FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-1866

STATE OF FLORIDA,

Petitioner,

v.

ALBERT KENNETH RICHMOND,

Respondent.

Petition for Writ of Certiorari—Original Jurisdiction.

November 9, 2022

PER CURIAM.

The State petitions for writ of certiorari seeking to quash a county court order sustaining Respondent's objection to a subpoena for medical records. Because the State met its burden of establishing relevancy and a compelling state interest to obtain the subpoena, we grant this petition.

Respondent was observed by a Florida Highway Patrol officer "weaving erratically," at 10:30am, "veer[ing] left towards the center dividing line and then abruptly" back and forth for approximately two miles. The officer conducted a traffic stop and approached the opened driver's side window. At that point, he smelled alcohol and could see an open alcoholic container in the center console cupholder. When asked, Respondent eventually

admitted to having had three beers. Respondent also informed the officer that he had diabetes and had last taken his insulin earlier that morning. The officer called an ambulance "to come to the scene to verify [Respondent] was not having a medical episode related to his diabetes."

After refusing to complete the agreed upon field sobriety exercises, Respondent was arrested and placed in the back of the patrol car, where he fell asleep. When the paramedics arrived, they revived Respondent and administered aid; they then informed the officer that Respondent needed medical treatment due to high blood sugar and transported him to the emergency room.

At the hospital, Respondent attempted to leave during his treatment but was intercepted by medical staff and the arresting officer, who had been waiting just outside the emergency room exit. After securing Respondent back in treatment, the medical staff informed the officer that Respondent's blood had been drawn for alcohol testing and that "it would be made available upon proper request by law enforcement." Respondent was released from the hospital and the officer again took him into custody.

The State issued a subpoena duces tecum seeking Respondent's hospital medical records regarding his visit to the emergency room on the date of the incident. Respondent objected, claiming that the request does not comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the medical records violated the procedures outlined in section 316.1933, Florida Statutes.

The county court held a hearing on the matter and found that, because Respondent was not involved in a car accident and he refused to provide a breath sample, the subpoena for his medical records violated his constitutional rights; Respondent's objection to the issuance of the subpoena was sustained. The State petitions for review of this order.

"It is well settled that to obtain a writ of certiorari, there must exist '(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.'" *Reeves v. Fleetwood Homes of Fla., Inc.*, 889 So. 2d 812, 822 (Fla. 2004)

(quoting *Bd. of Regents v. Snyder*, 826 So. 2d 382, 387 (Fla. 2d DCA 2002)).

The supreme court has held that a "patient's medical records enjoy a confidential status by virtue of the right to privacy contained in the Florida Constitution, and any attempt on the part of the government to obtain such records must first meet constitutional muster." *State v. Johnson*, 814 So. 2d 390, 393 (Fla. 2002). But this "right to privacy is not absolute" and the State may overcome this right if it can demonstrate a compelling governmental interest. *Id.* The supreme court also added,

> [c]learly, the control and prosecution of criminal activity is a compelling state interest, and this Court has held that a subpoena issued during an ongoing criminal investigation satisfies a compelling state interest when there is a clear connection between illegal activity and the person whose privacy has allegedly been invaded.

Id. By statute, a patient's medical records are confidential and must not be disclosed without consent of the patient, except "[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." § 395.3025(4)(d), Fla. Stat. (2022). Notably, "HIPAA does not prevent the State from subpoenaing relevant medical records in a criminal proceeding." *State v. Tavenese*, 321 So. 3d 252, 255 (Fla. 4th DCA 2021).

The State seeks Respondent's medical records that were directly related to the incident which led to the charges against Respondent, as well as the ongoing criminal investigation. Therefore, the State has "met its burden of establishing relevancy and a compelling a state interest." *State v. Rivers*, 787 So. 2d 952, 954 (Fla. 2d DCA 2001).

Because the State has met its burden, we grant the petition for writ of certiorari, quash the order that precluded the State from obtaining the hospital medical records, and direct the county court to authorize the State to issue the subpoena.

ROBERTS, MAKAR, and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Ashley Moody, Attorney General, and Sharon Traxler, Assistant Attorney General, Tallahassee, for Petitioner.

Charlie Cofer, Public Defender, and Elizabeth Hogan Webb, Assistant Public Defender, Jacksonville, for Respondent.