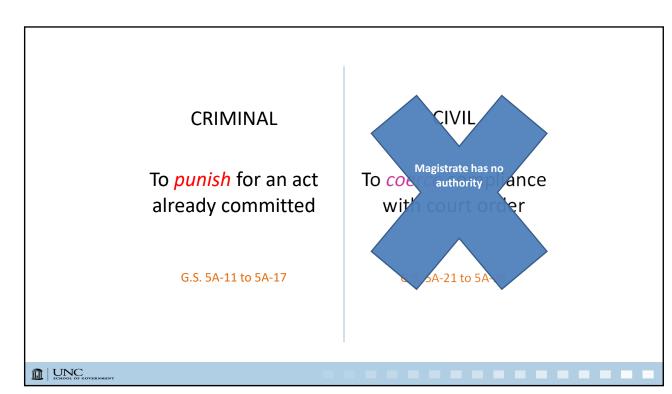
Contempt for Magistrates Cheryl Howell School of Government March 2023

1

Contempt authority is statutory

NC Gen. Stat. Chapter 5A
Criminal Contempt
Civil Contempt
Contempt by Juveniles



Criminal contempt - Grounds

- (1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.
- (2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.
- (3) Willful disobedience of, resistance to, or interference with a court's lawful process, order, directive, or instruction or its execution.
- (4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or affirmed, willful refusal to answer any legal and proper question when the refusal is not legally justified.
- (5) Willful publication of a report of the proceedings in a court that is grossly inaccurate and presents a clear and present danger of imminent and serious threat to the administration of justice, made with knowledge that it was false or with reckless disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.
- (6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction
- (7) Willful or grossly negligent failure to comply with schedules and practices of the court resulting in substantial interference with the business of the court.
- (8) Willful refusal to testify or produce other information upon the order of a judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity to Witnesses.
- (9) Willful communication with a juror in an improper attempt to influence his deliberations.
- (9a) Willful refusal by a defendant to comply with a condition of probation.
- (9b) Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes. ... "Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision" includes, but is not limited to, knowingly violating the terms of post-release supervision in order to be returned to prison to serve out the remainder of the supervisee's sentence.
- (10) Any other act or omission specified elsewhere in the General Statutes of North Carolina as grounds for criminal contempt.

G.S. 5A-11(a



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G.S. 5A-11(a)

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Magistrates can only punish "direct" criminal contempt.

"Direct" criminal contempt is contempt committed:

- Within sight or hearing of presiding judicial official; and
- In, or in immediate proximity to, room where proceedings are being held; and
- G.S. 7A-292(2) Likely to interrupt or interfere with matters before the court.



(1) Willful behavior committed during the sitting of a court and directly tending to interrupt its proceedings.

Examples:

- Attorney repeatedly demanding to be heard (after warnings to stop) and inciting his purported client to disrupt proceedings. In re Nakell (1991).
- · Mobile phone ringing? See State v. Phair (2008)
- (9) Willful communication with a juror in an improper attempt to influence his deliberations.
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G.S. 5A-11



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http://nccriminallaw.sog.unc.edu

Contempt and Cellphones

Posted on May, 1, 2013, 9:11 am by Michael Crowell • 2 comment



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A couple of this blog's recent Friday News Roundups have linked offbeat stories about contempt and cellphones. In the first a Michigan judge held himself in contempt and ordered a \$25 fine when his cellphone rang in court. The second story was the federal Sixth Circuit upholding a 30-day contempt sentence for a courtroom spectator caught texting in federal district court. Actually it was more than that, as he later admitted to also using his phone to photograph his friend being sentenced. After all, what are friends for?

Some readers might be wondering about contempt and cellphones in North Carolina courtrooms. In the Tar Heel state you might be held in contempt if your phone goes off, though not necessarily. Here is a binef primer on contempt and some observations about cellphones.

There are two kinds of contempt, civil and criminal. Civil contempt is used only when a person is currently disobeying a court order, and its only sanction is to lock up the person until they comply with the order. The most common example is the deadbeat father not paying child support. He does not get a set sentence; he stays in jail until he pays, and he gets out just as soon as he catches up on the support.

Criminal contempt can be for any of a number of behaviors listed in the statute. The most commor are disrupting or showing disrespect for the court, not following the court schedule, refusing to testify. It's shouting at the judge, cursing, refusing to sit down, coming late to court – the stuff people usually think about when they hear the word "contempt." Refusing to obey a court order also may be criminal contempt, just as it may be civil contempt. But it can't be both, the judge has to choose one, either civil or criminal contempt. The difference between the two is that criminal contempt is used to punish the person for past behavior; civil contempt is used to get the person to comply. Criminal contempt carries a set punishment which can be a fine of up to \$500 and/or jail for up to 30 days; civil contempt is jail until the order is complied with.

The ringing cellphone in court, or texting or taking photos, would be criminal contempt, not civil.



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(2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly tending to impair the respect due its authority.

Examples:

- Yelling at/insulting the judge.
- Coming to court drunk. State v. Ford (2004)
- Racial slur directed at court officer. State v. Johnson (2015) (unpub'd)
- Refusal to rise/stand when directed. State v. Randall (2002)

whose offense requiring post-release supervision is a reportable conviction subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes. ... "Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision" includes, but is not limited to, knowingly violating the terms of post-release supervision in order to be returned to prison to serve out the remainder of the supervisee's sentence.

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G.S. 5A-11



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Criminal contempt - Grounds

(2) Willful behavior committed during the sitting of a court in its immediate view and presence and directly "Courtroom decorum and function depends on the respect shown by its due its authority.

officers and those in attendance.
Unexcused refusal[] to stand creates a rift
in that respect and interrupts the normal
proceedings of the court."

- Racial slur directed at court officer. State v. Johnson (2015) (unpub'd)
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disregard of whether it was false. No person, however, may be punished for publishing a truthful report of proceedings in a court.

Examples:

- Attempting to coerce witness not to obey subpoena. State v. Wall (1980)
- Disobeying order to turn over control of assets to receiver. Osmar (1979)
- Disobeying order to keep children away from sex offender. State v. Mastor (2015)
- Juror conducting own investigations. State v. Pierce (1999)

release supervision" includes, but is not limited to, knowingly violating the terms of post-release supervision in order to be returned to prison to serve out the remainder of the supervisee's sentence.

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G.S. 5A-11



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- (6) Willful or grossly negligent failure by an officer of the court to perform his duties in an official transaction.

with the business of the court.

Examples:

- Attorney twice attempting to introduce polygraph results in criminal trial. In re Cogdell (2007)
- Attorney repeatedly failing to comply with Rape Shield Statute when questioning witness. State v. Okwara (2012)

G.S. 5A-11



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(9) Willful communication with a juror in an improper attempt to influence his deliberations

Example:

- Attorney abandoned client just before probation hearing because hadn't been paid.
 State v. Key (2007)
- But, State v. Chriscoe (1987): Failure of witness to appear promptly at 9:30 was not violation of order because not subpoenaed, not disruptive to schedule.

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Criminal contempt - Grounds

"[T[hat degree of interference with the court's business that is real, and not momentary or illusory."

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Criminal contempt - Procedure

Summary proceeding

Plenary proceeding

- Direct contempt only
- All <u>in</u>direct contempt
- Direct contempt (at court's option)



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Criminal contempt - Procedure

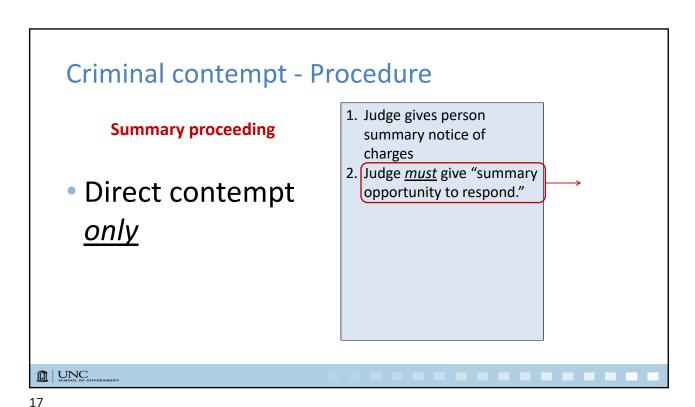
Summary proceeding

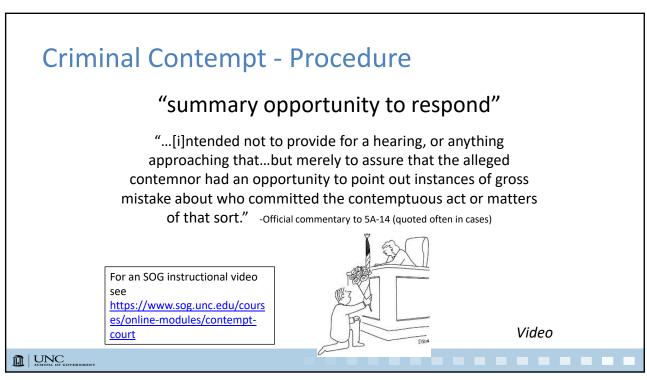
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- Within sight or hearing of presiding judicial official; and
- In, or in immediate proximity to, room where proceedings are being held; and
- Likely to interrupt or interfere with matters before the court.

Summary proceeding appropriate "when necessary to restore order or maintain dignity and authority of the court."







Criminal contempt - Procedure

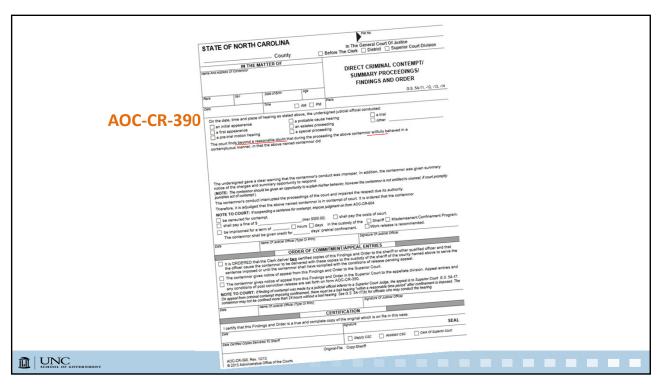
Summary proceeding

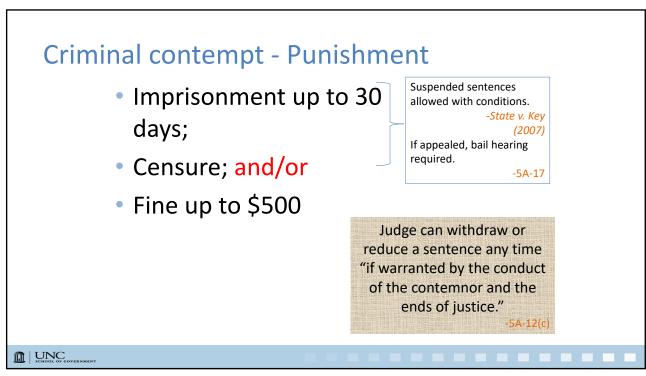
Direct contempt only

- Magistrate gives person summary notice of charges
- 2. Magistrate <u>must</u> give "summary opportunity to respond."
- 3. Magistrate finds facts supporting summary imposition of measures.
 - · Must find willfulness.
 - Must state facts found "beyond reasonable doubt."

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sog.unc.edu North Carolina Criminal Law Consecutive Sentences for Criminal Contempt LINKS One of the $\underline{\text{first posts}}$ I wrote on this blog was about the punishment for criminal contempt. The post included a discussion about whether sentences for contempt could be run consecutively About this Blog ASSET Mobile A -something our appellate courts hadn't yet ruled on at the time. In State v. Burrow, decided last week, the court of appeals approved a trial court's orders sentencing a defendant to six consecutive 30-day terms of imprisonment for contempt. SUBSCRIBE Burrow involved a defendant tried and convicted for attempted felony breaking or entering. He was also convicted of being a habitual felon, raising the punishment class for the attempted breaking or entering from Class I to Class E. The jury found an aggravating factor. The judge found that it outweighed the lone mitigating factor and sentenced the defendant from the top of the aggravated range for Prior Record Level VI: 63–88 months. ARCHIVES criminal contempt. The appellate opinion in Burrow doesn't give much detail about what happened. but the trial court orders themselves, available as part of the appellate record, do. Select Month The Court finds beyond a reasonable doubt that during this session of Court and during CATEGORIES the defendant's trial on Tuesday, 12 May 2015, in Surry County, in the absence of the jury and Crimes and Eler just before receiving the verdict in the second phase of the defendant's jury trial, when the Court was instructing the defendant's wife, Ms. Amber Childress, not to move about the courtroom Motor Vehicle UNC SCHOOL OF GOVE

Criminal contempt - Procedure

Plenary proceeding

- All <u>in</u>direct contempt
- Direct contempt (at court's option)

UNC SCHOOL OF GOVERNMENT

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Criminal contempt - Procedure

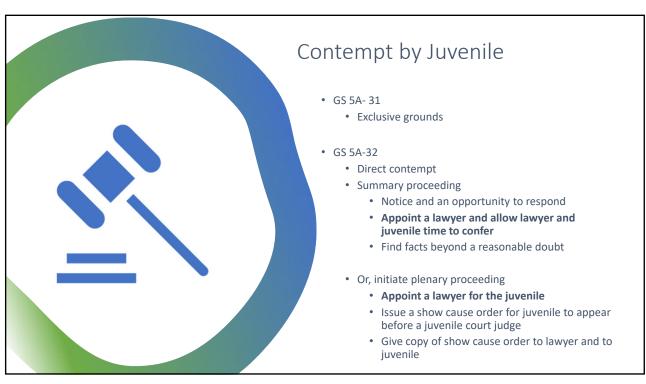
- Show cause order
 - Must state facts upon which order is based.
 - o Form: AOC-CR-219
- Hearing (non-jury trial)
 - o Burden of proof on State
 - $\circ \ \ \, \text{Beyond a reasonable doubt}$
 - o Indigent entitled to counsel
 - Self-incrimination protection applies.
- Order
 - Guilty or not guilty
 - o Findings of fact required.
 - Must find willfulness (or prior warning).
 - Must state "beyond reasonable doubt."

Plenary proceeding

- All <u>in</u>direct contempt
- Direct contempt (at court's option)

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- Punishment GS 5A-33(c)
 - Up to 5 days in juvenile detention facility, and/or
 - Up to 30 hours of supervised community service as arranged by a juvenile court counselor, and/or
 - Undergo evaluation as necessary to determine the needs of the juvenile

Appeal

Magistrate

Superior Court (de novo appeal)

(Juvenile goes to Court of Appeals)

Bail hearing required

- District court judge sets release conditions
- Hearing must be held within 24 hours
 - If judge doesn't act within 24 hours, magistrate or superior court judge can conduct bail hearing

Scenarios Alternatives to Contempt?

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