

IN THE COURT OF APPEALS OF IOWA

No. 9-935 / 09-0526
Filed December 17, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

THOMAS DURON WHITE,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Christine Dalton,
District Associate Judge.

A defendant appeals his conviction for escape in violation of Iowa Code
section 719.4(3) (2007). **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, Michael J. Walton, County Attorney, and Alan Havercamp, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Although framed as a challenge to a jury instruction, this case presents a question of legal interpretation of a criminal statute. The issue is whether Iowa Code section 719.4(3) (2007) criminalizes the situation where an inmate who is on work release fails to return to the residential correctional facility after leaving his worksite. Because we believe it does, we affirm Thomas White's conviction.

White was in the custody of the Iowa Department of Corrections in June 2008 when he began a work release program. His employer was Premier Cleaning. Under the rules of the program, an inmate is to report to his or her employer, and then is required to return to the facility within two hours of the completion of his or her job shift.

On September 29, 2008, White left the Davenport Residential Correctional Facility (RCF) at 2:15 p.m. to go to Jumer's Casino in Rock Island, where he had been assigned to work that day. At this point, White had less than a month to go before being discharged from the RCF. White told the residential officer he would be returning at 1:00 a.m. the next morning, after his work shift was over.

That day, White was asked by his employer to leave the worksite. According to the report, he was not following directions, he was loud and out of control, and he was refusing to perform tasks. White, however, did not return to the RCF at 1:00 a.m., and was placed on "escape" status. The RCF had two staff members check White's mother's residence, but they did not find him. The next day, White called the same residential officer and said he was not coming back. He also told the officer he had been dropped off somewhere else and, in

effect, advised the RCF staff not to look for him at his mother's any more. Showing some bravado, White later called the same residential officer again and inquired about the funds in his accounts at the RCF. On December 2, 2008, White was apprehended.

White was charged with the offense of escape within the meaning of Iowa Code section 719.4(3). That section provides:

A person who has been committed to an institution under the control of the Iowa department of corrections, to a community-based correctional facility, or to a jail or correctional institution, who knowingly and voluntarily is absent from a place where the person is required to be, commits a serious misdemeanor.

Iowa Code § 719.4(3). At the conclusion of the evidence, the district court proposed to instruct the jury:

The State must prove all of the following elements of the crime of Escape:

1. That the defendant had been previously committed to the Residential Correctional Facility.
2. The Residential Correctional Facility was a correctional institution under the jurisdiction of the Department of Corrections.
3. While in custody, the defendant was required to be at the Residential Correctional Facility or at his employers, Premier Cleaning, Rock Island Jumer's Casino.
4. On or about the 29th day of September, 2008, the defendant knowingly and voluntarily was absent from the place he was required to be and failed to voluntarily return to the Residential Correctional Facility.

If the State has proved all of the elements, the defendant is guilty of Escape. If the State has failed to prove any one of the elements, the defendant is not guilty.

White timely objected to this instruction, arguing that the words after "Residential Correctional Facility" should be omitted from the third element and the words after "required to be" should be omitted from the fourth element. In essence,

White maintained that he could not be convicted under section 719.4(3) for absencing himself from an employment site. The district court overruled White's objection, and the jury returned a guilty verdict. White was sentenced to one year imprisonment and now appeals.

We review White's challenge to the jury instruction for correction of errors at law. We must determine whether the instruction correctly states the law. Iowa R. App. P. 6.907; *State v. McCall*, 754 N.W.2d 868, 871 (Iowa Ct. App. 2008).

We believe the district court's instruction was an accurate statement of the law. Section 719.4(3) has two distinct components. The defendant must have been "committed to an institution under the control of the Iowa department of corrections, to a community-based correctional facility, or to a jail or correctional institution," *and* he or she must be "knowingly and voluntarily . . . absent from a place where the person is required to be." However, there is no requirement that the "place where the person is required to be" must be a jail, correctional facility, or correctional institution. Thus, in *State v. Burtlow*, 299 N.W.2d 665, 667 (Iowa 1980), our supreme court held that section 719.4(3) applied where an inmate "while committed on a felony sentence, failed to return to a state work release center after a seven-day furlough." The "furlough," of course, was not a penal institution or detention facility. As the *Burtlow* court put it, "Subsection three of [Iowa Code section 719.4(3)] obviously applies when a prisoner is absent without authority from a place he is required to be, even if he has not left the premises of the institution or detention facility." *Burtlow*, 299 N.W.2d at 669.

In this case the evidence showed White was required to be either at his worksite, or back at the RCF. He chose not to return to the RCF after being dismissed from the job site. For the foregoing reasons, we affirm White's conviction and sentence.

AFFIRMED.