



**WINKLER, Judge.**

{¶1} In three assignments of error, defendant-appellant Rachele Thomas appeals her conviction and sentence for direct criminal contempt. After a contempt hearing, the trial court concluded that Thomas had lied during voir dire and on a juror questionnaire for the purpose of avoiding jury duty. At the same contempt hearing, the trial court imposed a nine-day term of incarceration in the Hamilton County Justice Center. In several instances, the parties refer to material outside the record before this court. We are unable to consider such material; nevertheless, we can address Thomas’s contentions.

{¶2} Initially, Thomas was before the trial court on May 29, 2003, for consideration as a possible juror. The second time she appeared before the trial court was for a contempt hearing conducted on June 4, 2003. While it is not apparent from the transcript of the contempt hearing, a review of the trial court’s journalized entry of contempt reveals the following: “The Court finds beyond a reasonable doubt that” Thomas “is guilty of a direct criminal contempt.”

{¶3} The law of contempt is intended to uphold and ensure the effective administration of justice, to secure the dignity of the court, and to affirm the supremacy of law.<sup>1</sup>

{¶4} Direct contempt involves “misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice,” and acts in direct contempt of court may be summarily punished.<sup>2</sup> In contrast, indirect contempt involves acts occurring outside the presence of the court that demonstrate a lack of respect for the court or its lawful

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<sup>1</sup> See *Cramer v. Petrie* (1994), 70 Ohio St.3d 131, 133, [1994-Ohio-404](#), 637 N.E.2d 882.

<sup>2</sup> See R.C. 2705.01; *In re Oliver* (1948), 333 U.S. 257, 275-276, 68 S.Ct. 499.

orders,<sup>3</sup> and the court must afford the accused a hearing at which the accused will have an opportunity to be heard, by himself or counsel.<sup>4</sup>

{¶5} In the case of civil contempt, the punishment is remedial or coercive,<sup>5</sup> for the benefit of the complainant.<sup>6</sup> The contemnor is said to carry the keys to his prison in his own pocket, as he will be freed if he complies with the order of the court.<sup>7</sup> In contrast, the punishment for criminal contempt generally consists of an unconditional prison sentence.<sup>8</sup> The imprisonment for criminal contempt serves as punishment for the completed act of disobedience and vindicates the authority of the court.<sup>9</sup> In a criminal contempt proceeding, proof of guilt beyond a reasonable doubt is required.<sup>10</sup> If the proceeding is characterized as one for criminal contempt, the defendant is protected by many of the significant constitutional safeguards required in criminal trials, unless, as the Ohio Supreme Court has stated, and as the state argues in this case, the criminal contempt is direct and is summarily dealt with by the trial court.<sup>11</sup>

{¶6} Thomas's first appearance before the trial court was on May 29, 2003. Thomas was among a group of prospective jurors and was excused from service on the basis of having told the trial court that she wanted to keep a doctor's appointment for her son because she had been on a waiting list to see the particular doctor for eight months. She was released and instructed to return to the jury commissioner's office. There was no delay in seating a jury on May 29, 2003, based on the transcript transmitted to this court. There is

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<sup>3</sup> See R.C. 2705.02.

<sup>4</sup> See R.C. 2705.03.

<sup>5</sup> See *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 555, [2001-Ohio-15](#), 740 N.E.2d 265.

<sup>6</sup> See *Brown v. Executive 200, Inc.* (1980), 64 Ohio St.2d 250, 253, 416 N.E.2d 610.

<sup>7</sup> See *id.*

<sup>8</sup> See *id.* at 254.

<sup>9</sup> See *id.*; *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 555, [2001-Ohio-15](#), 740 N.E.2d 265; *State v. Kilbane* (1980), 61 Ohio St.2d 201, 400 N.E.2d 391.

<sup>10</sup> See *Brown*, 64 Ohio St.2d 250, 416 N.E.2d 610, syllabus.

<sup>11</sup> See *State v. Kilbane* (1980), 61 Ohio St.2d 201, 204, 400 N.E.2d 391; *Brown*, 64 Ohio St.2d at 252, 416 N.E.2d 610.

nothing in the May 29, 2003, transcript about the trial court's need to schedule a hearing to address Thomas's alleged untruthful answers given to the court.

{¶7} On June 4, 2003, the trial court addressed Thomas: "Ms. Thomas this is the second time that we have met." The court commented, "It appears that you may or may not have lied under oath, which is perjury, which is punishable in the State of Ohio up to five years in the Department of Corrections." The court continued, "I have heard that you do not like being a juror, that you suggested to the Jury Commissioner that you would rather be put in jail than serve on a jury. \* \* \* \* But if you lied indicating that you did not want to sit on this jury to take your child, who may or may not exist, to a doctor's appointment, which may or may not exist, goes to the very heart of our constitutional form of government." It was at this point that the trial court told Thomas in response to her query about whether she needed an attorney, "Ma'am, there is no right to an attorney on a direct contempt of court. I am allowing you to explain. If you did take a child to a doctor on Friday then your statement in court was correct. If you lied to me, I am willing to address that issue now."

{¶8} Thomas asked if she could plead no contest, to which the trial court responded, "Ma'am, there is not an issue of pleading no contest. I am giving you the opportunity that there may have been some miscommunication, it does not appear that you have acknowledged that's what you told me and I excused you. I also made a specific notation to my bailiff or constable: How could you have a doctor's appointment when you show no children?" We glean from the record that television cameras were then in the courtroom because Thomas asked, "Is this going to be on TV?" The bailiff instructed Thomas to answer the trial court's question.

{¶9} At the same hearing, after finding Thomas guilty, and while deciding upon an appropriate sentence, the trial court stated, "I am trying to get to a proportionality of

sentence which is fair for you and fair to the State, but more importantly, that your conduct has been sort of the buzz words in the Jury Commissioner's office." The record does not show that any witnesses testified at Thomas's contempt hearing.

{¶10} After being told that she would spend nine days in the Justice Center, Thomas told the trial court, "I am willing to serve," to which the trial court responded, "To minimize it is even more demeaning to you and more demeaning to the Court, because that's not what you told me last week." Based on this, it appears that Thomas was given an unconditional term of incarceration.<sup>12</sup>

{¶11} From the transcript of the June 4, 2003, contempt hearing, individuals who remained anonymous apparently approached the trial court with information about Thomas's comments after she had been excused and returned to the jury commissioner's office on May 29, 2003. Thomas admitted to her untruthfulness only after being told by the trial court, among other things, that she was facing a possible perjury charge and that there was no right to counsel.

{¶12} Thomas contends that (1) there was insufficient evidence to find her guilty; (2) the trial court erred by holding a direct contempt hearing and failing to inform her of her constitutional and statutory rights; and (3) the trial court failed to advise her of her Fifth Amendment right not to incriminate herself. We address the assignments of error out of order.

{¶13} The decisive issue is whether Thomas's conduct occurred in the presence of the court, thus permitting the trial court to classify her conduct as direct contempt and to summarily punish her pursuant to R.C. 2705.01.<sup>13</sup> Courts must closely scrutinize proceedings in which there is a departure from due-process guarantees out of concern for

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<sup>12</sup> See *Cermak v. Cermak* (1998), 126 Ohio App.3d 589, 595, 710 N.E.2d 1191 (there was no condition contemnor could have complied with to avoid the punishment once it was imposed).

<sup>13</sup> See *State v. Felson* (Mar. 23, 2001), 1st Dist. No. C-000470.

potentially “grave abuses.”<sup>14</sup> Accordingly, a summary proceeding is limited exclusively to punishment of court-disrupting conduct.<sup>15</sup> The power to punish summarily is limited in two ways.<sup>16</sup> First, the locus of the contumacious act or acts must be such that the determinative elements of the offense are known to the court personally so that no fact-finding determination is required and a summary proceeding is appropriate.<sup>17</sup> Second, the nature or quality of the contumacious act must be such that the orderly and effective conduct of the court’s business requires its immediate suppression and punishment.<sup>18</sup> If the court has not personally observed the essential elements of the contempt and must depend on the statements of others for knowledge of the essential elements, then one charged with contempt of court has the due-process protections of notice, counsel, and a fair hearing.<sup>19</sup> Moreover, knowledge acquired from the testimony of others, or even from the confession of the accused, will not justify a conviction without a trial in which there is an opportunity for the presentation of a defense.<sup>20</sup>

{¶14} There is no indication in the May 29, 2003, transcript transmitted to this court that the civil litigation for which Thomas had been called as a potential juror was unable to proceed, or that the trial court, at that time, scheduled any future hearings with Thomas concerning untruthful statements. Thomas’s second appearance before the trial court apparently resulted from information given by an anonymous third party or parties about Thomas’s statements elsewhere, rather than because the trial court had heard Thomas’s later comments about her voir dire and questionnaire responses firsthand. Accordingly, we hold that Thomas’s conduct merited an indirect contempt hearing, and,

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<sup>14</sup> See *id.*

<sup>15</sup> See *In re Oliver* (1948), 333 U.S. 257, 274, 68 S.Ct. 499.

<sup>16</sup> See *In re Davis* (1991), 77 Ohio App.3d 257, 263, 602 N.E.2d 270.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See *In re Oliver*, 333 U.S. at 274-275, 68 S.Ct. 499.

<sup>20</sup> See *id.* at 275, 68 S.Ct. 499.

consequently, that she was entitled to many of the constitutional safeguards required in a criminal trial.<sup>21</sup> We sustain Thomas's second and third assignments of error, that the trial court erred in conducting a direct-contempt hearing and, thus, that it failed to advise her of pertinent constitutional protections. Due to our disposition of the second and third assignments of error, we find that the one remaining assignment has been rendered moot.

{¶15} The judgment of the trial court is reversed, and this case is remanded for any further proceedings the trial court may wish to initiate consistent with the foregoing decision.

Judgment reversed and cause remanded.

**HILDEBRANDT, P.J.**, concurs.  
**PAINTER, J.**, concurs separately.

**PAINTER, J.** concurring separately.

I concur in Judge Winkler's patently correct analysis. This was not direct contempt because it required proof of facts unknown to the trial court. It was not summary contempt because it did not disrupt the proceedings. Thomas may well deserve punishment, but she must have due process of law first.

*Please Note:*

The court has recorded its own entry on the date of the release of this Decision.

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<sup>21</sup> See *Brown* at 252, 416 N.E.2d 610; *State v. Felson* (Mar. 23, 2001), 1st Dist. No. C-000470; *In re Estate of Carrier*, 1st Dist. No. C-030249, [2003-Ohio-6919](#), at ¶15; R.C. 2705.03; see, also, Chinnock and Painter, *The Law of Contempt of Court in Ohio* (2003), 34 Toledo L. Rev. 309, 337-346.