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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 12/22/2009
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 08-0156
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JOSHUA W. POLSON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-135959-001 DT

The Honorable Colleen L. French, Judge Pro Tem

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Michael T. O'Toole, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Presiding Judge

¶1 After a trial by jury, Appellant Joshua Polson
("Polson") was convicted of the following offenses: one count

of possession of dangerous drugs for sale, a class two felony; two counts of misconduct involving a weapon, each a class four felony; one count of escape in the second degree, a class five felony; and one count of possession of drug paraphernalia, a class six felony. Polson appeals from the judgment and imposition of sentences. He argues on appeal that the trial court abused its discretion when it denied his motion for judgment of acquittal with respect to the charge of escape in the second degree. Finding the court did not abuse its discretion, we affirm.

Facts and Procedural History

¶12 In reviewing the trial court's decision on a motion for judgment of acquittal, we view the evidence in the light most favorable to sustaining the verdict. *State v. McCurdy*, 216 Ariz. 567, 573, ¶ 14, 169 P.3d 931, 937 (App. 2007). Applying this standard of review, the evidence at trial supports the following facts.

¶13 On June 4, 2007, Phoenix Police Officer S. was working undercover in the area of 2500 W. Glendale Avenue. While parked in his unmarked police vehicle at a Jack-in-the-Box restaurant, Officer S. observed a motorcycle parked in a handicap parking space. The driver, later identified as W.G., was standing next to the motorcycle, which had a flat tire. Officer S. then observed Polson, driving a Chrysler, park in the handicap

parking space next to the motorcycle. The car had a standard Arizona license plate and Officer S. did not see a handicap "placard" hanging from the rear view mirror. W.G. got into Polson's car and Polson drove across the street to an automobile repair shop. Polson and W.G. then walked back across the street and pushed the motorcycle to the shop. During this time, Officer S. radioed Officer M. requesting his assistance in making contact with Polson.

¶14 A short time later, Officer S. pulled his car behind Polson's car, which was parked outside the repair shop. Polson was sitting in the driver's seat of the car and W.G. was inside the shop talking with a mechanic. Officer S. approached Polson and identified himself as a Phoenix Police Officer. He asked Polson for his driver's license and proof of insurance. Officer S. informed Polson he was requesting this information because Polson had parked in a handicap parking space at the Jack-in-the-Box restaurant. Polson told Officer S. that he did not have a driver's license. Officer S. then placed Polson under arrest for "refusing to provide identification" and put Polson in handcuffs. Officer M. arrived at the scene shortly after Polson's arrest.

¶15 After Polson was placed under arrest, Officer S. searched the car Polson was driving for illegal substances and weapons. Inside the car, Officer S. found a loaded handgun,

baggies of methamphetamine, empty baggies, and a scale. As Officer S. found these items, he showed them to Officer M. and placed the items on the roof of the car. Polson, who was standing next to Officer M., saw that Office S. had discovered the drugs and handgun inside the car. He became upset and "took off running." Officers M. and S. ran after Polson and they were able to eventually apprehend him.

¶16 As a result of the items found in the Chrysler, Polson was subsequently charged with the following felony offenses: one count of possession of dangerous drugs for sale; two counts of misconduct involving a weapon; and one count of possession of drug paraphernalia. Polson was also charged with escape in the second degree for running away from the police officers after he had been placed under arrest. At trial, Polson moved for judgment of acquittal pursuant to Rule 20 with respect to the escape in the second degree charge. The court denied Polson's motion and a jury later found Polson guilty as charged.

¶17 Polson timely appealed. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2001), and 13-4033 (Supp. 2009).

Analysis

¶18 Polson contends that the trial court erroneously denied his motion for a judgment of acquittal with respect to

the escape in the second degree charge. We apply an abuse of discretion standard when reviewing a trial court's denial of a motion for a judgment of acquittal and we will reverse only if there are no probative facts to support the conviction. *State v. Paris-Sheldon*, 214 Ariz. 500, 510, ¶ 32, 154 P.3d 1046, 1056 (App. 2007).

¶9 Polson asserts that the evidence presented at trial was insufficient to support his conviction for escape in the second degree. He does not dispute that he was in custody at the time of his escape. Polson argues, instead, that a reasonable juror could not find that he was in custody as a *result of being under arrest for a felony*, a necessary element of escape in the second degree. According to Polson, the only evidence that he was under felony arrest at the time of his escape came from Officer S.'s testimony where Officer S. "agreed" with the State that, in his mind, Polson's arrest became a felony arrest once he found the drugs and gun inside the car. Polson asserts that the evidence established only that he was under misdemeanor arrest for "failure to provide identification" at the time of his escape.

¶10 The State acknowledges that Polson was originally placed in custody as a result of being arrested for a misdemeanor offense. It argues, however, that there was sufficient evidence presented at trial for a reasonable juror to

find that Polson was also under arrest for a felony at the time he ran away from the police officers. We agree with the State.

¶11 A person commits escape in the second degree by knowingly escaping or attempting to escape from custody imposed as a result of having been arrested for a felony. A.R.S. § 13-2503(A)(2) (Supp. 2009)¹. The second degree escape statute merely requires the prosecution show that the defendant was under arrest for a felony at the time of the escape. *State v. Walker*, 181 Ariz. 475, 480, 891 P.2d 942, 947 (App. 1995). It does not require the defendant know the nature of his arrest or its classification as a felony. *Id.*

¶12 Here, it is uncontested that Polson escaped from police custody imposed as a result of having been arrested. Furthermore, there was sufficient evidence presented at trial from which a reasonable juror could find that, at the time of his escape, Polson was in custody as a result of having been arrested for a felony.

¶13 Officer S. testified that he found a brown bag in the car Polson was driving. The bag was within an arm's length distance of the driver's seat. The brown bag contained a loaded "22 caliber handgun, baggies of meth, and a scale." Based upon Officer S.'s experience, he believed at the time of the search

¹ We cite to the current version of the statute because the pertinent portions have not been materially amended.

that the substance in the baggies was methamphetamine. According to Officer S., Polson at that point was under arrest for the felony offenses of "having a weapon [] with drugs and possession of drugs" and the charge against Polson "went from a misdemeanor to a felony." He also testified that Polson escaped from custody after the gun and drugs were found in the car. Based upon this testimony, a reasonable juror could find that Polson escaped or attempted to escape from custody imposed as a result of having been arrested for a felony.

¶14 Polson also argued, at trial, that his motion for judgment of acquittal should be granted because Officer S. did not inform Polson that he was under felony arrest for the drugs and gun found in the car. In order for Polson to be found guilty of escape in the second degree, however, it is not necessary that the prosecution show that Polson knew the nature of his arrest or its felony classification. See *Walker*, 181 Ariz. at 480, 891 P.2d at 947.

¶15 Therefore, based upon the evidence presented at trial and this court's holding in *Walker*, we conclude that the court did not abuse its discretion in denying Polson's motion for judgment of acquittal with respect to the charge of escape in the second degree.

Conclusion

¶16 For the foregoing reasons, we affirm.

_____/s/_____
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

_____/s/_____
JON W. THOMPSON, Judge

_____/s/_____
PATRICK IRVINE, Judge