

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

[REDACTED]

Petitioner,

**ORDER RESCINDING
LICENSE REVOCATION**

v.

Commissioner of Public Safety,

Court File No. 19WSCV-13-655

Respondent.

The above-entitled matter came before the undersigned for an Implied Consent hearing on January 10, 2014 at the Northern Service Center, West St. Paul, Minnesota.

Petitioner was represented by Attorney Jeffrey Sheridan. The Commissioner of Public Safety was represented by Assistant Minnesota Attorney General Kristi Nielsen.

The issues before the Court are (1) whether there was sufficient probable cause to arrest Petitioner; and (2) whether the chemical test must be excluded because it was obtained in violation of the Fourth Amendment; and (3) whether the chemical test must be excluded because it was obtained in violation of Petitioner's due process rights. The Commissioner opposed the Petition.

The Court granted leave to brief the issues, with simultaneous briefs due on February 21, 2014. The Court received the parties' timely submissions and the Court took the matter under advisement accordingly.

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

FINDINGS OF FACT

1. Exhibit 1 was received by the Court. Exhibit 1 is a copy of the Motor Vehicle Implied Consent Advisory.
2. Exhibit 2 was received by the Court. Exhibit 2 is a copy of the DataMaster test result. The parties stipulated as to foundation.
3. Exhibit 3 was received by the Court. Exhibit 3 is a DVD recording of the squad video.

FILED DAKOTA COUNTY
CAROLYN M. RENN, Court Administrator

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4. Samantha Sautter is a certified peace officer in the State of Minnesota working as a police officer for the City of Inver Grove Heights. On or about April 14, 2013 at about 12:58 a.m., Officer Sautter observed a vehicle where the driver was not wearing a seatbelt. Officer Sautter stopped the vehicle by activating her emergency lights. The vehicle used its right turn signal, slowed down, and pulled to the right shoulder of the road appropriately, without any suggestion of impaired driving. Exhibit 3.
5. Having approached the suspect vehicle, Officer learned that there were three people inside, one driver and two passengers. Officer Sautter smelled alcohol coming from inside the vehicle. She asked whether the driver had anything to drink. The driver, later identified as Petitioner herein, admitted drinking 5-6 beers with his friends (referring to his passengers) since 4:00 p.m., over the course of about 9 hours. Officer Sautter testified that she also observed that Petitioner's eyes were red and watery and that Petitioner's speech was slurred, although the slurred speech is not apparent having carefully reviewed Exhibit 3. The Court now finds that Petitioner did not slur his speech while speaking with this officer.
6. Officer Sautter expressed to Petitioner that, "because I can smell the alcohol, I need to make sure that you're ok to drive." Exhibit 3. Officer Sautter never indicated that she was also concerned about any slurred speech and/or red, watery eyes, or identify any other factor suggesting that she believed Petitioner was impaired, which further supports this Court's finding that Petitioner did not slur his speech and, in addition, casts doubt on the testimony that Petitioner's eyes were red and watery at the time of the stop.
7. Officer Sautter proceeded to remove Petitioner from the vehicle. Exhibit 3 shows that Petitioner did not demonstrate impaired balance while exiting the vehicle or while taking instructions from the officer. Officer Sautter administered standard field sobriety testing including the HGN, Walk-And-Turn, and One-Leg Stand.
 - a. HGN: Officer Sautter testified that during an HGN test a sober person's eyes may jerk, but that an intoxicated person's eyes will jerk more. Officer Sautter further testified that she observed lack of smooth pursuit in Petitioner's eyes at

maximum deviation. Exhibit 3 is inconsistent with the testimony, specifically because officer told Petitioner she saw “a little nystagmus” and but that it was hard to tell because he “moved his head a little.”

- b. Walk-And-Turn: Officer Sautter testified that she saw Petitioner sway, lose his balance, and fail to follow her instructions, specifically that Petitioner took 8 steps rather than 9 and that he turned left rather than right. Exhibit 3 is inconsistent, however, because this officer did not direct which direction Petitioner should turn and because Petitioner in fact completed nine steps forward and nine steps back. Moreover, Petitioner does not appear to lose his balance or sway.
 - c. One-Leg-Stand: Officer Sautter testified that she observed that Petitioner lost his balance once, but that he started over and did “ok.” Exhibit 3 confirms that Petitioner lost his balance for a moment at the outset, but then proceeded to stand as directed and counted out 23 until Officer Sautter asked him to stop.
8. In this Court’s careful review, the evidence supports a finding that Petitioner completed the field sobriety tests as directed by this officer and in a satisfactory manner.
 9. Officer Sautter then directed that Petitioner complete a PBT, which registered a preliminary result over the legal limit for alcohol concentration.
 10. Officer Sautter arrested Petitioner for DWI and locked him into the back of her squad car. She then transported Petitioner to the Inver Grove Heights Police Station.
 11. Without having first asked whether Petitioner would voluntarily consent to taking a chemical test, at 1:27 a.m., Officer Sautter started to read the Implied Consent Advisory to Petitioner. The Advisory states, in pertinent part, that Minnesota law requires a chemical test to determine if the driver is under the influence of alcohol and that refusal to take a chemical test is a crime. Petitioner indicated that he understood the Advisory. Petitioner declined to contact an attorney. Officer Sautter then requested that Petitioner take a breath test and Petitioner responded “yes.” The Advisory process was completed at 1:28 a.m. Exhibit 1.

12. Nels Engstrom is also a certified peace officer in the State of Minnesota working as a police officer for the City of Inver Grove Heights. Officer Engstrom administered the DataMaster breath test. The reported value showed an alcohol concentration of .09.
Exhibit 2.
13. Throughout the entire process, Petitioner was cooperative with Officer Sautter in every respect.
14. At all times material, Officer Sautter had ready access to a two-way radio, laptop computer, and a cellular telephone.
15. Officer Sautter did not obtain or attempt to obtain a search warrant for the DataMaster chemical test, the field sobriety tests, or for the PBT.

Based upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The officer lawfully stopped Petitioner's vehicle for failure to wear a seat belt. The scope and duration of a traffic stop must be limited to the justification for the stop. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). Expansion of the scope of the stop to include investigation of other suspected illegal activity is permissible under the Fourth Amendment only if the officer has reasonable, articulable suspicion of such other illegal activity. *Id.* citing *Terry v. Ohio*, 392 U.S. 1, 20-21 (1968). Given this Court's findings that Petitioner performed satisfactorily on the field sobriety tests, and absent other objective indication of impairment, Officer Sautter should have ended this encounter, for example, by issuing a citation for the seat belt violation and allowing Petitioner to leave. Officer Sautter unlawfully expanded the scope of the traffic stop by directing that Petitioner submit to a PBT and, as a result, the PBT result must be suppressed.
2. To arrest Petitioner for DWI, the officer must have had probable cause to believe that Petitioner was under the influence of alcohol or that Petitioner was over an alcohol concentration of .08 or more. Probable cause exists whenever there are facts and circumstances known to the officer which would warrant a prudent person in believing that the individual was driving while impaired. *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011) citing *State v. Harris*, 202 N.W.2d 878, 881 (1972). The reasonableness of

an officer's actions is an objective inquiry. *Id.* at 363. The probable cause standard asks whether the totality of the facts and circumstances known would lead a reasonable officer to entertain an honest and strong suspicion that the suspect has committed a crime. *Id.* citing *State v. Harris*, 589 N.W.2d 782, 791 (Minn. 1999). An officer need only have one objective indication of intoxication to constitute reasonable and probable grounds to believe a person is under the influence. *Holtz v. Comm'r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983) citing *State v. Hicks*, 222 N.W.2d 345 (1974). Absent the PBT result and other items identified above, the Court now concludes that this officer did not have probable cause to arrest Petitioner for DWI.

3. A chemical test may only be required of a driver when an officer has probable cause to believe that person was driving, operating, or in physical control of a motor vehicle in violation of section 169A.20 (driving while impaired), and that person has been lawfully placed under arrest for DWI or the screening test was administered and indicated an alcohol concentration of 0.08 or more. Minn. Stat. § 169A.51, subd. 1(b). Absent probable cause and lawful arrest, as in this case, this officer did not have authority to invoke the implied consent law. The DataMaster chemical test, therefore, must be suppressed and his driving privileges, including driver's license, reinstated.
4. As a result of the above conclusions, the Court need not decide issues 2 and 3 at this time.

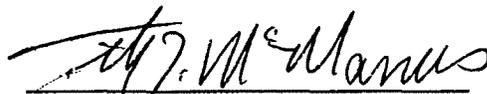
NOW THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the Court makes the following:

ORDER

1. The revocation of Petitioner's driver's license is hereby **RESCINDED**.
2. Dakota County Court Administration will send a copy of this Order by U.S. mail to both parties and attorneys of record, and upon that delivery, service shall be deemed proper.

Dated: March 3, 2014.

BY THE COURT:



Timothy J. McManus
Judge of District Court