STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1397

Connor J. K. Willis, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

Filed November 19, 2018
Reversed and remanded
Reyes, Judge

Winona County District Court
File No. 85-CV-16-186

Connor J. K. Willis, Rochester, Minnesota (pro se respondent)

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

Considered and decided by Florey, Presiding Judge; Ross, Judge; and Reyes, Judge.

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

REYES, Judge

Appellant Commissioner of Public Safety (the commissioner) seeks reversal of the district court's rescission of respondent's license revocation, arguing that (1) the district court erred in finding that respondent's consent to a warrantless blood test was involuntary and (2) even if the consent was invalid, the good-faith exception to the exclusionary rule should prevent the results of the blood test from being excluded. We reverse and remand.

FACTS

On July 24, 2015, a law enforcement officer initiated a traffic stop after observing a vehicle speeding. The officer identified the driver as respondent Connor J.K. Willis. Based on the odor of marijuana emanating from the vehicle and respondent's admission that he had marijuana, the officer conducted a vehicle search and found marijuana and drug paraphernalia. The officer also observed that respondent's eyes were bloodshot and watery, he was fidgety, and could not stand still. Respondent failed a field sobriety test, and the officer arrested him for driving while impaired.

The officer read respondent an implied-consent advisory that stated it is a crime to refuse to submit to a blood test. Respondent stated that he understood and did not wish to speak to an attorney. He agreed to provide a blood sample, which revealed that he had cannabis and benzoylecgonine (a metabolite of cocaine) in his system at the time of arrest. The state charged respondent with fourth-degree driving while intoxicated. The commissioner revoked respondent's driver's license.

Respondent petitioned the district court to rescind his driver's-license revocation. He argued that the warrantless blood test violated both his Fourth Amendment and due-process rights. The district court found that no exception to the Fourth Amendment warrant requirement justified the warrantless search of respondent's blood. Specifically, and relevant to this appeal, the district court found that, under *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016), respondent did not freely and voluntarily consent to the blood test because it was obtained under Minnesota's invalid implied-consent law. The district court rescinded the revocation.

The commissioner brought this appeal, arguing, under Fourth Amendment principles, that respondent validly consented to the blood test and that, even if the consent was not valid, the results of the blood test should not be excluded based on the good-faith exception to the exclusionary rule. This court stayed the appeal pending the supreme court's review of *State v. Phillips*, A16-0129 (Minn. App. Aug. 29, 2016), *review granted* (Minn. Nov. 15, 2016) *and appeal dismissed* (Minn. May 18, 2017). This court further stayed the appeal pending the decisions in *Johnson v. Comm'r of Pub. Safety*, 911 N.W.2d 506 (Minn. 2018), and *Morehouse v. Comm'r of Pub. Safety*, 911 N.W.2d 503 (Minn. 2018). Following the supreme court's decisions in those cases, this court reinstated the appeal on May 7, 2018, and asked the parties to submit supplemental briefs addressing the applicability of *Johnson* and *Morehouse*. The commissioner submitted a supplemental brief, arguing that the district court's decision should be reversed under *Morehouse* and *Johnson.* Respondent did not file a principal or supplemental brief, nor did he appear for oral argument.[1]

D E C I S I O N

I. Respondent's due-process rights were not violated because he did not prejudicially rely on the implied-consent advisory.

The district court did not address respondent's due-process argument, nor did the commissioner raise it in its briefs. We generally do not decide issues that have not first been addressed by the district court. *State v. Lemmer*, 736 N.W.2d 650, 656 (Minn. 2007).

[1] If respondent fails to file a brief, the case shall be determined on the merits. Minn. R. Civ. App. P. 142.03.

However, appellate courts may decide issues as justice requires, Minn. R. Civ. App. P. 103.04, and to serve the interests of judicial economy. *In re Estate of Vittorio*, 546 N.W.2d 751, 756 (Minn. App. 1996) (citation omitted). If respondent's due-process rights were violated, the Fourth Amendment claim need not be decided. Further, in light of the supreme court's decisions in *Johnson* and *Morehouse* and this court's request for the parties to address the applicability of those decisions to this case, we will decide this issue.

This court reviews due-process challenges de novo. *Anderson v. Comm'r of Pub. Safety*, 878 N.W.2d 926, 928 (Minn. App. 2016). The supreme court held in *McDonnell v. Comm'r of Pub. Safety* that an implied-consent advisory that threatened a criminal consequence the state is not authorized to impose violated the appellant's due-process rights and required rescission of her license revocation. 473 N.W.2d 848, 853-55 (Minn. 1991). In *Johnson*, the supreme court stated that, under *McDonnell*, a due-process violation did not occur solely because a driver had been misled by an inaccurate implied-consent advisory. 911 N.W.2d at 508. The supreme court clarified that a license revocation violates due process when: (1) the person whose license was revoked submitted to a blood, breath, or urine test; (2) the person prejudicially relied on the implied-consent advisory in consenting to the test; and (3) the implied-consent advisory was legally inaccurate. *Id.* at 508-509. In *Johnson*, the supreme court stated that Johnson's due-process claim failed on the first and second elements because Johnson did not submit to testing. *Id.* at 509.

In *Morehouse v. Comm'r of Pub. Safety*, issued contemporaneously with *Johnson*, the supreme court held that Morehouse, who consented to a blood test, was not entitled to a rescission of his license revocation under *McDonnell.* 911 N.W.2d 503, 505 (Minn.

2018). Morehouse's argument failed on the second prong because "the district court did not find, nor did Morehouse claim, that he prejudicially relied on the implied-consent advisory in deciding to submit to the test." *Id.* The facts are analogous here. Like Morehouse, respondent submitted to the blood test and therefore satisfies the first element of a *McDonnell* claim. And, as in *Morehouse*, respondent did not claim, nor did the district court find, that he prejudicially relied on the implied-consent advisory when he decided to take the test. Moreover, the record does not contain any facts indicating that respondent prejudicially relied on the implied-consent advisory. Therefore, as in *Morehouse*, respondent is not entitled to a rescission of his license revocation under *McDonnell*. Because we conclude that respondent's due-process rights were not violated, the issue of whether a valid exception under the Fourth Amendment justified the warrantless search is still relevant.

II. A determination of whether a person's consent is voluntary requires an analysis of the totality of the circumstances.

The commissioner argues that the district court's rescission of respondent's license revocation must be reversed because the district court erred in determining that respondent's consent was involuntary based solely on the incorrect implied-consent advisory. We agree.

Whether an individual voluntarily consented to a search is a question of fact. *Poeschel v. Comm'r of Pub. Safety*, 871 N.W.2d 39, 45 (Minn. App. 2015). A district court's finding of voluntary consent is reviewed for clear error. *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011). Findings of fact are clearly erroneous if, based on the evidence,

we are left with the definite and firm conviction that a mistake has occurred. *Id*. at 846-47.

The United States and Minnesota Constitutions prohibit the unreasonable search and seizure of persons, houses, papers, and effects. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Taking a blood sample constitutes a search under the Fourth Amendment. *State v. Brooks*, 838 N.W.2d 563, 568 (Minn. 2013). Warrantless searches are per se unreasonable, subject to limited exceptions, one of which is consent. *Poeschel v. Comm'r of Pub. Safety*, 871 N.W.2d 39, 45 (Minn. App. 2015). For a search to fall under the consent exception, the consent must be given freely and voluntarily. *Id*. Determining whether consent is voluntary requires an examination of 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 46 (citing *Brooks*, 838 N.W.2d at 569). Consent to testing is voluntary unless the totality of the circumstances demonstrates that the driver consented because his will was overborne and his capacity for self-determination was critically impaired. *Brooks*, 838 N.W.2d at 571-72 (finding voluntary consent based on totality of circumstances where officers read implied-consent advisory, gave Brooks an opportunity to consult with counsel, and did not subject him to repeated questioning); *see also Poeschel*, 871 N.W.2d at 46 (same analysis).

The Supreme Court's decision in *Birchfield* further guides our decision here. In that case, petitioner Beylund consented to a blood test after being arrested for driving while intoxicated. *Birchfield*, 136 S. Ct. at 2186. On the issue of whether Beylund voluntarily

consented to the test, the Court remanded the matter to the district court to determine the voluntariness based on the totality of the circumstances. *Id.*

Here, citing *Birchfield*, the district court found that the consent exception to the warrant requirement did not apply because respondent did not voluntarily consent to the blood test, based solely on the implied-consent advisory being incorrect. Because the district court did not consider the totality of the circumstances, we conclude that the district court erred in finding that respondent's consent was involuntary. We reverse and remand for the district court to consider the validity of consent based on the totality of the circumstances present here. If the district court determines on remand that respondent's consent was involuntary, it should then determine whether the *Lindquist* good-faith exception prevents the exclusion of the test results.

Reversed and remanded.