FIRST DISTRICT,
FIRST DIVISION
September 20, 2021

No. 1-18-2403

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. ACC 180049 (01)
	)	
TRACY McLELLAN,	)	The Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE COGHLAN delivered the judgment of the court.
Justice Walker concurred in the judgment.
Justice Pierce dissented.

ORDER

¶ 1 *Held*: The judgment of the circuit court finding defendant in direct criminal contempt is reversed.

¶ 2 Defendant Tracy McLellan appeals from the circuit court's order finding him in direct criminal contempt for audibly laughing during a court recess. We reverse.

¶ 3 I. BACKGROUND

¶ 4 On May 31, 2018, defendant was a spectator in the courtroom during pretrial proceedings in the prosecution of Jason Van Dyke on charges related to the death of Laquan McDonald, a high-profile proceeding that had received extensive media coverage. A sheriff's deputy admonished those present at the beginning of the proceedings, as follows:

> "No talking while court is in session. If you want to talk, you can step outside. There are no noises or outbursts while in court. Do not approach Mr. Jason Van Dyke for any reason in the courtroom. No protesting material of any kind in the courtroom is allowed per judge's orders. Pursuant to Supreme Court Rule on media coverage and per [the judge's] decorum order, only Antonio Perez is allowed to take still photography. Absolutely no cell phone usage by any attorney unless you are here on the Van Dyke case or with the media."

¶ 5 Defendant arrived late to court and did not hear this admonition. During a recess while the judge was in the courtroom speaking to the attorneys, defendant audibly "burst out laughing." Since court was not in session, there is no contemporaneous record of the incident, but it appears that defendant was immediately taken into custody.

¶ 6 Later that day, the judge ordered the sheriff to "bring out our contempt order" and the following discussion ensued:

> "THE COURT: [Y]ou disrupted this court. What's going on? Are you under—Do you have any medication that you take?
>
> * * *
>
> DEFENDANT: I would like to answer the first question first, please, Judge. I didn't mean to interrupt your court. I sat there respectfully the whole time that I've been in the

court, which I got here late at 9:08. And then you said there was a recess. And, okay, I sat quietly even during the recess. As you remember, then the defense lawyer talked to you.

THE COURT: God love you. All right. I am going to order a behavioral clinical examination.

DEFENDANT: And to answer your second question, Judge, if I may—

THE COURT: No need. We will have a doctor examine you. Take him back, please."

¶ 7 At some point, the defendant was brought back into to the courtroom, and the judge explained:

"As far as Mr. McLellan, while court was in session, he yelled out and caused a disturbance that affected the administration of justice, so I find him in direct contempt. That's my contempt order. *** And Mr. McLellan came out and addressed the court, and it's obvious that he has some emotional problems. So in fairness before anything can happen, I want a behavioral clinical examination ordered. All right. There will be no bail."

¶ 8 The judge did not explain the nature of defendant's "disruptive" conduct, his basis for *sua sponte* ordering a behavioral clinical examination (BCX), or his reason for ordering that defendant be held without bail. The judge ordered the matter continued to July 10.

¶ 9 On June 19, 2018, the judge granted defendant's motion to advance the case and continued the matter to June 20 for hearing on defendant's motions to vacate the contempt finding and to review bond. On June 20, the following discussion occurred between the judge and the assistant public defender (APD) representing the defendant:

"THE COURT: And if you're saying I don't have the power of contempt when somebody disrupts this courtroom, and I seen [*sic*] the impression that your client's outburst had on the news media that was here. Were you in the courtroom at the time?

APD: Yes, I was.

THE COURT: Did you see what happened and the results?

APD: I did.

THE COURT: So it was disruptive.

APD: Yes.

THE COURT: All right.

APD: And not disputing the disruption, Judge, but the cases I have come across, which many of them do involve the client busting out laughing either during litigation of his own case or during some sort of proceedings, however those cases also involve the defendant including some additional vulgarities, some sort of insult to his attorney, to the judge, something that is actually contemptuous.

THE COURT: You're absolutely right."

The court elaborated that defendant laughed during a "very high profile case" that had been disrupted by protestors even before defendant's interruption, asserting that defendant's laughter "was a trigger that could have ignited the whole courtroom," and continued the motion to July 6, 2018.

¶ 10 Regarding defendant's motion to set bail, the APD argued that lack of bail was "oppressive and not commensurate with the nature of the alleged charge," particularly since defendant's conduct was "not threatening or violent in any way," nor was he a danger to himself or others or a flight risk. Counsel stated that defendant was unemployed, supported himself with disability

payments he received for his bipolar disorder, lived alone, and was facing eviction proceedings that his landlord initiated after he was jailed for contempt. The circuit court set a bond of $10,000, placed defendant on home confinement with a curfew, and ordered him to report to pretrial mental health services and weekly treatment.

¶ 11 On August 20, 2018, the results of the BCX were forwarded to the court, indicating that defendant was legally sane at the time of the incident. The court denied defendant's motion to vacate as follows:

> "APD: If I might just inquire as to whether we would address the pending motion to vacate conviction—I'm sorry, motion to vacate the order of contempt prior to—
>
> THE COURT: There's a conviction here, that's denied. No problem. All right. State, proceed to sentencing."

¶ 12 In aggravation, the State argued that defendant had been arrested multiple times for misdemeanor offenses in various states between 1986 and 2017. In mitigation, defense counsel argued that defendant had already spent 21 days in custody and had been on electronic monitoring since his release from jail for a total of 80 days credit. Defendant stated in allocution that he arrived late to court on May 31 and never heard the deputy's admonishment. He further stated:

> "Judge, if I might remind you, I didn't scream in this courtroom, I laughed. And the laughter was about two seconds, and it wasn't meant as a sign of contempt for the court at all. You had called a recess, if you remember, and both lawyers on each side were still pursuing matters of fact or procedure with you, and you admonished the lawyers to the fact that, you know, you said in an ironic way, 'Are you even going to question my right to call a recess?' I was only laughing at the hierarchy of the power structures that were going on between the lawyers and you. It wasn't at all meant as a sign of contempt."

¶ 13 Defendant was sentenced to 40 days in custody with time served, 12 months misdemeanor probation, and 3 days in the sheriff's work program, and was assessed $15 per month in probation costs. Defendant's subsequent motions to vacate the contempt order and reconsider sentence were denied.

¶ 14 II. ANALYSIS

¶ 15 On appeal, defendant argues that his conduct did not rise to the level of criminal contempt, since his laugh occurred during a recess, did not embarrass, hinder, or obstruct the administration of justice, and was not intended to hinder the circuit court's ability to administer justice. He points out that he did not hear the deputy's admonishment and that even if he had, he would not have considered his laughter to be a violation of the court's decorum order.

¶ 16 Although courts have the inherent power to punish contempt, the exercise of this power " 'is a delicate one, and care is needed to avoid arbitrary or oppressive conclusions.' " *People v. Simac*, 161 Ill. 2d 297, 305-06 (1994) (quoting *Cook v. United States*, 267 U.S. 517, 539 (1925)). Direct criminal contempt is conduct occurring in the judge's presence "which is calculated to embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity, thereby bringing the administration of law into disrepute." (Internal quotation marks omitted.) *Id.* at 305. The circuit court must find that the contemnor's conduct was willful, which may be inferred from surrounding circumstances and the character of the conduct. *Id.* at 307. There must be "some form of constructive or actual knowledge of what conduct is forbidden in order that people can avoid such conduct." *People v. Watts*, 66 Ill. App. 3d 971, 974 (1978). We will not disturb the circuit court's exercise of its contempt power unless the circuit court's factual findings are against the manifest weight of the evidence or the contempt order is an abuse of discretion.

People v. Cole, 2017 IL 120997, ¶¶ 19-20; *Shamrock Chicago Corp. v. Wroblewski*, 2019 IL App (1st) 182354, ¶¶ 28-29.

¶ 17 Initially, we observe that the trial court failed to set forth any facts describing defendant's "disruptive" conduct in its contempt order, contrary to the well-settled principle that "a judgment order of direct criminal contempt must set forth the specific facts which form the basis for the order." *People v. Coulter*, 228 Ill. App. 3d 1014, 1019 (1992). In *People v. Tomashevsky*, 48 Ill. 2d 559, 565 (1971), our supreme court recognized:

> "Prudence would dictate that the [contempt] order should be in writing so that the contumacious acts may be set forth fully, clearly and specifically. Thus, the reviewing court could readily determine whether the committing court had jurisdiction to enter the order. It is conceivable that the record could reflect oral findings and an order which would be adequate to support the charge of direct contempt."

Similarly, in *People v. Baxter*, 50 Ill. 2d 286, 290 (1972), although recognizing the propriety of considering the record to determine the correctness of a contempt order, our supreme court emphasized that "it is better practice to use a written order in direct contempt proceedings which sets forth fully, clearly and specifically the facts out of which the contempt arose."

¶ 18 In the absence of such an order in the instant case, we must examine the record in order to determine the correctness of the contempt order. The parties repeatedly made reference to defendant "laughing" without the judge expressing any disagreement. In particular, the State's attorney who was present when the incident occurred indicated that defendant "disrupted or laughed out" during the recess. Our review of the record does not reveal how briefly laughing while court was in recess embarrassed, hindered, or obstructed the court's administration of justice.

¶ 19 Additionally, the circumstances and the character of defendant's conduct do not indicate any contumacious intent on his part. There are three kinds of behavior from which contumacious intent can be inferred: (1) an obviously contemptuous statement directed at the court or the judicial process, (2) an action which causes or is likely to cause a disturbance, and (3) persisting in behavior clearly prohibited by the trial court. *Watts*, 66 Ill. App. 3d at 974-75. Defendant did not engage in any of these kinds of behavior.

¶ 20 First, as discussed, defendant's laugh was not obviously contemptuous in nature, since it did not rise to the level of protestation or hostility toward the court, the judicial process, or any party. There is nothing inherently disrespectful or disruptive about briefly laughing in a public courtroom while court is in recess, particularly where, as here, no disrespectful or derogatory comments were directed at anyone in the courtroom.

¶ 21 Second, briefly laughing while court is in recess is not conduct that "is likely to create a disturbance." *Id.* at 974-75 (citing *People v. Collins*, 57 Ill. App. 3d 934, 936 (1978) (defendant's intent to disrupt proceedings could be inferred from the fact that he appeared naked in court)). Although we acknowledge that the Van Dyke trial was a high-profile proceeding involving complicated security issues, that is not a reasonable basis to conclude that a two-second laugh was likely to "trigger" protests or violence.

¶ 22 Third, defendant did not persist in behavior clearly prohibited by the trial court. See *Watts*, 66 Ill. App. 3d at 975 (although defendant's shirt with the words "bitch, bitch" was inappropriate courtroom attire, contempt finding was improper where "defendant was not given a reasonable opportunity to alter her behavior"). It is undisputed that defendant did not hear the sheriff's admonishments at the beginning of the proceedings or laugh again once he learned that such conduct was prohibited. In any event, "common sense knowledge" (*id.*) does not dictate that briefly

laughing while court is in recess could subject a spectator to criminal contempt proceedings. For example, *People v. Wilson*, 35 Ill. App. 3d 86, 88 (1975), involved a courtroom spectator being held in contempt for refusing to remain quiet after being told to do so several times and directing vulgar language at a courtroom bailiff trying to restore order. Here, defendant received no warning but was immediately held in contempt and taken into custody for conduct that is not inherently contemptuous or reasonably expected to create a disturbance. In this case, the contempt order and the record show that the evidence was insufficient to support a finding of contempt.

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we vacate the finding of contempt and reverse the judgment of the circuit court.

¶ 25 Reversed.

¶ 26 JUSTICE PIERCE, dissenting.

¶ 27 In my view, a reviewing court should give great deference to a judge's finding of direct criminal contempt because the judge is in the superior position of evaluating the defendant's conduct in the context of the proceedings where the offending conduct occurs. Here, the proceeding involved the murder prosecution of a police officer that generated substantial public interest and media attention, public protests and demonstrations, and threats to the defendant officer. This resulted in a heightened level of security imposed for the protection of the court, court personnel, prosecutors, defense counsel, the defendant police officer, and the public at large. This was not a one-time situation.[1] This was an ongoing atmosphere that existed throughout the entire

[1]I note that, while not germane to these proceedings, another man recently pleaded guilty to attempted obstruction of the free exercise of religion after he posted on Facebook "AFTER THEY LET VAN DYKE GO, BURN ALL THE CHURCHES OF THE PASTORS" who attended a press conference during the Jason Van Dyke trial. See https://chicago.suntimes.com/crime/2021/8/4/22609825/man-accused-threatening-cops-during-jason-van-dyke-trial-pleads-guilty-misdemeanor (last visited Aug. 19,

trial. The long serving, experienced trial judge was in the delicate, difficult, and unenviable position of conducting a fair, open, and public trial while maintaining the dignity, order, and decorum of the proceedings.

¶ 28 To be clear: the only party claiming defendant laughed is the defendant. The trial court never made this finding. Keeping that fact in mind and considering the findings and comments of the trial judge and the agreement of defense counsel that defendant was "disruptive," the following persuades me to part from my colleagues.

¶ 29 At the time of defendant's offending conduct, the record clearly reflects the trial court was in recess, but the court remained on the bench while engaged with counsel who continued discussing matters related to the case. The exact nature of what defendant did is unclear. However, the trial court stated defendant "yelled out and caused a disturbance that affected the administration of justice," because the court had to deal with defendant's outburst rather than the matters being discussed by counsel and the court. The trial judge did not comment one way or the other on defendant's characterization of making a "two second laugh," so I view this as indicative of the trial judge's disagreement with the characterization. Whatever the exact content of defendant's utterance, the judge described it as "a yell" that was "disruptive." This characterization was agreed to by defendant's attorney who attempted to minimize this conduct by stating "it was disruptive, but it did not rise to the level of criminal behavior." The trial judge found defendant's "yell" was "disruptive" because the trial judge was required to respond to defendant's disruptive conduct rather than addressing the matters the judge was dealing with. Even defendant's attorney agreed with the court that defendant's conduct was "disruptive." I would find the trial court did not abuse its discretion in finding defendant's conduct was "calculated to embarrass, hinder or obstruct a

2021). The same man posted comments to Facebook threatening the wives and children of Chicago police officers and voicing support for shooting up the courtroom. *Id.*

court in its administration of justice or derogate from its authority or dignity" (*People v Simac*, 161 Ill. 2d 297, 305 (1994)), and the trial court's factual findings are not against the manifest weight of the evidence. I respectfully dissent.

¶ 30 In finding defendant guilty of direct criminal contempt, the trial judge observed that "while the court was in session, [defendant] yelled out and caused a disturbance that affected the administration of justice, so I find him in direct contempt." At the hearing on defendant's motion to vacate the contempt order, defense counsel acknowledged the proceedings had generated an atmosphere of "tension" and "security" concerns in the courtroom stating,

> "We, the defense, have nothing but respect and appreciation for the courtroom security in this cause and for Your Honor's duty to keep us safe by maintaining order and decorum during the court proceedings. These things keep us safe on a daily basis and especially during high-profile cases, highly-publicized cases where tensions are obviously very high throughout the day in the courtroom, such as it is with Mr. Van Dyke's case."

¶ 31 At the time of defendant's outburst, the trial judge explained, "I said the court was in recess. I stood up. I was right here at the bench. I was not in the doorway. I was not in chambers, all right?" Later, the following colloquy took place:

> "[DEFENSE COUNSEL]: As I was saying, the conduct itself of my client was odd, undisputedly.
>
> THE COURT: It was disruptive, all right?
>
> [DEFENSE COUNSEL]: And it was disruptive, but it did not rise to the level of criminal behavior, anything that really should result in a conviction."

Also, during the hearing, the trial judge stated:

> "THE COURT: *** I was there when he disrupted the court, all right?

This is criminal contempt. I am yelling to commit a crime. It's when they yell, they disrupt the court, they stop the administration of justice. And we have people here that were in this courtroom. I had to come—you know, I had to address that rather than address what the needs of the interveners were on this, so certainly it interfered with the administration of justice, all right?"

¶ 32 Defense acknowledged that she was present in the courtroom at the time of defendant's outburst.

"THE COURT: *** Were you in the courtroom at the time?

[DEFENSE COUNSEL]: Yes, I was.

THE COURT: Did you see what happened and the results?

[DEFENSE COUNSEL]: I did.

THE COURT: So it was disruptive.

[DEFENSE COUNSEL]: Yes.

THE COURT: All right."

¶ 33 Later in the hearing, the trial judge observed that "There was nothing polite about him screaming in the courthouse." The following exchange also occurred:

"[DEFENSE COUNSEL]: *** And I would just like to emphasize that my client's behavior, although disruptive, was not threatening or violent in any way. He doesn't have a violent—

THE COURT: Well, here's what you have to understand, with all the things that I have told you about, the people threatening, the protesters here, Mr. Van Dyke was yelled at in this courtroom, to say it wasn't threatening, that was a trigger that could have ignited the whole courtroom.

[DEFENSE COUNSEL]: Exactly.

THE COURT: So, you know, just because a spark is a spark doesn't mean that it can't start a forest fire. And that's the same thing with a snow flake hitting—starting to become a snowball, turns into an avalanche. So these things—otherwise, certainly if this is a baseball park, nobody would even consider what he was doing as contemptuous."

¶ 34 The trial court reasonably concluded that defendant willfully disrupted the court proceedings. A sheriff's deputy admonished spectators against any noises or outbursts in the courtroom. The parties agree that the proceedings were tense and sensitive: the proceedings garnered significant and divisive public attention and were fraught with tension. There were online threats to disrupt the courtroom and the Sheriff was on high security. The trial judge observed that the proceedings had already been interrupted by protesters in a threatening and disruptive manner. At the time of defendant's outburst, although the judge had called for a recess, he remained in the courtroom while attorneys continued to try to discuss an issue on the record. In this context, the trial court could reasonably conclude that defendant's outburst, which had been expressly prohibited, during a tense moment in a tense proceeding was calculated to "embarrass, hinder or obstruct the trial judge in his administration of justice" by distracting the trial judge and court staff, and potentially leading to a larger disruption.

¶ 35 I am not persuaded by defendant's argument that his behavior did not rise to the level of criminal contempt because he laughed out of amusement during a recess and his "laughing" was not accompanied by any disrespectful language or obscenities directed at the trial judge. His first contention is inconsistent with the record—the trial judge was still in the courtroom talking to the attorneys about the case. Furthermore, I am aware of no requirement in Illinois law that disrespectful language or obscenity is required for a direct criminal contempt finding. Defendant

relies on *People v. Watts* for the proposition that there are three types of behavior courtroom spectators can reasonably infer to be contemptuous: obviously contemptuous statements directed at the trial judge, some action that is likely to cause a disturbance, or a direct notification from the court that certain behaviors are contemptuous. 66 Ill. App. 3d 971, 973-75 (1978). These are categories, not criteria. In *Watts*, the circuit court found a 19-year-old spectator in direct criminal contempt for wearing a t-shirt with the words "Bitch, Bitch" printed in five-inch letters. *Id.* at 973 We found that the circuit court erred by holding her in contempt because she had no notice that the trial judge would view her behavior as contemptuous, she made no contemptuous statement to the court, and did not violate any order of court; she was merely sitting in the gallery wearing the shirt and did not interrupt the court proceedings in any manner. *Id.* at 975.

¶ 36 Here, the sheriff's deputy announced at the beginning of the proceedings that no disturbances of any kind would be permitted, which sufficiently put spectators on notice that the court would not tolerate any disturbances. While defendant claimed that he arrived late and did not hear the admonishment, the circuit court was not required to accept this statement and could reasonably conclude that common sense would indicate any disturbance would not be tolerated. And while defendant argues that his conduct was not nearly as disruptive as other situations that this court has found contemptuous—such as an attorney deceiving the trial court and opposing counsel by substituting the attorney's employee for the defendant during an in-court identification at trial (*Simac*, 161 Ill. 2d at 306-10), or a defendant appearing in court with no clothes on (*People v. Collins*, 57 Ill. App. 3d 934, 936 (1978))—I would find that the circuit court reasonably concluded, under the circumstances, that defendant's conduct was designed to "embarrass, hinder or obstruct a court in its administration of justice or derogate from its authority or dignity." *Simac*, 161 Ill. 2d at 305. The trial judge was correctly concerned that any disruption from the gallery

could spark a larger disruption in the courtroom that might pose a physical danger to the judge, court staff, the sheriff's deputies, Jason Van Dyke, and other courtroom attendees. The trial judge was in a superior position to evaluate the trial atmosphere, and the tone, tenor, and extent of defendant's conduct and its impact or potential adverse impact on the underlying proceedings. In my view, there is ample evidence in the record to support the trial judge's finding that defendant's conduct was disruptive and interfered with the court's administration of justice.

¶ 37 The majority accepts defendant's characterization of his conduct as a short laugh during a recess. However, the trial judge—who remained on the bench and engaged with the attorneys when defendant "yelled" and was "disruptive," conduct acknowledged as disruptive by his attorney who witnessed the outburst—did not find the conduct as harmless or innocent as the majority does. We give deference to the trial judge's findings of fact precisely because the trial judge is in a superior position to observe and evaluate the impact of defendant's conduct on the proceedings and the participants. I would give deference to the trial judge's findings that defendant's conduct disrupted the tense proceedings and would affirm the trial court's finding of direct criminal contempt.