

No. 39980-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

RODNEY BRYSON,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

The Honorable Gordon Godfrey
The Honorable F. Mark McCauley

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

1. WHERE THE TRIAL COURT REFUSED TO APPOINT NEW COUNSEL, DESPITE THE BREAKDOWN IN COMMUNICATION WHICH WAS APPARENT BETWEEN BRYSON AND HIS DEFENSE ATTORNEY, MR. BRYSON WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL AND REVERSAL MUST BE GRANTED.

a. The trial court denied Mr. Bryson his Sixth Amendment right to conflict-free counsel when it refused to discharge his attorney, despite a complete breakdown in communications. Mr. Bryson showed “good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant.” State v. Varga, 151 Wn.2d 179, 200, 86 P.3d 139 (2004). Even if Mr. Farra was competent and prepared to handle certain aspects of the defense, as respondent argues, Resp. Brief at 11-12, a complete breakdown in communications can result in an inadequate defense. United States v. Nguyen, 252 F.3d 998, 1003 (9th Cir. 2001).

“Similarly, a defendant is denied his Sixth Amendment right to counsel when he is ‘forced into a trial with the assistance of a particular lawyer with whom he [is] dissatisfied, with whom he [will]

not cooperate, and with whom he [will] not, in any manner whatsoever, communicate.” Id. (citation omitted); see also Douglas v. United States, 488 A.2d 121, 136 (D.C. App. 1985) (finding conflict of interest where defendant had filed complaint against his court-appointed attorney with the Office of the Bar Counsel); Holloway v. Arkansas, 435 U.S. 475, 485-86, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978) (citations omitted).

Here, Mr. Farra told the court on three occasions that his relationship with Bryson had deteriorated to point of an “impasse” where they were no longer communicating with one another. RP 19-20, 25-26, 30-31. He told the court that Mr. Bryson planned to file a bar complaint against him. RP 20. He said, “[W]e’re not talking at all as far as communicating.” RP 25. On similar facts, the Ninth Circuit has found there was “no question” that there was a complete breakdown in the attorney client relationship. Nguyen, 262 F.3d at 1004 (attorney acknowledged to court that client “just won’t talk to me anymore”).

A key issue about which Mr. Bryson and his attorney disagreed was trial strategy. Mr. Farra suggested to the trial court that he was unprepared to make challenge the WSPCL testing protocol himself, creating an apparent atmosphere of distrust

between attorney and client. RP 30-31. Critical stages under the Sixth Amendment “can include steps in the proceedings . . . where available defenses may be irretrievably lost.” Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir. 1991) (citing Hamilton v. Alabama, 368 U.S. 52, 54, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961)); Wheat v. United States, 486 U.S. 153, 159-60, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988) (right to effective assistance of counsel contemplates right to conflict-free counsel).

Under Holloway, once defense counsel advised the trial court of the breakdown in communications, the court was obligated to take some responsive action to ensure Bryson’s Sixth Amendment right to counsel was protected. See Mickens v. Taylor, 535 U.S. 162, 168, 122 S.Ct. 1237, 152 L.Ed.2d 291 (2002) (reaffirming that “a defense attorney is in the best position to determine when a conflict exists . . . he has an ethical obligation to advise the court of any problem, and . . . his declarations to the court are “virtually made under oath.”) (quoting Holloway, 435 U.S. at 485-86) Instead, the trial court forced Bryson to choose between his right to counsel and his speedy trial right. The trial court’s denial of the motion to substitute counsel thus violated Mr. Bryson’s Sixth Amendment right.

b. The trial court failed to fulfill its duty to inquire into the conflict between Bryson and his counsel. Where the court learns of a conflict between an accused person and his attorney, the court has the “obligation to inquire thoroughly into the factual basis of the defendant’s dissatisfaction.” Smith v. Lockhart, 923 F.2d at 1320 (quoting United States v. Hart, 557 F.2d 162, 163 (8th Cir. 1977)). The court “must conduct ‘such necessary inquiry as might ease the defendant's dissatisfaction, distrust, and concern.’” United States v. Adelzo-Gonzalez, 268 F.3d 772, 777 (9th Cir. 2001) (quoting United States v. Garcia, 924 F.2d 925, 926 (9th Cir. 1991)). This inquiry should “provide a ‘sufficient basis for reaching an informed decision.’” Id. (quoting United States v. McClendon, 782 F.2d 785, 789 (9th Cir. 1986)). Thus the court “may need to evaluate the depth of any conflict between defendant and counsel, the extent of any breakdown in communication, how much time may be necessary for a new attorney to prepare, and any delay or inconvenience that may result from substitution.” Id.

The State suggests that Mr. Bryson’s motion for new counsel, coming on the eve of trial, was somehow undeserving of a full inquiry by the court, because Mr. Bryson is “an unreasonable and difficult client.” Resp. Brief at 12. This argument is inapposite

and has no foundation in Washington or Sixth Amendment law, which clearly holds that “even when the motion is made on the day of trial, the court must make a balancing determination, carefully weighing the resulting inconvenience and delay against the defendant's important constitutional right to counsel of his choice.” United States v. D’Amore, 56 F.3d 1202, 1206 (9th Cir. 1995). The trial court conducted no inquiry, balanced no interests, and, ultimately, failed to meaningfully exercise its discretion. The trial court’s ruling violated Mr. Bryson’s Sixth and Fourteenth Amendment rights. He is entitled to a new trial with substitute counsel.

2. WHERE THE TRIAL COURT DENIED MR. BRYSON HIS SIXTH AMENDMENT RIGHTS TO COMPULSORY PROCESS AND TO PRESENT A DEFENSE BY DENYING A CONTINUANCE, REVERSAL IS REQUIRED.

a. The trial court denied Mr. Bryson his Sixth Amendment rights by refusing to grant a continuance. An accused person has the right to compel the attendance of witnesses so he may present his defense. Chambers v. Mississippi, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973). The right to compulsory process “is in plain terms the right to present a defense.” Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967).

Courts in Washington recognize the guarantee of compulsory process is a “fundamental right and one which the Courts should safeguard with meticulous care.” State v. Maupin, 128 Wn.2d 918, 924, 913 P.2d 808 (1996) (citing State v. Burri, 87 Wn.2d 175, 181, 550 P.2d 507 (1976)).

In both criminal and civil cases, the decision to grant or deny a continuance rests within the discretion of the trial court. State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). Although the State argues that there is no reason to believe the ultimate result would have been different had Mr. Bryson’s expert been permitted to testify, neither does the State offer any explanation for the prejudice that would have accrued for permitting the testimony. Resp. Brief at 15. In contrast to Downing, 151 Wn.2d at 272, the State fails to advance a single way in which its case would have prejudiced by the minor delay sought by Mr. Bryson. Moreover, Mr. Bryson’s expert’s testimony would have been relevant and material to challenging the State’s proof of an essential element of the charged offense. He also agreed to waive his right to a speedy trial in order to call his expert witness. RP 30-31.

b. Reversal is required. A constitutional error is presumed prejudicial. Maupin, 128 Wn.2d at 924. The State has failed to

meet its burden to prove beyond a reasonable doubt that the result would have been the same absent the error. Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967); State v. Easter, 130 Wn.2d 228, 242, 922 P.2d 1285 (1996).

Bryson possessed a minute amount of methamphetamine residue. He articulated deficiencies in the WSPCL testing protocol that would have called into question the reliability of the State's forensic evidence. Even if this Court does not determine that automatic reversal is required based on the violation of Bryson's right to counsel, therefore, this Court should reverse Bryson's conviction based on the violation of his right to compulsory process and to present a defense.

B. CONCLUSION

For the foregoing reasons, Rodney Bryson requests his conviction for possession of methamphetamine be reversed.

DATED this 8th day of July, 2010.

Respectfully submitted:



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)	
RESPONDENT,)	
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v.)	NO. 39980-6-II
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RODNEY BRYSON,)	
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APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

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