STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED December 22, 2015
v	No. 328152 Macomb Circuit Court
ANDREW ZABLOCKI, Defendant-Appellee.	LC No. 2015-001830-AR

Before: SAWYER, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

The prosecution appeals by leave granted[1] the circuit court's opinion and order affirming the district court's suppression of defendant's blood test results. We reverse and remand.

Defendant is charged with operating a motor vehicle under the influence of alcohol with an occupant under age 16, MCL 257.625(7)(a)(*i*), and operating a motor vehicle while having a controlled substance in his body, MCL 257.625(8). There is no dispute that defendant consented to a blood draw on the night he was arrested. A licensed Emergency Medical Technician (EMT) was called to the police department and drew defendant's blood while inside an ambulance. The EMT obtained a blood sample from the inside of defendant's elbow and gave the vial of blood to a police officer.[2] According to the EMT, a hospital was less than 10 minutes from the police department, and he had the continual ability to speak with a physician over the radio from the ambulance.

Defendant moved to suppress the blood test results on the ground that neither a licensed physician nor an individual operating under the delegation of a licensed physician drew his blood. MCL 257.625a(6)(c) states in relevant part:

> . . . Only a licensed physician, or an individual operating under the delegation of a licensed physician under section 16215 of the public health code, 1978 PA 368,

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[1] See *People v Zablocki*, unpublished order of the Court of Appeals, entered August 12, 2015 (Docket No. 328152).

[2] The chain of custody was not contested.

> MCL 333.16215,[3] qualified to withdraw blood and acting in a medical environment, may withdraw blood at a peace officer's request to determine the amount of alcohol or presence of a controlled substance or other intoxicating substance in the person's blood, as provided in this subsection.

This provision is part of the procedural requirements of the implied consent statute, MCL 257.625c(1), which states that "[a] person who operates a vehicle . . . is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or other intoxicating substance, or any combination of them . . . ." See also MCL 257.625c(3) (stating that "[t]he tests shall be administered as provided in section 625a(6)").

The prosecutor challenges whether suppression of the blood test evidence was appropriate under MCL 257.625a(6)(c). Questions of statutory interpretation are questions of law that this Court reviews de novo. *People v Denio*, 454 Mich 691, 698; 564 NW2d 13 (1997).

We initially note that the Fourth Amendment's protections against unreasonable seizures do not apply in "situations in which voluntary consent has been obtained." *Illinois v Rodriguez*, 497 US 177, 181; 110 S Ct 2793; 111 L Ed 2d 148 (1990). Here, defendant voluntarily consented to having his blood drawn. Where there was no accompanying constitutional violation, the suppression of evidence is not an appropriate remedy for a mere statutory violation "unless the plain language of the statute indicates a legislative intent that the [exclusionary] rule be applied." *People v Anstey*, 476 Mich 436, 448-449; 719 NW2d 579 (2006) (citation and quotation marks omitted).

"The immediate purpose of the 'implied consent law' is to obtain the best evidence of blood alcohol content at the time of the arrest of a person reasonably believed to be driving while intoxicated." *Collins v Secretary of State*, 384 Mich 656, 668; 187 NW2d 423 (1971). Section 625a(6) is designed to set standards to ensure the reliability of blood test results. *People v Jenne*, 168 Mich App 518, 521; 425 NW2d 116 (1988).

In *Anstey*, the defendant was denied his statutory right under MCL 257.625a(6)(d) to obtain an independent chemical test. *Id*. at 440, 449-450. The Court noted that "the Legislature did not specify which remedy to apply if a police officer failed to advise, or denied, a defendant

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[3] The relevant part of § 16215 of the public health code, MCL 333.16215(1), reads:

> [A] licensee who holds a license other than a health profession subfield license may delegate to a licensed or unlicensed individual who is otherwise qualified by education, training, or experience the performance of selected acts, tasks, or functions where the acts, tasks, or functions fall within the scope of practice of the licensee's profession and will be performed under the licensee's supervision.

of his or her right to a reasonable opportunity to obtain an independent chemical test." *Id*. at 443. The Court noted by contrast, however, that the Legislature had

> . . . clearly specified that if a prosecutor fails to comply with subsection 8 of MCL 257.625a,[4] the remedy available to a defendant for violation of subsection 8 of the statute is suppression of the results of the state-administered chemical test. Had the Legislature intended a comparable remedy for a violation of subsection 6(d) – or even the more drastic remedy of dismissal – it could have so specified. *People v Monaco,* 474 Mich 48, 58; 710 NW2d 46 (2006) (citation omitted) ("'Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute . . . .'"). [*Anstey*, 476 Mich at 443-444 (footnote omitted).]

The Court also contrasted MCL 257.625a(7), and then concluded that "the statutory text does not reflect that the Legislature intended either dismissal or suppression of the evidence to be the remedy for a violation of MCL 257.625a(6)(d)." *Id*. at 463.

Here, even assuming that the EMT was not operating under the delegation of a licensed physician as defendant argued below, nothing in the relevant statutory language suggests that violation of § 625a(6)(c) requires suppression of the resulting blood test results. *Antsey*, 476 Mich at 449. As the *Anstey* Court noted with respect to subsection(6)(d), had the Legislature intended suppression of the blood test results as a remedy for a violation of subsection (6)(c), it could have so specified as it did in subsection (8). Accordingly, this remedy is not appropriate for a violation of MCL 257.625(a)(6)(c).[5] The trial court erred when it suppressed the blood test results on the basis of a statutory violation.

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[4] MCL 257.625a(8) provides:

> If a chemical test described in subsection (6) is administered, the test results shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The prosecution shall offer the test results as evidence in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution.

[5] Failure to comply with the precise terms of the statute does not automatically render the results of the blood test inadmissible as long as the prosecutor is able to otherwise establish an adequate foundation indicating that the sample was drawn and preserved in a manner that would ensure the purity of the sample and the accuracy of the tests results. Indeed, blood drawn pursuant to a search warrant does not need to comply with the requirements of MCL 257.625a(6)(c), yet can be admitted into evidence, provided an adequate foundation is presented by the prosecutor. *People v Callon*, 256 Mich App 312, 322-323; 622 NW2d 501 (2003). Nothing in the record suggests that the blood sample taken by the EMT was taken improperly or would not accurately

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Jane M. Beckering
/s/ Mark T. Boonstra

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represent the state of defendant's blood at the time in question. Since nothing in the record suggests that the test results would be unreliable, they should be admitted into evidence.