

65325-3

65325-3

REC'D

JAN 27 2011

King County Prosecutor
Appellate Unit

NO. 65325-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

T.E.D.,

Appellant.

2011 JAN 27 11:11:07
COURT OF APPEALS

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY, JUVENILE
DIVISION

The Honorable Michael J. Trickey, Judge

REPLY BRIEF OF APPELLANT

JENNIFER J. SWEIGERT
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ARGUMENT IN REPLY</u>	1
1. LEAVING AN APPROVED RESIDENCE WITHOUT AUTHORIZATION WAS THE BASIS FOR BOTH THE COMMUNITY SUPERVISION MODIFICATION AND THE CRIMINAL CHARGE OF ESCAPE.....	1
2. MERE REMOVAL OF A MONITORING BRACELET IS INSUFFICIENT EVIDENCE OF ESCAPE BECAUSE, UNLIKE A COURT ORDER TO WORK CREW OR TREATMENT, THE ANKLE BRACELET IN NO WAY RESTRAINS A PERSON’S MOVEMENT.....	2
B. <u>CONCLUSION</u>	3

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Murrin

85 Wn. App. 754, 934 P.2d 728 (1997)..... 1, 2

State v. Tran

117 Wn. App. 126, 69 P.3d 884 (2003)..... 1, 2

RULES, STATUTES AND OTHER AUTHORITIES

RCW 13.34.070 2

A. ARGUMENT IN REPLY

1. LEAVING AN APPROVED RESIDENCE WITHOUT AUTHORIZATION WAS THE BASIS FOR BOTH THE COMMUNITY SUPERVISION MODIFICATION AND THE CRIMINAL CHARGE OF ESCAPE.

In the same afternoon, T.E.D. removed his electronic home monitoring bracelet and left the residence approved by his probation counselor, his mother's home. CP 22. The State argues these two acts were separate conduct and that the bracelet removal formed the sole basis for the criminal charge of escape and leaving his mother's home formed the sole basis for modifying T.E.D.'s community supervision. Brief of Respondent at 8. This argument should be rejected.

T.E.D. agrees with the State that removal of the ankle bracelet was not mentioned in support of the community supervision modification. Brief of Respondent at 8. However, this fact does not lead to the conclusion that removal of the ankle bracelet was separate conduct from leaving his approved residence under State v. Tran, 117 Wn. App. 126, 69 P.3d 884 (2003) and State v. Murrin, 85 Wn. App. 754, 759-60, 934 P.2d 728 (1997). The escape charge necessarily rested on T.E.D. leaving his mother's house (the same basis asserted for the modification) because removal of the ankle bracelet, without more, is not sufficient evidence of escape.

2. MERE REMOVAL OF A MONITORING BRACELET IS INSUFFICIENT EVIDENCE OF ESCAPE BECAUSE, UNLIKE A COURT ORDER TO WORK CREW OR TREATMENT, THE ANKLE BRACELET IN NO WAY RESTRAINS A PERSON'S MOVEMENT.

The State likens an electronic home monitoring ankle bracelet to a court order requiring attendance at work crew or a substance abuse treatment program. Brief of Respondent at 12. But orders that a defendant attend a particular program do actually restrain that person's movement by requiring him or her to be in a specific place at a specific time. The ankle bracelet does no such thing. By contrast, the order requiring T.E.D. to live in approved housing does restrain his physical movement. Failing to do so necessarily formed the basis for the escape charge as well as the modification to T.E.D.'s community supervision. Therefore, under RCW 13.34.070(3), Tran, and Murrin, the State was precluded from charging T.E.D. with escape. Tran, 117 Wn. App. 126; and Murrin, 85 Wn. App. at 759-60.

B. CONCLUSION

For the foregoing reasons and for the reasons stated in the opening Brief of Appellant, T.E.D. requests this Court reverse his adjudication of guilt and order of disposition for second-degree escape and remand with instructions to dismiss.

DATED this 27th day of January, 2011.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC


JENNIFER J. SWEIGERT

WSBA No. 38068

Office ID No. 91051

Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 65325-3-I
)	
T.E.D.,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 27TH DAY OF JANUARY, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] T.E.D.
6901 SW DELRIDGE WAY
SEATTLE, WA 98106

SIGNED IN SEATTLE WASHINGTON, THIS 27TH DAY OF JANUARY, 2011.

x *Patrick Mayovsky*