2012 IL App (5th) 100424-U

NO. 5-10-0424

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | St. Clair County. |
| | ) | |
| v. | ) | No. 09-CF-1456 |
| | ) | |
| RICHARD G. ALLEN, | ) | Honorable |
| | ) | Jan V. Fiss, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE STEWART delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

**ORDER**

¶ 1 *Held*: The defendant waived the right to challenge a sheriff's deputy juror who wore a badge throughout trial by failing to challenge juror during *voir dire*; the court did not abuse its discretion in refusing to replace juror with alternate after the jury was seated; the defendant waived his right to object to statements of State's Attorney allegedly in violation of Supreme Court Rule 234 during *voir dire*, and there was no plain error when statements were designed to detect bias or inability to apply the law; the defendant was not prejudiced by the exclusion of a witness who was not included in the pretrial witness disclosure list; the court did not abuse its discretion in sentencing the defendant to the maximum term allowable in light of the fact that codefendants were given shorter sentences because they reached a plea agreement, and given plea agreements of codefendants and the defendant's extensive criminal record, the defendant's sentence was not disparate; and there was sufficient evidence within the personal knowledge of the court to support citation of criminal contempt against the defendant.

¶ 2 The defendant, Richard G. Allen, was charged with armed robbery pursuant to section 18-2(a)(2) of the Criminal Code of 1961 (720 ILCS 5/18-2(a)(2) (West 2010)). He proceeded *pro se*. The jury found the defendant guilty. The defendant filed numerous posttrial motions, 24 of which were heard by the circuit court on April 29 and 30, 2010. The

court denied 23 of the defendant's motions and struck one. The defendant was sentenced to 30 years in prison to be followed by 3 years of mandatory supervised release. The defendant filed a motion to reduce sentence, which the court denied. The defendant appeals the judgment of the circuit court.

¶ 3 On appeal, the defendant alleges the following errors: juror Charles Binnion, a St. Clair County sheriff's deputy, was biased in favor of the State, and the court improperly denied the defendant's peremptory challenge to Binnion; the jury was given an improper reasonable doubt instruction; the State's Attorney violated Supreme Court Rule 234 (eff. May 1, 1997); the court denied the defendant the use of his witness "Lance" Leatherwood; the court improperly subjected the defendant to an enhanced sentence, and the defendant's sentence was disparate in comparison with that of his codefendants; and the court erred in finding the defendant in criminal contempt. For the following reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 4 Juror Binnion

¶ 5 The defendant's first assignment of error is that juror Binnion, a deputy sheriff with the St. Clair County sheriff's department, was biased in favor of the State or prejudiced against him, and he was thereby deprived of a fair trial. The defendant further argues that the court did not allow him to utilize a peremptory strike against Binnion.

¶ 6 During *voir dire*, the court read a list of potential witnesses to the venire, which included several officers and detectives of the Belleville police department, along with Jim Ferry of the U.S. Marshal's Office. Jim Ferry was listed as a defense witness; however, he was never called. When the court asked the venire panel if anyone knew the witnesses, juror Binnion did not respond. Shortly thereafter, the court asked whether anyone had "close friends or relatives employed by law enforcement agencies." Juror Binnion then stated, "I, myself, work for the St. Clair county sheriff's department." The court then asked whether

there was "anything about [his] position as an officer that would somehow affect [his] ability to serve as far as this case [was] concerned." Juror Binnion's response was "no." The defendant then asked the juror to repeat his name, and Binnion did so. Later, the court asked the panel the following: "Has anybody here or any member of your family ever been the victim of a crime ***?" Binnion then advised that he had been a deputy for 25 years and that during that time, he was the victim of several batteries in his capacity as a police officer. He further advised that charges had been filed in at least some of the batteries. The judge then asked, "And anything about these experiences that would affect your ability to serve as far as this case is concerned?" Binnion replied, "No sir."

¶ 7 After the venire was questioned, the court explained the challenge process to the defendant:

> "So first we would challenge for cause. That would be the people that because they have stated something that would–it was obvious that they should not be on this jury, they would be excused up front. Then we would proceed through whoever is left and select by panels of four the various jurors with no back striking. In other words, once the four jurors are selected, you can't go back and knock them off with your seven challenge–one of your seven challenges."

The defendant responded, "Yes, sir." The judge then advised the defendant that the parties each had seven challenges. The defendant again indicated that he understood. At some point during the challenges for cause, the defendant asked, "Sir, is that beyond seven strikes right there?" The court then explained: "Seven–we haven't got to those yet. These are cause strikes." The defendant responded, "Oh, okay."

¶ 8 The State challenged several jurors for cause, and the court struck them. At some point, the clerk indicated that one of the individuals on the venire was a good friend of her and her husband. Because this individual did not earlier reveal the information, the

defendant challenged him for cause, and the court struck him. The record reveals that the defendant utilized all seven of his peremptory challenges.

¶ 9 After the jurors were selected, the defendant made the following statement to the court in relation to juror Binnion wearing a badge: "Last thing. I mean, I don't know what I could do now, but when I first noticed that he had a police badge on, you know, that's the first thing that I thought maybe that would constitute that he might sway–?" The defendant further stated:

> "Yeah, and, you know, I had moved to strike–I wanted to strike him. Even on my paper here I got an X over his name. That's the person I was–you know, I seen–once I noticed that he had the badge on. That's the first thing I said, well, you know, I don't want to have a cop on there that could be–."

The court responded as follows: "I have never ever in my entire history *** excused somebody because somebody thought they had knocked somebody off. That just isn't done. *** [S]o Mr. Binnion will remain on the jury."

¶ 10 At some point in the trial, the State advised the court that it had become aware that Jim Ferry, who was on the defendant's witness list, was currently married to the ex-wife of juror Binnion. The defendant requested that the court replace Binnion with an alternate juror, but the court denied the request:

> "Well, I see two things here. First of all, we have already been through this as far as the exercise of the seven challenges. Mr. Allen did not exercise the challenge against Mr. Binnion, and I've already ruled on that. Secondly, it would seem that this scenario is really more prejudicial to the State than it is to the defense, and I see no reason to excuse this [juror]."

¶ 11 During the posttrial hearing of April 29 and 30, the State called Deputy Binnion to the stand. Binnion testified that he followed the judge's instruction not to discuss the case with

other jurors or anyone else during the trial. He testified that he knew the detectives from the Belleville police department who had testified for the State. He further testified that he did not speak to those detectives during the trial. He testified that, to his knowledge, he did not even say "hi" to those detectives during the trial. He also testified that he had worn his badge throughout the trial, as he usually did on and off duty. On cross-examination, Binnion testified that he had told the court during *voir dire* that "in the course of my duties at the Sheriff's Department, that I had probably met everybody that was associated with the trial."

¶ 12 Subsequent to Binnion's testimony at the posttrial hearing, the defendant called Harold Franklin to testify. Franklin testified that he observed a juror, who was wearing a badge, talking with detectives who were State witnesses during the trial. He testified that his attention was captured due to the fact that he heard the name "Allen" mentioned.

¶ 13 Our analysis begins with the rule that "[t]he constitutional right to a jury trial encompasses the right to an impartial jury." *People v. Rinehart*, 2012 IL 111719, ¶ 16 (citing *Irvin v. Dowd*, 366 U.S. 717, 721 (1961)). While the "right to trial by an impartial jury is basic, a juror's failure to reveal potentially prejudicial information or giving false testimony during *voir dire* does not automatically entitle a defendant to a new trial." *People v. Potts*, 224 Ill. App. 3d 938, 946 (1992) (citing *People v. Hunt*, 112 Ill. App. 3d 138, 141 (1983)). "The standard to be applied is actual prejudice to defendant." *Id.* (citing *Hunt*, 112 Ill. App. 3d at 141). With regard to *voir dire*, "[t]he trial court is primarily responsible for initiating and conducting [it]" (*Rinehart*, 2012 IL 111719, ¶ 16 (citing *People v. Strain*, 194 Ill. 2d 467, 476 (2000)); however, the court "must permit the parties to supplement its examination 'by such direct inquiry as the court deems proper.' " *Id.* (quoting Ill. S. Ct. R. 431 (eff. May 1, 2007)). "The purpose of *voir dire* is to ascertain sufficient information about prospective jurors' beliefs and opinions so as to allow removal of those members of the venire whose minds are so closed by bias and prejudice that they cannot apply the law as instructed in

accordance with their oath." *People v. Cloutier*, 156 Ill. 2d 483, 495-96 (1993) (citing *People v. Seuffer*, 144 Ill. 2d 482, 500 (1991); *Wainwright v. Witt*, 469 U.S. 412, 424 (1985)). With regard to the parties to the case, " '[t]he failure to challenge a juror for cause or by peremptory challenge waives any objection to that juror.' " *People v. White*, 353 Ill. App. 3d 905, 913 (2004) (quoting *People v. Collins*, 106 Ill. 2d 237, 271 (1985)). "The determination whether to allow a challenge for cause is committed to the sound discretion of the trial court." *Seuffer*, 144 Ill. 2d at 502 (citing *People v. Hyche*, 77 Ill. 2d 229, 239 (1979)). The trial court's decision to deny a party's challenge for cause will not be reversed absent an abuse of discretion. *Id.*

¶ 14 In the present case, there is no indication in the record that the defendant exercised either a challenge for cause or a peremptory challenge with regard to juror Binnion during *voir dire*. And, as the State points out, it is not as if the defendant was not aware of the procedure by which such challenges are made, especially in light of the fact that he exercised all of his peremptory challenges and successfully challenged one juror for cause. Additionally, when juror Binnion advised the court that he was a sheriff's deputy, the defendant asked juror Binnion to repeat his name. This demonstrates that the defendant was aware that Binnion was a sheriff's deputy during *voir dire*. We agree with the State that a "*pro se* defendant must comply with the rules of procedure required of those represented by counsel, and a court should not apply more lenient standards to a *pro se* defendant." *People v. Stevenson*, 2011 IL App (1st) 093413, ¶ 39; see also *People v. Bond*, 178 Ill. App. 3d 1020, 1023 (1989) (citing *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983)). There is no indication in the record that the trial judge denied the defendant the opportunity to challenge jurors during *voir dire*. In fact, the judge advised the defendant of how many peremptory strikes he had remaining throughout the process, as well as advising the defendant of the difference between challenges for cause and peremptory challenges. Therefore, the

defendant waived any claim regarding a peremptory or for-cause challenge due to juror Binnion's position as a deputy sheriff.

¶ 15 With regard to the fact that juror Binnion knew the Belleville police detectives who were State witnesses, the defendant is technically correct in the assertion that Deputy Binnion did not specifically reveal, during *voir dire*, that he knew the detectives involved in the case. However, he did reveal, with regard to the court's question of whether he knew anyone in law enforcement, that he himself had been a deputy sheriff for 25 years and had been the victim of several batteries as a police officer that, in at least some instances, resulted in charges. Reasonably inferred from such statements is the conclusion that juror Binnion was acquainted with numerous other law enforcement and court personnel in the area. Juror Binnion's disclosures were sufficient to serve the purpose of *voir dire*. In any case, the defendant has not demonstrated actual prejudice as a result of Binnion knowing the detectives involved in the case.

¶ 16 The defendant further alleges denial of an impartial jury based on the fact that Binnion's ex-wife was, at the time of trial, married to Jim Ferry, a U.S. marshal, who was on the defense witness list. The trial court determined that if the connection was at all prejudicial, it would likely be prejudicial to the State. It is unclear whether Binnion knew Jim Ferry or maintained any relationship with his ex-wife, but it was well within the discretion of the trial court to not replace Binnion with an alternate juror.

¶ 17 The defendant seemingly alleges that Binnion's bias in favor of the State is further evidenced by the fact that he was observed talking to other law enforcement personnel who were State witnesses in the courthouse during the trial. However, during posttrial proceedings, Binnion testified that he had not communicated with the State's witnesses during the defendant's trial. Additionally, it is likely that the circuit judge found Harold Franklin's testimony to be highly suspect, given the fact that Franklin testified that his

attention was drawn to Binnion's alleged conversation with State witnesses because he heard the name "Allen" mentioned. In short, there is no credible evidence that Binnion had improper communications with State witnesses during the defendant's trial, and even if such conversations occurred, the defendant has not demonstrated that he was thereby prejudiced.

¶ 18 The defendant failed to challenge Binnion during *voir dire* and has failed to demonstrate that he was prejudiced by Binnion's attenuated connection to Jim Ferry. Additionally, the defendant failed to demonstrate any improper communications between juror Binnion and State witnesses that prejudiced him. Therefore, the defendant's contention that he was denied the right to an impartial jury is without merit.

¶ 19 Reasonable Doubt Instruction

¶ 20 The defendant next alleges that the jury was improperly given a reasonable doubt instruction in violation of his due process rights. The defendant admits that he forfeited this issue by failing to make a timely objection to any such instruction in the trial court; however, he urges this court to review this issue pursuant to the doctrine of plain error. The plain error doctrine allows a reviewing court to consider unpreserved errors where the evidence is closely balanced or where the alleged error is so serious that it affected the fairness of the defendant's trial or challenged the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005).

¶ 21 The defendant seems to allege that the following comments of the prosecutor during *voir dire* constituted a reasonable doubt instruction:

> "Does everyone understand and comfortable with the longstanding notion that we have the burden of proof beyond a reasonable doubt? Does anyone think that that burden should be higher? Does anyone, based on what you see on TV, think it should be [beyond] all doubt, or beyond any doubt, or a shadow of a doubt? So everyone can agree to hold us to a reasonable doubt? *** A reasonable doubt would be like, for

example, that an alien might have committed this if it looked just like the defendant or something just bizarre, that would be beyond a reasonable doubt. *** [T]hat is our burden, beyond a reasonable doubt. And you're comfortable with that?"

¶ 22 The State concedes that if an instruction defining reasonable doubt had been given, it would have been improper. See *People v. Cagle*, 41 Ill. 2d 528, 536 (1969). However, the State argues that no such reasonable doubt instruction was given.

¶ 23 Our supreme court has addressed the issue of a prosecutor's comments regarding reasonable doubt during *voir dire* in *People v. Barrow*, 133 Ill. 2d 226 (1989), and *People v. Edwards*, 55 Ill. 2d 25 (1973). In *Barrow*, the defendant alleged that the prosecutor "misstated and minimized the reasonable doubt standard by telling the jurors during *voir dire* and closing argument that they need not prove guilt 'beyond all doubt' or 'beyond a shadow of a doubt.' " *Id.* at 265. In *Edwards*, the prosecutor made similar comments, "stating that a reasonable doubt is determined by the standard of 'reasonableness' and was not the same as 'beyond any doubt' or 'beyond any possible doubt.' " *Id.* (quoting *Edwards*, 55 Ill. 2d at 35). The *Barrow* court followed the *Edwards* court's reasoning that while "it would have been better practice not to attempt to define the term 'reasonable doubt' either in *voir dire* or closing argument, no error resulted which requires reversal." (Internal quotation marks omitted.) *Id.* (quoting *Edwards*, 55 Ill. 2d at 35). The court further noted that "because the jury was properly instructed on reasonable doubt, and it must be presumed that the jurors followed the court's instructions, any error occasioned by the prosecutor's remarks would have been cured by the jury instruction." *Id.* at 266 (citing *People v. Bell*, 113 Ill. App. 3d 588, 601 (1983)).

¶ 24 In the present case, the jury instructions advised that the State's burden of proof was "beyond a reasonable doubt," but the instructions did not define reasonable doubt. While the comments of the prosecutor may have been improper, any potential error was cured by the

jury instruction.

¶ 25 Rule 234

¶ 26 The defendant next argues that, during *voir dire*, the prosecutor made several remarks in violation of Supreme Court Rule 234. The defendant concedes that he failed to timely object to the prosecutor's comments; however, he urges us to review this issue pursuant to the doctrine of plain error. The defendant alleges that the State "pre-preview[ed]" evidence, made "fragmented" statements of law, made misstatements of law, inserted personal opinions, and attempted to "pre-indoctrinate" jurors with the State's theories. Specifically, the defendant complains of the following statements by the prosecutor:

> (1) "Would anyone have a problem if in this case there wasn't any, say, DNA or fingerprint analysis collected and analyzed? Would that bother anybody? *** If there's some physical evidence and eyewitness testimony but no, say, laboratory evidence. *** You would be okay with that?"
>
> (2) "There's going to be some evidence presented–we're not going to try to hide this–that the victim in this case, Jared Seats, was involved in some less than savory business. You're going to see some evidence that he had sold marijuana to the defendant before. Based on that, based on the fact that a victim can sometimes be guilty of crimes as well, does anyone have any thoughts that maybe a victim could be responsible for the crime committed against them? *** I would just like to know if anyone feels that someone who's less than perfect can be a victim of a crime? Do you all believe that we can all–I mean, even guilty people can be victims and they're entitled to their own safety? And no one has a problem with the fact that this victim is certainly no angel, so to speak?"
>
> (3) "There's going to be some evidence of co-defendants, and they're not on trial this week, but some of the evidence will pertain to the co-defendants, what they

did, and how it relates to this defendant's case. The law in certain cases provides that a defendant or a person can be held accountable for the actions of others. And that means that a defendant could be responsible for his accomplices or his cohorts in crime, essentially."

(4) "Now, the court will instruct you about this aspect of the law during the jury instruction portion of this case, but would it affect anyone's ability in deciding this case on the issue of armed robbery if the evidence showed that this defendant did not personally have a weapon or a gun on his person? Does anyone think that they could not follow that aspect of the law, that a person can be held responsible for the actions of another?"

(5) (In response to the following juror question: "Would that be considered guilt by association?") "Well, Mr. Hunt, it would be–I mean, I can't instruct you as to the law in this area of the trial, but essentially like people who are involved in the commission of a crime together, maybe only one person out of them has the gun, but they are all working in concert is kind of what I'm getting it, that area of the law, and that's what we anticipate the evidence to show in this case. Would you have a problem with following that law?"

¶ 27 Rule 234 provides the following, *inter alia*, in regard to *voir dire*:

"The court may permit the parties to submit additional questions to it *** and shall permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of examination by the court, the complexity of the case, and the nature and extent of the damages. Questions shall not directly or indirectly concern matters of law or instructions." Ill. S. Ct. R. 234 (eff. May 1, 1997).

¶ 28 The defendant cites several cases, and only one seems to be on point. However, it

stands in contrast to the defendant's argument. In *People v. Davis*, the defendant was charged with murder. *People v. Davis*, 95 Ill. 2d 1, 10 (1983). On appeal, the defendant alleged, *inter alia*, that the court erred in allowing the prosecutor to make the following statements to the jury regarding felony murder, thereby violating Rule 234 and his right to a fair trial:

> " 'Now, there's going to be–there's going to be evidence involved in this case of a co-defendant, another defendant apart from this defendant. Some of the evidence will pertain to that co-defendant and how it relates to this defendant's case, and evidence that runs to this defendant. The law in certain instances would provide that a person would be held responsible for the acts of a co-defendant, a cohort in crime.
>
> * * *
>
> *** The Court will instruct you about this, this aspect of the law, that a person can be held accountable and responsible for the acts of another. Would it affect your ability in deciding this case on the issue or the charge of murder provided that the law states that the defendant could be held accountable under the facts that the defendant, this defendant before you, did not do the direct act, did not pull the trigger of the gun so to speak, that caused the death of the individual. Do you think that would affect your ability to decide or could you follow that law?' " *Id.* at 17-18.

The *Davis* court disagreed with the defendant, finding that the State's Attorney's comments were merely an inquiry into whether members of the venire panel could follow the law. *Id.*

¶ 29 In regard to the defendant's Rule 234 argument, this case is analogous to *Davis*. The prosecutor's comments were clearly aimed at ensuring that the jury would be free from prejudice against the victim and that jurors would be able to follow the law with regard to criminal liability for the acts of another. No error, plain or otherwise, occurred.

¶ 30 "Lance" Leatherwood

¶ 31 The defendant next argues that the circuit court improperly denied him the use of his

witness, "Lance" Leatherwood. A party must disclose the witnesses it intends to call before trial. *People v. McKinney*, 117 Ill. App. 3d 591, 596 (1983) (citing Ill. S. Ct. R. 413(d)(i) (eff. July 1, 1982)). "Failure to comply with this disclosure requirement subjects the defendant to possible sanctions, including the exclusion of the undisclosed witness." *Id.* (citing Ill. S. Ct. R. 415(g)(i) (eff. Oct. 1, 1971)). The question of whether to exclude a witness not previously disclosed "is a matter within the trial court's discretion, and the court's decision will not be disturbed absent a showing by defendant of prejudice or surprise." *Id.* (citing *People v. Morales*, 109 Ill. App. 3d 183, 189 (1982)). In the present case, the defendant claims that the court erred, but fails to show that he was thereby prejudiced, and as the State points out, the court also excluded a State witness that was not disclosed before trial.

¶ 32 The Sentence

¶ 33 The defendant makes two arguments with regard to his sentence. First, he seems to claim that he was subjected to a double enhancement, and second, he claims that his sentence was "grossly disparitive [*sic*]" when compared to that of his codefendants. It is clear that the defendant was not subjected to a double enhancement, but rather was sentenced to 30 years' imprisonment, which is within the range of the 6-to-30-year sentence a court may impose for armed robbery (*People v. Clemons*, 2012 IL 107821, ¶ 56). With regard to gross disparity in sentencing, the defendant correctly states the rule from *People v. Jackson* that "fundamental fairness and respect for the law require that defendants similarly situated should not receive grossly disparate sentences." *People v. Jackson*, 145 Ill. App. 3d 626, 646 (1986) (citing *People v. Cook*, 112 Ill. App. 3d 621, 623 (1983)). What is not stated by the defendant in his brief, but is apparent from a reading of *Jackson*, is the rule that "a disparity in sentencing may be supported by a more serious criminal record or greater participation in the offense than the individual with whom the defendant's conduct is compared." *Id.* (citing

*People v. Maxwell*, 130 Ill. App. 3d 212, 219 (1985)). In its brief, the State cites the rule from *People v. Reckers*, which is of particular application in this case:

> "It is proper for the trial court to grant leniency toward a defendant who by his plea of guilty has insured prompt and certain application of correctional measures, acknowledged his guilt, and shown willingness to assume responsibility for his misconduct, while giving a higher sentence to one who has stood trial. (*People v. Sivels* (1975), 60 Ill. 2d 102 ***.) Thus, a defendant who has stood trial cannot properly compare his sentence with those imposed on persons who have pleaded guilty. ([*People v.*] *McClendon* [(1986)], 146 Ill. App. 3d [1004,] 1013 ***.)" *People v. Reckers*, 251 Ill. App. 3d 790, 796 (1993).

We will not disturb the sentence imposed by the circuit court absent an abuse of discretion. *Jackson*, 145 Ill. App. 3d at 646.

¶ 34 In the present case, the defendant was sentenced to the maximum 30 years' imprisonment, while his codefendants received 9-year sentences. However, the codefendants chose to plead guilty, while the defendant proceeded to trial. Before sentencing, the judge noted that the defendant's presentence investigation was the worst that he had ever seen, with 15 felony convictions between 1989 and 2007. The court did not abuse its discretion in sentencing the defendant.

¶ 35 Criminal Contempt

¶ 36 The defendant next argues that the judge erred in citing him for criminal contempt. "A party may be found in direct criminal contempt when, in the judge's presence, that party's action is disrespectful, disruptive, deceitful, or disobedient to the extent that such action affects the court's proceedings." *Thomas v. Koe*, 395 Ill. App. 3d 570, 580 (2009) (citing *In re Marriage of Betts*, 200 Ill. App. 3d 26, 45 (1990)). "It is well established that all courts have the inherent power to punish contempt ***." *People v. Simac*, 161 Ill. 2d 297, 305

(1994) (citing *People v. Loughran*, 2 Ill. 2d 258, 262 (1954)). "Direct contempt is 'strictly restricted to acts and facts seen and known by the court, and no matter resting upon opinions, conclusions, presumptions or inferences should be considered.' " *Id.* (quoting *Loughran*, 2 Ill. 2d at 263). The court may summarily punish a party for direct criminal contempt "because all elements are before the court, and, therefore, come within its own immediate knowledge." *Id*. (citing *People v. Javaras*, 51 Ill. 2d 296, 299 (1972); *Loughran*, 2 Ill. 2d at 263). "[T]he standard of review for direct criminal contempt is whether there is sufficient evidence to support the finding of contempt and whether the judge considered facts outside of the judge's personal knowledge." *Id.* at 306 (citing *People v. Graves*, 74 Ill. 2d 279, 284 (1979)).

¶ 37 The defendant argues that because the judge did not personally hear him say "racist" at the time the judge held him in contempt, the contempt citation should be vacated. The record demonstrates that the judge did not personally hear the defendant say "racist" at the time he held the defendant in contempt, but rather, was informed by the State that the defendant had said "racist." However, the judge had sufficient evidence apart from the "racist" comment on that particular day. When the judge advised the defendant as to direct criminal contempt of court, he also advised him that he had personally heard the defendant say "racist" the day before. The judge further advised the defendant that he had observed a pattern on the part of the defendant of "snickering and laughing" at the court's rulings, and that under the "totality of the circumstances," things had "come to a head." The judge also noted that the defendant had previously stated that the court's rulings were becoming "personal." The judge offered the defendant the opportunity to make a statement, and the defendant stated the following:

> "Well, I think we need to reconvene at this time, because I'm very upset with some of the things–some of the things that you said. I'm very upset at the fact that I have–you

have pointed–you have systematically picked–pointed me out. *** I'm tired being treated–you understand me–unfairly. *** I do feel that you are biased towards me. And I have no problem saying–."

The judge advised the defendant that his motion to remove the judge for cause had already been addressed by Judge Gleeson. The defendant then told the judge that Judge Gleeson was his "buddy."

¶ 38 Additionally, at the same hearing, the defendant made the following statement:

"Sir, I am so upset and tired of this type of prejudicial and racial behavior, once again, that I don't have it in me to continue at this time. *** The emotions are too high here. Everyone sees what's going on here. Ray Charles could see it, and I'm just tired."

The record reveals that, apart from the "racist" comment made at the time the judge held the defendant in contempt, the judge personally observed sufficient disruptive acts to support the citation.

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 41 Affirmed.