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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1043**

State of Minnesota,  
Respondent,

vs.

Wesley Eugene Brooks,  
Appellant.

**Filed May 29, 2012  
Affirmed  
Schellhas, Judge**

Hennepin County District Court  
File No. 27-CR-10-2851

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Hans Zinn  
Larson, Assistant County Attorneys, Minneapolis, Minnesota (for respondent)

Carson J. Heefner, Heefner Nelson Law, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and  
Randall, Judge.\*

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

## UNPUBLISHED OPINION

SCHELLHAS, Judge

Following a bench trial on stipulated facts, appellant challenges his first-degree driving-while-impaired conviction. Appellant argues that the district court erred by determining that he voluntarily consented to a blood test after being read the implied-consent advisory. We affirm.

### FACTS

In January 2010, Minnesota State Patrol Trooper Azzahya Williams stopped appellant Wesley Brooks's pick-up truck after observing "sparks flying underneath the vehicle." According to the complaint, after stopping Brooks, Trooper Williams "observed several signs of intoxication" and gave Brooks a preliminary breath test that revealed that his alcohol concentration was 0.21. Trooper Williams arrested Brooks for driving while impaired and transported him to the Hennepin County Medical Center, where two police officers were present. Trooper Williams read Brooks the implied-consent advisory, which states that "Minnesota law requires the person to take a test," "refusal to take a test is a crime," and "the person has the right to consult with an attorney." *See* Minn. Stat. § 169A.51, subd. 2(1)–(2), (4) (2008). Brooks consulted with an attorney by phone and consented to a urine test but was unable to urinate. The officers then asked Brooks whether he would submit to a blood test. Brooks consulted with an attorney and consented to the blood test. The blood test revealed an alcohol concentration of 0.16. At no point during the implied-consent advisory did Trooper Williams attempt to obtain a warrant for the collection of urine or blood.

Respondent State of Minnesota charged Brooks with driving while impaired in violation of Minn. Stat. §§ 169A.20, subd. 1(1), subd. 3, 169A.24, subd. 1(1), subd. 2, 169A.275, 169A.276 (2008). Brooks moved to suppress the blood-test results, and the district court denied his motion. Brooks proceeded to trial based on stipulated facts pursuant to Minn. R. Crim. P. 26.01, subd. 4. The stipulated facts included that Brooks “has three prior impaired driving related incidents within the last ten years.” The court convicted Brooks of first-degree driving while impaired.

Brooks appeals.

## D E C I S I O N

The implied-consent law provides that “[a]ny person who drives . . . a motor vehicle within this state . . . consents . . . to a chemical test of that person’s blood, breath, or urine for the purpose of determining the presence of alcohol.” Minn. Stat. § 169A.51, subd. 1(a) (2008). The law includes an implied-consent advisory requiring, among other things, that “[a]t the time a test is requested, the person must be informed: (1) that Minnesota law requires the person to take a test . . . [and] (2) that refusal to take a test is a crime.” *Id.*, subd. 2(1)–(2).

“When reviewing a district court’s ruling on a pretrial motion to suppress evidence, we review . . . the district court’s legal determinations de novo,” *State v. Buckingham*, 772 N.W.2d 64, 70 (Minn. 2009) (quotation omitted), and, “[w]hen the facts are not in dispute, the validity of a search is a question of law subject to de novo review,” *Haase v. Comm’r of Pub. Safety*, 679 N.W.2d 743, 745 (Minn. App. 2004). The

United States and Minnesota Constitutions prohibit “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. “[C]ompelled intrusion into the body for blood to be analyzed for alcohol content must be deemed a Fourth Amendment search.” *Skinner v. Ry. Labor Execs. Ass’n*, 489 U.S. 602, 616, 109 S. Ct. 1402, 1412 (1989) (quotation omitted); *accord State v. Shriner*, 751 N.W.2d 538, 541 (Minn. 2008) (“Taking a person’s blood is considered a search under the Fourth Amendment.”). “[W]arrantless searches are generally unreasonable.” *State v. Netland*, 762 N.W.2d 202, 212 (Minn. 2009). “Nevertheless, because the ultimate touchstone of the Fourth Amendment is ‘reasonableness,’ the warrant requirement is subject to certain exceptions.” *Shriner*, 751 N.W.2d at 541 (quotation omitted). These exceptions include consent of the person searched, *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011), and exigent circumstances, *Netland*, 762 N.W.2d at 212.

Brooks challenges the district court’s denial of his motion to suppress his blood-test results, arguing that his consent was coerced and therefore invalid, because the implied-consent advisory informed him that refusal to take a test is a crime. The state argues that “the blood-draw was justified by the single-factor exigency of the dissipation of alcohol.” The state’s argument is persuasive in light of the supreme court’s decision in *State v. Netland*. *See Netland*, 762 N.W.2d at 214.

In *Netland*, the appellant argued that the state “impermissibly condition[ed] her driving privileges on an unconstitutional, warrantless search for blood-alcohol content” and that “the criminal sanctions imposed by the test-refusal statute nullify the voluntariness of submission to a chemical test.” *Id.* at 211–12 & n.8. The supreme court

noted that the unconstitutional-conditions doctrine “reflects a limit on the state’s ability to coerce waiver of a constitutional right where the state may not impose on that right directly” and that courts have applied the doctrine in other cases not involving search-and-seizure rights. *Id.* at 211. But the court declined to determine whether the unconstitutional-conditions doctrine applied because the appellant did not satisfy a pleading prerequisite to the doctrine’s application—that a party “successfully plead[] the merits of the underlying unconstitutional government infringement.” *See id.* at 211–12. The court reasoned that the appellant failed to establish that “the criminal test-refusal statute authorizes an unconstitutional search” because the exigent-circumstances exception justifies warrantless blood tests when “there is probable cause to suspect a crime in which chemical impairment is an element.” *Id.* at 212, 214 (noting that “rapid, natural dissipation of alcohol in the blood creates single-factor exigent circumstances that will justify the police taking a warrantless, nonconsensual blood draw from a defendant” (quotation omitted)). Because the court upheld the constitutionality of the search and seizure on that ground and related grounds, it declined to address “whether requiring a driver suspected of driving while impaired to submit to a chemical test necessarily coerces consent.” *Id.* at 212 n.8.

Consistent with *Netland*, we conclude that Brooks does not satisfy the pleading prerequisite to applying the unconstitutional-conditions doctrine because the exigent-circumstance exception renders the search and seizure of his blood reasonable and therefore constitutional. Because we uphold the constitutionality of the search and seizure

on that ground, we decline to address whether the implied-consent advisory coerced Brooks's consent.

**Affirmed.**