

NO. 75090-9-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 1

STATE OF WASHINGTON,

Respondent,

v.

JAMES LEE O'NEIL, JR.,

Petitioner.

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Court of Appeals
Division I
State of Washington

BRIEF OF RESPONDENT

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A. IDENTITY OF RESPONDING PARTY.

Respondent, the State of Washington, seeks the relief designated in part B.

B. STATEMENT OF RELIEF SOUGHT.

The State asks this Court to find that (1) the Superior Court did not abuse its discretion in allowing the State to interview Ms. Haydee Vargas and (2) the Superior Court did not abuse its discretion in denying Mr. Aralica's motion to withdraw from representation.

C. FACTS RELEVANT TO THE MOTION.

On February 6, 2015, the State filed an Information charging James Lee O'Neil, Jr., with felony harassment and attempted theft of a motor vehicle. CP at 1. He was arraigned on those charges on February 19, 2015, and pled "not guilty." He was represented by attorney Anu Luthra at arraignment. CP at 18. On February 19, 2015, the State filed an additional, unrelated charge of Residential Burglary in King County Superior Court #15-1-01547-4 KNT. On March 13, 2015, the State received another referral for this defendant alleging Robbery in the First Degree and Burglary in the

First Degree in King County Sheriff's Office investigation #15-040203. The robbery case remains unfiled. The State reconsidered its earlier filing decision in this cause number in light of these further developments. On March 30, 2015, the State filed an Amended Information charging the defendant with Attempted Assault in the Second Degree and Attempted Theft of a Motor Vehicle. CP at 20-23. On April 1, 2015, the State filed a Second Amended Information charging the defendant with Assault in the Second Degree, Attempted Theft of a Motor Vehicle, and Vehicle Prowl in the Second Degree. The defendant has convictions in Washington State for Rape in the Second Degree (1981) and Rape in the First Degree (1983). Because of these prior convictions, the State believes the current charges would constitute the defendant's "Third Strike."

Mr. O'Neil is currently represented by Edwin Aralica. Mr. O'Neil has filed a motion for re-arraignment, alleging that prior attorney Anu Luthra provided ineffective assistance of counsel at arraignment by not advising Mr. O'Neil to plead guilty at arraignment to the original non-strike offense. The defendant's motion will ultimately require that the ruling court establish an

objective standard of reasonable performance at arraignment for an individual similarly situated to Mr. O'Neil.

In preparation for this motion, the State identified attorney Haydee Vargas as the most appropriate individual to testify as to the standard practice for representing indigent defendants at arraignment at the Regional Justice Center. Ms. Vargas has been the "attorney of the day" at the Regional Justice Center for several years. During this time, she has staffed countless arraignment calendars and conducted hundreds, if not thousands, of arraignments on a routine weekly basis. The State believes Ms. Vargas can provide valuable testimony as to the current standard of practice at arraignment.

Edwin Aralica, Anu Luthra and Haydee Vargas are all public defenders employed by the King County Department of Public Defense (DPD). DPD is organized into four separate divisions operating under the same umbrella agency. Mr. Aralica and Ms. Vargas work in the "ACA Division" of the office. Ms. Luthra works in the "TDA Division" of the office. Mr. Aralica filed a written motion objecting to the State's request to interview Ms. Vargas, relying on RPC 3.7. Mr. Aralica moved in the alternative to allow his

withdrawal from the case. CP at 54-59. The State filed a memorandum addressing the objection.¹

The Honorable Judge Ronald Kessler heard argument on the defense objection on April 15, 2016. The court granted the State's request to interview Ms. Vargas, and denied Mr. Aralica's alternative motion to withdraw. CP at 137. The defendant now seeks appellate review of Judge Kessler's ruling.

D. GROUND FOR RELIEF AND ARGUMENT

1) THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN PERMITTING AN INTERVIEW OF HAYDEE VARGAS

The defendant argues that the Superior Court erred in permitting the State to interview Ms. Vargas as a potential witness. This was essentially an evidentiary ruling. A trial court's evidentiary rulings are reviewed for abuse of discretion. State v. Magers, 164 Wn. 2d 174, 181, 189 P.3d 126 (2008). "Abuse of discretion exists '[w]hen a trial court's exercise of its discretion is manifestly

¹ The State's response was erroneously not included in the initial designation of clerk's papers, although it was attached as an appendix to the State's pleadings submitted to the commissioner upon initial review by this Court. The State filed a supplemental designation adding the State's initial briefing on August 15, 2016, as Exhibit No. 84.

unreasonable or based upon untenable grounds or reasons.”

Magers, 164 Wn. 2d at 189. Appellate courts should generally view a trial court’s evidentiary rulings deferentially, with significant weight being given to the trial judge’s decision. See State v. Kinard, 109 Wn. App. 428, 432, 36 P.3d 573 (2001) (“ . . .the admission of evidence in a criminal case . . . should therefore be subject to the sound discretion of a trial court. And the test, a deferential test, is whether there are tenable grounds or reasons for the trial court’s decision.”); See State v. Gonzalez-Gonzalez, 193 Wn. App. 683, 689, 370 P.3d 989 (2016) (noting that appellate courts use a more deferential standard when a trial judge has used discretion to weigh various factors).

a. Haydee Vargas is a relevant and valuable witness

The defendant repeatedly suggests that the State failed to show Ms. Vargas was a “necessary” witness. Def. Brief at 15. This is not the proper standard. The initial inquiry is whether Ms. Vargas can provide relevant evidence. Subject to other rules and constitutional mandates, “[a]ll relevant evidence is admissible.” ER 402. Because this motion will not be heard before the jury, nor will it affect the

evidence introduced at trial, limiting rules concerned with trial prejudice, such as ER 403, are not relevant here. There is no general rule requiring a proponent be able to show that evidence is “necessary” as a prerequisite to admission, especially in a pre-trial hearing. While disallowing Ms. Vargas’ participation would not lead to the termination of the prosecution, she remains a relevant and highly probative witness for the State.

The defense cites several cases in support of their argument that calling a lawyer as a witness requires some heightened showing. However, these cases are highly distinguishable, as each dealt with a true “lawyer-witness” who was both a witness and an advocate for a party at the same trial. These cases, and RPC 3.7 itself, do not contemplate a witness who simply happens to be a lawyer. For example, State v. Schmitt, 124 Wn. App. 662, 666, 102 P. 3d 856 (2004) involved a prosecutor who was both trial deputy and witness, and where the defense had moved to disqualify her. The Schmitt Court held that in such circumstances a lawyer-witness’ testimony had to be material and otherwise unobtainable before the trial court should disqualify an attorney on the opposing party’s motion to call her as a witness. Id. Here, Ms. Vargas is not an advocate for Mr. O’Neil, nor is the State moving to disqualify

anyone. Similarly, Mills v. Hausmann-McNally, S.C., 992 F. Supp. 2d 885, 895 (2014), specifically dealt with one party moving to disqualify the other party's attorney. The reasoning therein would only be analogous were the State moving for Mr. Aralica's removal from the case, which is not the State's motion.

A claim of ineffective assistance of counsel focuses on whether an attorney's performance "fell below an objective standard of reasonableness based on consideration of all the circumstances." State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). The underlying test in making this determination is "reasonable under prevailing professional norms." In re Tsai, 183 Wn.2d 91, 99-100, 351 P.3d 138 (2015). "The court must engage in a fact-specific inquiry into the reasonableness of an attorney's actions, measured against the applicable prevailing professional norms in place at the time." Id. Because of the way that arraignments are staffed in King County, not every attorney can testify as to the prevailing professional norms in place regarding representation of indigent defendants at arraignment. Ms. Vargas is uniquely qualified to testify as to these prevailing norms, and was identified as such by numerous sources both within the Prosecuting Attorney's Office and by court staff. Ms. Vargas has conducted

hundreds, if not thousands, of arraignments in her capacity as the Attorney of the Day for otherwise unrepresented defendants at arraignment calendars. Ms. Vargas was performing this duty during the same time period the defendant was arraigned in this case. As the State explained to Judge Kessler, we are unaware of any attorney that has a similar volume of experience conducting arraignments with similarly situated clients at the Regional Justice Center. Ms. Vargas' testimony is being sought to describe, for example, her general level of preparation for arraignments and the depth of her interaction with clients at arraignment. The State wishes to inquire whether or not Ms. Vargas routinely does the things that Mr. O'Neil claims his prior counsel was ineffective for not doing. The defendant lists out his prior attorney's alleged failings and seems to suggest Ms. Vargas is not needed because his accusations constitute *per se* ineffectiveness. Def. Brief at 16. The State does not believe the matter can be so simply decided, and it is "impossible to 'exhaustively define the obligations of counsel [] or form a checklist for judicial evaluation of attorney performance.'" In re Tsai, 183 WN. 2d at 100.

It is also worth noting that Judge Kessler was in a unique position to rule on this case. Judge Kessler was at the time of this

motion (and remains today) the presiding judge of the Regional Justice Center. In this capacity, Judge Kessler presides over daily arraignment calendars. Ms. Vargas routinely appears before Judge Kessler in this capacity. Judge Kessler was familiar with Ms. Vargas, her experience at arraignments, and the relative experience of other attorneys, when he ruled on this motion. This type of on-the-ground familiarity is part of the reason why the standard of review for evidentiary rulings is generally deferential.

Ms. Luthra's testimony regarding her own practice cannot be considered an objective standard –it would be nonsensical to measure an attorney's performance against themselves to determine if they were ineffective. Given the nature of the defendant's argument, Judge Kessler was persuaded that the State is entitled to explore this area and make an adequate record concerning the existing standard of reasonable practice at arraignment at the RJC. Ms. Vargas has been consistently identified as having the greatest level of experience with RJC arraignment calendars, and is therefore capable of providing the most relevant and comprehensive testimony to the Court. The State need not question Ms. Vargas about any named individual cases she has handled in the past. The State's scope of examination can

be narrowly drawn to mirror Mr. O'Neil's claim of ineffectiveness, inquiring for example: (1) whether Ms. Vargas routinely reviews certifications of probable cause, compares it to the charging document, and notes whether the certification supports a more serious charge; (2) whether Ms. Vargas conducts any independent review or investigation of the Prosecutor's Appendix B to ensure a complete understanding of the defendant's offender score and criminal history; (3) whether the above-referenced matters are discussed with the client prior to or at arraignment; (4) and finally, whether Ms. Vargas has routine substantial conversations with clients regarding the right to plead guilty at arraignment.

The defendant suggests in his brief that the State can rely on judicial notice, judicial experience, case law, or expert witnesses, to obtain this testimony. The State strongly disagrees that any of these are viable options, and forcing the State to rely on them would unfairly weaken the State's position. "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." ER 201(b). As to subsection (1), the content of conversations between

defendants and their attorneys at or prior to arraignments is not something that is generally known. In fact, this information is typically protected by the attorney-client privilege. Certainly the State is not privy to these types of conversations and has no idea of what is typically discussed. Whether the trial judge may have some idea of what these conversations consist of is irrelevant. "A trial judge is prohibited from relying on his personal experience to support the taking of judicial notice." In re Estate of Hays, 185 Wn. App. 567, 598, 342 P.3d 1161 (2015). As to subsection (2), by its plain language it refers to sources of information such as calendars, maps, almanacs and dictionaries that are not subject to reasonable dispute. There is no standardized and indisputably accurate material that states an objective constitutionally sufficient standard of practice for arraignments.

It would also be improper to rely on case law in deciding this issue. The State has not discovered, nor has the defendant provided, any published case from any jurisdiction considering the issue of when it would be ineffective to enter a plea of "not guilty" at arraignment. As far as the State is aware, this is an issue of national first impression. In arguing that a case law review would be sufficient, the defendant presents as illustrative State v. Maynard,

183 Wn. 2d 253, 351 P.3d 159 (2015) and State v. Martin, 94 Wn. 2d 1, 614 P.2d 164 (1980). Both examples are problematic.

Maynard was a recent case where our Supreme Court decided an ineffectiveness claim apparently without the testimony of other attorneys as to standard practices. However, just because the Maynard Court was able to rule without such testimony does not mean that such testimony would not have been relevant or helpful. The Maynard decision certainly did not hold that such testimony is never required. In Maynard, the ineffectiveness claimed was a failure to notice that a juvenile defendant's 18th birthday was imminent, leading the defendant to lose an opportunity for resolution in juvenile court. The Maynard Court only briefly addressed the ineffective assistance claim in affirming the Court of Appeals, and the majority of its analysis was in consideration of the appropriate remedy. Every type of ineffectiveness claim is different – certainly not all will require additional testimony. Arraignment in particular is a procedure done in large quantities by certain attorneys, namely Ms. Vargas. It is therefore peculiarly amenable to testimony from her as to the standard of practice, whereas failing to notice a juvenile offender turning 18 is an issue where a large body of experience is unlikely to have accumulated in a single attorney.

The Martin decision discussed the right of a defendant to plead guilty at arraignment. The State is not contesting that such a right existed, and thus Martin is of limited relevance to the defendant's motion. Neither defendant provides significant dispositive force to this particular issue. It is unlikely that any case law exists that would.

The defendant suggests that the State could retain another attorney or expert witness to address the required testimony. The defendant names a Seattle University professor who specializes in legal ethics, Professor John Straight. Setting aside the oddity of a defendant suggesting to the State what expert witnesses would suit its needs, and the fact that he would be unlikely to testify *gratis*, it is unclear why Professor Straight would be an adequate substitute. The ultimate question is one of objective constitutional standards. The defendant is accusing his prior attorney of being ineffective, not unethical. Professor Straight is not known as an expert on arraignment practices at the Regional Justice Center. Reviewing Professor Straight's publicly accessible biography, it is not clear that he has ever actually practiced criminal defense or conducted an arraignment, and he has been in academia since 1974. Seattle University Faculty Profile for Professor John Straight,

<http://law.seattleu.edu/faculty/profiles/john-strait#facultyBiography>.
The testimony of a private attorney would be similarly unhelpful. It is very doubtful that private attorneys conduct the same volume of arraignments as Ms. Vargas, and they often do not work with similarly situated clients or with similar institutional pressures. Using the testimony of another public defender would also be sub-optimal. As the trial judge recognized in making his ruling, there is simply nobody with the same peculiarly relevant testimony as Ms. Vargas. An attorney from the Seattle courthouse would be less valuable both because there are cultural and qualitative differences between practices at the two locations, and because no Seattle attorney-of-the-day known to the State has the same length and breadth of tenure as Ms. Vargas. Ms. Vargas' predecessor in her position also apparently had a large body of experience as attorney-of-the-day, but that attorney's experience is now years out of date. Ms. Vargas has occupied this position for at least close to two years and, more importantly, her experience as attorney-of-the-day was contemporaneous with the defendant's arraignment in this case.

Finally, while the defendant has no shortage of suggestions for how the State could seek alternatives to the testimony of Ms. Vargas, he does not consider other options available to him. Mr.

Aralica could have another attorney from his office assist with the examination of Ms. Vargas. Mr. Aralica could have another attorney conduct any supervisory evaluations of Ms. Vargas. Either option would painlessly obviate the need for this motion without materially degrading the State's case.

b. Ms. Haydee Vargas is not a "lawyer-witness" within the meaning of RPC 3.7

Whether or not a conflict of interest exists at all is a question of law subject to *de novo* review. State v. Orozco, 144 Wn. App. 17, 19-20, 186 P.3d 1078 (2008). The decision of a trial court declining to disqualify an attorney is reviewed for abuse of discretion. Id.

RPC 3.7 provides for the following:

- (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
- (1) the testimony relates to an uncontested issue;
 - (2) the testimony relates to the nature and value of legal services rendered in the case;
 - (3) disqualification of the lawyer would work substantial hardship on the client; or
 - (4) the lawyer has been called by the opposing party and the court rules that the lawyer may continue to act as an advocate.
- (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

RPC 3.7 is rooted in the common law principle known as the advocate witness rule. See State v. Bland, 90 Wn. App. 677, 679, 953 P.2d 126 (1998). The advocate witness rule “prohibits an attorney from appearing as both a witness and an advocate in the same litigation.” State v. Lindsay, 180 Wn.2d 423, 437, 326 P.3d 125 (2014) (quoting United States v. Prantil, 764 F.2d 548, 552–53 (9th Cir.1985)). “This venerable rule is a necessary corollary to the more fundamental tenet of our adversarial system that juries are to ground their decisions on the facts of a case and not on the integrity or credibility of the advocates.” Prantil, 764 F.2d at 553.

In a criminal prosecution, “where so much is at stake for the defendant,” certain of these first principles—not the least of which is “objectivity in the presentation of evidence”—are secured by the advocate witness rule. United States v. Alu, 246 F.2d 29, 34 (2d Cir.1957). For example, by barring testimony from the participating prosecutor, the advocate witness rule “ ‘eliminates the risk that a testifying prosecutor will not be a fully objective witness given his [or her] position as an advocate for the government.’ ” Prantil, 764 F.2d at 553 (quoting United States v. Johnston, 690 F.2d 638, 643 (7th Cir.1982)). In addition, “the rule prevents the prestige and prominence of the prosecutor’s office from being attributed to

testimony by a testifying prosecutor.” Prantil, 764 F.2d at 553; see also United States v. Edwards, 154 F.3d 915, 921 (9th Cir.1998) (“Essentially, the danger in having a prosecutor testify as a witness is that jurors will automatically presume the prosecutor to be credible and will not consider critically any evidence that may suggest otherwise.”). Furthermore, “the rule obviates the possibility of jury confusion from the dual role of the prosecutor wherein the trier-of-fact is asked to segregate the exhortations of the advocate from the testimonial accounts of the witness.” Prantil, 764 F.2d at 553.

The State does not dispute that the Department of Public Defense, like the King County Prosecuting Attorney’s Office, is a “law firm” for purposes of RPC 3.7. RPC 3.7(a) is only relevant where an attorney is both a witness at trial as well as an advocate for a party to the litigation. Subsection (a) has no relevance to the issue here. The State has no intention of calling Mr. Aralica as a witness in this case. Ms. Vargas is not, nor has she ever been, Mr. O’Neil’s attorney. Instead, Mr. Aralica claims a conflict under RPC 3.7(b) because both he and Ms. Vargas work in the same law firm. However, RPC 3.7(b) states that “[a] lawyer may act as advocate in a trial in which another lawyer in the lawyer’s firm is likely to be

called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9." By its plain language, RPC 1.9 is not applicable to a conflict between two lawyers in the same law firm. The defense does not appear to suggest otherwise, so RPC 1.9 need not be addressed further.

RPC 1.7 primarily addresses conflicts of interests between two current clients of the same law firm. In defining a conflict of interest, RPC 1.7(a)(2) does include limitations originating in "the lawyer's responsibilities to . . . a third person or by a personal interest of the lawyer." While RPC 1.7(a)(2) theoretically could apply, Comment 10 to the rule discusses the types of conflicts envisioned by the drafters: situations where the "probity of a lawyer's own conduct in a transaction is in serious question," where the lawyer is seeking employment with an opponent, or where the lawyer has a financial interest in the outcome. Nothing in the plain language of the rule supports the defense position that Ms. Vargas is a "lawyer-witness." Ms. Vargas is not an advocate in this case, and Mr. Aralica is not a witness. This fact alone nullifies the primary concern of RPC 3.7: that the jury will be unduly swayed by the testimony of an advocate.

Even if this were a concern, it is unlikely that Ms. Vargas' credibility or veracity will be questioned by either litigant, and she will not be appearing before the jury, but rather only in pre-trial motions. She will not be testifying as a fact witness to the conduct underlying the charges, and neither her memory nor sensory perception will be significantly tested through her anticipated testimony. Due to the nature of her testimony, it is not particularly clear how, or why, Ms. Vargas would provide false testimony. Ms. Vargas is an attorney in good standing in King County, known to all the parties through her long tenure at the Regional Justice Center. The State assumes without reservation that she will provide honest testimony, and cannot envision a scenario where Mr. Aralica, on behalf of the defendant, thinks otherwise. Ms. Vargas is the type of witness both parties, jointly, simply want to collect unbiased facts from, in much the same way a records custodian produces facts. Because Ms. Vargas will be testifying only about standard practices her testimony will have no bearing whatsoever towards the guilt or innocence of Mr. O'Neil.

The only colorable claim of conflict arises from RPC 1.7(a)(2). The trial court found that the conflict claimed by Mr. Aralica was insufficiently compelling to deprive the State of the

evidence it sought. The only question is whether that decision was so "manifestly unreasonable" as to constitute an abuse of discretion.

c. Allowing Ms. Vargas to be Interviewed Was Not Manifestly Unreasonable.

It is clear that the trial judge was well within his considerable discretion in determining the flow of discovery at a pre-trial hearing. This is an entirely different inquiry than whether the trial judge abused his discretion in refusing to permit Mr. Aralica to withdraw. It is important to clarify the specific nature of Judge Kessler's ruling. Judge Kessler at this point has ruled only that the State may *interview* Ms. Vargas regarding potential testimony in a pre-trial hearing. CP at 137. The State has not even conclusively determined that it will call Ms. Vargas because we have been unable to even speak to her. Some of Mr. Aralica's arguments are thus not yet ripe. Ms. Vargas is, at the very least, a relevant witness. Judge Kessler considered the potential probative value of Ms. Vargas' testimony and weighed this against Mr. Aralica's objections. After doing so, Judge Kessler concluded that allowing the State to conduct a pretrial interview of Ms. Vargas outweighed Mr. Aralica's concerns. Mr. Aralica subsequently filed an updated

factual affidavit after review had been accepted on this matter. Mr. Aralica's supervisory responsibilities over Ms. Vargas have since abated considerably, and Ms. Vargas now has a different primary supervisor. Mr. Aralica now only provides evaluation "input" and oversees some narrow practice areas. The logical foundation of the trial court's ruling has only solidified further with time, and it may now be more practicable for Mr. Aralica to remove himself from conflict areas, such as approving vacation time.

In short, it cannot be said that the Court manifestly abused its discretion in determining that, in a question of arraignment practice, the defense attorney with perhaps the single greatest current body of experience at arraignment in King County is a relevant witness. Mr. Aralica claims he has a conflict. It is difficult for the State to fully rebut subjective claims such as this. However, the fact that a conflict could exist should not be the keystone of this Court's inquiry. Rather, it is whether a reasonable judge could weigh the two competing interests and determine the State's was the more compelling, regardless of whether there was an abuse of discretion on the entirely distinct question of Mr. Aralica's withdrawal. Judge Kessler's ruling was both reasonable and legally sound. The State requests that this case be remanded to the trial

court to complete litigation of the pre-trial motion consistent with the trial court's original ruling.

2) THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DECLINING TO DISQUALIFY MR. ARALICA

The decision of a trial court declining to disqualify an attorney is reviewed for abuse of discretion. Orozco, 144 Wn. App. at 19-20. The defense cites State v. Bland, 90 Wn. App. 677, 953 P.2d 126 (1998) for the proposition that "a lawyer may not act as advocate in trial in which another lawyer from the same firm is likely to testify." Def. Brief at 22. The Bland decision was handed down in 1998. The version of RPC 3.7 in effect in 1998 appears to have a significant difference compared to the current rule. In 1998, the Bland Court relied on a version of RPC 3.7 that read in part "A lawyer shall not act as advocate at a trial in which the lawyer or **another lawyer in the same law firm** is likely to be necessary witness except where . . ." Bland, 90 Wn. App. 677 at n.1 (emphasis added). The current version of RPC 3.7 has excised the "or another lawyer in the same law firm," and instead substituted subsection (b): "A lawyer may act as advocate in a trial in which

another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9." Thus, the reasoning in Bland is at least somewhat obsolete as applied by the defendant. .

Mr. Aralica believes he should have been disqualified from this case because Ms. Vargas is a subordinate employee. The State is not aware of any specific authority standing for the proposition that this type of relationship should call into question a lawyer's fitness to represent an unrelated client. The State does acknowledge that the broad language in RPC 1.7 makes Mr. Aralica's position colorable. The State believes the essential question here is not whether Mr. Aralica can plausibly claim a conflict, or even whether some degree of conflict exists, but whether the trial court abused its discretion in not allowing Mr. Aralica to withdraw.

In making its decision, the trial court was able to consider the following information: (1) that Ms. Vargas and Mr. Aralica are both public employees in good standing with the Court, and their relationship is entirely professional; (2) that Ms. Vargas is not a witness to any of the underlying facts; (3) that Ms. Vargas' testimony cannot incriminate Mr. O'Neil; (4) that Ms. Vargas has

never represented Mr. O'Neil; (5) the testimony will likely not involve Ms. Vargas recalling specific facts or dates related to any case; (6) that Mr. Aralica, at least at the time the trial court heard argument, was a supervisor of Ms. Vargas providing input into her workplace evaluations and in charge of administrative oversight, such as approving vacation. As noted above, Mr. Aralica's supervisory responsibilities have since lessened. Mr. Aralica makes other arguments that are entirely speculative. For example, he cites the specter of a formal workplace grievance. It is entirely unclear how or why Ms. Vargas providing testimony in good faith and being cross-examined in a professional manner could possibly result in a workplace grievance. It seems similarly speculative that Ms. Vargas' testimony could somehow result in Mr. Aralica recommending disciplinary action against her. Def. Brief at 24.

Being fully aware and advised of all the relevant issues, Judge Kessler found that whatever conflict might have existed was not sufficient to compel Mr. Aralica's withdrawal. At this point, Judge Kessler's ruling is simply that the State can interview Ms. Vargas. Judge Kessler gave proper weight to the purported conflict. While perhaps not trivial, a conflict between two work colleagues seems to be much less caustic than other illustrative examples

present in the rule comments and available case law cited by the defendant. Given the weight of evidence before him, it was not manifestly unreasonable to find that Mr. Aralica could examine another lawyer from his office regarding uncontroversial facts and still maintain a constitutionally effective standard of representation for the defendant.

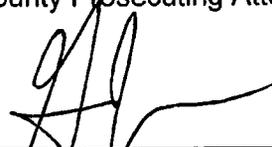
E. CONCLUSION.

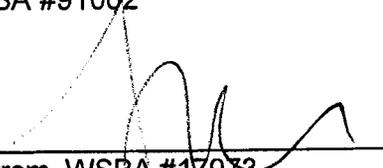
The State requests that this Court affirm the ruling of the trial court, and find that the trial judge did not abuse his discretion in permitting the State to interview Ms. Vargas and denying Mr. Aralica's motion to withdraw.

DATED this 24 day of August, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG
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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Edwin Lee Aralica, the attorney for the appellant, at edwin.aralica@kingcounty.gov; containing a copy of the BRIEF OF RESPONDENT, in State v. James Lee Oneil, JR, Cause No. 75090-9, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 25TH day of August, 2016.


Name:
Done in Seattle, Washington