IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAURICE WILLIAMS,	§	
	§	No. 348, 2013
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. No. 1011002501
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: November 27, 2013 Decided: February 19, 2014

Before HOLLAND, BERGER, and JACOBS, Justices.

ORDER

This 19th day of February 2014, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Maurice Williams ("Williams") was convicted of Escape After Conviction under 11 *Del. C.* § 1253 on May 30, 2013 following a two-day jury trial. On June 28, 2013, the trial court declared Williams an habitual offender under 11 *Del. C.* § 4214(a) and sentenced him to eight years at supervision Level V. Williams appeals from his conviction, claiming that the trial judge improperly precluded Williams from presenting a "justification—choice of evils" defense to the jury. We disagree and affirm.

- 2. On November 4, 2010, Williams was incarcerated at the Plummer Center in Wilmington, Delaware.¹ That morning, Williams left the Center on a day pass, which authorized him to leave the Plummer Center, but required him to return by 4:45 p.m. that same day. Williams did not return to custody as required, and was apprehended eight days later in Elkton, Maryland.
- 3. Following a jury trial, Williams was convicted of Escape After Conviction, in violation of 11 *Del. C.* § 1253, on June 23, 2011. This Court reversed that conviction by Opinion dated December 10, 2012, holding that the trial judge had improperly denied Williams' request to represent himself.²
- 4. A second jury trial on the charge of Escape After Conviction began on May 29, 2013. At that trial, Williams sought to present a "justification—choice of evils" defense under 11 *Del. C.* § 463.³ Specifically, Williams claimed that he did not return to custody on November 4, 2010 because he was trying to help his daughter, who was missing and at risk of suicide. During pre-trial proceedings,

¹ The facts are mainly drawn from this Court's Opinion reversing Williams' conviction after his first jury trial on this offense. *See* Williams *v. State*, 56 A.3d 1053 (Del. 2012).

² Williams, 56 A.3d at 1056. In that appeal, Williams also claimed that "the trial judge abused her discretion when . . . she denied his request for the jury to consider a defense of justification." *Id.* at 1054. We did not address that issue, having reversed the conviction on other grounds.

³ 11 *Del. C.* § 463 provides that "conduct which would otherwise constitute an offense is justifiable when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the defendant, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue."

however, the trial judge determined that Williams could not present that justification—choice of evils defense. The judge stated: "[w]e can do the proffer on the choice of evils defense, but I'll be honest with you, unless the proffer is that you're the one medical person that could have provided treatment to your daughter, it's not a valid argument. It's not even close actually." Williams and the judge then engaged in a colloquy as follows:

THE WITNESS: [Because of] my mental state of mind . . . I shouldn't even be coming to this.

THE COURT: Now your argument is not that you left because of an illness in your family, but because you were mentally ill yourself.

THE DEFENDANT: It was all of the above.

- 5. The trial judge later clarified that Williams "can just testify as to the facts. . . . I'm instructing counsel that you can't elicit a jury nullification fact or choice of evils defense fact. You can ask him what were you doing that day, what happened. I was out on a pass. My daughter disappeared and I decided not to [return to the Plummer Center]." During a pre-trial conference, Williams did not seek the admission of any specific pieces of evidence in support of his defense theory.
- 6. At trial, Williams testified that he did not return to the Plummer Center on November 4, 2010 because he believed that he had completed his sentence and was free to return to his home.⁴ On May 30, 2013 the jury convicted Williams of

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⁴ On November 4, 2010, Williams had only 22 days remaining on his sentence.

Escape After Conviction. On June 28, 2013 the trial court declared Williams an habitual offender under 11 *Del. C.* § 4214(a) and sentenced him to eight years at supervision level V, followed by six months at supervision level IV. Williams timely appealed from his conviction.

- 7. This Court reviews a Superior Court's evidentiary rulings for abuse of discretion.⁵ Claims that the trial judge violated a defendant's Sixth Amendment right to present a defense are reviewed *de novo*.⁶ Evidentiary rulings and claims that a defendant's Sixth Amendment right to present a defense was violated are subject to harmless error review.⁷
- 8. Williams sole claim on appeal is that the trial judge erred by prohibiting any presentation at trial of Williams' "justification—choice of evils" defense under 11 *Del. C.* § 463.⁸ The State responds that justification is available as a defense to a charge of escape only in the narrow circumstances identified in *Johnson v. State.*⁹

⁵ Coles v. State, 959 A.2d 18, 24 (Del. 2008) (citing Manna v. State, 945 A.2d 1149, 1153 (Del. 2008)).

⁶ *Id.* (citing *Jones v. State*, 940 A.2d 1, 9-10 (Del. 2007)).

⁷ See Culp v. State, 766 A.2d 486, 491 (Del. 2001) (conducting harmless error analysis); United States v. Lopez-Perez, 514 F. App'x 463, 464 (5th Cir. 2013) (citing United States v. Skelton, 514 F.3d 433, 438 (5th Cir. 2008)); United States v. Evans, 728 F.3d 953, 956 (9th Cir. 2013).

⁸ It is not entirely clear whether Williams is arguing that the trial judge abused his discretion in limiting Williams' testimony or that the trial judge violated Williams' Sixth Amendment right to present a defense, because almost all the cases cited in his opening brief concern the issue of when a defendant is entitled to a requested jury instruction.

⁹ 379 A.2d 1129 (Del. 1977).

Accordingly, (the State argues), the defense of justification was not available to Williams as a matter of law, and the conviction should be affirmed.

- 9. The parties' contentions raise two issues: 1) under what circumstances is justification available as a defense to the crime of Escape After Conviction; and 2) did the trial judge reversibly err by precluding Williams' justification defense?
- 10. As for the first issue, Delaware law is clear that justification is available as a defense to the crime of Escape After Conviction only in very limited circumstances. In *Johnson v. State* this Court approved the test for justification (in the context of escape) as set forth in *People v. Lovercamp*. This Court explained that:

Under *Lovercamp*, justification is available as a defense to the charge of escape from prison *only* when: (1) The prisoner is faced with a specific threat of death, forcible sexual attack or substantial bodily injury in the immediate future; (2) There is no time for a complaint to the authorities or there exists a history of futile complaints which make any result from such complaints illusory; (3) There is no time or opportunity to resort to the courts; (4) There is no evidence of force or violence used towards prison personnel or other 'innocent' persons in the escape; and (5) The prisoner immediately reports to the proper authorities when he has attained a position of safety from the immediate threat.¹¹

11. Williams argues that 11 *Del. C.* § 463 affords him an alternative justification defense independent of the *Johnson/Lovercamp* justification defense.

¹⁰ 118 Cal. Rptr. 110, 112 (Cal. Ct. App. 1974) (explaining that justification, as a defense to escape, has "rigid limitations" in order to protect "the rights and interests of society").

¹¹ *Johnson*, 379 A.2d at 1131-32 (citing *Lovercamp*, 118 Cal. Rptr. 110) (internal quotation omitted) (emphasis added).

That argument fails because it overlooks the language in *Johnson* that justification is available as a defense to the crime of escape *only* when the five enumerated conditions are satisfied. Moreover, 11 *Del. C.* § 463 provides that the choice of evils defense is available "[u]nless inconsistent with . . . some other provisions of law." 12

12. Regarding the second issue, Williams appears to argue that the trial judge erroneously determined that Williams' justification defense theory was not credible, and thereby usurped the fact-finding role of the jury. But, a defendant's right to present defense theories and evidence is not absolute.¹³ This Court has held that a trial judge may preclude the presentation of a justification defense where it is apparent that the defendant's proffered evidence is inadequate to support the defense.¹⁴ Presumably in response, Williams suggests, in his reply brief, that the trial judge erred by not holding a separate pre-trial evidentiary hearing to determine the legal adequacy of the evidence. Even if the pre-trial

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¹² 11 *Del. C.* § 463 (2007). *See, e.g.*, Michael H. Hoffheimer, *Codifying Necessity: Legislative Resistance to Enacting Choice-of-Evils Defenses to Criminal Liability*, 82 Tul. L. Rev. 191, 194 (2007) ("Escaped prisoners have raised the defense so often that most jurisdictions have crafted special rules that limit its availability in prosecutions for criminal escape.").

¹³ See United States v. Scheffer, 523 U.S. 303, 308 (1998) ("[S]tate and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. Such rules do not abridge an accused's right to present a defense so long as they are not 'arbitrary' or 'disproportionate to the purposes they are designed to serve."").

¹⁴ *Johnson*, 379 A.2d at 1132; *Holmes v. State*, 1980 WL 333049, at *1 (Del. Super. Ct. July 23, 1980); *see also, United States v. Kamara*, 304 F. App'x 959, 960 (3d Cir. 2008) ("We agree with the District Court that Kamara did not adduce sufficient evidence for prong one [of the justification defense]. The District Court thus did not err.").

colloquy between the trial judge and Williams was procedurally inadequate, any

error was harmless because the justification defense was unavailable to Williams

as a matter of law.

13. The choice of evils defense under 11 Del. C. § 463, and the justification

defense as set forth in Johnson, were unavailable to Williams as a matter of law.

Williams' defense—that he did not return to the Plummer Center because he

needed to find his daughter who was (according to Williams) at risk of suicide—

does not meet the first criterion of the Johnson/Lovercamp test ("The prisoner is

faced with a specific threat of death, forcible sexual attack or substantial bodily

injury in the immediate future"). The trial judge did not commit reversible error by

excluding Williams' choice of evils and justification defenses.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior

Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs

Justice

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