

NOT DESIGNATED FOR PUBLICATION

No. 125,772

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

LOGAN MEULI,
Appellant.

MEMORANDUM OPINION

Appeal from Greeley District Court; WADE M. DIXON, magistrate judge. Submitted without oral argument. Opinion filed December 8, 2023. Affirmed.

Michael S. Holland II, of Holland and Holland, of Russell, for appellant.

Natalie Chalmers, assistant solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

Before WARNER, P.J., ATCHESON, J., and MARY E. CHRISTOPHER, S.J.

PER CURIAM: Logan Meuli appeals his conviction for driving under the influence of alcohol (DUI) following a bench trial based on stipulated facts. Meuli challenges the district court's decision to deny his motion to suppress and admit the evidence of his blood-test results that showed his blood-alcohol level was over the legal limit. Meuli argues the State failed to prove unequivocal voluntary consent—free of duress or coercion—to the seizure of his blood and that none of the exceptions to the warrant requirement apply to the admission of his blood-test results. Based on our review of the record, we conclude there was substantial competent evidence presented at the suppression hearing to support the district court's finding that Meuli consented to the

blood draw and his consent was given without duress or coercion. Accordingly, we affirm Meuli's conviction.

FACTUAL AND PROCEDURAL HISTORY

On the evening of October 24, 2018, Undersheriff Garrett Wright was doing a security check at the Trails End Motel in Tribune. While he was conducting the security check, Wright observed a pickup truck coming from the west on a side street. The driver of the pickup truck stopped at a stop sign before overaccelerating, causing the rear end of the vehicle to swing out and then to overcorrect, or fishtail, as it turned onto the road.

Undersheriff Wright followed the pickup without activating his lights, and the driver of the pickup truck parked in front of a residence on Second Street. As Wright called in the tag and location of the pickup truck to his dispatcher, he observed Meuli get out of the pickup and walk into the residence located nearby. Wright then parked, walked up to the house, and knocked on the door.

Meuli opened the door and stepped outside. Undersheriff Wright asked Meuli if he was the one driving the pickup truck. Meuli admitted that he was the driver. When Wright asked Meuli why he overaccelerated, Meuli said he did not know.

During the conversation, Undersheriff Wright noticed that Meuli showed indications of possible impairment, such as slurred speech, bloodshot and watery eyes, swaying back and forth from one foot to the other, and some slowness in giving responses. Wright also noticed the odor of alcohol coming from Meuli. When Wright asked Meuli for his driver's license, he fumbled to get it out of his wallet. After noticing these signs, Wright asked Meuli if he had been drinking that night, and Meuli admitted to consuming vodka at the bowling alley. Based on his observations, Wright began a DUI investigation.

Undersheriff Wright asked Meuli if he would be willing to perform some standardized field sobriety tests and if he thought he would pass those tests. Meuli responded that he was "not going to lie, probably not." After conducting a preliminary breath test, Wright placed Meuli under arrest. They walked to the law enforcement center, which was located very close to the residence.

Undersheriff Wright then gave Meuli the oral and written notices required by the Kansas statutes through the use of a DC-70 form, which was revised in July 2018. Meuli said that he understood the form, and he had no questions. After receiving these notices, Meuli signed the form and agreed to submit to a blood test. Specifically, on the portion of the form that asks if Meuli will take a blood test, the box next to the question is marked "Yes." Meuli's signature appears on a line just below. Meuli's blood-test result indicated a blood-alcohol concentration of .09 grams of alcohol per 100 milliliters of blood, which is above the legal limit.

Before trial, Meuli moved to suppress the blood-test results, contending in part that his consent for the test was coerced and involuntary. After holding an evidentiary hearing, the district court denied Meuli's motion to suppress.

Meuli then agreed to a bench trial by stipulated facts in order to preserve the issues raised in his motion to suppress. In the stipulated facts presented to the district court at trial, the parties stipulated that Meuli "agreed to a blood test and signed the DC-70 testing advisory form." The court found Meuli guilty of DUI in violation of K.S.A. 2018 Supp. 8-1567, a class B nonperson misdemeanor. Meuli appealed his conviction to this court.

ANALYSIS

Motion to suppress

Meuli argues that the State failed to prove that his consent to the blood draw was unequivocal and free from coercion.

An appellate court reviews the district court's findings of fact surrounding a motion to suppress to determine if they are supported by substantial competent evidence, while we exercise unlimited review over the district court's ultimate legal conclusion. *State v. Cash*, 313 Kan. 121, 125-26, 483 P.3d 1047 (2021). Appellate courts do not reweigh the evidence or assess the credibility of witnesses. *State v. Hanke*, 307 Kan. 823, 827, 415 P.3d 966 (2018).

The Fourth Amendment to the United States Constitution prohibits unreasonable searches. Blood and breath tests conducted by the police constitute searches. See *Birchfield v. North Dakota*, 579 U.S. 438, 455, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016); *State v. Ryce*, 306 Kan. 682, 684, 396 P.3d 711 (2017). In addition, section 15 of the Kansas Constitution Bill of Rights provides the same protections against unreasonable searches as the United States Constitution. 306 Kan. at 684; *State v. Henning*, 289 Kan. 136, 145, 209 P.3d 711 (2009). Any warrantless search is intrinsically unreasonable unless it falls within one of the exceptions to the search warrant requirement recognized in Kansas. *State v. Heim*, 312 Kan. 420, 422-23, 475 P.3d 1248 (2020).

Here, the State relied on the consent exception to the search warrant requirement to admit the results of the blood draw. See *City of Kingman v. Ary*, 312 Kan. 408, 410-11, 475 P.3d 1240 (2020). The consent exception applies when one has consented to the warrantless search. "Valid consent to a search requires both (1) clear and positive

testimony that consent was unequivocal, specific, and freely given and (2) the absence of duress or coercion." *State v. James*, 301 Kan. 898, Syl. ¶ 4, 349 P.3d 457 (2015). To rely on this exception, the State must prove by a preponderance of the evidence that Meuli's consent was valid. See *State v. Daino*, 312 Kan. 390, 397, 475 P.3d 354 (2020).

Meuli argues the evidence at the suppression hearing does not establish that he agreed to submit to a blood draw. At the hearing, Undersheriff Wright testified he asked Meuli if he would agree to a blood draw after reading him the DC-70. Meuli's DC-70 form was admitted into evidence at that hearing. The form indicates that after the person has received the advisories, the officer should then request that the person submit to a test. The DC-70 form then has a question asking if the person is willing to take a blood test or a urine test; the boxes next to these question are marked with an "X"—indicating "Yes"—and "BLOOD TEST." Meuli signed his name on the form. Undersheriff Wright's testimony also indicated that Meuli was given the oral and written advisories on the DC-70, and he unequivocally consented to the test by indicating he had no questions and signing the form.

Meuli argues, however, that his consent was coerced because he was under arrest and threatened with losing his driver's license at the time he agreed to the blood draw. Coercion requires the defendant's will to be overborne or his or her capacity for self-determination to be critically impaired. *United States v. Watson*, 423 U.S. 411, 424, 96 S. Ct. 820, 46 L. Ed. 2d 598 (1976).

At the time of Meuli's arrest, the DC-70 form advised Meuli that refusing to submit to the blood test would result in the suspension of his driving privileges for a period of at least 30 days and up to 1 year. The revised DC-70 correctly advised Meuli of the civil penalty of the suspension of his driving privileges for refusal or failure of the test. See K.S.A. 2018 Supp. 8-1001(c).

In *State v. Nece*, 303 Kan. 888, 894, 367 P.3d 1260 (2016), the Kansas Supreme Court held "consent does not become involuntary merely because someone is advised of legal ramifications of their choice, even if those consequences are serious and negative." The *Nece* court found accurately informing a driver of the consequences that flow from his or her decision "'ensures' that the driver 'makes an informed choice.'" 303 Kan. at 895. Thus, our Supreme Court has found that a test taken after the DC-70 advisory is the product of the consent exception to the warrant requirement. As such, when a driver agrees to testing after being accurately informed of the information in the DC-70 advisory, the driver "conveys actual consent." 303 Kan. at 893; see *Mitchell v. Wisconsin*, 588 U.S. ___, 139 S. Ct. 2525, 2533, 204 L. Ed. 2d 1040 (2019) (referring to the civil consequence of automatic license revocation as "'unquestionably legitimate'").

The record does not show signs Meuli was coerced into giving consent. Although there is no testimony about his oral response to whether he consented to the blood draw, there is sufficient evidence to support a finding that Meuli did give his consent. Undersheriff Wright testified that after he gave Meuli the oral and written advisories in the DC-70, Meuli said he understood and did not have any questions. There are no facts tending to indicate Meuli was confused, resisted, or had to be convinced to consent to the blood draw. There is no evidence that Meuli was threatened before giving consent. In short, the record shows Undersheriff Wright did not coerce or otherwise impermissibly threaten or induce Meuli to consent to giving a blood sample for testing. Rather, the evidence indicates Meuli was accurately informed of the information in the DC-70 advisory, then freely gave his consent to the blood test.

Under the circumstances, Meuli's signature on the DC-70 form shows he consented to the blood test. The form Undersheriff Wright used does not have a place for the subject to sign. But after reading the DC-70 form to Meuli, Undersheriff Wright had Meuli sign on a line immediately below the checked boxes that indicated consent to a blood test. Ordinarily, the law enforcement officer requesting the testing would sign on

that line. Based on Undersheriff Wright's testimony at the suppression hearing, however, Meuli consented to the testing by signing the form. Thus, Meuli's signature on the DC-70 form is legally sufficient to establish consent.

The district court found the State showed by a preponderance of the evidence that Meuli consented to the blood draw and that Meuli's consent was freely and voluntarily given. Substantial competent evidence in the record supports that finding. As such, we find the district court did not err in denying the motion to suppress.

Affirmed.