Garden State CLE Presents:

"Top SCOTUS DWI Decisions of all time!"

Instructor:

Joseph P. Rem, Jr.
Certified Criminal Trial Attorney

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I. Blood Extractions
Breithaupt vs. Abram, 352 U.S. 432(1957)

This case must be understood in light of the decision in Rochin vs. California(1952), a case that predated Mapp vs. Ohio, 367 U.S. 643(1961). The decision in Rochin could not be predicated upon the due process clause of the 14th Amendment. However, as a substitute, the Justices rationalized that the methods employed by the police offended due process of law. The standard was that the police conduct shocked the conscious of the Court.

In Breithaupt, the same "offense to due process" was raised based upon a police blood draw from an unconscious defendant who was a suspect in a multi-fatality DWI crash. The police conduct in this case fell far short of shocking the conscious.

> Basically, the distinction rests on the fact that there is nothing 'brutal' or 'offensive' in the taking of a sample of blood when done, an in this case, under the protective eye of a physician. To be sure, the driver here was unconscious when the blood was taken, but the absence of conscious consent, without more, does not necessarily render the taking a violation of a constitutional right; and certainly the test as administered here would not be considered offensive by even the most delicate. Furthermore, due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by that whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct. It is on this bedrock that this Court has established the concept of due process. The blood test procedure has become routine in our everyday life. It is a ritual for those going into the military service as well as those applying for marriage licenses. Many colleges require such tests before permitting entrance and literally millions of us have voluntarily gone through the same, though a longer, routine in becoming blood donors. Likewise, we note that a majority of our States have either enacted statutes in some form authorizing tests of this nature or permit findings so obtained to be admitted in evidence.[3] We therefore conclude that a blood test taken by a skilled technician is not such 'conduct that shocks the conscience,' nor such a method of obtaining evidence that it offends a 'sense of justice.' This is not to say that the indiscriminate taking of blood under different conditions or by those not competent to do so may not amount to such 'brutality' as would come under the Rochin rule.

Note how much of this language returns are borrowed nine years later in Schmerber. Note that the final word on this DWI issue finally came in 2019 in Mitchell vs. Wisconsin.

Mitchell vs. Wisconsin, 139 S.Ct. 2525(2019)

The Court's decision in Mitchell answers the "unconscious defendant blood draw" issue using 4th Amendment principles and holding that the exigent circumstances exception to the warrant requirement justified this search.

> Today, we consider what police officers may do in a narrow but important category of cases: those in which the driver is unconscious and therefore cannot be given a breath test. In such cases, we hold, the exigent-circumstances rule almost always permits a blood test without a warrant. When a breath test is impossible, enforcement of the drunk-driving laws depends upon the administration of a blood test. And when a police officer encounters an unconscious driver, it is very likely that the driver would be taken to an emergency room and that his blood would be drawn for diagnostic purposes even if the police were not seeking BAC information. In addition, police officers most frequently come upon unconscious drivers when they report to the scene of an accident, and under those circumstances, the officers' many responsibilities—such as attending to other injured drivers or passengers and preventing further accidents—may be incompatible with the procedures that would be required to obtain a warrant. Thus, when a driver is unconscious, the general rule is that a warrant is not needed.

Schmerber vs. California, 86 S.Ct. 1826(1966)

The holding in this landmark blood case continues to reverberate to this day and affect police practices and procedures. The petitioner in Schmerber raised four issues, three of which were disposed of summarily by the Court.

DUE PROCESS - Breithaupt was also a case in which police officers caused blood to be withdrawn from the driver of an automobile involved in an accident, and in which there was ample justification for the officer's conclusion that the driver was under the influence of alcohol. There, as here, the extraction was made by a physician in a simple, medically acceptable manner in a hospital environment. There, however, the driver was unconscious at the time the blood was withdrawn and hence had no opportunity to object to the procedure. We affirmed the conviction there resulting from the use of the test in evidence, holding that under such circumstances the withdrawal did not offend 'that 'sense of justice' of which we spoke in Rochin. Breithaupt thus requires the rejection of petitioner's due process argument, and nothing in the circumstances of this case or in supervening events persuades us that this aspect of Breithaupt should be overruled.

THE PRIVILEGE AGAINST SELF-INCRIMINATION CLAIM - We must now decide whether the withdrawal of the blood and admission in evidence of the analysis involved in this case violated petitioner's privilege. We hold that the privilege protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature, and that the withdrawal of blood and use of the analysis in question in this case did not involve compulsion to these ends. In the present case, however, no such problem of application is presented. Not even a shadow of testimonial compulsion upon or enforced communication by the accused was involved either in the extraction or in the chemical analysis. Petitioner's testimonial capacities were in no way implicated; indeed, his participation, except as a donor, was irrelevant to the results of the test, which depend on chemical analysis and on that alone. Since the blood test evidence, although an incriminating product of compulsion, was neither petitioner's testimony nor evidence relating to some communicative act or writing by the petitioner, it was not inadmissible on privilege grounds.

THE RIGHT TO COUNSEL CLAIM - This conclusion on the self-incrimination argument also answers petitioner's claim that, in compelling him to submit to the test in face of the fact that his objection was made on the advice of counsel, he was denied his Sixth Amendment right to the assistance of counsel. Since petitioner was not entitled to assert the privilege, he has no greater right because counsel erroneously advised him that he could assert it. His claim is strictly limited to the failure of the police to respect his wish, reinforced by counsel's advice, to be left inviolate. No issue of counsel's ability to assist

petitioner in respect of any rights he did possess is presented. The limited claim thus made must be rejected.

THE SEARCH AND SEIZURE CLAIM - In Breithaupt, as here, it was also contended that the chemical analysis should be excluded from evidence as the product of an unlawful search and seizure in violation of the Fourth and Fourteenth Amendments. In this case, as will often be true when charges of driving under the influence of alcohol are pressed, these questions arise in the context of an arrest made by an officer without a warrant. Here, there was plainly probable cause for the officer to arrest petitioner and charge him with driving an automobile while under the influence of intoxicating liquor. The police officer who arrived at the scene shortly after the accident smelled liquor on petitioner's breath, and testified that petitioner's eyes were 'bloodshot, watery, sort of a glassy appearance.' The officer saw petitioner again at the hospital, within two hours of the accident. There he noticed similar symptoms of drunkenness. He thereupon informed petitioner 'that he was under arrest and that he was entitled to the services of an attorney, and that he could remain silent, and that anything that he told me would be used against him in evidence.'

The officer in the present case, however, 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.' We are told that the percentage of alcohol in the blood begins to diminish shortly after drinking stops, as the body functions to eliminate it from the system. Particularly in a case such as this, where time had to be taken to bring the accused to a hospital and to investigate the scene of the accident, there was no time to seek out a magistrate and secure a warrant. **Given these special facts, we conclude that the attempt to secure evidence of blood-alcohol content in this case was an appropriate incident to petitioner's arrest.**

Similarly, we are satisfied that the test chosen to measure petitioner's blood-alcohol level was a reasonable one. Extraction of blood samples for testing is a highly effective means of determining the degree to which a person is under the influence of alcohol. Such tests are a commonplace in these days of periodic physical examination and experience with them teaches that the quantity of blood extracted is minimal, and that for most people the procedure involves virtually no risk, trauma, or pain. Petitioner is not one of the few who on grounds of fear, concern for health, or religious scruple might prefer some other means of testing, such as the 'Breathalyzer' test petitioner refused. We need not decide whether such wishes would have to be respected.

Finally, the record shows that the test was performed in a reasonable manner. Petitioner's blood was taken by a physician in a hospital environment according to accepted medical practices. We are thus not presented with the serious questions

which would arise if a search involving use of a medical technique, even of the most rudimentary sort, were made by other than medical personnel or in other than a medical environment—for example, if it were administered by police in the privacy of the stationhouse. To tolerate searches under these conditions might be to invite an unjustified element of personal risk of infection and pain.

We thus conclude that the present record shows no violation of petitioner's right under the Fourth and Fourteenth Amendments to be free of unreasonable searches and seizures. It bears repeating, however, that we reach this judgment only on the facts of the present record. The integrity of an individual's person is a cherished value of our society. That we today hold that the Constitution does not forbid the States minor intrusions into an individual's body under stringently limited conditions in no way indicates that it permits more substantial intrusions, or intrusions under other conditions.

Missouri vs. McNeeley, 133 S. Ct. 1552(2013)

EXIGENCY IN DWI BLOOD-DRAW CASES – In Schmerber, this 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." The question presented here is whether the natural metabolization of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for non-consensual blood testing in all drunk-driving cases. We conclude that it does not, and we hold, consistent with general Fourth Amendment principles, that exigency in this context must be determined case by case based on the totality of the circumstances.

In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so. We do not doubt that some circumstances will make obtaining a warrant impractical such that the dissipation of alcohol from the bloodstream will support an exigency justifying a properly conducted warrantless blood test. That, however, is a reason to decide each case on its facts, as we did in Schmerber, not to accept the "considerable overgeneralization" that a *per se* rule would reflect.

In short, while the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, as it did in Schmerber, it does not do so categorically. Whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the circumstances.

Birchfield vs. North Dakota, 136 S.Ct. 2160(2016)

SEARCH INCIDENT TO ARREST: BLOOD V. BREATH TESTS - Because the impact of breath tests on privacy is slight, and the need for BAC testing is great, the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving. Blood tests, however, are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test.

Because breath tests are significantly less intrusive than blood tests and, in most cases, amply serve law enforcement interests, a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving. No warrant is needed in this situation.

Motorists may not be criminally punished for refusing to submit to a blood test based on legally implied consent to submit to them. It is one thing to approve implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply, but quite another for a State to insist upon an intrusive blood test and then to impose criminal penalties on refusal to submit. There must be a limit to the consequences to which motorists may be deemed to have consented by virtue of a decision to drive on public roads.

II. Admissibility of Forensic Evidence

INTRODUCTION - The case law related to the admissibility of forensic evidence in drunk-driving cases is based upon the twin holdings of Crawford vs. Washington, 124 S.Ct. 1354(2004) and Davis v. Washington, 126 S.Ct. 2266 (2006). These cases stand for the proposition that, notwithstanding state law exceptions to the hearsay rules, the Confrontation Clause of the Sixth and Fourteenth Amendments require that evidence that is testimonial in nature (that is, specifically prepared and intended to be used in a criminal prosecution of a targeted defendant) is not admissible unless the declarant appears as a witness at trial or has been subject to an opportunity for meaningful cross-examination. The main issue before the Supreme Court in the following two cases is whether forensic evidence in the form of scientific tests constitutes testimonial evidence. Simply stated, despite the hardships and inconvenience to state forensic laboratories, there is no forensic evidence exception to the requirements of Crawford and Davis.

California vs. Trombetta, 104 S.Ct. 2528 (1984)

FAILURE OF THE STATE TO PRESERVE BREATH SAMPLES - The Due Process Clause of the Fourteenth Amendment does not require that law enforcement agencies preserve breath samples in order to introduce the results of breath-analysis tests at trial, and thus here the State's failure to preserve breath samples for respondents did not constitute a violation of the Federal Constitution.

To the extent that respondents' breath samples came into the California authorities' possession, it was for the limited purpose of providing raw data to the **Intoxilyzer.** The evidence to be presented at trial was not the breath itself but rather the **Intoxilyzer** results obtained from the breath samples. The authorities did not destroy the breath samples in a calculated effort to circumvent the due process requirement of Brady vs. Maryland and its progeny that the State disclose to criminal defendants material evidence in its possession, but in failing to preserve the samples the authorities acted in good faith and in accord with their normal practice.

More importantly, California's policy of not preserving breath samples is without constitutional defect. The constitutional duty of the States to preserve evidence is limited to evidence that might be expected to play a role in the suspect's defense. The evidence must possess an exculpatory value that was apparent before it was destroyed and must also be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. Neither of these conditions was met on the facts of this case.

Melendez-Diaz vs. Massachusetts, 129 S.Ct. 2527(2009)

This case involved the analysis at a state forensic laboratory of CDS samples seized from the defendant. The prosecution's claim that the forensic analysts who tested the samples are not subject to confrontation because they are not "accusatory" witnesses finds no support in the Sixth Amendment's text or in this Court's case law. The affiants' testimonial statements were not "nearly contemporaneous" with their observations, nor, if they had been, would that fact alter the statements' testimonial character. There is no support for the proposition that witnesses who testify regarding facts other than those observed at the crime scene are exempt from confrontation. The absence of interrogation is irrelevant; a witness who volunteers his testimony is no less a witness for Sixth Amendment purposes. The affidavits do not qualify as traditional official or business records. The argument that the analysts should not be subject to confrontation because their statements result from neutral scientific testing is little more than an invitation to return to the since-overruled decision in Ohio vs. Roberts, which held that evidence with "particularized guarantees of trustworthiness" was admissible without confrontation. Petitioner's power to subpoena the analysts is no substitute for the right of confrontation. Finally, the requirements of the Confrontation Clause may not be relaxed because they make the prosecution's task burdensome. In any event, the practice in many States already accords with today's decision, and the serious disruption predicted by respondent and the dissent has not materialized.

Bullcoming vs. New Mexico, 131 S.Ct. 2705(2011)

Principal evidence against Bullcoming was a forensic laboratory report certifying that Bullcoming's blood-alcohol concentration was well above the threshold for aggravated DWI. At trial, the prosecution did not call as a witness the analyst who signed the certification. Instead, the State called another analyst who was familiar with the laboratory's testing procedures but had neither participated in nor observed the test on Bullcoming's blood sample.

The question presented is whether the Confrontation Clause permits the prosecution to introduce a forensic laboratory report containing a testimonial certification—made for the purpose of proving a particular fact—through the in-court testimony of a scientist who did not sign the certification or perform or observe the test reported in the certification. We hold that surrogate testimony of that order does not meet the constitutional requirement. The defendant's right is to be confronted with the analyst who made the certification, unless that analyst is unavailable at trial, and the accused had an opportunity, pretrial, to cross-examine that particular scientist.

III. Refusal to Submit to a Breath Test
South Dakota vs. Neville, 103 S. Ct. 916(1983)

The admission into evidence of a defendant's refusal to submit to a blood-alcohol test does not offend his Fifth Amendment right against self-incrimination. A refusal to take such a test, after a police officer has lawfully requested it, is not an act coerced by the officer, and thus is not protected by the privilege against self-incrimination. The offer of taking the test is clearly legitimate and becomes no *less* legitimate when the State offers a second option of refusing the test, with the attendant penalties for making that choice.

It would not be fundamentally unfair in violation of due process to use respondent's refusal to take the blood-alcohol test as evidence of guilt, even though the police failed to warn him that the refusal could be used against him at trial. Such failure to warn was not the sort of implicit promise to forego use of evidence that would unfairly trick respondent if the evidence were later offered against him at trial.

Welsh vs. Wisconsin, 104 S.Ct. 2091(1984)

On the night of April 24, 1978, a witness observed a car that was being driven erratically and that eventually swerved off the road, coming to a stop in a field without causing damage to any person or property. Ignoring the witness' suggestion that he wait for assistance in removing his car, the driver walked away from the scene. The police arrived a few minutes later and were told by the witness that the driver was either very inebriated or very sick. After checking the car's registration, the police, without obtaining a warrant, preceded to the petitioner's nearby home, arriving at about 9 p.m. They gained entry when petitioner's stepdaughter answered the door, and found petitioner lying naked in bed.

Petitioner was then arrested for driving a motor vehicle while under the influence of an intoxicant in violation of a Wisconsin statute which provided that a first offense was a noncriminal violation subject to a civil forfeiture proceeding for a maximum fine of $200. Petitioner was taken to the police station, where he refused to submit to a breath-analysis test. Pursuant to Wisconsin statutes, which subjected an arrestee who refused to take the test to the risk of a 60–day revocation of driving privileges, petitioner requested a court hearing to determine whether his refusal was reasonable.

Under Wisconsin law, a refusal to take a breath test was reasonable if the underlying arrest was not lawful. The trial court, ultimately concluding that petitioner's arrest was lawful and that his refusal to take the breath test was therefore unreasonable, issued an order suspending petitioner's license. The

Wisconsin Court of Appeals vacated the order, concluding that the warrantless arrest of petitioner in his home violated the Fourth Amendment because the State, although demonstrating probable cause to arrest, had not established the existence of exigent circumstances. The Wisconsin Supreme Court reversed.

The warrantless, nighttime entry of petitioner's home to arrest him for a civil, non-jailable traffic offense, was prohibited by the special protection afforded the individual in his home by the Fourth Amendment.

Before government agents may invade the sanctity of the home, the government must demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries. An important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made. Moreover, although no exigency is created simply because there is probable cause to believe that a serious crime has been committed, application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense has been committed.

Petitioner's warrantless arrest in the privacy of his own bedroom for a non-criminal traffic offense cannot be justified on the basis of the "hot pursuit" doctrine, because there was no immediate or continuous pursuit of the petitioner from the scene of a crime, or on the basis of a threat to public safety, because petitioner had already arrived home and had abandoned his car at the scene of the accident. Nor can the arrest be justified as necessary to preserve evidence of petitioner's blood-alcohol level.

Even assuming that the underlying facts would support a finding of this exigent circumstance, given the fact that the State had chosen to classify the first offense for driving while intoxicated as a noncriminal, civil forfeiture offense for which no imprisonment was possible, a warrantless home arrest cannot be upheld simply because evidence of the petitioner's blood-alcohol level might have dissipated while the police obtained a warrant.

Pennsylvania vs. Muniz, 110 S.Ct. 2638(1990)

Respondent Muniz was arrested for driving while under the influence of alcohol on a Pennsylvania highway. Without being advised of his rights under Miranda vs. Arizona, he was taken to a booking center where, as was the routine practice, he was told that his actions and voice would be videotaped. He then answered seven questions regarding his name, address, height, weight, eye color, date of birth, and current age, stumbling over two responses. He was also asked, and was unable to give, the date of his sixth birthday. In addition, he made several incriminating statements while he performed physical sobriety tests and when he was asked to submit to a breathalyzer test. He refused to take the breathalyzer test and was advised, for the first time, of his Miranda rights. Both the video and audio portions of the tape were admitted at trial, and he was convicted.

However, Muniz's response to the sixth birthday question was incriminating not just because of his delivery, but also because the *content* of his answer supported an inference that his mental state was confused. His response was testimonial because he was required to communicate an express or implied assertion of fact or belief and, thus, was confronted with the "trilemma" of truth, falsity, or silence, the historical abuse against which the privilege against self-incrimination was aimed. By hypothesis, the custodial interrogation's inherently coercive environment precluded the option of remaining silent, so he was left with the choice of incriminating himself by admitting the truth that he did not then know the date of his sixth birthday, or answering untruthfully by reporting a date that he did not know was accurate (which would also have been incriminating). Since the state court's holdings that the sixth birthday question constituted an unwarned interrogation and that Muniz's answer was incriminating were not challenged, this testimonial response should have been suppressed.

Muniz's incriminating utterances during the sobriety and breathalyzer tests were not prompted by an interrogation within the meaning of Miranda and should not have been suppressed. The officer's dialogue with Muniz concerning the physical sobriety tests consisted primarily of carefully scripted instructions as to how the tests were to be performed that were not likely to be perceived as calling for any verbal response. Therefore, they were not "words or actions" constituting custodial interrogation, and Muniz's incriminating utterances were "voluntary." The officer administering the breathalyzer test also carefully limited her role to providing Muniz with relevant information about the test and the implied consent law. She questioned him only as to whether he understood her instructions and wished to submit to the test. These limited and focused inquiries were necessarily "attendant to" a legitimate police procedure and were not likely to be perceived as calling for any incriminating response.

Mackey vs. Montrym, 99 S.Ct. 2612(1979)

A Massachusetts statute mandates suspension of a driver's license for refusing to take a breath-analysis test upon arrest for operating a motor vehicle while under the influence of intoxicating liquor. The Registrar of Motor Vehicles must order a 90-day suspension upon receipt of the police report of the licensee's refusal to take such test; the licensee, after surrendering his license, is entitled to an immediate hearing before the Registrar.

The Massachusetts statute is not void on its face as a violation of the Due Process Clause. Suspension of a driver's license for statutorily defined cause implicates a property interest protected by the Due Process Clause. Resolution of the question of what process is due to protect against an erroneous deprivation of a protectible property interest requires consideration of (i) the nature and weight of the private interest affected by the official action challenged; (ii) the risk of an erroneous deprivation of such interest as a consequence of the summary procedures used; and (iii) the governmental function involved and state interests served by such procedures, as well as the administrative and fiscal burdens, if any, that would result from the substitute procedures sought.

Here, neither the nature of the private interest involved—the licensee's interest in the continued possession and use of his license pending the outcome of the hearing due him—nor its weight compels a conclusion that the summary suspension procedures are unconstitutional, particularly in view of the post-suspension hearing immediately available and of the fact that the suspension is for a maximum of only 90 days.

Finally, the compelling interest in highway safety justifies Massachusetts in making a summary suspension effective pending the outcome of the available prompt post-suspension hearing. Such interest is substantially served by the summary suspension because (i) it acts as a deterrent to drunk driving; (ii) provides an inducement to take the breath-analysis test, permitting the Commonwealth to obtain a reliable form of evidence for use in subsequent criminal proceedings; and (iii) summarily removes from the road licensees arrested for drunk driving who refuse to take the test. Conversely, a pre-suspension hearing would substantially undermine the Commonwealth's interest in public safety by giving drivers an incentive to refuse the breath-analysis test and demand such a hearing as a dilatory tactic, which in turn would cause a sharp increase in the number of hearings sought and thus impose a substantial fiscal and administrative burden on the Commonwealth.

IV. Motor Vehicle Stops
Michigan vs. Sitz, 110 S.Ct. 2481(1990)

A motor vehicle stop at a DWI sobriety check-point constitutes a seizure within the meaning of the Fourth Amendment. The question for this case is whether such seizures are reasonable.

There is no dispute about the magnitude of, and the States' interest in eradicating, the drunken driving problem. The courts below accurately gauged the "objective" intrusion, measured by the seizure's duration and the investigation's intensity, as minimal. However, petitioners misread this Court's cases concerning the degree of "subjective intrusion" and the potential for generating fear and surprise. The "fear and surprise" to be considered are not the natural fear of one who has been drinking over the prospect of being stopped at a checkpoint but, rather, the fear and surprise engendered in law-abiding motorists by the nature of the particular stop, such as one made by a roving patrol operating on a seldom-traveled road.

Here, checkpoints are selected pursuant to guidelines, and uniformed officers stop every vehicle.

Unlike Delaware vs. Prouse, this case involves neither random stops nor a complete absence of empirical data indicating that the stops would be an effective means of promoting roadway safety. And there is no justification for a different conclusion here.

Despite this conclusion, a roadblock established for general law enforcement purposes, such as drug interdiction has been held by the Court to be unreasonable. See Indianapolis vs. Edmond, 121 S.Ct. 447(2000).

Pennsylvania vs. Bruder, 109 S.Ct. 205 (1988)

In the early morning of January 19, 1985, Officer Steve Shallis of the Newton Township, Pennsylvania, Police Department observed respondent Thomas Bruder driving very erratically along State Highway 252. Among other traffic violations, he ignored a red light. Shallis stopped Bruder's vehicle. Bruder left his vehicle, approached Shallis, and when asked for his registration card, returned to his car to obtain it. Smelling alcohol and observing Bruder's stumbling movements, Shallis administered field sobriety tests, including asking Bruder to recite the alphabet. Shallis also inquired about alcohol. Bruder answered that he had been drinking and was returning home. Bruder failed the sobriety tests, whereupon Shallis arrested him, placed him in the police car, and gave him Miranda warnings. Bruder was later convicted of driving under the influence of alcohol. At his trial, his statements and conduct prior to his arrest were admitted into evidence.

The facts in this record, which Bruder does not contest, reveal the same non-coercive aspects as the Berkemer detention: "a single police officer ask[ing] respondent a modest number of questions and request[ing] him to perform a simple balancing test at a location visible to passing motorists.". Accordingly, Berkemer's rule, that ordinary traffic stops do not involve custody for purposes of Miranda, governs this case.

V. Jury Trial
Blanton vs. North Las Vegas, 109 S.Ct. 1289(1989)

Under Nevada law, a first-time offender convicted of driving under the influence of alcohol (DUI) faces up to six months of incarceration or, in the alternative, 48 hours of community work while identifiably dressed as a DUI offender. In addition, the offender must pay a fine of up to $1,000, attend an alcohol abuse education course, and lose his license for 90 days. Penalties increase for repeat offenders. Petitioners, first-time offenders, were charged with DUI in separate incidents. The Municipal Court denied each petitioner's demand for a jury trial.

There is no Sixth Amendment right to a trial by jury for persons charged under Nevada law with DUI. This Court has long held that petty crimes or offenses are not subject to the Sixth Amendment jury trial provision. The most relevant criterion for determining the seriousness of an offense is the severity of the maximum authorized penalty fixed by the legislature. Under this approach, when an offense carries a maximum prison term of six months or less, as DUI does under Nevada law, it is presumed to be petty unless the defendant can show that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense is a "serious" one.

Under this test, it is clear that the Nevada Legislature does not view DUI as a serious offense. It is immaterial that a first-time DUI offender may face a minimum prison term or that some offenders may receive the maximum prison sentence, because even the maximum prison term does not exceed the constitutional demarcation point of six months. Likewise, the 90-day license suspension is irrelevant if it runs concurrently with the prison term. The 48 hours of community service in the specified clothing, while a source of embarrassment, is less embarrassing and less onerous than six months in jail. Also, the $1,000 fine is well below the $5,000 level set by Congress in its most recent definition of a petty offense, while increased penalties for recidivists are commonplace and are not faced by petitioners.