

*This opinion is nonprecedential except as provided by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
A20-0889**

Shareef Najeeaulah Shaheed, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 1, 2021
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-13-2578

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the summary denial of his postconviction petition, arguing that the postconviction court erroneously concluded that exigent circumstances supported an officer's warrantless demand for a blood or urine sample. We affirm.

FACTS

On April 13, 2013, at around 1:30 a.m., an officer stopped a vehicle driven by appellant Shareef Najeeaulah Shaheed. The officer observed indicia of intoxication, and a preliminary test of Shaheed's breath showed an alcohol concentration of 0.087. The officer arrested Shaheed, transported him to a law-enforcement center, and read him an implied-consent advisory.

Shaheed exercised his limited right to consult with an attorney before deciding whether to submit to additional chemical testing. At 2:05 a.m., he was given a phone and phone book to contact an attorney. At 2:38 a.m., Shaheed agreed to take a urine test. At 2:44 a.m., the officer provided him with a sample bottle and instructions, but Shaheed said that he was unable to provide a sample. At 3:05 a.m., the officer again requested a urine sample, and Shaheed said that he could not provide a sample. A phlebotomist then arrived to draw Shaheed's blood, but Shaheed said that he had a problem with needles and would not provide a blood sample. The officer deemed Shaheed's actions a test refusal.

The state charged Shaheed with one count of chemical-test refusal. He pleaded guilty to the charge, and the district court sentenced him to 66 months in prison with a five-year conditional-release period.

In 2017, Shaheed filed a postconviction petition, asserting that the Minnesota Supreme Court's recent decisions in *State v. Trahan*, 886 N.W.2d 216 (Minn. 2016), and *State v. Thompson*, 886 N.W.2d 224 (Minn. 2016), rendered his conviction unconstitutional. In those cases, the supreme court held that in the driving-while-impaired context, "the [s]tate may not criminalize refusal of a blood or a urine test absent a search warrant or a showing that a valid exception to the warrant requirement applies." See *Johnson v. State*, 916 N.W.2d 674, 679 (Minn. 2018) (discussing *Trahan* and *Thompson*). The postconviction court summarily denied Shaheed's petition, concluding that he waived his constitutional challenge by pleading guilty and that even if he had not waived it, *Trahan* and *Thompson* did not apply retroactively.

Shaheed appealed to this court, and we affirmed the denial of the postconviction petition, concluding that *Trahan* and *Thompson* did not apply retroactively. *Shaheed v. State*, No. A17-1627 (Minn. App. Mar. 7, 2018) (order op.). The supreme court granted review, vacated our decision, and remanded the case back to us for reconsideration in light of *Johnson*. *Shaheed v. State*, No. A17-1627 (Minn. Sept. 18, 2018) (mem.). In *Johnson*, the supreme court held that *Trahan* and *Thompson* could apply retroactively and that a guilty plea did not waive certain constitutional challenges to test-refusal convictions. 916 N.W.2d at 677.

We, in turn, remanded the case back to the postconviction court for further proceedings consistent with *Johnson*, including a determination whether the test-refusal statute was unconstitutional as applied to Shaheed. *Shaheed v. State*, No. A17-1627 (Minn. App. Dec. 12, 2018) (order op.). We placed the burden of proving the applicability of a

warrant exception on the state. *Id.* The state petitioned the supreme court for review of our decision regarding the burden of proof. The supreme court granted review and addressed the issue in *Fagin v. State*, holding that a postconviction petitioner bears the burden to allege and prove there was neither a warrant nor an applicable exception to the warrant requirement. 933 N.W.2d 774, 779-80 (Minn. 2019). The supreme court reversed our decision regarding the burden of proof and remanded the case back to the postconviction court for further proceedings consistent with *Fagin*. *Shaheed v. State*, No. A17-1627 (Minn. Nov. 19, 2019) (mem.).

The parties filed supplemental memoranda on remand. The state argued that exigent circumstances justified the officer's warrantless request for a blood or urine sample. Shaheed argued that there was no justification for the officer's warrantless request and that, at a minimum, he was entitled to an evidentiary hearing to "prove no exigency existed." He noted that the officer could have sought a warrant by electronic or telephonic means. He argued that if the postconviction court would grant an evidentiary hearing, he could prove that a judge was on call and available to review a warrant application.

The postconviction court summarily denied Shaheed's petition. The court explained that it had to determine whether "the exigent circumstances exception to the warrant requirement would have justified drawing [Shaheed's] blood without a warrant." The court concluded that the officer reasonably believed, until 3:05 a.m., that Shaheed was going to provide a urine sample. Relying on *State v. Stavish*, 868 N.W.2d 670 (Minn. 2015), the court took into account the importance of measuring Shaheed's alcohol concentration within the two-hour window following Shaheed's driving conduct. See Minn. Stat.

§ 169A.20, subd. 1(5) (2012) (criminalizing driving with an alcohol concentration of 0.08 or more “as measured within two hours” of driving). The court found that at 3:05 a.m. there were, at most, 25 minutes remaining in that two-hour window and “[p]resumably less than 25 minutes . . . when [Shaheed] refused a blood draw.” The court therefore concluded that the officer was faced with exigent circumstances.

This appeal followed.

DECISION

Shaheed argues that the postconviction court erred by summarily denying relief because exigent circumstances did not justify law enforcement’s demand for a warrantless search of his blood or urine. Alternatively, he argues that he is entitled to a hearing to prove that exigent circumstances did not exist.

Minnesota’s postconviction statute authorizes “a person convicted of a crime” to seek postconviction relief by filing a petition claiming that the conviction “violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2018). Upon the filing of a postconviction petition, an evidentiary hearing must be held “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2018). “In determining whether an evidentiary hearing is required, a postconviction court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner.” *Andersen v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018) (quotation omitted).

An appellate court reviews a denial of a postconviction petition, as well as a denial of a request for an evidentiary hearing, for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). A postconviction court abuses its discretion when it makes clearly erroneous factual findings, bases its ruling on an erroneous view of the law, or exercises discretion in an arbitrary or capricious manner. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017).

“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.” *Trahan*, 886 N.W.2d at 222 (quotations omitted); see *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S. Ct. 1942, 1949 (1978) (stating that exigent circumstances may exist when “there is compelling need for official action and no time to secure a warrant”). To determine whether exigent circumstances justified a warrantless search, courts examine the totality of the circumstances. *Stavish*, 868 N.W.2d at 676. As stated in *Stavish*:

the relevant inquiry is whether, under all of the facts reasonably available to the officer at the time of the search, it was objectively reasonable for the officer to conclude that he or she was faced with an emergency, in which the delay necessary to obtain a warrant would significantly undermine the efficacy of the search.

Id. at 676-77. We review the postconviction court’s determination that the officer faced exigent circumstances de novo, and we review the findings underlying that determination for clear error. *Trahan*, 886 N.W.2d at 221-22; *Stavish*, 868 N.W.2d at 677; see *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013).

As to the totality of the circumstances in this case, the need for a warrant did not become apparent to the officer until sometime after 3:05 a.m., when Shaheed refused to provide a blood sample. Prior to that point, Shaheed had indicated a willingness to submit to testing. The officer was justified in relying on that willingness and forgoing a warrant application because consent is an established exception to the warrant requirement. *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011).

Another relevant circumstance is the natural dissipation of alcohol in Shaheed's body. In *Schmerber v. California*, the Supreme Court held that one of the "special facts" that made it appropriate for the police to act without a warrant was the loss of evidence resulting from the natural dissipation of alcohol in the body. 384 U.S. 757, 770-71, 86 S. Ct. 1826, 1836 (1966). The Court noted that "the percentage of alcohol in the blood begins to diminish shortly after drinking stops, as the body functions to eliminate it from the system." *Id.* at 770, 86 S. Ct. at 1836. In *Missouri v. McNeely*, the Supreme Court held that the natural dissipation of alcohol, in itself, does not constitute an exigency in every drunk-driving case sufficient to justify a warrantless blood draw. 569 U.S. 141, 156, 133 S. Ct. 1552, 1563 (2013). But the Court reaffirmed that "the metabolization of alcohol in the bloodstream and the ensuing loss of evidence are among the factors that must be considered in deciding whether a warrant is required." *Id.* at 143, 165, 133 S. Ct. at 1555, 1568.

Here, the preliminary test of Shaheed's breath indicated that he was just above the legal limit of 0.08 when the police stopped the vehicle that he was driving around 1:30 a.m. See Minn. Stat. § 169A.20, subd. 1(5) (criminalizing driving with an alcohol concentration

of 0.08 or more “as measured within two hours” of driving). In *Stavish*, the supreme court determined that exigent circumstances justified a warrantless blood draw in part because under Minn. Stat. § 169A.20, subd. 1(5), there was a need to draw blood within two hours of driving conduct “to ensure the reliability and admissibility of the alcohol concentration evidence.” 868 N.W.2d at 677-78. “[C]ollecting a blood sample within that window best ensures that the sample can be used to prove impairment.” *Trahan*, 886 N.W.2d at 222 (quotation omitted). Here, the postconviction court reasoned that at 3:05 a.m. there were, at most, 25 minutes remaining in that two-hour window and “[p]resumably less than 25 minutes . . . when [Shaheed] refused a blood draw.” Shaheed does not dispute that his refusal occurred within the two-hour testing window, arguing that “[a] hearing is necessary to reach the determination that the officer could not have obtained a warrant in those 25-minutes.”

Given the totality of the circumstances, it was objectively reasonable for the officer to conclude that he would not be able to obtain a warrant and collect Shaheed’s blood sample within the two hours following Shaheed’s driving conduct and that he therefore was faced with an emergency in which the delay necessary to obtain a warrant would significantly undermine the efficacy of the search.

Shaheed argues that when a blood-alcohol test occurs outside of the two-hour testing window, the state has the ability to extrapolate and determine the blood-alcohol content at the time of driving. See *State v. Jensen*, 482 N.W.2d 238, 239 (Minn. App. 1992) (using a blood sample taken more than 11 hours later to calculate alcohol concentration at the time of driving), *review denied* (Minn. May 15, 1992). But any blood drawn after expiration of

the two-hour window would have had a diminished evidentiary value. *See Trahan*, 886 N.W.2d at 222; *Stavish*, 868 N.W.2d at 676. “[E]ven though experts can work backwards and use an alcohol concentration at the time a sample was taken to determine an alcohol concentration at the time of an alleged offense, long intervals may raise questions about the accuracy of the calculations.” *Stavish*, 868 N.W.2d at 676 (quotation omitted). As noted by the Supreme Court in *Mitchell v. Wisconsin*, it is important to recover blood-alcohol test results “accurate enough to stand up in court.” 139 S. Ct. 2525, 2536 (2019).

Shaheed also argues that he was entitled to an evidentiary hearing to determine whether a warrant could have been obtained in the 25 minutes between the officer’s realization, sometime after 3:05 a.m., that Shaheed would not submit to a blood or urine test, and the expiration of the two-hour testing window (3:30 a.m.). But the supreme court has clearly stated:

the relevant inquiry is whether, under all of the facts reasonably available to the officer at the time of the search, it was *objectively reasonable for the officer to conclude* that he or she was faced with an emergency, in which the delay necessary to obtain a warrant would significantly undermine the efficacy of the search.

Stavish, 868 N.W.2d at 676-77 (emphasis added). We question whether the officer could have obtained a warrant in two-hour testing window. Thus, it was objectively reasonable for the officer to conclude that he was faced with exigent circumstances at the time of refusal.

In sum, the files and records of the proceeding conclusively show that Shaheed was not entitled to relief because the undisputed facts of this case show that he could not meet

his burden to prove that the exigent-circumstances exception to the warrant requirement was inapplicable. *See* Minn. Stat. § 590.04, subd. 1; *Fagin*, 933 N.W.2d at 781. Thus, the postconviction court did not abuse its discretion by summarily denying Shaheed's petition.

Affirmed.