.” 1RP 64. With this information, defense counsel could have called Fuller or another of Ervin’s friends to testify to his extensive alcohol and drug use that day.<sup>3</sup> But defense counsel failed to do so. 3RP 91.

Furthermore, the trial court denied counsel’s request for a voluntary intoxication instruction before the defense officially rested. 3RP 83-91.

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<sup>3</sup> The State identified Fuller as a potential witness, indicating he was likely available for defense interview. 2RP 40, 3RP 4.

Once the court found insufficient evidence of intoxication, defense counsel should have called Hancock to the stand or requested a recess to subpoena Fuller to testify. But, again, counsel failed to do so. 3RP 91.

The facts were largely undisputed at Ervin's trial. Thus, given that Ervin's only defense was lack of intent, there was no legitimate strategic or tactical reason for counsel's failure to elicit this intoxication evidence at trial. Though Ervin's drug use would undoubtedly be prejudicial, he was essentially left with no defense because of counsel's failure. Counsel also could have easily cured the defect by calling Hancock or Fuller to the stand, but did not do so. As such, counsel's performance fell below an objective standard of reasonableness.<sup>4</sup>

Kruger is instructive here. Although there was substantial evidence of Kruger's intoxication, counsel failed to request the instruction. 116 Wn. App. at 692-93. Because the defense theory was lack of intent, the appellate court held there was no strategic reason for counsel's failure to request the instruction. Id. at 693-94. Prejudice resulted, because "[e]ven if the issue of Mr. Kruger's intoxication was before the jury, without the instruction, the defense was impotent." Id. at 694-95. Reversal was required. Id. at 695.

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<sup>4</sup> Defense counsel was also misguided in telling the court the intoxication instruction "is certainly not mandatory." 3RP 84. To the contrary, "[a] criminal defendant has a right to have the jury instructed on a defense that is supported by substantial evidence." Walters, 162 Wn. App. at 82.

The same is true here. Had counsel elicited testimony from Hancock or Fuller regarding Ervin's intoxication, the trial court would almost certainly have granted counsel's request for the intoxication instruction. Indeed, it would have been reversible error for the court to reject the proffered instruction. Rice, 102 Wn.2d at 123. The missing instruction left defense counsel unable to effectively argue her theory of the case and left the jury without direction on how to apply the intoxication evidence to the law.

But for counsel's failure to elicit sufficient evidence of Ervin's intoxication, there is a reasonable probability that the outcome of Ervin's trial would have been different. This Court should reverse and remand for a new trial because Ervin was deprived his constitutional right to effective assistance of counsel.

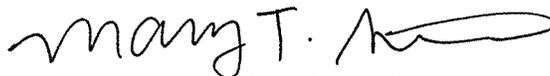
D. CONCLUSION

The Court should reverse and remand for a new trial where Ervin's jury is properly instructed on voluntary intoxication.

DATED this 25<sup>th</sup> day of March, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



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MARY T. SWIFT  
WSBA No. 45668  
Office ID No. 91051

Attorneys for Appellant

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

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STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 72468-1-I
	)	
CHRISTOPHER ERVIN,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 25<sup>TH</sup> DAY OF MARCH 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] CHRISTOPHER ERVIN  
NO. 215007079  
KING COUNTY JAIL  
500 5<sup>TH</sup> AVENUE  
SEATTLE, WA 98104

**SIGNED** IN SEATTLE WASHINGTON, THIS 25<sup>TH</sup> DAY OF MARCH 2015.

X *Patrick Mayovsky*