This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0831

Thomas Patrick Ness, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed December 11, 2023
Affirmed
Kirk, Judge*

Cass County District Court
File No. 11-CV-22-684

Rich Kenly, Kenly Law Office, Backus, Minnesota (for appellant)

Keith Ellison, Attorney General, Karthik Raman, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Frisch, Judge; and Kirk, Judge.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this appeal from the district court's order affirming the revocation of appellant's driver's license following an impaired-driving incident, appellant argues that the police did

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

not provide the proper advisory by failing to inform him that refusal to submit to a blood or urine test is a crime. We affirm.

FACTS

Following a traffic stop on February 27, 2022, a sheriff's deputy (the officer) arrested appellant Thomas Patrick Ness for driving while impaired and brought appellant to the county jail. At the jail, the officer asked appellant if he preferred to take a blood or urine test.[1] Appellant responded that "[the officer] wasn't going to obtain either test from him."

The officer obtained a search warrant authorizing him to procure either a blood or urine sample from appellant. After obtaining the warrant, the officer approached appellant's holding cell, stated appellant's name, and asked appellant to come talk to him. Appellant was lying down on the cell bed, was wrapped in a blanket with his eyes closed, and did not get up or respond to the officer. The officer informed appellant, "as I told you before, I was drafting a search warrant for your blood or urine because of the DWI, and I have a signed search warrant in my hand, and refusing to submit to that search warrant is a crime." The officer asked appellant if he understood. The officer testified that appellant did not respond and was ignoring him, but that at one point appellant opened his eyes and looked at him while adjusting his blanket before continuing to ignore him.[2] The officer asked appellant if he was refusing to give the officer a test, to which appellant did not reply.

[1] In his principal brief, appellant notes that this interaction was not recorded on video or audio, but does not otherwise challenge the officer's testimony.

[2] Appellant does not dispute that he was awake, but focuses his appeal on the officer's procedural defects in giving the search-warrant advisory.

The officer then told appellant that he was taking his silence as a refusal, and asked if appellant understood. Appellant again did not reply. The officer informed appellant that he was leaving appellant a copy of the search warrant but that appellant's noncompliance with the warrant would be considered a refusal and he would be charged with an additional crime. Appellant did not respond and continued to lie on the bed with his eyes closed. The officer then issued a notice and order of revocation of appellant's driver's license.

Appellant petitioned for judicial review of his driver's license revocation. At the hearing, appellant challenged, among other things, the validity of his test refusal. After considering the officer's body-worn-camera video and testimony, the district court found that appellant was clearly informed as to the relevant law and that he had refused to take the blood and urine tests. The district court denied appellant's request to rescind the order revoking his driver's license. This appeal follows.

DECISION

Appellant challenges the district court's finding that he refused to take a blood or urine test under Minn. Stat. § 171.177 (2022). Appellant contends that the officer failed to strictly comply with Minn. Stat. § 171.177, subds. 1 and 2, by not reciting the statute's language verbatim and by not asking appellant separate questions regarding taking a blood or urine test. We are not persuaded.

Appellant's arguments raise issues of statutory interpretation, which appellate courts review de novo. *State v. Morgan*, 953 N.W.2d 729, 732 (Minn. App. 2020), *aff'd*, 968 N.W.2d 25 (Minn. 2021). In interpreting statutes, the object is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2022). If a statute is

unambiguous, an appellate court must apply its plain meaning without resorting to canons of statutory construction. *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013).

Minnesota Statutes section 171.177 "governs the revocation of driving privileges based on a search warrant for the collection of a blood or urine sample from a person suspected of driving while impaired." *Nash v. Comm'r of Pub. Safety*, 989 N.W.2d 705, 707 (Minn. App. 2023), *rev. granted* (Minn. July 18, 2023). When a person who is suspected of driving while impaired refuses to comply with the execution of a search warrant for the person's blood or urine, the commissioner shall revoke the person's driver's license. Minn. Stat. § 171.177, subd. 4. "At the time a blood or urine test is directed pursuant to a search warrant . . . the person must be informed that refusal to submit to a blood or urine test is a crime." *Id.*, subd. 1. Minnesota Statutes section 171.177, subdivision 2, provides, in part, that:

> The peace officer who directs a test pursuant to a search warrant shall direct a blood or urine test as provided in the warrant. If the warrant authorizes either a blood or urine test, the officer may direct whether the test is of blood or urine. If the person to whom the test is directed objects to the test, the officer shall offer the person an alternative test of either blood or urine.

Action may only be taken against a person who is offered and refuses both a urine test and a blood test. *Id.*, subd. 2. Should a person pursue judicial review of their license revocation; the district court's review may consider whether law enforcement complied with subdivision 1 by informing the person that refusing the test was a crime. *Id.*, subd. 12(b)(7).

This court has determined that the warning requirement under Minn. Stat. § 171.177, subd. 1, is unambiguous and law enforcement is required to inform a defendant that refusal to submit to a warranted blood or urine test is a crime. *State v. Mike*, 919 N.W.2d 103, 110 (Minn. App. 2018), *rev. denied* (Minn. Aug. 20, 2019). Law enforcement must provide the statutorily required warning before the commissioner may secure a prehearing license revocation. *Jensen v. Comm'r of Pub. Safety*, 932 N.W.2d 844, 847 (Minn. App. 2019); *see also Tyler v. Comm'r of Pub. Safety*, 368 N.W.2d 275, 280-81 (Minn. 1985).

In *Nash*, this court considered whether law enforcement provided the search-warrant advisory required under Minn. Stat. § 171.177, subd. 1, when a state trooper told Nash, "I applied for a search warrant for a blood draw, and refusal to take a test is a crime." 989 N.W.2d at 706. Even though the warrant also permitted a urine test, the trooper did not mention the possibility of a urine test, and Nash did not have an opportunity to read the warrant before agreeing to the blood test. *Id.* at 710. We concluded that "the advisory informed Nash that he could be charged with a crime if he refused the blood test, even though the trooper had not offered Nash an alternative urine test. That was an inaccurate statement of law and misleading," and could not be a basis for Nash's license revocation. *Id.* at 710-11. We held that if a search-warrant advisory deviates from the exact wording of Minn. Stat. § 171.177, subd. 1, it "is insufficient to sustain the revocation of a person's driving privileges if it is an inaccurate statement of law, misleading, or confusing when considered in its context as a whole." *Id.* at 711.

Although here the officer's search-warrant advisory did not comply with the exact wording of Minn. Stat. § 171.177, subd. 1, *Nash* supports that a deviation is only problematic *if* it is an inaccurate statement of law, misleading, or confusing in its context. 989 N.W.2d at 711. Here, the officer's advisory was legally accurate and properly advised appellant of the consequences of his refusal. The officer testified that at the jail and prior to applying for a search warrant, he asked appellant whether he preferred a blood or urine test, to which appellant responded that he would provide neither. After applying for and receiving a search warrant, the officer told appellant that he had obtained a signed search warrant for appellant's blood *or* urine, and that refusing to submit to the search warrant was a crime.

Even if the officer's language indicated that refusing to submit to the search warrant, not specifically a blood or urine test, was a crime, because the officer informed appellant that the search warrant authorized a blood or urine test, the officer's statement was not an inaccurate statement of law, misleading, or confusing in its context. Further, appellant cites to no caselaw to support that Minn. Stat. § 171.177 requires a verbatim reading of subdivision 1. The officer complied with the requirements of subdivision 1.

Appellant also argues that the officer's failure to *direct either* a blood test or a urine test under Minn. Stat. § 171.177, subd. 2, is fatal to the advisory. We disagree.

The plain language of subdivision 2 does not require law enforcement to separately direct the tests. A peace officer who directs a test "shall direct a blood or urine test *as provided in the warrant*," and if the warrant authorizes both, the peace officer "*may* direct whether the test is of blood or urine." Minn. Stat. § 171.177, subd. 2 (emphasis added). If

a person objects to one test, the peace officer shall offer the other test. *Id*. The statute does not prohibit a peace officer from simultaneously offering a urine or a blood test. "Action may be taken against a person who refuses to take a blood test only if a urine test was offered and action may be taken against a person who refuses to take a urine test only if a blood test was offered." *Id*. Here, the officer testified to offering both types of tests to appellant before the officer obtained a search warrant. After obtaining the warrant, the officer again indicated to appellant that both tests were authorized by the search warrant before informing appellant that refusal to comply with the search warrant was a crime. The officer therefore complied with the requirements of Minn. Stat. § 171.177, subd. 2.[3]

Affirmed.

[3] Appellant further argues that the doctrine of substantial compliance does not apply here because Minn. Stat. § 171.177 is mandatory, not directory. Appellant did not raise this argument at the district court level, and thus we decline to address it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those questions previously presented to and considered by the district court). Moreover, because we agree with the district court that the officer complied with the plain language of Minn. Stat. § 171.177, subds. 1 and 2, we have no need to consider the doctrine of substantial compliance.