IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-245

Filed: 1 December 2020

Union County, No. 18CRS920, 18CRS923, 14 CVS 888

STATE OF NORTH CAROLINA

v.

MICHAEL S. HINSON and MARGARET H. HINSON, Defendants.

Appeal by Defendants from orders entered 22 August 2018 by Judge Lori Hamilton in Superior Court, Union County. Heard in the Court of Appeals 1 October 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kathryn H. Shields, for the State.

The Epstein Law Firm PLLC, by Drew Nelson, for Defendant-Appellant Michael S. Hinson.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for Defendant-Appellant Margaret H. Hinson.

McGEE, Chief Judge.

Michael S. Hinson ("Mr. Hinson") and Margaret H. Hinson ("Ms. Hinson") (together, "Defendants") appeal jointly from the trial court's orders finding each of

them in criminal contempt of court. Defendants contend the trial court erred by failing to provide sufficient notice prior to their criminal contempt hearing, by not appointing counsel at the beginning of the hearing and thereafter denying their motion to suppress evidence introduced prior to their representation by counsel, and by denying their motion to recuse. We hold that Defendants had a right to appointed counsel at the beginning of their contempt proceedings. We reverse the trial court's orders and remand for a new contempt hearing.

I. Factual and Procedural Background

This appeal arises from the trial court's finding Defendants in criminal contempt following recurring disputes between Defendants and their neighbors, George and Charlene Conner (the "Conners"). The Conners purchased real property, including a residence, adjoining Defendants' property in 2012. The Conners' real property was landlocked, accessible only via a 20-foot-wide easement over Defendants' adjoining real property. The Conners and Defendants had multiple disputes regarding Defendants' obstruction of the easement for about two years.

The Conners filed a civil lawsuit against Defendants in 2014; Defendants filed a counterclaim in response. The parties settled the suit with a consent order on 22 October 2015 (the "2015 Consent Order"). The 2015 Consent Order specified a number of requirements "enforceable by the contempt powers of the [c]ourt[,]" including the following relevant to this appeal: Defendants had to construct and

maintain a 126-foot privacy fence along the easement's edge; Defendants' personal property had to be stored out of view behind the fence; Defendants had to keep the easement clear and unobstructed; and Defendants could place no "tarps or other extraneous matter" onto the fence, other than a single sign.

The Conners filed a Motion for Order to Show Cause on 23 March 2016, requesting the court hold Defendants in contempt for their failure to abide by the terms of the 2015 Consent Order. The trial court entered an Order to Appear and Show Cause against Defendants on 29 March 2016. Following a hearing on the matter, the trial court entered an order (the "2016 Order") "enforceable by the contempt powers of the [c]ourt" finding Defendants in violation of the 2015 Consent Order. The 2016 Order directed Defendants to construct an additional 8 feet of fencing, store all of their personal property behind the fence, and ensure that the easement was not obstructed at any time in order to "purge themselves of their violations[.]"

Two years later, the Conners filed a second Motion to Appear and Show Cause on 19 April 2018, again requesting the trial court hold Defendants in contempt for failure to comply with its prior orders. The trial court entered an Order to Appear and Show Cause on 25 April 2018 (the "2018 Show Cause Order"), instructing Defendants that "probable cause exists to believe that you are in civil and/or criminal contempt" and directing them to appear and show cause as to "why [they] should not

be found in civil and/or criminal contempt for violation of [the 2015 Consent Order and the 2016 Order]."

When the hearing in the show cause action began on 23 July 2018 (the "July Hearing"), Defendants moved for a continuance on the grounds that they "[had not] had time to retain [] counsel[,]" which was opposed. The trial court denied Defendants' motion, stating "that almost three months since [Defendants] were served [in April] is sufficient time for [them] to have retained counsel[.]" Defendants then asked to exercise their right to apply for a court-appointed attorney because they could not afford one. The trial court denied their request, explaining that Defendants did not have a right to representation because, as of that moment, "[t]his [was] a civil case."

Mr. Conner then testified that Defendants had repeatedly violated the 2016 Order by obscuring the easement with vehicles and equipment, leaving materials visible from the easement, posting multiple signs on the fence, and by draping tarps over the fence. Mr. Conner identified photographs that were introduced into evidence depicting Defendants' violations at multiple times over the past two years. Defendants "ha[d] no evidence with [them]" to present that day.

The trial court informed Defendants at the close of the evidence that there was a "very real possibility" that Defendants would be subject to criminal contempt "because the [c]ourt by a preponderance of the evidence [was] satisfied that

[Defendants had] violated the prior order of the [c]ourt[.]" The court determined that "there's a very good chance" the parties would "get to a contempt portion of this hearing." Because the trial court now believed that Defendants "could be deprived of their liberty," Defendants were allowed to complete affidavits of indigency.

The trial court found that Defendants were indigent for the purpose of the hearing and appointed counsel to represent them. To allow the appointed attorneys sufficient time to prepare their cases, the trial court "set th[e] matter" for a hearing on 20 August 2018, stating that "Defendants w[ould] be required to show cause as to why they should not be held in criminal contempt of [c]ourt."

The matter was again heard on 20 August 2018 (the "August Hearing"). Defendants filed two motions with the trial court prior to the August Hearing, each of which was addressed at the start of the proceedings. First, Defendants moved for the trial judge to recuse herself citing Canon 3 of the N.C. Code of Judicial Conduct, which states "[a] Judge should disqualify [herself] in a proceeding in which [her] impartiality might be questioned." The trial court denied Defendants' motion to recuse. Second, Defendants moved to dismiss alleging the 2018 Show Cause Order did not provide adequate notice that Defendants could be held in criminal contempt, or, in the alternative, because Defendants were not allowed representation during the July Hearing. The trial court denied Defendants' motion to dismiss, but stated that the parties would need "to go back through most if not all of the evidence that

[they] put on" during the July Hearing, since Defendants were not represented by counsel during the July Hearing.

During a discussion of what evidence needed to be presented, the question arose of whether the August Hearing would proceed on the issue of civil or criminal contempt. The trial court decided that the August Hearing would proceed on criminal contempt only. Ms. Hinson invoked her Fifth Amendment right against self-incrimination when called as a witness and did not testify. Mr. Hinson chose to testify. Through the testimony of Mr. Hinson, the evidence was that Defendants repeatedly obscured the easement with vehicles and equipment, left materials visible from the easement, posted multiple signs on the fence, and draped tarps over the fence. A number of photographs illustrating Defendants' conduct was again introduced into evidence.

The trial court found Defendants in criminal contempt, stating:

> A Show Cause Order was issued and the contempt hearing was scheduled for *this session* of Criminal Superior Court in Union County, which began on August the 20th, 2018. The [c]ourt has *heard evidence* in this case both *at the original hearing* on [the Conners'] verified motion for an order to show cause and for now several hours over the course of two days in this contempt hearing to determine whether or not the Defendants are in willful violation of the original [2015] Consent Order and/or [the 2016 Order].
>
> In this matter I will find that the [c]ourt is fully satisfied and entirely convinced, which is the definition of beyond a reasonable doubt, that the Defendants have willfully, that is deliberately and purposefully in violation of law and

> without authority, justification or excuse, violated the terms and conditions of the original [2015] Consent Order . . . and the subsequent [2016 Order].

(Emphasis added). The trial court entered written orders finding each Defendant in criminal contempt, and ordered that each Defendant serve a term of 30 days imprisonment and pay a fine of $500.00. Defendants entered oral notice of appeal.

II. Analysis

Defendants renew each of their motions on appeal, arguing that the trial court did not have jurisdiction to find Defendants in criminal contempt because they were not given sufficient notice of the criminal contempt hearing through a show cause order; that the trial court erred by refusing Defendants the right to counsel during the July Hearing; and that the trial court erred by denying their motion to recuse.

A. *Notice*

Defendants first contend that the trial court "erred by conducting a plenary criminal contempt proceeding without issuing a written show cause order for the [August Hearing]." Defendants argue that because they were not noticed with a proper show cause order, the trial court lacked subject matter jurisdiction to hold a criminal contempt hearing. We disagree.

"Criminal contempt is imposed in order to preserve the court's authority and to punish disobedience of its orders." *Watson v. Watson*, 187 N.C. App. 55, 61, 652 S.E.2d 310, 315 (2007). Our Courts have long recognized "that criminal contempts

are crimes, and accordingly, the accused is entitled to the benefits of all constitutional safeguards." *O'Briant v. O'Briant*, 313 N.C. 432, 435, 329 S.E.2d 370, 373 (1985); N.C. Gen. Stat. § 5A-15 (2017). "Notice and a hearing at which the State bears the burden of proving the alleged criminal acts beyond a reasonable doubt is the bedrock of constitutional due process." *State v. Coleman*, 188 N.C. App. 144, 149, 655 S.E.2d 450, 453 (2008). Constitutionally sufficient notice provides the defendant with the time and opportunity to prepare an adequate defense. *O'Briant*, 313 N.C. at 435, 329 S.E.2d at 373.

Unless the act of contempt occurs within the presence of the judge, is committed during a proceeding, and "[i]s likely to interrupt or interfere with matters then before the court[,]" N.C. Gen. Stat. § 5A-13(a) (2019), it is considered "indirect contempt," not "direct contempt," N.C. Gen. Stat. § 5A-13(b). In a proceeding for indirect criminal contempt, "a show cause order is analogous to a criminal indictment and is the means by which the defendant is afforded the constitutional safeguard of notice." *Coleman*, 188 N.C. App. at 149, 655 S.E.2d at 453; N.C. Gen. Stat. § 5A-15(a) ("A copy of the order *must* be furnished to the person charged." (emphasis added)). "[O]ur caselaw has consistently held that a show cause order is sufficient to confer jurisdiction on a trial court for finding a defendant in indirect criminal contempt where it incorporates by reference a prior court order that a defendant has failed to comply with." *State v. Revels*, 250 N.C. App. 754, 762, 793 S.E.2d 744, 750 (2016)

(citing *State v. Pierce*, 134 N.C. App. 149, 151, 516 S.E.2d 916, 919 (1999); *Bennett v. Bennett*, 71 N.C. App. 424, 427–28, 322 S.E.2d 439, 440–41 (1984)).

In the present case, Defendants were provided notice of their criminal contempt charges on 25 April 2018 by way of the written 2018 Show Cause Order. The 2018 Show Cause Order informed Defendants:

> Based upon Plaintiffs' Verified Motion for Order to Show Cause filed in this matter on April 19, 2018, probable cause exists to believe that you are in *civil and/or criminal contempt* of this [c]ourt.
>
> You are hereby ordered to appear and show cause why you should not be found in *civil and/or criminal contempt* for violation of an Order of the Court as alleged in the Plaintiffs' Motion for Order to Show Cause.
>
> . . . .
>
> Plaintiffs are seeking enforcement of *and punishment for* your failure to comply with the [2015 Consent Order] signed by the Parties and the Honorable D. Forrest Bridges and filed on October 29, 2015, and the [2016 Order] on Plaintiffs' Motion for Contempt filed on August 1, 2016.

(Emphasis added). The July Hearing occurred nearly two months later on 23 July 2018. After hearing testimony regarding Defendants' conduct, the trial court chose not to complete the proceedings during the July Hearing. Instead, it chose to continue "this hearing" until August, appointed Defendants' counsel, and again informed Defendants they would "be required to show cause as to why they should not be held

in criminal contempt of [c]ourt." Following the August Hearing, the trial court held Defendants in criminal contempt.

Defendants contend the trial court was required to "issue [a new] show cause order following the [July Hearing]"—because it decided to continue the hearing and proceed in criminal contempt, not civil contempt. Defendants argue that, due to insufficient—*i.e.*, written—notice of the August Hearing, the trial court lacked jurisdiction to conduct that hearing. However, the 2018 Show Cause Order gave Defendants notice that they could be "found in civil and/or criminal contempt[,]" noted the Conners were seeking "punishment[,]" and incorporated the prior court orders with which Defendants had allegedly failed to comply—the 2015 Consent Order and the 2016 Order—prior to the start of the contempt proceedings. *See Revels*, 250 N.C. App. at 762, 793 S.E.2d at 750; *Pierce*, 134 N.C. App. at 151, 516 S.E.2d at 919 (explaining that language in a show cause order "direct[ing] [d]efendant to appear and show cause why he should not be punished for contempt . . . has been construed to have reference to criminal contempt"). In this case, as in *Pierce*, the trial court's "order directed Defendant[s] to appear and show cause why [they] 'should not be punished for contempt.'" *Pierce*, 134 N.C. App. at 151, 516 S.E.2d at 919 (citation omitted). "When issuing a criminal contempt citation, the presiding judge need only enter 'an order directing the [defendants] to appear before a judge . . . and show cause why [they] should not be held in contempt of court.'" *Id.*

We hold the 2018 Show Cause Order provided Defendants sufficient notice, and vested the trial court with jurisdiction to conduct the proceedings to completion. Defendants received sufficient written notice that they were subject to a finding of criminal contempt prior to the July Hearing, and, once the trial court obtained jurisdiction over the matter, its jurisdiction continued through the August Hearing. The contempt proceedings began with the July Hearing. Just as a continuation of a criminal trial does not create a new and separate trial, the August Hearing was a continuation of those same contempt proceedings, not a new hearing on the newly arisen or collateral subject of criminal contempt. The 2018 Show Cause Order constituted written notice of the possibility that Defendants could be found in criminal contempt during both portions of the subsequent proceedings. The trial court also informed Defendants once again at the close of the July Hearing that they could be found in criminal contempt. This argument is without merit.

B. *Right to Counsel*

As we have determined the July and August Hearings were a single proceeding during which the trial court could find Defendants in criminal contempt, we now determine whether Defendants were entitled to counsel throughout the entirety of the proceedings in this case. Defendants contend that the trial court erred by "denying their repeated requests for counsel [during the July Hearing], then holding

them in criminal contempt based in part on evidence presented while they were unrepresented." We agree.

It is well settled that constitutional issues, such as a defendant's right to counsel, are reviewed *de novo* by our appellate courts. *State v. Diaz*, 372 N.C. 493, 498, 831 S.E.2d 532, 536 (2019). "'When applying de novo review, we consider [ ] the case anew and may freely substitute our own ruling for the lower court's decision.'" *Bynum v. Wilson Cty.*, 367 N.C. 355, 358, 758 S.E.2d 643, 645 (2014) (citations and internal quotation marks omitted).

The Sixth and Fourteenth Amendments to the Constitution of the United States together grant indigent defendants the right to assistance of counsel. *Diaz*, 372 N.C. at 499, 831 S.E.2d at 536. An indigent defendant's right to appointed counsel applies where he or she "may be deprived of his [or her] physical liberty" as a result of the proceedings. *McBride v. McBride*, 334 N.C. 124, 127, 431 S.E.2d 14, 16 (1993). The right to counsel extends to all "critical stages" of an adversarial proceeding. *State v. Colbert*, 311 N.C. 283, 285, 316 S.E.2d 79, 80 (1984). Further, N.C. Gen. Stat. § 7A-451 provides that an indigent defendant is entitled to representation by counsel in "[a]ny case in which imprisonment, or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged." N.C. Gen. Stat. § 7A-451(a)(1) (2017); *see also Hammock v. Bencini*, 98 N.C. App. 510, 512, 391 S.E.2d 210, 211 (1990) (noting through *dicta* that N.C. Gen. Stat. § 7A-451(a)(1) includes criminal

contempt proceedings); *McBride*, 334 N.C. at 126, 431 S.E.2d at 16 (reconsidering the framework by which a court determines an indigent defendant's right to counsel in a civil contempt proceeding while assuming the right exists in proceedings for criminal contempt).

This Court has repeatedly explained that the outcome of a contempt hearing—whether the result is civil contempt or criminal contempt—determines the standards and safeguards that should have been met throughout the proceedings. *Watson*, 187 N.C. App. at 62, 652 S.E.2d at 316 (citing *Hartsell v. Hartsell*, 99 N.C. App. 380, 386–89, 393 S.E.2d 570, 574–76 (1990)). In *Watson*, the defendant received notice of a contempt hearing that did not specify whether the proceedings would be civil or criminal. *Id.* The defendant admitted that the end result of the proceedings found her in civil contempt, but nonetheless argued that she "should have been granted the full protections of a criminal contempt proceeding, since the notice of hearing did not clearly state whether the proceedings were criminal or civil." *Id.* The Court held, pursuant to binding precedent in *Hartsell*, "that because the contempt proceedings were clearly civil in nature, and since no relief of a punitive nature was ordered, defendant was not entitled to the procedural and evidentiary safeguards required in a criminal contempt proceeding." *Id.* The Court determined the overall purpose of the proceedings by examining their end result.

In *Hartsell*, the defendant received a show cause order informing him that "the court had probable cause to believe that 'civil and/or criminal contempt ha[d] occurred[.]'" *Hartsell*, 99 N.C. App at 386, 393 S.E.2d at 574. However, the defendant contended "he was not aware that he was no longer subject to criminal penalties until the court announced its findings." *Id.* at 387, 393 S.E.2d at 574. The defendant further argued that the trial court erred in denying him constitutional safeguards against self-incrimination when it required him to testify during the contempt hearing "because he was potentially subject to criminal penalties in th[at] proceeding[.]" *Id.* at 386, 393 S.E.2d at 574 . The *Hartsell* Court held that, because the findings against the defendant were ultimately "wholly civil in nature[,]" the "defendant was not, in fact, subject to criminal penalties" and "the trial court was not required to afford the defendant all procedural and evidentiary safeguards required for criminal contempt proceedings." *Id.* at 388, 393 S.E.2d at 575.

We apply this established rule of law to the present case. However, because the facts of this case are distinct from those of *Watson* and *Hartsell*, we reach the opposite result. Defendants' argument here is similar to the arguments in *Watson* and *Hartsell*: they contend the trial court should have afforded them the constitutional rights and safeguards required in criminal contempt proceedings throughout the entirety of their contempt hearing because they were possibly subject to criminal contempt from the start of the proceedings. Also, like the defendant in

Hartsell, Defendants received a show cause order providing notice that they could be found in "civil and/or criminal contempt." But, in this case, the trial court ultimately found Defendants in criminal contempt and ordered punitive relief against them—Defendants were ordered to pay $500.00 each to the court and imprisoned for 30 days, without a condition upon which their contempt could be avoided. *See O'Briant*, 313 N.C. at 434, 329 S.E.2d at 372 (noting that a civil contempt may often be avoided by complying with conditions set forth in the contempt order); *Bishop v. Bishop*, 90 N.C. App. 499, 505, 369 S.E.2d 106, 109 (1988) (defining criminal contempt as unavoidable imprisonment and/or fines to be paid to the court).

The State contends that Defendants were sufficiently provided their constitutional right to representation by counsel during the critical stages of the proceeding. The trial court initially denied Defendants' requests for appointed counsel because the court considered the hearing to be "a civil case." After hearing testimony and receiving photographic evidence, the trial court allowed Defendants to fill out indigency affidavits because she then believed that Defendants "could be deprived of their liberty." The trial court found Defendants indigent, appointed each Defendant counsel, and continued the July Hearing until August. Defendants were represented by counsel throughout the August Hearing and only then found in criminal contempt at its conclusion. Nonetheless, the July Hearing and the August Hearing comprised a single contempt hearing, the end result of which found

Defendants in criminal contempt. And the trial court's conclusion that there was "a very good chance" Defendants would be subject to criminal contempt was predicated on receipt of evidence introduced outside the presence of Defendants' counsel. We do not agree that the August Hearing was the only "critical stage" of the proceedings.

The trial court ultimately found Defendants in criminal contempt based upon evidence heard "in this case both *at the original hearing on [the Conners'] verified motion for an order to show cause* and for [] several hours over the course of two days in th[e] contempt hearing[.]" (Emphasis added). The right to counsel is a right "so basic to a fair trial that [its] infraction can never be treated as harmless error." *Colbert*, 311 N.C. at 286, 316 S.E.2d at 81 (citing *Gideon v. Wainwright*, 372 U.S. 335, 343–44, 9 L. Ed. 2d 799, 805 (1963)). Defendants were ultimately found to be in criminal contempt and subjected to punishment; therefore, they were entitled to representation during all critical stages of the hearings, and the trial court erred by considering evidence presented at the July Hearing conducted prior to counsel having been appointed to represent Defendants. Because the trial court's findings were based in part on evidence introduced while Defendants were unrepresented, "we are compelled to grant [them] a new [hearing]." *Id.*

C. *Recusal*

Defendants also argue that it was error for the trial court to deny their motion to recuse prior to the August Hearing. We disagree.

On the motion of a party, a presiding judge must be disqualified from a criminal trial or other proceeding if the judge has a personal bias or prejudice against a party or is otherwise unable to impartially render judgment in the matter. N.C. Gen. Stat. § 15A-1223(b) (2017); N.C. Code of Judicial Conduct, Canon 3(C)(1). N.C. Gen. Stat. § 5A-15 further provides: "If the criminal contempt is based upon acts before a judge which so involve [the judge] that [the judge's] objectivity may reasonably be questioned, the order must be returned before a different judge." N.C. Gen. Stat. § 5A-15(a). "The requesting party has the burden of showing through substantial evidence that the judge has such a personal bias, prejudice or interest that [she] would be unable to rule impartially." *In re Faircloth*, 153 N.C. App. 565, 570, 571 S.E.2d 65, 69 (2002) (citation omitted). This Court reviews *de novo* whether a party has met this burden of proof. *Dalenko v. Peden Gen. Contractors, Inc.*, 197 N.C. App. 115, 123, 676 S.E.2d 625, 631 (2009) (citations omitted).

Defendants each predominantly cite *State v. Fie*, 320 N.C. 626, 359 S.E.2d 774 (1987), arguing that it was the trial court's duty to recuse from the August Hearing, in part, because she initiated the matter. This case is distinguishable from *Fie*. In *Fie*, the presiding judge heard information which incriminated the defendants in a separate trial, then personally wrote to the district attorney recommending that charges be brought against the defendants. *Id.* at 627, 359 S.E.2d at 775. This Court held that it was error for the judge not to be recused because, when the judge

"initiated the criminal process against the two defendants, a perception could be created in the mind of a reasonable person that [the judge] thought the defendants were guilty of the crimes with which they were charged and that it would be difficult for the defendants to receive a fair and impartial trial before [that judge]." *Id.* at 628, 359 S.E.2d at 776.

In the present case, the contempt proceedings were initiated by the Conners' motions to appear and show cause—not by any of the trial court's actions. Rather, the trial court heard evidence of Defendants' allegedly contemptuous actions during the July Hearing and came to the conclusion that there was a "very good chance" the evidence supported a finding of criminal contempt. The transcript before us shows that the court made several comments, both at the conclusion of the July Hearing and during the August Hearing, which indicated a belief that the evidence supporting contempt was somewhat insurmountable by Defendants, even with newly appointed counsel. Nonetheless, the trial court's error was in not appointing Defendants' counsel at the beginning of the proceedings in this case, not in coming to a conclusion based upon the evidence before the court. Defendants have not shown substantial evidence that the trial court was unable to rule impartially in this matter.

III. Conclusion

We hold that the trial court did not err in denying Defendants' motion to recuse, and that the 2018 Show Cause

Order provided Defendants with sufficient notice of the subsequent contempt proceedings. We also hold that the trial court erred by finding Defendants in criminal contempt based in part on evidence improperly produced at the July Hearing when Defendants were without representation, thereby violating Defendants' constitutional rights to counsel. We vacate the trial court's orders finding Defendants in criminal contempt, and remand the matter to Superior Court, Union County for a new contempt hearing. If the matter comes before the original trial court judge, the judge will have full discretion to decide issues of recusal, should they arise.

VACATED AND REMANDED.

Judge COLLINS concurs.

Judge HAMPSON concurs with separate opinion.

Report per Rule 30(e). ____

HAMPSON, Judge, concurring.

I concur in the Opinion of the Court. I write separately to underscore the importance of delineating whether a trial court proceeding is for criminal contempt or civil contempt prior to entry of a contempt order. As our Supreme Court, discussing the predecessor statute to Chapter 5A, stated:

> It is essential to the due administration of justice in this field of the law that the fundamental distinction between a proceeding for [criminal] contempt . . . and a proceeding as for [civil] contempt . . . be recognized and enforced. The importance of the distinction lies in differences in the procedure, the punishment, and the right of review established by law for the two proceedings.

Luther v. Luther, 234 N.C. 429, 432, 67 S.E.2d 345, 347 (1951). This case is another example of the need to make the determination of this fundamental inquiry *before* a contempt hearing starts in order to preserve the rights of an alleged contemnor—in particular one who faces the possibility of incarceration for criminal contempt in a plenary proceeding without the opportunity to purge the contempt.

If upon commencement of the proceeding the possibility remains an alleged contemnor may be held in criminal contempt, the alleged contemnor should be provided with the rights and protections afforded in plenary criminal contempt proceedings, including *inter alia*: a right not to be compelled as a witness against themselves, N.C. Gen. Stat. § 5A-15(e) (2019); the requirement the facts be established beyond a reasonable doubt to support an adjudication of criminal

contempt, N.C. Gen. Stat. § 5A-15(f) (2019); and, in this case, the right to counsel in a plenary proceeding for indirect contempt, *see In re Oliver*, 333 U.S. 257, 275, 92 L. Ed. 682, 695 (1948) ("Except for a narrowly limited category of contempts, due process of law . . . requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation."). *See also O'Briant v. O'Briant*, 313 N.C. 432, 435, 329 S.E.2d 370, 373 (1985) ("[C]riminal contempts are crimes, and accordingly, the accused is entitled to the benefits of all constitutional safeguards."). If the required safeguards are not provided to an alleged criminal contemnor, the alleged contemnor may not be found in criminal contempt.