IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	)	
	)	
Appellant/Cross-Appellee,	)	
	)	
vs.	)	CASE NO. SC04-1934
	)	L T. NO. 4D02-4799
JAY JUNIOR SIGLER,	)	
	)	
Appellee/Cross-Appellant.	)	
_____	)	

CROSS-REPLY BRIEF

On Appeal from the District Court of Appeal,
Fourth District, State of Florida.

CAREY HAUGHWOUT
Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(561) 355-7600

PAUL E. PETILLO
Assistant Public Defender
Florida Bar No. 508438

Attorney for Jay Junior Sigler

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AUTHORITIES CITED

POINT ON CROSS-APPEAL

WHETHER THE DISTRICT COURT OF APPEAL CORRECTLY HELD THAT AN ESCAPED PRISONER CAN BE GUILTY OF HARBORING AN ESCAPED PRISONER UNDER A PRINCIPAL THEORY, AND, THUS, OF THIRD-DEGREE FELONY MURDER?

As a preliminary matter, the State asks this Court not to review this issue even though Sigler has properly presented the issue on his cross-appeal. However, since this issue has been "properly briefed and argued and [is] dispositive of the case[,]" *Savoie v. State*, 422 So.2d 308, 312 (Fla. 1982), this Court should review this issue. *Compare State v. Evans*, 770 So.2d 1174, 1177 n. 4 (Fla. 2000)(declining to address issues that were outside scope of conflict jurisdiction where new trial was ordered on conflict issue).

On the merits, the State misconstrues Sigler's argument. Sigler's argument is that he, as the escaped prisoner, cannot be guilty of harboring an escaped prisoner under a principal theory as a matter of law. Admittedly, an escaped prisoner can "incite, cause, or encourage"[1] someone to harbor her, just as the purchaser of a controlled substance can "incite, cause, or encourage" the drug dealer to sell her a controlled substance. But the

[1] *Arroyo v. State*, 705 So.2d 54 (Fla. 4th DCA 1997) (quoting standard jury instruction on principals).

purchaser is not guilty of sale of a controlled substance under a principal theory, and the escaped prisoner is not guilty of harboring an escaped prisoner because these crimes are "so defined that participation by another is inevitably incident to its commission," i.e., these are crimes that by definition must be committed by two people. *See* 2 W. LaFave & A. Scott, *Substantive Criminal Law* § 13.3(e) (2d ed. 2003).

The State cites the statute on principals, § 777.011, Fla. Stat. (1997), and argues that the language of that statute "suggests that the Legislature undoubtably intended s. 777.011 to apply to every criminal offense committed against the State, including but not limited to § 944.46, Fla. Stat." *Cross-Answer Brief* at p. 16-17. But criminal statutes are usually construed in light of the background rules of the common law. *Chicone v. State*, 684 So.2d 736, 741 (Fla. 1996). And the background rules of the common law place a limitation on accomplice liability for crimes so defined that participation by another is inevitably incident to its commission. *See Cross-Initial Brief* at pp. 24-26. What this Court said in *Staten v. State*, 519 So.2d 622, 626 (Fla. 1988), about whether a principal offender can also be an accessory after the fact is equally applicable to this issue: "Reading section 777.011 against its common law background, we do not believe the legislature intended such a result." Likewise, reading § 777.011 against its

common law background, it is clear that the Legislature did not intend that the escaped prisoner be guilty of harboring an escaped prisoner (i.e., himself or herself) under a principal theory.

Regarding Sigler's argument that harboring an escaped prisoner is simply a specific form of the post-crime aid offense of accessory after the fact and therefore he cannot be convicted of that offense pursuant to *Staten*, the State argues that Staten merely stands for the proposition that a "defendant cannot be convicted as both a principal and an accessory after the fact based on the same criminal act." *Cross-Answer Brief* at p. 21 (emphasis in original; footnote omitted). But Staten is not about dual convictions; in fact, this Court stated that "double jeopardy is not implicated here." *Staten*, 519 So.2d at 625 (citing, among other cases, *Blockburger v. United States*, 284 U.S. 299 (1932)). In *Staten*, this Court held that because Staten was a principal offender of the robbery she could not also be an accessory after the fact given the common law background of § 777.011, Fla. Stat., and accessory after the fact. This Court stated: "We find that being a principal offender of any crime and being an accessory after the fact to the same crime are mutually exclusive." *Staten*, 519 So.2d at 625. The State does not dispute Sigler's contention that harboring an escaped prisoner is simply a specific form of the post-crime aid offense of accessory after the fact.

Therefore, Sigler, as the principal offender of the escape, cannot also be guilty of the post-crime aid offense of harboring an escaped prisoner. Under Staten, these two crimes are mutually exclusive. The appropriate remedy in this case is discharge.

CONCLUSION

This Court should remand with directions to discharge Sigler.

Respectfully submitted,

CAREY HAUGHWOUT
Public Defender
15th Judicial Circuit of Florida
Criminal Justice Building
421 Third Street/6th Floor
West Palm Beach, Florida 33401
(561) 355-7600

PAUL E. PETILLO
Assistant Public Defender
Florida Bar No. 508438

Attorney for Jay Sigler

CERTIFICATE OF SERVICE

I certify that a copy of this cross-reply brief has been furnished by courier to August Bonavita, Assistant Attorney General, 1515 North Flagler Drive, 9th Floor, West Palm Beach, Florida 33401; and by U. S. Mail to Mr. Jay Sigler, DC# 420197 Florida State Prison, 7818 NW 228th Street, Raiford, FL 32026-1230 this 4th day of February, 2005.

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PAUL E. PETILLO
Assistant Public Defender
Florida Bar No. 508438

CERTIFICATE OF FONT COMPLIANCE

Counsel certifies that this brief was prepared with Times New Roman 14-point font.

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PAUL E. PETILLO

Attorney for Jay Junior Sigler