

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah Byrd, Clerk of Courts

City of Cleveland

Appellant

COA NO.
102835

LOWER COURT NO.
TRC-050891-15

CLEVELAND MUNICIPAL COURT

-vs-

Benjamin S. Oles

Appellee

MOTION NO. 491486

Date 1/7/2016

Journal Entry

Sua Sponte, the Judges of the Court of Appeals of the Eighth Appellate District find that the judgment entered in this case is in conflict with the judgments of the First District Court of Appeals in *State v. Leonard*, 1st Dist. Hamilton No. C-060595, 2007-Ohio-3312, *State v. Rice*, 1st Dist. Hamilton Nos. C-090071, C-090072, C-090073, 2009-Ohio-6332 and *State v. Kraus*, 1st Dist. Hamilton Nos. C-070428, C-070429, 2008-Ohio-3965, the Second District Court of Appeals in *State v. Simmons*, 2d Dist. Montgomery No. 23991, 2011-Ohio-5561, the Fifth District Court of Appeals in *State v. Crowe*, 5th Dist. Delaware No. 07CAC030015, 2008-Ohio-330 and *State v. Mullins*, 5th Dist. Licking No. 2006-CA-00019, 2006-Ohio-4674, the Seventh District Court of Appeals in *State v. Coleman*, 7th Dist. Mahoning No. 06 MA 41, 2007-Ohio-1573 and the Eleventh District Court of Appeals in *State v. Serafin*, 11th Dist. Portage No. 2011-P-0036, 2012-Ohio-1456 and *State v. Brocker*, 11th Dist. Portage No. 2015-Ohio-3412.

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In the instant case this Court upheld a decision by the Cleveland Municipal Court granting a defendant's motion to suppress evidence where, during the course of a traffic stop, he was removed from his vehicle by a law enforcement officer and placed in the front seat of the officer's patrol vehicle. We held that the defendant was subjected to custodial interrogation when the officer questioned him within the patrol vehicle concerning his alcohol consumption without first providing *Miranda* warnings. Therefore, our opinion is in conflict with the judgments pronounced above on the question of whether detention for questioning in the front seat of a law enforcement vehicle during the course of a traffic stop constitutes custodial interrogation.

We certify the following question to the Supreme Court for review and final determination:

During the course of a traffic stop, when a suspect is removed from his vehicle and detained in the front seat of a police vehicle for questioning, is he subjected to custodial interrogation?

Stated differently, in the course of a traffic stop, does the Fifth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution require a law enforcement officer to provide *Miranda* warnings to a suspect who is removed from his vehicle and placed in the front seat of a police vehicle for questioning?

The attention of counsel for both appellant and appellee is called to the Rules of Practice of the Supreme Court, specifically S.Ct.Prac.R. 8.01, Institution of a Certified-Conflict Case.

The parties are directed to timely file the notice of certified conflict in the Supreme Court together with a copy of this order, our underlying decision in this case and the conflicting opinions cited herein within thirty days of the date of this order.

SO ORDERED.

Eileen T. Gallagher, Judge, Concur

Melody J. Stewart, Judge Concur



Presiding Judge
Eileen A. Gallagher