

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota,

Case No. 62-CR- [REDACTED]

Plaintiff,

v.

**FACTS, CONCLUSIONS and
ORDER**

[REDACTED]

Defendant.

The above-entitled matter came before the Honorable Leonardo Castro on October 31, 2013, at the Ramsey County Courthouse, on the Motion of Defendant to Dismiss the Chemical Test on the grounds that the seizure of the sample offended the Fourth Amendment of the United States Constitution pursuant to the holdings of the United States Supreme Court in *Missouri v. McNeely*, 569 US --- ; 133 S.Ct. 1552 (2013), and the Minnesota Supreme Court in *State v. Brooks*, 838 N.W.2d 563 (Minn. 2013)

The State appeared by and through, Maureen Dolan, Assistant City Attorney, City of Saint Paul, MN. Defendant appeared personally and through his attorney, Rodd Tschida, Attorney at Law. Defendant filed a motion and memorandum. The State was given an opportunity but did not respond to Defendant's motion. The State does not dispute the relevant facts presented.

NOW THEREFORE after consideration of the files and memoranda in this matter, the arguments of counsel and the applicable law, the Court herewith makes the following:

FACTS

On May 22, 2010, at approximately 00:29 hours, the defendant was in the driver's seat of a vehicle, with the keys in the ignition, and the car running, while parked on a public road (near a bus stop) on Lexington Avenue, St. Paul, Minnesota, Ramsey County. A Minnesota State Trooper pulled up behind the vehicle and activated his emergency lights. The Defendant had indicia of intoxication and was arrested by the Trooper. The Defendant does not challenge the stop or arrest.

At the jail, the Trooper read the Defendant the Implied Consent Advisory. The Trooper informed the Defendant that the Minnesota law requires her to take a test and that refusal to take a test is a crime. The Defendant made phone calls to two family members but never was able to reach an attorney. At 02:22 hours, based on the Implied Consent Advisory, the Defendant gave consent to take a breath test which resulted in a .10 reading. Police did not obtain a search warrant. At time of the stop, the Defendant was a 50 year old woman with no criminal record and no experience with the criminal justice system.

Defendant was charged by citation as follows:

1. Misdemeanor violation of Minn.Stat. §169A.20 Subd 1 (1), *to wit.*, Operating a Motor Vehicle Under the Influence of Alcohol;
2. Misdemeanor violation of Minn.Stat. §169.20 Subd. 1(5) *to wit.*, Operating a Motor Vehicle With a Blood Alcohol Concentration of .08 or greater within Two (2) Hours of Driving.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I.

The taking of a breath sample from a person suspected of driving under the influence of alcohol constitutes a "search," for which a warrant must be obtained absent a valid exception to the warrant requirement of the Fourth Amendment to the United States Constitution and Article

One (1) Section Ten (10) of the Constitution of the State of Minnesota. The warrantless breath test given to Defendant was an unreasonable search.

II.

No exigent circumstances were present that would permit the taking of a breath sample without first having obtained a search warrant authorizing the Trooper to do so.

III.

The consent that is “implied” pursuant to the Minnesota Implied Consent Statute¹ is not true “consent” because the threat of imposition of a criminal sanction upon test refusal plainly serves to coerce an individual to provide actual consent.² Under the totality of circumstances in this case, the Defendant’s consent to search was not freely and voluntarily given, but rather was coerced based upon the threat of additional criminal prosecution. The Defendant did not speak to a lawyer about her ability to give or refuse consent, and was unfamiliar with the process as she had never been involved in the criminal justice system.

IV.

Under the Fourth Amendment, all warrantless searches are presumptively unreasonable unless the search falls within an established exception to the warrant requirement. Because none of the established exceptions to the warrant requirement apply, the warrantless search of Defendant by extraction of a sample of his breath for chemical testing was in violation of the Fourth Amendment of the Constitution of the United States and Article One (1), Section Ten (10) of the Constitution of the State of Minnesota.

Based upon the foregoing Conclusions of Law, the Court makes the following:

¹ Minn.Stat. §169A.50 *et. seq.*

² Minn.Stat. §169A.20 Subd. 2.

ORDER

I.

The Motion of Defendant to suppress the chemical test for intoxication from use in any subsequent proceedings herein must be and the same is herewith **GRANTED**.

II.

Because Count Two relies for its underpinning on the result obtained from the chemical test for intoxication, by reason of the preceding paragraph, Count Two must be and the same is herewith **DISMISSED**.

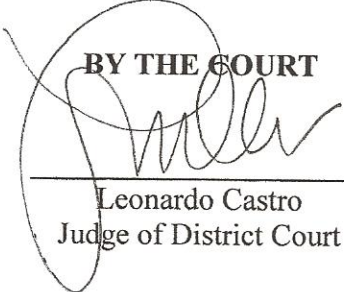
III.

The State may not use the chemical test result in its case-in-chief in subsequent trial of the case.

IV.

The matter is **ORDERED** to be set for trial on January 21, 2014 at 9:00 A.M before the Hon. Leonardo Castro, Judge of District Court.

Dated: December 6, 2013

BY THE COURT


Leonardo Castro
Judge of District Court