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

STATE OF WASHINGTON, Respondent, v. RASHIED MACEO MITCHELL, Appellant.	)	No. 80538-0-I UNPUBLISHED OPINION

VERELLEN, J. — Rashied Mitchell was convicted of first degree murder following a jury trial. Mitchell was represented by two defense counsel. Following trial, Mitchell received substitute defense counsel and made a motion for a new trial, arguing his trial counsel provided ineffective assistance. The court denied the motion. Mitchell makes the same arguments on appeal. Because the record shows his trial counsel chose a legitimate, reasonable trial strategy and pursued it using reasonable tactics, Mitchell fails to establish defense counsel's performance was deficient and ineffective. The court did not abuse its discretion by denying his motion for a new trial.

Mitchell also argues he received ineffective assistance because the trial court denied his motions for substitute defense counsel. Because Mitchell made his motions after trial began, was able to communicate with counsel, and disagreed over only trial strategy and tactics, he fails to establish the trial court abused its discretion by denying his motions for substitute defense counsel.

Therefore, we affirm.

FACTS

In mid-September of 2016, Tabitha Apling obtained a domestic violence protection order against her boyfriend Rashied Mitchell after an incident at a fast food restaurant. Mitchell was not allowed to have contact with Apling or their sons, then five years old and seven months old, respectively. Mitchell went to live with his mother Renee[1] in her one-bedroom apartment. Apling still wanted Mitchell to see his sons, however, and she relied on Renee for childcare when she was working. Mitchell was struggling emotionally, and at least twice in two weeks, Renee and others called the police after he posted suicidal comments online.

Between September 13 and September 24, Mitchell sent Apling 780 text messages. On September 16, he texted, "You don't realize you have broken me and all of this has gone too far until I'm looking you in your eyes. . . . You can only kick a pit so many times before they lash out and bite."[2] On September 24, Mitchell texted Apling, "It's past fun and games now because I will take my life. . . . I'm going crazy and I'm not stable. . . . I have reached way over my limit where now my sanity is really being affected."[3] Apling was afraid to see Mitchell, but because Renee would be home that night, she agreed to speak with him when picking up the kids after work.

[1] Because Elina Renee Mitchell and her son have the same last name, we refer to Renee by her preferred name.

[2] Report of Proceedings (RP) (June 6, 2019) at 937.

[3] Id. at 919.

Renee saw nothing out of the ordinary with her son when Apling arrived after 10:00 p.m. Mitchell sounded calm when they began talking. Renee was lying down in her bedroom with her seven-month-old grandson. Her older grandson was in the living room with his parents, playing video games. The older grandson soon came running to the bedroom, crying because his "dad had a gun."[4] Renee got up and saw Mitchell walking down the hallway with a handgun pointed at his head. She recognized the gun as her son's because she asked him to get rid of it only a few weeks earlier, and he said he had. Apling was pulling on the gun, trying to get it away from Mitchell's head. Renee took her older grandson into her bedroom, where her younger grandson had fallen asleep, and threw a comforter over him to block his view.

Mitchell told Renee, "Mom, if you call [911], I'm going to shoot [myself and Apling]."[5] Despite his threat, Renee called 911 because Apling asked her to. Mitchell learned 911 had been called and said to Apling, "It's over now. . . . You called the police on me. . . . You called the police. . . . You called the police."[6] Apling said, "Nobody called. Nobody called."[7] Renee saw Mitchell and Apling "wrestling" for the gun, fall over a glass table in the bedroom, and enter the bedroom closet while still wrestling to get the gun.[8] Renee heard a gunshot.

[4] RP (June 10, 2019) at 1006.

[5] Id. at 1010-11.

[6] Ex. 12, at 4.

[7] Id.

[8] RP (June 10, 2019) at 1013.

Mitchell came out of the closet crying and trying to shoot himself in the head, but the gun kept misfiring. Mitchell looked at Renee and said, "Go, Mom!"[9]

Renee ran out the door with the children and to the Federal Way police officers who had just arrived in the parking lot outside. Renee told an officer that her son was arguing with his girlfriend, he had a gun, they were wrestling over it, she heard a gunshot, and she could no longer hear Apling's voice. Inside the apartment, Mitchell placed the gun beneath his jaw and pulled the trigger. Officers outside heard the shot and used their loudspeakers to order Mitchell out of the apartment. He complied, crawling out of the apartment where medics treated and then took him to the hospital. Officers found Apling's body inside the closet. She was killed by a single, close-range gunshot that entered her left, upper back and passed down through her heart.

Mitchell was charged with first and second degree murder, both with domestic violence enhancements and a firearm enhancement. He was also charged with four domestic violence felony violations of a no-contact order and one count of unlawful possession of a firearm.

About one year later in August of 2017, Mitchell moved to dismiss his two assigned defense counsels, arguing he lacked confidence in them because they were inexperienced and had not communicated sufficiently with him. The court denied his motion. In October of 2017, Mitchell again moved to dismiss his attorneys, and the court denied his motion. On April 24, 2018, one month before

[9] RP (June 10, 2019) at 1024.

Mitchell's trial was set, both defense counsel sought the court's permission to withdraw because Mitchell was unwilling to communicate with them, resulting in "a complete breakdown in communication."[10] The court granted the motion and ordered the appointment of substitute counsel. Mitchell's trial was continued.

Kenan Isitt associated as defense counsel in May of 2018. Jason Moore associated as defense co-counsel in November of 2018. They considered whether a diminished capacity defense was viable but decided against it. When trial began, Isitt and Moore planned on arguing the shooting was unintentional and resulted either from voluntary intoxication or from an accident when Apling tried to take the gun from Mitchell to stop him from killing himself. Over the course of trial, they decided to focus solely on the accident theory and not call their intoxication expert.

The State called multiple witnesses to testify, including Renee. On the third day of trial, Mitchell moved for dismissal of his defense counsel and appointment of substitute counsel. The court denied the motion. On the sixth day of trial, Mitchell again moved to substitute new defense counsel. The court denied the motion.

The jury found Mitchell guilty on all charges, including the enhancements.[11] One month later, Isitt and Moore sought permission to withdraw because they could no longer communicate at all with Mitchell. The court granted permission to

[10] RP (Apr. 24, 2018) at 45.

[11] The court granted the State's motion to vacate the second degree murder conviction on double jeopardy grounds.

withdraw, appointed new defense counsel, and scheduled a date to hear Mitchell's CrR 7.5 motion for new trial.

Mitchell argued a new trial was required because Isitt and Moore provided ineffective assistance by "fail[ing] to properly investigate or develop a diminished capacity defense, fail[ing] to properly investigate and prepare a voluntary intoxication defense, and fail[ing] to effectively cross examine" Renee.[12] The court heard oral argument, made findings of fact, concluded Isitt and Moore did not provide ineffective assistance, and denied the motion for a new trial. Mitchell was sentenced to 720 months' incarceration.

Mitchell appeals.

ANALYSIS

I. Motion for New Trial

We review a decision to deny a motion for a new trial for abuse of discretion.[13] A trial court abuses its discretion when its decision is based upon untenable evidentiary grounds or was made for untenable legal reasons.[14] We apply this deferential standard because "'the trial judge who has seen and heard

[12] Clerk's Papers (CP) at 592.

[13] State v. Hawkins, 181 Wn.2d 170, 179, 332 P.3d 408 (2014) (citing State v. Williams, 96 Wn.2d 215, 221, 634 P.2d 868 (1981)).

[14] State v. Berry, 129 Wn. App. 59, 68, 117 P.3d 1162 (2005) (citing State v. Jackman, 113 Wn.2d 772, 777, 783 P.2d 580 (1989)).

the witnesses is in a better position to evaluate and adjudge than can we from a cold, printed record.'"[15]

Mitchell moved for a new trial under CrR 7.5(a)(8), which authorizes a new trial "when it affirmatively appears that a substantial right of the defendant was materially affected . . . . (8) That substantial justice has not been done." As he did below, Mitchell argues a new trial is required because Isitt and Moore did not provide effective assistance of counsel because, first, they failed to research and investigate either a diminished capacity or voluntary intoxication defense, and second, they failed to adequately cross-examine the State's witnesses.

An allegation of ineffective assistance presents a mixed question of law and fact.[16] When the trial court's findings of fact are unchallenged, we treat them as verities.[17] We review the trial court's conclusions of law de novo.[18]

We presume defense counsel's performance was effective.[19] To demonstrate he received ineffective assistance, Mitchell must show both that counsel's performance was deficient and that the deficient performance caused

[15] Hawkins, 181 Wn.2d at 179 (quoting State v. Wilson, 71 Wn.2d 895, 899, 431 P.2d 221 (1967)).

[16] State v. Lopez, 190 Wn.2d 104, 116, 410 P.3d 1117 (2018) (citing In re Brett, 142 Wn.2d 868, 873, 16 P.3d 601 (2001)).

[17] In re Davis, 152 Wn.2d 647, 679, 101 P.3d 1 (2004) (citing State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994)).

[18] Lopez, 190 Wn.2d at 117 (quoting Brett, 142 Wn.2d at 873-74).

[19] Davis, 152 Wn.2d at 673 (citing State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995)).

prejudice.[20] "'[S]trategic choices made after thorough investigation of law and facts relevant to plausible options'" are generally not deficient.[21]

Mitchell argues a new trial was required because his counsel did not present viable defenses due to inadequate investigation. Effective assistance "'includes a "reasonable investigation" by defense counsel,'"[22] and can also include "'expert assistance necessary to an adequate defense.'"[23] The appropriate "'degree and extent of investigation required will vary depending upon the issues and facts of each case.'"[24]

The same judge that presided over the trial considered the motion for a new trial and made findings of fact in his oral ruling on the motion for a new trial.[25] Mitchell has not challenged those findings, making them verities.[26]

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[20] Lopez, 190 Wn.2d at 109 (citing In re Pers. Restraint of Canha, 189 Wn.2d 359, 377, 402 P.3d 266 (2017)).

[21] State v. Fedoruk, 184 Wn. App. 866, 880, 339 P.3d 233 (2014) (quoting Strickland v. Washington, 466 U.S. 668, 690-91, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)).

[22] Lopez, 190 Wn.2d at 116 (quoting State v. Boyd, 160 Wn.2d 424, 434, 158 P.3d 54 (2007)).

[23] Id. (quoting State v. Punsalan, 156 Wn.2d 875, 878, 133 P.3d 934 (2006)).

[24] Fedoruk, 184 Wn. App. at 880 (quoting State v. A.N.J., 168 Wn.2d 91, 111, 225 P.3d 956 (2010)).

[25] Mitchell asserts the trial court did not make findings of fact. But the court's oral ruling expressly referred to making findings, RP (Sept. 20, 2019) at 202, and it was clearly making "'assertion[s] that a phenomenon . . . happened . . . independent of or anterior to any assertion[s] as to its legal effect.'" See Williams, 96 Wn.2d at 221 (defining "finding of fact") (quoting Leschi Improvement Council v. Highway Comm'n, 84 Wn.2d 271, 283, 525 P.2d 774 (1974)).

[26] Davis, 152 Wn.2d at 679.

The findings and the record do not support Mitchell's contentions. The trial court found Isitt and Moore "reviewed or investigated" several experts about the possibility of a diminished capacity defense.[27] It found that "[n]one of the witnesses that were investigated supported the idea that there was a diminished capacity" and that there was a "lack of medical support for the diminished capacity."[28] Regarding the voluntary intoxication defense, it "did not find that there was a nexus between the . . . intoxication and the actual crime for which Mr. Mitchell was convicted."[29] It found that the expert hired to evaluate and testify about the effects of voluntary intoxication on Mitchell's ability to form intent "was unable to opine on whether there was an intent."[30] And, based upon the trial record, it found "the accident defense was viable."[31]

The trial judge was in the best position to evaluate Mitchell's motion.[32] The court's findings about Isitt and Moore's performance are unchallenged and are supported by the record. "Once counsel reasonably selects a defense . . . 'it is not deficient performance to fail to pursue alternate defenses.'"[33] Thus, Mitchell fails

[27] RP (Sept. 20, 2019) at 198.

[28] Id. at 199, 201.

[29] Id. at 202.

[30] Id. at 199.

[31] Id. at 198.

[32] Hawkins, 181 Wn.2d at 179 (quoting Wilson, 71 Wn.2d at 899).

[33] Davis, 152 Wn.2d at 722 (quoting Rios v. Rocha, 299 F.3d 796, 807 (9th Cir. 2002)).

to prove that Isitt and Moore conducted an unreasonable investigation under the circumstances or did not present a viable defense.

Mitchell also argues defense counsel failed to research the relevant law for a voluntary intoxication defense because they believed Mitchell would have to testify. During a discussion in limine, Isitt explained "there would be no basis for a voluntary intoxication defense" if Mitchell did not testify.[34]

A defendant is entitled to a voluntary intoxication instruction when, among other requirements, there is substantial evidence of drinking and evidence that the drinking affected the defendant's ability to form the intent alleged.[35] Mitchell told the intoxication expert that he consumed a large bottle of brandy and two 1.5 ounce bottles of brandy on the day of the killing, but no witness testified to this. Although Renee testified about Mitchell's overconsumption of alcohol generally, none of her testimony indicated he drank that day. And because the police never ordered a blood draw or urine test for Mitchell, his medical records do not indicate how much alcohol he drank. The only evidence showing Mitchell drank that day was a small, empty bottle of brandy in Renee's kitchen and the smell of alcohol on his breath. Renee also testified that her son sounded "calm" and seemed normal when Apling arrived.[36]

[34] RP (June 4, 2019) at 833.

[35] State v. Kruger, 116 Wn. App. 685, 691, 67 P.3d 1147 (2003) (citing State v. Gallegos, 65 Wn. App. 230, 238, 828 P.2d 37 (1992)).

[36] RP (June 10, 2019) at 1005.

To the extent other evidence could have been used as proof of voluntary intoxication, the record is also unsupportive. Mitchell was on prescription fentanyl the day of the killing,[37] but the intoxication expert explained fentanyl would not, without more, make him unable to form the intent to kill. Mitchell was the only witness who could establish he drank enough alcohol or took enough drugs to lose the ability to form intent that day. Because having him testify would be incredibly risky, he fails to show defense counsel was deficient by making a strategic decision on that basis.

Mitchell contends defense counsel were ineffective because they did not sufficiently cross-examine Renee. "Courts generally entrust cross-examination techniques, like other matters of trial strategy, to the professional discretion of counsel. . . . [W]e need not determine why trial counsel did not cross examine if that approach falls within the range of reasonable representation."[38] Whether to cross-examine a witness is often tactical because it could open the door to damaging evidence or not provide evidence useful to the defense.[39]

Renee testified and was a "key" witness for the defense.[40] Her testimony was critical to establishing Mitchell's accident theory. For example, she testified that Mitchell never pointed the gun at Apling, only pointing it at himself or straight

[37] Mitchell also had a valid prescription for oxycodone to help manage his chronic pain, but no evidence demonstrated he had taken it that day.

[38] Davis, 152 Wn.2d at 720.

[39] In re Brown, 143 Wn.2d 431, 451, 21 P.3d 687 (2001) (citing In re Pers. Restraint of Gentry, 137 Wn.2d 378, 404, 972 P.2d 1250 (1999)).

[40] RP (June 3, 2019) at 530.

up in the air. She also testified about Mitchell and Apling "wrestling" for the gun and how Apling was pulling on the gun.[41]

Mitchell argues he received ineffective assistance because of the following exchange with defense counsel on cross-examination:

> [Defense counsel]: And during this struggle [for the gun] was when they fell over the glass table?
>
> [Renee]: Yes.
>
> [Defense counsel]: And that glass table was adjacent to the closet, correct?
>
> [Renee]: Yes.
>
> [Defense counsel]: And correct me if I'm wrong, they fell over the glass table during the struggle for the gun, and then they get back up again?
>
> [Renee]: Yes.
>
> [Defense counsel]: And they were still struggling for the gun at that point?
>
> [Renee]: Yes.
>
> [Defense counsel]: Was [Mitchell] trying to point the gun at his head still?
>
> [Renee]: Yes.
>
> [Defense counsel]: And then they fell into the closet?
>
> [Renee]: Yes. I don't know if they fell into the closet. I just know that the struggle, you know, led them into the closet.
>
> [Defense counsel]: They struggled into the closet. And was it fairly quickly after that that you heard the gunshot?

[41] RP (June 10, 2019) at 1013.

[Renee]: Yes.

[Defense counsel]: You say a few seconds?

[Renee]: Yes.[42]

Mitchell argues defense counsel should have refreshed Renee's recollection to establish that Mitchell and Apling fell into the closet. But the record does not show it would have been appropriate to refresh Renee's recollection. Before a witness's recollection may be refreshed, it must be demonstrated that their memory needs refreshing.[43] The record does not show Renee could not remember the events leading up to the shooting, so seeking to refresh her recollection would not have been appropriate. Thus, Mitchell's real argument is that defense counsel should have impeached Renee with a prior inconsistent statement. But Renee was a key defense witness. Deciding against undermining the credibility of a key defense witness is reasonable, especially when her testimony is consistent with the defense's theory of the case. The implication is the same for the jury whether Mitchell and Apling fell into the closet or struggled into the closet. Because "we need not determine why trial counsel did not cross examine if that approach falls within the range of reasonable representation,"[44] Mitchell fails to establish the decision not to impeach Renee was deficient.[45]

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[42] Id. at 1049-50 (emphasis added).

[43] State v. McCreven, 170 Wn. App. 444, 475, 284 P.3d 793 (2012) (citing State v. Little, 57 Wn.2d 516, 521, 358 P.2d 120 (1961)).

[44] Davis, 152 Wn.2d at 720.

[45] We also note that Renee's prior statements were consistent with her trial testimony. Mitchell relies upon several documents, including an application for a search warrant written by the lead investigating detective, as proof Renee said

Mitchell's trial counsel conducted a reasonable investigation into defense theories, chose a reasonable case theory based on the evidence, and made reasonable strategic decisions around cross-examination.[46] Mitchell fails to establish his defense counsel's performance was deficient.[47] Because their performance was not deficient, he fails to establish ineffective assistance of counsel.[48]

II. Motion to Substitute Counsel

Mitchell argues the court deprived him of the right to effective defense counsel when it denied his motions for substitute counsel during trial. We review a trial court's decision to deny a motion for substitute counsel for abuse of discretion.[49]

Apling and Mitchell fell into the closet. But Renee told the detective that Mitchell and Apling wrestled or went into the closet. She did not say they fell. During the interview, the detective recast Renee's statement as Mitchell and Apling "tumbling" into the closet, CP at 473, and Renee did not correct him. This detail was then repeated in the detective's application for a search warrant and his certificate for determination of probable cause.

[46] To the extent Mitchell argues limited cross-examination prevented him from establishing his theories of voluntary intoxication or diminished capacity, it is immaterial because the accident theory was valid and reasonable. "Once counsel reasonably selects a defense . . . 'it is not deficient performance to fail to pursue alternate defenses.'" Davis, 152 Wn.2d at 722 (quoting Rios, 299 F.3d at 807).

[47] See Fedoruk, 184 Wn. App. at 880 (reasonable strategic decisions made after investigation of relevant law and facts are not deficient).

[48] Lopez, 190 Wn.2d at 109.

[49] State v. Hampton, 184 Wn.2d 656, 663, 361 P.3d 734 (2015) (citing State v. Aguirre, 168 Wn.2d 350, 365, 229 P.3d 669 (2010)).

An indigent defendant has the right to counsel but not to the counsel of their choice.[50] An indigent defendant can move for substitute counsel upon a showing of good cause, such as a total breakdown in communications or an irreconcilable conflict.[51] A defendant's loss of trust or confidence in their attorney does not warrant substituting new counsel.[52]

Mitchell appears to argue irreconcilable conflict pretrial between himself and his attorneys led to a total breakdown in communications by the time of trial. But when Mitchell moved for substitute counsel on the third day of trial, Moore told the court, "I don't have any issues communicating with Mr. Mitchell."[53] Mitchell did not correct or disagree with him. When Mitchell again moved for substitute counsel on the sixth day of trial, he did not mention poor communication. And a post-trial declaration from Mitchell filed in support of his CrR 7.5 motion details multiple meetings both before and during trial in which Isitt, Moore, and Mitchell communicated about his defense.[54] The record does not show a total breakdown in communication before or during trial.

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[50] Id. at 662-63 (citing United States v. Gonzalez-Lopez, 548 U.S. 140, 144, 151, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006)).

[51] State v. Thompson, 169 Wn. App. 436, 457, 290 P.3d 996 (2012) (citing State v. Schaller, 143 Wn. App. 258, 267-68, 177 P.3d 1139 (2007)).

[52] Id. (citing State v. Stenson, 132 Wn.2d 668, 734, 940 P.2d 1239 (1997)).

[53] RP (June 3, 2019) at 547.

[54] See CP at 815 ("Prior to trial, I had many questions for defense counsel Isitt and Moore about my trial defense . . . . They told me that diminished capacity was a very hard defense to prove . . . They also said they were probably not going to introduce anything about my mental health at trial. . . . I was told they were thinking about an intoxication defense. . . . The next day, Mr. Isitt and Mr. Moore

The question is whether Mitchell's disagreements with his attorneys amounted to an irreconcilable conflict. A court weighs three factors to determine whether an irreconcilable conflict existed: "(1) the extent of the conflict, (2) the adequacy of the inquiry, and (3) the timeliness of the motion."[55]

Regarding the third factor, Mitchell's motions for substitute counsel were made during a trial that had already been delayed by more than one year following the replacement of Mitchell's original defense counsel. Jury voir dire alone lasted two-and-a-half days. As the trial judge explained when denying Mitchell's second motion on the sixth day of trial, "I can't in good conscience discharge counsel at this stage of the game."[56]

"[O]ne of the basic limits on the right to counsel of choice is 'a trial court's wide latitude in balancing the right to counsel of choice . . . against the demands of its calendar.'"[57] "'[W]here 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.'"[58]

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came to see me. . . . [During trial] Mr. Moore told me that I wouldn't like his opening [statement].").

[55] 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)).

[56] RP (June 11, 2019) at 1107.

[57] Hampton, 184 Wn.2d at 663 (alteration in original) (quoting Gonzalez-Lopez, 548 U.S. at 152).

[58] Stenson, 142 Wn.2d at 732 (quoting United States v. Williams, 594 F.2d 1258, 1260-61 (9th Cir. 1979)).

Because a jury had been empaneled to hear a long-delayed trial, this factor strongly favors upholding the trial court's decision.

For the second factor, Mitchel contends the court failed to conduct an adequate inquiry into his motion. But the record shows the court heard Mitchell's motions as soon as they were raised and took them seriously. The colloquies were conducted in limine, Mitchell was given time to speak without interference from the court or counsel, and the judge asked defense counsel questions to explore and test Mitchell's allegations. The court also invited Mitchell to make a written motion for reconsideration after denying his first motion, which was made orally.

Mitchell analogizes to United States v. Nguyen,[59] but it is not apt. Unlike that case, the judge tested Mitchell's allegations by asking defense counsel probing questions; Mitchell did not provide extrinsic evidence showing he could not communicate with his attorneys; defense counsel did not agree that all communication had broken down; the trial had been going on for several days; and the judge had been observing Mitchell and his attorneys during trial. Mitchell fails to demonstrate the court's inquiry was inadequate. This factor favors upholding the trial court's decision.

For the first factor, the extent of the conflict, we consider "the extent and nature of the breakdown in communication between attorney and client" and the

[59] 262 F.3d 998 (9th Cir. 2001).

breakdown's effect on representation.[60] The nature of the conflict between Mitchell and defense counsel was, as the trial court noted, "a strategy dispute."[61] In his first motion for substitute counsel, Mitchell pointed out disagreements with defense counsel about which witnesses to call, whether to raise a mental health defense, and whether to defer to his opinions on which jurors to empanel. When Mitchell made his second motion for substitute counsel, he said, "I don't believe that I have been defended the right way"[62] because of defense counsel's decisions about which witnesses to call, questions to ask witnesses on direct and cross-examination, and other evidentiary decisions.

The core concern of denial of a motion to substitute new counsel is denial of the defendant's Sixth Amendment right to effective assistance of counsel.[63] Legitimate trial strategy and tactics "cannot serve as a basis for a claim" for ineffective assistance of counsel.[64] Mitchell and defense counsel communicated about trial strategy and tactics but disagreed. As discussed above, Mitchell has not demonstrated Isitt and Moore provided deficient representation. This factor favors upholding the trial court's decision.

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[60] Stenson, 142 Wn.2d at 724.

[61] RP (June 3, 2019) at 545.

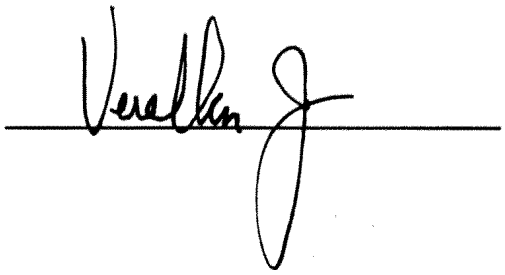
[62] RP (June 11, 2019) at 1101.

[63] See Stenson, 142 Wn.2d at 722 ("If the relationship between lawyer and client completely collapses, the refusal to substitute new counsel violates the defendant's Sixth Amendment right to effective assistance of counsel.") (citing Moore, 159 F.3d at 1158).

[64] State v. McNeal, 145 Wn.2d 352, 362, 37 P.3d 280 (2002) (citing State v. Adams, 91 Wn.2d 86, 90, 586 P.2d 1168 (1978)).

Because the record does not show a total breakdown in communication or an irreconcilable conflict, Mitchell fails to show the trial court abused its discretion by denying his motions for substitute defense counsel.

Therefore, we affirm.



WE CONCUR: