



1 swerve out of its lane before reaching the intersection and  
2 again swerving out of its lane upon entering, east bound, the  
3 main highway. Leapai pulled over that vehicle shortly  
4 thereafter at or near the parking lot of the K-2 Store. Leapai  
5 approached the vehicle's driver, whom he identified in court as  
6 McDonald, and advised him as to the reason for the traffic stop.  
7 While speaking with McDonald, Leapai observed that his eyes were  
8 red and detected an odor of alcohol on his breath. Leapai asked  
9 McDonald if he had consumed an alcoholic beverage and McDonald  
10 responded he had only consumed 2 beers at a party earlier.  
11 Leapai asked McDonald to step out of the vehicle and then  
12 advised him he would call another police officer to the scene to  
13 determine if McDonald could safely continue to drive.

14           Soon thereafter Officer Parker arrived on the scene.  
15 Parker is a certified D.U.I. Officer, trained to administer and  
16 evaluate S.F.S.T.s and breathalyzer tests. Parker testified  
17 that upon arriving at the scene of the traffic stop, and after  
18 being briefed by Leapai as to what had occurred before Parker's  
19 arrival, Parker noticed that McDonald had red, watery eyes and  
20 detected an odor of alcohol coming from his person. Parker re-  
21 advised McDonald as to the basis for the stop and asked McDonald  
22 if he had been drinking. McDonald responded that yes, he had  
23 been drinking earlier and had consumed 4-6 Steinlager beers.  
24 Again Parker noticed the odor of alcohol on McDonald's breath,  
25

1 and observed that during this conversation McDonald was swaying  
2 back and forth and leaning back against the car to maintain his  
3 balance. When asked for identification, McDonald also had  
4 difficulty in pulling out his wallet and producing his driver's  
5 license.

6 Parker next attempted to question McDonald's wife, who was  
7 in the passenger seat of McDonald's vehicle, but she was  
8 unresponsive. Parker noticed she appeared to be angry or upset  
9 and was crying. Leapai remained at the scene during this period  
10 and his trainee partner remained inside the police unit during  
11 the stop.

12 Parker next advised McDonald about conducting the S.F.S.T.s  
13 and obtained McDonald's consent to perform the tests. Parker,  
14 evaluating the traffic stop scene as both poorly-lit and not  
15 presenting a level 'floor' for conducting the tests, explained  
16 to McDonald that he would transport McDonald to the nearby  
17 Department of Public Safety Substation ("Substation West") to  
18 conduct the tests. Parker also informed McDonald he was not  
19 under arrest at that time. On cross examination and redirect,  
20 Parker testified he was a 5-year veteran of the Department of  
21 Public Safety, having conducted 50-60 D.U.I. investigations  
22 and/or arrests. He stated that some S.F.S.T.s were conducted at  
23 the scene of the traffic stop if they could be safely performed  
24 there, but if not, the driver would be transported back to the  
25

1 police station to conduct the S.F.S.T.s there. Parker also  
2 stated that McDonald gave him consent to drive McDonald's car to  
3 Substation West, with McDonald seated behind Parker in the  
4 backseat, and Mrs. McDonald seated in the front passenger's  
5 seat. Leapai followed in Parker's unit with Leapai's trainee  
6 partner driving Leapai's unit. At Substation West, McDonald was  
7 escorted inside the police station where he performed and failed  
8 the S.F.S.T.s, was formally arrested for D.U.I., advised of his  
9 Miranda rights, and opted to perform a breathalyzer test.

10 Mrs. McDonald testified that at the scene of the traffic  
11 stop adjacent businesses, including Talofa Video and the Nuuli  
12 Shopping Center, had well-lit, level parking areas where the  
13 S.F.S.T.s could have been promptly performed. She also stated  
14 that the transport time from the stop scene to Substation West  
15 was no more than 5 minutes in duration.

16  
17 **ISSUES**

18 McDonald contends that because Parker did not personally  
19 observe him operating his vehicle on the roadway, Parker could  
20 not lawfully arrest him for D.U.I.. Further, McDonald argues  
21 that because his vehicle was stopped for mechanical defects, his  
22 detention upon suspicion of D.U.I. was unreasonable. Finally,  
23 McDonald contends that he was taken into police custody without  
24 probable cause, thereby rendering all subsequent evidence  
25 obtained inadmissible in court.

DISCUSSION

1  
2 Recently this Court issued an Opinion and Order suppressing  
3 S.F.S.T.s and breathalyzer test results in Am. Samoa Gov't. v.  
4 Miscoi, UTC Nos. 286246 and 286247 (*slip op.* (Dist. Ct. March  
5 14, 2012)), involving several facts not facially dissimilar to  
6 many of those presented in this case.<sup>1</sup> In deciding the issues  
7 presented in this case, the Court adopts its reasoning and  
8 caselaw citations used in Miscoi and will frequently reference  
9 it.

10 With respect to McDonald's first issue, this Court has  
11 repeatedly ruled in bench decisions in cases presenting similar  
12 facts that a brief detention of a motorist at a traffic stop  
13 while a trained and certified D.U.I. police officer is promptly  
14 brought to the stop scene does not on its face create an  
15 unreasonable seizure of the motorist. If the officer initiating  
16 the traffic stop has an articulable basis for initiating that  
17 stop under Whren v. U.S., 517 U.S. 806 (1996), the initial stop  
18 is constitutionally valid. After that traffic stop, if the  
19 officer develops a reasonable suspicion that the driver had  
20

21  
22 <sup>1</sup> In the Miscoi case, Miscoi was stopped for speeding and had pulled over  
23 in a poorly-lit area. Because Miscoi exhibited some indicia of alcohol  
24 consumption at the scene of the stop, police officers subsequently  
25 transported Miscoi to the Central Police Station for continued S.F.S.T. and  
breathalyzer analysis. This Court ruled that under the totality of the  
circumstances, the police officers lacked the probable cause necessary to  
arrest Miscoi for D.U.I. at the scene of the stop. This Court further ruled  
that Miscoi's subsequent seizure and transport to the Central Police Station  
was unreasonable, and therefore suppressed the S.F.S.T. and breathalyzer test  
results. Cf. REV. CONST. OF AM. SAMOA art. I, § 5.

1 consumed alcohol or other drugs and might be intoxicated, a  
2 brief detention of the driver while a certified, trained D.U.I.  
3 police officer is promptly brought to the scene to take over the  
4 case development and evaluation of factors suggesting  
5 intoxication is also reasonable under the circumstances.

6 As this Court held in Miscoi, a brief transport of the  
7 driver from the traffic stop scene to a safe, public location to  
8 conduct S.F.S.T.s, when warranted by the unsafe conditions  
9 prevailing at the scene, does not generally turn the detention  
10 of the driver into an arrest. In the instant case, Parker  
11 briefly transported McDonald to Substation West, took him inside  
12 the police station, and conducted the "field" tests there. As  
13 this Court held in Miscoi, such practices effectively result in  
14 the driver being placed in police custody, and in the absence of  
15 probable cause for the officer to arrest, this seizure is no  
16 longer reasonable. Evidence obtained thereafter becomes  
17 inadmissible in court pursuant to REV. CONST. OF AM. SAMOA art  
18 I, § 5.

19  
20 In this case, however, under a totality of the  
21 circumstances test, Officer Parker had probable cause to seize  
22 McDonald prior to transporting McDonald to Substation West.  
23 Officer Leapai observed, in addition to the tail-lights'  
24 defective condition, two instances of unsafe driving by  
25

1 McDonald. McDonald told Leapai he had consumed two beers, but  
2 changed his story to Officer Parker and admitted to consuming  
3 4-6 Steinlagers. Parker observed McDonald at the stop to have  
4 red, watery eyes, and detected the odor of alcohol on his  
5 breath. In addition, McDonald was unable to maintain his  
6 balance standing outside his vehicle without using the vehicle  
7 for support. Further, McDonald exhibited difficulty in pulling  
8 out his wallet and presenting identification.

9 Notwithstanding Parker's statement to McDonald at the stop  
10 scene that he was not under arrest, there was probable cause to  
11 take McDonald into police custody immediately before his  
12 transport to Substation West. Because this seizure of McDonald  
13 was supported by probable cause, the subsequent results of the  
14 S.F.S.T.s and the breathalyzer test are admissible in court as  
15 evidence. See, generally, Pennsylvania v. Muniz, 496 U.S. 582  
16 (1990); Miscoi, UTC Nos. 286246 & 286247.

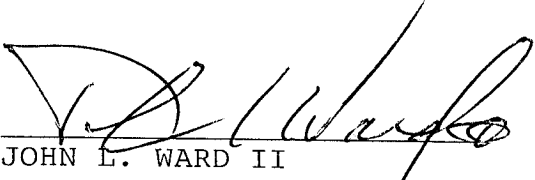
#### 18 CONCLUSION

19 In Miscoi, the police officer lacked probable cause to find  
20 and charge the driver at the scene of the traffic stop with  
21 being under the influence of intoxicating liquor rendering him  
22 incapable of safely driving (A.S.C.A. § 22.0707). Evidence  
23 obtained from Miscoi after being effectively placed in police  
24 custody at the Central Police Station was therefore inadmissible  
25 in court pursuant to REV. CONST. OF AM. SAMOA art I, § 5.

1 In the instant matter, Officer Parker did have probable  
2 cause at the scene of the traffic stop to find and charge  
3 McDonald with violating A.S.C.A. § 22.0707. The seizure of  
4 McDonald being a reasonable one supported by probable cause, his  
5 motion to suppress the test results of the S.F.S.T.s and the  
6 breathalyzer is denied. <sup>2</sup>

7 ORDER

8 So Ordered. Further, this matter is calendared for a  
9 pre-trial hearing on 10 April 12 at 8:30 A.M.

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11   
12 JOHN L. WARD II  
13 District Court Judge  
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24 <sup>2</sup> As more fully set forth in Miscoi, the present police practice of  
25 routinely transporting D.U.I. suspects from the traffic stop scene to the  
police station is facially suspect. Safer, quicker, and constitutionally  
permissible alternatives are readily available. The Department of Public  
Safety and the Office of the Attorney General are strongly admonished to  
review and revise this practice at their earliest opportunity.