



**In the
Missouri Court of Appeals
Western District**

STATE OF MISSOURI,)
)
 Respondent,) **WD80188**
)
 v.) **OPINION FILED: January 2, 2018**
)
 CHARLES LEE MILLER,)
)
 Appellant.)

Appeal from the Circuit Court of Harrison County, Missouri
The Honorable Jack N. Peace, Judge

Before Division One: Cynthia L. Martin, Presiding Judge, James Edward Welsh, Judge
and Karen King Mitchell, Judge

Charles Lee Miller ("Miller") appeals from the trial court's entry of judgment convicting him of possession or sale of equipment with altered identification numbers. Miller asserts on appeal that there was insufficient evidence to support the conviction and that the trial court committed plain error in refusing to allow Miller to introduce evidence relating to the content of text messages he exchanged with another person. Based on application of the escape rule, Miller's appeal is dismissed.

Factual and Procedural Background¹

In April 2015, Miller approached James Meyers ("Meyers"), proposing that Meyers trade his 1972 Chevrolet Nova valued at approximately \$6,000 for a motorcycle in Miller's possession. Meyers met Miller to inspect the motorcycle, which was a Suzuki Intruder that had been converted into a chopper. The two men agreed on a trade. Miller took possession of the Nova, and Meyers took possession of the motorcycle. Meyers gave Miller the Nova's title, and Miller gave Meyers an envelope containing the motorcycle's title. The motorcycle's title was an "open" title, as it did not have Miller's name on it. Instead, the title indicated that Jeffrey Beckham ("Beckham") was the motorcycle's owner.

Approximately a week after the two men traded vehicles, Meyers attempted to locate the motorcycle's VIN to check that it matched the VIN on the title. When Meyers was unable to find a VIN on the motorcycle, he contacted Miller. Miller told Meyers that the motorcycle's VIN was located underneath the seat at the bottom on the motorcycle's frame. Meyers looked where Miller said the VIN would be but did not find one. Then Miller searched in the same place and also could not locate the motorcycle's VIN. Miller offered to stamp a VIN on the motorcycle, and Meyers declined the offer. At that point, Miller told Meyers that he was going to have Meyers arrested for stealing the motorcycle from him.

Meyers took the motorcycle to Vintage Cycle and Auto Repair, a business in Bethany owned by Danny Spurling ("Spurling"), to have work done on the motorcycle.

¹"On appeal from a jury-tried case, we view the facts in the light most favorable to the jury's verdict." *State v. Rice*, 504 S.W.3d 198, 200 n.3 (Mo. App. W.D. 2016).

Spurling was also unable to locate a VIN on the motorcycle. One or two days after Meyers took the motorcycle to Vintage Cycle and Auto Repair, Miller went to the shop and asked Spurling to do additional work on the motorcycle. Spurling told Miller that since Meyers was the owner of the motorcycle, only Meyers could authorize repairs. Miller informed Spurling that the trade "wasn't going to go through so he actually owned the machine." Because Spurling was uncertain as to the ownership of the motorcycle, he refused to work on it and asked Meyers to remove it from the shop.

Meyers contacted Harrison County Sheriff Josh Eckerson ("Sheriff Eckerson") about the motorcycle. Meyers told Sheriff Eckerson that the motorcycle had no visible VIN and that he had received an "open title" from Miller. Sheriff Eckerson inspected the motorcycle and could not find a VIN, but Sheriff Eckerson located a number on the motor that indicated that it belonged to a 1996 Suzuki. Sheriff Eckerson testified that he inspected the title that Miller had given Meyers. That title had a VIN. Sheriff Eckerson checked that VIN in the Missouri State Highway Patrol MULES system to find whether the VIN was registered to Beckham or otherwise. Any vehicle that has been issued a Missouri certificate of title would be in the MULES system. Sheriff Eckerson's search yielded no results. Sheriff Eckerson testified that he believed two motorcycles had been used to make one custom vehicle, which was the motorcycle that Miller traded Meyers for the Nova.

Sheriff Eckerson contacted Jeffrey Ellis ("Ellis"), a motor vehicle inspector for the Missouri State Highway Patrol. Ellis examined the motorcycle and could not find a VIN. Ellis testified that there a method by which a homemade vehicle may obtain a valid VIN from the Highway Patrol. First, a person must purchase a form from the Department of

Revenue. Then, the person must request an inspection from the Highway Patrol. During that inspection, the person must provide receipts for any used parts from donor vehicles and the VIN numbers of the donor vehicles. After inspecting the receipts and the homemade vehicle, the motor vehicle inspector will assign the vehicle a VIN and affix a metal plate with that VIN to the vehicle. Ellis testified that, without receipts and titles to the donor vehicles, Meyers would not be able to obtain a VIN for the motorcycle in question, and that Meyers would not be able to obtain a title for the motorcycle without a VIN. Ellis further testified that a VIN stamped on the vehicle without the metal plate attached by a motor vehicle inspector for the Highway Patrol would not be valid.

The State charged Miller as a prior offender with one count of possession or sale of equipment with altered identification numbers in violation of section 301.390.² Miller represented himself throughout the proceedings. Prior to trial, Miller requested copies of text messages that he exchanged with Meyers from the State. The State informed the trial court that it had given Miller "everything [it] had." The State told the trial court that the text messages that Miller sought were on a phone that no longer existed and that no text messages had been provided to the prosecution. Miller argued to the trial court that Sheriff Eckerson had seen text messages that Miller and Meyers had exchanged, but the State told the trial court that it had never seen such text messages. Further, the State argued that, if Miller had copies of the text messages, he should not be permitted to use them at trial because they were never disclosed to the State.

²Unless otherwise noted, all statutory references are to the version in effect in April 2015 when the crime was committed.

During argument on a motion to dismiss filed by Miller, the trial court heard testimony from Sheriff Eckerson. Sheriff Eckerson testified that, during the course of his investigation, Meyers had shown him text messages that he had exchanged with Miller. Sheriff Eckerson testified that there was only one text message regarding the motorcycle and testified that, in that text message, Miller told Meyers he was going to report the motorcycle as stolen. Sheriff Eckerson did not initially collect the text messages, and when he attempted to collect the text messages after Miller requested them from the State, he was unable to do so because Meyers's phone had been damaged. The trial court denied Miller's motion to dismiss.

Meyers testified during trial. When Miller was cross-examining Meyers, he asked a question about the text messages. The State objected and argued that Miller should not be able to ask about the contents of the text messages because those text messages were never disclosed to the State by Miller. The trial court sustained the objection, allowing Miller to inquire as to the existence of text messages but disallowing Miller to ask about the content of those text messages. The trial court explained that the text messages "should've been disclosed to the State." Miller also attempted to use the text messages when he cross-examined Sheriff Eckerson. The State objected, and the trial court told Miller he could ask about the existence of the text messages but not the content thereof.

On April 26, 2016, the jury found Miller guilty of possession or sale of equipment with altered identification numbers, a class D felony. The trial court ordered a sentencing assessment report, increased bond for Miller from \$350 to \$15,000 cash, and ordered Miller to appear for sentencing on May 19, 2016. Miller posted bond on May 11, 2016. Miller

failed to appear on May 19, 2016, and the trial court revoked Miller's bond and issued a *capias* warrant due to Miller's failure to appear. The warrant was served on October 2, 2016, while Miller was in Colorado. Miller was then transported from Colorado to Harrison County, and Miller appeared for sentencing on October 20, 2016, over five months after the date his sentencing had been originally scheduled. The trial court entered a judgment convicting Miller of possession or sale of equipment with altered identification numbers and sentencing Miller four years imprisonment.

Miller appeals.

Analysis

Miller raises two points on appeal. First, he asserts that there was insufficient evidence that Miller knowingly committed the offense of possession or sale of equipment with altered identification numbers so that trial court erred in failing to grant judgment of acquittal *sua sponte* at the close of all the evidence. Second, Miller argues that the trial court plainly erred in refusing to allow him to present evidence of the text messages he exchanged with Meyers.

The State argues that Miller's appeal should be dismissed pursuant to application of the escape rule. We agree.

"The escape rule is a judicially-created doctrine that operates to deny the right of appeal to a criminal defendant who escapes justice." *State v. Carter*, 523 S.W.3d 590, 597 (Mo. App. W.D. 2017) (quoting *State ex rel. Koster v. Oxenhandler*, 491 S.W.3d 576, 604 (Mo. App. W.D. 2016)). The escape rule authorizes the appellate court to dismiss an appellant's appeal if the appellant absconds following a conviction. *Id.* "The decision to

apply the escape rule rests within the sound discretion of the appellate court.'" *Id.* (quoting *State v. Thomas*, 466 S.W.3d 44, 47 (Mo. App. W.D. 2015)). In determining whether to apply the escape rule to dismiss the appellant's appeal, our central inquiry is whether the appellant's escape adversely affected the criminal justice system. *Id.* If so, application of the escape rule and dismissal of appellant's appeal is appropriate. *Id.*

Missouri courts have set forth several reasons to justify the application of the escape rules. *Id.* Those reasons include:

(1) the need for a court to have control over the defendant before making a decision on appeal; (2) curtailment of administrative problems caused by the escapee's absence; (3) preventing prejudice to the State in the event of a remand for a new trial; (4) preventing defendants from selectively abiding by court decisions; (5) discouraging escape; (6) encouraging voluntary surrender; (7) preserving respect for the criminal justice system; and (8) promoting dignified operation of the appellate courts.

Id.

Miller acknowledges that Missouri courts have held that the failure to appear for sentencing gives the appellate court discretion to apply the escape rule to dismiss the appeal. However, Miller argues that we should adopt the reasoning set forth in *Ortega-Rodriguez v. United States*, 507 U.S. 234 (1993), and conclude that because he fled before sentencing and was recaptured before appeal, the trial court was well situated to respond to Miller's flight via sentencing him to the maximum possible sentence for a class D felony. *See* section 558.011.1(4) (setting the maximum term of imprisonment for a class D felony at four years).

In *Ortega-Rodriguez*, the Supreme Court considered "whether a defendant may be deemed to forfeit his right to appeal by fleeing while his case is pending in the district

court, though he is recaptured before sentencing and appeal." 507 U.S. at 235-36. The Court recognized that the federal courts have long held that appellate courts may dismiss "the appeal of a defendant who is a fugitive from justice *during the pendency of his appeal.*" *Id.* at 239 (emphasis added). The Court observed that "the justifications . . . for allowing appellate courts to dismiss pending fugitive appeals all assume some connection between a defendant's fugitive status and the appellate process, sufficient to make an appellate sanction a reasonable response." *Id.* at 244. "These justifications are necessarily attenuated when applied to a case in which both flight and recapture occur while the case is pending before the district court, so that a defendant's fugitive status at no time coincides with his appeal." *Id.* The Court explained that a defendant fleeing while his case is pending in the district court presents no risk of unenforceability of the appellate court's decision because the defendant will have already been returned to custody before he invokes the appellate process; does not affect the "efficient operation" of the appellate court because any delay will have occurred before the case is filed in the appellate court; and does not operate to "protect the dignity" of the appellate court because the defendant has flouted the authority of the district court, which has the authority to defend its own dignity. *Id.* at 244-446. Thus, the Court held that "while dismissal of an appeal pending while the defendant is a fugitive may serve substantial interests, the same interests do not support a rule of dismissal for all appeals filed by former fugitives, returned to custody before invocation of the appellate system. *Id.* at 249.

In *State v. Troupe*, 891 S.W.2d 808, 810 (Mo. banc 1995), our Supreme Court rejected the suggestion to apply the reasoning of *Ortega-Rodriguez* to cases in Missouri in

which a criminal defendant escapes and is recaptured prior to initiating an appeal. "Although application of the escape rule clearly requires a relationship between the escape and prejudice to the criminal justice system, this Court does not agree that the rule may be applied by an appellate court only when the appellate process itself is substantially prejudiced." *Id.* Instead, our Supreme Court directed that the relevant question in determining whether to apply the escape rule is whether the defendant's escape adversely affects the criminal justice system. *Id.* at 811. In *Troupe*, the defendant was at large for more than eight months. *Id.* at 810. The Court applied the escape rule, explaining:

It strains credulity to postulate that such a delay does not have an adverse impact on the criminal justice system and the state's case. If appellant were successful on the merits of an appeal, the cause might be remanded for a new trial. In that event, the state could be prejudiced by lost or destroyed evidence and witnesses who are no longer available. Further, over time, witnesses' memories fade, subjecting them to impeachment and consequent diminished credibility.

Id. at 810-11. The court dismissed the appeal. *Id.* at 812.

"Missouri appellate courts are constitutionally bound to follow the last controlling decision of Missouri's Supreme Court, regardless of how many years have passed since that decision as rendered." *State v. Naylor*, 505 S.W.3d 290, 298 (Mo. App. W.D. 2016). Thus, we decline Miller's invitation to disturb the holding of *Troupe*. Instead, we consider whether Miller's flight from the jurisdiction and subsequent failure to appear to sentencing adversely affected the criminal justice system.

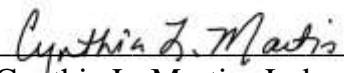
Miller's flight caused administrative difficulties and adverse effects to the criminal justice system. When Miller failed to appear to sentencing on May 19, 2016, the trial court revoked Miller's bond and issued a *capias* warrant, which was served on October 2, 2016.

Miller's flight required that he be transported from Colorado to Harrison County to be sentenced at public expense. Because of his escape, Miller was not sentenced until October 20, 2016, over five months after sentencing was originally scheduled.

By escaping justice for over five months, Miller demonstrated disregard of the law and disrespect for the court and the criminal justice system. *Thomas*, 466 S.W.3d at 47. Invoking the escape rule to dismiss Miller's appeal in this case will further the goals of discouraging escape and encouraging voluntary surrender. By increasing Miller's bond to \$15,000 cash after trial, the trial court anticipated that Miller would voluntarily surrender to the justice system on the date of sentencing. "Those who seek the protection of our legal system must be willing to comply with its rules and decisions." *Id.* Miller failed to do so. This case warrants the exercise of our discretion to dismiss Miller's appeal.

Conclusion

We dismiss Miller's appeal.



Cynthia L. Martin, Judge

All concur