STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2246

William Harvey Elyea, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

Filed June 23, 2014
Reversed
Connolly, Judge

Cass County District Court
File No. 11-CV-13-1323

Richard Kenly, Kenly Law Offices, Backus, Minnesota (for respondent)

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

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

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

CONNOLLY, Judge

Appellant Minnesota Commissioner of Public Safety challenges the rescission of the implied-consent revocation of respondent's driver's license, arguing that respondent's Fourth Amendment right was not violated by the taking of his urine for a test to establish

his alcohol concentration. Because respondent's rights were not violated, we reverse the rescission.

FACTS

In March 2013, a police officer found respondent William Elyea attempting to drive a truck out of a snowbank. Because respondent exhibited indicia of alcohol impairment, the officer administered a preliminary breath test, which showed an alcohol concentration of 0.191. Respondent was taken to jail, where he heard the implied-consent advisory, declined to talk to an attorney, and agreed to a urine test, which showed an alcohol concentration of 0.19. Respondent's driver's license was revoked.

Respondent petitioned for judicial review of the revocation of his driver's license, arguing that the warrantless urine test violated his Fourth Amendment rights. The parties agreed to submit the matter based on the police reports, the implied-consent advisory, and the urine test results. The district court agreed with respondent that his urine specimen was the result of a warrantless search to which the consent exception did not apply and rescinded the revocation of respondent's driver's license.

Appellant challenges the rescission.

D E C I S I O N

Where the appellant "raises only a question of law, our review is de novo." *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010) (addressing constitutional challenges).

Exceptions to the warrant requirement include consent of the person searched. *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011). The district court addressed whether

"an accused's consent to the Implied Consent test can be properly termed voluntary" and concluded that it could not because "[t]here is little voluntariness in the choice between a warrantless [alcohol-concentration] test and another criminal charge which carries with it the critical consequence of a license revocation."

But "[w]hen, based on the totality of the circumstances, [a driver] consented to the search, police did not need a warrant to search [his] blood or urine." *State v. Brooks*, 838 N.W.2d 563, 564 (Minn. 2013), *cert. denied* 134 U.S. 1799 (2014).[1] *Brooks* involved three DWI convictions based on incidents in which officers read the defendant the implied-consent advisory and "did not attempt to secure a search warrant." *Id.* at 565-66. In two incidents, the defendant agreed to urine tests; in the third, he agreed to a blood test. *Id.* The defendant, like the district court here, argued that "he did not truly have a choice of whether to submit to the tests because police told him that if he did not do so, he would be committing a crime, and . . . the fact that police advised him that it is a crime to refuse the chemical tests renders any consent legally coerced." *Id*. at 570. *Brooks* rejects this argument:

> Based on the analysis in [*South Dakota v.*] *Neville*[, 459 U.S. 553 103 S. Ct. 916 (1983)] and *McDonnell* [*v. Comm'r of Pub. Safety*, 473 N.W.2d 848 (Minn. 1991)], 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.
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> . . . [T]he Minnesota Legislature has given those who drive on Minnesota roads a right to refuse the chemical test. If a driver refuses the test, the police are required to honor that refusal and not perform the test. Although refusing the

[1] *Brooks* was released after the district court's decision.

> test comes with criminal penalties in Minnesota, the Supreme Court has made clear that while the choice to submit or refuse to take a chemical test will not be an easy or pleasant one for a suspect to make, the criminal process often requires suspects and defendants to make difficult choices.

Id. at 569-71 (citations and quotations omitted). In *Brooks*, as here, "nothing in the record suggests that [the defendant] was coerced in the sense that his will had been overborne and his capacity for self-determination critically impaired." *Id.* at 571 (quotation omitted). Nothing in the record here indicates that respondent was unable to make a decision and, again like the defendant in *Brooks*, respondent submitted to the search after being told he could refuse it. *See id.* at 572 ("While an individual does not necessarily need to know he or she has a right to refuse a search for consent to be voluntary, the fact that someone submits to the search after being told that he or she can say no to the search supports a finding of voluntariness.").[2]

Because respondent consented to the search, no warrant was required, and his Fourth Amendment right was not violated. We therefore reverse the rescission of the revocation of his driver's license.[3]

Reversed.

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[2] The district court also relied on *Missouri v. McNeely*, 133 S. Ct. 1552, 1556 (2013) (holding that courts must determine on a case-by-case basis whether the dissipation of alcohol in a suspect's bloodstream is an exigent circumstance permitting a warrantless search). But *McNeely* does not involve the consent exception to the warrant requirement: in that case, the defendant heard an implied-consent advisory but "nevertheless refused" to take the test and was tested without giving consent. *Id.*

[3] Because the parties stipulated to submit the matter for decision based on the police reports, the implied-consent advisory, and the urine test results, we do not remand for a finding of the totality of the circumstances. *See Brooks*, 838 N.W.2d at 564.