STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0339

State of Minnesota,
Respondent,

vs.

Lee Alan Adickes,
Appellant.

Filed October 15, 2013
Affirmed
Hooten, Judge

Wright County District Court
File No. 86-CR-11-1148

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Randi Anna Setter, Buffalo City Attorney, Buffalo, Minnesota (for respondent)

Richard L. Swanson, Chaska, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Hooten, Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

Appellant challenges his conviction of driving while impaired, arguing the district court erred by failing to suppress the results of a blood test because the blood sample was

destroyed without an opportunity for him to inspect it. Because the blood sample had no apparent or material exculpatory value and was not destroyed in bad faith, we affirm.

FACTS

On January 5, 2011, appellant Lee Alan Adickes was arrested on suspicion of driving while impaired (DWI). While under arrest, appellant gave a blood sample that was tested by the Minnesota Bureau of Criminal Apprehension (BCA) on February 2, 2011. The test found his blood sample to have an alcohol concentration of .17. Appellant was later charged with DWI in violation of Minn. Stat. § 169A.20, subd. 1(5) (2010).[1]

Appellant's attorney served the prosecutor with a disclosure demand that included a request for all reports of "examinations, scientific tests, experiments or comparisons made in connection with the particular case." The state responded on March 8, 2011, with a report on the BCA's test of the blood sample. The report indicated that the sample would be destroyed on February 2, 2012, or 12 months after the test.

On March 4, 2011, appellant's case was mistakenly dismissed when an assistant county attorney signed a notice of dismissal stating that a different defendant in a separate matter was deceased but listing the file number assigned to appellant's criminal matter. When the error was discovered on January 9, 2012, the district court ordered that the previous dismissal be vacated. Appellant's attorney called the BCA on March 22, 2012, to request access to the sample and was informed it had been destroyed on or about March 2, 2012. Appellant then requested a contested omnibus hearing, claiming a due

[1] Appellant was also charged with other offenses that are not at issue here.

process violation as a result of the destruction of the blood sample and requesting suppression of the results of the blood test. After the hearing, the district court denied appellant's motion to suppress.

Appellant agreed to a trial on stipulated facts, waiving his right to a jury trial or to contest any issues except for the suppression of the blood test. The district court found appellant guilty and affirmed the motion to suppress the test results by concluding that the facts were distinguishable from those in *State v. Hawkinson*, 812 N.W.2d 201 (Minn. App. 2012) (*Hawkinson I*), *rev'd*, 829 N.W.2d 367 (Minn. 2013). This appeal follows.

D E C I S I O N

"When reviewing a district court's pretrial order on a motion to suppress evidence," this court "may independently review facts that are not in dispute, and determine, as a matter of law, whether the evidence need be suppressed." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted).

Appellant relies on this court's opinion in *Hawkinson I*, but the supreme court released its opinion reversing *Hawkinson I* two days after appellant filed his brief. *State v. Hawkinson*, 829 N.W.2d 367 (Minn. 2013) (*Hawkinson II*) (filed April 24, 2013). In *Hawkinson*, the defendant was arrested on suspicion of DWI and consented to a blood test. *Id.* at 369. BCA testing determined that the defendant's blood sample had a blood-alcohol concentration of .11, and the defendant was charged with DWI. *Id.* at 369–70. Months later, the defendant made a discovery demand requesting preservation of "blood tests" and requested from the BCA information relating to his criminal prosecution, including any test reports and records. *Id.* at 370. The defendant received a copy of the

test report from the BCA indicating that the "blood sample would be 'destroyed by the laboratory twelve months following the date of this report.'" *Id.* Approximately 16 months after receiving the report, the defendant discovered the blood sample had been destroyed and filed a motion seeking to suppress the blood-test evidence. *Id.* The district court suppressed the evidence, finding, among other things, that the defendant was denied due process. *Id.* This court affirmed the district court's decision. *Hawkinson I*, 812 N.W.2d at 205.

In reviewing our decision, the supreme court identified two relevant questions: "(1) Is the rule from *Brady[v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963)], applicable because the destroyed evidence had apparent and material exculpatory value? And, (2) if not, was the evidence potentially useful and destroyed by the State in bad faith?" *Hawkinson II*, 829 N.W.2d at 372. As to the first question, the supreme court noted that the blood sample, having already shown that the defendant was intoxicated above a legal level, had "no apparent or material exculpatory value and only a mere hope of exculpatory potential." *Id.* at 373.

In determining whether the state acted in bad faith, the supreme court noted "two indices of bad faith," previously identified as: "(1) whether the State purposefully destroyed evidence favorable to a defendant so as to hide it; and (2) whether the State failed to follow standard procedures when it destroyed the evidence." *Id.* (citation omitted). Because the court had already concluded that the blood sample was not exculpatory, it also concluded that the state likely did not purposefully destroy it for obfuscation. *Id.* at 374. On this second point, the supreme court noted that it was

"undisputed that the BCA followed its normal practice to destroy blood samples 12 months after publishing test results obtained from the sample." *Id.* As a result, the supreme court determined that neither indicia of bad faith applied. *Id.* Finally, *Hawkinson II* determined that a request for the preservation of evidence prior to its destruction, by itself, does not satisfy the bad-faith requirement, but is a factor when making a bad-faith determination.[2] *Id.* at 375.

This case is similar to *Hawkinson*. In both cases, the destroyed blood sample was inculpatory, and the state lacked any incentive to destroy it. Similarly, in both cases, the BCA destroyed the blood sample at issue according to standard practices, and the defendants were given ample notice that the samples would be destroyed 12 months following the issuance of a report regarding the testing of the sample. Further, any differences between *Hawkinson* and this case only weaken appellant's arguments. First, appellant did not demand preservation of the sample in his discovery request. He only requested the production of "results of reports of . . . scientific tests." Second, appellant's request for access to the blood sample in March 2012 came after the date on which he knew the sample would be destroyed. Finally, appellant argues that, because the state was responsible for the dismissal and delay of the trial, destruction of the sample "reflects

[2] *Hawkinson II* goes on to conclude that the destruction of the blood sample did not violate the confrontation clause because that clause deals with witnesses rather than physical evidence, and also did not violate Minnesota criminal discovery rules, in part, because the evidence was not exculpatory. 829 N.W.2d at 377–79. Appellant includes similar arguments in his statement of legal issues, but makes no further mention of these issues in his brief, and has thus waived them. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997). Moreover, based on *Hawkinson II*, these arguments are not meritorious.

a blatant due process violation." Appellant does not indicate how the delay resulted in a due process violation, but he appears to direct it towards a showing of bad faith. However, appellant has not shown that the dismissal was intentional or that the state was responsible for the dismissal.

Because the blood sample had no apparent or material exculpatory value and was not destroyed by the state in bad faith, the district court did not err in declining to suppress the results of the blood test.

Affirmed.