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ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-502

OCTOBER TERM, 2005

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
Laurie Freer	}	
	}	DOCKET NO. 1072-7-02 FrCr

Trial Judge: Michael S. Kupersmith

In the above-entitled cause, the Clerk will enter:

Defendant Laurie Freer appeals from her conditional guilty plea to driving under the influence with serious bodily injury resulting. She argues that the trial court erred in denying her request to exclude her hospital treatment records, which included the results of a blood alcohol test, because the test results were privileged. We affirm.

The trial court made the following findings. Defendant was involved in a two-car accident in May 2002 and taken to the hospital. A police officer was directed to speak with defendant at the hospital to determine if the accident was alcohol-related. The officer spoke to defendant while she was lying in her hospital bed. He could smell an odor of alcoholic beverages on defendant=s breath. Defendant acknowledged that she had been drinking. The officer informed defendant of her Miranda rights and asked if she would waive her rights. She responded that she wanted to go to sleep. The officer read defendant her implied consent rights and asked if she wanted to speak to a lawyer before deciding whether to submit to a blood test. Defendant did not respond; the officer believed that she was pretending to be asleep. The officer did not contact an attorney on defendant=s behalf. He asked defendant for a blood sample, and defendant responded, ANo.@

In June 2002, a police officer visited defendant at her residence. During the visit, defendant signed an AAuthorization for Disclosure of Medical Record Information@ form, authorizing the hospital to release her medical/hospital records to the officer for the purpose of A[t]he investigation of a motor vehicle accident.@ Defendant indicated that only the records from her two-day hospital stay should be disclosed, but did not in any other way limit the release of her records. Included in the disclosed records were the results of a blood alcohol test. In July 2002, defendant was charged with driving under the influence with serious bodily injury resulting to another person, among other charges.

In January 2003, defendant moved to exclude evidence of her refusal to submit to a blood alcohol test, which the court granted. She also moved to suppress the results of the blood alcohol test found in her hospital records, asserting that she had not waived her doctor-patient privilege. The trial court denied her request, rejecting defendant=s assertion that she had signed only a limited release of her medical records without knowing that her waiver would be considered a general waiver for all of her records. The court explained that the police officer, not having seen the records, could not have provided defendant with any more detail than he had as to the type of the information that would be disclosed. The court further explained that even if, as defendant asserted, the officer obtaining the release had informed her that he needed the records for his accident report, and even though defendant did not waive her privilege as to each specific piece of information contained in her records, by consenting to the disclosure of a significant part of the privileged

matter, she had waived the privilege to all of the information in her records for the specific dates pursuant to Rule 510 of the Vermont Rules of Evidence. For this and other reasons, the court denied plaintiff=s motion to exclude her hospital records. Defendant pled guilty pursuant to a plea agreement and this appeal followed.

On appeal, defendant argues that the trial court erred in denying her motion because she did not voluntarily waive her privilege to the release of her blood alcohol test. According to defendant, she was unaware that her medical records contained the test, nothing on the release form indicated that this test was included, and the police officer Aperhaps deliberately@ misled her as to the nature of the request. Defendant asserts that her consent to disclosure must be construed narrowly, and she maintains that she did not voluntarily and knowingly waive her patient privilege with sufficient awareness of the likely consequences because she did not know that her blood alcohol had ever been measured. She also suggests that the disclosure form was confusing.

We find defendant=s arguments without merit. While defendant possessed a privilege against disclosure of her hospital records, V.R.E. 503; 12 V.S.A. ' 1612(a), she plainly waived this privilege. Defendant authorized the release of her Amedical/hospital records@ for the purpose of A[t]he investigation of a motor vehicle accident.@ Defendant did not limit the release of the records in any way other than limiting them to the two days that she received treatment at the hospital for her injuries. We reject defendant=s assertion that her waiver was somehow Ainvoluntary.@ That defendant may regret her actions does not render her waiver involuntary. Moreover, as the trial court explained, under the Vermont Rules of Evidence, a person who possesses a privilege against disclosure waives that privilege if she Avoluntarily discloses or consents to disclosure of any significant part of the privileged matter.@ V.R.E. 510. In this case, defendant consented to the disclosure of all of her hospital records. We reject defendant=s assertion that the form is confusing.

The California case cited by defendant, Roberts v. Superior Court of Butte County, 508 P.2d 309 (Cal. 1973), is unavailing. In that case, the court was asked to determine if the petitioner had waived her psychotherapist-patient privilege by signing a consent form that had been provided by her insurance company shortly after she had been involved in a car accident. The court looked to the language of the consent form, explaining that it would be strictly construed against the insurance company so that Athe waiver encompasses only that which clearly appears on its face.@ Id. at 317. The court found that the consent form referred only to records concerning the petitioner=s physical condition and treatment rendered, and it did not encompass the release of records concerning her past psychiatric treatment. Id. The court thus concluded that petitioner had not waived her psychotherapist-patient privilege by signing the consent form. Id. In this case, as discussed above, the disclosure form that defendant signed plainly encompassed all of her hospital records pertaining to the two days of her treatment, without limit, including the results of the blood alcohol test. The trial court did not abuse its discretion in denying defendant=s motion to exclude. See State v. Ogden, 161 Vt. 336, 341 (1993) (AAbsent an abuse of discretion, in which the court either totally withholds or exercises its discretion on clearly untenable or unreasonable grounds, the trial court=s evidentiary ruling stands on appeal.@).

Affirmed.

BY THE COURT:

_____
Denise R. Johnson, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Brian L. Burgess, Associate Justice

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