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

KAREN HOUSTON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_____/

APPELLATE DIVISION (CRIMINAL)
Case No.: 502011AP900033AXXXMB
Co. Court Case No.: 502010CT013085AXXXMB

Opinion filed: OCT 23 2012

Appeal from Judge, August Bonavita
County Court in and for Palm Beach County.

For Appellant: Amy Lora Rabinowitz, Esq., Office of the Public Defender, Criminal Justice Building, 421 Third Street/6th Floor, West Palm Beach, FL 33401.

For Appellee: Stephanie Vaz Toledo, Esq., Office of the State Attorney, 401 North Dixie Highway, West Palm Beach, FL 33401.

PER CURIAM.

This appeal stems from a blood draw of the Appellant who was in a car accident and taken to the hospital. The Appellant filed a Motion to Suppress Blood Draw & Subsequent Test Results which was denied by the trial court. Appellant was convicted after a jury trial and this appeal followed.

The record clearly supports the following:

1. The Appellant's vehicle struck a light pole at an intersection and continued driving until it crossed the center median of the roadway with two wheels on the roadway and two wheels on the sidewalk and was eventually stopped by a police officer.

2. The Appellant was behind the wheel of the vehicle, had blood on her mouth and seemed somewhat unresponsive when the police officer made contact with her.

3. The arresting officer made contact with the Appellant at Delray Medical Center. The officer testified that he did not smell any alcohol on the Appellant but that she displayed obvious signs of impairment. Appellant informed the officer that she had taken Seroquel and Xanax the night before and had taken a Percocet at approximately 11:30 a.m. the morning of the incident.

4. The officer testified that at the hospital, he asked Appellant if she would consent to a blood draw and the Appellant did not refuse. The Appellant testified that she did not recall being asked to give a blood sample test and to her knowledge, she did not give them permission to do a blood draw. Appellant testified that her signature was on the blood, urine and saliva consent form, but that she did not remember signing it.

Appellant's blood test was admissible under the Implied Consent Law. § 316.1932(1)(c), Fla. Stat. However, the Implied Consent Law is not the exclusive manner by which blood tests may be admitted into evidence. State v. Murray, 51 So. 3d 593 (Fla. 5th DCA 2011); see also State v. Slaney, 653 So. 2d 422, 426 (Fla. 3d DCA 1995); Robertson v. State, 604 So. 2d 783, 787 (Fla. 1992). In light of the facts and circumstances of this case, this court finds the defendant voluntarily consented to the blood test.

Furthermore, "[a] purely gratuitous observation or remark made in pronouncing an opinion and which concerns some rule, principle, or application of law not necessarily involved in the case or essential to its determination is obiter dictum, pure and simple." Bunn v. Bunn, 311 So.2d 387 (Fla. 4th DCA 1975). Obiter dictum is "[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). Black's Law Dictionary, 1100 (7th ed.

1999). "Judicial pronouncements which are obiter dicta in character more often serve to confound than to clarify the jurisprudence of this State." See Cobb v. State, 511 So.2d 698, 700 (Fla. 3d DCA 1987) (Baskin, J., specially concurring).

The lower court's decision is hereby AFFIRMED.

RAPP, FINE AND J. MARX, JJ. concur.