STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2074

Jacob Joseph Vaith, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

Filed June 23, 2014
Reversed
Peterson, Judge

Dakota County District Court
File No. 19AV-CV-13-1790

Ryan Joseph Wood, Bloomington, Minnesota (for respondent)

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

Considered and decided by Stauber, Presiding Judge; Peterson, Judge; and Hudson, Judge.

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

PETERSON, Judge

In this appeal from an order rescinding the revocation of respondent's driver's license under the implied-consent statute, appellant argues that the district court erred in determining that respondent's consent to a breath test was involuntary. We reverse.

FACTS

While on patrol, Lakeville Police Officer Adam Stier saw a car continually weaving from side to side as it traveled down the road. The car then made a left turn without signaling. Based on the traffic violation and driving conduct, Stier stopped the car.

Respondent Jacob Joseph Vaith was the driver. Stier smelled the odor of alcohol coming from the car and noted that respondent's eyes were bloodshot and watery and his speech was slurred. Respondent had trouble finding his proof of insurance and dropped several items out of his wallet while looking for it. Respondent admitted that he drank three beers, and he exhibited numerous signs of impairment during field sobriety tests. A preliminary breath test (PBT) showed an alcohol concentration of .135.

Stier arrested respondent for driving while impaired (DWI), brought him to jail, and read him the implied-consent advisory. Stier then asked respondent if he understood what had been explained. Respondent said, "Yes." When Stier asked respondent if he wanted to contact an attorney, respondent replied, "Not at this time." Respondent then agreed to submit to a breath test, which showed an alcohol concentration of .15.

At the implied-consent hearing before the district court, respondent waived all issues except whether the warrantless breath test was unconstitutional. The parties stipulated to a decision based on the police-report packet, which included the police report and the implied-consent-advisory form. The district court ordered that the revocation of respondent's driver's license be rescinded based on the conclusion that, because test refusal is a crime in Minnesota, consent given under the implied-consent

statute is not truly voluntary. After the district court issued its decision, the supreme court decided *State v. Brooks*, in which it rejected the rationale relied on by the district court. 838 N.W.2d 563, 570 (Minn. 2013), *cert. denied*, 134 S. Ct. 1799 (2014). This appeal followed.

D E C I S I O N

The Fourth Amendment protects the "right of the people to be secure . . . against unreasonable searches and seizures." U.S. Const. amend. IV; *accord* Minn. Const. art. I, § 10. This right extends to people who are detained by police on suspicion of drunk driving and asked to submit to chemical testing for the presence of alcohol. *Missouri v. McNeely*, 133 S. Ct. 1552, 1558 (2013) (plurality opinion) (blood testing); *see also Brooks*, 838 N.W.2d at 568-69 (applying *McNeely* to blood and urine testing). A warrant is necessary for such a search unless an exception to the warrant requirement applies. *McNeely*, 133 S. Ct. at 1558. When the facts are undisputed, the validity of a search is a question of law, which we review de novo. *Haase v. Comm'r of Pub. Safety*, 679 N.W.2d 743, 745 (Minn. App. 2004).

In *McNeely*, the Supreme Court held that "natural metabolization of alcohol in the bloodstream [does not] present[] a per se exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases" and that "exigency in this context must be determined case by case based on the totality of the circumstances." 133 S. Ct. at 1556. In *Brooks*, the Minnesota Supreme Court addressed how *McNeely* applied to three warrantless searches of Brooks's blood and urine following traffic stops. 838 N.W.2d at 567. In the first incident, after

Brooks was stopped for an apparent traffic violation, he showed signs of intoxication, was read the implied-consent advisory, sought advice of counsel, and agreed to provide a urine sample. *Id.* at 565. In the second incident, after Brooks was stopped because sparks were flying underneath his vehicle, he showed signs of intoxication, was read the implied-consent advisory, sought advice of counsel, and agreed to take a blood test. *Id.* In the third incident, Brooks was stopped while asleep behind the steering wheel of a running vehicle, showed signs of intoxication, was arrested and read the implied-consent advisory, sought advice of counsel, and agreed to a urine test. *Id.* at 565-66.

The supreme court analyzed the validity of the searches under the consent exception to the warrant requirement and applied the preponderance-of-evidence standard to determine whether Brooks voluntarily consented to the warrantless search in each incident. *Id.* at 568-70. The supreme court rejected Brooks's claim that, because test refusal is a crime in Minnesota, his consent was coerced. *Id*. at 570. The supreme court analyzed the totality of the circumstances in each of the three incidents and held "that Brooks voluntarily consented to the searches . . . ." *Id.* at 569-70, 572.

The supreme court described the circumstances in *Brooks* as follows:

> Here, the nature of the encounter includes how the police came to suspect Brooks was driving under the influence, their request that he take the chemical tests, which included whether they read him the implied consent advisory, and whether he had the right to consult with an attorney. Brooks does not argue that police did not have probable cause to believe that he had been driving under the influence. He also does not contend that police did not follow the proper procedures established under the implied consent law. Police read Brooks the implied consent

> advisory before asking him whether he would take all three tests, which makes clear that drivers have a choice of whether to submit to testing. In all three cases, police gave Brooks access to telephones to contact his attorney and he spoke to a lawyer. In fact, in one case, he even had two separate phone calls with an attorney. After consulting with his attorney, Brooks agreed to take the tests in all three instances.

Id. at 569-70.

Stier stopped respondent based on erratic driving and a traffic violation. After stopping respondent, Stier observed indicia of intoxication, and respondent's performance of field sobriety tests indicated impairment. Respondent waived the issue of whether Stier had probable cause to believe that he had been driving while impaired. Stier read respondent the implied-consent advisory, and respondent stated that he understood what had been explained. Respondent declined to contact an attorney and consented to a breath test. Although the *Brooks* court noted that the fact that Brooks consulted with an attorney before consenting to testing reinforced its conclusion that Brooks's consent was voluntary, the opinion does not indicate that consulting with an attorney is necessary for a finding of voluntary consent. *Id.* at 571-72.

Respondent's only argument is that *Brooks* was wrongly decided. This court, however, is "bound to follow Minnesota Supreme Court precedent." *Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435, 439-40 (Minn. App. 2005), *review denied* (Minn. June 14, 2005). Applying *Brooks*, we conclude that respondent voluntarily consented

to the breath test, and the district court erred in rescinding the revocation of his driver's license.

Because we have determined that the breath test was constitutional under the consent exception to the warrant requirement, we need not address the remaining arguments raised by appellant.

Reversed.