NOT DESIGNATED FOR PUBLICATION

No. 110,323

IN THE SUPREME COURT OF THE STATE OF KANSAS

WILLIAM HOEFFNER,
Appellant,

v.

KANSAS DEPARTMENT OF REVENUE,
Appellee.

MEMORANDUM OPINION

Review of the judgment of the Court of Appeals in 50 Kan. App. 2d 878, 335 P.3d 684 (2014). Appeal from Ford District Court; E. LEIGH HOOD, judge. Opinion filed October 21, 2016. Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

John M. Lindner, of Lindner, Marquez & Koksal, of Garden City, argued the cause and was on the brief for appellant.

John D. Shultz, deputy general counsel, of Legal Services, Kansas Department of Revenue, argued the cause and was on the briefs for appellee.

The opinion of the court was delivered by

STEGALL, J.: William Hoeffner, Jr.'s driving privileges were suspended by the Kansas Department of Revenue pursuant to K.S.A. 2010 Supp. 8-1014 as a result of a failed breath test administered after Hoeffner was arrested under suspicion of driving under the influence of alcohol. Hoeffner contended at the driver's license suspension hearing—and has continued to contend throughout this appeal—that his consent to the breath test was rendered involuntary when, after his initial refusal to take the test, law

enforcement officers claimed without legal justification that they would obtain a warrant for a blood alcohol test.

After reviewing the Kansas implied consent laws, a panel of the Court of Appeals agreed with Hoeffner that his consent was involuntary because an "officer is prohibited from obtaining a search warrant to extract blood after a person has refused to consent to a request to submit to blood-alcohol testing." *Hoeffner v. Kansas Dept. of Revenue*, 50 Kan. App. 2d 878, Syl. ¶ 8, 335 P.3d 684 (2014), *rev. granted* 302 Kan. 1009 (2015). However, the Court of Appeals declined to suppress the result of the breath test from the suspension proceedings, relying on the rule established in *Martin v. Kansas Dept. of Revenue*, 285 Kan. 625, 641, 646, 176 P.3d 938 (2008), that the "exclusionary rule does not apply in administrative driver's license suspension proceedings." *Hoeffner*, 50 Kan. App. 2d 878, Syl. ¶ 9.

Hoeffner now asks us to reconsider and reject the *Martin* rule. But the outcome of Hoeffner's appeal is now controlled by *City of Dodge City v. Webb*, 305 Kan. ___, ___ P.3d ___ (No. 109,634, this day decided). In *Webb*, we reviewed the identical statutory implied consent scheme at issue here and concluded law enforcement officers are not statutorily prohibited from obtaining a warrant in such circumstances. Slip op. at 1, Syl. ¶ 3. As such, law enforcement's ability to obtain a warrant in this case was controlled by the constitutional commands that set forth: (1) the minimal requirements that must be met prior to the issuance of a warrant; and (2) the minimal protections of the individual right not to be subject to unreasonable searches and seizures. See Kan. Const. Bill of Rights, § 15 ("The right of the people to be secure in their persons and property against unreasonable searches and seizures shall be inviolate; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons or property to be seized."); U.S. Const. Amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.").

Therefore, in keeping with our holding in *Webb* that there is no statutory prohibition against obtaining a warrant for a blood draw following a breath test refusal, we reject the conclusion of law articulated by the Court of Appeals in its eighth syllabus paragraph. Because Hoeffner does not argue—and the facts do not support—any claim that law enforcement's threat to obtain a warrant in Hoeffner's case was constitutionally unjustified, his ensuing consent to the breath test was voluntary and the results of the test are untainted by any constitutional infirmity. Given this, we need not—indeed we cannot—reach the question presented by Hoeffner to this court concerning the *Martin* rule.

The Court of Appeals decision to affirm the suspension of Hoeffner's driving privileges was therefore correct, albeit for the wrong reasons. See *State v. Wycoff*, 303 Kan. 885, 886, 367 P.3d 1258 (2016) ("an appellate court can affirm the district court if the court was right for the wrong reason").

Affirmed.

* * *

JOHNSON, J., dissenting: I dissent, principally for the reasons set forth in my dissent in *City of Dodge City v. Webb*, 305 Kan. ___, ___ P.3d ___ (No. 109,634, this day decided).

But I am particularly concerned with the majority's declaration in this opinion that a law enforcement officer's ability to obtain a warrant is controlled by the constitutional commands of the Kansas Constitution's Bill of Rights, § 15 and the United States Constitution's Fourth Amendment. Those bill of rights provisions were designed to be a shield that would protect people's personal, individual rights from governmental overreach. See *Payton v. New York*, 445 U.S. 573, 589, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980) ("The Fourth Amendment protects the *individual's* privacy in a variety of settings." [Emphasis added.]); *Rakas v. Illinois*, 439 U.S. 128, Syl. ¶ 1, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978) ("'Fourth Amendment rights are *personal rights*.'" [Emphasis added.]). They were never intended to invest governmental agents with any right or privilege, such as the ability to exercise police powers through a search warrant.

The constitutional authority to exercise police powers "[is] reserved to the States respectively, or to the people," by the Tenth Amendment to the United States Constitution. The people of Kansas normally "exercise their governmental powers through the legislature." *Manning v. Davis*, 166 Kan. 278, 281, 201 P.2d 113 (1948). Therefore, it is the Kansas Legislature that must confer upon a Kansas law enforcement officer the authority to obtain a search warrant, albeit constrained by the respective bill of rights provisions. In other words, the Fourth Amendment and Kansas Constitution Bill of Rights, § 15 tell us when a law enforcement officer *cannot* get a warrant; they do not tell us when a law enforcement *can* obtain a warrant.

LUCKERT, J., joins in the foregoing dissenting opinion.