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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> JOHN DOE INVESTIGATION)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 09-MR-1028
)	
)	Honorable
(Sheila Brown and Marissa Brown,)	Joseph G. McGraw,
Defendants-Appellants).)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justice Schostok concurred in the judgment.
Justice Birkett dissented.

ORDER

- ¶ 1 *Held:* Because the trial court abused its discretion in denying defendants' emergency petition to continue the grand jury subpoenas, we vacated the trial court's order finding defendants in indirect criminal contempt. Thus, we reversed the trial court.
- ¶ 2 On December 17, 2009, the State subpoenaed defendants, Sheila Brown and Marissa Brown, to appear before a grand jury proceeding on December 23, 2009, regarding a shooting the defendants witnessed. On December 21, 2009, defendants filed an emergency petition to continue the proceedings, arguing that they had previously purchased airline tickets to travel to Mississippi on December 23, 2009, to visit relatives for the holidays; the trial court denied the request. Following

the hearing, defendants' counsel filed a notice of appeal challenging the trial court's order. On the advice of counsel, defendants traveled to Mississippi and did not appear before the grand jury.

¶ 3 Thereafter, the State filed petitions for indirect criminal contempt against defendants. Following a hearing, the trial court entered an order finding defendants in indirect criminal contempt for failing to appear before a grand jury on December 23, 2009. The trial court fined defendants \$500 each. Defendants now appeal, contending that the State failed to prove beyond a reasonable doubt that their failure to appear was willful. For the following reasons, we vacate the trial court's order holding defendants in indirect criminal contempt and reverse its judgment.

¶ 4 I. Background

¶ 5 The record reflects that, on August 24, 2009, defendants witnessed two Rockford police officers shoot Mark Anthony Barmore, resulting in his death. Defendants received subpoenas to appear before a Winnebago County grand jury on September 11, 2009, but were later advised by the State that they would not have to appear. In October 2009, defendants purchased airline tickets to travel to Mississippi on December 23, 2009, to spend the holidays with family. On December 17, 2009, the State again subpoenaed defendants. The subpoenas required defendants to testify before the grand jury on December 23, 2009.

¶ 6 On December 21, 2009, defendants filed an emergency petition to continue the grand jury subpoenas. Defendants noted that the grand jury term had been extended until January 6, 2010, and that they would be available to testify on that date. Defendants noted that they purchased airline tickets "two months ago" to travel to Mississippi to visit relatives. Defendants argued that, because they had arranged to travel on December 23, two days before Christmas and one of the busiest travel days of the year, no other travel options were available other than flying standby, which would not guarantee that they would arrive in Mississippi in time for the holidays.

¶ 7 The State countered that January 6, 2010, was not convenient because the two attorneys handling this matter, the State's Attorney and one of his deputies, were scheduled to be on trial in an unrelated matter. The State argued that defendants were aware that they were involved in this investigation and that, when they made their travel arrangements, they made no effort to share their plans with the State.

¶ 8 During the course of the hearing, the trial court noted that defendants' emergency petition "really boils down to who's going to be inconvenienced here." The State argued that it was not possible for another attorney from the State's Attorney's office to present defendants to the grand jury on January 6, 2010, even though the grand jury was already set to convene on that date. The trial court further inquired into whether another attorney in the State's Attorneys office could be assigned to present the witnesses to the grand jury "knowing that you've got a couple weeks to *** prepare." The State's Attorney responded that he was:

"[C]oncerned about what decision comes that day by the grand jury, that's the completion of the proceedings, and the responsibilities of this office to report that to the community, as the community has taken great interest in this matter, and I think that presents something that *** I could not assign [this matter] to an assistant [S]tate's [A]ttorney to handle."

Thereafter, the following colloquy occurred:

"THE COURT: Maybe you could flesh that out a little more for me. I know you said that there's community interest in the case and there would need to be some sort of I guess *** feedback on that day; is that what you're thinking?"

MR. BRUSCATO [State's Attorney]: I would anticipate this matter would require that.

THE COURT: Are you saying *** as the elected State's Attorney[,] you feel it's your

responsibility to do that on that day?

MR. BRUSCATO: Yes, sir. That would interrupt the trial.

MR. SAULTER [Defense Attorney]: I would just suggest even if another [a]ssistant [S]tate's [A]ttorney presented the witness to the grand jury, that would not preclude Mr. Bruscato from then making comments to the community following the presentation and still making the presentation he feels is required by his office.

MR. BRUSCATO: I don't disagree with counsel. I'm just indicating not if I'm in trial. I can't be two places at one time.

THE COURT: Am I accurate in understanding you, you being in trial on [January 6, 2010] is going to interfere with your ability to present the outcome of the grand jury's work on the 6th because you're going to be in trial anyway?

MR. BRUSCATO: Yes.

THE COURT: So you are saying that you wanted to have resolution of the grand jury's work in hand, so to speak, after the 23rd?

Mr. BRUSCATO: It was our expectation, yes."

The trial court denied defendants' emergency petition. The trial court opined:

"I think in the interest of justice or what's really paramount, we talk in terms of convenience and so forth, it's not that. I think everyone is served, everyone's interest are served [*sic*], and justice's interest is served by presenting all the evidence in *** a continued or continuous format to the grand jury so that it's not old, it's not stale, they don't necessarily have to remember what they heard on a prior date, they can consider everything and deliberate and hopefully reach a verdict."

The trial court concluded, “I don’t think it really is of such an [e]mergent nature that I want to interfere or postpone the work that the grand jury will be doing on that day in this case.”

¶ 9 On December 22, 2009, defendants filed a notice of appeal of the trial court’s denial of their emergency petition. On December 28, 2009, the State filed petitions for rules to show cause against defendants for failing to appear at the December 23, 2009, grand jury proceedings. On January 4, 2010, the State filed petitions for adjudication of criminal contempt against defendants. On January 11, 2010, defendants filed motions to stay the contempt proceedings in the trial court pending appellate review. Defendants also filed motions to substitute the trial court judge and raised other jurisdictional challenges. On January 20, 2010, the trial court denied each of defendants’ then-pending motions. On February 17, 2010, defendants filed an emergency motion to stay the trial court proceedings pending appellate review, pursuant to Illinois Supreme Court Rule 305(d) (eff. July 1, 2004). On February 19, 2010, the trial court stayed the proceedings. Thereafter, this court dismissed defendants’ appeal for lack of jurisdiction (see *In re John Doe Investigation*, 2011 IL App (2d) 091355).

¶ 10 On March 21, 2012, a bench trial commenced with respect to the State’s petitions for criminal attempt. The State presented evidence by way of stipulation. The parties stipulated that defendants were represented by counsel between September 2009 through January 2010, and that counsel appeared before the trial court on December 21, 2009. The parties stipulated that defendants filed an emergency petition to continue the grand jury proceedings on December 21, 2009, and that the subpoenas were received by defendants’ attorneys. The subpoenas required defendants’ presence on December 23, 2009. The parties stipulated that defendants’ attorneys were present at the December 21, 2009, hearing, when the trial court denied defendants’ emergency petition. The parties further stipulated that Mr. Bruscato and an assistant State’s Attorney appeared at the December 21,

2009, hearing, and those attorneys presented witnesses to the grand jury on December 23, 2009, regarding the shooting. The parties stipulated that defendants did not appear pursuant to the December 17 subpoenas. After the trial court admitted the stipulations, the State rested.

¶ 11 Defendants first called Sheila Brown. Sheila testified that her attorney advised her in September 2009 that she was subpoenaed to appear before a grand jury on September 11, 2009, but that she was later advised by her attorneys that she did not have to appear on that date. Thereafter, in September and October, she made arrangements to travel to Mississippi to visit her 66-year-old parents and 89-year-old grandmother. Sheila testified that she conferred with her attorney before making the arrangements, and he advised that “it shouldn’t be a problem.” Sheila testified that she paid \$790 for airline tickets for her and Marissa, and that she heard nothing from the State regarding the grand jury until December 17, 2009. Sheila testified that she discussed the December 17, 2009, subpoena with her attorney, and he advised that, if the trial court denied their emergency petition, they would have an opportunity to appeal that denial, so they would still be able to go to Mississippi. Sheila testified that, after the emergency petition was denied, her attorney told her in the courtroom hallway that “he was going downstairs to file for an appeal,” and that they would still be able to go to Mississippi because the trial court would no longer have jurisdiction. Sheila testified that she met with her attorney later that day and that he advised that he filed for an appeal. Therefore, according to her attorney, the trial court no longer had jurisdiction and defendants would be able to travel to Mississippi. Sheila testified that she “didn’t want to do anything that wasn’t legal,” so she again asked her attorney if they could travel, and her attorney reassured her that everything would be fine. Sheila testified that, based on that conversation, she and her daughter flew to Mississippi. Sheila testified that she did not willfully intend to hinder, obstruct, or embarrass the trial court.

¶ 12 Sam Adam, Jr. testified next on defendants’ behalf. Adam testified that he was an attorney

in Chicago and that his law practice was 99% criminal. Adam estimated that he had tried more than 300 cases and had filed between 25 and 30 briefs before appellate courts. Adam testified that he represented defendants in this matter. Adam testified that, on December 17, 2009, he advised Sheila that he accepted a subpoena for them to appear before the grand jury on December 23, 2009. Adam testified that he was aware of their travel plans and that he told Sheila that he would “find out what [he] could do to continue the subpoenas.” Adam testified that, on December 21, 2009, he advised Sheila that, if the emergency petition was granted, they could go to Mississippi. He testified that he researched options if the trial court denied the petition and concluded that, if defendants immediately appealed the denied petition, jurisdiction would rest with the appellate court, and advised defendants that they would be able to go to Mississippi. Adam testified that, after the trial court denied the emergency petition, he explained the trial court’s ruling and that he would file a notice of appeal, which would stay the trial court proceedings. Adam testified that he advised his clients to return to their church and that he would meet them there after he filed the notice of appeal. Adam testified that, after he filed the notice of appeal and met defendants at their church, he explained that his reading of the law, his experience, and the lawyers that he had spoken with all agreed that once the notice of appeal had been filed, jurisdiction rested with the appellate court. Adam testified that he reassured his clients that “everything is on stay until the appellate court makes its findings and that [defendants] need not go on December 23rd.” Adam testified that he did not advise his clients to intentionally violate a court order. The defense rested after Adam’s testimony.

¶ 13 Following closing arguments, the trial court found defendants guilty. The trial court stated that, with respect to defendants’ emergency petition, the trial court “found that it was not an emergent nature sufficient to justify interfering or postponing the work of the [g]rand [j]ury.” The trial court orally concluded that the State had proved the elements of indirect criminal contempt

against defendants beyond a reasonable doubt. The trial court imposed a \$500 fine on each defendant. Defendants timely appealed.

¶ 14

II. Discussion

¶ 15 The only issue in this appeal is whether the State proved defendants guilty beyond a reasonable doubt of indirect criminal contempt for failing to appear at the December 23, 2009, grand jury proceedings. Defendants argue that the State failed to establish that they willfully ignored the trial court's order to appear at the grand jury proceedings because they relied in good faith on the advice of their attorney, who advised them that the filing of their notice of appeal divested the trial court of jurisdiction until resolution of their appeal. The State counters that acting in good faith reliance on advice from counsel is not a defense to indirect criminal contempt and that the evidence established beyond a reasonable doubt that defendants willfully disregarded the trial court's order.

¶ 16 Contempt adjudications are an important tool that are inherent to the powers of the court. *City of Chicago v. Le Mirage, Inc.*, 2011 IL App (1st) 093537 ¶ 48. Contempt proceedings are *sui generis* and vary with respect to the different types of contempt—civil or criminal and direct or indirect. *Id. In re Marriage of Betts*, 200 Ill. App. 3d 26, 43-60 (1990), provides a comprehensive review of the various types of contempt proceedings. As discussed below, we are concerned only with indirect criminal contempt, on which our analysis will focus. See *Le Mirage, Inc.*, 2011 IL App (1st) 093537, ¶ 48.

¶ 17 “Criminal contempt is conduct which is calculated to embarrass, hinder, or obstruct a court in its administration of justice or derogate from its authority, thereby bringing the administration of law into disrepute.” *People v. Weatherspoon*, 52 Ill. App. 3d 151, 153 (1977). Criminal contempt is retrospective in nature and consists of punishing a prohibited act or failing to do what has been ordered. *People v. Covington*, 395 Ill. App. 3d 996, 1006 (2009). The rationale for imposing

punishment for contempt is the same as for misdemeanor criminal proceedings, *i.e.*, retribution; deterrence; and vindication of norms of socially acceptable conduct such as respect for judges and court officials, orderly judicial proceedings, obedience of court orders, and not committing fraud upon the courts. *Le Mirage, Inc.*, 2011 IL App (1st) 093537, ¶ 49.

¶ 18 In addition, criminal contempt is considered “indirect criminal contempt” when the contempt proceedings involve contemptuous acts that occur outside the presence of a judge. *Betts*, 200 Ill. App. 3d at 47-48 (distinguishing indirect criminal contempt from direct criminal contempt, the latter being defined as “contemptuous conduct which occurs in the presence of a judge”). Here, defendants’ alleged contemptuous conduct—failing to appear before the grand jury on December 23, 2009—occurred outside the presence of the trial court, and therefore, defendants were charged with indirect criminal contempt. See *Le Mirage, Inc.*, 2011 IL App (1st) 093537, ¶ 48. To sustain a finding of indirect criminal contempt, the State must prove beyond a reasonable doubt the existence of a court order and a willful violation of that order. *Covington*, 395 Ill. App. 3d 996 at 1008.

¶ 19 Finally, our supreme court has cautioned that, while a court has the inherent power to punish for contempt, “ ‘its exercise is a delicate one and care is needed to avoid arbitrary or oppressive results.’ ” *People v. Ernest*, 141 Ill. 2d 412, 421 (1990) (*quoting Cooke v. United States*, 267 U.S. 517, 539 (1925)). Because a court’s contempt power is subject to abuse, it must be closely examined. *People v. Geiger*, 2012 IL 113181 ¶ 26 (citing *People v. Simac*, 161 Ill. 2d 297, 306, 315 (1994)).

¶ 20 A necessary component of our close examination includes a review of the trial court’s December 21, 2009, order denying defendants’ emergency petition. Although the parties did not present this analysis in their briefs, we believe that determining whether the trial court erred in denying defendants’ emergency petition—which formed the basis of the trial court’s subsequent

contempt finding—is consistent with our supreme court’s directive to closely examine a trial court’s contempt finding because contempt powers can be subject to abuse. See *Geiger*, ¶ 26.

¶ 21 In this case, we conclude that the trial court erred in finding defendants guilty of indirect criminal contempt because it abused its discretion in denying defendants’ emergency petition to continue the grand jury subpoenas. “ ‘It is well settled that the granting or denial of a continuance is a matter resting in the sound discretion of the trial court, and a reviewing court will not interfere with that decision absent a clear abuse of discretion.’ ” *People v. Martinez*, 2011 IL App (2d) 100498, ¶ 54 (quoting *People v. Walker*, 232 Ill. 2d 113, 125 (2009)). A trial court abuses its discretion when its ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Richardson*, 348 Ill. App. 3d 796, 801-02 (2004).

¶ 22 We conclude that the trial court’s determination to deny defendants’ emergency petition was arbitrary and unreasonable. We first note that the same grand jury panel was already scheduled to convene on January 6, 2010, and defendants advised the trial court that they would be able to testify on that date. As a result, the continuance requested by defendants would not have delayed the proceedings beyond the duration of this particular grand jury’s jurisdiction. *Cf. People v. Burkert*, 7 Ill. 2d 506, 513 (1956) (holding that the trial court did not abuse its discretion in denying the defendant’s request for a continuance because the continuance requested would have extended the proceedings beyond the duration of the grand jury’s jurisdiction).

¶ 23 Further, contrary to the trial court’s remarks during the hearing, defendants’ emergency petition did not merely present a matter of convenience. Rather, defendants purchased airline tickets to travel to Mississippi to visit relatives for the holidays. By doing so, they entered into a contract with a third party and had a clear and unmistakable monetary interest. See *Stough v. North Central Airlines*, 55 Ill. App. 2d 338, 340-43 (1965) (noting that the plaintiffs could have brought a breach

of contract claim against an airline carrier after the plaintiffs were not allowed to board the plane due to inclement weather and plane-capacity limitations). Even more compelling, defendants had not been contacted by the State since the time they were advised that they would not need to appear before the grand jury on September 11, 2009. Thus, when they purchased their airline tickets in October, they had no reason to suspect that they would be subpoenaed again more than two months later to testify before a grand jury just two days before Christmas, and on the same day they had previously planned to travel.

¶ 24 Moreover, the trial court's comment that "justice's interest is served by presenting all the evidence in *** a continued or continuous format to the grand jury so that it's not old, it's not stale" constituted speculation. The State did not indicate that the grand jury would be hindered if it did not hear the testimony continuously. Rather, the State's Attorney was only concerned about himself and his deputy being on trial in another matter on January 6, and as a result, he would not be able to brief the community on that date regarding the conclusion of the grand jury proceedings. Thus, the record fails to support the trial court's belief that "justice's interest" is served if the grand jury heard the testimony in a "continuous format." See generally *People ex. rel. Hines v. Hines*, 236 Ill. App. 3d 739, 746 (1993) (noting that the trial court abused its discretion in part by relying on the defendant caring for three foster children in reducing his child support when there was "no support in the record for the belief that the trial court's decision on child support payments should be affected by [the] defendant's foster children").

¶ 25 Finally, the State's argument that it could not find another attorney in its office to present defendants to the grand jury on January 6, 2009, is incredulous. Licensed attorneys in good standing are presumed to be competent. See generally *People v. Clark*, 47 Ill. App. 3d 624, 630 (1977) (noting that counsel is presumed competent when a trial court appoints a member of the bar in good

standing to represent the accused in a criminal proceeding). There is simply no plausible explanation for why the State's Attorney could not have delegated this matter to another attorney in his office, particularly when, as the trial court noted, that attorney would have had from December 21, 2009, until January 6, 2010, to prepare. Instead, as the transcript from the December 21, 2009, hearing made clear, the State's only concern was not having the grand jury proceedings interfere with the State's Attorney's and *one* deputy's trial schedule.

¶ 26 Citing *People v. Givens*, 237 Ill. 2d 311, 323 (2010), the dissent posits that we should not review the trial court's underlying order denying defendants' emergency petition because the propriety of that order was not raised by the parties on appeal. On our review of the record, we note that defendants raised this issue in their prior appeal that we dismissed for lack of jurisdiction.

¶ 27 More important, our review of the trial court's order denying the emergency petition is in accord with *Givens*. In that case, the reviewing court reversed a defendant's conviction after concluding that the defendant was denied the effective assistance of counsel because her attorney did not challenge a search on the basis that the person who consented to the search lacked the authority to do so. *Id.* at 322. That issue, however, was not raised by the parties on appeal; rather, appellate counsel argued only that counsel was ineffective for withdrawing her motion to suppress where the evidence adduced at trial cast doubt on whether the person voluntarily consented to the search of the entire apartment. *Id.* Our supreme court vacated the reviewing court's order, concluding that the court's raising of the authority-to-consent issue *sua sponte* violated the principal that, other than for assessing subject matter jurisdiction, a reviewing court should not *normally* search the record for unargued and unbriefed reasons to reverse a trial court's judgment. *Id.* at 324-25. (Emphasis in original.) However, our supreme court cautioned, "We agree with the general proposition that a reviewing court does not lack authority to address unbriefed issues and may do so

in the appropriate case, *i.e.*, where a clear and obvious error exists in the trial court proceedings.” *Id.* at 325. We maintain that the trial court made a clear and obvious error when it arbitrarily denied defendants’ emergency petition for reasons not advanced by the parties or supported by the record. Therefore, *Givens* permits us to review the trial court’s order denying defendants’ emergency petition despite the parties’ failure to brief it in this specific appeal.

¶ 28 The dissent states that, while we “may disagree with the trial court’s balance of the interests here, it clearly did not abuse its discretion.” In reaching this conclusion, the dissent notes that the trial court questioned the attorneys about possible alternatives; considered defendants’ suggestion that the grand jury panel could hear the testimony a week later; and that, after extending apologies, the trial court concluded that the request was not of such an emergent nature to postpone the work the grand jury would be doing on December 23, 2009.

¶ 29 Contrary to the dissent’s conclusion, the trial court’s reasoning for denying the petition was not advanced by the parties or supported by the record. As outlined above, the State’s Attorney’s sole concern was that he and his top deputy had to be in trial on January 6, 2010, and the State’s Attorney could not “be two places at one time.” Instead of denying defendants’ emergency petition for the reasons advanced by the State during the hearing, the trial court denied the petition on the basis that everyone’s interests would be served if the grand jury heard the testimony continuously, so that the testimony would not be “old” or “stale.” However, the trial court was not presented with any evidence, nor did it hear any argument, on how defendants’ testimony would have been “old” or “stale” had it been heard on January 6, 2010, as opposed to December 23, 2009.

¶ 30 Put more simply, the trial court went beyond the record to find a basis to deny defendants’ emergency petition. Holding defendants in contempt for violating a trial court order entered without sufficient support in the record is a clear abuse of a court’s inherent contempt power. Preventing

such abuse is consistent with our supreme court's directive that, because a court's exercise of its abuse powers is delicate, care is needed to avoid arbitrary or oppressive results. *Ernest*, 141 Ill. 2d at 421.

¶ 31 In closing, we express our concern over the manner in which this case was transpired. What began as a simple and reasonable request to reschedule a grand jury appearance turned into a litigation of its own, apart from what should have been the focus of the State's Attorney and the trial court—the circumstances of a person's death by two police officers. Defendants, mere observers to an individual's death, faced their own potential incarceration when their alleged wrongdoing can be summarized as follows: (1) being available to appear before the grand jury on September 11, 2009, pursuant to the original subpoena, only to be told by the State that they did not need to appear; (2) after hearing nothing further from the State, purchasing airline tickets to travel on December 23, 2009, to visit family for the holidays; and (3) after being subpoenaed again, advising the State and the trial court that they would be available to appear on January 6, 2010, when the jury was already set to convene. More concisely, defendants' alleged wrongdoing amounted to nothing more than being unable to rearrange their holiday travel plans, which they made in good faith and expended a considerable sum, on less than a week's notice to accommodate the State's trial calendar.

¶ 32

III. Conclusion

¶ 33 Because we conclude that the trial court abused its discretion in denying defendants' emergency petition to continue the grand jury proceedings, we vacate the trial court's order finding defendants in indirect criminal contempt.

¶ 34 Judgment reversed. Order vacated.

¶ 35 JUSTICE BIRKETT, dissenting.

¶ 36 I respectfully dissent. The majority begins their analysis by stating that the "only issue in this

appeal is whether the State proved defendants guilty beyond a reasonable doubt of indirect criminal contempt for failing to appear at the December 23, 2009, grand jury proceedings.” See *supra*, ¶ 15. Defendants do not contest that they disobeyed a valid court order. Their defense at trial was that their disregard of the trial court’s order was not willful because they relied in good faith upon the advice of their attorney. Rather than addressing this issue, which is the sole issue raised on appeal, the majority examines the December 21, 2009, order denying defendant’s emergency petition. The majority concludes that the trial court’s denial of defendant’s request to continue the grand jury proceedings was an abuse of discretion and on that basis alone vacates the trial court’s orders finding defendants in indirect criminal contempt.

¶ 37 The Illinois Supreme Court recently stated that “Illinois law is well settled that other than for assessing subject matter jurisdiction, ‘a reviewing court should not normally search the record for unargued and unbriefed reasons to *reverse* a trial court judgment.’” (Emphasis in original.) *People v. Givens*, 237 Ill. 2d 311, 323 (2010) (quoting *Saldena v. Wirtz Cartage Co.*, 74 Ill. 2d 379, 386 (1978)). As the court noted in *Givens*, “the United States Supreme Court recently addressed the propensity of a reviewing court ruling upon issues *sua sponte*.” *Id.* In *Greenlaw v. United States*, 554 U.S. 237, 243-44 (2008), the court admonished:

“In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.

To the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a *pro se* litigant’s rights. [Citation.] But as a general rule, “[o]ur adversary system is designed around the premise that

the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.’ [Citation.] As cogently explained:

‘Courts do not, or should not, sally forth each day looking for wrongs to right.

We wait for cases to come to us, and when they do we normally decide only questions presented by the parties. Counsel almost always know a great deal more about their cases than we do ***.’ [Citation.]”

¶ 38 The majority concedes that the parties did not present any analysis in their briefs whether the trial court erred in denying defendants’ emergency petition. See *supra*, ¶ 20. The majority concludes that an analysis of this issue is “consistent with our supreme court’s directive to closely examine a trial court’s contempt finding because contempt powers can be subject to abuse. See *Geiger*, ¶ 26.” I have examined *Geiger* and find nothing in that opinion that supports the majority view. The court in *Geiger* was examining a sentence imposed for contempt, not the order that was disobeyed. In *Geiger*, the defendant conceded that he had committed direct criminal contempt when he refused to testify. On appeal, he argued that the trial court’s sentence of 20 years “was excessive and grossly disproportionate to the nature of the offense.” *Geiger*, 2012 IL 113181, ¶ 15. The majority cites *People v. Ernest*, 141 Ill. 2d 412 (1990), for the proposition that the inherent powers of a court to punish for contempt should be exercised delicately “and care is needed to avoid arbitrary or oppressive results.” *Id.* at 421; see *supra*, ¶ 19. In *Ernest*, the contemnor was held in direct criminal contempt for causing a “discovery subpoena to be issued to a presiding judge once that judge had ruled that such a subpoena would be improper.” *Id.* at 413. The Illinois Supreme Court also rejected the defendant’s argument that the contempt proceeding did not satisfy the requirements of due process. *Id.* at 428. Finally, the majority references *People v. Simac*, 161 Ill. 2d 297 (1994) in citing to *Geiger*. *Simac* involved a defense attorney who was held in direct criminal contempt for

substituting an individual other than his client, a criminal case defendant, at counsel's table "without the court's permission or knowledge." *Id.* at 299. The finding of contempt was affirmed by this court and our supreme court. *Id.* at 314. Thus, none of the cases cited by the majority stand for the proposition that "a necessary component of our close examination includes a review of the trial court's December 21, 2009, order denying defendants' emergency petition." See *supra*, ¶ 20.

¶ 39 The contemnors in this case were accorded the constitutionally mandated procedural requirements applicable to other criminal proceedings – notice, a fair hearing, and an opportunity to be heard. *People v. Ramsell*, 266 Ill. App. 3d 297, 299 (1994). The evidence established that the contemnors willfully disobeyed the circuit court's order requiring their appearance before the grand jury. As the trial court correctly observed, even if a reviewing court determines that its order was "unwise" "**** that does not negate the duty of the contemnors ****" to obey the order. It is a well established principle that "[o]ne is justified in refusing to comply with a court order *only if* such order is utterly void, but it is no defense in a contempt proceeding to show that the order was merely erroneous." *Faris v. Faris*, 35 Ill. 2d 305, 309 (1966) (citing *Cummings-Landau Laundry Machinery Company v. Koplín*, 386 Ill. 368 (1944)).

¶ 40 In *Cummings-Landau Laundry Machine* the Illinois Supreme Court said, "[t]he principle is of universal force that the order or judgment of a court having jurisdiction is to be obeyed, no matter how clearly it may be erroneous." *Cummings-Landau Laundry Machinery Company*, 386 Ill. at 385. The court also noted that "[i]t would certainly be an innovation and establish a dangerous precedent to hold that the power of a court to punish for contempt for a violation of its injunctive, or other, orders, is dependent upon the affirmance of such orders by the highest court to which an appeal might be taken." *Id.* at 386. There is no question that the trial court has inherent supervisory powers over the grand jury. Witnesses are compelled to attend a grand jury through the court process. "If

a witness fails to attend, the power, as well as the duty, to compel his attendance, is vested in the court.” *People v. Sears*, 49 Ill. 2d 14, 28 (1971).

¶ 41 Even applying the majority’s novel approach, the record in this case does not support the conclusion that the trial court abused its discretion in denying the contemnors’ emergency petition to continue the grand jury proceedings. The matter before the grand jury was the fatal shooting of an unarmed man by uniformed police officers inside a building when the contemnors were providing education services to a group of children. The contemnors allegedly witnessed the shooting. The attorneys for the contemnors were in contact with the State’s Attorney’s office as early as September 9, 2009. Mr. Sam Adam, Jr. testified that he had accepted service of a grand jury subpoena for the contemnors for a September 11, 2009 appearance, but was later told by either someone in the State’s Attorney’s office or co-counsel, Mr. Keenan Saulter, that the contemnors would not be needed for that date. Mr. Adam Jr. then contacted the contemnors and told them “they did not need to appear at the grand jury at that time.” On December 17, 2009, Mr. Adam Jr. accepted grand jury subpoenas for the contemnors for their appearance for the grand jury on December 23, 2009. When Mr. Adam Jr. informed Sheila Brown of the subpoena, she told him about the scheduled trip. Mr. Adam Jr. testified that he told Sheila that he would file an emergency petition to continue the subpoena and that he thought he had a good chance of success. Mr. Adam Jr. and co-counsel Mr. Saulter went ahead with the plan to file the emergency petition and on December 21, 2009, appeared before the trial court. Mr. Adam Jr. testified that even before the hearing on the petition that he told the contemnors that even if the judge denied the petition, “I have researched this, and I have found in my opinion, that this is an appealable order and that we immediately appeal that, the jurisdiction will rest in the appellate court, the appellate court will decide whether or not Judge McGraw was right in his findings, and you do not have to appear before the grand jury until we have

the appellate court find that.” During the hearing on the emergency petition to continue neither Mr. Adam Jr. nor Mr. Saulter informed the court that they intended to appeal its order, nor did either attorney request a stay. Likewise, neither attorney argued that the denial of the petition would be an abuse of discretion.

¶ 42 During the hearing on the petition the record demonstrates that the court questioned the parties about the alternatives. It asked counsel, “if there’s any other accommodation that can be made for any inconvenience they may suffer.” The trial court considered Mr. Adam Jr.’s suggestion that a second panel of the grand jury a week later could hear the matter. Mr. Bruscato informed the court that “substantial preparation has gone in for the 23rd.” In denying the motion, the court stated, “I want to extend my apologies to Pastor Brown ***.” The court concluded that the request was not “of such an Emergent nature that I want to interfere or postpone the work that the grand jury will be doing on that day in this case.” The court stated, “[t]hey will be compelled to attend.”

¶ 43 The scheduling and compelling the attendance of witnesses before the grand jury is essential to the administration of justice. While the majority may disagree with the trial court’s balance of the interests here, it clearly did not abuse its discretion. “An abuse of discretion will be found only when the trial court’s ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.” *People v. Hall*, 195 Ill. 2d 1, 20 (2000).

¶ 44 The majority takes issue with the way this case was handled by the State’s Attorney. The majority characterizes the emergency petition as a “simple and reasonable request” which turned into “litigation of its own.” See supra ¶ 26. The majority concludes that “defendants’ alleged wrongdoing amounted to nothing more than being unable *** to accommodate the State’s trial calendar.” See supra ¶ 26. The State’s Attorney has every right to schedule grand jury presentations around his trial schedule. The State’s Attorney, “who is the county’s chief law enforcement officer,

coordinates the work of the grand jury and the police.” *People v. Bauer*, 402 Ill. App. 3d 1149, 1155 (2010) (quoting *January 1996 Term Grand Jury*, 283 Ill. App. 3d 883, 891 (1996)). Unfortunately, he did not know when he scheduled the matter for December 23, 2009, that the contemnors planned to be out of town. The court ordered them to appear and they willfully violated that order. As the trial court found, this conduct prevented the grand jury from hearing what they had to say “thereby casting a cloud over any conclusion that the grand jury may have reached.”

¶ 45 I do not understand the majority’s critique of my dissent in saying, “[c]ontrary to the dissent’s conclusion, the trial court’s reasoning for denying the petition was not advanced by the parties or supported by the record.” First, it is well settled that a reviewing court may affirm a trial court’s judgment on any grounds which the record supports, even if those grounds were not argued by the parties. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 74. Second, the trial court’s reasoning is supported by the record. The reason the parties did not argue the trial court’s reasoning for denying the emergency petition is because contemnors did not argue abuse of discretion at trial or on appeal *in this case*. Of course, counsel for contemnors is well aware of the rule that reversal of a judgment cannot be demanded upon a ground not submitted to the trial court and upon which it did not and was not asked to decide. *People v. Adam*, 15 Ill. App. 3d 669, 670 (1973).

¶ 46 The majority relies upon the “clear and obvious error” exception to the party presentation principle in criminal cases to justify their decision to decide this case on an un-briefed issue, relying on *People v. Givens*, 237 Ill. 2d 311 (2010). See *supra* ¶ 27. In *Givens*, the supreme court noted that “the issue identified *sua sponte* by the appellate court did not amount to obvious error *controlled by clear precedent*, and for that additional reason, the appellate court erred in addressing the issue.” (Emphasis added.) *Id.* at 326. In this case there is *no* precedent cited by the majority for their holding that the trial court’s denial of the petition to continue was an abuse of discretion.

¶ 47 Returning to the sole issue raised on appeal, the advice of counsel defense, I see no reason to disturb the trial court's findings. "Advice of counsel is not a defense to the act of contempt, although it may be considered in mitigation of punishment." *United States v. Remini*, 967 F.2d 754, 757 (1992) (quoting *United States v. Goldfarb*, 167 F.2d 735, 735 (2d. Cir. 1948)). Accord *United States v. Underwood*, 880 F.2d 612, 618-19 (1st Cir. 1989); *United States v. Armstrong*, 781 F.2d 700, 707 (9th Cir. 1986). The trial court carefully considered the arguments and concluded that "when the parties left the courtroom there was no ambiguity, no uncertainty about what the court had said," The court concluded that the "willfulness is patent, it is obvious. The Browns knew what was expected of them, they did not do that." The court aptly characterized Mr. Adam Jr.'s advice as "unfounded and ill-fated." For all of the foregoing reasons I disagree with my colleagues. I would affirm the trial court.