IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA.

IRMA ESTRADA,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

APPELLATE DIVISION (CRIMINAL)
Case No.: 502010AP900057AXXXMB
Co. Court Case No.: 502009CT011451AXXXMB

Opinion filed: OCT 12 2011

Appeal from Judge, Barry Cohen
County Court in and for Palm Beach County.

For Appellant, Karen Ehrlich, Esq., Office of the Public Defender, Criminal Justice Building/6th Floor, 421 3rd Street, West Palm Beach, FL 33401.

For Appellee, Michelle Zieba, Esq., Office of the State Attorney, 401 N. Dixie Highway, West Palm Beach, FL 33401.

PER CURIAM.

On April 4, 2009, Amber Floyd was watching fireworks on a bench with her son around 8:30 p.m., when the Appellant drove up to where she was sitting, drove onto the sidewalk and parked her car. The Appellant sat in her car for a minute, then stumbled out of the vehicle and began crying. Ms. Floyd approached her and asked if she was okay. Appellant looked at Ms. Floyd's son, looked at Ms. Floyd and then looked at her son again. Ms. Floyd asked the Appellant what was wrong and the Appellant responded that she was looking for her son. Ms. Floyd asked Appellant where her son was and the Appellant pointed at Ms. Floyd's son. The Appellant smelled of alcohol.

Ms. Floyd called her husband, informed him that there was a woman driving who was not well to drive and he told her to call the police. Ms. Floyd called the police, took the Appellant's keys and moved the vehicle. The Appellant sat next to Ms. Floyd in the passenger seat while Ms. Floyd moved her vehicle. Ms. Floyd kept the Appellant's keys, waited until the police arrived and then gave the officer the Appellant's keys.

Officer Robin McVay of the Greenacres Public Safety Department made contact with the Appellant and noticed a strong odor of an alcoholic beverage emitting from her breath and person. The Appellant's eyes were red, bloodshot and glazed over. The Appellant appeared unaware of her surroundings and it took her several seconds to respond to Officer McVay's questions. Appellant's mood changed from being friendly to crying and then Appellant would get verbally abusive.

Appellant was placed under arrest and submitted to a breath test where she blew a .225 and .225. Appellant was charged with Driving Under the Influence (DUI) (Enhanced). Defense counsel filed a Motion to Suppress the Breath Test. After hearing testimony and legal argument, the trial court denied the motion based on his finding that the Appellant's actions constituted a breach of the peace, the civilian witness had restricted her freedom by taking the Appellant's keys and moving her vehicle and that the civilian's actions were sufficient to meet the definition of a citizen's arrest. Appellant pled no contest to DUI, specifically reserving her right to appeal the denial of the motion to suppress.

On appeal, the Appellant argues that that the trial court erred in finding that she had been subject to a citizen's arrest. Appellant maintains that because there was no citizen's arrest or other lawful arrest, the breathalyzer test results should have been suppressed. The State contends that the trial court properly denied the Appellant's motion to suppress because the witness made a proper citizen's arrest.

The Supreme Court adheres to the view that a person is "seized" only when, "by means of physical force or a show of authority, his freedom of movement is restrained." U.S. v. Mendenhall, 446 U.S. 544, 553, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). In other words, a person is "seized" within the meaning of the Fourth Amendment "only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave," even if the person did not attempt to leave. Id.; see also Hill v. State, 39 So. 3d 437, 439-440 (Fla. 3d DCA 2010). Applying the reasonable person standard to determine whether a seizure has occurred is a fact-intensive analysis in which the reviewing court must consider the totality of the circumstances. Golphin v. State, 945 So.2d 1174, 1184 (Fla. 2006).

In Florida v. Royer, 460 U.S. 491, 494-495, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983), a plurality of the United States Supreme Court held that when the officers identified themselves as narcotics agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, *while retaining his ticket and driver's license* and without indicating in any way that he was free to depart, Royer was effectively seized for the purposes of the Fourth Amendment. Citing to cases such as Royer and Mendenhall, the Florida Supreme Court has also found that "the retention of identification during the course of further interrogation or search certainly factors into whether a seizure has occurred." Golphin, 945 So. 2d at 1185.

In the instant case, Ms. Floyd observed the Appellant drive up onto a sidewalk, stumble out of her vehicle and proceed to act erratically. Ms. Floyd called the police and took the Appellant's keys. Ms. Floyd moved the Appellant's car and the Appellant sat next to Ms. Floyd in the passenger seat of the vehicle while Ms. Floyd moved the vehicle. Ms. Floyd kept the Appellant's keys, waited until the police arrived and then gave the officer the Appellant's keys. Ms. Floyd testified during the hearing on the motion to suppress that she took the Appellant's keys because she did not want the Appellant

to hurt herself or someone else.

Appellant cites to Boermeester v. State, 15 Fla. Law Weekly 576a (Fla. 13th Cir. Ct. 2008), in support of her case. In Boermeester, the defendant approached the gate at MacDill Air Force Base and was stopped by Technical Sergeant Jorde Rosario whose duties that morning included ensuring that only authorized personnel be permitted to enter the base. Boermeester, 15 Fla. L. Weekly 576a. Believing that Boermeester might be impaired, Tech. Sgt. Rosario ordered him to exit his vehicle, to surrender his keys and then contacted the Tampa Police Department. Id. Boermeester was subsequently charged with DUI and filed a motion to suppress which was denied by the trial court. Id. Boermeester then appealed the denial of the motion to suppress. Id.

On appeal, the Boermeester court stated that the trial court did not indicate the basis for its finding that there was not a citizen's arrest. Id. The trial court did not file a written order, nor did it state the grounds for its decision at the moment it denied the motion. Id. The trial court simply stated there was not a citizens' arrest and denied the motion to suppress. Id.

The Circuit Court in Hillsborough opined, "[i]t is therefore with some difficulty that this Court reviews the trial court's determination" and then proceeded to reverse the county court's denial of the motion to suppress. Id. Based on the fact that the military guard had testified that he confiscated Boermeester's keys for the man's safety and that Boermeester was free to leave at any time, the court held that a citizen's arrest did not take place. Id. The Boermeester court focused on the intent of Tech. Sgt. Rosario in depriving Boermeester of his right to leave. Id.

In this case the issue of the citizen's arrest was squarely presented by the evidence and arguments below and the trial court properly addressed the issue. It is indisputable that Ms. Floyd took the Appellant's only means of transport, her car keys, thereby effectuating a seizure. However, contrary to the court's finding in Boermeester, the intent of Ms. Floyd in holding onto the Appellant's

keys is not pertinent to the Court's legal analysis. The critical point is that based on the totality of the circumstances, a reasonable person in the Appellant's position, having had her vehicle moved while she sat in the passenger seat and then deprived of her keys, would not have felt free to leave the scene at that time.

The trial court correctly found that the Appellant's conduct, which occurred in front of the civilian witness, constituted a breach of the peace. See Edwards v. State, 462 So. 2d 581 (4th DCA 1985). This private citizen took the type of action the law would encourage a private citizen to take in order to prevent an obviously intoxicated individual from continuing to drive on our streets. See Id. The civilian witness' actions in lawfully detaining the Appellant until police arrived constituted a proper citizen's arrest.

Accordingly, the lower court's decision is hereby AFFIRMED.

KASTRENAKES, COLBATH AND RAPP, JJ. concur.