O|A 10-1-84

64,776

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

JIMMIE RAMSEY,

Respondent.

PETITIONER'S REPLY BRIEF ON MERITS

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

TOPICAL INDEX

AUTHORITIES CITED

POINT

THE JUDGMENT AND SENTENCE PURSUANT TO THE ESCAPE CHARGE IN RAMSEY V. STATE, 442 So.2d 303 (FLA. 5th DCA 1983) SHOULD HAVE BEEN AFFIRMED BECAUSE THE DEPUTY HAD MR RAMSEY IN HIS CUSTODY AS WELL AS HAVING MR. RAMSEY CONFINED.

Respondent contends that the deputy in the case at bar must have had control/dominion over the arrestee prior to the arrestee being capable of "escaping." (See, Respondent's brief at page 5). Respondent implies that this type of "custody" should be a physical restraint. Respondent has cited no case authority for this proposition. The case of Bey v. State, 355 So.2d 850, 852 (Fla. 3d DCA 1978) delineated the elements of arrest. The court described when an arrest is effectuated as follows:

> The elements of an arrest are well settled in Florida and are as follows:
>
> (a) a purpose or intention to effect and arrest under real or pretended authority;
>
> (b) an actual or constructive seizure or detention of one person by another having present power to control the person arrested;
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> (c) a communication by the person making the arrest to the person whose arrest is sought, of an intention or purpose then and there to effect an arrest; and
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> (d) and understanding by the person whose arrest is sought that it is the intention of the arresting officer then and there to arrest and detain him. (id. at 852).

The emphasized element (b) above is the one that is being contested in the case at bar. Petitioner would submit that a constructive seizure or detention of Mr. Ramsey had occurred. The deputy had present power to control Mr. Ramsey. Ramsey's car had been stopped by the deputy. Ramsey also had left his vehicle; and had not done so of his own free will but had done so at the direction of and because of the stop by the deputy. Ramsey was walking towards the deputy's patrol car with the deputy when the police officer told him that he was under arrest. The two continued walking towards the deputy's patrol car where the deputy tells Ramsey to place his hands on the patrol car. At this point there has been a constructive seizure of Mr. Ramsey and the deputy certainly has the present power to control Mr. Ramsey's actions. The facts clearly show (or at least a jury could reasonable so conclude) that Mr. Ramsey had been arrested and was under the lawful control of the deputy. There is no legal difference between the facts where the deputy physically starts to place Ramsey's hands on the patrol car and then Ramsey breaks away or where the deputy orders the arrestee to place his hands on the patrol car and then the arrestee flees. Both circumstances are tantamount to a completed legal arrest and thus lawful custody.

In Jordan v. State, 438 So.2d 825 (Fla. 1983) a defendant was convicted of attempted resisting arrest with violence pursuant to § 843.01, Fla. Stat. (1981). The conviction initially was overturned in the district court because such a crime did not exist. This Honorable Court held, however, that double jeopardy did not preclude a retrial on the original charge of resisting arrest with violence because attempting to resist arrest with violence was tantamount to the same offense. Yet for

purposes of § 940.40, Fla. Stat. (1981) the difference between an attempt or pursuit to arrest an offender and one who escapes from a completed arrest after the arrest has been effectuated is crucial. Petitioner submits that once an arrest has been completed then for all intents and purposes that offender is a prisoner in the lawful custody of the law enforcement officer and thus if the offender flees at that time, he could be convicted of escape.

Respondent's suggestion would require this Honorable Court to make legal distinctions of physical and constructive custody which would not only be unnecessary but would obfuscate the law in this area. It is conceivable that a police officer would not need to nor want to use actual physical force to effectuate his arrest. A police officer, for example, may arrest an offender for an on-sight misdemeanor very close to the local jail. This same officer may be on foot patrol and would walk the offender to the jail. If while the offender and the officer are walking to the jail, the arrestee flees at this point, would he not be guilty of escape simply because the officer had not handcuffed or in some way restrained the offender, even though the arrestee was on his way to jail? Neither § 944.40 nor § 944.02(4), Fla. Stat. (1981) has any requirement that an arrestee must be touched, pushed, cuffed, or shackled or in any way physically restrained before the offender may be deemed guilty of escape.

In Bey, supra, it is significant to note that although the defendant was charged with resisting arrest with violence, the legal duty that the officer was performing came under § 901.22, Fla. Stat. (1975). The officer in Bey had stopped the defendant in his vehicle

for the offense of reckless driving. The officer announced that the defendant was under arrest to which the defendant responded that he could not be arrested and ran to his home. The officer pursued the defendant into his home where the defendant resisted using force. In upholding the conviction pursuant to § 901.22, Fla. Stat. (1975) the Third District quoted this statute as follows:

> if a person lawfully arrested escapes or is rescued, the person from whose custody he escapes or was rescued or any other officer may immediately pursue or take the person arrested without a warrant at any time and in any place. id at 851.

This statute is further evidence that the legislature intended that an arrestee who flees can be deemed guilty of "escape."

The same reasoning that this Honorable Court applied in State v. Williams. 444 So.2d 13 (Fla. 1984) can be applied in the case at bar. The jury based upon the facts in Ramsey could certainly make the reasonable inference that the arrest had been completed and that the defendant was in the lawful custody of the deputy. At this point Ramsey would then have to show that he was not in "lawful custody" either because the arrest had not been completed or because the arrest was not lawful. This burden would be on the defendant at this point because the words "lawful custody" are not in the enacting statute but rather fall in a subsequent statute, i.e §944.02, Fla. Stat. (1981).

Respondent contends that the language in § 944.40, Fla. Stat. (1981), "while being transported to or from a place of confinement" is clear and precise (See, Respondent's brief at page 6) and admits of but

one meaning. (See, Respondent's brief at page 6 quoting from Fine v. Moran, 74 Fla. 417, 77 So. 533, 536 (1917). Petitioner responds that if this language was so clear and precise then there never would have been a conflict between the Ramsey case and State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979). Furthermore all the questions that Justice Orfinger asked in his concurring opinion in State v. Iafornaro, ___ So.2d ___ (Fla. 5th DCA 1984) [Case No. 83-119] would not have been necessary if the contested language was so clear and unambiguous.[1] The very fact that this Honorable Court has accepted discretionary jurisdiction in this cause would also indicate that the statutory language is not clear and precise. Merely labeling the language in a statute clear and precise certainly does not make it so.

Respondent maintains that Ramsey was not being "transported to ...a place of confinement." (See, Respondent's brief at page 5). Yet an offender who is being booked into the jail after an arrest is likewise not technically being transported. Yet one who flees from the jail or the booking office of the jail can be convicted of escape. (See, Estep v. State, 318 So.2d 52 (Fla. 1st DCA 1975) where a defendant was arrested while he was in jail and was convicted for escape). Likewise in the case of Johnson v. State, 357 So.2d 203 (Fla. 1st DCA 1978) the defendant was not techinically being "transported" nor was he actually "confined"

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[1] In any event the Petitioner would still contend that even if this Honorable court deems this language clear and unambigious and under the facts Ramsey could still be considered in the process of being "transported to ...a place of confinement."

in the county jail. Rather he escaped from a hospital but was under the general custody of the jail. Therefore his escape conviction was affirmed.

Judge Orfinger in his concurrence in Iafornaro, supra, questioned the holding in Ramsey in regard to the interpretation of "transported" with 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?
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> ***
>
> 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.

There comes a point during an arrest procedure when a police officer becomes an "on-the-street jailer." At this point in time the arrestee is effectively the prisoner of the officer and under the officer's "confinement." Likewise, the arrestee who is under the control of the officer is at that point in time in the process of being "transported to ...a place of confinement". Indeed the arrestee is already constructively confined. Under the facts in the case at bar and under the prevailing case law Mr. Ramsey is an escapee and as such his conviction should be affirmed.

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,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing, Petitioner's Reply Brief on Merits, has been furnished, by deliver, to Larry B. Henderson, Esquire, Assistant Public Defender, this 2nd day of August, 1984.

W. BRIAN BAYLY
Of Counsel for Petitioner