FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-3073

STATE OF FLORIDA,

Appellant,

v.

EVAN R. HAMILTON,

Appellee.

On appeal from the Circuit Court for Wakulla County.
Ronald W. Flury, Judge.

November 16, 2022

PER CURIAM.

The State appeals the trial court's order suppressing blood draw evidence in this boating-under-the-influence case on the basis that Appellee voluntarily consented to it. We affirm because competent, substantial record evidence supports the trial court's conclusion that Appellee did not voluntarily consent to the blood draw, nor did a search warrant authorize it.

Appellee was boating and drinking with friends near St. Marks one weekend in February 2019. On the way back to the ramp, Appellee's operation of the boat apparently caused everyone on the vessel to be thrown into the water. The boat's propellor then fatally struck one of the boat's passengers and he died.

After Appellee came ashore at the public boat ramp in St. Marks, officers with the Florida Fish and Wildlife Conservation Commission began an investigation. The officers developed probable cause to believe that Appellee had been impaired by alcohol while operating the boat and took a blood sample to determine his blood-alcohol content. The blood sample confirmed that Appellee's blood-alcohol level exceeded 0.08, and Appellee was later arrested and charged with manslaughter by boating under the influence. *See* § 327.35(3)(c)3., Fla. Stat. (2018).

Appellee subsequently filed a motion to suppress the blood draw evidence. At a suppression hearing, the evidence indicated that officers did not obtain a warrant before drawing Appellee's blood but justified their actions on Appellee's supposed consent. Appellee argued, however, that he did not voluntarily consent to the draw, but was coerced to give blood by the officers. According to Appellee's father, who was there, officers told Appellee that Florida law required officers to take Appellee's blood, and that "one way or the other we are going to take blood." Appellee only consented to the blood draw after being told that the officers "will draw blood from you" and without being told that he could refuse their request and require them to get a search warrant. The trial court sided with Appellee's evidence that consent had not been voluntarily obtained because officers gave him no option to refuse their request to draw blood. The trial court suppressed the blood-alcohol evidence.

For purposes of reviewing the trial court's decision for error, appellate courts must defer to fact findings that are supported by competent, substantial evidence in the record. *Carter v. State*, 313 So. 3d 1191, 1193 (Fla. 1st DCA 2021). Rulings on motions to suppress are presumed correct. *Id.* And we are bound to interpret the evidence and any reasonable inferences therefrom in favor of sustaining the trial court's ruling. *Id.*

According to the United States Supreme Court, a blood draw is a search. U.S. Const. amend. IV; Art. I, § 12, Fla. Const.; *Missouri v. McNeely*, 569 U.S. 141, 148 (2013). Individuals cannot be lawfully compelled to submit to a blood draw by statute. *See Birchfield v. North Dakota*, 579 U.S. 438, 477 (2016). Rather, law enforcement officers must obtain a search warrant before drawing

blood, *see* chapter 933, Florida Statutes, or gain the subject's consent. *Birchfield*, 579 U.S. at 476.

In this case, the parties dispute whether a proper consent to search was given by Appellee. Consent to search must be given voluntarily. *Ohio v. Robinette*, 519 U.S. 33, 40 (1996); *see also Montes-Valeton v. State*, 216 So. 3d 475, 480 (Fla. 2017) ("[T]he Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force." (alteration in original) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 228 (1973))). Consent is not considered voluntary when statements or actions by law enforcement officers imply that an individual has no right or ability to refuse the request. *See Powell v. State*, 332 So. 2d 105, 107 (Fla. 1st DCA 1976) (holding that suspect did not voluntarily consent to search of a trailer where officers told him that the law required a search). Ultimately, whether consent is voluntary is a question of fact determined from the totality of the circumstances, instead of from any particular factor. *Montes-Valeton*, 216 So. 3d at 480.[1]

In this case, the State's burden was to show by a preponderance of the evidence that Appellee's consent was voluntary. *Id.* The trial court's conclusion that Appellee did not voluntarily consent, but only acquiesced to the officers' apparent authority, can be reasonably gleaned from the testimony of

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[1] The Florida Supreme Court set forth the following non-exhaustive list of factors for consideration of whether consent was given voluntarily:

> (1) the time and place of the encounter; (2) the number of officers present; (3) the officers' words and actions; (4) the age and maturity of the defendant; (5) the defendant's prior contacts with the police; (6) whether the defendant executed a written consent form; (7) whether the defendant was informed that he or she could refuse to give consent; and (8) the length of time the defendant was interrogated before consent was given.

Montes-Valeton, 216 So. 3d at 480.

Appellee's father. Appellee's father testified that the officers, citing Florida law, directed Appellee to provide blood without offering any option to refuse their demand.[2] The officers deny this claim. But with conflicting evidence, the trial court's fact-finding role and discretion allowed it to decide which story to believe. *See Alston v. State*, 894 So. 2d 46, 54 (Fla. 2004) ("It is the duty of the trial court to determine what weight should be given to conflicting testimony.") (quoting *Mason v. State*, 597 So. 2d 776, 779 (Fla. 1992)); *Crain & Crouse, Inc. v. Palm Bay Towers Corp.*, 326 So. 2d 182, 182 (Fla. 1976) ("[A]n appellate court is not free to substitute its judgment for the trier of fact, or to weigh evidence and reach a different conclusion from that reached at trial."). And because the court could reasonably find Appellee's evidence that he did not voluntarily consent to the blood draw more believable, the State has not demonstrated reversible error.

AFFIRMED.

RAY, OSTERHAUS, and NORDBY, 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 S. Traxler, Assistant Attorney General, Tallahassee, for Appellant.

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[2] The State argued that the trial court erroneously relied upon a non-evidentiary deposition of one of the officers in weighing the consent evidence. But even if this deposition was improperly considered, the trial court's conclusion that officers demanded the blood draw without Appellee's consent is supported by other court-credited evidence, specifically the hearing testimony of Appellee's father.

Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, and Thomas M. Findley of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Tallahassee, for Appellee.