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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RACHEL CINDA RAWLEY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 18-1-00669-18

BRIEF OF RESPONDENT

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DATED April 19, 2019, Port Orchard, WA

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the total circumstances of the incident were sufficient to justify a warrantless blood draw of a driver who had caused a head-on collision, exhibited indications of intoxication, and was subject to medical treatment, including the application of intravenous fluids, and imminent transport to the hospital?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Rachel Cinda Rawley was charged by information filed in Kitsap County Superior Court with theft of a motor vehicle, felony driving under the influence, and second degree driving with a suspended license. CP 1-5. A first amended information added a charge of operating a motor vehicle without an ignition interlock device. CP 11-14. A second amended information alleged theft of a motor vehicle, felony driving under the influence, second degree driving with license suspended, operation of a motor vehicle without an ignition interlock device, and, additionally, reckless driving. CP 58-61.

Rawley pled guilty to second degree driving with license suspended and operation of a motor vehicle with an ignition interlock device. CP 63-74 (statement of defendant on plea of guilty). Rawley waived trial by jury on the remaining counts. CP 100; (on-the-record

colloquy at RP, 7/16/18, 68-71)¹.

After the plea to the two misdemeanor counts and contemporaneous with the jury trial waiver, the state filed a third amended information adding as count VI a charge of tempering with a witness. CP 104.

The matter concluded under a forth amended information that charged felony driving under the influence, second degree driving with license suspended (already resolved by plea), operation of a motor vehicle without ignition interlock device (already resolved by plea), and reckless driving. CP 126-130. Rawley submitted the charge of felony driving under the influence to the trial court on stipulated facts. CP 111-114. The trial court accepted the stipulation. CP 114; 2RP 4 (trial court finds Rawley guilty).. Rawley submitted the charge of reckless driving to the trial court on stipulated facts. CP 115-117. The trial court accepted this stipulation as well. CP 116-17; 2RP 5 (trial court finds Rawley guilty).

Pretrial, Rawley moved to suppress the results of a blood draw. CP 75. The trial court entered findings of fact and conclusions of law on the suppression motion as required by CrR 3.6. The trial court concluded that the warrantless blood draw in issue was lawful because of exigent

¹ The operative transcripts here are from July 16, 2018, which is referred to as 1RP, and July 20, 2018, which is referred to as 2RP.

circumstances. CP 124.

Rawley sentence totaled 41 months—38 months on the felony DUI plus consecutive 90 days on the reckless driving count. CP 165.

B. FACTS

1. Suppression hearing

The trial court convened a hearing on Rawley’s motion to suppress the blood draw. RP, 7/16/18 (1RP) and RP, 7/20/18 (2RP).

Kitsap County Deputy Aman testified that he responded to a two-car, head-on collision. 1RP 21. Other police and fire crews were on the scene. *Id.* The vehicles involved, a Jeep Cherokee and a Chevrolet Malibu, evidenced frontal impact. 1RP 22. The two occupants of the Chevrolet were out of the car but the driver of the Jeep was still in her car. *Id.* The occupants of the Chevrolet reported that the Jeep had crossed into their lane. 1RP 23.

The female driver of the Jeep, Rawley, was trapped because the collision damage caused the door to be stuck shut. 1RP 23. As Deputy Aman spoke to Rawley, he noted a strong smell of alcohol and asked Rawley how much she had had to drink. 1RP 24. Rawley’s speech was slurred and repetitive. *Id.* The deputy believed that she was under the influence of alcohol. 1RP 24.

Medics and firefighters were working to stabilize Rawley and get her out of the car. 1RP 25. Deputy Aman contacted the lead paramedic: he was advised that Rawley would be transported for medical care and that the paramedics would likely begin an IV on her once she was freed from the car. 1RP 26-27. Deputy Aman responded that he may need to do a blood draw before the IV was started. 1RP 27.

After she was removed from the car, the deputy contacted Rawley in the back of a medic unit. 1RP 27. Here, again, the deputy detected a strong odor of alcohol. 1RP 28. The deputy was advised by paramedics that they intended to commence an IV. 1RP 28. The deputy did not know the contents of the IV solution. *Id.* The deputy was unaware of the extent of Rawley's injuries but understood that the starting of an IV indicated concern about internal injuries. 1RP 28.

Deputy Aman believed that the impending IV created exigent circumstances with regard to the blood draw. 1RP 29. Training and experience told him that an IV may "cause a change in the blood." 1RP 31. He advised the paramedics that he intended to do the blood draw before the IV was started. *Id.* The blood draw was accomplished at approximately 3:07 pm. *Id.* It was preformed by the a paramedic. *Id.* Immediately after the blood draw, the IV was inserted in the same spot. 1RP 30. A few minutes later the medic unit left the scene for the hospital. *Id.*

Deputy Aman recalled that the shortest time it had taken him to obtain a telephonic search warrant had been around 20 minutes. 1RP 31. The longest it had taken was 45 minutes to an hour. Id. The process involves contacting a deputy prosecutor, who then contacts a judge if one is available, and then providing the necessary information over the phone. 1RP 32. Factors the deputy considers in deciding exigency are whether the blood may be changed on the way to the hospital by the introduction of medication and the time frame required to get the warrant and respond to the hospital to serve the warrant. 1RP 31-32. In this case, the deputy expected to have just a few minutes with Rawley before the medic unit left for the hospital. 1RP

2. Facts of offenses

The guilty pleas to driving with license suspended and operation of a motor vehicle without ignition interlock device were supported by sufficient factual basis and establish that Rawley engaged in the behavior described by the charges.

As to felony driving while intoxicated, Rawley admitted the facts in her stipulation. She admitted that at the time of her operation of a motor vehicle she had an alcohol concentration of .35 within two hours of driving as shown by accurate and reliable blood testing. CP 111. She admitted that said alcohol concentration caused her to be under the influence when she drove. Id. And, she admitted the prior offense

required to elevate the charge to a felony. CP 111-12.

Rawley's stipulation to reckless driving similarly tracks the elements of that crime. CP 115 There, Rawley admits that she drove in wanton and willful disregard of persons or property. Id.

II. ARGUMENT

A. IN CIRCUMSTANCES INCLUDING A HEADON COLLISION, PROBABLE CAUSE TO BELIEVE THE CAUSING DRIVER WAS UNDER THE INFLUENCE, INJURIES TO THE CAUSING DRIVER REQUIRING MEDICAL TREATMENT AND TRANSPORT TO THE HOSPITAL, THERE WERE EXIGENT CIRCUMSTANCES JUSTIFYING A WARRANTLESS BLOOD DRAW.

Rawley argues that exigent circumstances do not obtain unless the state can show that Deputy Aman had the medical knowledge necessary to analyze the content of an impending IV and therefrom ascertain whether or not the particular IV would have an effect on the defendant's blood. This claim is without merit because the total circumstances presented to the deputy raised the necessity of proceeding with a warrantless blood draw.

A challenge to the trial court's findings of fact raises the question of whether or not those findings are supported by substantial evidence: "Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the

truth of the finding.” *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). The trial court assesses the credibility of the witnesses. *See State v. Miller*, 92 Wn. App. 693, 704, 964 P.2d 1196 (1998) *review denied* 137 Wn.2d 1023 (1999).

Rawley claims that the trial court’s finding of fact 15 is in error. CP 123. The finding says “That, on average, it can take up to 45 minutes to obtain a telephonic blood draw warrant.” *Id.* First, Deputy Aman was asked to “estimate” the shortest amount of time it had taken him to get such a warrant and he said “[m]aybe 20 minutes.” 1RP 31. Then, he was asked about the longest time and he said “*about* 45 minutes to an hour.” *Id.* (emphasis added). These are not intended to be precise temporal measurements—the deputy was being asked to estimate. Moreover, the trial court’s finding encompasses the estimation with the contingent phrase “can take.”

On this record, the trial court properly found that it is possible that it would take up to 45 minutes to obtain a warrant. The true fact is not knowable because a warrant was not sought. Further, Deputy Aman’s guess as to the time it would take to procure the warrant was just a piece of his consideration of the exigency he faced. Even if he was certain that he could get a warrant in the shortest possible time period, 20 minutes, he was with a person who had been in a serious collision, he did not know the

extent of her injuries, and he knew that an IV and transport to the hospital were imminent. Finding of Fact 15 is correct as far it goes but the answer to the question depends on all the circumstances.

The question of whether there are or are not exigent circumstances to justify a warrantless blood draw is a question of law that is reviewed de novo. *State v. Inman*, 2 Wn. App.2d 281, 290, 409 P.3d 1138 review denied 190 Wn.2d 1022 (2018).

A blood draw is a search and warrantless searches are unconstitutional under both Washington Constitution article 1, section 7 and the Fourth Amendment of the United States Constitution. *Inman*, 2 Wn. App. at 290. But a warrantless search may be upheld if there are exigent circumstances. 2 Wn. App.2d at 291. Generally, exigent circumstances obtain where “the delay necessary to obtain a warrant is not practical because the delay would permit the destruction of evidence.” *Inman*, 2Wn. App.2d at 291, quoting *State v. Baird*, 187 Wash.2d 210, 218, 386 P.3d 239 (2016). Possible destruction of evidence will support a finding of exigent circumstances. See *State v. Smith*, 165 Wn.2d 511, 517, 199 P.3d 386 (2009). The totality of the circumstances are to be considered, including that the intoxicating substance may dissipate over time. *Inman*, 2Wn. App.2d at 291. Because of the constitutional rights that circumscribe valid searches, the state bears the burden of showing

exigent circumstances by clear and convincing evidence. *Id.* at 290.

The *Inman* case is very similar to the present case and was central to the trial court's conclusion that the warrantless blood draw was allowed by exigent circumstances. CP 124 (*Inman* cited as supporting trial court's conclusions) There, medics and police came to an accident scene and found a wrecked motorcycle and two people on the ground. 2 Wn. App.2d at 284. Inman was being treated by a paramedic—the paramedic observed injuries and was told Inman had been unconscious for up to five minutes. *Id.*

Upon speaking to Inman, police smelled alcohol on his breath. 2 Wn App.2d at 284. While Inman was in an ambulance, a second officer smelled alcohol, asked Inman if he was dinking and driving, and Inman admitted that he was drinking before he drove the motorcycle. 2 Wn App.2d at 285.

The police acted on probable cause to believe Inman had been driving under the influence. *Id.* They knew that a helicopter was coming to evacuate Inman to the hospital. *Id.* The police knew that getting a search warrant for a blood draw would take approximately 45 minutes. *Id.* Further, the police did not have reliable cell phone coverage in the area of the wreck. *Id.* The police proceeded with a warrantless blood draw. *Id.*

On these facts, the trial court's ruling finding the warrantless blood

draw permissible was affirmed. *Inman*, 2 Wn. App.2d at 293. The Court found that the under the circumstances presented “obtaining a warrant was not practical.” 2 Wn. App.2d at 292. This because

In addition to the natural dissipation of alcohol in the blood, which was one factor contributing to exigent circumstances, Inman's continued medical treatment could have impacted the efficacy of the blood sample. With Inman's imminent transfer to the trauma center, the opportunity to draw Inman's blood may have passed by the time law enforcement obtained a warrant. And the rural location of the accident combined with the lack of reliable cellular phone coverage increased the impracticality of obtaining a warrant for the blood draw.

Id. (internal citation omitted). Further, in distinguishing *City of Seattle v. Pearson*, 192 Wn. App. 802, 369 P.3d 194 (2016), the Court found that “unlike the officer in *Pearson* who failed to obtain a warrant during the multiple hours in which he had an opportunity to do so, Deputy Przygocki did not have enough time to obtain a warrant before Inman's transport.” *Inman*, 2 Wn. App.2d at 292-93.

In the present case, Deputy Aman was faced with the same circumstances that faced Deputy Pryzcoki in *Inman*. Deputy Aman knew that Rawley's alcohol level would dissipate over time, he knew that Rawley would be subject to continuing medical treatment that could impact the efficacy of the blood sample, and he knew that transport to a medical facility was imminent and would occur before he could obtain a warrant. See *State v. Baird*, 187 Wn.2d 210, 220, 386 P.3d 239 (2016)

(time lost in transport to the hospital for treatment and in investigating the accident scene are important considerations in evaluating exigency). The present case is nearly the same as *Inman* with the exception that in *Inman* there was a problem with cell phone reception and rather than transport in a helicopter Rawley was transported by ambulance.

It remains that Rawley argues that Deputy Aman should have known that the particular IV that medics intended to give Rawley was a solution that would not affect her blood alcohol. Or, lacking that knowledge in the first instance, Deputy Aman should have quizzed the paramedics on their intended course of treatment in order to ascertain whether that intended medical treatment would take too long or otherwise affect the test. Moreover, Rawley's argument indulges the large presumption that the paramedic questioned would himself know whether or not the intended IV would have a negative effect on the collection of blood evidence. Brief at 12. No fact in the record supports this presumption.

Deputy Aman's testimony informs this issue. He testified that the point medical treatment begins he is concerned about whether there will be a blood change (transfusion?), whether there will be medications given, whether fluids given will dilute the blood sample, whether it will take too long to get the warrant and then get to the hospital to serve the warrant.

1RP 31-32.

Even more to the point, when asked directly by defense counsel why he did not ask about the IV, he reasonably responded that that was the paramedics' decision. 1RP 37. Asked about different possible IV solutions, he reasonably responded that "I'm not a medical expert." Id. The deputy said that his training and experience led him to the conclusion that an IV may affect blood results. Id. The deputy indicated that he had no training or experience on the impact that saline solution would have on a blood draw. 1RP 37-38.

As the trial court properly observed, no legal authority requires Deputy Aman to inquire as to what fluids or medications paramedics intend to give their patient nor does any authority allow Deputy Aman to delay medical treatment in order to get a blood draw. Doing the latter would likely be found to be unreasonable, negligent behavior by a civil jury if harm resulted to the defendant. Requiring the former would place investigating officers in a position of seeking medical opinions whenever a suspect is injured enough to require medical treatment.

Deputy Aman acted reasonably under the circumstances presented to him. The trial court's ruling allowing admission of the blood draw as taken under exigent circumstances should be affirmed.

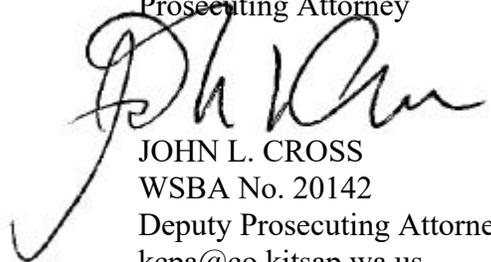
III. CONCLUSION

For the foregoing reasons, Rawley's conviction and sentence should be affirmed.

DATED April 19, 2019.

Respectfully submitted,

Chad M. Enright
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A handwritten signature in black ink, appearing to read "John L. Cross", is written over the typed name and title of the Deputy Prosecuting Attorney.

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