

Online Reference: FLWSUPP 2809SPAR

Criminal law -- Driving under influence -- Search and seizure -- Investigatory stop -- Where deputy approached defendant who was talking on cell phone in lawfully parked vehicle in hotel parking lot and observed open container of beer in vehicle, deputy requested defendant's driver's license and advised that he would be searching her vehicle, and deputy directed defendant to exit her vehicle and began administering field sobriety exercises, encounter was investigatory stop -- Where, at time deputy seized defendant by directing her to exit vehicle, he had no evidence that defendant was in actual physical control of vehicle by possessing keys and had observed no indicia of impairment other than flushed face, deputy lacked reasonable suspicion for seizure -- Motion to suppress is granted

STATE OF FLORIDA, v. PATRICIA SPARLING, Defendant. County Court, 7th Judicial Circuit in and for Flagler County. Case No. 2019 CT 788. February 27, 2020. D. Melissa Distler, Judge. Counsel: Raymond Dailey, Assistant State Attorney, Office of the State Attorney, for State. G. Kipling Miller, Miller Law Firm, Daytona Beach, for Defendant.

ORDER ON DEFENDANT'S MOTION TO SUPPRESS

THIS MATTER came before the Court on Monday February 24, 2020 on the Defendant's Motion to Suppress. The Court, having heard testimony from the arresting officer, Deputy Kyle Gaddie, and having reviewed the AXON video recordings admitted into evidence, and having heard argument from both Counsel for the State and the Defendant, the Court makes the following findings of fact:

Findings of Fact:

Deputy Kyle Gaddie testified that he was on duty on September 9, 2019, on routine patrol driving through the Red Roof Inn parking lot. He testified that he is familiar with the area and has previously located stolen vehicles, narcotics use, intoxicated subjects, etc. in this area. As he drove through the parking lot, he noticed a van parked lawfully in a parking spot with the window down and a female behind the driver seat. Deputy Gaddie testified that it was unusual to see someone sitting in the parking lot of the hotel. At the hearing, Deputy Gaddie testified that there was another vehicle in the parking lot with its lights on, and that he was concerned for the safety of property upon seeing the Defendant in her vehicle and the illuminated lights of the vehicle in a different area of the parking lot.

Deputy Gaddie parked his patrol vehicle in the lane of travel at least one spot away from the Defendant's vehicle, not blocking her in and not restricting her ability to leave at that point. When Deputy Gaddie approached the driver side window, he acknowledged that the vehicle was not running. Deputy Gaddie testified that he smelled an odor of alcohol coming from the driver side of the vehicle and saw an open container of alcohol with condensation on it. He also testified that the Defendant's eyes were bloodshot and watery, that she had an elevated emotional state, and that she lacked dexterity.

Upon watching the AXON video recording, which has no audio for the first thirty seconds, there seems to be one or two sentences exchanged before the audio portion initiates. During that time, the Defendant points towards the hotel. The AXON video recording reveals the following interaction between Deputy Gaddie and the Defendant immediately upon his approach:

Deputy Gaddie: Do you have your license with you?

Defendant: Oh yeah.

Deputy Gaddie: Is there a reason you have an open container of alcohol in your vehicle?

Defendant: No I don't.

Deputy Gaddie: That Coors light that I'm looking at right there? [shining flashlight into the vehicle] That's open, that's in your hand right now?

Defendant: I'm going into the hotel right now officer.

Deputy Gaddie then walks to the back of her vehicle to call in the tag. The Defendant asks where he is and he responds, "I'm back here." After Deputy Gaddie calls in the tag, he walks back towards the driver side window.

Defendant: Officer, I'm fine

Deputy Gaddie: Do you have your license with you?

Defendant: Yes. I'm going into the hotel officer please.

Deputy Gaddie: Okay why aren't you drinking inside?

Defendant: I was just talking to my son and I was going in, please.

Deputy Gaddie: Okay. Why are you so worked up over an open container of alcohol?

Defendant: Because I know how cops work.

Deputy Gaddie: What does that mean?

Defendant: Just let me go in please, I'm fine.

Deputy Gaddie: Anything in the vehicle I need to know about?

Defendant: Oh no.

Deputy Gaddie: Because I'm going to be searching your vehicle.

The deputy's statement about searching the vehicle is 1:49 into the video. At the time of the statement, the only violation that the Defendant had committed was an open container of alcohol, a civil infraction, which does not give the officer authority to search her vehicle. Deputy Gaddie then directs her twice to step out of the vehicle. She states that she was doing nothing wrong and he responds by saying she was "sitting inside a vehicle with an open container of alcohol." He tells her stand back away from her vehicle by his patrol car with another deputy, and she submits to his show of authority. Deputy Gaddie interacts with another individual from a previous stop, and then he goes to his vehicle to run her driver's license information. While he is sitting in his vehicle, Deputy Gaddie tells her, "hey don't go in the vehicle." He thereafter steps out of his vehicle and says, "It's because you have a previous DUI, isn't it?"

Approximately six minutes into the video after this statement about her prior arrest, Deputy Gaddie asks where the keys to the vehicle are. The Defendant says, "I just put them into my purse" and goes back into the driver seat. She looks in the passenger side but does not retrieve or show the keys. The keys are ultimately discovered in her purse by the assisting deputy after the Defendant has been placed under arrest.

Deputy Gaddie then says come out here and talk to me and asks "how much have you had to drink tonight." She proceeds to explain how she was about to go into the hotel after her conversation with her son. He then says to her, "stand right here for me, put your feet together, arms down by your sides." This occurs 6:45 into the video, and Deputy Gaddie administers HGN on the Defendant without ever asking if she was willing to submit to field sobriety exercises. After HGN, he starts asking personal questions about whether she has a room at the hotel and why she isn't staying at home in the F section. Deputy Gaddie tells her that her explanation does not make any sense, forcing her to explain that she had a disagreement with her boyfriend. He then asks the boyfriend's name and how long they have lived at the residence together. Deputy Gaddie then asks her if she sees the white line

and tells her to go stand on the line. Nowhere in the interaction does he ask her if she is willing to participate in the field sobriety exercises.

After the deputy completes two more standardized exercises, he tells her to “hang out” and proceeds to the passenger side of her vehicle to search through her items. He then comes back to her and says he is going to perform one more exercise; Deputy Gaddie then administers the finger to nose exercise. Before she starts this last exercise, more than twenty-six minutes into the video, Deputy Gaddie asks her if she has any medical issues that could impact her ability to perform any of the exercises. After the Defendant is being arrested, the deputy asked if there was a way to secure the vehicle, another indication that the keys had not been seen. When the deputies' search the vehicle, they find the keys deep inside the Defendant's purse which was located on the passenger side of the car. Throughout the interaction, Deputy Gaddie is condescending towards the Defendant and makes statements that are demeaning and unnecessary.¹

On cross-examination, Deputy Gaddie stated that he did not have any reasonable suspicion or probable cause of criminal activity when he approached the vehicle. Deputy Gaddie was also impeached based upon his prior testimony at a DHSMV hearing, at which there was no discussion of safety for property and the other vehicle in the lot with its lights illuminated.

The Defendant contests the entirety of the detention, due to the vehicle being legally parked in a parking lot, without any suspicion of any criminal activity or any other basis to interact with the vehicle, as well as not observing the keys to the vehicle until after the Defendant was arrested, contrary to Florida Statute 901.15. The Defendant cited several cases in the motion along with an unpublished County Court opinion from Brevard County. The State alleges that this was a simple consensual encounter that turned into an investigatory stop upon seeing the open container. The State provided the following cases for the Court's review: *Blake v. State*, 939 So.2d 192 (Fla. 5th DCA 2006) [31 Fla. L. Weekly D2510a]; *State v. Hughes*, 562 So.2d 795 (Fla. 1st DCA 1990); and *Brooks v. State*, 745 So.2d 1113 (Fla. 1st DCA 1999) [24 Fla. L. Weekly D2753a].

Conclusions of Law:

The Court must first determine the level of police-citizen encounter this constituted. A consensual encounter involves minimal police contact, which allows the citizen to either voluntarily comply with a request or choose to ignore the officer's request. *Popple v. State*, 626 So.2d 185 (Fla. 1993). The second type of encounter is an investigatory stop, where “a police officer may reasonably detain a citizen temporarily if the officer has a reasonable suspicion that a person has committed, is committing, or is about to commit a crime.” *Id.* In *Popple*, the Florida Supreme Court held that an officer's request that an occupant of a parked car step out of his vehicle was a “seizure” of the occupant requiring reasonable suspicion. *Id.* The third type, which is an arrest, requires probable cause.

The Court concludes that the interaction captured on AXON between the Defendant and Deputy Gaddie was not a consensual encounter. Deputy Gaddie approaches the Defendant, who is lawfully parked and seated in her vehicle on her cell phone. The deputy immediately requests the Defendant's drivers' license, at which point she is no longer free to leave. In less than two minutes, Deputy Gaddie explicitly states he will be searching her vehicle, even though he only had grounds to issue a traffic citation based on the open container, which standing alone would not authorize him to search her car. Next Deputy Gaddie directs her out of her vehicle and tells her to stand with another deputy. After he runs her drivers' license and determines she was previously arrested for DUI, he then asks about the keys to the vehicle, which were not produced even at that point. He begins administering field sobriety exercises without even explaining what he is doing or why. The video is replete with examples of Deputy Gaddie directing the Defendant to do something and her submitting to his show of authority, indicative of an investigatory stop and not a consensual encounter.²

At the time the Defendant was seized by being asked to step out of her vehicle, Deputy Gaddie had no evidence that the Defendant was in actual physical control of the vehicle. The first mention of the keys was several minutes after she was ordered out of the vehicle and detained. At the time that the Defendant PATRICIA SPARLING was ordered out of the vehicle, the Deputy did not observe sufficient indicators of impairment. The

vehicle was lawfully and appropriately parked in a parking space. The Defendant's elevated emotional state and open container in the car do not, standing alone, lead to the conclusion that the Defendant was in actual physical control of a motor vehicle while under the influence of alcohol to the extent her normal faculties were impaired and that there is a lawful basis to search her vehicle. There was no evidence that the Defendant's face was flushed, no credible evidence as to any effect on speech or her eyes. There was no evidence that her ability to converse with the deputy or to obtain appropriate documents was impaired.

Based upon the above findings of fact, it is therefore ORDERED AND ADJUDGED as follows:

The Defendant's Motion to Suppress is GRANTED. All evidence after the Defendant PATRICIA SPARLING is seized by being directed out of her vehicle, including any statements, the results of any field sobriety exercises and any matters related to the intoxilizer test are suppressed.

¹Examples of such comments include the following: "You are talking yourself into jail." "A five-year-old can do this." "Whining about it isn't going to change anything right now."

²A temporary detention can also be justified under the officer's exercise of his community caretaking function. *See Cady v. Dombrowski*, 413 U.S. 433 (1973). The State did not attempt to argue and there is no evidence that the deputy was performing a community caretaker function in this case. Under the community caretaking function, the officer has the authority to check the Defendant's status and condition to determine whether she needs assistance. Even without probable cause, an officer may detain an individual pursuant to community caretaking under certain circumstances. The deputy made no attempt to gather any information about the Defendant's well-being prior to asking for her drivers' license.

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