IN THE

SUPREME COURT OF VIRGINIA

RECORD NO. 100160

ANTOINE LANIER HALL,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

BRIEF OF THE COMMONWEALTH

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BRIEF OF THE COMMONWEALTH

This appeal asks the Court to determine whether common law principles of when an arrest is effected remain effective in the Commonwealth. The defendant—who had been told he was under arrest, who had complied with the officer's initial instructions and whom the officer had placed his hands on to arrest him—claims he was not in the officer's custody when he escaped.

STATEMENT OF THE CASE

This appeal originated from a final judgment entered against Antoine Lanier Hall in the Circuit Court for the City of Danville for felonious escape in violation of Virginia Code § 18.2-478. The trial court, sitting without a jury, convicted Hall and sentenced him to three years' imprisonment, with two years and 290 days suspended. (App. 123-26).

Hall appealed to the Court of Appeals of Virginia, challenging his conviction on the ground that he was not "in custody" at the time of his escape. Following briefing and argument, the Court of Appeals affirmed Hall's conviction in a published opinion. Hall v. Commonwealth, 55 Va. App. 451, 686 S.E.2d 554 (2009); (App. 195-99). Specifically, the Court of Appeals held that Hall was under arrest and, therefore, in custody when he escaped. Id. at 456, 686 S.E.2d at 556-57; (App. 199). This appeal followed.

ASSIGNMENTS OF ERROR

1. THE TRIAL COURT ERRED IN FINDING THE COMMONWEALTH'S EVIDENCE WAS SUFFICIENT TO SUPPORT HALL'S CONVICTION FOR FELONY ESCAPE BY USE OF FORCE OR VIOLENCE.

2. THE COURT OF APPEALS ERRED BY CONCLUDING THERE WAS NO ABUSE OF THE TRIAL COURT'S DISCRETION IN THIS MATTER.

QUESTIONS PRESENTED

1. DID THE TRIAL COURT ERR IN CONCLUDING THE COMMONWEALTH'S EVIDENCE WAS SUFFICIENT TO SUPPORT HALL'S CONVICTION FOR FELONY ESCAPE BY USE OF FORCE OR VIOLENCE?

2. DID THE COURT OF APPEALS ERR IN AFFIRMING THE TRIAL COURT IN CONCLUDING THAT THERE WAS NO ABUSE OF THE TRIAL COURT'S DISCRETION IN THIS MATTER?

STATEMENT OF FACTS

On December 20, 2007, Danville Police Officers Andrew Norris and Randy Merrill went to Hall's house to arrest him on warrants for identity fraud and driving on a suspended license. (App. 59-61, 69-70). Both officers were in uniform. (App. 60). Officer Norris knocked on Hall's front door and informed the woman who answered that he was looking for Hall.[1] (App. 63-64, 80). When Hall came to the door, Officer Norris told Hall he had warrants for his arrest and to step outside. (App. 64).

Hall complied with Officer Norris's instruction and stepped out on the front porch, where Officer Norris "grabbed him by his left wrist and told him he was under arrest." (App. 64, 80). Officer Norris then ordered Hall to put his hands behind his back, "pinned" his arm against his body and began to handcuff Hall's left wrist. (App. 64, 81). However, before Officer Norris

[1] Officer Merrill had gone to the rear of the house, in case Hall tried to flee out the back door. (App. 64, 70).

was able to latch the handcuff onto Hall's wrist, the defendant "began wiggling, trying to get away from me, struggling with me." (App. 64, 66). Officer Norris explained at trial that the handcuff "just hadn't gotten to where it had locked in with the teeth on the handcuff." (App. 66). Hall disregarded Officer Norris's instructions to stop resisting and instead continued struggling, from the front porch into the front yard. (App. 65).

Officer Merrill returned to the front of the house when he heard Officer Norris yell, "You're under arrest. Don't resist me." (App. 70). When Officer Merrill got to the front yard, he saw Hall and Officer Norris struggling. (App. 70). As Officer Merrill ran toward them, Hall shoved Officer Norris in the chest, pushing him backwards. (App. 70, 72). Officer Norris lost his grasp on Hall's wrist and, grabbing his shirt, he attempted to pull Hall to the ground. (App. 65, 67-68, 70). When Hall's shirt ripped, he fled. (App. 65, 70, 81).

At trial, Hall conceded he had complied with Officer Norris's instruction to step out onto the porch and Officer Norris had "grabbed" one of his arms and "pinned" it against his body. (App. 80-81). Hall claimed, however, that he "just ran" from Officer Norris. (App. 81).

STANDARD OF REVIEW

"When examining a challenge to the sufficiency of the evidence, an appellate court must review the evidence in the light most favorable to the prevailing party at trial and consider any reasonable inferences from the facts proved." Viney v. Commonwealth, 269 Va. 296, 299, 609 S.E.2d 26, 28 (2005). Moreover, the judgment of the trial court is presumptively correct and "shall not be set aside unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it." Code § 8.01-680; Viney, 269 Va. at 299, 609 S.E.2d at 28.

When considering a challenge to the sufficiency of the evidence, the reviewing court does not "ask itself whether ***it*** believes that the evidence at trial established guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 318-19 (1979) (citation omitted). Rather, the relevant question is whether "***any*** rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Id. This deference applies not only to historical facts, but also to the inferences drawn from those facts. "It is within the province of the [fact finder] to determine what inferences are to be drawn from proved facts, provided the inferences are reasonably related to those facts." Commonwealth v. Hudson, 265 Va. 505, 514, 578 S.E.2d 781, 786 (2003).

While Hall asserts a challenge to the sufficiency of the evidence, his argument necessarily requires the Court to construe § 18.2-478. The construction of a statute is a question of law that the Court reviews *de novo* on appeal. Phelps v. Commonwealth, 275 Va. 139, 141, 654 S.E.2d 926, 927 (2008).

ARGUMENT

HALL WAS IN OFFICER NORRIS'S LAWFUL CUSTODY WHEN HE ESCAPED.

Hall contends the evidence failed to prove he was "in custody" for purposes of Code § 18.2-478. Hall argues that the officer had to have "physical control" over his person to establish custody. This Court should affirm the defendant's conviction because the record establishes Hall was in Officer Norris's custody, by virtue of his lawful arrest, when he escaped.

"[I]f any person lawfully in the custody of any police officer on a charge of criminal offense escapes from such custody by force or violence, he shall be guilty of a Class 6 felony." Code § 18.2-478; Henry v. Commonwealth, 21 Va. App. 141, 147-48, 462 S.E.2d 578, 581 (1995) (discussing the elements of the escape charge).

"[A]n individual under arrest is ***always*** in custody for purposes of applying Code § 18.2-479." White v. Commonwealth, 267 Va. 96, 104, 591

S.E.2d 662, 667 (2004) (emphasis added).[2] Indeed, Hall concedes this point. (Def. Br. at 9). He appears to argue, though implicitly, that there was no arrest because Officer Norris did not have complete "physical control" over him, as evidenced by his escape. (Def. Br. at 11). This circular argument is inconsistent with the common law rule of arrest.

"With a few statutory exceptions, which need not be noticed here, the common law relating to arrest is the law on that subject in Virginia." Galliher v. Commonwealth, 161 Va. 1014, 1021, 170 S.E. 734, 736 (1933). Under the common law, "the mere grasping or application of physical force with lawful authority, whether or not it succeeded in subduing the arrestee, was sufficient." California v. Hodari D., 499 U.S. 621, 624 (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." Bristol v. Commonwealth, 272 Va. 568, 573, 636 S.E.2d 460, 463 (2006); see also Cavell v. Commonwealth, 28 Va. App. 484, 486-87, 506 S.E.2d 552, 553 (1998) (under the common law, words of arrest coupled with a "touching for the manifested purpose of

[2] Although White was charged with violating Code § 18.2-479, the statutory language is the same as the language at issue here. This Court has not had occasion to construe the meaning of "custody" within the intendment of Code § 18.2-478.

arrest by one having lawful authority completes the apprehension.").[3] Thus, "an arrest is effected by the slightest application of physical force, ***despite*** the arrestee's escape." Hodari D., 499 U.S. at 625 (emphasis added).

Officer Norris advised Hall of the outstanding warrants and told him, at least twice, he was under arrest. (App. 64-65, 70). Hall concedes Officer Norris then applied "physical force" by "grabbing" and "pinning" his arm while preparing to handcuff him. (App. 64, 81). This application of "physical force," coupled with the spoken words of arrest and the legal authority to make the arrest, sufficed to complete Hall's arrest, despite his escape. Hodari D., 499 U.S. at 625; State v. Stroud, 103 P.3d 912 (Ariz. 2005) (temporary restraint is sufficient; thus, where officer grabbed arrestee by shirt collar, leaned him over car and told him he was under arrest, the evidence was sufficient to show custody); State v. Nakoa, 817 P.2d 1060 (Haw. 1991) (words of arrest, touching and arrestee's initial compliance with officer's instructions sufficient to establish custody); State v. Ramsey, 475 So. 2d 671 (Fla. 1985) (physical restraint not required); People v. Johnson, 920 N.E.2d 1212 (Ill. App. Ct. 2009) (arrestee escaped from

[3] In Cavell, the Court of Appeals held the defendant was not in custody because when he fled he had not submitted to the officer's show of authority and the officer had not touched him to effectuate the arrest.

custody where officer stated he was under arrest and began to handcuff him); MacDonald v. State, 83 P.3d 549, 552 (Alaska Ct. App. 2004) (arrest complete when officers touch arrestee "for the manifested purpose of apprehending him"); Hunter v. State, 867 So. 2d 361, 365 (Ala. Crim. App. 2003) ("Hunter's arrest was complete when the officers grabbed his wrists, informed him that he was under arrest, and ***began*** to place handcuffs on his wrists.") (emphasis added); Gibbons v. State, 676 So.2d 956 (Ala. Crim. App. 1995) (words of arrest and grabbing arrestee's wrist sufficient to establish custody); State v. Solis, 685 P.2d 672, 674 (Wash. Ct. App. 1984) (grabbing arrestee's arm and telling him he was under arrest "were sufficient to effectuate an arrest"; thus, when arrestee "broke away and ran, he was escaping from custody"). See also State v. Thomas, 229 Ore. App. 453, 457 (Or. Ct. App. 2009) (spoken words of arrest "sufficient to establish constructive restraint" and, therefore, a finding that arrestee was in custody).

In addition, Hall submitted to Officer Norris's assertion of authority when he complied with the instruction to step out of the house onto the porch. (App. 64, 80). Hall did not quibble with the officer's instruction or claim that he had decided for himself to leave the comfort of his home. Instead, he complied with the command given by one with the legal

authority to arrest him and, thereby, submitted to Officer Norris's assertion of authority and purpose to arrest. Bristol, 272 Va. at 573, 636 S.E.2d at 463; Henry, 21 Va. App. at 145, 462 S.E.2d at 580 (when defendant "froze" for 30 seconds at gunpoint he submitted to the officer's show of authority). See also State v. Bradley, 2010 SD 40, 2010 S.D. LEXIS 42 (S.D. 2010) (arrestee in custody when he complied with officer's instruction to stand and put his hands behind his back, notwithstanding fact he then "took off running like a jackrabbit" when officer tried to handcuff him); People v. Thornton, 929 P.2d 729, 735 (Colo. 1996) (compliance with officer's initial instruction to put his hands on a parked car was a submission to officer's show of authority sufficient for arrest); Nakoa, 817 P.2d at 1063-64 (arrestee submitted to officer's authority when he surrendered his alcoholic beverage and complied with instruction to place his hands on a wall).

Hall's reliance on White for the proposition that the officer had to have "physical control" over him is misplaced. White addressed an investigative detention, not a formal arrest situation. The dispositive circumstance in White was that the officer had not yet taken steps to effectuate an arrest at the time the defendant fled; rather, the defendant "was ***going*** into custody. We were working our way there." Id. at 101, 591 S.E.2d at 664 (emphasis added). Nothing in the facts or holding of White supports Hall's contention

that he was not in custody following his formal, lawful arrest. "An individual under arrest is always in custody" within the intendment of the escape statutes. Id. at 104, 591 S.E.2d at 667.

Similarly, Hodari D. affords Hall no solace. To the contrary, Hodari D. makes plain that Hall's arrest was complete the moment Officer Norris grabbed his wrist. 499 U.S. at 625 (mere grasping is sufficient even if it did not subdue the arrestee). This simple, bright-line rule obviates litigation regarding the amount of force necessary or the length of time an arrestee must be subdued to effectuate an arrest. Cf. Ramsey, 475 So. 2d at 672 (adopting a construction of the Florida escape statute that would "eliminate some difficult questions concerning when transportation begins."). It also serves the important societal concern of reducing the likelihood of a violent encounter between the officer and the arrestee.[4]

[4] If an arrestee may resist a lawful arrest until some point on the way to the magistrate (Def. Br. at 8), he likely will do so; thus, police officers will employ greater force at the outset to ensure they have "physical control" of an arrestee. Cf. Commonwealth v. Hill, 264 Va. 541, 548 & n.2, 570 S.E.2d 805, 809 & n.2 (2002) (declining to extend to investigative detentions the common law rule permitting resistance of an unlawful arrest because such an expansion would "increase the danger of violence"); see also Warner v. State, 201 S.W.3d 197, 200 (Tex. App. 2006) (criticizing Texas precedent because it "***promotes*** crime by encouraging suspects to balk, pull away, defy, and even wrestle with the police who are attempting to effect an arrest.") (emphasis added).

Hall was in Officer Norris's lawful custody when he escaped. Stated differently, the "propitious moment" for Hall's escape had elapsed when he shoved Officer Norris in the chest and fled. White, 267 Va. at 106, 591 S.E.2d at 668. Under these circumstances, there is no error in the judgment below and this Court should affirm.

CONCLUSION

The judgment of the Court of Appeals affirming Hall's escape conviction should be affirmed.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA
Appellee herein.

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CERTIFICATE OF TRANSMISSION AND SERVICE

On June 28, 2010, the required number of copies of this brief were hand-delivered to the Clerk of this Court and three copies were mailed to: **Jason S. Eisner, Esquire, Office of the Public Defender, 105 South Union Street, Suite 326, Danville, Virginia 24541**, counsel for the appellant.

The Commonwealth desires to present oral argument in this case.

_____
Alice T. Armstrong
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Courtesy copy: The Honorable Michael J. Newman
The Honorable David A. Melesco