NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

STATE OF FLORIDA,
Appellant,

v.

JASON TARZIA,
Appellee.
_____/

UCN: 512015CF009003A000ES
Appeal No: CRC15009003CFAES
L.T. No: 14-9153WJYT-ES

On appeal from County Court,

Honorable Candy VanDercar,

Hannah Tait, Esq.,
for Appellant,

Thomas McLaughlin, Esq.,
for Appellee.

ORDER AND OPINION

The trial court erred in granting Appellee's motion to suppress evidence of urine test results, taken while Appellee was in the hospital. The order of the trial court is reversed and the cause is remanded for further proceedings.

STATEMENT OF THE CASE AND FACTS

Appellee was issued a traffic citation for driving under the influence ("DUI") in violation of § 316.193, Fla. Stat. Appellee entered a plea of not guilty and moved to suppress evidence of urine test results obtained from the hospital, alleging the Pasco County Sheriff's deputies never requested healthcare personnel draw his urine and that forced urine withdrawal is not permitted pursuant to § 316.1932(1), Fla. Stat. At the hearing on the motion, Appellant presented one witness, Deputy Monseguer, who testified to the facts leading up to Appellee's hospitalization.

Deputy Monseguer testified that Appellee was initially stopped for driving without headlights and once it became apparent Appellee was impaired, he conducted field sobriety tests ("FSTs"). However, the Deputy testified that he stopped the FSTs when it became apparent that Appellee could not stand, and that it would be dangerous for

Appellee to continue. Deputy Monseguer then arrested Appellee and read the implied consent warning. The Deputy also testified that Appellee consented to breath and urine tests and was read the *Miranda*[1] warnings. The Deputy testified further that Appellee quickly became non-responsive, falling to the ground. As a result, the Deputy contacted EMS to take Appellee to the hospital. Law enforcement remained with Appellee at the hospital, but did *not* request blood or urine test results. Nevertheless, while hospitalized, the hospital obtained blood and urine test results from Appellee.

Subsequently, Appellant filed a motion requesting authorization to execute a subpoena to obtain medical records and blood test results from the hospital. Thereafter, the trial court ordered that Appellant was entitled to subpoena Appellee's blood test results only. Appellant did not appeal that order. Notably, unbeknownst to Appellant, during Appellee's hospital stay, urine results were also obtained from Appellee. When the hospital responded to the subpoena, the hospital provided both the blood test results *and* the urine test results to Appellant.[2] Once Appellant became aware of the urine test results, Appellant requested authorization to execute a subpoena to also obtain Appellee's urine test results.

Thereafter, Appellee filed a motion to suppress the urine results Appellant received from the hospital. Appellant argued that the trial court should deny Appellee's motion because Appellant should be able to obtain and utilize the urine results it received from the hospital, through its subpoena power; however, the trial court granted Appellee's motion to suppress, relying on § 316.1932(1)(b) and finding that the statute requires a urine test be incidental to arrest, and be administered at the request of law enforcement when there is reasonable cause to believe the defendant was driving under the influence. In making its finding, the trial court also noted that in this case, although Appellee initially consented to breath and urine tests, once Appellee was hospitalized, the officer never requested the urine test and that Appellee's prior consent to urine testing was invalid due to his level of impairment. Appellant filed a timely notice of appeal.

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[1] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

[2] In Appellant's "Motion to Strike/Deny Defendant's Motion to Suppress and Memorandum of Law in Opposition and State's Amended Motion for Authorization to Obtain Urine Results," Appellant indicates that when the subpoena was issued to the hospital, the subpoena indicated "blood test results/toxicology results." Appellant indicated the term "toxicology results" was included in the subpoena because Appellant "believ[ed] the toxicology results were consistent with the ruling of the court."

STANDARD OF REVIEW

"Appellate review of a motion to suppress involves questions of both law and fact." *Rosenquist v. State*, 769 So. 2d 1051, 1052 (Fla. 2d DCA 2000). The appellate court reviews the trial court's application of the law to the facts of the case pursuant to a de novo standard. *Id.*; *Ornelas v. U.S.*, 517 U.S. 690, 698 (1996); *State v. Petion*, 992 So. 2d 889, 894 (Fla. 2d DCA 2008). Findings of fact by the trial court are reviewed for "clear error," with deference to inferences drawn from those facts by the trial court and law enforcement officers. *Ornelas*, 517 U.S. at 699. *See Pagan v. State*, 830 So. 2d 792, 806 (Fla. 2002).

LAW AND ANALYSIS

Appellant contends it was error for the trial court to suppress the urine test results because the test was taken at the hospital, by hospital staff, without law enforcement's request. Appellant relies on § 395.3025(4)(d), Fla. Stat., in support of its argument that the test results should be admissible because the testing was done for medical reasons and the results are relevant to the criminal investigation and necessary for effective prosecution of the case. Appellant contends that it intends to rely on the evidence to demonstrate Appellee was driving a motor vehicle while under the influence of a controlled substance and/or alcohol in violation of § 316.1932(3), Fla. Stat. Appellant contends further that criminal prosecution is a compelling state interest, and a subpoena issued during an ongoing criminal investigation satisfies a compelling state interest when there is a clear connection between illegal activity and the invasion of privacy. Appellant cites to *State v. Johnson*[3], 814 So. 2d 390 (Fla. 2002), *State v. Rivers*, 787 So. 2d 952 (Fla. 2d DCA 2001)[4], and § 316.1932(3), Fla. Stat., in support of its argument.

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[3] In *Johnson*, 814 So. 2d 390, the Court addressed § 395.3025(4)(d), Fla. Stat., which is designed "to balance a patients privacy rights against legitimate access to medical records," and "provides that before the records can be made available in any civil or criminal action, the patient must be put on notice and a subpoena must issue from a court of competent jurisdiction." *Id.* at 393. The issue in *Johnson* was "whether the State can avoid the procedural requirements of section 395.3025(4)(d) by use of its investigative subpoena power, and if not, what sanction is to be imposed when the State does not comply with these procedural requirements." *Id.* The Court found the state attorney's subpoena power could not override the notice requirements in the statute, and therefore remanded the matter for a determination of "whether the State made a good faith effort to comply with the statute." *See id.*

[4] In *Rivers*, the Court found that "emergency room and toxicology records and reports sought by the State were directly related to the incident which led to the charges against [defendant] and to the ongoing criminal

Appellee argues that Appellant's arguments on appeal are improperly directed to the propriety of the trial court's July 7, 2015 order permitting Appellant to subpoena Appellee's "blood test results only." Appellee contends that because Appellant did not file a timely appeal of the trial court's aforementioned order, the Court may not now consider the propriety of the trial court's decision. Instead, Appellee argues, the issue properly before the Court is whether the trial court erred in granting the motion to suppress, and that Appellant's arguments on appeal are moot.

The issue before this Court is whether the trial court erred in granting Appellee's motion to suppress evidence of urine test results obtained for medical purposes without Appellee's consent and without the request of law enforcement. The Court finds that this is an issue that is properly raised before this Court on appeal. Appellant's motion requesting authorization to execute a subpoena, specifically sought authorization to execute a subpoena *to obtain medical records and blood test results* and as noted by Appellee, the trial court's order granted Appellant's request for subpoena as to the blood tests only. However, contrary to Appellee's argument, the trial court did not deny Appellant's request as to the urine test results. As noted above, Appellant only became aware of the urine test results, *after* the hospital's response to the subpoena. Prior to the hospital's response to the subpoena, Appellant was unaware that the hospital had also obtained urine test results; therefore, when Appellant filed the motion seeking authorization to subpoena medical records and blood test results, Appellant did not seek authorization to also subpoena the urine test results. Once Appellant became aware of the urine test results, only then did Appellant seek to use its subpoena power to obtain these results, at which point, Appellee filed a motion to suppress the urine test results. Given the sequence of events that led up to and followed Appellant's revelation that urine test results were also available, Appellant is not untimely in its appeal of the trial court's denial of the request to subpoena the urine test results.

Finally, the Court finds that it was error for the trial court to rely on § 316.1932, Fla. Stat., in granting the motion to suppress evidence of Appellee's urine test results. As noted above, although law enforcement remained with Appellee at the hospital, they did

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investigation," and therefore State had "met its burden of establishing relevancy and a compelling state interest." *Id.* at 953-54.

not request Appellee's blood or urine test results. The urine test was performed for medical purposes, and not incidental to arrest or administered at the request of law enforcement; therefore § 316.1932 does not apply. Appellant sought to obtain the results of Appellee's urine test results using its *subpoena powers*. The *Johnson* case, cited by Appellant, is instructive on the issue of the State's subpoena powers under § 395.3025, Fla. Stat., which was designed "to balance a patients privacy rights against legitimate access to medical records." *Johnson*, 814 So. 2d at 393. The Court finds that § 395.3025, Fla. Stat., which provides that although "[p]atient records are confidential and must not be disclosed without the consent of the person to whom they pertain…appropriate disclosure may be made without such consent…[i]n any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice by the party seeking such records to the patient or his or her legal representative," was the appropriate statute for the trial court to rely on in making the determination concerning Appellant's ability to subpoena the urine test results. *Id.* at 392; § 395.3025(4)(d).

CONCLUSION

It is hereby ORDERED that the order of the trial court is REVERSED and the cause is REMANDED for further proceedings.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this ____ day of January, 2017.

Original Order entered on March 27, 2017, by Circuit Judges Kimberly Campbell, Shawn Crane, and Linda Babb.

Copies to:
Office of the State Attorney
Thomas McLaughlin, Esq.
Honorable Candy VanDercar