STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1563
A13-1922

State of Minnesota,
Appellant (A13-1563),

vs.

Stephen Howard King,
Respondent

and

Stephen Howard King, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant (A13-1922).

Filed April 28, 2014
Reversed and remanded
Bjorkman, Judge

Rice County District Court
File No. 66-CR-13-677

Lori Swanson, Attorney General, James E. Haase, Assistant Attorney General, St. Paul, Minnesota; and

Paul Beaumaster, Rice County Attorney, Terence Swihart, Assistant County Attorney, Faribault, Minnesota (for appellant)

Ryan M. Pacyga, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Rodenberg, Judge.

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

BJORKMAN, Judge

Appellants challenge the district court's suppression of respondent's urine test, and the resulting dismissal of his driving-while-impaired (DWI) charge and rescission of his driver's-license revocation, arguing that respondent voluntarily consented to the test. We reverse and remand for trial on the DWI charge.

FACTS

On February 15, 2013, Rice County Sheriff's Deputy Josh Malecha stopped the vehicle respondent Stephen King was driving. Deputy Malecha could detect the odor of alcohol coming from inside the vehicle and observed that King had watery and bloodshot eyes and smelled of alcohol. After failing field sobriety tests, King submitted to a preliminary breath test, which showed an alcohol concentration level of 0.115. Deputy Malecha arrested King for DWI and transported him to the Rice County Law Enforcement Center.

Deputy Malecha read King the Minnesota Implied Consent Advisory at 9:40 p.m. King asked to consult with an attorney, was given a phone and phone book, but did not make contact with an attorney. At 10:00 p.m., King agreed to take a urine test. King testified that he only did so because he was told that it was a crime to refuse. The test revealed an alcohol concentration of 0.13. Appellant Minnesota Commissioner of Public

Safety revoked King's driver's license and appellant State of Minnesota charged him with DWI.

King moved to suppress the results of the urine test as a warrantless search in violation of the Fourth Amendment, and to dismiss the DWI charge and rescind the license revocation. The district court granted the motions, determining that a warrant was necessary because King did not freely and voluntarily consent to the test and exigent circumstances did not justify a warrantless test. These consolidated appeals follow.

D E C I S I O N

I. The district court erred by granting King's motion to suppress and dismissing the DWI charge.

When reviewing pretrial orders on motions to suppress evidence where the facts are not significantly in dispute, we "may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).[1]

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, 1413 (1989); *State v. Brooks*, 838 N.W.2d 563, 568 (Minn. 2013),

[1] When the state appeals a pretrial order dismissing criminal charges, the state must show error by the district court that, unless reversed, will have a "critical impact on the outcome of the prosecution." *State v. Gradishar*, 765 N.W.2d 901, 902 (Minn. App. 2009) (quotation omitted). King does not dispute critical impact, and dismissal of a complaint based on a question of law satisfies the critical-impact requirement. *See State v. Dunson*, 770 N.W.2d 546, 550 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009).

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, 1563 (2013). But a warrantless search of a person's breath, blood, or urine is valid if the person voluntarily consents. *Brooks*, 838 N.W.2d at 568.

The state bears the burden of showing by a preponderance of the evidence that the defendant freely and voluntarily consented. *Id.* "Whether consent is voluntary is determined by examining the totality of the circumstances." *Id.* (quotation omitted). Relevant circumstances include "the nature of the encounter, the kind of person the defendant is, and what was said and how it was said." *Id.* at 569 (quotation omitted). 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 the driver had the right to consult with an attorney. *Id.* But a driver's consent is not coerced as a matter of law simply because she faces criminal consequences for refusal to submit to testing. *Id.* at 570.

Appellants argue that the totality of the circumstances establishes that King's consent was free and voluntary. The relevant facts are not in dispute. King acknowledges that the police had probable cause to believe he had been driving under the influence of alcohol. And it is undisputed that Deputy Malecha followed the proper implied-consent procedures. He read King the implied-consent advisory, which made it clear King could refuse the test, before asking him whether he would submit to a test. King indicated that he understood the advisory, was given a phone and 20 minutes to contact an attorney, and was willing to take a urine test. King was not subjected to

repeated questioning or asked to consent after spending days in custody. King argues that, unlike Brooks, he is "an inexperienced, naïve person" when it comes to the criminal process. We are not persuaded that this distinction is dispositive. While the kind of person the defendant is serves as a relevant factor, the totality of the circumstances here establishes that King freely and voluntarily consented to the urine test.

Accordingly, we reverse the dismissal of the DWI charge against King and remand for further proceedings. Because we hold that the district court erred by suppressing the urine test based on King's free and voluntary consent, we do not need to address appellants' other test-suppression arguments.

II. The district court erred by rescinding the revocation of King's driver's license.

If a person submits to a chemical test for intoxication, the results of the test must be reported to the commissioner and the authority responsible for prosecuting impaired-driving offenses if the test results indicate an alcohol concentration of 0.08 or more. Minn. Stat. § 169A.52, subd. 2(a)(1) (2012). Further, upon certification by a peace officer that there was probable cause to believe the person had been driving while impaired, that the person submitted to a test, and that the results indicate an alcohol concentration of 0.08 or more, "the commissioner shall revoke the person's license or permit to drive." *Id.*, subd. 4(a) (2012). We have concluded that the district court erred by suppressing the urine test, and the evidence establishes that King was driving while impaired and had an alcohol concentration of 0.08 or more. Because there is no basis to rescind the revocation of his driver's license, we reverse the rescission.

Reversed and remanded.