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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1191**

Weston Palmer Harbison, petitioner,
Respondent,

vs.

State of Minnesota,
Appellant.

**Filed June 15, 2020
Reversed and remanded
Slieter, Judge**

Ramsey County District Court
File No. 62-CR-13-2915

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant
Public Defender, St. Paul, Minnesota (for respondent)

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

John Choi, Ramsey County Attorney, St. Paul, Minnesota; and

Adam E. Petras, Special Assistant County Attorney, Minneapolis, Minnesota (for
appellant)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

In this appeal from an order granting postconviction relief and vacating respondent's conviction of first-degree test refusal, appellant argues that the district court erred by placing the burden of proof on the state to establish an exception to the warrant requirement. Because recent precedent places the burden of proof on the petitioner to establish the existence of an exception to the warrant requirement, we reverse and remand for further proceedings.

FACTS

Respondent Weston Palmer Harbison was involved in a single-vehicle crash in 2013 in White Bear Lake. Harbison could not explain to the responding state trooper how the crash happened. Ultimately, the trooper placed Harbison under arrest and brought him to Regions Hospital for chemical testing. Without obtaining a search warrant from a judge, the trooper read the implied-consent advisory and asked Harbison for a sample of his blood or urine. Harbison refused both tests.

The state charged Harbison with first-degree refusal to submit to a chemical test, in violation of Minn. Stat. § 169A.20, subd. 2 (2012). Harbison pleaded guilty to the offense in June 2013 and was sentenced to 66 months in prison. Harbison petitioned for postconviction relief in November 2018 on the grounds that his conviction must be reversed based upon new caselaw that established that a person cannot be convicted for refusing a blood or urine test absent a warrant or exigent circumstances justifying a warrantless blood or urine search.

The district court determined that the state bore the burden of establishing the presence of exigent circumstances to justify an exception to the warrant requirement. After this determination, the state conceded that it could not meet this burden. The district court issued an order granting relief and vacating Harbison's conviction. The state appeals, arguing that the district court incorrectly placed the burden of proof on the state.

D E C I S I O N

Appellate courts review a district court's postconviction decision for an abuse of discretion. *See Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). A district court abuses its discretion if it bases its postconviction ruling on an erroneous view of the law, and legal issues are reviewed *de novo*. *Id.*

As relevant background, *Birchfield v. North Dakota* established that a person cannot be convicted for refusing a blood test absent a search warrant or exigent circumstances justifying a warrantless blood search. 136 S. Ct. 2160, 2185-86 (2016). Minnesota has since established similar requirements for blood and urine testing. *See State v. Trahan*, 886 N.W.2d 216, 221 (Minn. 2016) (blood); *State v. Thompson*, 886 N.W.2d 224, 234 (Minn. 2016) (urine). These rules apply retroactively to final convictions on collateral review, although reversal is not automatic. *Johnson v. State*, 916 N.W.2d 674, 684 (Minn. 2018). The supreme court ruled that, upon remand, the district court must hold a hearing to make a "case-by-case determination[] to assess whether there was a warrant or an exception to the warrant requirement sufficient to sustain test-refusal convictions under the *Birchfield* rule." *Id.* In *Fagin v. State*, the supreme court clarified that the petitioner has

the burden of proving that no search warrant and no applicable exception to the warrant requirement existed. 933 N.W.2d 774, 780 (Minn. 2019).

The supreme court acknowledged in *Fagin* that placing the burden of proving that no warrant and no warrant exception existed on the petitioner creates an odd and inequitable situation in which the petitioner has to “prove two negatives” while the state can remain silent and not specify which warrant exception applied. *Id.* at 780. In an attempt to mitigate this problem, the supreme court created a “heightened” pleading requirement in postconviction test-refusal cases under which the state must “controvert the petitioner’s allegations of lack of a warrant or the lack of an exception” in a responsive answer or motion, or the argument will be deemed waived. *Id.* Specifically, if no warrant issued and the postconviction petition alleges that no warrant exception applies, the state’s responsive pleading must either admit the lack of an exception or specify the exception relied on and the grounds for reliance. *Id.* “The exception and its grounds must be pleaded in sufficient detail to give the petitioner adequate notice of the State’s position.” *Id.* In light of *Fagin*, the district court abused its discretion in placing the burden on the state.

Harbison argues that—even if the district court erred in placing the burden of proof on the state—the case need not be reversed and remanded for two reasons: (1) the state forfeited any claim of an exigent circumstance exception to the warrant requirement because it conceded that no exception existed, and (2) the record contains evidence sufficient for our court to determine that no additional exception applies even if other claims by the state of a warrant exception are not forfeited. The state disputes that it forfeited other claims to the presence of a search warrant exception and contends that the

case must be remanded to comply with the burden of proof and pleading requirements of *Fagin*.¹

Given the pleading requirements of *Fagin*, we believe the case should be remanded for proceedings consistent with *Fagin* and with the burden of proof placed on Harbison. On remand, the district court may address the parties' argument. The district court is in a better position to assess the record and decide these issues.

In sum, the order granting postconviction relief and vacating respondent's conviction of first-degree test refusal is reversed and the matter is remanded for proceedings consistent with the proper burden of proof and new pleading requirements set forth in *Fagin*.

Reversed and remanded.

¹ The state argues that it will assert on remand that no judge was available at the time of the accident in 2013 to grant a search warrant and that Harbison will have the burden of establishing a judge was available. Because we are remanding for further proceedings, we need not consider the viability of such argument.