

STATE OF MICHIGAN
COURT OF APPEALS

In re Investigation of the Homicide of ANDRE
ROBERT JAMES SMITH.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

UNPUBLISHED
January 28, 2021

v

ARMON HILL,

Respondent-Appellant.

No. 351978
Washtenaw Circuit Court
LC No. 00-000000

Before: SWARTZLE, P.J., and RONAYNE KRAUSE and RICK, JJ.

PER CURIAM.

Respondent, Armon Hill, appeals as of right the trial court’s order holding him in criminal contempt for failure to answer questions during an investigative-subpoena hearing. Respondent argues that the trial court abused its discretion and violated his Fifth-Amendment right against self-incrimination when it held him in contempt. We affirm.

I. BACKGROUND

This case stems from respondent’s appearance and testimony pursuant to an investigative subpoena. The subpoena was issued during an investigation by the Washtenaw County Prosecutor’s Office and Washtenaw County Sheriff’s Department into the alleged homicide of Andre Robert James Smith. During respondent’s second interview pursuant to the subpoena, he refused to answer the prosecutor’s question. In doing so, respondent stated: “I’m going to plead the Fifth.” Respondent explained that he was refusing to answer the question because he felt that he had already answered the same question. The interview ceased. After off-the-record discussions, the parties appeared in a contempt hearing in the presence of the presiding judge.

During the contempt hearing, the prosecutor explained that respondent’s counsel “advised that he is going to refuse to answer any further questions. Just simply refusing to answer questions.” The prosecutor requested that the trial court inquire as to whether respondent wished

to answer any further questions: “If not, I’m going to be asking the Court—Court to hold him in contempt.” The trial court then asked the prosecutor to pose the question again, and the following exchange occurred:

[The Prosecutor]: Mr. Hill, after you got back into the Ford Taurus after you pulled up to the parking lot of the pool at Schooner Cove, where did the vehicle go?

[Respondent]: (Indiscernible) refuse to answer.

[The Prosecutor]: I’m sorry?

[Respondent]: I said I’m refusing to answer.

[The Prosecutor]: Okay.

The Court: All right. Do you understand by refusing to answer you’re subjecting yourself to being held in contempt of court and being sent to jail, do you understand that?

[Respondent]: Yes. Yes.

The Court: So—so you—so you would prefer to be held in contempt of court and go to jail than answer the question?

[Respondent]: I—I already answered the question plenty of times.

The Court: Well, you just told me you were going to refuse to answer the question.

[Respondent]: I’m saying yes right now, but I’m saying—yes—yes. Currently, yes.

The Court: Yes what?

[Respondent]: Yes, I refuse to.

The Court: All right. I hold [respondent] in contempt of court for violation of the statute concerning investigative subpoenas and sentence you to six months in jail. If you choose to change your mind, Mr. Hill, you will be brought back to court, given an opportunity to answer the Prosecutor’s questions, and you’ll no longer be held in jail. The key to the jail is in your pocket.

This appeal followed.

II. ANALYSIS

We review for an abuse of discretion a trial court's decision to hold an individual in contempt. *In re Dudzinski*, 257 Mich App 96, 99; 667 NW2d 68 (2003). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Duncan*, 494 Mich 713, 722-723; 835 NW2d 399 (2013). We review for clear error the trial court's factual findings. *DeGeorge v Warheit*, 276 Mich App 587, 591; 741 NW2d 384 (2007). "Clear error exists when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* (cleaned up). We review de novo questions of law and constitutional issues related to a trial court's decision to hold an individual in contempt. *Id.*

Generally, both the United States and Michigan Constitutions provide that no person "shall be compelled in any criminal case to be a witness against himself." US Const, Am V; Const 1963, art 1, § 17. This privilege against self-incrimination entitles a witness to refuse to answer any question "which the witness may reasonably apprehend could be in a criminal prosecution or which could lead to other evidence that might be so used." *In re Baker*, 117 Mich App 591, 593; 324 NW2d 91 (1982) (cleaned up). "The privilege can be claimed in *any proceeding*, be it criminal or civil, administrative or judicial, investigatory or adjudicatory." *People v Ferency*, 133 Mich App 526, 533; 351 NW2d 225 (1984) (cleaned up). It is the trial court's duty to determine the legitimacy of a witness's exercise of the privilege. *Id.* at 534. "'A witness may not employ the privilege to avoid giving testimony that he simply would prefer not to give.'" *Id.*, quoting *Roberts v United States*, 445 US 552, 560 n 7; 100 S Ct 1358; 63 L Ed 2d 622 (1980).

Michigan law governs the investigative-subpoena process. MCL 767A.1 *et seq.* MCL 767A.5(1) provides as follows:

A person properly served with an investigative subpoena under this chapter shall appear before the prosecuting attorney and answer questions concerning the felony being investigated or produce any records, documents, or physical evidence he or she is required to produce.

The investigating prosecutor must inform a witness of the witness's "constitutional rights regarding compulsory self-incrimination before asking any questions under an investigative subpoena." MCL 767A.5(5). Although a trial court may order a witness to answer a question, MCL 767A.6(3), it may not do so if answering the question would violate the witness's right against self-incrimination. See MCL 767A.6(5). "A person who neglects or refuses to comply with an investigative subpoena in violation of a court order is guilty of contempt." MCL 767A.9(2).

As this Court has explained:

Contempt of court is defined as a willful act, omission, or statement that tends to impede the functioning of a court. Courts in Michigan have an inherent and statutory power to punish contempt of court by fine or imprisonment. The primary

purpose of the contempt power is to preserve the effectiveness and sustain the power of the courts. [*In re Dudzinski*, 257 Mich App at 108 (cleaned up).]

In this case, the trial court reasonably determined that respondent was simply refusing to give testimony that he preferred not to give. See *Ferency*, 133 Mich App at 534. Although respondent, during his interview with the prosecutor, stated that he was “pleading the Fifth,” neither respondent—nor his counsel—ever invoked his privilege against self-incrimination during the contempt hearing.

During the contempt hearing, the prosecutor represented that respondent was “merely straight up refusing to answer questions.” The prosecutor represented that respondent’s attorney “advised that [respondent] is going to refuse to answer any further questions. Just simply refusing to answer questions.” Respondent’s counsel, who was present during the investigative interview, during the in-chambers discussions, and who appears to have been present during the contempt hearing, did not seek to clarify or add additional context. It is telling that respondent’s counsel did not represent to the trial court that respondent was invoking his privilege against self-incrimination and did not dispute the prosecutor’s representations.

During the contempt hearing, respondent stated three times that he refused to answer the question posed. When warned that he would be held in contempt for doing so, respondent explained that “I already answered the question plenty of times.” Moreover, even assuming that respondent actually invoked his privilege against self-incrimination, the trial court reasonably determined that respondent’s answer would not have been incriminating. By respondent’s own words, he had *already answered the question*. The trial court, therefore, could have reasonably determined that any invocation of respondent’s privilege was not legitimate. Because the trial court reasonably relied on respondent’s testimony and the representations made by the parties during the contempt hearing, it did not abuse its discretion when it held respondent in contempt.

Affirmed.

/s/ Brock A. Swartzle
/s/ Amy Ronayne Krause
/s/ Michelle M. Rick