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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1042**

State of Minnesota,  
Respondent,

vs.

Wesley Eugene Brooks,  
Appellant.

**Filed May 7, 2012  
Affirmed  
Wright, Judge**

Scott County District Court  
File Nos. 70-CR-09-17926, 70-CR-10-2169

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Assistant Scott County Attorney, Shakopee, Minnesota (for respondent)

Carson J. Heefner, McCloud & Heefner, P.A., Lindstrom, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Johnson, Chief Judge; and  
Crippen, 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## UNPUBLISHED OPINION

**WRIGHT**, Judge

Appellant challenges his convictions of first-degree driving while impaired (DWI), arguing that the district court erroneously denied his motion to suppress evidence of intoxication. Appellant contends that the exigent-circumstances exception to the search-warrant requirement does not apply to the warrantless collection of his urine for testing purposes. We affirm.

### FACTS

The convictions that are the subject of this appeal arose from two impaired-driving incidents. At 2:06 a.m. on July 31, 2009, Shakopee Police Officer Michelle Schmidt initiated an investigatory stop of a vehicle in Shakopee. The vehicle's driver, appellant Wesley Eugene Brooks, exhibited indicia of intoxication. Brooks consented to submit to a urine test, and the test results for the urine sample that Brooks provided at 3:15 a.m. reported an alcohol concentration of .14. During an inventory search of Brooks's vehicle, the police recovered a glass pipe and a bag containing 5.1 grams of marijuana. Brooks subsequently was charged with first-degree DWI, possessing marijuana in a motor vehicle, possessing drug paraphernalia, driving after cancellation, and operating a vehicle without a valid driver's license.

Approximately six months later, at 7:11 a.m. on January 25, 2010, Prior Lake police officers discovered Brooks unconscious in the driver's seat of his vehicle. The vehicle's engine was running and its gear was in the drive position while Brooks's foot rested on the brake. When roused by the officer, Brooks exhibited indicia of

intoxication. Brooks agreed to submit to a urine test, and the urine sample that Brooks provided at 8:45 a.m. registered an alcohol concentration of .15. After providing the sample, Brooks flicked urine at an officer. During a search of Brooks's vehicle, the police recovered marijuana, a bottle of vodka, and a cellophane package containing a white powdery substance. Brooks subsequently was charged with several offenses, including first-degree DWI, fourth-degree assault of a peace officer, possessing a controlled substance, possessing marijuana in a motor vehicle, possessing an open bottle of alcohol in a motor vehicle, and driving after license cancellation.

Brooks moved to suppress the results of the urine tests in both cases, arguing that the state was required to obtain a search warrant before collecting Brooks's urine samples because exigent circumstances did not exist to justify a warrantless search. The district court held a consolidated omnibus hearing on the motions. Brooks presented the testimony of a forensic scientist who opined that alcohol in a person's urine does not dissipate once it reaches the bladder. The expert witness testified that urine is stored in the bladder until the bladder is voided, and the alcohol concentration in the bladder continuously changes as urine is excreted into the bladder. In support of Brooks's argument that the officer could have reached a judge to obtain a search warrant by telephone before collecting Brooks's urine, an attorney testified regarding his experience contacting judges by telephone after business hours. Testifying for the state, a Minnesota Bureau of Criminal Apprehension forensic scientist stated that urine is constantly produced by the human body, alcohol substantially increases urine production, and the

concentration of alcohol in the bladder does not remain constant as urine is produced. On December 6, 2010, the district court denied Brooks's motion to suppress the evidence.

The cases proceeded to a bench trial. On March 21, 2011, the district court found Brooks guilty of first-degree DWI on July 31, 2009, a violation of Minn. Stat. §§ 169A.20, subd. 1(5), 169A.24, subd. 1(1) (2008); first-degree DWI on January 25, 2010, a violation of Minn. Stat. §§ 169A.20, subd. 1(5), 169A.24, subd. 1(1) (2008 & Supp. 2009); and fourth-degree assault of a peace officer, a violation of Minn. Stat. § 609.2231, subd. 1 (2008). The district court dismissed the remaining charges, and this appeal followed.

## D E C I S I O N

Brooks argues that the district court erred by denying his motion to suppress the results of his urine tests because (1) the exigent-circumstances exception to the warrant requirement does not permit the warrantless collection of a urine sample and (2) the exigent-circumstances exception does not apply under the circumstances here because the police could have obtained a search warrant by telephone. When reviewing a pretrial order denying a motion to suppress evidence based on the district court's application of the law to the undisputed facts, we determine as a matter of law whether the evidence must be suppressed. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

The United States and Minnesota constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. The collection of a urine sample is a search. *Ellingson v. Comm'r of Pub. Safety*, 800 N.W.2d 805, 807 (Minn. App. 2011) (citing *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 616-17, 109 S. Ct.

1402, 1413 (1989) (concluding that taking blood, breath, or urine sample implicates Fourth Amendment)), *review denied* (Minn. Aug. 24, 2011). A warrantless search is per se unreasonable unless an exception to the warrant requirement applies. *Othoudt*, 482 N.W.2d at 221-22.

The presence of exigent circumstances is an exception that can justify a warrantless search. *State v. Netland*, 762 N.W.2d 202, 212 (Minn. 2009). The rapid dissipation of alcohol through the body's natural processes creates such an exigency. *Id.*; *State v. Shriner*, 751 N.W.2d 538, 545 (Minn. 2008). The Minnesota Supreme Court has held that blood tests and breath tests conducted without a search warrant are reasonable because they fall within the exigent-circumstances exception to the warrant requirement. *Netland*, 762 N.W.2d at 214 (holding that warrantless breath test is admissible); *Shriner*, 751 N.W.2d at 545 (holding that warrantless blood test is admissible). And we have concluded that the “exigent circumstances justifying a warrantless blood or breath test—the rapid change in alcohol concentration through the body's natural processes—also justify the warrantless collection of a urine sample.” *Ellingson*, 800 N.W.2d at 807.

Here, as in *Ellingson*, forensic expert testimony established that the collection of urine, like the collection of blood, is time-sensitive because the body's natural processes cause the alcohol concentration to change rapidly. *See id.* (describing forensic expert testimony concerning rapid dissipation of alcohol concentration in urine). Both forensic experts testified unequivocally that the alcohol concentration in urine stored in the bladder continuously changes as more urine is produced and that alcohol causes an increase in urine production. According to the state's forensic scientist, the alcohol

concentration in blood and urine are “extremely similar and related” in that both are constantly rising and falling. Applying the legal principles established in *Netland* and *Ellingson*, we conclude that the warrantless collection of Brooks’s urine was justified on both occasions by the exigent circumstance of the rapid dissipation of alcohol in urine.

Brooks contends that, because the police can quickly and easily obtain a search warrant over the telephone, the evanescent nature of alcohol does not create an exigency justifying a warrantless search. Exigent circumstances did not exist on either occasion at issue here, Brooks argues, because the police had ample time to request a telephonic search warrant from a judge before collecting Brooks’s urine. Minnesota law authorizes a police officer to obtain a search warrant by submitting sworn oral testimony to a judge by telephone. Minn. R. Crim. P. 36.01. But the possibility of obtaining a telephonic search warrant is not sufficient to overcome the exigent circumstance of the rapid dissipation of alcohol in a suspect’s body. *Shriner*, 751 N.W.2d at 549; *see also Netland*, 762 N.W.2d at 212-13 (discussing the *Shriner* decision). “[T]he delay required to obtain a telephonic warrant creates an unreasonable burden for law enforcement to evaluate how much time must pass before the evidence disappears.” *Netland*, 762 N.W.2d at 213. Accordingly, Brooks’s argument fails as a matter of law.<sup>1</sup>

Because the evanescent nature of alcohol in urine satisfies the exigent-circumstances exception to the search-warrant requirement, the collection of Brooks’s

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<sup>1</sup> We also reject Brooks’s argument that the Minnesota Supreme Court’s analysis in *Shriner* is erroneous. It is well-settled law that neither the Minnesota Court of Appeals nor the district court may disregard binding precedent. *See Jendro v. Honeywell, Inc.*, 392 N.W.2d 688, 691 n.1 (Minn. App. 1986) (observing that Minnesota Supreme Court precedent binds this court), *review denied* (Minn. Nov. 19, 1986).

urine without a search warrant was not an unreasonable search. The district court did not err by denying Brooks's motion to suppress the results of the urine tests.

**Affirmed.**