

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Kathryn Martin Key,)
)
Appellant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2016CP2306517
Ticket No.: H480200

ORDER ON APPEAL

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APR 24 2017
SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT upon the Appellant's Notice of Appeal and Appeal of her conviction from the Greenville County Magistrate's Court. On January 4, 2017, this Court conducted a hearing on the matter. At that hearing, E. Powers Price and James H. Price, III represented the Appellant, and Mitchell Byrd and Elizabeth Gary represented the Respondent. The parties presented argument regarding the validity of the Appellant's conviction, and in particular, the admissibility of the Appellant's toxicology report at trial. Based upon the findings of fact and conclusions of law stated herein, I hereby reverse and remand this matter to the Magistrate's Court for a new trial.

Factual Background

On December, 10, 2105, the Appellant ("Key") was involved in an automobile wreck at approximately 8:47 a.m.. Shortly thereafter, emergency medical personnel ("EMS personnel") arrived on scene. As EMS personnel were removing Key from her vehicle, Trooper Campbell, ("Campbell") the investigating/arresting officer, arrived at the scene of the accident. At that time, Campbell did not speak with Key because she was unconscious.¹ EMS personnel transported Key

¹ From all of the information presented to the Court, Key did not regain consciousness for an extended period of time.

to the emergency room at Greenville Memorial Hospital. Initially, Campbell remained at the scene of the accident in order to conduct an investigation as to the cause of the accident.

While conducting his investigation, Campbell determined that the vehicle that Key was removed from was in fact registered to her. Subsequently, Campbell went to Greenville Memorial Hospital and placed Key under arrest at 10:35 a.m.. At that time, Key remained unconscious from the accident. Campbell read Key the implied consent warnings pursuant to South Carolina Code Section 56-5-2950 at 10:36 a.m.. The Implied Consent Rights Form indicates that Key was not conscious when Campbell read her those warnings. Furthermore, Campbell testified at trial that Key did not give consent for her blood to be drawn. At 10:45 a.m., a registered nurse from the Greenville Hospital System drew a sample of Key's blood. Campbell did not obtain a search warrant prior to directing the nurse to take Key's blood sample. The parties stipulated that a magistrate judge was on duty at the time of accident, arrest and blood draw.²

On August 8, 2016, the parties engaged in a pretrial hearing before the Honorable Mark C. Edmonds of the Greenville Magistrate's Court. That hearing pertained to a Motion in Limine/Motion to Suppress concerning Key's blood sample and the corresponding analysis. During that hearing, Key's attorney asserted that the blood evidence should be suppressed because it was obtained pursuant to an unlawful search in violation of the Fourth Amendment to the United States Constitution, Article I, Section 10 of the South Carolina Constitution, and United States Supreme Court precedent.³ The magistrate judge denied Key's suppression motion. On November 8, 2016, a magistrate judge found Key guilty of Driving Under the Influence (1st Offense). Prior to and during Key's trial, Mr. Price, Key's attorney, renewed his Motion to Suppress regarding the

² Magistrate's Court Return, No. 5, Pg. 5.

³ In particular, Key's counsel argued that the search and seizure here violated the precedent established by the Court in *Missouri v. McNeely*. See *Missouri v. McNeely*, 133 S.Ct. 1552 (2013).

blood evidence. The State asserted that the blood draw was lawfully completed because Key consented to the blood draw based upon the state implied consent statute, which provides:

A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of the person's breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or the combination of alcohol and drugs, if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. . . . If the person is physically unable to provide an acceptable breath sample because the person . . . is unconscious . . . the arresting officer may request a blood sample to be taken. Any additional tests to collect other samples must be collected within three hours of the arrest.

S.C. Code Ann. § 56-5-2950 (A)(Supp. 2009).

The magistrate judge denied Key's motions. Additionally, Mr. Price moved for a directed verdict at the close of the State's case; however, the magistrate denied that motion as well. The trial judge found Key guilty based upon the evidence presented, including the blood evidence, during the course of the trial. Key then filed this appeal.

Legal Standard and Findings

The Fourth Amendment provides protection for citizens against unreasonable searches and seizures.⁴ Similarly, the South Carolina Constitution provides protection against unlawful searches and seizures.⁵ A search or seizure does not infringe upon the protections of the Fourth Amendment or the South Carolina Constitution if the search or seizure is initiated with a warrant

⁴ U.S. Const. amend. IV. "The right of the people to be secure in their persons, houses . . . against unreasonable searches and seizures, shall not be violated"

⁵ S.C. Const. art. I. § 10.

supported by sufficient probable cause.⁶ However, a warrantless search or seizure is not unreasonable so long as a recognized exception to the warrant requirement exists.⁷

In *Schmerber*, the United States Supreme Court held that the warrant requirement and corresponding exceptions apply to intrusions into the human body, including blood draws.⁸ Recently, the Supreme Court specifically addressed the warrant requirement in cases involving blood draws collected pursuant to an informed consent statute.⁹ In *McNeely*, the Court declined to establish a per se exigency for the natural metabolism of alcohol.¹⁰ The Court held that the reasonableness of a warrantless blood draw must be addressed on a case-by-case basis using a totality of the circumstances analysis.¹¹ More importantly, the Court noted that police officers should obtain a warrant for a blood draw if doing so does not "*significantly undermine* the efficacy of the search" ¹²

Here, the State argued that the blood draw was obtained lawfully pursuant to the informed consent statute.¹³ However, I do not find this argument compelling. In particular, the parties agreed that a magistrate judge was on-duty and available at the time of the blood draw. Therefore, Trooper Campbell had the opportunity to seek a search warrant, and a judge with the authority to issue such a warrant was readily available to him to issue such a warrant. However, Campbell did not obtain

⁶ *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006), cert. denied, 555 U.S. 1074, 129 S.Ct. 733, 172 L.Ed.2d 735 (2008).

⁷ *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011)(citing *Mincey v. Arizona*, 437 U.S. 385, 390, 98 S.Ct. 2408, 2412, 57 L.Ed.2d 290, 298-99(1978)). See also, *State v. Brown*, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012) Those exceptions include: "(1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception; (5) the plain view doctrine; (6) consent; and (7) abandonment."

⁸ *Schmerber v. California*, 384 U.S. 757, 770 86 S.Ct. 1826, 1835, 16 L.Ed.2d 908 (1966).

⁹ *Missouri v. McNeely*, 133 S.Ct. 1552, 185 L.Ed.2d 696, 81 USLW 4250 (2013). In *McNeely*, the state of Missouri appealed a trial court's decision to suppress blood test results obtained without a warrant during the course of a DUI investigation. In that case, Missouri relied upon an informed consent statute similar to South Carolina's statute.

¹⁰ *McNeely*, 133 S.Ct. at 1561-68 (noting that "the metabolization of alcohol in the blood stream is [one] factor that must be considered in deciding whether a warrant is required.")

¹¹ *Id.*

¹² *McNeely* at 1562 (citing *McDonald v. United States*, 335 U.S. 451, 456, 69 S.Ct. 191, 93 L.Ed. 153 (1948)).

¹³ S.C. Code Ann. § 56-5-2950 (Supp. 2009).

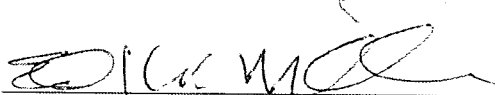
a search warrant even though the statute that he relied upon to obtain the blood sample provides a three hour time period in which blood samples may be obtained.¹⁴ Instead, Campbell waited only (10) minutes from the time of arrest before ordering Key's blood be drawn.

As the Court noted in *McNeely*, blood draws performed pursuant to implied consent statutes, like the statute at issue here, "implicate a significant privacy interest." In light of *McNeely*, I hold that a search warrant should have been obtained prior to Campbell ordering a blood draw from Key. The blood evidence obtained from Key constituted an illegal search and seizure in violation of Fourth Amendment to the United States Constitution and Article I, Section 10 of the South Carolina Constitution. Accordingly, I find that the trial court should have suppressed the blood evidence and a new trial is necessary.

THEREFORE, based upon the findings of fact and conclusions of law, it is hereby ordered that the blood test results were obtained pursuant to an unlawful search and should have been suppressed, and absent legally sufficient evidence of impairment, this conviction is reversed and remanded to the lower tribunal for a new trial.

AND IT IS SO ORDERED.

2/14/17


The Honorable Edward W. Miller
Presiding Judge, 13th Judicial Circuit

¹⁴ S.C. Code Ann. § 56-5-2950 (A)(Supp. 2009).

STATE OF SOUTH CAROLINA)
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COUNTY OF GREENVILLE)
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State of South Carolina,)
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Plaintiff,)
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v.)
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Kathryn Martin Key,)
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Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO. 2016-CP-23-06517

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ORDER

This matter comes before the Court upon Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

Based upon careful consideration of all the evidence and upon full consideration of the Plaintiff's motion, this Court is not persuaded to reconsider its ruling in this matter nor alter or amend the judgment.

THEREFORE, it is ORDERED ADJUDGED AND DECREED that the Plaintiff's Motion to Reconsider, Alter, or Amend is Denied.

IT IS SO ORDERED.

Dated: _____

Greenville, South Carolina

Edward W. Miller
Thirteenth Judicial Circuit

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SC Court of Appeals

Greenville Common Pleas

Case Caption: Kathryn Martin Key VS South Carolina State Of

Case Number: 2016CP2306517

Type: Order/Other

So Ordered

s/ Edward W. Miller

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