IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

ALAKIETHA NICOLE HULL,

Appellant,

v. Case No. 5D20-701

STATE OF FLORIDA,

Appellee.

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Opinion filed April 1, 2021

Appeal from the Circuit Court for Orange County, Denise Beamer, Judge.

Matthew J. Metz, Public Defender, and Marie Taylor, Assistant Public Defender, Daytona Beach, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Rebecca Rock McGuigan, Assistant Attorney General, Daytona Beach, for Appellee.

SASSO, J.

This case presents the issue of whether Florida law authorizes custodial arrests for violations of local ordinances that carry criminal penalties. We find it does, and therefore affirm the judgment and sentence entered against Appellant.

FACTS AND PROCEDURAL HISTORY

On September 3, 2019, an Orlando Police Department Officer observed, while watching live stream video at an OPD sub-station, a group gathering, dancing, and drinking beer in an empty parking lot in downtown Orlando. The officer drove from the police sub-station to make arrests for possession of an open container, a violation of a municipal ordinance. Appellant was among those in the group who was handcuffed and arrested for possession of an open container. During a search incident to arrest, suspected narcotics were found in Appellant's fanny pack. Appellant was ultimately charged with possession of a controlled substance and possession of drug paraphernalia.

Relevant to Appellant's charges, defense counsel moved to suppress any evidence of controlled substances or contraband, arguing that the evidence resulted from an illegal seizure, custodial interrogation, and/or subsequent search of Appellant. In support, Appellant primarily relied upon *Thomas v. State*, 614 So. 2d 468 (Fla. 1993), arguing probable cause for

violation of a municipal ordinance alone was insufficient to justify the prolonged detention, seizure, and search of Appellant. Specifically, Appellant argued that the *Thomas* definition of "arrest," as applied to municipal ordinances, only permits detentions "for the purpose of issuing a ticket, a summons or a notice to appear." As such, Appellant argued, the search was not performed pursuant to a lawful, custodial arrest and was unreasonable in violation of the United States and Florida Constitutions.

The trial court denied the motion to suppress. In doing so, the trial court noted that the ordinance Appellant was suspected of violating carries criminal penalties, in the form of a term of imprisonment.[1] The trial court therefore distinguished *Thomas* because the conduct prohibited by the ordinance at issue in *Thomas* had been decriminalized by the State and was noncriminal in nature.

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[1] The Orlando ordinance prohibiting the open container at issue is section 33.18 of the Orlando Municipal Code, and it provides:

> It shall be unlawful for any person to possess in any open container or to consume any alcoholic beverage or any mixture containing an alcoholic beverage in or upon any parking area open to public use, or in or upon any private property without the consent of the owner, tenant or other person lawfully in possession of said property.

Section 1.08(3) of the Orlando Municipal Code states that the penalty for a violation of section 33.18 includes "a definite term of imprisonment not to exceed sixty (60) days," a fine of up to $500, or both.

STANDARD OF REVIEW

A ruling consisting of a pure question of law is subject to a de novo review. *State v. Glatzmayer*, 789 So. 2d 297, 301–02 n.7 (Fla. 2001).

ANALYSIS

As she did below, Appellant argues here that the Florida Supreme Court's decision in *Thomas* dictates that an arrest for any municipal ordinance must be limited "for the purpose of issuing a ticket, a summons or a notice to appear." However, as the trial court aptly determined, this argument is incorrect.

In *Thomas*, the Florida Supreme Court was presented with two certified questions which it answered "in the context of the specific factual situation presented . . . ." *Thomas*, 614 So. 2d at 469. Relevant to Appellant's argument, the first certified question was whether a city could enforce a municipal ordinance requiring the existence of safety equipment on a bicycle ridden in the city limits by arresting a person who violates the ordinance. *Id.* In answering the question, the court examined section 901.15(1), Florida Statutes, which permits a law enforcement officer to arrest a person without a warrant when the person has violated a municipal or county ordinance. *Id.* at 470. The court explained that the term "arrest" as contemplated by section 901.15 "does not necessarily mean" a full custodial arrest. *Id.* Instead, the

court determined that the term arrest in section 901.15 bears alternative meanings, including "to detain for the purposes of issuing a ticket, a summons or a notice to appear." *Id.* at 471. The court then held:

> [W]hen a person is charged with violating a municipal ordinance regulating conduct that is **noncriminal in nature**, such as in the traffic control area, section 901.15(1) only permits a person to be detained for the limited purpose of issuing a ticket, summons, or notice to appear. A full custodial arrest in such situations is unreasonable and a violation of the Fourth Amendment and Article I, Section 12, of the Florida Constitution.

Id. (emphasis added). In other words, *Thomas* explains that section 901.15(1) does not provide blanket authority to perform a custodial arrest for all local ordinance violations. However, nothing in *Thomas* precludes a custodial arrest for a violation of an ordinance that is criminal in nature.

Appellant appears to recognize this distinction but nonetheless argues the ordinance at issue here is non-criminal in nature, even though it carries criminal penalties. In support, Appellant relies on section 775.08, Florida Statutes, which defines "crime" as a felony or misdemeanor. § 775.08(4), Fla. Stat. (2019). Because that section also excludes a conviction for any municipal or county ordinance from the definition of misdemeanor, Appellant argues that violation of any ordinance cannot be criminal in nature because it does not meet the statutory definition of "crime." *See* § 775.08(2), Fla. Stat. (2019) ("The term 'misdemeanor' shall not mean a conviction for any

noncriminal traffic violation of any provision of chapter 316 or any municipal or county ordinance.").

Again, we reject Appellant's argument. First, we note that section 775.08(4) also excludes the conviction for any violation of a municipal or county ordinance from the definition of a "noncriminal violation." § 775.08(3), Fla. Stat. ("The term 'noncriminal violation' shall not mean any conviction for any violation of any municipal or county ordinance.").

Second, and more importantly, Appellant's emphasis on definitions set forth in section 775.08 confuses the real issue: whether the search of Appellant was performed incident to a lawful arrest. Nothing in section 775.08 prohibits the custodial arrest of an individual who violates a municipal ordinance. Indeed, the statute does not address that issue at all.

To the contrary, the Legislature has specifically authorized municipalities to designate enforcement methods and penalties to be imposed for the violation of ordinances. *See* § 162.22, Fla. Stat. (2019) (noting enforcement methods may include "arrest" as provided for in chapter 901 and that a person convicted of violating a municipal ordinance may be sentenced to a term of imprisonment not to exceed 60 days).

Consequently, based on the plain language of sections 162.22 and 901.15, Florida Statutes, we determine that Appellant's arrest was lawful,

and the search incident to the arrest was proper under controlling precedent. *See, e.g.*, *Riley v. California*, 573 U.S. 373, 384 (2014) ("[C]ustodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification." (citations omitted)). *Thomas*, which was explicitly decided on the specific factual circumstances presented by that case, does not dictate a different result. As a result, we affirm.

AFFIRMED.

COHEN and LAMBERT, JJ., concur.