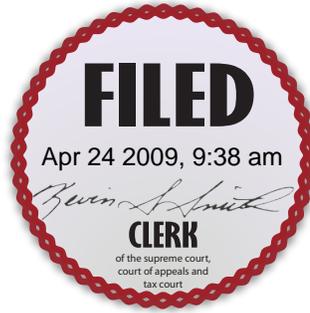


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)
)
 Appellant-Defendant,)
)
 vs.) No. 66A03-0811-CR-567
)
 JASON L. PATTON,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE PULASKI SUPERIOR COURT
The Honorable Patrick B. Blankenship, Judge
Cause No. 66D01-0802-FD-14

April 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

The State of Indiana appeals the trial court's grant of a motion to suppress filed by Appellee-Defendant Jason L. Patton. The State raises one issue, which we restate as whether the trial court abused its discretion in granting Patton's motion to suppress evidence obtained from a blood test conducted at Pulaski Memorial Hospital because the blood was drawn for medical purposes. We reverse and remand.

FACTS AND PROCEDURAL HISTORY

During the early morning hours of February 3, 2008, Medaryville Police Officers Jose Miramontes and Richard Weiczorek were "conducting stationary radar" along US 421 in Medaryville. Tr. p. 13. After clocking Patton at forty-five miles per hour in a thirty-five-mile-per-hour zone, Officer Weiczorek initiated a traffic stop. Upon approaching Patton's vehicle, Officer Weiczorek detected an odor of alcohol and observed that Patton's speech was slurred. Officer Weiczorek asked Patton to step out of the vehicle. Patton stumbled as he exited his vehicle. Patton attempted to complete the field sobriety tests conducted by Officer Miramontes but was unsuccessful.

Following Patton's failure to successfully complete the field sobriety tests, Officer Miramontes read the implied consent warning to Patton. Patton agreed to submit to a chemical test. Officers Miramontes and Weiczorek transported Patton to the Pulaski County Jail for the administration of a certified breath test. Patton vomited numerous times in Officer Weiczorek's police vehicle on the way to the jail. Upon arriving at the jail, Patton was unable to complete a certified breath test. The test administrator told Officers Miramontes and Weiczorek that, due to his condition, Patton would need to be taken to the

hospital for the purpose of receiving medical clearance before he could be admitted to the jail. Officers Miramontes and Weiczorek then transported Patton to the hospital.

Patton dozed intermittently while en route to the hospital. Upon arriving at the hospital, Officers Miramontes and Weiczorek indicated to Nurse Karen Showalter that Patton was there for the purpose of receiving medical clearance to be admitted to the jail and to give an implied consent blood draw. Dr. Rex Allman conducted an initial assessment of Patton after which he determined that Patton was somnolent and drowsy. Dr. Allman ordered lab tests for, *inter alia*, blood count, chemistry, and toxicology. Dr. Allman indicated that the tests were necessary to determine whether Patton was under the influence of drugs or alcohol or whether he was suffering from a medical condition, such as a diabetic coma or kidney or liver failure. Although Dr. Allman was aware that Patton had been brought in for the purpose of receiving medical clearance, he did not receive any directions from the officers regarding Patton's treatment. Dr. Allman was not aware that the officers had requested that a blood sample be taken from Patton.

Norman Allen, a medical technologist on the hospital staff, drew two vials of Patton's blood. One vial was retained by the hospital to complete the labs ordered by Dr. Allman, and one vial was given to Officer Weiczorek for testing by the Indiana State Police. Nurse Showalter also performed a catheterization in order to complete the tests ordered by Dr. Allman. After reviewing the lab results, Dr. Allman determined that Patton was under the influence of alcohol and granted him medical clearance to be returned to the jail, but he instructed Officers Miramontes and Weiczorek to wake Patton every two hours in order to

determine whether Patton was suffering from a “slow bleed into [his] brain.” Tr. p. 191. Throughout Patton’s hospital visit, Patton remained somnolent and drowsy, and continued to doze intermittently, but he was communicative and cooperative when engaged by the hospital staff.

On February 28, 2008, the State charged Patton with operating a vehicle with an Alcohol Concentration Equivalent of .15 or more, a Class D felony, and operating a vehicle while intoxicated, as a Class D felony.¹ On June 2, 2008, Patton moved to suppress any evidence stemming from the blood draws conducted at Pulaski Memorial Hospital on February 3, 2008. Following a hearing, the trial court granted Patton’s motion. The State now appeals.

DISCUSSION AND DECISION

The State contends that the trial court erred in suppressing the evidence obtained from the blood drawn for medical purposes because the blood was drawn in the normal course of Patton’s treatment independent of any investigation being conducted by Officers Miramontes and Wieczorek.²

On appeal from the grant of a motion to suppress, the State appeals from a negative judgment and must show that the trial court’s ruling on the suppression motion was contrary to law. We will reverse a negative judgment

¹ Patton’s driving record indicates that he has previously been convicted of operating a vehicle while intoxicated and that his driver’s license has previously been suspended for operating a vehicle while intoxicated.

² We note that the State appears to concede that the officers failed to properly obtain Patton’s consent to a blood draw in accordance with the implied consent warnings, and therefore the blood alcohol content evidence obtained from the blood draw performed at the request of law enforcement was illegally obtained and should not have been admitted into evidence by the trial court. Therefore, we shall limit our review to the admissibility of the evidence obtained from the blood draw ordered by Dr. Allman.

only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court. This court neither reweighs the evidence nor judges the credibility of the witnesses; rather, we consider only the evidence most favorable to the judgment.

State v. Litchfield, 849 N.E.2d 170, 173 (Ind. Ct. App. 2006) (citations omitted), *trans. denied*.

Here, the State argues that the trial court's order suppressing the evidence obtained from the blood drawn for medical purposes should be reversed because the order is contrary to law. In support, the State relies upon Indiana Code section 9-30-6-6(a) (2007) in conjunction with this court's determination that evidence obtained from blood draws conducted for medical purposes in the normal course of treatment may be admitted at trial. *Hannoy v. State*, 789 N.E.2d 977, 992 (Ind. Ct. App. 2003), *reh'g granted by* 793 N.E.2d 1109 (Ind. Ct. App. 2003), *trans. denied*; *State v. Eichhorst*, 879 N.E.2d 1144, 1147-49 (Ind. Ct. App. 2008), *trans. denied*.

Indiana Code section 9-30-6-6(a) provides, in pertinent part, as follows:

A physician or a person trained in obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician, who:

(1) obtains a blood, urine, or other bodily substance sample from a person, *regardless of whether the sample is taken for diagnostic purposes or at the request of a law enforcement officer under this section ...*

shall deliver the sample or disclose the results of the test to a law enforcement officer who requests the sample or results as part of a criminal investigation. Samples and test results shall be provided to a law enforcement officer even if the person has not consented to or otherwise authorized their release.

(emphasis added). The placement of Indiana Code section 9-30-6-6 in the Traffic Code indicates that it applies only to criminal investigations concerning operating while intoxicated

and its related crimes. *Hannoy*, 789 N.E.2d at 992; *Eichhorst*, 879 N.E.2d at 1149 n.3.

In *Hannoy*, this court determined that it was reasonable under the Fourth Amendment for an officer to obtain the results of the defendant's blood test performed by the hospital where the officer requested and received the results of a blood alcohol test performed by the hospital for medical treatment purposes. 789 N.E.2d at 990. We further determined that where the alcohol test was performed entirely at the hospital's or its doctors' instigation for diagnostic purposes, there was no law enforcement involvement in the taking or testing of the blood sample, and the only possible governmental "search" or "seizure" is the after-the-fact obtaining of the test results by a government official. *Id.*

"In order for the Fourth Amendment to be implicated by a governmental search, a person must have a legitimate expectation of privacy in the thing searched." *Id.* "A legitimate expectation of privacy involves two components: (1) an actual, subjective expectation of privacy (2) that society recognizes as reasonable." *Id.* The Indiana Supreme Court has held that "a person who operates a vehicle in Indiana impliedly consents to submit to toxicological testing as a condition of operating that vehicle," and therefore, drivers in Indiana should have little or no expectation of privacy in a post-accident test result that indicates the presence of drugs or alcohol. *Oman v. State*, 737 N.E.2d 1131, 1146 (Ind. 2000). Indiana Code section 9-30-6-6, however, does not limit its general application to situations where an individual has been in an accident, but rather applies to any criminal investigation concerning operating while intoxicated and its related crimes. See *Hannoy*, 789 N.E.2d at 992; *Eichhorst*, 879 N.E.2d at 1149 n.3.

Moreover, Indiana Code section 9-30-6-6(c) explicitly provides, in pertinent part, that “the privileges arising from a patient-physician relationship do not apply to the samples, test results, or testimony described in this section.” Indiana Code section 9-30-6-6(c) further provides that the samples, test results, and testimony may be admitted in a proceeding in accordance with the rules of evidence. The General Assembly’s explicit rejection of the patient-physician privilege with respect to samples, test results, or testimony provided to law enforcement by a physician or his agent in furtherance of a criminal investigation, together with its explicitly providing that such samples, test results, and testimony may be admitted at trial, indicate that, in Indiana, our society does not recognize an actual or subjective expectation of privacy in blood test results such as those at issue here.

Therefore, in light of the Indiana Supreme Court’s holding in *Oman*; the broad application of Indiana Code section 9-30-6-6 to any criminal investigation concerning operating while intoxicated and its related crimes; the General Assembly’s explicit rejection of the patient-physician privilege with respect to samples, test results, or testimony provided to law enforcement pursuant to Indiana Code section 9-30-6-6(a); and the provision providing that such samples, test results, and testimony may be admitted at trial, it follows that drivers in Indiana have no reasonable expectation of privacy in test results that indicate the presence of drugs or alcohol following a detainment or arrest concerning operating while intoxicated and its related crimes. Thus, Patton did not have a reasonable expectation of privacy in his blood drawn on February 3, 2008, during the normal course of his treatment at Pulaski Memorial Hospital. Any evidence obtained from the blood drawn for medical

purposes may therefore be admitted at trial pursuant to Indiana Code section 9-30-6-6(c) without implicating the Fourth Amendment. *See Hannoy*, 789 N.E.2d at 990.

In addition, more recently, in *Eichhorst*, this court considered whether Indiana Code section 9-30-6-6 was contingent upon an individual's consent to medical treatment. 879 N.E.2d at 1150. In *Eichhorst*, we determined that the trial court had abused its discretion in suppressing the evidence obtained by the State from the blood test that was ordered by the treating physician for medical purposes despite the defendant's claim that she did not consent to the medical treatment. *Id.* In arriving at that determination, we stated that "consent to health care treatment is not required in an emergency or when the patient is too intoxicated to give consent" because "not treating intoxicated patients who say they are 'just fine' in emergency situations would put physicians in a quandary." *Id.* We further stated that a defendant's refusal of treatment is simply not relevant in determining whether the defendant was too intoxicated to consent and that in light of the circumstances presented, the defendant's "consent to treatment was not necessary because of the emergency situation and her intoxication." *Id.*

Here, Officers Miramontes and Wieczorek came to believe that Patton was under the influence of alcohol during the course of their interaction with Patton as a result of a traffic stop that was initiated because Patton was driving in excess of the legal speed limit. Patton vomited numerous times in Officer Wieczorek's police vehicle while being transported to the Pulaski County jail for a certified breath test. Patton was unable to complete the certified breath test. The certified breath test administrator believed that Patton was so intoxicated

that it was necessary to receive medical clearance before Patton could be admitted to the jail. Additionally, Dr. Allman believed that it was necessary to run multiple lab tests to determine whether Patton was simply intoxicated or under the influence of drugs, or whether he was suffering from a more serious condition such as a diabetic coma or liver or kidney failure. Even after reviewing these tests, Dr. Allman was concerned that Patton could be suffering from a “slow bleed into [his] brain” and instructed Officers Miramontes and Wieczorek to wake him every two hours. Tr. p. 191. In light of these facts, we conclude that to the extent that Patton claims that he did not consent to medical treatment, his alleged refusal of treatment is simply not relevant in determining whether he was too intoxicated to consent to treatment, and his consent to treatment was not necessary because of the emergency situation and his intoxication. *See Eichhorst*, 879 N.E.2d at 1150.

Furthermore, to the extent that Patton argues that the blood drawn pursuant to Dr. Allman’s order could not have been done for medical purposes merely because Patton was only admitted to the hospital for the purpose of receiving medical clearance, we disagree. Patton provides no authority supporting this contention, and we are aware of none. In fact, once Patton was admitted to the hospital, Dr. Allman had a duty to examine and treat him, regardless of why Patton was admitted. *See id.* Additionally, we recognize that had Dr. Allman refused to treat Patton, he would have run the risk of incurring malpractice liability for failing to provide necessary treatment. *See id.* On appeal, the court will not play Monday-morning quarterback to the medical personnel’s decisions regarding the examination and treatment of a defendant, and therefore we will not second-guess Dr. Allman’s decision

that it was medically necessary to order a blood test in treating Patton.

For the foregoing reasons, we reverse the trial court's grant of Patton's motion to suppress the evidence obtained from the blood drawn for medical purposes and remand for proceedings consistent with this opinion.

The judgment of the trial court is reversed, and the cause is remanded.

FRIEDLANDER, J., and MAY, J., concur.