2016 IL App (1st) 133561-U

FOURTH DIVISION
May 5, 2016

No. 1-13-3561

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. ACC 13-0170
	)	
MARKO PANTELIC,	)	Honorable
	)	Diane Gordon Cannon,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justice Cobbs concurred in the judgment.
Justice Howse dissented.

O R D E R

¶ 1 *Held*: Defendant's criminal contempt of court was direct and could be imposed summarily; defendant's conduct in disrupting the courtroom proceedings warranted his contempt conviction. Defendant's sentence of 120 days' imprisonment is reduced to 20 days' imprisonment.

¶ 2 Defendant Marko Pantelic appeals from his summary conviction for direct criminal contempt of court based upon his disruption of courtroom proceedings. On appeal, defendant

contends that (1) the evidence was not sufficient to support the circuit court's finding of direct criminal contempt; (2) defendant's due process rights were violated when he was denied a hearing and the opportunity to present a defense; (3) the judge's contempt power was arbitrarily imposed; and (4) reversible error occurred when the circuit court judge failed to recuse herself. We affirm the direct criminal contempt conviction and modify the sentence.

¶ 3 The events leading to defendant's conviction for direct criminal contempt occurred on the morning of September 6, 2013, in a courtroom of the Criminal Division of the Circuit Court of Cook County. Defendant apparently had come to the courtroom in support of another individual who had a case pending before the court.[1] The record on appeal contains only a portion of the proceedings on that date, which came after the conduct at issue:

"THE COURT: Excuse me, sir. Take that man into custody. Stay right there, sir.

[Attorney Maksimovich]: Judge, I don't think he speaks English well. He speaks Serbian.

THE COURT: Well, call for a Serbian interpreter, will you.

MR. MAKSIMOVICH: I speak the language, Judge.

THE COURT: I don't think you want to go into the lockup with him.

What is your name?

MR. PANTELIC: Marko Pantelic.

THE COURT: Spell your first name and your last name for the court reporter.

MR. PANTELIC: M-a-r-k-o and P-a-n-t-e-l-i-c.

[1] Defendant's briefs assert that he accompanied a friend, Bratislav Kovacevic, to court because Kovacevic had a case pending in the courtroom on that date. Defendant has attached as an appendix to his brief the transcript of the hearing held that morning in Kovacevic's case, although the transcript is not part of the certified record before us.

THE COURT: Sir, you were sitting in this courtroom talking, the deputy told you to stop talking, you continued to talk. I told you to leave the courtroom. You've returned to this courtroom. You're in contempt of court. You're remanded to the custody of the Cook County Sheriff's Department, no bail. Please prepare the contempt petition. Do you have a lawyer?

MR. PANTELIC: No.

THE COURT: I'll appoint a lawyer from the public defender's office to represent you.

MR. PANTELIC: I'm so sorry. I'm first time in court. I didn't know --

THE COURT: Okay. Well, we'll see you back here -- It's no bail. We'll see you back here on September 25th.

If there's anybody here who can take his personal effects please wait or else they'll be in the lockup. No bail. You're going to jail, sir.

THE DEFENDANT: I'm going to jail now?

THE COURT: Correct.

(Other cases were called and heard.)

THE COURT: The ACC on Marco P-a-n-t-e-l-i-c is ACC 13017, remanded, no bail, Cook County Department of Corrections on a direct contempt of court, by agreement 9-25.

(Other cases were called and heard.)

THE CLERK: Marko Pantleic [*sic*].

MR. MAKSIMOVICH: Good morning, your Honor. For the benefit of the record Attorney Michael Maksimovich on behalf -- I'm filing my appearance on behalf of Marko Pantleic [*sic*], Judge.

At this time I would be asking the court if I can talk to my client --

THE COURT: Sure.

MR. MAKSIMOVICH: -- who is in custody.

[Assistant public defender]: Your Honor, the public defender's office is asking leave to withdraw on this case.

THE COURT: Leave is granted to the office of the public defender to withdraw.

MR. MAKSIMOVICH: Thank you, judge.

(Other cases were called and heard.)

THE CLERK: Marko Pantleic [*sic*].

THE COURT: Mr. Pantleic [*sic*], I'm granting leave of the office of the public defender to withdraw and counsel to file his appearance. I'll see you on 9-25.

MR. MAKSIMOVICH: Judge, at this time can I ask to reconsider his bond?

THE COURT: No bail. See you then."

¶ 4 The September 6 proceedings concluded with a discussion between the court and counsel about a continuance date. The court would only consider a date of September 25 or later, so counsel ultimately agreed to September 25.

¶ 5 The record includes a transcript for September 25, 2013, when defendant was returned to court. He was represented on that date by Michael Maksimovich and a second attorney, Robert Marcus. The following proceedings took place:

"THE CLERK: Marko Pantelic, in custody.

THE INTERPRETER: Toni Martic, T-o-n-i, M-a-r-t-i-c, official Serbian interpreter.

MR. MARCUS: For the record Robert Marcus for Marko Pantelic who has the benefit of a Serbian interpreter as well as Michael Maksimovich, M-a-k-s-i-m-o-v-i-c-h.

THE COURT: On September 6, 2013, the defendant was in court without a case pending. I believe I was told support for someone else. He did not have a case pending.

He was told to stop talking not once but twice while court was in session while this Court was taking a plea with a private attorney here and a defendant before the Court.

Twice the defendant was told to stop talking by the deputy sheriff. The defendant refused to stop talking. He was told to leave the courtroom. He uttered a racial slur at my sheriff. He, upon leaving -- upon leaving the courtroom. Moments later he walked back into the courtroom.

At that time, for the third time, I stopped the proceedings with the private attorney that was before me on an unrelated matter with a young man taking a plea of guilty on unrelated charges and held the defendant in direct contempt of court and he was taken into custody.

Direct contempt of this Court, twice disobeying the deputies assigned to my courtroom, twice disobeying my orders to leave, returning upon being asked to leave the courtroom, the sentence of the Court is 120 days in Cook County jail. He will receive credit for 20 days. Good luck to you, sir.

MR. MARCUS: Your Honor, we would request that we could make a statement in mitigation.

THE COURT: Sure.

MR. MARCUS: Your Honor, my client is here with the benefit today of a translator. It's my understanding that on the last court date, as this Court is now aware, he doesn't understand the English language very well.

THE COURT: He spoke English perfectly on that date. If he has forgotten how to speak English or if the derogatory statement word that he made means something else in Serbian, I will hear you, counsel.

But for this man was processed through the jail speaking English all the while, his name, his address and everything else, I don't know if you were here that day, but I was here that day, counsel.

MR. MARCUS: I was not here that day, your Honor.

THE COURT: I was here. James Murphy was not here. This assistant state's attorney --your name, sir?

MR. REYNA: For the record, assistant state's attorney Mariano Reyna.

THE COURT: -- was here and my sheriffs were here.

MR. MARCUS: Your Honor, at this point, are you going to be issuing a written order.

THE COURT: No.

MR. MARCUS: Thank you, your Honor.

THE COURT: You're welcome.

MR. MAKSIMOVICH: If we can talk to our client.

THE COURT: Pardon me.

MR. MAKSIMOVICH: If we can speak to our client.

THE COURT: Do you need the interpreter?

MR. MAKSIMOVICH: I speak the language."

¶ 6 As a threshold matter, we note that the certified record on appeal includes only the two above-cited transcripts and common law record. This court may not consider documents that are not part of the certified record on appeal. *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 14 (2009). Defendant improperly seeks to submit other documents by including in his brief an appendix containing documents that are not part of the certified record. Specifically, his appendix contains (1) an article, *Cook County Judge a Loose Cannon*, by David Protess, published in *The Huffington Post*, from which defendant has quoted extensively in his briefs, and (2) a transcript of the proceedings on September 6, 2013, in *People v. Bratislav Kovacevic,* No. 13-11735, the hearing involving the individual whom defendant claims he accompanied to court. Attachments to appellate briefs that are not contained in the certified record on appeal may not be used to supplement the record and are not properly before this court. *Id.* A reviewing court is required to determine the issues before it on appeal solely based on the record made in the trial court. *People v. Carini*, 357 Ill. App. 3d 103, 105 n.1 (2005).

¶ 7 On appeal, defendant first contends the evidence was not sufficient to support his conviction of direct criminal contempt. Defendant's argument is two-fold: he asserts that (1) not all of the facts relating to his conduct were within the personal knowledge of the court, and (2) it was not shown that his conduct was willful or intentional.

¶ 8 Direct criminal contempt is contemptuous conduct that occurs in the presence of the judge, with all of the elements of the offense coming within the judge's own personal knowledge. *People v. Simac,* 161 Ill. 2d 297, 306 (1994). Direct criminal contempt is restricted to acts seen

and known by the court, and not resting upon opinions, conclusions, presumptions or inferences. *Id.* The most readily recognizable examples of direct contempt are criminal contempts consisting of outbursts during court proceedings or other disruptions of judicial proceedings. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 47 (1990). "Causing a commotion which requires the court to suspend the hearing of a cause has been held to constitute direct criminal contempt of court." *People v. Wilson*, 35 Ill. App. 3d 86, 88 (1975). Criminal contempt "may also consist of disobedience of a court order." *Betts*, 200 Ill. App. 3d at 45 (citing *People v. Graves*, 74 Ill. 2d 279, 284-85 (1979); *People v. Townsend*, 183 Ill. App. 3d 268, 270-71 (1989)). Direct criminal contempt may be found and punished summarily because all elements come within the court's own immediate knowledge. *Simac*, 161 Ill. 2d at 306. Thus, the usual safeguards of procedural due process are not required. *People v. L.A.S.*, 111 Ill. 2d 539, 543 (1986). "A finding of criminal contempt is punitive in nature and is intended to vindicate the dignity and authority of the court." *Simac*, 161 Ill. 2d at 305-06. The standard of review for direct criminal contempt is whether there exists sufficient evidence to support a finding of contempt and whether the judge considered facts outside of the judge's personal knowledge. *People v. Hixson*, 2012 IL App (4th) 100777, ¶ 11, citing *Simac*, 161 Ill. 2d at 306.

¶ 9 The certified record before us contains (1) the transcript of the court proceedings on September 6, 2013, which covers only what occurred as of the moment when defendant was taken into custody after the conduct at issue had occurred; and (2) the transcript of the proceeding on September 25, 2013, when defendant was brought before the court again. The record does not contain a transcript of the moments when defendant's conduct at issue occurred. An appellant has the burden to present a sufficiently complete record of the proceedings below to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). Therefore, any doubts

which may arise from the incompleteness of the record must be resolved against the appellant, and we must presume that the trial court acted properly. *Id.* at 392. "In the absence of a complete record, a reviewing court presumes that the order entered by the trial court was in conformity with the law and had a sufficient factual basis." *Moenning v. Union Pacific R.R. Co.*, 2012 IL App (1st) 101866, ¶ 38.

¶ 10 What record we do have before us does demonstrate sufficient evidence to support the contempt finding. The September 25 transcript contains an account of the specific acts on which the contempt order was based, and the source came from the judge herself who stated on the record what had occurred in her presence while she was engaged in an unrelated matter: "[Defendant] was told to stop talking not once but twice while court was in session. *** Twice the defendant was told to stop talking by the deputy sheriff. The defendant refused to stop talking. He was told to leave the courtroom. He uttered a racial slur at my sheriff. He, upon leaving -- upon leaving the courtroom. Moments later he walked back into the courtroom. At that time, *for the third time, I stopped the proceedings* ***." (Emphasis added.) The obvious conclusion to be drawn is that the reason the judge was required to suspend the court proceedings multiple times was because she was personally aware of defendant's conduct and of the fact that defendant was being reprimanded by a deputy sheriff to stop talking. It became necessary to order defendant to leave the courtroom. Despite that order, defendant returned to the courtroom moments later, and the court was required to halt the proceedings a third time and order defendant to be placed in custody for contempt of court. It is clearly apparent from the record that there was contemptuous conduct when defendant returned to the courtroom just moments after the judge herself ordered defendant to leave. The standard of review was met when the judge's recitation of these facts provided sufficient evidence to support the judge's finding that

defendant was in direct criminal contempt of court, and defendant's actions were personally observed by the judge and resulted in disruption of courtroom proceedings.

¶ 11 Defendant attributes his conduct in court to a "language barrier," "limited understanding of English," and "a factual question as to his language skills." Significantly, he does not contend that he did not comprehend either that he was to keep silent or that he was not to come back into the courtroom after he was ejected. His refusal to keep quiet even when his conduct twice brought reprimands from courtroom officers and caused the business of the court to come to a halt, and his departure from the courtroom when the judge personally ordered him to do so, belie his claim that he did not understand English well. The September 6 transcript reveals that defendant responded to the court's inquiries when asked his name, and spelled his first and last names for the court reporter. When asked directly by the court if he had an attorney, defendant answered, "No." Defendant spoke to the court in English, saying, "I'm so sorry. I'm first time in court. I didn't know - -". Moreover, when informed by the court that he was going to jail, he queried: "I'm going to jail now?" Even if the judge improvidently concluded defendant was fluent in English, nevertheless it was based on the court's knowledge, *i.e.*, what she personally observed on September 6 when she spoke with defendant.

¶ 12 Defendant further argues that his "language abilities (or lack thereof) go directly to the heart of his ability to understand the proceedings and the events giving rise to his contempt conviction." He suggests that this is analogous to cases involving questions as to a defendant's mental capacity, and he offers two authorities in support of his argument. In the first of those authorities, *People v. Willson*, 302 Ill. App. 3d 1004 (1999), the defendant came before the court on a motion for a fitness hearing, during which the court found him in direct criminal contempt of court. On appeal, the appellate court ruled that since there was a *bona fide* question of the

defendant's mental fitness at the time of his allegedly contemptuous conduct, the circuit court could not have summarily determined he was capable of forming the requisite intent to commit direct criminal contempt. Significantly, the appellate court concluded: "However, we do not agree with the defendant's position that the court's subsequent determination of his unfitness precludes a finding that the defendant was guilty of direct criminal contempt." *Id.* at 1006. In *People v. Meyers*, 352 Ill. App. 3d 790 (2004), defendant was convicted of aggravated battery and cited for contempt, and he appealed. On appeal, this court observed the record was replete with evidence indicating that a substantial issue as to defendant's mental capacity existed. The court reversed defendant's aggravated battery conviction, vacated the contempt finding, and remanded for a fitness hearing "and also [to] afford defendant an opportunity to present a defense to the contempt citation." *Id.* at 800-01. These two cases do not hold that mental unfitness is necessarily a defense to a charge of contempt of court. Analogously, lack of language fluency is not necessarily a defense to a charge of contempt of court. Here, the judge personally communicated with defendant and determined that he was able to understand the proceedings. Under the facts surrounding defendant's actions, which included bringing the courtroom proceedings to a halt three times, defendant's alleged limited English was neither a reason nor an excuse for his conduct in disrupting the court.

¶ 13 Next, defendant contends that the evidence demonstrated his conduct was not willful or intentional "because this was his first time in court, he did not know he was violating court rules and orders, did not understand the court's orders and instructions and accordingly could not appreciate the nature of his conduct." He contends his sole intent in returning to the courtroom after being removed by a deputy sheriff was merely to retrieve his keys.

¶ 14 A court must find that the alleged contemnor's conduct was willful before citing him with contempt. *Hixson*, 2012 IL App (4th) 100777, ¶ 15, citing *Simac*, 161 Ill. 2d at 307. However, in direct contempt proceedings, a specific manifestation of contemptuous intent is not required; such intent may be inferred from the nature of the contemptuous act and surrounding circumstances. *People v. Ernest*, 141 Ill. 2d 412, 424 (1990); *Betts*, 200 Ill. App. 3d at 49.

¶ 15 Defendant refers us to *Petrakh v. Morano*, 385 Ill. App. 3d 855 (2008), where the defendant's direct criminal contempt conviction was reversed on the basis of insufficient evidence that the contemnor's conduct was willful. There, an attorney was held in contempt after taking exception to the court's ruling on a motion she had presented on behalf of her client. This court reversed the order of direct criminal contempt after finding that the attorney's efforts were no more than a good-faith representation of her client and that the court had misunderstood the status of the pending case. *Petrakh* is inapposite where its facts in no way resemble those of the instant case. Here, the record reveals that defendant's disruptive actions resulted in the courtroom proceedings being interrupted twice and required the circuit court judge to suspend the proceedings a third time to personally order defendant out of the courtroom. Defendant's conduct was shown to be willful where, after he persisted in disrupting the proceedings and the judge personally ordered him to leave, he violated the order to leave by returning to the courtroom. That was the contemptuous conduct. Nothing in the record suggests that defendant did not understand, either through limited language comprehension or any other reason, that he was not to return. We conclude that defendant's contumacious state of mind was patently demonstrated by his return to the courtroom.

¶ 16 In his second issue on appeal, defendant asserts that his due process rights were violated where he was denied the right to a hearing and the opportunity to present a defense or evidence

in mitigation. In an *indirect* criminal contempt proceeding, an alleged contemnor is entitled to "due process safeguards, including notice, opportunity to answer, and a hearing." *L.A.S.*, 111 Ill. 2d at 543-44. Also applicable in an indirect criminal proceeding are the privilege against self-incrimination, the presumption of innocence, and the right to be proved guilty beyond a reasonable doubt. *Betts*, 200 Ill. App. 3d at 58. In contrast, direct criminal contempt may be found and punished summarily because all elements come within the court's own immediate knowledge. *L.A.S.*, 111 Ill. 2d at 543. The usual procedural due process safeguards, therefore, are not required for a direct criminal contempt conviction. *Id.* Where, as here, the judge had personal knowledge of the facts establishing contemptuous conduct, no formal charge is filed, no plea or trial is required, and the presentation of evidence is unnecessary. *Betts*, 200 Ill. App. 3d at 49.

¶ 17 Third, defendant contends the circuit court's contempt power was arbitrarily and oppressively imposed because the court failed to consider his "language barrier" before finding him guilty of direct criminal contempt. As the record on appeal demonstrates, however, the court conversed with defendant on the record on September 6, 2013. Subsequently, on September 25, the judge specifically considered counsel's representation that defendant did not understand English well. The judge responded that she had observed on the earlier date that defendant "spoke English perfectly." Having heard defendant speak, the judge concluded that defendant had exhibited no difficulty in understanding English on September 6 that would indicate an inability on his part to understand the reprimands of the courtroom personnel or the order of the judge barring him from the courtroom.

¶ 18 Finally, defendant maintains that the circuit court judge's failure to recuse herself constitutes reversible error on two grounds.

¶ 19 The first submitted ground for recusal is defendant's claim that the judge "became personally embroiled in the case" because on September 24, 2013, an article appeared in *The Huffington Post* that was sympathetic toward defendant and critical of the judge. That article appears as an appendix to defendant's initial brief but is not part of the certified record on appeal. Attaching materials to an appellate brief as an appendix is an improper means of supplementing the appellate record where the materials were not part of the trial record. *People v. Gacho*, 122 Ill. 2d 221, 254 (1988). Accordingly, we strike the portions of the appendix to defendant's initial appellate brief containing those materials (both *The Huffington Post* article and the transcript of the unrelated case) and the portions of defendant's initial and reply briefs referring to those materials; and we will not consider those matters in our ruling on the issues on appeal. *Stokes v. Colonial Penn Insurance Co.*, 313 Ill. App. 3d 202, 204 (2000); see *People v. Mehlberg*, 249 Ill. App. 3d 499, 532 (1993).

¶ 20 The second ground defendant advances for recusal is that the judge obtained and used facts outside of her own personal knowledge by speaking with the courtroom deputy about the purported racial slur and with individuals who processed defendant during the booking procedure to determine his English-Language skills.

¶ 21 Defendant contends that when the judge alleged on September 25 that defendant had uttered a racial slur at a courtroom deputy, the judge must have heard about the racial remark from the courtroom deputy rather than having heard it personally because that fact does not appear anywhere in the record. The certified record on appeal does not contain the moments in the proceedings of September 6 when the contemptuous conduct occurred and the racial slur was, or was not, uttered. Defendant has failed to file in this court that portion of transcript of September 6, or a bystander's report or an agreed statement of facts reflecting that period of time.

An appellant is required to present a complete record on appeal so the reviewing court will be fully informed regarding the issues in the case. Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). "The appellant bears the burden of presenting an adequate record to support its claim of error. [Citation.] Any doubts stemming from an inadequate record will be construed against the appellant. [Citations.]" *People v. Hunt*, 234 Ill. 2d 49, 58 (2009). Moreover, even if defendant had not uttered a racial slur, the trial court properly found him in contempt of court where he willfully returned to the courtroom after being ordered to leave due to his repeated disturbance which interrupted the courtroom proceedings. See *Wilson*, 35 Ill. App. 3d at 88 (holding that the trial court properly found the defendant guilty of direct criminal contempt based on an altercation with a courtroom deputy, where, even if the defendant had not used the vulgarities she was alleged to have uttered, she "disturb[ed] the functions of the court by causing an uproar and a commotion.").

¶ 22 Defendant also alleges that during his courtroom appearance on September 25, the judge asserted that she did not perceive him to have a language barrier and stated in support of that assertion that defendant "was processed through the jail speaking English all the while, his name, his address, and everything else." We disagree with defendant's conclusion that the judge considered the jail processing in finding defendant in contempt of court. It is apparent from the judge's discussion on the record on September 25 that the basis for her conclusion about defendant's fluency in English was the communication she personally had with him on September 6. Defendant does not claim on appeal that he did not understand the reprimands of the courtroom personnel to be silent or that he did not understand that when he was ordered to leave the courtroom, he was not permitted to return. Defendant's contemptuous conduct occurred

when he returned to the courtroom after the judge ordered him out. We need not consider what happened after that, in or outside the court's presence.

¶ 23 Aside from the documents that are not a part of the record, defendant claims that the judge's inappropriate lack of detachment is shown by the harshness of the 120-day custodial sentence. Defendant asserts that on September 25, after he had served 20 days in jail, the judge imposed a total sentence of 120 days, giving him credit for the 20 days already served. Defendant argues that the addition on September 25 of 100 days to the 20 days he had already spent in jail served no purpose where his defiant conduct had already been terminated by that time. The parties agree that defendant was released from custody September 25 and has not served the remaining 100 days of the sentence imposed.

¶ 24 "[T]he courts are vested with an inherent power to punish contempt as essential to maintain their authority and to administer and execute judicial power." *City of Quincy v. Weinberg*, 363 Ill. App. 3d 654, 666 (2006). Accord, *In re Estate of Wernick*, 176 Ill. App. 3d 153, 156 (1988). A criminal contempt finding is punitive in nature and is intended to vindicate the dignity and authority of the court. *Ernest*, 141 Ill. 2d at 421. The standard of review concerning the imposition of a sentence for direct criminal contempt, as for any other sentence, is whether the circuit court abused its discretion in imposing the sentence. *People v. Geiger*, 2012 IL 113181, ¶ 27. Because there are no sentencing guidelines in contempt cases, appellate courts have a special responsibility for preventing abuse of the contempt power, if necessary by revising the sentence imposed. *Id.*

¶ 25 Upon reviewing the record in the instant case, we conclude that defendant's conduct was contemptuous and required the action taken by the court. However, here, as in *Geiger*, while defendant did exhibit a disregard for the authority of the court, his contemptuous conduct was

nonviolent and he was not flagrantly disrespectful to the trial judge. *Id.* at ¶ 31. We find that a less onerous sentence of 20 days, the time served by defendant, is appropriate under the circumstances of this case. Pursuant to our authority under Supreme Court Rule 615(b)(4) (eff. Aug. 27, 1999), we reduce the sentence imposed to 20 days' imprisonment.

¶ 26 The judgment of the circuit court is affirmed but modified to impose a sentence of 20 days, time considered served and actually served, for direct criminal contempt.

¶ 27 Judgment affirmed as modified.

¶ 28 JUSTICE HOWSE, dissenting:

¶ 29 The exercise of the power of criminal contempt is a delicate one, "and care is needed to avoid arbitrary or oppressive conclusions." *Simac*, 161 Ill. 2d at 306. This court must exercise care in examining the record as it stands and applying it to the law to determine whether defendant's conviction for criminal contempt should stand. After reviewing the record to determine whether there exists sufficient evidence to support a finding of contempt and whether the judge considered facts outside of the judge's personal knowledge (*supra*, ¶ 8), I do not find sufficient evidence to support defendant's conviction because the evidence is not sufficient to support a finding the allegedly contemptuous conduct was willful (*supra* ¶ 14). I would reverse defendant's conviction outright.

¶ 30 Defendant argues there is insufficient evidence in the record to support the court's finding of direct criminal contempt beyond a reasonable doubt in part because his "conduct was not willful or intentional." The majority finds that we can infer that defendant had a contemptuous intent when he returned to the courtroom from the nature of the contemptuous act and the surrounding circumstances. *Supra* ¶ 14. The act and circumstances were that "after he persisted in disrupting the proceedings and the judge personally ordered him to leave, he violated

the order to leave by returning to the courtroom" (*supra* ¶ 15), at which time he was immediately taken into custody (*supra* ¶¶ 3, 5, 10). Defendant asserts his only "intent" was to retrieve his keys. Admittedly, there is nothing in the record from which to infer defendant's intent in returning to the courtroom other than the fact he had been ordered to leave and he returned. But the absence of additional evidentiary material in the record may be attributable in part to the abbreviated nature of the proceedings. On September 6, defendant's attorney asked the trial judge to reconsider defendant's bond. The trial judge did not ask for argument from counsel, but responded: "No bail. See you then [(referring to defendant's next court date])." On the next court date, after the trial judge found defendant in contempt, defendant's attorney attempted to offer a statement in mitigation of the trial judge's sentence. Counsel began by arguing defendant does not understand English very well. The court pointedly rejected that assertion and declined to issue a written order. *Supra* ¶ 5.

¶ 31 This court must review all of the evidence to determine whether it shows the guilt of the defendant beyond a reasonable doubt, and where the record leaves this court with a grave and substantial doubt of the guilt of the defendant we will reverse the judgment. *People v. Sedlacko*, 65 Ill. App. 3d 659, 663 (1978) (citing *People v. Willson*, 401 Ill. 68, 73 (1948)). See also *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 21 ("reviewing court must consider all of the evidence submitted at the original trial to resolve the question of the sufficiency of the evidence" (citing *People v. Olivera*, 164 Ill. 2d 382, 393-94 (1995))). "To sustain a conviction on criminal charges, the State must prove every element of an offense beyond a reasonable doubt." *People v. Steele*, 2014 IL App (1st) 121452, ¶ 20. Thus, we must examine the entire record, including the order the trial judge actually gave defendant, to determine if there is sufficient evidence in the record to support a finding of contemptuous intent beyond a reasonable doubt.

¶ 32 In support of his argument that the record does not prove beyond a reasonable doubt that his conduct was willful, defendant has focused his attention on his alleged language barrier in understanding the proceedings and the events giving rise to his contempt conviction, as well as the fact this was allegedly his first time in court and he did not intend to disrupt court proceedings when he returned to the courtroom after being ordered to leave. The majority is correct that defendant does not contend to this court specifically that he did not comprehend from the trial judge's order that he was not to come back into the courtroom after he was ejected (*supra* ¶ 11); and nothing in the record suggests that defendant did not understand that when he was ordered to leave the courtroom was not permitted to return (*supra* ¶¶ 15, 22). Although this was clearly the trial court's understanding of the order to leave the courtroom. In its review of all of the evidence in the record, this court is not limited to reviewing the evidence in support of or in opposition to the arguments propounded by the parties. See *People v. Calderon*, 393 Ill. App. 3d 1, 11 (2009) ("The defendant has not provided us with any authority that directs us, in assessing the sufficiency of the evidence as to an element of the offense, to consider only that evidence that comports with what the defendant claims to be the State's theory."). In *Caldron*, the defendant argued that the court need not consider certain evidence in support of finding intent because the State did not pursue a particular theory of culpability at trial. *Id.* The court refused, holding that its review of the evidence was not limited to the State's theory. *Id.* Similarly, here, I do not believe our review of the record is limited to evidence of defendant's alleged language barrier or familiarity with court proceedings just because that is where defendant has focused his defense. Nor do I believe that the absence of evidence, direct or circumstantial, of defendant's reason for returning to the courtroom, or of his subjective understanding of the court's order, is dispositive in this case.

¶ 33 The record may not suggest defendant subjectively did not understand he was not to return (*supra* ¶ 15), but there is also nothing in the record to objectively prove that the order was to leave and not to return. Although in the absence of a complete record we must resolve any doubts against the appellant and presume the trial court acted properly (*supra* ¶ 9), I do not believe that rule permits us to infer the trial judge told defendant to leave and not to come back on this record. The trial judge's statements, on which we are relying exclusively (*supra* ¶ 10), reveal the trial judge told defendant nothing more than to leave. When the trial judge ordered defendant held for contempt on September 6, the trial judge said "you were sitting in this courtroom talking, the deputy told you to stop talking, you continued to talk. *I told you to leave the courtroom*." (Emphasis added.) Based on what the record reveals defendant *was* told, there is nothing in the record from which to reasonably infer defendant knew or reasonably should have known that returning to the courtroom for any reason was wrongful. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 515 (2001) ("[A]n element essential to a finding of criminal contempt is that the conduct be willful. [Citation.] The requisite contemptuous intent is established if the contemnor knew or reasonably should have known that his act was wrongful.").

¶ 34 Based on this record I do not believe we can infer defendant knew he was not to come back into the courtroom for any reason. The record does contain evidence that defendant was unfamiliar with court proceedings, as this was his first time in court, and that he may have had some difficulty understanding the English language; but most importantly, the record that is before this court is clear the trial court did not tell defendant he was not to return for any reason. Moreover, the record reveals that defendant was not disruptive when he did return because the trial judge ordered him taken into custody immediately. *Supra* ¶ ¶ 3, 5, 10.

¶ 35 "Direct criminal contempt must be proved beyond a reasonable doubt. [Citation.]" *Petrakh v. Morano*, 385 Ill. App. 3d 855, 859 (2008). There is insufficient evidence to establish beyond a reasonable doubt that defendant's act of returning to the courtroom was a willful violation of the trial judge's order to leave the courtroom when he was ordered to leave for talking and was *not* told not to return, for example, even if he forgot something vital or even if he could remain quiet. Therefore, I cannot agree with the majority that it is "clearly apparent from the record that there was contemptuous conduct when defendant returned to the courtroom just moments after the judge herself ordered defendant to leave." *Supra* ¶ 10. Contemptuous intent is far from clearly apparent on this record. I do not believe the trial judge's statements on September 25 (*supra* ¶ 5), in light of the trial judge's statements to defendant when he was taken into custody on September 6 (*supra* ¶ 3), are sufficient evidence to establish beyond a reasonable doubt that defendant contumaciously "returned to the courtroom after being ordered to leave" (*supra* ¶ 21), or that there is any doubt as to what defendant was told such that this court should simply presume a sufficient factual basis for a finding of direct criminal contempt based on defendant's return to the courtroom (*supra* ¶ 15). Accordingly, I would reverse defendant's conviction.