No. 121413

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. MICHAEL BROOKS, Defendant-Appellee.	)))))))))))	Appeal from the Appellate Court of Illinois, Fifth District, No. 5-15-0095 There on Appeal from the Circuit Court of the Fourth Judicial Circuit, Effingham County, Illinois, No. 14-DT-136 The Honorable Stanley Brandmeyer, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

Defendant Michael Brooks was cited for driving under the influence (DUI) following a motorcycle accident. C6.[1] The circuit court granted defendant's motion to suppress the results of blood testing ordered during defendant's treatment at a hospital. C36-37 (A6-7). The appellate court affirmed, holding that police participation in forcing defendant's transport to the hospital to obtain medical treatment rendered the subsequent warrantless blood test at the hospital a Fourth Amendment violation. *People v. Brooks*, 2016 IL App (5th) 150095-U (Sept. 1, 2016) (A1-5). No question is raised on the pleadings.

ISSUES PRESENTED

During a suppression hearing, the defendant is required to make a prima facie showing that the challenged evidence was obtained through an illegal search or seizure. *People v. Gipson*, 203 Ill. 2d 298, 306-07 (2003). If such a showing is made, the burden shifts to the State to counter the prima facie case, although the ultimate burden of proof remains with the defendant. *Id.* at 307; 725 ILCS 5/114-12(b) (2014). At issue here is:

1. Whether the lower courts erred by not applying this burden-shifting framework, under which the courts should have concluded that defendant failed to make a prima facie showing that the alleged blood test was a product of State action that violated the Fourth Amendment.

2. In the alternative, even if defendant made a prima facie showing that the blood test was an illegal search, whether the circuit court erred in granting defendant's motion to

[1] "C_" refers to the common law record and "R_" refers to the report of proceedings that are bound together in a single volume; "Supp." refers to the unbound sheets of paper entitled "Subpoena – Duces Tecum"; and "A_" refers to the appendix to this brief.

suppress without shifting the burden to the State to present evidence that the blood test was not the product of State action.

3. In the further alternative, whether suppression is an appropriate remedy for a Fourth Amendment violation under these circumstances.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b). On November 23, 2016, this Court allowed the People's petition for leave to appeal. *People v. Brooks*, 65 N.E.3d 843 (Ill. 2016).

STATEMENT OF FACTS

Defendant was cited for DUI in violation of 625 ILCS 5/11-501(a)(2) (2014) following a single-vehicle motorcycle accident. C6; R79. Defendant filed a motion to suppress the results of blood-alcohol testing performed at the hospital where he was taken for treatment after the accident. C24-25. The motion alleged that the police had forcibly removed defendant from a vehicle and sent him to the hospital despite his refusal of medical treatment and that police had "insisted" upon a blood test without a warrant or defendant's consent. C24.

About five weeks after the suppression motion was filed, the State subpoenaed defendant's hospital blood work. The clerk's office issued a subpoena duces tecum directing the hospital's medical records department to produce in a sealed envelope directed to the circuit clerk "[a]ll lab results ('blood work') pertaining to" defendant, originating from his admission on or about August 14, 2014. Supp. On December 12, 2014, the court received sealed "Subpoena Duces Tecum" materials from St. Anthony's Hospital, C4; R72; before the December 15, 2014 suppression hearing began, the circuit court noted receipt of the

sealed envelope, R72. Both parties stated that they assumed the envelope contained the results of hospital blood work conducted during defendant's medical treatment. R72-73. The court retained custody of the envelope, and it was never opened. R74, 113.[2]

Defendant called two witnesses in support of his suppression motion. Effingham police officer Thomas Webb testified that he was dispatched to the scene of a motorcycle accident around midnight on August 14, 2014. R79. When he arrived, he saw a motorcycle in a bush in the front yard of a house and a Jeep parked about 100 feet from the motorcycle. R79, 91. Webb approached the open-topped Jeep and saw defendant sitting in its passenger seat with the door closed. R79-80, 91, 95. The Jeep did not belong to defendant, R80; defendant alleged in the unsworn suppression motion that the Jeep had been driven by a friend, C24.

Webb observed that defendant's eyes were red and that his actions were sluggish; when defendant spoke, Webb smelled the odor of alcohol on his breath and noted that defendant's speech was slurred. C8; R90-91. Based on these facts and defendant's involvement in the accident, Webb believed that defendant was intoxicated. R93. Webb also observed that defendant's leg was "obviously broken"; defendant's foot hung at a strange angle, with the toes pointed to the side, almost upside down. R91-92, 95.

Defendant appeared agitated by the police presence at the scene, R91, and screamed "you can't do shit because you didn't see me drive." R93. Although no police officer saw defendant driving, R86-87, two witnesses told Webb that defendant had been driving the

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[2] The envelope is not included in the record on appeal. On information and belief, it remains sealed in the Effingham County Circuit Clerk's Office.

motorcycle, C8; R90, 93. Webb was concerned about defendant's safety and the fact that he did not appear to be thinking rationally. R92.

Webb explained that "a lot of times or all the time" ambulance personnel ask for police assistance in getting intoxicated and seriously injured subjects into an ambulance and to the hospital "to make sure they get the medical attention that they need." *Id.* Here, ambulance personnel "requested that [defendant] had to go to the hospital" in light of his serious injury, so Webb removed defendant from the Jeep. R92, 96. More specifically, Webb asked defendant if he wanted to go to the hospital, and defendant said that he did not. R80. Webb ordered defendant out of the vehicle; he refused and asked Webb not to touch him. R81. Webb then removed defendant from the Jeep. *Id.* Webb acknowledged that at that point, defendant was not free to leave, although Webb did not inform defendant that he was under arrest. *Id.* Webb confirmed that he had neither an arrest warrant nor a court order compelling defendant to receive medical treatment. R82, 96.

Webb then compelled defendant to lay on a gurney and assisted ambulance personnel in loading the gurney into the ambulance. R82. Initially, no police officer rode in the ambulance when it left the scene. *Id.* After the ambulance had traveled "[r]oughly a block or two," it stopped, and ambulance personnel requested an officer's assistance because defendant had tried to exit the ambulance. R83. Webb boarded the ambulance, forced defendant onto the gurney, and rode along to the hospital with defendant handcuffed because he was concerned for the safety of the ambulance personnel, defendant, and himself. R83, 86, 94.

At the hospital, Webb read defendant the Warning to Motorist, which provided standard notifications following a DUI arrest. C7; R84. Webb cited defendant for DUI (625

ILCS 5/11-501(a)(2) (2014)). C6; R84, 86. Webb asked defendant to consent to blood or breath testing; defendant refused. C8; R84. Webb notified defendant that his driver's license would be summarily suspended due to this refusal. C9-10; *see also* C11-14.

Webb never spoke to any nurse or doctor at the hospital and did not know whether defendant consented to medical treatment at the hospital. R85. Webb did not test defendant's blood or direct anyone else to do so. R94. After Webb left the hospital, he did not call the hospital to obtain any blood testing results. R87.

Defendant testified that he never consented to having his blood tested and that he refused "[e]very time they asked me." R97-98. He was at the hospital for about twelve hours; medical personnel set his broken leg and put a splint on it. R98-99. Defendant was not questioned about whether he refused this medical treatment, and his brief suppression hearing testimony — consisting of slightly more than two transcribed pages — did not address the issue. R97-99.

Defense counsel argued that the blood test results should be suppressed because Officer Webb and ambulance workers acting as agents of the State forced defendant to receive medical treatment against his will and that testing his blood without a warrant, court order, or consent constituted battery. R100-01. Counsel also objected to his client's private medical records being disseminated to the State, and the court asked the State whether there was a need for a HIPAA release form. R72-73. The State cited section 11-501.4 of the Vehicle Code (625 ILCS 5/11-501.4), providing for the admissibility of evidence regarding blood testing "conducted in the regular course of providing emergency medical treatment." R101-02. The State also contended that there was no State action involved in the decision to conduct blood testing at the hospital and that police were involved in transporting

defendant to the hospital only at the request of ambulance personnel. R102-07. Defense counsel, in rebuttal, stressed the applicability of HIPAA and his client's steadfast refusal of medical treatment. R107-09. The court took the motion under advisement. R112.

On January 8, 2015, the circuit court granted defendant's motion to suppress. C36-37 (A6-7). The court's written order highlighted the absence of testimony by any hospital, ambulance, or medical personnel to explain either the need for a blood test or any exigency that would justify a warrantless blood test. C36 (A6). The court stressed that defendant repeatedly refused medical treatment, and there was no testimony establishing the medical necessity for the treatment or the inability to obtain a warrant. C37 (A7).

The State filed a motion to reconsider. C38-53. In that motion and at the March 12, 2015 hearing on the motion, the State argued that it had statutory authority to subpoena and access the results of defendant's blood test and that the blood test was not a product of State action. *Id.*; R116-19. The State emphasized that medical need for the testing was part of the foundation required if and when it sought to admit the blood testing results at trial. C52; R118-19.

The court denied the reconsideration motion in an oral ruling. R120-25 (A8-13). The court noted that defendant made it clear that he did not want to go to the hospital and did not want to go in the ambulance. R120-21 (A8-9). The court also questioned whether a broken foot was a life-threatening injury or required blood testing. R121 (A9). The court suspected that the officer's primary purpose in assisting the transport of defendant to the hospital was to obtain evidence for use in a future prosecution. R122-23 (A10-11). The court also "believe[d] that under the circumstances, [the hospital had] some apparent agency" with the State in conducting the blood test. R123 (A11). With regard to the HIPAA objection, the

court stated that the issue would have been avoided had the State obtained a warrant. R123-24 (A11-12). The State filed a certificate of impairment, C54, and a timely notice of appeal, C60-61 (A14-15).

The Fifth District affirmed, rejecting the State's argument that the blood test was not a product of State action as required to trigger application of the Fourth Amendment. *Brooks*, 2016 IL App (5th) 150095-U (A1-5). The court noted that the Fourth Amendment does not permit warrantless blood tests incident to lawful DUI arrests absent exigent circumstances or consent. *Id.* at ¶ 18 (A3). While acknowledging that a search by a private person does not violate the Fourth Amendment and that the government can use information gleaned from a private search, *id.* (A3), the court concluded that the blood test here was a result of State action because defendant refused medical treatment and Officer Webb participated in compelling defendant to go to the hospital to receive medical treatment, *id.* at ¶¶ 21-22 (A4). The court also found that no exigent circumstances justified the warrantless blood test. *Id.* at ¶¶ 23-24 (A4-5). The court declined to reach the State's argument that the circuit court erred in refusing to open or disclose to the State the contents of the envelope presumably containing materials subpoenaed from the hospital. *Id.* at ¶¶ 15, 25 (A3, 5).[3]

[3] On February 2, 2017, this Court's clerk's office confirmed that certified copies of the appellate court briefs were in the case file. *See* Ill. Sup. Ct. R. 318(c).

ARGUMENT

I. Defendant's Suppression Motion Should Have Been Denied Because He Did Not Prove that Any Hospital Blood Test Was an Illegal Search Under the Fourth Amendment.

Standard of Review: Review of a circuit court's order suppressing evidence presents a mixed question of law and fact; the circuit court's factual findings are reversed only if they are against the manifest weight of the evidence, while the ultimate question of whether the evidence should be suppressed is reviewed de novo. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004).

A criminal defendant bears the burden of proof at a suppression hearing. *Gipson*, 203 Ill. 2d at 306; 725 ILCS 5/114-12(b) (2014). To justify suppression, defendant must make a prima facie case that the evidence in question was obtained through an illegal search. *Gipson*, 203 Ill. 2d at 306-07. If defendant makes this prima facie showing, the State has the burden of going forward with evidence to counter the prima facie case. *Id.* at 307. The ultimate burden of proof remains with the defendant. *Id.*

It is well-established that the Fourth Amendment to the United States Constitution prohibits unreasonable searches,[4] *People v. Watson*, 214 Ill. 2d 271, 279 (2005), and that the taking of a blood sample from a suspected drunk driver constitutes a search for Fourth Amendment purposes, *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2166, 2173 (2016). Although the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving, the same is not true for blood tests because they are more invasive. *Id.* at

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[4] Defendant did not cite the Illinois Constitution in support of suppression in the circuit or appellate courts, C24-25; R100-01, 107-10; *see also* p. 7, *supra* n.3, so only Fourth Amendment analysis is provided.

2178, 2184. Thus, a warrantless compelled taking of a blood sample for use as evidence in a criminal investigation is reasonable only if an exception to the warrant requirement — such as exigent circumstances or consent — applies. *Missouri v. McNeely*, 133 S. Ct. 1552, 1558 (2013) (warrantless blood test valid under exigent circumstances); *see also Georgia v. Randolph*, 547 U.S. 103, 106 (2006) (warrantless search of premises valid with voluntary consent); *People v. Harris*, 2015 IL App (4th) 140696, ¶ 49 (warrantless blood test valid with voluntary consent).

But the Fourth Amendment applies only to government action. *People v. Phillips*, 215 Ill. 2d 554, 566 (2005) (citing *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). Later government use of information gleaned through a search by a private person — even an unreasonable one — does not violate the Fourth Amendment because the private search already vitiated the expectation of privacy in the information revealed. *Jacobsen*, 466 U.S. at 113-14, 117; *Phillips*, 215 Ill. 2d at 566; *see also People v. Clendenin*, 238 Ill. 2d 302, 329-30 (2010). Thus, the Fourth Amendment does not apply to a search conducted by a private person so long as the private person did not act as an agent of the government, meaning with the participation or knowledge of a government official. *Jacobsen*, 466 U.S. at 113-14.

A. Defendant Failed to Make a Prima Facie Showing of an Illegal Search Because He Failed to Sufficiently Establish that Any Blood Test Was a Product of State Action.

This Court should reverse the circuit court's suppression order and remand the matter for trial because defendant failed to make a prima facie showing that the alleged hospital

blood test[5] was an illegal search. Defendant offered no evidence regarding who conducted the search or whether the search actually occurred. And even if defendant sufficiently proved that a hospital staff member tested his blood, he offered no evidence that the search was a product of State action.

1. Defendant offered no evidence regarding who conducted the alleged blood test or whether a blood test occurred at all.

Upon filing a suppression motion, the defendant bears the burden of making a prima facie showing of an illegal search. *Gipson*, 203 Ill. 2d at 306-07. A prima facie showing is defined as "[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced." *Black's Law Dictionary* 638-39 (9th ed. 2009). In other words, a party makes a prima facie case by presenting at least some evidence on every essential element necessary to the cause of action. *People v. Marsala*, 376 Ill. App. 3d 1046, 1048 (2d Dist. 2007) (citing *Kokinis v. Kotrich*, 81 Ill. 2d 151, 154 (1980)); *see also People v. Gibson*, 357 Ill. App. 3d 480, 486 (4th Dist. 2005).

Defendant could not satisfy his burden of making a prima facie case that hospital blood testing results should be suppressed without producing evidence, inter alia, that (1) the challenged search was a product of State action, *see Phillips*, 215 Ill. 2d at 566, and (2) a blood test actually occurred. But at the suppression hearing, defendant offered no evidence whatsoever about *who* tested defendant's blood, making it difficult, if not impossible, to evaluate whether any blood test was a product of State action. In fact, the only evidence

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[5] This brief refers to the alleged search as "blood testing." This term includes both the blood draw and the subsequent blood test. Defendant has never argued that each might constitute a distinct Fourth Amendment violation. *See generally* Andrei Nedelcu, Note, *Blood and Privacy: Towards a "Testing-as-Search" Paradigm Under the Fourth Amendment*, 39 Seattle U. Law Rev. 195, 195-96 (Fall 2015).

related to this point — which came out during the State's cross-examination — was Officer Webb's testimony that he neither conducted any blood test himself nor directed someone else to do so. R94. Moreover, defense counsel neither presented any testimony from hospital personnel, R72-114, nor asked defendant himself whether a blood test occurred, who drew his blood, or when, R97-98. To the contrary, defendant testified only that he never consented to having his blood drawn, *id.*, raising a possible inference that no blood test happened. Because defendant offered no evidence concerning who conducted the alleged search or whether any such search occurred, he failed to make a prima facie case that any blood test was a product of State action in violation of the Fourth Amendment.

The Fifth District found no deficiency in this regard because defendant filed a motion to suppress blood testing results and because the parties argued the motion's merits on the assumption that a blood test had occurred. *Brooks*, 2016 IL App (5th) 150095-U, ¶ 17 (A3). But the Fifth District erred by equating the filing of the suppression motion and the parties' assumptions with evidence. *See generally People v. Sutherland*, 223 Ill. 2d 187, 209 (2006) (citing *Black's Law Dictionary* 595 (8th ed. 2004) (defining "evidence" as "[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact")). The mere filing of an unsworn motion does not substantiate its allegations. *See People v. Brinn*, 32 Ill. 2d 232, 238-39 (1965) (bare allegations in motion for mistrial, absent affidavits or record evidence, insufficient to support granting motion). And the State had no choice but to oppose the motion upon nothing more than an assumption that a hospital blood test had occurred because the circuit court's refusal to open the envelope from the hospital prevented the State from learning whether it contained any documents that were responsive to the State's subpoena of blood testing results. *See also infra* Part II.B.

Given defendant's failure to offer any evidence regarding who conducted a blood test or whether defendant's blood was ever tested, this Court should conclude that (1) defendant failed to establish his prima facie showing that a search violated the Fourth Amendment, and (2) the lower courts erred in granting and affirming his suppression motion. *See Pitman*, 211 Ill. 2d at 512 (validity of ultimate suppression ruling is reviewed de novo).

2. Defendant offered no evidence that a blood test by a hospital staff member was a product of State action.

Even assuming that hospital personnel tested defendant's blood, suppression is unwarranted because defendant failed to prove State action. Defendant has never argued that (the unknown) hospital employee should be considered a State actor, and such a conclusion is unsupported by this record. Nor did defendant offer any evidence that the employee acted at the direction of a State actor. Officer Webb, the only State actor involved in defendant's case who was present at the hospital, gave unrebutted testimony that he did not instruct anyone at the hospital to test defendant's blood. R85, 94, 97. In fact, Webb testified that he did not speak with any physician or nurse while he was at the hospital. R85. Thus, defendant offered no evidence that the blood test was anything other than a routine step in his medical treatment at the hospital.

In addition to State actors, the Fourth Amendment applies to a search conducted by a private person acting as an agent of State actor, *i.e.,* with the "'participation or knowledge of any government official,'" *Jacobsen*, 466 U.S. at 113-14 (quoting *Walter v. United States*, 447 U.S. 649, 662 (1980) (Blackmun, J., dissenting)), sometimes termed "police subterfuge," *see, e.g., People v. Poncar*, 323 Ill. App. 3d 702, 707 (2d Dist. 2001); *People v. Yant*, 210 Ill. App. 3d 961, 965 (2d Dist. 1991). The circuit court here appeared to grant defendant's

motion to suppress, at least in part, based on such agency, noting that (1) defendant suffered non-life-threatening injuries and objected to transport to the hospital, (2) Officer Webb's primary purpose for forcing defendant's transport to the hospital seemed to have been to obtain evidence for a future DUI prosecution, and (3) "under the circumstances" there was "some apparent agency" between the hospital and law enforcement. R122-23 (A10-11).

To the extent this language could be construed as a factual finding of State action due to police agency, that finding is against the manifest weight of the evidence because no record evidence supports such a conclusion. *See Pitman*, 211 Ill. 2d at 512 (suppression order presents mixed question of law and fact; manifest-weight standard of review applies to factual findings, while *de novo* review applies to ultimate legal question). A finding is against the manifest weight of the evidence when "an opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary or not based on the evidence." *People v. Urdiales*, 225 Ill. 2d 354, 433 (2007).

When considering whether a private person was acting as a police agent, the question is whether the person, "in light of all the circumstances of the case, must be regarded as having acted as an 'instrument' or agent of the state." *Coolidge v. New Hampshire*, 403 U.S. 443, 487 (1971). This Court has noted that police participation alone is insufficient; the court must evaluate the nature of the police involvement, including any police coercion and whether the private actor made an independent decision to conduct the challenged search. *People v. Heflin*, 71 Ill. 2d 525, 539-41 (1978).

This Court should reverse because defendant presented no evidence that the hospital blood tester acted as a police agent. Defendant provided no evidence that Officer Webb sought or encouraged the blood testing or that Webb was even aware of and acquiesced in

such testing. Webb did not speak to any nurse or physician at the hospital that night. R85. Once Webb had read defendant the Warning to Motorist, documented defendant's refusal to submit to alcohol testing, and issued the DUI citation, Webb left the hospital. R84-87. Webb did not call the hospital later to obtain defendant's blood test results. R87. In fact, it was only *after* defendant filed his suppression motion, C24-25, that the State subpoenaed the blood test results, Supp., suggesting that the State was not aware that a blood test had been conducted until defendant filed his motion. And because defendant did not present the testimony of the (unknown) blood tester, defendant provided no evidence that the tester was even aware of Officer Webb or defendant's DUI citation, much less that the blood tester was motivated to conduct the test, even in part, to gather evidence for a possible future DUI prosecution. Thus, defendant failed to make a prima facie showing of police agency.

In its written suppression order, the circuit court highlighted the lack of any testimony about why defendant's blood was tested when questioning whether there was a medical need for the nonconsensual blood test or whether there were exigent circumstances justifying a warrantless blood test. C36 (A6). In this regard, the circuit court's suppression order appears based, at least in part, on the erroneous premise that suppression was warranted because the State failed to prove a medical necessity for the blood test. But the State has never relied on exigent circumstances or consent as an exception to the warrant requirement in this case. *Why* private medical personnel conducted a blood test is relevant for Fourth Amendment purposes only in the context of determining whether the blood test was a product of State action, *i.e.*, with the "participation or knowledge" of a government official. *See Jacobsen*, 466 U.S. at 113-14.

Only if and when the State seeks admission of blood test results at a future trial will the State bear the burden of satisfying the requirements of section 11-501.4(a) of the Vehicle Code, including a showing that the blood test was ordered "in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities." 625 ILCS 5/11-501.4(a), (a)(1)-(2) (2014). At pretrial suppression proceedings, in contrast, defendant bore the burden of making a prima facie showing that the blood test was a product of State action. *Gipson*, 203 Ill. 2d at 306. Thus, it was defendant's obligation — not the State's — to provide evidence about the reason the blood test was conducted (and perhaps the lack of a medical justification for it) to establish the requisite State action.

Relatedly, the circuit court's questioning whether there was any medical need for a blood test for defendant, a patient who suffered a broken ankle, R121 (A9), does not support an inference of police action in encouraging the blood test. First, the circuit court overlooked that there likely was a purely medical reason for the blood test: the hospital might have a blanket policy of testing the blood of all incoming patients who have suffered a trauma or who appear intoxicated. *See, e.g., People v. Spencer*, 303 Ill. App. 3d 861, 866-68 (4th Dist. 1999) (noting that hospital ordered blood work, including blood-alcohol testing, for anyone present in emergency room with trauma because blood-alcohol results are routinely relied upon by doctors in formulating treatment determinations); *see also People v. Luth*, 335 Ill. App. 3d 175, 176-77 (4th Dist. 2002) (standard emergency blood work for trauma patient included blood-alcohol testing). Second, because defendant bore the burden at the suppression hearing, *Gipson*, 203 Ill. 2d at 306, the *lack* of evidence about why defendant's blood was tested should not be construed in defendant's favor, *cf. Foutch v. O'Bryant*, 99 Ill.

2d 389, 391-92 (1984) (any doubts arising from incompleteness of record are construed against appellant who bears burden of producing adequate record).

Thus, defendant failed to make a prima facie showing that the blood test was a product of State action. Defendant also failed to provide any evidence that the blood test was conducted by or at the direction of a State actor, or by a private person acting as a government agent. Given this lack of State action, the hospital blood test did not violate the Fourth Amendment, and the lower courts erred in granting and affirming defendant's motion to suppress.

B. The Concerns Cited by the Lower Courts — Police Participation in Compelling Defendant to Receive Medical Treatment and Defendant's Lack of Consent Either Generally to Medical Treatment or Specifically to a Blood Test — Do Not Justify Suppression.

As explained in Part I.A., *supra*, the circuit court should have denied defendant's suppression motion. The two concerns cited by the lower courts in granting his motion — that Officer Webb compelled defendant to go to the hospital and that defendant refused to consent to medical treatment or a blood test — do not justify suppression under the Fourth Amendment.

1. Officer Webb's seizure of defendant during transport to the hospital does not warrant suppression.

The Fourth Amendment prohibits unreasonable seizures, and a seizure occurs when an officer uses physical force or a show of authority to restrain the liberty of a citizen. *People v. Luedemann*, 222 Ill. 2d 530, 544, 550 (2006) (citing *Florida v. Bostick*, 501 U.S. 429, 434 (1991); *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)). To determine whether a seizure occurred requires an analysis of whether a reasonable person would feel free to leave under the circumstances. *Luedemann*, 222 Ill. 2d at 550.

In granting and affirming suppression, the lower courts stressed that Officer Webb participated in compelling defendant to go to the hospital. *Brooks*, 2016 IL App (5th) 150095-U, ¶¶ 21, 25-28 (A4, A5); C36 (A6); R122-23 (A10-11) Webb unquestionably seized defendant within the meaning of the Fourth Amendment when he forced defendant out of the Jeep, onto a gurney, and into an ambulance and escorted defendant to the hospital using handcuffs. R81-83; *see Luedemann*, 222 Ill. 2d at 550. But defendant neither challenged the propriety of that seizure nor offered evidence that the hospital employee who conducted the blood test was aware of this seizure — much less that the employee was at all motivated by it — in deciding to conduct the blood test. Absent an evidentiary connection between the seizure during transport and the blood test, the seizure is irrelevant to the Fourth Amendment question presented here.

State v. Wall, 910 A.2d 1253 (N.H. 2006), illustrates this point. Wall challenged the trial court's denial of her motion to suppress blood testing results conducted at a hospital where she received treatment following a car accident. *Id.* at 1256. Emergency responders treating Wall had noticed an odor of alcohol, and police at the crash scene instructed the emergency responders to take Wall to a New Hampshire hospital. *Id.* At the hospital, the police arrested Wall for driving while intoxicated; the police did not instruct any hospital personnel to conduct a blood test. *Id.* The next day, a police officer returned to the hospital, without a warrant, and requested the results of any blood testing that had been conducted. *Id.* Hospital personnel gave the officer both the hospital testing results and blood samples that were later tested at the State laboratory. *Id.* at 1256-57. The trial court denied Wall's motion to suppress the blood testing results both from the hospital and the State laboratory,

rejecting Wall's argument that hospital personnel acted as police agents in testing Wall's blood. *Id.* at 1257.

The New Hampshire high court affirmed, rejecting the defendant's argument that an agency relationship was created between the police and hospital personnel when the police directed emergency responders to take Wall to a New Hampshire hospital (rather than a Massachusetts hospital) so that a blood sample could be obtained. *Id.* at 1257-58. The court noted that an agency relationship should be inferred only if there is an affirmative act by the government official that can be reasonably interpreted to have induced the private actor to conduct the search. *Id.* at 1258. The court declined to find an agency relationship because any agency relationship that existed between the police and the emergency responders did not extend to the hospital personnel who tested Wall's blood. *Id.* There was no evidence that hospital personnel were aware that the police had directed emergency responders to take Wall to a New Hampshire hospital, nor any evidence that the police requested hospital personnel to conduct the blood test. *Id.* Based on the totality of the circumstances, the trial court had concluded that the blood test was solely for medical treatment, a finding that was not clearly erroneous. *Id.* The state high court held that there was no agency between the police and hospital personnel testing Wall's blood, so suppression was unwarranted. *Id.*

A similar approach was taken in *People v. Poncar*, an Illinois case that the appellate court erroneously distinguished. *Brooks*, 2016 IL App (5th) 150095-U, ¶ 22 (A4). In *Poncar*, police initiated a traffic stop upon observing the defendant driving with a flat tire and, upon speaking with him, noticed that he appeared "highly intoxicated." 323 Ill. App. 3d at 703. Defendant was arrested and transported to the police station, where he was agitated and uncooperative. *Id.* at 703-04. During processing, defendant sustained a cut that

warranted medical attention beyond basic first aid. *Id.* Police handcuffed defendant to a gurney at a hospital emergency room while a nurse conducted a blood draw. *Id.* at 704. Defendant objected, but the nurse explained that, before he could be treated, it was necessary to determine what substances he had ingested. *Id.* The circuit court suppressed the blood testing results, *id.* at 704, 707, but the appellate court reversed, finding no Fourth Amendment violation because there was "no evidence" that the blood test was a product of police subterfuge, *id.* at 707. *See also People v. Wuckert*, 2015 IL App (2d) 150058, ¶¶ 4, 5, 29 (rejecting defendant's argument that illegal arrest at crash scene justified suppression of hospital urine test under Fourth Amendment; arrest was "legally irrelevant" because defendant conceded private actor who tested urine did not act as government agent).

Thus, in both *Wall* and *Poncar*, but for the police conduct, the defendants would not have had the challenged hospital blood tests: police instructed emergency responders to take Wall to a New Hampshire hospital, and police inadvertently inflicted the injury that necessitated Poncar's treatment and handcuffed him while the non-consensual blood draw was conducted. Yet in both cases, the court rejected suppression under the Fourth Amendment given the lack of evidence that the blood tester was motivated to conduct the blood test because of this police conduct or, at least in Wall's case, was even aware of the conduct at all. In other words, the Fourth Amendment suppression analysis does not turn on whether there was any police or State action at any step in the causal chain preceding a defendant's receipt of medical care that included a challenged blood test. Instead, the relevant question is *who* conducted the blood test and *why*, *i.e.*, whether there was any State action in conducting or motivating the blood testing. Here, as in *Wall* and *Poncar*, defendant failed to produce any evidence that (the unknown) hospital blood tester was aware of —

much less motivated by — Officer Webb's participation in compelling defendant to go to the hospital. Thus, this Court should reject the lower courts' conclusion that Officer Webb's seizure of defendant, alone, justifies suppression. *See Brooks*, 2016 IL App (5th) 150095-U, ¶¶ 21-22 (A4); C36 (A6); R122-23 (A10-11).

2. Defendant's lack of consent to the blood test or to medical treatment is irrelevant.

Rather than addressing who conducted the blood test or why, defendant's evidence focused on the undisputed fact that defendant did not consent to be transported to the hospital or to the blood test. *See, e.g.,* R97-98. But the State did not invoke consent to justify the warrantless blood test; instead, the State has consistently cited the lack of State action in the challenged search. *See supra* Part I.A. Thus, defendant's non-consent plays no role in the Fourth Amendment analysis.

The law is well-settled that a lack of consent, without more, does not transform a blood test into a Fourth Amendment violation. *See Yant*, 210 Ill. App. 3d at 965; *see also McNeely*, 133 S. Ct. at 1560-68 (evaluating whether exigent circumstances justified non-consensual, warrantless blood test). In fact, criminal defendants have unsuccessfully invoked several constitutional provisions when challenging admission of results from non-consensual blood testing by medical personnel. *See Schmerber v. California*, 384 U.S. 757, 759-60 (1966) (rejecting due process challenge to compelled blood draw conducted by medically-trained personnel in medically-acceptable manner in hospital environment); *id.* at 760-65 (rejecting Fifth Amendment self-incrimination challenge to compelled blood testing because the results of chemical testing are not testimony or "evidence relating to some communicative act or writing"); *see also Yant*, 210 Ill. App. 3d at 963 (non-consensual blood

draw does not violate any constitutional right of donor). Thus, defendant's non-consent does not establish a per se violation of the Fourth Amendment.

Instead, a Fourth Amendment challenge to a blood test focuses on whether a search warrant was obtained and, if not, whether an exception to the warrant requirement or to Fourth Amendment applicability applies. *See McNeely*, 133 S. Ct at 1558 (noting that warrantless search of person — including nonconsensual blood draw — is reasonable under Fourth Amendment only if it falls within recognized exception to warrant requirement). In particular, no Fourth Amendment violation occurs if (1) defendant consented to the search, *Harris*, 2015 IL App (4th) 140696; (2) exigent circumstances justified the search, *McNeely*, 133 S. Ct. at 1558; or (3) a warrant was not required because there was no State action involved in the search, *Phillips*, 215 Ill. 2d at 566. Here, there was no need for the lower courts to discuss consent or exigent circumstances at all because the State invoked only the third justification: the lack of State action. C38-53; R101-07; *see also* p. 7 *supra* n.3. Thus, defendant's lack of consent to the blood test or to medical treatment was not relevant to the Fourth Amendment analysis.

Defendant's lack of consent to the blood test does not justify suppression in the present DUI prosecution because the Fourth Amendment does not render inadmissible evidence uncovered through even an unreasonable search absent State action. *Jacobsen*, 466 U.S. at 113-14, 117; *Phillips*, 215 Ill. 2d at 566. Thus, the circuit court's concern that defendant did not consent to medical treatment or a blood test, C36 (A6); R122-23 (A10-11), does not justify suppression.

C. No Fourth Amendment Violation Should Be Found Here Because the Circuit Court's Ruling Does Not Establish an Administrable Rule for Police Officers.

Moreover, this Court should decline to recognize a Fourth Amendment violation here because the circuit court failed to articulate a sufficiently clean and simple standard, leaving police officers to struggle to comply in future cases. Here, the circuit court highlighted both defendant's lack of consent to medical treatment and the court's own speculation that defendant's obviously severely broken foot was not a life-threatening injury, R122-23 (A10-11), despite unrebutted testimony confirming that emergency responders decided defendant required treatment at a hospital emergency room, R92, 96, and that defendant's odor, appearance, and conduct supported the conclusion that he was intoxicated, C8; R90-91. The circuit court's holding requires a police officer, on the spur of the moment, to make two complex determinations at the scene of an accident: whether injuries are life-threatening, and whether the suspect is intoxicated to the degree that he or she is legally incapable of refusing consent to medical treatment. The question of whether a police officer's conduct violated the Fourth Amendment should not be made to turn on complex and uncertain medical judgments that the average police officer is ill-equipped to make. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001) ("Often enough, the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made."); *see also New York v. Belton*, 453 U.S. 454, 458 (1981), *overruled on other grounds by Davis v. United States*, 564 U.S. 229 (2011) (Fourth Amendment should be expressed in terms readily applicable by police engaged in law enforcement activities).

Thus, this Court should reverse the circuit court's finding of a Fourth Amendment violation under these circumstances.

II. Alternatively, If Defendant Demonstrated a Prima Facie Case that the Blood Test Was an Illegal Search, this Court Should Remand for Further Proceedings on the Suppression Motion.

In the alternative, if this Court concludes that defendant made a prima facie showing that the blood test violated the Fourth Amendment, it should remand for further proceedings on defendant's suppression motion.

A. The Circuit Court Erred by Failing to Shift the Burden to the State to Rebut Defendant's Prima Facie Case.

The circuit court erred by simply granting defendant's motion to suppress rather than finding that defendant had made a prima facie case and shifting the burden to the State before ruling on the suppression motion. *See* C36-37 (A6-7); R120-25 (A8-13). If this Court concludes that defendant made a prima facie showing of a Fourth Amendment violation, remand is required to give the State the opportunity to rebut defendant's prima facie case with evidence that the blood test was performed by a private actor absent State action, rendering the Fourth Amendment inapplicable. Thus, this Court should remand the matter to the circuit court with instructions that the court apply the governing burden-shifting framework. *Cf. People v. Davis*, 345 Ill. App. 3d 901, 905-06, 911 (1st Dist. 2004) (upon reversing circuit court's finding that defendant failed to make prima facie showing of *Batson* violation, case remanded for further proceedings with State bearing burden to show race-neutral reasons sufficient to rebut defendant's prima facie case); *People v. Holmes*, 272 Ill. App. 3d 1047, 1053, 1059 (1st Dist. 1995) (same).

B. Before Further Suppression Proceedings Occur, This Court Should Reverse the Circuit Court's Findings that, in Effect, Quashed the State's Subpoena or, Alternatively, Remand to the Appellate Court to Address the Subpoena Issue.

Standard of Review: The decision whether to quash a subpoena is reviewed under the abuse-of-discretion standard. *People v. Enis*, 194 Ill. 2d 361, 415 (2000). A circuit court abuses its discretion "when its decision is 'fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it.'" *People v. Kladis*, 2011 IL 110920, ¶ 23 (quoting *People v. Ortega*, 209 Ill. 2d 354, 359 (2004)).

On December 8, 2014, at the State's request, the Effingham County Circuit Clerk issued a subpoena duces tecum that commanded St. Anthony Hospital to submit a sealed envelope containing all blood testing results pertaining to defendant "originating from his admission on or about August 14, 2014." Supp. On December 15, 2014, prior to the suppression hearing, the circuit court informed the parties that it had received a sealed envelope from the hospital. R70, 72. Defense counsel objected to the court distributing its contents to the State because he assumed the envelope contained defendant's private medical records. R72-73. The court retained custody of the envelope, and it was never opened. R74, 113, 124-25 (A12-13). In its motion to reconsider the court's suppression ruling, the State challenged the court's retention of the subpoenaed materials (without conducting an in camera review) and cited statutes exempting blood testing results from medical privileges or the hearsay rule when the State seeks to use such test results in a DUI prosecution. C42-43 (citing 735 ILCS 5/8-802(9) (2014); 625 ILCS 5/11-501.4 (2014)). In denying the State's motion, the court held that the State should not have been permitted to subpoena the records and could not use them at the suppression hearing. R124-25 (A12-13). In effect, the circuit

court quashed the State's subpoena by refusing to open the envelope or to turn over its contents to the State (after conducting an in camera review).

The appellate court declined to address the State's challenge to this ruling. *Brooks*, 2016 IL App (5th) 150095-U, ¶¶ 15, 25-28 (A3, 5). But if this Court remands for further suppression proceedings, the issue of whether the circuit court abused its discretion in quashing the State's subpoena must be addressed because the envelope's contents (assuming they were responsive to the subpoena) presumably would reveal who had conducted any blood draw and testing, as well as any testing results. Such information is undeniably relevant to the State's task of rebutting defendant's prima facie case, as the contents may establish a lack of State action in the blood draw and testing. For the sake of expediency and to conserve judicial resources, this Court should address this purely legal question (rather than remanding to the appellate court) before remand for further circuit court suppression proceedings. *See People v. Wilson*, 143 Ill. 2d 236, 249 (1991).

The State was authorized to subpoena defendant's blood testing results. A subpoena duces tecum is a "'classic, recognized method for compelling the production of documents'" for criminal prosecutions. *People ex rel. Fisher v. Carey*, 77 Ill. 2d 259, 265-66 (1979) (quoting *Larson v. Commonwealth Edison Co.*, 33 Ill. 2d 316, 326 (1965)). A State's Attorney has the authority and the duty to investigate criminal activity, and, by statute, the State's Attorney may use the subpoena power in conducting such investigations. *People v. Nohren*, 283 Ill. App. 3d 753, 758-59 (4th Dist. 1996) (citing 55 ILCS 5/3-9005(b) (1994)). The subpoenaed materials must be sent directly to the court for in camera review, during which issues such as relevance, materiality, and privilege can be considered before the materials are released to the party who subpoenaed them. *Id.* at 759.

Although an Illinois statute creates a general physician-patient privilege under which medical professionals and hospital staff may not disclose information acquired while treating a patient, it carves out an exception for written results of blood-alcohol tests when admissible under section 11-501.4 of the Vehicle Code. 735 ILCS 5/8-802(9) (2014); *see also People v. Wilber*, 279 Ill. App. 3d 462, 467 (4th Dist. 1996) (physician-patient privilege of section 8-802 also applies to nurses and hospital staff); 735 ILCS 5/8-802(4) (2014) (creating exception for "all actions brought . . . against the patient . . . wherein the patient's physical or mental condition is an issue"). And section 11-501.4 provides that blood-alcohol test results from medical treatment in a hospital emergency room are admissible under the business record exception to the hearsay rule in DUI prosecutions when specified criteria are met.[6] The provision further provides that "The confidentiality provisions of law pertaining to medical records and medical treatment shall not be applicable with regard to chemical tests performed upon an individual's blood or urine under the provisions of this Section in [DUI] prosecutions as specified in subsection (a) of this Section." 625 ILCS 5/11-501.4(b) (2014).

Thus, under sections 8-802 and 11-501.4, a DUI defendant cannot object to the State subpoenaing blood-alcohol testing results purely on the medical-record-confidentiality

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[6] 625 ILCS 5/11-501.4(a) (2014) lists these criteria:
(1) the chemical tests performed upon an individual's blood or urine were ordered in the regular course of providing emergency medical treatment and not at the request of law enforcement authorities;
(2) the chemical tests performed upon an individual's blood or urine were performed by the laboratory routinely used by the hospital; and
(3) results of chemical tests performed upon an individual's blood or urine are admissible into evidence regardless of the time that the records were prepared.

rationale defendant cited here. *Wilber*, 279 Ill. App. 3d at 463, 465, 467-68 (in aggravated DUI case, blood-alcohol test results discoverable and admissible under section 11-501.4, and fell under exceptions to the physician-patient privilege, citing 735 ILCS 8-802(4) & (9) (1994)); *see also People v. Popeck*, 385 Ill. App. 3d 806, 807, 809-11 (4th Dist. 2008) (upholding State subpoena of DUI defendant's medical records from day of accident despite defendant's argument that only blood-alcohol test results could be released because information fell under both section 8-802(4) and (9) and exception (4) is not limited to blood-alcohol test results); *People v. Ogle*, 313 Ill. App. 3d 813, 814, 816-17 (1st Dist. 2000) (upholding State subpoena in DUI case because physician-patient privilege inapplicable given satisfaction of section 11-501.4(a) criteria); *Nohren*, 283 Ill. App. 3d at 755, 762 (upholding State subpoena in DUI case because test results fell under two exceptions to physician-patient privilege, then numbered as 735 ILCS 5/8-802(4.1) and (9) (Supp. 1995)). As this Court explained when reversing a circuit court's invalidation of a very similar provision of the Vehicle Code, section 11-501.4-1,[7] "When a person obtains a driver's license, he consents to the conditions imposed by the legislature in exchange for that privilege, one such condition being found in section 11-501.4-1." *Jung*, 192 Ill. 2d at 5.

Regarding the circuit court's concerns about HIPAA applicability, *see* R72-73, 123-24 (A11-12); *see also* R107, HIPAA does not create a privilege for patients' medical information; it specifies required procedures for disclosure of such information from a

[7] Section 11-501.4-1 allows blood-alcohol testing ordered by a physician in the course of emergency medical treatment for injuries from a vehicle accident to be reported directly to law enforcement officials, with a substantively identical subsection stating that medical-record confidentiality provisions do not apply. *People v. Jung*, 192 Ill. 2d 1, 3 (2000); 625 ILCS 5/11-501.4-1 (1997).

"covered entity," a category that does not include law enforcement agencies, including the State's Attorney's Office. *People v. Bauer*, 402 Ill. App. 3d 1149, 1157-58 (5th Dist. 2010) (citing *United States v. Bek*, 493 F.3d 790, 802 (7th Cir. 2007); 45 C.F.R. §§ 160.102, 164.104, 164.502(a) (2005); *Coy v. Washington Cnty. Hosp. Dist.*, 372 Ill. App. 3d 1077, 1081 (5th Dist. 2007)). Importantly, HIPAA permits disclosure for law enforcement purposes, without authorization of the patient, in response to a subpoena issued by a judicial officer, 45 C.F.R. § 164.512(f)(1)(ii)(A) (2014); *see also United States v. Cuppen*, 627 F.3d 1056, 1064 (8th Cir. 2010); *State v. Black*, 90 A.3d 448, 451 (Me. 2014), and does not, in any event, provide for suppression of evidence in a criminal case as a remedy for a HIPAA violation, *Bauer*, 402 Ill. App.3d at 1158; *State v. Eichhorst*, 879 N.E.2d 1144, 1154-55 (Ind. Ct. App. 2008). Thus, the prosecution had the authority to subpoena defendant's hospital blood testing results.

Moreover, the circuit court should have conducted an in camera review to determine whether the envelope's contents should be distributed to the State. *See Nohren*, 283 Ill. App. 3d at 759. Assuming that the envelope contains only documents pertaining to defendant's blood-alcohol test from the night in question, such documents should be turned over to the State because none of the bases on which defendant could object to distribution — the relevance, materiality, or privileged nature of the documents or the unreasonableness or oppressiveness of the subpoena — appears to be applicable. *See id.* (citing *Carey*, 77 Ill. 2d at 265); *see also Wilber*, 279 Ill. App. 3d at 463, 465, 467-68 (blood-alcohol test results are discoverable in aggravated DUI case); *People v. Kaiser*, 239 Ill. App. 3d 295, 296, 302-04 (2d Dist. 1992) (circuit court did not err in quashing State subpoena seeking all medical

records of DUI suspect returnable to State without in camera review as unreasonable, oppressive, or overbroad).

Thus, the State was authorized to subpoena any blood testing results from defendant's treating hospital, and the circuit court's contrary finding was an abuse of discretion. *Enis*, 194 Ill. 2d at 415; *see also Kladis*, 2011 IL 110920, ¶ 23 (ruling is abuse of discretion when so fanciful, arbitrary, or unreasonable that no reasonable person would agree with it). This Court should direct the circuit court to conduct an in camera review to confirm whether the envelope contains responsive documents — *i.e.,* defendant's blood-alcohol testing results from around August 14, 2014 — and to disclose such documents to the State.

III. Alternatively, Even If There Was a Fourth Amendment Violation, Suppression Is an Inappropriate Remedy.

The circuit court's suppression ruling was animated by its concern that police would routinely circumvent Fourth Amendment protections by compelling injured DUI suspects to go to the hospital for treatment and later obtaining hospital blood testing results; the court found the police conduct here particularly objectionable in light of defendant's "nonlife threatening injuries." R122-23 (A10-11). But suppression will not effectively address the court's concern; moreover, it is not an appropriate remedy under the present circumstances.

Evidence obtained in violation of the Fourth Amendment need not be suppressed in every case. *California v. Greenwood*, 486 U.S. 35, 44 (1988). The suppression remedy is intended to deter future police violations of the Fourth Amendment. *People v. LeFlore*, 2015 IL 116799, ¶ 17. It is a remedy of "last resort" because it can cause "'substantial societal costs,'" sometimes including setting the guilty free. *Hudson v. Michigan*, 547 U.S. 586, 591 (2006) (quoting *United States v. Leon*, 468 U.S. 897, 907 (1984)). Suppression is

appropriate only when its deterrence benefits outweigh these "substantial societal costs." *Id.* at 591, 594; *see also Davis*, 564 U.S. at 236-37.

For example, in *Hudson*, the defendant sought to suppress evidence obtained pursuant to a warrant because, in executing the warrant, police violated the knock-and-announce rule. *Id.* at 588, 590. Despite the undisputed violation, the Court declined to apply the exclusionary rule because the deterrence benefits did not outweigh its substantial costs. In addition to the exclusion of relevant, incriminating evidence, "imposing that massive remedy for a knock-and-announce violation" would generate a flood of knock-and-announce litigation (in which evaluation of compliance poses a difficult task for courts), and encourage police to "refrain[ ] from timely entry after knocking and announcing," resulting in destruction of evidence and an increase in preventable violence against officers. *Id.* at 594-96. On the other side of the equation, suppression would have little deterrent effect because police officers likely ignore knock-and-announce not to evade Fourth Amendment protections but due to motives such as preserving evidence and preventing violence against officers that, when supported by reasonable suspicion, obviate the knock-and-announce requirement anyway. *Id.* at 596.

As in *Hudson*, a comparison of societal costs and deterrence effect weighs against suppression. Suppression here comes at great societal cost: in addition to the exclusion of relevant, potentially incriminating evidence, the circuit court's rationale would discourage police from aiding injured DUI suspects and emergency responders at vehicle accident scenes. As *Hudson* found, exclusion here would create a flood of litigation on difficult questions of whether medical treatment was necessary or the defendant's injuries were life-

threatening and whether intoxication sufficiently impaired a defendant's ability to consent to treatment. *See supra* Part I.C.

And because Officer Webb acted at the request of emergency responders who determined that defendant needed medical treatment, R83, 92, 94, 96, the value of deterrence is questionable here because, even absent police assistance, emergency responders likely would insist that such injured defendants be taken to the hospital, resulting in the same discoverable blood testing results, *see, e.g., Yant*, 210 Ill. App. 3d at 963. As in this case, police likely compel injured DUI defendants to go to the hospital not to evade the warrant requirement, but because the defendants require medical assistance and emergency responders have requested police assistance. In light of the great societal costs and minimal value of deterrence in this context, suppression is an inappropriate remedy. Instead, police or emergency responders inappropriately forcing non-consenting injured DUI suspects to receive medical treatment face two more effective deterrents: potential challenges to the propriety of police seizures for lack of probable cause and civil suits for medical battery.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request this Court to reverse the Fifth District's judgment affirming the circuit court's order granting defendant's motion to suppress and, if necessary, remand for further proceedings.

March 2, 2017

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 32 pages.

/s/ Leah M. Bendik
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2016 IL App (5th) 150095-U

Appellate Court of Illinois,
Fifth District.

The PEOPLE of the State of Illinois, Plaintiff–Appellant,

v.

Michael BROOKS, Defendant–Appellee.

No. 5–15–0095.

Sept. 1, 2016.

Appeal from the Circuit Court of Effingham County. No. 14–DT–136, Stanley Brandmeyer, Judge, presiding.

ORDER

Justice CATES delivered the judgment of the court:

*1 ¶ 1 *Held:* The trial court did not err in granting the defendant's motion to suppress the results of a blood-alcohol analysis.

¶ 2 Following a single-vehicle accident with injury on August 14, 2014, the defendant, Michael Brooks, was charged with driving under the influence of alcohol (DUI) in violation of section 11–501(a)(2) of the Illinois Vehicle Code (625 ILCS 5/11–501(a)(2) (West 2014)). He moved to suppress the results of a blood-alcohol analysis performed at a local hospital on the night in question. While the defendant's motion was pending, the State issued a subpoena *duces tecum* to the local hospital requesting that the defendant's blood work be produced to the circuit court. Following an evidentiary hearing, the circuit court granted the defendant's motion to suppress. On reconsideration, the trial court declined to modify its order. The State filed a certificate of impairment and appealed the circuit court's order pursuant to Illinois Supreme Court Rule 604(a)(1) (eff.Jan.1, 2013). For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 The defendant was charged by citation with DUI as a result of a single-vehicle accident that occurred on August 14, 2014. Approximately two months later, the defendant filed a motion to suppress the results of a blood-alcohol analysis that was performed at a local hospital. On December 8, 2014, while the motion was pending, the State issued a subpoena *duces tecum* to the local hospital commanding it to produce "[a]ll lab results ('blood work')" originating from the defendant's admission on or about August 14, 2014. The subpoena requested that the hospital produce the results of the defendant's blood work in a sealed, clearly marked envelope, and send it to the Effingham County Circuit Clerk. A docket entry reflects that the court received the subpoenaed material from the hospital on December 12, 2014. Three days later, an evidentiary hearing was held on the defendant's motion to suppress. A summary of the proceeding follows.

¶ 5 At the outset of the suppression hearing, the circuit court noted that it was in possession of a sealed envelope. The circuit court did not open the envelope to ascertain its contents. The defendant informed the court that he presumed that the sealed records were the subject matter of the motion to suppress, and objected to disclosure of the records to the State on constitutional grounds. The State responded that it assumed that the envelope contained medical records that would reveal the lab results of the defendant's blood draw. The State further argued that the records were not the subject of the motion to suppress, and enjoyed no constitutional protection because any blood draw was not the result of State action. The State suggested that the court keep the medical records, pending the outcome of the proceeding. The court then asked the defendant if it had a response to the State's position. The defendant argued that the blood draw was a violation of his fourth amendment rights. In light of these arguments, the court maintained custody of the sealed envelope. Thereafter, the court instructed the defendant to call his first witness.

*2 ¶ 6 The defendant's first witness was Thomas Webb, a police officer with the Effingham City Police Department. Officer Webb testified that on August 14, 2014, at

approximately 11:54 p.m., he was dispatched to the corner of Temple and Main streets, the scene of a single-vehicle accident. When he arrived at the scene, Officer Webb saw that three Effingham police officers had already arrived at the accident site. Upon his arrival, Officer Webb saw a motorcycle on a bush in the front yard of a house. He also saw an opened-top Jeep across the street, near a parking lot, approximately 100 feet from the motorcycle. Webb walked across the street to the Jeep, and saw the defendant sitting in the passenger seat with the door closed. Although none of the police officers saw the defendant operating a motor vehicle, two witnesses informed Webb that the defendant had been driving. Webb spoke to the defendant, and while doing so, perceived that the defendant's speech was slurred, eyes were red, and that he had an odor of alcoholic beverage emitting from his mouth when speaking. Webb also believed, based upon his observation, that the defendant had a broken foot.

¶ 7 Webb admitted to having little medical training, and stated that he had no authority to force a person to undergo unwanted medical care. The defendant was not bleeding, but Webb believed that the injury was serious. When Webb asked the defendant if he wanted to go to the hospital, the defendant declined. According to Webb, the defendant appeared to be agitated by the presence of law enforcement, and he used explicit language while communicating with police. Webb was concerned about the defendant's safety, as he appeared to not be thinking rationally.

¶ 8 At some point during this incident, emergency medical services personnel (EMS) arrived. EMS requested assistance in getting the defendant to the hospital. Despite the fact that the defendant continued to refuse medical services, Webb and another officer physically removed the defendant from the vehicle, and forcibly placed the defendant on a gurney. Webb and the other officer also assisted EMS in putting the gurney into the ambulance. Webb was not in the ambulance when EMS began transporting the defendant to the hospital. EMS had to stop the ambulance after traveling one or two blocks from the scene because the defendant attempted to leave the emergency vehicle. EMS then requested that Webb aid in the transport of the defendant to the hospital. Webb forcibly placed the defendant on a cot, handcuffed him, and rode with the defendant and EMS in the ambulance the rest of the way to the hospital. Webb also assisted EMS in delivering the defendant to the emergency room at the local hospital. He never attempted to obtain a court order compelling the defendant to receive medical care.

¶ 9 At the hospital, Webb read the warning to motorists to the defendant and asked him to consent to blood or breath testing. The defendant refused Webb's request. At that point, Webb issued the defendant a citation for DUI. Webb did not take a sample of the defendant's blood, nor did he direct anyone at the hospital to do so. While Webb did observe nurses working on the defendant, he never spoke to a nurse or a doctor. Webb never heard the defendant change his mind and request medical services. Webb had no further contact with hospital personnel after he left. There is nothing in the record to suggest that Webb sought a warrant for a blood draw on the defendant.

*3 ¶ 10 The defendant testified as follows. At the hospital, the defendant never consented to have his blood drawn. Every time he was asked to have his blood drawn, the defendant refused. Medical staff at the hospital set his leg, which was broken. Altogether, the defendant spent approximately 12 hours at the hospital.

¶ 11 The defendant then rested, and the State called no witnesses. After hearing arguments, the circuit court took the matter under advisement and retained the defendant's sealed medical records. Approximately one month later, the circuit court issued an order granting the defendant's motion to suppress, finding that the case of *People v. Arner*, 2014 IL App (5th) 130342, was controlling, to the extent that "the State failed to prove exigent circumstances were present to obtain a blood draw from Defendant absent a warrant." The circuit court also explained that the case law relied on by the State regarding its ability to issue a subpoena *duces tecum* was not applicable to the case at bar, where "the Defendant repeatedly refused the need for medical treatment with the Officer, in the ambulance, and at the hospital, where there was no testimony regarding the emergency medical necessity of the medical treatment or where there was no testimony regarding the ability of the State to obtain a warrant to support the blood draw." Thus, the circuit court granted the defendant's motion to suppress.

¶ 12 On February 2, 2015, the State filed a motion to reconsider. During that hearing, the State argued that statutory authority entitled it to access the defendant's medical records. The State also reaffirmed its position that

there was no State action with regard to the defendant's blood being drawn. In response to the State's arguments, the defendant contended that the suggestion that there was no State action was contrary to the facts presented at the suppression hearing.

¶ 13 After hearing arguments on the motion to reconsider, the court stated that in most cases, a broken foot is not a life-threatening injury that requires the defendant to submit to immediate medical attention. The court further indicated that the blood draw administered on the defendant resulted from State action. Specifically, the court stated, "the argument that somehow the State wasn't responsible for the blood draw appears to me to be a form over substance argument." The court also noted that "it's strange *credula* to think that the reason for the officer's action was anything but to obtain evidence that could be used later in a prosecution for DUI." The circuit court, therefore, declined to modify its original order. The State filed a certificate of substantial impairment, and this appeal followed.

¶ 14 ANALYSIS

¶ 15 On appeal, the State contends that the circuit court erred in quashing its subpoena because the Code of Civil Procedure and the Illinois Vehicle Code (Vehicle Code) allow for the results of blood tests to be disclosed in DUI prosecutions. The State also claims that the circuit court erred in granting the defendant's motion to suppress because the defendant did not prove that a blood draw was administered, and that the defendant failed to meet his burden of proving that any blood test was the result of State action.

*4 ¶ 16 We consider first the propriety of the circuit court's order granting the defendant's motion to suppress, as this issue is dispositive of the outcome of this appeal. When reviewing a trial court's order on a motion to suppress, we apply a two-part standard of review. *People v. Carey*, 386 Ill.App.3d 254, 258 (2008). Deference is given to the trial court's findings of fact unless those findings are against the manifest weight of the evidence (*People v. Harris*, 2015 IL App (4th) 140696, ¶ 44), and the ultimate question of whether the evidence should be suppressed is reviewed *de novo* (*Carey*, 386 Ill.App.3d at 258).

¶ 17 The State's first argument on appeal is that the defendant failed to prove that any blood draw was performed at the hospital. According to the State, if the defendant did not offer any proof that a blood draw was performed, then he cannot carry his burden of proving that a blood draw was either ordered by the State, or "procured via State subterfuge." We disagree with the State's contention, as the defendant filed a motion to suppress the blood-alcohol analysis that was performed on him at the local hospital, and both parties proceeded to argue the merits of the underlying motion, with the understanding that a blood draw had been performed on the defendant. We therefore find no merit in this argument, and turn next to the State's contention that the blood draw administered on the defendant was not the result of State action.

¶ 18 The fourth amendment and specific statutory provisions govern the admissibility of blood-alcohol tests in a DUI prosecution. *People v. Yant*, 210 Ill.App.3d 961, 964 (1991). In particular, pursuant to section 11-501.4 of the Vehicle Code, the results of blood tests performed in the regular course of providing emergency medical treatment to patients are admissible, provided that such tests were not at the request of law enforcement authorities. See 625 ILCS 5/11-501.4 (West 2014). The fourth amendment, on the other hand, does not permit warrantless blood tests incident to lawful arrests for drunk driving (*Birchfield v. North Dakota*, — U.S. —, —, 136 S.Ct. 2160, 2184 (2016)), unless there is proof of the existence of an exception to the warrant requirement, such as exigent circumstances, or consent (*People v. Harris*, 2015 IL App (4th) 140696, ¶ 45). The fourth amendment applies only to government action. *People v. Phillips*, 215 Ill.2d 554, 566 (2005). A search performed by a private person does not violate the fourth amendment. *Phillips*, 215 Ill.2d at 566. Additionally, the fourth amendment does not prohibit the government from using information discovered by a private search. *Phillips*, 215 Ill.2d at 566.

¶ 19 In *People v. Yant*, 210 Ill.App.3d 961 (1991), the appellate court reversed the circuit court's decision to suppress evidence of a blood-alcohol test in a DUI prosecution. The following facts were agreed upon by both parties. At the scene of the accident, ambulance personnel felt the need to use leather restraints on the defendant because he was combative and uncooperative. *Yant*, 210 Ill.App.3d at 963. The defendant remained in restraints when he was transported to the emergency

room, and while he was treated for facial trauma. *Yant,* 210 Ill.App.3d at 963. Although the defendant refused treatment, and further refused requests to give a blood sample, the physician on duty at the hospital ordered a blood test in the course of emergency medical treatment, and blood was drawn against the defendant's will. *Yant,* 210 Ill.App.3d at 963. One of the arguments put forward by the defendant on appeal was that the blood draw was an unreasonable search and seizure in violation of his fourth amendment rights. *Yant,* 210 Ill.App.3d at 965. According to the defendant, this argument supported the trial court's decision to suppress evidence of the blood test. *Yant,* 210 Ill.App.3d at 965. The appellate court disagreed, and expressly noted that "there is no indication in the record that either the emergency restraints or the physician's blood test order here was a subterfuge procured by the police or any form of State action." *Yant,* 210 Ill.App.3d at 965. Thus, the appellate court attached significance to the fact that there was nothing in the record to suggest that the State participated in forcing medical treatment on the defendant.

*5 ¶ 20 In this case, the trial court determined that in the absence of exigent circumstances, the State was required to procure a warrant in order to administer the blood draw on the defendant. In making that determination, the circuit court implicitly determined that the blood-alcohol analysis performed on the defendant was the result of State action, thus requiring the issuance of a warrant to secure the defendant's blood work. The State disagrees, arguing that the defendant presented no evidence that any blood test was performed at the direction of police. In particular, the State contends that Webb provided unrebutted testimony that he did not take a sample of the defendant's blood, and that he did not direct anyone at the hospital to take a sample of the defendant's blood. In support of its argument, the State relies upon several cases, including *Yant* and *People v. Poncar,* 323 Ill.App.3d 702 (2001),

¶ 21 We disagree with the State's position. *Yant* lends support to our conclusion that the blood draw performed on the defendant was the result of State action, and *Poncar* is distinguishable. As previously noted, the appellate court in *Yant* expressly recognized the importance of the absence of State participation when the blood draw was performed on a defendant against his will. 210 Ill.App.3d at 965. In this case, despite the defendant's refusal of emergency medical treatment, Webb physically removed the defendant from a vehicle, forcibly placed him onto a gurney, and assisted in putting the defendant into an ambulance for transport to the hospital. When EMS had traveled only a block or two, EMS personnel requested Webb for his assistance because the defendant was trying to get out of the ambulance. Webb then forcibly placed the defendant on a cot, handcuffed him, rode with the defendant and EMS in the ambulance on the way to the hospital, and assisted EMS in delivering the defendant to the emergency room. What was absent in the record in *Yant,* State participation, is apparent in this case. Here, there is ample evidence in the record demonstrating that the State participated in forcing the defendant to obtain medical treatment.

¶ 22 The State's reliance on *Poncar* to support its argument that the police conduct in this case did not amount to State action is misplaced. The appellate court in *Poncar* relied on *Yant* in determining that there was no evidence to support the conclusion that the blood test performed on the defendant was the result of police subterfuge. *Poncar,* 323 Ill App.3d at 707. Most notably, what was missing from the *Poncar* court's analysis was whether the police conduct amounted to State action. Subterfuge is but one of the ways by which a defendant can prove that the police conducted an illegal search. See *Yant,* 210 Ill.App.3d at 965 (noting that nothing in the record suggested that the blood test was the result of police subterfuge or any other form of State action). Therefore, we find that *Poncar* is inapplicable to the instant case. Accordingly, we find that under the specific circumstances of this case, the blood draw performed on the defendant was the result of State action.

*6 ¶ 23 The trial court also determined that exigent circumstances did not exist, which would have allowed the police officer to obtain a blood draw from the defendant, absent a warrant. The U.S. Supreme Court has held that, "the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant." *Missouri v. McNeely,* 569 U.S. ——, ——, 133 S.Ct. 1552, 1568 (2013). Thus, a reviewing court must determine, on a case-by-case basis, whether the totality of the circumstances justifies a warrantless blood test. *McNeely,* 569 U.S. at ——, 133 S.Ct. at 1563.

¶ 24 A review of the totality of circumstances in this case leads us to conclude that officer Webb was not faced with

exigent circumstances that would justify a warrantless blood draw. Webb never testified that he was faced with exigent circumstances. The record shows that while there may have been some delay regarding the transport of the defendant to the hospital, there were three other police officers at the scene, besides Webb, to assist in the investigation. Any one of the four police officers could have attempted to secure a search warrant. There is nothing in the record to suggest that any one of the officers could not have attempted to secure a warrant.

¶ 25 In light of the foregoing, we conclude that the warrantless blood draw violated the defendant's fourth amendment right to be free from an unreasonable search. Accordingly, we affirm the order of the circuit court granting the defendant's motion to suppress. Given our disposition of the suppression issue, we need not address the State's remaining contention of error.

¶ 26 CONCLUSION

¶ 27 In conclusion, the trial court did not err in granting the defendant's motion to suppress the results of a blood-alcohol analysis. The order of the circuit court is affirmed, and this cause is remanded for further proceedings.

¶ 28 Affirmed; cause remanded.

Justices GOLDENHERSH and CHAPMAN concurred in the judgment.

All Citations

Not Reported in N.E.3d, 2016 IL App (5th) 150095-U, 2016 WL 4591490

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State of Illinois, Fourth Judicial Circuit

Effingham County

People of The State of Illinois

v.

Michael W. Brooks

2014 DT 136

ORDER ON MOTION TO SUPPRESS

This matter was called for hearing on Defendant's Motion to Suppress Evidence, specifically the results of blood tests conducted upon him at a local hospital after the Defendant had been involved in a one vehicle accident.

FACTS

Defendant called as his sole witness an Officer who responded to a vehicle accident, and who identified the Defendant as the person involved in that accident. The Officer testified that his department was alerted to the accident through dispatch. Upon arriving at the scene, the Officer found the Defendant sitting in a vehicle owned by someone other than the Defendant. This vehicle was parked upon private property, away from the crash scene. While the Officer engaged the Defendant in conversation, the Officer noticed the presence of an odor of an alcoholic beverage, among other indicators of alcohol consumption. The Officer also testified that one of the Defendant's legs or feet appeared to be injured.

During the colloquy with the Officer, the Defendant declined medical treatment and the need for an ambulance. The Defendant also demanded that he not be touched by the Officer, and he refused to exit the vehicle.

After Defendant refused the requests of the Officer he was ultimately restrained, placed upon a gurney and placed in an ambulance for transport to the hospital. About a block away from the crash scene, the ambulance came to a stop and the Defendant exited the ambulance. The Officer, and other officers on the scene, then restrained the Defendant, handcuffed him, and had him placed back upon a gurney for delivery to the hospital in the ambulance. An officer accompanied the Defendant and ambulance personnel to the hospital.

While at the hospital, the Defendant continued to deny medical treatment, and he did not consent to a blood draw or other medical services by hospital personnel. Notably, there was no testimony by any hospital, ambulance or other medical personnel. The Officer also acknowledged that he had no medical training. Thus, no testimony was elicited regarding any issue relating to the need for a blood draw, much less for the need to obtain a blood draw without a warrant under a theory of exigent circumstances.

The Defendant primarily relies on the authority of People v. Armer, (2014 IL APP [5th] 130342).

This Court finds the reliance upon *Armer* controlling and persuasive inasmuch as the State failed to prove exigent circumstances were present to obtain a blood draw from Defendant absent a warrant.

The State has cited to the Court other cases which primarily concern the State's ability to issue a subpoena duces tecum, or accomplish the same by way of a Grand Jury, in the investigatory capacity power of the State. Those cases are factually and legally distinct from the facts in the case at bar, where here the Defendant repeatedly refused the need for medical treatment with the Officer, in the ambulance, and at the hospital, where there was no testimony regarding the emergency medical necessity of the medical treatment or where there was no testimony regarding the ability of the State to obtain a warrant to support the blood draw.

ORDER

The Defendant's Motion to Suppress is granted.

So Ordered:

Date: 1/8/15

Honorable Judge

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THE COURT: Thank you. This is my take on it. I understand what the State's position is on a couple of areas, one of which was the State is making an argument that they do not conduct the blood draw. They didn't order the blood draw. They didn't do anything of that nature which would therefore somehow commence the whole process.

But we have an unusual set of circumstances here where as I understood the record, and I read the record again, and I read the Motion to Reconsider, and I read the accompanying case law. The facts that stick out in my mind the most that are most difficult to get over essentially leave me to understand that the Defendant, and you can correct me if I'm wrong, State, but The Defendant was not seen operating any vehicle. The State became aware of the possibility of an accident, went to investigate the circumstances of that accident, found a vehicle that was not anywhere but on private property. Found The Defendant in a vehicle of someone else who owned it in that vehicle parked on private property. Contacted The Defendant, approached The Defendant, which was a valid Terry stop. Interviewed The Defendant. The Defendant stated his not only reluctance but complete objection, right or wrongly, he objected to even speaking with the officer, which clearly the officer had a right to do, but clearly objected to the idea that he

should have to go to a hospital, number one. Number two, objected more strenuously that he would have to go by way of how the police officer wanted him to go, which was in an ambulance.

Now clearly, I'm not a medical person or a physician, but if someone has, even as the officer testified, an injured foot or broken foot, it's not something that in most cases is a life threatening situation which would require the Defendant to submit to police authority to take him to a hospital. There was some statements in the Motion to Reconsider to the effect of the Defendant had a very serious injury. Granted in some circumstances, a broken ankle is going to be a serious injury, but not being a medical person, it would seem to me understandable that if a person has a broken ankle, it doesn't automatically make it that that person be subjected to a blood draw.

And the State argued in it's Motion to Reconsider that essentially, somehow the state of mind of the Defendant was relevant and so therefore because he appeared to be intoxicated and he appeared to be objecting to A, the idea of being arrested because no one saw him driving the vehicle; B, being sent to the hospital because he had an injury and multiple other reasons that somehow, that should

exempt the State from the HIPPA requirements and that should also be able to enable the State to, through the business records exception under the vehicle code, be able to obtain records that would not have even come about without the State's involvement. So the argument that somehow the State wasn't responsible for the blood draw appears to me to be a form over substance argument.

I would suspect that if any possible defendant in the future would have some type of an injury and therefore not, or rather and therefore needs some type of medical treatment, the State would merely have to follow the same procedure which is force him onto a gurney, force him into an ambulance, when he gets out of the ambulance, handcuff him, put him back on the gurney, give him a police escort inside of the ambulance, and then take him in the hospital and say we had nothing to do with what happened to him after that. Clearly he's intoxicated but we didn't ask for a blood draw. It just seems unseemly at best that that was the case.

I think it's strange credula to believe that this particular officer, who is a very good officer and testified very clearly, that this particular officer's primary purpose in forcibly requiring the Defendant to go to a hospital A, not of the Defendant's choosing; B, not under the

circumstances of the Defendant's own choosing, after it was suspected that the Defendant was involved in a one vehicle accident which possibly involved the consumption of alcohol where the Defendant was pretty adamant and pretty defiantly stating to the officer, you can't get me for anything because you didn't see me operating that vehicle. And then where that Defendant has nonlife threatening injuries, it's strange credula to think that the reason for the officer's actions was anything but to obtain evidence that could be used later in a prosecution for DUI or something else.

I think it was -- and the argument was made somewhere along the line that essentially, at the hospital in conducting the blood draw, forcibly from this Defendant, that the hospital was not an agent of the State. But I can't help but believe that under the circumstances, they have some apparent agency.

And with regard to HIPPA, and like again with the business records exception to the vehicle code, at a minimum, there was a better way for the State to obtain that evidence if they wanted it. One of which was to ask for a warrant. You know if the State had obtained a warrant while they were forcibly placing this Defendant in an ambulance and having his blood drawn, we wouldn't be here right now so that takes us back to the Armer facts. The Armer facts are

not right on point but they are about as close to anything that we can get that I've seen, particularly as it relates to this. The State apparently had ample opportunity to obtain a warrant for the blood draw but didn't.

Based upon the facts that HIPPA and the business records exception to the Illinois Vehicle Code do not seem to work in this particular fact scenario, the fact that the Defendant while at one point clearly being under arrest, at what point it's open to interpretation. Certainly after he was handcuffed but possibly even before there while he was clearly under arrest at some point denying that he wanted to incriminate himself through the use of a blood draw or go to the hospital or anything of that nature, and just the basic fact that it seemed to me that the State may have a difficult case in proving a DUI charge against this gentlemen; for all of the facts that I've already recited one, nobody saw him operating a vehicle, I'm not going to modify my previous order. I think that, I think all of those factors come to play in suppressing the disclosure of the Defendant's medical records taken on that particular day.

I mean in one instance in the Motion to Reconsider, the State had put in quotations quote, suppression. I suspect that there was some lack of clarity on my part as to

what I meant by it, but I believe that the State shouldn't have been able to subpoena the records to begin with and definitely to use them now, the State should be unable to do that as well. And if you want to call that suppression, then that's what it means. So, anything else?

MR. HELLER: I don't believe so, Your Honor.

MR. FOWLER: No, sir.

THE COURT: State, I'm sorry?

MR. FOWLER: No, sir.

THE COURT: Thank you very much. This is something that I haven't found a fact scenario on point. It would just seem to me, you know, that some of the facts that were elicited at the hearing are not, don't really leave the State in a very good light. But if the Appellate Court decides otherwise, I'll be happy to listen to what they have to say.

MR. HELLER: Thank you, Judge.

THE COURT: Thank you very much.

MR. FOWLER: Would the Court want to set this for a status hearing at some point?

THE COURT: It's up to you. We can do that. Set it for a pretrial?

MR. FOWLER: I would anticipate that there will be a Certificate of Substantial Impairment filed and things will

THE APPELLATE COURT OF ILLINOIS
APPEAL FROM THE CIRCUIT COURT
OF THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, EFFINGHAM, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff-Appellant,)
)
vs.) No. 14-DT-136
)
MICHAEL BROOKS,)
)
Defendant-Appellee.)

NOTICE OF APPEAL

NOTICE is hereby given that the People of the State of Illinois APPEALS to the Appellate Court of Illinois, Fifth District.

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OFFENSE: Driving Under the Influence of Alcohol

TRIAL DATE: None

DATE OF ORDER: March 12, 2015

JUDGMENT: Order granting Defendant's Motion to Suppress Results of Blood Alcohol Analysis

JUDGE: Honorable Stanley Brandmeyer

THE PEOPLE OF THE STATE OF ILLINOIS

Regina Jeon,
Assistant State's Attorney of Effingham County

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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

PROOF OF FILING AND SERVICE

The undersigned deposes and states that on March 2, 2016, the foregoing **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the Court's electronic filing system, and one copy was served upon the following, by placement in the United States mail at 100 West Randolph Street, Chicago, Illinois 60601, in envelopes bearing sufficient first-class postage:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail the original and nine copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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