2016 IL App (5th) 150095-U

NO. 5-15-0095

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Effingham County.
	)	
v.	)	No. 14-DT-136
	)	
MICHAEL BROOKS,	)	Honorable
	)	Stanley Brandmeyer,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting the defendant's motion to suppress the results of a blood-alcohol analysis.

¶ 2 Following a single-vehicle accident with injury on August 14, 2014, the defendant, Michael Brooks, was charged with driving under the influence of alcohol (DUI) in violation of section 11-501(a)(2) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)(2) (West 2014)). He moved to suppress the results of a blood-alcohol analysis performed at a local hospital on the night in question. While the defendant's motion was pending, the State issued a subpoena *duces tecum* to the local hospital requesting that the defendant's blood work be produced to the circuit court. Following an evidentiary hearing, the circuit

court granted the defendant's motion to suppress. On reconsideration, the trial court declined to modify its order. The State filed a certificate of impairment and appealed the circuit court's order pursuant to Illinois Supreme Court Rule 604(a)(1) (eff. Jan. 1, 2013). For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 The defendant was charged by citation with DUI as a result of a single-vehicle accident that occurred on August 14, 2014. Approximately two months later, the defendant filed a motion to suppress the results of a blood-alcohol analysis that was performed at a local hospital. On December 8, 2014, while the motion was pending, the State issued a subpoena *duces tecum* to the local hospital commanding it to produce "[a]ll lab results ('blood work')" originating from the defendant's admission on or about August 14, 2014. The subpoena requested that the hospital produce the results of the defendant's blood work in a sealed, clearly marked envelope, and send it to the Effingham County Circuit Clerk. A docket entry reflects that the court received the subpoenaed material from the hospital on December 12, 2014. Three days later, an evidentiary hearing was held on the defendant's motion to suppress. A summary of the proceeding follows.

¶ 5 At the outset of the suppression hearing, the circuit court noted that it was in possession of a sealed envelope. The circuit court did not open the envelope to ascertain its contents. The defendant informed the court that he presumed that the sealed records were the subject matter of the motion to suppress, and objected to disclosure of the records to the State on constitutional grounds. The State responded that it assumed that the envelope contained medical records that would reveal the lab results of the

defendant's blood draw. The State further argued that the records were not the subject of the motion to suppress, and enjoyed no constitutional protection because any blood draw was not the result of State action. The State suggested that the court keep the medical records, pending the outcome of the proceeding. The court then asked the defendant if it had a response to the State's position. The defendant argued that the blood draw was a violation of his fourth amendment rights. In light of these arguments, the court maintained custody of the sealed envelope. Thereafter, the court instructed the defendant to call his first witness.

¶ 6 The defendant's first witness was Thomas Webb, a police officer with the Effingham City Police Department. Officer Webb testified that on August 14, 2014, at approximately 11:54 p.m., he was dispatched to the corner of Temple and Main streets, the scene of a single-vehicle accident. When he arrived at the scene, Officer Webb saw that three Effingham police officers had already arrived at the accident site. Upon his arrival, Officer Webb saw a motorcycle on a bush in the front yard of a house. He also saw an opened-top Jeep across the street, near a parking lot, approximately 100 feet from the motorcycle. Webb walked across the street to the Jeep, and saw the defendant sitting in the passenger seat with the door closed. Although none of the police officers saw the defendant operating a motor vehicle, two witnesses informed Webb that the defendant had been driving. Webb spoke to the defendant, and while doing so, perceived that the defendant's speech was slurred, eyes were red, and that he had an odor of alcoholic beverage emitting from his mouth when speaking. Webb also believed, based upon his observation, that the defendant had a broken foot.

¶ 7 Webb admitted to having little medical training, and stated that he had no authority to force a person to undergo unwanted medical care. The defendant was not bleeding, but Webb believed that the injury was serious. When Webb asked the defendant if he wanted to go to the hospital, the defendant declined. According to Webb, the defendant appeared to be agitated by the presence of law enforcement, and he used explicit language while communicating with police. Webb was concerned about the defendant's safety, as he appeared to not be thinking rationally.

¶ 8 At some point during this incident, emergency medical services personnel (EMS) arrived. EMS requested assistance in getting the defendant to the hospital. Despite the fact that the defendant continued to refuse medical services, Webb and another officer physically removed the defendant from the vehicle, and forcibly placed the defendant on a gurney. Webb and the other officer also assisted EMS in putting the gurney into the ambulance. Webb was not in the ambulance when EMS began transporting the defendant to the hospital. EMS had to stop the ambulance after traveling one or two blocks from the scene because the defendant attempted to leave the emergency vehicle. EMS then requested that Webb aid in the transport of the defendant to the hospital. Webb forcibly placed the defendant on a cot, handcuffed him, and rode with the defendant and EMS in the ambulance the rest of the way to the hospital. Webb also assisted EMS in delivering the defendant to the emergency room at the local hospital. He never attempted to obtain a court order compelling the defendant to receive medical care.

¶ 9 At the hospital, Webb read the warning to motorists to the defendant and asked him to consent to blood or breath testing. The defendant refused Webb's request. At that

point, Webb issued the defendant a citation for DUI. Webb did not take a sample of the defendant's blood, nor did he direct anyone at the hospital to do so. While Webb did observe nurses working on the defendant, he never spoke to a nurse or a doctor. Webb never heard the defendant change his mind and request medical services. Webb had no further contact with hospital personnel after he left. There is nothing in the record to suggest that Webb sought a warrant for a blood draw on the defendant.

¶ 10 The defendant testified as follows. At the hospital, the defendant never consented to have his blood drawn. Every time he was asked to have his blood drawn, the defendant refused. Medical staff at the hospital set his leg, which was broken. Altogether, the defendant spent approximately 12 hours at the hospital.

¶ 11 The defendant then rested, and the State called no witnesses. After hearing arguments, the circuit court took the matter under advisement and retained the defendant's sealed medical records. Approximately one month later, the circuit court issued an order granting the defendant's motion to suppress, finding that the case of *People v. Armer*, 2014 IL App (5th) 130342, was controlling, to the extent that "the State failed to prove exigent circumstances were present to obtain a blood draw from Defendant absent a warrant." The circuit court also explained that the case law relied on by the State regarding its ability to issue a subpoena *duces tecum* was not applicable to the case at bar, where "the Defendant repeatedly refused the need for medical treatment with the Officer, in the ambulance, and at the hospital, where there was no testimony regarding the emergency medical necessity of the medical treatment or where there was

no testimony regarding the ability of the State to obtain a warrant to support the blood draw." Thus, the circuit court granted the defendant's motion to suppress.

¶ 12 On February 2, 2015, the State filed a motion to reconsider. During that hearing, the State argued that statutory authority entitled it to access the defendant's medical records. The State also reaffirmed its position that there was no State action with regard to the defendant's blood being drawn. In response to the State's arguments, the defendant contended that the suggestion that there was no State action was contrary to the facts presented at the suppression hearing.

¶ 13 After hearing arguments on the motion to reconsider, the court stated that in most cases, a broken foot is not a life-threatening injury that requires the defendant to submit to immediate medical attention. The court further indicated that the blood draw administered on the defendant resulted from State action. Specifically, the court stated, "the argument that somehow the State wasn't responsible for the blood draw appears to me to be a form over substance argument." The court also noted that "it's strange *credula* to think that the reason for the officer's action was anything but to obtain evidence that could be used later in a prosecution for DUI." The circuit court, therefore, declined to modify its original order. The State filed a certificate of substantial impairment, and this appeal followed.

¶ 14 ANALYSIS

¶ 15 On appeal, the State contends that the circuit court erred in quashing its subpoena because the Code of Civil Procedure and the Illinois Vehicle Code (Vehicle Code) allow for the results of blood tests to be disclosed in DUI prosecutions. The State also claims

that the circuit court erred in granting the defendant's motion to suppress because the defendant did not prove that a blood draw was administered, and that the defendant failed to meet his burden of proving that any blood test was the result of State action.

¶ 16 We consider first the propriety of the circuit court's order granting the defendant's motion to suppress, as this issue is dispositive of the outcome of this appeal. When reviewing a trial court's order on a motion to suppress, we apply a two-part standard of review. *People v. Carey*, 386 Ill. App. 3d 254, 258 (2008). Deference is given to the trial court's findings of fact unless those findings are against the manifest weight of the evidence (*People v. Harris*, 2015 IL App (4th) 140696, ¶ 44), and the ultimate question of whether the evidence should be suppressed is reviewed *de novo* (*Carey*, 386 Ill. App. 3d at 258).

¶ 17 The State's first argument on appeal is that the defendant failed to prove that any blood draw was performed at the hospital. According to the State, if the defendant did not offer any proof that a blood draw was performed, then he cannot carry his burden of proving that a blood draw was either ordered by the State, or "procured via State subterfuge." We disagree with the State's contention, as the defendant filed a motion to suppress the blood-alcohol analysis that was performed on him at the local hospital, and both parties proceeded to argue the merits of the underlying motion, with the understanding that a blood draw had been performed on the defendant. We therefore find no merit in this argument, and turn next to the State's contention that the blood draw administered on the defendant was not the result of State action.

¶ 18 The fourth amendment and specific statutory provisions govern the admissibility of blood-alcohol tests in a DUI prosecution. *People v. Yant*, 210 Ill. App. 3d 961, 964 (1991). In particular, pursuant to section 11-501.4 of the Vehicle Code, the results of blood tests performed in the regular course of providing emergency medical treatment to patients are admissible, provided that such tests were not at the request of law enforcement authorities. See 625 ILCS 5/11-501.4 (West 2014). The fourth amendment, on the other hand, does not permit warrantless blood tests incident to lawful arrests for drunk driving (*Birchfield v. North Dakota*, ___ U.S. ___, ___, 136 S. Ct. 2160, 2184 (2016)), unless there is proof of the existence of an exception to the warrant requirement, such as exigent circumstances, or consent (*People v. Harris*, 2015 IL App (4th) 140696, ¶ 45). The fourth amendment applies only to government action. *People v. Phillips*, 215 Ill. 2d 554, 566 (2005). A search performed by a private person does not violate the fourth amendment. *Phillips*, 215 Ill. 2d at 566. Additionally, the fourth amendment does not prohibit the government from using information discovered by a private search. *Phillips*, 215 Ill. 2d at 566.

¶ 19 In *People v. Yant*, 210 Ill. App. 3d 961 (1991), the appellate court reversed the circuit court's decision to suppress evidence of a blood-alcohol test in a DUI prosecution. The following facts were agreed upon by both parties. At the scene of the accident, ambulance personnel felt the need to use leather restraints on the defendant because he was combative and uncooperative. *Yant*, 210 Ill. App. 3d at 963. The defendant remained in restraints when he was transported to the emergency room, and while he was treated for facial trauma. *Yant*, 210 Ill. App. 3d at 963. Although the defendant refused

treatment, and further refused requests to give a blood sample, the physician on duty at the hospital ordered a blood test in the course of emergency medical treatment, and blood was drawn against the defendant's will. *Yant*, 210 Ill. App. 3d at 963. One of the arguments put forward by the defendant on appeal was that the blood draw was an unreasonable search and seizure in violation of his fourth amendment rights. *Yant*, 210 Ill. App. 3d at 965. According to the defendant, this argument supported the trial court's decision to suppress evidence of the blood test. *Yant*, 210 Ill. App. 3d at 965. The appellate court disagreed, and expressly noted that "there is no indication in the record that either the emergency restraints or the physician's blood test order here was a subterfuge procured by the police or any form of State action." *Yant*, 210 Ill. App. 3d at 965. Thus, the appellate court attached significance to the fact that there was nothing in the record to suggest that the State participated in forcing medical treatment on the defendant.

¶ 20 In this case, the trial court determined that in the absence of exigent circumstances, the State was required to procure a warrant in order to administer the blood draw on the defendant. In making that determination, the circuit court implicitly determined that the blood-alcohol analysis performed on the defendant was the result of State action, thus requiring the issuance of a warrant to secure the defendant's blood work. The State disagrees, arguing that the defendant presented no evidence that any blood test was performed at the direction of police. In particular, the State contends that Webb provided unrebutted testimony that he did not take a sample of the defendant's blood, and that he did not direct anyone at the hospital to take a sample of the defendant's

blood. In support of its argument, the State relies upon several cases, including *Yant* and *People v. Poncar*, 323 Ill. App. 3d 702 (2001),

¶ 21 We disagree with the State's position. *Yant* lends support to our conclusion that the blood draw performed on the defendant was the result of State action, and *Poncar* is distinguishable. As previously noted, the appellate court in *Yant* expressly recognized the importance of the absence of State participation when the blood draw was performed on a defendant against his will. 210 Ill. App. 3d at 965. In this case, despite the defendant's refusal of emergency medical treatment, Webb physically removed the defendant from a vehicle, forcibly placed him onto a gurney, and assisted in putting the defendant into an ambulance for transport to the hospital. When EMS had traveled only a block or two, EMS personnel requested Webb for his assistance because the defendant was trying to get out of the ambulance. Webb then forcibly placed the defendant on a cot, handcuffed him, rode with the defendant and EMS in the ambulance on the way to the hospital, and assisted EMS in delivering the defendant to the emergency room. What was absent in the record in *Yant*, State participation, is apparent in this case. Here, there is ample evidence in the record demonstrating that the State participated in forcing the defendant to obtain medical treatment.

¶ 22 The State's reliance on *Poncar* to support its argument that the police conduct in this case did not amount to State action is misplaced. The appellate court in *Poncar* relied on *Yant* in determining that there was no evidence to support the conclusion that the blood test performed on the defendant was the result of police subterfuge. *Poncar*, 323 Ill App. 3d at 707. Most notably, what was missing from the *Poncar* court's analysis

was whether the police conduct amounted to State action. Subterfuge is but one of the ways by which a defendant can prove that the police conducted an illegal search. See *Yant*, 210 Ill. App. 3d at 965 (noting that nothing in the record suggested that the blood test was the result of police subterfuge or any other form of State action). Therefore, we find that *Poncar* is inapplicable to the instant case. Accordingly, we find that under the specific circumstances of this case, the blood draw performed on the defendant was the result of State action.

¶ 23 The trial court also determined that exigent circumstances did not exist, which would have allowed the police officer to obtain a blood draw from the defendant, absent a warrant. The U.S. Supreme Court has held that, "the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant." *Missouri v. McNeely*, 569 U.S. ___, ___, 133 S. Ct. 1552, 1568 (2013). Thus, a reviewing court must determine, on a case-by-case basis, whether the totality of the circumstances justifies a warrantless blood test. *McNeely*, 569 U.S. at ___, 133 S. Ct. at 1563.

¶ 24 A review of the totality of circumstances in this case leads us to conclude that officer Webb was not faced with exigent circumstances that would justify a warrantless blood draw. Webb never testified that he was faced with exigent circumstances. The record shows that while there may have been some delay regarding the transport of the defendant to the hospital, there were three other police officers at the scene, besides Webb, to assist in the investigation. Any one of the four police officers could have

attempted to secure a search warrant. There is nothing in the record to suggest that any one of the officers could not have attempted to secure a warrant.

¶ 25 In light of the foregoing, we conclude that the warrantless blood draw violated the defendant's fourth amendment right to be free from an unreasonable search. Accordingly, we affirm the order of the circuit court granting the defendant's motion to suppress. Given our disposition of the suppression issue, we need not address the State's remaining contention of error.

¶ 26 CONCLUSION

¶ 27 In conclusion, the trial court did not err in granting the defendant's motion to suppress the results of a blood-alcohol analysis. The order of the circuit court is affirmed, and this cause is remanded for further proceedings.

¶ 28 Affirmed; cause remanded.