



LGIT'S ROLL CALL REPORTER **NOVEMBER 2006**

MIRANDA WARNINGS AND FIELD SOBRIETY TESTS

QUESTION: Can an officer conduct field sobriety tests during a traffic stop without first administering the warnings outlined in *Miranda v. Arizona*?

ANSWER: Yes. The conduct of field sobriety tests during a traffic stop does not constitute custodial interrogation implicating the Fifth Amendment.

CASE: *Brown v. State*, No. 2273, September Term, 2005
Court of Special Appeals of Maryland, Decided November 1, 2006

In *Brown v. State*, the Court of Special Appeals was called upon to decide whether an officer acted unlawfully by conducting field sobriety tests without first administering the warnings outlined forty years earlier by the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966). In determining that the officer had not acted unlawfully, the Court held that the detained driver was not in custody when he was required to perform the tests. Consequently, the protections afforded under *Miranda* simply did not apply. The case is important for the additional reason that it again holds that police need only have reasonable articulable suspicion that the driver is under the influence of alcohol before requiring him or her to perform field sobriety tests; probable cause is not necessary.

The facts in the *Brown* case established that at approximately 2:00 a.m. on the morning of May 15, 2005, a Jeep Grand Cherokee collided with the rear of a vehicle that was stopped at a red traffic signal in a northbound lane at the intersection of 48th Street and Coastal Highway in Ocean City. Also stopped at the intersection, but in a southbound lane of Coastal Highway, was a marked police vehicle in which Officer Douglas Smith, a member of the Traffic Safety Unit of the Ocean City Police Department, and Officer Dagstani were riding. Officer Smith was driving the police vehicle. He saw the collision and heard a "loud" noise. He watched the drivers of the two vehicles leave their vehicles and speak briefly, then return to their vehicles when the light turned green and continue north on Coastal Highway. Officer Smith made a U-turn and followed the two vehicles as they headed north. The Grand Cherokee turned east on 51st Street, while the other vehicle continued northbound. Officer Smith immediately activated his emergency lights and stopped the other vehicle at 52nd Street and Coastal Highway. Officer Smith left Officer Dagstani to speak with the driver of that vehicle. Officer Smith then turned off his emergency lights and drove back to 51st Street, where he found the Grand Cherokee parked with the engine still running. As Officer Smith pulled behind the Grand Cherokee, the driver, Michael E. Brown, turned off its engine. Officer Smith got out of his vehicle and approached the Grand Cherokee.

As he reached the driver's window, Officer Smith asked Brown for his license and registration, and

began questioning him about the collision. At that time, he detected the “strong odor of an alcoholic beverage on [Brown’s] breath and person,” and saw that his “eyes were glassy and bloodshot.” Evidently, at some point during that exchange, Brown handed Officer Smith his insurance card, but not the vehicle’s registration. Officer Smith returned the insurance card and again asked Brown for the registration card. He noticed that, as Brown was “flipping through papers, he had passed over his registration card a couple of times.” When Officer Smith asked Brown the status of his license, Brown replied that “he had lost his license for a DWI” two years prior. Also, at some point during the stop, Officer Dagstani radioed to advise Officer Smith that the other driver did not wish to file an accident report.

Officer Smith asked Brown to exit the vehicle. Brown “staggered out of the vehicle” whereupon Officer Smith asked him about his consumption of alcohol that evening. Brown answered that “he had two mixed alcoholic beverages while at Seacrets,” a bar located at 49th Street in Ocean City. Brown said that he had his last drink at 1:00 a.m. Based on these observations, Officer Smith administered several field sobriety tests, including the horizontal gaze nystagmus, the walk-and-turn test, and the one-leg stand test. Initially, however, he had Brown count backward from seventy-five to fifty-seven and to recite the alphabet from “D to T.” Officer Smith found that Brown displayed a “lack of smooth pursuit in both his left and right eye,” was unable to maintain heel-to-toe position, and was unable to follow all of the instructions. Officer Smith then placed Brown under arrest for driving under the influence of alcohol. Brown agreed to take a breathalyzer test, the results of which showed his blood alcohol concentration to be 0.18 at the time of testing.

Before trial, Brown filed a motion to suppress the evidence the police obtained as a result of the stop. He argued, in part, that he was not advised of and did not waive his *Miranda* rights. The trial court denied the motion to suppress, finding, in part, that Officer Smith was “performing a traffic investigation” and there’s an abundance of authority that he does have the right to ask him questions without *Miranda* warnings.” Brown was found guilty of driving under the influence of alcohol, driving under the influence of alcohol *per se*, and driving while impaired. Brown was sentenced to one year, with all but 60 days suspended, followed by two years of supervised probation. He also was fined \$500.00. Brown appealed.

On appeal, the Court of Special Appeals entertained Brown’s arguments that field sobriety tests (1) rise to the level of custodial interrogation implicating the Fifth Amendment and (2) are testimonial in nature. The Court disagreed with Brown’s contention that the conduct of field sobriety tests constitutes custodial interrogation implicating the Fifth Amendment. Consequently, the Court did not address whether any of the tests given were “testimonial”.

In reaching its decision, the Court recounted that, in *Miranda*, the Supreme Court set forth prophylactic measures designed to advise the defendant of his right to remain silent in securing the Fifth Amendment privilege against compelled self-incrimination. *Miranda* warnings, however, need only be administered if the defendant is in custody. Custodial interrogation refers to “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” Relying on precedent from the Maryland Court of Appeals, the Court of Special Appeals concluded that a suspect who is briefly detained in order to perform field sobriety tests is not “in custody” for purposes of *Miranda*. The fact that the field sobriety tests given by Officer Smith were “more detailed” than the tests given by officers in other

cases failed to sway the Court. The Court concluded that, “[a]lthough the detention may have been made slightly longer by virtue of the time it took to conduct five tests, that fact, without more, did not render Mr. Brown in custody for *Miranda* purposes.” Consequently, Brown’s conviction was upheld.

NOTE: The *Brown* case is also important because it acknowledges that, although field sobriety tests are searches under the Fourth Amendment, such “searches” need be supported only by reasonable articulable suspicion, and not probable cause, that the driver is under the influence of alcohol. Officers are cautioned, however, that although reasonable suspicion is a less demanding standard than probable cause, the Fourth Amendment requires at least a minimum level of objective justification for requiring field sobriety tests. Reasonable suspicion in the *Brown* case was based on the strong odor of alcoholic beverage on Brown’s breath, the glassy and bloodshot appearance of his eyes, Brown’s admission that he had two mixed drinks at a local bar within hours before the stop, his repeatedly passing over his registration card while flipping through his papers, and his producing his insurance card instead of his registration card.

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