IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
Petitioner,)
vs.) CASE NO. 64,776
JIMMIE RAMSEY, JR.) 5DCA CASE NO. 82-1623
Respondent.)
)

PETITIONER'S BRIEF ON JURISDICTION

JIM SMITH
ATTORNEY GENERAL

W. BRIAN BAYLY
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014
(904) 252-2005

COUNSEL FOR PETITIONER

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AUTHORITIES CITED

STATEMENT OF THE CASE AND FACTS

Jimmie Ramsey, Appellant/Respondent (hereinafter referred to as Respondent) was charged by information with escape in violation of §944.40 Fla. Stat. (1981). (R 51). Respondent filed a Motion to Dismiss pursuant to Fla. R. Crim. P. 3.190(c)(4) (R 61-65). A demurrer was filed (R 60) and a hearing was held on the motion (R 1-27). The trial court by order denied the motion (R 72).

Respondent entered a plea of no contest as charged, (R 32), was adjudicated guilty of the felony of escape (R 40, 66-67), and sentenced to two years imprisonment (R 68-69). A notice of appeal was filed by Respondent (R 73).

Pursuant to the appeal, the Fifth District Court of Appeal filed an opinion on December 1, 1983, Ramsey v. State, __ So.2d __ (Fla. 5th DCA 1983) [8 FLW 2817], reversing the trial court. Petitioner filed a Motion for Rehearing due to express and direct conflict with State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979). This motion was denied.

In Respondent's Motion to Dismiss he swore to the following facts:

Respondent was stopped driving his automobile for traffic infractions by Deputy Sheriff A. Parsons of the Orange County Sheriff's Department. After ascertaining the identity of the Respondent, Deputy Parsons made a computer check whereby it was disclosed to him that Respondent had two outstanding capiases from Seminole County. The deputy had Respondent sign

the citations, then Respondent and Deputy Parsons began to walk towards the deputy's patrol car. At this point, the deputy informed Respondent of the two outstanding capiases from Seminole County, that the Respondent was under arrest on the outstanding warrants, and for the Respondent to place his (Respondent's) hands on the back of the patrol car. Respondent initially turned toward Deputy Parson's automobile as if to comply by extending his arms, then hesitated, exclaimed, "No way," and then fled to avoid arrest. Deputy Parsons did not have an opportunity to use his handcuffs (R 61-62).

The Fifth District Court of Appeal construed §944.40 Fla. Stat. (1981) which provides in the pertinent part:

> Any prisoner confined in any prison, ... or being transported to or from a place of confinement who escapes ... shall be guilty of a felony...

The district court held that under the facts the statute as quoted above requires:

> ...that the escape, in order to come within the confines of the statute, occur while the prisoner is being transported. (Ramsey, supra at page 2.)

The Fifth District Court of Appeal then acknowledged that the Second District in Akers, supra, reached the opposite conclusion but was factually distinguishable from the case sub judice in that Akers had been handcuffed while Ramsey had not.

Petitioner's jurisdictional brief pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv) follows.

POINT

THERE IS DIRECT AND EXPRESS CONFLICT BETWEEN THE CASE AT BAR, RAMSEY V. STATE, ___ SO.2D ___, (FLA. 5TH DCA 1983) [8 FLW 2817] AND STATE V. AKERS, 367 SO.2D 700 (FLA. 2D DCA 1979) BECAUSE THE ONLY DISTINGUISHING FACTOR BETWEEN THE TWO CASES IS THAT THE DEFENDANT IN AKERS WAS HANDCUFFED AND THIS DISTINCTION WOULD NOT BE SUFFICIENT TO DIFFERENTIATE WHEN AN ARRESTEE WAS "BEING TRANSPORTED TO A PLACE OF CONFINEMENT" PURSUANT TO §944.40 FLA. STAT. (1981).

ARGUMENT

In the case of State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979) the facts were as follows:

Officer Gravely of the Clearwater Police Department arrested defendant Akers for the offense of disorderly intoxication and handcuffed the defendant. At this point, another person interfered with defendant Akers' arrest. While Officer Gravely turned away from the defendant and was attending to the other person that was interfering, defendant Akers ran away and was apprehended within twenty minutes of the initial arrest. At no time was defendant Akers placed in the patrol cruiser. As a result of these facts, defendant Akers was charged with the offenses of resisting arrest without violence, escape and disorderly intoxication.

Based upon these facts, the Second District reversed the trial court's ruling which granted the motion to dismiss filed by Akers' attorney pursuant to Fla. R. Crim. P. 3.190(c)(4).

The Second District quoted §944.40 Fla. Stat. (1977) as follows:

> Any prisoner confined in any prison, ... 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...

Then the Second District quoted §944.02(5) Fla. Stat. (1977) as follows:

> "Prisoner" means any person who is under arrest and in the lawful custody of any law enforcement official.

The court went on to reason that:

> Construing the statute in pari materia, we conclude that the legislature intended that any person under arrest and in the lawful custody of a law enforcement official who escapes while being transported to or from a place of confinement shall be guilty of a felony (Akers at 702).

The Second District went on to hold that for a conviction under the escape statute, the State need only show a right to legal custody and a conscious and intentional act of the defendant in leaving the established area of such custody. The court went on to hold that they do not believe that the phrase found in §944.40 Fla. Stat. (1977), that is, "being transported to or from a place of confinement..." should be interpreted as meaning that a defendant must be in a penal institution at the time of escape.

In the case sub judice, i.e. Ramsey v. State, ___ So.

2d ___, (Fla. 5th DCA 1983) [8 FLW 2817], the facts were virtually the same as in the Akers case. Specifically in the motion to dismiss filed by Respondent's counsel, it is sworn to that Respondent was informed not only that he was under arrest but that he was under arrest for outstanding capiases or warrants. And in furtherance of the arrest as the Respondent and the deputy were walking toward the deputy's automobile, after the Respondent was told that he was under arrest and why, the deputy also directed Respondent to place his (Respondent's) hands on the back of the deputy's patrol car (R 62). Based upon these facts, the Fifth District Court of Appeal held that transportation of the prisoner had not yet begun for purposes of the clause in §944.40 Fla. Stat. (1981), to-wit: "..or being transported to or from a place of confinement..." The Fifth District then went on to acknowledge that Akers was distinguishable only because Akers had been handcuffed while Ramsey had not (Ramsey at 2). The Fifth District then announced in its opinion:

> We believe, however, that the statute as framed requires the State to show more than a mere right to legal custody as required by Akers and, to that extent, we are in conflict with Akers.... Penal statutes must be strictly construed and under the facts here there was no showing whatever that Ramsey was being transported as required by the statute. Since there was no such proof, the court should have granted Ramsey's motion to dismiss. (emphasis not supplied).

Petitioner would submit that the act of being hand-

cuffed would not be a legally sufficient distinction to determine whether or not a defendant is "being transported to a place of confinement" pursuant to §944.40 Fla. Stat. (1981). The facts pursuant to Fla. R. Crim. P. 3.190(c)(4) in Akers at 701 did not state that defendant Akers was informed that he was under arrest or for what reason. Be that as it may, the fact that defendant Akers was handcuffed under the circumstances would be sufficient knowledge on the part of defendant Akers that he was under arrest under the lawful custody of Officer Gravely. In Ramsey, Respondent had not been handcuffed, but nevertheless, Deputy Parsons told Ramsey that he was under arrest for outstanding warrants (R 62). The act of physically handcuffing defendant Akers is tantamount to the verbal assertion by Deputy Parsons to Respondent that he, the Respondent, was under arrest for outstanding warrants. Both acts serve notice on each of the respective arrestees that they are in the lawful custody of the arresting officer and since both arrests occurred in a public area where each peace officer had his respective patrol car available to him, each arrestee would anticipate that transportation to a place of confinement was imminent. In both cases the actual placing of the arrestee in the respective patrol cars had not commenced, although both patrol cars were available and ready to transport each of the respective arrestees.

In Akers, Officer Gravely had the option of issuing a notice to appear to the defendant Akers for the misdemeanors of resisting arrest without violence and disorderly intoxication

pursuant to §901.28(1) Fla. Stat. (1977) (assuming for the sake of argument that the escape charge was not or could not be charged under these circumstances), or the officer could have arrested defendant Akers. The Second option was the course of action that Officer Gravely chose. By handcuffing defendant Akers, the facts would show that the defendant was indeed arrested for the on-sight misdemeanor (pursuant to §901.15 Fla. Stat. (1977) and consequently transportation was inevitable.

Likewise, in Ramsey, the Orange County Deputy arrested Respondent. Indeed, the Orange County Deputy did not have an option as did Officer Gravely in the Akers case to issue a notice to appear. Section 932.48 Fla. Stat. (1981) gives the authority of the clerk of the circuit court to issue capiases for arrest for felony and the statute is quoted as follows:

> Upon the filing of an information, the clerk of the circuit court shall docket the information and shall, without leave or order of the court first being had and obtained, issue a capias for the arrest of the person charged, and the clerk shall likewise issue any and all other necessary process incident to the information.

When the Orange County deputy in Ramsey determined that there were outstanding Seminole capiases on the Respondent, the deputy was under a mandatory duty to comply with §907.04 Fla. Stat. (1981) which deals with the disposition of a defendant upon arrest and is quoted as follows:

> If a person who is arrested does not have a right to bail for the offense charged, he shall be delivered immediately into the custody of the sheriff of the county in which the indictment, information, or affidavit is filed. If the person who is arrested has a right to bail, he shall be released after giving bond on the amount specified in the warrant.

Under §901.28 Fla. Stat. (1981), the Orange County Deputy in the Ramsey case did not have the option to issue a notice to appear since he was dealing with capiases for circuit court and not warrants for misdemeanors or violations of municipal or county ordinances. In fact, this statute gives the arresting officer an option to issue a notice to appear but lists several exceptions. The pertinent exception in the Ramsey case under §901.28(1)(e) Fla. Stat. (1981) states that an officer who has any suspicion that the accused may be wanted in another jurisdiction should not issue a notice to appear. (See also Fla. R. Crim. P. 3.125(b)).

Under the circumstances presented in Ramsey, it is clear that the Orange County Deputy had a mandatory duty to arrest the Respondent. Under these circumstances, transportation was inevitable. Indeed, from the facts, it can be adduced that transportation had commenced since the deputy had announced that the Respondent was under arrest, was under arrest for Seminole warrants, and was directed to put his hands on the deputy's patrol car (R 61-62). Defendant Akers was in the same posture as the Respondent. He had been arrested and handcuffed for a misdemeanor committed in the presence of the arresting officer.

Transportation at this point was imminent and again it could be adduced the act of handcuffing defendant Akers was the first step in the transportation of defendant Akers to a place of confinement. Yet the holdings of each of these cases contradict each other and it would be difficult, if not impossible, for this Honorable Court or another district court of appeal to reconcile these cases in the event this issue arose again. Based upon the disparate holdings in the Akers and the Ramsey cases, Petitioner would submit that there is direct and express conflict which should be resolved by this Honorable Court.

CONCLUSION

Based on the argument and authorities cited herein, Petitioner respectfully prays this Honorable Court exercise its discretionary jurisdiction in this cause.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

W. Brian Bayly

W. BRIAN BAYLY
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014
(904) 252-2005

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by delivery to Larry B. Henderson, Esquire, Assistant Public Defender, 1012 South Ridgewood Avenue, Daytona Beach, Florida 32014-6183, this 19TH day of January, 1984.

W. Brian Bayly

Of Counsel for Petitioner
W. Brian Bayly