No. S19A1476

IN THE

Supreme Court of Georgia

SYLVESTER SCOTT TAYLOR,
Appellant,

v.

THE STATE,
Appellee.

On Direct Appeal from the Superior Court of Fulton County in 14SC127341 and 14CP143657

♦

Brief of Appellant

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STATEMENT OF THE CASE

This is a timely direct appeal from a final order sanctioning the Appellant by detention for 230 days for contempt of court for his outburst at the conclusion of 4 April 2014 preliminary hearing in the Fulton Superior Court:

> The Appellant: I ain't killed that bitch. That bitch killed herself. She committed suicide. Y'all keeping me locked up because that bitch committed suicide.
>
> The Court: Wait a minute.
>
> The Appellant: I'm educated. I went to the University of Georgia. I studied motherfucking law. That bitch killed her motherfucking self. You know that. She put the needle in her own motherfucking arm. That bitch committed motherfucking suicide. Y'all going to keep me motherfucking locked up while the bitch committed suicide. Ain't nobody raped that bitch. Nobody hit that bitch. Check this. Ain't nobody say motherfucking nothing to me, man. I ain't tell nobody shit. Y'all can kiss my black ass.
>
> R. at 1, 22; Prelim Tr. at 54:20–55:11.

The court took no immediate action but deferred contempt proceedings until 9 April 2014. *See* Contempt Tr. at 2.

JURISDICTION

The contempt proceedings occurred during a prosecution for murder, for which the Appellant was indicted shortly after his

outburst. R. at 3. As a collateral order, the contempt judgment itself is subject to appeal separately from the underlying (and still pending) murder charges[1] but the underlying charges nevertheless dictate appellate jurisdiction. *See State v. Murray*, 286 Ga. 258, 259 (2009). That jurisdiction resides exclusively in this Court. *Id.*; Ga. Const. Art. VI, § VI, ¶ III(8).

ENUMERATIONS OF ERROR

1. Because it withheld immediate sanction and deferred judgment, the court below owed the Appellant adequate notice of the charges in advance of his opportunity to be heard. According to the record, the only specification of the charges was in the contempt order itself. The court thus denied the Appellant the process of law that he was due.

2. The Appellant disrupted the court once in a single continuous outburst that lasted no more than a minute. That single outburst framed the appropriate unit of punishment. It was error for the court to sanction the Appellant multipliciously,

1. Concerns over the Appellant's mental competency have stayed any trial. R. at 179, 426, 433, 462, 506, 515, 521. Although the contempt judgment is more than five years old, there is no question of mootness here. The court ordered "that the service of [the 230 days] shall not begin until the defendant is otherwise eligible to be released, whether … by the posting of bond, by final disposition of the charges …, or for any other reason." R. at 22.

imposing cumulative punishments based on the number of vulgar words he used.

3. If it were within the power of the court to impose cumulative terms exceeding 180 days in jail, the Appellant would have been entitled as a matter of due process to trial by jury, which he neither was accorded nor did he waive.

ARGUMENT

1. In the circumstances of deferred judgment, due process of law required that the Appellant be given adequate notice of the contempt charges prior to his opportunity to be heard.

A court's power to act immediately and summarily to vindicate its dignity and authority for affronts committed directly in its face cannot be doubted. Such a power arises from the necessity to maintain order in the courtroom so that the court can accomplish its business. Necessity relieves the court of the customary process—formal notice and an opportunity to be heard in defense or mitigation before a detached factfinder. *Cooke v. United States*, 267 U. S. 517, 534–36 (1925); *In re Terry,* 128 U. S. 289, 308–09 (1888); *Garland v. State*, 99 Ga. App. 826, 830–32 (1, 2) (1959).

But "[t]he usual justification of necessity … is not nearly so cogent when final adjudication and sentence are postponed …." *Taylor v. Hayes*, 418 U. S. 488, 497 (1974) (ftn. and citation omitted). In that

event, the basic strictures of due process are restored, and those strictures include notice of the charges in advance of an opportunity to be heard.[2] *Id.; Groppi v. Leslie*, 404 U. S 496, 502–03 (1972); *In re Oliver*, 333 U. S. 257, 274–76 (1948).

The record does not reflect that the Appellant was accorded any prior notice of the precise charges.[3] The only notice appears in the 9 April 2014 adjudication order itself: (1) "[r]aising his voice loudly in open court …" and (2) his "use of no less than ~~twelve~~ thirteen (KSW) profane or obscene words in the courtroom …." R. at 22.

There could hardly be much dispute over just what the Appellant uttered during his outburst, but prior notice entails more than mere allegations of fact.[4] He was entitled to notice that the court was proceeding on more than a single act of "misbehavior," on misbehavior for *each* vulgar word he used. The Appellant was entitled to know that he would be facing jeopardy of 13 or 14 consecutive 20-day terms. Short

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2. Where the judge has become personally involved, due process may require a hearing before a different judge. *Mayberry v. Pennsylvania*, 400 U. S. 455, 465–66 (1971). The Appellant's language, however, was not directed to the judge, and there is no other basis to suggest that it was inappropriate for her to conduct the hearing.

3. The contempt hearing began with counsel "ask[ing] the court to elaborate on what section it is going forward with." Contempt Tr. at 2:24–25. The primary defense offered was that the Appellant's outburst, at the conclusion of the preliminary hearing, did not disrupt the court's business and that his language had not been directed toward the judge herself. *Id.* at 8–10.

4. *Strickland v. Washington*, 466 U. S. 668, 685 (1984), defined a "fair trial [as] one in which evidence subject to adversarial testing is presented to an impartial tribunal on *issues defined in advance of the proceeding*" (emphasis added).

of such notice, the trial court's contempt proceeding against the Appellant was a nullity. Appellant's contempt conviction therefore should be reversed.

2. The Appellant's single, continuous, disruptive outburst of no more than a minute formed the appropriate "unit of punishment," so the court below erred by sanctioning him multipliciously, imposing cumulative punishments based on the number of vulgar words he used.

The power of the courts to inflict summary punishment for contempt (as the court below could unquestionably have done upon the Appellant's outburst on 4 April 2014) is limited to "[m]isbehavior … in [their] presence … or so near thereto as to obstruct the administration of justice." OCGA § 15-1-4(a)(1). A court's power to punish for contempt is limited to $1,000 in fines, imprisonment for up to 20 days, or both. OCGA § 15-6-8(5). Sections 15-1-4(a)(1) and 15-6-8(5) together make clear that the appropriate unit of punishment for contempt of court is each episode of obstructive *"misbehavior,"* not the particular number of vulgarities that misbehavior happened to comprise. For the statutory restraints to have any meaning, a single, continuous outburst cannot be divided as though each vulgar (or loud) word were a separate obstruction of justice that could be stacked up in consecutive 20-day terms.

The federal statutory authority for the power to punish as contempt is cast in the same terms as Georgia's: It lies for

"[m]isbehavior of any person in [the court's] presence or so near thereto as to obstruct the administration of justice …." 18 USCA § 401. In *Murphy v. United States*, 326 F. 3d 501 (4th Cir. 2003), the question was the appropriate unit of prosecution when the invective occurred during a continuous diatribe. The only difference with this case at bar was that the court immediately cited the defendant and then cited him twice more as he persisted. *Id.* at 502–03. Applying the rule of lenity, the Circuit Court resolved the § 401's ambiguity in Murphy's favor. *Id.* at 504–05. It also noted that this result was consistent with a number of state court opinions, which it collected. *Id.*; *see also State v. North*, 978 A. 2d 435, 439–40 (Vt. 2009) (although three insults were each distinct vulgar acts, they were part of the same continuous contemptuous episode, so the appropriate punishment was concurrent sentences); *Mockbee v. State*, 80 N. E. 3d 917, 921–23 (Ind. Ct. App. 2017) (multiple acts occurring within a single, uninterrupted episode constituted a single contempt); *Butler v. State*, 330 So. 2d 244, 245 (Fla. Dist. Ct. App. 1976) (continued vilifications that were part of a single outburst constituted a single contempt). *Compare Smith v. State*, 855 A. 2d 339, 341–43 (Md. 2004) (sustaining separate contempt judgments where they "did not result from an extended, uninterrupted colloquy with the court; rather, they resulted from distinct acts, separated in time and focus by at least several minutes of

unremarkable, normal discussions or exchanges arguably relevant to the purposes of the proceeding").

The general rule in Georgia points in this same direction. See, for example, *McKee v. State*, 275 Ga. App. 646, 650 (2005), where the Court of Appeals vacated additional counts of cruelty to a child predicated on each day the defendant failed to procure her medical treatment: "Without evidence of a legislative intent to allow multiple punishments for the same course of conduct …, acts that constitute a continuous course of conduct are not punishable separately." If the legislature intends otherwise, it knows how to say it. *See Coates v. State*, 304 Ga. 329, 332 (2018).

3. If *arguendo* it were within the court's power to impose cumulative terms exceeding 180 days in jail, the Appellant would have been entitled as a matter of due process to trial by jury, which he neither was accorded nor did he waive.

The right to trial by jury attaches to contempt prosecutions which are not "petty offenses" because they result in detentions exceeding 180 days. *Bloom v. Illinois*, 391 U. S. 194, 207–08 (1968). Even if contempts in series are each punished by detention under six months, the right to trial by jury attaches if the terms are to be served consecutively to exceed that period. *Codispoti v. Pennsylvania,* 418 U. S. 506, 516–18 (1974).

Here, the cumulative penalty imposed was 230 days. The record does not reflect that the prosecution discharged its burden of

demonstrating that the Appellant waived jury trial. *Balbosa v. State*, 275 Ga. 574, 575 (2002). Nor may such a waiver be presumed from a silent record. *Carnley v. Cochran*, 369 U. S. 506, 515 (1962). And in the absence of a trial by jury or proper waiver thereof, the court below lacked the power to sentence the Appellant as it did.

CONCLUSION

This Court could correct the legal and constitutional errors arising from the multiplicious sentences and the detention exceeding 180 days simply by vacating all but one judgment of contempt or reducing the term. Vacatur, however, would not resolve the prior-notice deficiency in the proceedings below. This Court should therefore reverse the judgment below outright.

[signature page follows]

Respectfully submitted on July 10, 2019 by

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CERTIFICATE OF SERVICE

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