

IN THE COURT OF APPEALS OF IOWA

No. 8-972 / 07-2080
Filed January 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RODNEY LINDLE BERGMANN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart (motion to adjudicate law points) and James D. Coil (motion to quash), District Associate Judges.

Rodney Bergmann appeals his conviction for operating while intoxicated.

AFFIRMED.

Gary Boveia of Boveia Law Firm, Waverly, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brett Schilling, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Potterfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

On January 11, 2006, Rodney Bergmann was found unconscious in his vehicle, which was in gear with the engine running. Bergmann was roused and taken by ambulance to the hospital. A phlebotomist at the hospital drew Bergmann's blood, which showed a blood alcohol level of .216.¹ Bergmann's attorney sent a letter to Black Hawk County Deputy Sheriff William Locke that contained the medical records for treatment Bergmann received at the hospital. The Black Hawk County Attorney filed a trial information on February 13, 2006, charging Bergmann with operating while intoxicated in violation of Iowa Code section 321J.2 (2005).

Bergmann told rescuers that he took fentanyl for a back injury, and fentanyl was found in his vehicle. A treating nurse noted that Bergmann had refilled a prescription for fentanyl earlier that day. Bergmann asserted that the fentanyl was the cause of his condition and that ingestion of Nyquil caused his elevated blood alcohol level.

The State filed a motion to adjudicate law points seeking to use the analysis of Bergmann's blood that was performed at the hospital as was revealed in the medical records he provided. Bergmann resisted, stating these records were protected by the physician-patient privilege.² The district court found that the records were admissible because Bergmann destroyed the confidentiality

¹ This blood test was separate from another test of Bergmann's blood and urine that was performed pursuant to Iowa Code chapter 321J. The results of that test were suppressed because the specimens were improperly obtained.

² Bergmann did not execute a release of information.

between him and his physician when he released his medical records to the sheriff.

On July 3, 2007, the State applied for and received, *ex parte*, a county attorney's subpoena duces tecum commanding hospital personnel to provide the identity and address of the person who had tested Bergmann's blood. The subpoena also ordered the production of related information, which the county attorney obtained orally from the hospital personnel. The court order required the prosecutor to serve defense counsel with the application and order by fax the same day. The State argued the subpoena was necessary so that it could list the individual's name and address in the minutes of testimony as required by the Iowa Rules of Criminal Procedure.

On July 19, 2007, Bergmann filed a motion to quash the information obtained by the subpoena as it was protected by the physician-patient privilege.³ On July 24, 2007, the district court overruled Bergmann's motion to quash, finding that Bergmann had waived the physician-patient privilege.

Bergmann was convicted by a jury on July 27, 2007. He appeals, arguing the district court erred by: (1) finding that his medical records were admissible and issuing a subpoena; and (2) overruling his motion to quash.

II. Standard of Review

We review the district court's ruling for a correction of errors of law. *State v. Henneberry*, 558 N.W.2d 708, 709 (Iowa 1997).

³ Bergmann's argument that the motion to quash should have been sustained because the county attorney improperly obtained information pursuant to Iowa Rule of Criminal Procedure 2.5(6) was not presented to the district court and is therefore not considered on appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

III. Admissibility of Medical Records

Bergmann provided the State with medical documents to support his claim that he suffered from a fentanyl overdose. Those documents included the lab report revealing his blood alcohol content. Bergmann argues that, absent his release of additional records, the State should have access to only those medical records that he provided and nothing more.

A doctor is prohibited from disclosing a patient's confidential communications without the patient's consent. Iowa Code § 622.10. Unless the physician-patient privilege is waived, the hospital should not provide the State with medical information, including the blood alcohol test results. The patient can waive this privilege by disclosure or consent to disclosure. *State v. Demaray*, 704 N.W.2d 60, 65 (Iowa 2005). In this case, Bergmann disclosed medical information to the State. "[V]oluntary disclosure of the content of a privileged communication constitutes waiver as to all other communications on the same subject." *Miller v. Continental Ins. Co.*, 392 N.W.2d 500, 504-05 (Iowa 1986). Bergmann cannot waive the physician-patient privilege as to information that benefits his case and invoke the privilege against harmful information. *Id.* at 505. He can choose to invoke or waive the physician-patient privilege, but his decision is final and applies to all communication on that subject. *Id.* When Bergmann disclosed his medical records to the State, he waived his physician-patient privilege as to his treatment on that occasion.

The district court did not err in overruling Bergmann's motion to quash.

AFFIRMED.