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DISTRICT II

September 14, 2022

To:

Hon. Jennifer Dorow
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Matthew S. Pinix
Electronic Notice

Michael C. Sanders
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2021AP942-CR State of Wisconsin v. Frank C. Schiller (L.C. #2017CF958)

Before Neubauer, Grogan and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Frank C. Schiller appeals from a judgment entered on his no-contest plea to one count of homicide by intoxicated use of a vehicle, second or subsequent offense, contrary to WIS. STAT. § 940.09(1)(a) (2019-20).[1] Schiller contends the police violated his Fourth Amendment[2] rights when they entered his hospital emergency room and that, based on that violation, the circuit court should have granted his motion to suppress. However, he concedes that this court is bound to follow existing precedent—namely, ***State v. Thompson***, 222 Wis. 2d 179, 195, 585 N.W.2d

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

[2] U.S. CONST. amend. IV.

905 (Ct. App. 1998), which held that patients do not have a reasonable expectation of privacy in a hospital emergency room, and police gathering evidence in an emergency room does not constitute a Fourth Amendment search. Schiller acknowledges that he raises this issue simply to preserve it for supreme court review. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Because the law does not warrant suppression based on ***Thompson***, the circuit court did not err, and we affirm.

The State charged Schiller with sixteen crimes, including: (1) homicide by intoxicated use of a vehicle as a second or subsequent offense; (2) four counts of OWI causing injury as a second or subsequent offense; (3) OWI as a fifth or sixth offense; and (4) four counts of felony bail jumping.[3] The charges all stemmed from Schiller crashing his car into a van that had pulled over on the freeway because the van had a flat tire. The van belonged to two of the victims, whose four children were inside of it when Schiller crashed into it. Schiller also ran over another man, Peter Enns, who had stopped to help change the van's tire and was trying to remove the van's spare when Schiller hit him. Enns died.

Schiller was transported to the hospital. During that transport, police learned that Schiller had four prior OWI offenses and that he was prohibited from driving with a blood alcohol concentration (BAC) above .02. Police entered Schiller's room in the emergency area at the hospital to ask him questions about the accident. The officers smelled alcohol coming from Schiller and then arrested him for OWI. When Schiller refused to consent to a blood test, police

[3] The remaining charges were similar in nature but were based on operating with a prohibited alcohol content as opposed to operating while intoxicated.

obtained a search warrant. Schiller's blood drawn pursuant to the warrant showed a BAC of .147.

After the State charged Schiller, he moved to suppress the blood test result on the basis that the police violated his Fourth Amendment rights. The circuit court denied the motion. Schiller then entered into a plea bargain where he agreed to plead no contest to the homicide count, and all the other counts would be dismissed and read in or dismissed outright. The circuit court accepted Schiller's plea and imposed sentence. Schiller now appeals.

Schiller's only issue on appeal is whether the police violated his Fourth Amendment rights when they entered his hospital room without his permission or a warrant. As noted, Schiller concedes that we must affirm based on the binding precedent set forth in ***Thompson*** that forecloses Schiller's claim that he had a reasonable expectation of privacy while in the emergency room at the hospital. ***Thompson*** held that a patient "had no reasonable expectation of privacy in the hospital emergency room," and therefore "the officer's collection of evidence in these areas did not constitute a search within the meaning of the Fourth Amendment." ***Thompson***, 222 Wis. 2d at 195.

Thompson controls here. Pursuant to ***Thompson***, the police did not need permission or a warrant to talk to Schiller while he was in the emergency room because he did not have a reasonable expectation of privacy while he was there. *See* ***id.*** Thus, the police did not violate the Fourth Amendment when they entered his room to ask him questions about the accident, and the circuit court correctly denied his motion seeking suppression.

Schiller asserts ***Thompson*** is wrong and that patients' privacy rights while at the hospital should be recognized and constitutionally protected. We, however, are bound to apply

Thompson. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 190, 560 N.W.2d 246 (1997) ("[T]he court of appeals may not overrule, modify or withdraw language from a previously published decision of the court of appeals.").

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals