IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1022

Filed 16 April 2024

Durham County, Nos. 23CRS373–74

STATE OF NORTH CAROLINA

v.

KEYSHAWN COZART and KEYMON COZART, Defendants.

Appeal by defendants from 2 May 2023 contempt orders entered by Judge Brian C. Wilks in Durham County Superior Court. Heard in the Court of Appeals 19 March 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Jonathan D. Jones, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Jillian C. Franke, for defendant-appellant Keyshawn Cozart.

The Sweet Law Firm, PLLC, by Kaelyn N. Sweet, for defendant-appellant Keymon Cozart.

PER CURIAM.

This case arises from a plea hearing in *State v. Renell Clark*, 21CRS1043, which was held by the trial court on 2 May 2023, and where the defendant, Renell Clark, pled guilty to involuntary manslaughter of Marcia Pinkard.

During the hearing, Ms. Pinkard's children—namely, Kiera Snipes, Keyshawn Cozart ("Defendant Keyshawn"), and Keymon Cozart ("Defendant Keymon")—were given the opportunity to provide victim impact statements to the trial court. Ms. Snipes made her statement, after which Defendant Keyshawn interjected with inappropriate and inflammatory language, as well as threats directed at the defendant, Mr. Clark. The trial court warned Defendant Keyshawn that he would be held in contempt if he continued to speak, but Defendant Keyshawn continued to do so. The trial court announced it was holding Defendant Keyshawn in contempt and asked him: "Is there anything to the court you want to say in your summary hearing for contempt?" Before Defendant Keyshawn could respond, however, the prosecutor interjected and asked if "we [can] come back to that[,]" immediately after which Defendant Keyshawn was taken into custody.

Thereafter, Defendant Keymon also interjected with inappropriate and inflammatory language. He expressed frustration about the negotiated plea deal and made statements that were, per the Record on Appeal, inaudible to the court reporter. Defendant Keymon's interjection resulted in the trial court stating: "All right. You are in contempt. You got [thirty] days." Defendant Keymon responded, "I get contempt?" The trial court then stated, "[y]ou have any other outbursts, sir, you get more[,]" but Defendant Keymon nonetheless continued to speak. The Record contains no information on the events that immediately followed, but the trial court stated from the bench that Defendant Keymon shall be sentenced to "[sixty] days contempt

for spitting in the face of the defendant[,]" Mr. Clark. Defendant Keymon was taken into custody.

Following the conclusion of Mr. Clark's sentencing hearing, neither Defendant was returned to the courtroom to address the contempt charges against them. The trial court entered three separate contempt orders—one against Defendant Keyshawn, and two against Defendant Keymon. In Defendant Keyshawn's order, the trial court sentenced him to thirty days in custody, and in Defendant Keymon's orders, the trial court sentenced him to a collective sixty days in custody. Defendant Keyshawn and Defendant Keymon each filed timely notices of appeal, pursuant to N.C. Gen. Stat. § 5A-17(a) (2023).

On appeal, Defendant Keyshawn and Defendant Keymon each argue the trial court erred by entering judgments for direct criminal contempt without giving him the statutorily-required opportunity to respond. We agree.

This Court's review of a trial court's decision rendered in a non-jury trial is to discern "whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment." *State v. Simon*, 185 N.C. App. 247, 250, 648 S.E.2d 853, 855 (2007) (citation omitted). "The trial court's conclusion of law drawn from the findings of fact are reviewable de novo." *Id.* at 250, 648 S.E.2d at 855 (citation and internal quotation marks omitted).

Under N.C. Gen. Stat. § 5A-14, a trial court may "summarily impose measures in response to direct criminal contempt when necessary to restore order or maintain

the dignity and authority of the court and when measures are imposed substantially contemporaneously with the contempt." N.C. Gen. Stat. § 5A-14(a) (2023). The statute further provides, however, "[b]efore imposing measures under this section, the judicial official must give the person charged with contempt summary notice of the charges and a summary opportunity to respond and must find facts supporting the summary imposition in response to contempt. The facts must be established beyond a reasonable doubt." N.C. Gen. Stat. § 15A-14(b). Where there is no evidence a defendant "was given the opportunity to respond to the charge of contempt itself or present[] any argument as to why [he] should not be held in contempt in response to the notice of a contempt charge against [him,]" we must reverse the trial court's contempt order. *State v. Robinson*, 281 N.C. App. 614, 623, 626, 868 S.E.2d 703, 710–11 (2022) (reversing the trial court's contempt order, as the record on appeal contained no evidence tending to show the defendant was afforded her statutorily-required opportunity to respond).

Here, regarding Defendant Keyshawn, when the trial court asked him whether there is "anything to the court [he] want[s] to say in [his] summary hearing for contempt[,]" Defendant Keyshawn was given no opportunity to respond and was taken into custody. Regarding Defendant Keymon, the Record contains no evidence tending to show that he was given—at the time of or following his exchange with the trial court—an opportunity to respond to the trial court's notice of contempt. Further, as neither Defendant Keyshawn nor Defendant Keymon were returned to the

courtroom following the sentencing hearing and before the trial court entered its contempt orders, there is no Record evidence tending to show either Defendant was afforded the opportunity to present an argument as to why he should not be held in contempt. *See Robinson*, 281 N.C. App. at 623, 626, 868 S.E.2d at 710–11.

Upon our *de novo* review of the Record, we conclude the trial court failed to afford Defendants their statutorily-required opportunities to respond to the contempt charges against them. N.C. Gen. Stat. § 15A-14(b); *see Simon*, 185 N.C. App. at 250, 648 S.E.2d at 855. We therefore reverse the trial court's contempt order entered against Defendant Keyshawn, as well as the trial court's contempt order entered against Defendant Keymon. *See Robinson*, 281 N.C. App. at 623, 626, 868 S.E.2d at 710–11.

REVERSED.

Panel consisting of:

Judges STROUD, MURPHY, and FLOOD.

Report per Rule 30(e).