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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-2074**

Nancy Jean Dupont, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed June 27, 2011  
Affirmed  
Klaphake, Judge**

LeSueur County District Court  
File No. CV-10-29

Carson J. Heefner, Lindstrom, Minnesota (for appellant)

Lori Swanson, Attorney General, Melissa J. Eberhart, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Klaphake, Judge; and Connolly, Judge.

**UNPUBLISHED OPINION**

**KLAPHAKE**, Judge

Appellant Nancy Jean Dupont challenges a district court order sustaining the revocation of her driver's license under the implied consent law, arguing that police should have been required to obtain a search warrant before obtaining her urine for testing purposes. Because we conclude that the evanescent nature of alcohol in

appellant's urine was an exigent circumstance that permitted the warrantless search, we affirm.

## DECISION

Individuals are protected from unreasonable searches and seizures under both the Minnesota and United States Constitutions. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A search without a warrant is presumptively unreasonable. *State v. Othoudt*, 482 N.W.2d 218, 221-22 (Minn. 1992). The taking of a urine sample is subject to Fourth Amendment protection. *Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 616-17, 109 S. Ct. 1402, 1413 (1989). However, a warrantless search is permissible as an exception to the warrant requirement if “the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *State v. Shriner*, 751 N.W.2d 538, 541 (Minn. 2008) (quotation omitted).

In Minnesota, for purposes of seizing evidence in DWI cases, blood and breath tests are subject to the exigent circumstances exception to the warrant requirement. *State v. Netland*, 762 N.W.2d 202, 212-13 (Minn. 2009) (holding warrantless breath test admissible); *State v. Shriner*, 751 N.W.2d 538, 545 (Minn. 2008) (holding warrantless blood test admissible). In *Netland*, the court reasoned, “It is the chemical reaction of alcohol in the person's body that drives the conclusion on exigency, regardless of the criminal statute under which the person may be prosecuted.” 762 N.W.2d at 213. This court recently held that urine testing, like blood and breath testing, is also subject to the exigent circumstances exception. *Ellingson v. Comm'r of Pub. Safety*, \_\_\_ N.W.2d \_\_\_

(Minn. App. June 27, 2011). There, we held that “the exigent circumstances justifying a warrantless blood or breath test—the rapid change in alcohol concentration through the body’s natural process—also justify the warrantless collection of a urine sample.” *Id.* at —.

Appellant has offered no reason for this court to deviate from *Ellingson*. She relies on arguments that are identical to those rejected by this court in *Ellingson*, claiming that there is no exigency that relieves police from obtaining a warrant before testing a driver’s urine for alcohol because alcohol does not continue to metabolize once it reaches the bladder. However, as in *Ellingson*, the state here offered expert witness testimony that collection of urine in implied consent cases is time-sensitive because of metabolic processes related to the presence of alcohol in the body. The state’s expert testified that alcohol has a diuretic effect that causes a marked increase in a driver’s urge to urinate and that the concentration of alcohol in urine changes rapidly due to the constant introduction of urine into the bladder. Through introduction of this evidence, the state demonstrated that within the two-hour statutory period for implied consent testing purposes, the evanescent nature of alcohol in appellant’s urine was an exigency that excused police from obtaining a warrant before seizing that evidence.

**Affirmed.**