

In the Supreme Court of the State of Georgia

SYLVESTER SCOTT TAYLOR,)	
<i>Appellant,</i>)	Case No. S19A1476
)	
versus)	On appeal from the
)	Fulton County
THE STATE OF GEORGIA,)	Superior Court.
<i>Appellee.</i>)	

BRIEF OF APPELLEE
(The District Attorney)

Hon. PAUL L. HOWARD, JR. 371088
District Attorney of Fulton County

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SUMMARY OF ARGUMENT

Under the circumstances presented, the State agrees there was only one act of contempt which occurred. This is an inappropriate case in which to determine the proper unit of prosecution standards in contempt hearings given that agreement.

Given the State’s agreement that only one act of contempt occurred here, Taylor’s first issue (that Taylor should have been given notice the court was considering contempt as to each separate use of profanity) and third issue (that Taylor should have had a jury trial based on the length of the contempt order) are moot.

Part 1: BACKGROUND INFORMATION

STATEMENT OF THE CASE

Appellant SYLVESTER SCOTT TAYLOR's statement of the case is accurate. However, the State adds the following.

At the contempt hearing, the preliminary hearing judge noted the following:

The important aspect of this is, that I recognize tha[t] under ordinary circumstances I would have held Mr. Taylor in contempt immediately and designated—issued my sentencing determination at that time. However, out of respect for you, Mr. Thierry, and your interest in reviewing any law that you may have wanted to address concerning this matter, we delayed my ultimate determination on this, as well as we delayed my sentencing on this situation.

Contempt Tr. at 3. The interactions thus described are not contained within the reporter sections of the preliminary hearing transcript.

SPECIAL NOTE: PASSAGE OF TIME

Even though it is not contained within the record, the undersigned also notes the following as it is relevant to the rather egregious passage of time, especially given that in the end the State agrees.

In the months after joining this Office in August 2015, the undersigned attempted to move this case, but was unable to do so. The undersigned periodically returned to the case without a change in that status. At a recent status hearing, the undersigned noted among other things that he had been unable to obtain a transcript of the preliminary hearing, and the status hearing judge indicated the court would engage in its own attempts to locate the transcript. (The undersigned was not aware at that time that there were even two separate hearings involved.) It was not until after the record was transferred to an appellate court that the undersigned became aware of the filing of, and received an opportunity to read, the transcripts of either the preliminary or contempt hearing. That this delay has been caused in part because a transcript of the preliminary hearing—which existed almost immediately and was used at the contempt hearing, see Contempt Tr. at 2—but was not filed with the Clerk, is dismaying.

To the extent that this description of matters not contained within the record is inappropriate or undesirable, the undersigned apologizes. Given more recent questions about the passage of time in appeals cases, the undersigned decided to err on the side of providing information.

Part 2: ARGUMENT & CITATION TO AUTHORITY

I. The State agrees there was only one instance of contempt.

In his second enumeration of error, Taylor argues that the lower court erred in sentencing Taylor for 13 acts of contempt rather than one. The State agrees.

When Taylor began speaking inappropriately, the lower court told Taylor to hold on, but Taylor ignored the court and continued with a statement that included multiple instances of profanity. On these unique circumstances, the State agrees that Taylor's subsequent statements represented one act of contempt rather than multiple acts.¹

This Honorable Court should VACATE and REMAND the case to the trial court with direction to resentence Taylor for only one instance of criminal contempt.

* * *

Given that the State agrees, and given the unique circumstances presented, the State submits this case is not an appropriate vehicle for the Court to consider and issue broader rules on the unit of prosecution involved in instances of contempt.

¹ The transcript indicates a representative of the State was present but did not speak or take any position at the contempt hearing.

II. Appellant Taylor's remaining issues are moot.

In his first enumeration of error, Taylor argues that the lower court erred in failing to provide him with notice that it was considering citing him for multiple acts of contempt rather than one.² In his third enumeration of error, Taylor argues that the lower court erred in sentencing Taylor to incarceration of more than 180 days without affording him a jury trial.

Given its agreement that the lower court erred in sentencing Taylor for more than one instance of contempt and that this Court should direct the lower court to resentence Taylor for only one such instance,³ the State submits that both Taylor's first and third enumerations are MOOT.

² To the extent that Taylor's first claim asks for an outright reversal, the State notes the following. Taylor does not argue that his statements as a whole were not an act of contempt or that he was not on notice of at least a single act of contempt. Moreover, as noted in the background information, above, the Court specifically gave Taylor's attorney time to do research and that attorney presented research on the issue of separate judgements. See Contempt Tr. at 9. This suggests Taylor was on actual notice of the lower court's intentions, even if that notice was not on the record.

³ A single instance of criminal contempt is punishable "by fines not exceeding \$1,000.00, by imprisonment not exceeding 20 days, or both[.]" OCGA § 15-6-8 (5).

Part 3: CONCLUSION

Wherefore, for the reasons listed above, the STATE OF GEORGIA prays this Honorable Court will VACATE the lower court's order and REMAND the case with instructions to resentence Appellant SYLVESTER SCOTT TAYLOR as to one instance of contempt only.

Respectfully submitted,

s:\ KEVIN ARMSTRONG
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Senior Assistant District Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August 2019, true copies of this Brief of Appellee (the District Attorney) were served upon the following person by placing same in the U.S. mail with proper postage paid and addressed to: Mr. JIM BONNER Jr., 104 Marietta Street NW, Suite 600, Atlanta, Georgia 30303.

s:\ KEVIN ARMSTRONG
KEVIN ARMSTRONG 987456
Senior Assistant District Attorney