

**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**

**A10-1620**

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Karl Leroy Swanson, petitioner,

Appellant,

vs.

Commissioner of Public Safety,

Respondent.

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**ORDER OPINION**

Hennepin County District Court  
File Nos. 27-CR-09-57762,  
27-CV-10-2461

Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:**

1. At 10:41 p.m. on November 21, 2009, a deputy sheriff stopped a car being driven by appellant Karl Leroy Swanson on suspicion that Swanson was impaired by alcohol. After Swanson failed field sobriety tests and refused to take a preliminary breath test, the deputy arrested him and brought him to a police station.

2. At 11:00 p.m., the deputy read the implied-consent advisory to Swanson and requested that Swanson provide a urine sample for testing. Swanson then spoke with a lawyer and, at 11:46 p.m., he told the deputy that he would provide a urine sample. The deputy took the sample at 11:50 p.m. without first obtaining a search warrant. Testing showed the alcohol concentration of Swanson's urine to be .17, more than twice the

allowable limit for operating a motor vehicle. Swanson's driving privileges were revoked, and he requested an implied-consent hearing.

3. For purposes of the implied-consent hearing, Swanson stipulated that the deputy lawfully stopped his car, read the implied-consent advisory to him, "offered him a urine test and he agreed to take the test," and the result was .17 alcohol concentration. Further, the commissioner of public safety did not contend that the deputy had obtained or had tried to obtain a search warrant before requesting a urine sample from Swanson.

4. At the outset of the implied-consent hearing, the respective attorneys for the parties advised the district court as to the issues to be considered. Swanson's attorney stated that the issue was "whether or not the constitution requires a warrant prior to collecting a urine sample." He then noted that he would produce expert evidence that, unlike with blood, no rapid dissipation of alcohol occurs with urine, so that there is an opportunity to obtain a search warrant, and there is no exigency for obtaining a urine sample as there is for obtaining blood or breath samples.

5. Swanson's attorney stated that

[w]e also have the possibility of consent being an exception to the warrant requirement. And, of course, I'll argue that consent is not voluntary in this case when you're threatened with a crime if you refuse testing . . . . [Consent] has to be voluntary or freely given, not extracted.

6. The attorney for the commissioner replied that "consent was given when the implied consent advisory was read" and, when Swanson was "asked to take a test to determine the alcohol concentration, [he] agreed to do it." The attorney then said: "But notwithstanding that, there is also the exigency."

7. The Fourth Amendment to the United States Constitution prohibits “unreasonable searches and seizures.” U.S. Const. amend. IV. A search without a warrant is presumptively unreasonable. *State v. Othoudt*, 482 N.W.2d 218, 221-22 (Minn. 1992). But there are exceptions. A warrantless search made with the consent of the person searched is lawful. *State v. Hanley*, 363 N.W.2d 735, 738 (Minn. 1985). And a warrantless search is justified if “the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *State v. Shriner*, 751 N.W.2d 538, 541 (Minn. 2008).

8. The parties offered expert testimony on the exigency exception. Swanson’s expert testified that, unlike alcohol concentration as measured through a blood or breath sample, alcohol concentration in the urine does not rapidly dissipate with the passage of every minute but rather simply remains in the bladder with the urine until excreted through voiding. The commissioner’s expert did not expressly disagree with this proposition but testified that alcohol acts as a diuretic that causes frequent voiding. Because of the physiology of urine, which is different from the physiology of breath or blood, Swanson contended that *Shriner* and *State v. Netland*, 762 N.W.2d 202 (Minn. 2009), the cases offered by the commissioner as controlling authority, do not address the precise issue raised here and therefore are not precedential.

9. Upholding the revocation of Swanson’s driver’s license, the district court recognized the difference between alcohol metabolism in the blood and its physiology in the bladder but held that urine creates an exigency that makes a search warrant unnecessary:

While alcohol does not metabolize in the bladder, exigency still exists. A suspect can immediately remove urine containing alcohol from the body simply by voiding the bladder, either involuntarily or intentionally, to prevent the collection of a sample. The process of urination would effectively rid alcohol from the system, rendering probative evidence inaccessible. As a necessary step to prevent loss of such evanescent evidence, the exigency exception permitting warrantless searches applies to urine samples.<sup>1</sup>

10. The district court then acknowledged that consent is an exception to the search warrant requirement but stated: “Because the constitutionality of the search is upheld on other grounds, there is no need to address whether requiring a driver suspected of driving while impaired to submit to a chemical test necessarily coerces consent.” The parties neither raised, briefed, nor argued on appeal the district court’s determination that the consent issue need not be addressed because it found the exigency issue to be dispositive. It also appears that the attorneys briefed the consent issue in the district court but did not argue it further.

11. The parties to a case on appeal are entitled to a meaningful review of the case. *See Local Oil Co., Inc. v. City of Anoka*, 303 Minn. 537, 539, 225 N.W.2d 849, 851 (1975) (stating that when the record is inadequate to permit meaningful appellate review, interests of justice are best served by remanding case for reconsideration). When multiple meritorious issues are raised, a meaningful review requires that those issues be first addressed by the district court and then briefed on appeal. *See S.M. Hentges & Sons, Inc. v Mensing*, 777 N.W.2d 228, 232-33 (Minn. 2010) (reversing the sole issue that had

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<sup>1</sup> The district court also cited an unpublished case of this court as authority for its ruling.

been considered by the court of appeals and remanding for further consideration of the remaining issues that the court of appeals did not reach.

12. The warrantless search of Swanson's urine was permissible if either or both of the two exceptions of consent and exigency apply. Hypothetically, if this court were to hold that the exigency exception does not apply, a remand would be necessary to determine the applicability of the consent exception, for that issue was not decided by the district court and was not briefed or argued on appeal. To foster a meaningful review in this appeal, the district court must decide the applicability of both exceptions. Therefore, the district court is directed to decide the issue of whether the consent exception applies in this case, and the matter is remanded as to that issue.

**IT IS HEREBY ORDERED:**

1. This matter is remanded for findings and conclusions as to the undetermined issue of whether the consent exception applies to the warrantless search under consideration.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(b), this order opinion will not be published and shall not be cited as precedent except as law of the case, res judicata, or collateral estoppel.

Dated: April 29, 2011

**BY THE COURT**

/s/ \_\_\_\_\_  
Judge Gordon W. Shumaker