

STATE OF SOUTH CAROLINA  
COUNTY OF **CHEROKEE**

The STATE of South Carolina,

Prosecutor,

-vs-

ASENTE SHAHEIM FOSTER,

Defendant.

IN RE:

**MONIER MUFID ABUSAFT**  
229 Magnolia Street  
Spartanburg, South Carolina 29306

Contemnor.

IN THE COURT OF GENERAL SESSIONS

RECEIVED

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SC Court of Appeals

BRANDY W. MCCREE

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Warrant/Indictment Number(s)

2022-GS-11-00404. 2022-GS-11-00405  
2022-GS-11-00406

This matter came before the Court for hearing on a direct summary contempt to the court by Monier Mufid Abusaft occurring on March 7, 2023 during the March 6, 2023 term of General Sessions Court for Cherokee County. At the hearing held in this matter the contemnor was present and represented by counsel Twana N. Burris-Alcide, Esq.

At the outset of the hearing counsel Burris-Alcide requested to be heard on behalf of her client delivering an eloquent, impassioned, and persuasive statement of contrition and apology on his behalf. She pled for the court's mercy and to decline holding her client in contempt of court as he had learned much from the experience and had already suffered by the attention and embarrassment brought upon him resulting from the event and the holding of this hearing.

The Court commended counsel for her eloquent plea on behalf of her client and opined that had such a plea been made by him on the date of the event or any day thereafter up to and including the date of this hearing, it is quite possible that this hearing would have been unnecessary. Unfortunately, that will never be known as that personal statement of contrition and apology was never offered by the condemnor. The Court then provided its recitation of the salient facts relevant to the issue of contempt obtained from personal knowledge of the facts as perceived by the Court's own senses on the date of the event.

#### Salient Facts

On March 6, 2023 Monier Abusaft appeared in Cherokee County General Sessions Court in his representation of Asente Shaheim Foster on the defendant's pending charges. Mr. Abusaft and Mr. Foster appeared with Assistant Circuit Solicitor Kim Leskanic before the Court for presentation of a guilty plea pursuant to a negotiated plea agreement. During the Court's

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colloquy with the defendant regarding his understanding of the charges, the potential penalties associated with a conviction, and the waiver of his constitutional rights resulting from the entry of a plea of guilty, including the waiver of any legal defense he may have to a charge, Mr. Foster expressed some reservation to pleading guilty due to his belief he had a legal defense to the charges of attempted murder. The Court recessed the matter with instruction to Mr. Foster to further discuss his decision regarding disposition of his cases and the consequence of rejecting any plea offer made by the State, with his counsel. Because of the hour the Court allowed him additional time, until 10:00 a.m. on March 7, 2023, to think about it and let the Court know of his decision.

On the following morning of March 7, 2023, the Court was engaged in qualification of the jury venire to serve for the term of court. After the Court had concluded jury qualification, Mr. Abusaft informed the Court of Mr. Foster's wish to accept the State's plea offer and to plead guilty pursuant to the negotiated plea agreement. In order to minimize the inconvenience to the jury venire, the Court informed Mr. Abusaft that it would entertain acceptance of the guilty pleas after the selection of a jury panel in an unrelated case, but before the lunch recess, to which he expressed no dissatisfaction, disagreement or issue. After jury selection was complete around noontime, the selected panel was excused to the jury room for the Court to determine whether the guilty plea would take place before lunch. The Court being informed that the parties wished to proceed with the guilty plea before lunch, returned the selected jury to the courtroom to excuse them for lunch with instructions to return at 2:30 p.m. that afternoon. After the jury was excused, the Court then attempted to proceed with the presentation of Mr. Foster's guilty plea.

While counsel appeared to be in discussion for the presentation of Mr. Foster's guilty plea, the Court personally observed Mr. Abusaft, while in the well of the courtroom in possession of and using or attempting to use an active cell phone without requesting or obtaining prior permission. Such activity is a violation of the Court's prohibition against cell phones in the courtroom without prior approval having been given. When asked about his possession and use of the cell phone in violation of the prohibition, Mr. Abusaft, in a quite animated fashion, made some comment about the Court having him "scurrying" around and stated that he needed to "contact his client" and to "contact his office". The Court stated to Mr. Abusaft that he knew he was not permitted to do that in the courtroom and instructed Mr. Abusaft to give the cell phone to the bailiff. When he expressed, through facial gestures and no movement toward compliance, resistance and dissatisfaction with the Court's instruction, he was then ordered to surrender the cell phone to the Clerk of Court and told that the issue of his violation (of the cell phone prohibition) would be addressed later. The Court then took a brief recess with instruction to counsel to "figure it out" and ready Mr. Foster's plea for presentation.

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After the recess the Court returned to find Mr. Abusaft absent from the courtroom. Upon inquiry as to his absence, the Court was informed by the Clerk of Court that Mr. Abusaft told her he was returning to Spartanburg, and said, "Ya'll just do what you got to do." The Court was not provided any explanation by Mr. Abusaft for his or his client's absence from the courtroom and Mr. Abusaft did not return to the court until the morning of Friday March 10, 2023.

On August 25, 2000 the South Carolina Supreme Court issued and published an administrative order addressing the possession and use of cell phones and other personal communication devices in the courtrooms of this State and such order was in effect on March 7, 2023. It provides in pertinent part that:

"The use of ... cell phones, and other personal communication devices has increased dramatically and many users see them as a necessary incident to their work and personal lives. While these devices may be seen as enhancing communication, they are increasingly being recognized as a distraction and as having no place in certain venues. Accordingly, ... the use of cell phones, and any other personal communication device by attorneys ... or members of the general public, is banned in all courtrooms in this State."

The order further provided that:

"Violation of the terms of this Order may result in the confiscation of the equipment and the violator may be held in contempt of court and subject to sanctions" and required that "notice of the contents of this order be posted on courtroom doors."

Due to many disruptions experienced by this Court caused by attorneys, litigants, witnesses, jurors, bailiffs, and spectators' failure to comply with the dictates of the order; the unauthorized recordings and photography occurring during court proceedings; and to alleviate courtroom safety concerns; this Court found it necessary to issue its own long-standing order to carry out the purpose of the Supreme Court's order, prohibiting the possession and use of cell phones in the courtroom while court was in session unless prior approval of the Court has been obtained. The Clerk of Court and the bailiffs are instructed to provide notice of that prohibition to any person entering the courtroom. At each term of court jurors are provided notice as to the court's order and each person entering the courtroom from the public access, including attorneys, is provided notice of the court's order by way of signage placed in various locations in the courthouse and by personal oral notice provided by the bailiffs to any person entering the courtroom. This Court had personal knowledge of Mr. Abusaft's awareness of this prohibition.

#### Contemnor Testimony

At the hearing contemnor was called by his counsel to provide testimony. Counsel asked, "Did you have it (the phone) in your hand. Were you attempting to use the cell phone?"

Contemnor responded "No, no, I had the phone in my hand with a couple other items. I was not attempting to use it. I believe, at least what I think, there may be some - I did say that that was one reason I have - I had the phone but no no way was I attempting to use the phone. The phone was in my hand, I believe, underneath a portfolio and a book, I believe. I believe it was seen as I walked basically through the door, a couple of strides through the door, was first seen." Contemnor went on to explain that, "I have never in my lifetime ... used a phone ... as a telecommunication device in a courtroom. I've used it for internet; I've used it for text-messaging." "I am very aware of Judge Cole's rules about phones." "I mean, I literally had a phone taken out of my pocket in a trial before, and didn't get it back for a week."

At no time did condemnor or counsel challenge the existence of a valid order, duty, obligation, or prohibition applicable to the attendant circumstances. Nor was there a challenge to the condemnor's actual awareness of the order, duty, obligation, or prohibition applicable to him under the attendant circumstances. The condemnor solely challenges the "willfulness" of the violation which he admits did occur.

Upon completion of the condemnor's testimony the Court informed counsel as to the presence of various court officials who were also present in the courtroom on March 7, 2023, which included the Clerk of Court, bailiffs, assistant circuit solicitors, and courtroom security officers. Counsel was offered the opportunity to speak with any of them, should she wish to do so, in the event she deemed it beneficial or desirable to introduce any additional testimony as to any disputed fact. After consultation with her client she declined the Court's invitation.

#### Applicable Law

The American legal system grants to the presiding judge the power to control the proceedings in the courtroom over which he or she presides to ensure that those proceedings are carried out in an orderly manner and with proper decorum. A violation of any reasonable requirement imposed by the Court subjects a violator to a finding of contempt and the imposition of sanctions.

Contempt of court is the voluntary, willful and intentional doing of or failing to do what the law or rules of court require or the disregarding of something the law or rules of court forbid the doing of or requires done or given proper regard. This includes conduct that tends to bring the authority or administration of the court or law into disregard or disrespect. State v. Passmore, 363 SC 568 (S.C. App. 2005).

"The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts; and consequently, to the due administration of justice." The phrase "inherent powers" is used to refer to powers included within the scope of the court's jurisdiction which a court possesses irrespective of specific grant by Constitution or legislation.

Such powers can neither be taken away nor abridged by the legislature." State Ex McLeod v. Hite, 272 S.C. 303 (1979). "This power is not derived from any statute but from the common law which from its inception recognized this implied and necessary power, without which contumacious conduct could well destroy the authority of any court." State v. Goff, 228 S.C. 17 (1955).

"Direct contempt involves contemptuous conduct in the presence of the court." State v. Kennerly, 337 S.C. 617, (1999). A person may be found guilty of direct contempt if the conduct interferes with the judicial proceedings, exhibits disrespect for the court, or hampers the parties or witnesses." Stone v. Reddix-Smalls, 295 S.C. 514 (1988); State v. Havelka, 285 S.C. 388 (1985). This power includes the ability to maintain order and proper decorum during court proceedings. State v. Weinberg, 229 SC 286 (1956). Contempt that occurs in the presence of the court is referred to as direct or summary contempt and "may be immediately adjudged and sanctioned summarily." Brandt v. Gooding, 368 S.C. 618 (2006). Where conduct constitutes direct contempt, a criminal penalty may be imposed without hearing evidence or providing an offender notice and an opportunity to be heard, and without providing the offender the assistance of counsel. Int'l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 821, (1994). To authorize the use of summary proceedings, the contemptuous conduct must not only have occurred in the presence of the court but the judge must have personal knowledge of it acquired by the use of the judge's own senses. Bloom v. Illinois, 391 U.S. 194 (1968); In re Oliver, 333 U.S. 257 (1948); State v. Weinberg, 229 S.C. 286 (1956). "Where the contempt is committed directly under the eye of within the view of the Court, it may proceed upon its own knowledge of the facts and punish the offender, without further proof and without issue or trial in any form ..." Ex Parte Terry, 128 U.S. 289, (1888).

There are three essential elements to the establishment of a direct criminal contempt. The facts must establish beyond a reasonable doubt that; (1) there existed a valid duty, order, obligation, or prohibition imposed upon the alleged condemnor; (2) the alleged condemnor had appropriate knowledge (actual or implied) of the duty, order, obligation, or prohibition, and; (3) there was a willful voluntary violation or attempted violation of the duty, order, obligation, or prohibition on the part of the alleged condemnor. Burnell v. Burnell, 359 SC 361 (S.C. App. 2004).

"The Circuit Court may punish by fine or imprisonment, at the discretion of the court, all contempt of authority in any cause or hearing before the same." S.C. Code Ann. Section 14-5-320.

#### Discussion and Findings of Fact

The existence of a valid order, duty, obligation, or prohibition applicable to the attendant circumstance and condemnor's actual awareness of the order, duty, obligation, or

prohibition applicable to him under the attendant circumstances is not challenged and therefore those facts are not in dispute and have been established beyond a reasonable doubt. The condemnor solely challenges the "willfulness" of the violation which he admits did occur.

In his testimony, in response to questions posed by counsel, the condemnor stated, "I had the phone in my hand with a couple other items. I was not attempting to use it. I believe, at least what I think, there may be some - I did say that that was one reason I have - I the phone but no no way was I attempting to use the phone. The phone was in my hand, I believe, underneath a portfolio and a book, I believe. I believe it was seen as I walked basically through the door, a couple of strides through the door, was first seen." This statement contradicts itself and is therefore not credible. The Court could not have seen a cell phone if it were "underneath a portfolio and a book" and not likely would have taken notice of it from that distance even if not hidden from view. The Court did not observe Mr. Abusaft with a cell phone at the back of the courtroom upon his entry into the courtroom as he describes; the Court observed Mr. Abusaft's possession and use or attempted use of a cell phone while he was standing in the well of the courtroom between the table used by defense counsel and the Clerk of Court's station. He was personally observed by the Court holding in his hand an active cellphone. There was no portfolio or book in his hand. The device was plainly visible with a screen that was bright and lit. He had not previously requested nor had he been granted permission by the Court to possess or to use a cell phone for any purpose in the courtroom. Upon inquiry by the Court, condemnor acknowledged possession and use or attempted use of the cell phone stating, "I need to contact my client", who was not present in court when the plea was to be entered, "and my office", presumably to assist in locating his client.

Further in his testimony condemnor stated, "I have never in my lifetime ... used a phone ... as a telecommunication device in a courtroom. I've used it for internet; I've used it for text-messaging." The contemnror appears to exhibit an unawareness of the fact that text-messaging by use of a cell phone is by definition "telecommunication". Either he lacks this basic knowledge, which this Court finds to be unlikely, or his testimony lacks requisite candor and is not credible.

The condemnor further testified that, "I am very aware of Judge Cole's rules about phones." "I mean, I literally had a phone taken out of my pocket in a trial before, and didn't get it back for a week." He admits to actual knowledge of the Court's prohibition against the possession as well as the use of a cell phone while court is in session without prior permission. In his acknowledgment of actual notice condemnor references a prior experience when a cell phone was confiscated due to his violation of the prohibition. Due to an inaccurate statement as to those facts the Court is compelled to comment. On the occasion referred to by Mr. Abusaft, he was observed by a court bailiff and a court security officer in possession and use of a cell phone in the courtroom where this Court was presiding. The Court was informed by the

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court officers that Mr. Abusaft had been instructed by them to remove the cell phone from the courtroom but that he refused. When Court was in session and during the course of a bench conference with the solicitor and Mr. Abusaft, the Court inquired as to whether he was in possession of a cell phone. He initially denied what he knew to be an actual fact, that he had a cell phone in his possession, but upon the Court disclosing what the court officers, who were present, had relayed to the Court, he stated he had a phone but it was not turned on. The Court then instructed him to surrender the phone to the deputy clerk of court who was seated four feet away. He took the phone from his coat pocket and surrendered it to the deputy clerk. The Clerk of Court was instructed to return the confiscated cell phone upon completion of the trial in which the Court was engaged without any further hearing or discussion, without Mr. Abusaft being cited for contempt of court, and without any sanction being imposed.

Condemnor served circuit judge J. Mark Hayes as a judicial law clerk. In his testimony he asserts that people moving about in the courtroom while a jury venire is being qualified "is his (Judge Hayes's) big thing." He further stated that, "I've accidentally gotten up during jury qualification with Judge Hayes", and this court infers from his relating the event that it resulted in some reaction from Judge Hayes. It is inconceivable to this Court that a lawyer who worked for a judge and is aware of that judge's rule to remain seated or not to move about during the jury qualification process, could "accidentally" get up and move about. Clearly, he was aware of the rule and notwithstanding that awareness violated the rule. Standing from a seated position or physically moving about in a courtroom cannot be done "accidentally", it requires intentional voluntary physical movement generated by a message from the brain. Such conduct cannot be described as "accidental" and to aver such exhibits a lack of candor and is not credible.

The condemnor's testimony regarding the only disputed fact in this case is not credible. Condemnor's assertion that his acts were not willful but only accidental is belied by the fact that at the time the Court observed him engaged in prohibitive conduct, he was standing in the well of the courtroom with an active cell phone having a brightly lit screen openly held in his hand, and upon inquiry by the Court as to his possession of it, immediately responded that he needed to contact his client who was absent from the courtroom. Any assertion that such conduct was merely accidental is not reasonable, exhibits a lack of candor and is not credible.

Counsel Alcide argues that the Court in considering the conduct of her client should not make a finding of contempt due to the fact that condemnor has learned from the experience and the attention and embarrassment brought upon him by it. This Court is reminded of a quote from the famed writer Mark Twain and perhaps others that, "there is nothing learned from the second kick of a mule."

#### Conclusion

After consideration of the facts established by the probative and credible evidence in the record, this Court finds beyond a reasonable doubt that; (1) there existed a valid duty, order, obligation, or prohibition imposed upon the condemnor attendant to the circumstances of this case; (2) the condemnor had appropriate and actual knowledge of the duty, order, obligation, or prohibition attendant to the circumstances of this case, and; (3) the condemnor did willfully, voluntarily, knowingly, and intentionally violate the duty, order, obligation, or prohibition imposed upon the condemnor by having possession of a cell phone while court was in session and further that he was or was attempting to use that cell phone in violation of valid court orders of which he had actual knowledge and understanding.

Based upon the foregoing, this Court finds that Monier Mufid Abusaft has engaged in a willful, knowing, and intentional disobedience of a lawful order, duty, obligation or prohibition imposed upon him, committed in the presence of the court and with knowledge of the Court obtained by the Court's own senses, and by such conduct has exhibited a flagrant disrespect and disregard for the Court, its rules, and its authority.

This Court therefore finds Monier Mufid Abusaft to be in willful direct criminal contempt of court and for such contempt shall be sanctioned by commitment to the county detention facility for a period of 24 hours or by the payment of a fine in the sum of \$1,000.

Counsel informed the Court that the condemnor opted to pay the monetary fine which shall be due and paid not later than ten days from the filing of this order.

**IT IS SO ORDERED!**

**MARCH 27, 2023**

  
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**J. DERHAM COLE, PRESIDING JUDGE**  
The SEVENTH JUDICIAL CIRCUIT COURT

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