May 2, 1984
filed

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA	)	
	)	
Appellant,	)	
	)	
vs.	)	CASE NO. 65,127
	)	
ANTHONY IAFORNARO,	)	
	)	
Appellee	)	

RESPONDENT'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF CITATIONS

075

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CASE NO. 65,~~217~~ 127

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STATEMENT OF THE CASE AND FACTS

Although the Respondent accepts the majority of the Petitioner's Statement of The Case and Facts as being substantially accurate, 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 exact facts set forth in the opinion are not respectively repeated verbatim here:

"Iafornaro was stopped for running a red light. After obtaining the Defendant's Driver's license and registration, the police officer requested that the Defendant submit to a field sobriety test. The police officer was not satisfied with the results of the field sobriety test and advised the Defendant to place his hands on the car so that he might search

The Defendant. The Defendant backed up and fled. "Nothing in the officer's sworn affidavit contained in the Court's file which was relied upon by the State to charge the Defendant with escape reflect that Iafornaro was ever restrained".

ISSUE

WHETHER EXPRESS, DIRECT CONFLICT EXISTS BETWEEN Iafornaro v. State, _____ So. 2d _____ (Fla. 5th DCA 1983) (8FLW 2817) AND State v. Akers, 367 So. 2d 700 (Fla. 2d DCA 1979)?

In arguing that irreconcilable conflict exists between Iafornaro 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), Florida Rules Criminal Procedure. 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.

1/ The propriety of the Court's holding in Akers, supra, has not hithertofore 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).

In Iafornaro, 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.

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 Iafornaro, 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 Iafornaro the defendant was not handcuffed, nor was there any act that could be viewed as indicia of the commencement of transportation of the defnednat to or from a place of confinement.

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 Iafornaro, and such jurisdication 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 transporation of a defendant to or from a place of confinement, it remains that in Iafornaro 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,

Russell H. Cullen, Jr.
RUSSELL H. CULLEN, Jr., ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by mail, to MARK C. MENSER, ESQUIRE, ASSISTANT ATTORNEY GENERAL, 125 North Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014, Counsel for Appellant, this 30th day of April, 1984.

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