In The

Supreme Court of Virginia

RECORD NO. 100160

ANTOINE LANIER HALL,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

1. The trial court erred in finding that sufficient evidence was presented by the Commonwealth to support Mr. Hall's conviction under an indictment charging him with felony escape by use of force or violence.

2. The Court of Appeals of Virginia erred by concluding that there was no abuse of the trial court's discretion in this matter.

Mr. Hall preserved this issue through counsel's motion to strike and renewed motion to strike. (Joint Appendix 73-76, 82-86.)

STATEMENT OF THE CASE AND MATERIAL PROCEEDINGS

On 20 December 2007, Antoine Lanier Hall, hereinafter Mr. Hall, was arrested and charged pursuant to Virginia Code § 18.2-478 for the felony charge of escape from jail or custody by force or violence.

On 13 June 2008, Mr. Hall was present for a preliminary hearing held in the Danville General District Court. The Court found probable cause and the case was

certified to the Circuit Court. During the July 2008 term of the Danville Circuit Court, the grand jury indicted Mr. Hall on a felony charge of escape from jail or custody by force or violence pursuant to Virginia Code § 18.2-478.

On 16 July 2008, Mr. Hall pled not guilty to the charge as indicted. Mr. Hall was found guilty of the charge as indicted. On 27 August 2008, he was sentenced to three years in prison, with all but seventy-five days suspended on the condition of twelve months probation, and three years good behavior.

Mr. Hall noted his appeal to the Court of Appeals of Virginia on 18 September 2008. The transcript was timely filed on 12 December 2008. On 7 April 2009, the Court of Appeals of Virginia granted Mr. Hall's appeal. After hearing argument, the Court affirmed Mr. Hall's conviction on 22 December 2009.

Mr. Hall noted his appeal and timely filed his petition to this Court on 21 January 2010. This Court granted the appeal on 19 May 2010.

QUESTIONS PRESENTED

Did the Trial Court err by improperly concluding that sufficient evidence was presented by the Commonwealth to support Mr. Hall's conviction under an indictment charging him with felony escape by use of force or violence? This issue was preserved through counsel's motion to strike and renewed motion to strike. (Joint Appendix 73-76, 82-86) (See Assignment of Error 1.)

Did the Court of Appeals of Virginia err by affirming the trial court by concluding that there was no abuse of the trial court's discretion in this matter? (See Assignment of Error 2.)

STATEMENT OF FACTS

On December 20, 2007, Danville Police Officer Andrew R. Norris and Danville Police Officer Randy Merrill went to Mr. Hall's house to serve an outstanding warrant. (Joint Appendix 80.) Upon arrival, Officer Merrill went to the rear of the house. (Joint Appendix 70.) Officer Norris knocked on the front door. (Joint Appendix 63.) Mr. Hall's girlfriend

answered the door. (Joint Appendix 63, 80.) Officer Norris told her he was looking for Mr. Hall. (Joint Appendix 64.)

Officer Norris testified that he advised Mr. Hall that he had a warrant for Mr. Hall and asked him to step outside. (Joint Appendix 64.) When Mr. Hall stepped outside, Officer Norris grabbed him by his left wrist, told him he was under arrest, and to put his hands behind his back. (Joint Appendix 64.) Officer Norris started trying to handcuff Mr. Hall's left wrist. (Joint Appendix 64.) Before Officer Norris was able to handcuff Mr. Hall, Mr. Hall "began wriggling, trying to get away… struggling." (Joint Appendix 64.) While Officer Norris and Mr. Hall were struggling, Officer Norris and Mr. Hall went off the porch and Mr. Hall slipped out of Officer Norris' grasp. (Joint Appendix 65.) Officer Norris grabbed Mr. Hall's shirt and attempted to pull him to the ground with the shirt, but the shirt ripped and Mr. Hall fled on foot. (Joint Appendix 65.) Officer Merrill subsequently shot the taser at Mr. Hall but Mr. Hall was just far enough to

where the probes on the taser fell out of the cartridge and Mr. Hall was able to get away. (Joint Appendix 65.)

Officer Merrill testified that he heard a loud commotion and heard Officer Norris yell "you're under arrest. Don't resist me." (Joint Appendix 70.) As Officer Merrill came towards the front of the house, he saw Officer Norris trying to gain control of Mr. Hall "by grabbing his arm… grabbing his shirt." (Joint Appendix 70.) Mr. Hall took his left arm and shoved Officer Norris. (Joint Appendix 70.) Officer Norris lost his grip and Mr. Hall took off running. (Joint Appendix 70.) Officer Merrill attempted to tackle Mr. Hall, but missed. (Joint Appendix 71.) Officer Merrill then deployed his taser, saw Mr. Hall fall, get up and run off. (Joint Appendix 71.)

Mr. Hall testified that as he walked to the front door, Officer Norris stated, "You lied to me." (Joint Appendix 80.) Mr. Hall stepped out to the front porch and asked "What I do?" (Joint Appendix 80.) Officer Norris told Mr. Hall to turn around and informed Mr. Hall that he "committed identity

fraud" and grabbed his arm. (Joint Appendix 80-81.) When Officer Norris told Mr. Hall's girlfriend to step back, Mr. Hall took off running. (Joint Appendix 81.) Officer Norris grabbed Mr. Hall's shirt, but Mr. Hall continued to run. (Joint Appendix 81.) Mr. Hall further testified that he never received any warrants from the police. (Joint Appendix 82.)

ARGUMENT AND CITATIONS OF AUTHORITY

To prove the crime of escape by use of force or violence under Code § 18.2-478, the Commonwealth must prove beyond a reasonable doubt: (1) that the accused was in lawful custody; (2) of "any police officer"; (3) "on a charge of [a] criminal offense"; and (4) that by the use of force or violence he left such custody without lawful permission. Henry v. Commonwealth, 21 Va. App. 141, 147-148, 462 S.E.2d 578, 581 (1995). An essential element of the escape charge is that the defendant escaped from "lawful custody." Code § 18.2-478. Thus, it must be determined whether sufficient evidence proved Mr. Hall was in police custody when he fled from the officers.

In 2004, this Court held that under Code § 18.2-479,[1] an individual is in the custody of a law enforcement officer only where there has been a clear and effective restraint of the individual by the officer, either by having the individual in his physical control or by the individual's voluntary submission to the officer's authority, such that the individual's freedom of movement is curtailed to a degree associated with a formal arrest. White v. Commonwealth, 267 Va. 96, 106, 591 S.E.2d 662, 667-668 (2004) (ref. Ex parte McReynolds, 662 So.2d 886, 888 (Ala. 1994) ("One cannot escape from custody until one is in custody ... [which] is defined as a restraint or detention 'pursuant to a lawful arrest' "); Hubbard v. State, 800 P.2d 952, 954 (Alaska Ct. App. 1990) ("if an officer approaches an offender for the purpose of making an arrest, which he is unable to do because the other eludes him by running away, there has been no 'escape' "); People v. Thornton, 929 P.2d 729, 734

[1] Although the defendant in White was charged with violating § 18.2-479, the statutory language at issue there is the same as the language used on Code § 18.2-478, under which Mr. Hall was charged.

(Colo. 1996) ("for a suspect to be 'in custody' ... an officer must have effected the suspect's arrest by establishing physical control of the suspect sufficient to provide reasonable assurance that the suspect will not leave"); State v. Ryan, 62 Haw. 99, 612 P.2d 102, 103 (1980) ("once the defendant has submitted to the control of the officer and the process of taking him to the police station or to a judge has commenced, his arrest is complete, and he is in 'custody,' for the purposes of the escape statute").

While analyzing the escape statute in White, this Court stated that "in determining the intent of the General Assembly from the language used in this statute, we may presume that the term 'custody' was carefully chosen." White at 103. The General Assembly has provided by statute that an individual can be in 'custody' even when a formal arrest will not follow. Id. at 104. In White, this Court held that "under Code § 18.2-479, an individual is in the custody of a law enforcement officer only where there has been a clear and effective restraint of the individual by the

officer, either by having the individual in his physical control or by the individual's voluntary submission to the officer's authority." Id. at 106.

However, this Court also stated that "an individual under arrest is always in custody for purposes of applying Code § 18.2-479," White at 104, and the Court of Appeals relied heavily on that statement in upholding the trial court decision. However, mere words of an officer stating to a suspect that he is "under arrest" are not sufficient to constitute an arrest. California v. Hodari D., 499 U.S. 621, 626, 111 S. Ct. 1547, 113 L. Ed. 2d 690 (1991). An arrest occurs when an officer physically restrains a suspect or, in the absence of physical restraint, the suspect submits to the officer's assertion of authority and purpose to arrest. Id. An officer effects an arrest of a person whom he has authority to arrest, by laying his hand on him for the purpose of arresting him, although he may not success in stopping and holding him. Id. On the other hand, this Court explained in Howard that "an arrest is made by the actual restraint of the

person of the defendant or by his submission to the custody of an officer." Howard v. Commonwealth, 210 Va. 674, 677, 173 S.E.2d 829, 832 (1970). Thus, after an arrest, a suspect's liberty is completely constrained, at least until a judicial officer has determined the issue of bail. Commonwealth v. Hill, 264 Va. 541, 547, 570 S.E.2d 805, 808 (2002).

In White, the police officer initially detained the defendant on a traffic infraction. The officer requested that the defendant step out of the vehicle, telling him it would be towed after the defendant informed him that he did not have a valid license, the car belonged to his sister, and the license plates did not belong to the car. White at 99. The officer directed the defendant to place his hands on his vehicle and proceeded with a protective pat-down search when he discovered "little rocks in a plastic bag." Id. When the officer reached for his handcuffs, a struggle ensued and the defendant fled. White at 100. This Court found the officer had not restrained the defendant for the purpose of placing

him under arrest and reversed. Id. at 105-106. Therefore, an individual is not in custody merely by having an officer exert physical force. An individual is in custody when the officer has the individual in his physical control.

In this case, Officer Norris was in the process of arresting Mr. Hall when he grabbed Mr. Halls' wrist and informing him he was under arrest. However, Officer Norris never had physical control of Mr. Hall. Mr. Hall did not submit to Officer's Norris' authority and began struggling almost instantly. Like the defendant in White, Mr. Hall began wriggling and trying to get away before Officer Norris was able to handcuff him.

Even though Officer Norris informed Mr. Hall that he was being arrest and grabbed his wrist, Officer Norris never established physical control over Mr. Hall to ensure that Mr. Hall's freedom of movement was curtailed; therefore, Mr. Hall was never in "custody".

CONCLUSION

For the above reasons, the appellant, Antoine Lanier Hall, respectfully requests this Honorable Court reverse the decision of the Court of Appeals, to reverse the Sentencing Order of the Circuit Court for the City of Danville, and to dismiss the indictment against him.

Respectfully submitted on this 9th day of June 2010.

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CERTIFICATE

Pursuant to Rule 5:26(d), we hereby certify, this 9th day of June 2010, that:

(a) The Appellant, Antoine Lanier Hall, is represented by DaRong Park, Jason S. Eisner, and Joseph H.M. Schenk, Office of the Public Defender, 105 South Union Street, Suite 326, Danville, Virginia 24541, (434) 791-5306. The Appellee is represented by Alice T. Armstrong, Esq., Assistant Attorney General II, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219, (804) 786-2071.

(b) Fifteen paper copies and one electronic copy on CD of the foregoing Brief of Appellant and Appendix have been hand-filed with the Clerk of the Supreme Court of Virginia, and three paper copies of the same have been served, via U.S. Mail, postage prepaid, upon Counsel for Appellee, Alice T. Armstrong.

(c) A copy of the foregoing Brief of Appellant was served, via U.S. Mail, postage prepaid, upon the Appellant,

Antoine Lanier Hall, Inmate, Alamance County Detention Center, 109 South Maple Street, Graham, North Carolina 27253.

(d) Counsel for Appellant is appointed and requests oral argument.

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