

A08-1408

STATE OF MINNESOTA  
IN SUPREME COURT

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James Kolby-Ralph Lund, Jr.,

Respondent,

Vs.

Commissioner of Public Safety,

Appellant

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RESPONDENT'S BRIEF AND APPENDIX

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Samuel A. McCloud  
Attorney Reg. No. 69693

Carson J. Heefner  
Attorney Reg. No. 286011

McCloud & Heefner, P.A.  
Suite 1000, Circle K, Box 216  
Shakopee, MN 55379

Lori Swanson  
Minnesota Attorney General

John S. Garry  
Assistant Attorney General

445 Minnesota Street  
Suite 1800  
St. Paul, MN 55101

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR APPELLANT

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

## TABLE OF CONTENTS

1.	Table of Authorities.....	1
2.	Legal Issue.....	2
3.	Statement of the Case and Facts.....	3
4.	Argument:	
	I.    Standard of Review.....	4
	II.   The Court of Appeals Correctly Awarded Costs and Disbursements.....	4
5.	Conclusion.....	7

## TABLE OF AUTHORITIES

1.	<u>Bayard v. Kling</u> , 16 Minn. 221 (1870).....	5
2.	<u>Madson v. Minnesota Mining &amp; Mfg. Co.</u> 612 N.W.2d 168 (Minn.2000).....	4
3.	<u>State v. Johnson</u> , 53 N.W.2d 40 (Minn.1996).....	4
4.	<u>State v. Lienhard</u> , 431 N.W.2d 861 (Minn.1980).....	4
5.	<u>Vlahos v. R &amp; I. Constr. Of Bloomington, Inc.</u> , 676 N.W.2d 672 (Minn.2001)...	4

## **LEGAL ISSUE**

Is the State of Minnesota subject to costs and disbursements in cases where the State is a party in its sovereign capacity and no statute authorizes the taxation of costs and disbursements against the state?

The Court of Appeals ruled in the affirmative.

## STATEMENT OF THE CASE AND FACTS

The Respondent was arrested for Driving While Impaired in Mower County, State of Minnesota. The Respondent agreed to submit to a breath test using the Intoxilyzer 5000. The result of the breath test was a .15, and Appellant revoked Respondents driver's license under the Implied Consent law.

The Respondent filed a petition for judicial review, and sought discovery of the source code for the Intoxilyzer 5000. The District Court denied Respondent's motion.

The Respondent then appealed the denial of the discovery request to the Minnesota Court of Appeals. The Court of Appeals reversed and remanded, ruling that the District Court abused its discretion in denying said motion.

The Respondent filed a notice of taxation of costs and disbursements totaling \$981.68. The Appellant objected thereto. The Court of Appeals awarded Respondent's request for costs and disbursements, and judgment was issued.

The Appellant sought review by the Minnesota Supreme Court. The Court granted review.

## ARGUMENT

### I. Standard of Review:

The existence of immunity is a question of law. State v. Johnson, 533 N.W.2d 40 (Minn.1996). The interpretation of appellate rules are a question of law. Madson v. Minnesota Mining & Mfg. Co., 612 N.W.2d 168 (Minn.2000). The interpretation of a statute is likewise a question of law. Vlahos v. R& I Constr. Of Bloomington, Inc., 676 N.W.2d 672 (Minn.2004). Questions of law are reviewed de novo. Madson, 612 N.W.2d at 170.

### 2. The Court of Appeals Correctly Awarded Costs and Disbursements:

The Appellant argues that the state is immune from costs and disbursements because, in an Implied Consent proceeding, it is acting in its sovereign capacity. And because the language contained in the Implied Consent statute does not implicate liability for costs and disbursements, the state should not be required to pay those costs and disbursements when it loses an appeal. Although Respondent does not dispute the fact that the Commissioner of Public Safety acts within its sovereign capacity in the Implied Consent arena, Respondent submits that the Court of Appeals correctly used Lienhard as authority to award costs and disbursements. See: State v. Lienhard, 431 N.W.2d 861 (Minn.1988).

In Lienhard, the plaintiff was awarded \$200,000 due to a motorcycle accident, and 50% of the liability was apportioned to the State of Minnesota. Id. at 863. The state's maximum liability under law at the time was \$100,000, which it paid. The parties then reserved the question of whether the State should be held liable for costs and

disbursements over and above the \$100,000 liability threshold. The Court of Appeals ruled that the state was not liable. Id. The Minnesota Supreme Court granted review on the issue of the state's liability for costs and disbursements.

Although Lienhard was a tort case, the analysis by the Supreme Court indicates that costs and disbursements should be awarded when the state is a party. In Lienhard, The Court questioned whether, because the state had already paid its maximum "total liability" under statute, costs and disbursements should nevertheless be awarded. Id. at 864. The Court specifically noted that the statute limiting the state's "total liability" to \$100,000, "...does not contain any specific reference to costs, disbursements, or interest". Id. In other words, because the state had already met its maximum liability threshold before costs and disbursements were added, and the statute was silent on those costs and disbursements, should the state be liable for them absent specific statutory language?

As the Court noted, "[s]tatutory costs and disbursements, though includible in a judgment entered in a civil action, are "add-ons" rather than part of the cause of action itself". Id. And as the Court correctly noted, "[c]osts and disbursements were unknown to the common law; they are creatures of statute". Id., citing Bayard v. Kling, 16 Minn. 221, 232-33 (1870). The Court properly noted that "...costs and disbursements are not part of the claim for compensation for personal injury; they are reimbursement of the expense of litigating the claim". Id. The Court held that costs and disbursements, even though not specifically referenced in the statute, must be paid by the state. Id.

The Respondent respectfully submits that the Supreme Court in Lienhard expressly authorized costs and disbursements when the State is a party to litigation, even

when statutory language is silent on the issue. Again, even though Lienhard was a tort case, the Court's rationale is compelling. Costs and disbursements are not a punishment against the state. They are reimbursement for expenses incurred in litigating a claim against the state. It should not matter what type of case is involved. Whether costs and disbursements are incurred in a tort case, or in the Implied Consent arena, the expenses are real and calculable. The fact is that whenever a party feels aggrieved by a decision where the state is a party, and the Appellate Courts agree that the result was unjust, reasonable costs and disbursements incurred in order to right the wrong should be allowed.

Moreover, it is only fair and just to require the state to pay costs and disbursements when the state is on the losing end. There can be no dispute or argument that when a driver loses an Implied Consent hearing at the District Court level, subsequently appeals the decision and loses in the appellate courts, the state seeks and is awarded costs and disbursements. That is why every driver who appeals an Implied Consent case is required to file a cost bond. The bond is "...conditioned upon the payment of all costs and disbursements awarded against the appellant on the appeal...." Minn.R.Civ.App.P. Rule 107.01. If a private citizen must pay the state costs and disbursements when the later prevails at the appellate level, there is no rational reason to deny the same to the private citizen when the state is on the losing end.

The Respondent is not suggesting that the state should be liable for costs and disbursements in every case. For instance, when the state loses an Implied Consent hearing in district court, the state should not be responsible for reimbursing the costs

associated with that litigation. Similarly, if a driver loses in district court, appeals to the appellate courts and loses there as well, the state should not be responsible for reimbursing the costs associated with said appeal. However, when a driver appeals a decision to the appellate courts and prevails, it means that the district court erred either as a matter of law or in applying the law to the facts. In such an instance, it is only fair and just that a driver be reimbursed for the costs associated with remedying a wrongful decision that was rendered by an arm of the government.

**3. Conclusion:**

For the reasons stated herein, Respondent respectfully submits that the Court of Appeals did not err in granting costs and disbursements for an appeal in which the State of Minnesota did not prevail.

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Samuel A. McCloud  
Attorney Reg. No. 6969  
Carson J. Heefner  
Attorney Reg. No. 286011  
Suite 1000, Circle K, Box 216  
Shakopee, MN 55379  
(952) 445-6595  
ATTORNEYS FOR RESPONDENT