UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0917

September Term, 2014

HOWARD GREENBERG

v.

CIRCUIT COURT FOR HARFORD COUNTY

Eyler, Deborah S.,
Kehoe,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: September 2, 2015

On May 7, 2014, the Circuit Court for Harford County found appellant, Assistant Public Defender Howard Greenberg, to be in direct contempt of court while representing Angel Michelle Simms. Two days later, the court issued a written order of contempt. Appellant appeals to this Court, challenging the sufficiency of evidence to support his conviction, and asserting that he was not given an opportunity to present exculpatory information, contrary to Maryland Rule 15-203.

For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL HISTORY

As noted above, the incident in question arose during appellant's representation of Angel Michelle Simms before the Circuit Court for Harford County, Judge Thomas E. Marshall presiding, in case number 12-K-14-101. On May 7, 2014, the case was called in order to be postponed. When the case was called, appellant was not in the courtroom, and the State's Attorney offered to step outside the courtroom in an effort to locate appellant. Following a pause in proceedings, appellant appeared and the following colloquy occurred:

> THE COURT: Mr. Greenberg, didn't I just see you in chambers about five minutes ago and tell you that we're calling the docket?
>
> [APPELLANT]: Yes, I thought - yes, Your Honor, you did.
>
> THE COURT: And didn't a couple weeks ago I tell you that the next time you were late in my courtroom, I'm calling the docket and you're being advised I'm going to fine you?
>
> [APPELLANT]: If you wish to fine me, Your Honor, please do.

> THE COURT: All right, I'm going to find you in contempt of court and fine you $50, payable to the clerk. Be in my courtroom and be ready to go when you're supposed to.
>
> [APPELLANT]: Very well. I will write a check today.
>
> THE COURT: All right.
>
> [APPELLANT]: Who should I write that payable to, Your Honor?
>
> THE COURT: To whoever you make fines payable to, the Clerk of the Court.
>
> [APPELLANT]: Understood.
>
> THE COURT: Well, I'll have to get an order signed first, Mr. Greenberg, I'll see you on Friday and give you the order.

On May 9, 2014 the court filed the order of contempt which asserted that appellant was found in direct criminal contempt of court and provided, in part:

> [T]he contemnor represents Angel Michelle Simms in Case No. K-14-101 which was scheduled for a suppression hearing on May 7, 2014. When the case was called by the court clerk, the Contemnor was not in the courtroom. Notwithstanding the [c]ourt's instruction to the Contemnor to go into the courtroom as the docket was being called, the Contemnor had to be located before the hearing could begin. The Contemnor has been advised by the [c]ourt on numerous occasions not to linger in the hall and to be in the courtroom when his cases are called. The Contemnor was advised previously that his conduct was disruptive and that his repeated lateness would not be tolerated. He was also advised that any further violation of the [c]ourt's instructions would result in a contempt finding and sanctions.

On May 22, 2014, appellant filed an affidavit with the court. In his affidavit, appellant disputed that Ms. Simms' case was scheduled for a suppression hearing on May 7.

Rather, he asserted, the case was being called in order to request a postponement. The affidavit continued:

> 2. Judge Marshall mentioned in chambers that he was about to take the bench; when he did, [I] went into the courtroom;
>
> 3. The courtroom clerk called another case, not assigned to [me];
>
> 4. It was at that time that [I] stepped outside the courtroom and began discussing with a police officer another case on the morning's docket also before Judge Marshall. Thus, [I] believed - and still believe[] - that consultation with the officer was important and necessary to mitigate any avoidable delays that might have been caused later in proceedings before Judge Marshall;
>
> * * *
>
> 6. When [I] [am] in the hallway, [I] [am] not lingering; [I] [am] doing the court's business, discussing a particular case with [my] client, colleagues, opposing counsel and/or witnesses.

Finally, appellant asserted that the warnings on previous occasions about being prompt and present in court occurred over a period of years. Appellant submitted a recording of the proceedings, in which, he asserted, that no more than 30 seconds elapsed between the time the court ordered the State's Attorney to locate appellant and his arrival at counsel table.

DISCUSSION

I.

Appellant first contends that the evidence was insufficient to find him in contempt of court. He specifically asserts that the evidence does not demonstrate that he possessed the required *mens rea* to support a contempt finding, and also that any delay in proceedings

was *de minimis*. The State responds that there was sufficient evidence of *actus reus* and *mens rea* to support a finding of contempt.[1]

When reviewing a challenge to the sufficiency of evidence to sustain a finding of contempt, we apply the following standard:

> On appeal from a judgment of criminal contempt, we do not weigh the evidence, we merely assess its sufficiency. *See Kandel v. State*, 252 Md. 668, 672 (1969). In doing so, we review the evidence in the light most favorable to the prosecution, and then determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Albrecht*, 336 Md. 475, 479 (1994) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-319 (1979); *Dawson v. State*, 329 Md. 275, 281 (1993)).

Ashford v. State, 358 Md. 552, 570 (2000).

Contempt can either be direct or constructive. "'Direct contempt' means a contempt committed in the presence of the judge presiding in court or so near to the judge as to interrupt the court's proceedings." Md. Rule 15-202(b). "'Constructive contempt' means any contempt other than a direct contempt." Md. Rule 15-202(a). Contempt may also be civil or criminal in nature. *See King v. State*, 400 Md. 419, 432 (2007). Criminal contempt constitutes acts which offend the dignity or impede the process of a court, and their

[1] *See Harris v. State*, 353 Md. 596, 602 (1999) (citation omitted) ("Generally there are two aspects of every crime—the *actus reus* or guilty act and the *mens rea* or the culpable mental state accompanying the forbidden act."); *See also Black's Law Dictionary* (10th ed. 2014) (*actus reus* is defined as "[t]he wrongful deed that comprises the physical components of a crime and that generally must be coupled with *mens rea* to establish criminal liability," and *mens rea* is defined as "[t]he state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime.").

punishment is designed to vindicate the authority of the court and punish disobedience. *Id.* (citation omitted). "[O]nly that conduct that is willful or intentional may constitute a criminal contempt." *Ashford*, 358 Md. at 563. "[A]n attorney's failure to punctually attend court is at least misbehavior on the part of an officer of the court and may amount to, and be punishable as, contempt." *King*, 400 Md. at 433 (citation omitted). Further, such contempt may be punished summarily. *Id.*

Appellant asserts that, the interruption in proceedings only lasted approximately 30 seconds, and, as such, only created a *de minimis* delay. This assertion ignores the fact that any delay in proceedings can be disruptive, and offend the dignity or impede the process of the court. Appellant does not and cannot dispute that he was absent from the courtroom when the *Simms* case was called, and that he was instructed to go into the courtroom as the docket would be called. This act constitutes the *actus reus* of appellant's contempt.

Regarding appellant's *mens rea*, "(t)he requisite intent may of course be inferred if a lawyer's conduct discloses a reckless disregard for his professional duty." *Murphy v. State*, 46 Md. App. 138, 152, *cert. denied* 288 Md. 740 (1980) (quotation omitted). In this case, appellant knew that Judge Marshall wanted him to be in the courtroom, and deliberately absented himself from the proceedings. Appellant does not claim, nor can he, that he did not know that court was in session, and he knew that Judge Marshall desired his presence in court because his case would be called. This intentional, even if momentary,

disregard for Judge Marshall's direction is sufficient to create an inference of "reckless disregard for his professional duty."

The case of *In re Hunt*, 367 A.2d 155 (D.C. 1976) is instructive. There, on a Friday, a trial judge admonished the participants in the trial, including Hunt, who was counsel, to be in court promptly Monday morning. *Id.* at 156. The following Monday, Hunt was late to trial, by seven or eight minutes, and explained that he had attended to two other matters that morning before coming to trial. *Id.* The trial court did not accept Hunt's explanation, concluded his behavior was "deliberate and willful," and found him in contempt. *Id.* at 156-57. On appeal, Hunt asserted "that his tardiness should have been excused since it stemmed solely from his effort to meet his obligation to appear personally" in another matter that morning. *Id.* at 157. The District of Columbia Court of Appeals held that the trial court properly found that Hunt "had deliberately and willfully substituted his own judgment for a direct order of the court even though his actions represented a good faith attempt to straighten out [a] conflicting obligation with two other courts." *Id.*

Similarly here, appellant was directly instructed by Judge Marshall to enter the courtroom as the docket would soon be called. Even if we assume that appellant went into the courtroom, then left as his case was not the first one called on the docket, he still was aware that Judge Marshall desired him to be present, and then willfully substituted his own judgment for that of the court in attempting to speak with a police officer outside the courtroom. As in *Hunt*, although appellant may have been attempting to aid the court's

future business, he nonetheless substituted his own judgment for that of the court. Furthermore, appellant had been warned weeks earlier about his tardiness, and according to appellant's own affidavit, this had been an intermittent issue between he and Judge Marshall over the course of several years. In short, there was evidence sufficient for any rational trier of fact to have found the essential elements of contempt.

II.

Appellant's second claim is that the court failed to provide him an opportunity to present exculpatory or mitigating information, as required by Maryland Rule 15-203. The State responds that appellant was given such an opportunity, in compliance with the rule.

Maryland Rule 15-203(a) provides:

> **Summary Imposition of Sanctions.** The court against which a direct civil or criminal contempt has been committed may impose sanctions on the person who committed it summarily 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.

(Emphasis added). *See also Hermina v. Baltimore Life Ins. Co.*, 128 Md. App. 568, 583-84 (1999) ("Even in a summary proceeding for a direct contempt, the alleged contemnor must be given an opportunity to present exculpatory or mitigating evidence, *Roll and Scholl*, 267

Md. [714] at 732–33 [(1973)]; *McMillan v. State*, 258 Md. 147, 153 (1970); and if he does so, it is entirely proper for the court to receive contradictory evidence.")

The Court of Appeals has set forth the following standard of review in interpreting the Maryland Rules:

> With respect to the interpretation of the Maryland Rules, ... [t]he canons and principles which we follow in construing statutes apply equally to an interpretation of our rules. In order to effectuate the purpose and objectives of the rule, we look to its plain text. To prevent illogical or nonsensical interpretations of a rule, we analyze the rule in its entirety, rather than independently construing its subparts. If the words of the rule are plain and unambiguous, our inquiry ordinarily ceases and we need not venture outside the text of the rule.
>
> The venerable plain meaning principle, central to our analysis, does not, however, mandate exclusion of other persuasive sources that lie outside the text of the rule. We have often noted that looking to relevant case law and appropriate secondary authority enables us to place the rule in question in the proper context.

King, 400 Md. at 429-30 (quoting *Johnson v. State*, 360 Md. 250, 264-65 (2000) (citations and quotations omitted)).

We think the plain meaning of the emphasized portion of Maryland Rule 15-203(a), as applied to this case, is clear; appellant must have been afforded an opportunity to explain his absence in some way, or to present information which might mitigate any culpability. The question we must answer is whether appellant was afforded such an opportunity.

We recall the exchange quoted above:

> THE COURT: Mr. Greenberg, didn't I just see you in chambers about five minutes ago and tell you that we're calling the docket?

> [APPELLANT]: Yes, I thought - yes, Your Honor, you did.
>
> THE COURT: And didn't a couple weeks ago I tell you that the next time you were late in my courtroom, I'm calling the docket and you're being advised I'm going to fine you?
>
> [APPELLANT]: If you wish to fine me, Your Honor, please do.

We are persuaded that the above exchange represented an opportunity for appellant to present exculpatory or mitigating information. Judge Marshall confronted appellant when he returned to the courtroom, asking if he remembered the judge admonishing him to be in court for the call of the docket. At that moment, appellant began to offer an explanation, "[y]es, I thought," but reconsidered, choosing not to explain. The audio recording of this exchange also comports with the above transcript, indicating that appellant was about to explain himself and then thought better of it mid-sentence. Judge Marshall recalled admonishing appellant that, if he were late to court one more time, the court would fine him. This, again, was an opportunity for appellant to present exculpatory information, and he declined, responding "[i]f you wish to fine me, Your Honor, please do."

Appellant was permitted, consistent with Maryland Rule 15-203(a), to present exculpatory or mitigating information; that appellant chose not to avail himself of that opportunity is irrelevant. We affirm.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.