STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1869

Jeremy William Doerfler, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

Filed July 7, 2014
Reversed
Ross, Judge

Dakota County District Court
File No. 19HA-CV-13-2546

Robert H. Ambrose, Douglas T. Kans, Kans Law Firm, LLC, Bloomington, Minnesota (for respondent)

Lori Swanson, Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Willis, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

ROSS, Judge

A Dakota County deputy arrested Jeremy Doerfler after he failed several field sobriety tests, and Doerfler submitted to a breath test that indicated that his alcohol concentration was above the per se limit of intoxication. The commissioner of public safety revoked his driving privileges under the implied-consent law. Doerfler challenged the admissibility of his test result and the district court suppressed the result, holding that the police had violated Doerfler's Fourth Amendment right by obtaining the test without first securing a search warrant and no exception to the warrant requirement applied. The court therefore rescinded the revocation of Doerfler's driving privileges. Because the uncontested facts demonstrate that Doerfler consented to the breath test, we hold that his test result is admissible and reverse the district court.

FACTS

Dakota County Deputy Sheriff Sean Qualy stopped Jeremy Doerfler's motorcycle for speeding. Deputy Qualy smelled the odor of alcoholic beverages on Doerfler's breath, and Doerfler admitted to drinking "a beer or two." Doerfler failed several field sobriety tests, and a preliminary breath test showed he had an alcohol concentration of .109. The deputy arrested Doerfler for driving while impaired and took him to the county jail, where he read Doerfler the implied-consent advisory. Doerfler declined to contact an attorney when offered the opportunity, and he agreed to take a breath test. The breath test indicated that Doerfler's alcohol concentration was .09. Qualy issued Doerfler a citation for driving while impaired, speeding, and violating a restriction of his motorcycle permit

by driving at night. The commissioner of public safety revoked Doerfler's driving privileges under the implied-consent statutes for the positive test result.

Doerfler petitioned for judicial review and moved for an order rescinding the revocation, arguing that police violated his constitutional rights by administering the breath test without a warrant. He also moved the district court to declare the implied-consent law unconstitutional. The district court, lacking the guidance the supreme court later provided in *State v. Brooks*, 838 N.W.2d 563 (Minn. 2013), *cert. denied*, 134 S. Ct 1799 (2014), concluded that the criminal penalty for refusing a chemical test had coerced Doerfler into taking the test. It saw no other justification for the warrantless test and rescinded the revocation of Doerfler's driving privileges.

The commissioner appealed the district court's order. The commissioner also moved this court to stay the appeal pending the outcome of *Brooks*. We denied the motion because the supreme court decided *Brooks* shortly after the commissioner filed the appeal. We now consider the appeal.

D E C I S I O N

The commissioner challenges the district court's decision to suppress the result of Doerfler's breath test, a question of law, which we review de novo. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010). The federal and state constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A breath test is a search. *Skinner v. Ry. Labor Execs. Ass'n*, 489 U.S. 602, 616–17, 109 S. Ct. 1402, 1413 (1989). Evidence obtained through a constitutionally unreasonable search is generally inadmissible in criminal cases. *Hudson*

v. Michigan, 547 U.S. 586, 590–92, 126 S. Ct. 2159, 2163–64 (2006); *State v. Jackson*, 742 N.W.2d 163, 177–78 (Minn. 2007). A challenge to the revocation of driving privileges is a civil proceeding, not a criminal one. *Harrison*, 781 N.W.2d at 919–20. The supreme court has applied the prohibition against unreasonable searches in civil implied-consent proceedings challenging the revocation of driving privileges. *See Blaisdell v. Comm'r of Pub. Safety*, 381 N.W.2d 849, 849 (Minn. 1986) (applying Fourth Amendment analysis to license-revocation proceeding). So we rely on the same implied-consent jurisprudence that we would apply in a criminal case.

Warrantless searches are presumptively unreasonable, but, because our ultimate concern is reasonableness, there are exceptions to the warrant requirement. *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 1947 (2006). The commissioner bears the burden of showing that an exception to the warrant requirement applies. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). Voluntary consent is an exception to the warrant requirement, *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992), but the commissioner must prove that the suspect voluntarily consented, *Schneckloth v. Bustamonte*, 412 U.S. 218, 222, 93 S. Ct. 2041, 2045 (1973); *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011).

We look to the totality of the circumstances when deciding whether consent was voluntary. *State v. Brooks*, 838 N.W.2d 563, 568 (Minn. 2013), *cert. denied*, 134 S. Ct. 1799 (2014). The criminal consequences of refusing to test do not by themselves render involuntary the arrested, suspected drunk driver's difficult choice between granting and withholding consent. *Id*. at 570–71. The circumstances we consider when assessing

voluntariness include the reasons Deputy Qualy suspected Doerfler of driving while impaired, Deputy Qualy's request that Doerfler take a breath test after reading Doerfler the implied-consent advisory, Doerfler's opportunity to reach legal counsel, and the kind of person Doerfler is. *Id.* at 569.

The district court, lacking the benefit of the *Brooks* decision, erroneously held that the criminal penalties resulting from a test refusal necessarily coerced Doerfler into taking the breath test. It declared that seeking a warrant is the only constitutionally acceptable means of obtaining evidence against suspected drunk drivers while protecting the constitutional right Doerfler invokes. But *Brooks* forecloses this reasoning and the consequent holding.

Doerfler attempts to distinguish *Brooks*, but we are not persuaded that the differences he cites are material. He points out that, unlike the driver in *Brooks*, he did not actually consult an attorney. He puts too much weight on this distinction. The supreme court did not rely on the fact that Brooks actually contacted an attorney to conclude that his consent to be tested was voluntary. It instead agreed with the district court that "nothing in the record suggests that Brooks was coerced in the sense that his will had been overborne and his capacity for self-determination critically impaired." *Id*. at 571 (quotation omitted). Then it added, "The fact that Brooks consulted with counsel before agreeing to take each test *reinforces* the conclusion that his consent was not illegally coerced." *Id*. (emphasis added). The phrase "reinforces the conclusion" informs us that the supreme court had already reached its conclusion that the consent was voluntary, and it indicates that the *Brooks* court would not have decided differently even

had Brooks not actually consulted with counsel. Additionally, the court reasoned that it is "the *ability to* consult with counsel about an issue" that makes a subsequent decision more likely to be voluntary. *Id*. at 572 (emphasis added). Like Brooks, Doerfler had "the ability to" contact an attorney before agreeing to the breath test. That Doerfler expressly declined to avail himself of the opportunity he was offered does not suggest coercion but confidence in his power to make the decision without legal counsel.

We also believe that Doerfler exaggerates the importance of his not having any prior alcohol-related charges that would have familiarized him with the implied-consent procedure. A subject's familiarity with the implied-consent procedure would strengthen a finding of voluntariness, but the *Brooks* court did not treat that familiarity as necessary to voluntary consent. Most important here, the district court found involuntariness solely based on what it believed was the coercive weight of the test-refusal penalties—reasoning that cannot survive *Brooks*—and no evidence suggests that the deputy did or said anything else that might have overcome Doerfler's will and pressed him to declare his consent to the chemical test.

Reversed.