

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA13-357
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Durham County
No. 12 CRS 5265

TIKEEYA JACKSON

Appeal by defendant from judgment entered 1 November 2012 by Judge Michael O’Foghludha in Durham County Superior Court. Heard in the Court of Appeals 11 September 2013.

Attorney General Roy Cooper, by Assistant Attorney General Teresa M. Postell, for the State.

Peter Wood, for defendant-appellant.

CALABRIA, Judge.

Tikeeya Jackson (“defendant”) appeals from a judgment finding her guilty of direct criminal contempt. We affirm.

I. Background

On 10 July 2012, Deputy Donte Armstrong (“Deputy Armstrong”) was on duty as a courtroom bailiff in Durham County District Court. Another Deputy gave preliminary instructions to the audience, instructing everyone to silence their cell phones.

After a cell phone rang somewhere in the courtroom, the audience was given another warning to silence all cell phones. A cell phone rang a second time. Deputy Armstrong suspected, and several members of the audience indicated, that it was defendant's phone that rang. Deputy Armstrong informed the presiding judge, Judge James Hill ("Judge Hill"), that he believed the phone that rang belonged to defendant.

When defendant was called for her case, Judge Hill asked her whether it was her phone that rang. Defendant denied that it was her phone. Defendant requested a court-appointed attorney. Subsequently, Deputy Armstrong began handing out clipboards to the defendants in the courtroom for them to complete relevant paperwork. When Deputy Armstrong handed defendant a clipboard, she looked at Deputy Armstrong and said, "Thank you, house n-----." Deputy Armstrong and "everyone else around her" within fifteen feet heard defendant's statement. When Deputy Armstrong handed defendant's clipboard to Judge Hill, he informed Judge Hill that defendant had called him a "house n-----" and walked away.

Judge Hill immediately stopped the proceedings, called defendant to the front of the courtroom, and questioned both Deputy Armstrong and defendant about her statement. Judge Hill

charged defendant with direct criminal contempt and sentenced her to thirty days in the Durham County jail. Defendant appealed to Durham County Superior Court, where Judge Hill, Deputy Armstrong, and defendant all testified at a hearing. The trial court found defendant guilty of direct criminal contempt and sentenced her to thirty days in the Durham County jail. Defendant appeals.

II. Standard of Review

"In contempt proceedings, the trial judge must make findings of fact beyond a reasonable doubt, and enter a written order." *State v. Coleman*, 188 N.C. App. 144, 148, 655 S.E.2d 450, 452 (2008). On appeal, "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." *Id.*, 655 S.E.2d at 453. (citations omitted). The appellate court may only review the law applicable to the trial judge's findings of fact. *State v. Ford*, 164 N.C. App. 566, 569, 596 S.E.2d 846, 849 (2004).

III. Direct Criminal Contempt

Defendant contends that it was error for the trial court to hold her in direct criminal contempt. We disagree.

There are two types of criminal contempt: direct and

indirect. N.C. Gen. Stat. § 5A-13 (2011). An act is considered direct criminal contempt "when the act: (1)[i]s committed within the sight or hearing of a presiding judicial official; and (2)[i]s committed in, or in immediate proximity to, the room where proceedings are being held before the court; and (3)[i]s likely to interrupt or interfere with matters then before the court." N.C. Gen. Stat. § 5A-13(a)(1)-(3) (2011). "A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars (\$500.00), or any combination of the three" N.C. Gen. Stat. § 5A-12(a) (2011).

As an initial matter, defendant contends that "the trial judge had no direct knowledge of facts which would establish acts of contempt" and therefore "the trial court must [have] follow[ed] indirect criminal contempt procedures." Defendant argues that with indirect criminal contempt, the trial court should have followed the requirements for a plenary contempt proceeding pursuant to N.C. Gen. Stat. § 5A-15. However, defendant failed to make this argument below, and therefore it is not preserved for appellate review. See *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934) ("[T]he law does not permit parties to swap horses between courts in order to get a better

mount" on appeal).

In the instant case, when Deputy Armstrong handed defendant a clipboard, she said audibly, "Thank you, house n-----." At the hearing in Superior Court, defendant admitted making the statement to Deputy Armstrong in the courtroom while Judge Hill was conducting court. The trial court entered an order finding defendant in direct criminal contempt and made the following relevant findings of fact:

3) The Defendant appeared in that Courtroom that morning to answer a misdemeanor charge. The Defendant had been in a court of law on previous occasions and understood that she should treat courtroom officials with respect and in a dignified manner.

...

7) When Deputy Armstrong handed the Defendant her clipboard, she looked directly at Deputy Armstrong and said audibly, "Thank you, house [n-----]."

8) This racial epithet was made audibly, in open Court, while Court was in session, while the Presiding Judge was present, and within fifteen feet of the Judge's bench.

9) This racial epithet was therefore made within the sight or hearing of the presiding Judge, although Judge Hill did not actually hear the Defendant's words.

10) Making such a racial epithet to a uniformed Deputy Sheriff in charge of courtroom security and order is willfully contemptuous.

11) Making such a racial epithet in open Court directly tends to interrupt its proceedings, and did in fact interrupt the Court's proceedings, as Judge Hill, upon being informed of the Defendant's conduct, had to interrupt the Court's business to deal with the Defendant's conduct, and then Judge Hill had to recess Court briefly in order to thereafter properly conduct the remaining business of the Court.

12) Making such a racial epithet to a Deputy Sheriff in charge of courtroom security and order directly tends to impair the respect due the Court's authority.

13) Making such a racial epithet to Deputy Armstrong while Deputy Armstrong was carrying out the business of the Court by handing out necessary paperwork relating to the appointment or waiver of counsel constitutes interference with execution of the Court's lawful process, order, directive, or instruction.

The trial court then concluded that defendant's "conduct was willfully contemptuous ... that said conduct occurred in open court within the sight or hearing of the Honorable James T. Hill, and constitutes Direct Criminal Contempt under N.C.G.S. 5A-11(a) (1), 5A-11(a) (2), and 5A-11(a) (3)."

Defendant disputes findings of fact three and seven through twelve as well as the trial court's conclusion that she was in direct criminal contempt. However, the State presented evidence at the hearing that Deputy Armstrong was in uniform and in

charge of courtroom security on that date, and defendant made her statement directly to Deputy Armstrong in a crowded courtroom. Judge Hill immediately stopped proceedings to address defendant's statement, and indicated that defendant "was disrespectful to [Deputy Armstrong], and as a result, was disrespectful to the Court" and "had shown contempt for the Court and the entire process." Defendant knew the basics of courtroom decorum, and admitted making the statement despite knowing the history and the harmfulness of the statement. Despite defendant's contentions, the hearing testimony supports the trial court's findings.

Furthermore, defendant's actions met the statutory requirements of direct criminal contempt. The trial court found, and the State's evidence at the hearing showed, that defendant uttered the racial slur in the presence of the presiding judge. Defendant makes much of the fact that Judge Hill did not actually hear defendant utter the racial slur. However, N.C. Gen. Stat. § 5A-13(a) simply requires that the act be committed "within the sight or hearing of a presiding judicial official[.]" N.C. Gen. Stat. § 5A-13(a)(1) (2011). The statute does not require that the official actually see or hear the event occur. In addition, defendant made the statement in

open court during court proceedings, and thus her act was "committed in ... the room where proceedings are being held before the court" N.C. Gen. Stat. § 5A-13(a)(2).

Defendant contends that her behavior did not directly interrupt the normal court proceedings and uses several school cases to illustrate what is necessary to constitute a "disruption." However, the evidence at the hearing supported the trial court's findings that defendant's behavior was disruptive. When Judge Hill became aware of defendant's statements, he immediately stopped the proceedings to address defendant's behavior. When asked to explain the reason for holding defendant in contempt, Judge Hill stated, "[I]t was a disruption to the operation of court."

In light of these findings by the trial court and the evidence supporting them, it is clear that defendant's acts met the statutory requirements for direct criminal contempt. The trial court did not err in finding defendant in direct criminal contempt.

IV. Willfulness

Defendant argues that her comment did not rise to the level of contempt because it was not willful. We disagree.

"Criminal contempt" includes: "[w]illful behavior committed

during the sitting of a court and directly tending to interrupt its proceedings[,]” “[w]illful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority[,]” and “[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)(1)-(3) (2011). “In the context of contempt proceedings, this Court has previously defined a willful act as one ‘done deliberately and purposefully in violation of law, and without authority, justification, or excuse.’” *State v. Okwara*, __ N.C. App. __, __, 733 S.E.2d 576, 580 (2012) (citation omitted). Willfulness is not affected by a defendant’s claimed purpose offered to justify actions that are knowingly prohibited. See *State v. Simon*, 185 N.C. App. 247, 254, 648 S.E.2d 853, 857 (2007).

Defendant argues that her conduct was not willful, and thus it was error for the trial court to hold her in criminal contempt. Defendant admitted making the statement. Defendant admitted that she had previously been in a courtroom and knew how to treat courtroom officials. In addition, she knew the history and harmfulness of the racial epithet she used, and she knew it was wrong to use the word, but she said it anyway

because she "was mad at [Deputy] Armstrong." Although defendant argues that she did not intend for anyone to hear the statement and that it was uttered in anger, the motivation for her actions is irrelevant here. The statute only requires that the behavior be "willful," and defendant's action in making the statement was willful as it was "done deliberately and purposefully in violation of law, and without authority, justification, or excuse." *Okwara*, __ N.C. App. at __, 733 S.E.2d at 580 (citation omitted).

V. Conclusion

The trial court did not err in holding defendant in direct criminal contempt because it is clear that the statutory requirements for direct criminal contempt were met and defendant's actions were willful.

Affirmed.

Judges ELMORE and STEPHENS concur.

Report per Rule 30(e).