STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1939

Brian William Miller, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

Filed June 30, 2014
Reversed
Reilly, Judge

Rice County District Court
File No. 66-CV-13-474

Eric J. McCloud, McCloud Law Firm, PLLC, St. Paul, 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 Reilly, Judge.

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

REILLY, Judge

Appellant-commissioner filed this appeal from the district court's order suppressing the results of respondent-Brian Miller's warrantless urine test and rescinding the implied-consent revocation of respondent's driver's license. Based on the totality-of-

the-circumstances analysis stated by the Minnesota Supreme Court in *State v. Brooks*, 838 N.W.2d 563 (Minn. 2013), *cert. denied*, 134 S. Ct. 1799 (2014), we reverse.

FACTS

On January 1, 2013, at approximately 2:30 a.m., respondent was arrested on suspicion of driving under the influence. Officers with the Faribault Police Department were on patrol when they observed a blue Ford Focus driving over the centerline and swerving within its lane on 7th Street NW in Faribault, Minnesota. The officers stopped the car. When they approached, one of the officers saw an open bottle of alcohol in the backseat and smelled an odor of alcohol coming from the car. Respondent told the officer that he had consumed seven to eight beers that evening and was on his way home from the bar. The officer asked respondent to step out of the car to perform field sobriety tests. Respondent then submitted to a preliminary breath test that revealed an alcohol concentration of .161.

The officers placed respondent under arrest for suspicion of driving under the influence and transported him to the Rice County Law Enforcement Center. The officer read respondent the implied-consent advisory. Respondent asked to consult with an attorney and a telephone was made available to him. Respondent then agreed to submit to a urine test. The urine test revealed an alcohol concentration of .14. Respondent's driver's license was revoked.

Respondent challenged the constitutionality of the urine test and sought rescission of his driver's license revocation. The district court issued an order suppressing the results of the chemical test and rescinding respondent's driver's license revocation. The

commissioner appeals the district court's order suppressing the results of respondent's urine test and rescinding the license revocation.

D E C I S I O N

When the facts are not in dispute the validity of a search is a question of law subject to de novo review. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010). "Conclusions of law will be overturned only upon a determination that the trial court has erroneously construed and applied the law to the facts of the case." *Dehn v. Comm'r of Pub. Safety*, 394 N.W.2d 272, 273 (Minn. App. 1986). Whether consent was voluntary is a factual question that we will reverse only if the district court's decision is clearly erroneous. *See State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994).

Both the Fourth Amendment to the U.S. Constitution and Article I, Section 10 of the Minnesota Constitution prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "It is a basic principle of constitutional law that warrantless searches are presumptively unreasonable." *State v. Shriner*, 751 N.W.2d 538, 541 (Minn. 2008). However, because reasonableness is the "touchstone" of the Fourth Amendment, courts recognize several exceptions to this rule. *Id*.

"Taking blood and urine samples from someone constitutes a search under the Fourth Amendment." *Brooks*, 838 N.W.2d at 568. Nevertheless, a warrantless search is valid "if the subject of the search consents." *Id*. In order for the exception to apply, "the [s]tate must show by a preponderance of the evidence that the defendant freely and voluntarily consented." *Id*. Whether consent is voluntary must be determined on a case-by-case basis, examining the totality of the circumstances. *State v. Lemert*, 843 N.W.2d

227, 233 (Minn. 2014) (citing *Missouri v. McNeely*, 133 S. Ct. 1552, 1536 (2013)). This analysis includes "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.

Respondent freely and voluntarily agreed to provide a sample of his urine for testing. The officers saw an open bottle of alcohol in respondent's vehicle and smelled an odor of alcohol on his person. Respondent admitted consuming seven to eight beers before driving and was on his way home from a bar. The officers performed field sobriety tests on respondent and subjected him to a preliminary breath test, which resulted in a reading of .161. Respondent was placed under arrest for suspicion of driving under the influence.

The officers drove respondent to the Rice County Law Enforcement Center and read him the implied-consent advisory. The wording of the advisory is set forth in Minnesota Statute § 169A.51, subd. 2 (2012). Under Minnesota's implied-consent law, anyone who drives a motor vehicle in the state consents "to a chemical test of that person's blood, breath, or urine for the purpose of determining the presence of alcohol" when certain conditions are met. Minn. Stat. § 169A.51, subd. 1(a) (2012); *Brooks*, 838 N.W.2d at 569. A police officer can require an individual to submit to a test when the officer "has probable cause to believe the person committed the offense of driving while impaired and the person has been lawfully arrested for driving while impaired." *Brooks*, 838 N.W.2d at 569 (citing Minn. Stat. § 169A.51, subd. 1(b)). As part of the advisory, respondent was told both that "Minnesota law requires the person to take a test" and "that refusal to take a test is a crime." Minn. Stat. § 169A.51, subd. 2(1), (2).

After being read the advisory, respondent asked to speak with an attorney. A telephone was made available to him. Respondent then agreed to submit a sample of his urine for testing. Given the totality of the circumstances, we conclude that the district court's finding that respondent's consent to the chemical testing was not voluntary is clearly erroneous. Respondent drove his car after he had been drinking, was lawfully arrested on suspicion of driving while impaired, and voluntarily submitted to testing in accordance with Minnesota's implied-consent law. Accordingly, a search warrant was not required and the alcohol concentration test results were admissible. The district court erred in suppressing the results of respondent's urine test and rescinding the revocation of respondent's driver's license.

Reversed.