



STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
Attorney General

April 10, 1978

ATTORNEY GENERAL OPINION NO. 78-140

Mr. Steve Boyda  
Marshall County Attorney  
Box 207  
Marysville, Kansas 66508

Re: Motor Vehicles--Offenses--Interrogation

Synopsis: In those instances where a law enforcement officer has stopped a motorist for a traffic violation, specifically for driving while intoxicated or for reckless driving, Miranda warning need not be given until the motorist is subjected to custodial interrogation.

\*

\*

\*

Dear Mr. Boyda:

You ask the question whether a motorist, stopped by a law enforcement officer for a traffic violation, is entitled to have his rights to counsel recited to him under Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694, 86 S. Ct. 1602 (1966).

In some cases involving the stopping of a motorist by the police for a traffic offense, the courts have held that no Miranda warnings were required because the Miranda rule does not apply to traffic offenses generally, or to certain kinds of traffic offenses. 25 A.L.R. 3d 1076. It has been well established that the Miranda requirements do not apply to routine traffic offenses including, but not limited to, speeding, failure to carry vehicle registration, and expired license plates. People v. Walsh, 27 Mich. App. 100, 183 N.W.2d 360; U.S. v. Chase, 414 F.2d 780; U.S. v. Chadwick, CA 10 NM, 415 F.2d 167.

It has not been quite so clear in many jurisdictions as to application of the Miranda requirements to those individuals stopped for

Mr. Steve Boyda  
Page Two  
April 10, 1978

such traffic offenses as driving while intoxicated and reckless driving.

The most recent case law concerned with this issue indicates that the traffic offenses of DWI and reckless driving do not require that the Miranda warnings be given. However, this statement must be qualified by the principle that in those cases where an individual is placed in a situation of "custodial interrogation", then the Miranda warnings must be given.

The case law substantiating the general rule that the Miranda warning need not be given is found in the following:

"Miranda warnings were not necessary before the officer demanded the driver of the vehicle who was stopped on suspicion of driving while intoxicated to produce a driver's license, since this was not custodial interrogation."  
Gustafson v. State, (Fla. App.) 243 So.2d 615

Where a motorist, who had been stopped for erratic and high-speed driving and defective registration and had been taken into custody because he did not have valid license to post as bond for registration violation, made damaging statements before arresting officers suspected that the car had been stolen, detention was merely investigatory and as such did not require giving of the Miranda warnings. People v. Tate, 45 Ill.2d 540, 259 N.E.2d 791.

Motorist's "yes" answer as to whether he had been drinking, asked when he was still in his own truck and under no coercion, was admissible even though no Miranda warnings were given. State v. Dubany, 184 Neb. 337, 167 N.W.2d 556.

Upon stopping defendant for erratic driving, state trooper had no duty to apprise him of Miranda rights, but once officer became suspicious that defendant was intoxicated, and having desired to confirm his suspicion by having defendant perform sobriety test, Miranda rights attached. (At this point, it appears that the inquiry moved away from the investigatory stage to the accusatory stage.) State v. Darnell, 8 Wash. App. 627, 508 P.2d 613.

In determining the necessity of the Miranda warnings, the courts look to whether the driver is subjected to custodial interrogation. The underlying rationale in holding that no Miranda warnings are required when the motorist is stopped by police for a traffic offense is that the police officer does not thereby subject the motorist to "custodial interrogation."

Mr. Steve Boyda  
Page Three  
April 10, 1978

The whole issue then appears to be whether the driver of the vehicle has in fact been placed in a position of "custodial interrogation", such as to require the Miranda warnings.

"Custodial interrogation" has been defined as "the questioning of persons by law enforcement officers which is initiated and conducted while such persons are held in legal custody or deprived of their freedom of action in any significant way." (State v. Frizzel, 207 Kan. 393 (1971)). "Investigative interrogation" has been defined as "the questioning of persons by law enforcement officers in a routine manner in an investigation which has not reached an accusatory state and where such persons are not in legal custody or deprived of their freedom of action in any significant way." State v. Frizzel, supra.

The court in State v. Frizzel held that where an officer has stopped a vehicle for a routine driver's license check, and conducts routine on-the-scene questioning, this does not place the individual in a situation of "custodial interrogation". In this case, the officer had not done nor said anything which could be said to have deprived the defendant of her freedom of action in any significant way.

Further clarification may be found in State v. Carson, 216 Kan. 711 (1975). The court stated that circumstances bearing on whether a person questioned was subjected to custodial interrogation requiring the Miranda warnings can be classified thus:

- (1) the nature of the interrogator;
- (2) the nature of the suspect;
- (3) the time and place of interrogation;
- (4) the nature of the interrogation, and
- (5) the progress of the investigation at the time of the interrogation.

The court further held that general on-the-scene questioning as to facts surrounding a crime or general questioning of citizens in the fact-finding process does not constitute custodial interrogation requiring the Miranda warning.

Relating this concept to an individual who has been stopped for a traffic violation, it may be hypothesized that this too is an "on-the-scene" investigation, and absent the individual being placed in custodial interrogation, the Miranda warning need not be given.

This concept is reinforced by State v. Bohanan, 220 Kan. 121 (1976), in which the court ruled that the defendant's statements to a police officer are not automatically inadmissible for failure to give him the Miranda warnings unless the statements are the product of custodial interrogation. A person who has not been arrested is not in police custody unless there are significant restraints on his freedom of movement imposed by a law enforcement officer.

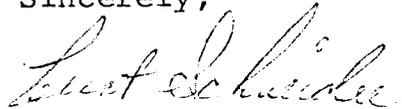
Mr. Steve Boyda  
Page Four  
April 10, 1978

This recent Kansas Supreme Court decision sets forth the principle that the resolution of questions pertaining to custodial interrogation are to be determined on a case-by-case approach depending upon the particular factual circumstances in each case. The fact that an investigation has focused on a suspect standing alone does not necessitate the giving of the Miranda warning, but it may be one of the determining factors in deciding whether such a warning is needed.

It can thus be reasonably argued that Kansas courts would hold that in those instances where a law enforcement officer has stopped a motorist for a traffic violation, specifically for driving while intoxicated or for reckless driving, the stopping and detention of the individual in most cases is "investigative interrogation", rather than "custodial interrogation". It is only in those cases where the individual is placed in "custodial interrogation" that the Miranda warnings need be given.

As previously stated, however, each instance must be determined on a case-by-case basis.

Sincerely,



CURT T. SCHNEIDER  
Attorney General

CTS:MGM:jj