STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0673

Travis Dean Schneider, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed October 21, 2019
Reversed and remanded
Larkin, Judge

Isanti County District Court
File No. 30-CV-15-715

Steven J. Meshbesher, Meshbesher & Associates, P.A., Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, William Young, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant challenges the district court's order sustaining the revocation of his license to drive under Minnesota's implied-consent law. The district court rejected

appellant's argument that the implied-consent advisory in this case misinformed him of the potential criminal penalty for refusing to submit to a blood test and therefore violated his right to due process. We reverse and remand for the district court to rescind appellant's license revocation.

FACTS

In May 2015, appellant Travis Dean Schneider crashed the motorcycle that he was driving. Sergeant Wade Book of the Isanti County Sheriff's Office responded to the crash scene and suspected that Schneider had been driving while impaired (DWI). Schneider submitted to a portable breath test, which indicated that Schneider's alcohol concentration was 0.13. Schneider was transported to a hospital for treatment of injuries that he sustained in the crash. At the hospital, Sergeant Book read Schneider an implied-consent advisory that informed him that Minnesota law required him to take a test to determine whether he was under the influence of alcohol and that refusal to take a test is a crime. Sergeant Book asked Schneider if he understood what Sergeant Book had just explained, and Schneider responded affirmatively. Schneider agreed to submit to a blood test. Sergeant Book did not obtain a search warrant authorizing the test.

The blood test revealed that Schneider's alcohol concentration was 0.13. Respondent Minnesota Commissioner of Public Safety revoked Schneider's license to drive based on the results of the test. Schneider petitioned for judicial review, seeking rescission of the revocation in part because the implied-consent advisory was "misleading, confusing and inaccurate and violated [his] right to due process of law under the Minnesota and United States Constitutions."

The district court continued the hearing on Schneider's petition for judicial review five times and eventually held the hearing in October 2018, nearly three years after Schneider petitioned for relief. At the hearing, Schneider testified that he took the test because Sergeant Book told him that if he "didn't take the test, that it was a crime" and he "didn't want to get in trouble" so he "took—whatever [test Sergeant Book] wanted [him] to do." Schneider limited his request for relief to his due-process claim. The district court rejected that claim and sustained his license revocation. Schneider appeals.

D E C I S I O N

Schneider challenges the district court's ruling that he is not entitled to rescission of his driver's license revocation on due-process grounds. "Whether an implied-consent advisory violates a driver's due-process rights is a question of law, which this court reviews de novo." *Magnuson v. Comm'r of Pub. Safety*, 703 N.W.2d 557, 561 (Minn. App. 2005).

In *McDonnell v. Comm'r of Pub. Safety*, the supreme court held that an implied-consent advisory that threatened a criminal consequence the state was not authorized to impose violated a driver's right to due process and that the violation required rescission of the commissioner's revocation of the driver's license to drive. 473 N.W.2d 848, 855 (Minn. 1991). In *Johnson v. Comm'r of Pub. Safety*, the supreme court clarified that a due-process violation under *McDonnell* does not occur "solely because a driver [has] been misled" by an implied-consent advisory. 911 N.W.2d 506, 508 (Minn. 2018). Instead,

> A license revocation violates due process when: (1) the person whose license was revoked submitted to a breath, blood, or urine test; (2) the person prejudicially relied on the implied consent advisory in deciding to undergo testing; and (3) the

> implied consent advisory did not accurately inform the person of the legal consequences of refusing to submit to the testing.

Id. at 508-09 (citing *McDonnell*, 473 N.W.2d at 853-55).

Schneider submitted to the blood test and therefore satisfies the first part of the *McDonnell* due-process test. The district court rejected Schneider's due-process challenge based on the second part of the *McDonnell* test and its determination that Schneider "failed to establish that he prejudicially relied on the Implied Consent Advisory when he agreed to take the blood test."

The second part of the *McDonnell* due-process test requires a factual determination. *See Morehouse v. Comm'r of Pub. Safety*, 911 N.W.2d 503, 505 (Minn. 2018) (rejecting a *McDonnell* due-process challenge because "the district court did not find, nor did [the driver] claim, that [the driver] prejudicially relied on the implied consent advisory in deciding to submit to the test"). We review a district court's factual findings for clear error and will not reverse those findings unless we are left with the definite and firm conviction that a mistake has been made. *Rasmussen v. Two Harbors Fish Co*., 832 N.W.2d 790, 797 (Minn. 2013). In doing so, we give "due regard . . . to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01; *see Frost v. Comm'r of Pub. Safety*, 348 N.W.2d 803, 804 (Minn. App. 1984) (stating that in an appeal from an implied-consent order, "due regard will be given to the [district] court's opportunity to judge the credibility of the witnesses, and findings of fact will not be set aside unless *clearly erroneous*").

As to prejudicial reliance, the supreme court in *McDonnell* explained that the driver "would have refused to submit to testing had she not felt certain that criminal penalties would result. It therefore appears that her interests were prejudiced when law enforcement officials misinformed her as to her potential criminal liability." 473 N.W.2d at 855. That language indicates a causal connection: the certainty of criminal penalties caused the driver to submit to testing. Indeed, that is how the Minnesota Supreme Court explained prejudicial reliance in *Johnson*:

> We concluded that [the *McDonnell* driver's] due process rights were violated when, after being threatened with impossible criminal charges, *she submitted to testing because of the threatened charges*. We reasoned that [the driver's] interests were prejudiced by the inaccurate implied consent advisory because [the driver] would not have submitted to the testing but for the threat of the impossible criminal penalties.

911 N.W.2d at 508 (emphasis added) (citation omitted).

In sum, Schneider had to show that he submitted to testing because of the threatened criminal penalty. To make that showing, Schneider testified, "[Sergeant Book] told [me] that if . . . I didn't take the test, that it was a crime. I didn't know what the crime was. All I knew was that I was scared, and I took—whatever he wanted to do. I didn't want to get in trouble." Schneider further testified, "I remember [Sergeant Book] explaining that I had to do it, otherwise it was a crime or I was breaking the law."

It is difficult to understand the district court's finding that Schneider did not establish that he prejudicially relied on the implied-consent advisory. Schneider's testimony that he "was scared" because it was a crime to refuse the test and that he did "whatever [Sergeant Book] wanted to do" because he "didn't want to get in trouble"

logically and reasonably supports a finding that he would have refused to submit to testing but for the threat of criminal penalties, like the driver in *McDonnell*.

The district court did not expressly reject Schneider's testimony that he decided to submit to the blood test because he feared the threatened criminal consequences. However, the district court made the following findings regarding Schneider's credibility:

> [Schneider] testified that he recalls portions of the Implied Consent Advisory but not all of it. He does not dispute that he indicated "yes" when asked if he understood the Advisory. [Schneider] also agreed that he was under the influence of alcohol and that alcohol affects memories and that his memory could be affected by the alcohol he had consumed that day.

Although we defer to those credibility findings, they do not support an implicit determination that Schneider was not credible when he testified that he took the test because he was afraid of the criminal consequences that would result from refusal.

Moreover, the district court's rationale for rejecting Schneider's claim of prejudicial reliance is questionable. The district court explained:

> In [Schneider's] case, he was read the Implied Consent Advisory word-for-word by Sergeant Book. Sergeant Book testified that he believed [Schneider] to be coherent enough at the scene of the motorcycle accident to begin the investigation into [Schneider's] possible intoxication. Once at the hospital, Sergeant Book did not rush into [Schneider's] hospital room and start reading the Implied Consent Advisory. Rather, Sergeant Book waited until hospital staff gave Sergeant Book permission to continue his investigation. Sergeant Book indicated that [Schneider] did not appear confused and was alert and responsive to his questions.
>
> [Schneider] indicated that he understood the Implied Consent Advisory on the day of the incident and testified that he had no reason to dispute that he so indicated. [Schneider] did not desire to speak with an attorney and did not ask Sergeant Book any questions about the blood test. The Implied

> Consent Advisory was completed at 4:53 p.m., a whole hour after [Schneider's] motorcycle accident.

Based on that explanation, the district court found that Schneider "failed to establish that he prejudicially relied on the Implied Consent Advisory when he agreed to take the blood test." The district court appears to have reasoned that because Schneider understood the advisory, he did not prejudicially rely on the advisory. But contrary to that reasoning, Schneider's ability to understand the advisory suggests prejudicial reliance: Schneider submitted to the test because he understood that he would be charged with a crime if he refused.

We note that the "prejudicial" aspect of the second part of the *McDonnell* due-process test regards the impact of an allegedly inaccurate advisory on the testing decision. *See Johnson*, 911 N.W.2d at 509 ("[T]here is no concern here that Johnson was prejudiced by relying on misleading statements by the officer about the consequences of refusing a test because Johnson did not submit to testing."). "[P]rejudicial reliance violates due process because it deprives a driver of the meaningful choice between submitting to and refusing a test." *Morehouse*, 911 N.W.2d at 505 (quotation omitted); *see McDonnell*, 473 N.W.2d at 854 (explaining that "the choice between submitting to and refusing a test may be a meaningful one to an individual driver" and that "[t]he certainty of a full year's license revocation may be less onerous than providing the state conclusive evidence of one's guilt" (quotation omitted)). If the advisory in this case did not accurately inform Schneider of the legal consequences of refusing to submit to testing, and he relied on it in choosing to submit to testing, he was deprived of a meaningful choice regarding the testing decision,

regardless of the circumstances surrounding the provision of the advisory and his ability to comprehend it.

In sum, we are left with a definite and firm conviction that a mistake has been made. We therefore reverse the district court's finding that Schneider did not prejudicially rely on the implied-consent advisory. Schneider's testimony established prejudicial reliance and satisfied the second part of the *McDonnell* due-process test.

We turn to the last part of the *McDonnell* due-process test: whether the implied-consent advisory did not accurately inform Schneider of the legal consequences of refusing to submit to a test. Schneider argues that the state could not have prosecuted him for refusing to submit to the blood test in this case and that the advisory therefore did not accurately inform him of the legal consequences of refusing. The commissioner does not dispute that the third part of the *McDonnell* due-process test is satisfied.

Schneider's position regarding the accuracy of the advisory is consistent with caselaw. When the implied-consent advisory was read in this case, it was "a crime for any person to refuse to submit to a chemical test of the person's blood, breath, or urine under section 169A.51 (chemical tests for intoxication), or 169A.52 (test refusal or failure; revocation of license)." Minn. Stat. § 169A.20, subd. 2 (2014). The Minnesota Supreme Court has since held that a driver cannot be prosecuted for refusing to submit to a blood test that would have violated the Fourth Amendment. *State v. Trahan*, 886 N.W.2d 216, 224 (Minn. 2016) (citing *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2186 (2016)).

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S.

Const. amend. IV. The administration of a blood test is considered a search that must comply with the Fourth Amendment. *Schmerber v. California*, 384 U.S. 757, 767, 86 S. Ct. 1826, 1834 (1966). "A warrantless search is generally unreasonable, unless it falls into one of the recognized exceptions to the warrant requirement." *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015), *aff'd sub nom. Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). "The state bears the burden of establishing an exception to the warrant requirement." *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). Yet the commissioner does not assert that an exception justifies the warrantless blood test in this case. We therefore conclude that Schneider's blood test violated the Fourth Amendment.

Trahan holds that Minnesota's criminal test-refusal statute is unconstitutional as applied to an individual who refuses to take an unconstitutional warrantless blood test. 886 N.W.2d at 224. Because Schneider could not have been prosecuted for refusing to submit to the unconstitutional blood test in this case, the implied-consent advisory did not accurately inform him of the legal consequences of refusing to submit to the test. Thus, the third part of the *McDonnell* due-process test is satisfied. *See Johnson v. Comm'r of Pub. Safety*, 887 N.W.2d 281, 294 (Minn. App. 2016) (concluding that because a criminal test-refusal charge would have been unconstitutional, an implied-consent advisory inaccurately advised a driver that refusal to take a urine test is a crime, resulting in a due-process violation under *McDonnell*), *rev'd on other grounds*, 911 N.W.2d 506 (Minn. 2018).[1]

[1] The supreme court has not further explained the third part of the *McDonnell* due-process test. *See Johnson*, 911 N.W.2d at 509 ("We need not consider whether the implied consent

Because the record establishes that the *McDonnell* due-process test is satisfied here, we reverse and remand for the district court to rescind Schneider's license revocation.

Reversed and remanded.

advisory was legally inaccurate when read to Johnson because he cannot establish the first two elements of his *McDonnell* claim."); *Morehouse*, 911 N.W.2d at 505 n.4 ("We do not address whether the implied consent advisory was legally accurate when it was read or whether accuracy is significant here because Morehouse did not claim to prejudicially rely on the implied consent advisory when he submitted to the test.").