

I. ISSUE PRESENTED

Is repeated violation of motion(s) in limine and / or trial court rulings by the Defense, and in a manner that is contemptuous, supported by substantial evidence?

II. STATEMENT OF ARGUMENT

In the case before us, there is not substantial evidence sufficient to support that the Defense repeatedly violated motion(s) in limine and / or trial court rulings in a manner that was contemptuous.

III. LEGAL GROUNDS FOR ARGUMENT

A Court of Appeals in reviewing a Findings of Fact and Conclusions of Law determines whether the trial court's findings of fact are supported by substantial evidence and whether they support the conclusions of law. *Price v. Kit-sap Transit*, 125 Wn.2d 456, 465 (1994); *Holland v. Boeing Co.*, 90 Wn.2d 384, 390-91(1978). Substantial evidence "is evidence sufficient to persuade a fair-minded, rational person of the truth of the declared premise." *World Wide Video, Inc. V. Tukwila*, 117 Wn.2d 382, 387 (1991), cert. denied, 112 S. Ct. 1672 (1992).

The State in its Brief (SB) based its argument of contemptuous conduct by the Defense on general assertions by Prosecutor Farr, Judge Woolard, and the State itself that certain motions in limine and court

rulings were violated. For example, the State referred to an “obvious contempt of rulings,” (SB 5), a “course of conduct that got her in trouble,” (SB 12), a violation of a motion in limine either having to do with evidence implicating another or domestic violence in the home (SB 13), a violation as to form of objections, interpreting, laughing inappropriately, violations of motion in limine number 23, and motion in limine number 24, (SB 18), and that “that’s probably the fifth violation of motions in limine.” (SB 20).

With respect to the vague references of bad acts that included “pouting” and “boorish behavior” (SB 2-27) there is no specific cite to any court ruling and / or motion in limine violated. There is no citation to any rule of evidence, with the exception of ER 101. SB 22. The closest the State gets in referencing concrete rulings is motions in limine number 23 and number 24 (SB 18), but there is no indication in the record to which substantive motions in limine these refer. With respect to the violations of interpreting during the trial and laughing inappropriately (SB 18), there is no specific cite as to where any such violations by Defense occurred.

With respect to speaking objections, the State also did not cite the record about such trial court rulings, neither in the motion in limine hearing nor in rulings thereafter. In fact, the trial court granted the motion in limine that objections be “relatively quick” and followed by the basis. RP 79.

Brinkman stated on the record that her understanding was the matter would be decided case-by-case per objection, in terms of what the trial court considered a proper objection followed by the basis. RP 79. The trial court did not contradict this understanding. RP 79-80.

The trial court did make a general warning to Brinkman that no comments be made during objections. RP 285. In response, Brinkman stated on the record that according to her understanding she had not been making speaking objections. RP 285-286. The trial court stated that Brinkman probably did not realize she had been preceding objections with "I feel." RP 286. There is no reference in the record with respect to any warning(s) by the trial court to the Defense that any alleged speaking objection(s) amounted to contemptuous conduct.

With respect to any ruling(s) concerning abuse by another, and domestic violence in the home, the State did not make any specific cite(s) from the record that such court rulings were or were not granted by Judge Woolard. In fact, the matter of so-called blaming someone else for the abuse of the victim did not get a definitive ruling during the motion in limine hearing (RP 73-75), nor in any trial court ruling(s) thereafter. The father's abusive behavior was open to questioning for impeachment purposes. RP 72-74. The trial court at once granted and also reserved the eliciting of testimony having to do with domestic violence. RP 92-95. The State has

REPLY BRIEF OF APPELLANT ~ 3

provided no specific references about direct rulings on these matters by the trial court and their repeated violations by Defense in a manner that is contemptuous. Nor were there any warnings by the trial court in the record that any such behavior by Defense was contemptuous.

With respect to the matter of motivation and bias of witnesses, this motion in limine was reserved by the trial court (RP 77-79), and then the trial court in fact allowed questioning about motive and bias during the trial. SB 7. The trial court further allowed questioning about motive and bias by the defendant, over the objection of the State. RP 608. Yet, after allowing the questioning, the trial court had the jury leave the courtroom, saying that the defendant had answered a question in a manner that the trial court stated was in violation of a motion in limine. RP 608-609. “That’s probably the fifth violation of motions in limine and is inexcusable,” stated the court. RP 609. The trial court went on to state that the matter was not a motion in limine it had granted after all; rather, it had been discussed earlier and “struck” by the court. RP 612. Given such a diversity of rulings, it is not evident how the Defense could have acted in a manner that was consistently disobedient and also contemptuous toward them, even if she had intended to do so.

In the context of the varied court rulings about motivation and bias, neither is it evident that the Defense intentionally made the following two comments during closing in a manner that was contemptuous:

“Now, what evidence does the State have that he ever lived there? He has – talk about bias – accusers who are all with their own motivations and interests, and not all of them that we could bring out to you, to be quite honest, because of the rules of this court.”

RP 810

and

“██████ talked about various types of underlying motivations her family may have that we couldn’t bring out to you entirely, different kind of stresses that she has, as well.”

RP 813.

These statements during closing were made in the context of the Defense relating that she had done her best to follow the rules of the court, and that it was her duty to point out any lack of evidence to the jury. The Prosecution did not object during closing, nor did the trial court make any indication that the Defense was contemptuous, sanctionable, or inappropriate.

The first and only time the trial court even mentioned the word contempt and / or sanctions was on September 4th, 2009. This occurred during a discussion outside the presence of the jury, among the Prosecution, the Defense, and the trial court. RP 519-530. The Prosecution talked about moving for a mistrial. RP 522. The Defense said that it wanted to move for a mistrial if certain evidence were not allowed to be presented. RP 529. The trial court stated “--now. I’m not going to tolerate it.” RP 529. The Defense

stated that it was “not going to tolerate not being able to fulfill the duties for my client.” RP 529.

The trial court responded to the request for a mistrial and statement by the Defense about fulfilling its duties as follows:

“Ms. Brinkman, if the Prosecutor did that, I’d hold him in contempt and they’d be going to jail. Now, you will not make an outburst like that again and make any accusations to the Court. If you are in any way unprofessional or lack respect for the Court, I’m going to start with fines.”

RP 529.

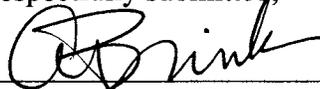
The Defense counsel did not make any further request(s) for a mistrial following this warning about contempt.

IV. CONCLUSION

During the trial there were varied rulings by the trial court that conflicted with one another. There is not substantial evidence sufficient to show consistently disobedient or contemptuous conduct by the Defense. The one time the trial court warned about contempt and / or sanctions was when the Defense asked for a mistrial, and she did not do this again.

DATED October 9th, 2009.

Respectfully submitted,



APRIL BOUTILLETTE BRINKMAN,
Attorney at Law
WSBA #36760

and that said envelope contained the following:

1. Response to the State's Brief.
2. Affidavit of Service of Response to the State's Brief.

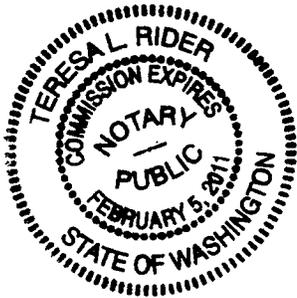
DATED this 9th day of October 2009



April Boutillette Brinkman, WSBA #36760

Attorney at Law

SUBSCRIBED AND SWORN to before me on October 9, 2009.



Notary Public in and for the State of Washington

Residing at Vancouver, Washington

My commission expires on 2.5.11