

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA,)
)
 Appellant,)
)
 v.)
)
 RACHEL YUTZY,)
)
 Appellee.)
_____)

Case No. 2D09-4834

Opinion filed September 8, 2010.

Appeal from the Circuit Court for Pinellas
County; Robert E. Beach, Senior Judge.

Bill McCollum, Attorney General,
Tallahassee, and Marilyn Muir Beccue,
Assistant Attorney General, Tampa, for
Appellant.

James Marion Moorman, Public Defender,
and Allyn M. Giambalvo, Assistant Public
Defender, Bartow, for Appellee.

WHATLEY, Judge.

The State appeals the order granting Rachel Yutzy's motion to suppress
the prescription records obtained by Corporal Kanoski from several pharmacies during
his investigation of allegations that Yutzy obtained a controlled substance from a
physician by withholding information.

In the order, the trial court ruled that the corporal's actions contravened sections 395.3025(4)(d) and 456.057(7)(a)(3), Florida Statutes (2007), and constituted an unreasonable search under the Fourth Amendment that violated Yutzy's reasonable expectation of privacy in her pharmaceutical records. At the time of the hearing on Yutzy's motion to suppress, the trial court did not have the benefit of our recent opinion that is directly on point, State v. Tamulonis, 35 Fla. L. Weekly D1535 (Fla. 2d DCA July 9, 2010), or the First District's decision in State v. Carter, 23 So. 3d 798 (Fla. 1st DCA 2009), which we relied upon in Tamulonis. Both of these opinions address all of the findings in the trial court's order and mandate reversal.

In Tamulonis, this court held that neither section 395.3025(4)(d) (applying to licensed facilities, the definition of which does not include pharmacies) nor section 456.057(7)(a)(3) (regulating health care practitioners, the definition of which expressly excludes pharmacists) required law enforcement to obtain a subpoena before procuring a patient's pharmacy records. Rather, section 893.07(4), Florida Statutes (2007), which requires pharmacists to maintain controlled substance records for at least two years "for inspection and copying by law enforcement officers," provides the authority for law enforcement to obtain pharmacy records regarding controlled substances without a warrant or notification to the patient. Tamulonis, 35 Fla. L. Weekly at D1536; Carter, 23 So. 3d at 799. And because section 893.07(4) is narrowly tailored to effectuate the compelling state interest in regulating controlled substances, it does not violate Florida's constitutional right to privacy. Art. I, § 23, Fla. Const. See Tamulonis, 35 Fla. L. Weekly at D1536.

Accordingly, we reverse the order granting Yutzy's motion to suppress and remand for further proceedings.

CASANUEVA, C.J., and KHOUZAM, J., Concur.