

Miranda and Field Sobriety Tests

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Normally, field sobriety tests are administered *before* an arrest is made, as part of an officer's investigation into a possible DWI. In that case, it's clear that the officer need not read the driver his *Miranda* rights before administering the tests. The driver isn't in custody -- he's just the subject of a traffic stop -- and *Miranda* warnings are required only for custodial interrogation. Sometimes, however, an officer will administer field sobriety tests *after* arresting the driver. In such a case, must the officer give the *Miranda* warnings before administering the tests?

I was recently asked that very question. The court of appeals has answered in the negative, concluding that "the physical dexterity tests are not evidence of a testimonial or communicative nature . . . and are not within the scope of the *Miranda* decision." *State v. Flannery*, 31 N.C. App. 617 (1976). Although *Flannery* appears to be the only published appellate case on point in North Carolina, out of state cases uniformly agree. See, e.g., *Campbell v. State*, 325 S.W.3d 223 (Tex. Ct. App. Ft. Worth 2010) ("[S]obriety tests yield physical evidence of a suspect's mental and physical faculties, and thus the results are not testimonial evidence that implicates *Miranda*."); *Commonwealth v. Cameron*, 689 N.E.2d 1365 (Mass. App. Ct. 1998) (holding that "[b]ecause field sobriety tests have been held not to elicit testimonial . . . evidence, they do not trigger the protections" of *Miranda*).

It probably follows from the foregoing, but our courts have also held that *Miranda* warnings need not be given before administering a breathalyzer. *State v. White*, 84 N.C. App. 111 (1987).