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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-917**

State of Minnesota,
Respondent,

vs.

Kenneth Daryl Shingobe,
Appellant.

**Filed March 15, 2011
Affirmed
Worke, Judge**

Mille Lacs County District Court
File No. 48-CR-08-834

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Janice S. Jude, Mille Lacs County Attorney, Mark J. Herzing, Assistant County Attorney,
Milaca, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara L. Martin, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his first-degree test-refusal conviction, arguing that there was
no reasonable, articulable suspicion to warrant a preliminary breath test. We affirm.

DECISION

Appellant Kenneth Daryl Shingobe challenges his first-degree test-refusal conviction, arguing that police lacked reasonable, articulable suspicion to request a preliminary breath test (PBT) after stopping his vehicle for driving at night without headlights activated. Any traffic violation, however minor, ordinarily provides an objective basis for a traffic stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). But the scope of a traffic stop must be tied to, and justified by, the circumstances of the stop; any expansion of the scope of the stop must be supported by reasonable and articulable suspicion of criminal activity. *State v. Fort*, 660 N.W.2d 415, 418-19 (Minn. 2003); *see also State v. Vievering*, 383 N.W.2d 729, 730 (Minn. App. 1986) (permitting request for PBT if based on “specific and articulable facts” that support suspicion of driving while impaired (DWI)), *review denied* (Minn. May 16, 1986). If an officer has reasonable, articulable suspicion that a driver is operating a vehicle under the influence of alcohol, “the officer may require the [driver] to provide a breath sample for a preliminary screening test.” *Knapp v. Comm’r of Pub. Safety*, 594 N.W.2d 239, 241 (Minn. App. 1999), *rev’d on other grounds*, 610 N.W.2d 625 (Minn. 2000). Reasonable, articulable suspicion includes the officer’s observations of sufficient indicia of intoxication. *State v. Driscoll*, 427 N.W.2d 263, 265-66 (Minn. App. 1988). The existence of reasonable, articulable suspicion is a legal question we review de novo. *Wilkes v. Comm’r of Pub. Safety*, 777 N.W.2d 239, 242-43 (Minn. App. 2010).

Appellant argues that the district court erred because the only sign of impairment supporting the officer’s reasonable, articulable suspicion to request a PBT was the odor

of alcohol. Appellant concedes that an odor of alcohol is an indication of impairment. *See State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004). Appellant contends, however, that the odor of alcohol alone is insufficient to request a PBT. Appellant cites to no authority supporting this position. Instead, appellant relies on cases in which this court has held that the odor of alcohol is sufficient to create reasonable, articulable suspicion when paired with other indicia of intoxication. *See Hager v. Comm'r of Pub. Safety*, 382 N.W.2d 907, 911 (Minn. App. 1986) (odor of alcohol and blood-shot, watery eyes created reasonable, articulable suspicion to administer a preliminary screening test); *Paulson v. Comm'r of Pub. Safety*, 384 N.W.2d 244, 246 (Minn. App. 1986) (location of traffic stop in an area of several bars and officer's observation of two partially filled glasses underneath the passenger seat provided reasonable, articulable suspicion); *Vievering*, 383 N.W.2d at 730 (odor of alcohol, presence of two open beer cans, and speeding violation created reasonable, articulable suspicion).

But the district court did not rely solely on the odor of alcohol in concluding that the officer demonstrated reasonable, articulable suspicion to request that appellant submit to a PBT. The district court determined that the officer's reasonable, articulable suspicion was based on appellant's driving conduct in addition to the strong odor of alcohol emanating from appellant. Driving a vehicle at night without activated headlights is a traffic violation under Minn. Stat. § 169.48, subd. 1(a) (2008). A traffic violation coupled with an objective indication of impairment equates to a reasonable, articulable suspicion justifying a PBT. *See Vievering*, 383 N.W.2d at 730. Accordingly, the district court did not err by concluding that the officer demonstrated a reasonable, articulable

suspicion necessary to expand the scope of the traffic stop and request that appellant submit to a PBT.

Affirmed.