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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0984**

Thomas Gerald Rothmeier, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed January 7, 2019
Affirmed
Ross, Judge**

Redwood County District Court
File No. 64-CV-15-741

Wesley J. Abrahamson, Douglas V. Hazelton, Lee M. Orwig, Jeremy J. Kaschinske,
Halberg Criminal Defense, Bloomington, Minnesota (for appellant)

Lori Swanson, Attorney General, William Young, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

ROSS, Judge

A sheriff's deputy stopped Thomas Rothmeier's car for having a loud exhaust and, after administering field sobriety tests, arrested him for impaired driving. The deputy read Rothmeier the implied-consent advisory and asked if he would take a breath test.

Rothmeier instead agreed to take a blood test, revealing a blood-alcohol concentration of 0.169. After Rothmeier challenged the consequent revocation of his driver's license, the district court found that the stop was valid, that Rothmeier consented to the blood test, that the good-faith exception applied to the test results, and that the implied-consent advisory did not violate Rothmeier's due process rights. We affirm because the deputy had reasonable suspicion to stop the car, Rothmeier did not argue that he prejudicially relied on the advisory, and Rothmeier consented to the blood draw.

FACTS

Redwood County Sheriff's Deputy Mitch Zimmermann was patrolling after midnight in August 2015 when he heard a car with a loud exhaust that he thought was revving its engine and squealing its tires. The car was out of the deputy's view, but when he turned a corner he saw a sole car stopped at an intersection. The car's engine revved and its exhaust was loud. Deputy Zimmermann stopped the car, which was being driven by Thomas Rothmeier.

Rothmeier showed signs of intoxication and said that he had been drinking. The deputy administered field sobriety tests, arrested Rothmeier for drunk driving, and took him to jail. Deputy Zimmermann read Rothmeier the implied-consent advisory, which warned that refusal to take a test is a crime. Rothmeier spoke with an attorney and told the deputy that his attorney recommended he take a blood test.

Deputy Zimmermann asked Rothmeier if he would submit to a breath test, and Rothmeier inquired about the differences between a breath test and a blood test. The deputy told him, "They are all equally viable." The deputy repeatedly asked Rothmeier if he would

take a breath test. After the third request, Rothmeier said that his attorney suggested that it was a “toss-up” between the blood or breath test. The deputy asked if Rothmeier would take a blood test. Rothmeier did not answer, asking if a refusal would result in the forfeiture of his car. Deputy Zimmermann asked a fourth time if Rothmeier would take a breath test. He responded, “Nah, let’s do the blood.” The blood test indicated that Rothmeier’s blood-alcohol concentration was 0.169, and the Commissioner of Public Safety revoked his driver’s license.

Rothmeier petitioned for judicial review with three challenges: he claimed that the traffic stop was invalid, a search warrant was necessary for the blood draw, and his due process rights were violated by the implied-consent advisory and the deputy’s comments. The district court denied the petition, holding that the deputy had reasonable suspicion to stop the car, Rothmeier consented to the blood test, the good-faith exception applied to the search results, and the advisory did not violate Rothmeier’s due process rights.

Rothmeier appealed the district court’s denial of his petition to reinstate his driver’s license. We stayed the appeal pending the decisions by the supreme court in *Johnson v. Commissioner of Public Safety*, 911 N.W.2d 506 (Minn. 2018), and *Morehouse v. Commissioner of Public Safety*, 911 N.W.2d 503 (Minn. 2018). Following the supreme court’s decisions, we reinstated and now decide this appeal.

D E C I S I O N

Rothmeier raises three arguments challenging the district court’s denial of his petition to rescind his license revocation. He argues first that the deputy lacked reasonable suspicion to stop his car. He argues second that the implied-consent advisory violated his

due process rights. And he argues third that the warrantless blood draw violated his Fourth Amendment rights. None of his arguments warrants reversal.

The district court properly concluded that Deputy Zimmermann had reasonable suspicion to stop Rothmeier's car. Although a judicial challenge to the administrative revocation of a driver's license under the implied-consent statute is a civil proceeding, we apply the exclusionary rule if the revocation resulted from a Fourth Amendment violation. *See Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552, 553–56 (Minn. 1985) (applying Fourth Amendment protection to license revocation proceeding); *Ascher v. Comm'r of Pub. Safety*, 527 N.W.2d 122, 125–26 (Minn. App. 1995) (applying exclusionary rule to Fourth Amendment violation in license-revocation proceeding), *review denied* (Mar. 21, 1995). We review de novo a district court's legal decision that an officer had reasonable suspicion to stop a car. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). In doing so, we base our decision on the district court's factual findings unless they are clearly erroneous. *Id.* The facts here are not materially disputed, so we review the district court's legal conclusion that the circumstances justified the stop.

We see no support for Rothmeier's position that the district court errantly held that the deputy had reasonable suspicion to justify stopping him. The deputy could stop Rothmeier without violating his Fourth Amendment rights so long as, under the totality of the circumstances, there was some objective manifestation that Rothmeier was engaged in criminal activity. *See Navarette v. California*, 572 U.S. 393, 396, 134 S. Ct. 1683, 1687 (2014). The district court credited the testimony establishing that the deputy saw Rothmeier's car—the only car around—and heard its engine rev with a loud exhaust. This

supports the deputy's stop based on the statutory requirement that every car must "be equipped with a muffler in good working order." Minn. Stat. § 169.69 (2014). The stop did not violate Rothmeier's Fourth Amendment rights.

We also see no support for Rothmeier's position that the implied-consent advisory violated his due process rights. We review due process challenges de novo. *State v. Krause*, 817 N.W.2d 136, 144 (Minn. 2012). Rothmeier maintains that the advisory's warning that refusing a blood test is a crime was false, based on cases decided after his arrest. But a due process violation based on an improper implied-consent advisory does not result merely from an inaccurate advisory; the driver must also establish that he prejudicially relied on the inaccurate advisory when he decided to undergo the chemical test. *Johnson*, 911 N.W.2d at 508–09. In a case similar to this one, the supreme court rejected a driver's due process challenge because the challenger "did not even claim, much less establish, that he prejudicially relied on the implied consent advisory." *Morehouse*, 911 N.W.2d at 505. Likewise, because Rothmeier did not claim in the district court, much less establish, that he prejudicially relied on the implied-consent advisory when he agreed to take the blood test, his due process argument fails.

Finally, we find no support for Rothmeier's position that the warrantless blood draw violated his Fourth Amendment rights on the notion that he did not voluntarily consent to it. Although warrantless searches are generally unreasonable under the Fourth Amendment and the taking of a blood sample constitutes a search, a search warrant is unnecessary if the person consents to the intrusion. *See State v. Brooks*, 838 N.W.2d 563, 568 (Minn. 2013). Because consent constitutes a valid exception only if it was given "freely and

voluntarily,” we must decide whether the district court accurately decided that Rothmeier’s consent was voluntary. *See State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011). We need not review the district court’s detailed factual findings supporting its conclusion that Rothmeier validly consented to the search, because Rothmeier never argues that the district court clearly erred when it made its findings under the factors discussed in *Brooks*. Rothmeier argues implicitly instead that the inaccuracy of the refusal-is-a-crime warning in the implied-consent advisory rendered his consent involuntary as a matter of law, distinguishing this case from *Brooks*, where the same warning was thought to be accurate. We cannot conceive how a warning about potential incarceration that is not inherently coercive when it is *enforceable* flips to being inherently coercive by virtue of its becoming *unenforceable*. Rothmeier offers no rationale.

Following *Brooks*, the district court reasoned that Rothmeier was informed he could refuse to submit to testing, he was afforded the opportunity to consult with an attorney, his impairment was not so great as to render him unable to consent, he understood the advisory and asked clarifying questions, and the deputy’s questioning was not persistent, authoritative, or pressuring. We see no fault in the district court’s factual findings or legal reasoning. We hold that Rothmeier voluntarily consented to the blood draw, and we therefore have no reason to consider his argument about the good-faith exception to the warrant requirement.

Affirmed.

A handwritten signature in blue ink, appearing to read "Kevin G. Row". The signature is fluid and cursive, with a large initial "K" and "R".