

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-12-061

Appellee

Trial Court No. 12 TRC 03445

v.

Steven B. Vargas

DECISION AND JUDGMENT

Appellant

Decided: June 28, 2013

* * * * *

Matthew L. Reger, City of Bowling Green Prosecuting
Attorney, for appellee.

George C. Rogers, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Bowling Green Municipal Court that found appellant guilty of a violation of R.C. 4511.19(A)(1)(b) after a no contest plea. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} On May 10, 2012, appellant Steven Vargas was issued a traffic citation for a violation of R.C. 4511.19(A)(1)(a), operating a motor vehicle under the influence of alcohol, and for a violation of R.C. 4549.08, fictitious plates. When appellant failed to meet several criteria of the field sobriety test and refused a breathalyzer test, he was issued an administrative license suspension. The arresting officer then applied for and received a search warrant for a blood draw. Appellant was transported to the Wood County Hospital where the officer gave the laboratory employee a copy of the warrant and a blood kit. The lab employee drew a blood sample from appellant, initialed the sample tube, signed the chain of custody card and gave the sample to the officer.

Appellant was arraigned and entered a not guilty plea. On August 23, 2012, he filed a motion to suppress the results of the blood test on the grounds the blood sample was not drawn by a qualified person. A suppression hearing was held on September 20, 2012. The court denied the motion to suppress.

{¶ 3} On October 17, 2012, the state moved for an order amending the complaint to reflect a violation of R.C. of 4511.19(A)(1)(b). Appellant entered a plea of no contest to the amended violation, was found guilty and sentenced.

{¶ 4} Appellant sets forth the following assignment of error on appeal:

The trial court erred by denying Mr. Vargas' motion to suppress the results of the blood sample as the state failed to show substantial compliance with the applicable statute, regulations, and the specific warrant requirements, as required for a conviction under R.C. 4511.19(A)(1)(b).

{¶ 5} In relevant part, R.C. 4511.19(D)(1)(b) states that only a “physician, a registered nurse, or a qualified technician, chemist, or phlebotomist shall withdraw a blood sample” for the purpose of determining the alcohol or drug content. No evidence was presented that Renee Mabus is a physician, nurse, or chemist. Therefore, we must determine whether the trial court reasonably concluded that Mabus is a qualified technician or trained phlebotomist. Because Ohio does not certify phlebotomists, the question whether Mabus is a phlebotomist essentially is akin to whether she was a qualified technician.

{¶ 6} The gist of appellant’s argument on appeal is that the trial court, “by judicial decision,” added to the list of individuals authorized to draw blood in this scenario “any person with 20 years’ experience in blood draws.”

{¶ 7} At the suppression hearing, Mabus testified as to her experience in the medical field drawing blood in various situations and stated that in Ohio a phlebotomist may receive certification but is not required to in order to work in that field. Mabus testified that she received “on-the-job” phlebotomy training and has worked at the hospital 20 years.

{¶ 8} At the conclusion of the hearing, the trial court stated:

Well, Miss Mabus has testified previously in this court as well as testified too that she has 20 years’ experience working at Wood County Hospital drawing blood samples. She’s not a certified phlebotomist, she’s certainly a qualified technician working at a hospital removing blood

samples. * * * I'm going to allow the samples, the test results, be admitted at trial.

{¶ 9} Appellate review of a ruling on a motion to suppress presents a mixed question of law and fact. 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 witness credibility. *State v. Mills*, 62 Ohio St.3d 357, 366, 582 N.E.2d 972 (1992). A disputed motion to suppress judgment supported by competent, credible evidence must not be disturbed. *State v. Fanning*, 1 Ohio St.2d 19, 437 N.E.2d 583 (1982).

{¶ 10} The trial court noted the decision in *State v. Bruce*, 2d Dist. No. 22612, 2008-Ohio-5514, wherein the appellant argued that the state had failed to establish the qualification of the person who drew his blood following his arrest for operating a vehicle while under the influence. After hearing testimony from the nurse who drew the blood, the court in *Bruce* found that three years of nursing background with a total of eight years drawing blood samples specifically for forensic purposes were enough to prove that the individual was qualified.

{¶ 11} Based on the foregoing, we find that the state's evidence clearly established that Mabus had expertise in the collection of blood samples. As such, the trial court properly concluded that she was a phlebotomist or qualified technician authorized to withdraw a blood sample pursuant to R.C. 4511.19(D)(1)(b). Accordingly, the trial court

did not err by denying appellant's motion to suppress and appellant's sole assignment of error is not well-taken.

{¶ 12} On consideration whereof, the judgment of the Bowling Green Municipal Court is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Arlene Singer, P.J.

Thomas J. Osowik, J.
CONCUR.

JUDGE

JUDGE

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
