

Criminal Contempt Cases*

Abdo v. Commonwealth, 64 Va. App. 486 (2015)

Court of Appeals of Virginia

The General District Court issued a show cause when the officer arrived 9 minutes late to court, after the Court granted a motion by the Commonwealth to *nolle prosequi* the matter. The officer had been tardy or a no-show on at least three other occasions which often resulted in dismissal (by *nolle prosequi*) of his cases. At the contempt hearing the Court found the officer's reasons for tardiness "unsatisfactory," found the officer guilty of contempt, and imposed a \$25 fine which the Court suspended conditioned upon 12 months of good behavior.

The officer appealed to the Circuit Court and in that hearing, argued that his tardiness was not intended to "delay, obstruct, or harass the proceedings of the general district court." The Circuit Court found the officer guilty and imposed the same punishment. The judge noted that this was not just based on the one instance of tardiness, but that the prior instances of tardiness supported the conviction.

On appeal to the Court of Appeals, the officer first argued that the court cannot consider "prior unadjudicated acts" for the "purpose of suggesting criminal propensity."

RULE: Evidence of prior bad acts may be admitted if offered "to prove any number of relevant facts, such as motive, intent, agency, or knowledge." *Wilson v. Commonwealth, 16 Va. App. 213, 220 (1993)*.

HELD: Evidence of the officer's prior tardiness was relevant to establish "his knowledge that being late would disrupt the court's docket" and was relevant to establishing intent ("Prior warnings constitute evidence of willfulness when they go unheeded").

The officer then argued that he lacked the intent necessary for finding him in criminal contempt, proposing that contempt is a "specific-intent crime."

RULE: The Court dove deep into the roots of the contempt power, noting that there was no authority in Virginia that requires specific intent for a finding of contempt. They also noted that the language of Section 18.2-456(1) does not require specific intent. Per *Johnson v. Commonwealth*, to establish specific intent as an element of an offense, it "must be explicitly found in the statute's language...." *37 Va. App. 634, 640 (2002)*.

HELD: "Under Virginia precedent, willfulness or recklessness satisfies the intent element necessary for a finding of criminal contempt."

The Court determined that the evidence was sufficient to support the conclusion of the trial court that the officer was guilty of criminal contempt. "The fact that appellant contacted a

fellow officer to inform the court that he would be late, as well as the fact that he was late by only nine minutes, *mitigate* the gravity of the offense but do not alter the fundamental problem: appellant was late without a valid excuse after repeated warnings to appear on time.”

*Read the footnotes – very helpful!

Bell v. Commonwealth, Record No. 1045-23-3 (August 13, 2024)

Court of Appeals of Virginia

Bell was found in summary contempt after sending a letter to members of the jury after he was convicted for brandishing a firearm, but before he was sentenced. The letter claimed that there was evidence that had been excluded from trial and proceeded to describe some of that evidence. The Court was made aware of the letters after they were sent, and after several emails between the Court clerk, Commonwealth Attorney and Sheriff were forwarded to the trial court. All of these items were labeled as exhibits in the contempt file and were made known to Bell at a hearing for the summary contempt. The trial Court stated that the hearing was “not a plenary proceeding” and Bell had been found in summary contempt. At a sentencing hearing for the contempt charge, a different jury suggested that 6 months incarceration be the punishment for the contempt.

On appeal, Bell argued that his conduct did not satisfy the requirements of Virginia Code 18.2-456(A)(1) or (3) and thus he could not be held in summary contempt.

RULE: Unless the contempt is committed in open court, such that the judge has personal knowledge of the essential elements, due process requires that the accused be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation.

RULE: Virginia Code §18.2-456 limits the conduct that courts can punish for contempt summarily. Subsection (A)(1) applies to “misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice.” Subsection (A)(3) applies to “vile, contemptuous, or insulting language addressed to or published of a judge for or in respect of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding.”

HELD: The trial court did not have the authority to apply §18.2-456 to Bell’s conduct because it did not occur in the presence of the court. The trial court did not personally observe the essential elements of the misbehavior. The letters were not sent directly to the court, so it did not have personal knowledge of their sending, and the court had to introduce its own exhibits to establish a factual basis for the contempt.

Burdett v. Commonwealth, 103 Va. 838 (1904)

Court of Appeals of Virginia (FKA Supreme Court of Appeals)

Mr. Burdett pled guilty to selling “ardent spirits and malt liquors without a license.” After his trial was concluded, he published an article where he accused the judge of having acted harshly towards him and of acting with vicious and corrupt motives. The county court issued a show cause and after a hearing, found him guilty of contempt of court and sentenced him to 10 days in jail and a \$50 fine. He appealed to the Circuit Court, who affirmed the trial court’s decision.

In his appeal to the Court of Appeals, Burdett argued that he could not be held in contempt because his statements were made *after* his case was concluded, and thus they did not tend to “prejudice the cause, or to impede its progress.”

RULE: The Court referenced multiple treatises and cases regarding different “sorts of contempt.” Contemptuous conduct includes acts which degrade the administration of justice by bringing the courts and judges into disrepute. *The Court also gave a solid definition of direct vs. indirect contempt.

HELD: Burdett’s publication was contemptuous because as a result “the county court, and justice as therein administered, were brought into udder disrepute.”

Cantrell v. Commonwealth, 229 Va. 387 (1985)

Supreme Court of Virginia

During the trial of Cantrell for murder of his wife, an attorney hired by his wife’s parents handled most of the prosecution, with the Commonwealth assisting. The attorney also represented the grandparents in their custody case involving Cantrell’s children. Cantrell argued that having an attorney that also has a private interest in the outcome of the criminal matter was a conflict of interest and infringed on Cantrell’s right to a fair and impartial trial.

RULE: “The common-law right of a crime victim, or of his family, to assist the prosecution with privately employed counsel is not absolute, but lies within the discretion and continuing control of the trial court.”

RULE: A private prosecutor is subject to the same high standard of conduct in the trial of the case as is a public prosecutor, but is also more limited in his role than a public prosecutor. They may not initiate a prosecution, appear before the grand jury, must have leave of court and consent of the public prosecutor to participate, and may not take part in decisions related to plea bargains.

RULE: “A private prosecutor having a civil interest in the case so infects the prosecution with the possibility that private vengeance has been substituted for impartial application of the criminal law, that prejudice to the defendant need not be shown.”

HELD: A conflict of interest on the part of the prosecution in itself constitutes a denial of a defendant’s due process rights and cannot be said to be harmless error.

Carter v. Commonwealth, 2 Va. App. 392 (1986).

Court of Appeals of Virginia

On the morning that the Defendant's criminal bench trial was to begin, and without prior notice, the Defendant asserted his right to a jury trial. The Commonwealth came prepared to proceed with the case, and all their witness were present. In response to a question by the trial Judge, Defendant's attorney asserted that the decision to request a jury was made the afternoon prior. The Defendant was given the opportunity to speak, and stated that he had mentioned a jury trial to his attorney before but was asked the day before to give a decision. The trial Judge held Defendant in contempt of court for delaying the administration of justice and sentenced him to 10 days in jail.

On appeal, Defendant argued that the evidence was not sufficient to prove beyond a reasonable doubt that his actions were willfully contemptuous.

RULE: A decision in direct contempt proceedings should set out sufficient facts to show that the court had jurisdiction to punish for contempt, that the contempt was committed in the presence of the court, and that the contempt was committed willfully, and should recite the facts upon which the court based its final conclusion.

HELD: The court held that the "beyond a reasonable doubt" standard was not met because the record did not contain evidence that the delayed request for a jury was made with intent to obstruct the administration of justice. "To support a finding of the willful intent necessary for conviction of contempt, the record must contain evidence that the delayed request was made for the purpose of obstructing or interrupting the administration of justice and not just for the purpose of exercising a right guaranteed by the Constitutions of the United States and the Commonwealth of Virginia."

Cooke v. U.S., 267 U.S. 517 (1925).

Supreme Court of the United States

Cooke was an attorney that represented Walker in a series of lawsuits. the day after a jury trial concluded, Cooke directed his client to deliver to the judge a letter in which Cooke suggested the judge should recuse himself "on the ground of prejudice and bias to try said matters" and set the matters for a new trial. Eleven days later, the Court issued a show cause summons and both Cooke and Walker were brought before the Court. During the "hearing" the judge repeatedly stated that the defendants needed to state any defense they had at that time, as he was not going to postpone the matter.

On appeal, Cooke argued that the letter was not contempt of court, but instead was just intended to advise the court of his desire to have another judge try the remaining cases needing to be heard. The Court found that the language used by Cooke as well as the timing of the letter (one day after the verdict) was sufficient to show that Cooke intended for the letter to be "personally condemnatory and were calculated to stir the judge's resentment and anger."

The Court then went on to address the process, or lack thereof, followed by the trial judge.

RULE: “To preserve order in the courtroom for the proper conduct of business, the court must act instantly to suppress disturbance or violence or physical obstruction or disrespect to the court, when occurring in open court.”

RULE: “Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony...”

HELD: In cases such as these “where the intention with which acts of contempt have been committed must necessarily and properly have an important bearing on the degree of guilt and the penalty which should be imposed, the court cannot exclude evidence in mitigation.”

Harris v. US, 382 U.S. 162 (1965)

Supreme Court of the United States

Harris was a witness that was brought in to testify before a grand jury. After he refused to answer certain questions based on his 5th Amendment privilege, the judge granted him immunity from prosecution and ordered him to return to the grand jury and answer the questions. Harris again refused to answer. He was then brought before the Court and sworn in, asked the same questions, and upon his refusal to answer the questions, was adjudicated guilty of criminal contempt and sentenced to one year in jail.

The main issue addressed by the Supreme Court was the procedure used by the trial judge.

RULE: Citing Rule 42(a) entitled “Summary Disposition” the Court noted “A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court.”

HELD: Summary contempt is for misbehavior in the actual presence of the Court. Then speedy punishment may be necessary in order to achieve summary vindication of the court’s dignity and authority.

Here, swiftness was not a prerequisite of justice. A delay necessitated by a hearing would not have imperiled the grand jury proceedings.

Hernandez v. Commonwealth, Record No. 1100-23-2 (August 13, 2024) (unpublished)

Court of Appeals of Virginia

Hernandez was a defendant in a traffic charge and appeared before the judge for a scheduling hearing. The same judge had previously presided over a case involving Hernandez's dog where the judge had ordered the dog to be euthanized for being dangerous. When he appeared in court, Hernandez called the judge, the CWA and another courtroom officer "cowards" in open court. Hernandez then wrote "fuck you" on the signature line of a notice of hearing form that the clerk had provided him. The judge did not become aware of the notice form until one or two days later. The judge issued a rule to show cause and held a hearing. During the hearing, the Commonwealth submitted a copy of the notice form but did not submit any other evidence or call any witnesses. Hernandez did not testify or present any evidence. The judge stated that he had heard what Hernandez said in court and that this was sufficient to find Hernandez guilty of contempt, ordering Hernandez to pay a \$200 fine.

On appeal, Hernandez argued that it was error for the judge to testify pursuant to 19.2-271.

RULE: 19.2-271 states that "No judge shall be competent to testify in any criminal or civil proceedings as to any matter which came before him in the course of his official duties."

HELD: The judge's testimony was given in violation of 19.2-271 and because the trial court based the finding of contempt entirely upon the improper testimony of the judge, without any additional evidence to support it, the court also erred in finding the evidence was sufficient.

Higginbotham v. Commonwealth, 206 Va. 291 (1965)

Court of Appeals of Virginia (fka Supreme Court of Appeals)

Higginbotham was an attorney in a criminal jury trial where a witness testified that her assailant was wearing short sleeves, but did not testify as to any identifying tattoo marks. In his argument to the jury, the attorney asked his client to roll up his sleeves to show the jury his tattoos. Commonwealth's objection was sustained but the attorney continued to argue that it was not new evidence and the defendant could simply take off his coat if he was hot, which defendant continued to do and then rolled up his sleeves to expose his tattoos. The Commonwealth moved for a mistrial, which the court overruled. Several days later, the judge told the attorney that he was holding him in summary contempt, but gave him the opportunity to retain counsel and set it for a hearing. At the hearing, Higginbotham was given the opportunity to make a statement but the court found he was in contempt and ordered that he pay a fine.

On appeal, Higginbotham contended that the court had lost jurisdiction and lacked the power to summarily hold him in contempt and that he should have been accorded a full hearing on the charge.

RULE: the power to punish summarily is discretionary and not mandatory.

RULE: The word “summarily” does not refer to the time the adjudication of contempt must be made, but to the form of procedure which dispenses with any further proof or examination and a formal hearing.

HELD: The court’s power to punish a contemnor is not lost by a short delay during the course of the trial. HOWEVER, in this case, the judge should have afforded Higginbotham an opportunity for a full hearing on the matter. The Court did not provide much detail on why a full hearing should have been granted. In the one paragraph used to explain it, the Court noted that the judge had to give it some thought before deciding it was contempt, and the judge had taken into consideration some statements the defendant had made at trial. So perhaps the rationale is that these are things that the trial judge should have given the defendant the opportunity to address?

In re Oliver, 333 U.S. 257 (1948)

Supreme Court of the United States

Mr. Oliver appeared to testify in a grand jury-type proceeding about gambling and official corruption. In Michigan, a statute allows a judge to operate like a grand-jury in certain circumstances, as in this case where the judge conducted the proceedings himself, in camera. There were other witnesses that appeared and testified prior to Mr. Oliver. After his testimony was given, the judge stated that Oliver’s testimony did not “jell” with the prior testimony of another witness and thus was not believed. Oliver was immediately charged and found in contempt, and then sentenced to 60 days in jail. His contempt proceeding was not made open to the public and his lawyer was denied access to him at some point. The trial court only submitted limited portions of the record below, citing the grand-jury secrecy rules.

The issue on appeal was whether Mr. Oliver’s rights to due process were violated (1) by the contempt proceeding being conducted within the grand jury proceeding which was not open to the public and/or (2) by the failure to afford Mr. Oliver with opportunity to defend himself.

RULE: Every accused shall enjoy the right to a speedy and public trial per the 6th Amendment to the Constitution and the right to due process per the 14th Amendment.

RULE: “For a court to exercise the extraordinary but narrowly limited power to punish for contempt without adequate notice and opportunity to be heard, the court-disturbing misconduct must not only occur in the court’s immediate presence, but that the judge must have personal knowledge of it acquired by his own observation of the contemptuous conduct.

RULE: “If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires...that the accused be accorded notice and a fair hearing...”

HELD: The proceeding on contempt should have been made open to the public.

HELD: The summary contempt finding was not appropriate because (1) the alleged misconduct occurred in secret, so there could be no possibility of demoralization of the

court's authority before the public; and (2) the judge's conclusion that Oliver testified falsely was based partly on the testimony of others.

NOTE: "It may be conceivable...that a judge can under some circumstances correctly detect falsity and evasiveness from simply listening to a witness testify."

Morrissey v. Commonwealth, 16 Va. App. 172 (1993)

Court of Appeals of Virginia

In his capacity as Commonwealth's Attorney, Morrissey wrote a letter to a substituted judge regarding an exchange between the judge and Morrissey's Assistant CWA that had occurred two days previously. In the letter, Morrissey defended the Assistant CWA and chastised the judge for criticizing the Assistant CWA and Morrissey. He concluded the letter with "...if that behavior *ever, ever*, happens again, I will not be so kind as to merely draft you a letter of indignation." The judge issued a show cause summons and recused himself from the trial. Morrissey was found guilty of contempt in GDC as well as Circuit Court, finding that the last paragraph constituted a threat to the judge in response to judicial conduct.

In his appeal, Morrissey contended that the letter only "threatens legal redress, which he had a right to do." He stated that his intent, if it were to happen again, was to file a complaint with the Judicial Inquiry and Review Commission. He also argued that his statement was protected speech under the First Amendment, because he had a right to make a report to JIRC so an implied threat to do so should be protected.

RULE: Contempt is an act in disrespect of the court or its processes, or which obstructs the administration of justice." Any act which is calculated to embarrass, hinder, or obstruct the court in the administration of justice in contempt.

RULE: Per the *Weston* test, language is not protected by the First Amendment if it is obscene, contemptuous or insulting; or constitutes a clear and present danger or obstruction to the administration of justice.

HELD: Regardless of the intent, the letter constitutes a threat that is calculated to hinder or obstruct justice. Morrissey had no right to threaten to do anything.

HELD: Morrissey's language was not protected speech under the First Amendment because it constituted a clear and present threat to obstruct the administration of justice by controlling the judge's behavior when a CWA appeared before him in the future.

Orndoff v. Commonwealth, 79 Va. App. 676 (Feb 6, 2024)

See also: 78 Va. App. 50 (July 11, 2023), 77 Va. App 766 (June 6, 2023)

Court of Appeals of Virginia

Orndoff appeared to testify in a criminal trial. Counsel proffered to the Court that they had agreed to some limitation on her testimony. After 80 minutes of her testimony, during which she was responding to questions with extraneous and prejudicial statements about the defendant (contrary to the proffered agreement), the jury was excused, and the judge began to ask her questions about her demeanor. The judge observed her to be rocking in her chair and almost falling over, commented on her continued non-responsive testimony, and then she admitted, after being asked, that she had smoked marijuana prior to coming to court that day. The trial judge held her in criminal contempt for “misbehavior in the presence of the court” per 18.2-456 for testifying while voluntarily intoxicated, and sentenced her to 10 days in jail. After she had been remanded into the sheriff’s custody, the Commonwealth asked the Court to reconsider the contempt finding, claiming that her demeanor was her normal state of being and asking for the Court to appoint counsel for her. The Court declined both requests, stating that she admitted to smoking marijuana before testifying and the Court stated that this was one of the facts on which he was basing his finding of contempt. Subsequently, there were multiple filings to vacate the Court’s contempt order. The Court entered several “clarifying” orders outlining his basis for the contempt finding. The final order, entered 4 months after the original contempt finding, stated that he did NOT rely on Orndoff’s admission of marijuana use but rather, based his finding ONLY on what he observed in the courtroom.

In her appeal, Orndoff argued that it was error for her to be found in summary contempt as this violated her rights to due process of law.

RULE: When a judge’s knowledge of the contemptuous conduct is acquired from the testimony of others, or even from the confession of the accused, this would not justify conviction without a trial in which there was an opportunity for the accused to present a defense. (quoting *In re Oliver*, 333 U.S. at 275).

RULE: In a summary contempt proceeding, the court may ask questions to clarify some detail...but the answers cannot serve as the trial court’s factual basis for finding any essential element of the alleged contemptible conduct.

RULE: To punish summarily for contempt, “the court-disturbing misconduct must not only occur in the court’s immediate presence,...the judge must have personal knowledge of it acquired by his own observation of the contemptuous conduct.”

HELD: On June 6, 2023 the Court of Appeals held that since the trial Court said it did not consider the admission of smoking marijuana in finding Orndoff in contempt, the Court of Appeals did “not regard the admission as evidence underlying the contempt conviction.” The Court of Appeals also found that since the trial court did not rely on the admission, the evidence observed in open court did not include any “causal nexus” between the behavior and the allegation of intoxication. “The alleged out-of-court use of some intoxicant(s) was an essential element of the alleged contemptible conduct of testifying while intoxicated.” In addition, the trial court relied on the proffer of counsel that there was an agreement that certain facts would not be mentioned, so this information was also beyond the judge’s personal knowledge. Thus, the conviction for summary contempt was improper.

*July 11, 2023 the Attorney General filed a petition to set aside the June 6, 2023 judgement, and a rehearing *en banc* was granted.

HELD: On February 6, 2024, upon a rehearing *en banc*, the Court of Appeals was EVENLY DIVIDED and thus, the June 6, 2023 opinion was withdrawn and the decision of the trial court remains in effect.

Parham v. Commonwealth, 60 Va. App. 450 (2012)

Court of Appeals of Virginia

During a child custody case in JDR, after the judge stated that she was granting sole custody to the other party (father), Parham (mother) was handed a summons for a child support matter and balled the paper up. When the custody order was handed to her, she balled that paper up as well. The court found her in contempt and drafted a certificate of the conviction that included the circumstances of the offense, per 18.2-459. Parham appealed the conviction. In circuit court, she conceded that she was upset at the court's ruling and agreed that balling up the first summons was contemptuous on her part. She denied balling up the second set of paperwork, claiming that the JDR judge made that up and she simply folded it. She also acknowledged that she had a prior conviction for perjury. The circuit court affirmed the JDR Court's finding of summary contempt.

On appeal, Parham claimed the evidence was insufficient as a matter of law, because her actions cannot fairly be described as misbehavior that obstructed or interrupted the administration of justice. She also claimed that the circuit court violated her due process right to confrontation by considering the certificate filed by the JDRDC.

RULE: "Where misconduct occurs in open court, the affront to the court's dignity is more widely observed, justifying summary vindication." (*Pounders v. Watson*, 521 U.S. 982 (1997)).

RULE: Courts "do rightly expect a disrespectful litigant to keep her insolent thoughts to herself and to refrain from exhibiting contemptuous behavior in open court. Such petulance breeds defiance of, and disdain for, the judiciary, while accomplishing absolutely nothing toward addressing the alleged error that provoked the litigant to misbehave in the first place."

RULE: Virginia Code 18.2-456(1) applies to misbehavior in the presence of the court OR misbehavior so near thereto as to obstruct or interrupt the administration of justice.

RULE: The 6th Amendment guarantees a defendant's right to confrontation *at trial*.

HELD: Balling up the paper was intended to display her contempt for the court's decision and thus was misbehavior in the presence of the court.

HELD: Misbehavior in the presence of the court can be summarily punished under 18.2-456(1) without a showing of an obstruction or interruption of justice.

HELD: One found guilty of summary contempt is not entitled to a trial, therefore there is no right to cross-examine the judge.

Scialdone v. Commonwealth, 279 Va. 422 (2010)

Supreme Court of Virginia

During a felony jury trial before Judge West, attorney Scialdone attempted to introduce a document into evidence that had been printed out from a Yahoo account. The username appearing near the top of the page was “westisanazi.” The document was not admitted for other reasons. Later a similar document, with a different username, was proffered for admission, but the court suspected it was just an altered version of the prior document. The Court proceeded to call in Scialdone’s business partner Taylor, their law school intern Mr. Jones and their secretary, separately, swore them in and asked them questions about the documents and the username. Jones admitted to the username being his, and he said he created it when he was upset about some of the court’s rulings. The court stated she was holding everyone in contempt and ordered more documents to be brought in for review and comparison with the proffered documents. She sent the secretary back to the law office to print new versions from the same computer. The trial judge told the three (Scialdone, Taylor, Jones) that she was holding them in summary contempt and then recessed for the day. She allowed the criminal trial to proceed without further mention of contempt until it was concluded, when she sentenced them to 10 days in jail and a \$250 fine (each). However, the judge did not enter any written order at that time. The next day, appeals were filed and motions to stay were filed. The motions to stay set forth their objection to the summary proceedings. The Court considered the motions and held a hearing where the judge denied the motions to stay and then entered a final order.

On appeal to the Court of Appeals, the panel held that due process rights were violated and remanded the matter for further proceedings. Upon a rehearing *en banc*, the Court of Appeals held that they had failed to preserve for appeal their due process argument because they had failed to object to the nature of the proceedings and had never specifically asked for the relief they claim was improperly denied.

The issues to be determined by the Virginia Supreme Court were (1) the holding that they failed to preserve their argument for appeal and (2) the propriety of the summary contempt proceeding.

RULE: Virginia Supreme Court Rule 5:25 states in part: “No ruling of the trial court... will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable this Court to attain the ends of justice...”

RULE: A party must state the grounds for an objection so that the trial judge may understand the precise question or questions he is called upon to decide.

RULE: An objection must be made...at a point in the proceeding when the trial court is in a position to both consider the asserted error and rectify the effect.

HELD: The purposes of Rule 5:25 were satisfied when the circuit court had notice of the defendant's objections (via the motions to stay) and had the opportunity to rule intelligently on those objections

RULE: Direct contempt occurs when the contemptible conduct is committed in the presence of the court, when all of the essential elements of the offense are personally observed by the judge.

HELD: As to Scialdone and Taylor, the court erred in employing a summary proceeding when it was necessary to question four witnesses under oath and obtain additional documents before making the finding. As to Jones, the court erred here as well because the court did not know who had created and used the username until inquiring, the act of creating the username occurred outside of the court's presence, and it was not Jones that presented to document to the court.

*NOTE: "Circumstances will undoubtedly arise when a trial court observes the essential elements of the contemptible conduct, but nonetheless needs to ask questions to clarify some detail."

Virk v. Clemens, Record No. 1903-22-4 (August 13, 2024)

Court of Appeals of Virginia

Virk was an attorney representing a party in a pending divorce matter. During a hearing on an emergency pretrial motion, Virk repeatedly asked the trial judge to provide a justification for his ruling. The record appears to indicate that she interrupted the judge multiple times, was warned that he thought she was being disrespectful, but continued to ask the judge to clarify his ruling. The judge instructed his deputy to take Virk into custody and declared he was imposing a penalty of \$250 and one night in jail. The clerk prepared a commitment order wherein she wrote the sentence and in the description wrote "civil contempt." The judge did not sign this order or prepare any other order.

On appeal, Virk tried to argue that the judge's oral order and the resulting form filled out by the clerk did not comport with the requirement of 18.2-456 to specify which subsection was implicated, and this was her basis for claiming that the actions of the judge, the clerk and the deputy were not valid.

The Court opined that "whether a circuit court has issued a contempt order comporting with the law is a separate question from whether a circuit court possesses the authority to hold an individual in contempt and to have court officials comply with this authority.

NOTE: This case has some helpful analysis on the validity of oral orders.

***For ease of reference, not all quotations herein are noted/cited/exact. I take no credit for any such quotations and encourage you to look to the original text for exact quotations.**