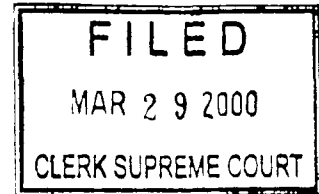


IN THE COURT OF APPEALS OF IOWA

No. 0-104 / 99-799
Filed March 29, 2000



CHARLES LONELL CRAWLEY,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR BLACK HAWK COUNTY,
Defendant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

Charles Crawley appeals a district court order finding him in contempt for
failing to comply with a prior court order requiring him to submit a handwriting
sample. **WRIT ANNULLED.**

Susan R. Stockdale of Roehrick, Hulting, Krull & Blumberg, P.C., Des
Moines, for plaintiff.

Thomas J. Miller, Attorney General, **Chris C. Odell**, Assistant Attorney
General, **Thomas J. Ferguson**, County Attorney, and **John Standafer**, Assistant
County Attorney, for defendant.

Heard by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

~~Charles~~ **Crawley** appeals a district court order finding him in contempt for failing to ~~comply~~ with a prior court order requiring him to submit a handwriting sample. We annul the writ.

1. Background Facts and Proceedings. Charles Crawley was charged with forgery on December 31, 1998. At his initial appearance that same day, an attorney was appointed to represent him. On January 8, 1999, the Black Hawk County Attorney filed a trial information formally charging Crawley with forgery in violation of Iowa Code section 715A.2 (1997). Crawley entered a plea of not guilty and trial was scheduled. Later, the county attorney filed a supplemental trial information adding Crawley's habitual offender status, as defined in Iowa Code sections 902.8 and 902.9.

On March 18, 1999, the State presented an application for nontestimonial identification to the district court. The application requested an order requiring Crawley to provide a handwriting sample at the Black Hawk County jail where he was in custody. That same date, the district court granted the application but failed to fill in the case number on the order.

On March 18, Waterloo Police Department Detective Linn Moller called ~~Crawley's~~ **attorney** to inform him of the court's order. The defendant's attorney agreed ~~that Moller~~ could meet with Crawley at the jail without the presence of counsel. Later that afternoon, Moller went to the jail and spoke with Crawley. The defendant refused to provide a handwriting example unless his attorney was present. Moller gave Crawley until March 22 to contact his attorney. On March 23, Moller met with the defendant and his attorney at the jail and tried for a

~~second time to obtain a~~ handwriting sample. After Crawley and his attorney conferred ~~privately~~, Crawley's attorney advised Moller that Crawley did not want to provide ~~a~~ handwriting sample.

As a result of the defendant's refusal to comply with the court order for a handwriting sample, the county attorney filed a motion for contempt on March 24, 1999. Hearing on the motion was held two days later. The district court found that the defendant had failed to comply with the court's previous order. Both Crawley and his attorney advised the court that the defendant would comply with the court's prior order.

Following the hearing, Detective Moller tried for a third time to obtain a sample of the defendant's handwriting. In Moller's opinion, Crawley refused to cooperate by failing to follow directions and attempting to disguise his handwriting. The district court was notified of the defendant's lack of compliance on March 29, 1999. The district court entered an order continuing Crawley's trial date and directing the county attorney to file a second motion for show cause hearing. The State filed the motion and a hearing was held on April 8, 1999.

The district court found Crawley in contempt and sentenced him to serve 180 days in jail. The court provided that his sentence would be reduced by one-half in ~~the event~~ he complied with the nontestimonial identification order. The court ~~ordered~~ Crawley's sentence to commence after he was released from custody on his pending charges.

Crawley filed a notice of appeal on May 6, 1999. Our Iowa Supreme Court deemed the appeal as a petition for writ of certiorari and ordered this case to proceed under Iowa Rule of Appellate Procedure 303. Crawley raises two

claims on appeal. First, he contends the order requiring him to provide nontestimonial identification was "not specific and certain." Second, he claims there was insufficient evidence to support the finding of contempt.

II. Scope of Review. Our review is at law, not de novo. *Sulma v. Iowa Dist. Ct. for Washington County*, 574 N.W.2d 320, 321 (Iowa 1998). We look at whether the district court acted illegally or without jurisdiction. See Iowa R. Civ. P. 306; see also *Sulma*, 574 N.W.2d at 321 (citation omitted). If it is claimed that a ruling is not supported by substantial evidence, we examine the record, not de novo, but to assure ourselves the proper proof supports the judgment. *In re Marriage of Spears*, 529 N.W.2d 299, 304 (Iowa App. 1994). We are not bound by the trial court's conclusions of law and may inquire whether the trial court applied erroneous rules of law that materially affect its decision. *Id.*

III. Specificity of the Court Order. The State contends Crawley's first challenge to the district court's contempt order has not been properly preserved for review. We agree. Although he raises the specificity and certainty of the district court order in his brief, Crawley failed to raise any issue concerning the specificity or definiteness of the order before the district court.

An issue must be first presented to the district court to preserve it for review. We will not consider an issue for the first time on appeal. *Schill v. Careage Corp.*, 353 N.W.2d 416, 420 (Iowa 1984). Crawley never contended the district court's order was unclear or that he did not understand what the order required him to do. In fact, the court's order of March 30, 1999, indicates both Crawley and his counsel told the court they intended to comply with its prior order when they appeared at the hearing on March 26, 1999. Not only was Crawley

represented by counsel, the order itself informed him of his right to have the order modified. We conclude defendant failed to preserve this issue for review. See *State v. Nagel*, 458 N.W.2d 10, 12 (Iowa App. 1990) (finding no violation of right to counsel at lineup where defendant was aware of right but appeared at the time and place designated by the order for lineup without an attorney and did not request delay or appointment of counsel).

IV. Sufficiency of the Evidence. In our review of a contempt finding, we ask whether substantial evidence supports the court's judgment. *McKinley v. Iowa Dist. Ct. for Polk County*, 542 N.W.2d 822, 824 (Iowa 1996). Contempt must be established by proof beyond a reasonable doubt. *Id.* Contempt is customarily defined as willful disobedience. *Id.* "Willful disobedience" requires:

evidence of conduct that is intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner had the right or not.

Id. Once a violation of a court order has been shown, the burden shifts to the alleged contemner to produce evidence suggesting that the violation was not willful. *Christensen v. Iowa Dist. Ct. for Polk County*, 578 N.W.2d 675, 678 (Iowa 1998). There are two ways in which the contemner may show that a failure to comply with a court order was not willful: (1) the order was indefinite; or (2) the contemner was unable to perform the act ordered. *Id.*

We determine substantial evidence supports the district court's contempt finding. After being advised by the court, his attorney, and Detective Moller what the order required, Crawley refused to provide a handwriting exemplar without his attorney present. After his attorney arranged to be present on March 23, the defendant again refused to provide a handwriting sample. The State presented

evidence that Crawley "feigned cooperation" on March 26. Crawley ignored Detective Moller's instruction to write the entire exemplar in cursive and refused to comply with a request to write on a blank piece of paper. Moller testified the defendant "was very obviously trying to disguise his handwriting form on the handwriting samples," holding his head down near the paper and holding the pen in an awkward position. A handwriting expert compared Crawley's exemplar with his signature on fingerprint cards. He concluded defendant's written sample involved "masking and disguising of his handwriting." Defendant offered no explanation for his behavior at the contempt hearing other than to indicate he "gave a good handwriting sample to officer Moller." We conclude substantial evidence supports the district court's finding of contempt. We, therefore, annul the writ.

We do point out the nontestimonial identification order did not in all respects comply with Iowa Code section 810.8, requiring the order to inform the person of "the nontestimonial identification procedures to be conducted, the methods to be used, and the approximate length of time the procedures will require." However, the State substantially complied with this requirement when Moller verbally explained, on more than one occasion, what was going to be required of Crawley. See *State v. Ripperger*, 514 N.W.2d 740, 747 (Iowa App. 1994) (officer's verbal explanation sufficiently supplemented nontestimonial identification order that failed to inform defendant of grounds to suspect he had committed the offense).

WRIT ANNULLED.

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