[Cite as *State v. Ridenour*, 2010-Ohio-3373.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
MEIGS COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No: 09CA13
v.	:	
KEITH G. RIDENOUR,	:	**DECISION AND JUDGMENT ENTRY**
Defendant-Appellant.	:	File-stamped date: 7-14-10

APPEARANCES:

Charles H. Knight, Pomeroy, Ohio, for Appellant.

Colleen S. Williams, Meigs County Prosecutor, Pomeroy, Ohio, for Appellee.

Kline, J.:

{¶1} Keith G. Ridenour (hereinafter "Ridenour") appeals the judgment of the Meigs County Court of Common Pleas. The trial court denied Ridenour's motion to suppress evidence and, after a jury trial, found him guilty of (1) Improperly Handling Firearms in a Motor Vehicle and (2) Operating a Vehicle Under the Influence.

{¶2} Following Ridenour's involvement in a fatal traffic accident, a Meigs County Juvenile/Probate Court Judge (hereinafter the "Meigs County Judge") issued a search warrant to draw Ridenour's blood. Ridenour contends the search warrant is invalid because the blood draw actually took place in Gallia County, which is outside the territorial jurisdiction of the Meigs County Juvenile/Probate Court. For this reason, Ridenour argues that (1) his constitutional rights were violated and (2) the trial court

should have suppressed evidence related to the blood draw. We disagree. Although the state did not comply with Crim.R. 41, the search warrant was (1) supported by probable cause and (2) issued by a neutral and detached magistrate. As a result, the violation of Crim.R. 41 is merely technical in nature and does not require suppression of the blood-draw evidence. Accordingly, we overrule Ridenour's assignments of error and affirm the judgment of the trial court.

I.

{¶3} Ridenour was driving on State Route 248 in Meigs County, Ohio, when his 2007 GMC Sierra collided with Ken Riggs's 2001 Pontiac Bonneville. Riggs's son, Devon, died as a result of the accident.

{¶4} Ohio State troopers Nick Lunsford (hereinafter "Lunsford") and Robert Jacks (hereinafter "Jacks") responded to the accident scene. Both troopers observed that Ridenour may have been intoxicated, and Lunsford administered three field sobriety tests to Ridenour. After Ridenour exhibited signs of impairment in each test, Lunsford placed him under arrest.

{¶5} Shortly thereafter, Ridenour complained of possible injuries and was transported by EMTs to Holzer Medical Center, which is in Gallia County. Lunsford followed Ridenour's ambulance to Holzer Medical Center.

{¶6} Later that evening, Jacks obtained a search warrant from the Meigs County Judge. Jacks swore out an affidavit in support of the warrant. The affidavit states, in part, the following: "Affiant has had numerous occasions to observe persons under the influence of alcohol and/or drugs, and believes, and has good reason to believe, based upon his education, training, experience and personal observations, that Keith G.

Ridenour was under the influence of alcohol and/or drugs at the time of the crash. * * * Affiant did observe the said Keith G. Ridenour, having sustained physical injury, being transported by emergency squad from the scene of the crash and being taken to Holzer Medical Center in Gallipolis."

{¶7} Gallipolis is in *Gallia* County. Regardless, based on Jacks's affidavit, the *Meigs* County Judge issued a warrant for "[b]lood and urine specimens from the person of Keith G. Ridenour, through collection at the Holzer Medical Center, by a person trained, certified and duly qualified through their professional education and training, and that the same be submitted to the Ohio Highway Patrol Crime Lab for analysis and comparison[.]"

{¶8} At the Holzer Medical Center, Ridenour refused to submit to blood-alcohol testing. But after Jacks faxed the search warrant to Lunsford, the Holzer Medical Center staff obtained a blood sample (hereinafter the "blood draw") from Ridenour. Subsequent testing revealed that Ridenour had a blood-alcohol level of .176, which is well above the legal limit.

{¶9} A Meigs County Grand Jury returned the following five-count indictment against Ridenour: (1) Aggravated Vehicular Homicide, a third-degree felony, in violation of R.C. 2903.06(A)(2)(a); (2) Aggravated Vehicular Homicide, a second-degree felony, in violation of R.C. 2903.06(A)(1)(a); (3) Improperly Handling Firearms in a Motor Vehicle, a fourth-degree felony, in violation of R.C. 2923.16(D); (4) Operating a Vehicle Under the Influence, a first-degree misdemeanor, in violation of R.C. 4511.19(A)(1)(a); and (5) Operating a Vehicle Under the Influence, a first-degree misdemeanor, in violation of R.C. 4511.19(A)(1)(b).

{¶10} On March 9, 2009, Ridenour filed a motion to suppress the blood-draw evidence for a variety of reasons. Ridenour's initial motion does not specifically argue that the search warrant was invalid because the blood draw took place outside of Meigs County. Instead, the motion states merely that "[i]tems from the defendant's person and/or vehicle were obtained in violation of his right against unreasonable searches and seizures as set forth in the Fourth Amendment of the U.S. Constitution and Article I, Section 14 of the Ohio Constitution."

{¶11} On May 26, 2009, the trial court held a lengthy hearing on Ridenour's motion to suppress. Later, at a July 13, 2009 pre-trial hearing, Ridenour's attorney addressed the validity of the search warrant in light of the Meigs County Judge's territorial jurisdiction. And on July 14, 2009, Ridenour filed a memorandum that discusses the jurisdictional issue in greater depth.

{¶12} The trial court overruled Ridenour's motion to suppress, and, after a jury trial, Ridenour was found guilty of counts three (Improperly Handling Firearms in a Motor Vehicle) and five (Operating a Vehicle Under the Influence). Ridenour was found not guilty of counts one (Aggravated Vehicular Homicide), two (Aggravated Vehicular Homicide), and four (Operating a Vehicle Under the Influence).

{¶13} Ridenour appeals and asserts the following two assignments of error: I. "THE SEARCH WARRANT ISSUED BY THE MEIGS COUNTY JUVENILE AND PROBATE JUDGE VIOLATED DEFENDANT/APPELLANT RIDENOUR'S FOURTH AND FOURTEENTH [AMENDMENT] CONSTITUTIONAL RIGHTS UNDER THE UNITED STATES CONSTITUTION AND HIS OHIO CONSTITUTIONAL RIGHTS UNDER ARTICLE 1, SECTION 14 IN THAT THE MEIGS COUNTY PROBATE AND JUVENILE

JUDGE LACKED JURISDICTION TO ORDER A SEARCH OUTSIDE HIS TERRITORIAL JURISDICTION." And, II. "THE TRIAL COURT ERRED BY DENYING DEFENDANT'S MOTION TO SUPPRESS THE ILLEGAL SEARCH CONDUCTED BY OHIO STATE PATROL OF DEFENDANT/APPELLANT IN GALLIA COUNTY, OHIO BASED UPON A MEIGS COUNTY SEARCH WARRANT. SAID OVERRULING OF DEFENDANT'S MOTION TO SUPPRESS DENIED DEFENDANT/APPELLANT OF HIS IV, VI, AND XIV AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION AND HIS ARTICLE 1, SECTION 14 RIGHTS UNDER THE OHIO CONSTITUTION."

II.

{¶14} We will consider Ridenour's two assignments of error together because they are interrelated. Throughout both assignments of error, Ridenour essentially contends that the trial court should have suppressed evidence related to the blood draw at Holzer Medical Center.

{¶15} Appellate review of a decision on a motion to suppress evidence presents mixed questions of law and fact. See *State v. McNamara* (1997), 124 Ohio App.3d 706, 710, citing *United States v. Martinez* (C.A.11, 1992), 949 F.2d 1117, 1119. See, also, *State v. Hurst*, Washington App. No. 08CA43, 2009-Ohio-3127, at ¶57. At a suppression hearing, the trial court assumes the role of trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate witness credibility. See *State v. Carter*, 72 Ohio St.3d 545, 552, 1995-Ohio-104. A reviewing court must accept a trial court's factual findings if they are supported by some competent, credible evidence. *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594; *Hurst* at ¶57. The reviewing court

then applies the factual findings to the law regarding suppression of evidence. An appellate court reviews the trial court's application of the law de novo. *State v. Anderson* (1995), 100 Ohio App.3d 688, 691; *Hurst* at ¶57.

{¶16} Under both assignments of error, Ridenour notes that the Meigs County Judge issued the search warrant for the blood draw. However, the blood draw was performed at Holzer Medical Center, which is in Gallia County. Crim.R. 41(A) provides: "A search warrant authorized by this rule may be issued by a judge of a court of record to search and seize property *located within the court's territorial jurisdiction*, upon the request of a prosecuting attorney or a law enforcement officer." (Emphasis added.) As a result, Ridenour argues that the search warrant is invalid because Gallia County is outside the territorial jurisdiction of the Meigs County Juvenile/Probate Court.

A.

{¶17} Initially, the state contends that Ridenour did not properly raise this argument at the trial court level. Crim.R. 47 provides: "An application to the court for an order shall be by motion. A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority, and may also be supported by an affidavit." The state argues that, in the proceedings below, Ridenour did not raise his argument with the particularity required by Crim.R. 47.

{¶18} Here, we believe that Ridenour preserved his argument for appeal. It is true that Ridenour's March 9, 2009 Motion to Suppress does not specifically mention the territorial jurisdiction of the Meigs County Judge. However, Ridenour's counsel

specifically addressed the territorial-jurisdiction issue at the July 13, 2009 pre-trial hearing. The trial court judge replied to Ridenour's counsel by saying that Ridenour "can re-approach that [issue] at trial[.]" July 13, 2009 Transcript at 8. Furthermore, in his July 14, 2009 memorandum, Ridenour discussed the issue of territorial jurisdiction in even greater detail. Thus, it appears that (1) Ridenour raised this particular argument in the proceedings below and (2) the trial court judge considered the territorial-jurisdiction issue. Accordingly, we will address Ridenour's argument on appeal.

B.

{¶19} Ridenour argues that his constitutional rights were violated because the blood draw took place outside the territorial jurisdiction of the Meigs County Juvenile/Probate Court. The Tenth District Court of Appeals addressed a similar argument in *State v. Bowman*, Franklin App. No. 06AP-149, 2006-Ohio-6146. Because we agree with the analysis in *Bowman*, we quote from that opinion at length.

{¶20} "Search warrants are subject to both constitutional and statutory provisions. *State v. Wilmoth* (1986), 22 Ohio St.3d 251. In order to pass constitutional scrutiny, the search warrant must be based on probable cause and issued by a neutral and detached magistrate. *Johnson v. United States* (1948), 333 U.S. 10; *State v. Kinney*[], 83 Ohio St.3d 85[, 87, 1998-Ohio-425] (holding that the protections of Section 14, Article I, of the Ohio Constitution are co-extensive with those of the Fourth Amendment to the United States Constitution). Whether a particular search is unconstitutional depends on the specific facts of each case. *State v. Klemm* (1987), 41 Ohio App.3d 382, citing *State v. Robinson* (1979), 58 Ohio St.2d 478. 'Only searches that are unreasonable in a constitutional sense mandate the suppression of evidence' pursuant to the exclusionary

rule announced in *Mapp v. Ohio* (1961), 367 U.S. 643. *Klemm*, *supra*, at 383; *Kettering v. Hollen* (1980), 64 Ohio St.2d 232 (holding that the statutory violation did not require suppression of the evidence because the officer had probable cause to arrest the defendant)." *Bowman* at ¶10.

{¶21} Generally, a violation of Crim.R. 41 does not require the suppression of evidence "if the search and seizure was constitutionally sound." Id. at ¶12; see, also, *State v. Hardy* (Aug. 28, 1998), Montgomery App. No. 16964. The United States Supreme Court "has made clear 'that technical defects in a warrant do not call for or permit exclusion of what the search produces.'" *United States v. Anderson* (C.A.D.C.1988), 851 F.2d 384, 390, quoting *United States v. Hornick* (C.A.7, 1987), 815 F.2d 1156, 1158, in turn, citing *United States v. Leon* (1984), 468 U.S. 897. See, also, *State v. Palinkas*, Cuyahoga App. No. 86247, 2006-Ohio-2083, at ¶11. "If the error in the search warrant is not constitutional in nature, it is non-fundamental." *State v. Joiner*, Cuyahoga App. No. 81394, 2003-Ohio-3324, at ¶16, citing *Wilmoth* at 263; see, also, *Hardy*.

{¶22} In *Bowman*, a Columbus police officer obtained a search warrant from a Franklin County municipal court judge. The warrant was for DNA evidence from an inmate at the Pickaway County Correctional Institute, which is outside of Franklin County. *Bowman* at ¶5. After the officer executed the warrant at the Pickaway County Correctional Institute, the inmate was indicted for a previously unsolved crime. Id. at ¶6. The trial court denied the inmate's motion to suppress the DNA evidence, and the inmate was eventually convicted of attempted rape and kidnapping. Id. at ¶7. On

appeal, the inmate pointed to violations of Crim.R. 41 and R.C. 2933.21[1] and argued that the DNA evidence should have been suppressed because "the Franklin County Municipal Court lacked territorial jurisdiction to issue the warrant." *Bowman* at ¶8.

{¶23} The Tenth District Court of Appeals rejected the inmate's argument. The court found that the inmate did "not assert the court acted unconstitutionally in issuing the search warrant. Specifically, [the inmate did] not challenge the issuing court's determination of probable cause. Similarly, [the inmate did] not allege that the judge who issued the warrant was anything other than neutral and detached. Nor [did the inmate] suggest police misconduct, such as judge shopping, or contend that absent the warrant at issue, the search would not have occurred, for the warrant could have been obtained as easily from the Pickaway County Municipal Court and would have resulted in law enforcement's obtaining the same DNA evidence.

{¶24} "Rather [the inmate] contend[ed] a statutory violation occurred when the court issued the warrant. Although the relevant statutory provisions were violated, suppression is not required because no constitutional violation occurred." *Bowman at* ¶13-14, citing *Hardy*; *Wilmoth*.

{¶25} Although we agree with the analysis in *Bowman*, we have also considered two relevant opinions from the Second District Court of Appeals. That court analyzed the impact of Crim.R. 41 violations in *Hardy* and *State v. Jacob*, 185 Ohio App.3d 408, 2009-Ohio-7048. Indeed, the *Bowman* court relied on *Hardy*, a 1998 case. See *Bowman* at ¶14. In *Hardy*, the defendant argued that a "Dayton Municipal Court did not have territorial jurisdiction to issue a search warrant for [a] parcel because [the parcel]

[1] Pursuant to R.C. 2933.21, "[a] judge of a court of record may, *within his jurisdiction*, issue warrants[.]" (Emphasis added.)

had been seized in Miamisburg and transported into the Dayton city limits." *Hardy*. The Second District Court of Appeals agreed that the search warrant violated Crim.R. 41. However, in spite of the violation, "the search warrant was issued by a neutral and detached magistrate upon probable cause, was supported by an affidavit, and described the parcel with particularity. As such, it satisfied traditional Fourth Amendment standards[.]" *Hardy*.

{¶26} However, the more recent *Jacob* opinion calls the validity of *Hardy* into question. In *Jacob*, "a municipal judge in Ohio issued a warrant without probable cause by which a California police officer searched a California location." Id. at ¶23. The trial court relied on *Hardy* in denying the defendant's motion to suppress, but the Second District Court of Appeals reversed the trial court's decision. The *Jacob* majority quoted favorably from the concurring opinion in *Hardy*, wherein Judge Fain observed that "'a judge of a court of record in Ohio is not authorized by law to issue a search warrant outside of the judge's jurisdiction and can no more be considered a magistrate for Fourth Amendment purposes than anyone else lacking that authority – be that judge the finest jurist who can be found in a sister state or in a foreign country.'" Id. at ¶24, quoting *Hardy* (Fain, J., concurring). As such, the *Jacob* court stated that "a magistrate who acts beyond the scope of his authority ceases to act as a magistrate for Fourth Amendment purposes." *Jacob* at ¶24.

{¶27} Despite this strong language, the *Jacob* court did not explicitly overrule *Hardy*. Instead, *Jacob* seems to distinguish *Hardy* based on the search warrant in *Jacob* having crossed state lines. "In *Hardy* and *Wilmoth*, at least the court that issued the warrant, the court that had authority to issue it, and the law-enforcement officers

were all in Ohio, albeit in different legislatively created venues, and therefore, their actions were subject to Ohio law. Allowing one state's court to determine when property, residences, and residents of another state may be subject to search and seizure would trample the sovereignty of states to determine the procedures by which a warrant may be issued and executed and of their courts to determine the consequences of a failure to follow those laws." Id. at ¶25. As a result, the *Jacob* court's analysis of the jurisdictional issue concluded with the following statement: "Because the municipal court's lack of jurisdiction to issue a warrant for an out-of-state search was contrary to Ohio law and was a fundamental violation of Jacob's Fourth Amendment rights, the evidence obtained in the search of Jacob's California house should have been suppressed." Id. at ¶26.

{¶28} For the following reasons, we find the present case to be distinguishable from *Jacob*. In the present case, every matter related to the search warrant transpired under Ohio law. Meigs and Gallia are neighboring counties in the state of Ohio. Additionally, the officer who obtained the search warrant and the officer who executed the warrant are both members of the Ohio State Highway Patrol. Therefore, the present case does not raise the same extra-territorial concerns as *Jacob.* On the contrary, this case shares far more similarities with *Bowman*. Like Meigs and Gallia, Franklin and Pickaway are neighboring counties. Furthermore, in both *Bowman* and the present case, judges issued warrants for biological evidence from individuals who were in some form of custody (a prisoner in *Bowman*, a suspect under arrest here).

{¶29} Accordingly, we choose to follow *Bowman*. And for the reasons discussed in *Bowman*, we cannot find a constitutional violation in the present case. Here, Ridenour

does not argue that the search warrant was invalid for a lack of probable cause. On the contrary, more-than-adequate probable cause existed to support the warrant. Ridenour was involved in a fatal car crash, and, at the scene of the crash, he exhibited clear signs of intoxication. Further, Ridenour does not claim, nor does the evidence support, any of the following: (1) that the Meigs County Judge was anything less than neutral and detached, (2) that there was any type of police misconduct, or (3) that the blood draw occurred only because of the flawed warrant. Instead, Ridenour argues that the evidence should have been suppressed simply because the blood draw took place outside of the Meigs County Judge's territorial jurisdiction. This argument, by itself, does not rise to the level of a constitutional violation. As a result, we find that the violation of Crim.R. 41 is not constitutional in nature.

{¶30} Therefore, in the present case, we find a non-fundamental violation of Crim.R. 41. "'Non-fundamental' noncompliance with Rule 41 requires suppression only where: (1) there was 'prejudice' in the sense that the search might not have occurred or would not have been so abrasive if the Rule had been followed, or (2) there is evidence of intentional and deliberate disregard of a provision in the Rule." *Wilmoth* at 263 (internal quotations omitted). Because Ridenour bases his argument solely on the jurisdiction of the Meigs County Judge, he does not argue that either prong of the non-fundamental-violation test applies. Nevertheless, we have reviewed the record, and there is no evidence that the state's technical violation of Crim.R. 41 requires suppression of the blood-draw evidence.

{¶31} Moreover, regarding the non-fundamental violation of Crim.R. 41, we note the United States Supreme Court's decision in *Schmerber v. California* (1966), 384 U.S.

757. *Schmerber* involved a defendant suspected of drunk driving. The defendant was arrested at a hospital after an automobile accident. A police officer requested a sample for blood-alcohol testing, but the defendant refused. Despite the defendant's objection, the police officer directed a physician to take a blood sample from the defendant. Subsequent testing revealed that the defendant's blood-alcohol level was above the legal limit. The defendant moved to suppress the blood-alcohol evidence, in part, because (1) he did not consent to the search and (2) the police officer did not obtain a search warrant for the blood draw. After the trial court denied the defendant's motion to suppress, the defendant was found guilty of driving an automobile while under the influence of intoxicating liquor. Id. at 758. The United States Supreme Court affirmed the conviction and found that, "in a case such as this, where time had to be taken to bring the accused to a hospital and to investigate the scene of the accident, there was no time to seek out a magistrate and secure a warrant. Given these special facts, we conclude that the attempt to secure evidence of blood-alcohol content in this case was an appropriate incident to petitioner's arrest." Id. at 770-71. As such, the officer in *Schmerber* did not need a warrant for the blood draw.

{¶32} Unlike *Schmerber*, the troopers in the present case obtained and executed a search warrant. As such, our resolution of the present case focuses on the violation of Crim.R. 41, not the "exigent circumstances" exception to the search-warrant requirement. *See State v. Hoover*, 123 Ohio St.3d 418, 2009-Ohio-4993 at ¶23 (citing *Schmerber* for the proposition that "exigent circumstances justify the warrantless seizure of a blood sample in DUI cases"). Nevertheless, in the present case, *Schmerber* is relevant as to whether the non-fundamental violation of Crim.R 41

requires suppression of the blood-draw evidence. We recognize the *Schmerber* Court expressly limited its holding to the facts of that case. See *Schmerber* at 772. However, in all cases of driving under the influence of alcohol, any delay in obtaining a blood sample "threaten[s] the destruction of evidence [because] the percentage of alcohol in the blood begins to diminish shortly after drinking stops[.]" Id. at 770 (internal quotation omitted). Furthermore, aside from the troopers obtaining a warrant, the facts in the present case are remarkably similar to the facts in *Schmerber*. Therefore, we believe the principles of *Schmerber* apply to the facts here. In the present case, the troopers and the Meigs County Judge were racing against the clock, and their actions should be viewed in light of those time constraints. Because there is no evidence that either prong of the non-fundamental-violation test applies, we believe the reasoning of *Schmerber* further excuses the technical violation of Crim.R 41.

{¶33} Accordingly, for the foregoing reasons, we find that the state's noncompliance with Crim.R. 41 did not violate Ridenour's Fourth Amendment rights. Instead, we find a non-fundamental violation of Crim.R. 41 that does not require suppression of the blood-draw evidence. Therefore, we overrule Ridenour's first and second assignments of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED. Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Meigs County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Harsha, J. and Abele, J.: Concur in Judgment and Opinion.

For the Court

BY:_____
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.