

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502016AP900039AXXXMB
L.T. NO.: 502014CT004400AXXXNB

STATE OF FLORIDA,
Appellant,

v.

JOCELIE KYLE ALLISON,
Appellee.

_____ /

Opinion filed: MAR 06 2018

Appeal from the County Court in and for Palm Beach County,
Judge Leonard Hanser.

For Appellant: Justin Chapman, Esq.
Office of the State Attorney
401 N. Dixie Highway
West Palm Beach, FL 33401
mdelsontro@sa15.org
criminalappeals@sa15.org

For Appellee: William S. Abramson, Esq.
324 Datura Street, Suite 208
West Palm Beach, FL 33401
wsabramson@att.net

PER CURIAM.

We grant Appellant's Motion for Clarification, withdraw our previous Opinion, and replace it with the following.

The State appeals the trial court's order suppressing evidence before trial, claiming that the trial court applied the incorrect standard and erroneously found that Appellant's consent was required to administer field sobriety exercises. We agree and reverse.

Officers conducting DUI stops are governed under investigative stop principles articulated

in *Terry v. Ohio*, 392 U.S. 1 (1968). *State v. Taylor*, 648 So. 2d 701, 703 (Fla. 1995). *Terry* and subsequent cases held that “certain investigative stops are permissible under the Fourth Amendment when based on an officer's reasonable suspicion that criminal activity is afoot.” *Taylor*, 648 So. 2d at 703. The Florida Supreme Court has applied these investigative stop guidelines to field sobriety exercises during a DUI investigation. *Id.* Consent is not necessary to administer field sobriety exercises when an officer has reasonable suspicion that a driver may be impaired. *See State v. Liefert*, 247 So. 2d 18, 19 (Fla. 2d DCA 1971).

In the instant case, the trial court specifically found that the officer had reasonable suspicion, but not probable cause, and Appellant’s consent was therefore required before the officer was able to conduct field sobriety exercises. Because the trial court applied the improper standard when granting Appellant’s motion to suppress, we reverse the trial court’s order of suppression and remand for further proceedings.

We further note that despite Appellee’s failure to file an answer brief, it is abundantly clear from the record that the officer had reasonable suspicion and that reversal is warranted.

REVERSED and REMANDED for further proceedings consistent with this Opinion.
JOHNSON, FEUER, and KASTRENAKES, JJ., concur.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO: 502016AP900039AXXXMB
L.T. NO: 502014CT004400AXXXNB

STATE OF FLORIDA,
Appellant,

Opinion/Decision filed: MAR 06 2018

v.

Appeal from County Court in and for
Palm Beach County, Florida;
Judge Leonard Hanser

JOCELIE KYLE ALLISON,
Appellee.

Appealed: March 16, 2016

_____/_____
DATE OF PANEL: OCTOBER 5, 2017

PANEL JUDGES: JOHNSON, FEUER, KASTRENAKES

AFFIRMED/REVERSED/OTHER: REVERSE

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With/Without Opinion)	With/Without Opinion)
)))
<u>3/5/17</u>)))
DATE: <u>[Signature]</u>	J.)		J.)		J.)
)))
)))
DATE: <u>3-6-18 Johnson</u>	J.)		J.)		J.)
)))
)))
DATE: <u>3/6/18</u>	J.)		J.)		J.)