COURT OF APPEALS
DECISION
DATED AND FILED

May 8, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1033-CR **Cir. Ct. No. 01-CF-1105**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

RAMON O. MEDINA-FUENTES,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: PAUL B. HIGGINBOTHAM, Judge. *Reversed.*

Before Dykman, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. The State of Wisconsin appeals the circuit court's order suppressing blood draw evidence. The issue is whether the blood was taken in violation of the Fourth Amendment prohibition against unreasonable searches and seizures. We conclude that the blood draw was reasonable under the Fourth

Amendment. Therefore, we reverse the circuit court's order suppressing the evidence.[1]

¶2 Ramon Medina-Fuentes and Samantha Cullen had a head-on automobile accident at 12:46 a.m. on May 19, 2001. Cullen died at the scene. Medina-Fuentes was taken to the hospital. Several officers remained at the scene to investigate, while police officer Rahim Rahaman went to the University of Wisconsin Hospital. Rahaman directed medical staff at the hospital to draw blood from Medina-Fuentes for evidence of intoxication. Medina-Fuentes moved to suppress the blood sample. The circuit court ordered the blood evidence to be suppressed for lack of probable cause.[2]

¶3 The State argues that the blood is admissible because the police had probable cause to arrest Medina-Fuentes and the blood sample was admissible as a search incident to arrest. The State cites ***State v. Bohling***, 173 Wis. 2d 529, 494 N.W.2d 399 (1993), which provides that a warrantless blood sample taken at the direction of the police is admissible as evidence of a crime if: (1) the blood is taken to obtain evidence from a person lawfully arrested for a drunk-driving related crime; (2) there is a clear indication that the blood will produce evidence of intoxication; (3) the blood is taken in a reasonable manner; and (4) the arrested person presents no reasonable objection to the blood draw. ***Id.*** at 533-34. Although Medina-Fuentes had not been arrested when the blood sample was taken, the State argues that there was probable cause to arrest him, which is

[1] The circuit court also granted Medina-Fuentes's motion to suppress statements he made at the hospital. The State does not challenge that ruling on appeal.

[2] The circuit court rejected Medina-Fuentes's argument that the evidence should be suppressed for lack of a search warrant.

sufficient to satisfy ***Bohling***. *See* ***id.*** at 534 n.1 (probable cause to arrest may substitute for the predicate act of a lawful arrest).

¶4 Medina-Fuentes contends, in pertinent part, that the blood sample was taken in violation of the Fourth Amendment because he had not been lawfully arrested and there was no probable cause to arrest him.[3] He cites ***State v. Swanson***, 164 Wis. 2d 437, 453 n.6, 475 N.W.2d 148 (1991), and ***State v. Seibel***, 163 Wis. 2d 164, 471 N.W.2d 226 (1991).

¶5 The parties have too narrowly focused the admissibility inquiry by addressing only whether there was probable cause *to arrest*, rather than whether there was probable cause *for a search* independent of any arrest. We recently held that, in the absence of an arrest, "probable cause to believe blood currently contains evidence of a drunk-driving-related violation or crime satisfies the first prong of ***Bohling***." ***State v. Erickson***, 2003 WI App 43, ¶12, *review denied* (Wis. Apr. 22, 2003) (No. 01-3367-CR). Among other things, we pointed to ***State v. Donovan***, 91 Wis. 2d 401, 408, 283 N.W.2d 431 (Ct. App. 1979), which provides: "Reasonableness as the ultimate standard of lawfulness of a warrantless search is fulfilled only if its two components are met: (1) probable cause to search and (2) exigent circumstances that excuse application for a judicially authorized search warrant." Under ***Erickson***, the blood sample is admissible if the police had probable cause to conduct a search and exigent circumstances were present.[4]

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[3] There is no dispute that there was no warrant and that there was no authority to take the blood sample under the implied consent law.

[4] Although probable cause to arrest and probable cause to search often "go hand in hand," *see* ***State v. Erickson***, 2003 WI App 43, ¶8, *review denied* (Wis. Apr. 22, 2003) (No. 01-3367-CR), the questions are not coextensive.

¶6 "When analyzing probable cause to search, the proper inquiry is whether evidence of a crime will be found." ***Erickson***, 2003 WI App 43, ¶14 (citations omitted). "The quantum of evidence required to establish probable cause to search is a fair probability that contraband or evidence of a crime will be found in a particular place." ***Id.*** (citations omitted). "Whether probable cause for a search exists is determined by analyzing the totality of the circumstances." ***Id.*** "The test is objective: what a reasonable police officer would reasonably believe under the circumstances …." ***Id.*** (citations omitted). "Probable cause does not mean more likely than not." ***Id.*** The information need only "support a reasonable belief that guilt is more than a possibility." ***Id.***

¶7 At the suppression hearing, Officer Rahaman testified about the circumstances surrounding the blood draw. He testified that he has extensive experience as a police officer, which includes training in detecting intoxicated drivers. He testified that, at their first contact, there was a strong odor of intoxicants coming from Medina-Fuentes. Rahaman also testified that the Med-Flight doctor told him he smelled an odor of intoxicants on Medina-Fuentes. Rahaman testified that Medina-Fuentes had red, bloodshot, and watery eyes. Finally, Rahaman testified that he was aware that Medina-Fuentes was involved in a head-on collision that had killed one of the drivers, suggesting erratic driving by at least one of the two drivers, and that the collision occurred at approximately 1:00 a.m., a time during which the majority of intoxicated drivers are arrested. Considering all of these facts, we conclude that Rahaman reasonably concluded that there was "a fair probability that contraband or evidence of a crime" would be found in the blood of Medina-Fuentes. Therefore, there was probable cause to conduct the search.

¶8 Next, we address whether exigent circumstances existed to excuse application for a judicially authorized warrant. The supreme court has ruled that "the rapid dissipation of alcohol in the bloodstream alone constitutes a sufficient exigency for a warrantless blood draw to obtain evidence of intoxication …." ***Bohling***, 173 Wis. 2d at 539. Because there was both probable cause to search and exigent circumstances, the evidence was admissible.

¶9 The parties argue at length about the application of a number of cases to this dispute, including ***Swanson***, 164 Wis. 2d 437, and ***Seibel***, 163 Wis. 2d 164. Because we have concluded that the evidence was admissible under the probable cause to search\exigent circumstances exception to the warrant requirement, we do not need to address whether there was probable cause to arrest Medina-Fuentes at the time the blood was drawn.

By the Court.—Order reversed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (2001-02).