

COURT OF APPEALS,
STATE OF COLORADO

Ralph L. Carr Judicial Center
2 East 14th Avenue
Denver, Colorado 80203

Appeal; Mesa County District Court; Honorable
Paul R. Dunkelman and Case Number 22CV10

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Plaintiff-Appellant: People of the State of
Colorado,

v.

Defendant-Appellee: Belinda Knisley

And Concerning

Appellant:

Tina Peters

▲ COURT USE ONLY ▲

Case Number: 23CA1073

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ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in C.A.R. 28(g). It contains 4271 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words). The brief complies with the standard of review requirements set forth in C.A.R. 28(b).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/ Daniel P. Rubinstein

Signature of attorney or party

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STATEMENT OF THE ISSUES

1. Whether the trial court findings of fact were sufficient to establish indirect contempt?

2. Whether the prosecution proved beyond a reasonable doubt that Ms. Peters committed punitive contempt by recording a court hearing and then lying to the court about it, despite not admitting the actual recording?

STATEMENT OF THE CASE

On March 2, 2022, The District Attorney for the 21st Judicial District of Colorado, Daniel P. Rubinstein, filed a motion for an order directing the issuance of a contempt citation against Tina Peters in Mesa County District Court case number 21CR1312, *People v. Belinda Knisley*. CF, pp 70-73.

The contempt motion was based on Peters appearing as a courtroom observer in case 21CR1312 on February 7, 2022. CF, p 70. It alleged that Peters impermissibly video recorded a portion of the hearing and when confronted by the presiding Judge, the Honorable Matthew Barrett, Peters was dishonest and said she had not recorded the proceeding. CF, p. 70-71.

On March 2, 2022, a second Judge, Mesa District Court Judge Lance Timbreza, granted the motion for the contempt and issued an Order directing the issuance of a contempt citation against Peters. CF, pp 1-7. Judge

Timbreza directed that all future filings in the case be filed in a new civil matter, *People v. Knisley and concerning Tina Peters*, Mesa County District Court Case No. 2022 CV 30010. CF, p 6.

Judge Timbreza's Order outlined two possible grounds for indirect contempt of court: (1) the allegation that Peters video recorded a hearing on February 7, 2022 in case 21CR1312; and, (2) the allegation that Peters did not tell the truth when she denied recording the hearing when asked by the presiding judge. CF, p 5.

On May 5, 2023, a third judge, the Honorable Brian Dunkleman, conducted a contempt hearing and entered an oral ruling finding Ms. Peters in contempt of court. The trial court imposed a \$1,500 fine to be paid within 45 days. TR 05/05/23, pp 126:22 – 127:2; p 138:6-7.

The District Attorney called three witnesses during the contempt hearing: Haley Gonzales, Patricia Weaver, and Belinda Knisley. TR 05/05/23, pp 15-89. Peters' counsel called one witness, District Attorney Investigator Michael Struwe. TR 05/05/23, pp 94-97.

Haley Gonzales, a paralegal for the district attorney's office, testified she was sitting at the prosecution table during the hearing before Judge

Barrett. TR 05/05/23, p 16:4-20. She testified that she “noticed Ms. Peters was sitting behind the defense counsel and she had an iPad in her lap that was at an awkward angle, and it was tracking the movements of the prosecutor.” TR 05/05/23, p 17: 1-4. She described the iPad as being perpendicular or “straight up and down” on her lap. TR 05/05/23, p 17: 19-21. Gonzales further testified that “it appeared that she was recording on the iPad.” TR 05/05/23, p. 20: 8-9. She also identified courtroom surveillance video which depicted what appeared to be Peters recording on her iPad. TR 05/05/23, p 23:6 -27:14. With respect to Peters’ movements with the iPad, she testified: “As she was doing that, I had a view of the screen for a brief moment and I could see the courtroom in real time. I could see the pew sitting next to her. And it appeared to be in camera mode because I could see the red button and a time, whereas if it’s just in picture mode, it does not have the time.” TR 05/05/23 p 21: 16-21.

Upon seeing this, Gonzales alerted prosecutor Johnathan Mosher of Peters’ suspected recording on the iPad. TR 05/05/23, p 20: 12-14. Following a break in the argument in court, she testified that Mosher alerted DA Rubinstein of the suspected recording, who then approached the Judge Barrett’s bench with opposing counsel. TR 05/05/23, p. 21: 1-9.

After DA Rubinstein raised the issue that Peters appeared to be recording the proceeding, Judge Barrett confronted Peters. The following exchange occurred:

Judge Barrett: "Were you recording, ma'am?"

Peters: "(Indiscernible) It was just –

Judge Barrett: "Were you not recording?"

Peters: (Indiscernible)

Judge Barrett: "Were you broadcasting this?"

Peters: "No, sir."

Judge Barrett: "Were you recording or not, ma'am?"

Peters: "No, sir, I was not." Indiscernible. "This is a workday for me."

Judge Barrett: "So, then, did you have your video up for some reason?"

Peters: "No"

Judge Barrett: "So he just completely mis-saw what was ever on your screen?"

Peters: "Yes. I don't need to record. This is recorded, right? I don't need to do that?"

Judge Barrett: “No. You don't need to do it because there is a sign outside the door saying no recording.”

Ms. Peters: “I understand. You know they are just wrong.”

TR 02/07/22, pp 10:12-12:2; TR 05/05/23, pp 121: 23 – 122:25

Patricia Weaver, the sister of Belinda Knisley, testified to being present in the Court during the hearing. TR 05/05/23, p 47:16-20; p 49:14-18. She testified that Peters sat beside her on the front pew of the courtroom behind her sister Knisley. TR 05/05/23, pp 49: 25-50-5. She testified to overhearing a conversation between Peters and Knisley in which Knisley asked Peters to record the court hearing and Peters agreed to record it. TR 05/05/23, p 51: 20-22.

Weaver testified to watching Peters hold up the iPad and her ability to see that the iPad screen was turned on and appeared to be recording the hearing. Although she did not see if the recording button was on, it appeared to be recording. TR 05/05/23, pp 54:15 – 55-7. Like Gonzales, Weaver identified courtroom surveillance video from the day of the hearing and testified that the video appeared to show Peters recording the hearing. TR 05/05/23, pp 54:21-55:7.

Weaver testified that after a discussion between the Judge and Peters, Peters told Weaver something to the effect that she told the Judge she was not recording. TR 05/05/23, p 60:12-14. Weaver testified that Peters then told her, “Even Abraham lied to protect himself.” TR 05/05/23, p 59:24-25. Weaver interpreted Peters’ statement to be reference to Peters “protecting herself.” TR 05/05/23, p 62:22.

Belinda Knisley testified to previously working for Peters at the Clerk and Recorder’s Office as a Chief Deputy Clerk and as her second in command. She described the two being friends and having a social relationship that included “camping, dinner or lunch, that type of thing.” She testified that they presently did not have a relationship. TR 05/05/23, pp 76:25 – 77: 20.

Knisley testified that Peters appeared at Knisley’s court hearing on February 7, 2022, to support her as her employee. TR 05/05/23, pp 77:21-78:4. She described asking Peters to record the hearing for her. Peters initially asked, “You want me to record this?” In response, Knisley said “yes”, and Peters agreed to record the hearing. TR 05/05/23, p 79: 4-7.

Knisley testified to the conversation between the Judge and Peters about whether Peters, in fact, was recording the hearing. She testified that Peters denied to the Judge that she had been recording. TR 05/05/23, pp 79:22-80:6. Following the hearing, Peters told Knisley, “Even Abraham lied to save Sarah.” TR 05/05/23, p 80:14-18. Upon cross examination, Knisley testified that she did not say anything in response to Peters’ statement, commenting: “I was dumbfounded, thinking, I didn’t ask anybody to lie. I didn’t need any protection.” TR 05/05/23, p 89:3-7.

The trial court concluded that Peters committed contempt of court and made the following findings:

“The Court makes the following findings of fact: The Court will note it does not find the facts to be particularly disputed in this case. Ms. Peters was attending a court proceeding being held for at the time for a friend of hers, an employee, Belinda Knisley and that proceeding was on February 7th, 2022. Just prior to the beginning of the hearing or right about the beginning of the hearing, Ms. Knisley asked Ms. Peters to record the proceeding. TR 05/05/23, p 119: 2-10.

“Ms. Peters answered affirmatively to Ms. Knisley that she would record the proceedings. TR 05/05/23, p 119: 14-15.

“Ms. Gonzales, a paralegal for the District Attorney’s office, saw what she believed to be Peters recording the hearing, based on seeing Peters holding an iPad perpendicular on her lap at an awkward angle tracking the movement of the prosecutor. TR 05/05/23, p 119:17-22

“Another witness, Ms. Weaver, testified that she overheard a conversation between Ms. Knisley and Ms. Peters where Ms. Knisley asked Ms. Peters

to record the proceedings. Heard Peters answer affirmatively, and then observed behavior consistent with the recording of the proceedings.”

TR 05/05/23, p 120: 8-13.

The trial court also determined that Peters, when confronted by Judge Barrett, was dishonest when she denied recording. This was supported by Peters statement to Knisley immediately after the confrontation. The trial court found that, “Ms. Weaver overheard Ms. Peters stating to Ms. Knisley something to the effect that even Abraham lied to protect himself.” TR 05/05/23, p 120, 13-16. Similarly, Knisley testified that Peters told her, “even Abraham lied to save Sarah.” TR 05/05/23, p 121: 1-4. The court found that both versions of Peters’ statement to Knisley constituted an admission by Peters that she was, in fact, recording the proceeding. TR 05/05/23, p 121: 5-7.

As to a court order prohibiting the recording of the hearing, the trial court found that Judge Barrett noted that there was a sign on the courtroom door “that says no recording, no video, audio.” TR 05/05/23, p 123: 8-9.

At the conclusion of the contempt hearing, the trial court held that Peters recorded the hearing and that the recording process was disruptive to the Court hearing. The Court found:

“. . .The Court will find that those facts have been proven beyond a reasonable doubt. The Court did find the testimony of the three witnesses to be consistent, consistent with the evidence in the case, consistent with the videos, and that the testimony of all three are consistent with each other. The Court does find their testimony to be credible. The Court does not find the evidence supports Ms. Peters was merely broadcasting.

“Based on these findings the Court makes the following conclusions of law and findings: The Court does find the behavior of Ms. Peters was disruptive. She was recording a proceeding. She was doing so covertly. She hid the fact when called out on it by Judge Barrett, certainly an indication to this Court that Ms. Peters was aware it was not acceptable, if not a violation of a Court order.

“It was the recording that was disruptive. . .

“Similarly, the conduct unreasonably interrupted with the due course of judicial proceedings. She was doing so covertly. She put that iPad down when called on it. It’s an indication she was aware it was not acceptable. It was the recording that interrupted the proceedings, not the People bringing that to the attention of the Court.”

TR 05/05/23, pp. 124:16 – 125:21.

After finding that Peters unreasonably interrupted the court hearing,

the trial court addressed Peters dishonesty when confronted with the

question of whether she had been recording:

“Probably most importantly to this Court, and the most clear contempt is the obstruction of the administration of justice. *Judge Barrett asked whether she was recording and the answer was dishonest. (emphasis added)*. If she had answered honestly, Judge Barrett could have handled it differently. He could have, and likely would have, handled it differently. . .” TR 05/05/23, p 126: 2-8.

“The Court does find that the dishonest answer by Ms. Peters obstructed the administration of justice. The Court also finds that to be offensive

to the dignity of the Court. The Court finds that to be proven beyond a reasonable doubt.” TR 05/05/23, pp 126:22-127:1.

As a sanction for the contempt of court, the Court imposed a \$1500 fine to be paid within 45 days, but declined to impose a jail sentence. TR 05/05/23, pp 138:6-7; 143:8-9.

SUMMARY OF THE ARGUMENT

The trial court properly found that there was sufficient evidence to establish that Appellant Peters committed contempt of court for recording a court hearing and lying about it when confronted by the presiding judge. The court determined that three credible witnesses testified who were consistent not only with each other, but consistent with court surveillance video.

Appellant Peters now contends the trial court failed to make two critical findings: (1) whether there was a valid court order prohibiting the recording of this court hearing; and (2) whether there was a finding by the trial court that Peters was aware of the court order against recording. The record on appeal, including the transcript of the contempt hearing, reflect that the Court made the findings that there was a valid court order against recording and that Peters’ knowingly violated that court order.

Additionally, Peters now argues that the “best evidence rule” required that the prosecution present the actual recording Peters made. The best evidence rule is inapplicable to the current allegations and facts. The prosecution was not required to prove, and did not attempt to prove, the accuracy of Peters’ recording. By contrast, the prosecution only alleged that Peters was recording a court hearing. The best evidence rule simply states a preference for the original where the contents of same are directly at issue. *Banks v. People*, 696 P.2d 293, 297 (Colo. 1985). Because the contents of the recording were not directly at issue and there is no evidence of bad faith, the best evidence rule is inapplicable.

ARGUMENT

I. Issue: Whether the trial court findings of fact were sufficient to establish indirect contempt?

A. Standard of Review and Preservation

Generally, a contempt finding is reviewed for an abuse of

discretion. *People v. Alleem*, 149 P.13d 765, 774 (Colo. 2007). Appellate courts review de novo punitive contempt factual findings regarding proof beyond a reasonable doubt. *People v. Kriho*, 996 P.2d 158, 172 (Colo. App. 1999). The issue of the sufficiency of the evidence is a question of law. *People v. Gonzales*, 666 P.2d 123 (Colo. 1983). In determining the sufficiency of the evidence, a reviewing court must determine whether the evidence, viewed as a whole and in the light most favorable to the prosecution, is sufficient to support a conclusion by a reasonable person that the defendant is guilty beyond a reasonable doubt of the crimes charged. *Kriho*, 996 P.2d at 172.

B. Analysis

Colorado Rule of Civil Procedure 107 governs civil contempt Proceedings. Indirect contempt is contempt that occurs outside of the direct sight or hearing of the court. C.R.C.P. 107(a)(3). A contempt of court can be indirect even if the conduct occurs in the presence of the court “if there are circumstances which have occurred outside of the presence of the court” that must be considered to fairly adjudicate the matter. *People v. Ganatta*, 622 P.2d 107, 109 (Colo. App. 1980).

Regarding the sufficiency of evidence for the finding of contempt of court, appellate courts must apply the substantial evidence test. Under this test, the Court must consider whether the evidence, viewed as a whole and in the light most favorable to the prosecution, is sufficient to support a rational conclusion that the defendant is guilty beyond a reasonable doubt. *Dempsey v. People*, 117 P.3d 800, 807 (Colo. 2005).

The trial court held that Peters was in contempt of court on two grounds: (1) the recording of a court hearing despite a posted sign warning courtroom participants that recording was not allowed: and (2) Peters' dishonesty with the Judge when confronted with the issue of whether she had been recording.

Appellant Peters contends that the trial court failed to make findings as to two of the required elements of proof. Amended Opening Brief, p 13. First, Peters alleges that the trial court "never found as a fact that that Judge Barrett had entered a lawful order that prohibited recording the proceedings in his courtroom." Second, she alleges that the court did not find that "Peters knew of the order before the District Attorney accused her of recording." Amended Opening Brief, p 13.

On the contrary, the People submit that the trial court made both findings. Regarding the existence of a court order, the court found that Judge Barrett made a record of the sign “outside the (courtroom) door saying no recording.” Judge Barrett’s record is also clear that he told Peters there was a sign outside the door that prohibited recording. TR 05/05/23, pp 121:23-122:25; p 123:8-9. The trial judge referenced the Order as the “expanded media coverage ruling that prohibits recording.” TR 05/05/23, p 110:15-16.

As to whether Peters knew of the order prohibiting recording, the trial court made the following findings: “The Court does find the behavior of Ms. Peters was disruptive. She was recording a proceeding. She was doing so covertly. She hid the fact when called out on it by Judge Barrett, certainly an indication to this Court that Ms. Peters was aware it was not acceptable, if not a violation of Court order. . . She was doing so covertly. She put that iPad down when called on it. It’s an indication she was aware it was not acceptable.” TR 05/05/22, pp 124:16-125:19.

There was a valid order, and Peters knew what she was doing was wrong. The trial court further determined that Peters’ conduct unreasonably interrupted the judicial proceedings. TR 05/05/22, pp 125:12-14. Given

these findings by the trial court, and in viewing the evidence in the light most favorable to the prosecution, the trial court reasonably concluded that Peters was guilty beyond a reasonable doubt. *Kriho*, 996 P.2d 158, 172 (Colo. App. 1999).

II. Issue: Whether the prosecution proved beyond a reasonable doubt that Ms. Peters committed punitive contempt by recording a court hearing and then lying to the court about it, despite not the actual recording?

A. Standard of Review and Preservation

The standard of review is de novo review. *Kriho*, 996 P.2d at 172.

Counsel for Appellant preserved the issue for appeal by arguing at the contempt hearing that the best evidence of the alleged recording required an examination of the iPad. Counsel asked the trial court to release the iPad for such an examination. The trial court denied counsel's request. TR 05/05/23, p 97:14-19.

B. Analysis

Counsel wrongly applies the Best Evidence Rule in this matter. Counsel argues: "Here, the content of the alleged recording, or its existence in general is the disputed issue, and therefore, to satisfy the Best

Evidence Rule, the prosecution was required to produce the original recording into evidence.” Opening Brief, p 16.

By contrast, CRE 1002, 1003, and 1004, commonly referred to as the “Best Evidence Rule,” only addresses cases in which the recording contents are disputed. CRE 1004 reads:

“The original is not required and other evidence of the contents of a writing, recording, or photograph is admissible if:

- (1) Originals lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or,
- (2) Original not obtainable. No original can be obtained by any available judicial process or procedure; or;
- (3) Original in possession of opponent. At a time when an original was under the control of the party against whom it was offered, he was put on notice, by pleadings or otherwise, that the contents would be a subject of proof at the hearing, and he does not produce the original at the hearing;
- (4) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.”

The best evidence rule simply states a preference for the original where the contents of same are directly in issue. *Banks v. People*, 696 P.2d 293, 297 (Colo. 1985). The accuracy or inaccuracy of Peters recording of the hearing is irrelevant; rather, the fact that Peters recorded a hearing

despite the existence of a court order prohibiting recordings is the basis of the contempt allegation. The prosecution established the fact of a recording by the testimony of witnesses, the court record, and court surveillance video.

In the present case, the prosecution did not attempt to prove the contents of the recording made by Peters; rather, the prosecution merely alleged and proved that Peters had made a recording of the court hearing. There was no need to show that the recording was accurate, complete or otherwise the best evidence of the court hearing. Similarly, the length of the recording was irrelevant. Whether the recording was 10 seconds or 10 minutes, the length of the recording was not necessary to prove the contempt of court. In this case, the fact that Peters was recording was established by the testimony of witnesses, surveillance video from courtroom, and the statements of the presiding judge. Further, at the contempt hearing, it was not disputed by Peters and Counsel that she possessed an iPad capable of recording.

Similarly, this is not a case where there is evidence that the proponent lost or destroyed the recording. District Attorney Investigator Michael Struwe testified that the iPad was located at the Mesa County Sheriff's Office and a forensic examiner was unable to bypass the passcode. TR

05/05/23, pp 95:25-96:4. Peters' Counsel then requested at the hearing that the iPad be released, and the trial court denied the request. TR 05/05/23, p 95:3-13.

Peters now contends that the prosecution failed to meet its burden by "presenting evidence that Peters appeared to be recording, but no evidence that the iPad contained a recording." Amended Opening Brief, p 122. This assertion that there is no evidence of a recording is contradicted by the evidence and the trial court findings.

The trial court found that the testimony of three witnesses --Gonzales, Weaver, and Knisley -- proved the defendant was recording. The testimony of the witnesses was not only credible but "consistent, consistent with the evidence in the case, consistent with the videos, and that the testimony of all three are consistent with each other." TR 05/05/23, pp 124:16-125:21.

This case also does not involve an allegation that the original was lost or destroyed in bad faith. When a proponent cannot produce the original because of its loss or destruction, the trial court may admit secondary evidence. *Rodriguez v. Schutt*, 896 P.2d 881 (Colo. App. 1994). In the present case, the video was not lost or destroyed. The iPad was available, but

a forensic examiner was unable to bypass the passcode. Therefore, there is no evidence of bad faith regarding the iPad or any recordings on the iPad.

CONCLUSION

Sufficient evidence supported the finding that Appellant Peters committed indirect contempt of court. This included three credible eye and ear witnesses, as well as court surveillance video. A valid court order prohibiting recording was posted on the courtroom door. Additionally, Peters' dishonesty when confronted by the Court and her admissions of lying to two witnesses establish that she knew her recording was wrong. The best evidence rule is inapplicable because the contents of Peters video recording were not directly at issue, and there is no evidence of bad faith by the prosecution.

Respectfully submitted this 26th day of July, 2024.

DISTRICT ATTORNEY'S OFFICE 21ST JUDICIAL DISTRICT
DANIEL P. RUBINSTEIN, DISTRICT ATTORNEY

By: /s/ Daniel P. Rubinstein
Daniel P. Rubinstein, Reg. No.27473
Deputy District Attorney
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CERTIFICATE OF SERVICE

I certify that on this 26th day of July 2024, a true and correct copy of the foregoing Answer Brief was served via Colorado Courts E-Filing on all parties who appear of record and have entered their appearances herein according to Colorado Courts E-Filing.

/s/ Daniel P. Rubinstein