

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
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Granted Appeal Summary

Case

KATIE ORNDOFF v. COMMONWEALTH OF VIRGINIA
(Record Number 240394)

From

The Court of Appeals of Virginia

Counsel

Thomas K. Plofchan (Westlake Legal Group, PLLC) for appellant.

Jason S. Miyares, Erika L. Maley, Craig Stallard, Graham K. Bryant, and Rick W. Eberstadt
(Office of the Attorney General) for appellee.

Assignments of Error

1. The Court of Appeals erred as a matter of law as the trial judge, given the circumstances of the case, could not find contempt or punish for contempt.
 - a. There is no evidence in the record of any contemptuous misbehavior by Orndoff and observations of Orndoff's delivery of testimony and posture do not identify or constitute "misbehavior."
 - b. There is no evidence of intoxication as there is no evidence of Orndoff having consumed "sufficient quantities" of narcotics, as found by the judge, or any other intoxicating substance, to render a person intoxicated, nor the timing of such consumption so as to draw any inference of intoxication.
 - c. There is no evidence that at any time Orndoff intended to undermine the authority of the judge.
2. The Court of Appeals erred as a matter of law as the trial judge, given the circumstances of the case, could not find contempt summarily or punish for summary contempt.
 - a. The judge engaged in impermissible investigation and impermissively considered evidence and statements about activity that did not occur in the courtroom.

- b. The judge’s order does not accurately reflect the facts as set forth in the record as established by video and audio recording, nor do the orders reflect the procedure of the case as established by the record, specifically she was NOT “at various times, incoherent, circuitous, inattentive and refused to obey court orders and admonitions to refrain from testifying to the incarceration status of the Defendant Phillips in front of the jury;” She also did NOT “repeatedly rock forward in her chair toward the front of the witness desk; repeatedly rock back in her chair to an almost prone physical position, at one point almost falling out of her chair;” further, her speech was NOT lethargic and rambling, and was NOT at times alternating unnaturally between high and low tones.”
 - c. There is no evidence of Orndoff not adhering to the “agreement of the parties” as there is no evidence that Orndoff was ever informed of any agreement between the parties; and there is no evidence that Court ever gave Orndoff specific orders to which she did not adhere.
3. The Court of Appeals erred as a matter of law as the trial judge denied Orndoff due process under the 5th, 6th, and 14th Amendments of the U.S. Constitution and Article 1, Sections 8, and 11 of the Virginia Constitution.
 - a. In sentencing Orndoff to a period of incarceration, the judge’s actions denied Orndoff essential Constitutional and statutory protections.
 - b. The finding of Orndoff in summary contempt was not made beyond a reasonable doubt based on the judge’s own language of its findings, and no rational trier of fact could have found the essential elements of contempt beyond a reasonable doubt.
 - c. The judge improperly determined it was not required to exclude all reasonable theories of innocence before finding Orndoff intoxicated and in contempt.
 - d. The judge ordered that Orndoff be assaulted and maliciously wounded via a post-conviction blood test that involved the puncturing of her skin.
 - e. The judge ordered the public dissemination of Orndoff’s protected health information.
4. The Court of Appeals erred as a matter of law as the trial judge, in finding Orndoff in summary contempt, did not comply with the law in doing so.
 - a. The judge improperly conflated the issues of credibility with competency.