Office of District Attorney Matt Ballard 8/10/2021 Summer 2021

THE BLUESHEETS

MIRANDA MADE SIMPLE 2021

Background: *Miranda v. Arizona* is actually a collection of four cases before the United States Supreme Court involving interrogations of arrested individuals.[i] In this 1966 opinion, the Court outlines a series of rights the police must recite to a person prior to a "custodial interrogation."[ii] Citing law review articles, books, and other cases, the Court collectively refers to law enforcement interrogation techniques as "the manuals" and presents somewhat of an editorial on the state of police interviews.[iii] The Court also outlines the history of the privilege against self-incrimination from the 17th Century Star Chamber, to the Bill of Rights, up to Twentieth Century case law.[iv]

IN ORDER FOR MIRANDA TO BE APPLICABLE, YOU **MUST** HAVE BOTH CUSTODY AND INTERROGATION. IF YOU ARE MISSING EITHER CONDITION, THEN MIRANDA SIMPLY DOES NOT APPLY. IF YOU TAKE NOTHING ELSE FROM THIS ARTICLE, PLEASE REMEMBER THIS SIMPLE FORMULA.

Requirements for Miranda: In order for Miranda to be applicable, you **MUST** have both custody and interrogation. If you are missing either condition, then Miranda simply does not apply. If you take nothing else from this article, please remember this simple formula. For some reason, the judicial system and law enforcement has struggled with this simple concept. Let's look at each factor more in depth. **Custody:** Custody can be thought of as formal arrest, or "restraint of freedom of movement of the degree associated with formal arrest."[v] So, if an individual is placed under arrest, then he is in custody for Miranda purposes. Furthermore, if one is detained (not arrested) and restrained in a way associated with formal arrest (handcuffs, placed in a jail cell, etc), then he is likely in custody when it comes to Miranda. **Interrogation:** This concept is also easy to determine. The easy case is where a police officer asks an individual incriminating questions. This is obviously interrogation. However, any conduct "reasonably likely to elicit an incriminating response" is also interrogation for Miranda purposes. The classic case involves two detectives conversing about the dangers of a discarded firearm within earshot of the arrestee. Although they never spoke to the defendant, their conduct was designed to cause a range of emotions in the accused which led him to disclose the location of the gun.[vi] **Waiver:** After being advised of his rights, the defendant must waive those rights and agree to speak to the police.

Express waivers, the accused telling you he waives or signing a written waiver, are easy to prove. Oftentimes the wavier question is built into the standardized waiver form. The Supreme Court recently held, "Where the prosecution shows that a Miranda warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent." [vii]

Miranda Myths Debunked: For some reason, Miranda has spurned quite a litter of urban legends. Let's address the most prevalent. ***Myth Number 1 – The Suspect Notion:*** Remember, Miranda is only triggered if you have custody and interrogation. The fact that an individual is a suspect has no bearing on the application of Miranda. ***Myth Number 2 – Police Station Interviews Require Miranda:*** So, you are asking incriminating questions, therefore you have interrogation. However, you do not have custody simply because those questions take place at the police station. If the interviewee is somehow restrained in a way associated with formal arrest, then he is in custody. Otherwise, Miranda is inapplicable. The Supreme Court addressed *Myths 1* and *2* as follows, "[P]olice officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect."[viii] ***Myth Number 3 – The State of Mind***: Suppose you intend to arrest your interviewee. Better yet, during your interview suddenly decide you are going to arrest the defendant. Does either situation equate to custody? The answer is a resounding "No." Unless your defendant is psychic, your state of mind has nothing to do with objectively determining whether the defendant was restrained in a way associated with formal arrest. [ix] ***Myth Number 4 – Investigative Detention equals Custody:*** Investigative detentions (whether during a traffic stop or during a search warrant) do not require Miranda, unless . . . you got it, the detention is in a manner associated with formal arrest.[x]

Myth Number 5 – The Miranda Warning must be read Word-for-Word: For some reason, many believe that the Miranda warning is like a Harry Potter spell which is completely ineffective unless quoted from a card. To the contrary, the Supreme Court has said, "We have never insisted that Miranda warnings be given in the exact form described in that decision." [xi]

The Significance of Miranda "Violations": Remember that Miranda arises out of the Fifth Amendment. As such, the procedure for addressing deviations from Miranda differs significantly than those from the Fourth Amendment. **When Does a Miranda Violation Occur:** Miranda is a trial right, not an everyday right like the protection from unreasonable searches and seizures. As such, interrogating an arrested subject without administering Miranda warnings is not in and of itself a Constitutional violation. Rather, the violation takes place when the statement is admitted in a trial.[xii] **Fruit of the Poisonous Tree DOES NOT Apply:** Let us say you interview a homicide arrestee without Miranda warnings and he tells you the murder weapon is located at his apartment. You then get a search warrant for that apartment and find the weapon. The weapon is admissible regardless of the Miranda admissibility of the underlying statement, so long as the statement is voluntary. [xiii] **Impeachment:** Even if you take a statement in violation of Miranda, it is "not a license to use perjury by way of a defense."[xiv] Consequently, the un-Mirandized statement could be used to impeach the defendant's testimony if he elects to testify at trial. *Note: the Court has held that these statements admitted as fruit of the (non) poisonous tree and impeachment must still be "voluntary."*

Invocations: Once the warnings are administered, a suspect can basically exercise the protections of Miranda in one of two ways. **Invoking the Right to Remain Silent.** If a defendant tells you he does not wish to speak with you; he has invoked his right to remain silent and

questioning must cease. However, you may approach the defendant about other crimes so long as (1) questioning ceased when the invocation was made, (2) "a substantial interval" passed before the new interrogation, (3) new Miranda warnings were given, (4) the subject of the new interrogation is unrelated to the first.[xv] **Invoking the Right to Counsel.** Unlike invoking the right to remain silent, if a defendant tells you that he does not want to speak with you without the assistance of counsel, he may not be approached regarding other crimes unless there has been a break in custody.[xvi] **Reinitiating:** Suffice it to say, "[Once an accused has invoked the right to counsel he] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with police." [xvii] **Break in custody**: A 14 day break in custody is sufficient to reinitiate an interrogation after an invocation of the right to counsel.[xviii]

Miscellaneous Categories for Miranda: As the application of Miranda, or the lack thereof, is arguably relevant any time a defendant is interviewed, Miranda has spawned several nuances over the last forty-five years. The following quotes may be of interest. **Public Safety:** "[T]here is a public safety exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into evidence."[xix] "[A]sking him about the presence of guns or sharp objects on his person after he was in custody but before he was informed of his Miranda rights . . . was proper under the public-safety exception to Miranda set forth in *Quarles*." [xx] **Booking Questions:** "Routine booking questions, or questions posed to secure the personal history data necessary to complete the booking process, are exempt from Miranda coverage . . ."[xxi] **Consent:** "A consent to search is not a self-incriminating statement."[xxii] **PreArrest Silence:** "[T]he Fifth Amendment is not violated by the use of prearrest silence to impeach a criminal defendant's credibility." [xxiii] "[Silence prior to arrest] is probative and does not rest on the implied assurance by law enforcement authorities that it will carry no penalty." [xxiv] **Becoming Silent During the Interview**: Simply becoming silent during an interview is not an invocation of the right to remain silent; therefore, during a voluntary interview when the suspect was answering questions, suddenly becoming silent when asked whether shotgun shells at the scene would match the suspect's shotgun was not an invocation of the right to remain silent and was admissible at trial. [xxv] **Advising A Suspect of the Evidence:** "Briefly reciting to a suspect in custody the basis for holding him, without more, cannot be the functional equivalent of interrogation."[xxvi] **Proving a Waiver:** "[T]he State need prove a waiver only by a preponderance of the evidence." [xxvii]

Final Thoughts: Don't overthink Miranda. Regardless of how one feels about the wisdom of the decision, Miranda's application is relatively simple. Be safe My Brothers!!

CITED AUTHORITIES

[i] *Miranda v. Arizona*, 384 U.S. 436 (1966)
[ii] Id.
[iii] Id.
[iv] Id.
[v] *California v. Beheler*, 463 U.S. 1121, 1125 (1983)
[vi] Rhode Island v. Ennis, 446 U.S. 291(1980)
[vii] *Berghuis v. Thompkins*, __ U.S. ___ (2010), 130 S.Ct. 2250.
[viii] *Oregon v. Mathiason*, 429 U.S. 711, 712 (1977).
[ix] *Stansbury v. California*, 511 U.S. 318, 323 (1994) ("[C]ustody depends on objective circumstances of the interrogation, not the subjective views harbored by either the interrogating officers or the person being questioned.")
[x] *Casey v. State*, 732 P.2d 885 (Okl. Cr. 1987)(Officers come upon a vehicle, victim says that the defendant raped her, police detain the defendant and question him in the patrol car. Court found that the defendant was not in custody for *Miranda* purposes), *U.S. v. Murray*, 89 F.3d 459, 462 (7th Cir. 1996) ("[T]he fact that [Defendant] was questioned while seated in the back of the squad car did not put him in custody for the purposes of Miranda warnings."), *U.S. v. Burns*, 37 F.3d 276, 281 (7th Cir. 1994) ("[I]n the usual case, a person being detained during the execution of a search warrant is not in custody for the purposes of Miranda."), *Misleh v. State*, 799 P.2d 631, 634 (Okl.Cr. 1990)("An investigative stop, in which the police conduct minimal investigation to determine whether probable cause exists to believe a crime has been committed, does not require Miranda warnings.")
[xi] *Duckwork v. Egan*, 492 U.S. 196, 202 (1989).
[xii] *U.S. v. Patane*, 542 U.S. 630 (2004)(" It follows that police do not violate a suspect's constitutional rights (or the *Miranda* rule) by negligent or even deliberate failures to provide the suspect with the full panoply of warnings prescribed by *Miranda*. Potential violations occur, if at all, only upon the admission of unwarned statements into evidence at trial.")
[xiii] Id.
[xiv] *Harris v. New York*, 401 U.S. 222, 229 (1971). See also, Oregon v. Elstad, 470 U.S. 298, 316 (1985)("[T]he presumption of coercion does not bar [the use of unwarned statements] for impeachment purposes on cross examination.")
[xv] *U.S. v. Glover*, 104 F.3d 1570, 1580 (10th Cir. 1997).
[xvi] *Arizona v. Roberson*, 406 U.S. 675 (1988)
[xvii] *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981).
[xviii] *Maryland v. Schatzer,* 559 U.S. 98 (2010)
[xix] *New York v. Quarles*, 467 U.S. 649, 655-56 (1984)
[xx] *U.S. v. Lackey*, 334 F.3d 1224, 1226 (10th Cir. 2003)
[xxi] *U.S. v Clark*, 982 F.2d 965, 968 (6th Cir. 1993)
[xxii] *U.S. v. Hildago*, 7 F.3d 1566, 1568 (11th Cir. 1993)
[xxiii] *Jenkins v. Anderson*, 447 U.S. 231, 238 (1980)
[xxiv] *Brecht v Abrahamson*, 507 U.S. 619, 628 (1993)
[xxv] Salinas v. Texas, 570 U.S. ___ (2013)
[xxvi] *Enoch v. Gramley*, 70 F.3d 1490, 1500 (7th Cir. 1995)
[xxvii] *Colorado v. Connelly*, 479 U.S. 157, 168 (1986)

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BRIAN SURBER IS THE FIRST ASSISTANT DISTRICT ATTORNEY FOR THE 12TH DISTRICT FOR ROGERS, MAYES, AND CRAIG COUNTIES. HE IS A FORMER SPECIAL AGENT FOR THE OKLAHOMA BUREAU OF NARCOTICS WHERE HE ALSO SERVED AS BOTH THE GENERAL COUNSEL AND DEPUTY GENERAL COUNSEL.