

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0021**

State of Minnesota,
Respondent,

vs.

Timothy James Atkins,
Appellant.

**Filed November 18, 2019
Affirmed
Smith, John, Judge***

Redwood County District Court
File No. 64-CR-18-127

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

Jenna M. Peterson, Redwood County Attorney, Shannon Ness, Assistant County Attorney,
Redwood Falls, Minnesota (for respondent)

Barry Hogan, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Cochran, Judge; and Smith,
John, Judge.

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

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm appellant's conviction for third-degree DWI (test refusal) because the district court did not err by denying his motion to suppress evidence and dismiss the charges.

FACTS

On the night of February 10, 2018, around 11 p.m., appellant Timothy James Atkins was pulled over by an officer from the Lower Sioux Tribal Police Department. The officer had observed Atkins's vehicle driving 30-35 mph in a zone with a posted speed limit of 55 mph. He had also observed the vehicle cross the fog line, hitting the gravel shoulder of the road, and later cross the center line of the road. The officer approached Atkins's vehicle after pulling him over. Atkins, who was seated in the driver's seat, struggled to open his window, apparently "fumbling" with the window switches. After waiting approximately eight seconds, the officer opened the door to the vehicle. As he asked Atkins questions, the officer detected a strong odor of alcohol. After noting that Atkins's eyes were bloodshot and watery, that his speech was slurred, and that his movements were lethargic, the officer arrested him for DWI.

Atkins was brought to the Redwood County Law Enforcement Center and placed in a holding cell. Shortly before midnight, a district court judge signed a search warrant authorizing law enforcement to procure a blood sample from Atkins to determine his blood alcohol concentration. Notably, it did not authorize a urine test. The arresting officer then

notified Atkins that he had a warrant and explained it to him. He also told Atkins “that refusal would be a crime.” Atkins was given a copy of the warrant.

Atkins was taken from the holding cell and brought to a different room in order to conduct a blood draw. A Minnesota State Patrol Trooper came to conduct the blood draw and told Atkins that he is a phlebotomist. The trooper testified that he trained as a phlebotomist through a program at Dakota Technical College, and that he had received his completion certificate for the program in January 2017 and was recertified in 2018. The trooper attempted to draw blood from Atkins, but stopped after noticing that Atkins’s arm was tensed. Because he had been trained not to force a blood test from a tensed arm, the trooper instructed Atkins to relax his arm multiple times. When the trooper again attempted to draw blood, Atkins declined to participate. The trooper then asked Atkins to take a urine test, and Atkins declined. At no point was Atkins allowed to speak with an attorney before the attempts to perform a blood draw or offer to take a urine test.

Redwood County charged Atkins with one count of third-degree DWI in violation of Minn. Stat. § 169A.20, subd. 2(2) (Supp. 2017), and one count of fourth-degree DWI in violation of Minn. Stat. § 169A.20, subd. 1(1) (2016). Atkins moved to suppress evidence and have the charges dismissed. The district court held a contested omnibus hearing and, on May 23, 2018, issued an order denying Atkins’s motions. The parties then agreed to submit the case to the district court in a stipulated-facts trial pursuant to Minn. R. Crim. P. 26.01, subd. 4. Atkins stipulated to the prosecution’s evidence and the parties agreed that the May 23 order denying Atkins’s motions was dispositive of the case. Minn. R. Crim. P. 26.01, subd. 4(a), (e). The district court dismissed the fourth-degree DWI charge pursuant

to a motion by the state, and found Atkins guilty beyond a reasonable doubt of third-degree DWI (test refusal). This appeal follows.

D E C I S I O N

Atkins appeals the district court's denial of his motions to suppress evidence and dismiss the charges against him. "When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009) (quotation omitted). "Following a stipulated-evidence trial, this court's review is further limited to the pretrial order that denied [appellant's] motion to suppress." *State v. Marsh*, 931 N.W.2d 825, 829 (Minn. App. 2019) (quotation omitted). In light of the procedural posture of this case, and because Atkins does not dispute any of the underlying findings of fact, this appeal presents purely legal questions.

I. Reasonableness of the blood draw

Atkins first argues that his refusal to submit to a blood draw should be suppressed because the methods for the proposed blood draw were unreasonable. He bases his argument on *Schmerber v. California*, 384 U.S. 757, 86 S. Ct. 1826 (1966). In *Schmerber*, the Supreme Court examined the constitutional protection provided by the Fourth, Fifth, Sixth, and Fourteenth Amendments to a defendant whose blood was drawn over his objection. 384 U.S. at 758-59, 86 S. Ct. at 1829-30.

The Supreme Court's Fourth Amendment analysis in *Schmerber* is relevant to the present case. It explained that in the context of "compelled intrusions into the body for blood to be analyzed for alcohol content, the Fourth Amendment's proper function is to

constrain, not against all intrusions as such, but against intrusions which are not justified in the circumstances, or which are made in an *improper manner*.” *Id.* at 768, 86 S. Ct. at 1834 (emphasis added). The Supreme Court tasked itself with determining “whether the means and procedures employed in taking [the defendant’s] blood respected relevant Fourth Amendment standards of reasonableness.” *Id.* As an initial matter, the Supreme Court held that drawing blood for testing is a reasonable test to conduct. *Id.* at 771, 86 S. Ct. at 1836. It then held that under the facts of that case, the test was performed in a reasonable manner. *Id.* In support of its holding, the Supreme Court noted that the defendant’s blood was drawn “by a physician in a hospital environment according to accepted medical practices.” *Id.* But it noted that it was

not presented with the serious questions which would arise if a search involving use of a medical technique, even of the most rudimentary sort, were made by other than medical personnel or in other than a medical environment—for example, if it were administered by police in the privacy of the stationhouse. To tolerate searches under these conditions might be to invite an unjustified element of personal risk of infection and pain.

Id. at 771-72, 86 S. Ct. at 1836.

Atkins argues that the facts of his case are very similar to the hypothetical described by the Supreme Court and that as a result the proposed method of drawing his blood was unreasonable and his refusal should be suppressed. We note that there are indeed some similarities between the hypothetical postulated by the Supreme Court and the circumstances here, given that the blood draw, if consented to by Atkins, would have been administered by law enforcement in a jail. But the above-quoted language from the Supreme Court that Atkins uses as the legal foundation for his argument is dicta because it

was not the basis for the Supreme Court’s decision and described a hypothetical not at issue. See *Carlton v. State*, 816 N.W.2d 590, 614 (Minn. 2012) (saying that a statement was dicta “because the resolution of that question [was] not necessary to our ultimate holding”). Atkins also does not cite to any cases applying or expanding this dicta, so adopting his position would require us to break new legal ground in Minnesota.

We decline to do so because the facts of this case are meaningfully distinguishable from the hypothetical described in *Schmerber*. The trooper who would have performed the blood draw in this case was certified to draw blood, so this was not a random officer being asked to take Atkins’s blood without any prior training or certification. Law enforcement in *Schmerber* did not have a warrant, instead relying on exigent circumstances to justify the blood draw, but there was a search warrant for a blood draw in this case. And most importantly, no blood sample was obtained, unlike in *Schmerber*, where blood was drawn despite the defendant’s objections. We conclude that Atkins’s first argument is unavailing.

II. Urine-test refusal

Atkins next argues that, as a matter of law, he cannot be convicted of test refusal under Minn. Stat. § 169A.20, subd. 2(2), because the warrant did not authorize a urine test. His argument relies on the reading of multiple statutes and how they interact with one another, so it involves statutory interpretation, which presents a question of law that is reviewed de novo. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). The first step of statutory interpretation is to determine whether the statutory language at issue is plain and unambiguous. *Id.* “A statute is ambiguous when its language is subject to more than one

reasonable interpretation.” *Id.* If a statute is unambiguous, then its plain meaning is applied. *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019).

Atkins was convicted of test refusal under section 169A.20, subd. 2(2), which says, “It is a crime for any person to refuse to submit to a chemical test: . . . (2) of the person’s blood or urine as required by a search warrant under section 171.177 and 626.04 to 626.18.” Atkins argues that section 171.177, subdivision 2 (2016), supports his position that, in order to be convicted of test refusal, the warrant must authorize both blood and urine testing. But the plain language of the statute does not require a search warrant for both a blood test and a urine test. The statute only requires that when a search warrant authorizes a blood or urine test, that an alternative test be offered to the person before it can be deemed a test refusal. Minn. Stat. § 171.177, subd. 2. Because the alternative urine test was offered to Atkins after he refused to give a blood test, the statute is satisfied here.

III. Limited right to counsel

Atkins next argues that the test-refusal charge should have been dismissed because he was not given the opportunity to consult with an attorney before refusing testing. In his brief, he acknowledged that, at the time of filing, this issue was being reviewed by the Minnesota Supreme Court and that he was preserving the issue while that decision was pending. After Atkins filed his brief, the supreme court released *State v. Rosenbush*, 931 N.W.2d 91 (Minn. 2019). It held “that the limited right to counsel under the Minnesota Constitution recognized in *Friedman* does not apply when a driver is presented with the choice to submit—or not to submit—to a blood test pursuant to a search warrant.” *Id.* at

99. Atkins was presented with the choice to submit, or not, to a blood test pursuant to a search warrant, so under *Rosenbush* he had no limited right to counsel. His argument fails.

IV. Expansion of the scope of the stop

Finally, Atkins argues that the evidence against him should be suppressed because the arresting officer improperly expanded the scope of the stop when he opened Atkins's door. The Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution protect the "right of the people to be secure in their persons, houses, papers, and effects" from "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "The touchstone of the Fourth Amendment is reasonableness." *United States v. Knights*, 534 U.S. 112, 118, 122 S. Ct. 587, 591 (2001).

The Fourth Amendment is implicated when law enforcement stops a person driving a motor vehicle. *See State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004). Warrantless searches are generally per se unreasonable. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). But an officer may "conduct a limited investigatory stop of a motorist if the state can show that the officer had a 'particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Anderson*, 683 N.W.2d at 822-23 (quoting *United States v. Cortez*, 449 U.S. 411, 414-18, 101 S. Ct. 690, 695 (1981)). In other words, the officer must have reasonable, articulable suspicion of criminal activity to justify the investigatory stop. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999). If an officer observes the motorist violating a traffic law, then this is generally sufficient to form the "requisite particularized and objective basis for conducting a traffic stop." *Anderson*, 683 N.W.2d at 823.

Minnesota courts have interpreted the Minnesota Constitution’s article I, section 10 protections more broadly than the United States Constitution’s Fourth Amendment protections. *State v. Askerooth*, 681 N.W.2d 353, 361-63 (Minn. 2004). Relevant to this case, the Minnesota Supreme Court has held that, unlike the Fourth Amendment, article I, section 10 of the Minnesota Constitution “requires application of *Terry* principles to traffic stops.” *Id.* at 363-64; *see also Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968). This involves a two-step inquiry. *Askerooth*, 681 N.W.2d at 364. First, courts must determine “whether the stop was justified at its inception.” *Id.* Second, courts then determine “whether the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place.” *Id.* Atkins does not dispute that the initial stop was justified.

The question presented is whether the arresting officer’s actions—specifically opening Atkins’s door—“were reasonably related to and justified by the circumstances that gave rise to the stop in the first place.” *Id.* Put another way, we must decide “whether the officer[] expanded the duration or scope of the stop beyond the stop’s original justification.” *State v. Smith*, 814 N.W.2d 346, 351 (Minn. 2012). If we determine that the arresting officer expanded the scope of the traffic stop, then we must “consider whether the officer[] had reasonable, articulable suspicion to support that expansion.” *Id.* If the officer did have reasonable, articulable suspicion, then the expansion of the scope of the stop does not violate article I, section 10. *Id.*

Atkins asserts that the arresting officer expanded the scope of the traffic stop when he opened the car door. We disagree. The officer observed the vehicle travel well below

the speed limit, drive onto the fog line, and drive over the center line. This gave the officer reasonable, articulable suspicion that Atkins had violated traffic laws and was driving while impaired. Opening the vehicle's door in order to communicate with Atkins, as opposed to doing something like opening the trunk of the vehicle, was within the scope of the stop—investigating traffic violations and a possible DWI crime. Furthermore, the officer did not simply walk up to the vehicle and immediately open the door. He waited approximately eight seconds while Atkins struggled to roll down his window before opening the door. We conclude that this was reasonable under the Fourth Amendment.

Even if we were to conclude that the officer had expanded the scope of the stop by opening Atkins's door, we would hold that such an expansion was supported by reasonable, articulable suspicion. Specifically, Atkins's inability to execute the simple task of opening his window was indicative of intoxication and would support an investigation into such intoxication by opening the door.

Therefore, Atkins's argument that the arresting officer impermissibly expanded the scope of the stop is without merit.

Affirmed.