STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1108

Stewart Edward Underhill,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

Filed April 24, 2023
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CV-21-10742

Charles A. Ramsay, Daniel J. Koewler, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota (for appellant)

Keith Ellison, Attorney General, Ryan Pesch, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

SYLLABUS

In a proceeding under section 171.19 of the Minnesota Statutes for judicial review of the suspension of a Minnesota driver's license based on an out-of-state conviction pursuant to section 171.18, subdivision 1(a)(7), a district court may not overturn the suspension on the ground that the out-of-state conviction is based on evidence that was obtained in violation of the licensee's Fourth Amendment rights.

OPINION

JOHNSON, Judge

Stewart Edward Underhill, a Minnesota resident, was arrested in Wisconsin on suspicion of driving a motor vehicle with an alcohol concentration of 0.08 or more and was convicted of an offense based on that conduct. The State of Wisconsin notified the State of Minnesota of Underhill's conviction. The Minnesota Commissioner of Public Safety suspended Underhill's Minnesota driver's license because of the Wisconsin conviction. Underhill petitioned the district court for judicial review of the suspension, arguing that his Wisconsin conviction was based on evidence that was obtained in violation of his constitutional rights. The district court sustained the suspension. We conclude that Underhill may not obtain the reinstatement of his driver's license by showing that the evidence supporting his Wisconsin conviction was obtained in violation of his Fourth Amendment rights. We also conclude that Underhill is not entitled to relief on his claim that the Wisconsin law-enforcement officer who arrested him violated his right to due process because Underhill did not show that the officer inaccurately advised him of the consequences of a refusal to submit to a warrantless blood test. Therefore, we affirm.

FACTS

The factual record of this case is not thoroughly developed, but the relevant facts are undisputed for purposes of the appeal.

On June 4, 2021, Underhill was arrested in Dunn County, Wisconsin, on suspicion of driving while he was intoxicated. A law-enforcement officer transported Underhill to a hospital, requested a blood sample, and advised Underhill of the consequences of a refusal

to provide a blood sample. Underhill provided a blood sample, which was tested and indicated an alcohol concentration of 0.08 or more.

In August 2021, the Wisconsin Division of Motor Vehicles (DMV) sent a one-page document to the Minnesota Department of Public Safety (DPS) concerning Underhill's arrest and subsequent court proceeding. The document is entitled, "Underlying Conviction for Report Out-of-State Withdrawal." The document contains a series of one-line notations but no narrative text. The document states, among other things, a "citation date" of "06/04/2021" and a "conviction date" of "08/07/2021."

Approximately one week later, the Minnesota Commissioner of Public Safety sent Underhill a two-page document entitled "Notice of Suspension of Your Driving Privileges," which refers to the June 4, 2021 incident, informs him that he may not operate a motor vehicle for one year, explains the procedures for reinstatement after the one-year suspension, and informs him that he has a right to administrative and judicial review.

In September 2021, Underhill petitioned the district court for judicial review of the suspension of his driver's license. The district court held an evidentiary hearing in April 2022. Underhill was the only witness at the hearing. He testified about his interactions with the Wisconsin officer who arrested him. Specifically, Underhill testified that the officer requested a blood sample, that he was not aware of any search warrant for a blood sample, that the officer read him an advisory stating that there would be consequences if he refused to provide a blood sample, that he did not refuse to provide a blood sample, and that a blood sample was drawn. He testified that he does not remember exactly what the officer said about the consequences of not providing a blood sample but that he recalls

generally that the officer said he would "be punished further" if he refused and that he felt as though he did not have a choice.

The commissioner introduced three exhibits at the evidentiary hearing: the document that Wisconsin DMV sent to Minnesota DPS concerning the June 4, 2021 incident; the notice of suspension that Minnesota DPS sent to Underhill; and a document created by Minnesota DPS that summarizes Underhill's driving record, which indicates an "out-of-state violation from Wisconsin" on June 4, 2021, with an alcohol concentration "at or over .08." The district court also considered an affidavit that Underhill had submitted with his petition.

At the conclusion of the hearing, the district court asked the parties to submit memoranda of law. Underhill submitted a memorandum in which he argued, among other things, that the commissioner may not rely on his Wisconsin conviction because it was based on evidence obtained in a warrantless blood test in violation of his Fourth Amendment rights and because the Wisconsin officer misled him into providing a blood sample in violation of his right to due process. In response, the commissioner submitted a memorandum in which he argued, among other things, that Underhill cannot challenge his Wisconsin conviction in a Minnesota court and that the officer did not mislead Underhill when informing him of the consequences of refusing to provide a blood sample.

In June 2022, the district court filed an 18-page order in which it sustained the commissioner's suspension of Underhill's driver's license. Based on the commissioner's exhibits, the district court found that Underhill "was convicted of an impaired driving offense" in Wisconsin that would be an offense if committed in Minnesota. The district

court also made findings concerning the statements of the Wisconsin officer who arrested Underhill. In an accompanying memorandum, the district court rejected Underhill's arguments by concluding that the commissioner had proper factual and legal bases for the suspension, that the Wisconsin conviction was not based on evidence obtained in violation of Underhill's constitutional rights, that Underhill cannot collaterally attack his Wisconsin conviction in a Minnesota court, and that the advisory that the officer likely read to Underhill was not inaccurate. Underhill appeals.

ISSUES

Did the district court err by sustaining the commissioner's suspension of Underhill's Minnesota driver's license based on his Wisconsin conviction of an offense for driving a motor vehicle with an alcohol concentration of 0.08 or more, despite Underhill's challenges to the Wisconsin conviction and the evidence on which it was based?

ANALYSIS

Underhill argues that the district court erred by sustaining the commissioner's suspension of his Minnesota driver's license. Specifically, he argues that the suspension is improper because his Wisconsin conviction was based on evidence obtained in a warrantless blood draw in violation of his Fourth Amendment rights and because the Wisconsin officer who arrested him misstated the applicable law concerning warrantless blood draws in violation of his constitutional right to due process.

In response, the commissioner argues that the suspension is proper because Underhill engaged in conduct in Wisconsin that would be an offense in Minnesota that would require the revocation of his driver's license. The commissioner argues further that

Underhill may not obtain reinstatement of his driver's license by collaterally attacking his Wisconsin conviction in this proceeding. The commissioner argues in the alternative that the evidence underlying Underhill's Wisconsin conviction was not obtained by unconstitutional means.

A.

The commissioner may suspend a person's driver's license for any of 13 reasons that are specified by statute. Minn. Stat. § 171.18, subd. 1(a) (2022). One such reason is that the person "has committed an offense for which mandatory revocation of license is required upon conviction." *Id.*, subd. 1(a)(1). Revocation of a driver's license is mandatory if a person has been convicted of a violation of section 169A.20. Minn. Stat. § 171.17, subd. 1(2) (2022). Section 169A.20 provides that it is a crime for a person to drive a motor vehicle while "the person's alcohol concentration . . . is 0.08 or more." Minn. Stat. § 169A.20, subd. 1(5) (2022). Thus, the commissioner is required to revoke, and is permitted to suspend, the driver's license of a person who has been convicted in Minnesota of the offense of driving a motor vehicle with an alcohol concentration of 0.08 or more.

Another reason for which the commissioner may suspend a person's driver's license is that the person "has committed an offense in another state that, if committed in this state, would be grounds for suspension." Minn. Stat. § 171.18, subd. 1(a)(7). Thus, the commissioner is required to revoke, and is permitted to suspend, the driver's license of a

person who has been convicted in another state of the offense of driving a motor vehicle with an alcohol concentration of 0.08 or more.[1]

A person whose driver's license has been suspended pursuant to section 171.18 may challenge the suspension by petitioning the district court in the county of the person's residence. Minn. Stat. § 171.19 (2022). The matter must be heard by the district court, and the petitioner must be present in person at the hearing. *Id.* The district court must "independently determine whether the cancellation is justified." *Constans v. Commissioner of Pub. Safety*, 835 N.W.2d 518, 523 (Minn. App. 2013). The petitioner bears the burden of proving that the commissioner erred by suspending the license. *Id.* On appeal from a district court's ruling on a petition filed pursuant to section 171.19, this court applies a *de novo* standard of review to the district court's determination of legal issues and a clear-error standard of review to the district court's findings of fact. *Id.*

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[1]We note that Minnesota is a member of the interstate Driver License Compact, which has been codified in the Minnesota Statutes. *See* Minn. Stat. § 171.50 (2022). The compact provides that participating states "shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee." *Id.*, art. III. A state receiving such a report shall, "for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, . . . give the same effect to the conduct reported . . . as it would if such conduct had occurred in the home state, in the case of convictions," with respect to several types of offenses, including the offense of driving a motor vehicle while impaired by alcohol. *Id.*, art. IV(a)(2). Wisconsin is not a member of the compact. National Ctr. for Interstate Compacts, *Driver License Compact* (2019), https://apps.csg.org/ncic/Compact.aspx?id=56 [https://perma.cc/QRU4-C4XA]. Nonetheless, a statute requires the commissioner to give the same effect to all reports received from other states that the commissioner would give to a report received from within this state, including "a report of conviction for . . . an offense described in sections 171.17 and 171.18," regardless of "whether or not the other state . . . is a party to the Driver License Compact." Minn. Stat. § 171.55 (2022).

B.

We begin our analysis by determining whether the requirements of section 171.18 are satisfied.

In *Anderson v. State, Department of Public Safety*, 305 N.W.2d 786 (Minn. 1981), the supreme court considered the case of a Minnesota resident who petitioned a district court to challenge the revocation of his driver's license based on his Colorado conviction of the offense of "driving while ability impaired." *Id.* at 786-87. The question before the court was whether a conviction of that Colorado offense, if committed in Minnesota, would be an offense requiring the revocation of the appellant's driver's license. *Id.* at 787. The supreme court compared the elements of the Colorado offense to the elements of the Minnesota offense of driving a motor vehicle while "'under the influence of alcohol.'" *Id.* (quoting Minn. Stat. § 169.121, subd. 1(a) (1978)). The supreme court reasoned that the Minnesota statute prohibited "the act of driving a motor vehicle while ability or capacity to drive is impaired by alcohol." *Id.* (emphasis omitted). The supreme court referred to Colorado law and described the Colorado offense at issue as one for "less serious forms of driving while under the influence," such that "it undoubtedly requires less proof for a prosecutor in Colorado to prove that a person's capacity to drive is impaired than it does for a prosecutor in Minnesota to make the same showing." *Id.* Nonetheless, the supreme court concluded that "the elements of the Colorado offense of driving while ability impaired are the same elements which, if proven in Minnesota, would justify a conviction for the offense of driving while under the influence." *Id.* Thus, the supreme court upheld the commissioner's revocation of the driver's license. *Id.*

In this case, the district court found that "Underhill was convicted of an impaired-driving offense in Wisconsin for driving with a blood-alcohol level over .08." The district court did not cite the applicable Wisconsin statute, apparently because neither party made express reference to a particular statute.[2] The district court drew inferences from the exhibits submitted by the commissioner to find that Underhill had been convicted of an offense that prohibits a person from driving a motor vehicle with an alcohol concentration of 0.08 or more. In his appellate briefs, Underhill does not challenge that finding.

The district court also found, "The Wisconsin offense of driving with a blood-alcohol concentration over .08 would be a crime in Minnesota." Indeed, it is a crime in Minnesota to operate a motor vehicle with an "alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle is 0.08 or more." Minn. Stat. § 169A.20, subd. 1(5).

Given the district court's findings, the elements of the Wisconsin offense of which Underhill was convicted are "the same elements which, if proven in Minnesota, would justify a conviction for the offense of driving while under the influence." *See Anderson*, 305 N.W.2d at 787. Thus, the commissioner properly determined that Underhill "has committed an offense in another state that, if committed in this state, would be grounds for suspension." *See* Minn. Stat. § 171.18, subd. 1(a)(7).

[2]We note that a Wisconsin statute makes it a crime to operate a motor vehicle with a "prohibited alcohol concentration." Wis. Stat. § 346.63(1)(b) (2022). The prohibited alcohol concentration is not more than 0.08. *See* Wis. Stat. § 340.01(46m)(a) (2022).

C.

Underhill does not challenge the statutory analysis described above. Rather, he argues that the commissioner may not rely on his Wisconsin conviction to suspend his Minnesota driver's license. Underhill asserts two legal theories in support of this argument.

First, Underhill argues that his Wisconsin conviction was based on evidence that was obtained in a warrantless blood draw, in violation of his rights under the Fourth Amendment to the United States Constitution. In support of this argument, he cites *Birchfield v. North Dakota*, 579 U.S. 438 (2016), *State v. Trahan*, 886 N.W.2d 216 (Minn. 2016), and *State v. Johnson*, 916 N.W.2d 674 (Minn. 2018).

Second, Underhill argues that the Wisconsin officer who arrested him inaccurately stated the applicable law concerning warrantless blood draws, in violation of his constitutional right to due process. In support of this argument, he cites *Morehouse v. Commissioner of Public Safety*, 911 N.W.2d 503 (Minn. 2018), and *Johnson v. Commissioner of Public Safety*, 911 N.W.2d 506 (Minn. 2018). Both *Morehouse* and *Johnson* are based on *McDonnell v. Commissioner of Public Safety*, 473 N.W.2d 848 (Minn. 1991), which is based on caselaw concerning the constitutional right to due process. *Id.* at 854 (citing *Raley v. Ohio*, 360 U.S. 423 (1959), and various opinions of Minnesota Supreme Court).

We will separately consider Underhill's two legal theories.

1.

We first consider Underhill's argument that the suspension of his driver's license is erroneous on the ground that his Wisconsin conviction was based on evidence obtained in violation of his Fourth Amendment rights.

Both parties have submitted written argument concerning whether Underhill may, in a sense, collaterally attack his Wisconsin conviction in this Minnesota case. Underhill cites the supreme court's opinions in *State v. Nordstrom*, 331 N.W.2d 901 (Minn. 1983), and *State v. Schmidt*, 712 N.W.2d 530 (Minn. 2006), and this court's opinions in *State v. Friedrich*, 436 N.W.2d 475 (Minn. App. 1989), and *State v. Dumas*, 587 N.W.2d 299 (Minn. App. 1998), *rev. denied* (Minn. Feb. 24, 1999).

The *Nordstrom* opinion is of no assistance to Underhill because this court has held that *Nordstrom* does not apply in a civil proceeding to reinstate a driver's license. In *Recker v. State, Department of Public Safety*, 375 N.W.2d 554 (Minn. App. 1985), a Minnesota driver was arrested in Wisconsin for driving under the influence of alcohol and was convicted of the charged offense. *Id.* at 554. As a consequence, the commissioner revoked his license pursuant to a statutory provision that is practically identical to the statute on which the commissioner relied in this case. *Id.* (citing Minn. Stat. § 171.17(7) (1982)). The driver argued that the commissioner should not have relied on his Wisconsin conviction because he was not represented by an attorney when he pleaded guilty to the charged offense. *Id.* at 556. He cited two opinions—*Baldasar v. Illinois*, 446 U.S. 222

(1980) (*per curiam*), and *Nordstrom*[3]—both of which held that a prior uncounseled misdemeanor conviction cannot be used in a subsequent prosecution to enhance a misdemeanor offense to a more serious offense. *Recker*, 375 N.W.2d at 556; *see also Baldasar*, 446 U.S. at 223-24; *Nordstrom*, 331 N.W.2d at 903-05. We rejected the driver's argument by stating that the concerns that were present in *Baldasar* and *Nordstrom* were "not relevant." *Recker*, 375 N.W.2d at 556-57. We reasoned, "The revocation of Recker's driving privileges resulting from his uncounseled plea does not subject him to punishment or incarceration, but instead it is 'an exercise of the police power for the protection of the public.'" *Id.* (quoting *State v. Normandin*, 169 N.W.2d 222, 224 (Minn. 1969)). We agreed with the district court's statement that "no authority exists to support the proposition that, in a proceeding involving the potential penalty of a loss of driving privileges, an indigent defendant is entitled to have counsel provided to him." *Id.* The *Recker* opinion prevents Underhill from obtaining the reinstatement of his driver's license by showing that the Wisconsin conviction was based on evidence obtained in violation of his constitutional rights. For the same reason, this court's opinions in *Friedrich* and *Dumas*, which relied on *Nordstrom*, also do not apply in this case. *See Dumas*, 587 N.W.2d at 302-04; *Friedrich*, 436 N.W.2d at 477-78.

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[3]This court later noted that *Baldasar* has been overruled and, consequently, that "the continuing vitality of *Nordstrom* may be subject to question." *Dumas*, 587 N.W.2d at 302 (citing *Nichols v. United States*, 511 U.S. 738, 748 (1994)). We also stated in *Dumas*, "Because the Minnesota Supreme Court has not addressed *Nordstrom* since *Nichols* was decided, we assume for purposes of our analysis that *Nordstrom* continues to represent the law in Minnesota." *Id.* It remains true that the supreme court has not revisited *Nordstrom* since *Nichols*. Thus, this court continues to assume that *Nordstrom* is binding precedent to the extent that it applies.

Underhill also cites *Schmidt*, in which a Minnesota driver was charged with enhanced felony offenses because he had four prior impaired-driving convictions, three from South Dakota and one from Minnesota. 712 N.W.2d at 532. The district court granted the driver's motion to dismiss the enhanced felony charges on the ground that, when arrested in South Dakota, he was not given opportunities to consult with attorneys before deciding whether to submit to chemical tests, as is guaranteed in Minnesota. *Id.* at 532-33 (citing *Friedman v. Commissioner of Pub. Safety*, 473 N.W.2d 828, 835 (Minn. 1991)). On appeal, the supreme court considered whether the defendant could defeat the enhancement of his pending Minnesota criminal charges by showing that his South Dakota convictions were obtained in violation of Minnesota law. *Id.* at 533. The supreme court determined that South Dakota law should apply, subject to "a very narrow exception" in which "strong public policy interests of the forum state provide sufficient reason to override the general rule of recognition" of a conviction in another state. *Id.* at 537. The supreme court concluded that the exception did not apply in that case because the *Friedman* limited right to counsel is subject to a balancing of interests, is less fundamental than the Sixth Amendment right to counsel at trial or a plea hearing, and "does not automatically render the subsequent conviction unreliable and prejudicial." *Id.* at 538-39.

Neither the supreme court nor this court has applied *Schmidt* in a civil proceeding concerning the revocation or suspension of a driver's license. The absence of such caselaw likely is due to the fundamental principle that, as this court said in *Recker*, a civil proceeding concerning the revocation or suspension of a driver's license is not concerned with "punishment or incarceration" but, rather, with "'an exercise of the police power for

the protection of the public.'" 375 N.W.2d at 557 (quoting *Normandin*, 169 N.W.2d at 224). Indeed, the *Schmidt* opinion is based in significant part on *Nordstrom*, which is based on *Baldasar*, which was based on the general principle that a person should not be imprisoned without having been represented by counsel in the proceedings that led to the imprisonment. *See Baldasar*, 446 U.S. at 224-29 (concurring opinions of Stewart, J., and Marshall, J.). Since *Schmidt*, the United States Supreme Court has reiterated that there is a significant distinction between civil penalties (such as license suspension) and criminal penalties for drunken driving. *See Birchfield*, 579 U.S. at 476-77; *Missouri v. McNeely*, 569 U.S. 141, 159-61 (2013). Underhill's liberty is not at stake in this proceeding. Thus, the rationale expressed in *Recker* is a sufficient basis for concluding that *Schmidt* does not apply in this case.[4]

Thus, the commissioner properly relied on Underhill's Wisconsin conviction for purposes of suspending his Minnesota driver's license, despite Underhill's argument that the conviction was based on evidence obtained in violation of his Fourth Amendment rights.

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[4]Furthermore, even if we were to apply *Schmidt*, Underhill would not prevail. The *Schmidt* opinion makes clear that, in a criminal case, a challenge to a prior conviction is viable only if the challenge is based on one of "those few (or perhaps singular) constitutional violations that rise to the level of a jurisdictional defect," such as a "'failure to appoint counsel for an indigent defendant.'" 712 N.W.2d at 534 (citing and quoting *Custis v. United States*, 511 U.S. 485, 493-97 (1994)). In this case, Underhill asserts that he was denied Fourth Amendment and due-process rights. The *Schmidt* opinion would not allow Underhill to collaterally attack his Wisconsin conviction because his Fourth Amendment and due-process claims are not within the "very narrow exception" recognized in *Schmidt*. *See* 712 N.W.2d at 537.

2.

We next consider Underhill's argument that the suspension of his driver's license is erroneous on the ground that the Wisconsin officer who arrested him inaccurately stated the law concerning warrantless blood draws, in violation of his right to due process.

In a case arising under the Minnesota Implied Consent Act, Minn. Stat. § 169A.50-.53 (2022), the supreme court held:

> A license revocation violates due process when: (1) the person whose license was revoked submitted to a breath, blood, or urine test; (2) the person prejudicially relied on the implied consent advisory in deciding to undergo testing; and (3) the implied consent advisory did not accurately inform the person of the legal consequences of refusing to submit to the testing.

Johnson, 911 N.W.2d at 508-09 (citing *McDonnell*, 473 N.W.2d at 853-55); *see also Morehouse*, 911 N.W.2d at 505.

The district court considered the merits of Underhill's second argument under the three-part *Johnson-Morehouse* test. The district court found that Underhill was asked to provide a blood sample and was informed that his refusal to do so "would result in 'punishment' or potential 'penalties'" but that Underhill "did not remember exactly what he was told by the police officer at the time." The district court also found that Underhill's recollection is consistent with the advisory required by Wisconsin law, which includes the following language: "If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties." Wis. Stat. § 343.305(4) (2022). The district court further found that there is "no credible evidence Underhill was threatened with criminal penalties if he refused consent to the requested

blood test" and "no evidence that Underhill was given incorrect information about his rights under Wisconsin law." In its conclusions of law, the district court analyzed Wisconsin statutes and caselaw and reiterated that the advisory that Underhill likely received was not inaccurate.

It is uncertain whether the three-part *Johnson-Morehouse* test applies in the circumstances of this case. The commissioner appears to argue that Underhill's second argument is, like his first argument, an impermissible collateral attack on his Wisconsin conviction. But Underhill's second argument is not based on caselaw arising from criminal prosecutions. Rather, his second argument is based on caselaw arising from civil licensure proceedings that are similar to this proceeding. Whether *Johnson* and *Morehouse* may be applied to a Wisconsin officer's reading of the Wisconsin statutory advisory is a different question, which could implicate choice-of-law issues. *See Schmidt*, 712 N.W.2d at 534-37. But the commissioner did not suspend Underhill's driver's license based on the blood test that followed the reading of a statutory advisory, as in *Johnson* and *Morehouse*. Rather, the commissioner suspended Underhill's driver's license because Underhill was convicted of "an offense in another state that, if committed in this state, would be grounds for suspension." *See* Minn. Stat. § 171.18, subd. 1(a)(7). Neither party's briefs are specifically focused on these issues with respect to Underhill's second argument.

Assuming without deciding that the three-part *Johnson-Morehouse* test applies, we conclude that the district court did not err by rejecting Underhill's argument on the ground that he did not establish the third requirement, that the advisory "did not accurately inform the person of the legal consequences of refusing to submit to the testing." *Johnson*, 911

N.W.2d at 509. A state may not *criminally* punish a person for refusing to submit to a warrantless blood draw. *Birchfield*, 579 U.S. at 477. Accordingly, an officer may not inform a driver that his or her refusal to submit to a blood test will result in *criminal* penalties. *See McDonnell*, 473 N.W.2d at 855; *State v. Johnson*, 887 N.W.2d 281, 291-95 (Minn. App. 2016), *rev'd on other grounds*, 911 N.W.2d 506, 507-09 (Minn. 2018). Underhill contends that the advisory he received is unlawful only because it did not "provid[e] any guidance as to what those penalties may have been." But an officer's statement does not violate a driver's right to due process if it is merely unclear or incomplete; it does so only if the officer affirmatively misinforms a person, misrepresents the law, or engages in "active misleading." *McDonnell*, 473 N.W.2d at 854-55; *see also South Dakota v. Neville*, 459 U.S. 553, 566 (1983) (concluding that officer did not violate Due Process Clause by not warning arrestee of all consequences of refusal of blood-alcohol test). The Wisconsin advisory that Underhill presumably received, which states that, upon a refusal, "your operating privilege will be revoked and you will be subject to other penalties," is not inconsistent with *Birchfield* and, thus, is not inaccurate.

Thus, the commissioner properly relied on Underhill's Wisconsin conviction for purposes of suspending his Minnesota driver's license, despite Underhill's argument that the Wisconsin officer who arrested him inaccurately advised him of the consequences of a refusal to provide a blood sample.

DECISION

The commissioner properly suspended Underhill's driver's license because he committed an offense in Wisconsin that, if committed in this state, would be grounds for

revocation. The commissioner properly considered Underhill's Wisconsin conviction despite his argument that the conviction was based on evidence obtained in violation of his Fourth Amendment rights and his argument that the Wisconsin officer who arrested him inaccurately advised him of the consequences of a refusal to provide a blood sample. Therefore, the district court did not err by denying Underhill's petition and sustaining the commissioner's suspension of Underhill's driver's license.

Affirmed.