NATIONAL MOTORISTS ASSOCIATION

# National Motorists Association Blog



## You Have The Right To Remain Silent — But Only If You Say So

October 13, 2010 • 0 Comments • Roadblocks, Traffic Tickets

*By Ted Levitt, NMA Member*

There is no good news regarding the “tweaking” the U.S. Supreme Court did this year with three decisions that greatly expanded the reach of the police when questioning defendants.

As a citizen you have the right, under the Fifth Amendment of the Bill of Rights which was ratified December 15, 1791, to not answer any questions put to you by a police officer as it might infringe on your right against self-incrimination.

However, as driving is a privilege granted to you by the state where you live via a drivers license, the officer who stops you for a driving offense has the right to require you to show a valid drivers license, and often valid proof of liability insurance and possibly your vehicle registration. You are not required under any law to speak, only to provide the required documents as set forth by each state.

The right to not speak to a police officer was first strengthened by the 1966 U.S. Supreme Court decision Miranda v. Arizona, 384 U.S. 436 where the Court mandated that police read every detained or arrested defendant their right to remain silent, have a lawyer present, have a lawyer provided for you if you can’t afford one, etc.

In most instances a traffic stop is not considered being detained or under arrest, but merely a custodial investigation relevant to the traffic stop. And up until this year, any deviation from the Miranda warning requirements was the kiss of death for the police and prosecutors.

**However, on February 23 of this year, the first of the three revisionary decisions by the U.S. Supreme Court was handed down.**

In Florida vs. Powell, No. 08-1175, the Court ruled that police in Tampa, Florida were entitled to give Miranda Warnings that varied from those familiar to fans of most TV crime dramas. This revised warning told the defendant about their right to consult a lawyer before questioning, but did not, in the same statement, tell the defendant that they had the right to have the lawyer present during the actual questioning.

This deviation is likely to lead defendants to assume that since they expressed their desire to remain silent (and have a lawyer present) that anything they would say prior to a lawyer being "on site" was protected.

**The next day, February 24, the Court ruled in Maryland vs.. Schatzer, No. 08-680, that if the suspect asks for a lawyer and is released without further questioning taking place, that the request to have a lawyer present is only valid for two weeks.**

Justice Antonin Scalia wrote the 5-4 majority opinion saying "In our judgment, 14 days will provide plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel and to shake off any residual coercive effects of his prior custody."

This means that a suspect can be brought back in for questioning after more than 14 days and the police can pretend that he/she never invoked his/her right to have a lawyer present, read him/her their Miranda rights again, and hope this time he/she answers without the lawyer actually being present.

This tactic puts the burden on the suspect who might assume that his/her prior invocation of his Miranda right to have a lawyer present was still in effect and all statement made during the second questioning session were inadmissible in court.

**On June 21st of this year in a 5-4 split decision the Supreme Court ruled in Berghuis vs. Thompkins, No. 08-1470, that a defendant who remained silent does not invoke his Miranda protections.**

In this case a man died in a shooting outside a Michigan Mall in 2000. Van Chester Thompkins was arrested as a suspect the following year and was read his rights. He indicated he understood them, but refused to sign the Miranda waiver.

After nearly three hours of interrogation from detectives during which he uttered only a few words, police asked him a series of questions about his faith. “Do you believe in God? Do you pray to him? Do you pray to God for forgiveness for shooting that boy down? Thompkins answered, “Yes.” The reply was ruled admissible, despite a lack of a signed confession.

The U.S. Supreme Court ruled “A suspect who has received and understood the Miranda warnings, and has not invoked his Miranda rights, waives the right to remain silent by making an uncoerced statement to police.”

They further said “The Supreme Court recognizes the practical realities that the police face in dealing with suspects”, “they don’t always answer the waiver questions clearly. When they do not, the bright-line rule of Miranda should not apply, and the statement should be admissible as long as it is not compelled”.

**The mere fact that you do not answer and choose not to speak means that you have not invoked your rights under Miranda and do not have any protection against self-incrimination. Thus comments you do subsequently make can be used against you in a court of law. This is the most troublesome of the 3 decisions this year.**

This ruling turns upside down the long held interpretation of the Miranda decision that silence was the same as the invocation of a defendants intent to remain silent and to be protected by his Miranda rights.

The police are no longer under the burden that a non-verbal response (or the refusal to sign a waiver of your Miranda rights) is a request for protection under those rights.

**You must now loudly and clearly state that you invoke your Miranda rights and will not speak and do not speak to the police until your attorney is present.**

It is common practice for a police officer, during a traffic stop, to ask you questions that are not directly related to the traffic stop, i.e., where are you going, where are you coming from, etc.. It is also common for a police officer to ask you if he/she may search your vehicle.

In most cases the officer may view the passenger compartment from outside the vehicle without your approval and without violating your rights. This is commonly called “The in plain sight rule”.

The officer may not force you to give him/her the key to your glove box, console, trunk or any compartment not already open or unlocked. If you volunteer to permit a search, the officer may search any part of the vehicle he chooses.

If you refuse this search the officer may very likely call for a drug sniffing dog to walk around and in your vehicle. This prolonged investigation and delay has been ruled not to have infringed upon your rights under the 4th Amendment (privacy), against self incrimination or to have denied you your Miranda rights or resulted in an illegal search and possible seizure by the police.

All you can do is state that the officer has no probable cause to detain you any further or to look in any other areas of your vehicle. You should then ask if you are now free to leave, but expect to be told you may not.

Our freedoms are being eroded one at a time, piece by piece. This is death by a thousand cuts.

**Based on these three rulings it is imperative that you loudly and clearly state to the police that you invoke all your rights under Miranda, you intend to remain silent, you do not intend to speak to them at any time and will not speak to them until/unless your attorney is present.**

In this type of situation silence is NOT golden.



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