

70337-4

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No. 70337-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

CHARLES CHAPPELLE, Jr.,

Appellant.

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

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. **Mr. Chappelle did know knowingly, intelligently, and voluntarily waive his constitutional right to counsel.**

The defendant has a constitutional right to the effective assistance of counsel and the constitutional right to represent himself. U.S. Const. amends. VI, XIV; Const. art. 1, § 22; Faretta v. California, 422 U.S. 806, 807, 819-20, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); State v. Madsen, 168 Wn.2d 496, 503, 229 P.3d 714 (2010). Given the tension between the two rights, a defendant's waiver of his constitutional right to counsel must be "unequivocal." State v. DeWeese, 117 Wn.2d 369, 377, 816 P.2d 1 (1991). Trial courts are required to indulge in every reasonable presumption against the waiver. Madsen, 168 Wn.2d at 504.

In the present case, Mr. Chappelle unsuccessfully attempted to obtain substitute counsel because he believed his court-appointed attorney was not investigating his defense and thus not providing adequate representation. CP 15-31, 32-52, 296-314; 10/26/12 RP 3-5; 11/13/12 RP 4, 6-10. Without expressly denying the request for substitute counsel, the court discharged Mr. Chappelle's attorney and permitted Mr. Chappelle to represent himself after a brief colloquy.

Mr. Chappelle appeals from the trial court's determination that he validly waived his constitutional right to counsel and subsequent order that he represent himself pro se.

The State begins its argument by noting that the court's denial of a defendant's motion for substitute counsel does not render a subsequent waiver of counsel invalid. Brief of Respondent (hereafter BOR) at 11 (citing DeWeese, 117 Wn.2d at 376). But the denial of a motion for substitute also does not constitute a valid waiver of the right to counsel. DeWeese, 117 Wn.2d at 377; State v. Garcia, 92 Wn.2d 647, 655, 600 P.2d 1010 (1979).

We note a defendant's desire not to be represented by a particular court-appointed counsel does not by itself constitute an unequivocal request by the defendant for self-representation. The requirement of a knowing and valid waiver must be met.

DeWeese, 117 Wn.2d at 377.

When a trial court correctly denies a defendant's request for new counsel, "the court may require the defendant to either continue with current appointed counsel or to represent himself. DeWeese, 117 Wn.2d at 376. The defendant must ask to proceed without counsel. Garcia, 92 Wn.2d at 655. The problem in this case is that the trial court never expressly denied Mr. Chappelle's request for substitute counsel,

and instead asked Mr. Chappelle about representing himself. 11/13/12 RP 5-10. The court thus never made it clear to Mr. Chappelle that his only choices were continuing the trial with his current attorney or continuing the trial pro se.

Mr. Chappelle's immediate request for new counsel as soon as his attorney was discharged demonstrates his lack of understanding of his limited options. 11/13/12 RP 23-24. Instead, he apparently viewed representing himself as a step required in the process of obtaining new counsel. This Court therefore cannot be convinced that Mr. Chappelle knowingly and intelligently waived his right to counsel.

In addition, the trial court's colloquy with Mr. Chappelle did not ensure that he understood the "dangers and disadvantages" of appearing pro se. Faretta, 422 U.S. at 835. While Mr. Chappelle knew that he was charged with second degree assault, the prosecutor had to remind him of the deadly weapon enhancement. 11/13/12 RP 18. The trial court never determined if Mr. Chappelle was aware of the elements of second degree assault, the requirements for a deadly weapon enhancement, or how to present his defense to the jury. 11/13/12 RP 4-20.

The State asserts that the trial court explained the possible penalties for both the charged offense and the enhancement. BOR at 21, 22. The State is incorrect. The trial court mentioned the standard sentence range and maximum term for second degree assault, but never informed Mr. Chappelle of the added two-year penalty that would result if the jury found the sentence enhancement. 11/13/12 RP 13; RCW 9.94A.533(4)(a).

In Hahn, the trial court made sure that the defendant's attorney had informed him of the maximum term, any lesser-included offenses that and the penalties for those crimes, and the available defenses during a colloquy with the defendant concerning his request to represent himself. State v. Hahn, 106 Wn.2d 885, 896 n.9, 726 P.2d 25 (1986). The trial court here did not determine if Mr. Chappelle knew the elements of the crime, any lesser-included offenses, or the available defenses.

Mr. Chappelle's waiver of his constitutional right to counsel was not knowing, intelligent, and voluntary. First, the trial never expressly denied Mr. Chappelle's motion for new counsel and never explained that the only options open to Mr. Chappelle were going to trial with his current counsel or representing himself. Second the trial

court's colloquy did not inform Mr. Chappelle was not informed of the dangers he faced at trial, including the correct sentence he faced, and did not confirm that Mr. Chappelle understood the elements of the crime and enhancement or how to present his defense. Mr. Chappelle's his conviction must be reversed.

2. Mr. Chappelle was forced to go to trial without the materials he needed for his defense as required by the Washington Constitution.

Mr. Chappelle was detained in jail during the trial where he represented himself pro se, and he had the right to "reasonable access to state provided resources that will enable him to prepare a meaningful pro se defense." State v. Silva, 107 Wn. App. 605, 622, 27 P.3d 663 (2001); Const. art. I, § 22. This Court should reject the State's argument that Mr. Chappelle had the materials he needed and cannot complain because he agreed to represent himself mid-trial. BOR at 24-29.

Mr. Chappelle began representing himself immediately prior to jury selection on November 13, 2012. 11/13/12 RP 18-19, 29-31. The State's first witness, a Seattle police detective, testified that day. 11/13/12 RP 32. During direct examination, it became clear that Mr. Chappelle did not have the detective's report or other discovery

materials provided by the prosecution to defense counsel. Defense counsel had left the courtroom without giving Mr. Chappelle any portion of his file. 11/12/13 RP 46, 49; 4/30/13RP 13. The prosecutor then provided Mr. Chappelle with the needed materials during the course of the trial.

The prosecutor argues that Mr. Chappelle eventually had access to interviews conducted by his former attorney's investigators, noting that he referred to them in cross-examining some of the witnesses. BOR at 26 (citing 11/14/12 RP 47-48, 77-80; 11/15/12 RP 76-81, 97-102). However, Mr. Chappelle did not receive those statements until the morning of November 14 and was forced to read them while the witnesses were testifying that day. 11/15/12 RP 7.

The three witnesses who testified on November 14 were the crime victim, who identified Mr. Chappelle as his attacker, and two friends who saw the victim emerge bleeding from the alley at the same time as Mr. Chappelle. 11/14/12 RP 16-30, 63-69, 95-98, 100. These were critical witnesses to the State's case, yet Mr. Chappelle had no time to prepare his cross-examination. Mr. Chappelle also received police officers' reports, medical records, and the crime lab's DNA

report as the trial progressed, resulting in little time to prepare.

11/15/12 RP 5-6, 9-11, 13-14, 116-17

The prosecutor also argues that Mr. Chappelle was given a redacted copy of the transcript approximately two months prior to trial. BOR at 26 (citing 4/30/13 RP 13). At the time Mr. Chappelle discharged his trial attorney, however, he no longer had the redacted discovery in his possession because he has been transferred from work release to the King County Jail, and that portion of his property was not transferred with him. 4/30/13RP 21. Moreover, the redacted discovery would not have included the witnesses' names and contact information or the medical reports. PostTrial Ex. 1; 4/30/13RP 17. The prosecutor nonetheless implies that redacted discover is sufficient because the defendant in Silva received redacted discovery. BOR at 25 n.5. In that case, the defendant was also provided stand-by counsel who provided access to his investigator, and Silva was also able to personally interview three witnesses. Silva, 107 Wn. App. at 610, 611

The federal constitutional guarantees the accused the “a meaningful opportunity to present a complete defense.” Holmes v. South Carolina, 547 U.S. 319, 324, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006) (quoting Crane v. Kentucky, 476 U.S. 683, 690, 106 S. Ct.

2142, 90 L. Ed. 2d 636 (1986)). The Washington Constitution guarantees reasonable access to the material needed to meaningfully present that defense. Silva, 107 Wn. App. at 622; Const. art. I, § 22. Mr. Chappelle received discovery from the prosecutor as the trial progressed, so that he could not meaningfully prepare his case. His conviction must be reversed.

3. Mr. Chappelle's constitutional right to effective assistance of counsel was violated because the attorney representing him at his motion for a new trial had a conflict of interest that hampered her representation.

When Mr. Chappelle's attorney was discharged midtrial, he left without giving Mr. Chappelle the material he needed to present his defense. A different attorney from the same office was later appointed to represent Mr. Chappelle at a motion for a new trial and sentencing. The second attorney argued that the State did not provide her client with the material he needed to represent himself, but did not argue that Mr. Chappelle was also prejudiced by his attorney's actions. Mr. Chappelle therefore argues on appeal that his right to effective assistance of counsel was violated because the attorney representing him at his motion for a new trial had a conflict of interest that prevented her from fully presenting his motion.

Mr. Chappelle's attorney was ethically required to ensure that his transition to pro se status was smooth and he was provided with the materials in his file. RPC 1.16(d). The State argues that trial counsel was prohibited from providing Mr. Chappelle with the discovery pursuant to CrR 4.7(h)(3). BOR at 31-32. The State, however, fails to address the other information in Mr. Chappelle's file that trial court could have provided to him.

An attorney's trial notebook contains far more than the discovery provided by the prosecutor. It would normally include information such as the relevant statutes, transcripts of witness interviews, prepared cross-examination questions or areas for cross-examination, interview and contact information for potential defense witnesses, trial briefs, and proposed jury instructions. In this case, defense counsel prepared a trial brief and had transcripts from interviews of several witnesses. CP 54-59. He would also have a copy of the State's trial brief. Mr. Chappelle was entitled to the contents of his file. Leaving Mr. Chappelle to fend for himself without this information was unethical.

When his representation of a client ends, RPC 1.16(d) requires an attorney to continue to protect the client's interests by, for example,

surrendering papers to which the client is entitled. In re Disciplinary Proceedings Against Eugester, 166 Wn.2d 293, 310, 318, 209 P.3d 435 (2009). The State argues that Mr. Chappelle's case is different than Eugester, where failure to promptly provide a client with her file was one of several ethical violations. BOR at 31. While the cases are different, the same ethical violation occurred here.

The defendant is entitled to counsel free from a conflict of interest. Wood v. Georgia, 450 U.S. 261, 271, 101 S. Ct. 1097, 67 L. Ed. 2d 220 (1981); State v. McDonald, 143 Wn.2d 506, 511, 22 P.3d 791 (2001). The attorney who represented Mr. Chappelle at his motion for a new trial had a conflict of interest because another attorney in her office had not provided Mr. Chappelle with his file when he was discharged and Mr. Chappelle represented himself. The new attorney argued that a new trial was warranted because the government did not timely provide Mr. Chappelle with the materials he needed to represent himself pro se and because the court denied Mr. Chappelle's requests for more time to prepare. But she did not argue that his former counsel violated his ethical obligations by not giving Mr. Chappelle his trial materials when he needed them.

The second attorney's conflict of interest thus adversely her performance. Mr. Chappelle's case must be remanded for a new hearing on his motion for a new trial. Strickland v. Washington, 466 U.S. 668, 692, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

B. CONCLUSION

Mr. Chappelle's conviction for second degree assault must be reversed and remanded for a new trial because (1) he did not knowingly, intelligently, or voluntarily waive his constitutional right to counsel, and (2) he did not receive the materials he needed to represent himself in time to permit him to prepare his defense.

In the alternative, Mr. Chappelle's case should be remanded for a new motion for a new trial with conflict-free counsel.

DATED this 14th day of May 2014.

Respectfully submitted,



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I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 14TH DAY OF MAY, 2014, I CAUSED THE ORIGINAL **REPLY 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:

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