STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1885

Christopher James Waldorf, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

Filed June 2, 2014
Reversed and remanded
Cleary, Chief Judge

Stearns County District Court
File No. 73-CV-12-8896

Charles A. Ramsay, Daniel J. Koewler, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Cleary, Chief Judge; and Larkin, Judge.

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

CLEARY, Chief Judge

Respondent Christopher James Waldorf's driver's license was revoked and his license plates were impounded by appellant Commissioner of Public Safety after a urine

test revealed that he had been driving while impaired (DWI). The district court rescinded the revocation and impoundment, ruling that the test was an unreasonable and unconstitutional search because a warrant was not obtained prior to the test and no exception to the warrant requirement applied. Because respondent voluntarily consented to the test and a search warrant was not required, we reverse and remand.

FACTS

Just before midnight on June 30, 2012, a deputy with the Stearns County Sheriff's Office stopped the vehicle driven by respondent for a headlight violation. While speaking with respondent, the deputy began to suspect that he was under the influence of alcohol. The deputy administered field sobriety tests, including a preliminary breath test, and ultimately placed respondent under arrest for DWI. Respondent was handcuffed, and he and his vehicle were searched. The deputy read respondent the implied-consent advisory. Respondent was informed that Minnesota law required him to take a test to determine whether he was under the influence of alcohol, that refusal to take a test was a crime, and that he had the right to consult with an attorney before making the decision about testing. Respondent replied that he understood the advisory and that he wished to contact an attorney. The deputy transported respondent to the Stearns County Jail, where a telephone and telephone books were made available, and respondent spoke briefly with an attorney. Respondent then stated that he was finished using the telephone. When the deputy asked whether respondent would take a urine test, respondent agreed to take a test, and that test revealed an alcohol concentration of .08.

Appellant subsequently revoked respondent's driver's license and impounded his license plates, and respondent filed a petition disputing this revocation and impoundment. Respondent challenged the constitutionality of the urine test and the reliability of the test results. Following an implied-consent hearing, the district court rescinded the revocation and impoundment. The court held that the urine test was an unreasonable and unconstitutional search because a warrant was not obtained prior to the test and no exception to the warrant requirement applied. The court determined that respondent did not voluntarily consent to the test because "[t]he imposition of [a] criminal sanction upon test refusal plainly serves to coerce an individual to provide his or her actual consent." The court did not rule on respondent's challenge to the reliability of the test results, finding that issue moot in light of its holding on the constitutionality of the test. This appeal follows.

D E C I S I O N

Appellant argues that, in light of the holding in *State v. Brooks*, the district court erred by ruling that respondent was coerced into agreeing to testing by being informed that refusal to take a test is a crime. *See State v. Brooks*, 838 N.W.2d 563 (Minn. 2013), *cert. denied*, 134 S. Ct. 1799 (2014). Appellant further argues that the totality of the circumstances demonstrates that respondent voluntarily consented to the urine test. "When the facts are not in dispute, the validity of a search is a question of law subject to de novo review." *Haase v. Comm'r of Pub. Safety*, 679 N.W.2d 743, 745 (Minn. App. 2004). We must "independently analyze the undisputed facts to determine whether evidence resulting from the search should be suppressed." *Id.*

The United States and Minnesota Constitutions guarantee the right to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. The taking of a blood, breath, or urine sample is a physical intrusion that constitutes a search. *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 616–17, 109 S. Ct. 1402, 1412–13 (1989). A search is generally unreasonable unless it is conducted pursuant to a warrant issued upon probable cause. *Id.* at 619, 109 S. Ct. at 1414. However, there are established exceptions to the warrant requirement, one of them being consent to the search. *State v. Hummel*, 483 N.W.2d 68, 72 (Minn. 1992).

Valid consent to a search must be voluntarily given, and whether consent is voluntary is determined based on the totality of the circumstances. *See State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S. Ct. 2041 (1973)). Voluntary consent is that given without coercion, such that a reasonable person would feel free to decline law enforcement's requests or otherwise terminate the encounter. *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994) (citing *Florida v. Bostick*, 501 U.S. 429, 111 S. Ct. 2382 (1991)); *see also Schneckloth*, 412 U.S. at 225–26, 93 S. Ct. at 2047 (stating that a suspect is coerced when "his will has been overborne and his capacity for self-determination critically impaired").

In *State v. Brooks*, the Minnesota Supreme Court held that a driver may validly consent to testing even if informed that refusal to submit to testing is a crime. 838 N.W.2d at 570. The defendant in *Brooks* was arrested for DWI on three separate occasions and, on each occasion, was read the implied-consent advisory, spoke with an attorney by telephone, and agreed to submit to testing. *Id.* at 565–66. In response to the

defendant's argument that he was coerced into agreeing to testing because he was told that test refusal is a crime, the supreme court held that "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." *Id.* at 570–71 (explaining that a decision to submit to testing is not coerced just because the choice is a difficult one and involves a consequence). Rather, whether consent is voluntary or coerced must be determined by examining "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 (quotation omitted). Moreover, the language of the implied-consent advisory makes clear that a person has a choice whether to submit to testing, and "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." *Id.* at 572. The *Brooks* court concluded that nothing in the record suggested 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 marks omitted).

Similarly, nothing in the record before this court suggests that respondent's will was overborne and that his capacity for self-determination was critically impaired when he made the testing decision. Respondent was read the implied-consent advisory, and he stated that he understood the advisory and wished to contact an attorney. Respondent spoke with an attorney before agreeing to take a urine test. In *Brooks*, the court stated that the fact that the defendant consulted with counsel before agreeing to testing "reinforce[d]" the conclusion that the defendant was not coerced because an attorney "functions as an objective advisor who could explain the alternative choices." *Id.* at 571–

72 (stating further that "we have recognized that the ability to consult with counsel about an issue supports the conclusion that a defendant made a voluntary decision") (quotation omitted). Although Respondent was told that test refusal is a crime, the language of the implied-consent advisory also informed him that whether to submit to testing was his choice. *See id.* at 572.

Respondent argues that he was in a coercive environment at the time he made the testing decision because he had been arrested, handcuffed, searched, and taken to jail. He contends that these facts weigh heavily against a determination that he consented to the test. The defendant in *Brooks* was also under arrest on each occasion that he agreed to submit to testing, and the supreme court stated that this fact was "not dispositive." *Id.* at 571. As in *Brooks*, there is no indication that respondent was "confronted with repeated police questioning," "asked to consent after having spent days in custody," or subject to any other coercive activity by law enforcement besides the circumstances that normally accompany an arrest. *See id.* Based on an examination of the totality of the circumstances, respondent voluntarily consented to the urine test. The deputy was not required to obtain a warrant prior to the test, and the test was not an unreasonable search. We therefore reverse the district court's decision to rescind the revocation of respondent's driver's license and impoundment of his license plates. We remand for the district court to consider respondent's challenge to the reliability of the test results.

Reversed and remanded.