STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1848

Ronald Michael Riegert, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed June 30, 2014
Affirmed
Schellhas, Judge

Cass County District Court
File No. 11-CV-13-561

Richard C. Kenly, Backus, Minnesota (for appellant)

Lori Swanson, Attorney General, Jacob C. Fischmann, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Schellhas, Judge; and Connolly, Judge.

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

SCHELLHAS, Judge

Arguing that the district court violated his constitutional rights under the Fourth Amendment by relying on blood-test results obtained without a search warrant, appellant challenges the order sustaining the revocation of his driving privileges. We affirm.

FACTS

Appellant Ronald Riegert challenged the revocation of his driver's license by respondent Minnesota Commissioner of Public Safety. Riegert moved to suppress the results of a blood test. At his revocation hearing, Saint Cloud Police Officer Janell Graff testified that, on January 26, 2013, she was dispatched to read the Minnesota Motor Vehicle Implied Consent Advisory to a man, later identified as Riegert, who had been flown to the hospital following an automobile accident. Officer Graff read the advisory to Riegert in a conversational tone. Riegert acknowledged that he understood the advisory, declined to speak to an attorney, and agreed to submit to a blood test. Riegert testified that he would not have consented to the blood test but for being told by Officer Graff that not consenting was a crime. Riegert also testified that Officer Graff lied during her testimony when she stated that she asked him if he would submit to a blood test.

The district court sustained the revocation of Riegert's driver's license. In relevant part, the court found that Riegert consented to the blood test and "was not coerced into submitting to a test." The court therefore concluded that the blood test was constitutional.

This appeal follows.

D E C I S I O N

Riegert argues that the district court erred by denying his motion to suppress his blood-test results because he "was not presented a free and unconstrained choice when he was threatened with a criminal charge if he refused to consent to a warrantless search." When reviewing pretrial orders concerning the suppression of evidence, appellate courts

review the district court's legal determinations de novo and its factual findings for clear error. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012).

The United States and Minnesota Constitutions prohibit warrantless searches and seizures, subject to limited exceptions. U.S. Const. amend. IV; Minn. Const. art I, § 10; *see generally Bailey v. United States*, 133 S. Ct. 1031, 1037 (2013) (noting that "[t]he Fourth Amendment[is] applicable through the Fourteenth Amendment to the States"). Taking a blood sample is a search. *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 616–17, 109 S. Ct. 1402, 1413 (1989).

If an individual consents to a search, the police do not need a warrant. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S. Ct. 2041, 2043–44 (1973). "[T]he State must show by a preponderance of the evidence that the defendant freely and voluntarily consented" to the search. *State v. Brooks*, 838 N.W.2d 563, 568 (Minn. 2013), *cert. denied*, 134 S. Ct. 1799 (2014). "Whether consent is voluntary is determined by examining the totality of the circumstances." *Id.* at 568 (quotation omitted). Under *Brooks*, consent "is assessed by examining all of the relevant circumstances." *Id*. at 569. This examination requires us to "consider the totality of circumstances, including the nature of the encounter, the kind of person the defendant is, and what was said and how it was said." *Id*. (quotation omitted). The "nature of the encounter includes how the police came to suspect [the driver] was driving under the influence, their request that he take the chemical tests, which included whether they read him the implied consent advisory, and whether he had the right to consult with an attorney." *Id.* "[A] driver's decision to agree

to take a test is not coerced simply because Minnesota has attached the penalty of making it a crime to refuse the test." *Id.* at 570.

Here, the district court found that

> Officer Graff's behavior and demeanor did not create any atmosphere of coercion. She did, as the law required, advise [Riegert] that refusal to submit to the test under the circumstances, would be a crime. She also afforded [Riegert] the opportunity to call an attorney to discuss whether he should or should not agree to provide a blood sample for testing, and he replied that he did not wish to speak to any attorney. He was then asked, "will you take the blood test?", and he answered, "yes".

The district court found Officer Graff's testimony that Riegert agreed to take a blood test credible. We defer to this finding. *See State v. Watkins*, 840 N.W.2d 21, 31 (Minn. 2013) ("[I]t is the function of the fact-finder, not this court, to make credibility determinations."). The court also found that Riegert consented and "was not coerced into submitting to a test." Under these circumstances, the district court did not err by declining to suppress the blood test and sustaining the revocation of Riegert's driver's license. Because the state prevails on the consent argument, we need not address the state's alternative arguments.

Affirmed.