[redacted]

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ISANTI

TENTH JUDICIAL DISTRICT

Court File No. [redacted]

[redacted] Petitioner,

FINDINGS OF FACT AND ORDER

v.

Commissioner of Public Safety,
Respondent.

The above-captioned matter came on for an Implied Consent Hearing before the Honorable [redacted] Judge of District Court, Isanti County Government Center, City of Cambridge, County of Isanti, State of Minnesota, on November 25, 2019, on remand from the Minnesota Court of Appeals. The only issues to be determined are whether the Petitioner freely and voluntarily consented to a warrantless search of his urine, whether the good-faith exception to the exclusionary rule applies, and whether Petitioner's due process rights were violated. All other issues were waived.

Attorney Charles A. Ramsay appeared on behalf of Petitioner, [redacted], who was present. Assistant Attorney General [redacted] appeared on behalf of the Commissioner of Public Safety.

At the Hearing, the Court heard testimony from Officer Gunter of the Cambridge Police Department and the Petitioner. A briefing schedule was provided following the Hearing. Petitioner submitted his written brief on December 16, 2020. The Commissioner of Public Safety submitted its written brief on January 6, 2020. The Court took this matter under advisement on January 6, 2020. The Parties waived timelines.

[redacted]

Based upon the arguments of the parties, all the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. The Court incorporates by reference into this Order the Findings of Fact 1 to 18 from the April 11, 2016, Order in this file.
2. Petitioner testified at the November 25, 2019, hearing that he took the urine test, because he felt that any refusal would be a criminal act.
3. Petitioner dropped out of school in the eighth grade.
4. Petitioner served on active duty in the United States Military from 1988 to 1991, being discharged from the reserves in 2004.
5. Petitioner has been diagnosed with several service-related conditions, including post-traumatic stress disorder (PTSD).
6. The Petitioner's PTSD condition can be triggered by the presence of uniformed individuals.

ORDER

IT IS HEREBY ORDERED THAT:

1. Petitioner's Petition for Rescission of the Order of License Revocation is GRANTED.
2. The attached Memorandum of Law is incorporated herein.

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[redacted]
Judge of District Court

[redacted]

MEMORANDUM OF LAW

I. Consent

"The Fourth Amendment of the United States Constitution provides: '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation . . .'" *State v. Brooks*, 838 N.W.2d 563, 568 (Minn. 2013) (quoting U.S. CONST. AMEND. IV). "But police do not need a warrant if the subject of the search consents." *Id.*; *see also State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011) ("Consent is an exception to the warrant requirement.").

"Whether consent is voluntary is determined by the 'totality of the circumstances.'" *Brooks*, 838 N.W.2d at 568 (quoting *State v. Harris*, 590 N.W.2d 90, 102 (Minn. 1999)). In *Brooks*, the "supreme court held that a driver voluntarily consented to testing where he did not dispute the existence of probable cause to believe that he had been driving while impaired, he was properly read the implied consent advisory, he was not subjected to repeated police questioning and did not spend days in custody before consenting, and he consulted with an attorney before he consented to testing." *Cowan v. Comm'r of Pub. Safety*, 2014 WL 3558047, *2 (Minn. Ct. App. 2014) (unpublished opinion).[1] Brooks' "will had not been overborne and his capacity for self-determination [had not been] critically impaired." *Brooks*, 838 N.W.2d at 571. Further, *Brooks* found that "the ability to consult with counsel about an issue supports the conclusion that a defendant made a voluntary decision." 838 N.W.2d at 572.

In this instance, Petitioner was read the Implied Consent Advisory and provided the opportunity to speak with an attorney. Nothing about these two facts suggest that Petitioner was

[1] Although this is an unpublished opinion, the Court finds it persuasive.

coerced in the sense that his will was overborne and his capacity for self-determination was impaired. However, the Petitioner was explicitly told by Officer Gunter that refusal to submit to a urine test was a crime and that Minnesota law required him to submit to the warrantless urine test. According to Petitioner's testimony, he felt compelled to submit to the testing, because he felt that he had no choice in the presence of uniformed law enforcement officers due to his PTSD. The Court also notes that the Petitioner's education level affected his ability to give voluntary consent. The Court finds the Petitioner's explanations about his PTSD and its effect on his ability to give voluntary consent to be credible.

Based upon the totality of the circumstances, specifically the misstatement of the law by Officer Gunter, the inaccuracy of the Implied Consent Advisory given to Petitioner, and Petitioner's unique service-related condition, Petitioner's consent was not voluntarily given under these circumstances.

II. <u>Good-Faith Exception</u>

Under the good-faith exception to the exclusionary rule, evidence obtained by law enforcement during a search conducted in reasonable reliance on binding appellate precedent is not subject to the exclusionary rule. *State v. Lindquist*, 869 N.W.2d 863, 869 (Minn. 2015) (citing *Davis v. United States*, 564 U.S. 229 (2011)). However, the good-faith exception is a narrow exception to the exclusionary rule. *Lindquist*, 869 N.W.2d at 876.

In order to show that Officer Gunter's warrantless urine test of the Petitioner is permissible under the good-faith exception, the Respondent would need to provide binding appellate precedent that authorizes such searches. Respondent has submitted no binding appellate precedent that is

applicable in this instance.[2] Therefore, the good-faith exception to the exclusionary rule does not apply.

III. Due Process

To obtain relief under the *McDonnell* due process doctrine in this context, the aggrieved party must satisfy a three prong test, as articulated in *Johnson v. Comm'r of Pub. Safety.* 911 N.W.2d 506 (Minn. 2018). There, the Minnesota Supreme Court held,

> [a] license revocation violates due process when: (1) the person whose license is revoked submitted to a blood, breath, or urine test; (2) the person prejudicially relied on the implied consent advisory in deciding to undergo testing; and (3) the implied consent advisory did not accurately inform the person of the legal consequences of refusing to submit to the testing.

Id. at 508 (citing *McDonnell v. Comm'r of Pub. Safety*, 473 N.W.2d 848, 854 (Minn. 1991)). While the Implied Consent Advisory states it is "a crime for any person to refuse to submit to a chemical test of the person's blood, breath, or urine under section 169A.51 (the chemical tests for intoxication), or 169A.52 (the statute criminalizing test refusal or failure; revocation of license)", the Minnesota Supreme Court has held that the individual cannot be prosecuted for refusing to submit to a blood test that would have violated the Fourth Amendment. *State v. Trahan*, 886 N.W.2d 216, 224 (Minn. 2016) (citing *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2186 (2016)). Similar to blood tests, urine tests require a warrant since they do not fall within the "search incident to arrest" exception to the warrant requirement. *See State v. Bernard*, 859 N.W.2d 762, 776 (Minn. 2015) ("Given *Riley*'s clarification that *Robinson* applies only to physical evidence found on a person's

[2] The Respondent cites to *State v. Brooks* and states that, "Deputy [sic] Gunter relied on binding appellate precedent at the time of this test that did not require a search warrant to collect a consensual urine sample in a DWI investigation." 838 N.W.2d 563, 572. However, as Petitioner points out, *Brooks* does not stand for the holding that warrantless blood and urine tests are constitutional. Rather, *Brooks* only assumed such tests were constitutional in light of the specific circumstances of that case.

body—and not digital content found on cell phones—the only logical conclusion is that the removal of breath (or blood or urine) from the body to discover an arrestee's blood alcohol level is not part of a search incident to arrest.").

The Minnesota Court of Appeals has stressed the importance of the district court analyzing a driver's prejudicial reliance on an inaccurate implied-consent advisory in the context of a warrantless blood test. *See Schneider v. Comm'r of Pub. Safety*, No. A19-0673, 2019 WL 5304520 (Minn. Ct. App. Oct. 21, 2019) ("[i]f the advisory in this case did not accurately inform Schneider of the legal consequences of refusing to submit to testing, and he relied on it in choosing to submit to testing, he was deprived of a meaningful choice regarding the testing decision, regardless of the circumstances surrounding the provision of the advisory and his ability to comprehend it"); *see also Johnson v. Comm'r of Pub. Safety*, 887 N.W.2d 281, 294 (Minn. Ct. App. 2016) *rev'd on other grounds*, 911 N.W.2d 506 (Minn. 2018) (concluding that since a test-refusal charge would have been unconstitutional, an implied-consent advisory inaccurately advised a driver that refusal to take a urine test is a crime, resulting in a due-process violation under *McDonnell*).

Here, the Petitioner asserts the implied consent advisory misled him regarding his legal obligation to submit to a urine test, which constitutes a due-process violation under *McDonnell*. Specifically, Officer Gunter told the Defendant that refusal of a warrantless chemical test would be a crime. The Petitioner's testimony at the November 2019 hearing demonstrates he prejudicially relied on the inaccurate Advisory, because he testified he thought he had no choice but to submit to the urine test. In other words, the Court finds that the Petitioner submitted to testing, because he thought the refusal of *any* form of test was a crime. The Implied Consent Advisory read to the Defendant in this case was legally

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inaccurate. Additionally, again, the Petitioner testified that his PTSD made him feel compelled to submit to the testing. The Petitioner has successfully demonstrated that his due process rights were violated due to the inaccuracy of the Implied Consent Advisory read to him.

Accordingly, for all the above reasons, the Petition for Rescission of the Order of License Revocation is granted.

[redacted]

[redacted]

State of Minnesota
Isanti County

District Court
10th Judicial District
Court File Number: [redacted]
Case Type: Implied Consent

FILE COPY

Notice of Filing of Order

[redacted] **vs Commissioner of Public Safety**

You are notified that the following order was filed on March 03, 2020.

Implied Consent Order

Dated: March 4, 2020

[redacted]
555 18th Avenue SW
Cambridge Minnesota 55008
[redacted]

cc: [redacted]
CHARLES ALAN RAMSAY

A true and correct copy of this notice has been served upon the parties pursuant to the Minnesota Rules of Civil Procedure, Rule 77.04.