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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0831**

State of Minnesota,
Respondent,

vs.

Bradley James Trousil,
Appellant.

**Filed April 10, 2017
Affirmed
Smith, Tracy M., Judge**

Douglas County District Court
File No. 21-CR-14-1883

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

Chad Larson, Douglas County Attorney, Michelle L. Clark, Assistant County Attorney, Alexandria, Minnesota (for respondent)

Daniel J. Koewler, Charles A. Ramsay, Jay S. Adkins, Ramsay Law Firm, P.L.L.C. Roseville, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Bradley James Trousil appeals his second-degree driving-while-impaired (DWI) conviction. Trousil argues that the district court erred in concluding that exigent

circumstances absolved the need for the arresting officers to obtain a warrant for a blood draw for an alcohol-concentration test. Because we agree with the district court's conclusion that the exigent-circumstances exception applies in this case, we affirm.

FACTS

At approximately 12:49 a.m. on September 27, 2014, Deputy Wacker and Deputy Stern of the Douglas County Sheriff's Office were dispatched to an all-terrain vehicle (ATV) accident. At some point, Sergeant Windhurst joined the deputies on the scene. They found the ATV tipped over on its side and the driver, Trousil, injured and lying in a ditch. Trousil had difficulty remaining conscious and smelled of alcohol. An ambulance arrived.

The three officers discussed whether a warrant was necessary to obtain a blood draw for an alcohol-concentration test. Sergeant Windhurst contacted the county attorney's office, who advised the officers to get a warrant if Trousil would stay at Douglas County Hospital, but to have blood drawn if Trousil was going to be flown to another hospital within a short period of time.

The ambulance left to take Trousil to Douglas County Hospital. The two deputies left the scene at 1:35 a.m. and went to Trousil's parents' house to inform his parents of the accident. Sergeant Windhurst remained on the scene to wait for a tow truck. Deputy Wacker went to Douglas County Hospital, arriving at approximately 1:55 a.m. Deputy Stern returned to the office to seek a warrant for the blood draw.

In the meantime, Deputy Wacker asked a nurse at Douglas County Hospital if Trousil was going to be flown to a different hospital. The nurse told Deputy Wacker that

they intended to fly Trousil to St. Cloud Hospital, and the flight crew said that they intended to leave in 15 to 20 minutes. Deputy Wacker believed that Trousil might not remain at St. Cloud Hospital due to the severity of his injuries and decided that there was insufficient time to obtain a warrant. Deputy Wacker requested that Douglas County Hospital staff perform a blood draw. The hospital did so at 2:20 a.m. Deputy Wacker notified Deputy Stern that Douglas County Hospital was transferring Trousil to St. Cloud Hospital, and thus Deputy Stern did not complete the warrant application.

The alcohol-concentration test showed that Trousil had an alcohol concentration of 0.214. Trousil was charged with second-degree and third-degree DWI.

Before trial, Trousil moved to suppress the results of the alcohol-concentration test obtained from the warrantless blood draw. The district court denied the motion, concluding that exigent circumstances absolved the officers of the warrant requirement. Trousil stipulated to the prosecution's case in order to obtain review of the pretrial suppression-motion ruling. A bench trial took place on November 12, 2015, at which Deputy Wacker and Deputy Stern testified. The district court found Trousil guilty on both counts.

Trousil appeals.

DECISION

Trousil argues that the warrantless blood draw was unconstitutional because the officers had sufficient time to obtain a telephonic warrant and, therefore, no exception to the warrant requirement applies to this case. The district court concluded that the exigent-circumstances exception applies because the officers did not have sufficient time to seek a warrant.

In reviewing a motion to suppress evidence, this court reviews the district court's legal determinations de novo and its factual findings for clear error. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997).

The Fourth Amendment protects individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Absent an exception, searches conducted without a warrant are per se unreasonable. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). An exception to the warrant requirement exists if the state can show that “the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *Mincey v. Arizona*, 437 U.S. 385, 394, 98 S. Ct. 2408, 2414 (1978) (quotation omitted). Exigent circumstances may exist when “there is a compelling need for official action and no time to secure a warrant.” *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S. Ct. 1942, 1949 (1978). In determining whether exigent circumstances exist, this court objectively examines the totality of the circumstances. *Missouri v. McNeely*, 133 S. Ct. 1552, 1559 (2013); *Kentucky v. King*, 563 U.S. 452, 464, 131 S. Ct. 1849, 1859 (2011).

In *Schmerber v. California*, the U.S. Supreme Court upheld the warrantless blood draw of a driver who was taken to the hospital and appeared intoxicated. 384 U.S. 757, 86 S. Ct. 1826 (1966). The Court noted in *Schmerber* that exigent circumstances existed because “time had to be taken to bring the accused to a hospital and to investigate the scene of the accident.” *Id.* at 770-71, 86 S. Ct. at 1836.

In *McNeely*, the U.S. Supreme Court reaffirmed that the *Schmerber* analysis “fits comfortably within our case law applying the exigent circumstances exception,” but

refined the application of the exigent-circumstances exception. 133 S. Ct. at 1560. In particular, the Court concluded that natural metabolization of alcohol does not constitute a *per se* exigency justifying a warrantless blood draw. *Id.* at 1556. The Court held that the Fourth Amendment requires law enforcement to obtain a warrant before a blood draw if reasonable to do so under the circumstances. *Id.* at 1563. While the Court noted that telephonic warrants make it easier for law enforcement to obtain warrants in time-sensitive cases, “time-consuming formalities designed to create an adequate record, such as preparing a duplicate warrant,” may make it unreasonable for officers to obtain a warrant in some cases. *Id.* at 1562. The Court concluded that “relevant factors in determining whether a warrantless search is reasonable, including the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence, will no doubt vary depending upon the circumstances in the case.” *Id.* at 1568.

After the Supreme Court decided *McNeely*, the Minnesota Supreme Court upheld a warrantless blood draw under the exigent-circumstances exception in *State v. Stavish*, 868 N.W.2d 670 (Minn. 2015). The Minnesota Supreme Court found the following circumstances relevant: (1) law enforcement had reason to believe that the accused was intoxicated at the time of the accident; (2) the accused sustained serious injuries that necessitated emergency treatment; (3) the need for medical treatment rendered the future availability of a blood draw uncertain; (4) the officer did not know how long the accused would remain at the same hospital or whether further medical care would preclude obtaining a sample; (5) the accused might be transported to a different hospital; and (6) it was important to draw the accused’s blood within the statutory two-hour period. *Id.* at

677-79. The court also noted that one “relevant consideration is whether the time necessary to bring the accused to the hospital, or for the officer to travel to the hospital, impacted the officer’s ability to obtain a warrant before the blood draw without significantly undermining the efficacy of the search.” *Id.* at 680.

This case presents similar facts to *Stavish*. Deputy Wacker believed that Trousil was intoxicated at the time of the accident because he could smell alcohol on his person. Trousil was having trouble remaining conscious, was badly injured by the accident, and needed emergency care. It took additional time for an ambulance to bring Trousil to Douglas County Hospital and for the deputies to notify Trousil’s parents of the accident. Sergeant Windhurst remained at the scene waiting for a tow truck. Thus, none of the three officers were available to begin the warrant process until 1:55 a.m. At that point, Deputy Stern returned to the office to seek a warrant. Around that same time, hospital staff notified Deputy Wacker that Trousil would be airlifted to St. Cloud Hospital in 15 to 20 minutes. Deputy Wacker also believed that Trousil might be taken to a different hospital after St. Cloud because of the severity of his injuries. Notice of the airlift gave the officers only 15 to 20 minutes to seek a warrant. Additionally, over an hour and a half passed between the time of the accident and the administering of the blood draw. To satisfy Minn. Stat. § 169A.20, subd. 1(5) (2014), the blood draw had to be administered within two hours of driving.

In light of these exigent circumstances, Deputy Wacker reasonably concluded that 15 to 20 minutes was insufficient time to obtain a telephonic warrant. A law enforcement officer requesting a telephonic warrant “must prepare a duplicate original warrant and must

read the duplicate original warrant, verbatim, to the judge.” Minn. R. Crim. P. 36.03 (2014). The judge “must prepare an original warrant by recording, verbatim, what has been read by the applicant.” *Id.* These procedural requirements are the sort of procedural delays described by the U.S. Supreme Court in *McNeely* as potentially excusing the warrant requirement in cases of exigent circumstances. 133 S. Ct. at 1562. Therefore, exigent circumstances excused the need for the officers to obtain a telephonic warrant.

Because exigent circumstances absolved the officers of the warrant requirement in this case, the district court did not err in denying Trousil’s motion to suppress the results of the alcohol-concentration test obtained from a warrantless blood draw.

Affirmed.