

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Appellant,

vs.

BRYAN TYLER ROBERTSON,

Appellee.

_____ /

Appeal from the County Court
for Orange County, Florida
Martha Adams, County Court Judge

Jeffrey Ashton, State Attorney
and Syed M. Qadri, Assistant State Attorney
for Appellant

Jacob V. Stuart, Jr., Esq.
for Appellee

Before MIHOK, LUBET, G. ADAMS

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

After an Orlando police officer pulled Appellee Bryan Robertson over for running a stop sign, he observed that Appellee had red, glassy eyes. He asked Appellee to exit his car. Appellee did so and, based on various indicia of possible impairment, the officer asked Appellee to perform field sobriety exercises. An arrest for driving under the influence ensued. Appellee sought suppression of the stop on the basis that the officer had no reasonable suspicion of

impairment at the time he initiated the investigation. The trial court granted the motion and the State appeals.

There is no doubt that running the stop sign allowed the officer to conduct the traffic stop. The question is at what point the encounter turned into a DUI investigation and whether the officer had a sufficient basis for that investigation.

The trial court focused on the subjective intent of the officer in making the stop, finding that the officer asked Appellee to exit the car because he (the officer) had already developed an unfounded suspicion of impairment. However, the subjective intent of an officer is not relevant. “[T]he constitutional reasonableness of a traffic stop under the Fourth Amendment does not depend on the actual, subjective motivations of the individual officers involved in conducting the stop.” *Dobrin v. Florida Dept. of Highway Safety & Motor Vehicles*, 874 So. 2d 1171, 1173-1174 (Fla. 2004). The test is whether there is an articulable, objective reason for the officer’s actions. *Id.*

Once the officer initiated the lawful stop, he did not need any particular level of suspicion of any crime to ask Appellee to exit his car. “[P]olice may ask drivers to exit their vehicles as a matter of routine procedure for police safety during traffic stops.” *State v. Olave*, 948 So. 2d 995, 997 (Fla. 4th DCA 2007). The request to exit did not initiate the DUI investigation.

After Appellee got out of his car, he had a very brief conversation with the officer, who had asked for Appellee’s license, registration, and insurance information. During this exchange, the officer noticed the odor of alcohol on Appellee’s breath, slightly slurred speech, and a slight sway. Appellee volunteered that he was coming from a bar and had a few drinks. The DUI investigation actually began only when Appellee was asked to perform field sobriety exercises.

By this point, the officer had sufficient indicia of possible impairment to lawfully conduct a DUI investigation.

In the absence of reasonable suspicion of other crimes, an officer who stops a driver for a traffic infraction may not detain him longer than necessary to write the ticket. *State v. Breed*, 917 So. 2d 206, 208 (Fla. 5th DCA 2005). However, there was no evidence here of any delay or detention by the officer to gather evidence of DUI. The testimony revealed that the officer had not even had time to start writing the ticket when he observed several physical signs of impairment and Appellee had told him he had a few drinks. Only at that point did the officer detain Appellee to investigate the possible DUI.

Because the request to exit the car was lawful and the officer had reasonable suspicion of impairment when he began his DUI investigation by asking for the field sobriety exercises, the motion to suppress should have been denied.

IT IS THEREFORE ORDERED AND ADJUDGED that the trial court's order granting the motion to suppress is REVERSED and the matter REMANDED for further proceedings.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 19th day of February, 2014

/S/

THOMAS A. MIHOK
Presiding Circuit Judge

LUBET and G. ADAMS, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Syed M. Qadri,, Assistant State Attorney**, sqadri@sao9.org, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and to **Jacob V. Stuart, Jr., Esq.**, jacob@raisedtoprotect.com, 37 North Orange Avenue, Suite 1100, Orlando, Florida 32801, this 19th day of February, 2014.

/S/ _____
Judicial Assistant