

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEIL ANDY WEBB,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43159

**FILED**

**JAN 11 2006**

ORDER OF REVERSAL

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of felony escape. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Neil Andy Webb to serve a prison term of 24 to 72 months. Webb claims among other things that insufficient evidence was adduced at trial to support his conviction. We agree.

To prove that a defendant is guilty of felony escape, the State must show that he was confined in a prison or in the lawful custody of an officer or other person; he escaped or attempted to escape from the prison or custody; and he was being held on a felony charge, conviction, or sentence.<sup>1</sup> The standard of review for a challenge to the sufficiency of the evidence to support a criminal conviction is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier

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<sup>1</sup>NRS 212.090; see also Browning v. State, 120 Nev. 347, 366, 91 P.3d 39, 53 (2004).

of fact could have found the essential elements of the crime beyond a reasonable doubt.”<sup>2</sup>

Here, even when viewed in the light most favorable to the prosecution, the evidence adduced at trial does not support a felony escape conviction. The State presented evidence that Webb was placed under arrest and that he subsequently attempted to escape, but it failed to present evidence that Webb was being held on a felony charge at the time of his attempted escape. At trial, Officer Heldt testified that she decided to place Webb under arrest after talking with Officer Clancy, Webb, and Webb's girlfriend and her daughter. Officer Heldt did not testify as to her reason for placing Webb under arrest. Officer Clancy, however, testified that Webb "was advised that he would be arrested for domestic violence." The first and second offenses of battery constituting domestic violence are misdemeanors.<sup>3</sup>

As no evidence was presented that Webb was being held on a felony charge, we conclude that the State failed to prove an essential element of the crime of felony escape and therefore Webb's conviction must

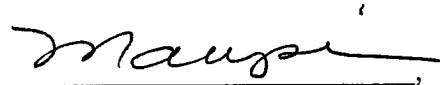
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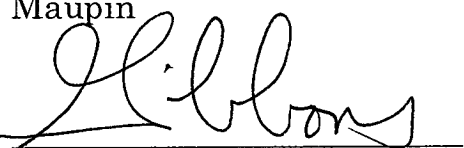
<sup>2</sup>McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

<sup>3</sup>See NRS 200.485(1)(a) and (b).

be reversed.<sup>4</sup> Having concluded that this case must be reversed, we decline to consider Webb's remaining contentions.<sup>5</sup> Accordingly, we

ORDER the judgment of conviction REVERSED.

 J.

Maupin  
 J.  
Gibbons

 J.  
Hardesty

cc: Hon. Stewart L. Bell, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk  
Neil Andy Webb

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<sup>4</sup>See Batin v. State, 118 Nev. 61, 38 P.3d 880 (2002).

<sup>5</sup>Because Webb is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Webb unfiled all proper person documents he has submitted to this court in this matter.