NO. COA08-293

NORTH CAROLINA COURT OF APPEALS

Filed: 21 October 2008

STATE OF NORTH CAROLINA

v. Columbus County
No. 07 CRS 2989

LARRY EVANS, JR.

Appeal by Defendant from Judgment of Criminal Contempt entered 14 August 2007 by Judge Gregory A. Weeks in Columbus County Superior Court. Heard in the Court of Appeals 10 September 2008.

Attorney General Roy Cooper, by Assistant Attorney General LaToya B. Powell, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Katherine Jane Allen, for Defendant.

ARROWOOD, Judge.

Larry Evans Jr. (Defendant) appeals from a judgment of criminal contempt. On 14 August 2007, in Columbus County Superior Court, the Honorable Gregory Weeks summarily found Defendant in direct criminal contempt and Judge Weeks sentenced Defendant and ordered him incarcerated for thirty (30) days. This punishment was later reduced to three (3) days incarceration. Defendant appeals.

The relevant facts are: On the morning of 14 August 2007, Defendant was walking out of the Columbus County Courthouse when he was approached by his former probation Officer Eric Lammonds (Lammonds). Lammonds, who had previously been a probation officer for Defendant, mistook Defendant for a current probationer of his with an outstanding parole warrant. Lammonds attempted to stop Defendant in order to speak with him. As soon as Lammonds approached, Defendant refused to identify himself, turned away and started "cussing." In response, Lammonds grabbed Defendant and put him against a nearby cement wall. Defendant jerked away and continued using profanity. Lammonds thereafter confirmed Defendant's identity from a bystander, who told him that Defendant was not the person he was looking for. After Lammonds confirmed Defendant's identity, Lammonds stepped away and attempted to apologize. Defendant continued cussing and threatening.

Judge Weeks heard this commotion immediately outside the window from his chambers. At the time, Judge Weeks was beginning the second day of the jury selection process for the controversial case of *State v. Troy*. Because the case involved racial overtones and was the subject of significant media publicity, the court expected the jury selection process to be a challenging one. Judge Weeks heard Defendant using profanity and speaking in a loud voice outside his chambers and in close proximity to where the jurors were being sequestered. Judge Weeks also observed Lammonds attempting to talk to Defendant and to calm him down. Subsequently, Judge Weeks held Defendant in criminal contempt of

court, concluding that the commotion which the Defendant created was loud enough for the jurors to hear and that his conduct was likely to interrupt or interfere with matters that were presently before the court.

Standard of Review

Defendant argues that a *de novo* standard of review is applied to a finding of criminal contempt. Defendant further notes that when reviewing a finding of contempt *de novo*, the Court assesses the sufficiency of the evidence under the constitutional requirement that the evidence must be sufficient to convince a rational trier of fact of guilt beyond a reasonable doubt.

Defendant's assessment of this Court's standard of review is incomplete. The standard of review of an appeal from a trial court's finding of criminal contempt is well-established. While conclusions of law are reviewable *de novo*, the findings of fact are not. *See State v. Ford,* 164 N.C. App. 566, 596 S.E.2d 846 (2004). On appellant review of a contempt order, "the trial judge's findings of fact are conclusive . . . when supported by any competent evidence and are reviewable only for the purpose of passing on their sufficiency." *O'Briant v. O'Briant*, 313 N.C. 432, 436-37, 329 S.E.2d 370, 374 (1985).

In the instant case, therefore, the appropriate standard of review is whether or not there was competent evidence to support the trial court's findings of fact and whether those findings of fact support a conclusion that Defendant was in criminal contempt. We find that there was sufficient evidence to support the findings

of fact, and that the findings support the conclusion that Defendant was in criminal contempt.

Criminal Contempt

Defendant argues the trial court erred in finding him in direct criminal contempt because his actions were not willful and were not committed with the willful intent to interrupt or interfere with court proceedings.

Criminal contempt is defined as the "[w]illful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution." N.C. Gen. Stat. § 5A-11(a)(3)(2007). Direct criminal contempt is "committed within the sight or hearing of a presiding judicial official[,]" N.C. Gen. Stat. § 5A-13(a)(1)(2007), while indirect criminal contempt "'arises from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice.'" *State v. Simon*, 185 N.C. App. 247, 251, 648 S.E.2d 853, 855 (2007) (quoting *Atassi v. Atassi*, 122 N.C. App. 356, 361, 470 S.E.2d 59, 62 (1996)), *disc. review denied*, 361 N.C. 702, 653 S.E.2d 158 (2007); N.C. Gen. Stat. § 5A-13(b)(2007).

The word willful when used in a criminal statute means that the act was conducted purposely and deliberately in violation of law and without authority, justification, or excuse. *State v. Chriscoe*, 85 N.C. App. 155, 354 S.E.2d 289 (1987). The term implies the act is done knowingly and of stubborn purpose or resistance. *McKillop v. Onslow County*, 139 N.C. App. 53, 61-62, 532 S.E.2d 594, 600 (2000); *see also Clayton v. Clayton*, 54 N.C.

App. 612, 284 S.E.2d 125 (1981), and *In re Hege*, 205 N.C. 625, 172 S.E. 345 (1933). Willfulness also connotes a "bad faith disregard for authority and the law." *Forte v. Forte*, 65 N.C. App. 615, 616, 309 S.E.2d 729, 730 (1983).

In this case, there is no doubt that Defendant acted willfully. He willfully "cussed" at Lammonds when he was originally approached. At trial, Defendant testified as follows:

> COURT: Do you want to respond by way of explanation and justification with regard to your conduct, not what [Lammonds] did, but what you did?
>
> DEFENDANT: Okay, I was wrong—I was cussing some but he had hurt me when he put me up against that wall right there.

Defendant's conduct clearly conveys stubborn resistance and general disregard for the law implied by the term "willful." Defendant could have easily revealed his identity to Lammonds and prevented the ensuing altercation. Instead of simply telling Lammonds who he was, Defendant shouted profanities. Even after he found himself pinned to the wall, Defendant refused to reveal his identity. We find that Defendant's disrespect and resistance in giving his name to the probation officer constituted willfulness in the context of criminal contempt.

Defendant mischaracterizes his altercation with Lammonds as an unlawful arrest. However, Defendant was not arrested. Moreover, an unlawful arrest would not excuse Defendant's loud cursing by Lammonds. Lammonds merely approached Defendant and ultimately engaged in an altercation with him. None of Lammond's actions come close to the definition of arrest. Even assuming *arguendo* that the

officer was attempting to make an unlawful arrest, Defendant may not exercise a legal right in a way that interrupts a sitting of a court of justice. *In re Hennis*, 6 N.C. App. 683, 688, 171 S.E.2d 211, 214 (1969), *rev'd on other grounds*, 276 N.C. 571, 173 S.E.2d 785 (1970).

Defendant also argues that his actions were not committed with the willful intent to interrupt or interfere with court proceedings because he had no knowledge that court proceedings were taking place. Defendant relies on *Hennis, supra,* where the Supreme Court reversed a finding of contempt because there was no evidence that petitioner had actual knowledge that court was in session or that his conduct was interfering with proceedings. The case *sub judice*, is distinguishable from *Hennis*. In *Hennis* the trial court had not made specific findings regarding the matter before the court. In contrast, the trial court in this case made specific findings regarding Defendant's conduct, giving specific details of the case, and further, there is evidence to support a finding that defendant knew court was in session.

Defendant's willful intent to interfere with court proceedings can be inferred. *State v. Warren*, 313 N.C. 254, 262, 328 S.E.2d 256, 262 (1985) (stating that a defendant's intent is seldom demonstrable through direct evidence and must ordinarily be inferred from circumstances). Defendant was familiar with the criminal court system and should have known the importance of maintaining a level of decorum in and around the courthouse. More specifically, it can be inferred that Defendant should have known

that the loud yelling of profanity outside of the courtroom and directly outside the judge's chambers would likely interrupt court proceedings, especially when he could have easily avoided confrontation by simply revealing his identity to the probation officer.

Defendant further argues that he lacked the willful intent to interrupt or interfere with court proceedings because the record does not support the fact that proceedings had begun. But the fact that proceedings may not have actually begun for the day is irrelevant as the court was still in session for the week. *See State v. Trent*, 359 N.C. 583, 585, 614 S.E.2d 498, 499 (2005) (referring to a session of court as the typical one week assignments of judges within a six month judicial term). Moreover, the court was in the process of beginning the day's business: Prospective jurors were summoned for service that morning in two rooms awaiting the start of *voir dire*.

Even if the court were not in session, a finding of criminal contempt would still be possible. Criminal contempt proceedings are those brought to preserve the power of the court, vindicate its dignity and punish for the disobedience of its processes. But, the disobedience of the court and its business can occur during recess or may not necessarily occur while the court is in session. *State v. Reaves*, 142 N.C. App. 629, 633, 544 S.E.2d 253, 256 (2001).

Finally, Defendant argues the record is devoid of the particulars of the offense and contains only conclusions that Defendant's actions were contemptuous. Defendant relies on the

case of *Rose's Stores v. Tarrytown Center*, 270 N.C. 206, 154 S.E.2d 313 (1967). In that case, the Supreme Court overturned a civil contempt order because the trial court failed to specify the "words, acts or gestures amounting to direct contempt, and when the record contain[ed] only conclusions that contemnor was contemptuous[.]" *Id.* at 213, 154 S.E.2d at 318.

Unlike the facts of the *Rose's Stores case*, however, the record of the instant case contains bountiful evidence of Defendant's specific words and acts that served as a basis for the trial court's finding of direct contempt. For instance, the record clearly mentions that Defendant created a commotion in front of the Columbus County Courthouse on the second day of a challenging jury selection process for a controversial local trial. The record also makes clear that Defendant used profanity, yelled loudly outside the judge's chambers and engaged in a verbal dispute with a probation officer.

We find that the facts found by the trial court are supported by the evidence and that the facts found are sufficient to support a conclusion of contempt.

Affirmed.

Judges BRYANT and JACKSON concur.

Report per Rule 30(e).