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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1088

Filed 17 September 2024

Brunswick County, No. 23 CRS 366

STATE OF NORTH CAROLINA

v.

KEVIN L. DAVIS

Appeal by defendant from order entered 25 April 2023 by Judge Jason C. Disbrow in Superior Court, Brunswick County. Heard in the Court of Appeals 28 August 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Meghan Melloy, for the State.*

*BJK Legal, by Benjamin J. Kull, for defendant-appellant.*

PER CURIAM.

**I. Background**

Defendant was arrested on several drug charges on 13 November 2021. At his first court date, on 15 November 2021, Defendant waived his right to an attorney. On 3 January 2022, Defendant was indicted in Brunswick County on charges of

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possession with intent to manufacture, sell, and deliver the controlled substance of cocaine, maintaining a vehicle or dwelling used for keeping and selling the controlled substance, possession of marijuana up to one half ounce, fleeing and attempting to elude arrest, and possession of drug paraphernalia.

After defendant plead not guilty, the trial on these charges began on 24 April 2023. During the proceedings on 25 April 2023, defendant was held in criminal contempt of court after using foul language and calling a witness a “liar” in the presence of the jury.

Defendant was asked by the trial judge if he remembered the judge warning him earlier in the trial not to use foul language and to act professionally. Defendant responded that he did recall “[s]omething like that,” and explained that he had “bad mental health issues.” After hearing defendant’s explanation, the trial judge sentenced defendant to 30 days in jail.

After asking and being told that he was not entitled to a further hearing on the contempt matter, defendant stated, “I appeal it then.” The judge then asked him whether he would like to continue with the trial after the jury had heard his angry outburst, to which defendant replied that he did not wish to proceed. Defendant made a timely appeal.

**II. Analysis**

Defendant raises a single issue on appeal: whether the trial court gave Defendant the “required ‘notice of the charges and a summary opportunity to

respond’ ” Defendant believes that he was not given this notice and opportunity. We disagree.

The standard of review for direct criminal contempt under N.C.G.S. § 5A-14 is *de novo*. *State v. Perkinson*, 271 N.C. App. 557, 559 (2020) (citations omitted).

Defendant concedes that the trial court complied with N.C.G.S. § 5A-12(b), which requires that the act be either “willfully contemptuous” or that it must be “preceded by a clear warning” if it is punished by a fine or imprisonment. N.C.G.S. § 5A-12(b) (2024). Defendant acknowledges that a clear warning was provided. The only challenged aspect is whether the trial court complied with N.C.G.S. § 5A-14(b), which requires that the defendant must be given a “summary notice of the charges and a summary opportunity to respond . . .” N.C.G.S. § 5A-14(b) (2024). Defendant argues that the trial court did not comply with this requirement.

It should be noted that defendant does not provide citations to any cases defining what the notice and summary opportunity to respond are. Defendant does not explain how the trial court did not comply with the statute, other than to simply state that it did not do so.

In cases where a court failed to comply with the statute, it has been where the court did not actually offer the defendant any opportunity to be heard at the time of the contempt finding. *See Peaches v. Payne*, 139 N.C. App. 580, 587 (2000); *see State v. Randell*, 152 N.C. App. 469, 470–71. For a defendant to have an opportunity to be heard, no formal hearing is required. *In re Owens*, 128 N.C. App. 577, 580–81 (1998).

The trial court in *Owens* gave a clear warning, the defendant continued the contemptuous act (having already given an explanation), and then was held in contempt. *Id.* at 579–81. In *Owens*, we affirmed the contempt finding. *Id.* at 584.

This case is similar to *Owens*. Here, the trial court explained the criminal contempt issue to defendant and heard defendant’s explanation *before* holding him in contempt. As the conversation between defendant and the trial court shows, defendant had been warned prior to the contempt finding. The trial court asked him if he remembered the warning, to which he agreed that he did. Then defendant explained why he had used foul language anyway. Only after all of this did the trial court hold him in contempt.

When defendant was asked if he recalled the conversation about criminal contempt, this was the trial court providing a summary explanation of the charges. The trial court specifically mentioned criminal contempt. After providing this explanation, the trial court further allowed defendant to explain his actions, providing the defendant with a summary opportunity to respond. Defendant explained that he used foul language because a witness lied, and defendant had mental health issues. The record reflects that defendant was provided a summary explanation of the charges and was provided a summary opportunity to respond. Only after this did the trial court find defendant in criminal contempt and sentence him.

### **III. Conclusion**

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Defendant was provided a summary explanation of the charges and a summary opportunity to respond as required under N.C.G.S. § 5A-14(b). Therefore, we affirm the trial court's criminal contempt order.

AFFIRMED.

Before a panel consisting of Judges ARROWOOD, COLLINS, and WOOD.

Report per Rule 30(e).