

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No. 19WS-CV-12-1594

[REDACTED]

Petitioner,

v.

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

Commissioner of Public Safety,

Respondent.

The above-entitled matter came on for hearing before Joseph T. Carter, Judge of District Court, on April 26, 2013, at the Dakota County Northern Service Center in West St. Paul, Minnesota. After testimony was taken, the hearing was continued to October 15, 2013. Jeffrey Sheridan, Esq., represented Petitioner, who appeared personally. Kristi Neilsen, Esq., and Jacob C. Fischmann, Esq., Assistant Minnesota Attorney General, appeared on behalf of the Minnesota Commissioner of Public Safety. The parties stipulated to all legal issues regarding the implied consent except whether there was an articulable reasonable suspicion to stop Petitioner's vehicle; whether the police officer unlawfully stopped Petitioner outside her geographic jurisdiction; and whether the warrantless search of Petitioner's person was unlawful under *McNeely*.

Based upon the file, proceedings, and record, including the arguments of counsel, the Court makes the following:

FILED **DAKOTA COUNTY**
CAROLYN M. RENN, Court Administrator

OCT 29 2013

FINDINGS OF FACT

1. On August 12, 2012, at 2:15 a.m., Officer Jennifer Hobbs of the Metropolitan Airport Commission ("MAC") saw a Buick automobile traveling eastbound on Interstate 494. All of the officer's observations regarding any driving conduct or indicia of intoxication took place within the city limits of Eagan, Dakota County, Minnesota.
2. The officer testified that she saw the vehicle drift over the right side of the lane of the road and then cross over the fog line on the left side of the road while traveling on Interstate 494. The vehicle then drove onto the Pilot Knob Road exit ramp.
3. The squad car tape recording¹ of the motorist's driving conduct shows that his right tire may have partially touched the right fog line. The tires did not go over the line. The motorist's driving, as depicted on the tape recording, did not reveal any drifting or erratic driving conduct. The driver appeared to be in complete control of the vehicle. As the vehicle traveled on the ramp there were no other vehicles present, and he did not endanger any other persons or property.
4. The officer testified that while on the exit ramp, the vehicle cross over to the left lane and then back to the right lane without signally the change of lane. The evidence reveals that the officer had activated her emergency lights to stop the vehicle as it turned the curve of the exit ramp. The vehicle came to a stop on the right side of the exit ramp. While the motorist did not signal a lane

¹ Officer Hobbs testified that the squad car video tape, as admitted into evidence, depicts all of the driving conduct she saw.

change during the process of being stopped by the officer, he appeared to be responding to the officer's emergency lights. The motorist did not commit any traffic violation while the officer stopped his vehicle. There were no signs the driver was impaired during the stopping of his vehicle.

5. Officer Hobbs identified the driver by using his driver's license. The driver, Petitioner, was the only person in the car. The officer observed that his eyes were blood-shot and watery. Petitioner needed some time to find his insurance card.
6. Petitioner told the officer that he was lost. He admitted to having consumed a few alcoholic drinks.
7. Officer Hobbs ran Petitioner's license plates and eventually administered field sobriety tests to which she has been adequately trained.
8. Petitioner failed the field sobriety tests.
9. The officer had a reasonable basis to ask Petitioner to give a breath sample through the PBT. Petitioner refused. The officer had probable cause to believe that Petitioner was driving while impaired and over the legal alcohol limit.
10. Officer Hobbs arrested Petitioner for DWI.
11. Prior to arresting Petitioner, Officer Hobbs had not observed any driving behavior within her jurisdiction, she was not in hot pursuit of Petitioner's vehicle, and the Commissioner presented no evidence that the officer had permission to conduct traffic stops in the city of Eagan, Minnesota. In fact, the officer was several miles from her jurisdiction.

12. After arresting Petitioner, Officer Hobbs took Petitioner to the Airport Operational Room and read the Implied Consent Advisory to him. He asked to talk to a lawyer. A telephone was made available to him from 2:55 to 3:24 a.m.
13. Petitioner was offered a breath test, but he failed to complete it. He was then offered a urine test, which shows that his blood alcohol level was greater than .08 within two hours of driving a motor vehicle.
14. Officer Hobbs did not seek or obtain a search warrant before having Petitioner give a urine sample. Under the circumstances of this case, Officer Hobbs was not confronted with exigent circumstances to forego obtaining a search warrant.
15. The officer did not ask Petitioner for consent to search his person for evidence of a crime.

CONCLUSIONS OF LAW

1. When any roadway has been divided into two or more clearly marked lanes for traffic, a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety. Minn. Stat. § 169.18 Subd. 7.
2. The Commissioner has failed to show by a preponderance of the evidence that Petitioner had driven outside the marked lanes of traffic, and therefore Officer Hobbs did not have a reasonable articulable suspicion of criminal activity to stop Petitioner's vehicle.

3. When a peace officer has probable cause to believe that a person is driving or operating a motor vehicle while impaired and before a stop or arrest can be made the person escapes from the geographical limits of the officer's jurisdiction, the officer in fresh pursuit of the person may stop or arrest the person in another jurisdiction within this state and may exercise the powers and perform the duties of a peace officer under this chapter. An officer acting in fresh pursuit pursuant to this section is serving in the regular line of duty as fully as though within the officer's jurisdiction. *Minn.Stat. §169A.40 Subd. 2.*
4. A peace officer acts in the course and scope of her employment when her suspicion regarding a vehicle is aroused in her jurisdiction; she follows the vehicle in question outside her jurisdiction, and then observes a traffic violation. *See, State v. Tilleskjaer*, 491 N.W.2d 893, 894 (Minn. 1992); *Lorensen v. Comm'r of Pub. Safety*, 594 N.W.2d 552, 554 (Minn. Ct. App. 1999); and *State v. Bunde*, 556 N.W.2d 917, 919-920 (Minn. Ct. App. 1996).
5. Officer Hobbs's stopping Petitioner's motor vehicle was unlawful because she conducted the stop outside her jurisdiction, and she was not in fresh pursuit, and therefore was not acting within the scope of her employment.

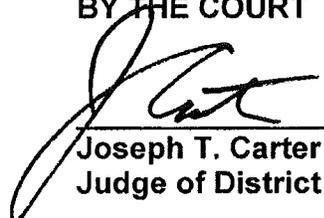
Based upon the conclusions of law, the Court makes the following:

ORDER

The Commissioner's revocation of Petitioner's driving privileges is rescinded.

October 25, 2013

BY THE COURT



Joseph T. Carter
Judge of District Court