Michigan Association of District Court Magistrates Annual Conference

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Current Issues with Search Warrants

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Noteworthy Fourth and Fifth Amendment Court Cases

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United States Constitution

- A particular focus of today's webinar are the constitutional issues surrounding the reasonableness of the initial traffic stop, search of the person and vehicle, the arrest, and statements made to the police.
- Most often at issue are the Fourth and Fifth Amendments to the United States Constitution.
- Today's webinar lays out the constitutional protections involved in traffic stops as dictated by the United States Supreme Court and the Michigan Supreme Court and Michigan Court of Appeals.

4th Amendment to the U.S. Constitution

- "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, **shall not be violated, and no Warrants shall issue, but upon probable cause,** supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

5th Amendment to the U.S. Constitution

- "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; **nor shall be compelled in any criminal case to be a witness against himself,** nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Stop

Terry v. Ohio, 392 U.S. 1 (1968)

- The Court held that an individual's Fourth Amendment rights are not violated if a police officer stops a person and frisks him or her without probable cause to make an arrest, so long as the officer is ". . .able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."
- In essence, if the officer has a reasonable suspicion that the person either has committed or will commit a crime and may be dangerous to the officer, then there is no violation of the 4th Amendment.


Right to Frisk Gets Supreme Court OK

Kansas v Glover, No. 18-556 (U.S. Supreme Court, April 6, 2020)

- The deputy involved in this case ran a registration check on a pickup truck with a Kansas license plate. The Kansas Department of Revenue's electronic database indicated the truck was registered to an individual whose driver's license had been revoked.
- Without observing any other traffic infractions or identifying the driver, the deputy pulled over the vehicle, discovered the owner was in fact the driver, and cited the defendant for driving while his license was revoked.
- The United States Supreme Court ruled "A sheriff's deputy making an investigative traffic stop after running a vehicle's license plate and learning that the registered owner's driver's license had been revoked was reasonable under the Fourth Amendment."
- The Court noted: "The inference that the driver of a car is its registered owner does not require any specialized training; rather, it is a reasonable inference made by ordinary people on a daily basis."

KANSAS

People v Mazzie, No. 343380 (Mich App 10/23/18)

- Defendant was a passenger in a vehicle that was pulled over, and then searched by, city of Monroe police officers. Defendant moved to suppress any evidence obtained from the search of the vehicle.
- According to testimony at the suppression hearing, at least twice per month, the Secretary of State sends information to the Law Enforcement Information Network (LEIN) regarding whether vehicles are insured, as they are required to be by state law. MCL 500.3102.
- Testimony also established that city of Monroe police officers routinely pull vehicles over if the LEIN indicates the vehicle is not insured.
- Upon searching the vehicle, the officers found small pieces of "an off-white chunky substance" scattered throughout the vehicle, which tested positive for cocaine.
- The Court held "The at most 16-day lapse in up-to-date information made available through the LEIN was not so late or unreliable that it could not provide the officers with reasonable suspicion that the vehicle was uninsured."
- "The officers' unrefuted testimony was that the insurance information was extraordinarily accurate, and even without that testimony, nothing in the record suggests that the information was not sufficiently reliable to provide reasonable suspicion that the driver was operating the vehicle contrary to MCL 500.3101."

Navarette v California, 572 U.S.393 (2014)

- Police received a tip that a truck had recently run the caller off the road, and the caller gave a specific description of the make, model, color and license plate of the vehicle.
- Police found the truck and followed it for about five-minutes, but did not observe any suspicious behavior. Nonetheless, they conducted a traffic stop and found thirty pounds of marihuana in the truck.
- At trial, the defendants argued the tip was unreliable.
- The Supreme Court found the tip to be reliable and held that law enforcement does not need to personally observe criminal activity when acting upon information provided by an anonymous 911 call.

People v Pagano, No. 159981 (Michigan Supreme Court, April 22, 2021)

- A police officer was informed by central dispatch of a 911 call that had been made. The caller was anonymous. The caller was concerned because the defendant had children with her, and she was yelling at them; appearing to be obnoxious; and appeared to be intoxicated that was causing her behavior with the children. The defendant then drove away.
- The caller relayed the vehicle's license plate number and the direction in which it was traveling, as well as the vehicle's make, model, and color. Within 30 minutes of the 911 call, the officer observed defendant's vehicle, which matched the caller's description. The officer followed the vehicle for a short time to corroborate the identifying information.
- During this period, the officer did not see defendant commit any traffic violations. The office pulled the defendant over based strictly on the 911 call information. Defendant was then arrested for operating while intoxicated.
- The Court ruled: "There was no report of even a minor traffic infraction in this case, and there is no support for the conclusion that appearing to be obnoxious and yelling at one's children creates a reasonable and articulable suspicion that one is intoxicated. All we have here is little more than a conclusory allegation of drunk driving, which is insufficient to pass constitutional muster."

Heien v North Carolina, No. 13-604 (U.S. Supreme Court, December 15, 2014)

- The United States Supreme Court ruled that, "A police officer's objectively reasonable 'mistake of law' can give rise to the reasonable suspicion necessary to uphold the stop of the vehicle."
- "It was objectively reasonable for an officer to think that the petitioner's faulty right brake light was a violation of state law, therefore, there was reasonable suspicion justifying a traffic stop."

Lange v California, No. 20-18 (U.S. Supreme Court, June 23, 2021)

- This case arose a police officer's warrantless entry into the defendant's garage.
- Lange drove by a California highway patrol officer while playing loud music and honking his horn. The officer began to follow the defendant, and soon after turned on his overhead lights to signal that the defendant should pull over.
- Rather than stopping, the defendant drove a short distance to his driveway and entered his attached garage. The officer followed the defendant into the garage. He questioned the defendant and, after observing signs of intoxication, he arrested him for driving under the influence.
- The United State Supreme Court held "Under the Fourth Amendment, pursuit of a fleeing misdemeanor suspect does not always—that is, categorically—justify a warrantless entry into a home."
- "On many occasions, the officer will have good reason to enter -- to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so -- even though the misdemeanant fled."

Pennsylvania v. Mimms, 434 U.S. 106 (1977)

- The Court held a police officer may order a driver out of a car and conduct a pat-down of that person without violating the protections of the Fourth Amendment.
- In *Maryland v. Wilson,* 519 U.S. 408 (1997), the Court extended that rule to passengers in a vehicle, as well.
- Pat-down of driver or passenger require reasonable suspicion the person is armed. *Terry v. Ohio,* 392 U.S. 1 (1968).

Rodriguez v. United States, 575 U.S. _ (2015)

- "The use of a K-9 dog after the completion of an otherwise lawful traffic stop exceeded the time reasonably required to handle the matter and therefore violated the Fourth Amendment's prohibition against unreasonable searches and seizures."
- "Absent reasonable suspicion, police extension of a traffic stop to conduct a dog sniff violates the Constitution's shield against unreasonable seizures."

People v Kavanaugh, No. 330359 (Mich. App., July 6, 2017)

- The Trooper returned to the cruiser and told defendant that he was going to give him a warning rather than a ticket for the traffic violations. He then asked defendant for consent to search the car.
- When defendant declined to consent, the Trooper informed him that he was going to radio a request for a dog to do a contraband sniff of his vehicle and that defendant and his companion would have to remain until the dog and its handler arrived and the process completed. After about 15 minutes, the dog and his officer arrived. The dog alerted at the car's trunk. The officers opened the trunk and found the marihuana.
- The Court of Appeals ruled the "Trooper did not have a reasonable suspicion of any criminal activity sufficient to justify his extension of the traffic stop to allow for a dog sniff."

People v Hannigan, No. 339239 (Mich. App., February 27, 2018)

- The case arose out of a traffic stop that occurred along I-196 in Berrien County. Defendant was driving a rented RV with two passengers northbound on I-196 to attend the Lakes of Fire Art and the Electric Forest Music Festival.
- The police officer initiated the stop after observing defendant drive over the "gore." After a positive indication by a drug-sniffing dog, police officers searched the RV and discovered capsules of MDMA and several small bags of marihuana.
- The officer finished his questioning of the passengers approximately 15 minutes into the video. However, the dog did not arrive for another additional 15 minutes.
- The Court ruled "The defendant's detention to wait for the dog after the officer ran computer checks and interviewed defendant and his passengers was impermissible under *Rodriquez."*

Gulyas v Minard, No. 18-2196 (6th Circuit of Appeals) (March 13, 2019)

- Officer Matthew Minard pulled over Debra Cruise-Gulyas for speeding.
- He wrote her a ticket for a lesser violation, known as a non-moving violation. As she drove away, apparently ungrateful for the reduction, she made an all-too-familiar gesture at Minard with her hand and without four of her fingers showing. That did not make Minard happy.
- He pulled her over again and changed the ticket to a moving violation—a speeding offense and what counts as a more serious violation of Michigan law.
- "Because Cruise-Gulyas did not break any law that would justify the second stop and at most was exercising her free speech rights, Minard violated Cruise-Gulyas' right to be free from an unreasonable seizure by stopping her a second time."
- "Fits of rudeness or lack of gratitude may violate the Golden Rule. But that doesn't make them illegal or for that matter punishable or for that matter grounds for a seizure."

Do Not Use The Word "HUNCH"

Arrest and Searches

Schmerber v. California, 384 U.S. 757 (1966)

- The Court upheld a warrantless blood test of an individual arrested for driving under the influence of alcohol because the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened the destruction of evidence."

Missouri v. McNeely, 569 U.S. 141 (2013)

- The Court noted, "The State nonetheless seeks a per se rule, contending that exigent circumstances necessarily exist when an officer has probable cause to believe a person has been driving under the influence of alcohol because BAC evidence is inherently evanescent."
- The Court ruled, "Though a person's blood alcohol level declines until the alcohol is eliminated, it does not follow that the Court should depart from careful case-by-case assessment of exigency."
- "When officers in drunk-driving investigations can reasonably obtain a warrant before having a blood sample drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so."
- "Circumstances may make obtaining a warrant impractical such that the alcohol's dissipation will support an exigency, but that is a reason to decide each case on its facts, as in *Schmerber,* not to accept the 'considerable overgeneralization' that a per se rule would reflect."

Mitchell v Wisconsin, No. 18-6210 (U.S. Supreme Court, June 27, 2019)

- The Defendant moved to suppress the results of the blood on the ground that it violated his Fourth Amendment right against "unreasonable searches" because it was conducted without a warrant.
- "When police have probable cause to believe a person has committed a drunk-driving offense and the driver's unconsciousness or stupor requires him to be taken to the hospital or similar facility before police have a reasonable opportunity to administer a standard evidentiary breath test, they may almost always order a warrantless blood test to measure the driver's BAC without offending the Fourth Amendment."

How Fast THC Goes Through the Blood

- Scientific studies show that a person smoking marijuana often has 50-80 nanograms of THC in their blood after their last puff.
- 30 minutes later, that level can drop to 15-16 nanograms—an 80% drop in THC.
- 1 hour later after the last puff, the level likely drops to 5-6 nanograms.
- THC levels can then drop to 2-3 nanograms after 90 minutes.

Arizona v. Gant, 566 U.S. 332 (2009)

- The Court held "The police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search (in an effort to protect law enforcement) or it is reasonable to believe the vehicle contains evidence of the offense of arrest (in order to preserve evidence relating to the arrestee's crime)."

Exclusionary Rule Exceptions-Automobile Searches

- May search passenger compartment if reasonable to believe arrestee might access the vehicle or that the vehicle contains evidence relevant to the offense for which the person was arrested. *Arizona v. Gant,* 536 U.S. 332 (2009)
  - Example - after OWI arrest – OK to search for alcohol containers
  - Example - after DWLS arrest – not OK

Byrd v United States, 584 U.S. _ (2018)

- The Supreme Court ruled "The driver who is not on the rental agreement may have a legitimate expectation of privacy in the vehicle, and therefore, the police must show probable cause to support the search."
- The United States Supreme Court rejected that "Drivers who are not listed in the rental agreements lacked an expectation of privacy in the automobile."

People v Mead, No. 156376 (Michigan Supreme Court, April 22, 2019)

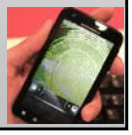
- The defendant was a passenger in a car when the police pulled it over, ordered him out, and searched the defendant's backpack. In the defendant's backpack were 5 prescription pills, 9 grams of marihuana, and 4 grams of methamphetamine. The defendant acknowledged the backpack left in the vehicle was his and he was arrested.
- The Michigan Supreme Court ruled "A person, whether he is a passenger in a vehicle, or a pedestrian, or a homeowner, or a hotel guest, may challenge an alleged Fourth Amendment violation if he can show under the totality of the circumstances that he had a legitimate expectation of privacy in the area searched and that his expectation of privacy was one that society is prepared to recognize as reasonable."
- The Court reversed its previous ruling, *People v LaBelle,* 478 Mich 891 (2007), which held that "Because the stop of the vehicle was legal, the defendant, a passenger, lacked standing to challenge the subsequent search of the vehicle."

Riley v. California, 573 U.S. ___ (2013)

- The Court noted "Cell phones differ in both a quantitative and a qualitative sense from other objects that might be carried on an arrestee's person. Notably, modern cell phones have an immense storage capacity.
- Before cell phones, a search of a person was limited by physical realities and generally constituted only a narrow intrusion on privacy. But cell phones can store millions of pages of text, thousands of pictures, or hundreds of videos. This has several interrelated privacy consequences."
- Therefore, the Court held "The police generally may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested."

Riley 5th Amendment Issue

- *Commonwealth of Virginia v. David Charles Baust,* Docket No. CR14-1439 (Va. Cir., October 28, 2014)
- The Court held "Defendant cannot be compelled to produce his passcode to access his smartphone but can be compelled to produce his fingerprint."
- Passcode = "testimonial communication"
- Fingerprint does not = "testimonial communication
  - *United States v. Kirschner,* 823 F. Supp. 2d 665 (E.D. Mich. 2010)



Carpenter v United States, No. 16-402 (U.S. Supreme Court, June 22, 2018)

- This case grew out of a series of armed robberies in Michigan and Ohio in 2010 and 2011. To prosecute its case against Timothy Carpenter, the government obtained cell-phone records that revealed his approximate location over 127 days, placing him in proximity to the crimes.
- The records were obtained under the Stored Communications Act of 1986, which allows phone companies to turn over records if the government has reasonable grounds to believe they will help a criminal investigation.
- The United States Supreme Court held in a 5-4 decision that the government violates the Fourth Amendment to the U.S. Constitution by accessing historical records containing the physical locations of cell-phones without a warrant.

Bailey v. United States, No. 11-770 (U.S. Supreme Court, February 19, 2013)

- The Court ruled that "The rule in *Michigan v. Summers* that officers executing a search warrant are permitted 'to detain the occupants of the premises while a proper search is conducted' is limited to the immediate vicinity of the premises to be searched and does not apply when a recent occupant of the premises was detained at a point beyond any reasonable understanding of the immediate vicinity of the premises in question."

Collins v Virginia, No. 16-1027 (U.S. Supreme Court, May 29, 2018)

- During the investigation of two traffic incidents involving an orange and black motorcycle with an extended frame, Officer Rhodes learned that the motorcycle likely was stolen and in the possession of the defendant Collins.
- Officer discovered photographs on Collins' Facebook profile of an orange and black motorcycle parked in the driveway of a house, drove to the house, and parked on the street.
- Without a search warrant, the Officer walked to the top of the driveway, removed the tarp, confirmed that the motorcycle was stolen, took a photograph of the uncovered motorcycle, and returned to his car to wait for Collins. When Collins returned, Officer arrested him.
- The Court held "Because the scope of the automobile exception extends no further than the automobile itself, it did not justify Officer Rhodes' invasion of the curtilage."
- The Court further ruled "Nothing in this Court's case law suggests that the automobile exception gives an officer the right to enter a home or its curtilage to access a vehicle without a warrant."

People v Kazmierczak, No. 113452 (Michigan Supreme Court, February 10, 2000)

- The Defendant was stopped for speeding. The Officer indicated he was five to ten feet behind the rear bumper of the car when he smelled "A very strong odor of marihuana emanating from the vehicle that was overpowering."
- When the Officer's search of the inside of the car did not reveal any marihuana, he opened the trunk and observed a zippered duffle bag. A search of the duffle bag revealed a block of marihuana in a sealed clear plastic bag.
- The Michigan Supreme Court ruled:

  "The smell of marihuana alone by a person qualified to know the odor may establish probable cause to search a motor vehicle, pursuant to the motor vehicle exception to the warrant requirement."

People v Moorman, No. 349282 (Mich. App., 2/13/20)

- During a traffic stop for speeding, trooper smelled strong odor of fresh marihuana. Defendant initially denied having any marihuana in the vehicle, but then said he had harvested marihuana earlier that day. He produced a valid medical marihuana caregiver card.
- The trooper searched the vehicle to verify that the amount of marihuana in the vehicle was the allowable amount under the MMMA. He testified that his search of the vehicle was based only on the odor of fresh marihuana.
- In a motion to suppress, defendant argued that the odor of fresh marihuana alone does not provide probable cause to search a vehicle without other circumstances indicating that he was outside the allowable amounts under the MMMA.
- The COA held that the search was legal under *Kaczmierczak*, and that the question was whether the trooper had probable cause to believe that defendant's possession was unlawful because of the quantity involved.
- Further, the COA held that defendant's inconsistent statements combined with the strong odor of fresh marihuana gave rise to probable cause to believe that defendant possessed more than his legal amount under the MMMA.

People v Hyde, No. 282782 (Mich. App., September 1, 2009)

- The Court held that taking the blood sample under the implied consent law was improper due to the defendant's diabetes.
- Therefore, the Court concluded that the defendant's blood was unconstitutionally seized in violation of the 4th Amendment, and the test results should be suppressed.

People v Arndt, No. 300301(Mich App 12/27/11)

- Defendant did not advise the arresting officer that he was a diabetic, although defendant was asked whether he had any medical conditions and whether he was taking any prescribed medications.
- Therefore, the officer had no reason to advise defendant that the implied consent statute did not apply to him.

People v Philabaun, 461 Mich 255 (1999)

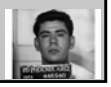
- Deputy Booker explained that a search warrant was a court order and that compliance was required. He told the defendant that if he did not comply, he would be charged "with resisting and opposing." Still, the defendant persisted.
- The defendant's refusal was offered in a civil tone. He did not curse or grow abusive. Neither did he offer any threats or physical resistance. Likewise, Deputy Booker simply stated his position. There was no attempt by Deputy Booker or the magistrate or the lab technician to force compliance.
- A subject who refuses to submit to a chemical test given pursuant to a search warrant is subject to being charged with resisting or obstructing an officer (even if no active aggression was exhibited).

Miranda and Traffic Stops

Miranda

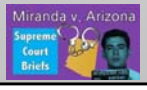
Miranda v Arizona, 384 U.S 436 (1966)

- *Miranda* Rights are usually given as follows:
  - You have the right to remain silent, and refuse to answer questions.
  - Anything you say may be used against you in a court of law.
  - You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future.
  - If you cannot afford an attorney, one will be appointed for you before any questioning.
  - If you decide to answer questions now without an attorney present you still have the right to stop answering at any time until you talk to an attorney.
  - Knowing and understanding your rights as I have explained them to you, are you willing to answer my questions.
- If the legal warning is not given prior to an **"In-Custody Interrogation,"** then all subsequent statements are precluded and are not admissible at trial.
- There are many misconceptions about when *Miranda* warnings apply.



Key Aspects of *Miranda v Arizona*

- First, Miranda warnings must be given prior to "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way." *Miranda v Arizona,* 384 U.S. 436 (1966).
- Second, Miranda warning must precede custodial interrogation. *Rhode Island v Innis,* 446 U.S. 291 (1980).
- Third, before a suspect in custody is interrogated, he must be given full warnings, or the equivalent of his rights. *Miranda v Arizona,* 384 U.S. 436 (1966).
- Fourth, once a warned suspect asserts his right to silence and request counsel, the police must respect his assertion of right. *Arizona v Roberson,* 486 U.S. 675 (1988).
- Fifth, a properly warned suspect may waive his Miranda rights and submit to custodial interrogation. *Tague v Louisiana,* 444 U.S. 475 (1980).
- Sixth, the admissions of an unwarned or improperly warned suspect may not be used directly against him at trial, but the Court has permitted some use for other purposes, such as impeachment. *Michigan v Tucker,* 417 U.S. 433 (1974).



Custody + Interrogation

- **Custody:** The United States Supreme Court has unequivocally settled that the triggering mechanism for the requirement for *Miranda* warnings is custody and not "focus of the investigation." Michigan follows this view as well. *Beckwith v. United States,* 425 U.S. 341 (1976); *People v Coomer,* 245 Mich. App. 206 (2001).
- **Interrogation:** It means questioning. This questioning can be in the form of an officer asking the suspect direct questions, or it can be comments or actions by the officer that the officer should know are likely to produce an incriminating reply. *Oregon v. Mathiason,* 429 U.S. 492; *People v. Hill,* 429 Mich. 382 (1987).
- Courts have generally used a "totality of the circumstances" test. For this test, a court will look at a number of factors and focus on the "physical and psychological restraints" on the person's freedom during the interview. *U.S. v. Axsom*, 289 F.3d 496 (8th Cir. 2002).

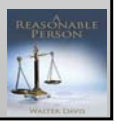
Custodial Interrogation Factors

- **Did the officer use any force on the suspect?** If an officer used force prior to or during the questioning, a court may consider it a custodial situation.
- **Did the officer use any physical restraints?** Was the suspect able to move around? Restriction of movement supports a finding of custody.
- **What time was it when the conversation took place?** Was it the middle of the night? Or during the day? An interview at an odd hour may point to custody.
- **How long did the questioning last?** Longer interviews lean toward a finding of custody.
- **What was the style of the interview? Were the questions accusatory or routine?** An interviewer accusing the suspect of certain acts in a threatening manner may indicate a custodial situation.
- **Was the suspect free to leave at the end of the conversation?** A "yes" answer tends to suggest that the suspect wasn't in custody.

Reasonable Person Standard

The Court applies an objective, context-specific test of how intimidated a reasonable person in the suspect's shoes would feel to freely exercise his right against self-incrimination.

A police's officer subjective and undisclosed view that a person being interrogated is a criminal suspect is not relevant for *Miranda* purposes, nor is the subjective view of a person being questioned. *Stanbury v California,* 511 U.S. 318 (1994).



Traffic Stops – *Miranda v Arizona*

- *Miranda* warnings are not required when a person is questioned during a routine traffic stop or Terry stop. *Berkemer v. McCarty,* 468 U.S. 420 (1984).
- A temporary detention—incident to a traffic stop or general on-the-scene investigation—normally doesn't trigger the *Miranda* protections. *Maryland v. Shatzer,* 559 U.S. 98 (2010).
- A motorist detained pursuant to a traffic stop is entitled to *Miranda* protections only if they're restrained to a degree associated with a formal arrest. *People v Steele,* 292 Mich App 308 (2011).

Berkemer v McCarty, 468 U.S. 420 (1984)

- An officer observed the defendant's car weaving in and out of its traffic lane. The officer stopped defendant and asked him to get out of his car. The officer noticed that the defendant was having difficulty standing. The defendant's speech was slurred and difficult to understand. Defendant could not perform a "balancing test" without falling.
- The officer then asked the defendant if he had consumed any intoxicants. Defendant said that he drank two beers and smoked several joints of marijuana shortly before being stopped. The officer then arrested the defendant and took him to the county jail where the defendant took a breathalyzer test. At no time was the defendant advised of his *Miranda* rights.
- The roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute "custodial interrogation" for the purposes of the *Miranda* rule.
- Although an ordinary traffic stop curtails the "freedom of action" of the detained motorist and imposes some pressures on the detainee to answer questions, such pressures do not sufficiently impair the detainee's exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights.

People v Jelneck, 148 Mich App 456 (1986)

- The officer stopped the defendant after observing the defendant driving in the wrong lane of traffic. The officer noticed a strong odor of alcohol coming from the defendant. The defendant fumbled to produce his license. The officer testified that the defendant's walk was staggered.
- The officer inquired as to how much education the defendant had completed, and the defendant replied that he had reached the sixth grade. When asked if he could count to ten or if he knew the alphabet, the defendant said no. The officer also noted that the defendant had poor balance.
- The officer arrested the defendant for Operating While Intoxicated (OWI). The defendant argued that his statements were inadmissible because the police did not advise him of his Miranda rights.
- The court held "Roadside questioning by police officers for the purpose of determining whether a motorist is intoxicated does not constitute custodial interrogation and, therefore, Miranda rights do not attach."

People v Walter Jones, No. 338472 (Mich. App., September 13, 2018)

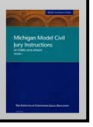
- Defendant was convicted by a jury of operating while intoxicated, third offense, and driving while license suspended. Evidence at trial revealed that defendant struck one vehicle, missed striking a second vehicle by a few feet, and struck the guardrail.
- A trooper who responded to the scene testified that he asked defendant what had occurred and defendant "said he was being an idiot" and "clipped a guy." The trooper also asked defendant if he had been drinking and if so, how much. Defendant answered in the affirmative and said he drank "quarts." He later clarified that he drank three quarts. Further questioning from the trooper led to more incriminating statements from defendant.
- The Court ruled that defendant was not in custody at the time the trooper questioned him and therefore Miranda did not apply.
- The Court quoted *People v. Ish*, 252 Mich App 115, 118 (2002), stating, "A police officer may ask general on-the-scene questions to investigate the facts surrounding a crime without implicating the holding in *Miranda*."

South Dakota v Neville, 459 U.S. 553 (1983)

- Neville was stopped by the police after they observed Neville's car drive past a stop sign without stopping. When officers asked Neville to step out of his car, he "staggered and fell against the car to support himself."
- After failing several field sobriety tests, the police placed the defendant under arrest. Officers asked Neville if he would submit to a blood-alcohol test, but he refused, stating "I'm too drunk, I won't pass the test."
- At trial, the defendant filed a motion to suppress all evidence with his refusal to take a blood alcohol test because it violated his privilege against self- incrimination.
- The Court held that prosecutors may use a suspect's refusal to submit to a blood-alcohol test as evidence of guilt and that the introduction of such evidence at trial does not violate the suspect's Fifth Amendment privilege against self incrimination.
- The Court concluded, "The state did not directly compel respondent to refuse the test, a simple blood-alcohol test is so safe, painless, and commonplace that a suspect would not feel coerced to refuse the test."

Defendant's Decision to Forgo Chemical Test

- Michigan Criminal Jury Instruction 15.9:
- Evidence has been admitted in this case that the defendant refused to take a chemical test. If you find that the defendant did refuse, that evidence was admitted solely for the purpose of showing that a test was offered to the defendant. That evidence is not evidence of guilt.
- Use Note:
- MCL 257.625a(9) provides: A person's refusal to submit to a chemical test as provided in subsection (6) is admissible in a criminal prosecution for a crime described in section 625c(1) only to show that a test was offered to the defendant, but not as evidence in determining the defendant's innocence or guilt. The jury shall be instructed accordingly.
- History:
- M Crim JI 15.9 (formerly CJI2d 15.9) was CJI 15:2:05; amended by the committee in September 2003.
- Statute:
- MCL 257.625a(9).
- Case Law:
- *South Dakota v Neville,* 459 US 553 (1983).



Berghuis v Thompkins, 560 U.S. 370 (2010)

- Police do not need to obtain a waiver before interrogating a suspect, but rather only need to inform the suspect of his rights under Miranda and may begin questioning once the suspect acknowledges his rights.
- Second, a suspect waives his rights under Miranda once he voluntarily answers questions knowing that he does not need to do so.
- Third, a suspect must unambiguously invoke his right to remain silent if he wishes to invoke his right to cut off questioning—he cannot do so through ambiguous conduct or by merely remaining silent.

Evans v Michigan, 568 U.S. 313 (2013)

- After the People of the State of Michigan rested its case at Evans' arson trial, the court granted Evans' motion for a directed verdict of acquittal, concluding that the State had failed to prove that the burned building was not a dwelling, a fact the court mistakenly believed was an "element" of the statutory offense.
- The Court held "The Double Jeopardy Clause bars retrial for Evans' offense."
- "Retrial following a court-decreed acquittal is barred, even if the acquittal is 'based upon an egregiously erroneous foundation.'" *Fong Foo v. United States,* 369 U. S. 141 (1962).

Kratom

- Kratom is a natural extract from the leaves of the Mitragyna Speciosa tree that is native to Southeast Asia (Thailand and Malaysia).
- Kratom is heavily promoted as a legal, undetectable, safe drug that can be used to come off stronger drugs. It is not yet illegal in the United States.
- Because of its legality, the drug tends to be more popular among young people who cannot yet buy alcohol and who may be concerned about being arrested with weed or other drugs.
- The Food And Drug Administration noted recent incidents "underscore the serious and sometimes deadly risks" of Kratom, including a case in which a teenager hanged himself, and another in which a drug overdose victim tested positive for nine different substances.
- Some of thee Kratom dangers include: paranoia, nausea, itching, and hallucinations.



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