DA 10-1-84

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,
vs.
JIMMIE RAMSEY,
Respondent.

CASE NO. 64,776

RESPONDENT'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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RESPONDENT'S BRIEF ON THE MERITS

STATEMENT OF THE CASE

Respondent accepts the State's Statement of the Case as being substantially accurate.

STATEMENT OF THE FACTS

Respondent declines to accept the State's Summary of Facts set forth in the Petitioner's Brief on Merits (PB at p. 1).[1/] Instead, Respondent respectfully submits that the controlling facts are set forth in the Sworn Motion to Dismiss, and are as follows:

On May 20, 1982, in the vicinity of State Road 15A and Pershing Road in Orange County, Florida, Deputy Sheriff A. Parsons and auxiliary Deputy Ellixson spotted a blue 1971 Camaro with a loud muffler, passing another vehicle in a no passing zone. Deputy Parsons, upon stopping the above-described vehicle for several traffic infractions, learned the identity of the driver of the vehicle to be Jimmie Ramsey, the defendant in this cause. Deputy Parsons attempted to check the department computers for any outstanding warrants for Jimmie Ramsey, but the initial reports were inconclusive. More information was requested.

Deputy Parsons prepared three traffic infraction citations for the defendant's signature. The defendant was not under arrest at this time. Deputy Parsons received additional information indicating that two capiases from Seminole County were outstanding against Jimmie Ramsey. At this time, Deputy Parsons had the defendant sign the citations. After signing the citations, Deputy Parsons and the defendant began to walk towards his car. Deputy Parsons then informed the defendant of the two outstanding capiases from Seminole County.

Deputy Parsons informed the defendant that he was under arrest on the outstanding warrants and instructed him to place his

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[1/] (PB) hereafter refers to the Petitioner's Brief on the Merits.

hands on the back of the automobile. Deputy Parsons did not have the defendant physically restrained in any manner and in fact was not touching him in any form. At this time the defendant turned toward his automobile, extended his arms as if to place his hands on the car, hesitated and then looked at Deputy Parsons and responded "No way!".

At this time, the defendant was not in any manner physically restrained and Deputy Parsons' arrest procedure had not progressed to the point where he had removed his handcuffs from their normal carrying place. At this time, the defendant fled from Deputy Parsons in an attempt to resist arrest. (R61-62).[2/]

A Demurrer was filed to these facts. (R60).

[2/] (R) refers to the Record on Appeal of the instant cause.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN REFUSING TO GRANT THE SWORN MOTION TO DISMISS, AS CORRECTLY HELD BY THE FIFTH DISTRICT COURT OF APPEAL, FOR THE UNCONTROVERTED FACTS FAILED TO PRESENT A PRIMA FACIE CASE OF ESCAPE UNDER SECTION 944.40, FLORIDA STATUTES.

Mr. Ramsey was detained for a traffic infraction and, after signing the citation, began to walk toward his car. Thereafter, without physically restraining Mr. Ramsey, the deputy announced that Mr. Ramsey was under arrest for outstanding Seminole County warrants. Mr. Ramsey said "No way!" and fled. The Fifth District Court of Appeal correctly decided that, as a matter of law, those facts were insufficient to establish a prima facie case of escape under Section 944.40, Florida Statutes (1981).

The pertinent statute provides:

> Any prisoner confined in any prison, jail, roadcamp, or other penal institution, state, county, or municipal, working upon the public roads, or being transported to or from a place of confinement who escapes or attempts to escape from such confinement shall be guilty of a felony of the second degree, punishable as provided in Section 775.082, Section 775.083, or Section 775.084. The punishment of imprisonment imposed under this section shall run consecutive to any former sentence imposed upon any prisoner.

Respondent respectfully submits that Mr. Ramsey was clearly not a "prisoner confined in any prison, jail, roadcamp, or other penal institution, state, county, or municipal, working upon the public

roads". Was Mr. Ramsey a "prisoner being transported to or from a place of confinement"? Again, the clear answer is no. Assuming for the sake of argument that Mr. Ramsey was indeed a "prisoner", it nonetheless remains that, when Mr. Ramsey stated "No way!" and ran, he was not being transported anywhere.

To transport means "to carry or convey from one place to another". Blacks Law Dictionary, 5th Edition (page 1344), see also Sacremento Navigation Company v. Salz, 273 U.S. 326, 329, 47 Sup.Ct. 368, 369, 71 L.Ed. 663, 666 (1927). Mr. Ramsey was not being carried from one place to another at the time he fled, and it is clear that the deputy never obtained custody over Mr. Ramsey in order to transport him.

Respondent submits that a distinction must be made between "lawful custody", as is used in the definition of "prisoner", and simply "custody", as used in reference to actual control/dominion over another. In this regard, "lawful custody" has become a term of art supplied by Section 944.02(4), Florida Statutes (1981), and used in a specific context as an element of proof to be proved by the State. State v. Williams, 444 So.2d 13 (Fla. 1984). "Custody", on the other hand, also connotes control over someone or something, and the plain meaning of that single word in the statute also requires consideration/application. In context, the word "custody" simply means that the officer must have control/ dominion over the arrestee prior to the arrestee being capable of "escaping".

The facts of the case sub judice are that the deputy did not have sufficient control [or "custody", if you will] to transport Mr. Ramsey anywhere. In recognition of this fact, the State

has framed its point to include "an arrestee ... who is being prepared to be transported to jail." (PB at p.5). The State could just as well argue that Mr. Ramsey was "being prepared to be" "confined in any prison, jail, roadcamp, or other penal institution". The inclusion of the words "being prepared to be" interjects a material change into the clear language of the statute.

Specifically, the State urges this Court to divine a legislative intent to have the instant legislation address the situation where an arrestee eludes his wouldbe arresting officer, notwithstanding that such conduct is clearly proscribed by Section 843.02, Florida Statutes (1981). Respondent respectfully submits that the language of Section 944.40 is clear and precise. Accordingly, it is unnecessary and improper to resort to statutory construction to achieve judicial restructuring of the already clear statute. Robinson v. State, 393 So.2d 1076 (Fla. 1981); Fine v. Moran, 74 Fla. 417, 77 So. 533 (1917).

In this regard, the Supreme Court of Florida has correctly stated the following:

> In construing or interpreting the words of a statute it should be borne in mind that the courts have no function of legislation, and seek only to ascertain the will of the Legislature. The courts may not imagine an intent and bend the letter of the act to that intent, much less, says the Maryland Court, "can we indulge in the license of striking out and inserting and remodeling with the view of making the letter express an intent which the statute in its native form does not evidence. (Citation omitted). The legislator is presumed to know the meaning of words and the rules of grammar, said the Supreme Court of the United States in (citation omitted). In the case of State ex rel Jordan v. Buckman, 18 Fla.

> 267, Mr. Justice Westcott, speaking for the court, said that when the language of a Constitution or statute is clear, plain, and without ambiguity, the effect must be given to it accordingly. The language being clear and plain, there is no uncertainty to be explained. In another case, the court, speaking through Mr. Justice Parkhill, said; "The first rule of construction is that, if the language is clear and admits of but one meaning, the Legislature should be held to have intended what it has plainly expressed, and there is no room for construction." (Citation omitted).
>
> It is not allowable to interpret what has no need of interpretation. (Citation omitted). For the words used have a definite and precise meaning, the courts have no power to go elsewhere in search of conjecture in order to restrict or extend the meaning. (Citation omitted). Courts cannot correct supposed errors, omissions, or defects in legislation. "The object of interpretation is to bring sense out of the words used, and not to bring a sense into them." (Citation omitted).

Fine, supra, at 536. The court went on to state that "it is not allowable to bend the terms of an act of the legislature to conform to our view as to the purpose of the act, where its terms are expressed in language that is clear and definite in meaning. Certainly it is not permissible to strike out words of plain, definite meaning and substitute others in order that the purpose of the act, after such remodeling, may more nearly conform to our notions as to its purpose and be congruent with our views as to what language should have been used to accomplish such purpose of the statute. Id. at 536.

The State points to cases where ambiguous statutes have necessarily been construed/interpreted by the respective courts and argues that, "... in the case at bar legislative history and other statutes should be considered before it becomes necessary

to narrowly and strictly construe this statute." (PB at p.10). This argument simply ignores that the instant statute is not ambiguous, and the legislative intent is clear and evident from the language used in the statute itself. To strickly construe this statute, as was done by the Fifth District Court of Appeal, does not in any way render it meaningless or provide for an absurd result. Rather, a common sense application of the statute obtains, bearing in mind that the penalty assessed by this particular legislation is necessarily consecutive to any former sentence imposed upon the prisoner. Cf., Section 944.40, Florida Statutes. Specifically but plainly said, an arrestee cannot become a "prisoner" pursuant to Section 944.02(5), Florida Statutes (1981), until he is in the lawful custody of a law enforcement officer.

The State relies on the past judicial interpretation of the term "lawful custody" as set forth in State v. Williams, 444 So.2d 13 (Fla. 1984), and argues that this means that, since the deputy had a right to arrest Mr. Ramsey, he was already a prisoner pursuant to Section 944.40, Florida Statutes (1981)(PB at p.16-17). Such arguing is a logical extension of State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979), but Petitioner maintains that such reasoning is erroneous. If the rationale of Akers and the State is accepted, a police officer can telephonically inform the subject of a capias that he is under arrest and, if the arrestee thereafter leaves, a successful prosecution for escape could be achieved. Respondent submits that that would be a ludicrous and absurd result, and a result clearly not set forth in the language of the instant statute. The Fifth District Court of Appeal has

correctly held that the statute as framed requires the State to show more than a mere right to legal custody before the arrestee can be convicted of the crime of escape.

The correctness of the court's ruling is evident upon examination of the Standard Jury Instructions for the offense of escape. The instruction specifically reads as follows:

> Before you can find the defendant guilty of Escape, the State must prove the following three elements beyond a reasonable doubt:
>
> Elements 1. (Defendant) was
>
> [under arrest and in the lawful custody of a law enforcement official.]
>
> [convicted of a crime and sentenced to a term of imprisonment and committed to (institution alleged) by a court.]
>
> Give 2a, 2b or 2c as applicable 2. While a prisoner, (defendant) was
>
> [confined at (name institution).]
>
> [being transported to or from a place of confinement.]
>
> [working on a public road.]
>
> 3. (Defendant) escaped or attempted to escape by (read from charge), intending to avoid lawful confinement.

Florida Standard Jury Instructions in Criminal Cases, page 253. Thus, the instructions recognize that the element contemplated in 2b is that a prisoner escapes while [<u>being transported</u> to or from a place of confinement.] Again, simply said, it is not an escape when an arrestee runs away from his wouldbe arresting officer. It matters not that the arrestee, if caught, was about to have been transported. He was not being transported at the

time that he left, and accordingly, pursuant to the clear language of the statute, he committed no escape.

CONCLUSION

BASED UPON the argument and authorities set forth in this Brief, this Court is respectfully asked to affirm in total the decision of the Fifth District Court of Appeal, and to quash the decision of the Second District Court of Appeal in State v. Akers, supra.

Respectfully submitted,

JAMES B. GIBSON
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SEVENTH JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: The Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, FL 32014 and Mr. Jimmie Ramsey, Inmate No. A073769, Reception & Medical Center, P. O. Box 628, Lake Butler, FL 32054-0628 this 25th day of July, 1984.

LARRY B. HENDERSON
ASSISTANT PUBLIC DEFENDER