STATE OF MINNESOTA
IN COURT OF APPEALS
A08-951

Nathan M. Zieglmeier, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed March 9, 2010
Affirmed.
Stauber, Judge

Ramsey County District Court
File No. 62C006003171

Charles A. Ramsay, Daniel J. Koewler, Charles A. Ramsay & Assoc., P.L.L.C., Roseville, Minnesota (for appellant)

Lori Swanson, Attorney General, Joan Eichhorst, Kristi Nielsen, Assistant Attorneys General, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Stauber, Judge.

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

STAUBER, Judge

Appellant challenges the admission of the urine test used by respondent to revoke his driver's license under the implied consent law. Appellant contends that the district court erred in sustaining the revocation of his driving privileges because (1) respondent

failed to establish that the urine testing method employed by the Bureau of Criminal Apprehension comports with the *Frye-Mack* standard for admissibility of scientific evidence; (2) the administration of the urine test violated appellant's right to equal protection; and (3) the results of the urine test should have been suppressed because the implied-consent advisory that criminalizes a refusal to submit to a chemical test creates an unreasonable search or seizure under the Fourth Amendment. We affirm.

FACTS

On March 26, 2006, appellant was arrested on suspicion of driving while impaired. After reading the implied-consent advisory, police asked appellant to submit to a blood or urine test. After speaking to an attorney, appellant chose the urine test, which revealed an alcohol concentration of 0.10. As a consequence, respondent Commissioner of Public Safety revoked appellant's driver's license.

Appellant petitioned the district court to rescind the revocation of his license. At a subsequent hearing on the petition, appellant challenged the validity of the urine test administered by police. Appellant offered the testimony of Thomas Burr, a forensic scientist who testified that the urine test result did not accurately reflect appellant's alcohol concentration because appellant was not required to void his bladder before the sample was collected. Burr opined that the urine sample obtained from appellant allowed for measurement of appellant's average alcohol concentration since he last urinated, but not his alcohol concentration at the time the urine sample was obtained. Burr further opined that the method used to determine appellant's alcohol concentration did "not conform to commonly accepted scientific procedures in forensic toxicology for obtaining

urine tests or alcohol concentration." To rebut Burr's assertions, the commissioner offered the testimony of Brent Nelson, a forensic scientist for the Bureau of Criminal Apprehension (BCA). Nelson testified that the test results from the urine sample accurately reflected appellant's alcohol concentration. Nelson also noted that state law does not require that a suspect void his bladder before submitting to a urine test.

After the hearing, the district court issued an order sustaining the revocation of appellant's driving privileges. The district court found that the urine test administered to appellant was reliable and, therefore, satisfied the admissibility requirements of Minn. Stat. § 634.15 (2004). The court also rejected appellant's arguments that (1) state laws governing alcohol-concentration testing violate equal protection and (2) his urine sample was obtained in violation of his Fourth Amendment right to be free from unreasonable searches and seizures because police did not have a warrant to obtain the sample and he did not voluntarily consent to the urine test. This appeal followed.

D E C I S I O N

I.

Appellant argues that the district court erred by failing to hold a hearing to determine whether the urine testing method employed by the BCA comports with the *Frye-Mack* standard for admissibility of scientific evidence. But appellant did not request a *Frye-Mack* hearing, and the district court did not address this question in its order. This court need not address issues that were not raised and decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We therefore conclude that appellant has waived the issue of whether a *Frye-Mack* hearing was necessary to

establish the general acceptance of pre-void urine tests within the relevant scientific community.

II.

Next, appellant argues that the district court erred by concluding that the implied consent law, which authorizes three separate forms of chemical testing to determine a driver's alcohol concentration, does not violate his right to equal protection under the Minnesota Constitution. *See* Minn. Stat. § 169A.51, subd. 1 (2004) (sanctioning the use of blood, breath, and urine testing to measure a driver's alcohol concentration). Article I, section 2 of the Minnesota Constitution provides that "[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land." Minn. Const. art. I, § 2. The purpose of the clause is to ensure "that all similarly situated individuals shall be treated alike." *Scott v. Minneapolis Police Relief Ass'n*, 615 N.W.2d 66, 74 (Minn. 2000). Whether a statute is constitutional is a question of law subject to de novo review. *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). "Minnesota statutes are presumed constitutional, and our power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary." *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989).

Appellant seems to claim that the implied-consent law is both unconstitutional on its face and as applied to him. *See State v. Richmond*, 730 N.W.2d 62, 71 (Minn. App. 2007) ("A party may raise an equal protection challenge to a statute based on the statute's express terms, that is, a 'facial' challenge, or based on the statute's application, that is, an

'as-applied' challenge"), *review denied* (Minn. June 19, 2007). First, appellant argues that the law is facially unconstitutional because blood and breath tests measure alcohol concentration more accurately than urine tests. Appellant's theory is that urine tests are less accurate because they measure the amount of alcohol pooled in the bladder at the time of testing and not whether the person is currently under the influence of alcohol.

Appellant does not allege that he is a member of a suspect class or that a fundamental right is involved. Thus, the rational-basis test applies to his equal-protection challenge. *See State v. Benniefield*, 678 N.W.2d 42, 46 (Minn. 2004). Under the rational-basis test, a statute is presumed constitutional and is sustained "if the classification drawn by it is rationally related to a legitimate governmental interest." *Id.* (quotation omitted). To satisfy this standard (1) any distinctions in a statute between classifications "must not be manifestly arbitrary or fanciful but must be genuine and substantial"; (2) the classification "must be genuine or relevant to the purpose of the law"; and (3) "the purpose of the statute must be one that the state can legitimately attempt to achieve." *State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991).

Here, the implied-consent law withstands the rational-basis test. First, there are genuine and substantial reasons for the current testing scheme. By authorizing three testing methods, the legislature has recognized that some flexibility in testing is necessary for police to properly enforce the implied-consent law. For example, it may be necessary to administer an alternative test because (1) a driver is physically unable to perform or has a "reasonable aversion" to a particular form of testing or (2) there are no qualified personnel available to administer a certain test. *See Franko v. Comm'r of Pub. Safety*,

432 N.W.2d 469, 472 (Minn. App. 1988) (reasonable aversion); *Belille v. Comm'r of Pub. Safety*, 411 N.W.2d 589, 591 (Minn. App. 1987) (physically unable), *review denied* (Minn. Nov. 6, 1987). Thus, by ensuring that a reliable form of testing is available, the testing scheme authorized by the legislature furthers the implied-consent law's purpose of promoting public safety. *See Rude v. Comm'r of Pub. Safety*, 347 N.W.2d 77, 80 (Minn. App. 1984) (stating that purpose of implied-consent statute is to "promote public safety on the highway and aid the proper enforcement of our D.W.I. statute"). The purpose of the law is also one that the state strives to achieve. *See C and R Stacy, LLC v. County of Chisago*, 742 N.W.2d 447, 454 (Minn. App. 2007) (stating that "[p]ublic safety is a legitimate concern of state government"). Because all three prongs of the rational-basis test are satisfied, the urine-test classification does not violate appellant's right to equal protection.

Appellant also asserts that the implied consent law is unconstitutional as applied to him. Appellant argues that the implied-consent law violates his equal-protection rights because it allows police to arbitrarily decide which form of testing to administer to a particular driver. But appellant's submission to a urine test did not arise out of the arbitrary application of the statute by police. Instead, appellant personally chose to submit to the urine test. Moreover, appellant's arbitrary-application argument was recently rejected by this court in *Hayes v. Comm'r of Pub. Safety*, 773 N.W.2d 134 (Minn. App. 2009) (concluding that "it is not enough to prove that differential applications of [the implied consent] statute are arbitrary" to establish an equal-protection violation), *review denied* (Minn. Dec. 23, 2009). Accordingly, appellant has not

established that the administration of a urine test violated his constitutional right to equal protection.

III.

Appellant also argues that Minnesota's criminal test-refusal statute authorizes an unconstitutionally coercive search, and therefore the result of his urine test should have been suppressed. When material facts are undisputed, this court reviews a district court's ruling on a suppression motion as an issue of law. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). The Fourth Amendment to the United States Constitution and article 1, section 10 of the Minnesota Constitution protect citizens from unreasonable searches and seizures. *See State v. Netland*, 762 N.W.2d 202, 212 (Minn. 2009). The taking of a urine sample constitutes a search under the Fourth Amendment. *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 616-18, 109 S. Ct. 1402, 1412-1414 (1989). Warrantless searches are generally unreasonable unless an exception applies. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). Consent and exigent circumstances with probable cause are two exceptions to the warrant requirement. *In re Welfare of B.R.K.*, 658 N.W.2d 565, 578 (Minn. 2003). Appellant asserts that he did not consent to the urine test and that the exigent-circumstances exception does not apply in the implied-consent context. Appellant maintains that warrantless searches in the implied-consent context are only reasonable under the exigent-circumstances exception if the driver "actually injured or killed another person, or damaged another's property."

The argument that the application of the exigent-circumstances exception depends on the underlying criminal offense was recently rejected by the Minnesota Supreme

Court in *Netland*. 762 N.W.2d at 214. The *Netland* court clarified that the exigent-circumstances exception does not "depend on the underlying crime; rather, the evanescent nature of the evidence creates the conditions that justify a warrantless search." *Id*. at 213. Accordingly, "no warrant is necessary to secure a blood-alcohol test where there is probable cause to suspect a crime in which chemical impairment is an element of the offense." *Id.* at 214; *see also State v. Shriner*, 751 N.W.2d 538, 549 (Minn. 2008) (holding that rapid, natural dissipation of alcohol in the blood creates exigent circumstances for warrantless blood draw). The exigent-circumstances exception clearly applies in the implied-consent context. We therefore affirm the district court's determination that appellant's Fourth Amendment rights were not violated.

Affirmed.