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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0627**

State of Minnesota,
Appellant,

vs.

Chad Harold Dyrdaahl,
Respondent.

**Filed September 4, 2018
Reversed and remanded
Reilly, Judge**

Clearwater County District Court
File No. 15-CR-17-462

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

Alan G. Rogalla, Clearwater County Attorney, Heather L. Labat, Assistant County
Attorney, Bagley, Minnesota (for appellant)

Peter J. Timmons, Samuel Edmunds, Mendota Heights, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Reilly, Judge; and Smith, John,
Judge.*

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

UNPUBLISHED OPINION

REILLY, Judge

The state challenges the district court's suppression of evidence based on the determination that law enforcement violated respondent Chad Harold Dyrdaahl's due-process rights by giving respondent a misleading breath-test advisory. Because the advisory was not misleading, we reverse and remand.

FACTS

On November 19, 2017, a state patrol officer observed respondent weaving and swerving as he drove his car. Based on respondent's driving, the officer conducted a traffic stop. The officer observed that respondent's eyes were bloodshot and watery, and he smelled a moderate odor of alcohol coming from inside the vehicle. Respondent told the officer that he had consumed "a little bit" of alcohol that evening. The officer conducted field sobriety tests; respondent exhibited multiple signs of impairment. The officer conducted a preliminary breath test, which registered a reading of 0.18. The officer arrested respondent and transported him to the county jail.

At the jail, the officer read the breath-test advisory to respondent. Respondent contacted an attorney and, after speaking to his attorney, agreed to take the offered breath test. Respondent's alcohol concentration was 0.14. Respondent was charged with third-degree driving while impaired in violation of Minn. Stat. § 169A.20, subd. 1(5).

Respondent filed a motion to suppress the evidence resulting from his agreement to take the breath test, alleging that the breath-test advisory violated his due-process rights. Respondent agreed that while it is against the law to refuse to consent to a breath test, the

advisory seemed to suggest that it was against the law to refuse to consent to *any* test, a misstatement of the law. The district court agreed and suppressed evidence resulting from his agreement to take the breath test, finding that the advisory, as read by the officer, was misleading and violated respondent’s due-process rights.

This appeal followed.

DECISION

“When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (citing *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992)). We review factual findings on a pretrial suppression order under the clearly erroneous standard and review legal determinations de novo. *State v. Onyelobi*, 879 N.W.2d 334, 342-43 n.4 (Minn. 2016).

Minnesota law requires law enforcement to provide an advisory prior to administering a breath test to a driver. Minn. Stat. § 169A.51, subd. 2 (2016). The advisory must inform drivers that “Minnesota law requires [them] to take a test,” “that refusal to submit to a breath test is a crime,” and that they may consult with an attorney. *Id.* Failing or refusing such a test can result in license revocation. Minn. Stat. § 169A.52, subs. 3, 4 (2016).

We note that due-process guarantees in a civil implied-consent proceeding differ from due-process guarantees in a criminal proceeding. Because a driver’s license is an important property interest, due process in a civil implied-consent context requires a

hearing before a person may be deprived of a driver's license. *See State v. Polsfuss*, 720 N.W.2d 1, 4 (Minn. App. 2006).

In the criminal context, like this case, due process requires that criminal defendants be treated with fundamental fairness. *Id.* A due-process violation in a criminal prosecution for driving while impaired occurs when a breath test is obtained through coercion. *Id.* An implied-consent advisory is coercive if it is misleading. *State v. Stumpf*, 481 N.W.2d 887, 889-90 (Minn. App. 1992).

Here, the advisory given by law enforcement did not violate respondent's due-process rights because it was not misleading. The officer informed respondent that Minnesota law required him to take "a test" to determine the presence of alcohol. The officer then informed respondent that refusal to take "a test" is a crime. The officer informed respondent that he had a right to consult with an attorney, and respondent then spoke with an attorney. Lastly, the officer offered respondent a "breath test," and respondent consented to take the breath test. The officer accurately informed respondent that his failure to take the breath test could result in criminal penalties. Therefore the advisory did not misstate the law. *See Minn. Stat. § 169A.52*, subds. 3, 4.

The district court determined that the instruction was misleading because the officer informed respondent that refusal to take a "chemical test" is a crime. The court determined this was a misstatement of the law because a driver may refuse certain chemical tests like those for blood or urine and such a refusal is not a crime. *See State v. Thompson*, 886 N.W.2d 224, 234 (Minn. 2016); *State v. Trahan*, 886 N.W.2d 216, 224 (Minn. 2016). But based on the record, the officer did not instruct respondent that refusal to take a *chemical*

test is a crime and instead explained that refusal to take *a* test is a crime. And, the only test offered to respondent was a breath test; the instruction accurately described that refusal to take the offered breath test would be a crime. The officer never asked respondent to take a blood or urine test. Given the circumstances, the breath-test advisory was not misleading.¹

Because we determine the officer accurately informed the driver of the legal consequences for refusing to submit to the testing, respondent's due-process rights were not violated, and the suppression of the breath-test evidence was improper.

Reversed and remanded.

¹ We also note that respondent consulted with an attorney before agreeing to take the test. Respondent presumably relied on that advice of counsel and not the breath-test advisory when making his decision about whether to take the test.