IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. GEOFFREY WILLIS McCLURE, Appellant.	No. 38502-3-II UNPUBLISHED OPINION

Armstrong, J. — Geoffrey Willis McClure submitted to a blood draw after his arrest for driving while under the influence (DUI). McClure moved to suppress the results of the blood test, arguing that he believed the blood draw was mandatory and he did not consent voluntarily. The trial court denied McClure's motion and found McClure guilty of driving under the influence, based on the results of the blood test. McClure appeals the trial court's denial of his motion to suppress. We affirm.

FACTS

On June 30, 2008, Trooper Eric Tilton arrested Geoffrey Willis McClure for driving under the influence. According to the trooper, McClure asked what was going to happen and the trooper responded he was going to ask a drug recognition expert to examine McClure. If a drug recognition expert was not available, the trooper said he would take McClure to the Forks Community Hospital for a blood draw. The trooper told McClure that he had the right to refuse the blood draw. When McClure asked what would happen if he refused, the trooper said, "[S]ince this is a felony DUI, I have the ability to request a blood search warrant for your blood, sir." Report of Proceedings (RP) (Sept. 25, 2008) at 17. McClure commented he could "either

do this the hard . . . way or the easy way," and the trooper responded, "[Y]ou can think whichever way you want, you just do what you need to do for yourself." RP (Sept. 25, 2008) at 11, 17-18. At the hospital, the trooper read an implied consent form to McClure. McClure reviewed the form and signed it. The trooper asked McClure if he would submit to the blood draw and McClure said yes.

The State charged McClure with felony DUI. McClure moved to suppress the results from the blood test, arguing he did not voluntarily consent to it. At the suppression hearing, McClure testified that the trooper told him the test was mandatory, and he would be restrained and forced to give a sample if he refused to voluntarily give blood. McClure testified he consented to the blood draw because he felt threatened and did not want a confrontation. On cross-examination, McClure admitted that he had consumed a few drinks on the day of his arrest and was heavily medicated. McClure acknowledged the combination of alcohol and medication might have affected his ability to recall events. McClure's passenger, Elizabeth Della, testified she heard the trooper tell McClure he would have to have blood drawn. The trial court found the trooper more credible than McClure or Della and denied McClure's motion.

At a bench trial, the court found McClure guilty of DUI, based on the results from the blood test. McClure appeals. McClure assigns error to the trial court's denial of his motion to suppress, four of the findings of fact, and two conclusions of law.

ANALYSIS

I. Standard of Review

When reviewing a motion to suppress, we review challenged findings of fact for

substantial evidence and challenged conclusions of law de novo. *See State v. Eisfeldt*, 163 Wn.2d 628, 634, 185 P.3d 580 (2008); *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). Substantial evidence is evidence sufficient to persuade a rational person that the finding is true. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

II. The Findings of Fact are Undisputed on Appeal

McClure assigns error to four of the trial court's findings of fact:

> 10. Trooper Tilton told the defendant that he had the ability to request a search warrant for the defendant's blood if the defendant refused the blood draw.
> . . . .
> 15. The defendant told Trooper Tilton that they could either do this "the easy way, or the hard way."
> 16. Trooper Tilton responded that if that was how the defendant wanted to view it, then he was correct.
> 17. The defendant ultimately consented to the blood draw.

Br. of Appellant at 1; Clerk's Papers (CP) at 4-5. McClure provides no argument as to why the trial court erred in finding these facts after accepting the trooper's testimony. And the findings are supported by substantial evidence. The trial court found the trooper's testimony more credible than McClure's or Della's. We defer to the trier of fact's determinations of witness credibility. *State v. Fiser*, 99 Wn. App. 714, 719, 995 P.2d 107 (2000). The trooper's testimony is sufficient to persuade a rational person the findings of fact are true. *Hill*, 123 Wn.2d 644.

III. McClure Voluntarily Consented to the Blood Draw

Consent is one of the narrow exceptions to the Washington Constitution's prohibition against warrantless searches. *See* Wash. Const. art. I, § 7; *Eisfeldt*, 163 Wn.2d at 635; *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996). For consent to be valid, a person must consent freely and voluntarily. *O'Neill*, 148 Wn.2d at 588. Any person who operates a motor

vehicle in Washington is deemed to have consented to a blood test if an arresting officer has reasonable grounds to believe the person has been driving while under the influence of drugs or alcohol. RCW 46.20.308(1). The arresting officer must inform the person of his right to refuse the blood test. RCW 46.20.308(2).

McClure assigns error to two of the trial court's conclusions of law:

> 3. Trooper Tilton did not say anything to the defendant that would have coerced him, or led him to believe that the blood draw was not voluntary.
> 4. The defendant submitted to the blood draw voluntarily.

Br. of Appellant at 1; CP at 6. McClure argues that when the trooper stated he had the ability to request a search warrant, and then essentially agreed to McClure's comment that this could be done "the hard way or the easy way," McClure believed his choice was between having blood drawn by consent (the "easy way") or pursuant to a search warrant (the "hard way"). Br. of Appellant at 7. McClure relies on *State v. O'Neill*, which held that consent is involuntary when granted "'only in submission to a claim of lawful authority.'" *O'Neill*, 148 Wn.2d at 589 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 233, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973)). McClure concludes that the State obtained his blood in violation of both the Washington Constitution and RCW 46.20.308.

In *State v. O'Neill*, an officer requested consent to search O'Neill's vehicle. *O'Neill*, 148 Wn.2d at 572-73. When O'Neill refused, saying the officer needed a search warrant, the officer responded that he could simply arrest O'Neill and search the vehicle incident to that arrest. *O'Neill*, 148 Wn.2d at 573. O'Neill continued to refuse and the officer continued to press for consent until O'Neill finally relented. *O'Neill*, 148 Wn.2d at 573. The Supreme Court found

O'Neill's consent involuntary because the officer pressured O'Neill by repeatedly claiming a search was inevitable. *O'Neill*, 148 Wn.2d at 590-91. The court acknowledged that advising a suspect of an officer's authority to search if consent is not granted does not always render consent involuntary, but the officer's repeated statements of authority in O'Neill's case demonstrated the statement was coercive rather than merely informative. *O'Neill*, 148 Wn.2d at 590-91.

Unlike *O'Neill*, Trooper Tilton's statement that he could request a search warrant was informative, not coercive: the trooper was responding to a question from McClure, and he did not repeat or emphasize his ability to request a search warrant. Furthermore, the trooper said he could "request" a search warrant, but did not imply a warrant would inevitably be granted. RP (Sept. 25, 2008) at 17; CP at 4. When McClure said this could be done "the hard way or the easy way," the trooper responded that McClure could "just do what you need to do for yourself." RP (Sept. 25, 2008) at 11. McClure was informed of his right to refuse to submit to the blood draw, and the trooper did not use a statement of authority to improperly coerce McClure's consent.

Accordingly, we affirm the trial court's conclusions of law and denial of McClure's motion to suppress.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Van Deren, C.J.