OA 10-1-84

IN THE SUPREME COURT OF FLORIDA

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

PETITIONER'S BRIEF ON MERITS

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STATEMENT OF THE CASE AND OF THE FACTS.

The facts of Ramsey v. State, 442 So.2d 303 (Fla. 5th DCA 1983) (App. 1-3) were summarized by Respondent's defense counsel below and stipulated to by the state attorney below as follows:

> It is just a simple situation where an individual was stopped on some routine traffic matters: One of them was a muffler, and passing in a no passing zone, which are basically traffic infractions. Deputy Parsons did state at the time he was writing the citation, as opposed to when he had called in for assistance to the computer to determine whether there were any outstanding warrants, that Mr. Ramsey was not under arrest and he did not intend to place him under arrest on the traffic infractions, because he could not. At some point Deputy Parsons did received information that Jimmie Ramsey, the individual who he had obtained, that he had stopped momentarily, was an individual who was wanted on two outstanding warrants from a Seminole County. He had Mr. Ramsey sign a traffic citation, the infraction citations which he had issued to him. And upon signing them, he walked back toward the defendant's car, and at that time he said, "By the way, there are two outstanding warrants from seminole county; You're under arrest; place your hands on the car." Mr. Ramsey at that time, according to Deputy Parsons, extended his hands, turned and looked at Deputy Parsons, and said, "no way" and ran. (R 5-6)

Prior to summarizing these facts, the defense counsel below announced:

> Defense does not intend to argue that at the time Mr. Ramsey was not under arrest (R 3).

Based upon above stipulated facts, Respondent's defense counsel below filed a sworn motion to dismiss pursuant to Fla. R. Crim. P. 3.190(c)(4) (R 61-65). The State filed a demurer to said motion (R 60) and after the hearing the circuit court judge denied the motion to dismiss (R 72). Mr. Ramsey then entered a plea of no contest appealed to the Fifth District Court of Appeal, and the Fifth District reversed the trial court's order. The Fifth District Court in its opinion, Ramsey, supra summarized the facts as follows:

> Ramsey was informed of the capias, 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. (App 1).

The Fifth District quoted the two statutes being construed for purposes of this petition which were as follows:

> Section 944.40 Fla. Stat, (1981) any prisoner confined in any prison, jail, road camp, or other penal institution, State, County, or Municipal, working upon a public road, 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 ...
>
> Section 944.02(5), Fla. Stat. (1984) "Prisoner" means any person who is under arrest and in the lawful custody of any law enforcement official, or any person convicted and sentenced by any court and committed to any Municipal or County jail or State

> prison, prison farm, or penitentiary, or to the custody of the Department, as provided by law.

In construing these statutes, the Fifth District Court concluded that "..transportation of the prisoner had not yet begun." (App. 2). The Fifth District maintained that the statute required that there would be some "showing...that Ramsey was being transported as required by the statute." (App. 3) (emphasis not supplied). Ergo, the court reasoned, the lower court should have granted Respondent's motion to dismiss.

The Fifth District in its Ramsey opinion did acknowlege in the case of State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979) was "factually distinquishable from this case only in that Akers had been handcuffed while Ramsey was not." (App. 2).

Under similar facts the Second District in State v. Akers, supra reversed a trial court's order which dismissed an information. The Second District maintained that 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 in order for the State to have prima facie evidence of escape. In the Aker's opinion the Second District concluded:

> We do not believe that the legislature perceived that the phrase found in § 944.40 "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. To do so might result in allowing a "prisoner" to simply walk away after he was lawfully arrested and in lawful custody without penalty. Such a strained result... is contrary both to the intent and meaning of this statutory proscription. 367 So.2d at 701. (emphasis supplied).

The State of Florida petitioned this Honorable Court to exercise its discretionary jurisdiction pursuant to Fla. R. App. P. 9.030(2)(A)(iv) in the case of Ramsey v. State, supra. The State maintained that there was express and direct conflict between the holdings of Ramsey and Akers, supra. After the appropriate briefs had been filed on the jurisdictional issue, this Honorable Court granted the State's petition (App. 7).

POINT

AN ARRESTEE UNDER THE LAWFUL CUSTODY OF A LAW ENFORCEMENT OFFICIAL AND WHO IS BEING PREPARED TO BE TRANSPORTED TO JAIL MAY BE CHARGED AND CONVICTED OF ESCAPE PURSUANT TO SECTION 944.40, Fla. Stat. (1981)

ARGUMENT

A. THE LEGISLATIVE INTENT UNDER SECTION 944.40 AND SECTION 944.02(5) FLA. STAT. (1981) ENVISAGES POTENTIAL CONVICTIONS FOR THE OFFENSE OF ESCAPE UNDER THE FACTS OF RAMSEY V. STATE, 442 So.2d 303 (FLA. 5th DCA 1983).

Legislative intent is the paramount consideration in any statutory construction issue. In State v. Nunez, 368 So.2d 422 (Fla. 3d DCA 1979) the trial court dismissed an information charging a defendant with carrying a concealed weapon, that is a pistol. The Defendant contended that a pistol was not a firearm because under the statutory definition of "explosive", § 790.001(5), Fla. Stat. (1977) excluded cartridges or ammunition for firearms. The Third District reversed the trial court's order dismissing the information. This reversal was based upon a close examination of the legislative history of the statutes concerned with carrying concealed firearms. The Third District in justifying its decision maintained:

> Although we are cognizant of the principles of law that criminal statutes should be strictly construed according to the letter

> thereof in favor of the accused, the primary and overriding consideration in statutory interpretation is that the statute should be construed and applied so as to give effect to the evident intent of the legislature regardless of whether such construction varies from the statute's literal meaning. (citations omitted). In other words, criminal statutes are not to be so strictly construed as to esmaculate the statute and defeat the obvious intention of the legislature. 368 So.2d at 423-424

The Third District in Nunez refused to accept the strict interpretation of the statute as presented by the defendant but chose rather to construe the statute in light of the obvious legislative intent. The United States Supreme Court visited a similar issue in United States v. Healy, 84 S.Ct. 553, 376 U.S. 75, 11 L.Ed.2d 527 (1964). In Healy the trial court dismissed an indictment based upon a statute penalizing airplane piracy. The defendant maintained that under the wording of the statute the airline hijacking must be for pecuniary reward. The trial court agreed. The United States Supreme Court rejected the defendant's reliance on the principles of strict construction of penal statutes and held:

> ...that maxim is hardly a directive to this court to invent distinctions neither reflective of the policy behind congressional enactments nor intimated the words used to implement the legislative goal. 84. S.Ct. at 558, 376 U.S. at 82.

The Supreme Court then reversed and remanded the cause to have

the trial court reinstate the indictment.

Since the legislative intent is of paramount importance it would be helpful to examine the legislative history of both § 944.40 and § 940.02(5), Fla. Stat. (1981). The predecessor of § 944.40, Fla. Stat. (1981) can be found in Ch. 57-121 Section 38, Laws of Florida which states:

> Any prisoner confined in any prison, jail, road camp, or other penal institution, State County, or Municipal, or in 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...

It can be seen from the wording above there has been no change in the statutory definition of escape other than to delete the words "or in" before the words "working upon the public roads...". In essence the statute has remainded unchanged since 1957. The statutory definition of a "prisoner", however, has under gone a significant change. Chapter 57-121, Section 1, Laws of Florida states:

> "Prisoner" means any person convicted and sentenced by the courts and committed to the State prison, prison farm, or penitentiary or to the custody of the Department, as provided by law.

This statutory definition was amended by Chapter 71-345, Section 1, Laws of Florida (which is now Section 944.02(5), Fla. Stat. (1981) as follows:

> "Prisoner" means any person

> who is under arrest and in the lawful custody of any law enforcement official, or any person convicted and sentenced by any court and committed to any Municipal or County jail or penitentiary, to the custody of the division as provided by law.

As the quoted history above indicates the words "being transported to or from a place of confinement" have been part of the statutory definition of § 944.40, Fla. Stat. (1981) since 1957. It was not until 1971 that the definition of "prisoner" was expanded to include "any person who is under arrest and in the lawful custody of any law enforcement official." From 1957 until 1971 words "being transported to or from a place of confinement" had to be construed with the definition of "prisoner" pursuant to Ch. 57-121 Section 1 Laws of Florida which limited the definition of "prisoner" to any person "convicted and sentenced by the courts and committed to the state prison, prison farm, penitentiary or to the custody of the Department, as provided by law." The words "being transported to or from a place of confinement" originally applied to those persons convicted and sentenced by the courts and committed to some penal institution. These words were never meant to sepcifically limit or modify the part of the definition of "prisoner" which states "any person who is under arrest and in the lawful custody of any law enforcement official." Rather the words relating to transportation were intended to apply to "prisoner" regardless of

their legal status, that is if the person is actually convicted of a law violation or an arrestee prior to conviction.

The opinion in Ramsey states:

> If Section 944.40 were intended to encompass situations such as the one before us, then the legislature would have provided in the statute that any prisoner who escapes from lawful arrest is guilty of escape. This it did not do. Instead, it required that the escape, in order to come within the confines of the statute occur while the prisoner is being transported. (App. 2)

In light of the legislative history, the "transported" language in the statutory definition of escape was never meant to exclusively limit the words "any person who is under arrest and in the lawful custody of any law enforcement official" under the definition of prisoner, any more than these words relating to transportation were meant to limit the definition of "prisoner" as "any person convicted and sentenced by any court and committed to any Municipal or County jail or State prison...". The legislative intent was to confer upon arrestee the same status as one already convicted, sentenced and incarcerated.

The United States Supreme Court had to address the problem of strict construction of a statute which would contravene the legislative intent as evidenced by the legislative history. This problem arose in United States v. Standard Oil Co., 86 S.Ct. 1427, 384 U.S. 224, 16 L.Ed.2d 492 (1966). The defendant was charged with an indictment under 33 United

States Code § 407 (1966) (The Rivers and Harbors Appropriation Act of 1899) which criminalized anyone who would "throw, discharge, or deposit...any refuse matter of any kind or description...(emphais supplies). The "refuse matter" that had been spilled into the river was commercially valuable 100 octane gasoline and the defendant contended that this could not be construed as "refuse matter". The trial court agreed and dismissed the indictment. In reinstating the indictment the Supreme Court maintained that the trial court's interpretation was narrow, cramped reading and in partial defeat of the legislative purpose of the statute. 86 S.Ct. at 1428, 384 U.S. at 226. Looking at past acts the Supreme Court reasoned that the present statute was a consolidation of these past laws. Looking at these former statutes the Supreme Court reasoned that refuse materials were not distinguished between whether they were commercially valuable or not. The Supreme Court maintained:

> But whatever may be said of the rule of strict construction it cannot provide a substitute for common sense, precedent, and legislative history. 86 S.Ct. 10 1428, 384 U.S. at 225.

Likewise in the case at bar legislative history and other statutes should be considered before it becomes necessary to narrowly and strictly construe the statute.

The case of Johnson v. State, 357 So.2d 203 (Fla. 1st DCA 1978) gives insight into how other words of § 944.40 Fla. Stat. (1981) have been interpreted. The facts involve

a defendant who was already confined in a county jail but became ill inside the jail. He was then escorted to the Alachua General Hospital and escaped from the hospital. After a trial the defendant claimed that there was a variance between the proof and the allegations (where the charge was escape) in that proof did not show that the defendant escaped while "confined" in county jail. Strictly speaking the defendant in Johnson did not escape when he was confined in jail nor did he escape while he was being "transported to or from a place of confinement." The First District rejected the argument of defendant as follows:

> We do not believe that the term "confinement" is narrowly limited to the actual physical presence in the jail. Appellant had been committed to the jail and was in the lawful custody of the jail. 357 So.2d at 204

The review court concluded that confinement could be extended to the hospital from which appellant escaped. So the judgment and sentence were affirmed. Likewise, in the case at bar, the terms "transported to or from a place of confinement" should not be so narrowly construed as to vitiate the intent of the statute. As discussed above, the terms "being transported to or from a place of confinement" were never meant to solely limit the definition of a prisoner as it pertains to an arrestee. In the Johnson case the narrow construction that respondent has offered could have been applied to the facts. Defendant Johnson could have main-

tanied that he was not being "transported to or from a place of confinement" because he was actually in a hospital. Yet the First District refused to recognize such a narrow construction.

To determine the legislative intent it will also be necessary to look at other applicable statutes dealing with escape. The first statute to be examined is § 843.12, Fla. Stat. (1981) which is entitled "aiding escape" and states:

> whoever knowingly aids and assists a person, attempting to escape, or who has escaped from an officer or person who has or is entitled to the lawful custody of such person is guilty of a felony...

In Dupree v. State, 416 So.2d 1228 (Fla. 1st DCA 1982) a defendant was charged with the above quoted statute. A policeman on duty went to the house of a defendant with a lawful arrest warrant to arrest a visitor in the defendant's house. The police officer announced the arrest and then proceeded to execute the arrest. At that point the defendant interfered with the duties of the police officer. The arrestee/visitor then fled and the police officer chased and caught him. The defendant then tried to strangle the police officer so that the arrestee could effectuate his escape. In affirming the conviction the First District maintained:

> In absence of evidence to the contrary, custody pursuant to an arrest warrant will be presumed valid. 416 So.2d at 1230.

The court maintained that it was clear that the officer serving the arrest warrant was entitled to the custody to the person named in the warrant. The First District did not limit the aiding escape statute by the words "transported to or from a place of confinement." Indeed it should not make any difference whether the defendant interfered with the officer in the process of making an arrest whether the arrestee was being handcuffed, escorted to a patrol car, being placed in the patrol car or actually in transit in the patrol car. The status of the arrestee remains the same and his fate remains the same. - he is going to jail.

Section 901.22, Fla. Stat. (1981), entitled "arrest after escape or rescue" is stated as follows:

> If a person lawfully arrested escaped or is rescued, the person from whose custody he escapes or was rescued or any other officer may immediately pursue and retake the person arrested without a warrant at any time and in any place.

This statute again does not turn on the fine distinction of whether the escapee from arrest was "being transported to or from a place of confinement." The officer may pursue the escapee whether or not that escapee was leaving an area of arrest or physically leaving a patrol car in transit to the jail.

To glean legislative intent, thus interpret a statute, this Honorable Court must look to the history, other cases, and other appropriate statutes. Strict construction

must not circumvent the obvious intent of the legislature. In the case of George v. State, 203 So.2d 173 (Fla. 2d DCA 1967) a defendant was charged with obtaining merchandise of a hundred dollars ($100) or more by worthless check. The defendant signed the checks as maker but made the same payable to himself and then endorsed them over to the two merchants. Defendant contended under § 832.05(3)(a), Fla. Stat. (1965) that he was a "payee" since the payee had knowlege that the maker lacked bank funds to pay the checks, the maker would be exempt from prosecution under the rules of strict construction. The Second District maintained that the purpose (which was set out in § 832.05(1), Fla. Stat. (1965) was to:

> Remedy the evil of giving checks... which tends to create the circulation of worthless checks...And (is) a mischief to trade and commerce. 203 So.2d at 175.

Likewise in the case at bar the purpose of the escape statute is to prevent lawfully arrested prisoners from escaping the custody of the arresting officer, regardless of the hypertechnical distinction of whether that officer is "transporting (a prisoner) to or from a place of confinement." The Second District in affirming the conviction in the George case reasoned:

> The intent of a legislative act as deducible from its language and legislative setting, is as much a part of the law as the words themselves...and in det-

> ermining that legislative intent, the subject matter on which the statute operates as well as the language of the statute must be considered...A statute should be construed and applied so as to fairly and liberally accomplish the official purpose for which it was adopted even if the results seems contradictory to ordinary rules of construction and the strict wording of the statute 203 So.2d at 175
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> ***
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> And the manifest intent of the legislature will prevail over any literal import of words used by it; and no literal interpretation leading to an unreasonable conclusion or a purpose not intended by the law should be given 203 So.2d at 176.
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> ***
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> In other words, such strict construction is subordinate to the rule that the intention of the law makers shall be given affect 203 So.2d at 176.

Petitioner submits that the usual rules of strict construction if they apply in the case at bar should yield to the obvious intention of the legislature. The Fifth District's strict interpretation in Ramsey of the escape statute should not apply because it runs counter to the obvious intention of the legislature.

B. THE JURY IS ENTITLED TO PRESUME THAT THE RESPONDENT IN RAMSEY WAS IN THE PROCESS OF BEING "TRANSPORTED TO OR FROM A PLACE OF CONFINEMENT"

In the present case, the jury would be entitled to infer from the fact that the defendant Ramsey was in the process of being arrested that this process would also include "being transported to or from a place of confinement". This Honorable Court had an opportunity in the case of State v. Williams, 444 So.2d 13 (Fla. 1984) to construe the escape statute, § 944.40, Fla. Stat. (1983). In Williams the defendant was tried and convicted of escape and violation of § 944.40, Fla. Stat.. (1979). At the close of the State's case the defendant moved for acquittal alleging the State proved custody, but never proved the validity of the pre-custodial arrest. Although the trial court denied this motion the Fifth District Court of Appeal reversed the trial court. This Honorable Court reviewed the case. The State argued that once the prosecution showed defendant was a prisoner, carried on the log book, wearing prison garb, it had proved Williams was a "prisoner" pursuant to § 944.40, Fla. Stat. (1979). This Honorable Court agreed with the State's argument and reversed the Fifth District's holding. This Honorable Court maintained that the element of custody was not intended by the legislature to invariably require proof of the technical correctness of the circumstances underlying the original arrest of the prisoner. This Supreme Court went on to hold the most reasonable interpretation and that which would serve the ends of justice would be that the unlawfulness of the confinement would be an affirmative

defense to be raised by the defendant. The jury was entitled to determine the inferential connection and measure the strength and reasonableness of any rational connection of the State's evidence and therefore was entitled to convict the defendant on the charge of escape. In the case at bar the jury should also be entitled to make a reasonable inference that Ramsey, as an arrestee, was in the process of being "transported to or from a place of confinement". It would certainly be reasonable to infer from the facts in Ramsey that transportation to jail was iminent.

The Deputy Sheriff in Ramsey was in fact under a mandatory duty to take the prisoner to jail. Under § 907.04, Fla. Stat. (1981) which deals with the disposition of the defendant upon arrest the deputy must take the arrestee to jail. The statute is quoted as follows:

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

The Fifth District in Ramsey maintained:

> 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. (App. 1).

The implication of this statement would be to bifurcate the

arrest procedure. Yet under the facts in Ramsey informing the arrestee of the outstanding capias and directing him to place his hands on the patrol car would be as much as a part of the arrest as the act of physically transporting the arrestee to the jail.

The Fifth District continued as follows:

> Ramsey had not been handcuffed had not been placed in the police car and the officer had not announced that he was taking him to jail. As a result, transportation of the prisoner had not begun. (App. 2)

But going to jail is inevitable in the facts in the case at bar. It is clear that it was the intent and indeed the deputy had a mandatory lawful duty to take the arrestee to jail. The jury was entitled to infer that the action of the deputy in Ramsey commenced the "transportation" to jail. The jury could make the reasonable inference under the facts that transportation to the jail was inevitable.

In a companion case to the case at bar, State v. Iafornaro, ___ So. ___ (Fla. 5th DCA 1984) (Case No. 83-119) the Fifth District per curiam affirmed a dismissal by a trial court of an escape information based upon similar facts at the case at bar and Akers, supra. In Iafornaro, Justice Orfinger specially concurred which was in effect a dissent from the holding of Ramsey (App. 5-6). Although Justice Orfinger acknowledged the reasoning in Ramsey, he took issue with the reasoning as evidence of the following comments:

> "In disagreeing with Akers because there had been no showing that the prisoner was being "transported" to a place of confinement, Ramsey does not address the question of when and by what means "transportation" begins. Does transportation of a prisoner necessarily begin only when he is handcuffed? Or does it begin only when he is placed in the patrol car? Must the patrol car begin to move before "transportation" begins? I pose only some of the difficult questions, but I believe that the Akers rationale eliminates them and makes resolution of the problem much simpler both for the courts, the prosecutors and the defendants. Since a suspect does not become a "prisoner" until he is placed under arrest, and since he cannot be transported to a place of confinement until he becomes a prisoner, unless the facts clearly show that the officer had no intention of taking him from the scene, "transportation to a place of confinement" begins at the time the suspect is placed under arrest, because that is the very first step in the process. Even though not yet physically restrained, one who has been placed under arrest has had his liberty retrain and that he is not free to leave. His confinement has begun and if he escapes from lawful custody, he may be properly charged with escape. (App. 6)

Justice Orfinger's reasoning summarizes Petitioner's second point very well. Other questions regarding the question of when does "transportation' commences, could be raised. If the arresting officer does have the prisoner in his patrol car but detours from the route to the jail or makes a "frolic" which is not authorized and the prisoner attempts to escape, under the Ramsey decision would there be an escape during

"transportation"?

The argument of Petitioner does not include the case where a police officer has made a temporary "Terry" stop pursuant to § 901.151, Fla. Stat. (1981) or where the officer is investigating a misdemeanor in his presence and has the option of giving a summons pursuant to § 901.28(1), Fla. Stat. (1981). In both these latter cases the jury certainly could not determine whether or not the officer would need to make a lawful arrest and exercise his authority to take the defendant to jail. But in the present case it is clear that these were not the options; the police officer was arresting Ramsey and taking him to jail.

Based upon the legislative intent and the reasonable interpretation of the escape statute the Fifth District Court or Appeal's decision in Ramsey should be reversed by this Honorable Court.

CONCLUSION

Based on the arguments and authorities presented herein, Petitioner respectfully prays this Honorable Court reverse the decision of the District Court of Appeal of the State of Florida, Fifth District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, Petitioner's Brief on Merits, has been furnished by deliver, to Larry B. Henderson, Esquire, Assistant Public Defender, this 5th day of July, 1984

W. BRIAN BAYLY
Of Counsel