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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1767**

Joseph Robert Bjornoos, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

**Filed June 9, 2014
Reversed
Bjorkman, Judge**

Dakota County District Court
File No. 19AV-CV-13-936

Christopher Hanscom, Adkins Law Group, Chartered, Minneapolis, Minnesota (for respondent)

Lori Swanson, Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant commissioner challenges the district court's rescission of respondent's driver's license revocation, arguing that respondent voluntarily consented to a blood test.

We reverse.

FACTS

On January 24, 2013, respondent Joseph Bjornoos was arrested for driving while impaired. Police read Bjornoos the implied-consent advisory and he contacted two attorneys. Bjornoos initially refused to take a breath test, but later agreed to provide a blood sample that revealed an alcohol concentration of 0.20. Based on that result, appellant Minnesota Commissioner of Public Safety revoked Bjornoos's driver's license. Bjornoos moved the district court to review the revocation, and the parties stipulated to the facts in the police report. The district court rescinded Bjornoos's license revocation, holding that his consent was coerced under the implied-consent law. This appeal follows.

DECISION

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*, 134 S. Ct. 1799 (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 driver freely and voluntarily consented. *Id.*

The voluntariness of Bjornoos'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 Bjornoos voluntarily consented to chemical testing. We agree. It is undisputed that police had probable cause to believe Bjornoos was driving while under the influence of alcohol. It also is undisputed that Bjornoos received an implied-consent advisory, which informed him that he had the right to consult with an attorney and that refusal to submit to chemical testing is a crime. Bjornoos contacted an attorney, and because he was not satisfied with the conversation, he consulted a second attorney. He thereafter consented to a blood test. Bjornoos has not claimed, and there is no evidence indicating, that the police did anything to overcome Bjornoos’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 Bjornoos voluntarily consented to chemical testing of his blood. Because Bjornoos's consent justified the warrantless search, we conclude the district court erred by suppressing the test result and rescinding Bjornoos's license revocation.

Reversed.