

Friday, April 27, 2007

30 contempt days in jail for public defender fighting in the pits.

Instead of being allowed to fight to keep her client out of handcuffs, criminal defense lawyer Sherri Johnson instead was cuffed herself by the presiding judge. (Image from National Park Service's website). Earlier this year, a Georgia juvenile public defender lawyer was sentenced to thirty days in jail for contempt of court arising from her contesting the limitations placed by the judge on her cross examination of a cop. This story has been making its rounds, including by *Capital Defense Weekly* and *Gideon*. Unfortunately, the Georgia Court of Appeals affirmed the lawyer's conviction, but not without a fight from three of its justices. In *re Jefferson*, 2007 Ga. App. LEXIS 391 (March 30, 2007). Hopefully Ms. Jefferson has appealed and will win before the Georgia Supreme Court. This dissent found as a matter of law that Ms. Jefferson's comments to the trial judge were not contumacious, and I agree. Here is the sum and substance of Ms. Jefferson's comments in question, quoted directly from the majority opinion of the Georgia Court of Appeals: "During the delinquency hearing, the prosecution sought to prove that B. W. had supplied the handgun used in the shooting and had encouraged the shooter to fire the handgun at the victim. As part of her examination of the law enforcement officer who had investigated the shooting, Jefferson attempted to question the officer about certain statements made to him by the alleged shooter, who had not yet testified. The prosecution objected on hearsay grounds, and the juvenile court sustained the objection. The juvenile court went on to suggest that in order to avoid the hearsay problem, Jefferson should first call the alleged shooter to the stand and question him about the statement, and then recall the investigating officer and question him about any inconsistencies in the shooter's statement. In response, Jefferson requested that she instead be permitted to continue questioning the officer about the shooter's statement and then call the shooter himself, rather than vice versa. When the juvenile court said that he would not allow her to proceed in that manner, Jefferson objected by stating, '[T]hat's a gross interference with the way that I can represent my client, Your Honor.'" Later during the examination, the officer testified that B. W. had told the shooter to fire the handgun and had 'egged it on.' Jefferson then asked, 'Can you show me in the shooter's statement where he told you that [B. W.] said shoot him?' The officer responded that '[i]t's not in the shooter's statement.' When Jefferson started to follow up on the officer's response, the prosecution objected on hearsay grounds to any testimony about what the shooter said or did not say to the officer. The juvenile court then ruled that he would give no probative value to any hearsay contained in the officer's testimony; after further discussion, the court also held that the police officer's report was inadmissible. The juvenile court then reiterated its ruling: 'I've already overruled your proffer of [the police officer's] report and also your efforts to get [the officer] to testify about his conversation with [the shooter].' When Jefferson continued to resist, the court commented that '[w]hat you're doing now is making a closing argument,' and said that it 'had heard enough on this issue.' Jefferson then protested: 'I just find the Court is biased in its view. You say that you're not prejudging the case but it seems to me like you've made up your mind and any and everything that I do to effectively defend my client I'm being rebutted.'" In *re Jefferson*, 2007 Ga. App. LEXIS 391 (emphasis added). It is hard enough to be defending a client's liberty in the heat of battle than to be looking over one's shoulder about whether a non-contumacious comment will land the criminal defense lawyer in the same jail that s/he's trying to keep the client out of. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:02