[Cite as *State v. Bloomfield*, 2015-Ohio-1082.]

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

STATE OF OHIO,	:	Case No. 14CA3
Plaintiff-Appellee,	:	
v.	:	DECISION AND JUDGMENT ENTRY
NATHAN J. BLOOMFIELD,	:	
Defendant-Appellant.	:	**RELEASED: 03/10/2015**

APPEARANCES:

Gene Meadows, Portsmouth, Ohio, for appellant.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and W. Mack Anderson, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

Harsha, J.

{¶1} Nathan Bloomfield is alleged to be the driver of a vehicle that crashed, killing its other occupant. After a Lawrence County grand jury indicted Bloomfield for aggravated vehicular homicide, he filed a motion to suppress the results of a blood-alcohol test. The trial court denied the motion and the case proceeded to a jury trial, which resulted in a guilty verdict.

{¶2} Bloomfield challenges the trial court's denial of his motion to suppress, asserting that the results of his blood-sample analysis are inadmissible because the sample was not collected under a valid search warrant as required by various constitutional and statutory provisions. Medical personnel in a Kentucky hospital, where he had been transported for treatment after the accident, withdrew his blood sample. The Fourth Amendment protection against unreasonable searches and seizures regulates conduct by government officials, not private persons. Because a private

hospital took his blood sample for purposes of his medical treatment, rather than at the direction of government officials, we reject Bloomfield's constitutional arguments. And because he was unconscious and the trooper had probable cause to believe that he operated the motor vehicle while intoxicated, Bloomfield impliedly consented to the blood test pursuant to R.C. 4511.191(A)(4).

{¶3} Next Bloomfield contends that the results of his blood-alcohol test were inadmissible because the sample was not withdrawn, maintained, and analyzed in accordance with Ohio Adm.Code Chapter 3701-53. The evidence introduced at the suppression hearing negates this contention, as witnesses testified to the procedure used to collect, store, and transport the sample. Because the state established that the test was administered in substantial compliance with the administrative regulations, the test results were admissible.

{¶4} Finally, Bloomfield claims that the Ohio State Highway Patrol lacked jurisdiction to seize his blood sample in Kentucky. However, regardless of where the state got the sample, the state's act of obtaining the blood sample taken by a private entity did not implicate any federal or state constitutional rights.

I. FACTS

{¶5} While traveling in Lawrence County, Ohio Nathan Bloomfield was involved in a one-vehicle accident that threw him from the vehicle and rendered him unconscious. John Markel, who was also ejected from the vehicle, died at the scene. Emergency medical personnel transported Bloomfield by ambulance to Kings' Daughters Medical Center in Ashland, Kentucky, where the hospital drew his blood as a standard protocol for his medical treatment. Because witnesses at the scene indicated

that Bloomfield smelled of alcohol and that he had been driving the car, an Ohio State Highway Patrol trooper obtained a subpoena for his blood sample 3 days after the accident. The trooper retrieved the sample from the hospital and mailed it to the Ohio State Highway Patrol Crime Lab, which determined it contained 0.146 grams by weight of alcohol per one milliliters of whole blood.

{¶6} A Lawrence County grand jury indicted Bloomfield on one count of aggravated vehicular homicide in violation of R.C. 2903.06(A)(1). Ultimately, he filed a motion to suppress the blood-alcohol test result, raising two separate grounds for the motion. First he challenged the withdrawal of his blood, claiming that it was not justified because it occurred without a warrant and without his consent, either express, or implied pursuant to the statute; and he challenged the Ohio Highway Patrol's seizure of the blood sample in Kentucky. Second he claimed that his blood sample was not withdrawn, maintained, and analyzed in accordance with Ohio Adm.Code Chapter 3701-53.

A. Focus of the First Hearing – Legal Arguments

{¶7} The trial court bifurcated the suppression motion and initially heard legal arguments on Bloomfield's first arguments. During that hearing Bloomfield's counsel emphasized that he was challenging the validity of the taking of his blood sample in the Kentucky hospital, the validity of the state's subsequent seizure of the blood sample pursuant to the subpoena, and the applicability of the Ohio implied consent statute. He specifically acknowledged he was not challenging the constitutionality of that statute.

{¶8} The trial court issued a decision overruling the first portion of Bloomfield's suppression motion. The court ruled that the withdrawal of blood in Kentucky did not

violate any constitutional or statutory provision because it was collected by hospital personnel, was warranted by the Ohio implied-consent statute, and "nothing in [the statutes] indicates that the drawing of blood would be limited to the County in which the accident occurred or the State in which the accident occurred, when exigent circumstances require the immediate transfer of the Defendant to different medical facilities, which may be in an immediate and adjoining State."

B. The Evidence – Factual Arguments

{¶9} At the subsequent evidentiary hearing on compliance with the administrative code, Ohio State Highway Patrol Trooper Laura Harvey testified she responded to a call of an accident at 5:56 p.m. on June 29, 2012 on State Route 93 in Lawrence County. Trooper Harvey arrived at the scene at 6:16 p.m. and observed Bloomfield, who was unconscious and bleeding extensively from his head, on the side of the road. About that time a severe storm hit the area, scattering tree limbs onto the roadways, and knocking out power to much of the area, including the patrol's dispatch communication center. Because of the weather and debris, Bloomfield went by ambulance to King's Daughters Medical Center in Ashland, Kentucky to treat his head trauma. When the emergency medical technicians placed Bloomfield in the ambulance, one of them noted that he reeked of alcohol. The officers found the vehicle's other occupant's dead body later under some tree limbs and branches about ten feet from the crash site. A nurse who showed up at the crash site told the trooper that she had seen the car go by and John Markel was in the passenger seat. Based on this statement and the fact that the car was Bloomfield's, Trooper Harvey concluded that Bloomfield had been driving the car when it crashed.

{¶10} Consistent with the hospital's routine protocols (without any direction from law enforcement officers) certified phlebotomist Chrissa Evans drew samples of Bloomfield's blood at 7:20 p.m. on June 29, 2012. According to Shawn Boggs, the hospital's director of laboratory services, protocol included using a non-alcoholic antiseptic preparation pad on the patient's skin, drawing blood with a sterile needle into a vacuum sealed tube, labeling the tubes with the patient's identification, and refrigerating the samples for storage. Evans confirmed that she followed the hospital's rules and regulations for drawing blood samples for alcohol testing when she drew Bloomfield's blood. Evans used the non-alcoholic antiseptic pad to prepare Bloomfield's skin and then drew the blood samples, attaching a sticker containing Bloomfield's identification, the date and time of collection, and her initials to the samples.

{¶11} Trooper Harvey investigated the crash and continued to interview witnesses. She could not follow the ambulance transporting Bloomfield to the Kentucky hospital because patrol was short-staffed, they were still looking for Bloomfield's passenger, the storm had caused other crashes, including a car that had people trapped in it, and fallen debris had made the area unsafe. Upon concluding her investigation, Trooper Harvey sought and received a subpoena issued by the Lawrence County Prosecutor's Office to obtain the blood samples taken by the Kentucky hospital.[1]

{¶12} Three days after the accident Trooper Harvey went to the hospital and submitted the subpoena for the blood samples to the hospital's director of laboratory services. Boggs retrieved the samples from refrigeration and handed them to the trooper after 3:00 p.m. on that date. Trooper Harvey then transported the blood

[1] That subpoena does not appear in the record. Therefore, we cannot determine whether it was issued in conjunction with the grand jury's investigative power, which authorizes investigative power. *See* R.C. 2939.12 and 2939.27; Crim.R. 6 and 17.

samples back to her patrol post, where she packaged and mailed them to the Ohio State Highway Patrol Crime Laboratory at 8:00 p.m. that evening. During this delay the samples were in transit.

{¶13} Deanna Nielsen, the lab director of the alcohol-testing section of the Ohio State Highway Patrol Crime Laboratory, testified that the lab received the blood samples on July 6, 2012, that they were placed in a refrigerator, and that she tested one of the samples on July 11. Nielsen noted that the sample she tested contained a solid anticoagulant, and that both samples were refrigerated, sealed, and labeled. Nielsen tested the sample and determined that it contained 0.146 grams by weight of alcohol per one milliliters of whole blood. Nielsen testified that she complied with all the rules and regulations set forth in the Ohio Administrative Code concerning the lab's treatment, testing, and maintenance of Bloomfield's blood sample. Nielsen noticed no anomalies with the blood sample when she tested it; the labels on the tubes were in pristine condition when she took the samples out for testing.

{¶14} The trial court determined that the samples and procedures complied with Ohio law. Therefore, the trial court denied the remaining portion of Bloomfield's motion to suppress.

{¶15} The case proceeded to a jury trial, which resulted in a verdict finding Bloomfield guilty of aggravated vehicular homicide.

II. ASSIGNMENTS OF ERROR

{¶16} Bloomfield assigns the following errors for our review:

1. Results of defendant's blood sample analysis are inadmissible as law enforcement officials did not collect the blood sample in accordance with a valid search warrant as required under O.R.C. 4511.19(D)(1)(b), O.R.C. 4511.19(A)(2) [sic], O.R.C. 4511.19(A)(4) [sic], the Ohio

> Constitution and the Fourth Amendment of the United States Constitution's protection against unwarranted searches.
>
> 2. Results of defendant's blood test are inadmiss[i]ble as the sample was not withdrawn, maintained, and/or analyzed in accordance with Ohio Administrative Code [Chapter] 3701[-]53.
>
> 3. The State Highway Patrol lacked jurisdiction to collect the blood sample in the state of Kentucky thereby violating the defendant-appellant's constitutional rights to be free from unreasonable searches and seizures.

III. STANDARD OF REVIEW

{¶17} In his three assignments Bloomfield asserts that the trial court erred in denying his motion to suppress. In general, "appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Codeluppi*, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.3d 691, ¶ 7:

> "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. *State v. Mills* (1992), 62 Ohio St.3d 357, 366, 582 N.E.2d 972. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Fanning* (1982), 1 Ohio St.3d 19, 1 OBR 57, 437 N.E.2d 583. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard. *State v. McNamara* (1997), 124 Ohio App.3d 706, 707 N.E.2d 539."

Id. quoting *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8.

{¶18} In ruling on the merits of an appeal, our review is limited to the assignments of error presented in the brief. Although we must consider arguments in support of these formal assignments of error, we need not address arguments that are not relevant to the assignments of error or that attempt to raise additional errors. *State v. Harlow,* 4th Dist. Washington No. 1329, 2014-Ohio-864, ¶ 10, and cases cited there

("Appellate courts review assignments of error – we sustain or overrule assignments of error and not mere arguments"). Our analysis in this appeal follows that framework.

IV. LAW AND ANALYSIS

A. Fourth Amendment Search by Private Entity

{¶19} In his first assignment of error Bloomfield asserts that his blood-alcohol test should have been suppressed because it was not collected under a valid search warrant as required by the United States and Ohio Constitutions.

{¶20} "The Fourth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 14, prohibit unreasonable searches and seizures." *State v. Emerson*, 134 Ohio St.3d 191, 2012-Ohio-5047, 981 N.E.2d 787, ¶ 15. The constitutional provisions contain nearly identical language and have been interpreted to afford the same protection. *State v. Hoffman*, __ Ohio St.3d __, 2014-Ohio-4795, __ N.E.3d __, ¶ 11.

{¶21} The Fourth Amendment protects against two types of unreasonable intrusions: 1) searches, which occur when an expectation of privacy that society is prepared to consider reasonable is infringed upon and 2) seizures, which occur when there is some meaningful interference with an individual's liberty or possessory interest in property. *See State v. Jacobsen* 466 U.S. 109, 113, 104 S. Ct. 1652, 80 L.Ed.2d 85 (1984).

{¶22} "[S]earches and seizures conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576

(1967). "Once the defendant demonstrates that he was subjected to a warrantless search or seizure, the burden shifts to the state to establish that the warrantless search or seizure was constitutionally permissible." *State v. Johnson*, 4th Dist. Scioto No. 14CA3618, 2014-Ohio-5400, ¶ 13, citing *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, ¶ 98.

{¶23} Bloomfield's suppression motion challenged the drawing of his blood by hospital personnel in Kentucky. "The Fourth Amendment limits official government behavior; it does not regulate private conduct,"; "[c]ourts have regularly declined to exclude evidence when it is obtained by private persons." *See, generally,* Katz. Martin, Lipton, Giannelli, and Crocker, *Baldwins Ohio Practice Criminal Law*, Sections 3:1-3:4 (3d Ed.2014), Katz, *Ohio Arrest, Search & Seizure*, Section 28:14 (2014); *State v. Branch*, 2d Dist. Montgomery No. 22758, 2008-Ohio-6721, ¶ 28; *State v. Jedd*, 146 Ohio App.3d 167, 171, 765 N.E.2d 880 (4th Dist. 2001). However, the Fourth Amendment does apply to searches and seizures where a private party acted as an instrument or agent of the government, *see State ex rel. Ohio AFL-CIO v. Ohio Bur. of Workers' Comp.*, 97 Ohio St.3d 504, 2002-Ohio-6717, 780 N.E.2d 981, ¶ 13. In that instance, the burden is on the defendant to show that state involvement transformed a private search into state action. Katz, *Ohio Arrest, Search & Seizure*, at Section 28:14.

{¶24} Here there is no evidence that the hospital acted as an agent of the state when it withdrew blood samples from Bloomfield after he arrived in the emergency room for treatment; rather, the hospital followed its normal protocol for diagnosing and treating severe trauma. The constitutional prohibition against unreasonable searches and seizures does not apply to a private search like the withdrawal of blood for medical

purposes by medical personnel. *See* Katz, Martin, Lipton, Giannelli, and Crocker, *Baldwin's Ohio Practice Criminal Law*, Section 17:3 (3d Ed.2014), citing *People v. Perlos*, 436 Mich. 305, 462 N.W.2d 310 (1990). Because searches by private entities are not prohibited by the Fourth Amendment, there was no constitutional violation of Bloomfield's rights when the hospital employees routinely collected his blood sample without any direction from state officials. *See, generally,* Katz, Martin, Lipton, Giannelli, and Crocker, *Baldwin's Ohio Practice Criminal Law*, at Section 3:2 ("searches by private citizens are not prohibited by the [Fourth] Amendment"). Regardless of whether that intrusion was reasonable or unreasonable, it did not violate the Fourth Amendment (or the Ohio Constitution) because of its private nature. *Jacobson, 466 U.S. at 144-155, 104 S.Ct. 1652, 80 L.Ed.2d 85*.

B. Statutory Warrant Requirement and Implied Consent

{¶25} Bloomfield also contends the results of the analysis of his blood sample are inadmissible under R.C. 4511.19(D)(1)(b), 4511.191(A)(2) and (4).[2]

{¶26} R.C. 4511.19(D)(1)(b) provides that "[i]n any criminal prosecution * * * for a violation of division (A) or (B) of this section or for an equivalent offense that is vehicle-related, * * * "[t]he court may admit evidence on the concentration of alcohol * * * when a person submits to a blood * * * test at the request of a law enforcement officer under section 4511.191 of the Revised Code or a blood * * * sample is obtained pursuant to a search warrant." A criminal prosecution for aggravated vehicular homicide under R.C. 2903.06 is a prosecution for an "equivalent offense" as defined in R.C. 4511.181(A)(4).

[2] In his assignment of error, Bloomfield mistakenly refers to R.C. 4511.191(A)(2) and (4) as R.C. 4511.19(A)(2) and (4).

{¶27} Under Ohio's implied-consent statute, R.C. 4511.191, "[a]ny person who operates a vehicle * * * upon a highway * * * shall be deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, * * * to determine the alcohol * * * content of the person's whole blood, blood serum or plasma * * * if arrested for a violation of division (A) or (B) of section 4511.19 of the Revised Code, section 4511.194 of the Revised Code, section 4511.194 of the Revised Code or a substantially equivalent municipal ordinance, or a municipal OVI ordinance." R.C. 4511.191(A)(2). R.C. 4511.191(A)(4) further specifies that "[a]ny person who is dead or unconscious, or who otherwise is in a condition rendering the person incapable of refusal, shall be deemed to have consented as provided in division (A)(2) of this section, and the test or tests may be administered subject to sections 313.12 to 313.16 of the Revised Code." " 'R.C. 4511.191 * * * was enacted to protect innocent motorists and pedestrians from injury and death caused by irresponsible acts of unsafe drivers on Ohio streets and highways. The broad purpose of the implied-consent statute is to clear the highways of and to protect the public from unsafe drivers.' " *State v. Uskert*, 85 Ohio St.3d 593, 598, 709 N.E.2d 1200 (1999), quoting *Hoban v. Rice*, 25 Ohio St.2d 111, 114, 54 O.O.2d 254, 256, 267 N.E.2d 311, 314 (1971). Bloomfield claims the trial court should have suppressed his blood-alcohol test because: 1) no search warrant authorized the blood draw, and 2) the implied consent statute does not apply because he was never arrested before the sample was drawn and it was "impossible to ascertain which of the two occupants was actually operating the vehicle at the time of the crash."

{¶28} However, Bloomfield is mistaken. The trial court determined that the state's subsequent seizure of the blood sample was warranted by R.C. 4511.191(A)(4),

which is not subject to a constitutional challenge here. But Bloomfield does contest the application of the implied consent statute.

{¶29} One of the well-delineated exceptions to the general prohibition against a warrantless search occurs when the person consents to the search. *State v. Ossege*, 2014-Ohio-3186, 17 N.E.3d 30, ¶ 13 (12th Dist.); *State v. Morris*, 42 Ohio St.3d 307, 318, 329 N.E.2d 85 (1975).

{¶30} R.C. 4511.191(A)(4) specifically deems an unconscious or incapacitated person to have consented to a blood test if there is probable cause to believe that the person has been operating a motor vehicle while intoxicated. *See, generally,* Weiler and Weiler, *Ohio Driving Under the Influence Law*, Section 8:6 (2014 Ed.); *State v. Troyer*, 9th Dist. Wayne No. 02-CA-0022, 2003-Ohio-536, ¶ 26 ("the Fourth Amendment does not require an arrest before a blood sample may be taken from an unconscious driver believed to have been driving under the influence of alcohol"); *State v. Taylor*, 2 Ohio App.3d 394, 395, 442 N.E.2d 491 (12th Dist.1982) ("We read [former] R.C. 4511.191(B) [now R.C. 4511.191(A)(4)] to authorize the withdrawal of blood from an unconscious individual by an officer who has reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways of this state while under the influence of alcohol, whether or not the unconscious person is actually placed under arrest"). This typically occurs when the person has been involved in a serious accident and is unconscious or unresponsive at the scene or shortly thereafter. Weiler and Weiler, *Ohio Driving Under the Influence Law* at Section 8:6.

{¶31} Here, the state did not physically obtain the blood sample from the hospital until 3 days after the accident. Thus it would seem it would have been simple

for the state to obtain a warrant and comply with R.C. 4511.19(D)(1)(b). Yet, the evidence is clear that Bloomfield remained incapacitated and incapable of providing express consent to providing the state with the blood sample. In fact, the trial court deemed Bloomfield incompetent to stand trial in entries in December 2012, January 2013, and February 2013, and did not find him competent to stand trial until March 2013.

{¶32} We turn now to whether there was probable cause to believe Bloomfield was operating a motor vehicle while intoxicated. The evidence at the suppression hearing included Trooper Harvey's testimony that shortly after she arrived at the crash site, she heard from witnesses that Bloomfield smelled of alcohol when he was placed in the ambulance, that the car involved in the crash was Bloomfield's, and that the dead person was a passenger in the car. This provided probable cause for the trooper to believe that Bloomfield had operated his car while under the influence of alcohol. Therefore, an arrest was not necessary before law enforcement could obtain Bloomfield's blood sample for testing. *See Troyer* and *Taylor*.

{¶33} The record refutes Bloomfield's claims that his blood-alcohol test should be suppressed because of the inapplicability of the implied-consent statute provision or a violation of the constitutional prohibition against unreasonable searches and seizures. We overrule his first assignment of error.

C. Compliance with ODH Regulations

{¶34} In his second assignment of error Bloomfield contends that his blood-alcohol test is inadmissible because the state failed to establish that his blood was withdrawn, maintained, and analyzed in accordance with the regulations promulgated

by the Ohio Director of Health ("ODH") in Ohio Adm.Code Chapter 3701-53. As he did in his suppression motion, Bloomfield simply lists most of the applicable regulations that he claims that the state failed to satisfy, but includes only a sparse amount of specific argument.

{¶35} R.C. 4511.19(D)(1)(b) provides for the admission of evidence on the concentration of alcohol in the defendant's blood in a prosecution for aggravated vehicular homicide premised on a violation of R.C. 4511.19(A), driving while intoxicated. The state must have the blood analyzed in accordance with methods approved by the ODH. R.C. 4511.19(D)(1)(b). A burden-shifting procedure governs the admissibility of alcohol-test results. *See State v. Mullins*, 4th Dist. Ross No. 12CA3350, 2013-Ohio-2688, ¶ 8, citing *Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, at ¶ 24. "The defendant must first challenge the validity of the alcohol test by way of a pretrial motion to suppress * * *." *Id.* Then, "the state has the burden to show that the test was administered in substantial compliance with the regulations prescribed by the Director of Health." *Id.* If the state satisfies this burden, thereby creating a presumption of admissibility, the burden "then shifts to the defendant by demonstrating that he was prejudiced by anything less than strict compliance." *Id.* Only errors that are "clearly de minimis" or "minor procedural deviations" can be excused under the substantial-compliance standard. *Id.* at ¶ 34; *State v. Mayl*, 106 Ohio St.3d 207, 2005-Ohio-4629, 833 N.E.2d 1216, ¶ 49.

{¶36} Bloomfield challenged the validity of the blood-alcohol test, so the state had the burden to establish that the test was administered in substantial compliance with the ODH regulations. Bloomfield claims that there is no evidence that his blood

was drawn in accordance with Ohio Adm.Code Chapter 3701-53 because his samples were drawn outside Ohio.

{¶37} "The blood-testing procedure in Ohio Adm.Code 3701–53–05 * * * requires the state to (1) use an aqueous solution of a nonvolatile antiseptic on the skin, (2) use a sterile dry needle to draw blood into a vacuum container with a solid anticoagulant, (3) seal the blood container in accordance with the appropriate procedure, and (4) refrigerate the blood specimen when it is not in transit or under examination. The purpose of these regulations is to ensure the accuracy of the alcohol-test results." *Burnside* at ¶ 21. The testimony of the state's witnesses—Trooper Harvey, certified phlebotomist Evans, hospital law director Boggs, and Ohio State Highway Patrol Crime Laboratory Alcohol-Testing Director Nielsen—established substantial compliance with these requirements. However, Bloomfield failed to demonstrate that he was prejudiced by anything less than strict compliance.

{¶38} The state also established substantial compliance with the testing requirements. Nielsen testified that she complied with the pertinent ODH regulations.

{¶39} Bloomfield points to a discrepancy in the times for the blood draw and the release of the sample by the hospital in the state's property control form, when comparing it to his hospital and emergency medical records. However, any deviation merely went to the weight of the evidence, not its admissibility, as he does not cite any specific ODH regulation that would trump the rules of evidence. Therefore, the trial court did not err in denying Bloomfield's motion to suppress. We overrule Bloomfield's second assignment of error.

D. Jurisdiction to Seize Blood Sample

{¶40} In his third assignment of error Bloomfield asserts that the Ohio State Highway Patrol lacked jurisdiction to seize a blood sample collected in Kentucky, thereby violating his constitutional right to be free from unreasonable searches and seizures. We reject this argument for several reasons.

{¶41} First, as we previously noted, the withdrawal of his blood by hospital personnel for medical purposes did not violate either his constitutional or statutory rights. Katz, Martin, Lipton, Giannelli, and Crocker, *Baldwin's Ohio Practice Criminal Law*, at Section 17:3. And once the hospital frustrated Bloomfield's expectation of privacy, there is nothing improper or unreasonable about the government's right to seize the evidence it obtained from a private party. *State v. Belacastro,* 8th Dist. Cuyahoga No. 77443, 2002-Ohio-2556, ¶ 7, citing *Walter v. U.S.*, 447 U.S. 649, 656, 100 S.Ct. 2395, 65 L.Ed.2d 410 (1980). In other words, the mere fact that the state subsequently obtained the blood drawn by Kentucky hospital employees does not transform constitutionally unprotected private conduct into the constitutional arena of the Fourth Amendment. *But see State v. Funk*, 177 Ohio App.3d 814, 2008-Ohio-4086, 896 N.E.2d 203 (4th Dist.).

{¶42} Second, as both the trial court and we previously found, under R.C. 4511.191(A)(4) Bloomfield consented to the state's seizure and chemical test of his blood. The accident occurred in Ohio. The fact that the blood sample was located in Kentucky does not render that consent inapplicable. That statute does not include any prohibition against its application in an adjoining state when exigent circumstances—here the proximity of a hospital that could treat Bloomfield's head trauma—required the transportation of the crash victim to a hospital in another state. Our decision in *Funk* is

inapposite because it involved a defendant who had not consented to the state's seizure and subsequent testing of a urine sample. That case did not involve the application of the implied-consent statute.

{¶43} Third, Bloomfield did not attack the validity of the implied-consent statute; he did not specifically assert an independent constitutional claim. We thus need not decide his unsupported contention based on an unraised constitutional issue. *See Freshwater v. Mt. Vernon City School Dist. Bd. of Edn.*, 137 Ohio St.3d 469, 2013-Ohio-5000, 1 N.E.3d 335, quoting *State ex rel. Essig v. Blackwell*, 103 Ohio St.3d 481, 2004-Ohio-5586, 817 N.E.2d 5, ¶ 34 (" 'Courts decide constitutional issues only when absolutely necessary' ").

{¶44} Finally, contrary to App.R. 16(A)(7); *Miller v. Miller*, 4th Dist. Athens No. 14CA6, 2014-Ohio-5127, ¶ 37, Bloomfield cites no authority for his proposition that "[a] search conducted outside the jurisdictional territory of the Ohio State Highway Patrol without the assistance of an officer having jurisdiction for the geographical area in which the search is conducted is per se unreasonable thus requiring the suppressing of all evidence so collected." Nonetheless, the premise of Bloomfield's claim is erroneous because the state trooper's acquisition of the blood sample did not amount to an invasion of a reasonable expectation of privacy in light of the hospital's actions. *See Jacobsen*, 466 U.S. 109, 120-121, 104 S.Ct. 1652, 80 L.Ed.2d 1652. We overrule Bloomfield's third assignment of error.

V. CONCLUSION

{¶45} After accepting the trial court's findings of fact, which are supported by competent, credible evidence, we have independently determined as a matter of law

that the trial court properly denied Bloomfield's motion to suppress. The trial court did not err in ruling that the blood-alcohol test result was admissible. Accordingly, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Hoover, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, 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.