NO. 41684-1-II

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

STATE OF WASHINGTON,
Respondent,

v.

SHARIE R. RAMSEY,
Appellant.

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

THE HONORABLE GORDON L. GODFREY, JUDGE

BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF THE CASE

Rachel and Rebecca Ramsey were born on May 14, 1996 to Sharie R. Ramsey and Hassan Elatiki.(RP at 106). On March 24, 2008 Hassan Elatiki, father of Rachel and Rebecca Ramsey, filed for a residential schedule to visit the children in Clallam County Superior Court.(RP at 108). Neil Morris was appointed Guardian ad Litem to oversee the visitation of the children and re-introduction to their father.(RP at 39). On May 9, 2008 the Clallam County Superior Court entered an order that states, "Mother is not to relocate with children out of this county without notifying the court."(RP at 39; Exhibit 4). On June 25, 2008 in a document titled *Memorandum Opinion Order re: Visitation*, the Clallam County Superior Court ordered that Hassan Elatiki (the father):

> will continue to be entitled to one phone call a week from the girls and will have one in person visit with the girls. The phone call will occur on Sundays at 6:00pm. generated by the girls to their father....The in person contact with be on Wednesday from 4:00p.m. to 6:00p.m. (Exhibit 5A).

The court also ordered that the children be placed in public school in Port Angeles, WA. (RP at 40).

On September 4, 2009 it was reported that the children had not attended the first day of school as ordered. (RP at 41). On September 8, 2009 Neil Morris learned that no one was home at the Ramsey residence and it appeared that they had fled. (RP at 41). On September 11, 2009 the Clallam County Superior Court issued a Writ of Habeas Corpus for the

return of the children to Clallam County Superior Court. (Exhibit 11). On February 16, 2010 the Clallam County Superior Court issued a Judgment and Order and Parenting Plan granting full custody of the children to Hassan Elatiki and ordering that they immediately be placed in his custody. (Exhibits 12, 13A).

On November 4, 2010 Sgt. Don Kolilis of the Grays Harbor County Sheriff's Department was sent to assist on a check of a residence located at 110 Artic Road for the missing children listed above.(RP at 84). Sgt. Kolilis arrived at 9:50pm and observed the girls in a window at the location.(RP at 86). Sgt. Kolilis contacted the home owners, Cliff and Deborah Thieme, and advised that he was looking for Rachel and Rebecca Ramsey. (RP at 86). The Thiemes stated the girls and their mother had been staying with them for around 10 days. (RP at 100).

Sharie Ramsey and the girls came down the stairs and Sgt. Kolilis explained the court order to pick them up to which Sharie Ramsey advised that this was an ongoing issue with Clallam County and that they were being tortured by them. (RP at 88). Sharie also acknowledged that there had been "multiple orders over time" and that the "Judge in Clallam county was being unreasonable" and so she "had to move the girls from house to house to keep the kids safe from the court."(RP at 88).

Sgt. Kolilis went up the stairs and could not find the girls as it appears they had climbed out a window. (RP at 89). Sgt. Kolilis noted phone numbers and address on the bed upstairs that looked like places for

the girls to have resources to call and Sharie Ramsey denied this. (RP at 90). Sgt. Kolilis then placed Sharie Ramsey into custody for obstructing his being able to carry out the court order. While being arrested and not in response to any question, Sharie Ramsey kept saying the order was immoral and the girls should not go with the officer or their father. (RP at 88, 90).

RESPONSE TO ASSIGNMENTS OF ERROR

1) **The defendant never made a motion to discharge her attorney**

Trial court decisions relating to attorney-client differences are generally reviewed for abuse of discretion. State v. Cross, 156 Wash.2d 580, 607, 132 P.3d 80 (2006). A defendant is not entitled to discharge appointed counsel unless the motion is timely and made upon proper grounds. Cross, 156 Wash.2d at 606. 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." In re Pers. Restraint of Stenson, 142 Wash.2d at 734 (*citing* Smith v. Lockhart, 923 F.2d 1314, 1320 (8th Cir.1991)). The court considers three issues when reviewing the denial of a request for new counsel: (1) the extent of the conflict; (2) the adequacy of the trial court's inquiry; and (3) whether the motion was timely. Cross, 156 Wash.2d at 607. Mere disagreements about trial strategy are insufficient grounds of conflict to require appointment of substitute counsel. Cross, 156 Wash.2d at 608–10. Generally, " 'where the request

for change of counsel comes during the trial, or on the eve of trial, the Court may, in the exercise of its sound discretion, refuse to delay the trial to obtain new counsel and therefore may reject the request.' " In re Pers. Restraint of Stenson, 142 Wash.2d 710, 732, 16 P.3d 1 (2001) (*quoting* United States v. Williams, 594 F.2d 1258, 1260–61 (9th Cir.1979)).

The Ninth Circuit has stated that "appointed counsel, and not his client, is in charge of the choice of trial tactics and the theory of defense." United States v. Wadsworth, 830 F.2d 1500, 1509 (9th Cir.1987)(*citing* Henry v. Mississippi, 379 U.S. 443, 451, 85 S.Ct. 564 (1965) (counsel's deliberate choice of strategy is binding on his client)).

Washington law also affords trial counsel great leeway:

> We note, with increasing concern, that it seems to be standard procedure for the accused to quarrel with court-appointed counsel, or to develop an undertone of studied antagonism and claimed distrust, or to be reluctant to aid or cooperate in preparation of a defense. This appears to be done in order to argue on appeal that the accused was deprived of due process alleging he was represented by incompetent counsel.

State v. Piche, 71 Wash.2d 583, 589, 430 P.2d 522 (1967) (*quoting* State v. Keller, 65 Wash.2d 907, 908, 400 P.2d 370 1965)).

In examining the extent of the conflict, this court considers the extent and nature of the breakdown in the relationship and its effect on the representation actually presented. State v. Schaller, 143 Wash. App. 258, 177 P.3d 1139 (2007). If the representation is inadequate, prejudice is presumed. If the representation is adequate, prejudice must be shown. Id.

(*citing* Cross, 156 Wash.2d 580, 132 P.3d 80.) Because the purpose of providing assistance of counsel is to ensure that defendants receive a fair trial, the appropriate inquiry necessarily must focus on the adversarial process, not only on the defendant's relationship with his lawyer as such. "[T]he essential aim of the [Sixth] Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." Schaller, 143 Wash. App. 258, 177 P.3d 1139 (*quoting* Wheat v. United States, 486 U.S. 153 (1988). Formal inquiry is not always essential where the defendant otherwise states his reasons for dissatisfaction on the record. Schaller, 143 Wash. App. 258, 177 P.3d 1139.

Here, it is not clear that Ms. Ramsey ever made a request for a new attorney. On December 16, 2010 a CrR 3.5 hearing was held where Sergeant Kolilis of the Grays Harbor County Sheriff's Department testified regarding Ms. Ramsey's statements made to him. (RP 12/16/10). The Judge ruled that Ms. Ramsey's statements may be admitted at trial. (RP 12/16/10 at 18). The judge then recessed the court by saying "Thank you." (RP 12/16/10 at18). After the court had recessed, Ms. Ramsey quietly stated from across the courtroom that she would like to say something. (RP 12/16/10 at 19). During this statement the Judge properly reminded everyone that the Court was at recess.(RP 12/16/10 at 19).

Between December 16, 2010 and the trial date of January 13, 2011 the court held three more hearings. On December 20, 2010 the court held

a pre-trial conference where the omnibus order setting an omnibus response date was entered and Ms. Ramsey did not address the court regarding new counsel. (Clerk's Minutes 12/20/10). Then, on December 28, 2010 the court heard argument on a motion to dismiss filed by the defense and entered CrR 3.5 findings.(RP at 4-25). Ms. Ramsey made no mention of discharging her assigned counsel. On January 12, 2011 the court heard motions *in limne* from both the prosecution and the defense. (RP at 26-68). At this hearing Ms. Ramsey testified before the court for an offer of proof. (RP at 49-65). At this hearing Ms. Ramsey never said anything to the court regarding possible dissatisfaction with her attorney. The trial then commenced on January 13, 2011 as scheduled. (RP at 69).

During the preliminary portion on trial day, and for the first time, Ms. Ramsey gave a speech to the court indicating her disagreement on the defense attorney's strategy. (RP at 78). This declaration was not timely as it was the morning of trial. Nonetheless, during this speech, she did not indicate that she wanted a new attorney and did not articulate proper grounds for a new attorney. In fact the issues she stated were evidentiary issues and it appears that she was unhappy that her attorney would not admit irrelevant evidence. However, it is clear from the case law as stated above that disagreement of trial strategy is not grounds for new counsel. Formal inquiry isn't necessary and Ms. Ramsey was allowed to state her reasons for dissatisfaction on the record.

Further, the defense attorney's performance in this case was clearly more than adequate given the number of motions he filed, his use of an investigator and his vigorous objections during the course of the trial and the verdict of not guilty on the felony charges. As stated above if the attorney's performance is adequate, then prejudice must be shown. Here, the defense offers no allegation of prejudice to the defendant's case from her attorney's performance and the possible lack of new counsel. The defense attorney is allowed to decide the trial strategy and it is only to be reviewed for an abuse of discretion.

Therefore, this assignment of error should be denied.

2) There was no prosecutorial misconduct

To prevail on a claim of prosecutorial misconduct, the defendant must establish " 'that the prosecutor's conduct was both improper and prejudicial in the context of the entire record and the circumstances at trial.' " State v. Magers, 164 Wash.2d 174, 191, 189 P.3d 126 (2008) (*quoting* State v. Hughes, 118 Wash.App. 713, 727, 77 P.3d 681 (2003) (*citing* State v. Stenson, 132 Wash.2d 668, 727, 940 P.2d 1239 (1997))). The "failure to object to an improper remark constitutes a waiver of error unless the remark is so flagrant and ill intentioned that it causes an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury." State v. Thorgerson, 248 P.3d. 43 (2011) (*quoting* State v. Russell, 125 Wash.2d 24, 86, 882 P.2d 747 (1994)); In closing argument the prosecuting attorney has wide latitude to argue

reasonable inferences from the evidence, including evidence respecting the credibility of witnesses. State v. Hoffman, 116 Wash.2d 51, 94–95, 804 P.2d 577 (1991); *see* State v.Fisher, 165 Wash.2d 727 at 747, 202 P.3d 937 (2009).

Here it is clear that there was no prosecutorial misconduct because the statements made by the prosecutor during closing argument reflect actual testimonial evidence. The prosecutor did not argue facts not in evidence but argued testimony and used proper inferences from that testimony. In fact, Sgt. Kolilis clearly testified at trial that: "When I first contacted the Thiemes I asked for Ms. Ramsey and they didn't know who I was talking about. They said that Sharie Rose was there."(RP at 87). Then Mr. Cliff Thieme furthered this fact by testifying that: "A friend introduced her as Sharie Rose." When asked to identify Ms. Ramsey in court by name, Mr. Thieme couldn't because he didn't know her by that name. When asked if Sharie Rose "was the name you knew her by?" He Clearly responded"Yes."(RP at 99). Given this testimony, it is reasonable to infer that Ms. Ramsey was using a different name than her own and that she was the one who had provided the incorrect name.

Nonetheless, even if the court were to believe that those facts were not in evidence, it is clear that the remarks do not rise to the level required for a finding of prosecutorial misconduct. The remarks were not objected to by defense counsel and by arguing allowable inferences, it is clear that there was no ill intention in the remarks. In addition, if the entire closing

argument is viewed as a whole, it is clear that there was more than enough evidence in the entire record for the jury to convict. The evidence presented at trial included court orders outlining a parenting scheme and Ms. Ramsey admitted she moved the girls from home to home to get away from the Clallam County Court order. With all of the evidence viewed as a whole, the prosecutor's reliance on a inference does not taint the jury's decision in anyway.

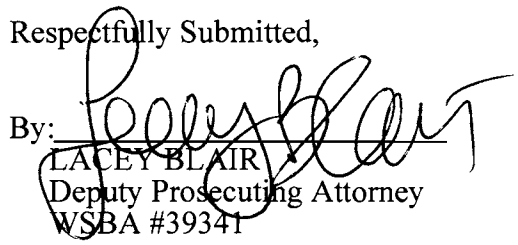
Therefore it is clear from the record that the prosecutor properly argued a reasonable inference from the evidence provided at trial and this assignment of error should be denied.

CONCLUSION

For the reasons set forth, this conviction must be affirmed.

DATED this 9 day of November, 2011.

Respectfully Submitted,



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BY_____
DEPUTY

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

STATE OF WASHINGTON, Respondent, v. SHARIE RAMSEY, Appellant.	No.: 41684-1-II **DECLARATION OF MAILING**

DECLARATION

I, Barbara Chapman hereby declare as follows:

On the 10th day of November, 2011, I mailed a copy of the Brief of Respondent to Maria L. Zink, Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 10th day of November, 2011, at Montesano, Washington.

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