

# Criminal Contempt

Before the Magistrate

Ann M. Anderson  
2020

"Hah! — I've been found in contempt by better judges than you!"

UNC SCHOOL OF GOVERNMENT [www.sog.unc.edu](http://www.sog.unc.edu) Video

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CRIMINAL

To **punish** for an act already committed

G.S. 5A-11 to 5A-17

CIVIL

Magistrate has no authority to interfere with court order

G.S. 5A-21 to 5A-24

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## What is criminal contempt?

- (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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## What is criminal contempt?

(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.

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(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.

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G.S. 5A-11



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Magistrates can only punish "direct" criminal contempt.

G.S. 7A-292(2)

"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
- Likely to interrupt or interfere with matters before the court.



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- Serious disrespect toward the court during a hearing. *Such as...*

- Yelling, cursing, calling magistrate foul names
- Throwing things, slamming a chair
- Repeated interrupting/arguing with court

- Disrupting hearing after warning. *Such as...*

- Repeatedly interrupting other party/counsel
- Loud side conversations/arguments
- Taking a call during evidence



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### Direct criminal contempt?

You walk past the waiting area outside the small claims hearing room. You hear one guy say to his friend,

*"I heard this magistrate is so dumb she makes decisions with a Magic 8 ball."*



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### Direct criminal contempt?

As you're about to hold the next initial appearance, the deputy informs you that the defendant just called him (the deputy) a *"sh--head"* and a *"son of a b----"*.



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### Direct criminal contempt?

As you start an initial appearance, the defendant, looking a little drunk, interrupts you by loudly asking,

*"Why am I here? Why in hell am I even in this place? I didn't do a damned thing to deserve being here!"*

Delay the proceeding under 15A-511(a)(3)?



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## Punishment



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## Punishment

- Imprisonment up to 30 days;
- Fine up to \$500;  
**and/or**
- Censure.



Magistrate can withdraw or reduce a sentence any time "if warranted by the conduct of the contemnor and the ends of justice."

-SA-12(c)



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### North Carolina Criminal Law

A UNC School of Government Blog

#### Consecutive Sentences for Criminal Contempt

Posted on Jun 11, 2016, 2:57 pm by James Markham • 2 comments



One of the [first assets](#) 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—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.

[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.

In addition to the felony sentence, the court entered six orders finding the defendant guilty of direct 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.

The Court finds beyond a reasonable doubt that during this session of Court and during the defendant's trial on Tuesday, 12 May 2015, in Surry County, in the absence of the jury and 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

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## Procedure

- **Summary proceeding** – Punish the direct contempt right after it occurs;
  - This is the only way a magistrate can punish contempt;
- or
- *Issue show cause order* – Matter goes to district court for **plenary proceeding**



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## Summary proceeding

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

G.S. 5A-14

Magistrate *must*:

1. Gives person summary notice of charges
2. Give “summary opportunity to respond.”



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## “summary opportunity to respond”

“...[i]ntended not to provide for a hearing, or anything approaching that...but merely to assure that the alleged contemnor had an opportunity to point out instances of gross mistake about who committed the contemptuous act or matters of that sort.” –Official commentary to 5A-14 (quoted often in cases)

For an SOG instructional video see  
<https://www.sog.unc.edu/courses/online-modules/contempt-court>



[Video](#)



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*In re Korfmann*, 786 S.E.2d 768 (N.C. App. 2016).

Trial judge:

This Court takes the strong position that technology is not to be utilized by jurors and, in fact, this jury has been warned several times not to use.

In my opinion the utilization by the juror is blatantly disrespecting the Court's order not to use.

Sir, I think that what I am going to do with you is I am going to send you to Wilson County Jail for 30 days for failing to follow the order given to you by this Court.

The ladies and gentlemen of this jury are now excused. You can get a certificate as to where you have been for the last several days. You are excused.

This gentleman is in your custody.

Court of Appeals:

**Contempt order  
VACATED:**

*“The trial court did not give appellant the necessary ‘summary notice of the charges and a summary opportunity to respond[.]’”*

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## Summary proceeding

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

G.S. 5A-14

Magistrate *must*:

1. Gives person summary notice of charges
2. Give "summary opportunity to respond."
3. Find facts supporting summary imposition of punishment.
  - Must find willfulness (or prior warning)
  - Must state that facts found "beyond reasonable doubt."

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AOC-CR-39018

If magistrate cannot or does not wish to hold a **summary proceeding**, may refer matter to district court for a...

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## Plenary proceeding

- Magistrate issues show cause order
  - Must state facts upon which order is based.
    - Form: **AOC-CR-219**
- Hearing before District Court Judge
  - Burden of proof on State
  - Beyond a reasonable doubt
  - Indigent entitled to counsel
  - Self-incrimination protection applies.
- Order
  - Guilty or not guilty
  - Findings of fact required.
    - *Must find willfulness (or prior warning).*
  - Judge *must* state "beyond reasonable doubt."

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## AOC-CR-219

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## Appeal

Magistrate → Superior Court  
(*de novo* appeal)

Bail hearing required

- District court judge sets release conditions
- Hearing must be held within 24 hours



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## Should I?

Some alternatives:

- Ignore and move on.
- Admonish and move on.
- If the person is not a party, instruct him or her to leave.
- Take a break. (Hit the reset button.)
- Unruly or grossly intoxicated criminal defendant? Delay the proceeding. Order confinement under **15A-511(a)(3)**. (See Smith book at p. 18).



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## SOG contempt resources (selected)

- North Carolina Trial Judges' Bench Book, DCJ Volume 2, Chapter 4, Contempt (most comprehensive)
- Contempt (overview), AOJ Bulletin, M. Crowell 2015: (<http://sogpubs.unc.edu/electronicversions/pdfs/aojb1503.pdf>)
- Contempt of Court - Online training module (<https://www.sog.unc.edu/courses/online-modules/contempt-court>)
- Numerous blog posts at "On the Civil Side": ([civil.sog.unc.edu/](http://civil.sog.unc.edu/))
- Numerous blog posts at Criminal Law Blog ([nccriminalaw.sog.unc.edu](http://nccriminalaw.sog.unc.edu))



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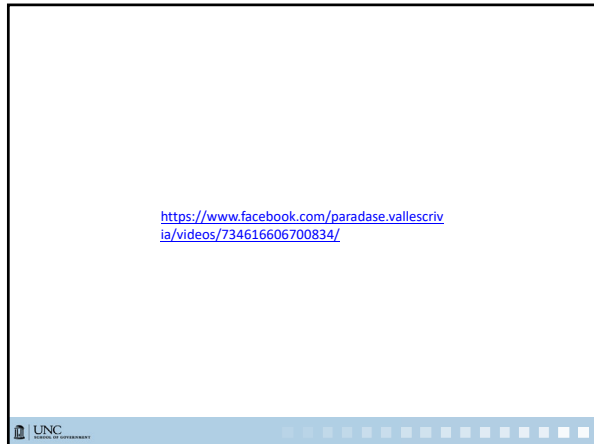
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