

Detective Michael Elliot was assigned to investigate the homicide. Elliot learned from the victim's aunt that, according to talk on the street, the shooting was the result of a fight on October 13 in which a man had been slashed in the face.

Elliot went to a nearby hospital and asked an administrator "if anyone came in for a slashing to the face on that date." The administrator gave him defendant's name and address. With the help of a police computer, Elliot obtained defendant's arrest record and a photograph of him. A witness to the shooting identified the photograph; the trail thus begun led to more evidence against defendant, and eventually to his conviction for second degree manslaughter.

The main ground for defendant's appeal is the denial of his motion to suppress all evidence obtained as a result of the hospital's disclosure of defendant's name and address to Elliot. Supreme Court held that evidence obtained in violation of the physician-patient privilege need not be suppressed. The Appellate Division affirmed on two alternative grounds: that there was no breach of the privilege, and that even if there was suppression was not required. A Judge of this Court granted leave to appeal, and we now affirm on the second of those two grounds.

Discussion

CPLR 4504 says: "Unless the patient waives the privilege, a person authorized to practice medicine . . . shall

not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity." We have held that the privilege does not apply to "such ordinary incidents and facts as are plain to the observation of any one without expert or professional knowledge" (Klein v Prudential Ins. Co. of Am., 221 NY 449, 453 [1917]). The People argue that the rule of Klein controls this case, because defendant's wound was visible to anyone who looked at him. Defendant argues that, while his wound may have been obvious, the cause of it was not; he says that lay people cannot tell whether a wound is caused by a "slash" or some other kind of injury (cf. Matter of Grand Jury Investigation in N.Y. County, 98 NY2d 525, 531-532 [2002] [the privilege may turn on "whether particular injuries and their causes would have been obvious to a layperson"]).

We need not decide this issue, because we agree with both courts below that, even if there was a violation of the physician-patient privilege, the suppression of the evidence found as a result is not required. The physician-patient privilege is based on statute, not the State or Federal Constitution (Klein, 221 NY at 453). Our decisions make clear that a violation of a statute does not, without more, justify suppressing the evidence to which that violation leads (People v Patterson, 78 NY2d 711, 716-717 [1991]).

We have made an exception to this rule only when the

principal purpose of a statute is to protect a constitutional right (People v Taylor, 73 NY2d 683, 690-691 [1989]; People v Gallina, 66 NY2d 52, 59 [1985]). The statute at issue in Taylor governed the procedure to be followed on an application by police officers for a search warrant; the statute in Gallina governed court-authorized wiretapping. In each case, while a violation of the statute was not necessarily a violation of a constitutional right, the statutes existed to safeguard rights protected by the Fourth Amendment. In those cases, we held that when the statutes were violated, the evidence obtained as a result should be suppressed.

This case is nothing like Taylor or Gallina. There is no constitutional right to privacy in physician-patient communications. The Legislature has created, by statute, several exceptions to the physician-patient privilege (see, e.g., Penal Law § 265.25 [doctors must report gunshot wounds and life-threatening knife wounds to the police]; Family Court Act § 1046 [a] [vii] [physician-patient privilege inapplicable at hearings in child protective proceedings]). It could, if it chose, make another exception for the disclosure in this case.

Indeed, the argument for suppression here is weaker than the argument we rejected in Patterson, for the statute at issue in Patterson, which required return to a criminal defendant of his photograph after charges against him were dismissed, had at least some relation to a constitutionally protected right: the

presumption of innocence (see 78 NY2d at 716). The physician-patient privilege, by contrast, does not serve primarily to protect individuals against government conduct; it regulates a private relationship. The primary obligation to comply with CPLR 4504 is the doctor's -- or, in this case, the hospital's. To suppress evidence resulting from a violation of Section 4504 would be to punish the State for a doctor's or hospital's misconduct -- a punishment unlikely to deter doctors and hospitals, who have little interest in whether criminal prosecutions succeed or not.

Defendant's other arguments lack merit.

Accordingly, the order of the Appellate Division should be affirmed.

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Order affirmed. Opinion by Judge Smith. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

Decided November 20, 2007