

NO. 41684-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

SHARIE RAMSEY,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

In her opening brief, Sharie Rose Ramsey argued that her trial suffered from two constitutional errors. First, the court conducted no inquiry each time Ms. Ramsey moved to discharge counsel. When the court provided her an opportunity to "make her record," Ms. Ramsey expressed general distrust of her attorney among other problems. The court violated her right to counsel by denying her motions.

Second, the prosecutor's closing argument that Ms. Ramsey supplied a false name for herself and her family was not only unsupported but appealed to the jury's prejudice and passion by implying that Ms. Ramsey lied about her last name to conceal her criminal conduct. The prosecutor's misconduct denied Ms. Ramsey a fair trial.

Each of these errors independently requires reversal of her convictions. The State's response brief provides insufficient basis for this Court to hold otherwise.

1. THE TRIAL COURT VIOLATED MS. RAMSEY'S RIGHTS UNDER THE SIXTH AMENDMENT AND ARTICLE 1, SECTION 22 BY DENYING HER MOTIONS TO DISCHARGE COUNSEL.

The State's argument that Ms. Ramsey never made a request for a new attorney is unsupported by the record. Resp. Br. at 5-6. On December 16, 2010, after the court ruled on the Criminal Rule 3.5 hearing but before the court recessed, Ms. Ramsey plainly stated "Excuse me. I would like to say something. I would like to dismiss him." 12/16/10RP 18-19.¹ It is difficult to imagine how a criminal defendant could state a motion to discharge any more clearly than telling the trial judge in open court, "I would like to dismiss him." However, the trial court disregarded Ms. Ramsey's request by saying only "I am at recess, thank you." 12/16/10RP 19.

Despite being promptly dismissed without consideration, Ms. Ramsey tried again to convince the court to dismiss her trial counsel. Counsel informed the court that Ms. Ramsey wished to address the court directly on the matter. See 12/28/10RP 78 ("The

¹ It is unclear how the State can argue from the record that Ms. Ramsey's statement was made "quietly . . . from across the room." Compare 12/16/10RP 19 with Resp. Br. at 5. Furthermore, the State mistakenly states that the court was already at recess when Ms. Ramsey made the request to "dismiss him," but that is also far from clear from the transcript. 12/16/10RP 18-19. In any event, neither of the State's suppositions have any bearing on the issue raised here.

court: Now, your attorney says you have something you wish to put on the record. Go ahead, young lady.”). Ms. Ramsey proceeded to inform the court of the bases for her dissatisfaction with counsel. 12/28/10RP 78-81. Acting pro se on the issue, Ms. Ramsey more than sufficiently put the court on notice that her relationship with counsel was deficient and necessitated appointment of a new attorney.

The State relies on State v. Schaller to argue the trial court’s complete lack of inquiry here was sufficient. See Resp. Br. at 5 (citing State v. Schaller, 143 Wn. App. 258, 177 P.3d 1139 (2007)). However, the trial court in Schaller did in fact inquire into the nature of that defendant’s conflict with counsel. As this Court recognized, the trial court in that case “specifically asked whether Schaller had any problems communicating with his counsel.” 143 Wn. App. at 262. The defendant in Schaller responded to the court’s inquiry that he had no problems communicating with counsel. Id. That defendant was also questioned by the prosecutor, which questioning “elicited the fact that he trusted his counsel” and could “assist counsel quite well.” Id.

Here, no such inquiry occurred. At the conclusion of testimony on defendant’s Criminal Rule 3.5 motion, Ms. Ramsey

asked to address the court, stating "Excuse me. I would like to say something. I would like to dismiss [my attorney]." 12/16/10RP 19. Without conducting *any* inquiry, the trial court refused to entertain the motion and simply stated "I am at recess, thank you." 12/16/10RP 19.

The trial court again conducted no inquiry into the nature of Ms. Ramsey's conflict with counsel when prior to voir dire, Ms. Ramsey again moved to discharge her counsel. 12/28/10RP 78. The court simply allowed her to "make [her] record" pro se. 12/28/10RP 79. During Ms. Ramsey's argument, the trial court interrupted her to instruct her not to "litigat[e] her case," but did not ask any pointed questions regarding her relationship with defense counsel. 12/28/10RP 79-81.

"For an inquiry regarding substitution of counsel to be sufficient, the trial court should question the attorney or defendant 'privately and in depth.'" United States v. Nguyen, 262 F.3d 998, 1003, 1004 (9th Cir. 2002) (quoting United States v. Moore, 159 F.3d 1154, 1160 (9th Cir. 1998)). "[I]n most circumstances a court can only ascertain the extent of a breakdown in communication by asking specific and targeted questions." United States v. Adelzo-Gonzalez, 268 F.3d 772, 777-78 (9th Cir. 2002). An adequate

inquiry “ease[s] the defendant’s dissatisfaction, distrust, and concern and provide[s] a sufficient basis for reaching an informed decision.” Daniels v. Woodford, 428 F.3d 1181, 1198 (9th Cir. 2005) (citing Adelzo-Gonzalez, 268 F.3d at 777). The trial court’s lack of inquiry failed in light of each of these measures.

The conflict between Ms. Ramsey and her attorney was clearly substantial—at least to the extent the conflict was revealed by the undeveloped record. During her pro se argument, Ms. Ramsey reported that her relationship with counsel had broken down. She informed the court she had provided her attorney information supporting her innocence on several occasions. 12/28/10RP 78. But her trial attorney did not meet with her again or review the information she provided. 12/28/10RP 78-79; compare Nguyen, 262 F.3d at 1000 (irreconcilable conflict found even though attorney visited client 6-7 times) with In re Pers. Restraint of Stenson, 142 Wn.2d 710, 728, 730, 16 P.3d 1 (2001) (no irreconcilable conflict where attorney visited client twice a week for 8 months—approximately 34 times total). Thus, based on Ms. Ramsey’s argument, the conflict with her attorney extended beyond a mere “disagreement of trial strategy.” See Resp. Br. at 6.

The breakdown in the attorney-client relationship between Ms. Ramsey and her lawyer, to the extent developed in the record despite the court's lack of inquiry, constituted a substantial conflict that should have been addressed by granting the motion to discharge counsel. See Moore, 159 F.3d at 1160.

The trial court violated Ms. Ramsey's constitutional right to counsel by denying her motions to discharge and forcing her to work with an attorney with whom she had a serious breakdown in communication. This error requires reversal and remand for a new trial. See Nguyen, 262 F.3d at 1005.

2. PROSECUTORIAL MISCONDUCT IN CLOSING ARGUMENT DENIED MS. RAMSEY A FAIR TRIAL.

In the alternative, prosecutorial misconduct requires reversal of Ms. Ramsey's convictions. During closing argument, the prosecutor argued that Ms. Ramsey used "a fake name" in her interactions with the homeowners where she was located in November 2010. 12/28/10RP 126. The prosecutor's argument was not based on the evidence in the record; contrary to the State's argument, it was also not a fair inference. Instead, the prosecutor's argument was designed to appeal to the jury's prejudice.

Ms. Ramsey did not use a false or "different" name with Clifford Thieme. See 12/28/10RP 126; Resp. Br. at 8. He was well aware that she was "Sharie Rose," Ms. Ramsey's first and middle name. He simply did not know, and apparently had not asked, Ms. Ramsey's last name.

The prosecutor's argument that Ms. Ramsey used a fake name, implied or stated her last name was "Rose" and communicated false information regarding her children's last name, is not a fair inference from the record but an attempt to play on the jury's passion and prejudice. See Resp. Br. at 8. When the prosecutor argues facts not in evidence, she becomes an unsworn witness against the defendant. State v. Belgarde, 110 Wn.2d 504, 508, 755 P.2d 174 (1988). "Comments meant to appeal to the jury's prejudice and encourage it to render a verdict on facts not in evidence are improper." State v. Smith, 67 Wn. App. 838, 844, 841 P.2d 76 (1992). Here, the prosecutor drew on facts not in evidence to appeal to the jury's prejudice by arguing that because Ms. Ramsey used a false name (which, according to the evidence she did not), she had something to hide.

There is a substantial likelihood that the prosecutor's false accusation that Ms. Ramsey lied about her name affected the

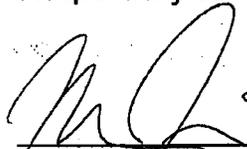
verdict. Belgarde, 110 Wn.2d at 509-10 (reversing conviction where prosecutor's argument was not based upon facts before the jury and was meant to inflame the jury's passions and prejudice). The argument not only relied on facts not in evidence but sought to play on the passion and prejudice of the jury. The prosecutor's argument was flagrant misconduct that prejudiced Ms. Ramsey's right to a fair trial. Her convictions should be reversed.

B. CONCLUSION

Ms. Ramsey's convictions should be reversed on either of two independent grounds: because her constitutional right to counsel was violated when the trial court failed to conduct a proper inquiry into or grant her motion to discharge counsel, or because the prosecutor's closing remarks relied on facts not in evidence to appeal to the jury's passion and prejudice.

DATED this 22nd day of November, 2011.

Respectfully submitted,



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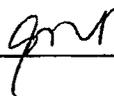
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v.)	NO. 41684-1-II
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APPELLANT.)	

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