

622 So. 2d 984, *, 1993 Fla. LEXIS 1139, **;
18 Fla. L. Weekly S 412

JOHN ALLRED, Petitioner, v. STATE OF FLORIDA, Respondent.
RICHARD DIANDREA, II, Petitioner, v. STATE OF FLORIDA, Re-
spondent.

Nos. 80,532, 80,475

SUPREME COURT OF FLORIDA

622 So. 2d 984; 1993 Fla. LEXIS 1139; 18 Fla. L. Weekly S 412

July 1, 1993, Decided

SUBSEQUENT HISTORY: [**1] Rehearing Denied September 2, 1993. Released for Publication September 2, 1993.

PRIOR HISTORY: Two Cases Consolidated: Applications for Review of the Decision of the District Court of Appeal - Direct Conflict of Decisions. Fourth District - Case Nos. 92-0323 & 92-0324 (Palm Beach County).

CASE SUMMARY:

PROCEDURAL POSTURE: The action was before the court upon the Fourth District Court of Appeal's (Florida) certification of the question of whether a police officer's request of an individual arrested for driving under the influence to recite the alphabet from "C" to "W" was a testimonial response within the privilege and protections of *U.S. Const. amend. V*.

OVERVIEW: Petitioners were suspected of driving under the influence. Police asked petitioners to recite the alphabet and numbers. Neither petitioner was read his Miranda rights before reciting the alphabet. Both petitioners failed to correctly recite the alphabet exactly as asked and were then arrested. The district court reversed a decision to suppress the alphabet tests. The supreme court reversed the district court's decision and found that petitioners were denied their constitutional protection against self-incrimination under *Fla. Cons. art. I, § 9*. Petitioners were under arrest and were therefore in custody. Petitioners were being interrogated when they were asked to recite the alphabet and numbers out of their ordinary sequence. A reasonable person would conclude that being asked to recite the alphabet out of sequence was designed to lead to an incriminating response. Failure to accurately recite the alphabet disclosed information beyond slurred speech. The content of the speech, incorrect recitation, was being introduced. Petitioners were entitled to their Miranda rights because they were faced with custodial interrogation.

OUTCOME: The supreme court answered in the affirmative the question of whether asking an individual arrested for driving under the influence to recite the alphabet from "C" to "W" was a testimonial response within constitutional protections. Being asked to recite the alphabet out of sequence was designed to lead to an incriminating response. The content of the speech was what respondent state sought to introduce, not the fact that the speech was slurred.

LexisNexis(R) Headnotes

Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > Self-Incrimination Privilege

Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Driving Under the Influence > General Overview

Evidence > Privileges > Self-Incrimination Privilege > General Overview

[HN1] Compelling an arrested drunk-driving suspect to disclose the date of his sixth birthday is a testimonial response.

Criminal Law & Procedure > Interrogation > Miranda Rights > Custodial Interrogation

[HN2] To be testimonial, an accused's communication must itself, explicitly or implicitly, relate a factual assertion or disclose information. Only then is a person compelled to be a witness against himself. Requiring a suspect to reveal the physical manner in which he articulates words, like requiring him to reveal the physical properties of the sound of his voice by reading a transcript, does not, without more, compel him to provide a testimonial response for purposes of the privilege.