

STATE OF MAINE

v.

MARK W. BRIGGS

Submitted On Briefs October 31, 2013

Decided November 19, 2013

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and
JABAR, JJ.

MEMORANDUM OF DECISION

Mark W. Briggs appeals from a judgment of conviction of criminal OUI (Class D), 29-A M.R.S. § 2411 (2012), entered by the District Court (*Mallonee, J.*) following a conditional guilty plea. Briggs contends that the court erred in denying his motion to suppress evidence of his blood-alcohol content (BAC) test because (1) he did not give valid consent, (2) his Fourth Amendment right was violated, and (3) the United States Supreme Court's recent decision *Missouri v. McNeely*, 569 U.S. ---, 133 S. Ct. 1552 (2013), abrogates the Maine implied consent statute, 29-A M.R.S. § 2521 (2012).

Ample evidence supports the court's finding that Briggs consented to the BAC test even though Briggs was under the influence of alcohol and claimed that he could not recall giving such consent. Because Briggs gave actual consent to the BAC test, the warrantless withdrawal of Briggs's blood did not violate his Fourth Amendment right. See *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973); *State v. Nadeau*, 2010 ME 71, ¶ 17, 1 A.3d 445. Further, where actual consent exists, neither *McNeely* nor the implied consent statute, 29-A M.R.S. § 2521, applies. See *McNeely*, 133 S. Ct. at 1556 (noting that the case dealt with "nonconsensual blood testing"); *State v. Carter*, 443 A.2d 958, 960 (Me. 1982) (noting that the implied consent statute was inapplicable where the defendant gave

voluntary consent to a BAC test and was not under arrest prior to the administration of the test).

The entry is:

Judgment affirmed.

On the briefs:

Hunter J. Tzovarras, Esq., Bangor, for appellant Mark W. Briggs

Carletta M. Bassano, District Attorney, and Mary N. Kellett, Asst. Dist. Atty., Prosecutorial District No. VII, Ellsworth, for appellee State of Maine