[Cite as *State v. Johnson* , 2009-Ohio-4129.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-06-153
	:	O P I N I O N
- vs -		8/17/2009
	:	
HARVEY G. JOHNSON, JR.,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2007-06-0947

Robin N. Piper, Butler County Prosecuting Attorney, Government Services Center, 315 High Street, Hamilton, Ohio 45012-0515, for plaintiff-appellee

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HENDRICKSON, J.

{¶1} Defendant-appellant, Harvey Johnson, appeals his convictions in the Butler County Court of Common Pleas for aggravated murder, kidnapping, having weapons while under disability, gross abuse of a corpse, tampering with evidence, grand theft, and several accompanying specifications. We affirm the decision of the trial court.

{¶2} In April 2007, Kiva Gazaway went missing. Friends, family members, and her employer became concerned when she did not report for work, missed her daughter's

birthday, and did not respond to phone calls. On April 16, 2007, Johnson, Gazaway's long-time boyfriend, filed a missing person report and a Butler County Sheriff responded to the Gazaway residence where Johnson had been staying. Johnson stated that he and Gazaway argued the previous Saturday over his infidelity and that Gazaway left and never returned. The next day, another officer came to Gazaway's home and walked through, but noticed nothing out of the ordinary. Again, Johnson told the officer that he had not seen Gazaway since the previous week.

{¶3} Soon after reporting Gazaway missing and speaking to the officer, Johnson traveled to Florida to visit family. At the time of his departure for Florida, Johnson was on post-release probation as a result of federal convictions for armed bank robbery and use of a firearm during a crime of violence. As part of his probation, Johnson was forbidden from leaving Ohio and from having any firearms. After his probation officer learned of Johnson's travel plans, he obtained a warrant for his arrest. When Johnson arrived in Florida, officers arrested him and found a .40 caliber loaded handgun in his car.

{¶4} As the investigation into Gazaway's disappearance continued, Detectives Duane Monroe and Rob Whitlock of the Butler County Sheriff's Office flew to Florida to interview Johnson. Because Johnson was being held on the federal probation violation, Monroe and Whitlock were forced to interview him at the Marion County Jail in Florida. The first two interviews took place in the jail's public defender's office in an eight by 10-foot room, which according to both Monroe and Whitlock, was extremely hot and uncomfortable. Due to Marion County regulations, Johnson remained shackled, including leg restraints, handcuffs, and a belly-band, during the first four-hour interview. Johnson was not permitted to smoke or eat, but was given several bottles of juice to drink during the interview. In very similar conditions, Whitlock and Monroe interviewed Johnson the next day for an additional two hours.

{¶5} During these interviews, and after signing cards waiving his *Miranda* rights, Johnson maintained his story of fighting with Gazaway about his infidelity and not having seen her since the day she drove off. After refusing the detectives' request to tape the interview, Johnson continued to talk to them but denied having any involvement in Gazaway's disappearance.

{¶6} On April 27, 2007, Detectives Monroe and Whitlock flew back to Florida to interview Johnson again. This time, they were permitted to talk to Johnson in the Seminole County Sheriff's Office where the conditions were more conducive to an open discussion. The Seminole County room was air conditioned, had better lighting and seating, and was twice the size of the Marion County room. During this interview, Johnson was bound by shackles on his legs, but the belly-band and handcuffs were removed. During the ten and one-half hour interview, Johnson was given multiple restroom and food breaks, including Burger King and Kentucky Fried Chicken. Johnson was also provided his cigarette of choice and was permitted to smoke on the balcony of the sheriff's office.

{¶7} During this third Florida interview, Johnson again waived his *Miranda* rights and spoke to the Detectives without asking for an attorney, but denied the Detectives' request to record the conversation. Monroe and Whitlock shared with Johnson information and evidence they had collected since the last time they spoke with him, including phone records, the location of Gazaway's car, and various BMV photographs of witnesses who provided details that conflicted with the story Johnson told the detectives during the previous two interviews. The detectives also showed Johnson pictures of a dry-erase-board where Butler County investigators had pieced together a time-line surrounding Gazaway's disappearance.

{¶8} While smoking on the balcony, Johnson asked the detectives to speak to the federal government about the probation violation and pending weapons charge. In return for proof of their agreement to intercede with the federal government, Johnson told the officers

that he would continue to speak to them regarding Gazaway's disappearance.

{¶9} After Whitlock communicated Johnson's request, Chief Deputy Anthony Dwyer of the Butler County Sheriff's Office faxed a letter to Florida entitled, "notice of investigatory intent." In the letter, Dwyer instructed Whitlock to "make thorough efforts and request that federal agents do not pursue any weapons charges against" Johnson. After seeing the letter, Johnson continued to speak to the detectives but did not change his story or implicate himself in Gazaway's disappearance. Monroe and Whitlock left Florida, flew back to Ohio, and continued the investigation.

{¶10} On May 11, 2007, Johnson was moved to the Butler County jail where Whitlock and Detective Kenneth Hardin interviewed him. The interview occurred in a 12 by 15 foot, air conditioned room where Johnson sat uncuffed and not bound by shackles. Johnson was permitted to smoke and was provided his specific brand of cigarettes. Before the five-hour interview began, Johnson was permitted to eat, and after finishing his meal, signed another card waiving his *Miranda* rights. At the beginning of the interview, the detectives showed Johnson an inter-office memo in which the Butler County Prosecutor's Office discussed various Ohio appellate cases that affirmed murder convictions, even though the victim's body was never recovered. Because the supporting cases were attached to the memo, it was approximately a half inch thick, and Johnson was permitted to review the memo and case law.

{¶11} The detectives also taped a photograph of a living Gazaway to the interrogation room's door so that it faced Johnson as he was being interviewed. Though Johnson verified that he recognized the photograph as Gazaway, the detectives and Johnson did not discuss the photograph further. During the interview, the detectives reminded Johnson that Mother's Day was a few days away, and that Gazaway and her family deserved closure and a Christian burial.

{¶12} At some point during the interview, Johnson asked the detectives to use the phone to call his father, a former Philadelphia police officer. Whitlock dialed the phone and handed Johnson the receiver and then gave him space to talk in private. The conversation lasted between five and 10 minutes. After the phone call, the detectives provided Johnson a copy of Ohio's criminal code at his request. Johnson informed the detectives that he was looking through the code for a section on assisted suicide. When the detectives told Johnson that assisted suicide, even if Ohio had such a statute, would "never fly" given the facts, Johnson began to reference possible manslaughter charges. In response, the detectives replied, "if the facts and evidence dictate it, that is what you will be charged with. *** Whatever the evidence produces, that is what you will be charged with."

{¶13} Johnson then told officers that he would take them to Gazaway's body if they would guarantee only manslaughter charges against him. In response, the detectives told Johnson that he "was fucked" and that he could not give up a body for a plea. Nevertheless, Johnson agreed to take Butler County officials to Gazaway's body. While the detectives were preparing transportation, Johnson requested a letter confirming that he would be charged with manslaughter. The detectives produced a letter, again entitled "notice of investigatory intent," in which Chief Deputy Dwyer recognized that Johnson expressed willingness to lead the detectives to Gazaway's body. The letter continued, "it is also my understanding that Johnson has eluded [sic] to the fact that this incident is the result of an argument and that he would cooperate with investigators if he is charged with voluntary manslaughter. If Mr. Johnson produces Kiva Gazaway's body and the evidence supports the charge, you are instructed to charge him with the crime of voluntary manslaughter." While waiting on the transportation, Johnson again asked to speak with his father and Whitlock again dialed the phone, but no one answered.

{¶14} Johnson then led the detectives to the site of Gazaway's body. Because the

body was located in Blue Ash, Ohio, the detectives asked Johnson where he killed Gazaway so that they could identify who held proper jurisdiction. Johnson replied that he killed Gazaway at her house. The detectives took Johnson back to the Butler County Sheriff's Office where he provided a complete confession in which he admitted in full detail to strangling Gazaway and dumping her body in the ravine.

{¶15} After making his confession, Johnson was indicted on two counts of aggravated murder, and single counts of kidnapping, rape, having weapons while under disability, gross abuse of a corpse, tampering with evidence, grand theft of a motor vehicle, aggravated robbery, and escape, as well as accompanying specifications.

{¶16} The kidnapping and rape charges stemmed from Johnson's statement that he took Gazaway into the bedroom and used duct tape to tape her arms and legs behind her back while she was alive, and that he tried to have sex with her while she was taped, but stopped because doing so "didn't feel right." The aggravated robbery and escape charges stemmed from Johnson's appearance in the Fairfield Municipal Court while he was in custody of the Butler County Sheriff, to answer an outstanding traffic charge against him. While waiting for court to start, Johnson asked a bailiff to deliver a message to a female in the gallery, and when the bailiff turned to do so, Johnson approached another bailiff from behind and tried to grab his holstered gun. The bailiffs and other officials jumped on Johnson and prohibited him from gaining control of the firearm.

{¶17} Johnson moved to sever the two charges related to his attempted escape from the murder and accompanying charges. The trial court granted Johnson's motion so that a jury heard only the attempted escape charges over a two-day trial. The jury found Johnson guilty, and the trial court sentenced him to 18 years. After overruling Johnson's motion to suppress statements made to the detectives during their investigation into Gazaway's disappearance, the trial court set the trial date for the murder and related counts.

{¶18} A week before his capital murder trial was to begin, Johnson filed a pro se motion to withdraw counsel and appoint new counsel. Before the start of jury voir dire proceedings, the trial court considered Johnson's motion. According to Johnson, he did not agree with his attorneys' trial strategy, as he felt it was insufficient to protect his life in light of the fact that the jury could recommend the death penalty should they find him guilty. Both of Johnson's trial counsel stated that they had been unaware of any break down in communication with Johnson, that their trial strategy was in his best interests, and that they were prepared to proceed with the trial. The trial court overruled Johnson's motion and the trial commenced.

{¶19} The jury acquitted Johnson of rape and some specifications, but found him guilty of murder and of all other counts and specifications. After a lengthy mitigation hearing, the jury declined to impose the death penalty, and instead, recommended a life sentence without the possibility of parole. The trial court sentenced him as such for the murder charge and imposed an additional 25 and one-half year sentence for the additional crimes. In total, and including his sentence for aggravated robbery and escape, Johnson was ordered to serve 43 and one-half years consecutive to his life without parole sentence.

{¶20} It is from the trial court's decision to deny his motion to suppress and the motion to withdraw counsel that Johnson now appeals, raising two assignments of error.

{¶21} Assignment of Error No. 1:

{¶22} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT OVERRULED HIS MOTION TO SUPPRESS."

{¶23} In his first assignment of error, Johnson argues that the trial court erred by not granting his motion to suppress because the statements he made to Butler County detectives were involuntarily made. This argument lacks merit.

{¶24} Appellate review of a ruling on a motion to suppress presents a mixed question

of law and fact. *State v. Cochran*, Preble App. No. CA2006-10-023, 2007-Ohio-3353. Acting as the trier of fact, the trial court is in the best position to resolve factual questions and evaluate witness credibility. Id. Therefore, when reviewing the denial of a motion to suppress, a reviewing court is bound to accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Oatis*, Butler App. No. CA2005-03-074, 2005-Ohio-6038. "An appellate court, however, independently reviews the trial court's legal conclusions based on those facts and determines, without deference to the trial court's decision, whether as a matter of law, the facts satisfy the appropriate legal standard." *Cochran* at ¶12.

{¶25} The Fifth Amendment to the United States Constitution guarantees that an accused shall not be compelled in any criminal case to be a witness against himself. While it is undisputed that Johnson signed cards waiving his *Miranda* rights before each of his interviews, "the question of whether the accused's statements were in fact voluntary is separate from the question of compliance with *Miranda*." *State v. Chase* (1978), 55 Ohio St.2d 237, 246.

{¶26} "The test for voluntariness under a Fifth Amendment analysis is whether or not the accused's statement was the product of police overreaching." *State v. Winterbotham*, Greene App. No. 05CA100, 2006-Ohio-3989, ¶30. A suspect makes a voluntary confession absent evidence "that his will was overborne and his capacity for self-determination critically impaired because of coercive police conduct." *Colorado v. Spring* (1987), 479 U.S. 564, 574, 107 S.Ct. 851, 857. "In deciding whether a defendant's confession is involuntarily induced, the court should consider the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement." *State v. Lawson* (Apr. 30, 2001), Butler App. No. CA99-12-226, 8.

{¶27} Regarding these factors at the time of his confession, we agree with the trial court's finding that there was no evidence to suggest that Johnson was mentally incapable, "feeble-minded, or particularly vulnerable to any type of interrogation methods or techniques." Johnson was 32 years old and never claimed to be mentally incompetent or displayed any sign that he was mentally unfit to make a voluntary statement.

{¶28} As evidenced by the federal charges pending at the time of his confession, Johnson engaged in criminal activity in his past so that it is reasonable to assume he was experienced in the criminal system. When considering this factor, the trial court made note of the pending federal charges Johnson faced at the time of the interrogations. While Johnson points out that the trial court did not have the specific details of his criminal past at the time of the motion to suppress hearing, it is reasonable to assume that any federal probationer would have a degree of familiarity with the criminal justice system.

{¶29} Concerning the interrogations themselves, the state does not deny that the conditions in the first two interviews in Florida were less than ideal. The room was small and very hot, Johnson was prohibited from smoking or eating, and had to wear shackles throughout the interview. However, at no time during these two interviews did Johnson make an inculpatory statement. Instead, he maintained that he did not have anything to do with Gazaway's disappearance. Therefore, we cannot say that these negative conditions played a role in the confession he made weeks later in the Butler County interview.

{¶30} Additionally, the circumstances surrounding the interview in which Johnson made his confession did not render his statement involuntary. The Butler County room was large and air-conditioned, and Johnson was not shackled. Johnson was provided cigarettes and opportunities to smoke, eat, and drink at his pleasure. The detectives provided Johnson with a copy of Ohio's criminal code, and later permitted him to call his father in private. The interview, which lasted approximately five hours, was not unduly long and was the fourth time

the police discussed Gazaway's disappearance with Johnson while he was in custody. Therefore, the length and frequency of the interrogation was not unreasonable and did not render Johnson's statements involuntary.

{¶31} Regarding intensity, the existence of physical deprivation or mistreatment, and the existence of threat, Johnson was very clear that the police treated him well during the interviews. In a taped interview he gave to Fox 19 News, Johnson stated that the Detectives had not mistreated him, that his confession was "totally" his decision, that the police had not tricked or coerced him, and that he "chose to do it on [his] own." When asked why he had confessed, and instead of claiming that police forced it out of him, Johnson stated that he planned on doing it earlier but wanted to visit his family one more time, that he loved Gazaway and her family and wanted them to have closure, and that he was not a selfish person. However, at no time during the interview did Johnson claim that his statement was involuntarily made. It was not until trial counsel was appointed, that Johnson moved the court to suppress his statements, focusing on the inducement factor of the totality of the circumstances test. He now asserts the same arguments on appeal.

{¶32} Specifically, Johnson argues that his statements were involuntary because his will was overborne by coercive police tactics, as the detectives promised leniency and exerted psychological pressure in order to elicit his confession. Regarding the promises of leniency, Johnson argues that the two letters from Chief Deputy Dwyer were coercive because they suggested that Butler County would intercede with the Federal Government on the pending probation violation and weapons charges, and that Johnson would be charged with manslaughter instead of murder. The trial court, however, found that based on the totality of the circumstances, Johnson's will was not overborne. We find no error in this conclusion.

{¶33} In addition to the general rules of law regarding voluntary confessions, we are

also mindful that police statements that promise leniency, if improperly used to elicit the statement, can render a statement involuntary. However, "when the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can perceive nothing improper in such police activity. On the other hand, if in addition to the foregoing benefit, or in the place thereof, *the defendant is given to understand that he might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making a statement, even a truthful one, such motivation is deemed to render the statement involuntary and inadmissible*. The offer or promise of such benefit need not be expressed, but may be implied from equivocal language not otherwise made clear." *State v. Arrington* (1984), 14 Ohio App.3d 111, 115. (Emphasis in original.)

{¶34} In the April 27, 2007 letter entitled notice of investigatory intent, Chief Deputy Dwyer stated that "if Johnson remains cooperative in the current investigation, you are hereby instructed and ordered to make thorough efforts and request that federal agents not pursue any weapons charges against Harvey Johnson Jr." However, no where in the letter did Dwyer state that Johnson would not face Federal charges if he cooperated, or that the probation violation and weapons charges would be dropped. Instead, Dwyer merely stated that the detectives would make efforts and request that federal agents not pursue the charges. Therefore, it remains obvious that no matter how thorough or persuasive the detectives were in their intercession, the final decision rested with the federal government whether or not to pursue the charges. Consequently, this letter was not a promise of leniency and did not constitute improper police activity.

{¶35} Before addressing the second letter, we make note of the fact that multiple times during the Butler County interview, detectives made comments to Johnson that the state would charge him with whatever crime was supported by the evidence. As the trial

court noted in its decision denying Johnson's motion to suppress, every time Johnson would make mention of possible charges against him, the detectives would answer that they did not know what happened to Gazaway and could not, therefore, make any assumptions on what charges would result from her death. The trial court found the detectives' testimony credible and noted that the detectives qualified their statements to Johnson by reminding him that without all the evidence, they could not make promises regarding what charges would be brought.

{¶36} According to Hardin's testimony at the motion to suppress hearing, Johnson requested that the detectives write him a letter guaranteeing that he would be charged with manslaughter instead of murder. Instead, Hardin testified that "and once again, we must have told him eight times. He was told in the hallway again, Harvey, we don't know what happened to her. If the evidence shows [manslaughter], that is what you will be charged with, but we don't know what happed to her. We will draft you a letter if that's what you want."

{¶37} Dwyer then produced the letter, dated May 11, 2007, which stated, "it is also my understanding that Johnson has eluded [sic] to the fact that this incident is the result of an argument and that he would cooperate with investigators if he is charged with voluntary manslaughter. If Mr. Johnson produces Kiva Gazaway's body *and the evidence supports the charge*, you are instructed to charge him with the crime of voluntary manslaughter." (Emphasis added.)

{¶38} This letter does not make a promise, explicit or implicit, that the state would limit the charges to manslaughter if Johnson produced the body. Instead, the detectives made it clear that Johnson would be charged with manslaughter only if the evidence supported the charge, and Dwyer's letter parrots that declaration. Therefore, Dwyer's statement was not a promise of leniency and did not constitute improper police activity.

{¶39} Additionally, we note that the letter could not have coerced Johnson's decision to make an inculpatory statement since he had already offered to take detectives to Gazaway's body. As soon as he offered the body in exchange for a lesser charge, the detectives blatantly state that Johnson "was fucked" and that the police would not make a plea in exchange for the body. The letter does not negate what the detectives clearly expressed regarding Johnson's request for manslaughter charges.

{¶40} Johnson also asserts that the picture of a living Gazaway taped to the interview room door was psychological pressure meant to induce his confession. However, a review of the record indicates otherwise. According to Detective Hardin's testimony, Johnson recognized the photograph but did not make reference to it or discuss the photograph in any other context. There was no testimony that Johnson was fixated on the photograph, was unnerved because of its presence, or that it in any way impacted his decision to speak to the detectives.

{¶41} Johnson also argues that the detectives' references to Mother's Day and the need to give Gazaway's family closure and a Christian burial was a psychological ploy that overbore his will and made his confession involuntary. According to Hardin's testimony, the detectives "touched on the fact" that Mother's Day was approximately two days away and that Gazaway's daughters deserved closure. The detectives also told Johnson that Gazaway and her family deserved a Christian burial so that the incident could be "closed and done."

{¶42} Neither of these statements would cause Johnson's will to be overborne. See *State v. Lynch*, 98 Ohio St.3d 514, 2003-Ohio-2284 (finding confession voluntary where appellant took police to the victim's hidden body and confessed to raping and killing her after police stated that they needed to find the victim, that the family needed to grieve properly, and that the victim needed a proper burial).

{¶43} We also note that multiple events occurred between the time of the detectives'

statements regarding Mother's Day and a Christian burial and the time Johnson made his first inculpatory statement indicating his involvement in the murder. Specifically, Johnson had a conversation with his father, requested a copy of Ohio's criminal code, informed the detectives he was looking through the code for an assisted suicide statute, was told that assisted suicide would never fly given the facts, and only then, offered Gazaway's body in exchange for a plea bargain. Based on this sequence of events, it is clear that the detectives' references to Mother's Day and Gazaway's right to a Christian burial did not overbear Johnson's will or impair his capacity for self-determination. Instead, Johnson continued to focus on possible charges he would face and tried to use Gazaway's body as a bargaining tool in his attempt to secure manslaughter charges instead of murder.

{¶44} Therefore, after reviewing the totality of circumstances, Johnson's statement was not involuntarily made and his first assignment of error is overruled.

{¶45} Assignment of Error No. 2:

{¶46} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT REFUSED TO APPOINT NEW COUNSEL TO REPRESENT HIM."

{¶47} In his second assignment of error, Johnson argues that the trial court erred by denying his motion to appoint new counsel because he had lost trust and confidence in his counsel's trial strategy. This argument lacks merit.

{¶48} "An indigent defendant has no right to have a particular attorney represent him and therefore must demonstrate 'good cause' to warrant substitution of counsel. The trial judge may deny the requested substitution and require the trial to proceed with assigned counsel participating if the complaint is unreasonable. The trial court's decision is reviewed under an abuse-of-discretion standard." *State v. Cowans*, 87 Ohio St.3d 68, 72-73, 1999-Ohio-250. (Internal citations omitted.) More than mere error of judgment, an abuse of discretion requires that the court's attitude was unreasonable, arbitrary, or unconscionable.

State v. Jackson, 107 Ohio St.3d 53, 89, 2005-Ohio-5981, ¶181.

{¶49} A complete breakdown in communication between the defendant and his appointed counsel has been found to be good cause for substitution, and a total lack of communication is a factor to consider while deciding if the trial court abused its discretion in denying a defendant's motion to appoint new counsel. *Cowans*, 73. "A defendant wishing to discharge his court-appointed counsel must show a breakdown in the attorney-client relationship of such magnitude as to jeopardize the defendant's right to effective assistance of counsel. *** Mere personality conflicts or disputes regarding trial strategy are insufficient to warrant the appointment of new counsel." *State v. Davis* (May 19, 1998), Franklin App. Nos. 97APA08-1020, 1021, *3. (Internal citations omitted.)

{¶50} Because he was facing a capital offense, the court appointed two attorneys to represent Johnson at his jury trials and mitigation hearing. After his trial on the severed counts, and a week before his murder trial was scheduled to begin, Johnson, acting pro se, filed a motion to withdraw and appoint new counsel. In his motion, Johnson claimed that "their [sic] is a conflict in interest, and their [sic] are irreconcilable differences in opinions and facts," and then listed three attorneys he requested the court to appoint on his behalf.

{¶51} The day the jury voir dire was to begin, the trial court held a hearing on Johnson's motion and asked him to explain what the conflict of interest was and what irreconcilable differences and opinions were hindering his defense. Johnson responded that he did not agree with his counsel's trial strategy and that "it's my life on the line. I would like to – you know, what the defense said they were going to present for me wasn't adequate for a death penalty case."

{¶52} When the trial court asked Johnson's counsel if there had been a break down in communication that prevented them from being able to carry out their duties as defense counsel, counsel replied that there had not been. Counsel further stated that they had visited

Johnson on multiple occasions since he filed his pro se motion, and had discussed matters, answered his questions, and reviewed strategy. Counsel then stated that they were prepared to proceed in a way "that is best for [Johnson]."

{¶53} The trial court asked the state its position regarding the motion, and the prosecutor responded, "I can't think of a defendant having two better attorneys who would fight for him zealously here in Butler County." Johnson then stated, "I agree with [the state], as far as the qualifications of my attorneys; that they are well qualified. *** It's just a conflict of interest as far as the way they want to go with my defense. *** It's just again, I feel that the way I want to be defended is different than the way they said they were going to defend me."

{¶54} The trial court then asked Johnson, "you understand that it is the job of your attorneys to provide you with the benefit of their legal experience and their advice regardless of whether you may agree or disagree with that advice, correct?" Johnson replied, "yes, Your Honor."

{¶55} The trial court then cited *State v. Cowans* and the factors found therein regarding granting a motion to appoint new counsel. The trial court found that there had not been a complete breakdown in communication between Johnson and his counsel, and that counsel was prepared to participate in the trial. The trial court also recognized that counsel was highly competent and that there was no good cause to grant Johnson's pro se motion. There is no error in this conclusion.

{¶56} It is obvious from Johnson's motion and statements to the trial court that the only reason he wanted to substitute counsel was that he did not agree with their strategy. However, at no time did Johnson claim that he was unable to communicate with counsel or that his defense was prejudiced by a breakdown in the attorney-client relationship of such magnitude as to jeopardize his right to effective assistance of counsel.

{¶57} Instead, as Johnson's complaints centered on disputes regarding trial strategy,

his assertions were insufficient to warrant the appointment of new counsel and the trial court did not abuse its discretion in denying his motion to appoint different counsel. Johnson's second assignment of error is overruled.

{¶58} Judgment affirmed.

POWELL, P.J., and YOUNG, J., concur.

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