

ARKANSAS SUPREME COURT HOLDS THAT TO SUMMARILY HOLD SOMEONE IN CONTEMPT, THE CITATION MUST BE ISSUED WITHOUT DELAY, OTHERWISE, THE CONTEMNOR MUST BE GIVEN NOTICE AND REASONABLE OPPORTUNITY TO DEFEND HIMSELF.

In *James v. Pulaski County Circuit Court, Fifth Division*,¹ the Arkansas Supreme Court reversed and dismissed nine citations against William O. James, Jr. and held that summary contempt orders announced after a mistrial was declared due to hung jury, for alleged violations of court order that had occurred during the trial and closing argument, violated James' right to notice and opportunity to present a defense.² Further, the court held James could not be held in contempt for not following what the circuit court meant to order, but can only be held in contempt for violating the circuit court's express commands.³

The case arose from a manslaughter trial against Joshua Hastings in June 2013.⁴ The presiding judge in that case, Wendell Griffen, found James, the defense attorney, guilty of ten contempt violations.⁵ Hastings was a police officer charged with the shooting death of Bobby Moore III, while on duty.⁶ Jeremiah Johnson and Keontay Walker, the prosecution's two key witnesses, were present at the time of the crime.⁷ Prior to the trial, Hastings filed a motion requesting the ability to cross-examine Johnson and Walker regarding their juvenile and probationary statuses.⁸ The motion was denied, but later reversed after Hastings filed a motion for reconsideration.⁹ The circuit court ruled that the defense may cross-examine the two witnesses about the fact that they were on probation in juvenile court only for the purpose of challenging their credibility on the grounds of bias or motive, not for the purpose of showing their state of mind at the time of the incident or for the purpose of establishing their character.¹⁰

James violated the order during opening statements following an objection by the prosecution, and the court held him in contempt.¹¹ The trial continued and ended with a hung jury. On Sunday, June 23, 2013, immediately following the court declaring a mistrial, it announced that nine other contempt violations had occurred throughout the trial.¹² Once a final order was entered, James filed a motion to vacate all ten contempt

¹ 2014 Ark. 305, ____ S.W.3d ____.

² *James*, 2014 Ark. 305, at 20, ____ S.W.3d ____ at ____.

³ *Id.*

⁴ *Id.* at 1, ____ S.W.3d ____ at ____.

⁵ *Id.* The court originally fined James \$2,500 per violation, but later reduced the amount to \$500 per violation. *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *James*, 2014 Ark. 305, at 1-2, ____ S.W.3d ____ at ____.

⁹ *Id.* at 2, ____ S.W.3d ____ at ____.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

findings, but the court denied the motion. The Arkansas Supreme Court reversed and dismissed these nine contempt findings.¹³

On appeal, James primarily argued the circuit court erred because he was not afforded his constitutional and statutory safeguards at the close of trial, on June 23, 2013, when the court announced the nine contempt citations.¹⁴ He argued that he was “ambushed” and that he could not have responded to the circuit court.¹⁵ Further, James contended that the circuit court’s order was invalid because it was entered on a Sunday, violating Ark. Code Ann. § 16-10-114 (Repl. 2010), which states courts are not to be open on Sunday with exceptions.¹⁶ Regarding this issue, the circuit court ruled that James’ Sunday argument was without merit because the statute allows action on Sunday when they occur in conjunction with jury deliberations, which was the case here.¹⁷ The Arkansas Supreme Court affirmed this finding.¹⁸

In reviewing James’ primary argument, the court analyzed several cases on criminal contempt and notice.¹⁹ The court explained that courts have inherent power to punish a contemnor, but that the Due Process Clause requires that an alleged contemner be notified that a charge of contempt is pending against him and that he be aware of the specific nature of that charge.²⁰ The guiding statute plainly states, “contempts committed in the immediate view and presence of the court may be punished summarily. In other cases, the party charged shall be notified of the accusation and shall have a reasonable time to make his or her defense.”²¹ Summarily is defined as “performed speedily and without ceremony.”²² In other words, the court must announce the contempt immediately following the violation, or the party must be notified of the accusation and have a reasonable time to make his defense at a later time.²³ Even though the violation may have occurred in the presence of the court, the punishment may be handled later if the contemner has notice that he is being held in contempt and he has reasonable time to make his defense.²⁴

The circuit court rendered its ten contempt findings at two different times.²⁵ The last nine contempt citations were not announced until the close of trial.²⁶ The Arkansas Supreme Court did not dismiss the first citation that occurred during the opening statement because the circuit court acted properly; the court announced the violation and

¹³ *Id.* at 20, ____ S.W.3d ____ at ____.

¹⁴ *James*, 2014 Ark. 305, at 15, ____ S.W.3d ____ at ____.

¹⁵ *Id.*

¹⁶ *Id.* at 8, ____ S.W.3d ____ at ____.

¹⁷ *Id.*

¹⁸ *Id.* at 9, ____ S.W.3d ____ at ____.

¹⁹ *Id.* at 16–19, ____ S.W.3d ____ at ____.

²⁰ *James*, 2014 Ark. 305, at 16–17, ____ S.W.3d ____ at ____.

²¹ *Id.* at 18.

²² *Id.* at 18 (quoting *American Heritage Dictionary*, 1733 (4th ed. 2000)).

²³ *Id.* at 18–19.

²⁴ *Id.* at 7.

²⁵ *Id.* at 6–7.

²⁶ *James*, 2014 Ark. 305, at 10, ____ S.W.3d ____ at ____.

explained it would take up the issue of sanctions after the trial.²⁷ However, the Arkansas Supreme Court dismissed the other nine citations because the circuit court did not render the citations until four days after the alleged conduct occurred, nor did the court put James on notice that he had violated the order.²⁸ Further, the Arkansas Supreme Court stated that James' conduct did not violate the circuit court's order.²⁹ The order stated James was not permitted to ask the witnesses about their probation statuses or refer to any juvenile offenses for the purpose of establishing their character or their state of mind at the time of the incident.³⁰ The Arkansas Supreme Court explained this did not preclude James from inquiring in to the witnesses' state of mind in general; he just was prohibited from using their probation status for that purpose.³¹ For these reasons, the Arkansas Supreme Court reversed and dismissed nine of the ten citations.

This case illustrates that to hold someone in contempt the court must announce the violation immediately following the conduct; otherwise, the court must put the person on notice and give him a reasonable time to make his defense.

*Lindsay Bridges

²⁷ *Id.* at 7.

²⁸ *Id.* at 18.

²⁹ *Id.* at 20.

³⁰ *Id.*

³¹ *Id.*