

NO.

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IN THE SUPREME COURT OF OHIO

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APPEAL FROM  
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO  
NO. 102835

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CITY OF CLEVELAND

Plaintiff-Appellant

-vs-

BENJAMIN S. OLES

Defendant-Appellee

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**MEMORANDUM IN SUPPORT OF JURISDICTION**

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7, 2016)

**EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL  
CONSTITUTIONAL QUESTION AND AN ISSUE OF GENERAL OR GREAT PUBLIC  
INTEREST**

The Eighth District has ruled that under the totality of the circumstances presented in this case that a reasonable person removed from his or her own vehicle and questioned about their alcohol consumption in the passenger seat of a police cruiser would not feel free to leave and would therefore be subject to custodial interrogation and the protections of *Miranda*. *City of Cleveland v. Benjamin S. Oles*, 8<sup>th</sup> Dist. Cuyahoga No. 102835. In doing so the Eighth District created a conflict between its ruling and other appellate district courts in Ohio. See Ohio Supreme Court Certified Conflict Case No. 2016-0172.

The analysis used by the lower court is severely flawed and consists of a ruling that is in contravention with this court's holding in *State v. Farris*, 109 Ohio St.3d 519. The *Farris* court held that a motorist who is temporarily detained as the subject of an ordinary traffic stop is 'in custody' for the purposes of *Miranda*, \*\*\*if that person 'thereafter is subject to treatment in that renders him in custody for practical purposes, he will be entitled to the full panoply of protections prescribed by *Miranda*'. By extending *Farris* to include questions about alcohol consumption in the passenger seat of a police cruiser during a routine traffic stop the Eighth District has created a constitutional question. This Court must resolve this constitutional question and, in doing so, Plaintiff-Appellant requests this Court accept the following Propositions of Law:

**PROPOSITION OF LAW I: The investigative questioning of a driver in the front seat of a police vehicle during a routine traffic stop does not rise to the level of custodial interrogation and any statements elicited do not incur the protections of *Miranda*.**

**PROPOSITION OF LAW II: The evidence obtained independently in an investigation of Driving Under the Influence during a routine traffic stop cannot be suppressed.**

Plaintiff-Appellant claims an appeal of right as the holding involves a substantial constitutional question. This case further involves an issue of public or great general interest.

### STATEMENT OF THE CASE AND FACTS

On September 19, 2014, Defendant-Appellee, Benjamin Oles, was arrested and charged with violations of R.C. 4511.19(A) (1) (a), DUI; R.C. 4511.19(A) (1) (d), DUI .08-.17 and, R.C. 4511.33, driving in marked lanes.

After a series of pre-trials, a hearing was held on a motion to suppress evidence in front of the Honorable Joseph J. Zone. At the conclusion of the hearing on March 23, 2015, Judge Zone found that the initial traffic stop was reasonable. The judge believed that Lieutenant Shepard observed a smell of alcohol and the bloodshot eyes of Defendant-Appellee that caused him to further investigate. The judge did not rule that the field sobriety tests were conducted inappropriately. Despite these findings Judge Zone granted the motion to suppress. The basis for the ruling was that *Miranda* warnings were not given to Defendant-Appellee. The evidence that was ordered to be suppressed was any evidence of the Field Sobriety testing done on Defendant-Appellee on September 19, 2014. Plaintiff-Appellant filed a Notice of Appeal on March 30, 2015. After oral arguments the Eighth District issued its ruling on January 7, 2016.

Plaintiff-Appellant now seeks jurisdiction in this Court to resolve substantial constitutional questions.

### LAW AND ARGUMENT

**PROPOSITION OF LAW I: The investigative questioning of a driver in the front seat of a police vehicle during a routine traffic stop does not rise to the level of custodial interrogation and any statements elicited do not incur the protections of Miranda.**

**I. The “totality-of-the-circumstances” in this case does not make the brief detention in the cruiser rise to the level of custodial interrogation.**

The issue is whether roadside questioning of a motorist pursuant to a traffic stop constitutes custodial interrogation and requires the invocation of *Miranda* rights. The Eighth District applied a “totality-of-the circumstances” analysis and found a reasonable person removed from his or her own vehicle and questioned about their alcohol consumption in the passenger seat of a police cruiser would not feel free to leave and would therefore be subject to custodial interrogation and the protections of *Miranda*. *City of Cleveland v. Benjamin S. Oles*, 8<sup>th</sup> Dist. Cuyahoga No. 102835.

The U.S. Supreme Court ruled on this very issue in *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138 82 L.Ed.2d 694 (1984). The *Berkemer* court held that “persons temporarily detained pursuant to such stops are not “in custody” for the purposes of *Miranda*.” *Id.* at 440. In this case the trial court found that the initial traffic stop of Defendant-Appellee was reasonable. The trooper observed physical characteristics that prompted him to investigate the stop further to determine if Defendant-Appellee was Driving under the Influence of alcohol. This questioning did detain Defendant-Appellee temporarily. The trooper asked Defendant-Appellee a moderate number of questions during the investigation. Defendant-Appellee was asked some of these investigatory questions in the front passenger seat of the cruiser and not in the back seat of the cruiser. This was done to place him in a controlled environment to observe physical characteristics and determine where the odor of alcoholic beverage was coming from. Defendant-Appellee was temporarily detained by the trooper while he conducted his investigation of the traffic stop. After the initial questioning the trooper asked Defendant-Appellee to exit the cruiser and perform field sobriety tests. This was not the “functional equivalent of formal arrest.” *Berkemer* at 442. Defendant-Appellee was temporarily detained

until after his field sobriety tests and therefore was not required to be advised of his *Miranda* rights during the initial roadside encounter nor during any questioning inside the police cruiser.

In addition, the trial court erred in suppressing the field sobriety tests based on *Miranda* because the trooper was not required to read the *Miranda* warnings until it was determined that Defendant-Appellee was going to be arrested. In *Strongsville v. Kessler*, 8<sup>th</sup> Dist. Cuyahoga (No. 71600), 1997 WL 476831 (Aug. 21, 1997) this court held that routine traffic stops did not require *Miranda* warnings because although the driver is detained during roadside questioning it does not rise to the level of custodial interrogation. The court stated “the atmosphere surrounding an ordinary traffic stop is substantially less ‘police dominated’ than that surrounding the kinds of interrogation at issue in *Miranda* itself. *Id.* at 5. The traffic stop in the instant case falls under the category of “routine” and therefore the investigative questioning and the field sobriety testing by the trooper did not rise to the level that would require *Miranda* rights to be invoked. Accordingly, the trial court should not have suppressed the field sobriety testing based on the fact that Defendant-Appellee was not advised of his 5<sup>th</sup> Amendment rights prior to any questioning inside the police vehicle.

**II. The Eighth District incorrectly extended the holding in *State v. Farris*, 109 Ohio St. 3d 519 in holding that investigative questioning of a motorist during a routine traffic stop about alcohol consumption was tantamount to custodial interrogation.**

The lower court relied on *State v. Farris*, 109 Ohio St.3d 519, 388 to support its holding. The *Farris* court held that the only relevant inquiry in determining whether a person is in custody is “how a reasonable [person] in the suspect’s position would have understood [their] situation. *Id.* at ¶14. The Eighth District incorrectly extended *Farris* in this case opining that a reasonable person removed from his or her vehicle and questioned about their alcohol consumption in the

passenger seat of a police cruiser would not feel free to leave. *Oles* at ¶19. The fact that Oles did not feel free to leave did not elevate the roadside questioning to custodial interrogation and incur the protections of *Miranda*. The Eleventh District ruled on a factually similar case in *State v. Serafin*, 2012-Ohio-1456. The *Serafin* court held that routine questioning of a detained motorist, including whether the motorist has been drinking, does not require the administration of the *Miranda* warnings. *Id* at ¶35 quoting *State v. Coleman*, 2007-Ohio-1573. The facts in *Oles* are substantially similar to the facts in *Serafin*. The drivers in both cases were stopped for traffic infractions. They were both ordered to the front passenger seat of the police cruiser. There is no indication that the trooper confiscated Oles' keys. Both drivers were in the front seat of the cruiser to help ascertain where the odor of alcoholic beverage was coming from and for investigative questioning. Neither driver was placed in handcuffs. The questioning of Oles in the vehicle was brief and he was asked out of the vehicle to perform field sobriety tests. In fact the entire encounter from the initial traffic stop to the breath test at the post lasted just over one hour including travel time from the roadside to the State Highway Patrol Post. There is no indication that this encounter was excessively long in duration for a Driving Under the Influence investigation which was a valid extension of the initial traffic stop.

In *Farris* the initial stop for speeding was extended into search for marijuana. The trooper in *Oles* was still investigating the traffic violation to determine if the additional violation of Driving Under the Influence had occurred. *Serafin* at ¶38. The brief detention of Oles in the passenger seat of the police vehicle did not convert the routine traffic stop into a custodial interrogation. The extension of *Farris* to this case was incorrect and the answers elicited from Oles and the results of the field sobriety tests should be allowed.

This Court should accept the first proposition of law and hold that a brief detention in the front passenger seat of a police vehicle during an investigation for Driving Under the Influence does not constitute custodial interrogation.

**PROPOSITION OF LAW II: The evidence obtained independently in an investigation of Driving Under the Influence during a routine traffic stop cannot be suppressed.**

Plaintiff-Appellant submits that evidence obtained independently or without infringement of constitutional rights cannot be suppressed. In this case, both the trial court and the Eighth District suppressed the results of the field sobriety tests. The Eighth District noted that the trooper may have had reasonable suspicion to conduct a field sobriety test after his initial interaction with Oles or based upon the odor of alcohol. *Oles*, ¶21. The Eighth District apparently determined that the suppression of the field sobriety test was required based upon the timing of when the field sobriety test was conducted when it noted that its analysis was “controlled” by testimony that the trooper decided to perform field sobriety tests only after Oles’ statements. *Id.*

In holding that the court was compelled to suppress the field sobriety test based upon the suppression of Defendant-Appellee’s statements, the Eighth District failed to consider whether the field sobriety tests were based on an independent source. The independent source doctrine permits the admission of evidence that has been discovered by means wholly independent of any constitutional violation. *Murphy v. Waterfront Comm’n of New York Harbor*, 378 U.S. 52, 79 (1964); *Kastigar v. United States*, 406 U.S. 441, 457, 458-459 (1972). Under the independent source doctrine the suppression of statements about alcohol consumption made by Defendant-Appellee does not require the suppression of his performance on field sobriety tests where the trooper had reasonable suspicion to conduct the tests for reasons independent of the statement.

In this case the trooper had already observed an odor of alcoholic beverage and slow, deliberate movements by Oles prior to any statement about alcohol consumption.

The Eighth District held that Oles was under custodial interrogation and affirmed the suppression of the statements and the results of the field sobriety test. The suppression of the field sobriety tests were affirmed even though the Eighth District readily acknowledged there may have been reasonable suspicion to conduct the field sobriety test for reasons independent of the statements. *Oles*, ¶21. Even if this Court were to conclude that Oles made statements that should be suppressed, that holding alone should not automatically exclude the results of the field sobriety tests. The trial court's exclusion of the field sobriety tests, and the Eighth District's subsequent affirmance, ignores the independent source doctrine.

The trooper had reasonable suspicion to conduct a field sobriety test based on his observations that were independent from any questioning of Defendant-Appellee. In *Cleveland v. Reese*, 8<sup>th</sup> Dist. Cuyahoga No. 100579, 2014-Ohio-3587, the Eighth District upheld the field sobriety test holding that a police officer only requires a reasonable suspicion based upon articulable facts that the motorist is intoxicated. *Cleveland v. Reese*, 8<sup>th</sup> Dist. Cuyahoga No. 100579, 2014-Ohio-3587, ¶17.

Applying the independent source doctrine in this matter demonstrates that the lower courts exceeded the scope of the constitutional challenge when it was held that both the statements and the field sobriety test be excluded as evidence. Without the statements there remained reasonable suspicion to conduct the field sobriety tests. The suppression of those tests was incorrect and unwarranted. Therefore, this Court should reverse the trial court's exclusion of the field sobriety test and remand this case to the trial court for further proceedings.

This Court should accept the second proposition of law and ultimately hold that evidence obtained independently in an investigation of Driving Under the Influence during a routine traffic stop cannot be suppressed.

**CONCLUSION**

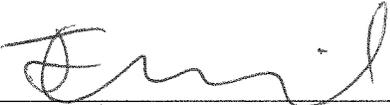
The State asks that this Court accept jurisdiction of this matter. The decision that a suspect is subject to custodial interrogation during a routine traffic stop when he is briefly detained in the passenger seat of a police vehicle is an important constitutional matter. For these reasons, the State asks that this Court accept jurisdiction of this case, adopt its Propositions of Law, and reverse the decision of the appellate court.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

A copy of the foregoing Memorandum in Support of Jurisdiction was sent via regular U.S. Mail to Joseph Patituce, Esq., Attorney for Defendant, Benjamin Oles, 26777 Lorain Road, Suite 708, North Olmsted, Ohio, 44070, on this 22<sup>nd</sup> day of February, 2016.

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