

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001321-MR

GEORGE BROWN

APPELLANT

v.

APPEAL FROM ALLEN CIRCUIT COURT
HONORABLE WILLIAM R. HARRIS, JUDGE
ACTION NO. 05-CR-00020

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: STUMBO AND TAYLOR, JUDGES; HENRY,¹ SENIOR JUDGE.

HENRY, SENIOR JUDGE: A jury found Brown guilty of Escape in the First Degree and recommended a sentence of ten years. The trial court denied his motion for a directed verdict and he now seeks our review of whether it was error to deny that motion. After a review of the record, we affirm the decision of the Allen Circuit Court.

Brown's argument is in essence that the Commonwealth failed to prove that Brown was ever in custody and therefore could not prove the required elements of the charge of Escape. We disagree.

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

A police officer on regular patrol spotted Brown in the back seat of a passing vehicle. The officer knew Brown and knew there was an active warrant for his arrest. He activated his emergency equipment and made a traffic stop of the vehicle. Both rear doors opened and another person bolted from the vehicle and ran. It was later determined that person also had warrants out for his arrest. The officer approached Brown's side of the vehicle and told Brown he was under arrest because there were outstanding warrants.

Brown exited the vehicle and turned his back to the officer. The officer grew apprehensive that Brown was also going to run and so the officer tried to grab Brown and place him in what could best be described as a bear hug. Brown forced himself in one direction and the officer again tried to grab Brown. Brown moved away in the other direction. The officer was getting his handcuffs ready when Brown leaned into the vehicle. The officer dropped his handcuffs when Brown moved back out of the vehicle. As the officer tried to retrieve the handcuffs Brown jumped up on the roof of the vehicle attempting to put the car between himself and the officer and thus potentially evade capture. The officer managed to grab Brown and pull him down to the ground but Brown landed on top of the officer who was injured in the fall.

The officer grabbed Brown's foot and Brown continued to struggle, kicking the officer in the head several times. The officer finally released Brown because as he later testified, he thought he was going to keep getting kicked in the head as long as he was hanging onto Brown's foot. Brown then ran away, but was captured the following evening.

Kentucky Revised Statute (KRS) 520.020 states that "[a] person is guilty of escape in the first degree when he escapes from custody or a detention facility by the use of force or threat of force against another person." KRS 520.010(2) defines custody

as “restraint by a public servant pursuant to a lawful arrest.” According to KRS 431.025, “[a]n arrest is made by placing the person being arrested in restraint, or by his submission to the custody of the person making the arrest.” Brown argues that he was never arrested or restrained because during the struggle, the officer never exercised control over him and therefore he could not have “escaped.”

When presented with a motion for a directed verdict, the trial court must review the evidence in the light most favorable to the Commonwealth. *Commonwealth v. Benham*, 816 S.W.2d 186 (Ky. 1991). The trial court is required to assume that all of the evidence presented by the prosecution is true. *Id.* at 187. Additionally, the trial court must “consider not only the actual evidence, but also must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth.” *Id.*

The officer told Brown several times he was under arrest. He placed Brown in a bear hug hold several times. He grabbed him from the top of the vehicle and they fell to the ground. He held Brown by the foot. The fact that the officer was never able to place Brown in handcuffs is of little consequence. This evidence, considered in the light most favorable to the Commonwealth, is clearly sufficient to conclude that Brown was in custody and his fleeing could amount to an escape. Denial of the motion for directed verdict was appropriate.

The judgment of the Letcher Circuit Court is affirmed.

ALL CONCUR.

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