

██████████
Filed in District Court

STATE OF MINNESOTA
COUNTY OF WRIGHT

State of Minnesota

Oct 1 2018 4:40 PM

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Court File No. ██████████
Case Type: Implied Consent

██████████,

Petitioner,

vs.

Commissioner of Public Safety,

Respondent.

**ORDER RESCINDING THE
REVOCATION OF
PETITIONER'S DRIVING
PRIVILEGES**

The above-entitled case came on for hearing before the Honorable ██████████ Judge of District Court, on September 17, 2018, at the Wright County Government Center in Buffalo, Minnesota, upon the Petition for Judicial Review of Driver's License Revocation. Petitioner appeared personally and was represented by Charles Ramsey, Esq. Assistant Attorney General ██████████ appeared on behalf of Respondent, the Commissioner of Public Safety. The issue for the Court to determine was if Petitioner refused to submit to the breath test. The Court received the police report and testimony from Wright County Deputy ██████████. The Court allowed both parties to argue on the record. The Petitioner waived timelines.

Based on the arguments of counsel and all of the files, records, and proceedings herein, the Court, being duly advised in the premises, now makes the following:

FINDINGS OF FACT

1. On July 21, 2018, Wright County Deputy ██████████ arrested Petitioner on suspicion of a DWI.
2. Deputy ██████████ testified that he transported Petitioner to the Wright County jail and proceeded to read to her the Implied Consent Advisory. *See Exhibit 1.* He testified that he read the advisory verbatim.
3. Deputy ██████████ testified that he began reading the implied consent advisory at 2:07 a.m. He testified that the telephone was made available between 2:08 and 2:13 a.m. She was unable to get a hold of an attorney.
4. Deputy ██████████ then asked whether she would take a breath test and Petitioner responded "no". This was approximately at 2:14 a.m.

5. Deputy ██████ testified that within approximately five minutes and thirty seconds, Petitioner stated that she was willing to take the breath test. Deputy ██████ testified that Petitioner rescinded her revocation when she learned what she was going to be charged with.

6. Deputy ██████ finished the implied consent advisory at 2:25 a.m. The implied consent process took eighteen (18) minutes.

Based on the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. This implied-consent action stems from Petitioner's license revocation for a breath test refusal. Petitioner argues that she rescinded her refusal of the breath test almost immediately.

2. A law-enforcement officer may request that a driver submit to a chemical test of the person's blood, breath, or urine, if the officer has "probable cause to believe the person was driving, operating, or in physical control of a motor vehicle" while impaired. Minn.Stat. § 169A.51, subd. 1(b). If a driver refuses to permit a test, "a test must not be given..." Minn.Stat. § 169A.52, subd. 1.

3. The general rule in Minnesota is that an initial refusal to submit to testing cannot be cured by a subsequent agreement to be tested. *Lewis v. Comm'r of Pub. Safety*, 737 N.W.2d 591, 593 (Minn. App. 2007) (citing *Nyflot v. Comm'r of Pub. Safety*, 369 N.W.2d 512, 517, n. 4 (Minn. 1985)). The intent of this nearly absolute rule is to prevent evidence deterioration and promote efficient policing. *Parsons v. Commissioner of Pub. Safety*, 488 N.W.2d 500, 502-03 (Minn. App. 1992) (citations omitted). However, Minnesota courts encourage flexibility to cure refusal if the subsequent consent is immediate. *See State v. Palmer*, 191 N.W.2d 188, 191 (Minn. 1971) (noting the officer "might well have permitted [a driver] to take the test after he had changed his mind"); *see also Mossak v. Comm'r of Pub. Safety*, 435 N.W.2d 578 (Minn. App. 1989) (suggesting an officer upholds "minimum public expectations by being flexible in disregarding a tentative refusal which is properly withdrawn"), *review denied* (Minn. App. 1989). The exception to the general rule extends to an "almost immediate" change of mind if not separated from the refusal by "substantial time, place, or a telephone call to counsel or a friend." *Schultz v. Comm'r of Pub. Safety*, 447 N.W.2d 17, 19 (Minn. App. 1989).

[REDACTED]

4. Here, the record states that Deputy [REDACTED] allowed Petitioner to attempt to contact an attorney between 12:08 a.m. and ended at 12:13 a.m. (*See* Exhibit 1). Deputy [REDACTED] testified he requested a breath test after Petitioner attempted to contact an attorney and was unsuccessful. Petitioner initially refused. Five minutes and thirty seconds elapsed from the initial refusal when she indicated her willingness to take the test. The entire implied consent process took eighteen minutes. The change of mind was not separated by a substantial change in time, place, or a telephone call. The temporal connection clearly indicates Petitioner's consent was almost immediate. The Court, therefore, finds Petitioner effectively cured her refusal.

Based on the above Findings of Fact and Conclusions of Law, the Court now makes the following:

ORDER

1. [REDACTED] Petition for Judicial Review is **GRANTED**.
2. The administrative revocation of her driving privileges is **RESCINDED**.

Dated: October 1, 2018

BY THE COURT

[REDACTED]

State of Minnesota
Wright County

District Court
Tenth Judicial District

Court File Number: [REDACTED]

Case Type: Implied Consent

FILE COPY

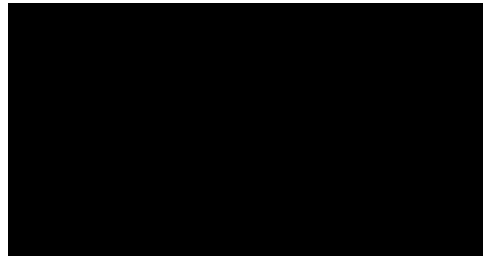
Notice of Filing of Order

[REDACTED] vs Commissioner of Public Safety

You are notified that on October 01, 2018, the following was filed:

Implied Consent Order

Dated: October 2, 2018



cc: Commissioner of Public Safety
CHARLES ALAN RAMSAY

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