

State of Minnesota
Dakota County

District Court
First Judicial District

Court File Number:	19WS-CV-08-820
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Case Type:	Implied Consent
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Notice of Filing of Order

RYAN MICHAEL PACYGA
247 3RD AVE S
MINNEAPOLIS MN 55415

CHRISTOPHER JOHN KAMPA vs Commissioner of Public Safety

You are notified that on October 31, 2008, the following was filed:

Findings of Fact, Conclusions of Law and Order
Rescinding Revocation of Petitioner's Driving Privileges

Dated: October 31, 2008

Carolyn M. Renn
Court Administrator
Dakota County District Court
One Mendota Road West, Suite 140
West St. Paul MN 55118
651-554-6200

cc: Commissioner of Public Safety

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

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Christopher John Kampa,

COURT FILE NO.: 19WS-CV-08-820

Petitioner,

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER RESCINDING REVOCATION OF
PETITIONER'S DRIVING PRIVILEGES**

Commissioner of Public Safety,

Respondent.

The above-entitled matter came on for hearing before the Honorable Timothy J. McManus, Judge of District Court on September 26, 2008, at 9:00 a.m. at the Northern Services Center, West Saint Paul, Minnesota.

Mr. Ryan M. Pacyga, Esq., appeared on behalf of Petitioner.

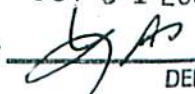
Mr. Peter D. Magnuson, Assistant Attorney General, appeared on behalf of the Commissioner of Public Safety.

The issues being submitted to the Court are:

- i) Whether Minnesota Statute 169A.51 subd. 3 and 4 were violated because no alternative test was offered to petitioner,
- ii) Whether there was a violation of Petitioner's Miranda rights when the Officer re-read the Implied Consent Advisory to Petitioner after he was arrested, booked and transported into custody at the Dakota County Jail, and
- iii) Whether Petitioner was improperly coerced into taking the blood test as set forth in *State v. Netland*;

The Court took this matter under advisement. The Petitioner was given until October 15, 2008 to present written submissions on the arguments to the Court. Respondent was given until October 22, 2008 to respond. Respondent submitted their briefs on October 22, 2008. Accordingly, the record is now complete.

FILED DAKOTA COUNTY
CAROLYN M. RENN, Court Administrator

OCT 31 2008
BY  DEPUTY

Based upon the file, the arguments of counsel, and being fully advised in the premises, the Court hereby makes the following:

FINDINGS OF FACT

1. The Court received Exhibit 1 into evidence. Exhibit 1 is a copy of the initial Motor Vehicle Implied Consent Advisory pertaining to the above-entitled matter.
2. The Court received Exhibit 2 into evidence. Exhibit 2 is the second Motor Vehicle Implied Consent Advisory pertaining to the above-entitled matter.
3. The Court received Exhibit 3 into evidence. Exhibit 3 is a Certified Copy of Petitioner's Driving Records from the Minnesota Department of Public Safety.
4. The Court received Exhibit 4 into evidence. Exhibit 4 is a compact audio disc of the Officer reading Petitioner the initial Implied Consent Advisory.
5. The parties stipulate that Officer Eric Bohrer, hereinafter referred to as Officer Bohrer, is a duly licensed police officer in the City of Inver Grove Heights, State of Minnesota. Officer Bohrer has been an Inver Grove Heights police officer for since 2004.
6. The Court found Officer Bohrer to be a very credible witness.
7. Officer Bohrer is a Certified Drug Recognition Evaluator.
8. Officer Bohrer stopped Petitioner on May 18, 2008 at approximately 12:28 a.m.
9. Petitioner submitted to standard field sobriety testing after which Officer Bohrer arrested Petitioner for Driving Under the Influence and for suspicions of being under the influence of controlled substance.
10. Officer Bohrer transported Petitioner to the Inver Grove Heights Police Department.
11. Officer Bohrer began reading the Implied Consent Advisory to Petitioner at 1:31 a.m. at the Inver Grove Heights Police Department.
12. As Officer Bohrer read the Advisory he checked off each paragraph (see Exhibit 1).
13. Officer Bohrer asked the Petitioner to provide a urine sample. He did not offer Petitioner the option of a blood or breath sample.
14. Petitioner refused to give the urine sample. His reason for refusing was "because of

my license.”

15. Following completion of the Implied Consent Advisory, Officer Bohrer completed the Notice and Order of Revocation, Police Officer’s Certificate and Petitioner signed the Notice. On the Notice and Order of Revocation, the officer checked the box next to the portion that reads “because you refused to submit to testing, the Commissioner of Public Safety will revoke your driver’s license and/or driving privileges for one year.”

16. At approximately 1:40 a.m. Petitioner was booked and transported to the Dakota County Jail.

17. No alternative test was offered to Petitioner at the time Exhibit 1, the Implied Consent Advisory, was read to him.

18. Officer Bohrer realized his error in not offering an alternative test. In an attempt to cure the mistake Officer Bohrer called Petitioner at the jail and at 3:06 a.m., approximately 1.5 hours after he read the first advisory. Officer Bohrer re-read Petitioner the Implied Consent Advisory (Exhibit 2), offering Petitioner the option of providing a blood or urine sample. During the reading Officer Bohrer was in the Police Department Squad Room and Petitioner was in the Dakota County Jail.

19. Petitioner refused to provide a sample of either blood or urine when asked during the reading of the second Implied Consent Advisory. His reason for refusing was again “because of my license.”

CONCLUSIONS OF LAW

1. Minn. Stat. 169A.51 subd. 3 states:

“The peace officer who requires a test pursuant to this section may direct whether the test is of blood, breath or urine. Action may be taken against a person who refuses to take a blood test only if an alternative test was offered and action may be taken against a person who refuses a urine test only if an alternative test was offered.”

2. Minn. Stat. 169A.52 subd. 7(a) states:

“On behalf of the Commissioner, a peace officer requiring a test or directing the administration of a chemical test shall serve immediate notice of intention to revoke and of revocation on a person who refuses to permit a test...”

MEMORANDUM

The ruling by this Court is based solely upon the fact that Respondent was not offered an alternative test prior to being arrested, booked and transported to jail for test refusal. On the facts of this case it is clear to the Court that while the Officer was trying to cure his mistake with the second reading of the Implied Consent Advisory, the Petitioner was not offered an alternative prior to revocation of his driving privileges in violation of Minnesota Statute 169A.51 subd. 3 and the Commissioner's revocation must be rescinded.

The Court does not like the result of this ruling because clearly the Petitioner would have refused both tests if offered to him within the procedures required by Minnesota law. Consequently, the Petitioner is benefitting from the obligation and duty of the Court to follow the procedures laid out in the Implied Consent Statutes.

The Court in *Berreth v. Commissioner of Public Safety*, a First Judicial District case with similar facts, stated the officer's "failure to provide Petitioner with an alternative test renders it legally impossible for the State to suspend Petitioner's license for test refusal." *Berreth v. Commissioner of Public Safety* (Court File No CV-08-820, Le Sueur County, Oct 16, 2005). In another case, the court held that compliance with the procedures of the implied consent law is a prerequisite to revocation pursuant to the implied consent law." *Tyler v. Commissioner of Public Safety*, 368 N.W.2d 275 (Minn. 1985).

The Court found Officer Bohrer to be a very credible witness who did not attempt to minimize his mistake in fulfilling his duties as a police officer in accordance with the law. Although he did attempt to fix his mistake it was not enough to satisfy the requirements of the laws of Minnesota governing procedural issues in implied consent cases.

ORDER

1. The Commissioner of Public Safety's determination to revoke Petitioner's driver's license is hereby **RESCINDED**.
2. The attached memorandum serves in part as the Court's findings and rationale for this decision.
3. Because the revocation is rescinded on this issue the other issues asserted by Petitioner are moot at this time.
4. A copy of this order shall be sent to counsel for both parties by U.S. mail, and upon such, service shall be deemed proper.

Dated: Oct 24, 2008

BY THE COURT:



Timothy J. McManus
Judge of District Court