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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1677**

John Michael Demskie, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed May 9, 2011
Affirmed
Halbrooks, Judge**

Goodhue County District Court
File No. 25-CV-10-1166

Charles A. Ramsay, Daniel J. Koewler, Ramsay Law Firm, P.L.L.C., Roseville,
Minnesota (for appellant)

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Paul, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his motion for a *Frye-Mack*
hearing on the admissibility of his urine test results. We affirm.

FACTS

Appellant John M. Demskie was arrested on suspicion of driving while impaired on March 28, 2010. He provided a urine sample, the testing of which showed an alcohol concentration of .12, and his driving privileges were revoked pursuant to Minn. Stat. §§ 169A.51-.53 (2010). Before his implied-consent hearing, appellant moved for a *Frye-Mack* hearing to determine the admissibility of the urine test results. The district court denied his motion and sustained the revocation of his driver's license. This appeal follows.

DECISION

Appellant argues that the district court abused its discretion by denying a *Frye-Mack* hearing on the admissibility of urine test results, asserting that testing urine for an alcohol concentration must be subjected to *Frye-Mack* analysis because it is a novel scientific technique that has never received appellate review. Although this may have been true when the parties in this case submitted their briefs, the scientific technique used to measure the alcohol concentration in a urine sample—gas headspace chromatography—has since received appellate review. This court recently released *State v. Edstrom*, 792 N.W.2d 105, 109 (Minn. App. 2010), in which we addressed whether gas headspace chromatography satisfies the *Frye-Mack* standard.

The *Frye-Mack* standard is two-pronged. *Goeb v. Tharaldson*, 615 N.W.2d 800, 815 (Minn. 2000). First, for evidence to be admissible, the scientific technique on which it is based must be generally accepted in the relevant scientific field. *Id.* Second, the administration of the technique in the particular instance must be reliable. *Id.* at 814-15. Appellant argues that first-void urine testing fails on both prongs. We disagree.

This court held in *Edstrom* that “[t]he uncontroverted evidence . . . demonstrates that gas headspace chromatography is generally accepted in the scientific community for the purposes of measuring the concentration of alcohol in a urine sample.” 792 N.W.2d at 112. Using gas headspace chromatography to measure alcohol concentration in urine therefore satisfies the first prong of a *Frye-Mack* analysis.

But even when evidence stems from a technique that is generally accepted in the scientific community, a party can still challenge “the reliability of the results in the case at hand.” *Id.* at 109. Appellant’s only challenge to the reliability of his test result is based on the fact that his urine sample was a “first-void” rather than a later-void sample. But we specifically held in *Edstrom* that “the use of gas headspace chromatography to determine the alcohol concentration of a urine sample meets the *Frye-Mack* standard for admissibility of scientific evidence, *regardless of whether the sample being tested is the product of a first void or a later void.*” *Id.* at 114 (emphasis added).

Based on our holding in *Edstrom*, a *Frye-Mack* hearing on the general acceptance and reliability of urine test results would not have changed the outcome in appellant’s case; his urine test result was admissible evidence. We therefore conclude that any error by the district court in denying appellant’s request for a *Frye-Mack* hearing was harmless.

Affirmed.