

No. 38913-4-II

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

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STATE OF WASHINGTON,

Respondent,

v.

NATHAN A. BROOKS,

Appellant.

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STATE OF WASHINGTON  
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COURT OF APPEALS  
DIVISION II

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable Gary R. Tabor, Judge  
Cause No. 08-1-01944-0

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BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether RCW 9A.76.110(1) applies to the situation where a person flees from custody that is based upon a warrant issued for violating conditions of community custody that was imposed following a felony conviction.

2. Whether there was sufficient evidence presented at trial to support a conviction for escape in the first degree.

B. STATEMENT OF THE CASE.

The State accepts Brooks' statement of the procedural and substantive facts.

C. ARGUMENT.

1. The plain language of RCW 9A.76.110(1) permits a conviction for first degree escape where the detention is based upon an arrest warrant issued for a community custody violation. If there is any ambiguity in that statute, it has already been resolved against Brooks' position.

The State has no dispute with Brooks as to the law pertaining to statutory interpretation. The State does disagree with his interpretation of RCW 9A.76.110(1), which provides, in pertinent part:

A person is guilty of escape in the first degree if he or she knowingly escapes from custody or a detention facility while being detained pursuant to a conviction of a felony or an equivalent juvenile offense.

Brooks does not dispute that he knowingly escaped from custody. He admitted that he had been detained by the trooper and

that he ran away.[RP 51-53] He argues instead that because he had already served his sentence for the underlying felony, his arrest on a warrant for a community custody violation, even where the community custody resulted from that felony conviction, does not constitute “detention pursuant to a conviction of a felony.” [Appellant’s brief 6-7] He argues that because the legislature passed other laws that create the crimes of second degree escape, which applies where the person has been charged with a felony but not yet convicted, RCW 9A.76.120(1)(b), or third degree escape, RCW 9A.76.130, a “catchall” crime that covers any other escapes, it must have intended that first degree escape not apply to the situation where the person has served his felony incarceration but has violated the terms of the community custody following that conviction. This conclusion does not logically follow.

Escape in the first degree is the only degree of escape that is specifically tied to a felony conviction. Second degree escape addresses situations where the escapee has been charged with a felony but not convicted, or has been committed pursuant to RCW 10.77, which concerns the criminally insane. Third degree escape, RCW 9A.76.130(1) simply reads:

A person is guilty of escape in the third degree if he escapes from custody.

The fact that the legislature chose to create lesser degrees of escape for different situations does not alter the facts that Brooks had been convicted of a felony, he was on community custody for that conviction, he had violated the terms of his community custody, a warrant had been issued for his arrest, and he was arrested pursuant to that warrant. That is a very direct association between the conviction and the detention.

Brooks further argues that the statute is ambiguous and therefore the rule of lenity requires that his interpretation controls. Courts that have considered RCW 9A.76.110(1), both in its current and former versions, have not found it to be ambiguous.

In 1978, RCW 9A.76.110(1) read:

A person is guilty of escape in the first degree if, being detained pursuant to a conviction of a felony, he escapes from custody or a detention facility.

State v. Bryant, 25 Wn. App. 635, 637, 608 P.2d 1261 (1980).

Bryant had run from the courtroom just after the court revoked his suspended sentence following a probation violation on a conviction for grand larceny. He made it no farther than down a flight of stairs before he was tackled by a deputy prosecuting attorney. After being convicted for escape, he filed a personal restraint petition

challenging the grand larceny conviction, and that matter was remanded for resentencing. He argued that the resentencing called into question the validity of the probation violation hearing from which he escaped. The court disagreed, and found that, “[D]espite this court’s order for resentencing on his plea of guilty to grand larceny, Mr. Bryant was, nevertheless, detained pursuant to a felony conviction at the time of his escape.” *Id.* The State acknowledges that because Bryant had a portion of his sentence left to serve he was not in exactly the same position as Brooks; however, the fact remains that the court found a probation revocation proceeding was “pursuant to a conviction for a felony.”

In State v. Teaford, 31 Wn. App. 496, 644 P.2d 136, *review denied*, 97 Wn.2d 1026 (1982), the defendant escaped from prison where he was serving sentences for first degree robbery and second degree burglary. He was caught and held in the county jail on the escape charge. While there, he and two other cellmates escaped; Teaford and one of the others were eventually recaptured. He was convicted of first degree escape for the escape from the county jail; the statute at the time was identical to that in Bryant. *Id.*, at 499. He argued that at the time he escaped he was in

the county jail solely on pending charges, not pursuant to a felony conviction. The court disagreed:

Penal statutes are to be strictly construed, to the end that activities not intended to be included within the ambit of the statute shall not be prosecuted. This does not mean, however, that a forced, narrow, or over-strict construction should be applied to defeat the obvious intent of the legislature. State v. Rinke, 49 Wn.2d 644, 306 P.2d 205 (1957). It is the function of the court to adopt a construction of the statute that is reasonable and in furtherance of the obvious purpose for which it was enacted. State v. Lee, 62 Wn.2d 228, 382 P.2d 491 (1963).

Id., at 499. The court went on to find “a legislative intent that escapes by persons confined after conviction should be dealt with more severely than those occurring before conviction.” Id.

In State v. Solis, 38 Wn. App. 484, 685 P.2d 672 (1984), the statute was again the same version as above. Id., at 486. Solis’s parole officer had determined he was in violation of his parole and authorized his arrest. When a police officer informed Solis of the warrant and grabbed his arm, he broke away and ran. After being captured, he was convicted of first degree escape. He maintained that a parole revocation was not the same as a conviction for a felony and therefore his conviction could not stand. The court held that suspension of the parole reinstated his felony conviction and his argument failed. Id., at 486.

A defendant can be detained pursuant to a felony conviction even if he is not serving time for that felony. State v. Snyder, 40 Wn. App. 338, 339, 698 P.2d 597 (1985). The defendant in that case had escaped before he began serving his sentence, but the court found he was still detained pursuant to the conviction. Id.

The defendant in State v. Perencevic, 54 Wn. App. 585, 774 P.2d 558 (1989), was convicted of first degree escape under the same version of RCW 9A.76.110(1) as applied in the cases above. Perencevic had been convicted of several other felonies and had finished serving his term of incarceration, but was still on community supervision. Then he was arrested for third degree theft as well as warrants for probation violations for the felonies, and attempted to escape by digging through the wall of the jail T.V. room. After being convicted of attempted first degree escape, he argued that he could not be detained pursuant to a conviction of a felony because the bench warrants were for probation violations on matters for which he had already served his sentence. Id., at 587. The Court of Appeals cited to both Snyder and Solis, concluding:

[T]he warrants arose out of Perencevic's prior felony convictions. The warrants also related to the punishment or sentence he received on his felony convictions because they were issued due to his failure to complete certain requirements of community

supervision which are as much a part of the punishment and sentence as detention time. Because there was a causal relationship between the warrants and the prior felony convictions, we hold that Perencevic's detention for his alleged supervision violation was "pursuant to a conviction of a felony". Thus, Perencevic was properly found guilty of attempted escape in the first degree.

Id., at 589.

Finally, Division III addressed the question in State v. Walls, 106 Wn. App. 792, 25 P.3d 1052 (2001). Walls was arrested on a warrant for violating conditions of community placement. The officer directed Walls toward the patrol car and began to handcuff him when Walls ran. He was caught, charged with first degree escape, and convicted. The Court of Appeals affirmed. Interpreting the statute "so as to advance the legislative purpose and avoid 'a strained and unrealistic interpretation,'" the court cited to Solis and Perencevic and concluded that an arrest based on a probation violation was a detention pursuant to a conviction of a felony. Walls, 106 Wn. App. at 798.

None of the Washington cases which have considered RCW 9A.76.110(1) have interpreted the statute as Brooks asks this court to do. He argues that there are two possible meanings as to what constitutes first degree escape, but the one he advocates is a "strained and unrealistic interpretation" and should be rejected. He

is correct that the Washington Supreme Court has not addressed the issue, but every decision of the Court of Appeals is against his position.

2. The evidence presented at trial was sufficient to permit a rational trier of fact to find Brooks guilty beyond a reasonable doubt of first degree escape.

Brooks argues that there was insufficient evidence to support his conviction because (1) there was insufficient evidence that he knew why he was being arrested, and (2) an arrest on a warrant for a community custody violation does not equal detention pursuant to a felony conviction. As to the second claim, he is incorrect as argued in section one, above.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

“[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” (Cite omitted.) This inquiry does not require a reviewing court to determine whether *it* believes the evidence at trial

established guilt beyond a reasonable doubt. “Instead, the relevant question 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*. (Cite omitted, emphasis in original.)

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

“A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” Salinas, *supra*, at 201. Circumstantial evidence and direct evidence are equally reliable, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). It is the function of the fact finder, not the appellate court, to discount theories which are

determined to be unreasonable in light of the evidence. State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).

The elements that the State was required to prove are set forth in Jury Instruction No. 6, CP 24-25, and in Appellant's Brief at pg. 10. One of those elements is that the defendant "knew his actions would result in leaving confinement without permission." He argues that the State bore the burden of proving that he knowingly fled from custody, and that is correct. The State was required to prove that he knew he was fleeing, not that he knew the basis for his detention. There is no dispute that he knew he was fleeing. He testified that he took off running, [RP 53], and he testified that he did so because he was scared. RCW 9A.76.110(2) provides for an affirmative defense to the charge of first degree assault:

It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from remaining in custody or in the detention facility or from returning to custody or to the detention facility, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to remain or return, and that the person returned to custody or the detention facility as soon as such circumstances ceased to exist.

Brooks does not claim any uncontrollable circumstances. The statute does not provide a defense of "I was scared and I didn't know why I was arrested." Nor does the State have to prove that Brooks knew the reason he was placed under arrest, even though there was ample evidence from which the jury could have concluded that he did know. The trooper testified that dispatch advised her there was a warrant for Brooks' arrest and the information was broadcast over a speaker attached to her uniform. [RP30] She was close enough to him that he would have been able to hear.

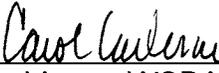
The State only had to prove that Brooks knew he was fleeing, and his own testimony established that. An arrest warrant issued for community custody violations provides the basis for a detention pursuant to a felony conviction. Both of these elements were proved to the jury, and there was sufficient evidence to support his conviction for first degree escape.

#### D. CONCLUSION.

An arrest on a warrant for community custody violations is a detention pursuant to the underlying felony conviction. The State produced ample evidence to support the conviction for first degree

escape. The State respectfully asks this court to affirm Brooks' conviction.

Respectfully submitted this 25<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
Carol La Verne, WSBA# 19229  
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of the Brief of Respondent, on all parties or their counsel of record on the date below as follows:

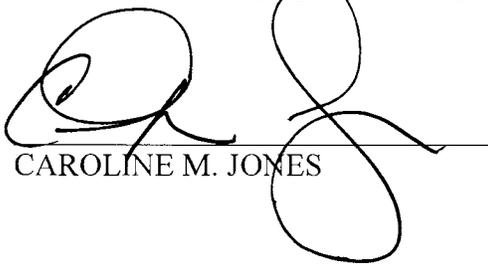
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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 25 day of September, 2009, at Olympia, Washington.

  
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CAROLINE M. JONES