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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-264

Filed 15 October 2024

Catawba County, No. 23 CR 2070

STATE OF NORTH CAROLINA

v.

AARON GUESS, Defendant.

Appeal by Defendant from judgment entered 28 July 2023 by Judge William A. Long in Catawba County Superior Court. Heard in the Court of Appeals 10 September 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Justin M. Bradley, for the State.*

*Pope McMillan, P.A., by Christian Kiechel, for Defendant.*

GRIFFIN, Judge.

Defendant Aaron Guess appeals from the trial court's judgment finding him in criminal contempt of court under N.C. Gen. Stat. §§ 5A-11(a)(1) and (3) for speaking to a juror while a party to a civil trial. Defendant contends the State's evidence was insufficient to show that he acted willfully, either to disrupt a sitting court or to interfere with the court's lawful instructions. We affirm the trial court's judgment

finding Defendant in criminal contempt under N.C. Gen. Stat. § 5A-11(a)(3), but reverse its judgment under section 5A-11(a)(1).

### **I. Factual and Procedural Background**

This case arises out of a communication between Defendant, as a party to a civil trial, and a juror assigned to that trial. Evidence presented during Defendant's contempt hearing tended to show as follows:

In June 2023, Defendant was a party to a civil trial in Catawba County Superior Court. As trial began, the trial court issued an order in open court and in the presence of all parties, instructing the jury:

You must understand that neither the [c]ourt nor the parties nor the witnesses nor the lawyers may have any private contact or conversation with you during this week. . . . Because of your special status as jurors it is important that you remember . . . it is your duty not to talk amongst yourselves about the proceedings in this court or about the case here for trial and not to talk to any parties . . . about this case set for trial, or to engage in any type of conversation with them even if it is to just pass the time of day. . . . You should understand that it would be improper for them to be particularly friendly to you or to engage you in any conversation because of your special status as a juror.

After four days of trial proceedings, the parties conducted settlement discussions during the morning hours of June 30. Defendant left the courthouse around 12:15 p.m. On his way out of the courthouse, Defendant spoke to a juror on his case, Juror 10, greeting him with a question regarding his opinion on the case. Defendant asked Juror 10 something like: "How do you think things are going?" or

STATE V. GUESS

*Opinion of the Court*

“How would it have gone?” Juror 10 did not answer Defendant and immediately reported the interaction to a bailiff. Settlement discussions continued between the parties via email from around 12:20 p.m. until the parties ultimately signed the settlement agreement at 12:40 p.m.

Proceedings resumed in Defendant’s civil case at approximately 1:30 p.m. on June 30. The trial judge confirmed that each party intended to enter into a consent settlement agreement and signed the agreement. The judge then asked the jury whether “any of the parties or the attorneys, during the course of this proceeding, talk[ed] to any of you directly?” Juror 10 recounted his earlier interaction with Defendant. As a result, the trial court issued a written show cause order to Defendant for criminal contempt.

The trial court conducted Defendant’s contempt hearing on 28 July 2023. The court heard witness testimony and arguments from each party, and reviewed a video of Defendant’s interaction with Juror 10 obtained from courthouse security cameras. Defendant moved to dismiss his charges at the close of the evidence; the trial court denied the motion. The trial judge then indicated his findings of fact in open court, stating:

I think at a minimum what the evidence suggests to the [c]ourt is that [Defendant] either had a blatant disregard for those instructions, at a minimum was entirely forgetful of any formal instructions that the [c]ourt might have given. But in any event I would say also that at the time that the [c]ourt entered the courtroom and had a discussion with the parties related to the settlement agreement, there

is nothing to have prevented [Defendant] based on that interaction and based on any information he may have received from not signing the settlement agreement.

The trial judge found “based on those findings beyond a reasonable doubt that [Defendant] did willfully communicate with a juror during the course of an ongoing trial amounting to criminal contempt under, specifically, 5A-11 Subsection 1 and Subsection 3.” The trial court entered a written order and judgment holding Defendant in criminal contempt on the same day.

Defendant timely appeals.

## **II. Analysis**

The trial court found Defendant in criminal contempt of court under sections 5A-11(a)(1) and (3) of the North Carolina General Statutes. “In contempt cases, the standard of review is ‘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. Baker*, 260 N.C. App. 237, 241, 817 S.E.2d 907, 910 (2018) (citation omitted). “[T]he judge’s findings of fact are conclusive on appeal when supported by any competent evidence and are reviewable only for the purpose of passing on their sufficiency to warrant the judgment.” *Clark v. Clark*, 294 N.C. 554, 571, 243 S.E.2d 129, 139 (1978). “[C]onclusions of law drawn from the findings of fact are reviewable *de novo*.” *Curran v. Barefoot*, 183 N.C. App. 331, 335, 645 S.E.2d 187, 190 (2007) (citing *Humphries v. City of Jacksonville*, 300 N.C. 186, 187, 265 S.E.2d 189, 190 (1980)).

“Criminal contempt is generally applied where the judgment is in punishment of an act already accomplished, tending to interfere with the administration of justice.” *O’Briant v. O’Briant*, 313 N.C. 432, 434, 329 S.E.2d 370, 372 (1985). “Direct criminal contempt is committed within the sight or hearing of a presiding judicial official, while indirect criminal contempt arises from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice.” *State v. Simon*, 185 N.C. App. 247, 251, 648 S.E.2d 853, 855 (2007) (quoting *Atassi v. Atassi*, 122 N.C. App. 356, 361, 470 S.E.2d 59, 62 (1996)) (cleaned up); see N.C. Gen. Stat. § 5A-13(a)(1) (2005) (defining direct contempt); N.C. Gen. Stat. § 5A-13(b) (2005) (defining indirect contempt).

Section 5A-11 enumerates the following as criminal contempt, whether direct or indirect:

(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

...

(3) Willful disobedience of, resistance to, or interference with a court’s lawful process, order, directive, or instruction or its execution.

N.C. Gen. Stat. § 5A-11(a)(1), (3) (2023). “[A] finding of criminal contempt, direct or indirect, does not require that the relevant ‘process, order, directive, or instruction’ be a formal written order.” *Simon*, 185 N.C. App. at 252, 648 S.E.2d at 856. Further, if the defendant’s conduct was a verbal communication, it must also have “present[ed]

a clear and present danger of an imminent and serious threat to the administration of criminal justice.” N.C. Gen. Stat. § 5A-11(b).

“In order to be found guilty of criminal contempt, an individual must act willfully. . . .” *State v. Okwara*, 223 N.C. App. 166, 170, 733 S.E.2d 576, 580 (2012). Acting “willfully” means the defendant’s act was “done deliberately and purposefully in violation of law, and without authority, justification, or excuse.” *State v. Phair*, 193 N.C. App. 591, 594, 668 S.E.2d 110, 112 (2008) (internal quotation marks and citations omitted). “Intent is a mental attitude seldom provable by direct evidence [and] must ordinarily be proved by circumstances from which it may be inferred.” *State v. Lamp*, 383 N.C. 562, 570, 884 S.E.2d 623, 628 (2022).

Here, Defendant spoke with Juror 10 in the lobby of the courthouse, outside of the sight or hearing of a presiding judge. Therefore, Defendant’s conduct must have been that which tends to obstruct the administration of justice in an imminent and serious way. Defendant concedes that he spoke with Juror 10 before the civil trial formally concluded, that he asked Juror 10 a question pertaining to the outcome of the civil trial, and that he was present when the trial court instructed the jury not to have any contact with the parties. Defendant argues, however, that the State’s evidence failed to prove beyond a reasonable doubt that he willfully acted to interrupt proceedings during the sitting of a court, under section 5A-11(a)(1), or to interfere with the court’s lawful order or instruction, under section 5A-11(a)(3).

STATE V. GUESS

*Opinion of the Court*

Regarding section 5A-11(a)(1), we are unable to cite precedent where our Courts held a defendant in criminal contempt “during the sitting of a court” when court was not currently in session when the contemptuous act occurred. Rather, our precedent shows that the defendant’s actions must cause a disruption in a contemporaneous court proceeding. *See, e.g., State v. Baker*, 260 N.C. App. 237, 242, 817 S.E.2d 907, 910–11 (2018) (affirming direct contempt where the defendant made an obscene gesture toward a currently testifying witness); *Matter of Nakell*, 104 N.C. App. 638, 651, 411 S.E.2d 159, 166–67 (1991) (affirming direct contempt where the defendant repeatedly interrupted the judge during trial). Indeed, indirect criminal contempt under section 5A-11(a)(1) is especially rare, as the defendant’s conduct must willfully disrupt the sitting of a court while occurring outside the sight or hearing of the presiding judge. *See In re Hennis*, 276 N.C. 571, 573, 173 S.E.2d 785, 787 (1970) (holding there was “no support for the conclusion that [the defendant’s] conduct constituted a Wilful [sic] interference with the orderly functioning of a session of court” where “no findings and no evidence in the record sufficient to support findings, that [the defendant] had knowledge that court was in session or that he had knowledge his conduct was interfering with the regular conduct of business at a court session” while the defendant picketed outside the courthouse).

In the present case, the undisputed evidence showed that Defendant spoke to Juror 10 in the lobby of the courthouse while the civil trial was at ease for settlement discussions, and there was no evidence to show that either the trial judge was

STATE V. GUESS

*Opinion of the Court*

conducting another session of court at that time or that the court's proceedings were interrupted by Defendant's conduct. Therefore, the State's evidence was insufficient to hold Defendant in criminal contempt under section 5A-11(a)(1).

Conversely, we hold the State's evidence was sufficient to support the trial court's findings of fact, and the findings of fact were sufficient to support its conclusion of law that Defendant committed criminal contempt under section 5A-11(a)(3). Defendant was present when the trial court instructed the jury that the parties were not to speak to them under any circumstances. This instruction was framed toward the jurors, but its intended effect applied to all parties to the civil trial. At minimum, Defendant's conduct sought to interfere with Juror 10's adherence to the trial court's instruction.

Further, the trial judge found Defendant spoke to Juror 10 willfully, with a "blatant disregard" to the court's instruction, and there was "nothing to have prevented [Defendant] based on that interaction and based on any information he may have received from not signing the settlement agreement." These findings were supported by undisputed evidence that Defendant spoke to Juror 10 around 12:15 p.m. Though Defendant indicated his consent to settle before he spoke to Juror 10, the parties did not formally sign a settlement agreement until 12:40 p.m. This evidence tended to show that Defendant's communication with Juror 10 could have given him the ability to alter the resolution of the civil trial, impermissibly interfering with the court's administration of justice in an immediate and meaningful way.



Defendant testified that he assumed the trial court's instruction no longer applied because settlement discussions had concluded. However, "[w]here there is competent evidence supporting the findings of fact of the trial court, this Court cannot reweigh the evidence and make its own findings, but is bound by the trial court's findings." *State v. Key*, 182 N.C. App. 624, 628, 643 S.E.2d 444, 448 (2007). Therefore, the trial court did not err in holding Defendant in criminal contempt under section 5A-11(a)(3).

In his last argument, Defendant expounds a policy question, asserting that Defendant's conviction defies our legislature's directives by converting contempt under section 5A-11 as a whole "from an intent based offense to one of strict liability simply by reading a set of instructions at the beginning of each trial[.]" **{Def Br 13}**. Defendant's assertion is misplaced. The trial court did not hold Defendant in contempt based strictly on the act of absent-mindedly speaking to the juror; rather, the court found, based on its reasonable evaluation of the evidence, that Defendant willfully spoke to Juror 10 with "blatant disregard" for the trial court's instructions beginning his civil case.

### **III. Conclusion**

We hold the trial court did not err in holding Defendant in criminal contempt of court under N.C. Gen. Stat. § 5A-11(a)(3). However, the evidence was insufficient to convict Defendant of criminal contempt under N.C. Gen. Stat. § 5A-11(a)(1).

**AFFIRMED IN PART AND REVERSED IN PART.**

Judges MURPHY and ARROWOOD concur.

STATE V. GUESS

*Opinion of the Court*

Report per Rule 30(e).