STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2077

Tyler James Bezdicek, et al.,
Appellants,

vs.

Commissioner of Public Safety,
Respondent.

Filed July 5, 2011
Affirmed
Stoneburner, Judge

Jackson County District Court
File Nos. 32CV1045; 32CV09126; 32CV1036; 32CV0987

Samuel A. McCloud, Carson J. Heefner, McCloud & Heefner, P.A., Lindstrom, Minnesota (for appellants)

Lori Swanson, Attorney General, Melissa Jeanne Eberhart, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

STONEBURNER, Judge

In this consolidated appeal, appellants Tyler Bezdicek, Daniel Schultz, Tyler Olsen, and John Sathe challenge district court orders sustaining revocation of their driving privileges under the implied-consent law, arguing that the exigent-circumstances

exception does not apply to the warrantless collection of their urine samples. We disagree and affirm.

FACTS

In separate incidents, each of the four appellants in this consolidated appeal was arrested for driving while impaired (DWI) in Jackson County and consented to a urine test, which revealed an alcohol concentration of .08 or greater. Based on the results of the tests, respondent Commissioner of Public Safety, in separate proceedings, revoked each appellant's driving privileges. Each appellant requested an implied-consent hearing, and the cases were consolidated for hearing. Appellants argued that the urine-test results should be suppressed because any consent to the collection of the urine samples was not voluntary due to the consequence of criminal prosecution for refusal and because the exigency exception to the warrant requirement does not apply to collection of urine.

Appellants' expert witness, a forensic-sciences professor at Hamline University and former supervisor of the Toxicology Department at the Bureau of Criminal Apprehension (BCA), testified that alcohol that has entered the bladder does not dissipate and remains there until the bladder is voided. This expert witness also testified that the constant production of new urine into the bladder could dilute or concentrate the alcohol concentration in the bladder.

The Commissioner argued that the exigent-circumstances exception applies to appellants' cases under *State v. Shriner*, 751 N.W.2d 538 (Minn. 2008), and that the threat of prosecution under the implied-consent law does not make consent involuntary. The Commissioner's expert witness, a BCA forensic scientist, testified, in part, that urine

is usually produced by the body at a rate of one milliliter per minute, but that rate can increase up to ten times when a person consumes alcohol, a diuretic. He explained that, as a person consumes alcohol, the amount of liquid in the bladder is accumulating more quickly and to a greater degree than usual. He also testified that, in the post-absorptive phase of the body's alcohol processing, voiding the bladder could reduce the alcohol concentration in the bladder.

Both parties submitted post-hearing legal arguments to the district court. The district court sustained revocation of appellants' driving privileges, concluding that exigent circumstances justified the warrantless collection of the urine samples. The district court did not reach the issue of consent. This consolidated appeal follows.

D E C I S I O N

Appellants argue that the district court erred by sustaining the revocation of their driving privileges, asserting that the exigent-circumstances exception does not apply to the warrantless collection of a urine sample. In a civil action to challenge an implied-consent revocation of driving privileges, the commissioner has the burden to demonstrate, by a preponderance of the evidence, that revocation was appropriate. *Kramer v. Comm'r of Pub. Safety*, 706 N.W.2d 231, 235 (Minn. App. 2005). When the appellant raises only a question of law, this court reviews a district court's order sustaining an implied-consent revocation de novo. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010) (addressing constitutional challenges).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 12. The collection of a urine

sample is a search. *Skinner v. Ry. Labor Execs. Ass'n*, 489 U.S. 602, 616–17, 109 S. Ct. 1402, 1413 (1989) (concluding that taking a blood, breath, or urine sample implicates the Fourth Amendment). A search conducted without a warrant is presumptively unreasonable. *State v. Othoudt*, 482 N.W.2d 218, 221–22 (Minn. 1992).

One exception to the warrant requirement is the existence of exigent circumstances. *State v. Netland*, 762 N.W.2d 202, 212 (Minn. 2009). Warrantless blood and breath tests are reasonable because of the exigent-circumstances exception to the warrant requirement. *Id*. at 214 (breath test); *Shriner*, 751 N.W.2d at 545 (blood test). The exigency is created by a single factor: the rapid dissipation of alcohol through the body's natural processes. *Netland*, 762 N.W.2d at 213–14; *Shriner*, 751 N.W.2d at 542, 544–45.

Appellants acknowledge that the exigent-circumstances exception applies to warrantless blood and breath tests but assert that the exception does not apply to the collection of urine samples because urine alcohol does not metabolize and therefore "there is no loss of alcohol in one's bladder until one urinates." This court recently rejected the same argument in *Ellingson v. Comm'r of Pub. Safety*, ___ N.W.2d ___, ___, No. A10-1913, slip op. at 1 (Minn. App. June 27, 2011) (holding that "[b]ecause the body's natural processes cause the alcohol concentration of urine to change rapidly over time, exigent circumstances justify the warrantless collection of a urine sample from a person arrested for driving while impaired"). Based on the expert testimony presented to

the district court in this case, the district court correctly reached the same conclusion as this court reached in *Ellingson*.

Affirmed.