[Cite as *In re Kafantaris*, 2009-Ohio-4814.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN RE:	)	
	)	
CONTEMPT TO ATTORNEY GEORGE KAFANTARIS.	)	
	)	
	)	CASE NO. 07-CO-28
	)	
	)	OPINION
	)	
	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Court of Common Pleas of Columbiana County, Ohio Case No. 07MJ105
JUDGMENT:	Affirmed
APPEARANCES: For Appellee	Robert L. Herron Prosecuting Attorney Tad Herold Assistant Prosecutor 105 South Market St. Lisbon, Ohio 44432
For Appellant	Atty. Irene K. Makridis 183 W. Market St. Warren, Ohio 4481

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: September 11, 2009

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DONOFRIO, J.

{¶1} Appellant, Attorney George Kafantaris, appeals from a Columbiana County Common Pleas Court judgment twice finding him to be in contempt of court and sentencing him to ten days in jail on each of the two contempt findings.

{¶2} Appellant was defense counsel in the murder case of *State v. Andrew Irwin*. Irwin was on trial for the stabbing death of Emily Foreman. Throughout the week-long trial, the court admonished appellant repeatedly about things such as asking irrelevant questions, making speeches and giving commentary, and moving at a very slow pace. The court warned appellant that the failure to heed its warnings would result in a contempt finding against him. The court ultimately found appellant in contempt twice.

{¶3} The first contempt finding occurred while appellant was questioning coroner Dr. William Graham. Appellant had earlier tried to have numerous letters, allegedly written by Foreman, admitted into evidence. However, because he was unable to authenticate the letters as having been written by Foreman, the court ruled them inadmissible. Nonetheless, appellant continued to use the letters to question Dr. Graham. The prosecutor objected. The court instructed appellant not to bring up the letters. However, appellant persisted. Consequently, the court found him in contempt.

{¶4} The second contempt finding occurred after the jury returned their guilty verdict. Appellant had a cassette tape in his hand. The tape contained a statement by Jason Beaver wherein Beaver stated that another man had confessed to Foreman's murder. Appellant waived the tape at the jury and stated, "Here is your murderer." (Vol. 6: 134). The court again found appellant in contempt.

{¶5} The trial court entered a judgment on July 11, 2007 journalizing its contempt findings.

{¶6} Appellant filed a notice of appeal on August 10, 2007. This court found that the notice of appeal was premature because the trial court had not yet imposed any sanctions for the contempt. The trial court subsequently held a hearing where it found that appellant on two separate occasions obstructed the administration of

justice. It sentenced appellant to ten days in jail on each contempt to be served consecutively.

{¶7} Upon appellant's motion, this court granted a stay of execution of his sentence pending this appeal.

{¶8} Appellant raises two assignments of error, the first of which states:

{¶9} "THE TRIAL COURT ERRED IN FINDING THE APPELLANT GUILTY OF DIRECT CRIMINAL CONTEMPT."

{¶10} Appellant argues that his conduct at issue did not obstruct the orderly administration of justice. He asserts that the trial court essentially found that once it rules an exhibit inadmissible, then a party has no right to look at it or show it to another witness. Appellant argues that this position ignores the possibility that a subsequent witness may be able to lay a foundation that would make the exhibit admissible. He further contends that he only asked Dr. Graham to read letters, which the trial court had already ruled inadmissible, to himself. Therefore, appellant argues that there was no harm done because the jury never heard the letters' content.

{¶11} Appellant further asserts that the trial court was biased against him and that was the reason for the contempt finding.

{¶12} Finally, appellant argues that he did not intend to disrupt the proceedings or to disrespect the court. The lack of intent on his part, appellant contends, demonstrates that that his actions did not constitute contempt.

{¶13} We review a trial court's contempt finding for abuse of discretion. *State ex rel. Celebrezze v. Gibbs* (1991), 60 Ohio St.3d 69, 75. An abuse of discretion is more than an error of law or judgment; it implies that the trial court's judgment was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶14} Contempt can be direct or indirect, civil or criminal. Here we are dealing with direct, criminal contempt.

{¶15} R.C. 2705.01 defines direct contempt as misbehavior occurring in the presence of a judge or "so near the court or judge as to obstruct the administration of

justice." In addition, direct contempt has been defined to include "conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *Denovchek v. Trumbull Cty. Bd. of Commrs.* (1988), 36 Ohio St.3d 14, 16, quoting *Windham Bank v. Tomaszczyk* (1971), 27 Ohio St.2d 55, 56.

{¶16} "Courts, in their sound discretion, have the power to determine the kind and character of conduct which constitutes direct contempt of court." *State v. Kilbane* (1980), 61 Ohio St.2d 201, paragraph one of the syllabus.

{¶17} Criminal contempt is generally characterized by an unconditional prison sentence that operates not as a coercive remedy but as punishment for the completed act of disobedience and to vindicate the court's authority. *Brown v. Executive 200, Inc.* (1980), 64 Ohio St.2d 250, 253-54.

{¶18} In a case of criminal contempt, the alleged contemnor must have acted with the intent to disobey the court's order. *State v. Khong* (1985), 29 Ohio App.3d 19, 29. But we should keep in mind that "a person is presumed to intend the natural, reasonable and probable consequences of his voluntary acts." Id., citing *State, ex. rel. Seventh Urban, Inc., v. McFaul* (1983), 5 Ohio St.3d 120, 123. When the alleged contemnor is an attorney, his intent may be inferred if his conduct disclosed a reckless disregard for his professional duty. Id. at 30.

{¶19} It is with these principles in mind, that this court will consider the two situations giving rise to the trial court's contempt findings. We will examine each of the two occasions of contempt separately.

{¶20} As to the incident regarding appellant's questioning of Dr. Graham with the letters, the trial court did not abuse its discretion in finding appellant in contempt.

{¶21} Earlier in the trial appellant attempted to have numerous letters, allegedly written by Foreman, admitted into evidence. He did so by questioning Foreman's mother about whether she could identify Foreman's handwriting. She was unable to conclusively identify the writing in the letters as Foreman's handwriting. Since he was unable to authenticate the letters as having been written by Foreman,

the court ruled them inadmissible.

{¶22} Dr. Graham is the county coroner. Appellant initially questioned Dr. Graham about Foreman's cause of death and the stab wounds. He then asked Dr. Graham, "I'm just curious, just a little curious; okay? Anybody ever give you any letters that Emily wrote?" (Vol.5: 178). The state objected and appellant withdrew the question. The following comments were then made:

{¶23} "MR. HERRON [prosecutor]: Your Honor, I object to the characterization. He has not provided any foundation that Emily Foreman wrote any of those letters, and I ask that the jury be instructed to disregard an entirely inappropriate commentary by counsel.

{¶24} "THE COURT: I agree with the prosecuting attorney. The jury is instructed to disregard. Mr. Kafantaris, I would hope you know better." (Tr. Vol. 5: 178).

{¶25} Appellant then asked Dr. Graham a few questions about drug-related cases. He then showed Dr. Graham two of the letters and asked him to read them. (Tr. Vol. 5: 179-80). The prosecutor once again objected. The court sustained the objection. It then excused the jury and the following transpired:

{¶26} "THE COURT: All right, Mr. Kafantaris, that's it. You're in contempt. You get 10 days in the county jail. That's the first time. If you want to keep cruising along, the next time it'll be more. And the time after that'll be more.

{¶27} "I've tried to be as patient as I could possibly be, but this last – this last business with this letter, that's just beyond the pale. There was no foundation for that.

{¶28} "You're an officer of the court. I have given you lots of leeway. You've asked irrelevant questions. You're trying to raise issues where there are none. It's unprofessional. It's in violation of the Code of Professional Responsibility and your oath as a lawyer." (Tr. Vol. 5: 182).

{¶29} In support of the contempt finding, plaintiff-appellee, the State of Ohio, points to appellant's actions in making certain gestures regarding the letters in view

of the jury. However, this occurred after the court had already found appellant in contempt. (Tr. Vol. 5: 183-84). Thus, these references are irrelevant to the contempt finding. What is relevant, however, is appellant's conduct throughout the trial leading up to the first contempt finding.

{¶30} Throughout the trial, appellant demonstrated an obvious disregard for the court's orders and warnings.

{¶31} For example, while appellant was questioning Police Chief Charlie Burgess, the prosecutor objected. The court instructed appellant to ask relevant questions. (Tr. Vol. 4: 167-68.). Yet appellant continued to make irrelevant remarks, such as talking about his own children and his own mistakes. (Tr. Vol. 4: 175, 184-85). The court sustained objections to these types of irrelevant comments and urged appellant to proceed. (Tr. Vol. 4: 175, 184-85). When appellant concluded his cross examination of Chief Burgess, the court gave him the following warning:

{¶32} "You know, you're refusing to identify exhibits by number. You often stand with your back to the court reporter, who's trying to make the record, and the jury, who's trying to - - ultimately will be deciding this case.

{¶33} "You seem to be a nice individual, probably an experienced practitioner. But – and I don't like to – you know, I don't like the word 'contempt,' but, you know, I think we're getting close to that, so I hope that in the future you'll make more of an effort to follow my admonitions, you know." (Tr. Vol. 4: 188-89).

{¶34} Regardless of the court's warning, appellant continued to make personal commentary and disregard the court's instructions. For instance, while cross examining Linda Eveleth, a DNA analyst, appellant characterized the victim as "Poor Emily" and stated that he felt badly for her. (Vol. 4: 237). This type of personal commentary bore no relevance to the DNA issues on which Eveleth was testifying. And appellant continued with the personal commentary and irrelevant questions despite the court's instructions to the contrary. (See for example Vol. 4: 255-56, 257, 259-60; Vol. 5: 48, 162-63, 174-75).

{¶35} When the court found appellant in contempt, he had been continuously

ignoring the court's orders throughout the trial, including the warning the court gave him that his actions could result in contempt. The examples listed above are just a sampling of the continuing disregard appellant showed for the court's instructions. Thus, when the court found appellant in contempt for bringing up the letters when it had instructed him not to do so, this was not an isolated incident. The court was obviously frustrated that no matter how many times it admonished appellant not to do something, appellant continued.

{¶36} Appellant's conduct obstructed the administration of justice. He ignored the court's orders and caused repeated interruptions in the flow of the trial. And appellant's intent can be inferred from these repeated instances. Consequently, the trial court did not abuse its discretion by finding appellant in contempt when he refused to obey its instruction with respect to the letters.

{¶37} And as to the incident regarding appellant's outburst with jurors still remaining in the courtroom, again the trial court acted within its discretion in finding appellant in contempt of court. The facts giving rise to the second contempt were as follows.

{¶38} The jury returned their verdict of "guilty." The court thanked the jurors for their service and excused them. (Tr. Vol. 6: 133-34). The court then asked the first row of jurors to depart by the elevator. (Tr. Vol. 6: 134). The first row of jurors left the courtroom. (Tr. Vol. 6: 134). With the second row of jurors still in the courtroom, appellant stated, "There's your murderer, right there." (Tr. Vol. 6: 134). Appellant waived a tape recorded statement as he made this outburst. The tape recorded statement was made by Jason Beaver, wherein Beaver stated that another man had confessed to Foreman's murder. Thus, appellant was basically telling the jury that they had just convicted the wrong man. The court immediately found appellant in contempt. (Tr. Vol. 6: 134). The second row of jurors then left the courtroom. (Tr. Vol. 6: 135).

{¶39} At the time appellant made his outburst, half of the jurors were still in the courtroom. At appellant's contempt hearing, the prosecutor aptly summed up

how appellant's outburst impeded the administration of justice:

{¶40} "It was a terrible insult to the jury, something that I was personally ashamed of. To me his actions and his conduct that morning demonstrated a total disregard for the work of the jury, their consideration, their effort and their feelings as human beings. It was clearly offensive. It was in my estimation, and my belief, an unforgivable obstruction to the administration of justice. It was conduct that undermines the public's confidence in the way it views our local courts. He mocked that jury." (Contempt Tr. 27).

{¶41} The prosecutor's comments sum up the situation. Appellant, in front of half of the jurors, made a statement that they erred in finding appellant guilty and that he had the evidence to prove that they convicted the wrong man. This type of proclamation could likely put doubt into the jurors' minds as to whether they heard all of the evidence in this case and whether they just convicted the right man. It called the whole jury trial process into question. The obvious proper course of action to contest the verdict is through the appellate process. Furthermore, appellant's outburst was highly unprofessional as an officer of the court. For these reasons, the trial court did not abuse its discretion in finding appellant in contempt a second time.

{¶42} Accordingly, appellant's first assignment of error is without merit.

{¶43} Appellant's second assignment of error states:

{¶44} "THE TRIAL COURT ABUSED ITS DISCRETION BY IMPOSING ON APPELLANT A TEN DAYS' JAIL SENTENCE FOR ALLEGEDLY CONTEMPTUOUS ACTS WHICH NEITHER INTERRUPTED THE COURSE OF THE PROCEEDINGS NOR COULD HAVE AFFECTED THE JURORS' CONSIDERATION OF THE ISSUES BEFORE THEM."

{¶45} Here appellant simply argues that the ten-day jail sentences are excessive and constitute an abuse of discretion.

{¶46} An appellate court will not reverse the punishment imposed by the trial court in a direct contempt absent a showing of abuse of discretion. *Kilbane*, 61 Ohio St.2d at 207.

{¶47} As appellee points out, while the punishment for direct contempt is not dictated by statute, punishment for indirect contempt is. See *Scherer v. Scherer* (1991), 72 Ohio App.3d 211, 215-16. For a first offense of indirect contempt, the court may fine the contemnor not more than $250 and impose up to 30 days in jail, or both. R.C. 2705.05(A)(1). For a second offense, the court may fine the contemnor not more than $500 and impose up to 60 days in jail, or both. R.C. 2705.05(A)(2). Thus, in the case of indirect contempt, the legislature has stated that a 30-day jail sentence is reasonable for a first offense and a 60-sentence is reasonable for a second offense.

{¶48} But "[i]n imposing punishment for acts of direct contempt, courts are not limited by legislation but have the power to impose a penalty reasonably commensurate with the gravity of the offense." *Kilbane*, 61 Ohio St.2d at paragraph one of the syllabus.

{¶49} In support of his argument that his punishment is excessive, appellant relies on *In re Contempt of Mgbaraho*, 8th Dist. No. 80387, 2002-Ohio-3429. In *Mgbaraho*, the appellant, an attorney, appealed from the trial court's judgment finding him in contempt for arriving 45 minutes late for a sentencing hearing. At his show cause hearing, the appellant apologized to the court and explained that he was stuck in traffic. Therefore, he asserted that he had no intent to disregard the court's schedule. The court fined the appellant $150. The appellant appealed.

{¶50} On appeal, the appellant argued that he had no intent to disobey the court's order. The appellate court found that the evidence before the trial court did not prove that the appellant intentionally brought the administration of justice into disrespect, embarrassed, impeded or obstructed the court in the performance of its functions, or that he intentionally violated a court order. Id. at ¶24.

{¶51} *Mgbaraho* is distinguishable from the case at bar. The *Mgbaraho* decision only dealt with whether the contempt finding was supported by the evidence. It never considered whether the court's sanction was excessive. Thus, it is not relevant to our determination here.

{¶52} Here the court imposed ten-day jail sentences for both the first and second contempt findings. These sentences were "reasonably commensurate with the gravity of the offense[s]." The court found that appellant, on these two occasions, interfered with the orderly administration of justice. In the first instance, appellant, after repeated admonitions, purposely disobeyed the court's orders. And in the second instance, appellant called the whole jury-trial process into question in front of half of the jurors.

{¶53} Furthermore, the sentence for the first contempt finding is much less than the 30-day maximum allowed for a first finding of indirect contempt. And the sentence for the second offense is considerably below the 60-day maximum allowed for a second finding of indirect contempt.

{¶54} We cannot conclude that the trial court abused its discretion in sentencing appellant to ten-day jail sentences. Accordingly, appellant's second assignment of error is without merit.

{¶55} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.