

Commonwealth Of Kentucky
Court of Appeals

NO. 2007-CA-000115-MR

SCOTT PEDEN

APPELLANT

v.

APPEAL FROM BARREN CIRCUIT COURT
HONORABLE W. MITCHELL NANCE, JUDGE
ACTION NO. 06-D-00152-001

W. MITCHELL NANCE, JUDGE;
TIFFANY RENEE PEDEN; AND
GREGORY D. McGINNIS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON AND DIXON, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Scott Peden appeals from a finding of indirect criminal contempt. We affirm.

On December 22, 2006, a hearing was scheduled on a domestic violence petition taken by Tiffany Renee Peden against Gregory D. McGinnis. Prior to the hearing, McGinnis and Tiffany Peden's father, Scott Peden, among others, were waiting

¹ Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

on the front porch of the Barren County Courthouse in Glasgow, Kentucky. McGinnis and Scott Peden exchanged hostile words and Peden struck McGinnis on the side of his face. Law enforcement officers intervened to break up the altercation. The court granted a domestic violence order in favor of Tiffany Peden against McGinnis. The court also ordered Scott Peden to appear on January 2, 2007, to show cause why he should not be held in contempt of court for the incident prior to the hearing. The court conducted a contempt hearing at which four persons testified. The court ultimately found Scott Peden guilty of indirect contempt of court. The court sentenced Peden to serve 180 days in jail and to pay a \$500.00 fine. The court also suspended 150 days of the sentence and the fine under certain conditions. This appeal followed.

Peden argues that the court abused its discretion in finding him guilty of contempt without the violation of a court order when the contemptuous conduct occurred outside the presence of the court.

The exercise of a court's contempt power is reviewed for abuse of discretion. *Arnett v. Meade*, 462 S.W.2d 940, 948 (Ky. 1971). The distinction between civil contempt and criminal has been stated as follows:

Civil contempts are those quasi contempts which consist in failure to do something which the contemnor is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court, while criminal contempts are **all acts** in disrespect of the court or its process which obstruct the administration of justice, or tend to bring the court into disrepute.

Levisa Stone Corp. v. Hays, 429 S.W.2d 413, 414 (Ky. 1968)(quoting *Jones v. Commonwealth*, 308 Ky. 233, 213 S.W.2d 983, 985 (Ky. 1948))(emphasis added).

Criminal contempt is further divided into two categories; direct and indirect.

Commonwealth v. Burge, 947 S.W.2d 805, 808 (Ky. 1996). Direct contempt is committed in the presence of the court and may be punished summarily without a fact-finding function because the all the elements of the offense are within the personal knowledge of the court. *Id.* Generally, contempt is considered to have been committed in the presence of the court:

if committed while the court is in session or during some short recess of court in any place set apart for the use of any constituent part of the court while in session, including such places as the courtroom itself, the judge's chambers, the clerk's office, the jury room, the witness room, the corridors adjacent to the courtroom, the courthouse steps or yard, or the immediate vicinity...

17 C.J.S. *Contempt* § 26 (1963).

Indirect contempt is committed outside the presence of the court and may be punished only after a hearing that satisfies due process. *Burge*, 947 S.W.2d at 808. A finding of indirect contempt requires the presentation of evidence “to establish the violation of the court’s order.” *Id.* The violation of a court order is not an exhaustive example of indirect criminal contempt. *See Mitchell v. Commonwealth*, 206 Ky. 634, 268 S.W. 313 (Ky. 1925); *Brannon v. Commonwealth*, 162 Ky. 350, 172 S.W. 703 (Ky. 1916).

Peden’s violation of a court order was not a necessary prerequisite for finding him guilty of indirect criminal contempt. Peden argues on policy grounds that allowing a court to hold a person in criminal contempt without the violation of a court order for conduct that occurs outside the presence of the court would allow any conduct to be criminalized if the judge thought that the conduct brought the court into disrepute. We disagree.

Peden assaulted a witness on the front porch of the courthouse while both were awaiting a hearing. The fact of the matter is that this incident occurred at the courthouse and not in a saloon. Law enforcement officers were required to intervene. The assault of a witness has been held to interfere with the authority of a court and to be an obstruction of justice that constitutes criminal contempt. *Brannon v. Commonwealth, supra*. A court of law has the inherent power to protect its own dignity and the safety of those who appear before it. While the facts of this case were not within the personal knowledge of the court, the offense was committed in its presence. Permitting litigants and witnesses to brawl in and around the courthouse while awaiting their cases to be called would be an invitation to anarchy and bring the courts into disrepute before the public. The court held a hearing that comported with due process of law and was within its authority to find Peden guilty of indirect criminal contempt under the circumstances. There was no abuse of discretion.

Accordingly, the order of the Barren Circuit Court is affirmed.

DIXON, JUDGE, CONCURS.

CLAYTON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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