

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

MARY E. ROBINSON,

Defendant.

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Cr. A. No. 1109006063

Submitted: April 16, 2015

Decided: May 15, 2015

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DECISION ON DEFENDANT’S MOTION TO SUPPRESS

Defendant Mary E. Robinson (“Robinson”) stands charged with Driving Under the Influence of Drugs (“DUI”) in violation of 21 *Del. C.* § 4177(a), Failure to Stop at a Red Signal in violation of 21 *Del. C.* §4108(a)(3)(A), and Driving with a Suspended/Revoked License in violation of 21 *Del. C.* § 2756(a), all of which arise from an incident that occurred on September 7, 2011.

Robinson moved to suppress the following evidence: (1) the results of a toxicology report based on the ground that the investigating police officer failed to obtain either Robinson’s consent or a search warrant prior to the withdrawal of her blood; (2) Robinson’s statement that she consumed Xanax at some point before the car accident, and; (3) Robinson’s medical records, under the *corpus delicti* doctrine. The Court heard the motion on March 3 and March 20, 2015.

At the March 3, 2015 hearing, the State conceded that, in light of the Delaware Supreme Court's recent decision in *Flonnory v. State of Delaware*,¹ the results of the blood draw should be suppressed. Robinson proceeded with her other arguments regarding her statement and medical records. At the Court's direction, Robinson submitted a letter brief outlining her argument for suppressing her statement.

The suppression hearing continued on March 20, 2015, and the Court found Robinson's statement admissible, but reserved decision on whether Robinson's medical records should be suppressed based on Fourth Amendment considerations. This is the Court's Opinion on Robinson's requested relief.

FACTS

On September 7, 2011, Sergeant Daniel Parks ("Sergeant Parks") of the Delaware State Police was dispatched to the intersection of Delaware Route 2 and Delaware Route 41 to investigate a two-vehicle collision. Sergeant Parks documented his investigation in a police report, which provides the following: Robinson was traveling eastbound on Delaware Route 2, approaching Delaware Route 41, when she ran a red light and collided with another vehicle. Sergeant Parks searched Robinson's vehicle, but the search did not yield any contraband. After the search, Sergeant Parks traveled to Christiana Hospital, where Robinson was being treated.

At the hospital, Sergeant Parks spoke with Robinson. His report states that during the conversation, he observed Robinson as incoherent and unable to understand his questions, and indicated that she kept falling asleep. Robinson also stated that she had taken a Xanax pill at some point prior to the accident; however, the exact timing of when she took the pill is unknown. At the direction of Sergeant Parks, a member of the hospital staff drew a sample of Robinson's blood.

¹ 109 A.3d 1060 (Del. 2015).

On July 18, 2014, the State subpoenaed the medical records kept by Christiana Care Health Services to compel the hospital to provide Robinson's certified medical records from her September 7, 2011 visit. On March 6, 2015, the State disclosed the records to Robinson.

PARTIES' CONTENTIONS

On March 13, 2015, Robinson filed a letter brief with the Court. Robinson contends that the medical records are inadmissible because they (1) are prejudicial to her defense due to the State's untimely disclosure; (2) lack proper certification under Delaware Rule of Evidence 902; (3) violate Robinson's expectation of doctor-patient privilege; and (4) violate Robinson's rights under the Fourth Amendment. Robinson also argues that even if the Court does not find for Robinson under those grounds, the medical records are still inadmissible under the *corpus delicti* doctrine. Robinson contends that the medical records fail to satisfy the *corpus delicti* doctrine because the records are contradictory and lack any meaningful specificity with which to conclude that the records corroborate any statements made by Robinson.

The State contends that the medical records should not be suppressed because they contain certain information pertaining to the treatment Robinson received at Christiana Hospital following the collision, which suggests that there is evidence beyond the confession – embedded in the records – to corroborate the confession.

DISCUSSION

The analysis of admissibility of medical records requires two separate determinations. "First, the Court must decide whether the actual taking of Defendant's blood constituted a search or seizure under the Fourth Amendment."² "Next, the Court must determine whether the State's

² *State v. Onumonu*, 2001 WL 695539, at *2 (Del. Super. Jun. 5, 2001)

acquisition of the [records] *infringed on Defendant's Fourth Amendment privacy interests;*³ however, only the second issue is disputed in this case.

The United States and Delaware Constitutions protect the right of persons to be secure from “unreasonable searches and seizures.”⁴ Generally, “[s]earches and seizures are *per se* unreasonable, in the absence of exigent circumstances, unless authorized by a warrant supported by probable cause.”⁵ However, case law draws a distinction between blood draws by medical personnel, and blood draws performed at the direction of law enforcement officials. Blood draws performed by medical personnel, solely for medical treatment do not implicate Fourth Amendment concerns.⁶

Accordingly, Robinson rightly concedes that the blood draw by the Christiana Hospital staff member did not constitute a search within the meaning of the Fourth Amendment. This leaves the issue of determining whether the State’s acquisition of Robinson’s medical records infringed her Fourth Amendment privacy interests.

Since the dissemination of *Katz v. U.S.*, courts have adopted the rule that a “reasonable expectation of privacy” exists where “a person... exhibit[s] an actual (subjective) expectation of privacy[,] and [where] that...expectation [is] one that society is prepared to recognize as [objectively] ‘reasonable.’”⁷ “It has been recognized that patients undergoing diagnostic tests in a hospital enjoy a reasonable expectation of privacy that the results of the tests will not be shared with nonmedical personnel without the patient's consent.”⁸ Delaware applies a Fourth

³ *Id.* (emphasis added).

⁴ U.S. Const. amend. IV; Del. Const. art. I, § 6.

⁵ *Scott v. State*, 672 A.2d 550, 552 (Del.1996) (citing *Hanna v. State*, 591 A.2d 158, 162 (Del.1991)).

⁶ *See U.S. v. Jacobsen*, 466 U.S. 109, 113 (1984) (holding that Fourth Amendment protection is wholly inapplicable to private individuals effecting searches and seizures without government involvement).

⁷ *State v. Howard*, 728 A.2d 1178, 1181 (Del. Super. 1998)(quoting *Katz v. U.S.*, 398 U.S. 347, 361(1967)).

⁸ *Onumonu*, 2001 WL 695539, at *3.

Amendment analysis to blood draws because they involve “[s]uch an invasion of bodily integrity [which] implicates an individual's ‘most personal and deep-rooted expectations of privacy.’”⁹

Recently, in *Flonnory v. State*, the Delaware Supreme Court distinguished the scrutinies applied to blood draws and breathalyzer tests, and found that “[a] blood draw is fundamentally different from a breath test because it involves an intrusion into the human body...[which] is why a search warrant is required in the absence of exigent circumstances or consent.”¹⁰ “However, the test to determine whether a person has a protected Fourth Amendment privacy right is whether that person has a reasonable expectation of privacy in the area invaded by government action.”¹¹

There are two notable Delaware cases that address a defendant’s privacy interests with respect to medical records. In *State v. Onumonu*, medical personnel at Christiana Hospital performed a blood draw and resultant analysis following a three-car collision involving the defendant.¹² Christiana Hospital voluntarily released the results of the blood draw to the police. The defendant sought to suppress the evidence obtained from the blood draw, which occurred for the sole purpose of medical treatment.¹³ The *Onumonu* court held that “because there was no State involvement in the withdrawal and testing of Defendant's blood or in its disclosure to police, there were no Fourth Amendment intrusions into Defendant's right to privacy.”¹⁴ However, the *Onumonu* court noted that, “in contrast, any such evidence which is obtained at the request of, or with the involvement of, law enforcement officials is subject to Fourth Amendment constraints.”¹⁵ The Court held that Christiana Hospital’s disclosure of the defendant’s blood test

⁹ *Missouri v. McNeely*, 133 S.Ct. at 1558 (quoting *Winston v. Lee*, 470 U.S. 753, 760 (1985)).

¹⁰ *Flonnory v. State*, 109 A.3d 1060, 1064 (Del. 2015).

¹¹ *Onumonu*, 2001 WL 695539, at *2 (citing *Katz v. United States*, 389 U.S. 347, 349 (1967)).

¹² *Id.* at *1.

¹³ *Id.* at *2.

¹⁴ *Id.* at *3.

¹⁵ *Id.* At *5 (citing *Shemerber v. California*, 384 U.S. 757, 766 (1966)).

results to the police did not violate the defendant's Fourth Amendment right to privacy because law enforcement played no role in the hospital's decision to turn over the results to police.¹⁶ The instant matter, however, is distinguishable. While in *Onumonu*, Christiana Hospital voluntarily gave the records to the police without use of official power, in the instant matter, the State issued a subpoena for Robinson's records.

In *State v. Lawrence Robinson*, Christiana Hospital drew blood from the defendant for medical purposes.¹⁷ However, in that case, the investigating officer specifically left the hospital, obtained a warrant for the results of the blood draw, and returned for the records after obtaining a warrant.¹⁸ Thus, the Superior Court found that the State had complied with the Fourth Amendment. In denying the defendant's motion to suppress the results of the blood draw based on this information, the Superior Court noted, "because there is no evidence to suggest that the police or other governmental agents compelled the hospital to analyze defendant's blood, or otherwise requested the hospital's performance of the [blood alcohol content] test, the Fourth Amendment was not implicated in this case."¹⁹ Implicit in the Court's ruling is the proposition that a search warrant is the appropriate method of forcefully obtaining private medical records without consent.²⁰

It is well-settled that, in the absence of exigent circumstances or consent, a warrant is required to pass Constitutional muster. The State has not demonstrated that either consent or exigent circumstances existed justifying the failure to obtain a warrant.²¹ The State's subpoena

¹⁶ *Id.*

¹⁷ 2006 WL 1148477, at *4 (Del. Super. May 1, 2006).

¹⁸ *Id.*

¹⁹ *Robinson*, at *4.

²⁰ *Id.*

²¹ Incidentally, the medical records contain the results of the blood draws, which, as stated *supra*, the State has already agreed to suppress. The State has, *ex proprio motu*, suppressed the results of the blood draw. This is nothing more than an attempt to get the results of the blood draw admitted into evidence via another medium.

of the medical records, rather than an application for a search warrant, *compelled* Christiana Care to produce the records, and therefore does not meet the requirements of the Fourth Amendment.

ORDER

For the foregoing reasons, Defendant Mary E. Robinson's Motion to Suppress is **GRANTED.**

IT IS SO ORDERED this 15th day of May, 2015.

The Honorable Carl C. Danberg,
Judge

cc: Diane Healy, Judicial Case Management Supervisor

