

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1589**

Karl Leroy Swanson, petitioner,  
Appellant,

vs.

Commissioner of Public Safety,  
Respondent.

**Filed May 21, 2012  
Affirmed  
Hudson, Judge**

Hennepin County District Court  
File No. 27-CV-10-2461

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

Lori Swanson, Attorney General, Joan M. Eichhorst, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Johnson, Chief Judge; and Randall, Judge.\*

**UNPUBLISHED OPINION**

**HUDSON, Judge**

Appellant challenges the district court's orders sustaining the revocation of his driver's license under the implied-consent law, arguing that the chemical testing of his

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

urine violated the constitutional prohibition on unreasonable searches and seizures because his consent to testing was not voluntary for Fourth Amendment purposes. Because we conclude that the search was justified by exigent circumstances, we affirm.

## **FACTS**

In November 2009, a Hennepin County deputy sheriff stopped a vehicle driven by appellant Karl Leroy Swanson on reasonable suspicion that appellant was driving while impaired. Appellant was read the implied-consent advisory and consented to a urine test. The urine sample, which was collected approximately one hour after the stop, showed an alcohol concentration of .17. The Minnesota Commissioner of Public Safety revoked appellant's driver's license under the implied-consent law, Minn. Stat. § 169A.51-.53 (2008).

Appellant challenged the revocation in district court, arguing that the warrantless collection of his urine sample violated his Fourth Amendment rights and neither the exigent-circumstances nor the consent exceptions to the warrant requirement applied. He presented testimony from a toxicologist that once alcohol leaves the bloodstream and enters the bladder, it remains until the bladder is voided. A toxicologist from the Minnesota Bureau of Criminal Apprehension testified for the commissioner that, after alcohol peaks in the bloodstream, it begins to appear in the urine and will have a diuretic effect that continues for about two hours after the cessation of drinking.

The district court sustained the revocation, concluding that the testing of appellant's urine did not violate his Fourth Amendment rights because the exigency exception to the warrant requirement applied, based on the application of *State v.*

*Netland*, 762 N.W.2d 202 (Minn. 2009), and *State v. Shriner*, 751 N.W.2d 538 (Minn. 2008). The district court did not address appellant's alternative argument that his submission to chemical testing was not voluntary because of the criminal sanctions imposed by the implied-consent statute.

Appellant challenged the district court's order in this court. This court held that, if we were to conclude that the exigency exception to the warrant requirement did not apply, a remand would be necessary to determine the applicability of the consent exception. *Swanson v. Comm'r of Pub. Safety*, No. A10-1620 (Minn. App. Apr. 29, 2011) (order op.). Therefore, to foster meaningful review, the case was remanded for the district court to decide the applicability of that exception. *Id.* On remand, the district court found that, after speaking with his attorney, appellant expressly consented to chemical testing and understood that refusal to test would amount to a separate crime. The district court concluded that because appellant freely and voluntarily consented to the warrantless seizure of his urine, the seizure was constitutional. Appellant seeks review of both district court orders.

## **D E C I S I O N**

In a civil action relating to revocation of driving privileges under the implied-consent law, the commissioner has the burden to demonstrate that revocation was appropriate by the preponderance of the evidence. *Ellingson v. Comm'r of Pub. Safety*, 800 N.W.2d 805, 806 (Minn. App. 2011), *review denied* (Minn. Aug. 24, 2011). This court reviews for clear error a district court's findings of fact sustaining an implied-consent revocation and will "overturn conclusions of law only if the district court

erroneously construed and applied the law to the facts of the case.” *Id.* (quotation and citations omitted). The analysis of Fourth Amendment principles in criminal cases applies equally to Fourth Amendment arguments in the context of license-revocation proceedings. *See Knapp v. Comm’r of Pub. Safety*, 610 N.W.2d 625, 628 (Minn. 2000) (relying on criminal cases in analyzing legality of traffic stop in civil case).

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. const. amend. IV; Minn. const. art. I, § 10. Collection of a urine sample constitutes a search for Fourth Amendment purposes. *Skinner v. Ry. Labor Execs.’ Ass’n*, 489 U.S. 602, 616–17, 109 S. Ct. 1402, 1413 (1989) (concluding that taking breath, blood, or urine sample implicates Fourth Amendment); *Ellingson*, 800 N.W.2d at 807. “But the [United States] Supreme Court has held that a warrantless search to determine whether a person was driving under the influence does not necessarily violate the Fourth Amendment.” *Netland*, 762 N.W.2d at 212 (citing *Schmerber v. California*, 384 U.S. 757, 772, 86 S. Ct. 1826, 1836 (1966)). Although warrantless searches generally are unreasonable, certain exceptions apply, including exceptions for exigent circumstances and for consent. *Id.* at 212, 212 n.8.

The Minnesota Supreme Court has held that warrantless breath and blood tests are reasonable searches, based on the presence of exigent circumstances. *Id.* at 214 (upholding warrantless breath test); *Shriner*, 751 N.W.2d at 545 (upholding warrantless blood test). The supreme court concluded that the rapid dissipation of alcohol through the body’s natural processes creates a single-factor exigent circumstance that justifies a warrantless search. *Netland*, 762 N.W.2d at 213; *Shriner*, 751 N.W.2d at 549–50. Under

the same reasoning, we recently held that the single-factor exigency exception also applies to warrantless searches by urine sample. *Ellingson*, 800 N.W.2d at 807.

Appellant argues that his consent to testing was coerced because the implied-consent advisory informed him that failure to submit to testing was a crime. Appellant accurately states that the implied-consent statute criminalizes the failure to submit to testing. *See* Minn. Stat. § 169A.51, subd. 2(2) (2008) (requiring that a person requested to take a test to determine impairment must be informed “that refusal to take a test is a crime”). But in *Netland*, the Minnesota Supreme Court rejected the argument that a breath test administered pursuant to the implied-consent statute constituted an unreasonable search because it impermissibly conditioned driving privileges on an unconstitutional, warrantless search for blood-alcohol content. *Netland*, 762 N.W.2d at 211–12. In doing so, the supreme court determined that, because the driver had not shown that a warrantless search for her blood-alcohol content would have been unconstitutional, it need not consider the applicability of the unconstitutional conditions doctrine, which precludes the state from coercing waiver of a constitutional right when the state could not directly infringe on that right. *Id.* Noting that “the ultimate touchstone of the Fourth Amendment is reasonableness,” the supreme court held that when probable cause exists to suspect a crime in which chemical impairment is an element of the offense, the exigent-circumstances exception to the warrant requirement applies. *Id.* at 212, 214 (quotation omitted). And because it upheld the constitutionality of the search on that ground, the supreme court concluded that it was not required to address appellant’s argument relating to whether the statutory requirement that a driver

suspected of driving while impaired must submit to chemical testing necessarily coerces consent. *Id.* at 212 n.8.<sup>1</sup> We conclude that application of the supreme court's analysis in *Netland* precludes any determination that appellant retained a valid constitutional right to withhold his consent to testing.

**Affirmed.**

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<sup>1</sup> Likewise, in a recent unpublished opinion, *State v. Zortman*, No. A11-646, 2012 WL 426586, at \*3 (Minn. App. Feb. 13, 2012), we recognized that the supreme court resolved the reasonableness issue in *Netland* by concluding that the exigent-circumstances exception justifies chemical testing. Although this court does not accord precedential effect to unpublished opinions, we have indicated that they may have persuasive value. *State v. Zais*, 790 N.W.2d 853, 861 (Minn. App. 2010), *aff'd*, 805 N.W.2d 32 (Minn. 2011).