IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. SHARIE R. RAMSEY, aka SHARON ROSE CLENDENEN, Appellant.	No. 41684-1-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — Sharie R. Ramsey appeals her conviction of two counts of second degree custodial interference, arguing that the trial court violated her constitutional right to effective assistance of counsel by denying her motions to discharge counsel and that prosecutorial misconduct during closing argument denied her a fair trial. Finding no error, we affirm.

Facts

Ramsey and Hassan Elatiki are the parents of twin girls born in 1996. In 2008, Elatiki filed an action in Clallam County Superior Court, seeking visitation rights with his daughters. The court appointed a guardian ad litem (GAL) to oversee the visitation and issued an order barring Ramsey from relocating with the children outside Clallam County without notifying the court. The court also ordered that Elatiki was to have phone and personal contact with the girls once a

week and that the girls were to attend public school in Port Angeles.

In September 2009, the GAL learned that the girls had not been in school for two days. After the GAL reported that no one was at the Ramsey residence, the Clallam County Superior Court issued a writ of habeas corpus for the return of the girls to the court. That court subsequently issued a judgment and order and parenting plan that granted immediate and full custody of the children to Elatiki.

A few months later, authorities learned that Ramsey and the girls were staying at a home in Grays Harbor. Sergeant Don Kolilis went to the home shortly before 10:00 pm and saw the girls in a window. He spoke to the homeowners, Cliff and Deborah Thieme, who did not recognize Ramsey's name but said a woman named Sharie Rose was staying with them. Rose and her daughters had been staying with the Thiemes for about 10 days.

Ramsey and the girls came downstairs, and Sergeant Kolilis explained that a court order required him to take the girls into custody. After the girls went upstairs to pack their belongings, Ramsey told the sergeant that the order was illegitimate and immoral.

When the girls did not return, Sergeant Kolilis went upstairs and found them missing. He also found a notebook with a list of phone numbers and addresses. When he confronted Ramsey, she was unwilling to assist in locating the girls, and he arrested her for obstruction. Law enforcement found the girls walking along a highway the next morning.

The State charged Ramsey with two counts of first degree custodial interference. Following a pretrial hearing, the trial court found Ramsey's prearrest statements admissible and concluded the hearing by saying, "Thank you." Report of Proceedings (RP) (Dec. 16, 2010) at 18. Ramsey then volunteered, "Excuse me. I would like to say something. I would like to

dismiss him." RP (Dec. 16, 2010) at 19. The court stated it was at recess.

Before voir dire and on the first day of trial, defense counsel stated that Ramsey wanted to put some complaints about him on the record. Ramsey told the court that after she gave counsel a four-page explanation of her case, he failed to meet with her again for almost two weeks. She also complained that counsel had not obtained the evidence necessary to defend her, despite her efforts to have him do so. She argued that she knew of records showing that Elatiki had abandoned the girls and refused to pay child support, and that she needed these records for her defense. The court informed Ramsey that she was not to litigate her case and commented that a failure to pay support did not eliminate a parent's visitation rights under the law. The court noted that Ramsey's complaints about her attorney were on the record and proceeded to jury selection.

Elatiki, Sergeant Kolilis, and the GAL testified for the State, as did Cliff Thieme. Cliff Thieme testified that a friend had introduced Ramsey to him as Sharie Rose. Ramsey testified on her own behalf and denied telling Cliff Thieme her last name was Rose.

During closing argument, the State asserted that Ramsey had been introduced to Cliff Theime as Sharie Rose and added, "She uses a fake name." RP (Jan. 14, 2011) at 126. The jury found Ramsey guilty of the lesser included crime of second degree custodial interference on both counts. The trial court imposed a standard range sentence.

Discussion

Right to Counsel

Ramsey argues that the trial court deprived her of the right to counsel guaranteed by the federal and state constitutions when it denied her motions to discharge trial counsel. U.S. Const. amend. VI; Wash. Const. art. I, § 22.

A criminal defendant has a constitutional right to receive effective representation from his attorney. *Wheat v. United States*, 486 U.S. 153, 159, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988). This right does not guarantee a defendant the right to her counsel of choice or to counsel with whom she has a meaningful attorney-client relationship. *Wheat*, 486 U.S. at 159; *Daniels v. Woodford*, 428 F.3d 1181, 1197 (9th Cir. 2005), *cert. denied*, 550 U.S. 968 (2007); *State v. Varga*, 151 Wn.2d 179, 200, 86 P.3d 139 (2004). Furthermore, a qualified appointed counsel, and not the client, is generally 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).

The defendant must show good cause to justify appointment of new counsel, as shown by a conflict of interest, an irreconcilable conflict, or a complete breakdown in attorney-client communication. *Varga*, 151 Wn.2d at 200. Generally, a defendant's loss of confidence or trust in her attorney is not sufficient reason to appoint a new one. *Varga*, 151 Wn.2d at 200. But if the attorney-client relationship completely collapses, the refusal to substitute new counsel violates the defendant's right to effective assistance of counsel. *United States v. Moore*, 159 F.3d 1154, 1158 (9th Cir. 1998). Whether a defendant's dissatisfaction with her attorney is meritorious or justifies the appointment of new counsel is a matter within the trial court's discretion. *State v. Schaller*, 143 Wn. App. 258, 267, 177 P.3d 1139 (2007), *review denied*, 164 Wn.2d 1015 (2008).

In determining whether a trial court abused its discretion in denying a motion for new counsel based on a claim of irreconcilable conflict, we must consider (1) the extent of the conflict, (2) whether the trial judge made an appropriate inquiry into the extent of the conflict, and (3) the timeliness of the motion to substitute counsel. *Moore*, 159 F.3d at 1158-59; *State v. Thompson*, No. 63241-8-I, 63709-6-I, 2012 WL 2877533, at *7 (Wash. Ct. App., July 16, 2012). When inquiring into the extent of the conflict, courts have examined both the extent and nature of the breakdown in communication between attorney and client and the breakdown's effect on the representation the client actually received. *Thompson*, 2012 WL 2877533, at *7; *Schaller*, 143 Wn. App. at 270.

Ramsey cites several decisions from the Ninth Circuit Court of Appeals to support her claim of irreconcilable conflict. In one case, the defendant went to trial with an attorney with whom he would not cooperate or communicate after the trial court summarily denied four motions for new counsel. *Brown v. Craven*, 424 F.2d 1166, 1169 (9th Cir. 1970). The defendant did not testify and his resulting defense was perfunctory. *Brown*, 424 F.2d at 1169. The Ninth Circuit found it not unreasonable to believe that the defendant would have been convicted of a lesser included offense had he been represented by an attorney in whom he had confidence. *Brown*, 424 F.2d at 1170. In *Moore*, the defendant and his attorney had a serious argument when counsel failed to disclose an important development in the case. 159 F.3d at 1159. The defendant threatened to sue for malpractice, and his attorney felt physically threatened as a result. *Moore*, 159 F.3d at 1159. These facts, coupled with counsel's limited investigative efforts, led the court to find a breakdown comparable to that in *Brown*. *Moore*, 159 F.3d at 1160.

Ramsey also relies on the Ninth Circuit's finding of similar conflict in *United States v.*

Nguyen, 262 F.3d 998 (9th Cir. 2001). In *Nguyen*, there was a "complete breakdown" in the attorney-client relationship. 262 F.3d at 1004. By the time of trial, Nguyen would not speak to his attorney and, thus, could not confer with him about trial strategy, additional evidence, or even receive explanations of the proceedings. *Nguyen*, 262 F.3d at 1004. As a result, he was left to fend for himself. *Nguyen*, 262 F.3d at 1004. Ramsey also cites *Daniels*, where the defendant refused to communicate with his attorney for reasons the Ninth Circuit found understandable. 428 F.3d at 1198. The defendant did not testify in his own behalf, and defense counsel presented an "implausible" defense. *Daniels*, 428 F.3d at 1199. Communications did not break down because they never existed. *Daniels*, 428 F.3d at 1199; *see also United States v. Adelzo-Gonzalez*, 268 F.3d 772, 780 (9th Cir. 2001) (citing several examples of serious discord and friction to show that the attorney-client relationship was "antagonistic, lacking in trust, and quarrelsome").

Ramsey argues that the extent of the conflict between her and defense counsel was worse than the conflicts described above, but the record does not support her claim. She complained at a single hearing about her attorney's failure to pursue evidence that the trial court correctly informed her was irrelevant. After she made those complaints, there was no further evidence of discord between her and defense counsel. She testified on her own behalf, asserting her belief that Elatiki had abandoned their children, but the court sustained the State's objections to defense counsel's questions about Elatiki's failure to pay child support. Defense counsel moved for dismissal several times and made a lengthy closing argument. Although he did not obtain an acquittal, he did succeed in convincing the jury to convict her of a lesser included offense. There is simply no evidence of a breakdown in communication or representation similar to the

breakdowns in the federal cases cited above.

The second factor to consider in assessing whether the trial court erred in denying a motion for new counsel is the extent of the trial court's inquiry into any potential conflict. We first note that Ramsey's only express motion for new counsel came after the trial court had recessed for the day. Ramsey made no mention of any unhappiness with her attorney during two subsequent hearings and waited until the first day of trial to complain about counsel's refusal to pursue certain evidence. Even if we agree with Ramsey that she made two attempts to discharge her attorney, a formal inquiry by the court was not essential. *See Schaller*, 143 Wn. App. at 271 (formal inquiry is not always essential where the defendant otherwise states his reasons for dissatisfaction on the record). The trial court allowed Ramsey to fully express her complaints, and we do not see that they warranted further inquiry.

Finally, we consider the timeliness of Ramsey's motions. The first came after the court had recessed, and Ramsey did not renew her complaints until the first day of trial. The Ninth Circuit stated in *Daniels* that even if the trial court becomes aware of a conflict on the eve of trial, a motion to substitute counsel is timely if the conflict is serious enough to justify the delay. 428 F.3d at 1200. "This is particularly true where the trial court has reason to know of the conflict months before the trial but does not inquire into the conflict." *Daniels*, 428 F.3d at 1200.

The record before us does not demonstrate that a serious conflict existed either on the eve of trial or months before. The goal of the right to counsel 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." *Wheat*, 486 U.S. at 159. The goal described in *Wheat* was realized here, and we see no abuse of discretion in the trial court's handling of Ramsey's

complaints about her attorney.

Prosecutorial Misconduct

Ramsey argues next that the prosecuting attorney committed misconduct sufficient to deny her a fair trial when he argued in closing that she had used a false name.

To prevail on a claim of prosecutorial misconduct, a defendant must show "'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 Wn.2d 174, 191, 189 P.3d 126 (2008) (quoting *State v. Hughes*, 118 Wn. App. 713, 727, 77 P.3d 681 (2003)). To establish prejudice, the defendant must prove that there is a substantial likelihood that the misconduct affected the verdict. *Magers*, 164 Wn.2d at 191.

In determining whether prosecutorial misconduct occurred, we look first to whether the defendant objected to the alleged misconduct. *Magers*, 164 Wn.2d at 191. The failure to object waives a claim of error unless the remark was so flagrant and ill intentioned that it caused an enduring and resulting prejudice that could not have been cured with an admonition to the jury. *State v. Thorgerson*, 172 Wn.2d 438, 443, 258 P.3d 43 (2011).

We review a prosecutor's comments during closing argument in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the jury instructions. *State v. Boehning*, 127 Wn. App. 511, 519, 111 P.3d 899 (2005). A prosecutor has wide latitude in closing argument to draw reasonable inferences from the evidence and to express such inferences to the jury. *Boehning*, 127 Wn. App. at 519.

The evidence revealed that Ramsey and her children were staying with the Thiemes when Sergeant Kolilis attempted to execute the writ of habeas corpus. When the sergeant asked the

Thiemes about Sharie Ramsey, they did not recognize that name but said a woman named Sharie Rose was staying with them. Cliff Thieme testified that Ramsey was introduced to him as Sharie Rose. During cross-examination, Ramsey denied telling Cliff Thieme her last name was Rose. The State contended during closing argument that Ramsey was introduced to the Thiemes as Sharie Rose and, thus, used a fake name in an attempt to elude law enforcement. The defense did not object, perhaps because this was a legitimate inference to draw from the evidence. We see no misconduct and decline to consider this issue further.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

VAN DEREN, J.

JOHANSON, A.C.J.