STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0980

Jeffery John Huebner, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

Filed December 3, 2018
Remanded
Cleary, Chief Judge

Isanti County District Court
File No. 30-CV-15-627

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

Lori Swanson, Attorney General, Dominic J. Haik, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Cleary, Chief Judge; and Reilly, Judge.

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

CLEARY, Chief Judge

The commissioner of public safety appeals the district court's order rescinding the revocation of respondent's driver's license. Because the district court did not address the

issues of consent, the good-faith exception, and the *McDonnell* due-process argument, we remand to allow the district court to consider these issues in the first instance.

FACTS

Respondent Jeffery John Huebner was arrested on suspicion of driving under the influence of a controlled substance. He was brought to Isanti County Jail, where an officer read him the Minnesota Implied Consent Advisory. Respondent provided a urine sample. Because analysis of the sample indicated that respondent had controlled substances in his system, appellant commissioner of public safety revoked his driver's license.

Respondent sought judicial review of the revocation, arguing two similar, but distinct, reasons for finding constitutional violations.[1] First, he maintained that the urine test was a warrantless search in violation of the Fourth Amendment and that, as a consequence, the exclusionary rule should apply. Next, respondent posited that the implied consent advisory misled him regarding his legal obligation to submit to a urine test, a due-process violation under *McDonnell v. Comm'r of Pub. Safety*, 473 N.W.2d 848 (Minn. 1991).

After a combined contested omnibus and implied-consent hearing, the district court suppressed the urine test results and rescinded the driver's license revocation. In doing so, the district court concluded that a warrant should have been obtained to search respondent's urine. The court did not expressly rule on whether respondent's consent was voluntary or

[1] Respondent also argued that the officers did not have probable cause to arrest him and that his right to counsel was not vindicated. The district court ruled against respondent and these issues are not challenged on appeal.

if the good-faith exception should apply. In addition, the court did not discuss respondent's *McDonnell* due-process argument. The commissioner appealed.

D E C I S I O N

The district court's order was based solely upon the grounds that a warrantless blood or urine search was not admissible under the search-incident-to-arrest exception after *State v. Thompson*, 873 N.W.2d 873 (Minn. App. 2015), *aff'd*, 886 N.W.2d 224 (Minn. 2016). The district court did not consider other exceptions to the warrant requirement, such as whether respondent consented to the search. *See State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011) ("Consent is an exception to the warrant requirement."). Nor did the district court consider whether the good-faith exception to the exclusionary rule applied. *See State v. Lindquist*, 869 N.W.2d 863, 876 (Minn. 2015) (concluding the "exclusionary rule does not apply to violations of the Fourth Amendment to the U.S. Constitution, or Article I, Section 10, of the Minnesota Constitution when law enforcement acts in objectively reasonable reliance on binding appellate precedent"). Finally, because the district court rescinded the revocation on Fourth Amendment grounds, it did not reach the *McDonnell* due-process argument.

These issues were presented to, but not decided by, the district court. Accordingly, this court cannot review them. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also Welch v. Comm'r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996) ("A remand

may be required if the trial court fails to make adequate findings."). We remand to allow the district court to decide these issues in the first instance.[2]

Remanded.

[2] We express no opinion on how the district court should resolve these issues. Whether the record should be reopened on remand is left to the district court's discretion.