OBERLIN MUNICIPAL COURT
OBERLIN, OHIO

STATE OF OHIO
PLAINTIFF

CASE NO. 15TRC06432

VS.

KEVIN D. MEADOWS
DEFENDANT

ENTRY AND OPINION

April 20, 2016

Kevin D. Meadows filed a Motion to Suppress Evidence. Mr. Meadows lists five separate grounds in support of his Motion to Suppress Evidence. Prior to the hearing the parties stipulated that a portion of ground (3) and grounds (4) and (5) would be withdrawn leaving the following grounds as issues before the court:

(1) Mr. Meadows did not consent to the seizure of his blood sample, blood test results, urine sample, and/or urine results, and the blood draw did not comply with Ohio's implied consent statute
(2) The State of Ohio illegally searched and seized Mr. Meadows' blood sample, blood test results, urine sample, and/or urine tests results without a warrant
(3) The State of Ohio obtained Mr. Meadows' non-consensual and warrantless blood sample, blood test results, urine sample, urine test results, medical records, [and] medical laboratory test results in violation of the Fourth Amendment of the United States Constitution and Article I, Section 14 of the Ohio Constitution

[The portion of ground (3) that asked for suppression of testimonial evidence from doctors and/or staff was deemed moot by the prosecutor's representation that the State did not intend on introducing any testimonial evidence from doctors and/or staff]

The parties stipulated to the following facts:

- Mr. Meadows was involved in a single vehicle accident on December 12, 2015 in Penfield Township, Ohio.

- Mr. Meadows was the driver of the vehicle.

- The Ohio State Highway Patrol investigated the accident. Trooper Lister arrived at the scene approximately 20 minutes after being dispatched.

- Information received at the scene caused Trooper Lister to be suspicious that Mr. Meadows may have been operating the vehicle while impaired

- Mr. Meadows was being treated by EMTs and therefore was not placed under arrest.

- Mr. Meadows was not read the 2255 Form and was not asked to consent to a chemical test

- Mr. Meadows was life flight to Metro Medical Center in Cleveland, Ohio. Blood and urine samples were taken at Metro Medical Center

- Trooper Lister requested the results of blood and urine tests taken using Form OHP 2795 attached to Mr. Meadow's motion as Exhibit "B"

- Trooper Lister received the results of the tests without seeking a warrant

- There were no exigent circumstances

- Mr. Meadows did not consent to the seizure of his blood sample, blood test results, urine sample, and/or urine results, and the blood draw did not comply with Ohio's implied consent statute

Mr. Meadows is asking that the court to suppress the results of any tests obtained by the prosecution as a result of Trooper Lister's request. Mr. Meadows cites cases in support of his position including two cases decided by the 3rd District Court of Appeals in 2014, to wit:

- *State v Little*, 2014-Ohio-4871 (3rd Dist.), Appeal not Accepted for Review – See *State v Little*, 142 Ohio St.3d 1466, 2015-Ohio-1896
- *State v Clark*, 2014-Ohio-4873 (3rd Dist.)

Based in part because the Ohio Supreme Court did not accept the Little case for review the court agrees with the holding in these cases, to wit:

- An operation of a vehicle while under the influence of alcohol (OVI) suspect enjoys a reasonable expectation of privacy in his or her medical records that pertain to any test or the result of any test administered to the person to determine the presence or concentration of alcohol, a drug of abuse, or alcohol and a drug of abuse in the person's blood, breath, or urine at any time relevant to the criminal offense in question, which are stored securely in a hospital, and therefore, prior to obtaining such medical records a law enforcement officer must comply with the warrant requirement of the Fourth Amendment. U.S.C.A. Const.Amends. 4, 14; R.C. § 2317.02(B)(2)(a).
- Law enforcement officer's act of requesting and obtaining operation of a vehicle while under the influence of alcohol (OVI) suspect's medical tests without a warrant, violated his constitutional protection against unreasonable search and seizure, and therefore his motion to suppress was improperly denied, where tests had been previously properly performed by hospital, and no arrest, consent, hot pursuit, or probable cause and exigent circumstances existed. U.S.C.A. Const.Amend. 4; R.C. §§ 2317.02(B)(2)(a), 2317.022.

In addition, this court has ruled similarly in State v Goehring, Oberlin Municipal Court Case No.12TRC05043, decided January 24, 2013, a copy of which is attached to this Entry and Opinion.

Motion to Suppress is granted.

Pretrial is scheduled for the 10th day of May, 2016 at 2:15 P.M.

JUDGE

Copy to Attorney Apelis

Copy to Prosecutor

OBERLIN MUNICIPAL COURT
OBERLIN, OHIO

STATE OF OHIO
PLAINTIFF

CASE NO. 12TRC05043

VS.

JEFFREY B GOEHRING
DEFENDANT

OPINION

01-24-2013

There are two pending motions to suppress evidence. This Opinion addresses the Motion to Suppress Medical Records and to Declare Revised Code 2317.02 in part unconstitutional.

The parties stipulated to the facts set forth in Mr. Goehring's Memorandum in Support of the motion for purposes of the court's consideration of the issues in the motion. The facts are:

> Jeffrey Goehring was injured as a result of a motor vehicle accident on October 29, 2012. As a result of the accident, Mr. Goehring was treated by Amherst Township Fire and EMS, as well as Life Care EMS. He was later transported to Lorain Mercy Hospital for additional treatment. He appears to have been also treated by Cleveland Metro Health Center.
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> It appears, as well, that Trooper L.S. Deshuk requested that the Record Department of the Cleveland Metro Health Center provide to [said] trooper certain medical records possessed by said hospital related to the treatment of Mr. Goehring. Apparently said hospital has complied with said request, such that these medical records have been disclosed and are now in the possession of the prosecution.
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> [The prosecution attached to its response filed on January 23, 2013 a copy of what was represented to be the request by Trooper Deshuk referred to in Mr. Goehring's Memorandum. Although not made a stipulation the court has considered the attachment for the limited purpose of confirming that Trooper

Deshuk followed the statutory procedure for obtaining the test results]

Mr. Goehring is asking that the court declare R.C. 2317.02 unconstitutional and to suppress the results of any tests obtained by the prosecution as a result of Trooper Deshuk's request. Mr. Goehring's position is that he has an expectation of privacy in his medical records and that R.C. 2317.22 and R.C. 2317.022 are constitutionally deficient because there is no requirement in the statute that notice be given to the patient that a request is being made to obtain the information and no requirement that law enforcement provide a factual basis upon which the request is made to support a finding of reasonable and articulable suspicion. Mr. Goehring concludes that the statutory scheme permits a law enforcement officer to obtain medical records for anyone simply by certifying that law enforcement is officially investigating that person without the person ever knowing. Mr. Goehring calls the statutory scheme "ridiculous and clearly unconstitutional."

Whether the statutory scheme can be characterized as "ridiculous" is irrelevant. There are many laws with which citizens may disagree and object and even label "ridiculous." The court has no opinion on whether this is such a law. The issue of whether the statutory scheme is unconstitutional will be addressed.

The United States Supreme Court has held that "the reasonable expectation of privacy enjoyed by the typical patient undergoing diagnostic tests in a hospital is that the results of those tests will not be shared with nonmedical personnel without her consent." See *Ferguson v City of Charleston* (2001), 532 U.S. 67,78 The United States Supreme Court has noted the reason for this expectation of privacy is that an intrusion on that expectation may have adverse consequences because it may deter patients from receiving needed medical care. See *Whalen v. Roe*, 429 U.S. 589,599-600, 97 S. Ct. 869 (1977). In this case blood was taken from Mr. Goehring at the hospital [presumably] for diagnostic testing. Therefore, Mr. Goehring enjoyed a reasonable expectation of privacy in the results of those tests.

The cases cited by the prosecution are not inconsistent but do not apply to the facts of this case. *State v Meyers* 2001-Ohio-2282 does not hold that a person does not have a reasonable expectation of privacy that tests will not be shared with nonmedical personnel. The holding in that case is simply that blood testing in the course of independent medical treatment does not constitute state action and does not implicate the Fourth Amendment. This issue is not in dispute in this case. The issue in this case is whether the

results of a blood test taken during the course of medical treatment may be released to the State without complying with the Fourth Amendment. And *State v Desper* 2002-Ohio-7176 does not apply to the facts of this case either. *Desper* involved an administrative search. *Desper* cites Ferguson with approval at ¶18 for the proposition that the reasonable expectation of privacy enjoyed by the typical patient undergoing diagnostic tests in a hospital is that the results of those tests will not be shared with nonmedical personnel without her consent.

The court finds that Mr. Goehring had an expectation of privacy in the test results obtained while a patient.

Having found that Mr. Goehring had an expectation of privacy in the test results the court must now determine if his rights were violated and if so, what is the consequence of any violation. It is well-settled that warrantless searches are "per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions." *Coolidge v. New Hampshire* (1971), 403 U.S. 443, 454-455, 91 S.Ct. 2022, 2032, 29 L.Ed.2d 564; Katz v. United States (1967), 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576. The state has the burden of establishing the application of one of the exceptions to this rule designating warrantless searches as "per se unreasonable." *State v. Call* (1965), 8 Ohio App.2d 277, 220 N.E.2d 130; *State v. Person* (1973), 34 Ohio Misc. 97, 298 N.E.2d 922; *United States v. Jeffers* (1951), 342 U.S. 48, 51, 72 S.Ct. 93, 96 L.Ed. 59.

Trooper Deshuk of the Ohio State Highway Patrol followed the procedure set forth in R.C. 2317.22 and R.C. 2317.022 to obtain the blood test results. Mr. Goehring argues that the statute is unconstitutional because it has no procedural safeguards and permits law enforcement to obtain private medical records simply by alleging that an "official criminal investigation has begun" or a "criminal action or proceeding has commenced."

Statutes enacted in Ohio are presumed to be constitutional. See *State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas* (1967), 9 Ohio St.2d 159, 161-162, 224 N.E.2d 906. This presumption of constitutionality remains unless it is proven beyond a reasonable doubt that the legislation is clearly unconstitutional. See, *Roosevelt Properties Co. v. Kinney* (1984), 12 Ohio St.3d 7, 13, 12 OBR 6, 11, 465 N.E.2d 421, 427. See *State v. Williams* (2000), 88 Ohio St.3d 513, 728 N.E.2d 342.

The statute in this case permits the search or gathering of medical records without any requirement of reasonable suspicion or probable cause. This is not a holding that hospital staff needed to comply with Fourth Amendment principles to obtain the blood sample. The hospital was not

acting as an agent of law enforcement and therefore did not have to comply with Fourth Amendment principles when collecting the blood sample. But when law enforcement attempts to obtain test results or other medical information lawfully obtained in which a person has a legitimate expectation of privacy then law enforcement must comply with Fourth Amendment principles and no statute can trump the Fourth Amendment. See *In re U.S. for Orders (1) Authorizing Use of Pen Registers and Trap and Trace Devices* (2007) 515 F.Supp.2d 325.

The statute may comply with the Health Insurance Portability and Accountability Act (HIPAA). The regulations set forth in 45 C.F.R. §164.512(f)(1)(ii) provide that a hospital [covered entity] may disclose protected health information for a law enforcement purpose to a law enforcement official if certain conditions are met, as applicable:

> "(1) Permitted disclosures: Pursuant to process and as otherwise required by law. A covered entity may disclose protected health information:
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> (ii) In compliance with and as limited by the relevant requirements of:
> (A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
> (B) A grand jury subpoena; or
> (C) An administrative request, including an administrative subpoena or summons, a civil **or an authorized investigative demand**, or similar process authorized under law, provided that:
> (1) The information sought is relevant and material to a legitimate law enforcement inquiry;
> (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
> (3) De-identified information could not reasonably be used."

But the issue in this case is not whether the hospital complied with the law. The issue is when a law enforcement officer is permitted to obtain information for which a person has a privacy interest. In order to obtain information for which a person has a privacy interest the government must comply with the constitution. The statute in this case is clearly in contravention of the Fourth Amendment and therefore is unconstitutional to the extent that it requires a medical provider to release information gathered

or collected from a patient undergoing diagnostic tests without a warrant or some other recognized exception to the warrant requirement. The state has failed to cite any recognized exception.

The Motion to Suppress is granted.

Hearing on Additional Motion to Suppress Medical Records scheduled for March 5, 2013 at 3:00 P.M. is cancelled. Pretrial shall be held on March 5, 2013 at 3:00 P.M.

IT IS SO ORDERED.

JUDGE

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