

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Petitioner,)	No. 81348-5
)	
v.)	En Banc
)	
THOMAS HARRY EATON,)	
)	
Respondent.)	
_____)	Filed March 25, 2010

CHAMBERS, J. – Thomas Eaton was arrested for driving under the influence (DUI) and taken by police to the Clark County Jail. At the jail, Eaton was searched by staff who discovered a small bag of methamphetamine taped to his sock. The State charged Eaton with DUI and possession of methamphetamine and sought a sentencing enhancement for possessing a controlled substance in a jail or prison. A jury convicted Eaton on both charges and found by special verdict that Eaton possessed methamphetamine while in a jail. The trial court imposed an enhanced sentence.

At issue is whether a sentencing enhancement for possession of a controlled substance in a jail or prison requires a finding that that defendant took a volitional

act to place himself in the enhancement zone. We hold that the enhancement does require a volitional act and affirm the Court of Appeals.

Facts and Procedural History

On September 22, 2005, Vancouver Police Department Officer Jeff Starks saw Eaton driving with his headlights turned off and made a routine traffic stop. After performing field sobriety tests Officer Starks concluded that Eaton was impaired and arrested him for DUI. Eaton was read his *Miranda*¹ rights and was taken to jail. There he was searched and officers found “what appeared to be a plastic bag taped to the top of [Eaton’s] sock.” I Report of Proceedings at 99. The contents of the bag tested positive for methamphetamine.

The State charged Eaton with one count of DUI and one count of possession of a controlled substance. Because the methamphetamine was discovered on Eaton while he was in the county jail the State sought a sentence enhancement. The jury found Eaton guilty of both counts and, by special verdict, found that Eaton possessed methamphetamine in a county jail. Eaton’s standard sentencing range would have been 0 to 6 months, but with the sentence enhancement, his range became 12 to 18 months. The trial court sentenced Eaton to 12 months and 1 day.

The Court of Appeals reversed the trial court’s imposition of the sentencing enhancement, reasoning that the State failed to prove Eaton acted voluntarily. *State v. Eaton*, 143 Wn. App. 155, 164-65, 177 P.3d 157 (2008). The court held that the sentencing enhancement statute was not intended to punish defendants for their involuntary acts. *Id.* at 164. Eaton’s convictions for DUI and possession of a

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

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controlled substance are not before us; we are reviewing only the sentencing enhancement for possession of methamphetamine in a jail.

Analysis

Questions of statutory interpretation are reviewed de novo. *State v. Wadsworth*, 139 Wn.2d 724, 734, 991 P.2d 80 (2000). Our purpose in interpreting a statute is to determine and carry out the intent of the legislature. *State v. Cromwell*, 157 Wn.2d 529, 539, 140 P.3d 593 (2006). We must construe statutes consistent with their underlying purposes while avoiding constitutional deficiencies. *State v. Crediford*, 130 Wn.2d 747, 755, 927 P.2d 1129 (1996). In construing a statute, we presume the legislature did not intend absurd results. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

Criminal Responsibility

As the Court of Appeals correctly observed: “as a general rule, every crime must contain two elements: (1) an actus reus and (2) a mens rea.” *Eaton*, 143 Wn. App. at 160 (citing *State v. Utter*, 4 Wn. App. 137, 139, 479 P.2d 946 (1971)). Actus reus is defined as “[t]he wrongful deed that comprises the physical components of a crime,” *Id.* (alteration in original) (quoting Black's Law Dictionary 39 (8th ed. 2004)), and the mens rea is “[t]he state of mind that the prosecution . . . must prove that a defendant had when committing a crime.” *Id.* (alteration in original) (quoting Black's Law Dictionary 1006 (8th ed. 2004)). At common law it was said that “to constitute a crime against human laws, there must be, first, a vitious will; and, secondly, an unlawful act consequent upon such vitious will.” William Blackstone, 5 Commentaries *21. “An involuntary act, as it has no claim to

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merit, so neither can it induce any guilt: the concurrence of the will, when it has [its] choice either to do or to avoid the fact in question, being the only thing that renders human actions either praiseworthy or culpable.” *Id.*

Although most criminal laws since codified still adhere to this general principle, we now recognize that the “legislature has the authority to create a crime without a mens rea element.” *State v. Bradshaw*, 152 Wn.2d 528, 532, 98 P.3d 1190 (2004) (citing *State v. Anderson*, 141 Wn.2d 357, 361, 5 P.3d 1247 (2000)). Though they are disfavored, these “strict liability” crimes criminalize unlawful conduct regardless of whether the actor possesses a culpable mental state. *State v. Rivas*, 126 Wn.2d 443, 452, 896 P.2d 57 (1995); *see also Morissette v. United States*, 342 U.S. 246, 256 n.14, 72 S. Ct. 240, 96 L. Ed. 288 (1952). In this way, the legislature seeks to deter harmful conduct by creating harsh penalties that focus on the defendant’s actions and their consequences. “The law threatens certain pains if you do certain things, intending thereby to give you a new motive for not doing them.” O.W. Holmes, Jr., *The Common Law* 40 (Mark DeWolfe Howe ed., Harvard Univ. Press, 1967) (1881).

Fundamental to our notion of an ordered society is that people are punished only for their own conduct. Where an individual has taken no volitional action she is not generally subject to criminal liability as punishment would not serve to further any of the legitimate goals of the criminal law.² We punish people for what they do, not for what others do to them. We do not punish those who do not have the

² Of course, the legislature has legitimately criminalized the failure to act in some instances. *See e.g.* RCW 9A.76.030 (refusing to summon aid for a peace officer); RCW 9A.84.020 (failure to disperse). Importantly, under these crimes, it is the defendant’s choice not to act that renders him criminally liable.

capacity to choose.³ Where the individual has not voluntarily acted, punishment will not deter the consequences.

As these principles suggest, although an individual need not possess a culpable mental state in order to commit a crime, there is “a certain minimal mental element required in order to establish the actus reus itself.” *Utter*, 4 Wn. App. at 139. Movements must be willed; a spasm is not an act. Holmes, *supra*, at 45-46. It is this volitional aspect of a person’s actions that renders her morally responsible and her actions potentially deterrable. To punish an individual for an involuntary act would run counter to the principle that “a person cannot be morally responsible for an outcome unless the outcome is a consequence of that person’s action.” A.P. Simester, *On the So-called Requirement for Voluntary Action*, 1 Buff. Crim. L. Rev. 403, 405 (1998). It would create what Simester has called “situational liability,” penalizing a defendant for a situation she simply finds herself in. *Id.* at 410. “Unless there is a requirement of voluntariness, situational offenses are at odds with the deepest presuppositions of the criminal law.” *Id.* at 412. As Holmes tells us, the “reason for requiring an act is, that an act implies a choice, and that it is felt to be impolitic and unjust to make a man answerable for harm, unless he might have chosen otherwise.” Holmes, *supra*, at 46. “[T]he choice [to act] must be made with a chance of contemplating the consequence complained of, or else it has no bearing on responsibility for that consequence.” *Id.* A person cannot be answerable for a state of affairs unless she could have done something to avoid it.⁴

³ For example, children under the age of eight do not have the capacity to commit a crime. RCW 9A.04.050. Nor do we punish defendants with diminished capacity. *See State v. James*, 47 Wn. App. 605, 609, 736 P.2d 700 (1987).

⁴ As a cautionary example, Simester references the notorious English case of *Rex v. Larssonneur*

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Simester, *supra*, at 412.

The Enhancement

The purpose of sentencing enhancements is to provide legislative guidance to courts in calibrating the appropriate punishment for crimes based on relevant circumstances surrounding the underlying conduct. “Zone” enhancements direct courts to sentence offenders beyond the standard range if they are found committing some designated crime in a particular area. For example, the legislature has enacted statutes creating mandatory increased penalties for individuals convicted of possession with intent to deliver controlled substances in a variety of “zones,” including near schools, parks, bus stops, and on public transport vehicles. RCW 69.50.435. In this case, Eaton was convicted of possession of methamphetamine and his sentence was enhanced because the police found the methamphetamine while he was in a jail, which has been designated an enhancement zone. RCW 9.94A.533(5).

The Court of Appeals held that Eaton committed no actus reus amounting to voluntary possession of methamphetamine in the enhancement zone. *Eaton*, 143 Wn. App. at 157. RCW 69.50.4013(1) states that “[i]t is unlawful for any person to possess a controlled substance.” In addition, RCW 9.94A.533(5) requires courts to impose a sentencing enhancement under certain circumstances. The statute states in relevant part:

where the defendant, a French woman, was convicted of being in the United Kingdom when permission to enter had previously been refused. Simester, *supra*, at 410-11 (citing *Rex v. Larsonneur*, 149 L.T. 542 (1933)). Larsonneur was convicted despite the fact that she had been brought to the United Kingdom from Ireland by the police, against her will. *Larsonneur*, 149 L.T. at 544.

The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection.

.....

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

RCW 9.94A.533(5).

The State argues that the plain language of the statute does not contain a volitional element, that one should not be inferred, and that the sentencing enhancement should be upheld. The State is correct that the language of RCW 9.94A.533(5) is silent on whether a volitional act is required before imposing an enhancement. The statute simply requires that the State show the defendant was in a jail or correctional facility while possessing a controlled substance. However, as noted above, we attempt to construe statutes in a way that is consistent with their underlying purpose. *Crediford*, 130 Wn.2d at 755. As the Court of Appeals concluded, the State’s application of the enhancement statute would lead “to an unlikely, absurd, and strained consequence, imposing a strict liability sentence enhancement for *involuntary* possession of a controlled substance in a county jail or state correctional facility.” *Eaton*, 143 Wn. App. at 161. Once Eaton was arrested, he no longer had control over his location. From the time of arrest, his movement from street to jail became involuntary: involuntary not because he did not wish to

enter the jail, but because he was forcibly taken there by State authority. He no longer had the ability to choose his own course of action. Nor did he have the ability through some other course of action to avoid entering the area that would increase the penalty for the underlying crime.⁵ We doubt the legislature intended to grant the police such broad authority to affect the defendant's punishment after arrest. Additional punishment for being in an enhancement zone serves no logical purpose unless we presume that its infliction was intended only where the defendant could have avoided being there.⁶ The act may be as simple as choosing to put one foot in front of the other and running the risk of entering an enhancement zone. But it must be a choice made free from the kind of authority the State exercises when it makes an arrest.⁷ For these reasons we hold that RCW 9.94A.533(5) encompasses a volitional element that the State must prove beyond a reasonable doubt. *Cf. State v. Boyer*, 91 Wn.2d 342, 344, 588 P.2d 1151 (1979) (finding an implied element of guilty knowledge in the crime of delivery of a controlled substance); *see also State*

⁵ The State is concerned that requiring a volitional element calls into question the State's ability to seek harsher punishments for "zone" enhancements generally. The State appears to be under the misapprehension that requiring volition is the same as requiring intent. But nothing in our opinion should be read as requiring that the State prove a defendant intended to be in the enhancement zone or even that she knew she was in the enhancement zone. The State must simply demonstrate that the defendant took some voluntary action that placed him in the zone.

⁶ The dissent suggests that its strict interpretation of the sentencing enhancement statute creates incentives for admitting possession to the arresting officer before being taken to jail. Dissent at 5. In other words, if Eaton wished to avoid a more severe punishment, he should have offered up the evidence that would eventually convict him of illegal possession. Such an application of the enhancement statute may have implications on the Fifth Amendment right against self-incrimination.

⁷ The dissent suggests that our holding eliminates the State's ability to seek a sentencing enhancement under RCW 9.94A.533(5) even where the controlled substance is discovered several days after a defendant is booked. Dissent at 8. It does not. At some point, when the defendant retains possession despite the opportunity to do otherwise, possession within the zone becomes voluntary. The State simply bears the burden of proving this has occurred.

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v. Hall, 54 Wash. 142, 144, 102 P. 888 (1909).

Cases from other jurisdictions support our conclusion that the legislature did not intend to hold individuals criminally liable for being in some designated place when forced there involuntarily by an arresting officer. *Martin v. State*, 31 Ala. App. 334, 335, 17 So. 2d 427 (1944) (accusation of public intoxication cannot be established where an intoxicated defendant was involuntarily and forcibly carried onto the street by an arresting officer); *Fontaine v. State*, 135 Md. App. 471, 762 A.2d 1027 (2000) (holding that after a defendant was arrested in Delaware and taken to Maryland by the police, the evidence failed to prove he intended to distribute marijuana in his possession while in Maryland); *State v. Tippetts*, 180 Or. App. 350, 43 P.3d 455 (2002) (holding that conviction for supplying contraband in a correctional facility requires a showing the defendant voluntarily introduced the contraband). Echoing Holmes the *Tippetts* court noted “the concept of fault ordinarily implies the ability to choose.” *Id.* at 355. Where, as here, the defendant is forcibly transported by police to the area giving rise to additional punishment, he did not have the requisite ability to choose.

The State argues that the above cited cases are distinguishable from the case before us because RCW 9.94A.533(5) is an enhancement statute and not a separate crime. As the State points out, Eaton was convicted of possession of a controlled substance, a crime that does require a volitional act of possession. Under the State’s theory, once every element has been proved for the underlying offense, a defendant may receive additional punishment based on any circumstance she finds herself in after the time of arrest, regardless of whether those circumstances were

brought about by her own volition. The State suggests that requiring a separate volitional act for the sentencing enhancement “adds additional elements that were never contemplated by the legislature.” Pet. for Review at 7. We disagree.

Allowing the State to bootstrap additional punishments to the underlying crime where the defendant has done nothing to create the aggravating circumstance would run counter to the notions of justice that serve as the backdrop for our criminal law. While the enhancement in this case was not, strictly speaking, a separate crime, it still requires proof that the defendant did something separate.

While the State bears the burden of proving each element beyond a reasonable doubt, we hold that when a person is found within an enhancement zone in possession of a controlled substance, the State is entitled to a permissive inference that the person is within the zone of his own volition.⁸ See *State v. Cantu*, 156 Wn.2d 819, 822, 132 P.3d 725 (2006) (permissive inferences permitted because they do not relieve the State of its burden of proof). “[D]ue process is not offended if the prosecution shows that the inference more likely than not flows from the proven fact.” *Id.* at 826 (quoting *State v. Deal*, 128 Wn.2d 693, 700, 911 P.2d 996 (1996)). However, while possession within the enhancement zone allows a fact finder to infer volition, the inference alone may not be enough for the State to meet its burden. *State v. Hanna*, 123 Wn.2d 704, 710, 871 P.2d 135 (1994). Here it was not. The facts clearly establish that Eaton was arrested outside the enhancement zone and was transported to the jail by Officer Starks. After he was arrested, there

⁸ While neither party has specifically addressed permissive inferences, both parties focus their arguments on what is required to prove the enhancement. A discussion of the State’s burden of proof regarding the volitional element is necessary to fully resolve this issue.

was nothing he could have reasonably done to avoid being taken to jail. The State failed to meet its burden of proof that Eaton volitionally possessed drugs inside the enhancement zone.

Eaton made a choice to possess methamphetamine. That is properly subject to punishment under the laws of our State. The State is seeking to subject Eaton to additional punishment based on circumstances it created. Eaton could not have chosen to avoid the enhancement zone. We hold that RCW 9.94A.533(5) was not intended to create criminal liability for one forced into an enhancement zone against his own will.

Conclusion

We hold that RCW 9.94A.533(5) requires that a defendant took some voluntary act to be placed within the enhanced zone in order to subject the defendant to an enhanced sentence. The defendant need not intend or even know he is entering an enhanced zone. The volitional element may be as simple as choosing to put one foot in front of the other to enter the zone, but it must be a choice freely made. The fact that a defendant is found within an enhancement zone gives rise to a reasonable inference that the defendant is there volitionally. The permissive inference does not relieve the State of its burden of proof that the defendant was within the enhancement zone volitionally. Where, as here, the defendant is arrested and taken to the enhancement zone, the volitional component of the actus reus cannot be met. Eaton did not enter the jail volitionally. We affirm the Court of Appeals.

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AUTHOR:

Justice Tom Chambers

WE CONCUR:

Justice Charles W. Johnson

Justice Gerry L. Alexander

Justice Richard B. Sanders

Justice Debra L. Stephens
