

IN THE  
SUPREME COURT OF FLORIDA

WILLIE L. CLARK,	)	
	)	
Petitioner/Appellant,	)	
	)	
vs.	)	CASE NO. SC05-1248
	)	DCA CASE NO. 4D03-3426
STATE OF FLORIDA,	)	
	)	
Respondent/Appellee.	)	
_____	)	

PETITIONER'S BRIEF ON JURISDICTION

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ARGUMENT

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**PRELIMINARY STATEMENT**

Appellant was the defendant and Appellee the prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, In and For Martin County. The parties will be referred to as they appear before this Court.

**STATEMENT OF THE CASE AND FACTS**

The facts are taken from the decision of the district court in Petitioner's case, Clark v. State, 30 Fla. L. Weekly D1192 (Fla. 4<sup>th</sup> DCA May 4, 2005), and the decision is contained in the Appendix A-1-3.

Mr. Clark was convicted of escape and resisting arrest without violence based upon the same conduct A-1. Mr. Clark was found in a parked car by an officer who had a warrant for his arrest A-1. After the officer advised Mr. Clark that he was under arrest, the officer attempted to take Mr. Clark into custody by grabbing him and pepper spraying him A-1. The attempt to take Mr. Clark into custody was unsuccessful A1. The district court held that under State v. Ramsey, 475 So. 2d 671 (Fla. 1985) and Johnson v. State, 536 So. 2d 1045, 1046 (Fla. 1<sup>st</sup> DCA 1988), the evidence was sufficient to prove Mr. Clark was under arrest and that his confinement had begun A-2.

Mr. Clark's timely motion for rehearing was denied on June 15, 2005. Notice to invoke this Court's discretionary review jurisdiction was timely filed on July 14, 2005. This brief on jurisdiction follows.

### SUMMARY OF THE ARGUMENT

The district court's decision conflicts with Sullivan v. State, 430 So. 2d 519 (Fla. 2d DCA 1983) and State v. Ramsey, 475 So. 2d 671 (Fla. 1985). Also, by allowing one to be convicted for escape when one is not in actual custody or confinement, the district court's decision runs afoul of Florida's standard jury instruction on escape and California v. Hodari D., 111 S.Ct. 1547 (1991) which recognizes that a mere show of authority is not enough to effect the seizure of a person. Finally, the cases relied upon by the district court for affirming the escape conviction contradict the rules that statutes are to be construed based upon their plain text and the legislature's declaration (§ 775.021(1)) that if there are any ambiguities in a criminal statute they are to be construed most favorably to the accused. This Court should exercise its discretion in this case.

ARGUMENT

THE DECISION OF THE DISTRICT COURT EXPRESSLY  
AND DIRECTLY CONFLICTS WITH SULLIVAN v.  
STATE, 430 So. 2d 519 (Fla. 2d DCA 1983) and  
STATE v. RAMSEY, 475 So. 2d 571 (Fla. 1985).

An essential element of escape is custody (a/k/a confinement). Sullivan v. State, 430 So. 2d 519 (Fla. 2d DCA 1983). The district court held that the evidence was sufficient to show that confinement had begun in this case A-2. However, as explained in the district court's opinion, there was an attempt to place Mr. Clark in custody, but the attempt was not successful:

The record reflects that a deputy sheriff found Clark sitting in a parked vehicle and advised him that he was under arrest for an outstanding warrant. The deputy ordered Clark to step out of the car. Twice, the deputy explained that he had a warrant for Clark's arrest, advising him not to attempt to flee. As Clark turned and began moving away, the deputy first tried to grab him, and then, with pepper spray, to stop him, to no avail. Clark was soon apprehended.

A-1. In holding that the evidence was sufficient to prove escape the decision conflicts with Sullivan which holds that custody (rather than the mere right to custody) is required for an escape conviction.

The district court's holding that confinement began was based on State v. Ramsey, 475 So. 2d 671 (Fla. 1985). However,

utilizing Ramsey to affirm an escape conviction where Mr. Clark is never in actual custody is a misapplication of Ramsey and provides misapplication conflict. E.g. Acensio v. State, 497 So. 2d 640, 641 (Fla. 1986). In Ramsey, the defendant was actually being detained by police as the result of a stop. Whereas, in this case, Mr. Clark was never actually detained by the officer.

This Court should accept this case to review the conflicts. The endorsement of the use of show of authority as being sufficient to constitute custody also is at odds with California v. Hodari, D., 111 S.Ct. 1547 (1991) which holds that a mere show of authority does not constitute a seizure. The decision also contradicts the Standard Jury Instruction 27.1 that requires the defendant be "under arrest" and in the lawful custody of a law enforcement officer." See transcript at 235. The term "in the lawful custody" logically means actual, rather than constructive, custody. Otherwise, the term "lawful custody" would have no meaning, as it would be rendered superfluous by the definition of arrest (which requires either an actual or constructive custody). In other words, if "lawful custody" was interpreted to include constructive custody there would be no need to instruct the jury on "lawful custody" because it would be fully covered by the custody requirement for



arrest. Yet, there is a requirement that the jury be instructed on custody.

This case is also important to resolve an anomaly in construction. Due process requires fair warning of what conduct is punishable by criminal sanctions; therefore, the meaning of a criminal statute is governed almost exclusively by its text. As the Supreme Court stated, "Because construction of a criminal statute must be guided by the need for fair warning, it is rare that legislative history or statutory policies will support a construction of a statute broader than that clearly warranted by the text." Crandon v. United States, 494 U.S. 152, 160 (1990). The plain text of the statute controls.

In the event of an ambiguity, the Florida Legislature has declared that the statute be construed in favor of the accused. The Legislature has declared that criminal statutes must be strictly construed in favor of the accused. Section 775.021(1), Florida Statutes, sets out the rule for construing provisions of the Florida Criminal Code:

The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.

This rule of strict construction arises from fundamental principles of due process. "To the extent that penal statutory

language is indefinite or 'is susceptible of differing constructions,' due process requires a strict construction of the language in the defendant's favor under the rule of lenity." Kobel v. State, 745 So.2d 979, 982 (Fla. 4<sup>th</sup> DCA 1999) (quoting Register v. State, 715 So.2d 274, 278 (Fla. 1<sup>st</sup> DCA 1998)). This Court wrote almost a century ago: "It is a rule too well recognized to require citation of the authorities that penal laws should be strictly construed, and those in favor of the accused should receive a liberal construction." Sanford v. State, 75 Fla. 393, 400, 78 So. 340, 342 (1918).

However, the cases cited by the district court take the opposite approach and require the intent of the legislature prevail over the plain words of the statute when interpreting the escape statute:

The intent of the legislature controlling over the literal interpretation of the words of the statute.

A statute should be construed and applied so as to fairly and liberally accomplish the official purpose for which it was adopted even if the results seem contradictory to ordinary rules of construction and the strict wording of the statute.... And the manifest intent of the legislature will prevail over any literal import of words used by it; and no literal interpretation leading to an unreasonable conclusion or a purpose not intended by the law should be given.

George v. State, 203 So. 2d 173, 175-76 (Fla. 2d DCA 1967).

State v. Ramsey, 475 So. 2d at 673 (emphasis added) (compare State v. Ruiz, 863 So. 2d 1205, 1209 (Fla. 2003) (“Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity.”) By going beyond the plain text of a statute that requires actual confinement or custody (rather than a mere right to custody) an anomalous result occurs. Individuals such a Petitioner who are resisting arrest end up with two convictions based on the same conduct - escape and resisting arrest. This Court should exercise its discretion to review this case.

**CONCLUSION**

This Court should exercise its discretion.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of Petitioner's Brief on Jurisdiction has been furnished to DONNA M. HOFFMAN, Assistant Attorney General, 1515 North Flagler Drive, Ninth Floor, West Palm Beach, Florida 33401-3432, by courier this \_\_\_\_\_ day of July, 2005.

Attorney for Willie L. Clark

**CERTIFICATE OF FONT COMPLIANCE**

Counsel hereby certifies that the instant brief has been prepared with Courier New 12-point font.

JEFFREY L. ANDERSON  
Assistant Public Defender

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**APPENDIX**

PETITIONER'S BRIEF ON JURISDICTION

Clark v. State, 30 Fla. L. Weekly D1192  
 Fla. 4<sup>th</sup> DCA May 4, 2005)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the Appendix to Petitioner's Brief on Jurisdiction has been furnished to DONNA M. HOFFMAN, Assistant Attorney General, 1515 North Flagler Drive, Ninth Floor, West Palm Beach, Florida 33401-3432, by courier this \_\_\_\_\_ day of July, 2005.

Attorney for Willie L. Clark