

STATE OF MINNESOTA

COUNTY OF DAKOTA

DISTRICT COURT

FIRST JUDICIAL DISTRICT

File No. 19AV-CV-13-800

Jesse Curtis Huber,

Petitioner,

v.

Commissioner of Public Safety,

Respondent.

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER**

The above-entitled matter came before the Honorable Kathryn D. Messerich, Judge of District Court, on May 7, 2013, at Dakota County Western Service Center, Apple Valley, Minnesota. The parties agreed to submit the matter on the police reports (Exhibit 1) and argument. The parties were granted leave to submit written arguments and the Court took the matter under advisement.

W. Harvey Skees, Esq. appeared on behalf of the Petitioner. Kristi A. Nielsen, Assistant Attorney General, appeared on behalf of the Commissioner of Public Safety.

Prior to the hearing, the Petitioner narrowed the issue in this case to whether the evidentiary test was a violation of his Fourth Amendment right because no warrant was sought prior to obtaining the sample pursuant to the ruling in *Missouri v. McNeely*, ___ U.S. ___, 133 S.Ct. 1552 (2013). Petitioner also seeks to have the Court stay this case until the Minnesota appellate courts have decided *State v. Brooks*, A11-1043 (Minn. App. May 29, 2012), *rev. denied* (Minn. July 29, 2012), *cert. granted, reversed and remanded* (U.S. April 22, 2013). All other issues were waived.

FILED
CAROLYN M. RENN, Court Administrator
DAKOTA COUNTY

JUN 03 2013

Based upon the proceedings, this Court makes the following:

FINDINGS OF FACT

1. Officer Tara Becker and other officers of the Apple Valley Police Department responded to a call at the AT&T store at approximately 7:54 p.m. on March 11, 2013 in the City of Apple Valley, County of Dakota, Minnesota. (Exh. 1). Employees of the store reported an intoxicated male who was possibly going to be driving his vehicle with a child in the car.
2. Officers observed Petitioner enter the vehicle, close the door, and start the vehicle, but he turned it off when he noticed the officer's squad car.
3. Officer Becker made contact with Petitioner and observed signs of impairment, including the odor of alcoholic beverage, bloodshot and glassy eyes. Petitioner admitted he had been drinking.
4. The officer asked Petitioner to perform field sobriety tests, including the Horizontal Gaze Nystagmus test, the Walk and Turn test, the One Leg Stand and to recite the alphabet from E to X. After observing that Petitioner exhibited signs of impairment on all the tests, she asked Petitioner to take a Preliminary Breath Test (PBT), which indicated a reading of .12. Officer Becker then placed Petitioner under arrest for Driving While Impaired (DWI) and transported him to the Apple Valley Police Department.
5. After being placed under arrest, Officer Stier read the Minnesota Implied Consent Advisory to Petitioner. (Exh. 1) Petitioner indicated he understood the Advisory, did not wish to speak with an attorney, and agreed to take a breath test.
6. No search warrant was sought prior to giving the test or having the sample

analyzed.

7. There is no evidence that Petitioner was coerced into providing a breath sample or that the reading of the Minnesota Implied Consent Advisory amounted to a coerced threat.
8. Petitioner affirmed his implied consent to submit to a breath test during the reading of the Implied Consent Advisory and when he agreed to submit to a breath test.
9. Officer Becker administered the Datamaster DMT-G with fuel cell option breath test to Petitioner and the result indicated a reported value of 0.14.

CONCLUSIONS OF LAW

1. The United States Supreme Court case of *Missouri v. McNeely*, 133 S. Ct. 1552 (2013) addressed a *nonconsensual warrantless blood draw*.
2. The Implied Consent Law states that any person who drives, operates or is in physical control of a motor vehicle and is arrested for DWI, consents to a test of that person's blood, breath or urine. Minn. Stat. §169A.51, subd.1(a).
3. Consent is implied and continues until expressly withdrawn by the driver. Minn.Stat. §169A.51, subd. 6 (2012).
4. A driver may withdraw their implied consent after an arrest for DWI when they are given a choice to submit to a test. A driver may also choose to affirm their implied consent after an arrest for DWI, when they agree to submit to an offered test.
5. The case of *Missouri v. McNeely*, 133 S. Ct. 1552 (2013) recognized that all 50

States, including Minnesota, have implied consent laws that require a “motorist, as a condition of operating a motor vehicle within the State, to consent to BAC testing if they are arrested or otherwise detained on suspicion of a drunk driving offense.” The United States Supreme Court further acknowledged that “such laws impose significant consequences when a motorist withdraws consent.”

Petitioner in this matter did not refuse or withdraw his consent but rather affirmed his consent after being advised of the potential consequences of withdrawal of consent and having been given the opportunity to consult an attorney. Consent is a valid exception to the warrant requirement. Consent was voluntary and not coerced. Therefore, a warrant was not required.

6. The test in this matter was reasonable. It was performed with consent unlike the test in *McNeely*; it did not involve a physical intrusion beneath the petitioner's skin and into his veins to obtain a sample of his blood. Further the Officer had probable cause to believe that the petitioner had violated the DWI law.

ORDER

1. The petitioner's driver's license revocation is hereby SUSTAINED.
2. The petitioner's request to stay the proceedings until the Minnesota Court of Appeals issues a decision in *State v. Brooks*, A11-1043 (Minn. Ct. App. May 29, 2012), *rev. denied* (Minn. July 29, 2012), *cert. granted, reversed and remanded* (U.S. April 22, 2013) is DENIED.

3. Petitioner may file a motion to reopen this case, pursuant to Minn. R. Civ. P. 60.02(f), should the opinion of the appellate courts in *State v. Brooks* change the state of the case law in this order.

Dated: June 3, 2013

BY THE COURT:

Kathryn D. Messerich
Kathryn D. Messerich
Judge of District Court

State of Minnesota
Dakota County

District Court
First Judicial District

Court File Number: **19AV-CV-13-800**

Case Type: Implied Consent

Notice of Filing of Order

WILLIAM HARVEY SKEES
601 CARLSON PKWY STE 1050
MINNETONKA MN 55305

Jesse Curtis Huber vs Commissioner of Public Safety

You are notified that an order was filed on this date.

Dated: June 3, 2013

Carolyn M. Renn
Court Administrator
Dakota County District Court
14955 Galaxie Avenue
Apple Valley MN 55124
952-891-7256

cc: KRISTI ANN NIELSEN

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.