

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

STATE OF FLORIDA,

APPELLATE DIVISION (CRIMINAL)
Case No.: 502010AP900044AXXXMB
Co. Court Case No.: 502010CT005154AXXXSB

Appellant,

v.

CATHERINE FORD,

Appellee.

Opinion filed: **AUG 22 2011**

Appeal from Judge, Leonard Hanser
County Court in and for Palm Beach County.

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

For Appellee, Catherine Ford, *pro se*, P.O. Box 542786, Greenacres, FL 33454.

PER CURIAM.

On February 17, 2010 at approximately 4:18 p.m. citizens reported a car stalled on the North I-95 off ramp at Glades Road West with a person who appeared to be unconscious inside. Brett Martin, and Andrea Veas, both firefighter/paramedics with the Boca Raton Fire Rescue were the first to respond. Upon arrival, they observed a black Mercedes parked in the left hand turn lane, partially off the road with its brake lights on.

When the paramedics approached the car, the back windows of the vehicle were down and they observed the Appellee, Ms. Ford with her foot on the brake, her head down and the radio turned up seemingly as high as it would go. The medics walked up to the car and knocked

on the window, however Appellee did not respond.

Paramedic Martin then went in through the back and was able to unlock the front door and open it. Paramedic Martin got inside the back seat, reached forward, put the car in park, turned the vehicle off and was able to reach across the Appellee and open the door for his partner. At this point, Paramedic Martin took the keys out of the ignition and kept them. Appellee was still not conscious. The paramedics then did a sternum rub on the Appellee and after about one minute she awoke.

Because she was speaking coherently and was able to answer their questions, the medics asked Appellee to step out of her vehicle. When she stepped out of the vehicle she had a red plastic Dixie cup in one hand and stumbled as she was exiting the vehicle. The cup, based on the color and smell appeared to contain an alcoholic beverage.

While the paramedics were evaluating the situation, Ms Ford attempted to walk away several times stating she had to use the bathroom. She was stopped by the medics because it was not safe for her to walk by herself up the I-95 off ramp in her condition.

A few minutes after the arrival of the medics, the police arrived, conducted an investigation and arrested Ms Ford for DUI. Paramedic Martin testified at the hearing on the Appellee's Motion to Suppress that based on his observations, he believed the Appellee was impaired. Paramedic Martin further testified that she was not free to leave or to walk away from the scene and that they would not have allowed her to drive under any circumstances. Paramedic Veas, another paramedic at the scene, testified that at the point the Appellee stepped out of the vehicle she was not free to go back inside the vehicle and drive away and that the Appellee was not free to leave. Neither paramedic was of the opinion that they had arrested Ms Ford. They

were asked and gave their opinions on this topic. They were also asked hypothetical questions, e.g. if a friend of Ms. Ford had arrived and offered to drive her home and arrange for safe removal of her car, whether they would have allowed the Appellee to leave. The paramedics responded in the affirmative because they had determined she appeared to be physically okay other than being drunk.

During the hearing on the motion to suppress, Paramedic Martin testified as follows:

STATE: I'm sorry. Was Ms Ford free to leave after you made contact with her?

Medic Martin: We were not letting her drive the vehicle under any circumstances, no ma'am.

COURT: I've got a question. What if she just wanted to walk away, let you worry about towing the car?

COURT: Would you have let her just walk away from the scene?

Medic Martin: No, because her impairment could have still caused her harm if she wandered into traffic. We would not have let her just simply walk away. She could still hurt herself, fall down, fall down the embankment as I said, or walk into traffic which it's very busy at that intersection.

(T 18-19).

Paramedic Veas then testified as follows:

STATE: Okay. At the point that the Defendant was asked to step out of the vehicle, was she free to go back inside the vehicle and drive away?

Medic Veas: No.

STATE: Okay. Was she free to leave?

Medic Veas: No.

(T 28).

Paramedic Veas further testified:

STATE: When you were questioning the Defendant, you knew that police Officers were

arriving?

Medic Veas: Yes.

STATE: And was the Defendant free to leave before the police officer arrived?

Medic Veas: If that's the call the Lieutenant wanted to make and somebody has come to pick her up, I suppose, yes, she would have been free.

STATE: So that wasn't your call to make?

Medic Veas: It's not my call, no. I know we can't actually put somebody under arrest if they know where they're at and they know the date and they are oriented to person, place and time, then we can't personally put them under arrest.

STATE: And you believe this person was impaired, the Defendant?

Medic Veas: I believed they were, yes.
(T 31-32).

It appears that Paramedic Veas' guess about what another firefighter/paramedic Lieutenant would do, i.e. let the impaired Defendant leave if someone came to pick her up may have convinced the trial court that the Defendant was not under arrest.

The trial Court continued asking hypothetical questions. For example:

COURT: Let's assume that she wanted to leave, the officers (police) had not yet arrested her. How would you continue to hold her?

Medic Veas: If she wanted to leave?

COURT: Yes

Medic Veas: That's something we – I personally didn't think about it too much. I knew the cops were on their way; they would be there within minutes and that really wasn't going to be an option. I knew somebody wasn't going to drive up to pick her up but I guess I didn't think we could let her leave on foot. Not where we were, we were on the side of I-95, the exit ramp.

(T 32-33).

Later the Court asked, "Yes, but you had no authority to stop – to continue to hold her is

that right?" Whereupon the prosecutor states: "I'm going to object to this line of questioning. I believe it's calling for speculation on the part of the paramedic. That's not what happened in this particular case." (T 33).

Nevertheless, the Court continued questioning the witness on this subject, specifically asking the witness on what lawful authority would the firefighter/paramedic continue to hold the defendant if the police hadn't arrived so quickly.

In his Order Granting the Motion to Suppress, the trial court, citing Boormeester v. State, 15 Fla. Law Weekly 576a (Fla. 13th Cir. Ct. 2008), wrote, "The key issue here is whether the Boca Raton Fire Rescue made a citizen's arrest. The Officer (i.e. police officer) lacked probable cause to arrest the Defendant because she did not observe the defendant in actual physical control of the car and defendant did not have the keys to the car when the officer arrived." The trial court further wrote, "In the instant case Defendant was not deprived of the right to leave."

However, being intoxicated, passed out in your car with the engine running on the I-95 off ramp amounts to a breach of the peace. See Edwards v. State, 462 So.2d 581, 582 (Fla. 4th DCA 1985); see also State v Furr, 723 So. 2d 842 (Fla. 1st DCA 1999). The paramedic took Appellee's keys out of the ignition of her car and retained possession thereby depriving her of her ability to drive and would not allow her to leave.

It is not the duty of a paramedic to arrest people. Their confusion about what does or does not amount to an arrest is as understandable as it is irrelevant. Paramedics do not have arrest powers as do police officers. The opinion of the paramedics regarding whether the Appellee was arrested i.e. detained against her will until the police officer arrived is not pertinent to the Court's legal analysis. Their knowledge or understanding or ability to articulate their

lawful authority is not relevant for a proper legal analysis. We do not rely on police officers to tell us when they have probable cause or not. These decisions are made by courts based on the facts presented. The decision as to whether the firefighter/paramedics made a lawful citizen's arrest ought to be made based on the actions of the paramedics, not on their opinions of the legal effect of their actions.

In Boermeester, the Defendant approached a military base in a vehicle. Boermeester, 15 Fla. L. Weekly 576a. The military guard thought the Defendant was drunk and ordered him to exit the vehicle, took his keys and ordered him to wait for the police. Id. In Boermeester, the appellate court wrote that the trial court found without explanation that there was no citizen's arrest. Id. The trial court did not issue a written order or otherwise elaborate on this conclusion. 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, "It is therefore with some difficulty that this Court reverses the trial court's determination... This court presumes that the trial court denial of the motion to suppress relied on the belief that Officer Arena witnessed each element of the crime...or a misapplication of the fellow officer rule and as a result the Hillsborough, Circuit Court reversed the County Court's denial of the motion to suppress. Id. The Circuit Court gave no analysis as to whether or not the Defendant was in fact subject to a citizen's arrest. Id.

In this case that issue was squarely presented by the evidence and arguments below. It is indisputable that the Defendant's keys were taken from her. She was helped out of the car. She tried but was not permitted to walk away. She was detained until the police arrived. Boermeester only stands for the proposition that if there is no citizen's arrest, the fellow officers

rule does not apply and therefore the police must have witnessed the Defendant in possession of the car (not standing outside the car) to make a valid misdemeanor arrest. Boermesster does not support the trial Court's conclusion in this case. Regardless of what the paramedics' intentions were or might have been had circumstances been different it is demonstrably clear by this record that the Defendant was lawfully detained by the paramedics until the police arrived.

Accordingly, the trial court's order granting Appellee's motion to suppress is REVERSED and the cause REMANDED.

OFTEDAL, K. MARX AND RAPP, JJ. concur.

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