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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1405**

Joe Edward McCarroll, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed April 28, 2014  
Affirmed  
Halbrooks, Judge**

Itasca County District Court  
File No. 31-CV-13-416

James Perunovich, Law Offices of James Perunovich, P.F., Hibbing, Minnesota (for appellant)

Lori Swanson, Attorney General, Jacob Fischmann, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Cleary, Chief Judge; Halbrooks, Judge; and Schellhas, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

On appeal from an order sustaining the revocation of his driver's license under the implied-consent law, Minn. Stat. § 169A.52 (2012), appellant argues that evidence obtained as a result of a warrantless entry into his home should have been suppressed.

Because the record supports the district court's finding of voluntary consent to enter appellant's home, we affirm.

## **FACTS**

On January 31, 2013, a citizen reported a car that was in a ditch. Deputy Eddie Lee Huffman with the Itasca County Sheriff's Department was dispatched to the scene. After finding no one in the vehicle, Deputy Huffman determined that its registered owner was appellant Joe Edward McCarroll. Deputy Huffman went to McCarroll's home to conduct a welfare check. He arrived at McCarroll's home dressed in his uniform, knocked on the side door, and entered the home after the door was opened. The parties dispute who opened the door and whether the deputy had permission to enter. Deputy Huffman spoke with McCarroll and later administered a breath test, which McCarroll failed. McCarroll's driving privileges were revoked under the implied-consent law.

McCarroll sought judicial review of his driver's license revocation, arguing that Deputy Huffman's entry into his home was unlawful. The parties offered conflicting testimony at a hearing. Deputy Huffman testified that McCarroll's wife answered the door and let him into the house. McCarroll testified that he answered the door while talking on the phone with a towing service, stepped back from the door, and walked to the kitchen, leaving the door open. McCarroll further testified that Deputy Huffman followed him to the kitchen, waited for him to finish his phone call, and then asked whether he was all right. Neither McCarroll nor his wife asked Deputy Huffman to leave or indicated that he was unwelcome.

Accepting McCarroll's version of the facts, the district court found that McCarroll impliedly consented to the deputy's entry into the home and issued an order sustaining the revocation of McCarroll's driver's license. McCarroll now appeals.

## D E C I S I O N

McCarroll challenges the district court's finding that he consented to Deputy Huffman's entry. The United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, evidence seized in violation of the constitution is inadmissible for criminal prosecution in a court of law. *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007). The exclusionary rule applies to implied-consent license-revocation proceedings. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010).

The warrantless entry of a home by a government agent is presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 1380 (1980). Voluntary consent is a valid exception to the search-warrant requirement, regardless of whether consent is granted orally or implied from nonverbal conduct. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). Whether voluntary consent was given is a question of fact, *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994), which we review on a clearly erroneous basis, *State v. Alayon*, 459 N.W.2d 325, 330 (Minn. 1990).

McCarroll testified that he opened the door to Deputy Huffman, whom he recognized as a law-enforcement officer, stepped back from the door, and walked toward the kitchen while leaving the door open. This testimony reasonably supports the district

court's finding that McCarroll impliedly consented to the entry. *See State v. Howard*, 373 N.W.2d 596, 599 (Minn. 1985) (holding that the act of completely opening a door to a police officer and then stepping back can “only be interpreted as constituting limited consent to enter”); *State v. Vang*, 636 N.W.2d 329, 332, 333 (Minn. App. 2001) (holding that act of opening a door to a police officer and then walking back into the apartment constituted consent to enter).

McCarroll relies on two cases in support of his argument that his testimony is insufficient to establish consent. This reliance is misplaced. In *Othoudt*, a deputy's warrantless entry into the appellant's home, as part of an investigation of a traffic accident, was not consensual because the deputy simply walked into the home without knocking or asking for permission to enter. 482 N.W.2d at 221, 224. And in *Negaard v. Comm'r of Pub. Safety*, consent to enter a motor home was not established because the appellant failed to manifest any “welcoming behavior” in his interaction with law enforcement. 500 N.W.2d 148, 149, 150 (Minn. App. 1993). These prior decisions are factually distinguishable from this case.

Because the district court's finding of consent is supported by record evidence, we will not disturb its determination on appeal.

**Affirmed.**