

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000371-MR

DAVID WAYNE PATTERSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM JR., JUDGE
ACTION NO. 13-CR-000857

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, D. LAMBERT AND THOMPSON, JUDGES.

COMBS, JUDGE: David Wayne Patterson appeals the judgment of the Jefferson Circuit Court finding him guilty of contempt and imposing a sentence of 120 - days' incarceration. After reviewing the entirety of the proceedings and considering the arguments of counsel, we affirm.

On July 23, 2014, the circuit court granted Chantay McDougale's application for a restraining order with respect to the Appellant, David Wayne Patterson. The

order prohibited Patterson from “making contact with [McDougle] or from “initiating . . . any communication likely to cause serious alarm, annoyance, intimidation, or harassment. . . .”

On November 6, 2014, the Commonwealth filed a motion to hold Patterson in contempt of court based upon allegations that he had violated the terms of the court’s order. A criminal summons was issued and bond was set.

Following an evidentiary hearing, the circuit court found that on three occasions, Patterson parked his car very near McDougle’s home and sat inside the vehicle until McDougle noticed him. The court found that on another occasion, Patterson placed a menacing telephone call to McDougle’s cell phone. The circuit court held Patterson in contempt and sentenced him to 120-days’ incarceration. This appeal followed.

Patterson contends that the evidence introduced at the hearing was insufficient to prove that he had engaged in conduct that amounted to contempt of court. We disagree.

In *Commonwealth v. Bailey*, 970 S.W.2d 818, 820 (Ky. 1998), we defined contempt as “the willful disobedience of – or open disrespect for – the rules or orders of a court.” Civil contempt involves the failure of one to perform an act pursuant to an order of the court, *Commonwealth v. Burge*, 947 S.W.2d 805 (Ky. 1996). Criminal contempt is conduct that demonstrates disrespect toward the court, obstructs justice, or brings the court into disrepute. *Meyers v. Petrie*, 233 S.W.3d 212 (Ky.App. 2007).

Where an alleged criminal contempt is committed outside the presence of the court, it is an “indirect contempt.” *Burge, supra*. As the alleged contempt becomes more serious and more direct, the Due Process clauses of the United States Constitution become implicated to require procedures to safeguard the rights constitutionally guaranteed for criminal trials. *Cabinet for Health and Family v. J.M.G.*, 475 S.W.3d 600, 611-12 (Ky. 2015)(citing *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994)). These proceedings require a hearing and the presentation of evidence in order to establish a violation of the court’s order. *Miller v. Vettiner*, 481 S.W.2d 32 (Ky. 1972). “[T]he defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and [he] cannot be compelled to testify against himself.” *J.M.G.*, 475 S.W.3d at 613 (citing *Gompers v Buck’s Stove & Range Co.*, 221 U.S. 418, 444, 31 S.Ct. 492, 55 L.Ed. 797 (1911)).

In this case, Patterson’s actions toward McDougale were perceived by the court as indirect, criminal contempt. His incarceration was punitive in nature and was ordered to vindicate the authority of the court.

Patterson was punished following proceedings that satisfied the requirements of due process. He was provided fair notice of the allegations against him and the opportunity to present a defense against them. Patterson presented a cogent and vigorous argument that he had not engaged in activity that violated the court’s order with respect to his interaction with McDougale. Nonetheless, the

court found that Patterson had, in fact, willfully made contact with McDougle of a sort that was likely to alarm, annoy, intimidate, or harass her.

Patterson contends that there is insufficient proof that he engaged in conduct expressly prohibited by the court since he did not enter McDougle's home or speak with her. We wholly reject his contention. The court ordered Patterson **not to make contact or initiate any communication** with McDougle that was likely to alarm her. The evidence was sufficient to show that he did exactly what he was forbidden to do. The court properly addressed Patterson's willful challenges to its order by an appropriate punishment.

We affirm the decision of the trial court finding Patterson in contempt.

LAMBERT, D., JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

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