


STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota

Plaintiff,

Court File No.27-CR-14-

vs.

ORDER

B  F  W 

Defendant.

The above-entitled case came on for a hearing before the undersigned Judge of District Court on April 10, 2014 on the motion of the defendant to suppress evidence and to dismiss.

Appearances:

Gregory Holly, Esq., appeared on behalf of Plaintiff.
Ryan Garry, Esq., appeared on behalf of Defendants.

Based upon all the files, records, and proceedings herein, including the arguments of counsel, the Court makes the following **ORDER**:

1. Defendant's motion to suppress evidence and dismiss is **GRANTED**.
2. The attached memorandum is incorporated herein as if set forth in full.

LET JUDGMENT BE ENTERED ACCORDINGLY

DATED: 5/5/2014

BY THE COURT



John Q. McShane
Judge of District Court

MEMORANDUM

The matter before the Court is Defendant's motion to suppress PBT results and to dismiss.

FACTS

The following facts are taken as true unless otherwise noted. On January 19, 2014 at 2:55 AM defendant B [REDACTED] F [REDACTED] W [REDACTED] (W [REDACTED]) was pulled over by Richfield police officer A [REDACTED] J [REDACTED]. Officer J [REDACTED] stopped W [REDACTED] because her license plate light was not illuminated and the bottom half of her license plate was obscured by snow. When the officer approached the vehicle she smelled a strong odor of alcohol from the vehicle. She admitted that she could not determine if the smell came from Defendant or the vehicle. She stated that the strength of the odor was consistent with spilled alcoholic. Officer J [REDACTED] testified that she observed that Defendant's eyes were watery or glassy and that she fumbled with her driver's license and insurance information. The officer was unable to be any more specific than "fumbled." When she asked Defendant if she had been drinking, Defendant admitted that she had had one beer.

The officer testified that she was trained to consider the following to determine if a person is intoxicated: driving behavior, speech, odor, condition of eyes, confusion, clothing, etc. In the present case, the officer observed watery eyes and fumbling.

A review of the squad video, Ex. 1, demonstrates proper driving and a prompt and appropriate response when the officer activated her squad light. The speech heard from the Defendant was not slurred or inappropriate. Defendant does not seem confused and her clothing appears normal. It is clear that the officer administered the PBT because she was unable to determine if the strong smell of alcohol was from the vehicle or from Defendant's person. The

PBT was given to eliminate Defendant as a source of the smell, which was the only basis for concluding that Defendant was driving under the influence.

ANALYSIS

Under the United States and Minnesota constitutions, a police officer may make an investigatory stop if he/she has a reasonable articulate suspicion that the person stopped is engaged in criminal activity. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 Led. 2d 889 (1968). Clearly the officer in this case had such a suspicion upon seeing the license plate light out and the license plate obscured by snow. The scope and duration of any traffic stop must be limited to the original justification for the stop. State v. Diede, 795 NW.2d 836, 845 Minn. (2011). An officer may expand the scope of the stop only for offenses for which the officer possesses a reasonable articulable suspicion within the time necessary to resolve the original offense. *Id.* at 845.

An officer must have a reasonable articulable suspicion of a DWI violation to support a PBT request. State, Dept. of Public Safety vs. Junczewski, 308 N.W.2d 316, 321 (Minn. 1981). PBT may be administered by an officer even if he is unsure whether the driver is under the influence. Marben vs. State, Dept. of Public Safety, 294 N.W.2d 697, 700 (Minn. 1980).

The court finds that the officer did not have a reasonable articulable suspicion of intoxicated driving and therefore did not have the right to administer the PBT test. There was no questionable driving conduct. The odor of alcohol was so strong that it was consistent with a spilled alcoholic beverage according to the officer. The fumbling is too vague to consider and is consistent with uniqueness of the situation. Watery eyes are not uniquely attributable to alcohol consumption. The clearness of speech, normal movement, normal behavior demonstrated by the

squad video would lead a reasonable person to conclude that the driver was not under the influence of alcohol.

For these reasons the results of the PBT must be suppressed without them there is no reasonable articulable suspicion to justify the arrest. Therefore the case must be dismissed.

JQM