



STATE OF MINNESOTA **FILED** DISTRICT COURT

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COUNTY OF HENNEPIN DEPUTY FOURTH JUDICIAL DISTRICT

State of Minnesota, HENN CO. DISTRICT COURT ADMINISTRATOR

Plaintiff,

**ORDER AND MEMORANDUM**

vs.

Court File No. **[REDACTED]**  
07004214

David Guy ULRICH,

Defendant.

The above-entitled matter came on for hearing on Defendant's Motion to suppress all evidence subsequent to the PBT before the Honorable Richard S. Scherer, Judge of the Hennepin County District Court, on March 12, 2007. Ryan Garry appeared on behalf of Defendant. John Manning, Assistant City Attorney, appeared on behalf of the Plaintiff. Defendant raised two arguments. First, whether the officer had reasonable justification under Minn. Stat. §169A.41 to administer a preliminary breath test (PBT) to Defendant, and second, whether the officer went beyond the scope of the stop and lacked reasonable articulable suspicion justifying the seizure of the Defendant when he ordered him to submit to a PBT while seated in his vehicle.

Based upon the evidence submitted, the arguments of counsel, and all files, records, and proceedings herein, the Court makes the following:

**FINDINGS OF FACT**

1. On January 19, 2007 at approximately 12:15 a.m., Officer Windus clocked Defendant's vehicle traveling 41 m.p.h. in a 30 m.p.h. zone. Officer Windus pulled his car behind the Defendant's vehicle where he had stopped for a stop light. Once the light turned green, the Officer activated his emergency lights. The Defendant pulled over without incident. Except for the speeding, there was no deficit in Defendant's driving.
2. Officer Windus approached the driver's side door / window of Defendant's vehicle. While standing next to Defendant's car and speaking with the Defendant, the Officer smelled alcohol. Officer Windus asked the Defendant if he had been drinking and he responded "no." The Officer also asked Mr. Guzek, the passenger in Defendant's car, if he had been drinking and he responded "yes."

Officer Windus testified that the Defendant was not "looking him in the eye" but admitted that on traffic stops this does occur, and can be attributed to drivers being embarrassed, nervous, etc. Although the Officer testified that the Defendant was not "looking him in the eye," the Officer did testify that the Defendant's eyes were bloodshot. The Defendant gave his license to the Officer without incident and the Officer returned to his squad car with it.

3. The Defendant did not have slurred speech, was not confused, did not reveal motor skills impairment, and did not fumble with his license or insurance card. On the other hand, the Defendant was cooperative, had "normal" pupils, and had normal reactions to instructions.
4. The Officer returned to his squad car with Defendant's license. After a few minutes, the Officer returned to Defendant's vehicle and asked the Defendant to blow into a PBT. Defendant declined to do so. Officer Windus then ordered the Defendant out of the car and placed him in the backseat of his squad car. Upon exiting his car, Defendant showed no indicia of being under the influence of alcohol. Defendant was eventually transported to the patrol / police station.
5. The Officer administered no field sobriety tests, as the weather conditions were hazardous. The Officer admitted that he could have administered some field sobriety tests without Defendant having to exit his vehicle—this, however, was not done.

#### CONCLUSIONS OF LAW

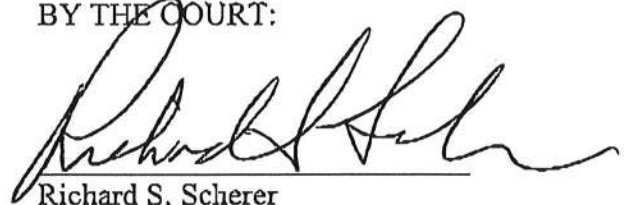
1. An officer may request a PBT when the officer has "reason to believe" that the driver maybe violating Minn. Stat. §169A.20. Minn. Stat. §169A.41. To meet this standard, the officer must posse specific and articulable facts that form a basis to believe that a person is or has been driving, operating, controlling a motor vehicle while under the influence of alcohol. *State, Dep't of Pb. Safety v. Junczewski*, 308 N.W.2d 316, 321 (Minn. 1981), *State v. Vievering*, 383 N.W.2d 729, 730 (Minn. Ct. App. 1986). Articulable suspicion is an objective standard and is determined by the totality of the circumstances. *Paulson v. Commissioner of Pub. Safety*, 384 N.W.2d 244, 245 (Minn. Ct. App. 1986).

2. In the present matter, and based upon the totality of the circumstances, the officer did not have specific and articulable facts (reasonable suspicion) to believe the Defendant was driving under the influence.

**ORDER**

1. That the Defendant's Motion to suppress all evidence subsequent to the PBT is **GRANTED**. *The case is dismissed.*

BY THE COURT:



Richard S. Scherer  
Judge of District Court

DATED: March 22, 2007  
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