

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH WATSON,	§	
	§	No. 283, 2011
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	Kent County
	§	
STATE OF DELAWARE,	§	C. A. Nos. IK 10-07-0087 and
	§	IK 11-03-0350
Plaintiff Below,	§	
Appellee.	§	

Submitted: November 9, 2011
Decided: November 30, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 30th day of November 2011, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Kenneth Watson (“Watson”), the defendant-below, appeals from the denial, by the Superior Court, of his motion for a judgment of acquittal of Second-Degree Escape and Resisting Arrest with Force or Violence. Watson was convicted of those offenses by a jury after trial. On appeal, Watson claims that the evidence was legally insufficient to support those convictions.

2. On May 10, 2010, prison officials transported Watson from Sussex Community Corrections Center to the James T. Vaughn Correctional Center, for medical treatment. En route, Watson attacked Robert Read (“Read”), the

correctional officer who was transporting him. Read testified at trial that Watson had slipped one of his hands out of his handcuffs and struck Read on the side of his body while Read was driving on the South Smyrna exit off Route 1. Read pulled the van over on the exit ramp, turned to face Watson as he attacked, and sprayed Watson with pepper spray. Watson repeatedly grabbed for Read's gun, which was holstered on Read's waist. Read placed his hands on the pistol to prevent it from being taken from his holster, leaving Read unable to defend against Watson as the struggle continued. Eventually, however, Read was able to exit the van.

3. At trial, Read's and Watson's testimony conflicted over whether Read then pulled Watson out of the van, or whether Watson jumped out. Whatever occurred, once both men were outside the van, Watson again confronted Read and another struggle ensued. In an attempt to prevent Watson from grabbing his gun, Read eventually threw Watson down an embankment located next to the road. Disobeying Read's orders, Watson refused to surrender. Instead, Watson began slowly walking backwards through the bushes at the bottom of the embankment, and then went into an open field. Eventually, Watson was arrested about two hundred yards from the site of his escape, by Sergeant Brian Moore ("Moore") of the Smyrna Police Department.

4. At trial Read and Moore testified for the State. The prosecution then rested its case, and Watson moved for a judgment of acquittal on the ground that

the evidence was legally insufficient to convict him. Based on the testimony, Watson argued that he could not have escaped custody because he was in Read's custody at all times. Furthermore, Watson claimed that he had not violently resisted arrest after being thrown down the embankment by Read, and that the confrontation during his entire escape attempt was "one continuous assault."

5. The trial judge orally denied both motions. After Watson testified at trial in his own defense, the jury convicted him of Second-Degree Escape and Resisting Arrest with Force or Violence. This appeal followed.

6. This Court reviews a trial court's denial of a motion for a judgment of acquittal *de novo* to determine whether a rational trier of fact could have found that the evidence, viewed in the light most favorable to the State, proved each element of the offense beyond a reasonable doubt.¹ It is for the jury to assess the credibility of witnesses, and we "will not substitute our judgment" on such issues.²

7. A defendant is guilty of Second-Degree Escape where he escapes from a detention facility, or from the custody of the Department of Health and Social Services or the Department of Correction.³ 11 *Del. C.* § 1258(4) defines "escape" as the "departure from the place in which the actor is held or detained with

¹ *Priest v. State*, 879 A.2d 575, 577 (Del. 2005).

² *Poon v. State*, 880 A.2d 236, 238 (Del. 2005).

³ 11 *Del. C.* § 1252.

knowledge that such departure is unpermitted.” “Escape requires only that a person be in physical custody and then break or depart from that custody without authorization.”⁴ “Custody” is defined in 11 *Del. C.* § 1258(2) as “restraint by a public servant pursuant to an arrest, detention or order of a court.”

8. Read’s testimony established that Watson was in custody in the van while he was being transported to the James T. Vaughn Correctional Center. Read’s testimony also established that Watson departed the van after his initial struggle with Read, and eventually ended up alone some two hundred yards away from where the van was stopped. That marked a clear, unauthorized departure from physical custody. Therefore, a rational jury could properly have found beyond a reasonable doubt that Watson was guilty of Second-Degree Escape.

9. To prove that a defendant is guilty of Resisting Arrest with Force or Violence, the State must establish that the defendant intentionally prevented or attempted to prevent, by use of force or violence, a peace officer from effecting an arrest or detention of the defendant or another person.⁵ The jury was instructed that arrest “means taking a person into custody.” As a matter of logic, a defendant must not already be in custody for an officer to effect an arrest (*i.e.*, take him into

⁴ *Patrick v. State*, 922 A.2d 415 (Del. 2007) (quoting *State v. Burton*, 2006 WL 1134215, at *2 (Del. Super. Apr. 18, 2006)).

⁵ 11 *Del. C.* § 1257(a)(1). The force or violence must be directed towards the peace officer.

custody).⁶ Therefore, to be convicted of Resisting Arrest with Force or Violence Watson must not have been in custody at the time the jury found that he resisted arrest through force or violence.

10. Read testified that after Watson was freed from the van, Watson voluntarily confronted Read to try forcibly to take Read's gun. At that point, the jury could have concluded that Watson was no longer in custody, because the elements of escape had been proven, by Watson having broken from the physical restraints Read had imposed on him, and having departed from the site (the van) where he (Watson) had been held. Read's testimony also established that, once both men were outside the van, Read attempted to prevent Watson from seizing his gun. Read also attempted to arrest Watson and return him into custody—an attempt that Watson resisted with force. Based on this evidence, a rational jury could have found beyond a reasonable doubt that Watson was guilty of Resisting Arrest with Force or Violence. Accordingly, the trial court correctly denied Watson's Motions for Judgment of Acquittal.

⁶ See also *Shambor v. State*, 807 A.2d 579 (Del. 2002) (“[A]rrest is not a single act, but rather a process by which a person is brought into custody.”).

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice