STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0717

State of Minnesota,
Respondent,

vs.

Demetruis N. Harris,
Appellant.

Filed July 7, 2009
Affirmed
Toussaint, Chief Judge

Hennepin County District Court
File No. CR-07-015956

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Halbrooks, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

In this appeal from his third-degree-controlled-substance-crime conviction, appellant Demetruis N. Harris argues that, because the hospital and its personnel are state actors, the district court abused its discretion by refusing to suppress drugs recovered from his clothing at the hospital. Because appellant introduced no evidence to suggest that the hospital or its personnel are state actors, we affirm.

D E C I S I O N

Appellant argues that the district court erred in denying his suppression motion because the hospital and its personnel are state actors. We review a suppression ruling as a question of law if the facts are undisputed. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). We independently review the facts to determine whether "the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Appellant contends that the hospital and its personnel are subject to the warrant requirement because the state failed to prove that the hospital receives no government funding. The federal and state constitutions prohibit warrantless searches. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. The prohibition against warrantless searches applies to "certain arbitrary and invasive acts by" government officials "or those acting at their direction." *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 613-14, 109 S. Ct. 1402, 1411 (1989). If private parties perform the searches or seizures, then this prohibition does not apply. *Id.* at 614, 109 S. Ct. at 1411. To decide whether private

parties act as government instruments or agents, we must determine whether "the government knew of and acquiesced in the search" and whether "the search was conducted to assist law enforcement efforts or to further the private [parties'] own ends." *State v. Buswell*, 460 N.W.2d 614, 618 (Minn. 1990). Determining whether a search involved state action presents a factual question, which we will only reverse if clearly erroneous. *Id.*

Based on the record, the district court's findings were not clearly erroneous. First, the state trooper who was investigating the one-car accident involving appellant knew nothing about the emergency room technician's (ERT) search of appellant's clothing. Additionally, the trooper did not ask any hospital staff to search appellant or his clothing. The ERT confirmed that no one asked him to search appellant's clothes and that the search was part of his job. The trooper also testified that he was not present when the ERT searched appellant's clothes and that the trooper learned of the search only after the ERT gave him a bag containing 14.7 grams of crack-cocaine. Thus, the government had no knowledge and did not acquiesce in the search, which supports the district court's conclusion of no state action. *See id.* (listing government's knowledge of and acquiescence in search as critical factor in determining whether search involved state action).

Second, the ERT testified that his job required him to cut off patients' clothing to prevent further aggravation to their injuries. Appellant arrived at the hospital after being ejected from his vehicle in a one-car accident. The ERT cut off appellant's clothing to prevent further aggravation to appellant's serious bodily injuries during treatment, as his

job required. The ERT's job also required him to search the patients' clothing for valuables and to place the valuables in a bag to prevent them from being discarded. He performed this search with every patient. Once appellant's clothes were removed and he was being treated, the ERT searched appellant's clothes and discovered the bag of crack-cocaine. Thus, the search's purpose was related to the ERT's job rather than to aid law enforcement. *See id.* (listing purpose of search to aid law enforcement or to further private party's own ends as critical factor); *see also State v. Jorgensen*, 660 N.W.2d 127, 132 (Minn. 2003) (concluding that sister's search of house was purely personal and not to aid law enforcement).

Although appellant's argument that the state failed to prove that the hospital was not a state hospital or that the ERT was not a state employee is novel, it lacks evidentiary support. Appellant presents no evidence about the hospital's financials, although he could have subpoenaed someone from the hospital, and the district court gave him a chance to address this point again in a motion before the suppression ruling. Additionally, the ERT testified that he believed he did not work for a government agency and the hospital was privately owned. Based on the evidence in the record, the district court's factual findings were not clearly erroneous, and the district court did not err when it denied appellant's suppression motion.

Affirmed.