

Rel: October 7, 2022

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# Alabama Court of Criminal Appeals

OCTOBER TERM, 2022-2023

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CR-21-0253

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Christine Hernandez

v.

State of Alabama

Appeal from Mobile Circuit Court  
(CC-18-2240.40)

McCOOL, Judge.

Attorney Christine Hernandez appeals the Mobile Circuit Court's order finding her in constructive criminal contempt. Hernandez was ordered to pay a fine of \$100.

Facts and Procedural History

On November 18, 2021, Judge Samuel Wesley Pipes was conducting a murder trial in which the defendant was represented by Chase Dearman. During a recess that followed closing arguments, Dearman was in the hallway outside the courtroom when Eddie Stokley, a process server, approached him and served him with a subpoena; several jurors were also in the hallway at that time. The subpoena stemmed from a case in which Dearman's former secretary was being prosecuted for allegedly stealing money from Dearman's law firm, and Hernandez, who was the secretary's counsel, had instructed Stokley to serve Dearman at the courthouse. Upon returning to the courtroom, Dearman told Judge Pipes that he had "just [been] served with a subpoena from Hernandez in front of all the jurors" (R. 5), and Judge Pipes instructed the bailiff to locate Stokley and detain him. After a "[b]rief pause" (R. 7), the bailiff brought Stokley to the courtroom, and Judge Pipes informed Stokley that he was "charging [Stokley] with contempt of court for interfering with a trial." (R. 8.) Judge Pipes then conducted the charge conference and, following that conference, stated that he "kn[e]w that Dearman ha[d] an objection ... he want[ed] to put ... on the record" regarding the service incident. (Id.) However, before addressing the service incident further,

Judge Pipes first brought the jury back into the courtroom, delivered his jury charge, and released the jury to begin its deliberations.

After the jury retired to deliberate, Judge Pipes allowed Dearman to address the service incident, and Dearman moved for a mistrial. Dearman argued that a mistrial was warranted because Stokley had served him "in front of at least five jurors," which, according to Dearman, could have led the jury to convict his client "because they thought [Dearman] was a shady lawyer or something like that." (R. 11, 12.) Judge Pipes stated that he would not rule on the motion for a mistrial at that time because the jury was deliberating and might acquit Dearman's client, which would render the motion moot. The jury did not reach a verdict that day, and the next morning Dearman's client pleaded guilty to a lesser offense.

With the trial having concluded, Judge Pipes took testimony from Juror M. regarding what he had observed in the courthouse hallway during the recess that followed closing arguments. Juror M. testified that he had seen Stokley in the hallway at that time, that other jurors "had to" have seen Stokley as well because he "was everywhere" (R. 28), and that it had been apparent that Stokley "was nervously waiting to do

something." (R. 31.) However, Juror M. testified that he "[did not] know what [Stokley] was doing" (R. 28), that the only statement he had heard Stokley make was that he "needed to get in [the courtroom]" (R. 31), that he had not seen Stokley speak to Dearman (R. 29), that he had not seen Stokley "hand anything to Dearman" (Id.), and that, to his knowledge, Stokley had not spoken to any of the other jurors. Juror M. did testify that he had seen "several pieces of paper in [Stokley's] hand," but, when asked if he "[c]ould tell what they were," Stokley testified that the papers were "wadded up." (Id.) No other jurors were questioned about the service incident.

Ten days later, Judge Pipes issued a contempt citation in which he charged Hernandez and Stokley with constructive criminal contempt. In relevant part, the contempt citation stated:

"Hernandez hired and directed Stokley to serve Dearman with the subpoena, and it is the court's belief she did so not only knowing he was in trial, but specifically because he was in trial for the negative effect it would have on Dearman. Hernandez knew, or should have known, that jurors would see Stokley serve Dearman, or that it was a very real and distinct possibility. It should have been obvious to her, as an officer of the court and seasoned criminal defense attorney, that by doing so she would prejudice Dearman's client and either cause a mistrial or put a verdict in jeopardy. Hernandez intentionally and/or recklessly interfered with, interrupted, disturbed, and hindered the trial of this matter."

(C. 17-18.)

Hernandez filed an answer to the contempt citation and conceded that she had told Stokley to serve Dearman at the courthouse. Hernandez claimed, however, that she had told Stokley to serve Dearman "at the end of the trial," not during the trial. (C. 39.) Regardless, Hernandez argued that service of the subpoena during a recess in the trial was "insufficient for a finding of criminal contempt" (C. 40) because, she said, it had not "interrupted, disturbed, and hindered" the trial (C. 41) or otherwise "obstructed the administration of justice." (C. 42.)

At the contempt hearing, Hernandez testified that her reason for having Stokley serve Dearman at the courthouse was because it was her understanding that Dearman is "not [at his office] that often" and was therefore "going to be kind of hard to serve." (R. 55.) Hernandez also submitted an affidavit from an attorney who shares an office space with Dearman, and that attorney stated that Dearman "never comes out to accept service at the office and would not allow anyone else to accept service at the office." (C. 79.) However, consistent with the answer she filed, Hernandez testified that she had told Stokley to serve Dearman "at the end ... of the trial." (R. 51.) Stokley disputed Hernandez's testimony.

According to Stokley, Hernandez had not told him to "wait until trial was over" before serving Dearman but, instead, had told him to "[g]et [Dearman] before court." (R. 61.) Hernandez's counsel argued, though, that regardless of whose testimony was true, there had been "nothing that identified [Stokley] as a process server" (R. 49) and that Juror M.'s testimony indicated that he "saw nothing, heard nothing, and kn[ew] of no juror that saw or heard anything." (R. 48.) Thus, according to Hernandez's counsel, the service incident was "no big deal" and did "not rise to the level of contemptuous conduct." (R. 49, 59.) Following the contempt hearing, Judge Pipes announced that he was holding Hernandez and Stokley in contempt and was fining them \$100 and \$25, respectively. In support of his ruling, Judge Pipes stated:

"Stokley is found in contempt and fined \$25. This is based on the very objective determination that he served a subpoena in front of jurors while on break. He sat amongst them. It should not have happened. I accept his apology and his statement, and I have no doubt that it will never happen again.

"Hernandez ... is found in contempt and fined \$100. It's my finding that she intentionally had Dearman served while he was in trial knowing he was in trial.

"The statements made and the reasons given I find not sufficient. Specifically, there was no proper purpose for her serving him while he was in trial. The allegation that

Dearman would avoid service is, in my opinion, without merit. No attempt was made to serve him that he avoided.

"The hearing for which he was served was 25 days away. And he, like Hernandez, is an officer of the court and can be punished for avoiding service. In fact, as an officer of the court, he can be made to appear in court to accept service.

"Finally, the testimony on this issue is contradictory and it is my determination that Stokley's is true."

(R. 67-68.)

Three days later, Judge Pipes issued a written contempt order, which states, in pertinent part:

"There are two separate instances of contempt. The first is the decision by Hernandez to serve the subject subpoena on [Dearman] in the courthouse during [Dearman's client's] murder trial. The second is the act of Stokley serving the subpoena directly in front of one juror and within sight of several others.

"....

"Stokley is found in contempt for serving [Dearman] with a subpoena in front of, and within sight of, jurors in the trial of this matter. The jurors wore badges identifying themselves as 'JUROR.' They were conspicuous in the hall outside [the courtroom]. It was impossible not to see and recognize them. Stokley sat among them as he waited for [Dearman] to leave the courtroom. There can be no conclusion other than he intentionally served the subpoena in front of them, and even if he did not intend to prejudice [Dearman's client], his actions threatened to do exactly that and put the trial directly in jeopardy.

"....

"Hernandez is found in contempt for intentionally directing Stokley to serve [Dearman] with the subpoena while he was in trial. The testimony on this issue is contradictory. The court finds Stokley's to be ... true. Further, it is the court's determination that Hernandez directed Stokley to do so for no legitimate reason and that it was done to make a point to [Dearman] in their ongoing and completely unrelated saga involving [Dearman's] former secretary, whom Hernandez represents. The court finds Hernandez's statements that she was concerned [Dearman] would avoid service to be unpersuasive. The subpoena compelled production of documents for a preliminary hearing scheduled for December 13, fully 25 days away from the date of service on November 18. There was plenty of time to serve [Dearman] if he did in fact attempt to avoid service. However, there is no evidence [Dearman] had avoided service in the past, or that he would attempt to do so now. Most importantly, [Dearman] is (like Hernandez) an officer of the court. He is not allowed to play games to avoid service. He can be compelled to appear in court for the purpose of accepting service.

"As with Stokley, it does not matter if Hernandez did not intend to prejudice [Dearman's client]. Her decision to serve a subpoena on his counsel while in trial ... was done intentionally and for no legitimate reason. If Stokley had succeeded in serving [Dearman] prior to closing arguments, it either would have, or could have, impaired his ability to deliver an effective argument. Interfering or attempting to interfere with an attorney's representation of a man charged with murder, looking at the possibility of serving a life sentence if convicted, is contemptuous in and of itself. Her decision still led to Stokley serving [Dearman] in front of a juror and putting the trial in jeopardy."

(C. 91.) Hernandez filed a timely notice of appeal.



Standard of Review

""The scope of review on the issue of contempt 'is limited to questions of law and, if there is any evidence to support its finding, the judgment of the trial court will not be disturbed.'" [Graham v. State, 427 So. 2d 998,] 1006 [(Ala. Crim. App. 1983)], citing Murphy v. Murphy, 395 So. 2d 1047, 1049 (Ala. Civ. App. 1981)."

Ex parte Dearman, 322 So. 3d 5, 9 (Ala. 2020) (quoting Holland v. State, 800 So. 2d 602, 604 (Ala. Crim. App. 2000)).

Discussion

In this case, Judge Pipes found Hernandez in constructive criminal contempt because she had instructed Stokley to serve Dearman with a subpoena at the courthouse where Dearman was then defending the accused in a murder trial and because the service ultimately occurred in the presence of multiple jurors. In relevant part, constructive criminal contempt is defined as "[m]isconduct of any person that obstructs the administration of justice and that is committed either in the court's presence or so near thereto as to interrupt, disturb, or hinder its proceedings." Rule 33.1(b)(3)(a), Ala. R. Crim. P.

On appeal, Hernandez claims that she did not commit constructive criminal contempt because, she says, the evidence indicates that "[n]othing either [she] or Stokley did ... obstructed the administration of

justice so as to interrupt, disturb, or hinder" Dearman's client's trial. (Hernandez's brief, p. 23.) In support of that claim, Hernandez contends that Juror M.'s testimony "reveal[ed] a rather uneventful encounter between Dearman and Stokley" during a recess in the trial and that there is "no evidence that any of the jurors even knew what the interaction between Stokley and Dearman was about." (Id. at 25, 27.) The State disputes Hernandez's claim but, as a threshold matter, argues that her claim was not preserved for appellate review. See McKinnie v. State, [Ms. CR-18-0875, April 23, 2021] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Crim. App. 2021) (noting that "the general rules of preservation apply to issues concerning findings of contempt, and such issues not presented to the trial court are waived on appeal"). Thus, before addressing the merits of Hernandez's claim, we address the State's preservation argument.

In support of its preservation argument, the State notes that Hernandez did not raise her claim "after [Judge Pipes] pronounced [his] findings orally" or "after [he] entered [his] written order." (State's brief, p. 14.) That much is true. However, in her answer to the contempt citation, Hernandez expressly argued that she had not engaged in any conduct that had "interrupted, disturbed, and hindered" Dearman's

client's trial or otherwise "obstructed the administration of justice." Then, at the contempt hearing, Hernandez's counsel argued that Juror M.'s testimony indicated that no juror had been aware that Dearman had been served with the subpoena and that, as a result, the service incident was "no big deal" and "d[id] not rise to the level of contemptuous conduct." Thus, Hernandez clearly argued during the contempt proceedings that there was no evidence to support a finding that she had committed constructive criminal contempt, which is the argument she has made on appeal.

The purpose of requiring an appellant to raise an issue in the circuit court before she may raise the issue on appeal is to give the circuit court an opportunity to address the issue. R.V.D. v. State, 268 So. 3d 96, 99 (Ala. Crim. App. 2018). As the Alabama Court of Civil Appeals has put it: "'In order to preserve an issue for appeal the issue must be presented to the trial court in such a way that the trial court has an opportunity to rule on that issue.'" Bad Ass Coffee Co. of Hawaii, Inc. v. Naughty Donkey Enter., LLC, 64 So. 3d 659, 663-64 (Ala. Civ. App. 2010) (quoting Brookside Mobile Home Park, Ltd. v. Peebles, 48 P.3d 968, 972 (Utah 2002)). In this case, Hernandez raised below the argument she has raised

on appeal, which provided Judge Pipes with an opportunity to consider the argument. Thus, "[t]his is not a situation where a party [has] attempt[ed] to raise on appeal a new matter upon which the [circuit] court had no opportunity to pass." Smither v. International Paper Co., 540 So. 2d 760, 761 (Ala. Civ. App. 1989). The fact that Hernandez did not reassert that argument after Judge Pipes rejected it and found her in contempt did not, as the State suggests, operate as a waiver of the argument she had clearly made throughout the proceedings. Accordingly, we disagree with the State's argument that this claim is not preserved for appellate review, and, having done so, we turn to the merits of the claim.

As noted, constructive criminal contempt is defined, in relevant part, as "[m]isconduct of any person that obstructs the administration of justice and that is committed either in the court's presence or so near thereto as to interrupt, disturb, or hinder its proceedings." Rule 33.1(b)(3)(a). Here, Hernandez argues that there is no evidence to support a finding that the service incident interfered with Dearman's client's trial. The State disagrees, arguing that the service incident interfered with the trial in one or both of two ways. We agree with

Hernandez, and the deficiency in the evidence is best explained by examining the State's arguments.

First, the State points to the undisputed fact that Dearman was served with the subpoena in a hallway where multiple jurors were congregated during a recess in his client's trial. According to the State, "[w]ithout proper context and legal knowledge, these jurors could have reached any number of conclusions regarding why Dearman would be served a subpoena in the middle of a murder trial – most not beneficent" – and "any negative connotations from the incident" could have "parlay[ed] to the jury's verdict." (State's brief, p. 19.) The problem with this argument is that there is no evidence indicating that any juror saw Stokley serve Dearman or even interact with Dearman. In fact, the only juror who was questioned about the service incident testified unequivocally that he "[did not] know what [Stokley] was doing" and did not see Stokley speak to Dearman or "hand anything to Dearman." Of course, because other jurors were also in the hallway when the service occurred, it is possible that one or more of them realized Stokley was serving Dearman with a subpoena. However, without more, the mere fact that other jurors were in the hallway "'affords nothing more than

mere speculation [or] conjecture'" as to what those jurors knew and is therefore "'wholly insufficient'" to support a finding that they knew Dearman was being served with a subpoena. CNH America, LLC v. Roebuck, 41 So. 3d 41, 48 (Ala. 2009) (quoting Roberts v. Carroll, 377 So. 2d 944, 946 (Ala. 1979)). Furthermore, even if one or more of those jurors had such knowledge, the State's argument is that this knowledge "could have parlay[ed] to the jury's verdict," but there was no jury verdict because Dearman's client pleaded guilty. In short, then, there is simply no evidence to support the conclusion that Dearman's client's trial was tainted in any way by the service incident.

Alternatively, the State argues that the service incident "disrupted the trial proceedings as [Judge Pipes] was obligated to address the incident and its potential ramifications prior to resuming trial." (State's brief, p. 19.) However, when Judge Pipes learned of the service incident near the end of a recess, he instructed the bailiff to bring Stokley to the courtroom, which the bailiff did after a "[b]rief pause"; told Stokley that he would be charged with contempt; and then conducted the charge conference. Following the charge conference, Judge Pipes acknowledged that Dearman wanted to raise an objection regarding the service

incident, but Judge Pipes first delivered his jury charge and released the jury to deliberate before addressing the incident further. Thus, the only "disruption" to the trial that resulted from the service incident was that the recess between closing arguments and the charge conference was extended for what appears to have been only a matter of a few minutes so that Judge Pipes could briefly address Stokley. In this Court's opinion, that brief extension of the recess did not "interrupt, disturb, or hinder" the trial in any meaningful way, Rule 33.1(b)(3)(a) – a conclusion that is strengthened by the fact that Judge Pipes did not base his contempt finding on that brief delay in the proceedings. See Yoskowitz v. Yazdanfar, 900 A.2d 900, 906 (Pa. Super. Ct. 2006) (holding that there was not "a significant disruption of the proceedings" when, before the trial resumed following a recess, the trial court questioned the contemnor "for a short period of time" regarding the allegedly contemptuous conduct that had occurred during the recess); and Commonwealth v. Collier, 510 A.2d 796, 800 (Pa. Super. Ct. 1986) (holding that it was "difficult to find a disruption of judicial proceedings" where the allegedly contemptuous conduct occurred during a recess in the trial).

To be clear, we do not foreclose the possibility that there might be circumstances in which a person commits constructive criminal contempt by serving an attorney with a subpoena at the courthouse where the attorney is in the middle of a trial. However, if such circumstances exist, they exist only when there is some evidence indicating that service of the subpoena actually obstructed the administration of justice or interrupted, disturbed, or hindered the proceedings. Rule 33.1(b)(3)(a). There was simply no such evidence in this case. We can certainly envision scenarios in which serving Dearman with a subpoena during his client's murder trial could have interfered with the trial, and we understand why Judge Pipes was frustrated with Hernandez's decision to effect service at that time and why he believed there was no valid reason for effecting service at that time; nevertheless, although Hernandez clearly demonstrated a lack of prudence in that decision, there is no evidence, testimonial or otherwise, to support the conclusion that the service incident interfered with the trial. In fact, we find it significant that nowhere in Judge Pipes's oral or written findings did he conclude that the service incident had actually interfered with the trial. Instead, Judge Pipes found only that Hernandez had intended for Stokley



to serve Dearman during the trial and that service of the subpoena could have interfered with the trial if the circumstances had been different. But to restate the matter clearly, possibilities and speculation as to what could have occurred, although sufficient to demonstrate a lack of wisdom in Hernandez's decision, are not sufficient to support a finding that she committed constructive criminal contempt without some evidence indicating that the service incident actually interfered with Dearman's client's trial.

#### Conclusion

A circuit court's finding of contempt will not be disturbed "if there is any evidence to support its finding." Ex parte Dearman, 322 So. 3d at 9 (citations omitted). In this case, there is no evidence to support a finding that Hernandez committed constructive criminal contempt. Accordingly, we reverse the contempt order insofar as it found Hernandez in contempt and fined her \$100, and we remand the case for the circuit court to vacate that part of the contempt order.

**REVERSED AND REMANDED.**

Windom, P.J., and Kellum, Cole, and Minor, JJ., concur.