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DIVISION II

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STATE OF WASHINGTON
BY
DEPUTY

NO. 38858-8-II

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

STATE OF WASHINGTON, Respondent

v.

PETRONILO CIFUENTES VICENTE, Defendant

Matter of April Boutillette Brinkman, Appellant.

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE DIANE M. WOOLARD
CLARK COUNTY SUPERIOR COURT CAUSE NO. 08-1-00927-1

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. STATEMENT OF FACTS 1
II. RESPONSE TO ASSIGNMENT OF ERROR 1
III. CONCLUSION..... 28

TABLE OF AUTHORITIES

Cases

<u>Pounders v. Watson</u> , 521 U.S. 982, 989-91, 117 S. Ct. 2359, 138 L. Ed. 2d 976 (1997).....	27
<u>State v. Berty</u> , 136 Wn. App. 74, 84-85, 147 P.3d 1004 (2006).....	25
<u>State v. Garrett</u> , 124 Wn.2d 504, 522, 881 P.2d 185 (1994)	28

Statutes

RCW 2.28.010	23
RCW 7.21.010	24, 27

I. STATEMENT OF FACTS

The State accepts the statement of facts as set forth by the appellant. However, additional information is needed to adequately respond to the issue raised on appeal. With that in mind, additional information will be supplied during the argument section of this brief.

II. RESPONSE TO ASSIGNMENT OF ERROR

The assignment of error raised by the defense attorney, April Boutillette Brinkman, is that she should not have been found in contempt of court for repeated violations of the trial court's rulings and in particular for two instances of contempt during her portion of the closing arguments.

A copy of the Findings of Fact and Conclusions of Law Finding Contempt Sanctions (CP 98), dated January 2, 2009, is attached hereto and by this reference incorporated herein.

The State submits that the record established clearly supports the Finding of Fact and Conclusions of Law entered by the court related to contempt of court by this particular attorney. Further, it appears, based on the circumstances, that the penalty of \$500 is an appropriate sanction for her behavior.

This particular trial, based on charges of rape of a child in the first degree and child molestation in the first degree, was particular contentious

and, made all the more difficult, because of the conduct of the defense attorney both before the beginning of the trial and during the trial itself. Although the area of contempt dealt with two examples of misconduct during closing argument, the State submits that it is necessary to review the previous history of contemptible behavior by this attorney that led, ultimately, to the trial court sanctioning her.

This record demonstrates, quite amply, that the defense attorney was repeatedly trying to test the patience of the court. It is to the trial courts credit that she did not fall victim to this but maintained her professionalism and proper courtroom demeanor. Unfortunately, the same cannot be said for the defense attorney.

At pretrial, the baiting of the judge by the defense attorney began. Examples can be found during the pretrial proceedings of August 28, 2008, where the defense attorney makes the following types of comments to the trial court:

MS. BRINKMAN: You want my response now? Yes - -

THE COURT: No, I want you to brief it further before I make a ruling on it.

MS. BRINKMAN: Well, maybe you can tell me what the Prosecution has said that's convinced you about anything, because I don't think he is at all stating law that's relevant or helpful.

THE COURT: And if you don't feel he is and that you've got some that is relevant or helpful then I need to see that.

MS. BRINKMAN: So you're saying, based on the information the Prosecution is giving you, that's enough for you to be - -

THE COURT: I'm making no - -

MS. BRINKMAN: - - denying - -

THE COURT: - - I'm making no ruling on it, I want to hear your basis on case law.

- (RP 70, L.17 - 71, L.8)

MS. BRINKMAN: Your Honor, we object. I think that's just impossible to practically implement in a court setting. And it's not going to be relevant for us because we'll have plenty of people to back it up, but it doesn't make any sense.

THE COURT: It gets back to the character evidence of witnesses and how it is that we talk about that. Isn't that what you're saying?

MR. FARR (Deputy Prosecutor): Well, kind of. I think the - - it - - because what happens is individuals can ask a question of a witness, you went out the door, didn't you, and the witness says no, and there's nobody the counsel has to support that they actually went out the door. So you shouldn't be able to ask a question and leave a sent for the jury that you have no proof to substantiate.

MS. BRINKMAN: Your Honor, I think that's just a ridiculous thing to try to - -

THE COURT: Okay. Let's - -

MS. BRINKMAN: - - regulate.

THE COURT: Let's stop for a minute. I'm not asking for everybody - - anybody's judgment on each one of the objections or the replies. Okay. So just say objection because ridiculous is not a basis of an objection. So let's leave it at that. I can - -

MS. BRINKMAN: Okay.

- (RP 78, L.1-25)

This type of behavior continues as given in examples of September 2, 2008, where the defense attorney actually is confronting the judge.

MR. FARR (Deputy Prosecutor): The only thing from the State at this point is, we're very concerned over the issue of the Defendant's - - the Defense trying to bring in any form of domestic violence in the household, any form of criminal history of any of the participants. And we would ask that that not be mentioned or discussed in front of the jury unless and until we have a hearing outside the court.

MS. BRINKMAN: Your Honor, I will not be limited in my impeachment powers. And I don't know what this Court will have to do to stop me, but it's my duty to my client to be able to impeach. And if Mr. Farr wants to try to limit me like that, I just don't find it's - -

THE COURT: Well - -

MS. BRINKMAN: - - ethical thing for me to do.

THE COURT: - - that's why we have the rules of evidence. There are certain things that you can impeach on and correctly impeach, and there are certain things that you can't, so we just follow the rules of evidence.

MS. BRINKMAN: Exactly. I will.

- (RP 155, L.3-22)

Later on, on the same day, the defense attorney is admonished by the court concerning her behavior and also her obvious contempt of rulings that have previously been made.

MR. FARR (Deputy Prosecutor): Your Honor, my concern is that we are once again back on the question of, you abused your daughter, which has been a motion in limine, has been instructed by Your Honor not to do that, has been objected to, again instructed not to do that, and again has been presented in front of the jury.

THE COURT: The original question that he answered was that he did not know about any abuse by Petronilo Cifuentes of his daughter.

MS. BRINKMAN: In my memory, Your Honor, it was - - my question written down, did you know about any abuse of your little girl occurring in your home.

THE COURT: And that's inappropriate.

MS. BRINKMAN: That was - -

THE COURT: I have ruled on that two times now, a motion in limine and objections.

MS. BRINKMAN: Well, you know, and there was no objection to it when I asked it this time. And it was unclear that all of that was forbidden based on any motion - -

THE COURT: It is forbidden and it will be a subject of - - to be stricken from the record when the jury comes back in.

MS. BRINKMAN: Could I ask why?

THE COURT: Because my ruling is that it's not relevant.

MS. BRINKMAN: It's not relevant if he knew if there was any abuse - -

THE COURT: And there will be no - -

MS. BRINKMAN: - - (inaudible) going on or not?

THE COURT: - - further argument on that subject. Are we ready to bring the jury back in?

MR. FARR: Yes, Your Honor.

THE COURT: Okay.

(JURY PRESENT, 4:10)

THE COURT: I didn't say you weren't going to get exercise, did I? Okay.

MS. UNIDENTIFIED: All kinds of bonuses.

THE COURT: All right. Thank you. Have a seat, Mr. Rames.

And the jury will disregard the last question and answer and it will be stricken from the record and disregard your notes also.

MS. BRINKMAN: Your Honor, for the record, that this man knew or didn't know about abusive of that little girl - -

THE COURT: Stop - -

MS. BRINKMAN: - - in the home is - -

THE COURT: - - now.

MS. BRINKMAN: - - something I strongly object to.

THE COURT: Stop, now. Okay. We've been over that and - -

MS. BRINKMAN: Thank you.

THE COURT: - - it is understood. You're adequately on the record. Okay. Continue.

CROSS – EXAMINATION (CONTINUING)

BY MS. BRINKMAN:

Q Mr. Rames, before this alleged incident, did you have any reason to have any sort of bias or prejudice against my client, Petronilo?

A Before that incident?

Q Before this alleged incident.

MR. FARR: Objection as to relevancy then.

A No.

THE COURT: I'll allow it.

Q I missed the answer.

A No.

Q No, you did not have any bias or prejudice?

A No.

Q Okay. Thank you for your answer. Okay.

Okay. You mean to tell me you never thought my client had an affair with your wife?

MR. FARR: Oh, objection.

THE COURT: Sustained.

MS. BRINKMAN: Your Honor, I think I have the right to be able to impeach this witness. He's

saying he didn't have bias. I can show you case law, State v. Dolan - -

MR. FARR: Objection.

THE COURT: We're going to remove the jury.

MS. BRINKMAN: Okay.

- (RP 227, L.1 – 230, L.6)

The record continues into September 3, 2008, where it is obvious that the defense attorney does not know, apparently, how to object properly to questions and continues an argument with the court. Further, it appears during this long quote that, in a sense, the defense attorney is "pouting" about some of the rulings or as a result of the discussion with the court and prosecutor.

(RECESS TAKEN FROM 9:47 TO 10:22)

(JURY ABSENT)

THE COURT: Okay we're back on the record.

Ms. Brinkman, I need to bring something to your attention, and that is the proper form of objections. The proper form of objections is, I object, without the editorial comments of, I feel, or this is ridiculous, or whatever, and then give me a specific ground, or tow, with a specific rule number for the basis for your objections. Speaking objections are not appropriate. So I just thought I'd bring that to your attention.

MS. BRINKMAN: Your Honor, I disagree. It's what I have been doing. I've been saying, I object. I've been giving numbers or foundations, and then I've been moving

on. So we can look to the record later if someone wants to take that up. But I don't take that - -

THE COURT: Okay.

MS. BRINKMAN: - - at face value.

THE COURT: You probably didn't realize you have been preceding every objection, I feel, or some other - -

MS. BRINKMAN: I haven't remembered saying, I feel, but I will not say, I feel. I certainly don't remember saying - -

THE COURT: Okay. Well, that's why I wanted to bring it to your attention, because sometimes those things happen and, well, we all - -

MS. BRINKMAN: I remember saying, I consider a few times, but not, I feel.

THE COURT: Okay. Just brought it to your attention, so. Are we ready for the jury/

MR. FARR: State's ready, Your Honor.

THE COURT: Ms. Brinkman.

MS. BRINKMAN: We're ready, Your Honor.

THE COURT: Okay

(JURY PRESENT, 10:24)

THE COURT: Good morning again.

THE JURY: Good morning.

THE COURT: Cross-examination.

MS. BRINKMAN: Are you asking me to begin, Your Honor?

THE COURT: Yes.

MS. BRINKMAN: I want to make sure I'm following all procedures correctly. So if I'm not, would you please let me know at the time so I'll know how to proceed?

THE COURT: Yes.

MS. BRINKMAN: Thank you so much.

- (RP 285, L.13 – 287, L.9)

The jury later in the day is again removed from the courtroom and the court again admonishes the defense attorney about her conduct.

(JURY ABSENT, 10:53)

MS. BRINKMAN: Why does Mr. Farr get to make his argument when the jury's here, but as soon as I start to talk, they have to go?

THE COURT: Because you're making a speaking objection other than objection, argumentative; objection, hearsay; objection, fact not in evidence. And you start speaking beyond that. That's the issue.

MS. BRINKMAN: He's gone beyond that, too.

THE COURT: So.

MS. BRINKMAN: So this happened yesterday. There was the ability to have this kind of testimony from Mr. Ramos. I asked him, why did you change your story, and yesterday that was allowed. So why is it different today?

MR. FARR: Well, Your Honor, the objection from the State is that we don't have that established yet. So she's

arguing that she is changing her story and lying in front of the jury, when we don't have any establishment of evidence that, in fact, she said something differently.

She says, I don't remember what I told the officer. That's not a response that says, I didn't say that. Plus there have been numerous times when Counsel has made comments in response to a statement by a witness, or anticipation of a question, that are completely inappropriate.

MS. BRINKMAN: Your Honor, everyone here is making comments today, not just me. But somehow my comments are getting blown way out of proportion and they're getting to say a lot. So that's why you see this situation.

And in addition, if this was the threshold, which questions could be asked. I mean, can my client be asked, you know, did you do this? What kind of proof do they have backing up anything that's being asked today. I can answer the - - ask the question. She can ask it as she wants, or as she sees fit.

THE COURT: She has. And when you haven't gotten the answer that you thought you deserved, you go back and that's why you get that question asked and answered again.

MS. BRINKMAN: That is not true. Because I asked this question, he objected before she even had the chance to answer it. I asked, why did you change your story. Before I even got an answer, he objected and the jury had to leave.

MR. FARR: Well, because the objection is, is that by making the statement, why did you change your story, suggests to the jury an item not in evidence, which is that her story was different from what she says. She says, I don't remember.

THE COURT: Well - -

MS. BRINKMAN: You know what, there's a lot of stuff not in evidence that people are asking about. It's up to her to answer it.

THE COURT: It's up to the Court to give direction on objections, and I'll do so. Okay? And I have been careful to send the jury out because this kind of discussion - - any kind of discussion before a jury is inappropriate because they need to rest solely and make their decisions solely on the evidence in court, and not the argument of counsel. In fact, there was a preliminary instruction indicating that objections and argument of Counsel is not evidence.

So, that having been said, are we ready to move onto another question or another area?

MS. BRINKMAN: Where to begin is my only question. Okay. Sure. Let's just start up again.

THE COURT: Okay.

- (RP 304, L.18 – 307, L.12)

Even after the dressing down by the court, the defense attorney within two pages of that in the transcript continues the same course of conduct that got her in trouble. (RP 309-310). This, lead to the jury again being taken out of the courtroom and the court again admonishing the defense attorney about her conduct.

MR. FARR: Again, objection; asked and answered and it calls for speculation.

THE COURT: Sustained.

MS. BRINKMAN: Okay, (inaudible) the record, Your Honor, I don't think she answered the question.

THE COURT: Take the jury out, please.

(JURY ABSENT, 11:11)

THE COURT: Wasn't this kind of subject subject to one of the motions in limine about - -

MR. FARR: This was.

THE COURT: - - domestic violence in the home?

MR. FARR: Number 5 on my motion to limine would preclude any evidence implicating another. You granted that because, pursuant to case law, the defendant in Washington State cannot claim or imply another's involvement without admissible evidence linking that person to the crime charged.

MS. BRINKMAN: Your Honor, with all due respect, I tried to start out, Ms. Ramos, according to your testimony, the only way in which abuse against your daughter could have occurred in your home is because of my client. Correct.

(COUNSEL IS OUTSIDE MICROPHONE RANGE)

MS. BRINKMAN: And it's completely acceptable. It's asking her if it is indeed my client that could have done this, according to her, and she doesn't understand it so I'm asked to rephrase the question. And I keep having to come up with all these creative ways to rephrase it. You know, at a certain point, you keep rephrasing it, I don't know what to do.

THE COURT: Move on.

MS. BRINKMAN: Well, but you keep doing this every time and then I don't get to ask my questions and that's a real problem.

THE COURT: I have the motions in limine. It - - you're talking abuse by another person. That's not the issue at trial. The issue at trial is that the State has to prove that your client abused Norma beyond a reasonable doubt.

MS. BRINKMAN: Any my question related to my client. But she won't answer it. She won't answer my questions.

THE COURT: I'm instructing you to move on.

MS. BRINKMAN: I can do that, but for the record, I object to that.

THE COURT: And your objection is so noted. And this is the third time, at least, that you've violated the motions in limine.

MS. BRINKMAN: You know, I don't see myself as violating them, but we're - - I object to it.

THE COURT: Okay.

- (RP 314, L.2 – 316, L.2)

Yet again, in the same day, the court has to remove the jury and again admonish the defense attorney for her conduct.

MS. BRINKMAN: Okay. Because, Your Honor, I object again, I think this has been asked and answered, just the same with me, and now it's become argumentative, badgering the witness.

THE COURT: Thank you. Would you remove the jury, please?

(JURY ABSENT, 11:35)

THE COURT: Ms. Brinkman, I had asked you not to editorialize when you're making objections. And when you make an objection, you are asking, same as me. You've done that twice. That is absolutely improper.

MS. BRINKMAN: Your Honor, I object. In the courtroom, there should be reciprocity. There should be equal protection of our rights. And so I think it's completely legitimate to bring that up. Our rights as attorneys, our rights as witnesses, rights of the Defendant.

THE COURT: I am telling you as the judge presiding in these proceedings, that's improper.

MS. BRINKMAN: Okay.

THE COURT: And I will - -

MS. BRINKMAN: Thank you.

THE COURT: - - I will not allow it.

MS. BRINKMAN: And for the record, I object.

THE COURT: All right.

MR. FARR: Thank you. Your Honor, the purpose of - - just so I - - we can do an offer of proof if you want. But the purpose of my question was rehabilitation of the witness after cross-examination. It's fair and proper. I'm just trying to establish if she ever left the residence, if she had other obligations that took her away from the residence, if she had other issues where she was not in the residence, et cetera.

THE COURT: I'm not finding that your inquiry is inappropriate.

MR. FARR: All right. Thank you.

MS. BRINKMAN: Your Honor, I object. Whenever I've tried to ask her again and she doesn't understand, I've been told to move on. For the record.

THE COURT: I understand that we have a different interpretation of what's going on here. Okay?

- (RP 328, L.3 – 329, L.18)

The court had to again later in the day admonish the defense attorney yet again concerning her conduct. (RP 395-396).

The next day, September 4, 2008, the court is having continuing difficulties controlling the defense attorney. On this date, it is obvious, from the record, that the defense attorney loses her cool, loses her objectivity, and begins to lash out at the prosecution, the court, and the way the trial is going.

MS. BRINKMAN: And, Your Honor, if you remember, I made no objection at the very beginning with the State and I said we shouldn't be talking about time frames outside of that. I was overruled and that those time frames outside of that were relevant.

So, for the record, the State has been able to talk about time frames outside of that time frame of its charge, and so it's brought forth information of where my client was supposedly living during that time. Since they opened that door - - and that's the whole part of this, I don't know what we're going to present till they present their case, but they opened that door. I have the right now to say, no, that's not true.

THE COURT: (inaudible) - -

MS. BRINKMAN: We have a witness here married to him during that time.

MR. FARR: Your Honor, if I understand it right, the alleged - - the suspect in this case had not met or married

his wife until long after he'd moved out of the house in December of - - in '03, so their testimony as what happened in '01 does not make any sense.

MS. BRINKMAN: Your Honor, they were testifying to all the way through 2004, and we've heard lots of testimony today saying that my client lived with them till 2004.

(COUNSEL RAISES HER VOICE)

MS. BRINKMAN: Now, that speaks directly to their credibility and it is our absolute right to present that information.

MR. FARR: No, the witnesses did not - -

MS. BRINKMAN: And if you're not going to let us do that, then we - -

THE COURT: Stop - -

MS. BRINKMAN: - - want a mistrial.

THE COURT: - - now. I'm not going to tolerate it.

MS. BRINKMAN: I'm not going to tolerate not being able to fulfill the duties for my client.

THE COURT: 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.

Now, stop and slow down for a minutes. I'm going to grant the State's motion for you to limit your witnesses to the times that are in the Information.

MS. BRINKMAN: Can I ask the reasoning, Your Honor?

THE COURT: It's not relevant.

MS. BRINKMAN: Then can I ask why it was relevant for the State to bring up those dates outside the time frame?

- (RP 528, L.1 – 530, L.1)

Just prior to this discussion between the court and the defense attorney, the State had presented to the court the examples of the violations of the motion in limine together with other conduct in the courtroom which was causing the deputy prosecutor a great deal of concern about the integrity of the judicial process.

MR. FARR (Deputy Prosecutor): Your Honor, I asked for this time because we are now approaching the Defense witness list, and the State - - I don't believe I have, I don't know if you have received anymore clarifying information as to what impeachment - - or, uh - - I've got to get the language - - character or impeachment issues are. I am concerned because I believe at this point the State has sufficient evidence and sufficient facts to request a mistrial.

We've had numerous violations of the motions in limine. Number eight, the motion as far as to the form of objections, which was granted. Number 23, the motion on DV, which was granted. Number 24, the motion to stop the Counsel from interpreting, which was granted. Number five, motion to exclude evidence implicating another, which was granted.

And we've had numerous comments during trial suggesting disbelief as to testimony from the witness stand such as laughing during the father's testimony. We've had discovery violations and failure to disclose material information for impeachment and cross-examination such as marital infidelity. And the State only has once chance at this case.

The purpose of the motion in limine is to eliminate things popping up in trial so that I have to object based upon the evidence, and it makes me look like I'm hiding information. So that's the purpose of the motion in limine. It has - - they have not been followed. And every time something pops out and I have to object, a bell is heard by the jury and, you know, although we can ask them to disregard and set aside, I've had the bells of St. Mary going on here and they can't disregard everything, it's just not personally possible.

- (RP 519, L.16 – 520, L.23)

Even after this long discussion, the court again finds itself having to remove the jury from the courtroom and admonishes the defense attorney concerning at least, the fifth violation of the motions in limine that had previously been granted by the court.

MS. BRINKMAN: And I apologize. Did everyone hear the answer?

Q Did you every have problems with her family?

A (Defendant) With the father, yes, he didn't like me.

Q And why did he not like you?

MR. FARR: (Inaudible).

THE COURT: Overruled.

A Because he would accuse me that I was with his wife and he - -

THE COURT: Okay. Let's remove the jury. The jury will ignore the answer and it will be stricken from the record.

(JURY ABSENT, 1:59:00)

THE COURT: That's probably the fifth violation of motions in limine and is inexcusable.

MS. BRINKMAN: Your Honor, I didn't - - I wanted him to be able to explain t the jury if - - that he knew a reason with would be made up 'cause I think that's really in their mind, and I did no know what's coming out. I know rumor's been going around, but as my client, I feel like I have to ask him that.

THE COURT: But that's violating the Court's ruling.

MS. BRINKMAN: But you ask - - you said I could ask the question. I didn't know - -

THE COURT: No - -

MS BRINKMAN: - - what he was going to say.

THE COURT: - - I didn't say you could ask the question and get into that at all.

MS BRINKMAN: You just said it was overruled about asking that question. He objected and you said we could go ahead.

THE COURT: Because I didn't think he was going to go into what was part of the motion in limine.

MS. BRINKMAN: I didn't either. I have no idea - -

THE COURT: Then warn your clients next time about what they are not suppose to talk about. I hate to have to cut off a question or an answer because of what's anticipated, but you should be able to anticipate the motions in limine for each one of your witnesses.

MS BRINKMAN: I know there have been problems at work. I did not know exactly what everyone - -

THE COURT: You should tell all of your witnesses what not to talk about.

MS. BRINKMAN: So, can I lead him and say, well, were you having problems at work with the father?

THE COURT: No, we're not going there at all.

MS. BRINKMAN: So can I ask the question at all, why do you think this may have happened, that they made up this - - allegations?

THE COURT: He indicated he didn't know why Norma made up the allegations through the beginning and the end of it, especially if he's going to use that occasion to get into this other.

MS. BRINKMAN: Okay. So we will just proceed with other questioning then.

- (RP 608, L.17 – 610, L.22)

These examples, ultimately, culminated in the two situations in the closing argument by the defense attorney that clearly indicate that she was ignoring any of the previous rulings made by the court. The two areas of discussion in her closing argument were the two following sections:

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 rules of this court.

- (RP 810, L.9-13)

They may all be good people, but use your common sense. You know that kids create these kind of stories. You see it all the time. And there's various types of wants for attention. Norma 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, L.15-22)

The defense attorney on page 19 of the Brief of Appellant makes a comment that the "two comments made by Brinkman during closing argument did not directly violate any motion in limine that had been granted by the trial court."

It appears from the brief that the appellant believes that the only type of contempt, or the only type of violation and admonishments from the court, have to be set out in writing before the start of trial. In this situation, the conduct of the defense attorney had escalated from the point of just sheer boorish behavior with the court to a situation where she infers (and states directly) that there is hidden information that, but for, the actions of "this court" the jury would hear and would obviously lead to an acquittal of her client. It is because of this hidden knowledge and information that the true story does not come out for the jury. The State submits that this does not require a motion in limine; this is ER 101. This is about as fundamental as a rule can possibly get. There are only two possible ways that this can be looked at: It is either ignorance or

arrogance. The State submits that the latter appears to be more appropriate. This appears to be nothing more than sheer arrogance on the part of this attorney. She is consistently arguing with the court, questioning the court's authority to make rulings, objecting and continuing to badger the prosecution and trial court to the point that the jury has to be lead from the courtroom on numerous occasions, the defense attorney lectured at strenuously, and then, as if she conveniently forgets or it is not in writing, the defense attorney blithely goes back to doing exactly what she had been warned not to do. This type of behavior is unethical and leads to a total breakdown of the proper protocol and demeanor that an attorney should exercise in a courtroom. She does not show deference to the court as is needed, but shows contempt. There is absolutely no justification for her conduct and the State submits that sanctions were clearly appropriate under the circumstances.

The rules concerning this type of behavior and the case law is all quite clear.

RCW 2.28.010. Powers of courts in conduct of judicial proceedings

Every court of justice has power – (1) to preserve and enforce order in its immediate presence. (2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority. (3) To provide the orderly conduct of

proceedings before it or its officers. (4) To compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein. (5) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto. (6) To compel the attendance of persons to testify in an action, suit or proceeding therein, in the cases and manner provided by law. (7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

RCW 7.21.010. Definitions

The definitions in this section apply throughout this chapter:

(1) "Contempt of court" means intentional:

(a) Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceedings;

(b) Disobedience of any lawful judgment, decree, order, or process of the court;

(c) Refusal as a witness to appear, be sworn, or, without lawful authority, to answer a question; or

(d) Refusal, without lawful authority, to produce a record, document, or other object.

(2) "Punitive sanction" means a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.

(3) "Remedial sanction" means a sanction imposed for the purpose of coercing performance when the contempt

consists of the omission or refusal to perform an act that is yet in the person's power to perform.

As explained in State v. Berty, 136 Wn. App. 74, 84-85, 147 P.3d

1004 (2006):

A finding of contempt and punishment, including sanctions, lies within the trial court's sound discretion, and we will not disturb such findings and sanctions absent an abuse of that discretion. State v. Dugan, 96 Wn. App. 346, 351, 979 P.2d 885 (1999). A trial court abuses its discretion when it exercises it in a manifestly unreasonable manner or bases its decision on untenable grounds or reasons. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

A finding of contempt will be upheld as long as a proper basis can be found. State v. Hobbie, 126 Wn.2d 283, 292, 892 P.2d 85 (1995) quoting State v. Boatman, 104 Wn.2d 44, 46, 700 P.2d 1152 (1985)). The authority to impose sanctions for contempt may be statutory or under the inherent power of constitutional courts. Hobbie, 126 Wn.2d at 292.

Contempt can be either civil or criminal, with the latter requiring the constitutional safeguards extended to other criminal defendants. In re the Marriage of Didier, 134 Wn. App. 490, 500, 140 P.3d 607 (2006) (citing In re the Interest of M.B., 101 Wn. App. 425, 438-40, 3 P.3d 780 (2000)). The current Washington statutes on contempt define contemptuous conduct but, unlike previous versions of the statute, do not distinguish between civil and criminal contempt. Hobbie, 126 Wn.2d at 292. Instead, current statutes distinguish between punitive and remedial sanctions for contempt. In re Didier, 134 Wn. App. at 500, 140 P.3d 607 (2006); RCW 7.21.010, 030, 040. A "punitive sanction" is "a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court." RCW 7.21.010(2). A "remedial sanction" is "a sanction imposed for the purpose of

coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform." RCW 7.21.010(3).

Both remedial and punitive sanctions statutes contain an exception to compliance with their provisions, if the contempt falls within the provisions of RCW 7.21.050. Hobble, 126 Wn.2d at 293. Both punitive and remedial sanctions are authorized for direct contempt – a presiding judge “may summarily impose either a remedial or punitive sanction ... upon a person who commits a contempt of court within the courtroom if the judge certifies that he or she saw or heard the contempt.” RCW 7.21.050(1). The judge may impose such contempt sanctions at the end of the proceeding, and sanctions are only permitted “for the purpose of preserving order in the court and protecting the authority and dignity of the court.” RCW 7.21.050(1).

Under the plain language of the contempt statute, the trial court's imposition of sanctions in this case was proper. The judge summarily imposed punitive sanctions on Grissom due to his contempt within the courtroom. The judge certified that he saw the contempt when he notified Grissom during closing argument that his (Grissom's) comments were sanctionable. The judge was permitted to wait to impose sanctions until the end of the proceeding, and substantial evidence supports the court's finding that the sanctions were necessary to preserve order in the court and protect the authority and dignity of the court. The trial court did not abuse its discretion by imposing these sanctions, and we accordingly affirm.

Grissom argues that the court's inherent power to find contempt “generally is limited to immediate action.” Appellant's Br. at 14. The court did state that it was using its “inherent summary contempt power.” But its actions were authorized by the summary contempt statute. However, an appellate court may sustain a trial court on any correct ground, even if that ground was not considered by the trial court. Nast v. Michels, 107 Wn.2d 300, 308, 730 p.2d 54 (9186); see also State v. Winnings, 126 Wn.

App. 75, 88, 107 P.3d 141 (2005). The summary contempt statute specifically allows a court to impose sanctions after the proceeding, so Grissom's argument is without basis."

Finally, the defense attorney makes an incredibly ludicrous argument that the trial court did not have the appropriate authority to question a violation of the rules of professional conduct by this attorney. All of the findings of fact are clearly supported by evidence during the course of this trial. The fact that the trial court may not have submitted a complaint to the Bar Association does not relieve the attorney of responsibility for her boorish behavior and totally unprofessional conduct.

Contempt of court includes (1) intentional "disorderly, contemptuous, or insolent behavior toward the judge ... , tending to impair its authority ... " or (2) intentional "disobedience of any lawful judgment, decree, order, or process of the court." RCW 7.21.010(1)(a)-(b).

Repeated violations of court rules can rise to contumacious conduct, especially when an attorney violates a court's instructions not to pursue a particular line of questioning. See Pounders v. Watson, 521 U.S. 982, 989-91, 117 S. Ct. 2359, 138 L. Ed. 2d 976 (1997).

Under Rules of Professional Conduct 3.5(c), a lawyer shall not "engage in conduct intended to disrupt a tribunal." Under RPC 8.4(d), it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice . . ." Upon admission to practice before this court, members of the Washington State Bar take an oath of attorney which includes the words "I will

maintain the respect due to the courts of justice and judicial officers” and “I will abstain from all offensive personalities. . . .”

- State v. Garrett, 124 Wn.2d 504, 522, 881 P.2d 185 (1994)

The State submits that the contempt was appropriate under these circumstances and that the sanction imposed by the court was appropriate.

III. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 10 day of Sept, 2009.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


MICHAEL C. KINNIE, WSBA#7869
Senior Deputy Prosecuting Attorney

APPENDIX

FILED

JAN 02 2009

Sherry W. Parker, Clerk, Clark Co.

THE SUPERIOR COURT FOR CLARK COUNTY, WASHINGTON

State of Washington,

Plaintiff

Case No. 08-1-00927-1

Vs.

Petronilo Cifuentes-Vicente

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
FINDING CONTEMPT
SANCTIONS**

Defendant

This matter having come before the court on or about November 19, 2008, the State of Washington represented by Deputy Prosecuting Attorney Kim Farr, the Defendant, Petronilo Cifuentes-Vincent, present, defense attorney April Boutillette Brinkman present and represented in this matter by her Attorney Charles Buckley, and the court having reviewed the briefs of the attorneys and having heard the trial upon which sanctions for contempt have been requested, the Court makes the following:

I. FINDINGS OF FACT

The court incorporates all that entered within the FINDINGS OF FACT AND CONCLUSIONS OF LAW entered in this matter.

- 1. Attorney Brinkman defended Petronilo Cifuentes-Vicente on charges of Rape of a Child I and Child Molest I.**

109
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- 2. The State argued that the acts occurred on numerous occasions when the Defendant lived with the victim and her family.**
- 3. Defense argued that the events never happened, and the Defendant only lived with the victim's family for a very short period, and that the victim's claims were untrue.**
- 4. During the actual trial the defense attorney repeatedly violated instructions from the court to such an extent that the trial court on several occasions had to withdraw the jury to warn Brinkman about her specific violations. The violations included, but are not limited to, violating motions in limine, not adhering to the court's instructions of making objections as well inappropriate comments at closing argument. The court observed the long pattern of behavior over the course of the entire trial and that Brinkman was unable to conform her behavior to the court's instructions.**
- 5. After the jury gave its verdict, the State brought its motion for sanctions as a result of closing argument statements by Defense.**
- 6. The court allowed the Motion for Contempt and sanctions to be delayed until after sentencing to which the prosecuting attorney agreed, pursuant to the request of defense attorney.**
- 7. Sentencing was held on November 19, 2008, and the contempt/sanction hearing was held afterward, and before the Defendant's request to appeal his conviction was entered.**

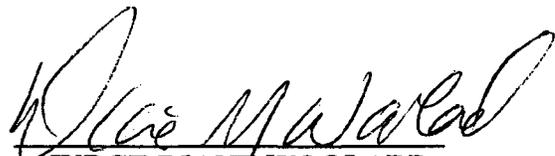
Based upon the above Findings of Fact, the court makes the following:

II. CONCLUSIONS OF LAW

1. The court, in reviewing RCW 7.21.010 and RCW 7.21.050, has decided the summary contempt statute is adequate, and will proceed under its inherent authority rather than the statutory contempt scheme.
2. The court having informed Brinkman that her conduct, was impermissible, but Brinkman's words and behavior continued and were disrespectful of the court's authority and an affront to its dignity. The actions were likely violations of the Rules of Professional Conduct.
3. The court concludes that Brinkman's conduct was willful and intentional beyond a reasonable doubt.
4. The court concludes a sanction of \$500.00 is appropriate and shall be paid to the Clerk of the Superior Court within 30 days of the entry of this order.

DATED

1/2/09


JUDGE DIANE WOOLARD

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK**

State of Washington

Vs.

Case No. 08-1-00927-1

Petronilo Cifuentes-Vinte

DECLARATION OF MAILING

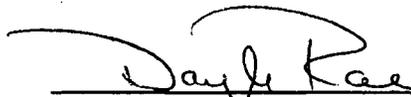
I declare under penalty of perjury under the laws of the State of Washington that on this date I sent a copy of the FINDING OF FACT AND CONCLUSION OF LAW FINDING CONTEMPT SANCTIONS dated January 2, 2009 by regular, U.S. Mail, to the parties addressed below:

**Kim Farr
Deputy Prosecuting Attorney
PO Box 5000
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**Charles Buckley
Attorney at Law
1409 Framnklin Street, #204
Vancouver, WA 98660**

**April Brinkman
Attorney at Law
205 E. 16th St.
Vancovuer, WA 98663**

DATED this 2nd day of January, 2209



**Dayle Rae, Judicial Asst.
to Judge Wodlard**

