STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1260

State of Minnesota,
Respondent,

vs.

Benjamin Louis Yaeger,
Appellant

Filed August 20, 2018
Reversed and remanded
Worke, Judge

Olmsted County District Court
File No. 55-CR-15-7998

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

Mark A. Ostrem, Olmsted County Attorney, James Spencer, Assistant County Attorney, Byron H. Black, Assistant County Attorney, Jennifer D. Plante, Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

WORKE, Judge

Appellant argues that the district court erred by admitting evidence of his urine-test results in violation of his Fourth Amendment and due-process rights. We reverse and remand.

FACTS

On November 17, 2015, at approximately 12:13 a.m., Trooper Elzen responded to a report of an individual in a vehicle acting strangely at a gas station. Trooper Elzen located the vehicle and observed that one of its headlights was out. Trooper Elzen also observed the vehicle run a red light, make a wide turn, and hit a curb. Trooper Elzen pulled over the vehicle and spoke to the driver, appellant Benjamin Louis Yaeger. Yaeger spoke "very slow" and would "never make eye contact." Yaeger had spilled soup "all over his fingers and all over the front seat of the vehicle" and had chewing tobacco "all over his lips and chin area." Yaeger's pupils were dilated "way above average," which suggested to Trooper Elzen that Yaeger was under the influence of a depressant. Trooper Elzen did not notice any odor of alcohol coming from Yaeger or the vehicle.

Trooper Elzen asked Yaeger to perform standardized field-sobriety tests, which Yaeger failed. Although he initially denied taking any medication that night, Yaeger admitted that he had taken Cymbalta, an antidepressant, about two hours before the traffic stop. Trooper Elzen arrested Yaeger for driving while impaired (DWI). As Trooper Elzen and his partner Trooper Bormann were placing Yaeger under arrest, Trooper Bormann told Yaeger that he was "not gonna get charged tonight."

Trooper Bormann is a drug-recognition expert and instructor. He observed Yaeger fail the field-sobriety tests and noted that Yaeger's pulse was 122 beats per minute, which was "a bit high." Trooper Bormann found the raised pulse significant because "certain medications that are in the depressant category, such as antidepressants and anxiety medications . . . can elevate the pulse." Trooper Bormann also noticed that Yaeger's eyes were "dilated above the normal range in near darkness," which was significant because "certain medications in the depressant category can cause the pupils to dilate."

At the patrol office, Yaeger told Trooper Bormann that he takes Cymbalta once in the evening as well as Trazodone for sleep. Trooper Bormann noticed "a lot of the clinical indicators" of intoxication while speaking to Yaeger. Trooper Bormann explained to Yaeger that because of those indicators, "that's why we had to come in to give a urine test just to, you know, ah, just to see what's in your system, that's all." Trooper Bormann also told Yaeger that he would not be "charged tonight. We're just gettin[g] the test to see what comes back on the test. And . . . if there's things in there that are impairing you then you could get charged with a DWI. . . . So you won't be gettin[g] a ticket tonight or anything like that or charged tonight."

Trooper Elzen read Yaeger the implied-consent advisory. Yaeger decided to consult with an attorney, but before speaking with an attorney asked the troopers, "So is it ultimately, is this, you guys are trying to get it into like a DWI?" Trooper Elzen replied that Yaeger had been arrested for "DWI, a controlled substance." Yaeger said that "the medication that I'm on[,] I was told I can drive on those medications." Trooper Bormann replied, "Yeah there's . . . a prescription defense to that, however we don't know tonight

how much you took, if you took other things." Yaeger then consulted an attorney and agreed to take a urine test. The urine test came back positive for alpha-hydroxyalprazolam, also known as Xanax, as well as Zolpidem.

On November 18, 2015, Yaeger was charged with one count of DWI—operating a motor vehicle under the influence of a controlled substance. Yaeger moved to suppress "any evidence acquired as a result of the unlawful search . . . ." The district court held a hearing on Yaeger's motion to dismiss, at which he argued that he did not consent to the search, the good-faith exception to the warrant requirement did not apply, and that his due-process rights had been violated as a result of an incorrect implied-consent advisory.

Ruling from the bench, the district court "d[id] not find that consent was voluntary." The district court, "[c]onsidering the totality of the circumstances[,]" noted first that the implied-consent advisory read to Yaeger was not accurate. The district court stated that the incorrect advisory "is one thing that [it] can consider." In addition, the district court considered "other things that occurred," including that troopers told Yaeger he was not going to be charged that night, they were "just getting the test to see what comes back on the test, and . . . if there's things in there that are impairing, then you could get charged with a DWI." The district court stated that it was "inclined to look at that statement as one that's not supporting consent, that [Yaeger] [wa]s being told, more or less, that his acquiescence to the test [wa]s one thing that they'll consider in releasing him tonight and ultimately whether or not he's going to be charged." The district court then considered the good-faith exception to the exclusionary rule. The district court found that the troopers "acted appropriately" and that "[t]here isn't anything in the record that suggests that there

was police misconduct." The district court also found that the implied-consent advisory was correct at the time it was read to Yaeger. Accordingly, the district court concluded that the good-faith exception to the exclusionary rule applied and that the urine-test results were admissible.

After a court trial, the district court found Yaeger guilty of first-degree DWI. The district court sentenced Yaeger to 42 months in prison stayed for five years. This appeal followed.

D E C I S I O N

Yaeger argues that the district court erred by invoking the good-faith exception and refusing to suppress the urine-test results. Upon review of a pretrial order on a motion to suppress evidence, this court independently reviews the facts and determines whether, as a matter of law, the district court erred in not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). We review questions of law de novo. *State v. Lindquist*, 869 N.W.2d 863, 866 (Minn. 2015).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A urine test is a search for the purposes of the Fourth Amendment. *State v. Brooks*, 838 N.W.2d 563, 568 (Minn. 2013). "A search conducted without a warrant is per se unreasonable unless an exception applies." *Ellingson v. Comm'r of Pub. Safety*, 800 N.W.2d 805, 807 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). However, "police do not need a warrant if the subject of the search consents." *Brooks*, 838 N.W.2d at 568. To establish consent, the state must show by a preponderance of the evidence that a defendant's consent was given freely and

voluntarily. *Id.* This court looks to the totality of the circumstances to determine whether consent is voluntary, "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). Consent to a police request is involuntary if the encounter is coercive. *State v. Harris*, 590 N.W.2d 90, 102 (Minn. 1999).

Here, the district court found that Yaeger did not voluntarily consent to the urine test. The district court's finding was not based solely on the inaccurate statement of law contained in the implied-consent advisory. The district court also considered the statements made by the troopers suggesting that "[Yaeger's] acquiescence to the test is one thing that they'll consider in releasing him tonight and ultimately whether or not he's going to be charged." The troopers also downplayed the consequences of taking the urine test. Additionally, Trooper Bormann mistakenly informed Yaeger that there was a "prescription defense" to DWI.[1] The state does not argue that the district court erred by finding that Yaeger's consent was invalid. Accordingly, the district court's finding is presumed to be correct.

Yaeger challenges the district court's application of the good-faith exception to the exclusionary rule. The supreme court stated in *Lindquist* that "[t]he exclusionary rule does not apply . . . when law enforcement acts in good-faith, objectively reasonable reliance on binding appellate precedent." 869 N.W.2d at 864. The supreme court reiterated that

[1] Although a "prescription defense" exists to the charge of driving while having any amount of a schedule I or II controlled substance in a person's body, that defense does not extend to driving while impaired by a controlled substance. Minn. Stat. § 169A.46, subd. 2 (2016).

"deterrence of police misconduct" is the "central purpose of the exclusionary rule" and concluded that "applying the exclusionary rule to evidence obtained during a search conducted in reasonable reliance on binding appellate precedent would have no deterrent value on police misconduct." *Id.* at 871.

The state does not cite any binding precedent that stated, before the warrantless search in this case, that the implied-consent statute is constitutionally valid. The state concedes, however, that approximately a month after the warrantless search in this case, on December 28, 2015, this court ruled in *State v. Thompson* that it was unconstitutional for the state to criminalize refusal to provide a warrantless urine test. 873 N.W.2d 873, 880 (Minn. App. 2015), *aff'd*, 886 N.W.2d 224 (Minn. 2016).

The district court erred by applying the good-faith exception. The good-faith exception to the exclusionary rule would apply only if the incorrect advisory was the sole factor that rendered Yaeger's consent involuntary. *See Lindquist*, 869 N.W.2d at 869 (stating that the good-faith exception applies only to "circumstances in which binding appellate precedent specifically *authorizes* a particular police practice" (quotation omitted)); *see also Brooks*, 838 N.W.2d at 570 ("[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."). Here, in addition to the incorrect advisory, the troopers told Yaeger that he would be released without being charged after he took the urine test, downplayed the consequences of the test, and misled him to believe that there was a prescription defense to DWI. The state cites no binding appellate precedent that authorizes such conduct. The state also does not contend that the caselaw concerning consent to a warrantless search

changed after the warrantless search in this case. Accordingly, we conclude that the district court erred by reversing its direction and ultimately admitting the urine-test results under the good-faith exception.

The state argues that even if the urine-test results were erroneously admitted, a new trial is unnecessary because any error was harmless beyond a reasonable doubt. When an error implicates a constitutional right, "a new trial is required unless the [s]tate can show beyond a reasonable doubt that the error was harmless." *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). "An error is harmless beyond a reasonable doubt if the . . . verdict was surely unattributable to the error." *Id.*

Here, the district court issued findings of fact and explained the basis for its decision. The district court "credit[ed] Trooper Bormann's conclusions" that Yaeger was "significantly impaired by a controlled substance" and that "[t]he controlled substance was a central nervous system (CNS) depressant." The district court also discussed the urine-test results at length, noting that Yaeger's urine tested positive for Alprazolam, a "CNS depressant" as well as Zolpidem, another "CNS depressant." The district court found that "Trooper Bormann's observations and ultimate opinion were consistent with impairment by [A]lprazolam and [Z]olpidem. He also noted that Xanax ([A]lprazolam) can elevate one's heart rate, unlike some other CNS depressants."

Based on the district court's findings, we conclude that the urine-test results played a significant role in corroborating Trooper Bormann's testimony. The state has not met its burden of demonstrating beyond a reasonable doubt that the district court's verdict was surely unattributable to the erroneously-admitted evidence. We therefore reverse and

remand for a new trial. Because we reverse on the basis of Yaeger's Fourth Amendment argument, we need not address whether admitting the urine-test results violated Yaeger's due-process rights.

Reversed and remanded.