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IN THE SUPREME COURT OF FLORIDA

FILED
S'D J. WHITE
AUG 23 1984
CLERK, SUPREME COURT
By [Signature]
Chief Deputy Clerk

STATE OF FLORIDA,
Petitioner,

vs.

ANTHONY DEAN IAFORNARO,
Respondent.

CASE NO. 65,127

PETITIONER'S REPLY BRIEF ON THE MERITS

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TOPICAL INDEX

	<u>PAGES</u>
<u>STATEMENT OF THE CASE AND FACTS</u>	1
<u>ARGUMENT</u>	
INCAPACITATION IS NOT AN ELEMENT OF ARREST	2
<u>CONCLUSION</u> ,	3
<u>CERTIFICATE OF SERVICE</u>	3

AUTHORITIES CITED

CASES

PAGES

State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979) 2

STATEMENT OF THE CASE AND FACTS

The State will rely upon its earlier statement.

ARGUMENT

INCAPACITATION IS NOT
AN ELEMENT OF ARREST

The State indeed presumes the correctness of officer Albert's statement that he placed the Appellee under arrest, said assertion being essentially uncontested. The issue, as Appellee reminds us, involves the level of restraint required before me is considered to be "under arrest".

A decision by the trial court to "disbelieve" officer Albert would be an assumption of credibility or fact outside the scope of (c)(4) and thus per se reversible error. Such an assumption was not the source of this problem. The problem, again, involves the level of restraint.

The Appellant does not consider himself "under arrest" unless he is physically unable to resist confinement. This theory is not only erroneous, it is exceedingly dangerous to police and defendants alike.

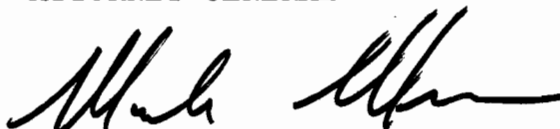
The State again relies upon the case of State v. Akers, 367 So.2d 700 (Fla. 2d DCA 1979) in support of the proposition that lawful confinement does not require physical incapacitation. "Catch me if you can" is a children's game. It is not the law.

CONCLUSION

Lawful custody for the purposes of "escape" commences upon arrest. A lawful arrest is effective when announced, and does not require the physical incapacitation of the arrestee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished, by mail, to Russell H. Cullen, Jr., Esq., P.O. Box 1114, Altamonte Springs, Florida 32715-1114, Counsel for Respondent, this 22nd day of August, 1984.



Of Counsel
Mark C. Menser