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NO. 64438-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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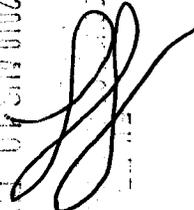
STATE OF WASHINGTON,

Respondent,

v.

ANTHONY DELPRIORE,

Appellant.

2018 JUN 10 11 2:19  


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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE THERESA B. DOYLE

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. Evidence is sufficient to support a conviction if, after reviewing it in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Here, Delpriore was walking with a friend when he punched Cummings in the face and knocked him to the ground. Moments later, Cummings felt hands reaching into his pockets as Delpriore and his friend stood over Cummings. Cummings tried to run away, but Delpriore's friend tackled him and stole his cell phone and other property. Was there sufficient evidence to support the jury's guilty verdict that Delpriore acted as an accomplice to the robbery?

2. A defendant is not entitled to the appointment of new counsel absent an irreconcilable conflict or a complete breakdown in communication with defense counsel. During two motions to discharge counsel, Delpriore complained generally about his attorney's efforts and believed that his case was being neglected, but Delpriore did not refuse to speak with his attorney. Did the trial court properly exercise its discretion in denying Delpriore's motion for new counsel?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL AND PRETRIAL FACTS**

On March 27, 2009, the State charged Anthony Delpriore and co-defendant Mosley with Robbery in the Second Degree.

CP 1. Delpriore was arraigned on April 9, 2009. 5/20/09 RP 3.

On May 20, 2009, Delpriore moved the court to substitute counsel. Delpriore told the court that his attorney "seems adequate [sic] on me taking continuances and taking plea bargains, when that is not what I want to do." Delpriore felt that his case was being neglected and that "he's not the right attorney for me." 5/20/09 RP 3-4. The court ruled that was not a basis to discharge counsel and denied Delpriore's request. 5/20/09 RP 4. Delpriore's attorney informed the court that he had talked with Delpriore about the State's offer and that Delpriore wanted to set the case for trial. 5/20/09 RP 5. The court set the case for trial on June 29, 2009. 5/20/09 RP 5.

On July 15, 2009, Delpriore again moved the court to discharge counsel because his trial had been continued on the State's motion and his attorney would not file a motion to dismiss the case on speedy trial grounds. 7/15/09 RP 5. The court informed Delpriore that "the speedy trial rule permits the Court to

administratively extend your speedy-trial when either the prosecutor is in another trial." 7/15/09 RP 6. The court further explained to Delpriore that his attorney "knows the law" and "knows that it would detract from his credibility if he filed a motion that had no legal basis." 7/15/09 RP 6. The court denied Delpriore's motion. 7/15/09 RP 7.

On August 27, 2009, Delpriore wrote a letter to the court expressing dissatisfaction with his attorney. CP 15-16. Delpriore asserted that there was "no communication" between him and his attorney. CP 15. Delpriore wrote that he had asked his attorney "to defend my rights and he has refused" and that "all he says is that he's ready for trial when he still has not interviewed me." CP 15. Delpriore also wrote that his attorney told him that the "prosecution offered a deal for Assault 3, but he didn't know the time it would carry and that he had to go back to court." CP 15.

Delpriore never set a motion with the court to address his claims in the August 27, 2009 letter. On September 22, 2009, when Delpriore appeared before the trial court, he did not express any dissatisfaction with his attorney, and told the court that he wished to go forward with the trial. 9/22/09 RP 7-8. Delpriore's attorney had spent a long time talking with him about the Assault in

the Third Degree offer and had even made arrangements for Delpriore to speak directly with the State in his presence. 9/22/09 RP 2. In addition, Delpriore's attorney had interviewed both the victim Cummings and Mosley. 9/22/09 RP 9, 30. Delpriore and his attorney were communicating, and had discussed meeting with the State about the Assault 3 offer and had discussed other trial issues, including their proposed lesser-included defense jury instruction. 9/22/09 RP 3-5.

## **2. TRIAL FACTS**

On March 25, 2009 at approximately 12:30 a.m., Kyle Cummings was walking to a grocery store a few blocks away from his house. 9/23/09 RP 14. When Cummings turned a corner, he saw Anthony Delpriore and Delpriore's friend Joshua Mosley walking in his direction. 9/23/09 RP 12-17. When Cummings first saw them, he heard Delpriore and Mosley mumble something, but he could not make out what they were saying. 9/23/09 RP 19. There were no other people or cars moving down the street. 9/23/09 RP 19.

As Delpriore and Mosley got within arms' reach of Cummings, Delpriore punched Cummings in the face with a closed

fist and knocked him to the ground. 9/23/09 RP 19-20, 29; 9/24/09 RP 52, 64-65. Neither Delpriore nor Mosley said anything to Cummings before the punch. 9/23/09 RP 20; 9/24/09 RP 57. Delpriore subsequently testified to punching Cummings in the face and standing over him, but he claimed he did it because he was agitated and wanted to pick a fight with somebody. 9/24/09 RP 63-65, 72-74. On cross-examination, Delpriore testified that he was unemployed and agreed that "money's tight" at that time. 9/24/09 RP 77. During his testimony, Delpriore also admitted to having convictions for crimes of dishonesty, including Forgery and Possession of Stolen Property. 9/24/09 RP 62.

While Cummings was on the ground, he could feel hands reaching into his pockets around his middle region. 9/23/09 RP 21-23, 35. Cummings could not tell if it was Delpriore or Mosley reaching into his pockets because both of them were standing over him; however, Delpriore was standing closer to Cummings at that time. 9/23/09 RP 22. Cummings believes he heard "an outburst or two" from either Delpriore or Mosley, but he could not remember what they said. 9/23/09 RP 22.

Cummings was able to get up and run away, but Mosley ran after him. 9/23/09 RP 25; 9/24/09 RP 58. Delpriore did not run

after Cummings or say anything to him. 9/23/09 RP 23-26, 36-38. Mosley tackled Cummings from behind and demanded everything in his pockets or else he was going to take Cummings' life. 9/23/09 RP 24; 9/24/09 RP 53-54. Cummings gave Mosley his cell phone, a lighter, and his wallet, which contained approximately \$100. 9/23/09 RP 24-25; 9/24/09 RP 53-54. After that, Mosley left. 9/23/09 RP 25; 9/24/09 RP 54.

Mosley subsequently testified that he decided to rob Cummings "on impulse" after Delpriore punched him, and that the robbery was not planned. 9/24/09 RP 58. However, on cross-examination Mosley admitted that he had already pled guilty to Robbery in the Second Degree and that he could not get into any more trouble. 9/24/09 RP 50, 58-59. Mosley acknowledged that Delpriore could still get into trouble for his involvement, but if Mosley testified that he did this all by himself then Delpriore might not get in trouble. 9/24/09 RP 58-59. Mosley also testified that he was friends with Delpriore and that Delpriore's girlfriend had set up his interview with the defense investigator. 9/24/09 RP 55-59. In addition, Delpriore's girlfriend had also driven Mosley to court to testify that day. 9/24/09 RP 59.

Around 1:00 a.m., Officer Musseau and Officer Carpenter responded to a noise complaint at 4309 Evanston Avenue North, which is a few blocks from where Cummings was robbed. 9/23/09 RP 28, 65-67; 9/24/09 RP 11, 22. While they were there, Officer Musseau and Officer Carpenter saw Delpriore and Mosley walk up to the residence together; and Officer Musseau noticed that Delpriore was slightly out of breath and sweating a little bit. 9/23/09 RP 67-68; 9/24/09 RP 17. The officers left the residence a few minutes later. 9/23/09 RP 69; 9/24/09 RP 19.

In the meantime, after being robbed, Cummings had walked home and called 911. 9/23/09 RP 27. Approximately 10 minutes later an officer arrived, and Cummings provided a description of the robbery suspects. 9/23/09 RP 27. When Officer Musseau and Officer Carpenter heard the description of the suspects broadcast over the radio, they both immediately thought of Delpriore and Mosley because they matched the description. 9/23/09 RP 70; 9/24/09 RP 21. Officer Musseau, Officer Carpenter and other officers returned to the residence at 4309 Evanston Avenue North. 9/23/09 RP 70-71; 9/24/09 RP 22. Another officer transported Cummings to the residence, and Cummings positively identified

Delpriore and Cummings as the two people that had robbed him a half hour earlier. 9/23/09 RP 29, 72; 9/24/09 23-24, 35.

Delpriore and Mosley were placed under arrest, and Officer Carpenter recovered Cummings' stolen cell phone from Mosley's front pants pocket. 9/23/09 RP 31, 70-73; 9/24/09 RP 24. There were several other people in the house. 9/24/09 RP 26. Officer Carpenter was able to look around the living room for Cummings' wallet, but he could not find it. 9/23/09 RP 31, 74; 9/24/09 RP 26. The house was large and had multiple occupants, so Officer Carpenter's search was limited to the living room. 9/24/09 RP 26.

At trial, the jury was instructed on accomplice liability as follows:

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if with knowledge that it will promote or facilitate the crime commission of the crime, he either:  
(1) solicits, commands, encourages, or requests another person to commit the crime; or  
(2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or

presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

9/24/09 RP 102-03.

During closing argument, the prosecutor reviewed the accomplice liability instruction with the jury. 9/24/09 RP 110-13.

The prosecutor stated that "this robbery would not have succeeded but for Mr. Delpriore's participation in it" and that "he aided Mr. Mosley in finishing this robbery." 9/24/09 RP 110-11.

Specifically, the prosecutor argued that "Mr. Delpriore knew this was a robbery; that is when they encountered Kyle Cummings, the plan was to rob him; and that by punching Kyle Cummings, by starting this whole chain of events, by instilling fear and violence into this encounter with Kyle Cummings, Mr. Delpriore knew there was going to -- that the goal was to commit a robbery." 9/24/09 RP 112-13.

In addition, the prosecutor discussed the credibility of Delpriore and Mosley with the jury, including the numerous

discrepancies between the testimony of Delpriore and Mosley and also discrepancies between their testimony and Cummings' testimony. The prosecutor explained to the jury that "you have to decide who you believe." 9/24/09 RP 115-22. The prosecutor also questioned Mosley's credibility by explaining that "Mr. Mosley's already gotten into trouble; he's already pled guilty; he's already been sentenced. He's done. He can't get in any more trouble for this" and that "he can take all the responsibility for that night, and get his buddy off the hook. That's a lot of personal interest in this case." 9/24/09 RP 117-18.

The prosecutor concluded by referencing several important pieces of evidence that supported the conviction, including that Cummings' pockets were searched immediately after Delpriore's punch while Delpriore was still present; Delpriore did not need to punch Cummings again because he had Mosley to "chase after Mr. Cummings and finish the job"; Delpriore and Mosley met up a block from where this robbery started; and that "the crime was ongoing" because it "started at 44th and Fremont, and it ended when Mr. Mosley had what he -- he and Mr. Delpriore wanted from Mr. Cummings." 9/24/09 RP 134-36.

The jury convicted Delpriore of Robbery in the Second Degree. CP 58.

**C. ARGUMENT**

- 1. VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE AND DRAWING ALL INFERENCES IN THE STATE'S FAVOR, THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S GUILTY VERDICT.**

Delpriore argues that there is insufficient evidence to support his conviction for Robbery in the Second Degree on an accomplice liability theory. However, when the evidence is reviewed in the light most favorable to the State, and all reasonable inferences are drawn in the State's favor, there is sufficient evidence from which a rational trier of fact could find beyond a reasonable doubt that Delpriore acted as an accomplice and that he committed the crime of Robbery in the Second Degree.

A person is an accomplice of another person in the commission of a crime if (a) with knowledge that it will promote or facilitate the commission of the crime, he (i) solicits, commands, encourages, or requests such other person to commit it; or (ii) aids or agrees to aid such other person in planning or committing it. RCW 9A.08.020(3).

Accomplice liability represents a legislative decision that one who participates in a crime is guilty as a principal, regardless as to the degree of participation. State v. Hoffman, 116 Wn.2d 51, 104, 804 P.2d 577 (1991). An accomplice need not have specific knowledge of every element of the crime committed by the principal, provided that he has general knowledge of that specific crime. State v. Roberts, 142 Wn.2d 471, 512, 14 P.3d 713 (2000).

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. State v. McDaniel, 155 Wn. App. 829, 863-64, 230 P.3d 245 (2010); WPIC 10.51. In an accomplice liability case, the jury is free to disbelieve the principal's testimony that that defendant did not assist him and was not even aware of the criminal activities. State v. Gallagher, 112 Wn. App. 601, 614, 51 P.3d 100 (2002).

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Tilton, 149 Wn.2d 775, 786, 72 P.3d 735 (2003); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). By claiming insufficiency of the evidence, a defendant admits the truth of the State's evidence and all inferences that reasonably can be

drawn therefrom. State v. Salinas, 119 Wn.2d at 201. All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Id.

Furthermore, when evidence is conflicting or is of such a character that reasonable minds may differ, it is the function and province of the jury to weigh the evidence, to determine the credibility of the witnesses, and to decide the disputed questions of fact. State v. Gerber, 28 Wn. App. 214, 216, 622 P.2d 888, rev. denied, 95 Wn.2d 1021 (1981). Credibility determinations are for the trier of fact and are not subject to appellate review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Deference must be given to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, rev. denied, 119 Wn.2d 1011 (1992).

Here, there is sufficient evidence to support the conviction, particularly when the evidence is viewed in the light most favorable to the State and all reasonable inferences are interpreted most strongly against the defendant. The State's case includes evidence that (1) Delpriore and his friend Mosley approached Cummings on the street; (2) Cummings could hear them talking to each other as

they approached him; (3) without saying a word, Delpriore punched Cummings in the face and knocked him on the ground; (4) when Cummings was on the ground with Delpriore standing over him, he felt hands attempting to go through his pockets; (5) Mosley then chased Cummings a short distance before tackling and robbing him; and (6) Delpriore and Mosley met up minutes after the robbery and returned to their residence. Based on this evidence, Delpriore aided Mosley in the commission of the robbery by knocking Cummings to the ground, which allowed one or both of them to start going through his pockets and instilling fear of additional harm if he continued to resist the robbery. The jury considered these facts and concluded that Delpriore aided Mosley in the commission of the robbery and acted as an accomplice.

Furthermore, when evidence is conflicting, it is the function and province of the jury to decide the disputed questions of fact. Delpriore and Mosley testified and attempted to convince the jury that Delpriore was not an accomplice to the robbery. Delpriore testified he punched Cummings because he was agitated about other things in his life, and Mosley testified that he robbed Cummings "on impulse" after Delpriore knocked Cummings to the ground. The jury weighed the evidence, determined the credibility

of the witnesses, and concluded that they did not believe Delpriore and Mosley. Mosley had already pled guilty, so he had nothing to lose by attempting to take responsibility for the robbery that he and Delpriore carried out together. The jury was free to disbelieve the testimony of Delpriore and Mosley, and that is what the jury did. It is the function and province of the jury to make these determinations, and the evidence supports the verdict. Moreover, these credibility determinations are for the jury and are not subject to appellate review.

However, Delpriore argues that the court should disregard the jury's verdict because the prosecutor's statement that Delpriore "started this chain of events" in her closing argument is similar to language used in another case that was reversed on different grounds. In Cronin, the defendant's conviction was reversed because of an erroneous jury instruction and not because the prosecutor argued that the defendant "merely needed to aid or agree to aid...in the commission of the assaultive behavior that unravels into that fatal stabbing." State v. Cronin, 142 Wn.2d 568, 577, 14 P.3d 752 (2000). The erroneous jury instruction stated that "a person is an accomplice...if, with knowledge that it will promote or facilitate the commission of a crime, he...aids or agrees to aid

another person in committing a crime." Cronin, 142 Wn.2d at 576-77 (emphasis added). The Court noted that "the statutory language requires that the putative accomplice must have acted with knowledge that his or her conduct would promote or facilitate the crime for which he or she is eventually charged. Id. at 579.

The Court held that "in order to convict Cronin as an accomplice to premeditated murder, the State had to prove beyond a reasonable doubt that Cronin had general knowledge that he was aiding in the commission of the crime of murder." Id. at 582-83. The accomplice liability instruction was erroneous because "it allowed [the jury] to convict Cronin of premeditated murder merely if it found that he knew he promoted or facilitated 'the commission of a crime.'" Id. at 582.

Unlike in Cronin, the accomplice liability instruction in Delpriore's case correctly stated that:

A person is an accomplice in the commission of a crime if with knowledge that it will promote or facilitate the crime commission of the crime, he either:  
(1) solicits, commands, encourages, or requests another person to commit the crime; or (2) aids or agrees to aid another person in planning or committing the crime.

9/24/09 RP 102-03 (emphasis added).

The prosecutor argued that Delpriore was an accomplice to the robbery by stating that "this robbery would not have succeeded but for Mr. Delpriore's participation in it" and that "he aided Mr. Mosley in finishing this robbery." Therefore, the State argued and the jury agreed that Delpriore was an accomplice to the crime of robbery and not just any crime as in Cronin. Therefore, Delpriore's reliance on Cronin is misplaced.

In this case, the jury weighed all of the evidence, determined the credibility of Delpriore and the other witnesses, and concluded that Delpriore acted as an accomplice in the commission of the robbery. Deference must be given to the jury, and the court should not disregard the verdict simply because Delpriore disagrees with the jury's conclusion.

**2. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING DELPRIORE'S MOTION FOR NEW COUNSEL.**

Delpriore claims that the trial court erred in denying his two motions to substitute counsel. These arguments should be rejected because Delpriore has failed to demonstrate that he had either an irreconcilable conflict or complete breakdown of communication with his attorney.

A trial court's denial of a motion to substitute counsel is reviewed for an abuse of discretion. State v. Varga, 151 Wn.2d 179, 200, 86 P.3d 139 (2004). The purpose of providing assistance of counsel is to ensure that criminal defendants receive a fair trial; therefore, the appropriate inquiry focuses on the adversarial process, not on the accused's relationship with his lawyer. Wheat v. United States, 486 U.S. 153, 159, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988). A defendant does not have an absolute Sixth Amendment right to choose any particular advocate. State v. DeWeese, 117 Wn.2d 369, 375-76, 816 P.2d 1 (1991). Generally, a defendant's loss of confidence or trust in his counsel is not a sufficient reason to appoint new counsel. Varga, 151 Wn.2d at 200. A defendant must show 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. Id.

A reviewing court uses a three-prong test to determine whether the trial court erred in its assessment of whether an irreconcilable conflict exists and in denying a motion to substitute counsel. In re Personal Restraint of Stenson, 142 Wn.2d 710, 723-24, 16 P.3d 1 (2001), citing United States v. Moore, 159 F.3d

1154, 1158 n.3 (9th Cir.1998). The factors in the test are (1) the extent of the conflict, (2) the adequacy of the inquiry, and (3) the timeliness of the motion. Id.

Under the Moore factors, the trial court did not abuse its discretion in denying Delpriore's two motions to discharge counsel. Under the first factor in the Moore test, Delpriore did not have an irreconcilable conflict with his attorney that threatened his right to a fair trial. During the two hearings to discharge counsel, Delpriore was dissatisfied with his attorney because his case had been continued; he did not want to consider plea bargains; he believed that his attorney was "not the right attorney" for him; his attorney declined to file a meritless motion to dismiss on a non-existent speedy trial violation; and he believed his attorney was neglecting his case. This Court has already rejected a similar argument in State v. Staten, 60 Wn. App. 163, 169, 802 P.2d 1384, rev. denied, 117 Wn.2d 1011 (1991). In Staten, this Court rejected the argument that any public defender would lack the time to properly prepare for the defendant's case. The Court further held that inaccessibility does not require a trial judge to grant a motion to substitute, particularly when a substitution would delay trial for several weeks. Absent counsel's failure to prepare a defense, a

conflict of interest, or a complete breakdown in communication that threatens a defendant's right to a fair trial, such a substitution is not justified. Id.

Delpriore never set a motion with the court to address the complaints in his August 27, 2009 letter to the court, so the court never had the opportunity to conduct an inquiry. However, on September 22, 2009, when Delpriore appeared before the trial court, he did not mention anything about the letter or express a desire to discharge his counsel. To the contrary, Delpriore and his attorney were communicating well. Delpriore's attorney had completed all of the necessary defense interviews and pretrial investigation, and Delpriore told the court that he wished to proceed to trial.

At one point, Delpriore may have believed that his attorney was not the right one for him and that his case was being neglected; however, that does not demonstrate a complete breakdown in communication that threatened his right to a fair trial. Therefore, Delpriore has failed to show that the trial court abused its discretion in denying the motion to discharge counsel.<sup>1</sup>

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<sup>1</sup> See Stenson, 142 Wn.2d at 724-25 (discussion of federal cases demonstrating irreconcilable conflicts and complete breakdowns of the attorney-client relationship).

Second, the court made appropriate inquiries during the motions to discharge counsel and allowed Delpriore and his attorney to be heard. Those inquiries showed that communication between Delpriore and his attorney may have been strained, but they were still communicating with each other. In addition, the inquiries showed that some of Delpriore's complaints about his attorney were the result of him not understanding speedy trial rights. During the second hearing, the court even took time to explain why Delpriore's perceived understanding of his speedy trial violation was faulty and why his attorney would not want to file a meritless motion with the court.

Nonetheless, Delpriore argues that the trial court failed to satisfy the Moore factors in its denial of his motions. These arguments should be rejected because Delpriore cannot show that the trial court abused its discretion in denying his motions. Delpriore relies on Brown v. Craven, 424 F.2d 1166 (9th Cir. 1970), but the record shows that Brown is inapposite. In Brown, a dispute arose immediately between Brown and his appointed counsel. He absolutely refused to cooperate or communicate with his attorney in any manner, depriving his attorney of the power to present any adequate defense. Brown, 424 F.2d at 1169. Delpriore fails to

show that he had such a complete breakdown in communication with his attorney and the general lack of rapport between them does not rise to the level of an irreconcilable conflict.

Given the general nature of Delpriore's complaints, the trial court's ruling is consistent with Washington cases holding that the motion to substitute counsel was properly denied.<sup>2</sup> Regardless of whether his motions were timely, neither of the first two Moore factors requires reversal here. The court did not abuse its discretion and should be affirmed.

**D. CONCLUSION**

Taking as true the State's evidence and drawing all reasonable inferences in the State's favor, the evidence supports the jury's conclusion that Delpriore was an accomplice to the robbery. The jury's verdict should not be disregarded simply because Delpriore disagrees with the outcome of the trial.

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<sup>2</sup> See, e.g., Varga, 151 Wn.2d at 199-200 (no abuse of discretion in denying motion for new counsel and counsel not ineffective when counsel failed to note bond hearing and defendant and counsel disagreed on trial strategy); Staten, 60 Wn. App. at 170 (unsupported general allegations of deficient representation are inadequate to support a motion to substitute); Stenson, 142 Wn.2d at 729 (no abuse of discretion in denying motion for new counsel when basis is defendant's disagreement with tactics and frustration over limited visits from and communication with attorney).

In addition, Delpriore has failed to show that the trial court abused its discretion in denying his motions to substitute counsel because his complaints were insufficient to show an irreconcilable conflict with his attorney. The State respectfully requests that the trial court be affirmed.

DATED this 10<sup>th</sup> day of August, 2010.

Respectfully submitted,

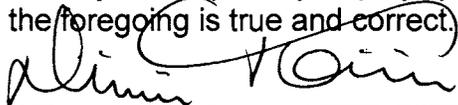
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Office WSBA #91002

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 Lila Silverstein, 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. ANTHONY DELPRIORE, Cause No. 64438-6-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.



Divina Tomasini  
Done in Kent, Washington

8/10/10

Date

2010 AUG 10 PM 2:19

COURT OF APPEALS  
DIVISION I  
SEATTLE, WA