

IN THE COURT OF APPEALS OF IOWA

No. 3-007 / 10-0862
Filed February 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSHUA JOHN PAARMANN,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Paul L. Macek,
Judge.

Joshua Paarmann challenges his conviction for felony escape under Iowa
Code section 719.4(1) (2009). **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Matthew Oetker, Assistant Attorney
General, Michael J. Walton, County Attorney, and Jerald L. Feurerbach,
Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

Joshua Paarmann challenges his conviction for felony escape under Iowa Code section 719.4(1) (2009), alleging he should have been prosecuted instead under the absence-from-custody provision at Iowa Code section 719.4(3). Because substantial evidence backs the district court's determination that Paarmann intentionally left a facility to which he was committed by reason of his previous burglary conviction, we affirm his class "D" felony escape conviction.

In May 2008, Paarmann was convicted of forgery and burglary in the second degree¹ and sentenced to the Iowa Department of Corrections (DOC). The DOC placed him at the Davenport Work Release Center in December 2009. On December 30, 2009, nineteen-year-old Paarmann departed the work release center without permission. He left through a fire exit in the facility's dining hall. A staff person was located in the area of the dining room but was not situated near the exit. The door was equipped with a crash bar but not an alarm. When Paarmann did not return to the facility, the DOC placed him on "escape status." He was arrested on January 5, 2010.

On January 26, 2010, the State prepared a trial information, charging him with felony escape in violation of section 719.4(1) (2009). On April 19, 2010, Paarmann waived his right to a jury trial and stipulated to the facts set out in the previous paragraph. Defense counsel urged the district court to find Paarmann was not guilty of felony escape because the door was not guarded. The defense argued the facts instead fit the serious misdemeanor described in section

¹ Second-degree burglary is a class "C" felony. Iowa Code § 713.5(2) (2007).

719.4(3). The district court issued its verdict on April 30, 2010, finding Paarmann guilty of felony escape. On May 19, 2010, the court sentenced him to an indeterminate five-year term to run consecutive to his current sentence. Paarmann appealed that same day.

On appeal, Paarmann reiterates his belief that his offense fell under section 719.4(3) and not 719.4(1). Our review of the sufficiency and statutory interpretation issues is for errors at law. See *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008).

The best place to start is the language of the statutes. The felony escape statute provides, in pertinent part:

A person convicted of a felony . . . who intentionally escapes . . . from a detention facility, community-based correctional facility, or institution to which the person has been committed by reason of the conviction . . . commits a class “D” felony.

Iowa Code § 719.4(1).

The absence-from-custody provision states, in pertinent part:

A person who has been committed to an institution under the control of the Iowa department of corrections, to a community-based correctional facility . . . who knowingly and voluntarily is absent from a place where the person is required to be, commits a serious misdemeanor.

Iowa Code § 719.4(3).

In *State v. Burtlow*, 299 N.W.2d 665, 669 (Iowa 1980), our supreme court discussed the difference between the two subsections:

Subsection one of section 719.4 obviously applies when a person convicted or charged with a felony intentionally departs without authority from a detention facility or institution to which the person has been committed on the conviction or charge. This is true whether the departure is accomplished through “stealth, guile or

violence.” 4 J. Yeager and R. Carlson, *Iowa Practice: Criminal Law and Procedure* § 426, at 110 (1979). Subsection three of the statute obviously applies when a prisoner is absent without authority from a place he is required to be, even if he has not left the premises of the institution or detention facility. *Id.*, § 428

The *Burtlow* court concluded a defendant’s conduct in failing to return to a work release center following a week-long furlough fell within subsection three. *See Burtlow*, 299 N.W.2d at 669. The court opined subsection one was intended to punish “unauthorized departures from physical restraint” when a “danger of injury to persons or property exists.” *See id.* The court later clarified that the phrase—“physical restraint”—as used in *Burtlow*, did not mean “actual physical contact” but the potential for that contact if a person tried to flee from authorities. *See State v. Breitbach*, 488 N.W.2d 444, 449 (Iowa 1992). The *Breitbach* court also explained that the State was not required to show a defendant’s unauthorized departure gave rise to a “danger of injury to persons or property” to prove a violation of subsection one. *See id.*

Here, Paarmann asserts his situation is analogous to *Burtlow* because leaving through the unguarded dining room exit “did not create a circumstance of physical danger.” As established in *Breitbach*, the creation of physical danger is not an essential element of felony escape.

The question is whether Paarmann’s departure from the DOC facility subjected him to immediate physical restraint. *See State v. Smith*, 690 N.W.2d 75, 77 (Iowa 2004). The district court was correct in concluding it did; “the defendant certainly knew or should have known that when permission was required to be absent from the facility, by leaving the facility without permission,

he was escaping from it. To accept the defendant's argument, would essentially nullify subsection one except in escapes from actual physical contact." After his unauthorized departure from the work release center on December 30, 2009, the DOC placed Paarmann on "escape status," and he was arrested six days later. When he walked out of the fire exit, even in the absence of a guard or an alarm, Paarmann was subject to immediate physical restraint because he had been committed to the DOC facility and did not have permission to be at any other location. See *Burtlow*, 299 N.W.2d at 669 (noting intentional departure of person committed to facility need not be a violent one to qualify as an "escape"). His conviction under section 719.4(1) should stand.

AFFIRMED.