

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	CASE NO. CA2026-01-002
Appellee,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
TYRONE JASON ALLEN,	:	10/19/2026
Appellant.	:	
	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 25CR42926

David P. Fornshell, Warren County Prosecuting Attorney, and Kirsten A. Brandt, Assistant Prosecuting Attorney, for appellee.

Tyrone Jason Allen, pro se.

OPINION

SIEBERT, J.

{¶ 1} Tyrone Jason Allen appeals his conviction and sentence in the Warren County Court of Common Pleas for one count of escape and one count of theft. On

appeal, Allen argues the State presented insufficient evidence of either crime. We agree with Allen regarding his escape conviction because a curfew with electronic monitoring does not constitute "detention," a necessary element of escape. However, we disagree with Allen regarding his theft conviction because his removal of the monitor without authorization exceeded the scope of the consent form he signed with community corrections, regardless of whether Allen agreed to pay costs associated with the breach.

Background

{¶ 2} Allen pled guilty to attempted trespass in a habitation and theft greater than \$1,000. The trial court sentenced Allen to three years of community control, requiring that he also serve 120 days in the Warren County jail (with 101 days of jail time credit) and complete outpatient substance abuse treatment. Allen subsequently violated his community control, but the trial court allowed him to remain on community control with the addition of an "[e]lectronic monitor with a curfew for a term of 60 days." (Underscore in original.). The referral form outlining Allen's electronic monitoring also indicated Allen had a 60-day curfew from 8:00 PM to 8:00 AM at his mother's residence. The form had two other boxes in the same section: (1) "EMHA" (electronic monitoring house arrest), and (2) Open schedule. Neither of these were marked.

{¶ 3} Allen subsequently reported to Warren County Community Corrections ("Community Corrections") to receive his electronic monitor. While there, he signed a consent form which contained the following language:

You will be financially liable should any damage or loss occur to any of the Electronic Monitoring equipment given to you by Community Corrections . . . *You may be prosecuted* under applicable criminal law in the event the equipment is not returned to Community Corrections. *Damage to any electronic monitoring equipment may also warrant court action* . . . You understand that if you violate any condition of the program that you will be referred back to the sentencing court for further disposition. (Emphasis added.)

The form also stated "You are not to remove your monitor without authorization (e.g. cut, destroy, etc.)." Finally, before the signature line, the form stated, "**I understand that my failure to comply with the rules and Conditions of Warren County Community Corrections may result in my arrest.**" (Bold in original.).

{¶ 4} Just two days after Allen signed this form and had the electronic monitor placed on him, Community Corrections received an alert that Allen's monitor had been tampered with. Immediate efforts to locate Allen and the monitor were unsuccessful, but officers eventually located Allen in the Hamilton County jail a week later. Community Corrections never located or recovered Allen's monitor.

{¶ 5} The State brought charges of escape and theft against Allen. At the bench trial, Community Control officers testified Allen was advised of the rules of his electronic monitoring. However, Community Control never expressly advised Allen that his electronic monitoring constituted "detention" or "confinement." According to the officers, Allen was "able to do whatever it is that he would like to do" outside of his curfew hours. The State argued at trial that Allen's "hybrid" electronic monitoring nonetheless constituted "detention." The trial court noted during closing arguments there may be "an argument as to whether or not electronically monitored supervision, sort of like an open schedule, would constitute detention" but ultimately concluded "the electronically monitored supervision with the house arrest, curfew, etcetera, does constitute detention . . ." The trial court found Allen guilty of escape and theft and sentenced him to 24 months in prison and \$2,099 in restitution.

{¶ 6} Allen now appeals and asserts there is insufficient evidence to support either conviction.

First Assignment of Error – Escape

Standard of Review

{¶ 7} "When reviewing the sufficiency of the evidence underlying a conviction, an appellate court examines the evidence to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Madden*, 2024-Ohio-2851, ¶ 31, citing *State v. Paul*, 2012-Ohio-3205, ¶ 9 (12th Dist.). Therefore, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, *superseded by state constitutional amendment on other grounds as stated in State v. Smith*, 1997-Ohio-355, ¶ 49, fn. 4.

Applicable Law

Escape

{¶ 8} Under Ohio law, "No person, knowing the person is under detention . . . shall purposely break or attempt to break the detention, or purposely fail to return to detention . . . at the time required when serving a sentence in intermittent confinement." R.C. 2921.34(A)(1). The relevant term on appeal within the statute is "detention." The statutory definition for "detention" is large and contains many different situations, but for our purposes, two are relevant:

confinement in any public or private facility for custody of persons charged with or convicted of crime in this state or another state or under the laws of the United States . . . [or] supervision by an employee of the department of rehabilitation and correction of a person on any type of release from a state correctional institution;

R.C. 2921.01(E) (the "Detention Definition").

{¶ 9} Outside of the statutory definition, Ohio courts have observed "the word

detention is a legal phrase that does not imply a location or method of confinement, but instead is an abstract term describing a person's status." *State v. Boggs*, 2008-Ohio-1583, ¶ 11 (2nd Dist.), citing *State v. Smith*, 29 Ohio App.3d 194, 195 (8th Dist. 1985). See also *State v. Shook*, 45 Ohio App.2d 32, 34 (3rd Dist. 1975). Stated differently, detention "constitutes the state of being held in some form of legal custody." *Smith*, at 195. See also *State v. Brown*, 2007-Ohio-5787, ¶ 17 (12th Dist.).

Community Control

{¶ 10} In addition to the foregoing, an understanding of community control is necessary to understand what constitutes detention. Under Ohio law, when a trial court is not required to impose a prison term, "the court may directly impose a sentence that consists of one or more community control sanctions . . ." R.C. 2929.15(A)(1). Community control sanctions include "[1.] [a] term of house arrest with electronic monitoring . . . [2.] a term of electronic monitoring . . . without house arrest, or [3.] a term of house arrest without electronic monitoring . . ." R.C. 2929.17(B). "House arrest" is defined as "a period of *confinement* of an offender that is in the offender's home or in other premises specified by the sentencing court or by the parole board . . ." (Emphasis added.) R.C. 2929.01(P). The definition further states that in order for a sanction to constitute house arrest, it must: (1) require the offender to remain at home or other authorized premises, such as work; (2) require the offender "to report periodically to a person designated by the court or parole board" and (3) "subject [an offender] to any other restrictions and requirements that may be imposed by the sentencing court or by the parole board." *Id.*

{¶ 11} A "curfew term" is a separate sanction that may be imposed by the trial court. R.C. 2929.17(I). "Curfew" is defined as "a requirement that an offender during a specified period of time be at a designated place." R.C. 2929.17(G). Unlike house arrest, curfew contains neither "confinement" nor "detention" in its definition. See *id.*

{¶ 12} "Electronic monitoring" is simply defined as "monitoring through the use of an electronic monitoring device." R.C. 2929.17(TT).

Relevant Caselaw

{¶ 13} The Supreme Court of Ohio expressly held "*pretrial* electronic home monitoring does not constitute detention for the purpose of prosecuting the crime of escape . . ." (Emphasis added). *State v. Gapen*, 2004-Ohio-6548, ¶ 72. The Supreme Court favorably cited a Sixth District Court of Appeals case in *Gapen*. *Id.* at ¶ 67, 69, citing *State v. Sutton*, 2004-Ohio-2679 (6th Dist.). In *Sutton*, the Sixth District also held that a defendant's pretrial electronic monitoring did not constitute detention under the escape statute. *See generally id.* Elsewhere in the opinion, however, the court observed "[w]hen electronic monitoring is a condition of *sentence*, it is considered it to be 'detention' under [the Detention Definition]." (Emphasis added.). *Id.* at ¶ 11. Stated differently, the court concluded "[p]re-trial electronic monitoring at home is different from house arrest or electronic monitoring after conviction." *Id.* at ¶ 12. Such sanctions after a conviction fell under the definition of detention as "confinement in any public or private facility for custody of persons charged with or convicted of crime in this state. . ." *See id.* at ¶ 7. The Supreme Court of Ohio summarily affirmed *Sutton* "on the authority of *State v. Gapen* . . ." *State v. Sutton*, 2004-Ohio-6558, ¶ 1.

{¶ 14} Other cases have grappled with what constitutes detention under various post-trial scenarios. For example, the First District held that "[e]lectronic monitoring is a form of supervision and restraint while on community control. As such, it is not detention." *State v. Anderson*, 2006-Ohio-4602, ¶ 21 (1st Dist.). In so holding, the court noted the statutory comments from 1973 stated the definition of detention "expressly excludes the supervision and restraint incidental to probation, parole, and release on bail." *Id.*

{¶ 15} The Fifth District held removing an electronic monitor, resulting in a violation

of "electronically-monitored house arrest," can result in an escape charge. *Gould*, 2008-Ohio-900 (5th Dist.). In coming to this conclusion, the court questioned the First District's analysis in *Anderson* because "the current version of [the Detention Definition] does not exclude supervision and restraint incidental to probation . . ." *Id.* at ¶ 44. See also *State v. Holmes*, 2008-Ohio-6804, ¶ 2, 18 (6th Dist.) (holding, citing *Gould*, that a defendant violating "electronically monitored house arrest" could be charged with escape).

{¶ 16} The Second District held a defendant on *postrelease control* can be charged with escape. *Boggs*, 2008-Ohio-1583, ¶ 14 (2nd Dist.). To the court, postrelease control fell within the definition of detention as "supervision by an employee of the department of rehabilitation and correction of a person on any type of release from a state correctional institution . . ." *Id.* at ¶ 11. See also *State v. Long*, 82 Ohio App.3d 168, 171 (2nd Dist. 1992) (holding *electronic monitoring house arrest* is a form of detention because it acts as confinement whereas probation—now called community control—"is the suspension of a sentence of confinement prior to commitment."), *State v. Duke*, 1999 WL 76076, *3 (6th Dist. Feb. 19, 1999), (holding "detention encompasses persons who are *confined at home* with electronic monitoring following their conviction and sentencing for a crime.") (Emphasis added).

Analysis

{¶ 17} Allen argues on appeal that there is insufficient evidence to support his conviction for escape because his curfew did not amount to "custody" or "confinement" sufficient to be deemed "detention." We agree. The trial court's order and Allen's electronic monitoring referral expressly noted Allen was subject to a curfew, not house arrest, and officers testified that Allen was "able to do whatever it is that he would like to do" outside of his curfew hours. The distinction between house arrest and a simple curfew is significant. A curfew cannot be considered "confinement in any public or private facility

for custody of persons charged with or convicted of crime" (one definition of detention) because a curfew—unlike house arrest—does not include "confinement" within its statutory definition. Compare R.C. 2929.01(G) and (P). In addition, community control is not "supervision by an employee of the department of rehabilitation and correction of a person on any type of release from a state correctional institution" (another definition of detention) because (1) community control is "the suspension of a sentence of confinement prior to commitment" and (2) community control is (with limited exception) supervised by local probation departments, not the department of corrections. *Id*; *Long* at 171; R.C. 2929.15(2)(a).

{¶ 18} None of the authorities the State cited in support of Allen's escape charge involve an individual on community control with an electronically monitored *curfew*. *Sutton*, 2004-Ohio-2679 (6th Dist.) (pretrial electronic monitoring); *Gould*, 2008-Ohio-900 at ¶ 2 (5th Dist.) (electronically monitored house arrest); *Duke* at *1, 3 (electronically monitored house arrest); *State v. Luikart*, 1996 WL 253316, *3 (3rd Dist. May 8, 1996) (holding defendant's "*confinement* in his home" met the definitions of detention and detention facility); *Long* at 169 (electronically monitored house arrest). These cases are therefore easily distinguishable from the facts of this case which involves a curfew, not house arrest.

{¶ 19} After viewing the evidence in a light most favorable to the prosecution, one of the essential elements of escape—detention—cannot be met in this case.

{¶ 20} Allen's first assignment of error is sustained.

Second Assignment of Error – Theft

Standard of Review and Applicable Law

{¶ 21} We analyze Allen's assignment of error regarding his theft conviction with the same sufficiency of the evidence standard articulated above. Theft occurs when a

person "with purpose to deprive the owner of the property . . . knowingly obtain[s] or exert[s] control over . . . the property . . . [b]eyond the scope of the express or implied consent of the owner or person authorized to give consent." R.C. 2913.02(A)(2).

Analysis

{¶ 22} Allen raises only one argument against his theft conviction: the State presented insufficient evidence for him to be convicted of theft because he did not "exert control of the electronic monitor equipment beyond the scope of the express consent given by [Community Corrections]." He asserts that under the terms of the consent form he signed, he "was able to do whatever he wanted with the monitoring equipment he received, so long as he paid for the monetary costs."

{¶ 23} This is incorrect. While the consent form stated Allen was "financially liable should any damage or loss occur" to his electronic monitor, the form also expressly stated (1) "You are not to remove your monitor without authorization (e.g. cut, destroy, etc.)" and (2) "*You may be prosecuted* under applicable criminal law in the event the equipment is not returned to Community Corrections." The evidence presented at trial demonstrates Allen removed his monitor without authorization and never returned it to Community Control. These actions went beyond the scope of the consent form, regardless of whether Allen agreed to pay for the costs associated with that breach.

{¶ 24} Allen's second assignment of error is overruled.

{¶ 25} Judgment affirmed in part, reversed in part. Allen's conviction for escape is vacated.

PIPER, P.J., and M. POWELL, J., concur.

JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed in part and reversed in part. Appellant's conviction for escape is vacated.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed 50% to appellant and 50% to appellee.

/s/ Robin N. Piper, Presiding Judge

/s/ Mike Powell, Judge

/s/ Melena S. Siebert, Judge