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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1982

Christie Arnold Matheson, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

Filed May 19, 2014
Reversed
Bjorkman, Judge

St. Louis County District Court
File No. 69DU-CV-13-1864

Jeremy M. Downs, The Downs Law Firm, Duluth, Minnesota (for respondent)

Lori Swanson, Attorney General, Adam Kujawa, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Reilly, 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 drivers's license revocation, arguing that suppressing evidence of respondent's alcohol

concentration is unwarranted because he voluntarily consented to a blood test. We reverse.

FACTS

On May 12, 2013, respondent Christie Arnold Matheson was arrested for driving while impaired. Police read Matheson the implied-consent advisory, and Matheson agreed to take a breath test. Multiple attempts yielded invalid results, and Matheson agreed to submit to a blood test. The test revealed an alcohol concentration of 0.22. Based on that result, appellant Minnesota Commissioner of Public Safety revoked Matheson's driver's license.

Matheson sought judicial review of the license revocation. He argued, in part, that the warrantless blood test was presumptively unconstitutional and that his consent to the test was not voluntary because he gave it to avoid a criminal test-refusal charge. Matheson agreed to submit the issue to the district court based on the police reports. The district court suppressed the test result, concluding that "[t]he warning that refusal to submit to a blood test constitutes a crime eliminated the possibility that [Matheson]'s consent was free and voluntary." The district court rescinded Matheson's license revocation, and this appeal follows.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* (U.S. Apr. 7, 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, 1561 (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 defendant freely and voluntarily consented. *Id.*

The voluntariness of Matheson's consent depends on "the totality of the circumstances," which we review independently. *See id.*; *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 (quoting *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994)). 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 Matheson voluntarily consented to chemical testing. We agree. It is undisputed that police had probable cause to believe Matheson was driving while under the influence of alcohol. It also is undisputed that Matheson received an implied-consent

advisory, which informed him that he had the right to consult with an attorney and to refuse chemical testing. He thereafter consented to a breath test, twice attempted to give a sample, and when he was unable to do so, consented to a blood test. Matheson was promptly transported to a hospital, where he signed a written consent to have his blood drawn for testing. Approximately one hour elapsed between the beginning of the implied-consent advisory and the blood draw. Matheson has not claimed, and there is no evidence indicating that the police did anything to overcome Matheson'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.

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

Reversed.