No. 121413

IN THE
SUPREME COURT OF ILLINOIS

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

BRIEF OF DEFENDANT-APPELLEE MICHAEL BROOKS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

On August 15, 2014, Officer Thomas Webb was called to the scene of a motorcycle accident. Upon arriving at the scene, Officer Webb found the Defendant, Michael Brooks, sitting in a jeep on private property. After approaching Mr. Brooks, Officer Webb stated that he detected an odor of alcohol and further noticed that Michael appeared to have a foot injury. Officer Webb specifically asked Michael if he wanted medical treatment for his injured foot. Michael expressly denied any form of medical treatment for his foot and clearly told Officer Webb that he did not want to go to the hospital.

After Michael had already expressly refused medical treatment, Officer Webb forcibly removed Michael from the jeep he was in and forced Michael on to a waiting gurney. Michael continued to refuse medical treatment and expressly stated that he did not wish to go to the hospital. Officer Webb then assisted the paramedics with forcing Michael into the ambulance. After the ambulance had driven about a block, Michael attempted to exit the ambulance because he did not want medical treatment. At this point, Officer Webb forced Michael back into the ambulance, handcuffed him to the gurney, and rode with Michael to the hospital. Once at the hospital, Michael continued to refuse medical treatment. Despite Michael's express refusal for medical treatment at every stage, his blood was eventually drawn over his objections.

The State then attempted to issue a subpoena to obtain the results of Michael's blood draw, contending that they were entitled to the test results because the blood draw was taken in the course of providing "routine medical treatment." Michael's counsel moved to suppress the results of the blood test, arguing that the State violated Michael's

fourth amendment rights by drawing his blood without a warrant and with no showing of exigent circumstances that would justify a warrantless search of Michael. Judge Brandmeyer, after hearing all evidence agreed that Officer Webb should have obtained a warrant and that no exigent circumstances existed that justified proceeding without a warrant. Judge Brandmeyer noted that it was apparent from the facts presented that Officer Webb wanted a blood draw due to the fact that he assisted in forcing unwanted medical treatment on Michael for a non-life-threatening injury.

Also, Judge Brandmeyer noted that allowing Officer Webb to proceed in this manner would allow officers to circumvent the warrant requirement by allowing the State to force medical treatment on a Defendant anytime they wanted a blood draw. The State then appealed, arguing that Michael's treatment was "routine" and thus blood test results were subject to subpoena and that there was no State action by Officer Webb because he did not stand over Michael and specifically order the needle to be placed in his arm.

The appellate court denied such argument and affirmed the trial court's order suppressing the blood draw evidence. Holding that blood draw evidence can be subpoenaed and used as evidence in a DUI prosecution; however, it is a violation of the fourth amendment if the blood draw was taken at the behest of the State and was not administered as routine medical treatment. *People v. Brooks,* 2016 IL App (5th) 150095-U (Sept. 1, 2016)A1-5[1]. Also, the blood draw was a result of State Action here as despite

[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 "Sub – Duces Tecum"; and "A_" refers to the appendix to the Appellant's brief.

the defendant's refusal of emergency medical treatment, Officer 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. *Id.* There was ample evidence in the record to show that the state participated in the blood draw. *Id.*

ADDITIONAL STATEMENT OF FACTS

The Defendant, Michael Brooks, was charged with driving under the influence of alcohol ("DUI") on August 15, 2014. C6. The record indicates that on August 15, 2014 Officer Thomas Webb was called to the scene of a motorcycle accident. C8. Upon information obtained from witnesses, Officer Webb made the determination that Michael Brooks had been driving the motorcycle involved in the accident and served Notice of Summary Suspension/Revocation of driving privileges on Michael. C8. Officer Webb's report makes it clear that Mr. Brooks refused to submit to chemical testing. C8.

On September 5, 2015, Michael's counsel filed a Motion to Rescind the Statutory Summary Suspension. C19. Shortly thereafter, on October 30, 2014, Michael filed a Motion to Suppress Results of Blood Alcohol analysis. C24. In the Motion, Michael specifically alleged that when the police arrived upon the scene on August 15, 2014, Michael was seated in a pickup truck being driven by one of his friends. C24. Upon their arrival, the officers forcibly removed Michael from the pickup truck, placed him in an ambulance, and sent him to the hospital where he continued to refuse medical treatment and refused to consent to the drawing of his blood. C24.

On December 10, 2014, the People of the State of Illinois filed a Subpoena - Duces Tecum directed to St. Anthony Memorial Hospital and commanded them to

produce "All lab results ("blood work") pertaining to patient Michael W. Brooks (DOB: 04/18/1960) originating from his admission on or about August 14, 2014." Supp. On December 15, 2014, a hearing was held on Michael's Motion to Suppress. R70. At the outset, the trial judge noted that he had received a sealed envelope presumably from St. Anthony's Memorial Hospital and the State expressly noted that they also presumed the records to be the "blood work done on the Defendant." R72-73. After opening statements, Michael first called Officer Webb to the stand. R78. Officer Webb confirmed that Michael was not with the motorcycle, but rather in a jeep on private property when he arrived on the scene. R80. He further admitted that Michael refused to go to the hospital. R80. Officer Webb stated that he was aware that Michael did not want to get out of the jeep and that he was aware that Michael refused to get in the ambulance. R81. Officer Webb stated that Michael was forcibly removed from the jeep and that he was not free to leave. R80. Despite admitting to having no medical training, Officer Webb indicated that he forcibly put Michael on a gurney while Michael still refused medical care. R82.

Officer Webb testified that, after the ambulance traveled roughly a block or two, the ambulance stopped because Michael was attempting to exit the vehicle. R83. According to Officer Webb, Michael again stated that he did not want to go to the hospital, so Officer Webb forcibly placed him on a gurney and handcuffed him to the ambulance. R83. Officer Webb conceded that Michael made no choices at all concerning his medical care and continued to refuse to consent to blood and/or breath testing. R84. Officer Webb testified that he does not know if Michael ever consented to anyone providing medical services, but that he did in fact assist with the delivery of Michael to the emergency room. R85-86.

On cross-examination Officer Webb testified that when he approached Michael, Michael's foot appeared to be broken, but that no blood was visible. R91-92. Officer Webb expressly stated that he has no authority to determine whether a person gets a medical procedure, no authority to force a person to take unwanted medical care, and that he did not attempt to obtain any court order compelling Michael to get medical care. R96.

Following Officer Webb's testimony, Michael took the stand. Michael testified that at no point did he consent to a blood draw and that every time he was asked to have his blood drawn, he refused. R98. Following Michael's testimony, his counsel made it clear that Michael at no point wanted medical treatment and that it was the agents of the State, the police and the EMS people, who made the decision for Michael to undergo medical treatment. R100. Michael's counsel also pointed out that these medical providers who took Michael's blood were chosen by the police and not by Michael. R.100-101. Finally, Michael's counsel argued to the court that this was not simply a case where routine medical treatment was provided to a patient and then that information was handed up to the State. R101. The State continued to argue that Michael underwent "routine medical treatment" that would entitle them to receive the results of the blood test pursuant to 625 ILCS 5/11-501.4. R101.

The State, in its argument, admitted that it's difficult to find case law supporting whether a police officer should or can take a person with a broken foot to the hospital. R103. The State instead provided case law where a Defendant was unresponsive when medical care was provided to him in an attempt to support its position. R103. Counsel for Michael continued to point out that every person has a constitutional right to refuse medical care, that the government has appropriate procedures in place to compel a person

to get medical care, and that there was no indication that this situation was an emergency. R107-108.

On January 8, 2015, Judge Brandmeyer issued an order granting Michael's Motion to Suppress. C34. Judge Brandmeyer expressly noted that Michael had refused medical treatment on the night of August 15, 2014. C34. The opinion stated that there was no testimony regarding any issue relating to the need for a blood draw, much less the need to obtain a blood draw without a warrant under the theory of exigent circumstances. C34. The trial court found that the State's cases, involving the ability to issue a subpoena-duces tecum, were inapplicable to the case at bar where Michael had repeatedly refused the need for medical treatment. C35.

The State, on February 2, 2015, filed a Motion to Reconsider. Arguments were heard on the State's Motion on March 12, 2015. R116. After hearing arguments, the court acknowledged understanding the State's position and noted that this case presented an unusual set of circumstances. R120. Judge Brandmeyer pointed out that Michael was not seen operating any vehicle and when he was found, he was in a vehicle located on private property. R120. The court again took note of Michael's complete objection to medical treatment and his even more strenuous objection to obtaining medical treatment in the manner that the police wanted him to. R121. Judge Brandmeyer stated that a broken foot, in most cases is not a life-threatening injury that would require Michael to submit to police authority to take him to a hospital. R121. The court expressly rejected the State's argument that because Michael appeared to object to being arrested that, somehow, his objection to being sent to the hospital should be ignored and the State allowed to use the business records exception without the involvement of the State. R121-122. Thus, Judge

Brandmeyer reasoned that the State's argument appeared to be one of form over substance. R122.

Judge Brandmeyer went on to note that, in the future, the State could simply follow this same procedure with any potential criminal defendant that may have some type of injury. R122. Specifically, the court noted that the State could merely:

> "force [a potential defendant] 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 an ambulance, and then take him to 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." R122.

Judge Brandmeyer stated that it is strange credula to believe that this officer's forcing Michael to go to a hospital that Michael did not choose when he has refused medical treatment for a non-life threatening injury, after it was suspected that he was involved in an accident, was done for any other reason but to obtain evidence that could be later used in a prosecution. R122-123. Judge Brandmeyer expressly stated that, under the circumstances of this case, he believed the hospital at least had some apparent agency. R123.

Regarding HIPPA and the business records exception to the vehicle code, the court noted that the State could have asked for a warrant while they were forcibly placing the Defendant in the ambulance. R123. Judge Brandmeyer held that based on the facts of this case, the HIPPA and business records exception to the Illinois Vehicle Code do not seem to work. R124. Based on these factors, Judge Brandmeyer stated that the State should not have been able to subpoena the records to begin with and definitely should not be able to use them now, and therefore he would not modify his original order. R124-125.

The State filed a Certificate of Substantial Impairment on March 20, 2015 and this appeal followed. C54-60.

STANDARD OF REVIEW

In reviewing a trial court's ruling on a motion to suppress evidence in a DUI case the court applies the two-part standard of review as set forth by the United States Supreme court in *Ornelas v. United States,* 517 U.S. 690, 699, (1996). A trial court's findings of historical fact should be reviewed only for clear error, and a reviewing court must give due weight to any inferences drawn from those facts presented to the trial court. *People v. Luedemann*, 857 N.E.2d 187, 195–96 (Ill. 2006). These facts are to be given great deference and any factual findings shall only be reversed if they are against the manifest weight of the evidence. *Id.* A court reviews *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted. *Id.*

ARGUMENT

I. Defendant's Motion to Suppress Was Rightfully Granted as Defendant made a Prima Facie case that The Hospital Blood Draw at Issue Was an Illegal Search Under the Fourth Amendment.

In a Motion to Suppress hearing, the burden is on the defendant to present a prima facie case that the evidence in question was obtained through an illegal search. *People v. Gipson,* 203 Ill. 2d. 298, 306; 725 ILCS 5/114-12(b) (2014). If the defendant meets their burden or makes a prima facie case the burden then shifts to the State to counter that prima facie case. *People v. Gipson,* 203 Ill. 2d. 298, 306; 725 ILCS 5/114-12(b) (2014). A blood draw from a suspected DUI offender is a search that is subject to Fourth Amendment analysis. *Birchfield v. North Dakota,* 136 S. Ct. 2160, 2173 (2016). The

blood draw commands more fourth amendment protection than a breath test as it is a medical procedure and more invasive by the sheer nature of the proceeding. *Id.* at 2178.

A warrantless search is a per se violation of the Fourth Amendment unless the search falls into a category of narrowly defined and well-articulated exceptions. *Coolidge v. New Hampshire,* 91 S.Ct. 2022, 2032 (1971). This applies for blood draws as well. The taking of blood must fall within one of the warrantless exceptions such as exigent circumstances or consent otherwise it is an invalid search subject to suppression. *Missouri v. McNeely,* 133 S.Ct. 1552, 1558 (2013). For the search to be invalid the search must be performed by the government or due to government action. *People v. Phillips,* 215 Ill. 2d 554, 566 (2005) (citing *United States v. Jacobsen,* 466 U.S. 109, 113 (1984)). The Fourth Amendment does not apply to a search conducted by a private person so long as the private person was not acting as an agent for the government, meaning with the participation or knowledge of a government official. *Jacobsen,* 466 U.S. at 113-114.

A. Defendant Made a Prima Facie Showing of an Illegal Search Because He Established that A Blood Test Occurred and it was a Product of State Action or Police Subterfuge.

This Court should affirm the Appellate Court's ruling and the Circuit Court's suppression order because the Defendant did make a prima facie case showing that the blood test occurred and was an illegal search in violation of the Fourth Amendment. Also, the blood test would not have occurred but for the conduct of Officer Webb; thus, the blood test of Michael Brooks was a result of Police Subterfuge.

1. Defendant met its burden of proving that an Illegal Search namely a Blood Test Occurred as both parties Proceeded with the Hearing as if a Blood Test Occurred.

This matter proceeded to hearing on December 15, 2014 in the Circuit Court of

Effingham County and Michael Brooks' Counsel argued that Defendant refused medical treatment and insisted that the medical staff not take his blood and nevertheless they took his blood. R75. The State then argued that the Officer (Officer Webb) ordered no blood test of Michael Brooks yet the hospital for whatever reasons drew blood from Michael Brooks. R76. The testimony by Officer Webb was that Michael was forcibly removed from the jeep and that he was not free to leave. R80. Despite admitting to having no medical training, Officer Webb indicated that he forcibly put Michael on a gurney even though Michael refused medical care. R82. He was then placed in an ambulance and transported to a hospital. R83. The Officer then asked if he would consent to blood and/or breath testing and Michael refused. R84. The Officer then noticed that medical staff mainly nurses had begun to work on Michael Brooks and he left. R85. Michael Brooks testified that he had refused to consent to a blood draw; nevertheless, he was at the hospital for about twelve hours and they straightened and put a splint on his leg. R98-99.

The facts as stated in the record clearly demonstrate that both parties proceeded with this hearing as if a blood draw occurred. Also, the State subpoenaed records from the hospital in question specifically requesting all lab results ("blood work") pertaining to patient Michael W. Brooks originating from his admission on August 14, 2014. Supp. A sealed envelope then arrives in response to that very subpoena clearly raising an inference that a blood test occurred and the results are within the sealed envelope. R72.

Based on these facts and circumstances the Appellate Court held,

> "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." *People v. Brooks,* 2016 IL App (5th) 150095-U, ¶ 17, (Ill. 2016). A3.

The defendant cites to *People v. Sutherland* and *People v. Brinn* for a definition of evidence and an example of a motion that was denied based on the evidence presented. In *Sutherland,* the court defines evidence as "[s]omething (including testimony, documents, and tangible objects) that tend to prove or disprove the existence of an alleged fact. 223 Ill.2d 187 (2006). In our case the testimony of Officer Webb and documents contained in a sealed envelope from the hospital at issue clearly tend to prove that a blood draw occurred. In *Brinn,* this case dealt with a motion for setting aside a jury verdict alleging that some jurors did not disclose that they were exposed to certain pre-trial or during trial publicity. *People v. Brinn,* 32 Ill. 2d 232, 238-239 (1965). The analysis of setting aside a jury verdict is far different than the analysis for a motion to suppress evidence. Also, the only evidence presented in the *Brinn* case alleging such pretrial publicity bias was a hearsay newspaper article that came out the day after the verdict claiming that an unnamed juror read that Brinn had warned Morrison that some of the others set up a trap to get him killed. *Id.* Whereas in the instant case, we have documents returned from a hospital pursuant to a court ordered subpoena and testimony from a law enforcement officer that he sent Michael Brooks to the hospital and requested a blood and/or urine sample from Michael Brooks but he refused. R82-84. Solid evidence compared to a hearsay newspaper article.

The defendant did put forth enough evidence that a blood draw occurred; thus, meeting his prima facie case that the evidence was obtained from an illegal search. The

next issue Michael Brooks addresses is whether this blood test was administered as a result of State Action or Police Subterfuge.

2. Defendant put forth a Prima Facie case that the Blood Test Administered by the Hospital was a Product of Police Subterfuge.

The Appellate Court was correct to determine that the blood draw in this case performed on Michael Brooks was a result of Police Subterfuge. *People v. Brooks,* 2016 IL App (5th) 150095-U ¶ 22 (Sept. 1, 2016) (A1-5). The Court held that despite Brooks' refusal of medical treatment, Officer Webb physically removed Michael Brooks from a vehicle, forcibly placed him onto a gurney, and assisted in putting Michael Brooks into an ambulance for transport to a hospital. Then EMS only traveled a block or two when they again called Officer Webb to help detain Michael Brooks in the ambulance even though he was trying to escape. Officer Webb then forcibly placed Michael Brooks on a cot and handcuffed him to it. He then proceeded to ride with Michael Brooks all the way to the hospital and assisted EMS with transporting Michael Brooks to the Emergency Room. The court felt that these facts lead to the reasonable conclusion that State Action was present and that the State participated in Michael Brooks obtaining medical treatment. *Id.* at ¶ 21.

A blood or urine sample obtained while providing routine medical treatment is admissible only if it was not ordered at the direction of the police or obtained through police subterfuge. 625 ILCS 5/11-501.4(a)(1); See Also, *People v. Poncar,* 323 Ill. App. 3d 702, 707 (2d Dist. 2001) (stating that the fourth amendment precludes admission of a blood test that is a result of police subterfuge or came about because of a form of state action.) Therefore, the order of the trial judge and Appellate court should be affirmed.

According to 625 ILCS 5/11-501.4(a)(1), the results of a blood test administered at the hospital are not admissible if they were ordered by the police. Put another way, if the blood test results came about because of police subterfuge or were a result of State Action, Section 11-501.4(a) does not apply. *Poncar,* 323 Ill. App. 3d 702, 707; See also, *People v. Yant,* 210 Ill. App. 3d 961, 965 (2d Dist. 1991) (discussing whether emergency restraints or the blood test order was subterfuge procured by the police or any form of state action). Despite references to "subterfuge" and "State Action," the State appears to take the position that the only way the police can order a blood test or that a blood test can be brought about by State Action is when an officer stands above a patient and orders a needle to be placed in the patient's arm. However, this ignores the fact that the State can, and did, procure a blood test through State Action by forcing someone to undergo medical treatment that he expressly refused.

Because State Action and police subterfuge can be more than just a police officer ordering a needle into the arm finds support in numerous cases, including cases cited by the State in their brief. In *People v. Yant,* the defendant was in an automobile accident and was transported by ambulance to Hinsdale Hospital. 210 Ill. App. 3d 961, 962 (2d Dist. 1991). Because the defendant was uncooperative and combative, the ambulance personnel felt the need to restrain the defendant in leather restraints. *Id.* The defendant refused medical treatment and refused a blood draw, but the physician nevertheless ordered a blood test in the course of providing emergency medical treatment. *Id.* In finding the test results under those facts admissible, the Second District expressly noted that neither "the emergency restraints or the physician's blood test order was a subterfuge procured by the police or any form of State Action." *Id.* at 965 (emphasis added). Thus,

the *Yant* court expressly considered whether the restraints used to transport the defendant to the hospital had been a result of State Action, not just the blood draw itself.

People v. Poncar, another case cited by the Appellant, also supports the conclusion that a blood test brought by "State Action" is inadmissible. In *Poncar*, the defendant was arrested after a traffic stop and transported to the police station. 323 Ill. App. 3d 702, 703-704 (2d Dist. 2001). While in the "shakedown" room, the defendant refused to comply with the officer's directions and repeatedly pulled his hands away from the wall. *Id.* at 703. At one point, the defendant turned his head abruptly and his right ear was cut after it struck the wall and became pinched between the wall and his eyeglass frames. *Id.* at 704. The officers called an ambulance for the defendant and he was transported to the hospital. *Id.* While in the emergency room, the Defendant's left wrist was handcuffed to the gurney and his blood was eventually drawn over his objection. *Id.*

In holding that the blood test was not barred under the fourth amendment, the Second District cited to *Yant,* stating that under these facts there was no evidence that the blood test was the result of subterfuge because the defendant was combative and injured accidentally while resisting attempts to keep him in position. *Id.* at 707. More importantly, the court noted that the trial court had expressly found that the police did not intentionally do anything to cause harm to the Defendant. *Id.* Thus, the *Poncar* court, following the rule in *Yant,* upheld the blood test because the police did nothing to intentionally bring about the blood test. Rather, the medical treatment and blood test itself were brought about on the basis of an accident, not on the basis of forced State action. *Id.*

Following the direction of both *Yant* and *Poncar,* the relevant inquiry is not whether the police officer stood over Michael Brooks and ordered the needle into his arm. The relevant inquiry is whether the blood test was brought about through subterfuge or State Action, which can be far more than simply ordering the nurse or physician to draw blood. The facts of this case make it clear, as the trial Judge and Appellate Court have found, that no blood test here would have ever came about without Officer Webb's use of force. Thus, the hospital employee here who took Michael Brooks' blood did so under the guise of State Action or Police Subterfuge.

Michael Brooks consistently refused any form of medical treatment from the time Officer Webb first approached him, to when he was forced onto a gurney, handcuffed to an ambulance and forced into the hospital, and even when the nurse attempted to draw his blood. R80-100. The trial judge found that Michael Brooks refused both medical treatment and an ambulance. C34. Moreover, the trial judge found that the officer on the scene restrained Michael inside the ambulance. C34. This shows a massive departure from the *Yant* decision. In *Yant,* no state action was found because it was the medical personnel, and not the State, who restrained the Defendant with leather restraints in order to obtain blood. *Yant,* 210 Ill. App. 3d 961, 962 (2d Dist. 1991). In this case the Trial Judge found, and Officer Webb did not deny, that it was the State that forcibly handcuffed Michael Brooks to the inside of an ambulance in order to force unwanted medical treatment upon him. This difference shows why the test was admissible in *Yant* and why in a case such as this where it is the State taking the action that forces the medical treatment, that the test is inadmissible. In *Yant* and *Poncar,* the blood tests were inadmissible because the samples were taken incident to medical treatment not by force.

In *People v. Farris,* an officer was called to the scene of an accident, where he found the defendant sitting in her vehicle. 2012 IL App (3d) 100199, ¶ 4. The defendant reported to the officer that she had hit her lip on the dash and that her head was hurting. *Id.* The defendant was transported to the hospital by ambulance. *Id.* The Officer testified that the defendant repeatedly stated "take me to f---ing jail" while she was at the hospital. *Id.* The officer stated that while at the hospital he sought consent from the defendant for a blood draw which the defendant refused. *Id.* at ¶ 5. The officer instructed the nurse to draw the blood and the defendant was held down by the hospital staff while the blood was drawn. *Id.* The defendant testified that she never lost consciousness and had only minor injuries. *Id.* at ¶ 7. She further testified that as soon as she arrived at the hospital, demands were made that she consent to a blood draw, which she refused because she did not believe that a blood draw was necessary for treatment based on her injuries. *Id.* The defendant stated that she physically resisted the blood draw. *Id.*

In affirming the Trial Court's grant of the defendant's motion to suppress the blood test, the Third District, quoting the Illinois Supreme Court, expressly noted that a "law enforcement officer is not permitted to use physical force in obtaining blood, urine, and breath samples." *Farris,* 2012 IL App (3d) at ¶ 16 (quoting *People v. Jones*, 214 Ill. 2d 187 (Ill.2005)). The Third District expressly stated that the trial court was correct in holding that, pursuant to *Jones,* law enforcement officials have no right to use force to obtain a blood sample from the Defendant. *Id.* at ¶¶ 21-22. Thus, because force was used to obtain the blood sample, the Third District held that the defendant's fourth amendment rights had been violated and upheld the trial court's suppression order. *Id.* at ¶ 24.

Much like *Farris*, Officer Webb arrived on scene after any alleged accident had occurred. Michael Brooks like the defendant in *Farris* was conscious and speaking to Webb and injuries were observed, both refused to consent to a blood test, and despite the State's contentions, just like *Farris* the blood sample was obtained through the use of force. The only difference is when the use of force occurred. In *Farris*, it occurred during the blood test and in the instant case, the force was used to get Michael Brooks to the hospital.

The State argues that Michael Brooks must prove that the hospital was acting as a police agent, "in light of all the circumstances of the case, the hospital must be regarded as having acted as an 'instrument' or agent of the state." *Coolidge v. New Hampshire,* 403 U.S. 443, 487 (1971). *Coolidge,* is not factually similar as it deals with a consensual interview between police officers and the Defendant's wife. The Court held that the Officer's merely interviewed the woman and asked questions and that she on her own provided them with incriminating evidence against her husband including his clothes and a firearm. *Id.* The court held that, "[t]he two officers who questioned her behaved, as her own testimony shows, with perfect courtesy. There is not the slightest implication of an attempt on their part to coerce or dominate her, or, for that matter, to direct her actions by the more subtle techniques of suggestion that are available to officials in circumstances like these." *Id.* at 489-490. These facts are very different from the force that Michael Brooks was subjected to. The actions the officer took against Michael Brooks are more akin to the facts presented in the *Farris* opinion where the blood test was suppressed. Officer Webb's actions can be described in a lot of ways but certainly not as courteous.

Also, it should be noted that these cases are both DUI prosecutions and the facts are directly on point.

The blood draw that occurred at St. Anthony's Memorial Hospital in Effingham the night Michael Brooks was arrested was a result of the State forcing him from a vehicle, forcing him into an ambulance, and forcing him to remain in said ambulance. The Police Officer's conduct is not absolved because he simply walked away after issuing citations and reading the defendant the warning to motorist. Officer Webb's use of force and State Action triggered the blood test; thus, the defendant has put forth a prima facie case that the blood draw was administered and that is was done so as a result of State Action or Police Subterfuge. It is an unreasonable search and seizure and in violation of the appellee's Fourth Amendment constitutional right.

B. The Conduct that Officer Webb administered in this case Warrant's Suppression of the Evidence.

The lower courts both ruled that the results of Michael Brooks' blood test should be suppressed. The trial court reasoned that, in the future, the State could simply follow this same procedure with any potential criminal defendant that may have some type of injury. R122. Specifically, the court noted that the State could merely:

> "force [a potential defendant] 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 an ambulance, and then take him to 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." R122.

The Defendant's motion suppressing the evidence relating to the blood draw should be Affirmed based on Officer Webb's actions.

1. Officer Webb's Seizure of defendant during transport to the Hospital Warrant's Suppression.

The Fourth Amendment prohibits unreasonable searches and 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 (2006) (citing *Florida v Bostick*, 501 U.S. 429, 434 (1991); *Terry v. Ohio,* 392 U.S. 1, 19 n.16 (1968)). Michael Brooks agrees that he was in fact seized by Officer Webb when he was forced from the Jeep, placed in an ambulance, and later handcuffed to the ambulance. R80-100. Without this seizure of Michael Brooks no illegal search would have occurred. This is just another argument in the lengthy line of arguments put forth by the State claiming that since Officer Webb did not specifically request the hospital to take Michael Brooks' blood therefore his prior conduct is absolved.

The Fourth Amendment provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." *U.S. Const., amend IV,* as cited in *Birchfield v. North Dakota,* 136 S. Ct. 2160, 2173 (2016).

The court has long established that a blood or breath test is a search and the Fourth Amendment prohibits unreasonable searches. *Birchfield v. North Dakota,* 136 S. Ct. 2160, 2173 (2016). Quoting, *Skinner v. Railway Labor Executives' Assn.,* 489 U.S. 602, 616–617, (1989); *Schmerber v. California,* 384 U.S. 757, 767–768, (1966). The unreasonable search that Brooks was subjected to alone requires constitutional protection.

Moreover, a blood test has been held to be a search as well as a seizure subject to constitutional protection based on the nature of the procedure and the piercing of the skin. *People v. Armer,* 2014 IL. App. (5th) 130342 ¶ 11, citing *Missouri v. McNeeley,* 133 S.Ct.1552, 1560-1563 (2013); *Schmerber v. California,* 384 U.S. 757, 769-70 (1966). As such, a valid search warrant must be obtained from a Judge to administer the blood draw unless one of the warrant exceptions occur. The seven exceptions to allow a warrantless search to be admissible include exigent circumstances (most commonly at issue in DUI blood draw case law), consent, the automobile exception, plain view, search incident to arrest, stop and frisk (*Terry* stops), and community care-taking. The State argues, none of these warrant exceptions are at issue and the only issue is whether this search was performed by a private person or by police subterfuge or State action.

The case cited to by the Plaintiff *State v. Wall,* remains silent on whether the defendant consented to the medical treatment. 910 A. 2d 1253 (N.H. 2006). In the instant case Michael Brooks adamantly refused medical treatment. The trial court held that,

> "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 non-life 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." R122-123.

The court further noted some type of agency was apparent between the Police and the hospital. R123. In *Wall,* the Defendant was involved in a multi-vehicle accident and had a

child passenger in the vehicle. *Id.* at 1256. The case does not discuss the extent of Wall's injuries nor whether she consented to the blood draw or medical treatment in general. It does not indicate whether she consented to the ambulance ride. The facts presented in *Wall* are quite different than what we have in the instant case as Michael's injuries were characterized as non-life-threatening. R121. The facts we are presented with including outright refusal of medical treatment and an officer forcing the defendant to go to the hospital show an agency relationship exists.

The State further cites to *Poncar;* however, the differences between that case and the instant case have already been outlined in this response. It was clearly explained earlier the reasons for admissibility in *Poncar* but the facts presented in the instant case support a finding of inadmissibility of the blood draw.

2. The Principles of the Health Care Surrogate Act, 755 ILCS 40/1 *et seq.* should apply to Michael Brooks.

The Health Care Surrogate Act, which expressly recognizes that all persons have a fundamental right to make decisions regarding their own medical treatment, applies to Michael Brooks as an adult patient with decisional capacity. See 755 ILCS 40/15 (2014). Thus, because Illinois law specifically gives Michael Brooks the right to refuse medical treatment including the right to refuse a forced trip to a hospital that he did not choose and did not agree to pay for, the decision of the Trial Judge and Appellate Court should be affirmed.

The Illinois Health Care Surrogate Act is intended to define the circumstances under which private decisions by patients with decisional capacity may be made without judicial intervention. 755 ILCS 40/5 (2014). The Act specifically recognizes that all

persons have a fundamental right to make decisions relating to their own medical treatment. *Id.* Moreover, the Act specifically states that if the patient is an adult with decisional capacity, then the right to refuse medical treatment does not require the presence of a qualifying condition under the Act. 755 ILCS 40/15 (2014).

Case law shows that the Illinois Health Care Surrogate Act would be applicable in this situation. In *In re Estate of Allen,* 365 Ill. App. 3d 378 (2d Dist. 2006), the plaintiff attempted to argue that the principles of the Act should be applied to determine whether she had the right to refuse medical treatment. The Second District, however, determined that the Act does not apply to "emergency medical treatment administered without informed consent." 365 Ill. App. 3d 378, 392 (emphasis added). Thus, what the Second District was saying, and what the Act supports, is that the Act does apply in non-emergency situations. The Appellee's injuries here were described as a possible broken foot and were deemed non-life-threatening. R121. This decision was not arbitrary and unreasonable and therefore there is no reason to disregard this finding. Thus, because Michael Brooks was not receiving emergency medical treatment, the provisions of the Act are fully applicable to Michael's decision making regarding his own medical treatment.

As already noted, the Health Care Surrogate Act states that an adult with decisional capacity has the right to refuse medical treatment. 755 ILCS 40/15. According to the Act, "decisional capacity" means "the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment … and the ability to reach and communicate an informed decision in the matter as determined by the attending physician." 755 ILCS 40/10 (2014). More importantly, the Act specifically

states that a patient is "presumed to have decisional capacity in the absence of actual notice to the contrary." 755 ILCS 40/20 (cd) (2014).

There is absolutely nothing in this case to show that Michael Brooks lacked decisional capacity to make decisions regarding his medical treatment. When Officer Webb arrived on the scene, Michael Brooks was sitting in a jeep on private property. R80. He expressed that he did not want to get out of the jeep and that he did not want to be placed in an ambulance. R80. Even after being in the ambulance, Michael continued to object to going to the hospital. R83. Michael specifically refused to have his blood drawn when asked by Officer Webb, stating he refused to do anything for Webb. R84. Officer Webb testified that Michael did not appear to be acting rationally, but based this on nothing more than the fact that Michael was agitated and smelled like alcohol. R93. However, in his official written report, Officer Webb merely stated that Michael indicated that he was not going to the hospital, that he smelled like alcohol, and that he appeared "sluggish." R90. There was absolutely no indication that Michael could not talk, could not walk, could not communicate with Officer Webb, or any other sign that would rise to the level of Michael lacking decisional capacity. What the State is arguing is that Officers of the law can force people to obtain medical treatment by merely smelling alcohol on their breath. There was no admission to drinking and no evidence to show how much alcohol the defendant had consumed. Thus, the Healthcare Surrogate Act applies and Brooks cannot be forced into obtaining medical treatment.

It is unquestioned that a physician cannot force medical treatment on a patient without being liable for a battery. *Curtis v. Jaskey,* 326 Ill. App. 3d 90 (2d Dist. 2001). If a physician cannot force unwanted medical treatment on a patient, the Trial Judge and

Appellate court were correct in holding that the State cannot force a patient into a hospital to undergo treatment that he has expressly refused. The State has provided this Court with no support that it can do otherwise as all the cases the State has cited deal with individuals who request, consent, or remain silent about whether they wanted the routine medical treatment for non-life-threatening injuries. That is not the facts that we are presented with here.

The State cites to *Jacobsen* and *Phillips* as examples where State Action was not found in an otherwise illegal search. The facts in those cases differ immensely from the facts in the instant case. In *Phillips,* the defendant took his computer to a computer shop (a private business) to be worked on in Kankakee. *People v. Phillips,* 831 N.E. 2nd 574, 575 (Ill. 2005). The computer technician viewed what he believed to be child pornography and immediately called the authorities. In *Jacobsen,* employees of a shipping company searched a damaged package and located crumpled newspapers and a tube made of duct tape. *U.S. v. Jacobsen,* 466 U.S. 109, 111 (1984). The employees cut open the tube of duct tape and found what was later determined to be cocaine and called in federal agents. *Id.* Both these searches were upheld because it was a private citizen who conducted the search not the government. The State argues that the facts are like the instant case but they are clearly not. In both the cases cited the respective defendants of their own free will put a computer and a package into the stream of commerce to accept technical services and delivery services. Here, Michael Brooks expressly refused medical services and the State forced him to undergo them. It would be like the police grabbing Phillips and forcing him to take his computer to the computer shop having a good hunch that there were illegal items on there and then saying their conduct is absolved because

the computer technician performed the search. Further, it would be like a police officer forcing the Jacobsen's to ship their cocaine through interstate commerce so the shipping company could perform the illegal search. We are not presented with the same factual scenario in the instant case that's why the blood draw is inadmissible and the pornography and the cocaine are admissible in the respective cases.

Also, seeking repairs on a computer and shipping a package through a private carrier are routine business practices in the United States that do not have any specific constitutional or legal protections. A person either wants to purchase those services or they do not. Here, the defendant has a constitutional and statutorily protected right to refuse medical treatment and he was denied that right so the State could circumvent the law and claim a private actor took the blood to obtain and preserve evidence in their DUI prosecution.

C. The State argues that no Fourth Amendment violation should be found here because the Circuit Court's Ruling does not Establish an Administrable Rule for Police Officers.

The State did not pursue this claim on appeal from the trial court's order granting defendant's motion to suppress. Issues that could have been raised on appeal, but were not, will be deemed forfeited. *People v. Blair,* 215 Ill.2d 427, 443–445, (Ill. 2005). Nevertheless, the Trial Court was concerned about the opposite occurring here as Judge Brandmeyer went on to note that, in the future, the State could simply follow this same procedure with any potential criminal defendant that may have some type of injury. R122. Specifically, the court noted that the State could merely:

> "force [a potential defendant] 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 an ambulance, and then take him to 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." R122.

Thus, Judge Brandmeyer was more concerned long term about the officer's actions infringing upon a person's constitutional right to refuse medical treatment. The *Atwater* case related to an arrest based on certain misdemeanor and traffic offenses. *Atwater v. City of Lago Vista,* 532 U.S. 318, 323-24 (2001). The analysis is quite different than that of whether a blood draw is an illegal search and/or seizure. The cases previously cited indicate that a blood draw is an extreme invasion of privacy and should be determined on a case by case analysis. *Schmerber v. California,* 384 U.S. 757 at 772 (1966).

II. The Cause Should Not be Remanded for Further Proceedings on the Suppression Motion as the State had Their Opportunity to Rebut the Defendant's Prima Facie Case at the Trial Level.

The State argues that in the alternative if the Court finds that the defendant presented a prima facie case that the blood test violated the fourth amendment, it should remand for further proceedings so the State can rebut the Defendant's Prima Facie case. However, this is not the case as the State already had their opportunity to rebut and failed to do so.

A. The Burden Shifting Does Not have to be Explicit or Put on the Record.

The State did not pursue this claim on appeal from the trial court's order granting defendant's motion to suppress. Issues that could have been raised on appeal, but were not, will be deemed forfeited. *People v. Blair,* 215 Ill.2d 427, 443–44 (Ill. 2005).

The State cites to *People v. Davis* where the court held that the trial court did not appropriately shift the burden to the prosecution when determining whether a *Batson*

problem occurred. 345 Ill. App. 3d 901, 905-906, 911 (1st Dist. 2004). It cannot be stressed enough that this case deals with an entirely different analysis than a motion to suppress. In motion to suppress hearings there are at times multiple grounds for suppression of evidence alleged. In *People v. Litwhiler,* the defendant asked that illegal narcotics located during a search of his vehicle should be suppressed based on: 1) an illegal traffic stop of his vehicle; and 2) that the K9 dog was unreliable thus the search of his vehicle was illegal under the fourth amendment. 12 N. E. 3d 141, 146 (3rd Dist. 2014). The trial court noted that speeding was the reason for the traffic stop and the defendant testified he was not speeding. *Id.* That alone shifts the burden to the State to rebut the prima facie case. *Id.* It would be impractical to order the defendant to stop testifying at this juncture to shift the burden to the State only to then recall the defendant to discuss what his observations were of the K9 dog (his other basis for an illegal search). The hearing would be unreasonably delayed and choppy if the proceedings were to occur in the manner the State argues they should proceed.

In *People v. Janis,* the court ordered the State to stop cross examining their officer and asked the defendant if they had any additional evidence to present. 139 Ill. 2d 300, 306 (Ill. 1990). The defendant presented no further evidence and the Judge asked for argument on whether the defendant had met its burden. *Id.* After argument, the Judge ruled the defendant had not met its burden and denied the motion to suppress. *Id.* This case is an example of a Judge terminating a suppression hearing when he believes the defendant has not met his burden. In the instant case, Judge Brandenmeyer could have stopped the hearing had he felt the defendant did not shift the burden. He did not. He asked the State if they had any further witnesses and they did not call any. R100. Thus,

the burden was appropriately shifted based on the case law and the review of proceedings.

It is appropriate for the trial court to hear all evidence before making a ruling on a motion to suppress. The burden can be shifted by the slightest bit of testimony; thus, making it impracticable to constantly be making findings and shifting the burden in these hearings.

B. This Case Should Not be Remanded back to the Trial Court based on the Court's Ruling not to Release the Subpoenaed Medical Records.

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 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)).

The subpoenaed documents in question were returned to the Effingham County Circuit Court prior to the suppression hearing that took place on December 15, 2014. R70, 72. The Defendant objected to the release of the records based on a violation of the defendant's constitutional rights. R72-73. The state argued that the documents were not obtained based on a constitutional violation and asked that they be released. R74. Despite their argument; however, the State informed the court that they could hold on to the subpoenaed documents until after the suppression hearing dependent upon the Court's ruling. R74. Thus, no motion was ever made to quash a subpoena and the analysis should be limited to whether the results of the blood draw should be suppressed.

The Defendant, Michael Brooks, like all other citizens has a constitutionally protected right to refuse medical treatment for a non-life-threatening injury and therefore any blood test created by the State's forced medical treatment is not subject to subpoena. In its brief, the State attempts to dilute the serious constitutional issues raised by Officer Webb's actions and goes to great lengths to convince this Court that this case is nothing more than a question of the State's ability to issue a subpoena pursuant to statute. This position completely ignores that fact that Officer Webb forced Micheal Brooks to go to the hospital against his will and facilitated in the forcing of Mr. Brooks to obtain medical treatment that he specifically refused. However, because Mr. Brooks has a constitutionally protected right to refuse medical treatment for a non-life-threatening injury, the Trial Judge was correct to suppress the results of the blood test that would have never came about without the State's violation of Michael's constitutional rights.

It is well established that, at common law, a patient's consent is required before any physician may administer any kind of medical treatment to a patient. *In re Estate of Allen,* 365 Ill. App. 3d 378, 385 (2d Dist. 2006) (citing *In re Estate of Longway,* 133 Ill. 2d 33, 44 (Ill. 1989)). A corollary to the consent requirement is that an individual has the right to refuse medical treatment. *Id.* This deep-rooted right to refuse medical treatment has been recognized by both the United States Supreme Court and the Illinois legislature, both saying that an individual enjoys such a right even if that refusal will result in death. See *Cruzan v. Dir., Mo. Dep't of Health,* 497 U.S. 261 (1990); See Also 755 ILCS 40/5 (2014) (stating that "[t]he legislature recognizes that all persons have a fundamental right to make decisions relating to their own medical treatment, including the right to forgo life-sustaining treatment"). Thus, Michael Brooks had a right to refuse medical treatment

for a broken foot; a right that was violated when Officer Webb forced Michael into an ambulance and handcuffed him to ensure that he was forced into a hospital for treatment.

With the right to refuse medical treatment firmly grounded in both Supreme Court case law and Illinois law, the State is correct that fourth amendment constraints and specific statutory provisions govern the admissibility of blood-alcohol tests in DUI prosecutions. *People v. Poncar,* 323 Ill. App. 3d 702, 706 (2d Dist. 2001). Specifically, 625 ILCS 5/11-501.4 (2014) governs the admissibility of chemical tests of blood or urine conducted in the regular course of providing emergency medical treatment. According to Section 11-501.4(a):

> Notwithstanding any other provision of law, the results of blood or urine tests performed for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds, or any combination thereof, of an individual's blood or urine conducted upon persons receiving medical treatment in a hospital emergency room are admissible in evidence as a business record exception to the hearsay rule only in prosecutions for any violation of Section 11-501 of this Code or a similar provision of a local ordinance, or in prosecutions for reckless homicide brought under the Criminal Code of 1961 or the Criminal Code of 2012, when each of the following criteria are met:
>
> > (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.

What the State fails to recognize, and what the Trial Judge correctly determined, is that Section 11-501.4 does not apply to this case for two reasons. First, because Michael Brooks was forced into an ambulance and taken to the hospital by the use of police force, any chemical tests performed on him at the hospital are a result of police subterfuge and thus not admissible pursuant to 11-501.4(a)(1). See *People v. Jones,* 214 Ill. 2d 187, 201 (Ill. 2005) (stating that law enforcement officials do not have the right to use physical force in obtaining blood, urine, and breath samples). If an officer cannot use force to obtain a blood sample, it follows that an officer cannot use physical force to ensure that Michael Brooks received medical treatment that he had a constitutional right to refuse. Second, a broken foot is not a medical emergency and, even if it does constitute an emergency, Michael Brooks expressly refused medical treatment. See *Curtis v. Jaskey,* 326 Ill. App. 3d 90, 96 (2d Dist 2001) (stating that where a patient has expressly refused medical treatment, he cannot be treated even when an emergency exists). Therefore, in the face of Michael's express refusal to accept medical treatment, a physician could not have treated Michael. If a physician could not render medical treatment to Mr. Brooks, then Officer Webb and the State of Illinois certainly had no right to handcuff him to a gurney and force him inside an ambulance to go to a hospital he did not choose to receive medical treatment that he did not want. Thus, the trial judge was correct to determine that the State had no right under Section 11-504.1 to subpoena any test obtained through the State's forcing of Michael Brooks to go to the hospital and his ruling should be affirmed.

III. Suppression is an Appropriate Remedy for this Fourth Amendment Violation.

The State did not pursue this claim on appeal from the trial court's order granting defendant's motion to suppress. Issues that could have been raised on appeal, but were

not, will be deemed forfeited. *People v. Blair,* 215 Ill.2d 427, 443–44 (2005). Nevertheless, blood draws that violate the fourth amendment have been routinely suppressed by Illinois courts and the United States Supreme Court as it is a highly personal infringement of one's expectation of privacy. *Birchfield v. North Dakota,* 136 S. Ct. 2160, 2178 (2016); *People v. Armer,* 2014 IL App (5th) 130342.

Moreover, a blood test has been held to be a search as well as a seizure subject to constitutional protection based on the nature of the procedure and the piercing of the skin. *People v. Armer,* 2014 IL. App. (5th) 130342 ¶ 11, citing *Missouri v. McNeeley,* 133 S.Ct.1552, 1560-1563 (2013); *Schmerber v. California,* 384 U.S. 757, 769-70 (1966). As such, a valid search warrant must be obtained from a Judge to administer the blood draw unless one of the warrant exceptions occur.

The State argues that a ruling in Michael Brooks' favor would discourage police from aiding injured DUI suspects and emergency responders at vehicle accident scenes. The answer to this question is simple as the facts in the instant case address an issue when someone is refusing medical treatment not when they request medical services. Also, as noted by the State the Trial Judge was more concerned about setting a precedent going forward where police officers would circumvent the Fourth Amendment by simply requiring suspects to go to the hospital for treatment. The answer to this issue is simple. The police officers can simply elect to apply for a search warrant when confronted with similar scenarios.

In *Missouri v. McNeeley,* the court wrestled with whether to apply the factually driven totality of the circumstances case by case analysis of the Fourth Amendment to a

warrantless blood draw. 133 S. Ct. 1552, 1564 (2013). The court reasoned that a blood draw is such an invasion of the bodily integrity that it implicates an individual's most personal and deep-rooted expectations of privacy. *Id.* at 1552. See *Winston v. Lee,* 470 U.S. 753, 760 (1985); see also *Skinner v. Railway Labor Executives' Assn.,* 489 U.S. 602, 616 (1989). As such, it is worthy of police officers having to make a difficult split-second judgement. *Id.* at1564. A broad categorical rule would be easier for law enforcement; however, the invasion of privacy is too great to justify a warrantless blood draw. *Id.* Also, the Court held that law enforcement could effectively fight drunk driving with other tools such as breath analysis, implied consent laws, and field sobriety testing. *Id.* at 566.

The State cites to *Hudson v. Michigan*, to bolster their argument that suppression need not occur in every case where the intrusion is minor and the damage to the prosecution's case is great. 547 U.S. 586, 591 (2006). That case however, dealt with a violation of the Fourth Amendment based on a knock and announce violation. *Id.* The police officers possessed a valid search warrant to enter the defendant's home the only issue was whether they waited long enough before entering the house. *Id.* That is quite different from the circumstances we are dealing with that include a piercing of the skin and extraction of a person's blood without a warrant. The controlling analysis should be found in *Missouri v. McNeeley*, which is factually similar.

CONCLUSION

For these reasons, the Defendant respectfully requests this Court to affirm the Fifth District's judgment affirming the Circuit Court's order granting defendant's motion to suppress.

May 11, 2017

Respectfully Submitted,

Michael Brooks, Defendant-Appellee

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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 34 pages.

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STATE OF ILLINOIS)
) ss.
COUNTY OF COLES)

PROOF OF FILING AND SERVICE

The undersigned certifies that on May 12, 2017, the foregoing **Brief of Defendant Appellee,** was filed with the Clerk, 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 1101 Broadway Avenue Mattoon, IL 61938, in an envelope 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 twelve copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therin stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

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