STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of Contempt of CARL WILSON.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

V

RAYMOND YOUNG,

Respondent,

and

CARL WILSON,

Appellant.

UNPUBLISHED
December 11, 2001

No. 224091
Wayne Circuit Court
Family Division
LC No. 99-381010

Before: Bandstra, C.J., and Doctoroff and White, JJ.

PER CURIAM.

Appellant Carl Wilson was the Legal Aid and Defender Association attorney representing the juvenile respondent in the underlying action. According to the trial court, when the verdict in that matter was announced appellant "high-fived" his client and exclaimed "yes," prompting the court to order appellant out of the courtroom for the remainder of the trial.[1] At a summary proceeding held later that same day, the trial court found appellant's conduct to be contemptuous and fined him $250. Appellant appeals as of right. We reverse and remand for a hearing before a different judge.

Because we find it to be dispositive, we address only appellant's claim that the summary proceedings instituted against him failed to accord him the minimum requirements of due

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[1] Others who witnessed the incident stated that rather than actually give his client a "high five," appellant merely raised himself from his seat, made a gesture with his arm in which he raised and lowered his fist toward his body, and then clapped his hands together before exclaiming "yes" while pointing at the jury.

process of law. Although the issuance of a contempt order is generally reviewed for an abuse of discretion, *In re Contempt of Steingold*, 244 Mich App 153, 157; 624 NW2d 504 (2000), where, as here, the issuance of such an order implicates due process concerns, appellate review is de novo. See *In re Carey*, 241 Mich App 222, 225-226; 615 NW2d 742 (2000).

The Fourteenth Amendment of the United States Constitution guarantees that no state shall deprive any person of "life, liberty, or property, without due process of law."[2] Nevertheless, the ability of a court to summarily punish contemptuous behavior committed in its presence has long been recognized in Michigan both by statute, How Stat § 7258,[3] and in the cases, *In re Wood*, 82 Mich 75, 81-82; 45 NW 1113 (1890). Because, however, summary punishment does not allow for many of the procedural safeguards viewed as essential to fundamental fairness, "[s]ummary punishment always, and rightly, is regarded with disfavor." *Sacher v United States*, 343 US 1, 8; 72 S Ct 451; 96 L Ed 717 (1952).

Summary procedures are permissible only in cases where the contempt is "direct," i.e., committed in the immediate presence and view of the court. See *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 712; 624 NW2d 443 (2000). However, the rationale for this distinction in procedure is that, in the case of a contempt committed in the midst of proceedings, the trial court may need to punish summarily in order to uphold its dignity and authority. *People v Kurz*, 35 Mich App 643, 656; 192 NW2d 594 (1971). This same rationale is not applicable to contempt sanctions that are imposed after the proceedings have concluded:

> [W]here conviction and punishment are delayed, "it is much more difficult to argue that action without notice or hearing of any kind is necessary to preserve order and enable [the court] to proceed with its business." [*Taylor v Hayes*, 418 US 488, 498; 94 S Ct 2697; 41 L Ed 2d 897 (1974), quoting *Groppi v Leslie*, 404 US 496, 504; 92 S Ct 582; 30 L Ed 2d 632 (1972).]

Thus, the *Taylor* Court held that "before an attorney is finally adjudicated in contempt and sentenced ***after*** *trial for conduct* ***during*** *trial*, he should have reasonable notice of the specific charges and opportunity to be heard in his own behalf." *Id*. at 498-499 (emphasis added).

In this case, although appellant was ejected from the courtroom during trial, the trial court convicted and sentenced appellant for contempt after it had concluded the proceedings. Because, as in *Taylor*, the conviction and sentence were imposed after the proceeding, the rationale for summary punishment did not exist and notice and hearing on the charges should have been granted.[4]

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[2] Const 1963, art 1, § 17 provides the same protection.

[3] Presently MCL 600.1711.

[4] In reaching this conclusion, we recognize that at the time appellant was ejected from the courtroom all that remained of the proceedings was to poll and dismiss the jury. We nonetheless find the circumstances presented here to necessitate adherence to the procedures required where conviction and sentence for contempt are delayed. Despite the nearly-concluded nature of the proceedings no citation for contempt was issued at the time appellant was ejected, nor was appellant given any opportunity to speak in his behalf with respect to his conduct. See *Taylor*,
(continued…)

Moreover, such hearing was required to be held before a judge other than that which presided over the proceeding in which the alleged contemptuous behavior occurred. See *Kurz, supra* at 659. Although *Taylor, supra*, suggests that a hearing before a separate judge is required only in those circumstances where the presiding judge has "become embroiled in a running controversy with [the contemnor]," *id*. at 502, Michigan has adopted a more stringent requirement. As noted by this Court in *Kurz, supra*:

> It is not in the interest of the sound administration of justice to encourage persons charged with or convicted of criminal contempt to search the transcript of proceedings and attempt to demonstrate that the trial judge acted out of personal animosity, or became personally embroiled, or that his objectivity can reasonably be questioned. [*Id*. at 659-660.]

See also *In re Contempt of Scharg*, 207 Mich App 438, 440-441; 525 NW2d 479 (1994) (holding that "*Kurz* requires a hearing before an independent judge in all deferred summary contempt citations, regardless of the actual objectivity of the court").

Accordingly, we reverse the trial court's order holding appellant in contempt and remand for a hearing before a different judge. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Martin M. Doctoroff
/s/ Helene N. White

(…continued)

supra at 498 ("[e]ven where summary punishment for contempt is imposed during trial, 'the contemnor has normally been given an opportunity to speak in his own behalf . . . .'") (Citation omitted). Additionally, we note that it is not clear from the record that the trial court's finding of contempt was based solely on appellant's conduct immediately following the verdict. As noted by appellant, the trial court's comments during trial and at the summary contempt proceeding suggest that although it was this final outburst that prompted the court to initiate the summary proceedings, its finding of contempt may have additionally been based on other conduct by appellant during trial.