

State of Minnesota  
Chisago County

District Court  
Tenth Judicial District

Court File Number: [REDACTED]

Case Type: Crim/Traf Mandatory

**Notice of Filing of Order**

CHARLES ALAN RAMSAY  
2780 SNELLING AVE N  
STE 330  
ROSEVILLE MN 55113

**RECEIVED**  
FEB 12 2016  
BY: \_\_\_\_\_

State of Minnesota vs TIMOTHY [REDACTED] [REDACTED]

You are notified that an order was filed on February 10, 2016.

Order-Other

Dated: February 10, 2016

Kathleen E. Karnowski, Court Administrator  
By: Tam Oknich, Deputy  
Chisago County District Court  
313 North Main Street  
Center City MN 55012  
(651) 213-8650

cc: DAVID WILLIAM HEMMING

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

State of Minnesota,

Plaintiff,

Filed - State of Minnesota  
Chisago County District Court  
Kathleen Karnowski

**ORDER**

vs.

Oknich, Tam (Chisago Court Admin)  
Feb 10 2016 8:31 AM

██████████ ██████████ ██████████

Court File No.: ██████████

Defendant.

The above-entitled matter came on for a contested omnibus before the Honorable Todd R. Schoffelman, Judge of District Court, on December 8, 2015 at the Chisago County Government Center in Center City, Minnesota.

Assistant Chisago County Attorney Brian Duginske appeared on behalf of the State of Minnesota. Attorney Charles Ramsay appeared with and on behalf of Defendant.

Based upon all files, evidence and proceedings herein, the Court hereby makes the following:

**FINDINGS OF FACT**

1. On May 27, 2015 North Branch Police Sergeant ██████████ ██████████ was dispatched to a report of a crash with injuries. Sergeant ██████████ responded to the scene and observed a single vehicle in the ditch. He observed a child who appeared to have some injuries.
2. Sergeant ██████████ identified the driver as ██████████ ██████████ ██████████ ("Defendant"). While speaking with the Defendant Sergeant ██████████ noted that Defendant had glassy, watery eyes, was unsteady on his feet and that there was an odor of alcohol emanating from Defendant.
3. Sergeant ██████████ asked Defendant to perform standardized field sobriety testing and submit to a preliminary breath tests. Each test showed indications of impairment. Based on these results and his observations of the Defendant, Sergeant ██████████ placed Defendant under arrest for suspicion of DWI.
4. Sergeant ██████████ testified that during the transport of the Defendant to the hospital in Wyoming he spoke with other officers and a representative of the Chisago County Attorney's office. Sergeant ██████████ testified that the county' attorney's office advised that

he should forgo the implied consent advisory and ask for the Defendant's consent to perform a test of his blood or urine.

5. Upon arrival at the hospital Sergeant [REDACTED] asked Defendant if he would consent to a blood draw. Defendant responded "I guess I mean, can I talk to my wife?" Sergeant [REDACTED] indicated that Defendant could talk to his wife at some point during the process. Defendant again stated that he wanted to talk to his wife. Sergeant [REDACTED] responded "Okay so at this point you are saying yes to the blood draw and calling your wife too?" Defendant responded in the affirmative.
6. Sergeant [REDACTED] did not read the Minnesota Motor Vehicle Implied Consent Advisory prior to asking Defendant for consent to conduct the blood draw.
7. A blood test was administered to the Defendant. Defendant was then transported to the Chisago County Jail. Defendant was read his *Miranda* rights upon arrival at the jail. Defendant invoked his right to remain silent and did not speak with Sergeant [REDACTED]

#### CONCLUSIONS OF LAW

1. Anyone who drives a motor vehicle in the state of Minnesota is subject to the implied consent law. Minn. Stat. § 169A.51, subd. 1(a). When an individual is arrested on suspicion of DWI or if the person has been involved in a motor vehicle accident involving injury the implied consent advisory must be provided to that person prior to requesting a sample of blood, breath or urine for chemical testing purposes. *Id.* at subd. 2(a). The advisory specifically must inform the individual that he has the limited right to speak to an attorney before submitting to the test. *Id.* However, an officer who is not pursuing an implied consent revocation is not required to provide this advisory if the officer has probable cause to believe the individual has violated the criminal vehicular homicide and/or operation statutes. *Id.* at subd. 2(b). In light of the holding in *McNeely* the Court would be required to engage in an analysis regarding the totality of the circumstances to determine if an exigency existed that would allow for a non-consensual blood draw. *Missouri v. McNeely*, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013). The State does not argue that the blood draw in this case was based on exigency but instead argues that the blood draw was justified based on Defendant's consent to the search.
2. A driver has a constitutional "right, upon request, to a reasonable opportunity to obtain legal advice before deciding whether to submit to chemical testing." *Friedman v. Comm'r of Pub. Safety*, 473 N.W.2d 828, 835 (Minn. 1991). The *Friedman* court found that "a driver who has been stopped for a possible DWI violation and has been asked to submit to

a chemical test is at a 'critical stage' in DWI proceedings, thus triggering the right to counsel. *Id.* at 833. This right to counsel has been codified in the implied consent statute as stated above. The State argues that this right to counsel does not exist in this case because the basis for the search was Defendant's consent rather than the implied consent statute. However, the State has provided no basis by which it may circumvent the implied consent procedure where it seeks to use Defendant's consent to conduct the blood draw. Even if the consent procedure employed by the State was valid, the Defendant's consent was not obtained freely and voluntarily.

3. Consent must be freely and voluntarily obtained. *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994). The test of voluntariness is the totality of the circumstances. *Id.* Mere discomfort of the person being questioned is not sufficient to show involuntariness. *Id.* "Rather, it is at the point when an encounter becomes coercive, when the right to say no to search is compromised by a show of official authority, that the Fourth Amendment intervenes. Consent must be received, not extracted." *Id.* Post-arrest consents are viewed with skepticism because "once arrested, a person becomes more susceptible to police duress and coercion." *State v. High*, 176 N.W.2d 637, 639 (Minn. 1970). In this case, the Defendant was in custody when he was asked for consent to conduct a blood draw. When asked if he would consent to a blood draw, Defendant stated: "I guess, can I talk to my wife." The officer informed Defendant that he would be able to speak to his wife at some point during the process. Defendant then stated "I want to talk to my wife". The officer replied "Okay so at this point you are saying yes to the blood draw and calling your wife too?" To which the Defendant replied "Ya". The Defendant appears to be consenting to the blood draw based on his desire to speak with his wife and the officer's representation that he would be able to speak to his wife at some point during the process. Based on the fact Defendant was under arrest, was in the custody of a police officer and it was at least implied that he would get to speak to his wife after he consents to a blood draw, the Court finds that Defendant's consent was not freely and voluntarily given.<sup>1</sup>

### ORDER

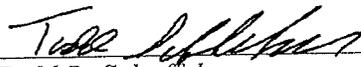
1. The Defendant's Motion to Suppress is hereby **GRANTED**.
2. Court Administration shall set this matter on for a Pre-Trial and Trial.

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<sup>1</sup> Because the Court finds that the blood test in this case was given in violation of Defendant's Fourth Amendment rights and is suppressing the results of the blood test, the Court does not reach the Defendant's argument regarding the alleged *Miranda* violation as the Defendant only seeks to suppress the Defendant's statements made in response to questioning regarding his consent to the blood draw as an alternative basis to suppress the blood test results.

**BY THE COURT:**

Schoffelman, Todd  
(Chisago Judge)

  
Todd R. Schoffelman  
Judge of the District Court

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