IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. PETRONILO CIFUENTES-VICENTE, Defendant, In re Matter of April Boutillette Brinkman, Appellant.	No. 38858-8-II UNPUBLISHED OPINION

Bridgewater, P.J. — April Boutillette Brinkman appeals the trial court's order imposing $250 sanctions for each of two comments that she made during closing arguments at trial. We affirm the sanctions.

FACTS

I. Background

Brinkman defended Petronilo Cifuentes-Vicente on charges of child rape and child molestation. The State alleged that Cifuentes[1] sexually abused the victim on several occasions when he lived with the victim's family. The defense theory was that Cifuentes briefly lived with the victim's family and that the sexual abuse never happened.

II. Pretrial Motions

The State filed several motions in limine, three of which are important to the contempt because they show that the trial court warned Brinkman not to enter the proscribed inquiries, contrary to her assertions, and they show the continual contentious and contemptuous atmosphere that Brinkman created throughout the trial, ultimately culminating in her contemptuous statements in closing arguments. First, the State asked the trial court to exclude testimony and argument that would imply another's involvement in the sexual abuse without admissible evidence linking that person to the crime charged. The court granted the motion. Second, the State asked the court to require quick objections on the basics—to avoid speaking objections that contain arguments to the jury. Brinkman agreed, and the court granted the motion. Finally, the State asked the court to exclude argument and testimony about domestic violence. The court "[g]enerally" granted the motion but reserved a ruling if something were to arise during trial. 1 RP at 95.

[1] Defendant indicated at trial that he preferred to be called Cifuentes.

III. Trial

A. Brinkman's Cross-Examinations

The State called Pantaleon Rames-Gonzales, the victim's father, as a witness. On cross-examination, Brinkman asked Rames whether he was abusive or violent towards the victim:

> Q Mr. Rames, according to your testimony you did not know anything about your little girl being allegedly abused; isn't that correct?
> A No.
> Q So you did not know of any alleged abuse against her?
> A No, because I trusted Petronilo --
> Q So you did not have any --
> A —so—he's family. So I trusted him and he stayed with my kids there sometimes and he played with my kids.
> Q *So does that abuse include abuse or violence committed by yourself?*
> MR. FARR: Objection. Objection. This is a matter we've discussed.

2 RP at 221-22 (emphasis added). The trial court excused the jury and reminded Brinkman that it had granted the State's motion in limine not to discuss domestic violence. After hearing counsel's arguments, the court specifically ruled that it was "not going to allow that kind of testimony. . . . it's not relevant and it's improper under the court rules as well as the case law." 2 RP at 224.

Brinkman continued to question Rames and was increasingly impatient with his responses, even though he spoke through an interpreter. Brinkman again asked whether he was abusive or violent towards the victim:

> Q So, Mr. Rames, according to you, you did not know anything about your little girl being allegedly abused in your own home; is that correct?
> A That I didn't know?
> Q *Asked you the question, I don't know how to put it any clearer.*
> A Could you repeat it again?
> Q *They say third time's a charm. Let's see. Okay.*
> MR. FARR: Objection, Your Honor, I'd ask for the restriction of comments.
> THE COURT: And I also need to have you rephrase the question if we're

not getting—
MS. BRINKMAN: *Okay.*
Q *Mr. Rames, it's obviously my fault that I'm not making this understandable to you.* According to you, you did not know anything about your little girl allegedly being abused in your own home; isn't that correct?
A That I said?
Q According to your testimony.
A My daughter told me—
Q No, I asked, according to your testimony.
THE COURT: Wait. Stop. Okay.
[MS. BRINKMAN] I'm not asking for hearsay, I'm just asking for your testimony.
A Yes, I knew my child was being abused in my own home.
[MS. BRINKMAN]: *(Laughing) Okay. Did that include abuse or violence by yourself?*
MR. FARR: Objection, Your Honor.

2 RP 225-26 (emphasis added). The trial court excused the jury and reminded Brinkman that she could not ask questions about domestic violence, saying that it had "ruled on that two times now, a motion in limine and objections." 2 RP at 227.

The State next called Lucrecia Ramos-Figueroa, the victim's mother, as a witness. In cross-examining Ramos-Figueroa, Brinkman asked whether someone else in the home could have abused the victim:

Q Could've abuse against your daughter occur—could it have occurred in any other way at your home?
MR. FARR: Objection; calls for speculation.
THE COURT: Sustained.
Q Ms. Ramos[-Figueroa], according to your own personal knowledge, did the abuse alleged against your daughter take place only because of what you're alleging against my client, *or could it have occurred because of any other person in the house?*
MR. FARR: Again, objection; asked and answered and it calls for speculation.
THE COURT: Sustained.

3 RP at 313-14 (emphasis added). The trial court again removed the jury and again reminded Brinkman that the motions in limine prohibited her from implying that another was involved in the sexual abuse. The court also noted that it was at least the third time Brinkman had violated the motions in limine.

B. Brinkman's Objections

Throughout the course of the trial, the court reprimanded Brinkman several times for editorializing her objections, which also violated motions in limine. When the court brought her improper objections to her attention, Brinkman responded:

> 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 two, 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?
>
> . . . .
>
> (JURY PRESENT)
>
> 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.

3 RP at 285-87 (emphasis added).

As the trial progressed, Brinkman continued to editorialize her objections and make inappropriate comments. The following exchange occurred when Brinkman interrupted Farr during his redirect:

MS. BRINKMAN: *Your honor, so I ask that Counsel be asked to move on as I have been, rather than badgering the witness.*
. . . .
[MR. FARR rephrases question] Were there times that you would go to the store?
MS. BRINKMAN: *Interpreter, are you done?*
. . . .
INTERPRETER: *The interpreter is done.*
MS. BRINKMAN: *Are you done interpreting?*
INTERPRETER: *The interpreter is done.*
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)
THE COURT: Ms. Brinkman, I had asked you not 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.

3 RP at 327-28.

C. Brinkman's Outburst

Based on Brinkman's questioning and behavior during the State's case-in-chief, the State

urged the trial court to take an offer of proof from each of the defense's witnesses. Brinkman handed the court a complete list of the defense's witnesses and said that she did not "know exactly everything they're going to say." 4 RP at 524. When Brinkman indicated that she planned to call Cifuentes's wife, the court asked whether Cifuentes had been married to her during the alleged sexual abuse. The following exchange ensued:

> 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 minute. 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?

4 RP at 528-30 (emphasis added).

D. Brinkman's Closing Argument

Brinkman's conduct at trial culminated with her two comments she made in closing, which is the nub of the case concerning the contempt. Brinkman made the following remarks:

> 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.*
>
> . . . .
>
> They may all be good people, but use your common sense. You know that kids create these kind of stories. You know that they recant. 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.

5 RP at 810, 813 (emphasis added). The State did not object, and the court did not stop Brinkman. When Brinkman concluded her closing, however, the State made a motion to hold her in contempt, which alleged that she made two improper comments on motive in her closing and requested that the court sanction her $250 for each comment. Brinkman responded that sanctions were inappropriate because she did not have the requisite intent to demean the court and because the court did not address her alleged contemptuous conduct on the spot.

IV. Sanction Hearing Procedure

In its motion, the State delineated the two comments in Brinkman's closing that it felt were sanctionable; the State did not request the trial court to sanction Brinkman for violating the orders in limine during testimony. Brinkman asked for time to "work out . . . [a] strategy" for the sanctions hearing, and the court delayed the hearing several times to accommodate Brinkman. 6 RP at 859. Brinkman was represented by counsel at the hearing. The court concluded the

sanctions hearing a little less than two months after sentencing.

The trial court made findings of fact and conclusions of law, ultimately imposing $500 sanctions for the two statements. In finding of fact 4, the court referred to counsel's conduct: "The violations included . . . inappropriate comments at closing argument." CP at 99.

But finding of fact 4 is also important because although the contempt was based solely upon the allegation of the "inappropriate comments at closing argument," the finding sets forth the facts that the trial court repeatedly warned Brinkman of the proscribed areas of inquiry—alleging that the victim's father was violent in his household and implying that someone else, as the phantom perpetrator, committed the crime. CP at 99. Thus, finding of fact 4 demonstrates not only Brinkman's violations of the trial court's orders in limine, but also Brinkman's repeated violation in the court's presence and her contempt for the court.

In finding of fact 5, the trial court clarified the basis of the claim of contempt: "After the jury gave its verdict, the State brought its motion for sanctions as a result of closing argument statements by Defense." CP at 99. Thus, the court saw Brinkman's two closing statements as continued violations of the motions in limine.

In its conclusions, the trial court found Brinkman's conduct and words were willful, intentional, disrespectful, and an affront to the dignity of the court. The court sanctioned Brinkman $250 for each comment, for a total of $500.

ANALYSIS

I. Summary Contempt Statute

Brinkman contends that the trial court erred in holding her in contempt and sanctioning

her. Her argument is not persuasive.

A trial court has sound discretion to hold a person in contempt and sanction them accordingly. *State v. Dugan*, 96 Wn. App. 346, 351, 979 P.2d 885 (1999). Absent an abuse of that discretion, we will not disturb the trial court's contempt and sanction findings. *Dugan*, 96 Wn. App. at 351. A trial court abuses its discretion when it exercises discretion 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).

We will uphold a trial court's finding of contempt as long as we find proper basis for the finding. *State v. Hobble*, 126 Wn.2d 283, 292, 892 P.2d 85 (1995) (citing *State v. Boatman*, 104 Wn.2d 44, 46, 700 P.2d 1152 (1985)). A trial court has authority under both statute and its inherent power to impose sanctions for contempt. *Hobble*, 126 Wn.2d at 292.

The current Washington contempt statutes define contemptuous conduct, but, unlike the previous contempt statutes, do not distinguish between civil and criminal contempt. *Hobble*, 126 Wn.2d at 292; *but see In re the Marriage of Didier*, 134 Wn. App. 490, 500, 140 P.3d 607 (2006) (contempt can be either civil or criminal, with the latter requiring the constitutional safeguards extended to other criminal defendants), *review denied*, 160 Wn.2d 1012 (2007). Instead, the current contempt statutes distinguish between remedial and punitive sanctions. *Hobble*, 126 Wn.2d at 292; RCW 7.21.010(2)-(3), .030, .040. 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). 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).

If the court certifies that it witnessed the contempt, the court has authority to summarily impose either remedial or punitive sanctions on the contemnor. RCW 7.21.050. The court may impose the sanctions at the end of the trial but "only for the purpose of preserving order in the court and protecting the authority and dignity of the court." RCW 7.21.050(1). The court must also give the contemnor an opportunity to comment in order to mitigate the contempt, unless compelling circumstances demand otherwise.

The contemptuous statement that defense counsel made during closing arguments in *State v. Berty*, 136 Wn. App. 74, 147 P.3d 1004 (2006), is very similar to the statements Brinkman made during the closing arguments of the instant case. In *Berty* defense counsel stated:

> What possible motive would [a witness] have to charge her husband? What possible motive? Did you hear the State say that? What possible motive would she have? Well, you saw hints of it. I wish I could tell you all of the motives, but you heard hints.

Berty, 136 Wn. App. at 80. The offending language identified in *Berty* was, "I wish I could tell you." *Berty*, 136 Wn. App. at 80. Here, Brinkman said that she was unable to bring out motivations of accusers "because of rules of this court." 5 RP at 810. Like the trial court's ruling in *Berty*, which we found constituted contempt, the language Brinkman used impugns the trial court's ruling. Brinkman's two comments in closing are but a continuation of her themes—which the trial court prohibited—that Brinkman could not elicit testimony that the father was violent in his household and that a phantom perpetrator committed the crimes.

Under the plain language of the summary contempt statute, the trial court properly

sanctioned Brinkman. The sanctions were punitive because the court imposed them to punish Brinkman's contempt during closing arguments. The court made findings that it observed her behavior over the course of the entire trial. The court witnessed Brinkman's closing argument and found the language contemptuous. Although RCW 7.21.050 requires the court to certify that it witnessed the contemptuous statements, the court witnessing Brinkman's two closing statements is implicit because it heard the closing arguments.[2] The court also gave Brinkman the opportunity to speak in mitigation of the contempt in a subsequent hearing and did not sanction her more than the statute permitted. The court could have imposed sanctions immediately and summarily; however, it properly chose to follow the summary contempt statute and delayed a hearing on the appropriate sanctions until after sentencing. This procedure was proper. *See, e.g.*, *Berty*, 136 Wn. App. 74. We hold that the court complied with the procedural requirements of the contempt statute, and we cannot say that the trial court abused its discretion in holding Brinkman in contempt and sanctioning her.

However, the trial court's findings of fact and conclusions of law could be clearer. The only matters at issue were the two statements during closing arguments. Inasmuch as finding of fact 4 refers to Brinkman's "violations," her repeated violations of the motions in limine should not be confused with her two comments made in closing that were the basis for the State's contempt motion and that were the basis for the court's finding of contempt. CP at 99. Further, conclusion of law 2[3] pertains to the improper argument because the court had informed her "that

[2] Brinkman also does not raise this as an issue.

[3] Conclusion of law 2 provided in full states, "The court having informed Brinkman that her conduct, was impermissible, but Brinkman's words and behavior continued and were disrespectful

her conduct[] was impermissible" during the trial. CP at 100.

of the court's authority and an affront to its dignity. The actions were likely violations of the Rules of Professional Conduct." CP at 100.

II. Inherent Authority

Brinkman nevertheless argues that the trial court incorrectly proceeded under its inherent authority to impose the sanctions, even though it had concluded that the summary contempt statute was adequate. We reject this argument based on *Berty*.[4]

In *Berty*, the trial court relied on its inherent contempt power and imposed sanctions on an attorney after the trial. *Berty*, 136 Wn. App. at 83. We upheld the sanctions because the summary contempt statute authorized the sanctions. *Berty*, 136 Wn. App. at 85. Although the trial court sanctioned the attorney for an amount greater than the contempt statute allowed, the appropriate remedy was to reduce the sanction to an amount consistent with the statute.

The trial court here stated that it was "proceed[ing] under its inherent authority rather than the statutory contempt scheme"; however, we may sustain a trial court on any correct ground, even if the trial court did not consider that ground. CP at 100; *Nast v. Michels*, 107 Wn.2d 300, 308, 730 P.2d 54 (1986); *see, e.g.*, *State v. Winings*, 126 Wn. App. 75, 88, 107 P.3d 141 (2005). The trial court's procedures satisfied the summary contempt statute procedures. And, notably, the trial court did not impose greater sanctions than the contempt statute allowed. *But see Mead Sch. Dist. No. 354 v. Mead Educ. Ass'n*, 85 Wn.2d 278, 287-88, 534 P.2d 561 (1975) (trial court cannot resort to its inherent contempt authority and impose greater sanctions than the applicable contempt statute allows, unless the trial court sufficiently explains why the statutory contempt procedures and remedies are inadequate). Also noteworthy is that the trial court and counsel all

[4] Also, during oral argument, Brinkman's counsel maintained that Brinkman had no objection to the procedure that the trial court followed.

relied on *Berty* during the contempt hearing. Because the trial court's conduct was consistent in all respects with the summary contempt statute, we hold that the trial court did not commit reversible err when it stated that it was proceeding under its inherent authority, rather than under its statutory authority.

III. $500 Sanction

Brinkman also argues that the sanctions were not appropriate and that the trial court did not give her sufficient notice that her conduct was impermissible. The definitions alone of "contempt" illustrate that prior warnings do not have to be given, even to attorneys.[5] But here, the record is replete with warnings to Brinkman to avoid the offending conduct.

Although the State only asked the court to sanction Brinkman $250 for each of her two impermissible comments in closing, throughout the trial, Brinkman had repeatedly violated the court's orders and unequivocally flouted the court's authority. Indeed, the trial court correctly noted that "if [Brinkman was fined] for every [$]500—every time $500 for every sanction, then, you know, somebody'd be a millionaire by now." 6 RP at 858-59. The $500 sanction for her two closing comments, which were the culmination of her numerous occasions of misconduct, was

[5] RCW 7.21.010(1) states:

> "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.

well within the trial court's statutory authority. *See* RCW 7.21.050. Attorneys, judges, and the legal profession in general all deserve much better courtroom etiquette than Brinkman brought to this trial. We cannot say that sanctioning Brinkman $500 for her two closing comments was inappropriate.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, P.J.

We concur:

Armstrong, J.

Quinn-Brintnall, J. (concur in result only)