[Cite as *State v. Komadina*, 2004-Ohio-4962.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO Appellee v. DAVID KOMADINA Appellant	C.A. No. 03CA008325 APPEAL FROM JUDGMENT ENTERED IN THE LORAIN MUNICIPAL COURT COUNTY OF LORAIN, OHIO CASE No. CRB003292

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BOYLE, Judge.

{¶1} Appellant, David Komadina, appeals from the judgment of the Lorain County Court of Common Pleas finding him in contempt of court for failure to report to jail as scheduled. This Court reverses.

I.

{¶2} After a jury trial, Appellant was found guilty of aggravated menacing in violation of R.C. 2903.21. On May 22, 2001, he was sentenced to thirty days in jail and ordered to pay a fine of $500.00. Appellant appealed his conviction to this Court and his sentence was stayed pending the appeal. We affirmed his conviction and reversed his sentence to the extent that the trial court

erroneously suspended his driver's license. See *State v. Komadina*, 9th Dist. No. 02CA008104, 2003-Ohio-1800.

{¶3} This Court's decision was released on April 9, 2003. However, a letter dated July 6, 2001 was sent by the trial court judge informing Appellant that he was to report to jail on July 27, 2001. Appellant denies receiving the letter, and the letter was never journalized or placed in the trial court record in any fashion. Appellant did not report to jail as scheduled. As a result, he was brought before the trial court on August 6, 2003, on a charge of contempt.

{¶4} At the contempt hearing, no evidence was presented and no witnesses testified. Appellant's trial counsel attempted to explain that it was unclear whether Appellant's sentence was still stayed. The trial court stated summarily that it had sent a letter to Appellant requiring him to report to jail at a scheduled time and that Appellant had not. The trial court then found Appellant guilty of contempt and sentenced him to thirty days of electronically monitored house arrest.

{¶5} Following the contempt conviction, Appellant filed a pro se motion for appointment of counsel with this Court. This Court denied his motion because he failed to demonstrate that the trial court denied his request for counsel. Subsequently, Appellant's appeal was dismissed for failure to file a brief. Appellant then retained counsel who filed an application to reopen this appeal pursuant to App.R. 26(B). On April 23, 2004, this Court granted Appellant's

application. As such, Appellant appeals his contempt conviction, raising one assignment of error.

II.

ASSIGNMENT OF ERROR

> "THE TRIAL COURT'S FINDING OF CONTEMPT IS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE AND SHOULD BE REVERSED BECAUSE IT VIOLATES THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 10 OF THE CONSTITUTION OF THE STATE OF OHIO."

{¶6} In his sole assignment of error, Appellant contends that his conviction is against the manifest weight of the evidence and the evidence introduced against him was insufficient to justify his conviction. This Court agrees.

{¶7} We begin our discussion by noting that the State did not file a brief. Therefore, we accept Appellant's statement of the facts and issues as correct, which allows reversal of the judgment if Appellant's brief reasonably appears to sustain such action. See App.R. 18(C).

{¶8} "While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion." *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. 19600, citing *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52 (Cook, J., concurring). Further,

> "[b]ecause sufficiency is required to take a case to the jury, a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency. Thus, a determination that [a] conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." (Emphasis omitted.) *State v. Roberts* (Sept. 17, 1997), 9th Dist. No. 96CA006462.

{¶9} Contempt of court may be defined as disobedience of a court order or conduct which brings the administration of justice into disrespect, or impedes a court's ability to perform its functions. *Windham Bank v. Tomaszczk* (1971), 27 Ohio St.2d 55, paragraph one of the syllabus. In particular, criminal contempt sanctions are generally punitive in nature, vindicating the authority of the court. *Denovchek v. Bd. of Trumbull Cty. Comm'rs* (1988), 36 Ohio St.3d 14, 16. These criminal contempt sanctions are generally unconditional fines or prison sentences. *In re Purola* (1991), 73 Ohio App.3d 306, 311, citing *Brown v. Executive 200, Inc.* (1980), 64 Ohio St.2d 250, 253-54. Because Appellant was sentenced to an unconditional term of house arrest, he was necessarily convicted of criminal contempt.

{¶10} Additionally, indirect contempt of court is defined as an act "committed outside the presence of the court but which also tends to obstruct the due and orderly administration of justice." *In re Lands* (1946), 146 Ohio St. 589, 595. R.C. 2705.02 provides in pertinent part as follows:

> "A person guilty of any of the following acts may be punished as for a contempt:
>
> "(A) Disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or officer[.]"

{¶11} Indirect criminal contempt must be proven beyond a reasonable doubt. *Midland Steel Prods. Co. v. U.A.W., Local 486* (1991), 61 Ohio St.3d 121, 127. The charge of contempt requires the State to establish a valid court order, knowledge of the order by the defendant, and a violation of the order. *Citicasters Co. v. Stop 26-Riverbend, Inc.*, 147 Ohio App.3d 531, 2002-Ohio-2284, at ¶47, citing *Arthur Young & Co. v. Kelly* (1990), 68 Ohio App.3d 287, 295. Further, intent to defy the court is an essential element of indirect criminal contempt. *Midland*, 61 Ohio St.3d at paragraph two of the syllabus.

{¶12} In the instant case, there is no dispute that Appellant failed to report to jail at the time specified in the letter sent by the trial judge. However, we find it doubtful that a valid court order existed to justify a charge of contempt. "It is well settled that a court speaks only through its journal." *Brown v. Bentree Development Corp.* (Nov. 17, 1980), 2nd Dist. No. 6646. The trial judge sent a letter to Appellant informing him that he was to report to jail by a specific date. This letter was never journalized. In contrast, the entry staying Appellant's sentence was journalized.

{¶13} However, assuming arguendo that the above letter constituted a court order, the trial court did not establish that Appellant had knowledge of the order. The letter itself was not introduced at Appellant's contempt hearing. Further, no evidence was submitted establishing that it had been sent by the court or received by Appellant. As such, knowledge of the court order, an essential

element of contempt, was not proven beyond a reasonable doubt. Therefore, insufficient evidence was presented to support Appellant's conviction. Accordingly, Appellant's sole assignment of error is sustained.

III.

{¶14} Appellant's sole assignment of error is sustained. The judgment of the Lorain County Court of Common Pleas convicting Appellant of contempt is reversed, and the cause is remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Lorain Municipal Court, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this

judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

Exceptions.

EDNA J. BOYLE
FOR THE COURT

WHITMORE, P. J.
SLABY, J.
CONCUR

APPEARANCES:

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