

SPECIAL LEGAL BULLETIN

PROVIDING HIGHWAY SAFETY AND SECURITY THROUGH EXCELLENCE IN SERVICE, EDUCATION, AND ENFORCEMENT

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Does the defendant's speeding, smell of alcoholic beverages, and glassy, bloodshot eyes give rise to reasonable suspicion to investigate for DUI?

Yes. Recent district court opinions show that the smell of alcoholic beverage, plus some other indication of intoxication gives rise to reasonable suspicion.

In order to ask a driver to submit to field sobriety testing, an officer must have reasonable suspicion that the driver is driving under the influence. Reasonable suspicion can arise under a variety of circumstances, but many cases involve observations of the smell of alcoholic beverage, as well as visual signs, such as bloodshot or glassy eyes. The District Court's decision in State v. Ameqrane reaffirms that an officer's observations of the smell of alcoholic beverage and glassy, bloodshot eyes are sufficient to transition from a routine traffic stop to a DUI investigation. 2010 WL 2010804 (Fla. 2d DCA, 2010).

Officer Juan Mello observed defendant Othmane Ameqrane's vehicle speeding and conducted a traffic stop. When he approached the vehicle and began talking to Ameqrane, Officer Mello smelled alcoholic beverage on his breath and saw that his eyes were bloodshot and glassy. Ameqrane admitted that he had consumed alcohol. It was then that Officer Mello performed an HGN field test. When that test showed that Ameqrane had been drinking, Officer Mello asked him to submit to further testing. When Ameqrane finally refused, he was arrested for DUI. Ameqrane, at 1. The District Court determined that Officer Mello did have "reasonable suspicion" sufficient to conduct sobriety testing. Ameqrane, at 3.

Under Florida Statute § 901.151, the "Florida Stop and Frisk Law," law enforcement officers in an encounter with a person under "circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of [criminal laws]" may stop that person to determine his or her identity and ascertain the circumstances that led to the stop. The "reasonable" circumstances standard for investigating the circumstances of DUI is what the court again confirms in Ameqrane. Id. at 2 (*citing State v. Taylor*, 648 So.2d 701, 703-704 (Fla. 1995)).

The District Court points out many possible observations and combinations of observations that can give rise to reasonable suspicion, represented in the table below:

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Signs of DUI Sufficient to Create “Reasonable Suspicion”

	Smell of Alcoholic Beverage	Bloodshot Eyes and/or Flushed Face	Admission of Alcohol Consumption	Staggered Walking	Slurred Speech	Speeding or other Traffic Infraction	OUTCOME
<u>Ameqrane</u>	•	•	•			•	Reasonable Suspicion
<u>Taylor</u>	•	•		•	•	•	Reasonable Suspicion
<u>Origi</u> , 912 So.2d 69 (Fla. 4th DCA 2005)	•	•				•	Reasonable Suspicion
<u>Carder</u> , 15 Fla. L. Weekly Supp. 547a (Fla. 9th Cir.Ct. 2007)	•	•					Reasonable Suspicion
<u>Fewell</u> , 14 Fla. L. Weekly Supp. 704a (Fla. 9th Cir.Ct. 2007)	•	•				•	Reasonable Suspicion
<u>Brush</u> , 14 Fla. L. Weekly Supp. 2b (Fla. 4th Cir.Ct. 2006)	•	•				•	Reasonable Suspicion
<u>Tamer</u> , 10 Fla. L. Weekly Supp. 931a (Fla. 15th Cir.Ct. 2003)	•	•	•			•	Reasonable Suspicion
<u>Petroski</u> , 6 Fla. L. Weekly Supp. 621b (Fla. 15th Cir.Ct. 1999)	•	•	•				Reasonable Suspicion
THE RULE = Smell of Alcoholic Beverage + Some other indication	•						Reasonable Suspicion

As you can see, the smell of alcoholic beverage on the driver’s breath; bloodshot, glassy eyes or a flushed appearance; admission of consuming alcohol; staggered walking; and slurred speech can all be signs of DUI. If the driver was stopped for speeding or some other traffic infraction, this can support an officer’s finding of reasonable suspicion. The Supreme Court of Florida has held that speeding, in combination with observations of bloodshot eyes and a strong odor of alcohol is “more than enough to provide reasonable suspicion.” Taylor, 648 So.2d at 703-04.

While more signs of DUI can amplify evidence of reasonable suspicion, officers should keep in mind that a driver does not need to display all of the signs of DUI to justify a request to perform field sobriety testing. In Carder v. Dep’t of Highway Safety and Motor Vehicles, the Circuit Court stated that observations of bloodshot eyes and odor of alcohol were sufficient to request field sobriety testing, even though the driver’s speech was not slurred and she showed no other signs of possible DUI. 15 Fla. L. Weekly Supp. 547a n. 2 (Fla. 9th Cir.Ct. 2008). It should also be noted that qualifying signs of DUI are not limited to those listed above.

As Ameqrane reaffirms, an officer’s observations of the smell of alcoholic beverage, plus some other sign of DUI – bloodshot eyes, slurred speech, or another sign – is sufficient to raise reasonable suspicion to further investigate whether or not DUI has occurred.



State v
Ameqrane.rtf

All questions should be directed to the local State Attorney or the Office of General Counsel (850) 617-3101. If you care to review other Legal Bulletins, please note the website address: DHSMV Homepage <http://www.hsmv.state.fl.us/Bulletins>) or FHP Homepage (www.fhp.state.fl.us).

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