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2012 IL App (3d) 120216-U

Order filed December 21, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-12-0216
)	Circuit No. 10-CM-1520
)	
WILLIAM RUSSELL,)	Honorable
)	Domenica Osterberger,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* The grand jury subpoena was unreasonable; therefore, the court's order suppressing evidence received as a result of the subpoena is affirmed.
- ¶ 2 Defendant, William Russell, was charged with two counts of driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (a)(2) (West 2010)) and one count of reckless driving (625 ILCS 5/11-503(a) (West 2010)). Prior to the filing of the charges, the State subpoenaed defendant's medical records through the grand jury. Defendant filed a motion to

suppress the records. The trial court granted defendant's motion. The State appeals, arguing that the trial court erred as a matter of law when it suppressed the records. We affirm.

¶ 3

FACTS

¶ 4 On April 12, 2010, defendant was involved in an accident in Homer Glen, Illinois. Prior to the filing of charges, Will County Sheriff's Deputy James Wendt appeared before the grand jury. Wendt informed the grand jury only that defendant was involved in a two-vehicle accident and that his vehicle was traveling approximately 90 miles per hour when it struck another vehicle in the rear. Wendt stated that pursuant to the investigation, he was seeking defendant's medical records. The grand jury appointed Wendt as grand jury investigator and later issued a subpoena ordering Loyola Hospital to produce defendant's medical records. The subpoena requested that Loyola Hospital provide the home addresses of the individuals who treated defendant, the results of any blood or urine tests and the person who administered them, and any and all records pertaining to the treatment of defendant.

¶ 5 Thereafter, Wendt received the medical records, and the State charged defendant with two counts of DUI (625 ILCS 5/11-501(a)(1), (2) (West 2010)) and one count of reckless driving (625 ILCS 5/11-503(a) (West 2010)). The records were never presented to the grand jury.

¶ 6 Prior to trial, defendant filed a motion to suppress evidence, asking the court to suppress evidence obtained from an improper search of his vehicle and an improperly executed grand jury subpoena. Specifically, defendant argued that Wendt did not present the grand jury with probable cause or sufficient evidence to support a subpoena of his medical records.

¶ 7 On November 2, 2011, the trial court held a hearing on defendant's motion. Wendt testified that he was in the traffic division of the Will County sheriff's department and that he was

the lead investigator of the collision involving defendant. As part of his investigation, Wendt performed an inventory search of defendant's vehicle in order to identify defendant. During the search, Wendt discovered defendant's driver's license as well as a bottle of vodka. Wendt testified that he did not have a warrant to search the vehicle, nor did he have defendant's consent. Further, Wendt stated that he did not know whether the policies and procedures of the Will County sheriff's department allowed an inventory search after a vehicle was towed from the scene of an accident.

¶ 8 In an effort to obtain a grand jury subpoena for defendant's medical records, Wendt informed the grand jury that defendant was involved in an accident in which he was traveling 90 miles per hour; however, he did not mention that he found a bottle of vodka in defendant's vehicle. Wendt testified that he received the information requested in the subpoena, but he did not return the information to the grand jury.

¶ 9 At the conclusion of the hearing, the trial court suppressed the evidence obtained from the search of defendant's vehicle and the subpoena of defendant's medical records. The court noted that the State did not need to provide probable cause for the subpoena, but it did need to present some evidence to the grand jury that they were investigating a DUI case. Because the State failed to present any evidence that defendant was under investigation for a DUI, the subpoena was not properly executed.

¶ 10 Following the State's filing of a motion to reconsider, the court further found that the error in the subpoena was not harmless. Contrary to the State's argument, the court ruled that the blood alcohol test results could not have been later obtained pursuant to section 11-501.4-1 of the

Illinois Vehicle Code (Code) (625 ILCS 5/11-501.4-1 (West 2010)). The court denied the motion to reconsider. The State appeals.

¶ 11

ANALYSIS

¶ 12 The State argues that the trial court erred as a matter of law when it suppressed defendant's medical records obtained through the grand jury subpoena. We review a trial court's ruling on a motion to suppress evidence pursuant to a two-part test. *People v. Absher*, 242 Ill. 2d 77 (2011). First, we will uphold the court's factual findings unless they are against the manifest weight of the evidence. *Id.* Second, we assess the established facts in relation to the issues presented and review the ultimate legal question of whether suppression is warranted *de novo*. *Id.*

¶ 13 The State first argues that the grand jury subpoena was reasonable and proper, and therefore the information obtained should not have been suppressed. As an investigatory body charged with determining whether probable cause that a crime occurred exists, the grand jury has extensive powers. It can investigate merely on suspicion that the law is being violated or because it wants assurance that it is not. *United States v. R. Enterprises, Inc.*, 498 U.S. 292 (1991). However, the grand jury's subpoena power is not unlimited. *People v. DeLaire*, 240 Ill. App. 3d 1012 (1993). When a subpoena infringes on a person's protected rights, the reasonableness of the intrusion must be tested against the validity of the subpoena. *Id.* For documentary evidence, a grand jury subpoena is reasonable where: (1) the document is relevant to the inquiry; and (2) the specification of the document to be produced is adequate but not excessive for the purpose of the relevant inquiry. *Id.*

¶ 14 Here, we find that the State did not provide any information to the grand jury that made defendant's medical records relevant to their inquiry into the accident. The only information before the grand jury was that defendant was involved in an accident in which his vehicle was traveling 90 miles per hour when it hit the rear of another vehicle. Nothing in the information given to the grand jury suggested defendant was intoxicated. The fact that an accident occurred or that an individual was speeding prior to an accident does not justify an intrusion into an individual's medical records. Therefore, we find that the grand jury subpoena was not reasonable.

¶ 15 We also find that the subpoena was unreasonable because it was excessive. The subpoena requested all records pertaining to the treatment of defendant. Even if defendant's blood alcohol level was relevant, information regarding the injuries he sustained as a result of the accident as well as any and all other information pertaining to the treatment he received was not. Therefore, we find that the subpoena was unreasonably excessive.

¶ 16 The State further argues that the trial court ruled incorrectly when it did not find harmless error. We note that we can affirm the trial court's ruling on any ground warranted by the record, regardless of the trial court's stated reasons. *People v. Hale*, 326 Ill. App. 3d 455 (2001). The State claims that the error was harmless because section 11-501.4-1 of the Code permits it to obtain defendant's blood alcohol results upon request. 625 ILCS 5/11-501.4-1 (West 2010). We withhold judgment on the State's argument pertaining to section 11-501.4-1. We are reluctant to find harmless error where important liberty interests are at stake. See *Matter of DeLong*, 289 Ill. App. 3d 842 (1997). Here, the subpoena sought information that far exceeded the scope of a proper investigation into a vehicular accident. We believe that finding harmless error would

suggest that we condone invasions of personal privacy by the State in its hope that some of the information obtained may be allowed in a court of law. Where, as here, the State intrudes upon an individual's personal liberty, we are unwilling to find harmless error.

¶ 17 We conclude that the evidence produced by the subpoena should have been suppressed. Thus, we affirm the trial court's order granting defendant's motion to suppress evidence.

¶ 18 **CONCLUSION**

¶ 19 The judgment of the circuit court of Will County is affirmed.

¶ 20 Affirmed.