COURT OF APPEALS
DECISION
DATED AND FILED

July 20, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP2076-CR **Cir. Ct. No. 2007CF161**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY LOWELL CARLISLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Pierce County: ROBERT W. WING, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Jeffrey Carlisle appeals from a judgment of conviction, entered on guilty pleas, to one count each of homicide by intoxicated use of a vehicle, *see* WIS. STAT. § 940.09(1)(am), and reckless driving, *see* WIS.

STAT. § 346.62(4).[1] Carlisle argues Minnesota law requires suppression of blood draw evidence and medical records gathered after he caused a fatal collision in Wisconsin. The circuit court concluded the evidence was admissible under Wisconsin law and denied Carlisle's suppression motion. We affirm.

BACKGROUND

¶2 On April 22, 2007, a Cadillac Escalade, driven by Carlisle, crossed the center line on a two-way highway in Pierce County, Wisconsin, and collided head-on with a Volvo. The driver of the Volvo was killed, and the front-seat passenger seriously injured. Officers briefly spoke with Carlisle before he was airlifted to Regions Hospital in Minnesota. Carlisle stated he could not remember what happened or what direction he was driving. Based on the location of the vehicles, authorities determined Carlisle's erratic driving was the cause of the crash.

¶3 After Carlisle was removed from the scene, Wade Strain, an inspector for the Pierce County Sheriff's Department, examined Carlisle's vehicle. Strain noticed a pill bottle on the floor, with white pills scattered across the floor and ground near the open driver's side door. Strain picked up the bottle and saw the label was torn in half. The label read "Oxycodone," but was missing the portion indicating the patient's name.

¶4 Strain sent officer Michael Vodinelich to Regions Hospital, where Vodinelich asked a nurse to sample Carlisle's blood. Vodinelich was told staff had already performed a toxicology screen and detected opiates in Carlisle's

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

blood. Strain subsequently subpoenaed Carlisle's medical records, which the hospital provided.

¶5 Carlisle sought to suppress both the toxicology screen results and his medical records, arguing both were obtained in violation of Minnesota law. The circuit court denied the motion.

DISCUSSION

¶6 Our first task is to determine whether the admissibility of the blood test evidence must be analyzed under Minnesota or Wisconsin law. This is a choice-of-law dispute and involves a question of law subject to our independent review. ***State v. Townsend***, 2008 WI App 20, ¶6, 307 Wis. 2d 694, 746 N.W.2d 493.

¶7 Carlisle argues the circuit court erred by evaluating the admissibility of the blood draw under Wisconsin law instead of Minnesota law. In denying Carlisle's suppression motion, the circuit court relied on ***State v. Kennedy***, 134 Wis. 2d 308, 396 N.W.2d 765 (Ct. App. 1986), and ***Townsend***. In ***Kennedy***, we held that Minnesota law governed the admissibility of blood samples gathered in Minnesota by Minnesota physicians. ***Id.*** at 320. There, we stated the "manner and method of obtaining evidence is governed by the law of the jurisdiction in which the evidence is secured," reasoning a contrary conclusion would produce the unreasonable requirement that officials in one jurisdiction be aware of and apply the procedures of a foreign jurisdiction. ***Id.*** In ***Townsend***, we concluded the spirit of the ***Kennedy*** rule trumped its literal command, and held that "Wisconsin law shall be applied to evidence gathered in a foreign state by a Wisconsin official charged with the duty to gather evidence for use in a Wisconsin criminal prosecution." ***Townsend***, 307 Wis. 2d 694, ¶15.

¶8 Carlisle agrees the ***Kennedy*** and ***Townsend*** decisions, read together, suggest Wisconsin law governs the merits of his suppression motion. But he argues we must roll back the clock and follow ***Kennedy***'s literal command because, unlike the official in ***Townsend***, Vodinelich was not authorized to act as law enforcement in Minnesota.[2] We are not persuaded. The ***Townsend*** decision does not indicate the Wisconsin officer there possessed any specialized authority.[3] Accordingly, we conclude ***Townsend*** controls and requires application of Wisconsin law to Carlisle's suppression motion.

¶9 Next, we must determine whether the circuit court properly denied Carlisle's motion. "When we review a [circuit] court's ruling on a motion to suppress, we uphold its factual findings unless they are clearly erroneous." ***State v. Bridges***, 2009 WI App 66, ¶9, 319 Wis. 2d 217, 767 N.W.2d 593. Whether the facts satisfy constitutional principles is a question of law we determine independently of the circuit court. ***Id.***

¶10 The taking of a blood sample is a search and seizure within the meanings of the United States and Wisconsin Constitutions. ***State v. Bentley***, 92 Wis. 2d 860, 863, 286 N.W.2d 153 (Ct. App. 1979). Generally, warrantless searches are per se unreasonable, subject to a few carefully delineated exceptions. ***State v. Bohling***, 173 Wis. 2d 529, 536, 494 N.W.2d 399 (1993).

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[2] We clarify that suppression is not required merely because a police officer acts without authority outside his or her jurisdiction. ***State v. Keith***, 2003 WI App 47, ¶9, 260 Wis. 2d 592, 659 N.W.2d 403. If Carlisle sought suppression on that basis, no further analysis would be necessary. However, he claims the scope of the officer's authority is relevant to the choice-of-law issue presented, and we consider his claim only in that context.

[3] Moreover, Carlisle cites Wisconsin law to demonstrate Vodinelich was acting outside his authority in Minnesota, but does not explain why Wisconsin law should govern that matter but not his suppression motion.

> A warrantless blood sample … is permissible under the following circumstances: (1) the blood draw is taken to obtain evidence of intoxication from a person lawfully arrested for a drunk-driving related violation or crime, (2) there is a clear indication … the blood draw will produce evidence of intoxication, (3) the method used to take the blood sample is a reasonable one and performed in a reasonable manner, and (4) the arrestee presents no reasonable objection to the blood draw.

Bohling, 173 Wis. 2d at 533-34 (footnote omitted).

¶11 The first ***Bohling*** prong requires us to determine whether Carlisle was lawfully arrested for a drunk-driving related crime. Although Carlisle was not formally arrested, "probable cause to believe blood currently contains evidence of a drunk-driving related violation or crime satisfies the first prong of ***Bohling***." *See* ***State v. Erickson***, 2003 WI App 43, ¶12, 260 Wis. 2d 279, 659 N.W.2d 407. Here, police had the requisite quantum of suspicion. When Vodinelich ordered the blood draw, police knew Carlisle was operating entirely in the opposite lane of traffic, causing a fatal head-on collision. Carlisle could not explain how the accident happened or why he was driving in the wrong lane. *See* ***State v. Seibel***, 163 Wis. 2d 164, 180-81, 471 N.W.2d 226 (1991) (unexplained erratic driving which causes a serious accident is an indicia of intoxication). After Carlisle was flown to Minnesota, police discovered, in plain view, a bottle labeled, "Oxycodone" and white pills strewn across the driver's side floor.[4] This same

[4] The phrase "plain view" is a term of art.

> Under Wisconsin … law, a warrantless seizure is justified under the plain view doctrine where the object is in plain view of an officer lawfully in a position to see it, the officer's discovery is inadvertent, and the seized object, either in itself or in [the] context with [the] facts known to the officer at the time of the seizure, supplies probable cause to believe the object is connected to … criminal activity.

(continued)

probable cause necessarily satisfies the second prong of ***Bohling***. *See* ***Erickson***, 260 Wis. 2d 279, ¶12.

¶12 The blood sample was also obtained in a reasonable manner, without reasonable objection. The blood draw was performed by medical personnel in a hospital setting, and there is no evidence physicians deviated from medically accepted standards. *See* ***State v. Daggett***, 2002 WI App 32, ¶¶14-18, 250 Wis. 2d 112, 640 N.W.2d 546. Carlisle has not suggested he had any legitimate basis to object to the blood draw.[5] Accordingly, we conclude the seizure was reasonable.

¶13 Finally, Carlisle argues the circuit court should have suppressed his subpoenaed medical records because Regions Hospital violated Minnesota privacy law by disclosing them. However, he presents no reason to apply Minnesota law other than the arguments we have already rejected. In Wisconsin, patients may generally prohibit disclosure of information obtained or disseminated for purposes of diagnosis or treatment. WIS. STAT. § 905.04(2). However, there is no privilege for medical records relating to the facts or immediate circumstances of a homicide.

State v. Carroll, 2010 WI 8, ¶24, 322 Wis. 2d 299, 778 N.W.2d 1. When Strain picked up the bottle to read the label, police were investigating a homicide caused by Carlisle's erratic driving. This, coupled with the presence of pills and a pill bottle in open view near the driver's seat, supplied probable cause to believe the evidence was connected to the accident.

[5] Although Carlisle does not address the issue, we note a person driving or operating a motor vehicle on Wisconsin's public highways is deemed to have given consent to tests of his or her breath, blood or urine for the presence of controlled substances. WIS. STAT. § 343.305(2). Although Carlisle was unconscious by the time Vodinelich arrived at the hospital, "[a] person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent." WIS. STAT. § 343.305(3)(b).

WIS. STAT. § 905.04(4)(d).[6] The circuit court properly denied Carlisle's suppression motion.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[6] For this reason, we also reject Carlisle's related argument that a search warrant for his Cadillac's sensing and diagnostic module was invalid because the supporting affidavit included the toxicology screen results.