IN THE SUPREME COURT OF FLORIDA



STATE OF FLORIDA,

Plaintiff,Petitioner,

v.

JIMMIE RAMSEY, JR.,

Defendant,Respondent.

CASE NO. 64,776

# RESPONDENT'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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RESPONDENT'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case as being substantially accurate. However, the "Facts" stated by Petitioner deviate from those stated in the decision here at issue, and since it is from those Facts that express and direct conflict must derive, the precise facts set forth in the opinion are respectfully repeated verbatim here:

"Ramsey was stopped for passing another vehicle in a no-passing zone and for several other traffic violations. While writing up the citations, the deputy received information from his routine computer check that there were two outstanding capiases for Ramsey from Seminole County. Ramsey was informed of the capiases, placed under arrest, and instructed to put his hands on the trunk of the patrol car. Ramsey then turned around and said, "No way!"

and ran from the scene. At no time was Ramsey restrained and the arrest procedure had not progressed to the point where the deputy had removed his handcuffs from their carrying place."

## ISSUE

WHETHER EXPRESS, DIRECT CONFLICT EXISTS BETWEEN RAMSEY V. STATE, ___ So.2d ___ (Fla. 5th DCA 1983)[8 FLW 2817] AND STATE V. AKERS, 367 So.2d 700 (Fla. 2d DCA 1979)?

In arguing that irreconcilable conflict exists between Ramsey v. State, ___ So.2d ___ (Fla. 5th DCA 1983)[8 FLW 2817] and State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979), the State has failed to recognize that the cases concern sworn motions to dismiss pursuant to Rule 3.190(c)(4), Fla.R.Crim.P. Thus, the question before each trial judge was whether the particular facts of the respective case, viewed in a light most favorable to the non-moving party, established a prima facie violation of Section 944.40, Florida Statutes (Escape).

The Second District Court of Appeal in Akers, supra, held that a prima facie case of escape was presented where a defendant was arrested, placed in handcuffs and thereafter ran from the arresting officers. The Court, whether correctly or incorrectly,[1/] apparently viewed the handcuffing of that defendant as presenting competent, substantial evidence from which a jury could determine that transportation of the defendant to a place of confinement had commenced.

In Ramsey, however, there simply were no facts from which a jury could lawfully determine that transportation of the defendant to or from a place of confinement had commenced prior to the defendant running away from the arresting officer.

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[1/] The propriety of the Court's holding in Akers, supra, has not hitherto been challenged. Akers has only been cited in a footnote in Yates v. State, 392 So.2d 1020 (Fla. 5th DCA 1981), and a concurring opinion in Williams v. State, 416 So.2d 493 (Fla. 5th DCA 1982), quashed at State v. Williams, ___ So.2d ___ (Fla. 1984)[9 FLW 12].

Respondent respectfully submits that the only basis for the exercise of jurisdiction by this Court is if the opinion in Akers is fallacious. Specifically, if the handcuffing of a defendant before he flees from an arresting officer is insufficient indicia of "transportation to or from a place of confinement" so as to qualify the conduct of the defendant as an escape in accordance with Section 944.40, Florida Statutes, then, and only then, does the holding in Akers conflict with the holding in Ramsey, and such jurisdiction should be exercised to quash the Akers opinion.

However, if the handcuffing of a defendant before the defendant flees from the arresting officer is viewed by this Court as being competent, substantial proof of transportation of a defendant to or from a place of confinement, it remains that in Ramsey the defendant was not handcuffed, nor was there any act that could be viewed as indicia of the commencement of transportation of the defendant to or from a place of confinement.

## CONCLUSION

BASED UPON the argument and authority cited herein, Respondent respectfully submits that the only basis for the exercise of this Court's discretionary jurisdiction is direct conflict generated by an erroneous holding in State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979), and such jurisdiction should be exercised if this Court deigns it necessary to correct the Akers decision.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to: The Honorable Jim Smith, Attorney General, 125 N. Ridgewood Ave., Fourth Floor, Daytona Beach, Florida 32014 and Mr. Jimmie Ramsey, Inmate No. A073769, Reception & Medical Center, P. O. Box 628, Lake Butler, FL 32054-0628 this 7th day of February, 1984.

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