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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0599**

State of Minnesota,  
Respondent,

vs.

Bonnie Ann Lindquist,  
Appellant.

**Filed March 17, 2014  
Affirmed  
Worke, Judge**

Aitkin County District Court  
File No. 01-CR-11-178

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

James P. Ratz, Aitkin County Attorney, Lisa Roggenkamp Rakotz, Assistant County Attorney, Nicholas B. Wanka, Assistant County Attorney, Aitkin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

On remand from the Minnesota Supreme Court, this court is directed to consider whether *Missouri v. McNeely*, 133 S. Ct. 1552 (2013), and *State v. Brooks*, 838 N.W.2d

563 (Minn. 2013), alter this court’s decision to affirm appellant’s third-degree driving while intoxicated (DWI) conviction. Because appellant did not raise the issue below or in her first appeal, we affirm.

## FACTS

A jury found appellant Bonnie Ann Lindquist guilty of third-degree DWI under Minn. Stat. § 169A.03, subd. 3(2) (2010). In Lindquist’s first appeal, this court rejected Lindquist’s claims that the state failed to prove that her blood-alcohol concentration was .20 or greater within two hours of her driving and that her post-driving consumption of alcohol invalidated her test results. *State v. Lindquist*, No. A12-0599 (Minn. App. April 8, 2013), *review granted in part* (Minn. July 16, 2013) *and remanded* (Minn. Nov. 26, 2013).

The supreme court granted Lindquist’s petition for further review as to “the application of *Missouri v. McNeely*” but denied the petition as “to all other issues.” The supreme court also stayed proceedings pending disposition in *Brooks*. After release of *Brooks*, the supreme court remanded the matter for this court to “address Lindquist’s challenge to her warrantless blood draw in light of *Missouri v. McNeely* . . . and *State v. Brooks* . . . .” This court reinstated the appeal, and the parties submitted supplemental briefs.

## D E C I S I O N

The United States and Minnesota Constitutions guarantee individuals the right to be free from “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. This right to be free from unreasonable searches is provided to persons such

as Lindquist, who are asked to submit to chemical testing. *Brooks*, 838 N.W.2d at 568. Typically, a warrant is required for these searches unless there is a constitutional exception to the warrant requirement. *See id.* (noting that voluntary consent of the suspect is an exception to the warrant requirement).

In *McNeely*, the Supreme Court held that “natural metabolization of alcohol in the bloodstream does not present a per se exigency that justifies an exception to the Fourth Amendment’s search warrant requirement for nonconsensual blood testing in all drunk-driving cases,” and that “instead, exigency in this context must be determined case by case based on the totality of the circumstances . . . .” 133 S. Ct. at 1552.

Following issuance of *McNeely*, the Minnesota Supreme Court addressed the constitutional validity of warrantless searches of a suspect’s blood and urine in *Brooks*. 838 N.W.2d at 567. Addressing only whether Brooks consented to three searches, the supreme court applied a preponderance-of-evidence standard of proof to conclude that under the totality of the circumstances, Brooks “voluntarily consented to the searches . . . .[.]” and that they were therefore not unlawful within the meaning of the Fourth Amendment. *Id.* at 565, 568, 572.

Lindquist claims that her warrantless search was unconstitutional because there was no exigency supporting the search, she did not consent to the search, and the search was not incident to her lawful arrest. But Lindquist did not challenge the legality of her search before the district court or in her direct appeal to this court. As an appellate court, we generally “do not decide issues raised for the first time on appeal, even constitutional questions of criminal procedure.” *State v. Henderson*, 706 N.W.2d 758, 759 (Minn.

2005). “We may address such issues, though, when the interests of justice require their consideration and doing so would not work an unfair surprise on a party.” *Id.*; see Minn. R. Crim. P. 28.02, subd. 11 (permitting appellate review of any criminal matter “as the interests of justice may require”).

Lindquist has not offered a reason why this court should make an exception in this case. The district court record is not developed as to whether law enforcement could have obtained a timely warrant, and the existing record suggests that the responding officers, who worked in a rural area, were quite occupied investigating the accident scene, attempting to locate Lindquist, who left the accident scene and attempted to evade police by hiding at her home about 36 miles away, and responding to other calls, including a missing-child report. We note that such factual circumstances suggest that an exigency existed in this case that would provide a constitutional basis for the search under the totality-of-circumstances test set forth in *McNeely*. 133 S. Ct. at 1552.

As a separate issue, the state also argues that the good-faith exception available under federal law should apply here, asserting that Lindquist’s Fourth-Amendment argument is premised solely on federal law. This characterization of Lindquist’s argument is inaccurate. Lindquist claims that “[t]he warrantless search of [her] blood was unconstitutional,” citing to the Fourth Amendment of the United States Constitution, but she also cites *Brooks* extensively, as well as other Minnesota caselaw and rules. See *State v. Eichers*, 840 N.W.2d 210, 215-16 (Minn. App. 2013) (stating that a defendant’s rights to challenge a search under the Minnesota Constitution are coextensive with the defendant’s rights under the Fourth Amendment to the United States Constitution).

Minnesota has not adopted the good-faith exception to the warrant requirement. *State v. Jackson*, 742 N.W.2d 163, 180 n.10 (Minn. 2007). In *Brooks*, Justice Stras filed a concurring opinion, urging adoption of the good-faith exception, but recognizing that the exception has not been adopted in Minnesota. 838 N.W.2d at 574-75 (Stras, J., concurring). Given these recent statements, we do not believe that the good-faith exception can be adopted in the first instance by this court. *See Eichers*, 840 N.W.2d at 228 (recognizing that court of appeals is an error-correcting court and that authority to interpret the Fourth Amendment in state cases “lies with the supreme court”).

Based on the reasoning set forth in our first decision, and because the issue of Lindquist’s warrantless blood draw was not raised in the district court or in Lindquist’s first appeal, we affirm Lindquist’s conviction.

**Affirmed.**