

STATE OF MICHIGAN
COURT OF APPEALS

In re Contempt of MARC E. HART

Wayne County Prosecutor,

Appellant,

UNPUBLISHED
December 17, 1996

v

No. 114988
Recorder's Court
LC No. 00157375

Recorder's Court Judge,

Appellee

Before: Griffin, P.J., and T.G. Kavanagh* and D.B. Leiber**, JJ.

PER CURIAM.

Assistant prosecuting attorney Marc E. Hart appeals by right from a Recorder's Court order of contempt entered against him for his conduct during the trial of *People v James Jackson* in January, 1989. Hart was sentenced to a \$250 fine, or 1 ½ days in jail if he failed to pay the fine. We affirm.

Hart contends that the trial court abused its discretion in convicting him. Pursuant to MCL 600.1711; MSA 27A.1711, a trial court may summarily punish contempt which occurs in the immediate view and presence of the court. *In re Contempt of Robertson*, 209 Mich App 433, 436; 531 NW2d 763 (1995). This direct form of contempt requires that the trial court have personal knowledge of all the facts necessary to convict. *Id.* at 438.

The order states that the trial court convicted Hart of contempt because Hart had been warned to stop making comments to the jury but continued to do so, and because Hart made a comment to defense counsel that, "I'm ready for you." The latter was apparently a reference to an incident, during the trial, in which the trial court had sustained an objection by Hart to a defense question. When the defense counsel began to rephrase, Hart made the statement.

* Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

** Circuit judge, sitting on the Court of Appeals by assignment.

Although the meaning and context of the “I’m ready for you” comment are ambiguous, the record contains many comments, which were not included in questions, made by Hart during his examinations of witnesses. The trial court repeatedly advised Hart that he was not permitted to make comments, warned him that he would be found in contempt if he did not cease making comments and warned him again before ultimately fining him \$250. Although this Court must be sensitive to the balance between a trial judge’s obligations and vigorous advocacy, Hart’s conduct transgressed that balance because it was a wilful pattern which continued despite repeated warnings from the trial court. Compare, *People v Kurz*, 35 Mich App 643, 651; 192 NW2d 594 (1971), and *In re Burns*, 19 Mich App 525, 526; 173 NW2d 1 (1969). The trial court did not abuse its discretion in convicting Hart of contempt.

Affirmed.

/s/ Richard Allen Griffin
/s/ Thomas Giles Kavanagh
/s/ Dennis B. Leiber