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FILED
Apr 13 2010, 10:36 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

STATE OF INDIANA,	)	
	)	
Appellant- Plaintiff,	)	
	)	
vs.	)	No. 87A01-0907-CR-363
	)	
COREY J. BUEHNER,	)	
	)	
Appellee- Defendant,	)	

APPEAL FROM THE WARRICK SUPERIOR COURT
The Honorable Keith A. Meier, Judge
Cause No. 87D01-0708-FC-188

April 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

The State appeals the trial court's suppression of evidence of the results of a blood test taken from Corey Buehner. For our review, the State raises a single issue, which we restate as whether the trial court erred when it suppressed the evidence. Concluding the trial court did not err, we affirm.

Facts and Procedural History

In the early afternoon of July 2, 2006, Buehner was driving a Ford Explorer and attempting to pass another vehicle on a two-lane road when he struck a motorcycle ridden by Jay and Lisa Lampton. Jay died at the scene, and Lisa sustained serious injuries. According to the accident report, emergency services received a 911 call reporting the accident at 1:26 p.m., and the first officer arrived on the scene at 1:30 p.m. At the scene, Buehner submitted to a portable breath-alcohol test, which revealed no evidence of alcohol in his system. Buehner was then taken to a local hospital. A subsequent search of Buehner's vehicle revealed a "one-hitter" pipe of the type commonly used to smoke marijuana. Transcript at 9.

Deputy Brandon Kaiser of the Warrick County Sheriff's Office, questioned Buehner about the accident at the scene and later in the hospital. After initially speaking with Buehner in the hospital, Deputy Kaiser received a call from another officer informing him of the marijuana pipe in Buehner's car. Deputy Kaiser asked Buehner if he had been smoking marijuana. Buehner admitted he had smoked marijuana the previous night but denied smoking at all that day. Deputy Kaiser then informed Buehner a blood test was needed to check for marijuana in Buehner's system, and left to set up the

blood test with the hospital staff. Deputy Kaiser did not read Buehner the Indiana implied consent law or ask Buehner if he would consent to a blood test. Instead, Deputy Kaiser simply completed and signed a form created by the hospital requesting the blood test. The form certifies Deputy Kaiser had:

> probable cause to believe that: (A) [Buehner] has violated I.C. 9-30-5.[1] (B) [Buehner] has been transported to a hospital or other medical facility. (C) [Buehner] has been involved in a motor vehicle accident that resulted in the serious bodily injury or death of another occurred [sic] not more than three (3) hours before the time the sample is requested.

A nurse took a blood sample from Buehner at 4:55 p.m., more than three hours after the accident occurred.

Buehner was a minor at the time of the accident. On August 16, 2007, after Buehner had been waived into adult court, the State charged him with reckless homicide, a Class C felony; causing the death of another person while operating a vehicle with a controlled substance in one's body, a Class C felony; criminal recklessness, a Class D felony; causing serious bodily injury to another person while operating a vehicle with a controlled substance in one's body, a Class D felony; possession of marijuana, a Class A misdemeanor; and possession of paraphernalia, a Class A misdemeanor. On February 17, 2009, Buehner filed a motion to suppress statements he made to Deputy Kaiser and the results of his blood test. The trial court held a suppression hearing on April 23, 2009, and allowed the parties to submit written briefs in lieu of closing arguments. On June 3, 2009, the trial court issued its order granting Buehner's motion to suppress with respect

[1] Indiana Code chapter 9-30-5 includes the crime of operating a motor vehicle with a controlled substance or its metabolite in a person's body. See Ind. Code § 9-30-5-1(c).

to the blood test results. The trial court certified the issue for interlocutory appeal, and we accepted jurisdiction. The State now appeals.

Discussion and Decision

I. Standard of Review

We review a trial court's decision to grant a motion to suppress as a matter of sufficiency. State v. Lucas, 859 N.E.2d 1244, 1248 (Ind. Ct. App. 2007), trans. denied. In conducting our review, we neither reweigh the evidence nor judge the credibility of the witnesses. Id. Further, where, as here, the trial court suppresses evidence seized as a result of a warrantless search, the State appeals from a negative judgment; therefore, it must show the trial court's decision to grant the motion to suppress was contrary to law. Id. We reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court. Id.

II. Blood Test Results

In general, the Fourth Amendment prohibits warrantless searches, including warrantless searches of one's person. Hannoy v. State, 789 N.E.2d 977, 982 (Ind. Ct. App. 2003), aff'd on reh'g, 798 N.E.2d 1109 (Ind. Ct. App. 2003). The compulsory administration of a blood test constitutes a search of one's person. Id. at 983 (quoting Schmerber v. California, 384 U.S. 757 (1966)). If a warrantless search is conducted, the burden falls upon the State to prove an exception to the warrant requirement existed at the time of the search. Id.

Indiana's implied consent law requires a law enforcement officer to offer a chemical test to:

> any person who[m] the officer has reason to believe operated a vehicle that was involved in a fatal accident …. If … the results of a portable breath test do not indicate the presence of alcohol but the law enforcement officer has probable cause to believe the person is under the influence of a controlled substance ….

Ind. Code § 9-30-7-3(a). The statute also requires a blood test "must be administered within three (3) hours after the fatal accident…." Ind. Code § 9-30-7-3(b). Deputy Kaiser admitted he did not read Buehner the implied consent law and he did not ask for Buehner's consent before requesting the blood test. Instead, Deputy Kaiser simply asked the hospital staff to perform the blood test. In addition, the blood test occurred more than three hours after the accident, and Deputy Kaiser was uncertain whether he had even requested the test within the three hours. As a result, Deputy Kaiser plainly did not comply with the implied consent law, which means the blood test cannot be justified by reference to that law.

In Schmerber, the Supreme Court cautioned the Fourth Amendment forbids a compulsory blood test on the mere chance that desired evidence might be obtained "in the absence of a clear indication" evidence of drug use will be found. 384 U.S. at 769-70. The Supreme Court ultimately upheld the search in Schmerber because it found the officer plainly had probable cause to believe the suspect was operating a vehicle under the influence of alcohol based upon the odor of liquor on the suspect's breath and the suspect's bloodshot eyes. Id. at 768-69.

Here, the State failed to prove Deputy Kaiser plainly had probable cause to believe Buehner's blood would contain a controlled substance or a metabolite of a controlled substance. The only evidence Buehner had used a controlled substance was his statement

to Deputy Kaiser he had smoked marijuana the night before, and the presence of the one-hit pipe in Buehner's vehicle. Deputy Kaiser admitted Buehner showed no signs of intoxication and he had no suspicion Buehner had used a controlled substance prior to being notified about the pipe. In addition, there is no evidence in the record of how much marijuana Buehner had used the previous night, how long marijuana or its metabolites typically remain in the blood stream, whether the one-hit pipe actually contained any marijuana or marijuana residue, or whether the pipe appeared to have been recently smoked. As a result, the State has failed to meet its burden to prove Deputy Kaiser had probable cause to request a blood test and the trial court properly granted Buehner's motion to suppress.

Conclusion

The trial court did not err when it granted Buehner's motion to suppress the results of the blood test because the State failed to prove a valid exception to the warrant requirement existed at the time of the search.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.