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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1293**

State of Minnesota,
Respondent,

vs.

Thomas Larold Meyer,
Appellant.

**Filed June 25, 2018
Affirmed
Smith, Tracy M., Judge**

Morrison County District Court
File No. 49-CR-15-955

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brian J. Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and
Bratvold, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Thomas Meyer challenges his conviction of driving while impaired (DWI), arguing the district court erred in refusing to suppress the results of a warrantless blood draw. Because exigent circumstances made the warrantless search reasonable, we affirm.

FACTS

On March 7, 2015, Meyer flipped his pickup and was ejected onto the side of the road. A bystander called 911 at approximately 8:32 p.m., and, shortly thereafter, Morrison County Sheriff's Deputy Bill Vanden Avond and Upsala Fire and Rescue (UFR) arrived on the scene. When Deputy Vanden Avond checked to see if Meyer was conscious, he detected a strong odor of alcohol emanating from Meyer.

Approximately 20 minutes later, Deputy Hasten Warnberg arrived on the scene. While Meyer was moved to a UFR ambulance, Deputy Warnberg and Deputy Vanden Avond canvassed the area and found a bottle of whiskey and a bottle of soda that smelled like a whiskey mixed drink. Warnberg then sent another deputy to obtain a preliminary breath test (PBT) from Meyer, but Meyer refused to give a breath sample.

A few minutes later, a Gold Cross ground ambulance arrived to transport Meyer to St. Cloud Hospital. However, after evaluating Meyer, Gold Cross determined that an airlift should be used instead. Deputy Warnberg assisted the helicopter in landing safely, and Meyer was airlifted from the scene of the crash at approximately 9:15 p.m.

Once the decision was made to airlift Meyer, the Morrison County Sheriff's Office contacted the St. Cloud Police Department, asking the department to send an officer "to the hospital [to] read [the] implied consent and try to obtain a blood draw," because deputies are "not supposed to leave the county while [they are] working," and because it would have taken Deputy Warnberg approximately 45 minutes to get from the scene of the crash to the hospital. At 9:22 p.m., St. Cloud Police Officer Trent Fischer was dispatched to the hospital. En route, Officer Fischer spoke with Deputy Warnberg and learned that

Meyer (1) had crashed his car, (2) admitted to drinking, (3) was conscious at the scene, and (4) had refused to provide a PBT.

Officer Fischer arrived at the hospital at around 9:30 p.m., but was unable to meet with Meyer for approximately 45 minutes because Meyer was undergoing a CT scan. Shortly before 10:15 p.m., Officer Fischer entered Meyer's hospital room and told Meyer that he "was there on behalf of Morrison County Sheriff's Department and was going to read him the implied-consent advisory." Meyer raised his right arm to acknowledge Officer Fischer's presence. At 10:15 p.m., Officer Fischer began reading the implied-consent advisory. He stopped, however, when he reached the "Do you understand what I've just explained?" question because Meyer did not verbally respond. Officer Fischer then asked Meyer to blink if he could hear and understand; again Meyer did not respond.

After Meyer did not acknowledge the implied-consent advisory, Officer Fischer left Meyer's room to consult by phone with Deputy Warnberg and Officer Fischer's supervisor. Ultimately, it was decided to proceed with a warrantless blood draw, and Officer Fischer asked a hospital staff member to extract a sample of Meyer's blood. At 10:35 p.m., a lab technician drew a sample that, when tested, indicated an alcohol concentration of 0.31.

Meyer was charged with two counts of DWI: one for driving while under the influence of alcohol and one for having an alcohol concentration of 0.08 or higher as measured within two hours of driving. Meyer moved to suppress the results of the warrantless blood draw, and a contested omnibus hearing was held.

Deputy Warnberg and Officer Fischer testified at the hearing. Deputy Warnberg testified that he never tried to read the implied-consent advisory to Meyer at the scene of the crash because there was "not enough time from the time that Upsala personnel [were]

working on Mr. Meyer to the time that Gold Cross arrived.” Deputy Warnberg said he never attempted to get a search warrant for Meyer’s blood at the scene “[b]ecause from the time of call to the time [he] was on scene from the time [he] cleared, [they] were closing in on the two-hour window.” Deputy Warnberg testified that it would have taken 25 to 30 minutes to drive back to his office and another 30 to 60 minutes to draft the warrant, obtain a judge’s signature, and transmit the warrant to Officer Fischer.

Officer Fischer testified that he never attempted to obtain a warrant “based on the time factor and the request from Morrison County to . . . obtain the blood.” Officer Fischer testified that to obtain a warrant, he “would have had to write the warrant out and then have it reviewed by a county attorney and then respond to the on-call judge’s residence, have it signed, and then respond back to the hospital.” Officer Fischer testified that this process generally took 45 to 120 minutes.

The district court denied Meyer’s motion to suppress. Meyer subsequently agreed to stipulate to the state’s case under Minn. R. Crim. P. 26.01, subd. 4. The district court found Meyer guilty of having an alcohol concentration of 0.08 or higher as measured within two hours of operating a motor vehicle and dismissed the other charge.

Meyer appeals.

D E C I S I O N

Meyer argues the district court erred in concluding that exigent circumstances justified a warrantless blood draw. When the facts are undisputed, we review the existence of exigent circumstances de novo. *See State v. Stavish*, 868 N.W.2d 670, 677 (Minn. 2015).

The United States and Minnesota Constitutions prohibit unreasonable searches. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search of a person,

including the person's blood, is unreasonable unless an exception to the warrant requirement applies. *Stavish*, 868 N.W.2d at 675. One such exception is exigent circumstances. *Id.* "The exigent circumstances exception to the warrant requirement applies when the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *State v. Trahan*, 886 N.W.2d 216, 222 (Minn. 2016) (quotations omitted). "[T]he natural and gradual dissipation of alcohol in the defendant's bloodstream, in and of itself, does not constitute an exigency in every drunk-driving case"; rather, "whether exigent circumstances exist must be decided in each case, based on the totality of the circumstances." *Stavish*, 868 N.W.2d at 676. Looking at the totality of the circumstances, we must determine whether "law enforcement 'can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search.'" *Id.* (quoting *Missouri v. McNeely*, 569 U.S. 141, 152, 133 S. Ct. 1552, 1561 (2013)).

Meyer argues law enforcement could reasonably have obtained a warrant here "given the multiple officers involved and the ample time to obtain a warrant." More specifically, Meyer argues that from the time he was airlifted from the scene, 72 minutes remained during which either Deputy Warnberg, Officer Fischer, or another St. Cloud Police Officer could have obtained a warrant.

In our view, this case is analogous to *Stavish*. Like in this case, in *Stavish*, law enforcement received a report of car crash and the officer in charge of the investigation arrived approximately 20 minutes later. 868 N.W.2d at 673. The defendant was transported to a hospital, and an officer was dispatched to that hospital to attempt to obtain a blood sample for alcohol-concentration testing. *Id.* As in this case, the officer in question

did not obtain a warrant or consent for the search, but rather instructed hospital personnel to obtain a sample. *Id.* At the time the sample was drawn in *Stavish*, “70 minutes remained in the 2-hour window for obtaining a blood sample.” *Id.*

Before trial, *Stavish* moved to suppress the results of the alcohol-concentration test. *Id.* That motion was granted, but this court reversed the district court, and the Minnesota Supreme Court affirmed that reversal. *Id.* at 672. In doing so, the court noted that the relevant circumstances included: “that law enforcement had reason to believe that [the defendant], who allegedly admitted to being the driver, had consumed alcohol, and that alcohol contributed to the accident;” that “it was important to draw [the defendant’s] blood within 2 hours of the accident to ensure the reliability and admissibility of the alcohol concentration evidence;” and that “[the defendant’s] medical condition and need for treatment rendered his future availability for a blood draw uncertain,” because it was unknown “how long [the defendant] was likely to remain at the same hospital.” *Id.* at 677-78. Notably, the court specifically considered and rejected the argument that there were not exigent circumstances given the amount of time (70 minutes) left within the two-hour period between when the crash occurred and when the defendant’s blood was drawn. *Id.* at 679-80.

We see analogous circumstances in this case. Here, as in *Stavish*, law enforcement had reason to believe that Meyer had consumed alcohol and that alcohol contributed to the accident. It was also important to draw Meyer’s blood within two hours of the accident to ensure the reliability and admissibility of the alcohol-concentration evidence. Finally, although there was no indication Meyer would be moved from one hospital to another, Officer Fischer had to wait 45 minutes to meet with Meyer because Meyer was undergoing

a CT scan. This reasonably could have created concerns that, if a blood draw was not imminently performed, Meyer might again have become unavailable.

We also reject Meyer's suggestion that Deputy Warnberg could have begun working on a warrant application as soon as Meyer was airlifted from the scene. Deputy Warnberg's responsibilities at the scene were not limited to his interactions with Meyer and assisting in landing the helicopter; he was also responsible for canvassing the area for evidence. Furthermore, Deputy Warnberg testified that he would have had to return to his office to type up the warrant application, that no administrative personnel were on duty to help, and that there was no one else to assist him. Meyer argues that Deputy Warnberg could have dictated the warrant application to his sergeant while driving back to the office. However, even if the sergeant was available to take dictation, we are reluctant to hold that the United States or Minnesota Constitutions requires officers to dictate legal documents while they are driving in order to avoid having alcohol-concentration test results suppressed. As a result, we conclude that the district court did not err in refusing to suppress the results of the blood test.

Affirmed.