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STATE OF WASHINGTON
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NO. 66118-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JASON VRIEZEMA,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

THE STATE MISCONSTRUES THE NATURE OF MR. VRIEZEMA'S CONFLICT WITH COUNSEL AND BASELSSLY DISMISSES THE TRIAL COURT'S INADEQUATE INQUIRY.

As Mr. Vriezema argued in his Opening Brief, his conviction must be reversed because the trial court improperly denied his motion to discharge counsel. A month before his trial date, Mr. Vriezema moved to discharge counsel, explaining: "I don't think she has my best interests in mind. She has not come and seen me, not once; and, two, she is already making me plead out to a Rob II . . . she haven't [sic] even heard my side of the story." 8/3/10RP 3-4. Mr. Vriezema also told the court "I just don't feel that I feel comfortable with going to trial with [her]." 8/3/10RP 4. An examination of the seriousness of the conflict, the insufficiency of the trial court's inquiry and the timeliness of Mr. Vriezema's motion to discharge compels the conclusion that the trial court erred. See In re Pers. Restraint of Stenson, 142 Wn.2d 710, 724, 16 P.3d 1 (2001) (citing United States v. Moore, 159 F.3d 1154, 1158-59 (9th Cir. 1998)).

In its Response Brief, the State improperly minimizes Mr. Vriezema's conflict with his attorney. Contrary to the State's

attempt to downplay the conflict, Mr. Vriezema had completely lost trust in his attorney. 8/3/10RP 3. He lacked confidence that his attorney had his "best interests in mind." Id. As Mr. Vriezema further explained to the court, he and his attorney also disagreed on the substance of his case. 8/3/10RP 3-4. Finally, though she had been assigned the case at least a couple weeks prior and trial was only a month away, Mr. Vriezema's attorney had neither visited his client nor listened to his version of events. 8/3/10RP 3-4. The conflict of which Mr. Vriezema complained accordingly affected his entire relationship with counsel.

The State's attempt to justify the trial court's extremely limited inquiry into the nature of the conflict is also unavailing. The entire hearing on Mr. Vreizema's motion lasted three minutes during which time the court asked only a single question. 8/3/10RP 2-4. The court's one question was directed at defense counsel and not at Mr. Vriezema. 8/3/10RP 4. Such a cursory examination can hardly be considered sufficient.

Moreover, contrary to the State's insinuation, Mr. Vriezema's Opening Brief does not rely exclusively on United States v. Nguyen, 262 F.3d 998, 1003 (9th Cir. 2002). Nguyen, however, does demonstrate the importance of a trial court's inquiry upon a motion

to discharge. 262 F.3d at 1005. Mr. Vreizema also pointed to Moore, 159 F.3d at 1160, United States v. Adelzo-Gonzalez, 268 F.3d 772, 777-78 (9th Cir. 2002), and Daniels v. Woodford, 428 F.3d 1181, 1198 (9th Cir. 2005) to argue that the trial court's extremely limited inquiry here was insufficient.

As noted by the Washington Supreme Court in State v. Cross, 156 Wn.2d 580, 610, 132 P.3d 80 (2006), "[a]n adequate inquiry must include a full airing of the concerns (which may be done in camera) and a meaningful inquiry by the trial court." In that case the court's "repeated inquiry," which included briefing and several hearings, was "meaningful and full." Id. On the other hand, here the three-minute hearing punctuated by a single question from the court—directed at defense counsel—was hardly sufficient. Cf. State v. McDonald, 143 Wn.2d 506, 22 P.2d 791 (2001) ("We now hold when the trial court knows or should know of a conflict of interest between the defendant and standby counsel, it must conduct an inquiry into the nature and extent of the conflict. After such an inquiry, the court may remove standby counsel and then substitute or replace standby counsel, or take other appropriate action. *Failure to make an inquiry* and take appropriate action

constitutes reversible error and prejudice will be presumed." (emphasis added)).

The State further argues Nguyen is not applicable because the defendant in that case offered up several witnesses in support of the asserted conflict. However, given the confidential nature of the attorney-client relationship, it certainly cannot be rare, nor is it fatal to his argument, that Mr. Vriezema did not offer up witnesses to attest to the conflict with his attorney.

Finally, the State disregards entirely the timeliness of Mr. Vriezema's motion to discharge counsel. As discussed in the Opening Brief, coming a month before the scheduled trial, Mr. Vriezema's motion was timely.

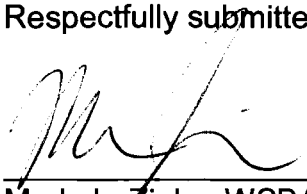
In sum, the trial court erred in denying Mr. Vriezema's motion to discharge counsel where there was a serious breakdown in communication and a total loss of confidence, the trial court failed to conduct sufficient inquiry, and the motion was timely. The State does not dispute that the proper remedy for this error is reversal.

B. CONCLUSION

Because the denial of his motion to discharge counsel violated his constitutional right to counsel, Mr. Vriezema's conviction must be reversed.

DATED this 2nd day of August, 2011.

Respectfully submitted,



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DIVISION ONE

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Respondent,	)	
	)	NO. 66118-3-I
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	)	
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	)	
Appellant.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 2ND DAY OF AUGUST, 2011, 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:

[X] TUYEN LAM, DPA KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
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SIGNED IN SEATTLE, WASHINGTON THIS 2ND DAY OF AUGUST, 2011.

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