

STATE V. JOHN G.

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOHN G.,
Child-Appellant.

NO. 29,932

COURT OF APPEALS OF NEW MEXICO

March 16, 2010

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY, Jane Shuler Gray,
District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Hugh W. Dangler, Chief Public Defender, Karl Erich Martell, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: CYNTHIA A. FRY, Chief Judge,
ROBERT E. ROBLES, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

Child appeals his conviction for escape from the custody of a peace officer. We proposed to affirm in a calendar notice, and Defendant responded with a memorandum

in opposition. We have carefully considered Defendant's arguments, but we are not persuaded that affirmance is not the correct disposition in this case. We therefore affirm.

Defendant continues to argue that he should have been charged with escape from the custody of CYFD, rather than escape from the custody of a peace officer. As discussed in our calendar notice, Child was arrested on a charge of first degree murder, detained, and later bound over to district court to be tried as an adult. Child was incarcerated in the Eddy County Detention facility. While being transported from the detention facility, Child unlocked his restraints with a stolen handcuff key and escaped from the van when the door was opened by the officer.

Escape from a peace officer occurs when a person arrested for the commission or alleged commission of a felony unlawfully escapes from the custody or control of a peace officer. NMSA 1978, § 30-22-10 (1963). Escape from the custody of CYFD occurs when a person who is alleged to be a delinquent child and has been lawfully detained in a juvenile detention facility escapes from another lawful place of custody or confinement that is not within the confines of a CYFD juvenile justice facility. NMSA 1978, § 30-22-11.1 (2009). Here, Child was bound over to be tried as an adult in district court, and prior to his escape, Child was detained in the county detention facility and not in a juvenile detention facility. The circumstances of this case fit within the statutory language for escape from the custody of a peace officer, but do not fit within the statutory language for escape from the custody of CYFD.

For the reasons discussed above and in our calendar notice, we affirm Child's conviction.

IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

CYNTHIA A. FRY, Chief Judge

ROBERT E. ROBLES, Judge