STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0532

State of Minnesota,
Respondent,

vs.

Jonathan Yemane,
Appellant.

Filed March 16, 2020
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CR-18-20980

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jordan W. Rude, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Charles A. Ramsay, Daniel J. Koewler, Ramsay Law Firm, PLLC, Roseville, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Reilly, Judge.

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

CONNOLLY, Judge

Appellant challenges the enhancement of his felony driving while impaired (DWI) conviction, arguing that one of the prior convictions used for enhancement resulted from an unconstitutional warrantless blood test. Because the prior conviction was a "qualifying incident" under Minn. Stat. §§ 169A.03, subd. 22, .24, subd. 1 (2018), we affirm.

FACTS

In March 2013, a police officer found appellant Jonathan Yemane apparently asleep in the driver's seat of a car with the engine idling and lights and emergency flashers on in a parking garage. The officer woke appellant by knocking on the car window; when appellant opened it, the officer noticed his bloodshot eyes, his sluggish movements, and the odor of alcohol. Appellant's responses to questions about his recent drinking were unintelligible. He tried but failed to blow into a preliminary breath test (PBT) device.

Appellant was arrested and taken to the police station, where he was read the implied-consent advisory then in use; it advised that it was a crime to refuse a blood test. After consulting an attorney by phone, appellant agreed to a blood test, which revealed an alcohol concentration greater than 0.08. He was charged with one count of second-degree gross misdemeanor DWI—alcohol concentration greater than 0.08 and one count of second-degree gross misdemeanor DWI—two or more aggravating factors. He pleaded guilty to having an alcohol concentration greater than 0.08 and therefore was not convicted on the aggravating-factors count. This was appellant's second DWI conviction: his first had occurred in August 2010, and he had a third in April 2013.

In August 2018, police found appellant after he had struck two other vehicles in a parking lot. They noticed his bloodshot eyes, slurred speech, poor balance, and smell of intoxicating beverages. Appellant failed to complete some field sobriety tests and scored poorly on others. His alcohol concentration was 0.23. He was charged with two counts of felony DWI: count 1—operating a motor vehicle under the influence of alcohol and count 2—operating a motor vehicle within two hours of having a BAC of at least 0.08.

Following the denial of appellant's motion to have his March 2013 offense excluded as a qualifying offense and a stipulated-facts trial, he was found guilty of felony DWI, based in part on the March 2013 offense. On appeal, he challenges the denial of his motion to exclude the March 2013 offense.

D E C I S I O N

Applying the impaired-driving statute to undisputed facts involves a question of law subject to de novo review. *See State v. Wiltgen*, 737 N.W.2d 561, 566 (Minn. 2007). The facts here are undisputed.

"A person who violates section 169A.20 (driving while impaired) is guilty of first-degree driving while impaired if the person: (1) commits the violation within ten years of the first of three or more qualified prior impaired driving incidents." Minn. Stat. § 169A.24, subd. 1. "Qualified prior impaired driving incident" includes prior impaired driving convictions. Minn. Stat. § 169A.03, subd. 22. Appellant makes a collateral attack on the conviction for his March 2013 offense. That conviction was based on a guilty plea, and "when a guilty plea is at issue, the concern with finality served by the limitation on

collateral attack has special force." *Custis v. United States*, 511 U.S. 485, 497, 114 S. Ct. 1732, 1739 (1994) (quotation omitted).

Appellant argues that the conviction for the March 2013 offense may not be used to enhance his present offense because, in March 2013, he was advised that refusal to submit to a blood test was a crime before submitting to the blood test on which his guilty plea was based and it was later determined that such refusals could not be prosecuted criminally without a warrant. *See Birchfield v. North Dakota*, 136 S. Ct. 2160, 2184 (2016); *State v. Trahan*, 886 N.W.2d 216, 219 (Minn. 2016). But, even though advising a defendant that refusing a warrantless blood test is a crime now precludes prosecution for driving with a particular alcohol concentration, "prosecution [may] still proceed for the general offense of driving while under the influence, based on other evidence of impairment." *State v. Schmidt*, 712 N.W.2d 530, 539 (Minn. 2006). We agree with the district court's conclusion that here, "there was ample other evidence to sustain a prosecution and conviction for driving while impaired under a different subdivision of Minn. Stat. § 169A.20, even if the district court had suppressed the unconstitutional blood draw."[1]

[1] Both parties and the district court rely on a recent unpublished decision of this court addressing a very similar situation, *State v. Nordstrom*, No. 17-0875, 2018 WL 1787680 (Minn. App. Apr. 16, 2018) (rejecting defendant's argument that his Wisconsin conviction for driving while under the influence of an intoxicant, obtained after he was told by Wisconsin law enforcement that refusing a blood test was a crime and agreed to the blood test, could not be used to enhance a Minnesota conviction because the Supreme Court later determined that the blood test violated constitutional rights). Moreover, in 2013, appellant was not convicted on the general DWI charge only because he agreed to plead guilty to the blood alcohol concentration (BAC) charge.

Because collateral attacks of criminal convictions undermine the finality of judgments, they are allowed only in "unique cases." *State v. Warren*, 419 N.W.2d 795, 798 (Minn. 1988), *quoted in Schmidt*, 712 N.W.2d at 538 n.4. A change in the law following a conviction is not a unique case. There is no basis to reverse the district court's denial of appellant's motion to exclude the March 2013 conviction.

Affirmed.