STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1326

Paul Jonathan Aubart, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

Filed June 23, 2014
Reversed
Bjorkman, Judge

Stearns County District Court
File No. 73-CV-12-11509

Charles L. Hawkins, Minneapolis, Minnesota (for respondent)

Lori Swanson, Attorney General, James E. Haase, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Johnson, Judge.

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

BJORKMAN, Judge

Appellant commissioner challenges the district court's rescission of respondent's driver's license revocation, arguing that respondent voluntarily consented to a urine test. We reverse.

FACTS

On October 1, 2012, respondent Paul Jonathan Aubart was arrested for driving while impaired. State Trooper Nick Diederich read Aubart the implied-consent advisory. Aubart was given the opportunity to consult an attorney, but declined to do so. He agreed to a breath test, but was unable to provide a sufficient sample. Trooper Diederich asked Aubart if he would take a urine test. Aubart agreed, and the result showed an alcohol concentration of 0.17. Appellant Minnesota Commissioner of Public Safety revoked Aubart's driver's license, and Aubart petitioned the district court to review the revocation. The district court rescinded Aubart's license revocation, holding that his consent to the urine test was coerced under the implied-consent law. This appeal follows.

D E C I S I O N

Collection and testing of a person's blood, breath, or urine constitutes a search under the Fourth Amendment to the United States Constitution, requiring a warrant or an exception to the warrant requirement. *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 616-17, 109 S. Ct. 1402, 1412-13 (1989); *State v. Brooks*, 838 N.W.2d 563, 568 (Minn. 2013), *cert. denied*, 134 S. Ct. 1799 (2014). The exigency created by the dissipation of alcohol in the body is insufficient to dispense with the warrant requirement. *Missouri v. McNeely*, 133 S. Ct. 1552, 1563 (2013). But a warrantless search of a person's breath, blood, or urine is valid if the person voluntarily consents to the search. *Brooks*, 838 N.W.2d at 568. The commissioner bears the burden of showing by a preponderance of the evidence that the driver freely and voluntarily consented. *See id.*

The voluntariness of Aubart's consent depends on "the totality of the circumstances," which we review independently. *See id.* (quotation omitted); *see also State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) ("When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing . . . the evidence."). The relevant circumstances include "the nature of the encounter, the kind of person the defendant is, and what was said and how it was said." *Brooks*, 838 N.W.2d at 569 (quotation omitted). The nature of the encounter includes how the police came to suspect the driver was under the influence, whether police read the driver the implied-consent advisory, and whether he had the right to consult with an attorney. *Id.* A driver's consent is not coerced as a matter of law simply because he or she faces criminal consequences for refusal to submit to testing. *Id.* at 570.

The commissioner argues that examination of the totality of the circumstances reveals that Aubart voluntarily consented to chemical testing. We agree. Aubart concedes that the trooper had probable cause to believe he was driving while under the influence of alcohol. It also is undisputed that Aubart received an implied-consent advisory, which informed him that he had the right to consult with an attorney and to refuse chemical testing. *See id.* (stating that implied-consent advisory "makes clear" that a driver has a choice). Aubart indicated that he understood the advisory, and was given the opportunity to consult with an attorney. He thereafter consented to give a breath sample, and when he was unable to do so, consented to a urine test. Aubart has not claimed, and there is no evidence indicating, that the trooper did anything to overcome

Aubart's will or coerce his cooperation. He was not subjected to extensive questioning or held in custody for a prolonged time before being asked to provide a sample for chemical testing. His only argument is that his consent was coerced because refusal is a crime, which our supreme court rejected as a matter of law in *Brooks*. *See id.*

Overall, this record indicates that Aubart voluntarily consented to chemical testing of his urine. Because Aubart's consent justified the warrantless search, we conclude the district court erred by suppressing the test result and rescinding Aubart's license revocation.

Reversed.