STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1692

State of Minnesota,
Appellant,

vs.

Susan Marie Quiram,
Respondent.

Filed June 9, 2014
Reversed and remanded
Halbrooks, Judge

Rice County District Court
File No. 66-CR-13-711

Lori Swanson, Attorney General, St. Paul, Minnesota; and

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

Charles F. Clippert, Clippert Law Firm, P.L.L.C., Assistant State Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Klaphake, 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

HALBROOKS, Judge

The state challenges the district court's pretrial suppression of evidence from respondent's blood test on the grounds that (1) respondent freely and voluntarily consented to the search, (2) the blood test was justified by exigent circumstances under the totality of the circumstances, and (3) a good-faith exception to the exclusionary rule should apply. Because we conclude that respondent's consent was freely and voluntarily given, we reverse and remand on that basis and do not reach the state's other arguments.

FACTS

At approximately 11:00 p.m. on February 5, 2013, Morristown police officer Brandon Noble observed a vehicle with snow-covered license plates turn abruptly into the driveway of a home. No one exited the vehicle, and a few minutes later it continued down the road. At 11:10 p.m., Officer Noble initiated a traffic stop of the vehicle and identified the driver as respondent Susan Marie Quiram.

Officer Noble suspected Quiram of driving while impaired (DWI) because he detected a strong odor of alcoholic beverage coming from Quiram's breath, her speech was slurred, her eyes were watery and bloodshot, and she had difficulty keeping her balance. A check of Quiram's driving status revealed that her license had been cancelled as inimical to public safety (IPS). Officer Noble attempted to administer field sobriety tests and a preliminary breath test, but Quiram was uncooperative. Quiram eventually agreed to perform the horizontal gaze nystagmus test and did poorly on it.

Quiram was arrested and taken to the Rice County Law Enforcement Center. At 12:20 a.m., Officer Noble read Quiram the standard implied-consent advisory. Quiram stated that she wanted to consult with an attorney and attempted to do so from 12:24 until 1:26 a.m. The record is unclear as to whether Quiram actually made contact with an attorney. Quiram then stated that she would take a blood test, and Officer Noble transported her to the hospital to obtain a sample. Results later revealed an alcohol concentration of .09 grams per 100 milliliters of blood. At no point in the process did Officer Noble attempt to obtain a search warrant.

Quiram was charged with operating a motor vehicle at more than .08 alcohol concentration in violation of Minn. Stat. § 169A.20, subd. 1(5) (2012), and driving after cancellation IPS in violation of Minn. Stat. § 171.24, subd. 5 (2012). Quiram moved the district court to suppress the evidence of the blood test and to dismiss the DWI charge on the ground that the officer's failure to seek a warrant before subjecting Quiram to a blood test violated her Fourth Amendment rights. After a contested omnibus hearing, the state amended the complaint to add a charge of driving under the influence of alcohol in violation of Minn. Stat. § 169A.20, subd. 1(1) (2012).

The district court granted Quiram's suppression motion and dismissed the DWI charge under Minn. Stat. § 169A.20, subd. 1(5), for lack of probable cause. The district court found that the officer's failure to obtain a search warrant before administering the blood test violated Quiram's Fourth Amendment rights and that suppression was required under Minn. Stat. § 626.21 (2012) and on constitutional grounds. The district court rejected the state's argument that a warrant exception applied. Specifically, the district

court found that (1) Quiram could not have voluntarily consented to the test after the officer advised her that refusal was a crime; (2) no exigency existed to take a blood sample without a search warrant; and (3) although the officer did not act in bad faith, suppression of the evidence was required to discourage future unauthorized conduct by police. This appeal follows.

D E C I S I O N

Because the facts are undisputed, the district court's pretrial suppression order presents a question of law, which we review de novo. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). We first consider the threshold, jurisdictional question of whether the suppression of the evidence has a critical impact on the state's ability to prosecute the defendant. *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998); *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004). Critical impact is shown when "the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Kim*, 398 N.W.2d 544, 551 (Minn. 1987). Because the district court dismissed a charge against Quiram after suppressing evidence of her blood test, the critical-impact requirement has been satisfied. *See State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009) (holding that the critical-impact requirement was satisfied where the pretrial orders would suppress the breath test and dismiss certain charges); *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001) (holding that "[d]ismissal of a complaint satisfies the critical impact requirement"), *review dismissed* (Minn. June 22, 2001). We therefore turn to the merits of the appeal.

The state argues that the district court erred when it suppressed evidence of Quiram's blood test on the basis that her consent was not given freely and voluntarily. Collection and testing of a person's blood constitutes a search under the Fourth Amendment to the United States Constitution and therefore requires 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*, 134 S. Ct. 1799 (2014). The exigency created by the dissipation of alcohol in the body is insufficient by itself to dispense with the warrant requirement. *Missouri v. McNeely*, 133 S. Ct. 1552, 1561 (2013). But a warrantless search is valid if a person voluntarily consents to the search. *Brooks*, 838 N.W.2d at 568.

The state bears the burden of demonstrating by a preponderance of the evidence that the defendant freely and voluntarily consented to a search. *Id.* Whether consent is given freely and voluntarily is determined by examining the "totality of the circumstances." *Id.* (quotation omitted.) A driver's decision to take a test is not coerced or extracted "simply because Minnesota has attached the penalty of making it a crime to refuse the test." *Id*. at 570.

The district court did not have the benefit of our supreme court's decision in *Brooks*—or this court's subsequent decisions applying *Brooks*—when it ruled that Quiram's "consent was 'extracted' and not given freely and voluntarily" because Officer Noble had advised her that refusal to submit to a test is a crime. But the supreme court concluded in *Brooks* that the implied-consent advisory by itself does not coerce consent, and the issue of consent must be evaluated based on the totality of the circumstances,

"including the nature of the encounter, the kind of person the defendant is, and what was said and how it was said." *Id*. at 569 (quoting *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994)).

Applying the *Brooks* totality-of-the-circumstances analysis to the undisputed facts here, we conclude that Quiram voluntarily consented to the blood test. The facts of this case are similar to those in *Brooks*. In *Brooks*, the appellant was arrested three different times for driving under the influence, was read the implied-consent advisory each time, spoke with an attorney each time, and submitted to testing each time. *Id*. at 569-70. Based on these facts, the supreme court held that the appellant freely and voluntarily consented in each instance. *Id*. at 572.

Similarly here, "the nature of the encounter, the kind of person [Quiram] is, and what was said and how it was said" indicate that Quiram freely and voluntarily consented to take the blood test. *Id.* at 569 (quotation omitted). Officer Noble detected a strong odor of alcohol on Quiram's breath and observed that her speech was slurred and her eyes were watery and bloodshot. Quiram performed poorly on the horizontal gaze nystagmus test and had difficulty maintaining her balance.

After 40 minutes of interaction on the side of the road, Officer Noble arrested Quiram and took her to the Rice County Law Enforcement Center. Officer Noble read Quiram the implied-consent advisory, which explains that Minnesota law required her to submit to a test, that refusing the test is a crime, and that she had the right to speak with an attorney. Quiram asked to speak with an attorney and was given just over an hour to do so. She then agreed to take a blood test.

Quiram attempts to distinguish her previous contacts with law enforcement from that of the driver in *Brooks*, noting that she was charged with a misdemeanor-level DWI offense and not the felony-level offenses at issue in *Brooks*. But Quiram was also charged with driving after cancellation IPS, which indicates that she had previous experience with law enforcement.

In sum, the totality of the circumstances demonstrates that Quiram voluntarily consented to the blood test. The record does not suggest that Quiram was coerced to submit to the blood test, and the district court specifically found that Officer Noble did not act in bad faith. The state has met its burden of showing by a preponderance of the evidence that Quiram freely and voluntarily consented to the test. Because Quiram's consent was given freely and voluntarily, a search warrant was not required, and Quiram's Fourth Amendment rights were not violated. The district court therefore erred by suppressing the evidence of the blood test. Our resolution of this issue makes it unnecessary to reach the state's arguments that exigent circumstances justified the search or that a good-faith exception to the exclusionary rule should apply. We reverse the suppression of the evidence and dismissal of the charge and remand for trial.

Reversed and remanded.