Commonwealth of Kentucky
Supreme Court
No. 2023-SC-0106-DG
Electronically filed

TYLER STORY — **APPELLANT**

v.

On Review from Court of Appeals
Case No. 2021-CA-1048-DG
Campbell Circuit Court
Hon. Daniel J. Zalla, Judge
Case No. 21-XX-0001
Campbell District Court
Hon. Karen A. Thomas, Judge
Case No. 19-T-03549

COMMONWEALTH OF KENTUCKY — **APPELLEE**

Brief for the Commonwealth of Kentucky

Submitted by,

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CERTIFICATE OF SERVICE

I certify that on November 22, 2023, a copy of the Brief for the Commonwealth of Kentucky has been served as follows: via U.S. Mail to Hon. Daniel J. Zalla, Circuit Court Judge, Campbell County Courthouse, 330 York Street, Newport, Kentucky 41071; via U.S. Mail to Hon. Erin Matthews Sizemore, District Court Judge (Division 2); 330 York Street, Newport, Kentucky 41071; via email to Hon. Steven J. Franzen, County Attorney, 319 York Street Newport, KY 41071; and via U.S. Mail to Hon. Joshua M. McIntosh, counsel for appellant, 713 Scott Street, Covington, Kentucky 41011. The appellate record was not checked out.

/s/ Melissa A. Pile
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INTRODUCTION

Appellant, Tyler Story (Story), entered a conditional guilty plea to operating a motor vehicle while under the influence (DUI). The Campbell Circuit Court affirmed the Campbell District Court's rulings pertaining to Story's independent blood test. The Court of Appeals granted discretionary review and affirmed. This Court also granted discretionary review.

STATEMENT CONCERNING ORAL ARGUMENT

This Court's October 13, 2023 order granting discretionary review is silent as to oral argument. Story did not request oral argument and the Commonwealth agrees that oral argument is not necessary. The issues raised on appeal may be adequately addressed by the parties' briefs, but the Commonwealth will present oral argument should this Court order it after the completion of briefing.

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STATEMENT CONCERNING CITATIONS TO THE RECORD

The Commonwealth's video record citation will conform to RAP 31(E)(4).

The transcript of court filings will be cited as "TR, [page number]."

Appellant's brief will be cited as "Appellant's Br., [page number]."

COUNTERSTATEMENT OF POINTS AND AUTHORITIES

COUNTERSTATEMENT OF THE CASE

The Commonwealth does not accept Tyler Story's statement of the case and sets forth the facts that it considers essential to a fair and adequate statement of the case.

The certified appellate record does not contain the court filings from Campbell County District Court. The Commonwealth's recitation of the facts derives from the Campbell County Circuit Court's Opinion affirming (TR, 31-35), and the video recordings. There was no sworn testimony taken during those court proceedings; thus, citation to them is based upon the parties' representations.

On June 18, 2019, Story was arrested for DUI,[1] submitted to an intoxilyzer test, and exercised his statutory right under KRS 189A.103(7) to obtain an independent blood test. (TR, 32.) The result of the Commonwealth's intoxilyzer test was represented to be a breath alcohol concentration of .177. (VR 9/10/19, 2:15:15) (VR 12/16/19, 12:08:04.) The result from the independent blood test is not in the record. Ultimately, the result from the intoxilyzer breath test was suppressed.[2] (VR 11/26/19, 2:03:39, 2:04:50.) Following that, the Commonwealth stated that it was in possession of Story's independent blood sample and would seek to have it tested. (*Id.* at 2:04:12.) The district court believed that such testing, preferably done pursuant to a search warrant, would be admissible given that the hospital did not retain the blood sample and it was in the Commonwealth's possession. (*Id.* at 2:04:50.)

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[1] KRS 189A.010.

[2] The result was suppressed because Story allegedly was heard burping on the officer's body-worn camera footage, but undisputedly stated "excuse me," and afterwards, the officer did not ask Story if he had brought anything up into his mouth prior to administration of the intoxilyzer test. (VR 11/26/19, 2:00:02-2:03:39.)

Story filed a motion for the blood sample to be returned to him. (VR 12/16/19, 12:02:46.) The district court determined that the blood sample, now in possession of the police department, was evidence and denied Story's motion. (*Id.* at 12:04:54, 12:11:42.) The district court found, and the circuit court agreed, that after six months of the blood sample being in police custody, Story had abandoned it. (TR, 32.) Story next petitioned the circuit court for a writ of prohibition to prevent the district court from approving a search warrant for the Commonwealth to test the blood sample. (*Id.*) After the petition for a writ was denied, Story unsuccessfully moved to suppress the results of the blood sample. (*Id.*) While Story's motion to suppress is not part of the appellate record, the district court's basis for denial was that the cases he relied upon were distinguishable. (VR 11/20/20, 9:19:40.) The distinction being that, in Story's case, a search warrant was not needed to obtain the blood sample because Story requested the blood draw and had not been forced to provide the sample. (*Id.*)

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The following month, Story entered a conditional guilty plea to the amended charge of a non-aggravated first-offense DUI. (VR 12/21/20, 1:04:38.)[3] On appeal to circuit court, Story alleged error in the district court's denial of his motion to return the blood sample and requested that the case be dismissed with prejudice. (TR, 1.) He claimed that the district court's ruling violated his statutory right under KRS 189A.103(7) to an independent test. (TR, 6-13.) He alternatively argued that the district court erred in denying his motion to suppress the results from the blood sample. (*Id.* at 13-15.) He requested that the district court's rulings be reversed, and his case dismissed with prejudice. (*Id.* at 15.) The

[3] The video proceeding from this court date is audio only. As such, the time stamp is based on the time elapsed.

Commonwealth responded and noted that the district court did not directly address if Story's KRS 189A.103 right to an independent test was violated; instead, the court determined that Story had abandoned the blood sample and it became potential evidence. (TR, 22.) The Commonwealth argued that the cases Story relied upon were distinguishable and there was no error. (*Id.* at 22-28.)

On August 16, 2020, the circuit court affirmed. (*Id.* at 31-35.) The circuit court determined that the district court's finding that Story had abandoned the blood sample was supported by substantial evidence and not clearly erroneous. (*Id.* at 34.) Next, the circuit court found that *Combs v. Commonwealth*, 65 S.W.2d 161, 165 (Ky. 1998), the case Story relied upon for suppression, was distinguishable because it "did not concern voluntary blood draws." (TR, 34.) Thus, the results of the blood sample did not require suppression. (*Id.* at 35.)

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Our Court of Appeals granted Story's motion for discretionary review and affirmed. *Story v. Commonwealth*, No. 2021-CA-1048-DG, 2023 WL 1485430 (Ky. App. Feb. 3, 2023). First, the panel of the Court of Appeals found that there had not been a violation of KRS 189A.103(7), because the officer facilitated Story's request for an independent blood draw. *Story*, 2023 WL 1485430 at *4. To that end, the court did not agree that Story had abandoned the blood sample; but had requested it back within a reasonable time. *Id.* at *7-8. Ultimately, the court determined that the blood sample could be tested pursuant to the search warrant because it was evidence in the case. *Id.* And the court did not think the results of the blood tests should have been suppressed because, unlike in *Combs*, Story requested the blood draw. *Id.* at 11. On June 7, 2023, this Court granted Story's motion for discretionary review. Additional facts will be developed below.

ARGUMENT

I. The denial of Story's motion to return his blood sample did not amount to a violation of KRS 189A.103(7).

Because the district court did not order the return of Story's blood sample, he claims his right to an independent blood test under KRS 189A.103(7) was violated. (Appellant's Br., 4-15.) There was no statutory violation because the officer complied with the statute by facilitating Story's request for the blood draw.

A. Standard of review

Because this issue concerns statutory interpretation, the language of KRS 189A.103(7) is reviewed de novo and should be construed "so as to effectuate the plain meaning and unambiguous intent expressed in the law." *Bob Hook Chevrolet Isuzu v. Transportation Cabinet*, 983 S.W.2d 488, 492 (Ky. 1998). In so doing, courts should reject an interpretation "that is unreasonable and absurd, in preference for one that is 'reasonable, rational, sensible and intelligent[.]'" *Monumental Life Ins. Co. v. Dept. of Revenue*, 294 S.W.3d 10, 19 (Ky. App. 2008) (internal quotations omitted). "The most logical and effective manner by which to determine the intent of the legislature is simply to analyze the plain meaning of the statutory language[.]" *Stephenson v. Woodward*, 182 S.W.3d 162, 169-70 (Ky. 2005).

B. The Commonwealth complied with KRS 189A.103(7) and accommodated Story's request for a blood draw.

The statutory right to an independent blood test is provided in our informed-consent statute:

> After the person has submitted to all alcohol concentration tests and substance tests requested by the officer, the person tested shall be permitted to have a person listed in subsection (6) of this section of his or her own choosing administer a test or tests in addition to any tests administered at the direction of the peace officer. Tests conducted under this section shall be conducted within a reasonable length of time.

> Provided, however, the nonavailability of the person chosen to administer a test or tests in addition to those administered at the direction of the peace officer within a reasonable time shall not be grounds for rendering inadmissible as evidence the results of the test or tests administered at the direction of the peace officer.

KRS 189A.103(7). Story obtained a blood draw. And when you look to our DUI statutory scheme, it anticipates that the independent testing of it will be done, not six months later and after evidentiary rulings, but contemporaneous with the DUI arrest. Our statute addressing the effect of a DUI suspect's refusal to submit to a test provides that if a person does submit to the officer's requested test:

> The person has the right to have a test or tests of his or her blood performed by a person of his or her choosing described in KRS 189A.103 ***within a reasonable time of his or her arrest*** at the expense of the person arrested

KRS 189A.105(2)(a)(2)(b) (emphasis added). And again, the statute reiterates:

> Immediately following the administration of the final test requested by the officer, the person shall again be informed of his or her right to have a test or tests of his or her blood performed by a person of his or her choosing described in KRS 189A.103 ***within a reasonable time of his or her arrest*** at the expense of the person arrested. He or she shall then be asked "Do you want such a test?" The officer shall make reasonable efforts to provide transportation to the tests.

KRS 189A.105(4) (emphasis added).

Story is correct that the purpose of this independent test is "to compare with or controvert the police officer's test." (Appellant's Br., 5 citing *Commonwealth v. Minix*, 3

S.W.3d 721, 724 (Ky. 1999).) In *Minix*, this Court held the defendant waived his right to an independent blood test because he refused to submit to the officer's requested intoxilizyer breath test. *Id.* But Story was not denied the opportunity to conduct his own independent test on the blood sample. There was discussion prior to testing about Story having the opportunity to conduct independent testing of the remaining sample after the Commonwealth had it tested at the Kentucky State Police laboratory. (VR 12/16/19, 12:05:22.)

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KRS 189A.103(7) is generally understood to address the accommodations an officer must make to facilitate a test. A few years after this Court decided *Minix*, a former panel of our Court of Appeals interpreted whether a defendant had been denied her right to an independent test under KRS 189A.103 when the officer would not permit her to contact her friend to arrange payment for the test. *Commonwealth v. Long*, 118 S.W.3d 178, 181 (Ky. App. 2003). The *Long* court held that under the totality of the circumstances, that right was denied because the officer "fail[ed] to make a reasonable effort to accommodate her right." *Id.* at 183.

Here, the officer followed our precedent and the General Assembly's mandate in KRS 189A.105(4) to reasonably accommodate Story's request for an independent test. While Story obtained a blood draw, he did not follow through in obtaining testing of that sample. In interpreting KRS 189A.103 and *Long*, this Court noted: "all that is required of the officer is 'some level of facilitation' in providing the person accused with an independent blood test." *Lee v. Commonwealth*, 313 S.W.3d 555, 556 (Ky. 2010).

Relying upon *Long*, Story argues that the remedy in his case should be dismissal with prejudice. (Appellant's Br., 15.) But to do that would create a separation-of-powers issue.

Separation of powers dictates that "subject to rare exceptions usually related to a defendant's claim of a denial of the right to a speedy trial, a trial judge has no authority, absent consent of the Commonwealth's attorney, to dismiss, amend, or file away before trial a prosecution based on a good indictment." *Hoskins v. Maricle*, 150 S.W.3d 1, 13 (Ky. 2004). Even if the courts below erred, which the Commonwealth contends neither did, the remedy for an illegal seizure is suppression, not dismissal of the case. *United States v. Calandra*, 414 U.S. 338, 347 (1974) ("[E]vidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure."). Moreover, "[a]lthough exclusion is the proper remedy for some violations of the Fourth Amendment, there is no exclusionary rule generally applicable to statutory violations. Rather, the exclusionary rule is an appropriate sanction for a statutory violation only where the statute specifically provides for suppression as a remedy or the statutory violation implicates underlying constitutional rights such as the right to be free from unreasonable search and seizure." *United States v. Abdi*, 463 F.3d 547, 556 (6th Cir. 2006).

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So, what happens when an officer accommodates a DUI suspect's request for an independent test, but the defendant still does not obtain that test? KRS 189A.103(7) anticipates this and states that "the nonavailability of the person chosen to administer a test or tests . . . shall not be grounds for rendering inadmissible as evidence" the results of the breath or blood test taken at the direction of law enforcement. Even if a DUI suspect is provided all reasonable accommodations in attempting to obtain an independent test, the statutory right is not violated if the person or facility they have chosen is unavailable for testing. In this case, the hospital's decision not to test or retain the sample does not render Story's statutory right violated.

This Court addressed an analogous scenario in *Lee*. In that case, the defendant did not request a specific provider for his independent test, but once at the hospital, the doctor diagnosed him with alcohol intoxication and would not administer a blood test. 313 S.W.3d at 556. This Court found that there was not a violation of KRS 189A.103 because the defendant did not request an additional test and there was no evidence of bad faith by the officer. *Id.* at 557.

Similarly, all accommodations were made in anticipation that Story would obtain independent testing. He just failed to follow through for reasons that are not clear from the record. And as this Court has noted, "the narrow holding in *Long* only extends to cases where satisfying the purpose of the statute requires only *minimal* police assistance." *Commonwealth v. Riker*, 573 S.W.3d 622, 624 (Ky. 2018). Story does not claim that any additional assistance from the officer would have resulted in the blood sample being tested. Even when Story was well aware of the results of the Commonwealth's breath test, he did not seek the blood sample for comparison testing. It is the subsequent testing of his blood after suppression that he challenges. Because the medical facility did not retain the blood sample, and because Story never sought to test it until months later, there was no statutory violation.

Story analogizes his case to that of *Conley v. Commonwealth*, 599 S.W.3d 756 (Ky. 2019). (Appellant's Br., 5-8.) In *Conley*, the circuit court denied her request for funding to retain a mental health expert witness. 599 S.W.3d at 762. Instead, the circuit court referred Conley to the Kentucky Correctional Psychiatric Center (KCPC) for evaluation. *Id.* The KCPC doctor "concluded that Conley was not absolved from her involvement in the death by reason of insanity." *Id.* at 763. Later, the circuit court granted Conley's motion for expert funding but

permitted the Commonwealth to utilize the KCPC doctor as its rebuttal expert. *Id.* at 762. This Court held that the circuit court abused its discretion by its initial denial of expert funding. *Id.* at 766. The court was instructed that on remand the KCPC doctor and her report could not be utilized. *Id.* at 770.

Our statutory scheme for DUI testing is unique from expert-witness funding. And Story's case presents a unique set of circumstances distinguishable from *Conley.* That is because Story abandoned the sample in the custody of the police department.

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C. Story abandoned the blood sample.

Story was arrested on June 18, 2019. (TR, 32.) The following month, the district court granted Story's motion to preserve the blood sample. (VR 7/17/19, 2:49:45.) But Story did not take steps for the sample to be returned until approximately five months later after the district court granted suppression and the Commonwealth stated it would seek to have the sample tested. (VR 12/16/19, 12:02:46.) The district court determined that because almost six months had elapsed between the collection of the blood sample and Story's motion to return it, he had effectively abandoned his right to the sample. (VR 12/16/19, 12:03:00; 12:04:20.)

In affirming the district court, the circuit court cited *Watkins v. Commonwealth*, 307 S.W.3d 628, 630 (Ky. 2010), and *Marino v. Commonwealth*, 488 S.W.3d 621, 622-23 (Ky. App. 2016). (TR 33-34.) Both of those cases address whether an individual has a reasonable expectation of privacy in abandoned property to be free from unreasonable search and seizure under the United States and Kentucky Constitutions.

In *Watkins*, the defendant fled from police and crashed a vehicle in the process. 307 S.W.3d at 629. A search of the wrecked vehicle yielded marijuana and cocaine inside the trunk.

The defendant moved to suppress the evidence based on the warrantless search. *Id.* However, our Supreme Court held that Watkins had no standing to challenge the search because the property was abandoned. *Id.* at 630. The Court was careful, however, to limit the concept of "abandonment" to the facts of that case, *i.e.* the discarding of property by a fleeing fugitive: "[o]ur holding should not be stretched beyond these narrowly drawn facts." *Id.* at 630.

In *Marino*, the defendant was charged with sexual assault after DNA collected from the victim matched DNA collected from saliva on a Styrofoam cup. 488 S.W.3d at 623. He moved to suppress the collection of the DNA evidence as a violation of his right to be free from unreasonable searches and seizures under the federal and state constitutions. However, this Court determined that no search or seizure occurred because the defendant had abandoned the Styrofoam cup on which his DNA was found. *Id.* at 625.

The Court in *Marino* made clear that because the saliva was taken from a cup, as opposed to being taken from the defendant's person – like a buccal swab or a blood draw – there was no intrusion upon the body, and therefore no search. *Id.* at 624.

Watkins and *Marino* detail a defendant's abandonment of property: just as Story relinquished his control of the blood sample. "[T]he act of abandonment itself turns to a large degree upon the possessor's state of mind." *Watkins*, 307 S.W.3d at 630. By acquiescing to the police department's possession of the sample, Story cannot now claim protection for evidence he willingly turned over. Story did not claim an interest in the blood sample until the Commonwealth asked to send the sample out for testing. Both *Watkins* and *Marino* demonstrate that no Fourth Amendment protection exists where the person asserting the right has relinquished control of the property. Similarly, Story had no reasonable expectation of privacy in the blood sample relinquished to the Commonwealth. Because the blood sample

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was still in the possession of the Commonwealth, the circuit court properly affirmed the district court's denial of the motion to return the sample.[4]

D. By abandoning the blood sample, Story forfeited his right to an independent test.

Story claims that the purpose of KRS 189A.103(7) "would be turned on its head" if the Commonwealth could use the blood sample. (Appellant's Br., 5.) But Story forfeited his right to the independent test by failing to assert it in a reasonable time and leaving the sample in the custody of the police. "[T]he failure to make the timely assertion of a right" constitutes a forfeiture of that right. *Branham*, 97 F.3d at 842 (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)). Although a *sample* was collected, Story never moved to have the sample released, either to his own possession or to the possession of a third party for testing, until *after* the Commonwealth moved to have it tested. The right afforded under KRS 189A.103(7) is the right to a *test*. KRS 189A.105 anticipates that the independent testing will be done within a reasonable time, not months later.

II. The denial of Story's motion to suppress.

Story also challenges the denial of his motion to suppress. (Appellant's Br., 15-16.) He argues that the testing of the blood sample pursuant to a search warrant was improper because his case did not involve death of physical injury. (*Id.* at 16.)

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[4] The Kentucky Supreme Court has repeatedly held that a defendant may also waive a statutory right – the "relinquishment or abandonment of a known right." *United States v. Branham*, 97 F.3d 835, 842 (6th Cir. 1996). *See Commonwealth v. Townsend*, 87 S.W.3d 12, 15 (Ky. 2002); *Malone v. Commonwealth*, 30 S.W.3d 180, 184 (Ky. 2000); *Commonwealth v. Griffin*, 942 S.W.2d 289, 291 (Ky. 1997). And under KRS 189A.103(7), the right to waiver makes sense – an individual must only be provided the *opportunity* to obtain an independent test, but he may decline to do so if he wishes.

On review of a denial of a motion to suppress, the court's findings of fact are conclusive if they are supported by substantial evidence, and the court's application of the law to those facts is reviewed de novo. *Commonwealth v. Jones*, 217 S.W.3d 190, 193 (Ky. 2006) (internal quotations omitted).

Searches conducted pursuant to a search warrant are preferred. *See Commonwealth v. Pride*, 302 S.W.3d 43, 48 (Ky. 2010) (citing *Illinois v. Gates*, 462 U.S. 213, 236 (1983) and *Ornelas v. United States*, 517 U.S. 690, 698-99 (1996)). At the time of the district court's denial of Story's motion, KRS 189A.105(2)(b) provided for the circumstances for a search warrant for a blood draw:

> Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident, *when a person is killed or suffers physical injury*
>
> . . . .
>
> If the incident involves a motor vehicle accident in which there was a fatality, the investigating police officer shall seek such a search warrant for blood testing[,]" that requirement applies *unless the testing has already been done by consent.*

(Emphasis added.) The language mandates that law enforcement obtain a search warrant when there is death or physical injury. It does not restrain them from obtaining one absent those unfortunate scenarios. Our DUI statutory scheme has since developed. With the passage of House Bill 154 during the 2022 legislative session, KRS 189A.105(2)(b) has been amended to remove the language "when a person is killed or suffers physical injury."

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Story relies upon *Combs v. Commonwealth*, 965 S.W.2d 161, 164 (Ky. 1998), and argues that the use of a search warrant to test the blood sample was improper because there was no death or physical injury in his case. (Appellant's Br., 15-16.) But *Combs* was rendered over 25 years ago and based upon an outdated version of KRS 189A.105. *See Combs*, 965 S.W.2d at 163 ("The plain language of the statute in question is as follows: No person shall be compelled to submit to any test or tests specified in KRS 189A.103[.]"). In 2000, KRS 189A.105 was amended and the language "no person shall be compelled" was removed.

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But Story was not compelled to submit to a blood draw. Story consented to the blood draw. Under KRS 189A.105(2)(b), a search warrant is necessary "*unless the testing has already been done by consent.*" (emphasis added). In *Birchfield v. North Dakota*, 579 U.S. 438, 476 (2018), the United States Supreme Court held that warrantless blood tests are not permitted under the Fourth Amendment unless they fall within one of the existing exceptions to the warrant requirement, consent being one of those. *Id.*

Although courts preceding *Story* have not spoken to this specific issue regarding independent blood tests, other states have recognized that the state may use a voluntarily submitted blood sample: "[m]oreover defendant's blood was *voluntarily* offered, not forcibly extracted. A legal search conducted pursuant to voluntary consent is not unreasonable and does not violate the [F]ourth [A]mendment." *State v. Oakley*, 469 N.W.2d 681, 683 (Iowa 1991). The Michigan Court of Appeals has also recognized the voluntary nature of the withdrawal of a blood sample:

> Having consented to the blood draw and having made no effort to withdraw her consent until after the search was complete, defendant has no grounds on which to object to this search. . . . This seizure of blood is also within the scope of defendant's consent because, when giving consent to a blood draw for alcohol testing, the

> typical reasonable person would understand that the evidence the authorities intend to seize is obviously a sample of blood for alcohol analysis.

People v. Woodard, 909 N.W.2d 299, 304-05 (Mich. App. 2017) (internal citations and quotation marks omitted).[5]

The *Woodard* court noted that the defendant could not later withdraw her consent to the testing of a blood sample held by the police:

> Moreover, because the blood itself was collected before defendant attempted to withdraw her consent, her withdrawal of consent came too late to invalidate the seizure of her blood. In other words, defendant cannot retroactively withdraw her consent to the blood draw, and her attempt to withdraw consent after the search cannot deprive the police of evidence lawfully collected during the course of the consent search.

Id. at 386.

And in *State v. Van Linn*, after the state's warrantless blood test was suppressed, it subpoenaed the defendant's records from his hospital blood test. 971 N.W.2d 478, 486 (Wis. 2022). The Supreme Court of Wisconsin held that the subpoenaed hospital records documenting the defendant's blood-alcohol concentration were admissible "under the independent-source doctrine." *Id.*

Here, Story requested the blood draw and relinquished control of the ensuing sample to the Bellevue Police Department. Story's motion to suppress is not part of the record, but the district court determined that the cases he relied upon were factually distinguishable because the search warrant was for testing of the blood sample and not for a forced blood

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[5] *Woodard* did not involve the statutory right to an independent blood test. That case involved a consensual blood draw pursuant to law enforcement request, and the police retained custody of the blood sample. 909 N.W.2d at 302.

draw. (VR 11/20/20, 9:17:35.) Further, the court determined that Story requested the blood draw. (*Id.* at 9:19:20.) And the circuit court recognized that *Combs* did not apply because it involved "compelled body searches" and not voluntary blood draws. (TR, 34.) The courts below properly determined that suppression was not appropriate because Story consented to the blood draw. Thus, there was no forced blood draw that would trigger KRS 189A.105(2)(b).

CONCLUSION

Wherefore, for all the foregoing reasons, the opinion of the Campbell County District Court should be affirmed.

Respectfully Submitted,

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