[Cite as *State v. Lazier*, 2009-Ohio-5928.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-02-015
	:	O P I N I O N
- vs -		11/9/2009
	:	
CRYSTAL LEE LAZIER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 08CR25340

Rachel A. Hutzel, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Terrence M. McNamara, P.O. Box 984, Union, Kentucky 41091, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Crystal Lee Lazier, appeals from her conviction in the Warren County Court of Common Pleas for escape. We reverse and appellant is discharged.

{¶2} On September 5, 2008, appellant was arraigned on one count of trafficking in heroin. After posting bond, appellant was released, placed under the supervision of the Warren County Pretrial Services Office, required to enroll in a substance abuse monitoring program, instructed not to use any controlled substances, and ordered to

submit to random drug testing.

{¶3} On the morning of September 11, 2008, appellant was randomly selected to submit to a drug test administered by Jennifer Loeb, a Pretrial Services employee, at the Pretrial Services Office located in the "temporary trailers in the parking lot of the jail." Appellant tested positive for Oxycodone, a schedule II controlled substance, and Benzodiazepine, a metabolite of cocaine. Following the drug test, and while appellant filled out "admit and deny forms," Loeb contacted the trial court judge who "told [her] to take [appellant] into custody * * *." Loeb then called "court security to have them come over and take [appellant] into custody." When appellant asked if she was going to jail, Loeb responded affirmatively.

{¶4} A short time later, and while she looked around the room and "fidget[ed] around her chair," appellant told Loeb that she "needed" to have a cigarette. Loeb, however, informed appellant that "can't happen," and that she "can't leave." In response, appellant "sat there for a second" before she "popped" up, turned around the corner, exited the building, and ran across the parking lot. Surprised by her sudden departure, Loeb followed appellant to "the threshold of the door," told her to stop, and asked where she was going. However, upon reaching the door, Loeb realized that appellant was "gone, running."

{¶5} Later that day, appellant was apprehended by Deputy Nicolas Marconi and Deputy Randy Asencio, both with the Warren County Sheriff's Office, as she made her way through the surrounding neighborhood.

{¶6} On September 22, 2008, appellant was indicted for one count of escape in violation of R.C. 2921.34(A)(1), a third-degree felony. Following a bench trial, appellant was found guilty and sentenced to serve three years in prison. Appellant now appeals, raising one assignment of error.

{¶7} "THE TRIAL COURT ERRED WHEN IT FOUND [APPELLANT] GUILTY OF ESCAPE."

{¶8} In her sole assignment of error, appellant argues that the state failed to provide sufficient evidence to support her escape conviction. We agree.

{¶9} Whether the evidence presented is legally sufficient to sustain a verdict is a question of law. *State v. Whitaker,* Butler App. No. CA2008-01-034, 2009-Ohio-926, ¶6. In reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Brown*, Warren App. No. CA2006-10-120, 2007-Ohio-5787, ¶10; *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52; *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. The relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Greathouse,* Warren App. No. CA2009-01-009, 2009-Ohio-3829, ¶7; *State v. Haney,* Clermont App. No. CA2005-07-068, 2006-Ohio-3899, ¶14; *State v. Tenace,* 109 Ohio St.3d 255, 2006-Ohio-2417, ¶37. Proof beyond a reasonable doubt is "proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs." R.C. 2901.05(D).

{¶10} Appellant was charged with escape in violation of R.C. 2921.34(A)(1), a third-degree felony, which provides, in pertinent part, "[n]o person, knowing the person is under detention or being reckless in that regard, shall purposely break or attempt to break the detention * * *." Pursuant to R.C. 2921.01(E), "detention" includes, among

other things, being under "arrest."[1] *State v. Carson*, Cuyahoga App. No. 909975, 2009-Ohio-2027, ¶20.

{¶11} R.C. 2935.01, even though it contains definitions of many of the critical terms found in R.C. Chapter 2935, the Ohio arrest statute, does not define "arrest." *In re M.D.*, Madison App. No. CA2003-12-038, 2004-Ohio-5904, ¶15. However, according to the Ohio Supreme Court, an arrest occurs when the following four requisite elements are met: "(1) an intent to arrest, (2) under a real or pretended authority, (3) accompanied by an actual or constructive seizure or detention of the person, and (4) which is so understood by the person arrested." Id., quoting *State v. Barker* (1978), 53 Ohio St.2d 135, 139; *State v. Claytor* (1991), 61 Ohio St.3d 234, 240; *State v. Carroll*, 162 Ohio App.3d 672, 2005-Ohio-4048, ¶8; *State v. Bird*, Butler App. No. CA2002-05-106, 2003-Ohio-2541, ¶19. In other words, "an arrest is the taking, seizing or detaining of the person of another, either by touching or putting hands on him, or by any act which indicates an intention to take him into custody and subjects the person arrested to the actual control and will of the person making the arrest." *State v. Horton* (Dec. 26, 2000), Clermont App. No. CA2000-04-024, at 7, quoting *State v. Massey* (1975), 49 Ohio App.2d 272, 274. "This is an objective determination that can be made on a case-by-case basis * * * [and] is established by the defendant's surrender or submission to police authority or by police exertion of control * * *." *State v. Fambry* (Oct. 17, 1988), Clermont App. Nos. CA87-12-099, CA87-12-100, CA87-12-101, CA87-12-102, CA87-12-103, at 9-10, citing *State v. Hoffman* (1987), 38 Ohio App.3d 84, 86.

{¶12} After a thorough review of the record, we find that appellant could not be found guilty of escape because she was never under arrest, and therefore not under

1. At oral argument, the state conceded that if appellant was under detention it was only because she was under arrest. Specifically, the state claimed that "the detention here would be arrest. That is what we are

detention, before she fled from the Warren County Pretrial Services Office as the state failed to prove Loeb, a Pretrial Services employee, manifested the necessary *intent to arrest* appellant prior to her flight.

{¶13} As the evidence indicates, Loeb testified that after being instructed by the trial court judge to take appellant into custody, she "didn't try to make it a big deal," that she "wanted to really explain it to her more when the officer got there," and that she was "wait[ing] until [she] got some extra help * * *." Loeb then testified that she "called court security to have *them come over* and take [appellant] into custody." (Emphasis added.) In turn, although she informed appellant that she was going to jail and that she could not leave to smoke a cigarette, there is no evidence that Loeb, acting as a court employee, actually *intended to arrest* appellant. See, e.g., *State v. Wiley*, Cuyahoga App. No. 88595, 2007-Ohio-3415, ¶13. Instead, based on her own testimony, we find Loeb merely intended to keep appellant within the Pretrial Services Office until "court security" could arrive and take her into custody. This is insufficient to support the requisite intent element necessary for an *arrest*. See *In re M.D.*, 2004-Ohio-5904 at ¶16; *State v. Chappell*, 149 Ohio Misc.2d 80, 2008-Ohio-6416, ¶57-58. As a result, because there was no evidence to establish appellant was under arrest, and therefore no evidence that she was under detention, an essential element to the crime charged, the trial court erred by finding appellant guilty of escape. Accordingly, appellant's sole assignment of error is sustained.

{¶14} In light of the foregoing, and even though this court strongly disapproves of her actions, appellant's conviction for escape is reversed and appellant is hereby discharged.

{¶15} Judgment reversed and appellant is discharged.

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arguing. *** We are making our case on arrest. There was either arrest or there wasn't [a detention]."

BRESSLER, P.J., and POWELL, J., concur.