

CASE NO. 2021-13
PHIL DUDT
v.
NORTHWEST GEORGIA PRESBYTERY
DECISION ON APPEAL
April 27, 2022

I. SUMMARY OF THE FACTS

- 07/16/18 The Midway Presbyterian Church (MPC) Session determined not to invite Dan Crouse to participate in officer training after being nominated for the office of Ruling Elder by RE Dudt.
- 08/20/18 A motion to rescind the July 19, 2018 action by the MPC Session not to invite Dan Crouse to the training class failed.
- 08/30/18 Dan and Angelia Crouse filed a Complaint that the MPC Session action on July 16, 2018 was a violation of the officer training and examination process outlined in the *BCO*.
- 01/21/19 The MPC Session denied the Complaint and appointed a Shepherding Committee of five REs and one TE to assist in shepherding Dan and Angelia Crouse.
- 02/18/19 Four REs, including RE Dudt, filed a dissent with the MPC Session regarding the denial of the Complaint.
- 04/02/19 The Northwest Georgia Presbytery (NWGP) adopted the recommendation of its Judicial Commission that the Complaint be denied.
- 04/04/19 Dan Crouse carried his Complaint to the General Assembly.
- 10/18/19 The Standing Judicial Commission (SJC 2019-03) ruled that the MPC Session erred in setting aside the nomination of Crouse to be a ruling elder prior to training and examination.
- 05/11/20 RE Dudt made a speech at a MPC Session meeting imploring the Session to call a congregational meeting to inform them of the SJC 2019-03 decision, publicly repent, and apologize to Dan and Angelia Crouse. No motion was made related to the speech.

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- 06/15/20 RE Dudt made a motion at a MPC Session meeting “That the Midway Session inform the Midway Congregation of case 2019-3, the SJC’s decision, and the Session’s formal response. That this be done before the nomination process starts on the 2020 elections.” The motion failed when a substitute motion passed.
- 07/08/20 The MPC Session called a Congregational Meeting for July 19, 2020 to elect three assistant pastors as associate pastors.
- 07/12/20 Seven days prior to the congregational meeting, RE Dudt emailed the congregation the following (emphasis original):

RE: The congregational meeting of July 19, 2020

I am writing to you as an Elder of Midway Presbyterian Church with regards to the congregational meeting set for Sunday 7-19-2020, however I am not representing the Midway Session.

Whereas: This recommendation was hastily established. A Session meeting was called on July 4, 2020 and the Session met on July 8, 2020 to discuss and decide this matter.

Whereas: The entire Session was not able to be present for the meeting.

Whereas: This was not a unanimous decision by the Midway Session and a significant minority is opposed to this motion.

Whereas: The current pandemic will prohibit full participation by the congregation in said meeting.

Whereas: According to the *Book of Church Order* of the PCA (chapter 20-2) “A church shall proceed to elect a pastor in the following

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manner: The Session shall call a congregational meeting to elect a pulpit committee which may be composed of members from the congregation at large or the Session, as **designated by the congregation.**”

Whereas: The Standing Judicial Committee of the PCA ruled against the Midway Session and the Northwest Georgia Presbytery in the case of Dan and Angelia Crouse vs. the Northwest Georgia Presbytery (SJC Case 2019-03) **for unconstitutionally handling officer nominations.** See pages 44-47 of the following link: <https://pcaga.org/wp-content/uploads/2020/06/SJC-Report-to-GA-2020-6-9-20.pdf>

Whereas: The proposed action will expand the Session to 16 members and unduly enhance the influence of the church staff in the governance of the church. This will give the staff a voting block that will require a supermajority of ruling elders to prevail on any motion including the budget and other financial issues.

Therefore: I am asking the congregation to support a substitute motion to postpone this meeting until January 2021 to allow the congregation reasonable time to prayerfully consider the church’s needs, the men’s qualifications, the establishment of a pulpit committee, and the subsidence of the global pandemic to allow for greater congregational participation.

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The MPC Session approved a resolution defining how a member of the Session can dissent from an action of the Session which included, among other requirements, that an elder must first resign from his office if he feels compelled to publicly communicate “dissatisfaction with or any opposition

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to a decision or action of the Session.” Otherwise, the elder would be in violation of vow #5 and/or vow #6.

- 10/07/20 The MPC Session approved moving forward with process against RE Dudt and issued an indictment with two charges. Those charges are shown below:
(1) Violating of his ordination vows (#5, 6) distributing the SJC case 2019-03 [Crouse v. NW GA] to the entire congregation against the express will of the Session and therefore failing to be in subjection to his brethren (vow #5), and
(2) Violating the ninth commandment and vow #6 in the letter he sent [to the congregation] on July 12, 2020.
- 10/19/20 RE Dudt pled “not guilty” to the two charges outlined in the indictment.
- 10/22/20 Three MPC Session ruling elders requested the Moderator call a meeting for the purpose of considering two motions: (i) approval an independent moderator from the NWGP for the process and trial and (ii) engagement of a court reporter for the trial.
- 10/26/20 The MPC Session met to consider the two motions. Both motions failed.
- 11/11/2020 The trial commenced at 7:30 pm and concluded at 5:40 am the next day. RE Dudt was found guilty of the two charges in the indictment and censured by indefinite suspension from office. The MPC Session appointed both a Restoration Committee and a Respondents Committee (in case of an appeal). The Session also approved a summary statement of its actions against RE Dudt to be sent to the congregation on November 12, 2020.
- 11/12/20 RE Dudt submitted a Notice of Intention to Appeal dated 11/11/2020 with the NWGP Clerk.
- 11/12/20 MPC Session sent an email to the congregation communicating that RE Dudt had been censured.

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- 11/16/20 MPC Session approved a revised statement regarding RE Dudt to send to the congregation.
- 12/07/20 RE Dudt submitted an Appeal with the NWGP Clerk.
- 04/27/20 NWGP Judicial Commission conducted the Appeal Hearing.
- 08/21/20 NWGP approved the Judicial Commission Decision that the MPC Session did not err procedurally or manifest prejudice in its prosecution of RE Dudt.
- 02/11/20 The SJC Panel Hearing was conducted via GoToMeeting. The Panel included TE Coffin, RE Terrell, and TE Waters (chairman). Alternates RE Dowling and TE Kooistra were present. Also present were RE Dudt and RE David who acted as his assistant, and TE Daniel who served as the Respondent's representative.

II. STATEMENT OF THE ISSUE

At its meeting on November 12, 2020, did the Session of Midway Presbyterian Church err in finding RE Dudt guilty at trial of the two charges in the indictment and thereafter imposing upon RE Dudt the censure of indefinite suspension from office; and at its meeting on August 21, 2021, did Northwest Georgia Presbytery err in approving its Judicial Commission's decision that the Midway Presbyterian Church Session did not err in its prosecution and censure of RE Dudt?

III. JUDGMENT

Yes. The decisions of the Session of Midway Presbyterian Church and Northwest Georgia Presbytery are reversed in whole. The SJC renders the decision that should have been rendered, to wit, not guilty. RE Dudt is relieved of his conviction and censure and is restored to the full exercise of his office.

IV. REASONING AND OPINION

With respect to the guilty verdict, Appellant raises 40 specifications of error on the part of MPC Session and 15 specifications of error on the part of NWGP. Of the specifications of Session error, 14 were sustained (3, 4, 5, 6, 9

in part, 14, 15, 23, 24, 25, 30, 31, 33, 34). Of the specifications of Presbytery error, eight were sustained (1, 3, 4, 5, 7, 13, 14, 15). The specifications of error sustained, taken together, demonstrate clear error on the part of the lower courts with respect to factual findings and matters of discretion and judgment, as well as violations of the Constitution of the PCA, all of which vindicate the Judgment of the SJC in this case. The Session and Presbytery alleged errors will be taken up in turn below.

In the 1st specification of Session error, Appellant alleges that Session erred in not pursuing a *BCO* 31-2 investigation into his actions, establishing a strong presumption of guilt, and on that basis instituting process.

This specification of error is not sustained.

A Minute Explanatory. *BCO* 32-2 provides that “Process against an offender shall not be commenced unless some person or persons undertake to make out the charge; or unless the court finds it necessary, for the honor of religion, itself to take the step provided for in *BCO* 31-2.” The Session followed the path of the former disjunct.

In the 2nd specification of Session error, Appellant alleges that Session misrepresented him in the indictment when it charged that RE Dudt had “distributed” the SJC case 2019-03 to the entire congregation.

This specification of error is not sustained.

A Minute Explanatory. Providing a link in an email is a commonplace means of document distribution.

In the 3rd specification of Session error, Appellant alleges that Session erred in failing to demonstrate that the distribution of SJC case 2019-03 to the entire congregation, against the will of the Session, is properly an offense according to *BCO* 29-1.

This specification of error is sustained.

A Minute Explanatory. Regardless of the means employed to express its will, Session has no right to make that will a rule requiring obedience from a Session member that is not based upon Scripture. Preliminary Principle 7 declares: “All church power, whether exercised by the body in general, or by representation, is only ministerial and declarative since the Holy Scriptures are the only rule

of faith and practice. No church judicatory may make laws to bind the conscience”. The Session had a right to refuse to distribute the SJC decision in question. The Session had no right to forbid RE Dudd from doing so, the 5th ordination vow notwithstanding. The promise to be in “subjection to your brethren” is always qualified and limited by “in the Lord.” As the Larger Catechism instructs us, we owe authorities over us “obedience to their *lawful* commands and counsels. . . . (emphasis added, LC 127).” (*BCO* 14-7)

In the 4th specification of Session error, Appellant alleges that Session erred in finding RE Dudd guilty of the first charge of the indictment, to wit, distributing SJC case 2019-03 to the entire congregation against the express will of the Session, when at trial no evidence of such an express will was forthcoming.

This specification of error is sustained.

A Minute Explanatory. “Express” is defined as “Directly and distinctly stated or expressed rather than implied or left to inference: not dubious or ambiguous: definite, clear, explicit, unmistakable.” (*Webster’s Third New International Dictionary* (1976)). The ROC did not provide *any evidence* of such an express will. An action by the Session to decline itself to distribute a document does not imply that a Session member is prohibited from such a distribution. In fact, the ROC shows that during the trial, defense’s questioning witnesses on this point was repeated so frequently, with no evidence forthcoming, that the Moderator sought to preempt further pursuit of the matter with witnesses to come: “May we try something on that line of questioning? May we by common consent agree that on that series of questions, there was no explicit mandate to Elder Dudd? Is there any objection? So we will stipulate that there was no explicit mandate to Elder Dudd not to distribute. . . .” Apparently, before he could rule, there was objection voiced; however, the Moderator’s proposal is a clear indication of the state of the evidence-gathering, at least at that late point in the proceedings. Further, the Presbytery Judicial Commission’s written decision plainly grants the point: “In this case, the will of Midway’s session, regarding how SJC 2019-03 was to be handled by the leadership of the church, was consistent and recognizable, even if it was not explicit. . . .” The charge in the indictment, however, was that the action was “against *the express* will of the Session.” [emphasis added. Session clearly erred in finding RE Dudd guilty of the first charge of the indictment.

In the 5th specification of Session error, Appellant alleges that Session erred in finding RE Dudt guilty of the second charge of the indictment, to wit, violating the ninth commandment by including false statements in the July 12 email sent from RE Dudt to the congregation.

This specification of error is sustained.

A Minute Explanatory. The ROC does not show evidence for the allegation that there were false statements in the Appellant's July 12 email. Absent such evidence, the Session's finding is clearly in error.

In the 6th specification of Session error, Appellant alleges that Session erred in finding

RE Dudt guilty of the second charge of the indictment, to wit, violating the ninth commandment, by the July 12th email as a whole. Appellant alleges that Session, without evidence, found that "The purpose of the Letter (specifically, his use of the SJC decision) was to challenge the competency, credibility, and trustworthiness of the Session. Mr. Dudt did not accurately represent the Session's process or position. He employed partial truth to bias the congregation against its elders in order to defeat their recommendation at the forthcoming . . . congregational meeting."

This specification of error is sustained.

A Minute Explanatory. Appellant's purpose in the letter is clearly stated: "I am asking the congregation to support a substitute motion to postpone this meeting until January 2021 to allow the congregation reasonable time to prayerfully consider the church's needs, the men's qualifications, the establishment of a pulpit committee, and the subsidence of the global pandemic to allow for a greater congregational participation." This purpose is misstated in the Session's indictment: "in order to defeat their recommendation at the forthcoming . . . congregational meeting." The Session clearly erred in the judgment made about the content of the email. The ROC does not sustain the claim that Session showed that RE Dudt's email to the congregation constituted an offense as defined by *BCO* 29-1.

In the 7th specification of Session error, Appellant alleges that Session erred in finding RE Dudt guilty of the second charge of the indictment, to wit, violating ordination vow 6 when evidence to the contrary, from SJC 2015-11, was prohibited from being introduced at the trial.

This specification of error is not sustained.

A Minute Explanatory. There is no citation in the ROC that sustains this allegation. However, it is of interest to note that the case referred to in the specification shows that the SJC ruled that: “The admonitions given [the accused] as represented in the Indictment could be interpreted as instructing [the accused] not to send any emails regarding church business, not even one composed with temperate language, and with accurate, non-confidential content, and sent to willing recipients. . . . A ban of that scope would be beyond the powers of a Session because that prohibition would have no basis in the general moral regulations of Scripture.” (SJC 2015-11, *Thompson v. S. Florida*, M44GA, p. 539)

In the 8th specification of Session error, Appellant alleges that Session erred by not investigating the alleged offenses prior to indicting RE Dudt, thus violating *BCO* 31-2.

This specification of error is not sustained.

A Minute Explanatory. See Minute for the 1st specification of Session error.

In the 9th specification of Session error, Appellant alleges that Session erred by not investigating the alleged offenses prior to indicting RE Dudt, thus violating *BCO* 31-2. Further, the specification alleges that the Session erred passing a resolution prohibiting all active officers from publicly disagreeing with the Session. Appellant alleges that this resolution provided a foundation, *ex post facto*, for the accusations against RE Dudt with respect to his July 12th email.

This specification of error is not sustained, in part, and sustained, in part.

A Minute Explanatory. As to the first part, concerning *BCO* 31-2, see specification of error 1. As to the second part, it is sustained. The so-called “Talley Resolution” clearly violates *BCO* PP II.7 and WCF 20-2. Such *in thesi* deliverances form no part of the Constitution of the Church and have no binding power. Yet the question of their authority and of their binding power typically at once become a subject of controversy and needlessly divide the Church. A Session cannot authoritatively establish the meaning of the *BCO*, it can only interpret

it in light of its history and its sense as received by the Church. No officer can be subject to discipline for disagreeing with, or violating, such a resolution. Further, the Resolution is effectively a bill of attainder, i.e., an act of a legislature declaring a person, or a group of people, guilty of some crime, and punishing them, without a trial, and as such it is invalid. It is instructive to note that a bill of attainder is prohibited in the United States Constitution and that every state constitution also expressly forbids bills of attainder. The *BCO* clearly forbids such a procedure in, for example, 24-7 and Preliminary Principle 8.

In the 10th specification of Session error, Appellant alleges that Session erred by classifying the alleged offenses as “general” when no heresy or immorality was involved.

This specification of error is not sustained.

A Minute Explanatory. Appellant appears to understand the difference between “personal offenses” and “general offenses” (*BCO* 29-3) to be the kind of criminality involved. In fact the difference is concerning the offended: Personal, when one or more particular individuals are the subject; general, when that is not the case.

In the 11th specification of Session error, Appellant alleges that Session erred by classifying the alleged offenses as “public,” while he alleges that they were only known to a few.

This specification of error is not sustained.

A Minute Explanatory. Whatever the degrees of understanding of relative criminality might have been, the email to the congregation makes it categorically “public.”

In the 12th specification of Session error, Appellant alleges that Session erred by not sending a committee to converse with RE Dudt before instituting process.

This specification of error is not sustained.

A Minute Explanatory. The provisions of *BCO* 31-7 make the use of such a committee entirely at the Session’s discretion and the Appellant

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has provided no evidence that such a committee would have “promote[d] the interests of religion” in this case.

In the 13th specification of Session error, Appellant alleges that Session erred in not following the principles of Matthew 18.

This specification of error is not sustained.

A Minute Explanatory. The ROC shows that the two elders, Keesee and Talley, who initiated the charges, first spoke with RE Dudt privately.

In the 14th specification of Session error, Appellant alleges that Session erred in assigning malicious motive to RE Dudt in the production and distribution of his July 12th email, contrary to his expressed intent.

This specification of error is sustained.

A Minute Explanatory. See Minute for the 6th specification of Session error.

In the 15th specification of Session error, Appellant alleges that Session erred in failing to follow the procedures of *BCO* 32-3.

This specification of error is sustained.

A Minute Explanatory. The minutes of the Special Session Meeting of October 7, 2020, and the dating of the indictment clearly show that the Session conflated the provisions of *BCO* 32-3. However, Appellant did not raise a point of order, as was his right, at that meeting, nor at the Stated Session Meeting of October 19, 2020 when he was called upon to plead with respect to the indictment; and the error did not cause material harm to Appellant’s cause.

In the 16th specification of Session error, Appellant alleges that Session erred in that the indictment did not match the charges made received at the October 7, 2020, Special Session Meeting.

This specification of error is not sustained.

A Minute Explanatory. There is no provision in the Rules of Discipline that requires an indictment to include all of the wording included in a

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charge received. Further, if there was an error, it is the error of the Prosecutor, not the Session. In any case, the error did not cause material harm to Appellant's cause.

In the 17th specification of Session error, Appellant alleges Session erred by instituting process as if the prosecution was instituted by the court when it was initiated by two elders when they called for the October 7, 2020 Session meeting to indict the RE Dudt.

This specification of error is not sustained.

A Minute Explanatory. The ROC shows the MPC Session voted to commence process against RE Dudt at a duly constituted meeting of the court on October 7, 2020. (187)

In the 18th specification of Session error, Appellant alleges Session erred by allowing an elder to prosecute the case without first attempting to reconcile and reclaim the offender in violation of *BCO* 31-5.

This specification of error is not sustained.

A Minute Explanatory. See Minute for the 13th specification of Session error.

In the 19th specification of Session error, Appellant alleges that Session erred when several members of the court failed to study the Rules of Discipline in preparation for the trial.

This specification of error is not sustained.

A Minute Explanatory. It is wise for the members of a church court to study the Rules of Discipline, but the ROC does not establish that the Rules were not understood by the court. Additionally, the ROC indicates the moderator summarized the Rules in the Session meeting on October 7, 2020.

In the 20th specification of Session error, Appellant alleges that Session erred by not demanding that the members of the pastoral staff attempt the means of reconciliation.

This specification of error is not sustained.

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A Minute Explanatory. There is no constitutional requirement that the Session direct the pastoral staff to pursue reconciliation. Also see Minute for the 13th specification of Session error.

In the 21st specification of Session error, Appellant alleges that Session erred because three associate pastors did not recuse themselves since the alleged offenses were directly related to the calling of them to associate pastor and two of them argued in favor of the indictment and conviction of RE Dudt.

This specification of error is not sustained.

A Minute Explanatory. The ROC does not indicate the Appellant challenged the right of any member of the court to sit in the trial. (*BCO* 32-16)

In the 22nd specification of Session error, Appellant alleges that Session erred by denying RE Dudt's request for an independent moderator.

This specification of error is not sustained.

A Minute Explanatory. While it would have been wise to have procured an independent moderator in this case, it was not constitutionally required.

In the 23rd specification of Session error, Appellant alleges that Session erred by allowing RE Dudt only one communing member of the congregation to represent him at trial before the Session when *BCO* 32-19 states "an accused person, if he desires it, may be represented before the Session by any communing member of the same particular church."

This specification of error is sustained.

A Minute Explanatory. The substance of *BCO* 32-19 is that professional counsel is not permitted, not that the accused is limited to only one representative.

In the 24th specification of Session error, Appellant alleges that Session erred by receiving accusations from witnesses deeply interested in the conviction of the accused (*BCO* 31-8).

This specification of error is sustained.

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A Minute Explanatory. The Record indicates there are at least two instances of evidence of accusations being received from individuals who were “deeply interested in any respect to the conviction of the accused.” *BCO* 31-8 does not prohibit accusations from witnesses that are deeply interested in a conviction, but the provision does require the exercise of great caution. There is no evidence in the ROC that any caution, great or otherwise, was exercised by the court with respect to these witnesses. (*BCO* 31-8).

In the 25th specification of Session error, Appellant alleges that Session erred during the trial by allowing the moderator to relinquish and reassume the chair, which allowed him to examine witnesses.

This specification of error is sustained.

A Minute Explanatory. *Robert’s Rules of Order* states: “The presiding officer who relinquished the chair then may not return to it until the pending main question has been disposed of, since he has shown himself to be a partisan as far as that particular matter is concerned. Indeed, unless a presiding officer is extremely sparing in leaving the chair to take part in debate, he may destroy members’ confidence in the impartiality of his approach to the task of presiding.” RONR (12th ed.) 43:29

In the 26th specification of Session error, Appellant alleges that Session erred when several elders testified that they had been angry with RE Dudt and therefore should have recused themselves to avoid violating *BCO* 27-4 and *BCO* 31-8.

This specification of error is not sustained.

A Minute Explanatory. The ROC does not indicate the members of the court exercised their power out of “wrath” (*BCO* 27-4).

In the 27th specification of Session error, Appellant alleges that Session erred by not allowing members of the congregation to attend the trial when they voted to conduct the proceedings in executive session.

This specification of error is not sustained.

A Minute Explanatory. It was constitutionally permissible for the Session to conduct the trial in executive session.

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In the 28th specification of Session error, Appellant alleges that Session erred by conducting the trial in executive session in conflict with the requirement of minute keeping of the procedures stated in *BCO 32-18*.

This specification of error is not sustained.

A Minute Explanatory. The ROC indicates that careful records of the procedures, including the trial with transcript, were completed as directed in *BCO 32-18*.

A 29th specification of Session error, Appellant alleges that Session erred by not allowing RE Dudt's wife to attend the trial.

This specification of error is not sustained.

A Minute Explanatory. See Minute for the 27th specification of Session error.

A 30th specification of Session error, Appellant alleges that Session erred by declining to receive proper evidence (*BCO 42-3*) that could have contradicted the indictment's claims that RE Dudt's actions that "led to a divisive congregational meeting" when lines of questioning to witnesses about the congregational meeting were ruled out of order by the moderator on grounds of relevancy.

This specification of error is sustained.

A Minute Explanatory. The Moderator improperly ruled out of order questions that may have led to testimony that contradicted the indictment's charge of divisiveness. When an objection was raised against the Moderator's ruling, Session upheld the Moderator's ruling.

A 31st specification of Session error, Appellant alleges that Session erred when the moderator, when questioned during the trial, did not definitely state that the burden of proof rests with the prosecution.

This specification of error is sustained.

A Minute Explanatory. The burden of proof is placed on the prosecution.
SJC 1998-08 states:

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"The fact that the burden of proof is on the prosecution is clear from several procedures in our Book of Church Order. First, the reason why the prosecution argues first at trial, and has the closing remarks, is because the burden of proof is on the prosecution. Second, the accused is not required to testify and the defense need not even present a case. The prosecution, however, must present a case. Third, if an accused person ignores repeated citations to plead, or to appear for trial, that person can be censured for contumacy. He is not, however, censured for the offense on which he was indicted because his guilt on that charge has not yet been proven." (Beverly Smith v. Southwest, M28GA, pp. 218, 227)

A 32nd specification of Session error, Appellant alleges that Session's moderator and clerk refused to distribute copies of the trial audio recordings to the accused within four weeks of Appellant's conviction and, therefore, Session erred in violation of *BCO* 32-18.

This specification of error is not sustained.

A Minute Explanatory. The ROC does not furnish evidence of such a request having been refused by Session, whether through Session's moderator or through Session's clerk. However, if the ROC had demonstrated this, it would have been a Session error.

A 33rd specification of Session error, Appellant alleges that Session erred in violation of *BCO* 42-6 when it announced to the congregation the Appellant's censure approximately an hour and a half after Appellant had filed notice of appeal with the Clerk of Session.

A 34th specification of Session error, Appellant alleges that the wording of Session's November 12 letter to the congregation, announcing Session's judgment and Appellant's censure, violated *BCO* 42-6.

These two specifications of error are sustained.

A Minute Explanatory. *BCO* 42-6 reads in part, "Notice of appeal shall have the effect of suspending the judgment of the lower court until the case has been finally decided in the higher court." Appellant filed notice of appeal, dated November 11, 2020, to Clerk of Presbytery .

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That notice had the effect of suspending Session's judgment in the trial of Appellant. Session therefore erred when it communicated to the congregation on November 12 that Appellant had been censured.

A 35th specification of Session error, Appellant alleges that Session erred in violation of *BCO* 42-6 when it prevented Appellant from exercising his official functions without documenting sufficient reasons.

This specification of error is not sustained.

A Minute Explanatory. Invoking *BCO* 42-6 and 31-10, Session acted to suspend Appellant from the functions of office, without censure, and offered grounds for its action.

A 36th specification of Session error, Appellant alleges that Session erred in violation of *BCO* 42-6 in prohibiting RE Dudt from "performing non-office related duties."

This specification of error is not sustained.

A Minute Explanatory. The ROC indicates that a member of Session's Restoration Committee communicated to Appellant that his suspension from office did include activities that the specification characterizes as "non-office related duties." But the ROC does not indicate that Session acted to prohibit Appellant from performing particular duties not related to his office.

A 37th specification of Session error, Appellant alleges that Session erred in the "harshness of its censure to suspend RE Dudt from the functions of office for his alleged offense," and should have, rather, imposed the censure of admonition.

This specification of error is not sustained.

A Minute Explanatory. The censure of admonition is to be administered to "an accused, who, upon conviction, satisfies the court as to his repentance and makes such restitution as is appropriate. Such censure concludes the judicial process" (*BCO* 30-1). In the judgment of the Session at the time of the imposition of censure, Appellant had not met the requisite conditions for the censure of admonition and, therefore, the Session was in no position to inflict this censure upon Appellant. This

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Minute should not be construed as an endorsement of Session's judgment at the time of the imposition of censure.

A 38th specification of Session error, Appellant alleges that Session erred in violation of *BCO* 42-6 when the Session's Restoration Committee sent an email to Appellant on November 16, 2020 "to begin the process of restoration even though all committee members knew that the notice of appeal, which suspended the judgment, had been filed, thus not respecting RE Dudt's right of appeal (*BCO* 42-6)."

This specification of error is not sustained.

A Minute Explanatory. The email in question was written by a member of the committee "on behalf of the restoration committee." As such, any alleged error would be of the committee and not of the Session. The ROC does not demonstrate that the contents of the email communicated actions of the Session.

A 39th specification of Session error, Appellant alleges that Session erred when it allowed a TE "who testified during the trial that he did not privately discuss this matter with RE Dudt due to a perceived conflict of interest" to write, on behalf of the Restoration Committee, to Appellant the email of November 16, 2020.

This specification of error is not sustained.

A Minute Explanatory. The ROC does not indicate that Session appointed or expressly permitted this TE to write the email of November 16, 2020.

A 40th specification of Session error, Appellant alleges that Session erred in violation of *BCO* 42-6 when an email sent by a member of the Session's Restoration Committee communicated to Appellant that his suspension would "persist even in the presence of an appeal [citing *BCO* 36-5]" notwithstanding the judgment of the lower court having been suspended by Appellant's filing notice of appeal.

This specification of error is not sustained.

A Minute Explanatory. The ROC shows that the language in question is that of a member of a committee of Session but does not show that this language is that of the Session.

A 1st specification of Presbytery error, Appellant alleges that Presbytery erred in violation of *BCO* 42-5 when it allowed testimony taken after the trial to be included in the ROC.

This specification of error is sustained.

A Minute Explanatory. The Session does not dispute that such testimony was so added, but argues that this inclusion is permissible under *BCO* 42-5 (“any papers bearing on the case”). But testimony taken after the trial is not a “paper bearing on the case” (*BCO* 42-5; cf. *BCO* 35-13,14) and, as such, should not have been added to the ROC.

A 2nd specification of Presbytery error, Appellant alleges that Presbytery erred in violation of *BCO* 42-3 (“refusal of reasonable indulgence to a party on trial”) when it declined Appellant’s request to reformat the ROC.

This specification of error is not sustained.

A Minute Explanatory. *BCO* 42-3 governs the lower court’s actions in the course of a trial. As such, it does not regulate a higher court’s responsibilities with respect to reformatting the existing transcript of a trial conducted by a lower court.

A 3rd specification of Presbytery error, Appellant alleges that Presbytery erred in violation of *BCO* 42-4 when it concluded that Appellant had not submitted notice of appeal on November 12, 2020 because Appellant’s filing lacked supporting reasons, and that Appellant only properly submitted (that is, with supporting reasons) his appeal on December 7, 2020.

This specification of error is sustained.

A Minute Explanatory. *BCO* 42-4 envisions two distinct actions that Presbytery has conflated in its adjudication of this matter. First, “notice of appeal may be given the court before its adjournment.” Second, Appellant has thirty days to submit “written notice of appeal, with supporting reasons” to the clerks of the lower and higher courts.

A 4th specification of Presbytery error, Appellant alleges that Presbytery erred in its ruling that Session did not violate *BCO* 42-6 when Session announced to the congregation the Appellant’s conviction and censure on November 12.

This specification of error is sustained.

A Minute Explanatory. See Minute for the 33rd and 34th specifications of Session error.

A 5th specification of Presbytery error, Appellant alleges that Presbytery erred in violation of *BCO* 42-8 when it failed to answer each specification of error alleged in Appellant's appeal.

This specification of error is sustained.

A Minute Explanatory. Presbytery declined to address the Appellant's specifications "in an *ad seriatim* fashion" and adopted "a summative approach," "rul[ing] against all 40 grounds, with only some given a response". But *BCO* 42-8 requires the higher court "to vote on each specification in this form: Shall this specification of error be sustained?"

A 6th specification of Presbytery error, Appellant alleges Presbytery erred by concluding that the claim that the MPC Session was prejudiced was "never substantiated."

This specification of error is not sustained.

A 7th specification of Presbytery error, Appellant alleges that Presbytery erred by not overturning RE Dudt's conviction on the first specification of the indictment. Appellant alleges that he was indicted and convicted for lack of submission to the "express" will of the Session. He further alleges that Presbytery found only that RE Dudt had violated what they took to be the implied will of the Session, and, without warrant, found that supposed implication sufficient to convict.

This specification of error is sustained.

A Minute Explanatory. Presbytery's substituting of implied will for express will is clearly in error. See Minute for the 4th specification of Session error.

An 8th specification of Presbytery error, Appellant alleges that Presbytery erred by not sustaining the Appellant's claims that he was denied reasonable indulgences (*BCO* 42-3) that included an independent moderator, a court

reporter, the trial not be held in executive session and permitting his wife to attend the trial.

This specification of error is not sustained.

A Minute Explanatory. See Minute for the 22nd, 27th, 28th, and 29th specifications of Session error.

A 9th specification of Presbytery error, Appellant alleges that Presbytery erred in violation of *BCO* 32-18 when it declared in its Written Decision that Appellant had mischaracterized as “hasty” a decision of Session that “in fact ... had been discussed and deliberated upon for several months prior to the called congregational meeting”. Appellant alleges that this declaration (“in fact ... meeting”) “is not one of the Facts of the Case.”

This specification of error is not sustained.

A Minute Explanatory. *BCO* 32-18 prevents the higher court from taking into consideration anything “not contained” in the ROC. But Appellant’s allegation reflects a difference between Appellant and Appellee with respect to the interpretation of the contents of the ROC.

A 10th specification of Presbytery error, Appellant alleges that Presbytery “due to its conflict of interest regarding the inclusion of the SJC decision” acted prejudicially against the Appellant when it devoted “nearly one-third” of its Written Decision to Appellant’s distribution of an SJC Case to the congregation.

This specification of error is not sustained.

A Minute Explanatory. Appellant has not demonstrated either that Presbytery had a conflict of interest in this matter or that such alleged conflict of interest accounts for the proportion of the treatment of this matter relative to the length of Presbytery’s Written Decision as a whole.

An 11th specification of Presbytery error, Appellant alleges that Presbytery erred in concurring with the Session in classifying the alleged offenses as “public,” while he alleges that they were only known to a few.

This specification of error is not sustained.

APPENDIX T

A Minute Explanatory. See Minute for the 11th specification of Session error.

A 12th specification of Presbytery error, Appellant alleges that Presbytery erred when it accepted the Session's claim that RE Dudt's email divided the congregation.

This specification of error is not sustained.

A Minute Explanatory. Presbytery, not having found clear error on the part of the Session with respect to this factual claim, exhibited appropriate deference to the lower court's finding.

A 13th specification of Presbytery error, Appellant alleges that Presbytery erred by not recognizing that the MPC Session failed to exercise great caution by receiving accusations from witnesses "deeply interested in any respect in the conviction of the accused" (*BCO* 31-8).

This specification of error is sustained.

A Minute Explanatory. See Minute for the 24th specification of Session error.

A 14th specification of Presbytery error, Appellant alleges that Presbytery erred by ruling that charge 1 of the Session's indictment, citing Acts 15:24-25; Titus 1:6-7, 10, gave adequate Scriptural support for the charge that RE Dudt's email constituted an offense as defined by *BCO* 29-1.

This specification of error is sustained.

A Minute Explanatory. See Minute for the 3rd specification of Session error.

A 15th specification of Presbytery error, Appellant alleges that Presbytery erred by condoning the indictment's assigned motive to RE Dudt's July 12, 2020, email to the congregation.

This specification of error is sustained.

A Minute Explanatory. See Minute for the 6th specification of Session error.

MINUTES OF THE GENERAL ASSEMBLY

The Panel decision was written by TE David Coffin, RE Bruce Terrell, TE Guy Waters, RE Steve Dowling, and TE Paul Kooistra, and edited and approved by the Panel 3-0-0.”

The SJC modified and approved the decision on the following roll call vote:

Bankson <i>Absent</i>	S. Duncan <i>Concur</i>	Nusbaum <i>Concur</i>
Bise <i>Concur</i>	Ellis <i>Concur</i>	Pickering <i>Not Qual.</i>
Cannata <i>Concur</i>	Greco <i>Concur</i>	Ross <i>Concur</i>
Carrell <i>Concur</i>	Kooistra <i>Concur</i>	Terrell <i>Concur</i>
Coffin <i>Concur</i>	Lee <i>Concur</i>	Waters <i>Concur</i>
Donahoe <i>Concur</i>	Lucas <i>Concur</i>	White <i>Absent</i>
Dowling <i>Concur</i>	McGowan <i>Concur</i>	Wilson <i>Concur</i>
M. Duncan <i>Absent</i> (19-0-0)	Neikirk <i>Concur</i>	

Concurring Opinion

of RE Howie Donahoe, joined by TE Sean Lucas, TE Charles McGowan, TE Mike Ross, RE Dan Carrell, RE EJ Nusbaum, RE Bruce Terrell

We concurred with the Decision but believe two comments are warranted - one as a critique of a Session trial court procedure and the other as a general caution regarding individual elders emailing their congregations.

1. The Summary of the Facts indicates that on November 11, 2020, “The trial commenced at 7:30 pm and concluded at 5:40 am the next day.” The Record indicates the meeting concluded at 5:40 am, but it’s unclear when the defense and prosecution closing arguments occurred. Presumably, because there were three prosecution witnesses and 16 defense witnesses, it was probably well after midnight. That is a highly unreasonable way to conduct a trial. An overnight trial is extraordinary, and so is a court discussing the verdict and censure during the wee hours of the morning. The Record does not indicate time was of the essence in this matter. The trial court committed a clear error of judgment in this procedure, despite the defendant’s failure to object.

However, because the Appellant didn’t cite this matter as a specification of error, the SJC did not address it, following *BCO* 39-3.1: “A higher court, reviewing a lower court, should limit itself to the issues raised by the parties to the case in the original (lower) court.” While we agree the SJC should avoid basing judgments on issues unraised by the parties, it is proper to raise concerns about a lower court error, nonetheless. Doing so helps to clarify that

serious errors evident in the Summary of the Facts, and thus evident to the reader, are not necessarily judged as benign.

2. It would be unfortunate for anyone to conclude, that because this Appeal was sustained, it is appropriate for a Session member to email his congregation expressing disagreement with a Session decision. Such conduct would rarely be wise or appropriate.

It would be unfortunate if any elder feels emboldened by this ruling. Session members have several avenues for expressing disagreement with a Session decision, some wiser than others, depending on the circumstances. And ordination vows 5 and 6 certainly must have some bearing on the matter - #5. "Do you promise subjection to your brethren in the Lord?" #6. "Do you promise to strive for the purity, peace, unity, and edification of the Church?"

In addressing Appellant specification of error #3, the SJC ruled: "The Session had a right to refuse to distribute the SJC decision in question. The Session had no right to forbid RE Dudt from doing so, the 5th ordination vow notwithstanding." We agree. The SJC Decision in Case 2019-03 *Crouse v. Northwest Georgia* was a General Assembly action and one which the congregation had a right to see, regardless of whether the SJC Decision found error in a Session action. (BCO 14-7)

But the Session's decision declining to distribute the Decision was not the lone concern expressed by the Appellant in his July 2020 email to the congregation. He offered other critiques of the Session, including his disagreement with the Session's decision to recommend the congregation promote three assistant pastors to associates and his disagreement with the Session's interpretation of BCO 20-2.

The Decision ruled that the Appellant's distribution of the *Crouse* Decision was not a censurable offense. (Charge 1; Appellant specification of error #3, sustained by the SJC) The Decision also ruled that the Session did not prove the email contained false statements or that the email "as a whole" violated the 9th commandment. (Charge 2; Appellant specifications of error #5 and #6, sustained by the SJC) Nevertheless, the propriety and wisdom of sending such an email to the congregation is, in our opinion, highly questionable.

There are few things that disturb the peace and unity of a church more than individual elders bringing to public attention their disagreements with Session decisions. And few things disturb the peace and unity of a church more than

a Session putting an elder on trial for actions related to disagreements with the Session. Not many things divide a church more quickly.

CASE NO. 2021-06
DANIEL HERRON, ET AL.
v.
CENTRAL INDIANA PRESBYTERY
DECISION ON COMPLAINT
June 2, 2022

SUMMARY OF THE CASE

The genesis of this case is a *BCO* 31-2 investigation of TE Daniel Herron on various reports concerning his Christian character. The *BCO* 15-1 non-judicial commission, appointed by CIP on September 13, 2019, met with the TE in question and his accusers over a period of months in the fall of 2019 and made a full report to CIP’s Church Planting team in January 2020. The report concluded: “The Commission does not believe there is a ‘strong presumption of guilt of the party involved.’” The Commission added, “[I]t is the judgment of the commission that there is enough weight to the allegations that pastoral, corrective measures are in order.”

Presbytery “received” an edited version of the full report containing the two recommendations. A complaint was ultimately filed with the SJC against CIP’s not finding “a strong presumption of guilt” regarding the accused and for not receiving the full report. The SJC referred the matter back to CIP with instructions to appoint a committee to conduct a *BCO* 31-2 investigation of reports concerning the TE and to “pursue whatever other lines of investigation may be prudent.”

The Investigative Committee (IC), appointed by CIP on March 5, 2021, reported on May 14, 2021, finding a strong presumption of guilt regarding TE Herron and recommending that six charges be brought against him. CIP 1) approved the report and approved a motion to try the case as a committee of the whole, 2) suspended TE Herron per *BCO* 31-10 and, 3) released a public statement about actions taken by CIP. After the suspension, CIP denied TE Herron access to meetings and minutes from subsequent meetings of CIP. TE Herron, joined by four others, complained against CIP’s actions.