

**FILED**  
**OCTOBER 2, 2012**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

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

STATE OF WASHINGTON,	)	No. 29325-4-III
	)	
Respondent,	)	
	)	
v.	)	
	)	
EMORY E. REEVES,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	
	)	

Kulik, J. —Emory Reeves moved to substitute counsel and continue his trial on the day before trial. The court had previously granted six continuances. Mr. Reeves stated his dissatisfaction with his current attorney but the court denied the motion. The jury found Mr. Reeves guilty of second degree assault. Mr. Reeves appeals, challenging the denial of his motion for substitution of counsel and continuance. We conclude that the trial court did not abuse its discretion in denying the motion, and we affirm the conviction for second degree assault.

FACTS

Spokane County charged Emory Reeves with second degree assault. The trial

court scheduled his trial for January 2010. The court continued the trial twice. Then, Mr. Reeves' first attorney, Jeff Leslie, withdrew from the case based on a conflict of interest. Mr. Reeves was assigned a new attorney, Terence Ryan. The trial court granted three more continuances, with the last continuance granted to the State due to the unavailability of a witness.

Trial was set for August 2, 2010. On Friday, July 30, 2010, Mr. Reeves moved to substitute counsel and for a continuance. Mr. Ryan stated that communication with his client had completely broken down. Mr. Ryan also stated that his client felt uncomfortable and lacked confidence in him.

Mr. Reeves testified that he had not been represented the way he wanted. Specifically, he said that he had miniscule contacts with Mr. Ryan and that things were "blown off" "that should have been taken care of." Report of Proceedings (July 30, 2010) (RP) at 9. Mr. Reeves further stated that "[he wanted] to make sure that every possible thing has been taken care of." RP at 9.

Mr. Ryan advised the court that Mr. Reeves contacted and retained attorney Tracy Collins, and that Mr. Reeves wanted Mr. Collins to represent him. During the hearing, the trial court spoke with Mr. Collins by telephone. Mr. Collins was on vacation in Missouri. Mr. Collins acknowledged Mr. Reeves had retained him, but informed the

court that he would not return until August 8. Mr. Collins requested a 60-day continuance.

The trial court noted the number of continuances in the case. The court held that a continuance would prejudice the State because interviews become stale and witnesses disappear. The court also noted that Mr. Ryan was ready for trial and that Mr. Collins was not. The trial court observed that the case was about one year old and that a typical case involving a second degree assault charge did not take that long.

The trial court stated its belief that Mr. Ryan was competent. The court denied the motion for substitution and continuance.

#### ANALYSIS

To overturn the denial of a motion for a continuance, the facts must show that the trial court abused its sound discretion. *Barrinuevo v. Barrinuevo*, 47 Wn.2d 296, 300, 287 P.2d 349 (1955). Unless the trial court manifestly abused its discretion or failed to exercise its discretion, the appellate court will not overturn its ruling. *State v. Miles*, 77 Wn.2d 593, 597-98, 464 P.2d 723 (1970). A trial court abuses its discretion when its decision was “manifestly unreasonable” or “exercised on untenable grounds, or for untenable reasons.” *City of Des Moines v. Personal Property Identified as \$81,231 in U.S. Currency*, 87 Wn. App. 689, 698, 943 P.2d 669 (1997).

A defendant has a constitutional right to an attorney of his own choice. U.S. Const. amend. VI. However, limits to this right exist when a defendant seeks a continuance to substitute attorneys near the time of trial. *State v. Chase*, 59 Wn. App. 501, 506, 799 P.2d 272 (1990) (quoting *State v. Garcia*, 92 Wn.2d 647, 655-56, 600 P.2d 1010 (1979)). “[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.” *In re Pers. Restraint of Stenson*, 142 Wn.2d 710, 732, 16 P.3d 1 (2001) (quoting *United States v. Williams*, 594 F.2d 1258, 1260-61 (9th Cir. 1979)).

We determine whether the trial court properly denied a motion for a continuance sought to obtain new counsel based on the following four factors: (1) whether the court had granted previous continuances at the defendant’s request; (2) whether the defendant had some legitimate cause for dissatisfaction with counsel, even though it fell short of likely incompetent representation; (3) whether available counsel is prepared to go to trial; and (4) whether the denial of the motion is likely to result in identifiable prejudice to the defendant’s case of a material or substantial nature. *State v. Roth*, 75 Wn. App. 808, 825, 881 P.2d 268 (1994).

In addition, the trial court should consider the defendant’s interest in counsel of his

choice and the ““public’s interest in prompt and efficient administration of justice.”” *Id.* at 824-25 (quoting *Linton v. Perini*, 656 F.2d 207, 209 (6th Cir. 1981)).

A defendant must show good cause if there are communication difficulties that require new substitute counsel. *State v. Schaller*, 143 Wn. App. 258, 267, 177 P.3d 1139 (2007). A dispute over strategy or general dissatisfaction with counsel’s representation is not sufficient to appoint new counsel. *State v. Price*, 126 Wn. App. 617, 634, 109 P.3d 27 (2005).

With regard to continuances previously granted, the defendant in *Roth* had already received one continuance and had competent counsel. *Roth*, 75 Wn. App. at 826. The trial court did not want to condone further delay. *Id.* at 826-27. The appellate court held that the “trial court’s decision that the prompt and efficient administration of justice outweighed [Mr.] Roth’s right to counsel of choice cannot fairly be characterized as an unreasoning and arbitrary insistence upon expeditiousness.” *Id.* at 827.

In *Miles*, the Washington Supreme Court held that the trial court did not abuse its discretion by denying the defendant’s motion for a continuance when the defendant requested the continuance to seek other counsel. *Miles*, 77 Wn.2d at 597-98. The court determined that the court-appointed attorney was competent and experienced in criminal defense. *Id.* at 598. The court also determined that the attorney skillfully represented

Mr. Miles during each stage of the court proceedings. *Id.*

Mr. Reeves claims the continuances in his case were outside his control. He maintains that the court granted one continuance to accommodate the State and another to accommodate the withdrawal of Mr. Leslie.

But the trial court did not abuse its discretion when it denied Mr. Reeves's motion for substitution of counsel and continuance. The court properly considered the four *Roth* factors in reaching its conclusion.

First, the trial court recognized the requested continuance would be the sixth continuance and would extend trial for at least another 60 days. While the State requested one of the continuances, the record does not identify the requesting party in the remaining continuances. Admittedly, the court stated that it did not matter how many of the continuances were requested by defense counsel or the State because the trial court was convinced that any further delay would prejudice the State.

Second, the trial court did not find that Mr. Reeves had a legitimate cause for dissatisfaction with his counsel. Mr. Reeves did not cite any specific disputes he had with Mr. Ryan. Instead, the trial court determined that Mr. Reeves did not trust his counsel, but the lack of confidence did not rise to a level that required a continuance. *Price*, 126 Wn. App. at 634.

Third, with regard to preparation, the trial court found that Mr. Ryan was prepared to begin trial. Mr. Ryan admitted that all of the witnesses were available and that he would be ready to begin trial on Monday. In contrast, Mr. Collins requested the 60-day continuance to adequately prepare for trial.

Finally, there is no evidence that the denial of the motion would have resulted in prejudice to Mr. Reeves. As in *Miles*, the court determined that Mr. Ryan and Mr. Collins were equally competent and experienced. Here, the trial court found that the delay would result in prejudice to the State because witness testimony becomes stale with delays in trial.

In sum, the court weighed the determinant factors and had sound reasons for denying Mr. Reeves's request for a substitute attorney. The court considered the competence of counsel and the fact that both sides were prepared for trial the following business day. The court acknowledged the six continuances already given, weighed the prejudice to the State and the harm to the witnesses, and the court ruled that the motion for substitution and continuance should be denied. Any further delay of this trial would have burdened the “public's interest in prompt and efficient administration of justice.” *Roth*, 75 Wn. App. at 824 (quoting *Linton*, 656 F.2d at 209).

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The trial court did not abuse its discretion by denying Mr. Reeves's request to substitute counsel and to continue the trial. We affirm the trial court and the conviction for second degree assault.

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

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Kulik, J.

WE CONCUR:

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Sweeney, J.

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Brown, J.