UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2263 & 2264

September Term, 2013

KELLY MADIGAN and LARAI EVERETT

v.

STATE OF MARYLAND

CONSOLIDATED CASES

Woodward,
Friedman,
Sonner, Andrew L.
(Retired, Specially Assigned),

JJ.

Opinion by Sonner, J.

Filed: June 22, 2015

While trying an extended murder conspiracy trial in the Circuit Court for Baltimore City, the trial judge issued an order pursuant to Maryland Rule 15-203 in which the judge found appellants, LaRai Everett and Kelly Madigan, to be in direct criminal contempt because they arranged a lunch date between two State's witnesses "who happened to be inmates." Each appellant was fined five hundred dollars ($500.00), with all but one hundred dollars ($100.00) suspended. Appellants timely appealed, raising the following question to this Court:

> Did the trial court err in finding Appellants in direct contempt of court and imposing summary sanctions?

For the reasons discussed below, we shall reverse the trial court's decision that found appellants in direct criminal contempt.

BACKGROUND

During the fall of 2013, Ms. Madigan and Ms. Everett, both experienced Assistant State's Attorneys with the Baltimore City State's Attorney's Office, were in the process of prosecuting *State of Maryland v. Quincy Chisolm, et. al*, Case no. 112132012 (Baltimore City Circuit Court), a six-week long murder conspiracy jury trial that was presided over by the Honorable Emanuel Brown. During this trial, which involved several co-defendants and dozens of witnesses, Judge Brown required parties to submit proposed writs to the court on a daily basis in order to allow incarcerated witnesses to be transported to the Baltimore City Circuit Courthouse.

On the morning of October 31, 2013, appellants submitted -- and the trial judge signed -- a proposed writ which would allow State's witness Donnie Adams to be brought

to the courthouse that same day for the purpose of testifying as a prosecution witness. However, despite the stated purpose of the writ, Mr. Adams had already completed his trial testimony, and appellants' sole purpose in submitting the misleading writ was so that Mr. Adams could be brought to the courthouse for a lunchtime visit with his sister, Sara Hooker.

Ms. Hooker was also an incarcerated witness in the *Chisholm* case who was nearing the end of her testimony; her brother, Mr. Adams, was "a paraplegic as the result of being attacked and stabbed while in jail." Given their mutual status as prison inmates, these siblings had not seen each other for an extended period of time and would not have another opportunity to see each other again for several years. By arranging the lunchtime visit, appellants' sole intention was to "do something nice on a human level" for Mr. Adams and Ms. Hooker. Ms. Everett, who signed the writ, explained that it was "a nice thing to do and that's why the State did it." Judge Brown agreed that it was "a very nice thing to do."

Appellants did not disclose the arranged meeting between Ms. Hooker and Mr. Adams to defense counsel on the day it took place. However, while having his own lunch that day, defense attorney Garland Sanderson happened to notice Mr. Adams on the courthouse premises "with two Baltimore City police officers." After Ms. Hooker returned to the witness stand, during re-cross examination Mr. Sanders questioned her regarding whether she had seen her brother that day, which she admitted. Ms. Hooker revealed that she had previously requested seeing him, and, during their lunchtime meeting, she and her brother sat and talked for about 20 minutes, remaining handcuffed while two police officers and her attorney remained present in the room. They were instructed not to discuss the case.

After Ms. Hooker completed her testimony, all defense counsel moved for a mistrial on the basis that that State provided Ms. Hooker with a benefit that defense was not made aware of. Defense argued that although they did discover the meeting and had an opportunity to ask Ms. Hooker questions about it, they had "no ability to ask Mr. Adams about the agreement," which "call[ed] into question the whole prosecution of the case[.]" When the court asked the State to respond, Ms. Madigan immediately took full personal responsibility for the action. After dismissal of the jury for the day, the following colloquy took place:

> MS. MADIGAN: Your Honor, I don't believe a mistrial is the appropriate remedy. To the extent she received any benefit, she was cross-examined about the benefit and answered about it, and I don't believe a mistrial is a proper remedy.
>
> THE COURT: Well, why don't you help me understand how did it happen?
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> MS. MADIGAN: I will take responsibility for that, Your Honor.
>
> THE COURT: What does that mean?
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> MS. MADIGAN: That Your Honor's correct, [s]he did receive a benefit. We arranged for her to see her brother today.
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> THE COURT: Was the Court used in any manner to arrange for her –
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> MS. MADIGAN: Yes, Your Honor.
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> THE COURT: -- to see her brother?
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> MS. MADIGAN: And I apologize for that.
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> THE COURT: Do you understand the implication of that?
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> MS. MADIGAN: I do.
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> THE COURT: I really don't think you do.

MS. MADIGAN: I do, Your Honor.
In hindsight, it was not a very good decision at the time.

THE COURT: This Court has declined to sign mass writs and required you to bring writs or your staff to bring writs on a daily basis and this happens?

MS. MADIGAN: I -- I apologize.

The court thereafter heard further arguments regarding the appropriate remedy for the State's failure to disclose the benefit provided to Ms. Hooker. While defense counsel argued that this "abuse of the process" should result in a dismissal or a mistrial of the case, the State maintained that all defense counsel had "a full and fair opportunity to cross-examine" Ms. Hooker regarding the lunch benefit. In response to a comment by defense counsel regarding the timing of Ms. Hooker's request to see her brother, the court stated that "the request was made a while back. From what I'm hearing Ms. Madigan say is that she felt it was a nice thing to do and decided to do it this morning or yesterday whenever the writ was prepared." Before ruling on the motions by defense counsel, the trial court ordered Ms. Hooker and Mr. Adams to appear in court the following day for further examination.

On the morning of the next day, November 1, 2013, Judge Brown heard testimony from both Ms. Hooker and Mr. Adams, who each testified that their unanticipated lunch visit lasted about 20 minutes, and they did not discuss their trial testimony during this time. Each sibling also testified that police officers and Ms. Hooker's attorney were present in the room during the meeting, which was not related to any plea agreement with the State.

After Ms. Hooker and Mr. Adams completed their testimony, Judge Brown addressed Mr. Sanderson, the defense counsel who had first raised the lunchtime visit issue.

Mr. Sanderson explained that, although he didn't actually see them having lunch together, while he was sitting and having his own lunch in a little courtyard between the courthouses, he saw Mr. Adams come out to smoke a cigarette with a couple officers, which "piqued my curiosity because Mr. Adams had already testified[.]" Judge Brown thereafter heard argument from the parties regarding the failure to disclose the benefit provided to Ms. Hooker. During this argument, Ms. Madigan emphasized that she had not previously considered that the lunch visit would be considered a benefit to a State's witness, but had only been "trying to do something nice on a human level. . . ."

Judge Brown ultimately denied the defense motions for a mistrial and motions to dismiss. The court then informed the parties that it would wait until the end of the trial to address the issuance of the writ used to transport Mr. Adams, which he labeled as "a discovery violation," noting that there had also been one or two discovery violations on the defendants' side during the course of the trial. Although initially inclined to take action regarding the State's misuse of the writ process, Judge Brown explained that, after giving the situation further thought, he decided that it would be better to let some time pass and not address the matter until the end of trial. In the meantime, the court could "look at the entire picture before deciding what to do." The judge made it clear that among the options he was "thinking about [was] sanctions, contempt, because the Court finds the actions contemptible." Judge Brown noted that "at least in part the State's actions were founded in acts of human kindness, but it still violated the process, and it violated the process in a way that cannot be tolerated."

Nine days after the issuance of the lunchtime writ application, the *Chisholm* case ended on November 8, 2013, at which time the court then addressed the issue of sanctions for the misleading filing. Appellants each emphasized that their decision to allow a visit between Ms. Hooker and Mr. Adams was motivated by a desire to do something nice for them, and not out of any intent to disrupt the orderly procedure of the court.

> MS. MADIGAN: I would prefer to address Your Honor by myself, not in front of counsel, but I just again, wanted to offer my sincerest apologies. It was not my intention to act in any way to show that I was trying to be disrespectful to the Court, and I am sincerely apologetic for that. And I don't know if Your Honor understands how upset I have felt because I feel like your Honor has been upset by my actions, and that was not my intention. . . .
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> To say that I have not suffered humiliation as a result of this by other members of the bar, by members in my office, is not true. And I take my reputation extremely seriously and I have tried under all circumstances to conduct myself accordingly. I'm extremely disappointed in myself and I apologize. . . .
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> MS. EVERETT: I also share the same position as Ms. Madigan does. This was certainly not something we did intentionally to do something to the Court or to counsel to think that we were doing something that was improper. Our – our whole intention was to do something nice and to be kind and it was improper in that we requested a writ from the Court to do what we were trying to do . . . .
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> My credibility is extremely important to me, and I think it has been humiliating to have our names in the paper and to have this Court have to address us in that manner and to have our office question why we would do such a thing. And, of course, hindsight's 20-20, and had we even thought for one second, had we thought it completely through which we -- we didn't think it would be such a problem, and a concern and had we actually thought it all through and not just the spur of the moment reaction of let's do something nice for, you know, Ms. Hooker, on some level, that's going to jail for 15 to 30 years and never see her brother who's a paraplegic, that was all that it was – the intention to be for. . . .

After hearing appellants' pleas, the court also heard a statement by one of the defense counsel, Jane Loving, who attested to their professionalism and fairness throughout

not only the *Chisholm* trial but in every proceeding during which she worked with them throughout the past several years. Judge Brown indicated that he, too, was "acutely aware of [appellants'] reputations" and their conduct in this case was "as far away from what I've seen and what I've heard as could possibly be."

Judge Brown then stated that he had not anticipated the apologies that he just heard, and "was moved by that." However, the order was "already written" and the judge believed that he was required to impose sanction of some sort, as the following colloquy illustrates:

> THE COURT: I will tell you that I did not anticipate the apologies that I heard this morning. And I was moved by that. I will tell you that my order is already written. But based on what I've seen and heard, I'm going to write another order. This Court believes that it must take some action –
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> MS. MADIGAN: I don't want anything.
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> THE COURT: -- take some action as a result of what happened, and sometimes we do what we don't like to do. The Court shares Ms. Loving's comments about you. However, the Court is going to hold you in contempt. The original sanction was going to be a $500 fine for each of you. I'm going to impose that and suspend all but $100. . . .
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> [O]ne of the difficulties I have with our profession is that when mistakes are made folk rarely recover. And when I look at the body of work you did in this case alone, that would be unfortunate if you did not recover from this.

Judge Brown emphasized that he did not question appellants' integrity and trusted that what he described as a "horrible lapse in judgment" would "not become a stigma." Although appellants did not want any sanctions, the judge stated: "that's beyond my control. In any event, the order will be prepared."

Thereafter, the court issued an "Amended Order of Direct Criminal Contempt (Maryland Rule 15-203)" dated November 21, 2013, which found appellants to be in direct

contempt of court "by reason of [their] orchestration of and/or participation in the arrangement of the aforementioned lunch date between the two State's witnesses who happened to be inmates." This timely appeal followed.

DISCUSSION

Appellants contend that the trial court's summary imposition of sanctions on them for direct criminal contempt pursuant to Maryland Rule 15-203 was "inappropriate on every level." First, the act of submitting a misleading writ for the judge's signature failed to meet Rule 15-202(b)'s requirement that the act be "committed in the presence of the judge presiding in court or so near to the judge as to interrupt the Court's proceedings." Although it is not clear when the acts constituting the "orchestration and/or planning" of the lunch date took place, appellants contend that they clearly did not take place "within the sensory perception of the Court or even anywhere near the courtroom." In fact, the trial court had no personal knowledge of any facts regarding the alleged contempt, as required, and "was not even aware of the lunch meeting until well after the meeting had ended[,]" having to inquire of appellants and others to learn what had taken place. Further, the record reflects that there was "no open and direct threat to court proceedings," no disturbance that needed to be quelled, and appellants always "conducted themselves professionally" so that the court could maintain an appropriate level of dignity. Moreover, by delaying nine days to find appellants in contempt, the court waited too long to properly do so. Finally, appellants argue that the court's summary imposition of sanctions for direct criminal contempt was inappropriate because there was no contumacious intent at all, nor any intent to show disrespect to the court in any way.

The State contends that the record fails to establish that the trial court abused its discretion by finding that appellants' conduct constituted a direct criminal contempt, nor was this decision clearly erroneous. Because the trial judge personally signed the erroneous writ and presided over testimony regarding what he described as a "discovery violation," the State maintains that appellants' contemptuous "conduct unquestionably occurred in his presence." Because appellants' act resulted in time-consuming motions for mistrial and/or dismissal of the case, the State claims that appellants' "conduct interrupted the order of the court and interfered with the dignified conduct of the court's business." Moreover, given the length and complexity of the trial itself, the court did not err by delaying its imposition of sanctions until the end of trial. Finally, the State argues that appellants acted with contemptuous intent by purposefully presenting the writ to the court for its signature.

The authority of a trial court to convict for direct criminal contempt is a very special power, and is not to be taken lightly. *Johnson v. State*, 100 Md. App. 553, 561 (1994). "[T]he magnitude of its force demands care and discretion in its use to avoid arbitrary, capricious or oppressive application of this power." *State v. Roll and Scholl*, 267 Md. 714, 717 (1973). "The purpose of a summary conviction for direct criminal contempt is to punish immediately the contemnor for his or her behavior and vindicate the authority and dignity of the court, serving both as a specific and general deterrent." *Smith v. State*, 382 Md. 329, 338 (2004).

When called upon to determine whether sufficient evidence exists to sustain a direct criminal contempt conviction, "we review the evidence in the light most favorable to the

State, giving due regard to the trial court's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses." *Ashford v. State,* 358 Md. 552, 571 (2000). This Court will reverse the trial court's decision only upon a showing that the finding of fact upon which the contempt was imposed was clearly erroneous or that the trial court abused its discretion in finding particular behavior to be contemptuous. *Droney v. Droney,* 102 Md. App. 672, 683-84 (1995).

Only willful, intentional conduct may constitute direct contempt, which is defined by Maryland Rule 15-202(b) as "contempt committed in the presence of the judge presiding in court or so near to the judge as to interrupt the court's proceedings." *See King v. State*, 400 Md. 419, 431 (2007). Maryland Rule 15-203(a) permits the summary imposition of sanctions for direct contempt if:

> (1) the presiding judge has personally seen, heard, or otherwise directly perceived the conduct constituting the contempt and has personal knowledge of the identity of the person committing it, and (2) the contempt has interrupted the order of the court and interfered with the dignified conduct of the court's business. The court shall afford the alleged contemnor an opportunity, consistent with the circumstances then existing, to present exculpatory or mitigating information. If the court summarily finds and announces on the record that direct contempt has been committed, the court may defer imposition of sanctions until the conclusion of the proceeding during which the contempt was committed.

Rule 15-203(a). Although a summary imposition of direct criminal contempt is permitted by the Rules, the Court of Appeals has explained that such a proceeding "should be an exceptional case." *Usiak v. State,* 413 Md. 384, 396 (2010). It is well established that in order to find someone in direct criminal contempt, the actions of the contemnor must

interrupt the order of the courtroom and interfere with the conduct of the court's business, posing an open, serious threat to orderly procedures that instant. *Id., see also Roll and Scholl*, 267 Md. at 733; *King*, 400 Md. at 433.

When such a disruption occurs, it will be within the sensory perception of a presiding judge, who will have a sufficient knowledge of the contemptuous act tending to interrupt the proceedings and the judge will not have to rely upon other evidence to establish the details, although additional testimony may be supplied in order to supplement the details. *Roll and Scholl*, 267 Md. at 734. "When, as in the case here, the judge does not have personal knowledge of the facts and must learn of them totally from others, direct contempt proceedings are not authorized." *Id.*

"'Criminal contempt is not a strict liability offense; willfulness or intent is an essential element.'" *Scott v. State*, 110 Md. App. 464, 490 (1996) (quoting *Betz v. State*, 99 Md. App. 60, 66 (1994)).

> Accordingly, to be convicted of criminal contempt, a person must 1) engage in activities that bring the authority and administration of the law into disregard, that interfere with or prejudice parties during litigation, or that impede, embarrass, or obstruct the court in the administration of its duties; and 2) intend that his actions have such effects. If both the *actus reus* and the *mens rea* cannot be proven beyond a reasonable doubt, then a conviction for criminal contempt is unwarranted.

Id. Accord, Roll and Scholl, 267 Md. at 730; *Ashford*, 358 Md. at 571(Only willful or intentional conduct may constitute criminal contempt, and both the *actus reus* and the *mens rea* must be proven).

In *Hammonds v. State*, 436 Md. 22, 35 (2013), the Court of Appeals emphasized that in order for a charge of direct criminal contempt to stand, the alleged contemnor must

have acted not only willfully, but "'with the knowledge that it would frustrate the order of the court.'" (quoting *In re Ann M.*, 309 Md. 564, 568-69 (1987)). "'[W]hen the contempt is charged as criminal in nature, and the conduct is not shown to be plainly contemptuous on its face, proof beyond a reasonable doubt that the alleged contemnor possessed a contumacious intent is a necessary ingredient for an adjudication of guilt.'" *Id.* (quoting *Giant of Md., Inc. v. State's Attorney*, 274 Md. 158, 176 (1975)).

In the case *sub judice*, appellants were found guilty of direct criminal contempt nine days after their act of "orchestration of and/or participation in the arrangement of" a lunch date between "two State's witnesses who happened to be inmates." By preparing an inaccurate writ for presentation to the court and then failing to disclose the inmates' lunch meeting to defense counsel, appellants took no actions "in the presence of the judge presiding in court or so near to the judge as to interrupt the court's proceedings," as required by Rule 15-202. Although this discovery violation and defense counsel's subsequent discovery of the lunch meeting resulted in the prolonging of an already lengthy trial by their filing of motions, which led to additional testimony and hearings, all were conducted in a civil, professional manner. In a lengthy, complex murder conspiracy trial, delays because of such defense motions are always to be expected.

Upon discovery of appellants' inaccurately filed writ on October 31, 2013, the trial judge did not rule immediately, but delayed ruling until the end of trial. Maryland Rule 15-203(a) provides that "[i]f the court summarily finds and announces on the record that direct contempt has been committed, the court may defer imposition of sanctions until the

conclusion of the proceeding during which the contempt was committed." However, it must first find the contempt promptly.

Finally, as the court's own order states, appellants' act arose out of a "lapse in judgment" and was not the result of a willful, contumacious intent to disrupt the order of the court. They each made it clear that their sole intent was a desire to "do something nice on a human level" for two incarcerated siblings, one of whom had become permanently disabled after being attacked in prison. It is often said that no good deed goes unpunished. Here, the court's finding two assistant state's attorneys in contempt was arbitrary and capricious and an oppressive use of the court's power. The assistant state's attorneys had apologized for their actions that were not intended to disrupt the trial but merely caused the trial judge to feel it necessary to hold a short hearing in a nine day trial. Holding them in contempt was therefore beyond the proper use of the contempt power to punish attorneys in order to control the courtroom or maintain the dignity of the proceedings. It was instead punishment for having done a good deed. We reverse the decision of the trial court finding each appellant guilty of contempt.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED AND CONVICTIONS VACATED;

COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE