

STATE OF MINNESOTA  
COUNTY OF STEARNS

DISTRICT COURT  
SEVENTH JUDICIAL DISTRICT

J [REDACTED] W [REDACTED] P [REDACTED],  
Petitioner,

Court File No.: 73-CV-13-[REDACTED]

v.

ORDER

Commissioner of Public Safety,  
Respondent.

The above-captioned matter came on for hearing before the Honorable W [REDACTED] J.  
C [REDACTED] on September 3, 2013.

Attorney Ryan P. Garry appeared on behalf of the Petitioner J [REDACTED] W [REDACTED] P [REDACTED].  
Attorney J [REDACTED] S. B [REDACTED] appeared on behalf of Respondent Commissioner of Public Safety.

At the September 3 hearing, Respondent entered into evidence five exhibits:

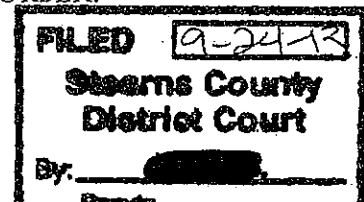
1. The Motor Vehicle Implied Consent Advisory Form Read to Petitioner on June 16, 2013 and Peace Officer's Certificate.
  2. The Narrative Police Report of Stearns County Sheriff's Department Deputy V [REDACTED] W [REDACTED].
- Exhibits three, four, and five are illustrative pictures demonstrating the roads driven on by Petitioner on June 16, 2013.

After post-hearing submissions, this matter was taken under advisement.

NOW, having considered the file and all the records contained therein, and being fully advised in the matter, this Court makes as its:

ORDER

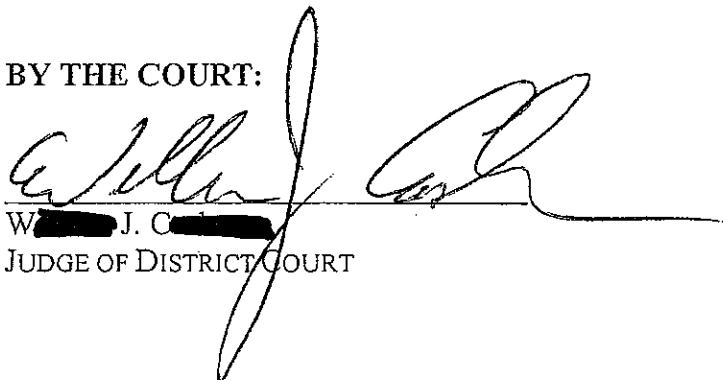
1. THAT, the Commissioner's revocation of the Petitioner's driving privileges is hereby **RESCINDED**.
2. THAT, the attached MEMORANDUM is hereby made part of this ORDER.



IT IS SO ORDERED

Dated: September 24, 2013

BY THE COURT:

  
W. J. C.  
JUDGE OF DISTRICT COURT

**JUDGMENT**

I hereby certify that the foregoing Order/Conclusions of Law constitutes that Judgment of the Court.

Dated: 9-26-13  
T. R. Court Administrator

By:  Deputy

## MEMORANDUM

### I. INTRODUCTION

Petitioner challenges Respondent's revocation of his driving privileges on the basis that first, the arresting officer lacked reasonable, articulable suspicion to support the stop, and secondly, the implied consent statute is unconstitutional in its current form based on the language that advises that "Refusal to take a test is a crime".

Respondent opposes this challenge. In short, it argues that reasonable articulable suspicion existed for the stop, and Minnesota's Implied Consent Law was not invalidated or otherwise rendered unconstitutional by the recent United States Supreme Court decision in *Missouri v. McNeely*.

### II. FACTS

At the September 3 hearing in this matter, the parties stipulated to the admission of the police reports and statements as well as the fact that a search warrant was *not* obtained prior to the deputy requesting the breath test.

For the purposes of this motion, the Court finds the following facts from the police reports and statements:

On June 16, 2013, at approximately 1:00 a.m., Sergeant V. W. of the Stearns County Sheriff's Department was on patrol in the City of Avon, County of Stearns, Minnesota. (Ex. 2, at 1.) Sergeant W. observed a vehicle traveling northbound on County Road 9, and observed that vehicle swerve to avoid hitting a temporary cross-walk sign, placed in the center of the road. (Ex. 2, at 1. *See also*, Ex. 3.) Sergeant W. then pursued the vehicle to continue to observe its driving behavior. (Ex. 2, at 1.) After observing the vehicle swerving within its lane and touching

the fog line, Sergeant W [REDACTED] initiated a traffic stop by activating his emergency lights, and after the vehicle eventually pulled over, Petitioner J [REDACTED] W [REDACTED] P [REDACTED] emerged as the driver. (Ex. 2, at 1-2.)

Upon contacting Petitioner, Sergeant W [REDACTED] immediately noticed signs of intoxication and advised Petitioner that he would administer field sobriety tests to investigate the possibility that Petitioner had been driving while impaired. (Ex. 2, at 2.) After another officer from the Avon Police Department arrived, Sergeant W [REDACTED] administered field sobriety tests to Petitioner, and based on Petitioner's performance, placed him under arrest for driving while impaired. (Ex. 2, at 2-4.)

After transporting Petitioner to the Stearns County Jail, Sergeant W [REDACTED] read the Implied Consent Advisory form to Petitioner at 1:51 a.m. on June 16, 2013. (Ex. 2, at 5; Ex. 1, at 1.) As part of the Motor Vehicle Implied Consent Advisory, the deputy told Petitioner that "Minnesota law requires you to take a test to determine if you are under the influence of alcohol" and that "[r]efusal to take a test is a crime." (Ex. 1, at 1.) Petitioner spent until 2:25 a.m. trying to contact an attorney without success. (Ex. 2, at 5; Ex. 1, at 1.) After failing to contact an attorney, Petitioner refused to submit to testing, stating that he wanted to talk to his attorney first. (Ex. 1, at 1.)

### **III. SERGEANT W [REDACTED] LACKED REASONABLE ARTICULABLE SUSPICION TO JUSTIFY THE INITIAL TRAFFIC STOP**

It is a well-established point of constitutional law that "a seizure occurs when a police officer stops a vehicle." *State v. Klamar*, 823 N.W.2d 687, 692 (Minn. Ct. App. 2012) (citing *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)). But that seizure is not unconstitutional when the

officer has reasonable articulable suspicion of criminal activity. *Klamar*, 823 N.W.2d at 691 (citing *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968)).

Whether the officer has the requisite reasonable articulable suspicion to justify the stop “depends on the totality of the circumstances, and a showing that the seizure was not ‘the product of mere whim, caprice, or idle curiosity.’” *Klamar*, 823 N.W.2d at 691 (quoting *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448 (Minn.App.2005), review denied (Minn. June 28, 2005)). The factual basis required to justify an investigative seizure is minimal. *Klamar*, 823 N.W.2d at 691 (citing *Magnuson v. Comm’r of Pub. Safety*, 703 N.W.2d 557, 560 (Minn.App.2005)).

In determining whether or not the stop was constitutionally permissible, “[t]he court may consider the officer's experience, general knowledge, and observations; background information, including the nature of the offense suspected and the time and location of the seizure; and anything else that is relevant.” *Klamar*, 823 N.W.2d at 691 (citing *Appelgate v. Comm’r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn.1987)).

Relevant to the present case, the Statutes of Minnesota provide that “[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(a) (2012). The fact that a vehicle drifts toward, but not over, a fog line does not provide reasonable articulable suspicion for a stop. See *Holstein v. Commissioner of Pub. Safety*, 392 N.W.2d 577, 580 (Minn. Ct. App. 1986); *State v. Hugger*, C7-01-1144, 2002 WL 1751069 (Minn. Ct. App. July 30, 2002).

In this case, the Court reviewed the video recording of Petitioner's driving conduct during the hearing on September 3, 2013. The Court finds that Petitioner's vehicle did not cross over the fog line where Sergeant W [REDACTED] indicated that it did, and therefore the deputy lacked reasonable articulable suspicion based on that evidence. Furthermore, the Court is also not convinced that the fact that Petitioner negotiated his vehicle to avoid a sign in the middle of the road, by itself, could establish reasonable articulable suspicion to support the traffic stop, given the totality of the circumstances described by Sergeant W [REDACTED] and Petitioner at the September 3, 2013 hearing.

Therefore, since neither swerving within the petitioner's lane of traffic nor operating the vehicle to avoid the sign in the middle of the road established reasonable articulable suspicion for the stop, the Court finds that the initial traffic stop was not justif

### **III. PETITIONER'S MOTION REGARDING THE TEST REFUSAL**

The Court has determined that Sergeant W [REDACTED] lacked reasonable articulable suspicion to stop the Petitioner's vehicle on the night of his arrest, and since that determination is dispositive of this case, the Court will not address the issues raised by the United States Supreme Court's decision in *Missouri v. McNeely*, 133 S. Ct. 1552 (2013).

### **IV. CONCLUSION**

In conclusion, the Court finds that the traffic stop of the Petitioner J [REDACTED] W [REDACTED] P [REDACTED] was not supported by reasonable articulable suspicion. Since the officer did not have probable cause to stop the Petitioner, the license revocation is rescinded. Since this Court's determination that the deputy did not have reasonable articulable suspicion to stop the vehicle is dispositive of the issue raised by the petition, the Court will not address the issues raised by the United States

Supreme Court's decision in *Missouri v. McNeely*. Therefore, the revocation of the Petitioner's driving privileges is **RESCINDED**.

WJC

9/24/13