

**IN THE SUPREME COURT
STATE OF GEORGIA**

CASE NO. S24A1245

**BRIAN STEEL,
APPELLANT,**

v.

**STATE OF GEORGIA,
APPELLEE.**

BRIEF OF APPELLANT

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EXHIBIT “A,” ORDER DATED JULY 11, 2024, IMMEDIATELY
BEFORE CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE 43

**IN THE SUPREME COURT
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BRIAN STEEL,)	
)	
APPELLANT,)	
vs.)	CASE NO. S24A1245
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STATE OF GEORGIA,)	
APPELLEE.)	

BRIEF OF APPELLANT

PART ONE

STATEMENT OF JURISDICTION

The Supreme Court of Georgia, rather than the Court of Appeals of Georgia, has jurisdiction of this appeal in that this Court granted a writ of certiorari on the appeal of this contempt order pursuant to Ga. Const. of 1983, Art VI § VI, Para. V. (R1 V1 106-107).

STATEMENT OF THE CASE

On June 10, 2024, Brian Steel [hereinafter “Steel”] was held in contempt of court and sentenced to serve 20 days in custody over the course of 10 weekends based on an incident that occurred during the middle of trial. (R1 101; R2 V4 70-71). The trial court orally denied Steel’s request for supersedeas bond. (R2 V4 65-66). Steel filed a notice of appeal and then filed emergency requests for a

supersedeas bond in the Court of Appeals and this Court. (R2 V4 82). This Court then granted the motion for supersedeas bond and issued a writ of certiorari so that it could consider the merits of this appeal. (R1 V1 106-07). This case was docketed by this Court on July 3, 2024, and on July 11, 2024, an extension of time in which to file the initial brief was granted. (See Order dated July 11, 2024, attached hereto as Exhibit A). Thus, this brief is timely filed.

STATEMENT OF THE FACTS

Steel is lead counsel of record for Jeffery Williams in State of Georgia v. Jeffery Williams et al., Fulton County Indictment Number 22SC183572, a sixty-five (65) count indictment charging 28 individuals with violations of Georgia’s Racketeer Influenced and Corrupt Organizations Act and other crimes. (R1 V1 6-100). Voir dire commenced in January 2023 and opening statements began in November 2023 before Fulton County Superior Court Judge Ural Glanville.

1. Friday, June 7, 2024 Hearing

On Friday, June 7, 2024, prosecutors sought and obtained a “use immunity” order pursuant to O.C.G.A. § 24-5-507 for Kenneth Copeland, a witness at trial. (R3 V4 7). After Copeland took the stand and was sworn, he exercised his Fifth Amendment privilege against self-incrimination. (R3 V4 11). Copeland was held

in willful contempt and summarily incarcerated over the weekend. (R3 V4 33-35). The judge announced that when court resumed the following Monday, Copeland would be brought to court and outside the presence of the jury, “we’ll ask him whether or not he wishes to continue his testimony.” (R3 V4 70). The Court adjourned proceedings for the week. (R3 V4 69-70).

Copeland remained under oath as a sworn witness, with both the prosecutors and the court contemplating a contempt sanction that would induce him to purge himself and agree to testify. (R3 V4 55) (trial court saying, immediately after holding Copeland in contempt, “We’ll see if we can get some more testimony at that point in time.”).

2. Monday, June 10, 2024 *Ex Parte* Hearing

At 9:10 a.m. on Monday, June 10, 2024, the court commenced an *ex parte* meeting in its chambers with one of the two lead prosecutors, two Fulton County District Attorney investigators, and counsel for Copeland, in the presence of a court reporter.¹ (R1 V2 3). No defense attorneys attended or were informed this

¹ The transcript of the *ex parte* meeting, which the court initially declined to provide the defense, but later released, is included in the record of this appeal. (R1 V2; R2 V4 25-26, 33, 44). The fact that the meeting occurred as well as the details of the meeting have led to the recusal of the trial judge and a tsunami of motions for *Brady* disclosure, motions for mistrial and motions for disqualification of the prosecutors based thereon. (R3 V2).

meeting was taking place. The Court did not place the hearing under seal, enter a protective order, or direct the participants to keep the meeting in confidence. (R1 V2). Copeland was then brought into the meeting along with the other lead prosecutor, two investigators, two deputies, and two sergeants with the Fulton County Sheriff's Department. (R1 V2 23). Defense counsel received no notice that the meeting about Copeland's testimony occurred.

During the *ex parte* meeting, Copeland repeatedly made statements that he had lied to law enforcement officers, including that, "I have never been truthful a day in my life." (R1 V2 24). The court and the prosecutors incorrectly informed Copeland that he could be held in custody until every single co-defendant's case was resolved—not just the trial that was ongoing. (R1 V2 6-7, 34-36). The prosecutors repeatedly told Copeland that he could be released from custody to go home if he just testified. (R1 V2 29, 34-36, 39-41, 46-51). Copeland ultimately relented and agreed to testify, almost an hour and a half after the *ex parte* meeting began. (R1 V2 55).

3. June 10, 2024 Contempt Hearing

Although defense counsel were ordered to be present at 8:30 a.m. on Monday, June 10, 2024 for trial to reconvene, the court did not convene until 11:52 a.m.. (R3 V2 4). Copeland testified, and then a lunch recess was taken. (R3 V2 4).

Over this lunch recess, Steel and other defense counsel learned that the court conducted an *ex parte* conference with the prosecutors and the sworn witness, an unexpected development that greatly concerned Steel, who believed it constituted a significant violation of his client's statutory and constitutional rights. (R2 V4 5).

As soon as the court reconvened after lunch, Steel attempted to convey his concern about the impropriety of the *ex parte* meeting, make a record of the events to preserve the issue for appeal, and demand *Brady* material from the *ex parte* meeting. (R2 V4 4-50). The court repeatedly cut Steel off and would not allow him any meaningful opportunity to make his record. (R2 V4 4-50). The court was "kind of disturbed because that [meeting] is *ex parte*. All that was an *ex parte* conversation. How did you find out about any of that?" (R2 V4 5). Steel responded by citing authority from this Court forbidding trial courts from meeting *ex parte* with sworn witnesses. (R2 V4 5-6). The court was singularly focused on discovering how Steel learned of the secret conference, and continuously interrupted Steel, thereby denying him any meaningful opportunity to make his record. (R2 V4 6-7). The court then threatened: "Well, listen, if you don't tell me how you got this information, then you and I are going to have some problems." (R2 V4 7). The court characterized the meeting and the information as "proprietary," but when Steel pressed to understand what was "proprietary" about

it, the court could not offer a valid explanation.² (R2 V4 8-9). The court later referred to “a violation of the sacrosanctness of the Court’s chambers” as justification for its inquisition. (R2 V4 32).

Ultimately, the court threatened to hold Steel in contempt if he did not reveal how he learned about the *ex parte* meeting. (R2 V4 9). Steel responded that he was not going to answer the question because it was protected by the attorney-client and attorney work-product privileges. (R2 V4 10). The court dismissed that response, claiming “that is not attorney-client privilege” without giving Steel any opportunity to explain his basis. (R2 V4 9-10). The court then took a recess, giving Steel “five minutes” to reveal his source. (R2 V4 10).

After the brief recess, the court directed Steel to the podium and told him that “[t]here is only one way you could have gotten [information about the *ex parte* meeting], so I’m going to ask you again.” (R2 V4 11). Steel began to cite Georgia Rule of Professional Conduct 1.6, specifically Comment 5, but the court prevented

² At several points during the hearing, the court claimed that the existence and contents of the *ex parte* meeting were “proprietary,” “privileged,” or otherwise “information that [Steel] shouldn’t have gotten.” (R2 V4 8-9, 16-17, 32, 40). But when pressed by Steel for an explanation as to why the information was subject to secrecy, the court failed to offer a valid reason, claiming “well, that’s for another day.” (R2 V4 8-9, 16-17, 32, 40, 45 (Court: “I do think that somebody told you some things . . . that violate privilege.” Steel: “What privilege?” Court: “Attorney-client privilege so—” Steel: “How do you get—” Court: “I mean, but that is beside the point at this point in time. We’re not going to argue about that right now.”)).

Steel from speaking and again threatened him with contempt. (R2 V4 11). The court pressed more and Steel again tried to explain his reading of the ethics rules, saying “if you look at Comment [5], this is how I understand the law—” but the court again cut him off. (R2 V4 12-13). Steel implored the court to “just listen to what I’m trying to tell you. You’re saying—,” but again was shut down. (R2 V4 13). When Steel was finally allowed to complete a sentence, he stated that the principles of privilege and confidentiality prevent him from revealing information gained during a client representation “whatever its source. . . . But I’m telling you I can’t do that under the bar rules.” (R2 V4 13-14) (referring to Ga. R. Prof. Cond. 1.6, Cmt 5).

The court offered its hunch about how Steel received the information, accusing Steel of eavesdropping: “You cannot eavesdrop and get that information that was not meant for you to hear at that particular point in time.” (R2 V4 14-15). Steel moved for a mistrial and asked for a substantive hearing on the *ex parte* issue, but the court instead immediately told Steel that he would be held in contempt and taken into custody. (R2 V4 15). The court then offered an alternative to its eavesdropping theory, suggesting that Copeland’s attorney, Kayla Bumpus,³ told

³ On Monday June 10, 2024, witness Copeland was represented by attorney Bumpus, substituting for attorney John Melnick who had appeared for Copeland in court on Friday, June 7, 2024. (R3 V4 75-77, 89-90).

Steel about the meeting. (R2 V4 15-16, 20).

After the court found Steel in contempt, his co-counsel Keith Adams rose to inform the court that he, too, learned of the *ex parte* meeting and he repeated Steel's request for a full transcript of that hearing. (R2 V4 25-26). The court did not make any inquiries of Adams or demand that he reveal the source of his information. (R2 V4 25-26). Steel was placed in custody but later permitted to return to the courtroom to represent his client although the court maintained he was still in contempt. (R2 V4 43). The court stated that Steel could "purge that contempt by just telling me who it is that told you this information...So if you are willing to tell me, that's fine. That will purge your contempt." (R2 V4 25-26, 30-34. 43, 48).

Trial proceedings continued for the day, during which Steel's counsel filed a Motion to Set Aside the Contempt, a Motion for a Supersedeas Bond, and a Notice of Appeal. (R2 V4 80-90). After the jury was released, the trial court revisited the contempt issue and pursued its demand that Steel disclose how he learned about the *ex parte* meeting. (R2 V4 50). Steel alerted the trial court that counsel from the Georgia Association of Criminal Defense Lawyers ("GACDL") were present and trying to gain access to the courtroom to represent Steel. (R2 V4 50-51). Although the court initially stated that there was no space to accommodate Steel's counsel,

two lawyers were later permitted to enter the courtroom to represent Steel. (R2 V4 51, 56).

The court informed Steel's counsel that "I've held him in contempt earlier from today's proceedings by him not telling me who it is he got this information from." (R2 V4 52). The court clarified that it was criminal contempt and that Steel could "purge" himself by revealing his source. (R2 V4 52-53). Thereafter, Steel's counsel explained that although the court held Steel in criminal contempt, it had imposed a sentence of indefinite detention with the ability to purge, which is a civil contempt penalty. (R2 V4 52). The court reconsidered its position and sentenced Steel to incarceration at the Fulton County Jail for "20 days consisting of every weekend for the next ten weekends." (R2 V4 70-71). The court then entered a written contempt order. (R1 101).

PART TWO

ENUMERATION OF ERRORS

- I. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT STEEL'S CONTEMPT CONVICTION BEYOND A REASONABLE DOUBT.**
- II. THE TRIAL COURT'S DIRECTIVE THAT STEEL DISCLOSE PRIVILEGED INFORMATION WAS UNLAWFUL AND CREATED A CONFLICT OF INTEREST BETWEEN HIS CLIENT'S INTERESTS AND HIS OWN.**
- III. THE TRIAL COURT ERRED IN FAILING TO AFFORD STEEL THE DUE PROCESS TO WHICH HE WAS ENTITLED.**

PART THREE

ARGUMENT AND CITATION OF AUTHORITY

I. THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT STEEL’S CONTEMPT CONVICTION BEYOND A REASONABLE DOUBT.

Standard of Review: "On appeal of a criminal contempt conviction the appropriate standard of appellate review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *In re Syvertson*, 368 Ga. App. 865, 865, 891 S.E.2d 424 (2023).

This Enumeration of Error is always preserved for appellate review.

A. The use of contempt powers is only appropriate where the conduct in question threatens the administration of justice.

Generally, "contempt of court" refers to an individual’s "disregard for or disobedience of the order or command of the court," which includes the interruption of court proceedings. *In re Herring*, 268 Ga. App. 390, 390, 601 S.E.2d 839, 840 (2004). Georgia law grants state judges broad authority to preserve order in their courtrooms, and the contempt power exists so judges may execute and enforce that public duty, although that power is limited by both the State Constitution and legislation passed by the General Assembly. *See* Ga Const. of 1983, Art I, Sec II, Par. IV (“Contempts: The power of the courts to punish for

contempt shall be limited by legislative acts”); *see also* O.C.G.A. §§ 15-1-3 and 15-1-4; *In re Jefferson*, 283 Ga. 216, 217, 657 S.E.2d 830 (2008).

While the power of courts to punish misconduct and ensure compliance with its orders and directives is broad, it is not absolute. “Contempt is a drastic remedy which ought not to deprive one of his liberty unless it rests upon a firm and proper basis.” *Martin v. Waters*, 151 Ga.App. 149, 150, 259 S.E.2d 153 (1979). When addressing contempt matters, any doubts must be “resolved in favor of vigorous advocacy.” *In re Jefferson*, 283 Ga. at 220. “[C]ourts must be judicious in their approach to adjudicating contempt” precisely because “vigorous advocacy is essential not only to the preservation of individual rights but also to the integrity of the judicial system whose truth-seeking process is sought to be protected through the exercise of the contempt power.” *Id.* at 221. Therefore, “trial judges must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice.” *Id.* (quotation omitted).

To that end, the court must not violate the constitutional and statutory rights of the alleged contemnor, nor may it conduct the contempt proceedings in a way that violates fundamental notions of fairness and due process. *See, e.g., International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 827, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994) (because criminal contempt “is a crime in the ordinary sense...criminal penalties may not be imposed on someone

who has not been afforded the protections that the Constitution requires of such criminal proceedings”); *accord In re Syvertson*, 368 Ga. App. at 866.

Georgia Courts recognize two types of contempt: civil and criminal. *Garland v. State*, 253 Ga. 789, 325 S.E.2d 131 (1985). “The distinction between criminal and civil contempt is that criminal contempt imposes unconditional punishment for prior acts of contumacy, whereas civil contempt imposes conditional punishment as a means of coercing future compliance with a prior court order.” *Ford v. Ford*, 270 Ga. 314, 315, 509 S.E.2d 612 (1998).

While a sanction imposed for a civil contempt violation may be ongoing without definite end in order to gain compliance with the court’s directive, by contrast “[c]riminal contempt is . . . a violation of the law, a public wrong which is punishable by fine or imprisonment or both.”⁴ *In re Syvertson*, 368 Ga. App. at 866. The ability to impose sanctions for criminal contempt empowers the court to punish disruptive conduct which has occurred in the past, when the conduct in question constituted an “imminent, not merely a likely, threat to the administration of justice.” *Wood v. Georgia*, 370 U.S. 375, 376, 82 S.Ct. 1364, 8 L.Ed.2d 569

⁴ The maximum punishment for each individual conviction for criminal contempt in a superior court proceeding is 20-day jail sentence and a \$1,000 fine with no mandatory minimum sentence. *See* O.C.G.A. § 15-6-8; O.C.G.A. § 15-7-4. By contrast, in a civil contempt proceedings, the contemnor is often described to “carry the keys of their prison in their own pockets,” since they have the power to avoid court sanction by complying with the court’s directive. *Hicks v. Feiock*, 485 U.S. 624, 633, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988).

(1962). To that end, “[t]he danger [to the administration of justice] must not be remote or even probable; it must immediately imperil.” *Id.*

The standard of proof for civil contempt is preponderance of the evidence, *see, e.g., In re Estate of Banks*, 339 Ga. App. 144, 146, 793 S.E.2d 451 (2016), while the evidentiary standard in a criminal contempt case is proof beyond a reasonable doubt, the same as in any other criminal proceeding. *Garland v. State*, *supra*.

B. Steel’s Conduct Did Not Interfere or Threaten to Interfere With the Administration of Justice.

Like all crimes, contempt has an act requirement (actus reus) and a mental component (mens rea).” *In re Lightfoot*, 358 Ga. App. 187, 854 S.E.2d 353 (2021). To satisfy the actus reus, there must be sufficient proof that the act in question constituted an imminent threat to the administration of justice. *Id.* “The arguments of a lawyer in presenting his client's case strenuously and persistently cannot amount to a contempt of court so long as the lawyer does not in some way create an obstruction which blocks the judge in the performance of his judicial duty.” *In re McConnell*, 370 U.S. 230, 236, 82 S. Ct. 1288, 8 L.Ed.2d 434 (1962). Courts have found that an attorney interfered or threatened to interfere with the ability to administer justice when, for example, the attorney’s acts prevent a hearing or trial from going forward. *See, e.g., Britt v. State*, 282 Ga. 746, 747, 653 S.E.2d 713 (2007) (affirming summary disposition where trial counsel refused to participate in

a motions hearing); *Barlow v. State*, 237 Ga. App. 152, 154, 513 S.E.2d 273 (1999) (affirming contempt order where the attorney refused to proceed to trial). Importantly, even where a contempt finding is proper, the contempt power of judges should be limited to the exercise of the least possible power adequate to achieve the end proposed. *In re McConnell*, 370 U.S. at 234.

Here, Steel merely attempted to make a record of proceedings that he believed violated his client's rights but did nothing to interfere with the administration of justice. Nothing about Steel's behavior prevented the trial from proceeding or otherwise interfered with the administration of justice. In fact, the court explicitly acknowledged that the exchange with Steel would have no impact on the trial schedule, stating that it was going to move forward with the trial with Steel's co-counsel, Keith Adams, representing Williams while Steel was in custody. (R2 V4 30-32). That the court intended to seamlessly continue and did continue with the trial approximately 45 minutes after initially taking Steel into custody supports this conclusion. (R2 V4 16, 30-31; R3 V2 3). Ultimately, Steel was released from custody and allowed to resume his representation of Williams and trial proceeded as scheduled. Accordingly, this conviction for criminal contempt cannot stand.

Even if the trial court's concern regarding the source of Steel's information

about the *ex parte* meeting was legitimate,⁵ the court had less problematic alternatives available to it instead of directing Steel to reveal privileged information, finding Steel in contempt, and issuing the maximum authorized sentence. *See In re Jefferson*, 283 Ga. at 220 (“[T]he court should always assess whether there are other correctives sufficient to address the problematic conduct in question.”). For example, the court could have questioned any of the attendees of the *ex parte* meeting to determine who leaked the information, or it could have referred the matter to law enforcement for an investigation if it believed something illegal had occurred. In fact, the next day the court entered an Order to Show Cause against Kayla Bumpus. (R3 V1).

C. Steel’s Conduct Did Not Exceed the Boundaries of Permissible Advocacy.

To sustain the contempt conviction, this Court must also find that the evidence established beyond a reasonable doubt that Steel knew or should have known that his conduct was outside the bounds of permissible advocacy. *See Hillman v. Aldi*, 349 Ga. App. 432, 445, 825 S.E.2d 870 (2019). As noted above, this element is the *mens rea* for criminal contempt, as an attorney can only be found guilty if he “knows or reasonably should be aware in view of all the

⁵ As noted in the facts section above, the trial court did not order that the conversation be sealed or direct any party not to disclose the contents of the *ex parte* meeting. (*See* entire transcript, R1 V2). It is therefore unclear what obligation existed for any attendee to keep the information confidential.

circumstances, especially in the heat of controversy, that he is exceeding the outermost limits of his proper role and hindering rather than facilitating the search for truth.” *In re Jefferson*, 283 Ga. at 220 (quotation marks and citation omitted). This Court has identified a non-exhaustive list of factors that are probative of whether the attorney knew or should have known that his conduct exceeded the boundaries of acceptable advocacy:

(1) the extent to which the attorney was put on notice prior to the contempt citation that a continuation of the offending statements would constitute contempt; (2) the likely impact of the offending statements on the deliberations of the factfinder, which calculus incorporates both the nature and timing of the offending conduct and whether the factfinder is a judge or jury; (3) whether the offending statements occurred as an isolated incident or constituted a pattern of behavior; (4) the significance of the particular issue in question to the case as a whole and the relative gravity of the case; and (5) the extent, if any, to which the trial court provoked the offending statements with its own improper statements.

In re Jefferson, 283 Ga. at 220.

The record here demonstrates that Steel’s refusal to reveal his source was not borne out of obstinance or disrespect, but was rather zealous advocacy on behalf of his client who had been deprived of his right to be present during all critical stages of the trial, as well as a good faith belief that Steel had a professional obligation under the Georgia Rules of Professional Responsibility and statutory law to maintain that information in confidence. *See Scudder v. State*, 298 Ga. 438, 782 S.E.2d 638 (2016) (it is “a fundamental right and a foundational aspect of due

process of law” that criminal defendants have the right to be present and hear all critical parts of their trials which include when the judge and a prosecutor speak with a witness). But this Court need not resolve whether Steel’s client was actually entitled to be present for the *ex parte* hearing, only whether Steel was acting in good faith and following the law as he understood it. *In re Spruell*, 200 Ga. App. 218, 407 S.E.2d 451 (1991) (“Whether the appellant’s position on that point of law was correct is irrelevant to the contempt conviction.”). And this Court must resolve any doubts regarding Steel’s conduct “in favor of vigorous advocacy.” *In re Jefferson*, 283 Ga. at 220. Further, “[a]n attorney may not be held in contempt of court merely for presenting in good faith a motion which he has a right to make, nor may an attorney be held in contempt merely because, having filed such a motion, he fails to prevail on it.” *In re Adams*, 215 Ga. App. 372, 376, 450 S.E.2d 851 (1994); *see also In re McLarty*, 152 Ga. App. 399, 263 SE2d 194 (1979).

The *Jefferson* factors strongly weigh in favor of concluding that Steel was acting in good faith and did not know or believe that his conduct was outside the bounds of advocacy. Although Steel was informed that if he did not provide the requested information he would be held in contempt, all of the remaining factors weigh in favor of overturning Steel’s contempt conviction. There was no impact on the trial, which continued despite Steel’s refusal to provide the requested information. Moreover, the exchange with the court occurred outside the presence

of the jury, and thus did not impede the jury's fact-finding role. There is no evidence that this was anything other than an isolated incident; even the court did not suggest that it was part of a pattern of behavior. Significantly, the two remaining factors weigh heavily in Steel's favor, as he was responding to the court's improper *ex parte* meeting and trying to make a record of a matter he genuinely believed was of extreme importance to his client's case. Comparatively, the source of the information had nothing to do with the underlying case or the issue that Steel was trying to litigate. Taken in totality, the *Jefferson* factors strongly support a conclusion that Steel did not know that his actions exceeded the bounds of advocacy.⁶ His conviction cannot stand.

D. Steel's Alleged Contempt Was Not Willful.

Finally, Steel's conviction cannot stand without evidence that he acted willfully. Here, the record fails to establish willfulness and is, in fact, replete with support to the contrary. *In re Bowens*, 308 Ga. App. 241, 242, 706 S.E.2d 694 (2011) (no person can be convicted of criminal contempt for violating a court order unless they acted willfully). To prove willfulness, there must be proof beyond a reasonable doubt that the alleged contemnor had the power and ability to comply

⁶ The inquiry is only whether Steel knew or should have known that his conduct exceeded the bounds of zealous advocacy, not whether it actually did so. But nevertheless, Steel maintains that he did not act improperly in light of the information provided to him, and his concerns with protecting confidential information gained through his representation, as discussed in more detail below.

with the court's order and chose not to do so. *See id.* at 242.

The Georgia Rules of Professional Conduct “set out the minimum ethical standards that attorneys practicing in Georgia must follow.” *Registe v. State*, 287 Ga. 542, 544, 697 S.E.2d 804 (2010); *St. Simons Waterfront*, 293 Ga. 419, 421-422, 746 S.E.2d 98 (2013). Georgia Rule of Professional Responsibility 1.6 requires an attorney to “maintain in confidence” any information the attorney learns through his professional relationship with his client, “*whatever the source.*” Ga. R. Prof. Cond. 1.6, cmt. 5 (emphasis added). Comment 5 to Rule 1.6 describes how the “principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics.”

As discussed in more detail below, *see infra* Issue II, Steel could not comply with the court's order without violating his constitutional and statutory duties to his client and his professional obligations under the ethical rules. Therefore, his refusal to answer could not be willful. *See In re Bowens* 308 Ga. App. at 242; *In re Adams*, 215 Ga. App. at 376 (attorney had “both the right and the duty” to make arguments to the court); *see also United States v. Allmon*, 594 F.3d 981(II) (8th Cir. 2010) (an asserted privilege defeats any willful contempt and thus, there can be no bad faith or willful contempt if the person identified a privilege). While Steel repeatedly tried to make this clear to the trial court, it never

seriously considered Steel's assertion that the material was privileged. There is no basis for finding Steel in contempt on this record, "given the difficult position in which the appellant found himself during the course of this . . . trial, and given the extreme importance of the showing which he was attempting to make on his client's behalf." *Calhoun v. Findley*, 168 Ga. App. 634, 637, 309 S.E.2d 907 (1983).

E. The trial court did not make the requisite findings to hold Steel in contempt.

Critically, the contempt order here is wholly deficient in that it fails to set forth "with specificity" several things, including "an explanation of the deleterious impact on the court's operations or its integrity" of the conduct in question, and the basis for finding that there was no justification for the attorney's behavior. *See In re Shafer*, 216 Ga. App. 725, 726-727, 455 S.E.2d 421 (1995). The court's final order contains none of the requisite findings as it only recites that Steel "repeatedly refused to follow the [c]ourt's order" "to tell the [c]ourt how he came into that information" about the *ex parte* conference. (R1 V1 101-102). While the court's findings focus solely on the fact that Steel did not provide the information demanded by the court, the order does not address in any way how Steel's refusal interfered with the court's ability to proceed with trial or otherwise administer justice. (R1 V1 101-102). Commentary by the court that it had "serious concerns"

about how the information was disclosed, and found “troubling” some of Steel’s claims, does not explain or describe how this conduct hindered the administration of justice or had any deleterious impact on the court’s operations or its integrity, as required by *Shafer, supra* or *Ramirez, supra*.

Clearly, there is no evidence in this record to conclude that Steel’s advocacy on behalf of Williams—or his refusal to identify the source of his information—interfered with the court’s ability to administer justice and preside over the trial. (R1 V1 101-102). Because the court did not make the requisite findings of fact detailing how disruptive conduct interfered with or posed a threat to the administration of justice and whether the attorney was on notice that his acts exceeded the outermost bounds of permissible advocacy, this Court must reverse Steel’s criminal contempt conviction. *See In re Shafer*, 216 Ga. App. at 726-727; *See also Hillman*, 349 Ga. App. at 445.

II. THE TRIAL COURT’S DIRECTIVE THAT STEEL DISCLOSE PRIVILEGED INFORMATION WAS UNLAWFUL AND CREATED A CONFLICT OF INTEREST BETWEEN HIS CLIENT’S INTERESTS AND HIS OWN.

Standard of Review: The trial court’s ultimate rulings regarding privilege are reviewed for an abuse of discretion, while review of any factual determinations underlying those rulings is for clear error. *Advantage Behavioral Health Sys. v. Cleveland*, 350 Ga. App. 511, 829 S.E.2d 763 (2019).

This Enumeration of Error is preserved for appellate review as the privilege claims were properly asserted and overruled. (R2 V4 9-11, 13-14, 19).

A. The trial court could not validly order Steel to violate attorney-client privilege.⁷

The trial court was wrong to discount Steel’s position that the attorney-client privilege prevented him from revealing the source of his information. The attorney-client privilege—the oldest privilege for protecting confidential information—is founded on the need for attorneys to have full and complete information without fear of disclosure to represent their clients. *Upjohn Co. v. United States*, 449 U.S. 383, 389, 101 S. Ct. 677, 66 L.Ed.2d 584 (1981). The work-product doctrine directly protects the adversarial system by allowing attorneys to prepare cases without concern that their work will be used against their

⁷ This Court can review the validity of the underlying order on appeal from an order holding the attorney in contempt. *See Buckner-Webb v. State*, 314 Ga. 823, 830-831, 878 S.E.2d 481 (2022) (where “attorney feels strongly enough that he or she is being compelled to violate the applicable rules of professional conduct, or otherwise imperil a client’s constitutional rights, the attorney can refuse to comply with the trial court’s order ... and potentially be held in contempt for violating that order,” and then appeal). Here, interlocutory review under O.C.G.A. § 5-6-34(b) was, practically viewed, unavailable to Steel, as the trial court did not allow Steel any time to comply with those procedures—or even to brief the issue. Notably, complying with the order would have mooted the appeal and caused irreparable harm to Steel and his client. *Interest of M.F.*, 305 Ga. 820, 820-821, 828 S.E.2d 350 (2019) (mootness is a jurisdictional issue, and a case is moot when the remedy sought no longer benefits the party seeking it). Therefore, in order to seek review of the court’s order, Steel had no option but to remain silent when the court demanded the privileged information from him.

clients. *Moody v. Hill, Kertscher & Wharton, LLP*, 358 Ga. App. 771, 771-772, 856 S.E.2d 389 (2021). “An uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all.” *Cooksey v. Landry*, 295 Ga. 430, 436, 761 S.E.2d 61 (2014).

The trial court ordered that Steel reveal information which he asserted was protected by the duty of confidentiality and loyalty, the attorney-client privilege, and the attorney-work product privilege. The attorney-client privilege attaches where (1) there is an attorney-client relationship, (2) the communications in question relate to the matters on which legal advice was sought, (3) the communications have been maintained in confidence, and (4) no exceptions to privilege are applicable. *St. Simons Waterfront*, 293 Ga. 419, 423, 746 S.E.2d 98 (2013); *see also* O.C.G.A. 24-5-501(a)(2). Each of these requirements was met here, and therefore, the information was privileged and not subject to disclosure.

While Georgia courts have recognized that there are circumstances in which an attorney may be required to reveal information that was otherwise privileged, none of those situations were present here. *See, e.g., Davis v. State*, 285 Ga. 343, 346, 676 S.E.2d 215 (2009) (holding that the privilege does not extend to communications prior or related to crimes and fraud); *Peterson v. Baumwell*, 202 Ga. App. 283, 284-285, 414 S.E.2d 278 (1991) (exception to attorney-client privilege when attorney jointly represented two or more clients); *Waldrip v. Head*,

272 Ga. 572, 577, 532 S.E.2d 380 (2000), *overruled on other grounds by Duke v. State*, 306 Ga. 171, 829 S.E.2d 348 (2019) (privilege does not apply when attorney testifies in response to claims of ineffective assistance of counsel or professional malpractice). There was no lawful reason for the trial court to demand that Steel reveal privileged information *instanter*, especially in open court during a trial that was being streamed live for the world to see on YouTube, without any chance for the attorney to litigate the issue or to seek redress from an appellate court. *Atlantic Coast Line R. Co. v. Daugherty*, 111 Ga. App. 144, 149, 141 S.E.2d 112 (1965) (“[p]rivilege is thus absolute,” and privileged communications “shall never be heard by the court”).

But even where courts have a valid basis to question the invocation of privilege, they cannot summarily steamroll over that privilege without some kind of legal process. *See St. Simon’s Waterfront*, 293 Ga. at 429-430 (trial court may need to conduct an *in camera* review to determine whether work-product privilege prevents disclosure); *see also Southern Guar. Ins. Co. of Georgia v. Ash*, 192 Ga. App. 24, 28, 383 S.E.2d 579 (1989) (*in camera* proceedings are appropriate “when the underlying facts demonstrating the existence of the privilege may be presented only by revealing the very information to the court that is sought to be protected by the privilege” (cleaned up)).⁸

⁸ Steel could not have revealed the information to the trial court that held him in contempt, even *ex parte*, because at that point, the damage would have been

Once the sensitive question of privilege was asserted, the trial court should have immediately paused the proceedings and referred the matter to another judge, who could have determined in camera whether the information was privileged and/or whether other steps were appropriate under the circumstances. Yet, the court misunderstood Steel's claim of privilege, stating "I didn't ask him to do anything illegal, immoral or unethical," (R1 V2 69), and took no steps to assess the merits of Steel's privilege assertion. Indeed, the court was loathe even to hear Steel out, never allowed him to fully make his record, and did not allow his attorneys to address the privilege issue when they arrived. (R2 V4 11, 13-14). The trial court erred in holding Steel in contempt based on his refusal to comply with a directive the court had no authority to issue.

B. By ordering Steel to reveal confidential information, the trial court improperly created a conflict between Steel's interests and those of his client.

Steel's client has a constitutional right to the counsel of his choice who is free of conflict. *Bernocchi v. Forcucci*, 279 Ga. 460, 462, 614 S.E.2d 775 (2005) ("The right to counsel is an important interest which requires that the curtailment of the client's right to counsel of choice be approached with great caution." (cleaned up)); *Hall v. Jackson*, 310 Ga. 714, 720, 854 S.E.2d 539 (2021) done. There would be no way to protect the information or the attorney-client privilege by revealing it to the trial court that was demanding the answer. Therefore, any inquiry into whether the information was privileged would have had to be conducted by another court.

(constitutional right to the effective assistance of counsel includes “the right to representation that is free of actual conflicts of interest”). An attorney has a conflict where he faces a choice between protecting his own interests and protecting those of his client. Ga. R. Prof. Cond., R. 1.7(a) (“a lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer’s own interests...will materially and adversely affect the representation of the client”).

Here, the trial court attempted to create a conflict between Steel’s personal interests and those of his client. Steel has an obvious interest in defending himself in a criminal matter and from accusations of contempt and in avoiding jail.⁹ But he has an equally compelling interest in zealously representing his client’s interests, and honoring his ethical obligations under the Georgia Rules of Professional Conduct, including Rule 1.6’s requirement to maintain client confidences. As Steel attempted to communicate to the trial court, he felt constrained by his ethical obligations and his duty to his client not to reveal the information demanded by the trial court. (R2 V4 13-14). Accordingly, this Court should hold that the trial court’s demand of Steel engendered a conflict of interest between attorney and

⁹ The court accused Steel twice of committing the crime of eavesdropping in violation of O.C.G.A. § 16-11-62. (R2 V2 14, 20). Even if Steel had eavesdropped—which he did not—he would have had the absolute constitutional right to remain silent. *See, e.g., Elliott v. State*, 305 Ga. 179, 824 S.E.2d 265 (2019) (describing the right against self-incrimination).

client that was completely avoidable, that its demand that Steel reveal privileged information was improper, and that Steel was not required to comply with it.

III. THE TRIAL COURT ERRED IN FAILING TO AFFORD STEEL THE DUE PROCESS TO WHICH HE WAS ENTITLED.

Standard of Review: Whether a proceeding afforded the defendant due process is reviewed *de novo*. *Troupe v. State*, 372 Ga. App. 16, ___ S.E.2d ___ (decided June 21, 2024).

This Enumeration of Error is preserved for appellate review as Steel requested that the judge overseeing the trial immediately recuse from the contempt proceeding and argued that he was entitled to notice and a hearing. (R2 V4 63, 67-68).

A. The Trial Court Erred By Failing to Recuse Itself and Refer the Matter to a Different Judge.

As described above, strict due process requirements apply before a court can hold someone in contempt because of the “heightened potential for abuse posed by the contempt power.” *See Taylor v. Hayes*, 418 U.S. 488, 500, 94 S. Ct. 2697, 41 L.Ed.2d 897 (1974). Any trial court considering criminal contempt sanctions against an individual must act dispassionately, without personal reactions or injecting the court into the case. *Id.* at 503; *see also In re Crane*, 253 Ga. 667, 342 SE.2d 443 (1985). However, where a judge becomes personally embroiled in the controversy that is the subject of the contempt, or where the announcement of

punishment is delayed, that judge must immediately recuse from the matter and refer the contempt proceeding to be heard to a different judge. *See, e.g., In re Schoolcraft*, 274 Ga. App. 271, 617 S.E.2d 241 (2005); *In re Burgar*, 264 Ga. App. 92, 94, 589 S.E.2d 679 (2003); *In re Adams*, 215 Ga. App. at 37 (where the judge reacted to the supposed contumacious conduct in such a manner to become involved in the controversy, that judge may give the attorney notice of specific charges, but the hearing, including the attorney’s opportunity to be heard, must be conducted in front of an unbiased, impartial judge).

This Court has consistently explained that recusal in a contempt proceeding is mandatory where, as here, (1) the announcement of punishment is delayed, and (2) the contumacious conduct was directed toward the judge or the judge reacted to the contumacious conduct in such a manner as to become involved in the controversy. *Dowdy v. Palmour*, 251 Ga. 135, 141-142, 304 S.E.2d 52 (1983); *In re Adams, supra* (1994). “Where the trial judge does not act the instant the contempt is committed, but waits until the end of the trial, on balance, it is generally wise where the marks of the unseemly conduct have left personal stings, to ask a fellow judge to take his place.” *Strayhorn v. Stayley*, 177 Ga. App. 458, 458-459, 339 S.E.2d 740 (1986) (cleaned up) (reversing due to failure to recuse); *see also Taylor*, 418 U.S. at 501-02 (remanding for proceedings in front of a different judge required because there was such a “mounting display of an

unfavorable personal attitude toward petitioner, his ability, and his motives”).

Here, there was a clear delay between the allegedly contumacious conduct and the ultimate imposition of sentence, which is evidence that the trial court should have recused itself. *See Dowdy*, 251 Ga. at 141-42. Further compounding the problem, the trial court itself was at the heart of the contempt issue, as evidenced by the trial court (i) having conducted the *ex parte* meeting, the propriety and legality of which was the basis of Steel’s oral motion; (ii) failing to order the disclosure of obvious impeachment and *Brady* material to the defense (which was one of the legal issues Steel was attempting to argue at the time he was interrupted and then taken into custody); and (iii) expressing outrage and extreme concern when it learned that Steel had somehow been informed of the secret hearing. (R2 V4 5-21, 32, 59). The trial court refused to entertain the serious questions presented by Steel’s motion or even allow him to fully articulate the factual record and legal issues Steel needed to raise to protect his client’s rights. Instead, the court attempted to chill Steel’s advocacy challenging the prosecutors’ and judge’s misconduct and pointed its accusations at Steel to divert attention to an issue unrelated to the trial.

Throughout the contempt proceedings, the trial court was solely concerned with investigating the source of Steel’s information. (R1 V2; R2 V4 5-21, 32, 59). The trial court’s repeated comments about the “sacrosanct” nature of its chambers

demonstrate that the trial court was personally offended by the idea that the *ex parte* meeting was revealed and was determined to identify the source of the leak, thereby impermissibly inserting itself into the issue. (R2 V4 5-21, 32, 59). Because the trial court was embroiled in the controversy, recusal was required and the contempt order must be vacated. *In re Schoolcraft*, 274 Ga. App. at 273.

Further, recusal is required in contempt cases—like all cases—where there is “such a likelihood of bias or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.” *Taylor*, 418 U.S. at 501; *In re Siemon*, 264 Ga. 641, 641, 449 S.E.2d 832 (1994) (trial judges must disqualify themselves where their impartiality might reasonably be questioned in contempt proceedings). Recusal is appropriate in direct contempt proceedings because “one cannot be both the prosecuting witness and the judge in our judicial system.” *In re Burgar*, 264 Ga. App. at 94. In analyzing whether a judge had become so involved in a contempt proceeding so as to require recusal, the Court of Appeals has commented that “[i]t is difficult to maintain the objectivity required of a fair and impartial judge, when you [the trial court] are deciding whether it is your version [of events] or the defendant's that is correct.” *In re Adams*, 215 Ga.App. at 377. Steel’s case is a textbook scenario where recusal was mandatory for these same reasons.

The record in this case plainly demonstrates why the recusal rule

exists—because there *were* signs of actual bias. First, the judge baselessly accused Steel of committing the crime of eavesdropping. (R2 V2 14, 20). Second, the judge did not question any of the other attorneys who received the same information Steel received. (R2 V4 25, 36). Third, the judge initially insisted that Steel was not entitled to any consideration of bond, and then summarily denied Steel a supersedeas bond once the court was informed that it was within his discretion to grant bond. (R2 V2 64-66). *See In re McLarty*, 152 Ga.App. at 401 (“The appearance of personal rancor is particularly strong in a case where the appellants are denied bail pending appeal.”); *see also Taylor*, 418 U.S. at 502. Fourth, the judge did not consider any alternative to contempt to determine how the “sacrosanctity” of its chambers was compromised. *See In re Jefferson*, 283 Ga. at 220 (“[T]he court should always assess whether there are other correctives sufficient to address the problematic conduct in question.”). Fifth, the judge completely disregarded Steel’s repeated statements that he was not wilfully contemptuous but that the law and ethical mandates prevented him from releasing the information demanded. (R2 V4 9-24).

These factors demonstrate not just potential, but actual bias. Indeed, the trial court was removed and recused from presiding over the trial mid-case because of the way it responded to Steel’s advocacy on behalf of his client. (R3 V2 12-21). For all of these reasons, the trial court erred by refusing to recuse itself from

presiding over the contempt proceeding.

B. The Trial Court Erred by Using the Summary Contempt Procedure When There Was No Immediate Threat to the Court’s Ability to Administer Justice.

Georgia courts are statutorily authorized to “inflict summary punishment for contempt of court” for various different types of misconduct, a procedure that provides for fewer due process protections. *See, e.g., In re Sprayberry*, 334 Ga. App. 571, 779 S.E.2d 732 (2015). However, “[s]ummary punishment always, and rightly, is regarded with disfavor.” *Taylor v. Hayes*, 418 U.S. at 497 (cleaned up). Summary disposition is “tolerated” only if there is an immediate threat to the court’s ability to administer justice. *See Ramirez v. State*, 279 Ga. 13, 14-15, 608 S.E.2d 645 (2005); *see also Bagwell*, 512 at 832 (“In light of the court’s substantial interest in rapidly coercing compliance and restoring order, and because the contempt’s occurrence before the court reduces the need for extensive fact-finding and the likelihood of an erroneous deprivation, *summary proceedings have been tolerated.*”) (emphasis added). And “undue haste in exercising [the] summary contempt power is to be avoided . . . particularly in the case of an attorney who is attempting to be heard on behalf of his client.” *Calhoun v. Findley*, 168 Ga. App. at 637.

In this case, because there was no immediate need to restore order, there also was “no justification for dispensing with the ordinary rudiments of due process.” *In*

re Adams, 215 Ga. App. at 376 (internal quotation marks and citation omitted); *In re Schoolcraft*, *supra*. Although the court may have properly found that the alleged contempt was direct, meaning that it happened in the direct presence of the court, that does not itself mean that summary contempt procedures were appropriate. “In a summary contempt proceeding, objectively observable and describable behavior that causes an articulable interference with the administration of justice must be demonstrably present.” *In re Shafer*, 216 Ga. App. at 726.

There must be some threat to the court’s immediate ability to conduct its proceedings in order to dispense with the normal due process protections and to use the summary contempt procedure. *Newton v. Golden Grove Pecan Farm*, 309 Ga. App. 764, 769-770, 711 S.E.2d 351 (2011). Without that threat, the potential contemnor is entitled to “more normal adversary procedures,” including reasonable notice and a reasonable opportunity to prepare a defense. *Id.* at 770.

Here, for the reasons articulated above, *supra* in Issue I B, there was no threat to the administration of justice. The court’s order lacked any finding establishing that the summary procedures were necessary, and there is no basis in this record to conclude that the summary procedures were needed or appropriate. (R1 V1 101-102); *see In re Shafer*, 216 Ga. App. at 726-27 (requiring that an order make findings with specificity as to why the summary procedures were appropriate). Accordingly, the trial court’s improper use of the summary contempt

procedure requires reversal.

C. The trial court denied Steel his due process rights of notice, an opportunity to be heard, and representation by counsel.

As described above, the contempt proceedings evolved throughout the day as the court at various points held Steel in *sua sponte* criminal contempt, (R2 V4 49), informed him that he could purge the contempt by providing the information demanded by the court, (R2 V4 38, 43-45, 48, 52-53, 64, 67), and then reversed course again when it ultimately held him in direct criminal contempt and sentenced him to 20 days in jail. (R2 V4 70-71, R1 V1 101-02). When Steel's counsel were finally permitted to speak on his behalf, long after the court held Steel in contempt, the court told them plainly that Steel had "gotten the due process he's going to get." (R2 V4 54). Because the due process afforded him was inadequate under even the most deferential legal standard, his contempt conviction cannot stand.

In the interest of thoroughness, Steel addresses below how the trial court erred at each step, whether the proceedings were civil or criminal, given the trial court's lack of clarity about the type of contempt at issue.

1. Whether civil or criminal, the trial court denied Steel the due process to which he was entitled when it initially held him in contempt.

Because summary proceedings were inappropriate, Steel was entitled to the full protections of the due process clause. *See Ramirez*, 279 Ga. at 16 (2005) (insufficient due process protections afforded to contemnor where court improperly

relied on direct summary contempt procedures). “It is well established that criminal contempt is a crime in the ordinary sense, and criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings.” *Inquiry Concerning Peterson*, 319 Ga. 316, __ S.E.2d __ (2024). “Due process cannot be measured in minutes or dollars and cents. For the accused contemnor facing a jail sentence, his liberty is valuable and must be seen as within the protection of the Fourteenth Amendment.” *Maples v. Seeliger*, 165 Ga. App. 201, 202, 299 S.E.2d 906 (1983) (quotation omitted). In criminal contempt cases, the defendant is entitled to formal notice, a hearing, and counsel. *See McDaniel v. State*, 202 Ga. App. 409, 413, 414 S.E.2d 536 (1992) (right to counsel); *Hedquist v. Hedquist*, 275 Ga. 188, 189, 563 S.E.2d 854 (2002). Steel received none of this process prior to being taken into custody, and therefore, was deprived of these important constitutional rights.

If the contempt proceeding was civil, Steel still should have been afforded due process rights. “It is well established that the requirements of due process apply in a civil contempt proceeding,” including notice and an opportunity to be heard. *McLaws v. Drew*, 355 Ga. App. 162, 168, 843 S.E.2d 440 (2020). “[A] charge of contempt based on an alleged violation of a court order must apprise the respondent of the specific acts which he is charged with committing in violation of the subject order, so that he may be prepared to defend against such allegations at

the hearing.” *Norred v. Moore*, 263 Ga. App. 516, 519, 588 S.E.2d 301 (2003). The respondent must be given the opportunity to prove that the thing ordered was within the power of the person against whom the order was directed and that the noncompliance was willful. *In re Brookins*, 153 Ga. App. 82, 87, 264 S.E.2d 560 (1980); *Martin v. Waters*, 151 Ga. App. 149, 150, 259 S.E.2d 153 (1979).

For the same reasons described above, Steel was deprived of notice and an opportunity to be heard when the court (i) demanded that he provide the requested information, (ii) refused to acknowledge Steel’s arguments that the court’s demands required him to violate his ethical obligations, and (iii) summarily ordered him held in contempt. Steel was never given the opportunity to explain the specifics of why it was not within his lawful power to comply with the court’s order, and that his refusal to answer the court’s question was not willful.

Further, Steel had the right to have counsel present before being held in contempt.¹⁰ *Johnson v. Hauck*, 344 Ga. App. 848, 854, 812 S.E.2d 303 (2018) (constitutional right to be represented by paid counsel if desired, under Ga. Const., Art. I, Sec. I, Para. XII (“No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person’s own cause in any of the courts of this state.”)); *Newbern v. State*, 356 Ga. App. 696, 697-698, 849 S.E.2d 39 (2020) (even where counsel not required by Sixth Amendment, a more limited

¹⁰ Steel is not asserting that he had the right to appointed counsel, but that he had the right to have private counsel present.

due process right to counsel may exist under the Fourteenth Amendment); *Miller v. Deal*, 295 Ga. 504, 506-507, 761 S.E.2d 274 (2014) (right to counsel not waived by unknowingly failing to insist upon a lawyer in a proceeding).

Steel was deprived of the due process he was entitled to when he was initially taken into custody without his counsel present and when the court later addressed the contempt issue while counsel were held outside the courtroom. (R1 V2 51).

2. **Even if the court properly used the summary criminal adjudication procedures, it still deprived Steel of the meaningful opportunity to be heard.**

Even if the trial court correctly used the summary contempt procedure, Steel was entitled to due process, specifically including a meaningful opportunity to be heard. *Taylor*, 418 U.S. at 499 (noting that, at a hearing, an attorney might be able to argue that the behavior was not contempt, “the acceptable conduct of an attorney representing his client” or “he might present matters in mitigation or otherwise attempt to make amends to the court”). In *In re Johnson*, 364 Ga. App. 646, 649-650, 875 S.E.2d 844 (2022), the Court of Appeals held that the trial court had deprived the attorney of the meaningful opportunity to defend himself because while the attorney was trying to make a record as to the underlying issue, the court simply imposed punishment and directed that the attorney be taken into custody. *See also In re Spruell*, 200 Ga. App. 218, 229, 407 S.E.2d 451 (1991) (reversing

order where attorney not given the opportunity to speak on his own behalf); *In re Sprayberry*, 334 Ga. App. 571, 573, 779 S.E.2d 732 (2015) (trial court repeatedly interrupted attorney as she attempted to explain herself, such that she had no meaningful opportunity to be heard); *In re Hughes*, 299 Ga. App. 66, 69-72, 681 S.E.2d 745 (2009) (attorney not afforded opportunity to be heard).

Here, the trial court did not provide Steel any meaningful opportunity to be heard as Steel was interrupted and cut off at every utterance. The trial court did not allow Steel to develop his argument that he could not lawfully comply with the court's order, nor did he allow Steel's attorneys to be heard without interruption after they arrived at 5:00 p.m. (R1 V2 61). The court's position was that, "So [Steel has] gotten the due process he's going to get." (R1 V2 54). Accordingly, even if the summary contempt procedure was appropriate, the court failed to afford Steel the minimum due process he was required to, and the contempt conviction must be reversed.

3. When the trial court imposed the final criminal contempt sentence, it still failed to afford Steel the due process to which he was entitled.

After the trial court initially held Steel in contempt and directed the sheriff to take him into custody, the court released Steel at the behest of the State, and the trial resumed without any impact on the jury or the State's presentation of evidence. It was only after the jury was dismissed for the day, several hours later,

that the court revisited the contempt holding. (R2 V4 50). Confronted with law which established that the court had procedurally erred in its earlier contempt finding, the court took a lengthy recess before recalibrating a sentence and entering a final written contempt order. (R1 V5 101-02; R2 V4 54-72). Despite arguments by Steel's counsel, the court held Steel in direct summary contempt, and denied counsels' repeated requests for additional due process protections. (R2 V4 68). Because summary proceedings were inappropriate, Steel was entitled to the full panoply of due process rights at this time—notice of the precise charge against him, a full hearing in front of another judge, and the right to counsel. *See, e.g., In re Siemon*, 264 Ga. at 641 (1994). Steel was denied these rights and his criminal contempt conviction must be vacated.

IV. CONCLUSION

As described above, the trial court abused its contempt power by holding Steel in contempt when Steel was fulfilling his duty to zealously advocate on behalf of his client, and it did so without affording Steel any of the due process protections required by law and without recusing itself, as mandated. Because there is no basis on which to conclude that Steel was engaged in contemptuous conduct, and the record and contempt order are deficient, a reversal of the

conviction is warranted without remand. *See In re Shafer*, 216 Ga.App at 727 (remand is “only appropriate in those cases where there was a proper record made *at the time* and the order is inadequate but could be made adequate upon review of the existing record. In cases such as this, where no record was properly made below, remand is clearly inappropriate”); *see also In re Schoolcraft*, 274 Ga. App. at 274 (remand only required where the record establishes some basis for a finding of contempt); *see also Brantley v. State*, 272 Ga. 892, 893, 536 S.E.2d 509 (2000); *In re Ragas*, 359 Ga. App. 670, 672, 859 S.E.2d 827 (2021) (remand is not appropriate where the evidence is legally insufficient to support the conviction, because the state cannot rectify evidentiary deficiencies on remand).

This submission does not exceed the word-count limit imposed by Rule 20.

Respectfully submitted, this 22nd day of August, 2024.

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SUPREME COURT OF GEORGIA
Case No. S24A1245

July 11, 2024

BRIAN STEEL v. THE STATE. .

Your request for an extension of time to file the brief of appellant in the above case is granted. You are given an extension until August 22, 2024.

Appellee's brief shall be filed within 20 days after the filing of appellant's brief.

A request for oral argument must be independently timely filed, except in direct appeals from judgments imposing the death penalty, every interim review which is granted pursuant to Rule 37, appeals following the grant of petitions for writ of certiorari, applications of certificates of probable cause to appeal in habeas corpus cases where a death sentence is under review, and appeals in habeas corpus cases where a death sentence has been vacated in the lower court, where oral argument is mandatory. Rule 50(1) -(2). No extensions of time for requesting oral argument will be granted. Rule 51(1). A copy of this order **MUST** be attached as an exhibit to the document for which you received this extension.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

 , Clerk

CERTIFICATE OF SERVICE

This is to certify that, before filing this document, I have served a copy of the foregoing brief via e-mail, by consent, to the following:

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This 22nd day of August, 2024.

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