

IN THE SUPREME COURT OF FLORIDA

RAYMOND EUGENE JOHNSON,  
Petitioner,

vs.

STATE OF FLORIDA,  
Respondent.

Case No.

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF PETITIONER OF JURISDICTION

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TENTH JUDICIAL CIRCUIT

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**FILED**

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APR 18 1985

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

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STATEMENT OF THE CASE

Petitioner RAYMOND EUGENE JOHNSON, was charged by information with escape, a violation of Section 944.40, Florida Statutes (1983).<sup>1/</sup> The information was filed May 11, 1984, in the Circuit Court, Polk County. (R3-5) Petitioner was convicted of escape by a jury August 6, 1984, Honorable Oliver L. Green, Judge. (R70-72) On September 5, 1984, he was sentenced to eighteen months in prison. (R78-81)

Petitioner appealed to the Second District Court of Appeal September 12, 1984. (R83) On March 8, 1985, the Court of Appeal affirmed on the authority of State v. Akers, 367 So.2d 700 (Fla.2d DCA 1979). No formal opinion was entered. Johnson v. State, \_\_So.2d\_\_, (Fla.2d DCA, Case No. 84-2037). Upon the Petitioner's Motion for Rehearing and/or Certification of Conflict, the Court of Appeal stated, "In affirming by adhering to the authority of State v. Akers, 367 So.2d 700 (Fla.2d DCA 1979), we continue to be in conflict with Ramsey v. State, 442 So.2d 303 (Fla.5th DCA 1983)." Johnson v. State, \_\_So.2d\_\_, 10 F.L.W. \_\_ (Fla.2d DCA, Case No. 84-2037, opinion dated April 12, 1985).

Petitioner filed notice of seeking discretionary review by the Florida Supreme Court April 12, 1985.

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<sup>1/</sup> Petitioner was also charged with and convicted of trespass and resisting arrest, but he is not appealing these convictions.

## STATEMENT OF THE FACTS

Petitioner was accused of shoplifting from a Super Star service station in Lake Wales. (R15) Deputy Sheriff Ray Allen told Petitioner to pay for the item in question (unspecified), and to stay out of the store. (R16) Petitioner lives behind the store. (R16) Minutes later Allen observed Petitioner throwing bottles and calling the store clerk names. (R17-18) Allen attempted to arrest Petitioner for trespass and disorderly conduct. (R18) Petitioner struggled with Allen, who subdued and handcuffed Petitioner with the aid of Deputy Gonzalez. (R19-20) Petitioner bolted and ran before the deputies could place him in the patrol car. (R22) Petitioner was later found at home, in bed and asleep, still cuffed. (R38-40) Deputy Allen was of the opinion Petitioner suffered from emotional problems and had run away out of fear. (R26-27)

ARGUMENT SUMMARY

The instant case presents the question whether Section 944.40, Florida Statutes (1983), dealing with escapes, was intended to apply to persons who run from police officers immediately after having been arrested. The Fifth District Court of Appeal, in Ramsey v. State, 442 So.2d 303 (Fla.5th DCA 1983), has held the statute inapplicable in such situations. However, the Second District affirmed on similar facts in the instant case, relying on its previous decision in State v. Akers, 367 So.2d 700 (Fla.2d DCA 1979), and on rehearing, noting the conflict with Ramsey.

## ARGUMENT

### ISSUE

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN THE CASE AT BAR IS IN DIRECT AND EXPRESS CONFLICT WITH THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN RAMSEY V. STATE, 442 So.2d 303 (Fla.5th DCA 1983).

Petitioner moved for a judgment of acquittal on the charge of escape, arguing that "this is not the type of situation that is envisioned for the escape statute." (R63) The Court of Appeal upheld the denial of that motion, citing its earlier opinion in State v. Akers, 367 So.2d 700 (Fla.2d DCA 1979). Under Akers, the trial court's ruling is probably correct. Akers held that a suspect/arrestee in much the same situation as Petitioner was a "prisoner" for purposes of Section 944.02(5), Florida Statutes (1983).

More recently, however, the Fifth District overturned an escape conviction predicated on facts remarkably similar to the instant case. Ramsey v. State, 442 So.2d 303 (Fla.5th DCA 1983). Ramsey was stopped for routine traffic violation, whereupon the officer discovered outstanding warrants and attempted an arrest. The defendant fled before he could be cuffed and was charged with escape. The Court of Appeal ruled the legislature, enacting Section 944.40, did not intend to punish as escape flight from the custody of an arresting officer. Ramsey was followed by State v. Iaforaro, 447 So.2d 961 (Fla.5th DCA 1984), wherein Chief Judge Orfinger, concurring specially, noted the conflict between Akers and Ramsey and declared the Supreme Court should be given an opportunity to resolve the split of authority.

Petitioner would concur in Judge Orfinger's suggestion that statewide uniformity of case law is a desirable goal. The issue involved is the scope of Florida's escape statute. Under the status quo a conviction may be had in the Second District for conduct that, in the Fifth, would justify at best a misdemeanor charge, "resisting arrest." §843.02, Fla.Stat. (1983).

CONCLUSION

For the above reasons and authorities, Petitioner respectfully requests this Honorable Court accept jurisdiction over the instant case based on the interdistrict conflict.

Respectfully submitted,

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