

Ford v. Superior Court

(July 31, 2001) __ Cal.App.4th __

ISSUE

- (1) Was a murder suspect illegally seized at some point while waiting to be interviewed by officers?
- (2) If not, was he illegally seized before subsequent interviews?

FACTS

Ford lived in a van behind his sister's home in Oakland. One of the people who lived in the house was Ford's niece, April Matlock. Upon waking up one day, Ford went into the house where he got into an argument with Matlock, who was the only person at home. According to Ford, April "verbally abused" him so he grabbed a hammer and hit her over the head with it several times, killing her. After putting April's body in her bed, Ford set about to make it look like April had been killed by a burglar. For example, he pulled out drawers from cabinets and scattered clothing and papers around the house. He even broke down the door leading to the bedroom of April's sister. Then he returned to his van.

Just before 3:30 P.M., Ford's sister arrived home and discovered the "burglary" and saw blood on the walls of April's bedroom. She immediately notified Ford who walked into the house, looked around, and made the first of two calls to 9-1-1-each one later became a factor in focusing suspicion on Ford.

Call #1: In the first call, he told the 9-1-1 operator the house had been burglarized but he didn't say anything about seeing blood anywhere. This was considered strange considering blood was spattered on all four walls of April's bedroom and, in addition, Ford's sister had specifically told him she'd seen blood there.

Call #2: About 15 minutes later, Ford phoned 9-1-1 again and said "there's blood all over" one of the bedrooms. He did not, however say anything about seeing a body in the bedroom until later in the call when he said, "I think that's her [April] in the room. I think. I don't know."

The first officer on the scene, upon discovering the body and talking with Ford, was apparently starting to think that Ford might be the killer. In any event, he asked Ford if "he would mind sitting in his patrol car." Ford said okay and "just jumped right in the back seat of the patrol car, where was locked in." About ten minutes later, the officer asked Ford "if he would mind going to the police station, where there were people trained in these type of things that would like to talk to you." Ford said "that would be fine," so the officer drove him to the OPD building. Ford was not handcuffed.

At about 5:15 P.M., they arrived at the homicide section where Ford was asked to wait in a windowless, eight-by-eight interview room containing a table and three chairs. The door to the room locks automatically when it is closed, so officers told Ford to knock on the door if he needed anything.

Meanwhile, the lead investigator in the case, Sgt. Joyner, was at the scene of the crime, checking for physical evidence and interviewing residents and neighbors. He completed his work there at about 8 P.M. and returned to the homicide section to interview Ford and other members of the family. He decided to interview Ford last because he, too, was starting think Ford was the murderer and he wanted to have as much information as possible before interviewing him. Also before talking with Ford he

listened to the tapes of Ford's calls to 9-1-1, reviewed his notes and police reports, and spoke with other officers who had been at the scene. At some point he also spoke briefly with Ford, explaining what he was doing, why it was taking so long, and apologizing for the wait. Ford said he understood. The first interview with Ford began just after midnight. Ford waived his Miranda rights and spoke with Joyner and his partner Sgt. Longmire about his activities before the "burglary" was discovered. About an hour later, Ford was asked if he would be willing to give a blood sample; he agreed. He was then driven to the county hospital in an unmarked car. He sat in the backseat and was not handcuffed. On the way, they stopped at Jack-In-The-Box where they all had something to eat.

They returned to OPD at 2:22 A.M. By this time, Ford was a full-fledged suspect. So Joyner decided to "turn on the interview techniques to see what might turn up." Joyner began by confronting Ford with some inconsistencies in his story. When Joyner misled Ford into believing that a neighbor had seen him enter the house before April was murdered, Ford admitted he "might have" been in the house then. Ford's story then started unraveling and he soon confessed.

DISCUSSION

Although Ford consented to go to the police station for questioning, he argued that by the time he started making incriminating statements he was effectively under "arrest." And because probable cause to arrest did not exist at that point, the arrest was illegal and his subsequent statements should have been suppressed. The People responded that Ford's appearance at the police station was consensual and remained so until probable cause developed.

To determine whether a suspect has been arrested or detained, the courts usually look to see whether a reasonable person under the circumstances would have believed he was free to go. Here, there was one circumstance that tended to indicate Ford was under arrest, at least before he confessed: he had been locked in an interview room for almost seven hours. This, to be sure, is strong evidence of a de facto arrest, but fortunately there were countervailing circumstances-at least four of them:

- (1) Consent not withdrawn: At no time did Ford say or even hint he was no longer willing to wait at the police station.
- (2) The apology: Joyner apologized to Ford about the delay and explained the reasons for the delay, and Ford said he "understood." Said the court, "Although [Ford] was never told in so many words that he was not under arrest or that he was free to leave, that advice was implicit in the sergeant's apology for the time it was taking to interview other witnesses."
- (3) Diligence: Joyner and the other officers were acting diligently under the circumstances; there were many things they needed to do and many people to interview before talking with Ford. And, as noted, Joyner explained this to Ford.
- (4) Ford's strategic role: From the beginning-and continuing at "regular intervals"-Ford expressed a desire to cooperate with the investigators. As the court noted, "He was, in fact, playing the role of the concerned and cooperative family member who wanted to assist officers in any way he could."

Consistent with this role, he made it clear he wanted to be available to the officers and assist them in any way he could. Said the court:

It thus appears that [Ford], from the moment he summoned the police to the scene, deliberately chose a stance of eager cooperation in hopes of persuading the police of his innocence. The record establishes

that [Ford] was unfailingly cooperative and remained eager to prove his veracity even after the interrogation began. In these circumstances the police could reasonably rely on [Ford's] apparent consent.

Accordingly, the court ruled that Ford was not arrested or even detained before he confessed and, therefore, his statements were admissible.

DA's COMMENT

The problem confronting the officers in Ford is a recurring one. A person who appears to be only a witness to a crime or maybe a long-shot suspect, is asked to accompany officers to the police station for questioning. At first it's entirely consensual. But as time drags on, as the interview becomes more accusatory, and as the suspect is confronted with inconsistencies in his story and evidence of his guilt, the encounter may suddenly and seamlessly become a de facto or inadvertent arrest. If this happens, and if probable cause to arrest does not exist at that point, the arrest is illegal, which means anything the suspect says after that may be suppressed.

It is, therefore, critically important that officers in situations such as these remain constantly alert to this possibility, and take steps to avoid it. What can they do? Among other things, they can repeatedly remind the suspect he is free to go. They can explain to him that he is considered merely a witness in the case. They can be considerate of his needs, offering him food, coffee, or whatever. If the suspect is not yet deemed a security risk, the locking door to the interview room might be propped open and the suspect allowed to go to the restroom or snack bar unaccompanied by officers. If it is necessary to have the suspect wait in a locked interview room, they can make sure someone regularly opens the door and asks if he needs anything. Signs could be posted in any locked interview room explaining that the door locks automatically and that if an occupant wants something he should just knock on the door. Gratuitous Miranda warnings should be avoided. And if it is necessary to have the suspect wait for a relatively long time, officers should explain the reasons for the delay to the suspect and even, as Sgt. Joyner did, apologize to the suspect.

Finally, if officers do any of these things, they must be sure to document them in their reports so as to enable prosecutors to prove that the encounter remained consensual until probable cause was established.