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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE, Plaintiff and Respondent, v. KANWALJIT HUNDAL, Defendant and Appellant.	C055057 (Super. Ct. No. MF029718A)
THE PEOPLE, Plaintiff, v. KANWALJIT HUNDAL, Defendant; CLAIRE VAN VUREN, as Deputy District Attorney, etc., Objector and Appellant.	C055128 (Super. Ct. No. MF029718Y)

*Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of part I.

APPEAL from judgments of the Superior Court of San Joaquin County, Terrence R. Van Oss, Judge. Appeal No. C055057 (Hundal) is affirmed in the unpublished portion of this opinion. Appeal No. C055128 (Van Vuren) is reversed in the published portion of this opinion.

Kyle R. Knapp; and Peter A. Galgani for Defendant and Appellant Kanwaljit Hundal.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, J. Robert Jibson and Peter H. Smith, Deputy Attorneys General, for Plaintiff and Respondent the People.

James P. Willet, District Attorney (San Joaquin), Edward J. Busuttil, Assistant District Attorney, Daniel G. Bonnet and Kevin A. Hicks, Deputy District Attorneys, for Objector and Appellant Claire Van Vuren.

Defendant Kanwaljit Hundal was found guilty by a jury of six counts of committing lewd acts on his daughter, M., when she was 10 years old. (Pen. Code, § 288, subd. (a).) He was sentenced to a total of six years in state prison.

Defendant appeals, contending the trial court erred in excluding certain evidence and in denying his motion for a continuance. He also raises ineffective assistance of counsel. In the unpublished portion of the opinion, we shall affirm the judgment against defendant (see part I, *post*).

In a consolidated matter, Deputy District Attorney Claire Van Vuren appeals from a $50 sanction imposed on her by the trial court pursuant to Code of Civil Procedure section 177.5. In the published portion of the opinion, we shall reverse the judgment against Attorney Van Vuren by striking the fine (see part II, *post*).

I.*

DEFENDANT'S APPEAL

Facts

In 2000, defendant and his wife S. separated after 11 years of marriage. In 2001, the couple obtained a divorce decree, under which they shared custody of their three children, M., her older brother P. and younger brother A.

In May 2006, when M. was 10 years old, she and her brothers were residing half time with each parent, switching residences every Wednesday.

On Saturday, May 6, 2006, defendant took his three children to Wal-Mart. He had just joined a fitness center and he wanted to buy M. a bathing suit, so she could swim there.

Defendant took M. and A. into the store, while P. waited in the car. Defendant bought his daughter a pink two-piece bathing suit, two pairs of underwear and two bras. They then drove back to defendant's residence.

M. went into the bathroom and tried on her underwear and swimsuit to see if they fit, which they did. However, defendant told her she had to try on the items again, so he could check them. M. protested, but her father insisted, so she did as she was told. This was the first time M. had ever purchased a bra. Defendant had never checked his daughter's underwear purchases before.

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*See footnote, page 1, *ante*.

M. went back into the bathroom and put on a pair of underpants and a bra. Defendant came into the bathroom and started "checking it." He placed his hand on her private area and began moving it in a circular motion. He was feeling, rubbing and inserting his fingers into her private spot. He touched her bra and under her bra. M. told him to stop, but he ignored her. He then told her to try on the other pair of underpants and bra.

After M. changed into the second pair of underwear, defendant returned to the bathroom, where he inserted his fingers into her private spot, put his hand under her bra, and "probably" touched her butt.

Defendant then told M. to try on her bathing suit. He left the bathroom and M. tried on the bathing suit again, because her father thought the fit was too tight. Defendant returned and while "checking" the fit, he again touched her bottom with his hand and inserted his fingers in her private spot.

During this sequence of events, seven-year old A. opened the bathroom door to ask his father a question. Defendant slammed the door shut, but not before A. saw him in the mirror touching M. in the left chest and groin areas, under her bathing suit.

Around 5:30 p.m., defendant took his children to temple, after which they went to the fitness center. When all three children were in the pool, defendant instructed M. to allow him to hold her and "hop" in the pool. Although she said no, defendant grabbed her and made her hop with him. M. felt her

father's private area rubbing up against her butt, or backside. She complained to her little brother A., who told her to try to stay away from him.

Afterwards, M. and her brothers went into the spa with their father. In the spa, defendant instructed M. to lie on top of him. When M. refused, defendant again grabbed her and pulled her toward him. As he held her stomach, M. could feel him trying to get his private area as close to her butt as he could. M. felt frightened, feeling that it was something a father should not be doing with a daughter.

That night, defendant made M. sleep with him, and draped his legs around hers in the bed. Again she felt his private area close to hers and felt frightened.

The next day, Sunday, defendant took his children to temple and back to the fitness center. Defendant again made M. hop with him in the pool; as they jumped, she felt his private area touching her butt or backside.

On Monday morning, after defendant left for work, M. called her mother S. and said she had something important to tell her. When S. arrived, M. explained what defendant had done to her, and started to cry. S. was "shocked and surprised," and called the police. M. eventually gave a videotaped interview at the Child Advocacy Center, which was played for the jury.

Defense case

On cross-examination, M. admitted that, before this incident, she strongly preferred living with her mother to living with her father and was aware that if sexual abuse allegations were true, she would no longer have to live with defendant. She also acknowledged telling Child Protective Services (CPS) after the incident that her father put all five fingers into her butt. A. admitted he, too, preferred living with his mother, because she treated him better than their father.

S. testified that she felt "very much abused" by defendant during their marriage. She admitted that she had called CPS on two or three previous occasions to complain about his treatment of the children. While denying that she prompted her daughter to make up the sexual abuse allegations against her former husband, she admitted she once took $14,000 from defendant and lied about it in court.

Dr. Demosthenes Lorandos, a licensed psychologist, testified as an expert for the defense. He discussed the doctrine of Parental Alienation Syndrome. According to this theory, in a high-conflict divorce situation, one parent will pressure or manipulate the child to say bad things about the other parent. In order to live with a loved parent, the child may also make up stories about the alienated parent, including fabrications about being sexually abused. The child herself may come to believe false things that are repeated over and over again by the alienating parent. Lorandos opined that pedophile parents are

unlikely to sexually abuse their own children in a high-conflict divorce case, due to the heightened scrutiny of their behavior.

Procedural background

Based on M.'s testimony, defendant was charged with 13 counts of lewd acts upon a child under 14 years of age. The following chart summarizes the jury's verdict on each count:

Count	Penal Code §§	Description	Verdict
1	288(a)	Touched buttocks in bathroom--swimsuit	Not Guilty
2	288(a)	Touched breast in bathroom--swimsuit	**Guilty**
3	288(a), 1203.066(a)(8)*	Touched private area in bathroom--swimsuit	**Guilty**
4	288(a)	Touched buttocks in bathroom--first pair of undergarments	Not Guilty
5	288(a)	Touched breast in bathroom--first pair of undergarments	**Guilty**
6	288(a), 1203.066(a)(8)*	Touched private area in bathroom--first pair of undergarments	**Guilty**
7	288(a)	Touched buttocks in bathroom--second pair of undergarments	Not Guilty
8	288(a)	Touched breast in bathroom--second pair of undergarments	Not Guilty
9	288(a) 1203.066(a)(8)*	Touched private area in bathroom--second pair of undergarments	Not Guilty
10	288(a)	Lewd act in pool--first time	**Guilty**
11	288(a)	Lewd act in spa	**Guilty**
12	288(a)	Lewd act in bedroom	Not Guilty
13	288(a)	Lewd act in pool--second time	Not Guilty
*****No probation due to substantial sexual conduct.			

The trial court denied probation and sentenced defendant to six concurrent six-year terms in state prison.

DISCUSSION--DEFENDANT

A. Motion for Continuance

Defendant contends the trial court denied him a fair trial by denying his motion to continue the trial due to the unavailability of defense cocounsel and his expert witness, Dr. Lorandos.

The record shows that on August 3, 2006, the trial was set for November 27, 2006. On November 21, defense counsel Harjot Walia filed a motion to continue the trial based on the unavailability of Dr. Lorandos. She also stated that cocounsel, Attorney Anthony Lowenstein, had some conflicts with the trial schedule, and requested that trial be put over until February 2007.

At the hearing on November 27, 2006, the prosecutor opposed the motion, noting that when Attorney Lowenstein was retained in September, the defense already knew of the trial date. In September the defense also knew it would utilize Dr. Lorandos as an expert. The prosecutor also had spoken with Lowenstein, and assured the court he would be available when needed. She believed that the motion was a delaying tactic, pointing out that several of the state's witnesses were children, whose memories fade with time.

The trial court denied the motion for continuance, scolding Attorney Walia for committing to Dr. Lorandos before she knew of his availability, and for failing to subpoena him. The court

concluded that Dr. Lorandos would simply have to adjust his schedule to fit the court's.

The next day, Attorney Walia, joined this time by cocounsel, Attorney Lowenstein, renewed the continuance motion. Walia again complained about Dr. Lorandos's unavailability (he was participating in a case in Hawaii), claiming she could not cross-examine witnesses without his assistance. Lowenstein said that he and Walia had divided the trial tasks between them and could not effectively try the case until both of their calendars were clear. Essentially, the defense's position was that Walia was unprepared to go to trial without cocounsel's uninterrupted assistance.

The trial court again denied the motion. After noting that the case was entitled to preference due to the child victim's tender age, the court reiterated that it was not impossible to secure the testimony of Dr. Lorandos. "Frankly, it looks to me like we can get the job done here. I think we can get the guy here. You can get him here on an airplane. . . . He can get here for a day." The court was also unsympathetic to counsel's plea of unpreparedness. "Reasonable minds can differ. I don't agree . . . that defendant is going to be prejudiced in this way in this regard. You can do the job. Both sides are entitled to a fair and speedy resolution."

Defendant contends the trial court abused its discretion in denying a two-month continuance, noting that it was the first

such request by the defense and alleging that Attorney Walia was clearly unprepared to go to trial by herself.

The decision whether to grant a continuance rests in the sound discretion of the trial court. (*People v. Beeler* (1995) 9 Cal.4th 953, 1003.) When a trial court denies a defense motion to continue, the defendant bears the burden of demonstrating that the court abused its discretion. (*Ibid*.) It is only in the unusual case that we would find an abuse of discretion, because the trial court retains wide discretion in the management of its own calendar. (*Ibid*.) Moreover, a reviewing court will not reverse the judgment unless the defendant establishes that he was actually prejudiced by the denial of the continuance. (*People v. Samayoa* (1997) 15 Cal.4th 795, 840 (*Samayoa*); *People v. Zapien* (1993) 4 Cal.4th 929, 972-973 (*Zapien*).)

The record shows the trial court carefully balanced defendant's rights as a criminal defendant with the right of the People and the victim to a speedy trial. The court could reasonably look upon the defense's excuses with skepticism, since the late November trial date had been selected in early August. More significantly, defendant cannot show prejudice from the court's ruling. As it turned out, Dr. Lorandos did testify, illuminating fully the psychological theory of Parental Alienation Syndrome for the jury. Nor does it appear that the court forced defense counsel to go to trial unprepared. Contrary to defendant's unsubstantiated assertions, his

attorneys presented a strong defense of their client, resulting in his acquittal of more than half the charges against him.

Because the record does not show the trial court's order led to the waiver of any meritorious defense or the forfeiture of any of his substantial rights, defendant cannot show prejudice as a result of the denial of the continuance. Consequently, the argument must be rejected. (See *Samayoa*, *supra*, 15 Cal.4th at p. 840; *Zapien*, *supra*, 4 Cal.4th at pp. 972-973.)

B. Exclusion of Impeachment Evidence

Prior to trial, the defense made a motion in limine to be allowed to ask S. whether in 2000, when M. was four years old, she [S.] accused defendant's brother of trying to rape her [S.] and of leering inappropriately at M. Defense counsel alleged the evidence was relevant to S.'s credibility and professed to have a good faith basis for asking the questions, based upon a psychological report written by Dr. Howells, a clinical psychologist.

The prosecutor objected, noting that the incident did not involve allegations of sexual abuse by the victim M. and the defense had not shown that S.'s accusations were, in fact, false.

The court denied the motion based on Evidence Code section 352. The court noted the accusations were of doubtful relevance to the issues in the case, that the alleged incident was remote, that there was no showing that the charges were false, and that allowing defense counsel to open up the subject could lead to

undue prejudice and time consumption. "We cannot," declared the trial judge, "turn the trial into an airing of the dirty laundry between these folks throughout their entire history."

Defendant claims the ruling was an abuse of discretion, urging that the trial court should have either admitted S.'s statements or Dr. Howell's testimony about the accusations. The court's ruling was expressly based on Evidence Code section 352, balancing prejudicial effect against probative value. Yet defendant undertakes no analysis of the propriety of the ruling under that section. Indeed, defendant fails to cite the statute in either his opening or reply brief. His argument consists of a brief discussion of the *relevance* of the evidence, paired with the conclusory assertion that the trial court abused its discretion.

We need not respond to contentions of this sort. Arguments presented without meaningful legal analysis or citation to apposite authority are deemed forfeited. (*Clark v. Burleigh* (1992) 4 Cal.4th 474, 481-482; *Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647.) As the court in *Haynes v. Gwynn* (1967) 248 Cal.App.2d 149 noted: "If and when we are required to perform tasks which are properly those of appellants' counsel, we necessarily relegate farther into the background appeals waiting their turn to be decided. It is unfair to litigants thus affected that we do this." (*Id.* at p. 151.)

C. Ineffective Assistance

Defendant seeks reversal on the ground that one of his attorneys, Attorney Walia, deprived him of effective assistance of counsel. This argument is divided into two sections: Counsel was unprepared for trial; and counsel gave an ineffective closing argument. Neither claim has any merit.

Trial preparation

Defendant first makes the general accusation that Attorney Walia was "unprepared for trial." He bases this claim on three factual assertions: (1) Walia repeatedly asked for continuances, telling the court that she was not prepared to go to trial without cocounsel Lowenstein's assistance; (2) Lowenstein "begged" the court to let him finish Walia's cross-examination of the victim, to no avail; and (3) during Walia's cross-examination of Detective Beerman, she "stumbled" into allowing disclosure of the prejudicial fact that adult pornography had been found on defendant's computer.

"To establish constitutionally inadequate representation, a defendant must demonstrate that (1) counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness under prevailing professional norms; and (2) counsel's representation subjected the defendant to prejudice, i.e., there is a reasonable probability that, but for counsel's failings, the result would have been more favorable to the defendant." (*Samayoa*, *supra*, 15 Cal.4th at p. 845.) The record must affirmatively disclose the lack of a rational tactical

purpose for the challenged act or omission. (*People v. Ray* (1996) 13 Cal.4th 313, 349.) We will reverse a conviction on the ground of ineffective assistance of counsel "'only if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for his act or omission.'" (*People v. Frye* (1998) 18 Cal.4th 894, 979-980.) Finally, if the defendant fails to establish the prejudice component, the reviewing court need not determine whether counsel's performance was deficient. (See *In re Emilye A.* (1992) 9 Cal.App.4th 1695, 1712.)

Defendant's first two citations of incompetence fail at the outset because they depend, not on an objective assessment of Attorney Walia's conduct, but on her own statement declaring a *subjective* perception that she lacked adequate trial skills and her cocounsel's request to complete the cross-examination of the victim. The fact that Walia may have felt uncertain or insecure about her ability to try the case is totally irrelevant, absent a showing that she engaged in actions or omissions that fell below an *objective* standard of care and prejudiced her client's case. In the absence of such a demonstration, the argument fails.[1]

The last alleged instance of ineffective assistance is simply factually inaccurate. Detective Beerman first revealed

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[1] In a throwaway sentence, defendant points out that Attorney Walia did not subpoena M.'s maternal grandfather or Dr. Howells. Since he fails to explain how that would have helped the defense, the point is forfeited. Defendant's argument also ignores the fact that Attorney Lowenstein assisted Walia as cocounsel throughout the trial.

that adult pornography was found on defendant's computer under *direct* examination by the prosecutor, not through a "stumbling" cross-examination by Attorney Walia.[2] On direct, the officer quickly added that no child pornography was found, and he acknowledged during cross-examination that adult pornography was not illegal in California.

In any event, defendant does not present a convincing argument that the disclosure of adult pornography played a crucial role in the jury's verdict. As the prosecutor correctly noted during an exchange outside the presence of the jury, the adult pornography discovery was relevant to the crucial issue of M.'s credibility, since she had told interviewers that she had seen images of adults wearing bras and panties on her father's computer. Although the trial judge speculated that, had an appropriate motion been made, he might have excluded the evidence as more prejudicial than probative, he also remarked that it

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[2] At oral argument defense counsel switched gears, acknowledging that the pornography finding was revealed during the prosecution's case-in-chief, but charging that Attorney Walia was ineffective in not having made a pretrial motion to exclude the testimony. Arguments raised for the first time at oral argument are forfeited. (*Stevenson v. Baum* (1998) 65 Cal.App.4th 159, 167, fn. 8.)

In any event, the record of the discussion in chambers shows that Attorney Walia told the court she was *unaware* of the pornography report and complained that it had been withheld from the defense, an accusation which the prosecutor heatedly denied. Regardless of the merits of the discovery dispute (an issue not before us), Walia cannot be faulted for failing to make a motion to exclude evidence of which she had no knowledge.

"isn't a big deal."[3] And any prejudice from the disclosure was significantly diminished when defense expert Dr. Lorandos testified that child molesters "very rarely" look at adult pornography.

Closing argument

Defendant also finds fault with Attorney Walia's closing argument. As best we can discern, the criticisms are: that she did not adequately weave Dr. Lorandos's expert testimony regarding Parental Alienation Syndrome into her summation; that she "undermined" the defense strategy by saying, "This is a very high-conflict divorce. *And needless to say, which divorce isn't*" (italics added); and that Walia "testifie[d] against her client" by speculating as to what might have happened in the bathroom when defendant checked M.'s underwear and bathing suit.

We have carefully reviewed counsel's closing argument and find no ineffective assistance. On the contrary, Attorney Walia gave a rational, even persuasive argument in favor of her client's innocence. She effectively attacked S.'s credibility, citing her admission of perjury and strong motive to prompt M. to fabricate allegations of sexual abuse in order to gain full custody of her daughter. She noted that M. was susceptible to

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[3] After the pornography disclosure, Attorney Walia initially asked the court to give the jury a limiting admonition and the court was poised to oblige, but she later concluded, with the court's concurrence, that it was best to just "leave it alone." We find no fault with counsel's strategic decision on this point.

brainwashing, since she did not like being in her father's strict household, and preferred living with her mother. Counsel also cast doubt on M.'s credibility, pointing out that her testimony sounded rehearsed and that she "crie[d] on cue" when being cross-examined. Walia portrayed her client as "[a] man who has raised his kids as a single father doing the best that he can," who was being victimized simply because he helped his daughter with the fitting of her bathing suit and undergarments. Defendant's claim that counsel "argued against her client" is patently ridiculous.

Defendant also contends Attorney Walia violated his constitutional right not to testify by giving her own testimony about what happened in the bathroom. The argument is based on the following remarks: "I don't know exactly how or what happened, but I do know this that he went in there, he checked her top, and she said he pulled on the strings, and he pulled on the sides. And then he went out and waited for her to change again. And then she said, I am ready again, and then he got back in there. I don't know. Maybe he is, you know, he is rough with checking the straps pulling and tugging on them. I don't know if he knows how to fit a swimsuit."

These statements do not amount to the giving of personal testimony. Attorney Walia's argument was based on inferences drawn from M.'s own testimony, which counsel was using to show how innocent behavior could be manipulated by M.'s mother into false accusations of sexual abuse. This was made clear by

Walia's very next remarks: "But I do know that even grown women are fitted for bras at Victoria's Secret . . . . [S]o I don't know what happened, *but I do know that if there is such a thing called brainwashing or taking an innocuous event and turning it into an incriminating one and taking innocent behavior and turning it into something horrible and low like this, that is brainwashing*." (Italics added.) Counsel's remarks did not represent volunteered testimony, only forceful advocacy.

Defendant's allegations of ineffective assistance are also belied by the fact that Attorney Walia nearly obtained a complete acquittal of her client. The jury retired to deliberate on December 14, 2006, reported that it was deadlocked on all counts on December 15 and did not return a verdict until December 20. The mixed verdict (acquittal on seven counts, conviction on six) shows the jury obviously struggled with the case, another indication that Attorney Walia's closing argument had a substantial impact.

No ineffective assistance is shown on this record. **[The remainder of this opinion is certified for publication.]**

II.

VAN VUREN'S APPEAL

Facts

On the morning of December 5, 2006, in the middle of jury selection, Attorney Walia failed to appear for court and cocounsel Lowenstein showed up late, at 9:30 a.m. While waiting for defense counsel to appear, Deputy District Attorney Van Vuren

handed the court clerk a document indicating that, in 2004, Attorney Lowenstein had received a suspension by the California State Bar.

When court convened in chambers, trial judge Terrence Van Oss, stated that he had received Attorney Van Vuren's note but assured Attorney Lowenstein that it made no difference to him, since Lowenstein was currently eligible to practice law. Lowenstein explained that he had, in fact, received a 90-day suspension, but that his record was now clear and he was fully licensed to practice. Judge Van Oss replied that he was not angry with Lowenstein, but was very upset with Attorney Van Vuren for engaging in an ex parte communication with the court. Van Vuren stated she was concerned about the defense's attorneys not appearing for trial and thought the court "should probably be aware that in the past there has been problems [*sic*] with this particular thing. I simply disclosed it for information."

Remarking that "[t]his has nothing to do with [Attorney Lowenstein] ever being late to court before," Judge Van Oss was not placated, calling the prosecutor's action "totally improper." The judge continued: "I think this is dirty pool. I really do. [¶] . . . [I]t should not be presented to the judge without [Attorney] Lowenstein's advance knowledge. You should never do something like that. I don't know what to do about this. I am going to think about it. I wanted to make a record about it. I wanted to make it crystal clear for whatever message I can send to your office." Judge Van Oss then admonished Attorney Van

Vuren, "Don't ever do something like this again. It is just totally improper. [¶] If you ever feel there is some burning, compelling reason to check up on your opposing counsel here and notify the court, you let opposing counsel know first. Don't ever give anything to a judge without doing that."

Later that afternoon, Attorney Walia appeared and explained that she had been delayed by a family emergency. The court reprimanded Walia because she had failed to contact Attorney Lowenstein or the court clerk and had kept everyone in the courtroom waiting. Finding that she had inexcusably failed to appear and failed to notify the court, the judge fined Walia $250 pursuant to Code of Civil Procedure section 177.5.[4]

Judge Van Oss then turned to Attorney Van Vuren and again admonished her for having engaged in ex parte communication with the court. He concluded, "It appears to me it was solely for the purpose of giving the Court a negative. I will find that a direct contempt before the Court, and I am fining you $50 pursuant to the same [Code of Civil Procedure] section. Fifty dollars ($50) payable to the court. I don't want any more shenanigans."

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[4] Undesignated statutory references are to the Code of Civil Procedure.

DISCUSSION--VAN VUREN

A. Procedural Issues

Deputy District Attorney Van Vuren appeals from the imposition of the $50 fine for engaging in ex parte communication with the court. The appeal is authorized by section 904.1, which permits an appeal from a final order imposing a sanction of less than $5,000. (§ 904.1, subd. (b); *People v. Muhammad* (2003) 108 Cal.App.4th 313, 319 (*Muhammad*).)

As noted in *Muhammad*, although Attorney Van Vuren has proper standing as an aggrieved appellant, the trial court "is not and cannot be a party in a direct appeal from a case it has tried." (*Muhammad*, *supra*, 108 Cal.App.4th at p. 320.) A brief filed by the trial court may nevertheless be treated as a brief amicus curiae. (*Ibid.*) Although a copy of Van Vuren's opening brief was served upon it pursuant to the California Rules of Court,[5] the San Joaquin Superior Court has not filed a response to this appeal. Nevertheless, "we do not assume that 'the ground urged by appellant for reversing the judgment is meritorious' (*People v. Hacker Emporium, Inc.* (1971) 15 Cal.App.3d 474, 476-477), but rather we 'examine the record on the basis of appellant's brief and . . . reverse only if prejudicial error is found.'" (*Korea Exchange Bank v. Yang* (1988) 200 Cal.App.3d 1471, 1473, quoting *Estate of Maron* (1986) 183 Cal.App.3d 707, 711, fn. 1.)

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[5] California Rules of Court, rule 8.360(d)(4) provides: "A copy of each brief must be served on the superior court clerk for delivery to the trial judge."

B. The Fine Must Be Stricken

The trial court fined Attorney Van Vuren under the auspices of section 177.5. This section empowers a judicial officer to impose monetary sanctions payable to the county "for any violation of a lawful court order by a [witness, a party, or a party's attorney], done without good cause or substantial justification." (§ 177.5, 1st par.) Such sanctions may be imposed "on the court's own motion, after notice and opportunity to be heard." (§ 177.5, 2d par.) The order imposing sanctions must be in writing and must set forth in detail "the conduct or circumstances justifying the order." (*Ibid.*)

As Attorney Van Vuren points out, the monetary sanction is defective in at least three respects.

First, the fine was not imposed for violation of a court order. Attorney Van Vuren's transgression was providing the court with a copy of opposing counsel's disciplinary record without first providing a copy to him. While this conduct might be considered a technical violation of the State Bar's ethical rules (see Rules Prof. Conduct, rule 5-300(B)(4); 2 Vapnek et al., Cal. Practice Guide: Professional Responsibility (The Rutter Group 2007) ¶ 8:434, pp. 8-68 to 8-69), under no stretch of the imagination can it be said to constitute a "violation of a lawful court order" (§ 177.5). This is not a situation where Judge Van Oss had previously warned Van Vuren against ex parte communication. (See *Seykora v. Superior Court* (1991) 232 Cal.App.3d 1075, 1081 (*Seykora*).) In the absence of

evidence that she violated an existing court order, the court lacked authority to sanction Van Vuren under section 177.5. (*Muhammad*, *supra*, 108 Cal.App.4th at pp. 324-325.)

Second, the trial court failed to provide Attorney Van Vuren with a written statement of reasons for the sanction. Section 177.5 provides: "An order imposing sanctions *shall be in writing and shall recite in detail the conduct or circumstances justifying the order*." (§ 177.5, 2d par., italics added.) In this case, Judge Van Oss imposed the sanction summarily and orally from the bench.

Third, the trial court did not afford Attorney Van Vuren the requisite procedural due process protections. Section 177.5 allows the court to impose the sanction on the court's own motion, but only "*after notice and opportunity to be heard*." (§ 177.5, 2d par., italics added.)

During the trial court's initial reprimand, it did not inform Attorney Van Vuren that it was considering sanctions. The court merely told her, "I don't know what to do about this. I am going to think about it." The sanctions order against Van Vuren came later that afternoon, and as an apparent afterthought, following the imposition of a $250 sanction against defense counsel Walia.

"Due process, as well as the statute itself, requires that a person against whom Code of Civil Procedure section 177.5 sanctions may be imposed be given adequate notice that such sanctions are being considered, notice as to what act or

omission of the individual is the basis for the proposed sanctions, and an objective hearing at which the person is permitted to address the lawfulness of the order, the existence of the violation, and the absence of good cause or substantial justification for the violation." (*Seykora*, *supra*, 232 Cal.App.3d at p. 1088 (dis. opn. of Grignon, J.).) Because it did not accord Attorney Van Vuren adequate notice or a hearing prior to imposing the sanction, the court exceeded its statutory authority.

DISPOSITION

The judgment against defendant is affirmed (C055057). The judgment against Attorney Van Vuren is reversed (striking the order imposing a $50 sanction) (C055128). No costs are awarded. (Cal. Rules of Court, rule 8.278(a)(5).) **(*CERTIFIED FOR PARTIAL PUBLICATION*.)**

BUTZ, J.

We concur:

SIMS, Acting P. J.

ROBIE, J.