STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0875

State of Minnesota,
Respondent,

vs.

Eric Edward Nordstrom,
Appellant.

Filed April 16, 2018
Affirmed
Reilly, Judge

Hennepin County District Court
File No. 27-CR-16-21961

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Adam W. Delderfield, Assistant County Attorneys, Minneapolis, Minnesota (for respondent)

Jeffrey S. Sheridan, Sheridan & Dulas, P.A., Eagan, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Reilly, Judge; and Stauber, Judge.*

U N P U B L I S H E D O P I N I O N

REILLY, Judge

Appellant Eric Edward Nordstrom challenges his first-degree impaired-driving conviction, arguing that the district court erred by using evidence of a prior impaired-

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

driving offense in Wisconsin to enhance the current offense because the prior conviction was obtained in violation of his constitutional rights. We affirm.

D E C I S I O N

Appellant was arrested and charged with first-degree driving while impaired. The state charged the crime as a felony because appellant had three prior impaired-driving offenses within ten years, including two convictions in Minnesota and one conviction in Wisconsin. Following a stipulated-facts trial, the district court adjudicated appellant guilty of the impaired-driving offense and imposed a felony sentence. On appeal, appellant argues that the district court erred by ruling that his prior impaired-driving conviction in Wisconsin could be used to enhance his current impaired-driving offense in Minnesota.

The state may use a "[q]ualified prior impaired driving incident" to enhance an impaired-driving charge when the prior incident is an "impaired driving conviction[]." Minn. Stat. § 169A.03, subd. 22 (2016). A "[p]rior impaired driving conviction" includes a prior conviction under a statute or ordinance from another state that is "in conformity with" one of Minnesota's impaired-driving statutes. Minn. Stat. § 169A.03, subd. 20(7). Applying the impaired-driving statute to undisputed facts involves a question of law subject to de novo review. *See State v. Wiltgen*, 737 N.W.2d 561, 566 (Minn. 2007).

The Wisconsin and Minnesota impaired-driving statutes are in conformity with one another because they prohibit the same behavior: operating a motor vehicle under the influence of alcohol. *Compare* Wis. Stat. § 346.63(1)(a) (2016) (prohibiting a person from driving a vehicle while "[u]nder the influence of an intoxicant"), *with* Minn. Stat. § 169A.20, subd. 1 (2016) (prohibiting a person from driving a vehicle while "under the

influence of alcohol"); *see also State v. Friedrich*, 436 N.W.2d 475, 477 (Minn. App. 1989) ("A comparison of the Wisconsin and Minnesota DWI statutes shows the Wisconsin statute conforms with the Minnesota statute."). It is uncontested that appellant entered a plea of no contest to, and was convicted of, violating Wis. Stat. § 346.63(1)(a), by driving while under the influence of alcohol. Accordingly, appellant's impaired-driving offense in Wisconsin qualifies as a basis for charge enhancement in Minnesota and the district court properly rejected his challenge to the enhancement of the offense.

Appellant argues, however, that enhancement was improper because the Wisconsin conviction was based on evidence obtained from a warrantless blood draw in violation of his constitutional rights. In *Birchfield v. North Dakota*, the United States Supreme Court determined that refusal of a warrantless blood test cannot be prosecuted due to the intrusive nature of a blood draw. ___ U.S. ___, 136 S. Ct. 2160, 2184 (2016); *see also State v. Trahan*, 886 N.W.2d 216, 219 (Minn. 2016) (same). Appellant also argues that the arresting officer violated his due-process rights by reading Wisconsin's implied consent advisory. *See Johnson v. Comm'r of Pub. Safety*, 887 N.W.2d 281, 294 (Minn. App. 2016) ("Because a criminal test-refusal charge would be unconstitutional, the implied-consent advisory inaccurately informed [defendant] that refusal to take a [chemical] test is a crime."), *review granted* (Minn. May 30, 2017).

A criminal defendant may collaterally attack a prior conviction to prevent it from serving as an enhancement, but "only in unique cases." *State v. Schmidt*, 712 N.W.2d 530, 538 n.4 (Minn. 2006). The district court determined that this was not a unique case, and we agree. Appellant entered a plea of "no contest" in Wisconsin to violating a state statute

that provides: "[n]o person may drive or operate a motor vehicle while: (a) Under the influence of an intoxicant . . . to a degree which renders him or her incapable of safely driving. . . ." Wis. Stat. § 346.63, subd. 1(a). Wisconsin has a separate statutory provision prohibiting a person from driving while that person's alcohol concentration is above a prohibited alcohol concentration. *See* Wis. Stat. § 346.63, subd. 1(b) (2016) ("No person may drive or operate a motor vehicle while . . . [that] person has a prohibited alcohol concentration."). Accordingly, appellant's Wisconsin conviction did not require the state to prove that appellant had a prohibited alcohol concentration.

Appellant argues that the district court's finding is flawed because evidence of his alcohol concentration was still admissible to prosecute him on the impaired-driving charge, despite his guilty plea. *See* Wis. Stat. § 885.235(1g)(c) (2016) ("The fact that the analysis shows that the person had an alcohol concentration of 0.08 or more is prima facie evidence that he or she was under the influence of an intoxicant and is prima facie evidence that he or she had an alcohol concentration of 0.08 or more."). Appellant argues that the results of his blood test were known at the time of his plea and were relevant to his conviction. *Schmidt* is again instructive. The *Schmidt* court considered evidence of a prior conviction, reasoning that "[w]hile [the uncounseled decision to submit to chemical testing] would preclude certain prosecutions, for example driving with an alcohol concentration of 0.08 or more, prosecution could still proceed for the general offense of driving while under the influence, based on other evidence of impairment." 712 N.W.2d at 539 (citations omitted). This case presents a similar factual scenario. Even if the results of the blood test should have been suppressed in Wisconsin, other evidence of impairment sustained the conviction.

Moreover, appellant's Wisconsin conviction arose as the result of a guilty plea and, generally, "when a guilty plea is at issue, the concern with finality served by the limitation on collateral attack has special force." *Custis v. United States*, 511 U.S. 485, 497, 114 S. Ct. 1732, 1739 (1994).

We conclude that appellant's conviction in Wisconsin is not subject to collateral attack. The district court properly ruled that appellant's Wisconsin conviction was a "qualified prior impaired driving incident" that could be used to enhance the impaired-driving offense in Minnesota.

Affirmed.