ILLINOIS OFFICIAL REPORTS

Appellate Court

***People v. McClanahan*, 2011 IL App (3d) 090824**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. NEIL McCLANAHAN, Defendant-Appellant.
District & No.	Third District Docket No. 3-09-0824
Filed	August 23, 2011
Rehearing denied	October 11, 2011
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	Where defendant broke away from an officer who was attempting to place handcuffs on him, his conviction for escape was affirmed over his contention that he was never in "legal custody."
Decision Under Review	Appeal from the Circuit Court of Iroquois County, No. 07-CF-109; the Hon. James B. Kinzer, Judge, presiding.
Judgment	Affirmed.

Counsel on Appeal	Glenn Sroka, of State Appellate Defender's Office, of Ottawa, for appellant. James A. Devine, State's Attorney, of Watseka (Terry A. Mertel and Nadia L. Chaudhry, both of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE SCHMIDT delivered the judgment of the court, with opinion. Justices Wright concurred in the judgment and opinion. Justice McDade dissented, with opinion.

OPINION

¶ 1 After a bench trial, the defendant, Neil McClanahan, was convicted of escape (720 ILCS 5/31-6(c) (West 2008)) and sentenced to seven years in the Department of Corrections. The defendant claims that his conviction was an error because he was never in "lawful custody" under the escape statute. 720 ILCS 5/31-6(c) (West 2008). We affirm.

¶ 2 FACTS

¶ 3 The record reveals that on June 25, 2007, Robert Lang, a member of the village council, encountered defendant at the City of Thawville's water department building. Lang was there to turn on the water to a property in Thawville. When the defendant saw Lang, he used some foul language and said that he wanted the water turned on at "Wendy['s]" trailer. The defendant grabbed a wrench, and the two men struggled over it. Lang eventually let go of the wrench and called 911. The wrench was recovered from the bushes near the defendant's trailer.

¶ 4 The next day, Lang received permission from the mayor to turn Wendy's water back on. Lang and another employee, Janet Monk, went to the trailer, but they were unsuccessful in turning the water back on. Lang and Monk decided to go to dinner and, on their way, they saw defendant sitting in Lang's truck going through some papers. Lang called the police and told Monk to go to the fire department. The police arrived between 20 and 30 minutes later, but the defendant had left during that time.

¶ 5 Sergeant David Cook arrived on the scene and he spoke with Lang and Monk. The defendant returned and began yelling at Lang about the water situation. At that point, Cook advised the defendant that he was under arrest. Cook grabbed the defendant and a struggle ensued. During the struggle, defendant was forced onto the hood of a car. When Cook reached for his handcuffs, the defendant managed to slip away. Lang stated that "when the

officer went to get his handcuffs out [the defendant] seemed to know what was going to happen." Cook described the struggle, stating that defendant "was wrestling trying to get away from me. He was hard to hold onto. He had no shirt on, he was sweaty and slippery. And I believe that we were somewhere around in front of my squad car at that time and I got him down on the car to pull his hand back." While the defendant was not in "a dead run" he nonetheless "took off running."

¶ 6 Defendant testified that he was not told that he was under arrest until he was later apprehended. He said that Cook told him to "get out of here," so he left the premises.

¶ 7 The defendant was tried for criminal damage to property and escape. He was found not guilty of criminal damage to property, but convicted of escape. He appealed.

¶ 8 ANALYSIS

¶ 9 On appeal, the defendant argues that his conviction should be reversed because he was never in lawful custody. In essence, he argues that Cook failed to acquire sufficient control over his person to put him into custody.

¶ 10 First, we must decide the appropriate standard of review. Ordinarily, when a defendant challenges the sufficiency of the evidence supporting his conviction, the relevant inquiry is whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. De Filippo*, 235 Ill. 2d 377 (2009). However, the defendant argues that we should review this case *de novo* because we are interpreting the term "custody" as used in the escape statute. 720 ILCS 5/31-6(c) (West 2008).

¶ 11 We do not find that this case involves a matter of statutory interpretation. Instead, the defendant's conviction is dependent upon whether the officer exercised a sufficient amount of control over the defendant. *People v. Brexton*, 343 Ill. App. 3d 322 (2003). We will, therefore, uphold the conviction if any rational trier of fact could have found that the defendant was in lawful custody. However, as a practical matter, the record before us is sufficient to affirm the defendant's conviction under either standard of review. *People v. Johnson*, 396 Ill. App. 3d 1028 (2009).

¶ 12 Turning to the merits of the defendant's argument, the statute at issue provides:

> "(c) A person in the lawful custody of a peace officer for the alleged commission of a felony offense or an act which, if committed by an adult, would constitute a felony, and who intentionally escapes from custody commits a Class 2 felony[.]" 720 ILCS 5/31-6(c) (West 2008).

The statute does not provide a definition of lawful custody, and no definition appears in either the Code of Criminal Procedure of 1963 (the Code) (725 ILCS 5/100-1 *et seq.* (West 2008)) or the Criminal Code of 1961 (720 ILCS 5/1-1 *et seq.* (West 2008)). When interpreting the term custody under the escape statute, Illinois courts have focused on the amount of control the officer had over the defendant at the time of the arrest. See *Brexton*, 343 Ill. App. 3d 322.

¶ 13 For example, in *People v. Kosyla*, 143 Ill. App. 3d 937 (1986), the court held that a

defendant who was not restrained by the arresting officers was not in custody under the escape statute. In *Kosyla*, when the defendant was told he was under arrest, he ran into his house and then out into a cornfield. *Id.* at 940. The officers did not make contact with the defendant until he was later apprehended. *Id*. The *Kosyla* court stated that the defendant's actions evidenced his intent to "evade the imposition of custody altogether, not to escape from it." *Id.* at 952.

¶ 14 In contrast, in *People v. Lauer*, 273 Ill. App. 3d 469 (1995), the court found that the defendant was in custody despite the fact that the officers had not handcuffed defendant. The defendant in *Lauer* engaged in a struggle with officers in his driveway before running into his house. *Id*. at 471. The officers subdued the defendant, but he broke free. *Id*. The officers pursued the defendant into a back bedroom. *Id*. An officer placed the defendant in a choke hold and dragged him through the house toward the front door. *Id*. The defendant managed to break free again and ran out of the house. *Id*.

¶ 15 In affirming the defendant's conviction for escape, the court emphasized that "[the officer] did more than merely announce that defendant was under arrest. He actually restrained defendant before defendant escaped by breaking away and running out the back door." *Id.* at 474.

¶ 16 We find that the case before us is more similar to *Lauer*. Cook did more than inform defendant that he was under arrest; he physically restrained him and forcefully moved defendant to the hood of the squad car. It was when the officer necessarily had to use one hand to reach for his handcuffs and attempt to handcuff defendant that he escaped. That is, defendant was lawfully restrained notwithstanding his resistance. As in *Lauer*, the officer "did more than merely announce that defendant was under arrest." *Id.* at 474.

¶ 17 The defendant also argues that under the doctrine of *in pari materia*, we should consider the escape statute in reference to the resisting arrest statute in an effort to harmonize them. See *People v. Elsperman*, 219 Ill. App. 3d 83 (1991) (comparing resisting arrest to escape and stating that resisting arrest applies to situations where an officer attempts to make an arrest and is unsuccessful while escape occurs after arrest). However, we find that the statutes are not out of harmony. In *Lauer*, the court drew a distinction between resisting arrest, which occurred during the struggle between the defendant and the officers, and escape, which requires the defendant to break free. *Lauer*, 273 Ill. App. 3d 469. In other words, the two offenses contain different elements. Compare 720 ILCS 5/31-1 (West 2008), with 720 ILCS 5/31-6 (West 2008). The defendant in this case could have been additionally charged with and convicted of resisting arrest. *Lauer*, 273 Ill. App. 3d 469.

¶ 18 Finally, the defendant states without citation to authority that his conviction should be reversed because the trial court found defendant guilty based upon its holding that the officer "attempt[ed]" to place the defendant in custody. Even assuming, *arguendo*, that the trial court misapplied the statute, a reviewing court may affirm the trial court's decision on any legally sufficient ground. *People v. Hale*, 326 Ill. App. 3d 455 (2001). The record adequately supports a conviction for escape; we find that the defendant was in lawful custody under the escape statute.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Iroquois County is affirmed.

¶ 21 Affirmed.

¶ 22 JUSTICE McDADE, dissenting:

¶ 23 The majority has concluded that the State's evidence sufficiently proved the defendant's guilt beyond a reasonable doubt of the offense of escape. Because I do not believe that the State's evidence proved beyond a reasonable doubt that Cook ever had the defendant in his lawful custody, I respectfully dissent for the reasons and analysis I have already stated in *People v. Johnson*, 396 Ill. App. 3d 1028 (2009).

¶ 24 To sustain a conviction for escape, the State must prove, among other things, that the defendant was in the "lawful custody" of a police officer. 720 ILCS 5/31-6(c) (West 2008). The jurisprudence surrounding the offense of escape indicates that lawful custody is defined by the control the police officer exercised over the defendant. See *People v. Kosyla*, 143 Ill. App. 3d 937 (1986); see also *People v. Elsperman*, 219 Ill. App. 3d 83 (1991); see also *People v. Lauer*, 273 Ill. App. 3d 469 (1995). In the case at bar, the defendant continuously struggled with Cook as Cook attempted to place defendant in custody; thus, I do not believe that Cook exerted sufficient control over the defendant to render the defendant in the lawful custody of Cook. Accordingly, I would reverse defendant's conviction for escape.