95 Wash.App. 1069

NOTE: UNPUBLISHED OPINION, SEE WA R GEN GR 14.1

Court of Appeals of Washington, Division 3.

CITY OF SPOKANE, Respondent,
v.
Thomas M. WRENN, Petitioner.

No. 16904–9–III. | June 3, 1999.

District Court County Spokane, Docket No. 96–1–02632–7, judgment or order under review, date filed 08/12/1997; Gregory D. Sypolt, Judge.

Attorneys and Law Firms

Katherine S. Knox, Spokane, WA, for Petitioner(s).

Salvatore J. Faggiano, City Prosecutor, Office of City Attorney and John A. Level, Spokane City Prosecutor, Spokane, WA, for Respondent(s).

Opinion

UNPUBLISHED OPINION

BROWN.

***1** Today we decide whether, under these facts, the City of Spokane unreasonably interfered with Thomas M. Wrenn's right to additional blood testing pursuant to RCW 46.20.308(2). We hold it did not and affirm Mr. Wrenn's driving while under the influence conviction in the district court.

FACTS

In October 1995, a Spokane police officer arrested Thomas Wrenn for driving while under the influence (DWI) and driving without a valid driver's license (NVOL). The officer transported him to the breath testing room in the Public Safety Building. According to the officer, Mr. Wrenn requested a blood test one time while en route; according to Mr. Wrenn, he requested a test three or more times.

Upon arrival, the officer read Mr. Wrenn his constitutional rights. Mr. Wrenn requested to speak with an attorney. Mr. Wrenn then spoke with the on-call public defender. The officer next read Mr. Wrenn the implied consent warning. Mr. Wrenn read and signed the implied consent form. He refused to take the breath test but did not then or thereafter request from the officer an independent blood test. The officer transported Mr. Wrenn to the Spokane County jail where he was booked into jail on an unrelated warrant. At the jail Mr. Wrenn had unlimited access to a telephone. The officer's affidavit indicated that he would have transported Mr. Wrenn for testing had a request been made to him after the implied consent warnings.

At a pretrial hearing in district court, Mr. Wrenn moved to dismiss the DWI charge on the ground that the officer violated his right to a blood test. The court denied the motion. At the conclusion of the trial, Mr. Wrenn was found guilty on the DWI and NVOL charges. Mr. Wrenn appealed to superior court. The superior court affirmed the district court's denial of the motion to dismiss. Mr. Wrenn successfully petitioned for discretionary review to this court.

ANALYSIS

The issue is whether the trial court erred when affirming the district court's denial of Mr. Wrenn's motion to dismiss and concluding the City had not unreasonably interfered with Mr. Wrenn's right to have an additional blood test pursuant to RCW 46.20.308(2). A trial court's denial of a motion to dismiss is reviewed for an abuse of discretion. See *State v. Barnes*, 85 Wash.App. 638, 655, 932 P.2d 669 (1997).

Washington State's implied consent statute requires law enforcement officials to inform DWI suspects they have the right to additional tests: "The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing...." RCW46.20.308(2). Although law enforcement officials have no further duty to arrange additional testing, they may not interfere with a DWI suspect's efforts to make such arrangements. *State v. McNichols*, 128 Wash.2d 242, 251, 906 P.2d 329 (1995). Whether the City has unreasonably interfered with a suspect's right to additional testing is determined on a case by case basis. *Id.* at 252, 906 P.2d 329.

***2** Mr. McNichols claimed that law enforcement had interfered with his right to have an additional blood test. *Id.* at 245–46, 906 P.2d 329. Rejecting this contention, the court

reasoned Mr. McNichols was given unlimited access to the telephone and told he could make his own arrangements. *Id.* at 253, 906 P.2d 329. Furthermore, the court emphasized that the defendant had exercised his right to legal counsel:

[M]ost importantly, McNichols understood and exercised his right to counsel earlier that evening. That McNichols felt misled by authorities could have easily been remedied had McNichols contacted the on-duty public defender to whom he had turned earlier for advice. For whatever reason he decided not to call a qualified person to take a blood test or to seek advice of counsel. We find that under the circumstances the jail personnel did not unreasonably interfere with McNichols' right to obtain additional testing.

Id. at 253, 906 P.2d 329.

The present case is similar to McNichols in that Mr. Wrenn was advised he had access to a phone and did speak to an attorney prior to receiving the formal implied consent warnings. Further, Mr. Wrenn had continued unlimited telephone access during and after booking. He made no attempt to arrange for a blood test. Mr. Wrenn merely suggests that law enforcement should have done more than their statutory duty to inform him of his rights. He does not point to facts indicating interference.

Police officers have no duty, per se, to transport a suspect to a hospital to obtain additional blood tests. See *State v. Reed,* 36 Wash.App. 193, 195–96, 672 P.2d 1277 (1983), *review denied,* 100 Wn.2d 1041 (1984). Rather, as noted above, courts determine the reasonableness of an officer's conduct on a case by case basis. *McNichols,* 128 Wash.2d at 252, 906 P.2d 329.

In sum, Mr. Wrenn was advised of his constitutional rights and spoke with an attorney. Then, after speaking with counsel and receiving the implied consent warnings, he failed to take the necessary and available steps to obtain additional testing. Law enforcement's specific, limited, statutory duties were observed here. Even an initial election not to request additional blood testing would not foreclose Mr. Wrenn from seeking additional testing should he later change his mind. The focus is on whether the City unreasonably interfered with Mr. Wrenn's right to have an additional blood test. We hold, under these facts, it did not.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

KURTZ, A.C.J. and KATO, J., concur.

Parallel Citations

1999 WL 355822 (Wash.App. Div. 3)