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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0643**

Evan Scott Gittus, petitioner,
Respondent,

vs.

Commissioner of Public Safety,
Appellant.

**Filed November 24, 2014
Reversed
Chutich, Judge**

Dakota County District Court
File No. 19AV-CV-13-1957

Gary Gittus, Rochester, Minnesota (for respondent)

Lori Swanson, Attorney General, Kristi Nielsen, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Chutich, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellant commissioner of public safety challenges the district court's order rescinding the revocation of respondent Evan Gittus's driver's license. Because we conclude that the district court erred in finding that the imposition of criminal or civil

penalties for refusing to submit to a chemical test under Minnesota's implied-consent law violates the Fourth Amendment, we reverse.

FACTS

In the early-morning hours of June 15, 2013, Dakota County Sheriff's Office Deputies Daniel Forrey and Gordon Steffel conducted a traffic stop of Gittus's car because it was travelling over 91 miles per hour in a 55-mile-per-hour zone. After approaching the car, Deputy Forrey observed that Gittus's eyes were glassy, his speech was mumbled and slurred, and his bodily movements were unsteady, swayed, and slow. Gittus unsuccessfully attempted to complete several field sobriety tests, displaying further signs of impairment. Gittus refused a preliminary breath test three times. Based upon these circumstances, Deputy Forrey suspected that Gittus was driving under the influence, and he arrested Gittus.

Deputy Forrey took Gittus to the Dakota County Jail, where Deputy Forrey read Gittus the Minnesota Motor Vehicle Implied Consent Advisory. Gittus acknowledged that he understood the advisory and requested to speak with an attorney. After speaking with someone, Gittus was asked twice if he would submit to a blood or urine test. Each time, he refused chemical testing.

Gittus was charged with third-degree driving while impaired—refusal to submit to a chemical test, in violation of Minnesota Statutes section 169A.26, subdivision 1(b) (2012); operating a motor vehicle under the influence of alcohol, in violation of Minnesota Statutes section 169A.20, subdivision 1(1) (2012); and speeding, in violation

of Minnesota Statutes section 169.14, subdivision 2(A)(3) (2012). Additionally, Gittus's driver's license was revoked for refusing to submit to a chemical test.

Gittus filed an implied-consent petition, requesting rescission of the order of revocation of his driver's license. After holding an implied-consent hearing, the district court granted Gittus's motion to rescind the revocation of his driver's license. The district court determined that the imposition of criminal or civil penalties for refusing to submit to a chemical test under Minnesota's implied-consent law violates the Fourth Amendment. The commissioner appealed.

D E C I S I O N

The commissioner argues that the district court erred by rescinding the revocation of Gittus's driver's license. The commissioner challenges the district court's conclusion that Gittus's constitutional rights were violated when his driver's license was revoked after he refused to submit to a chemical test. Gittus failed to file a responsive brief to address the commissioner's argument. In the absence of a responsive brief, the case will be determined on the merits. *See* Minn. R. Civ. App. P. 142.03.

The district court's decision involves the constitutionality of Minnesota's implied-consent statute. *See* Minn. Stat. §§ 169A.50-.53 (2012). The constitutionality of a statute is a question of law that this court reviews de novo. *State v. Ness*, 834 N.W.2d 177, 181 (Minn. 2013). We presume that statutes are constitutional, and we will declare a statute unconstitutional only when absolutely necessary. *Hamilton v. Comm'r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). “[A] party challenging the constitutionality of a

statute must demonstrate beyond a reasonable doubt that the statute violates a constitutional provision.” *State v. Cox*, 798 N.W.2d 517, 519 (Minn. 2011).

In rescinding the revocation of Gittus’s driver’s license, the district court found that imposing a penalty for refusing a search is a violation of the Fourth Amendment, citing *Missouri v. McNeely*, 133 S. Ct. 1552 (2013) to support its determination. The district court’s reliance on *McNeely*, however, is misguided.

The United States Supreme Court in *McNeely* did not invalidate state implied-consent statutes, but rather held that “the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.” *Id.* at 1568. The Court, instead, supported the operation of implied-consent laws. *Id.* at 1566-67. In fact, a plurality of the Court noted that “[s]tates have a broad range of *legal tools* to enforce their drunk-driving laws and to secure [blood-alcohol-concentration] evidence without undertaking warrantless nonconsensual blood draws.” *Id.* at 1566 (emphasis added).

In interpreting *McNeely*, the Minnesota Supreme Court remarked that the description of implied-consent laws as “legal tools” is inconsistent with the argument that Minnesota’s implied-consent statute is unconstitutional. *State v. Brooks*, 838 N.W.2d 563, 572 (Minn. 2013) (“By using this ‘legal tool’ and revoking a driver’s license for refusing a test, a state is doing the exact thing Brooks claims it cannot do—conditioning the privilege of driving on agreeing to a warrantless search.”), *cert. denied*, 134 S. Ct. 1799 (2014). *Brooks* held that, although *McNeely* eliminated the single-factor exigency exception to the warrant requirement, a warrantless extraction of blood, breath, and urine

was still permissible under the Fourth Amendment when Brooks, under the totality of the circumstances, freely and voluntarily consented to testing. *Id.* at 568-69, 572. The supreme court further held that the effect of Minnesota's implied-consent statute, which makes it a crime to refuse a test, is not so coercive as to invalidate a driver's consent. *Id.* at 571-72.

Moreover, in two recent opinions of this court, we rejected the argument that Minnesota's implied-consent statute violates the Fourth Amendment. *See State v. Bernard*, 844 N.W.2d 41 (Minn. App. 2014), *review granted* (Minn. May 20, 2014); *Stevens v. Comm'r of Pub. Safety*, 850 N.W.2d 717 (Minn. App. 2014). In *Bernard*, we upheld the constitutionality of an appellant's conviction for test refusal, concluding:

The state is not constitutionally precluded from criminalizing a suspected drunk driver's refusal to submit to a chemical test under circumstances in which the requesting officer had grounds to have obtained a constitutionally reasonable nonconsensual chemical test by securing and executing a warrant requiring the driver to submit to testing.

844 N.W.2d at 47. This conclusion was premised on the determinations that the Fourth Amendment does not disallow the criminalization of refusing to submit to a breath test and "[test-refusal] prosecution d[oes] not implicate any fundamental due process rights." *Id.* at 46-47.

Stevens involved a driver who was arrested for suspicion of impaired driving and refused to submit to chemical testing. 850 N.W.2d at 720. In considering whether Minnesota's implied-consent statute authorizes a search that violates the Fourth

Amendment, we concluded that the statute satisfies the Fourth Amendment's reasonableness standard, providing:

[T]he state's strong interest in ensuring the safety of its roads and highways outweighs a driver's diminished privacy interests in avoiding a search following an arrest for DWI. Thus, if we assume that the implied-consent statute authorizes a search of a driver's blood, breath, or urine, such a search would not violate the Fourth Amendment.

Id. at 730. An identical determination is warranted here.

We understand that the district court's decision preceded our decisions in *Bernard* and *Stevens*. Nonetheless, these cases control our resolution of this case. *See State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (providing that the court of appeals and district court are "bound by supreme court precedent and the published opinions of the court of appeals" and must apply precedent to similar cases), *review denied* (Minn. Sept. 21, 2010). Accordingly, we conclude that the district court erred by rescinding the revocation of Gittus's driver's license.

Reversed.