

First Place

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Introduction

A police officer is patrolling a two lane road, when a car that matches an incomplete description of a vehicle at robbery crosses the median twice. The car is then pulled over for its failure to maintain lane and two occupants are found inside. The police officer and their partner approach the vehicle and ask both of the occupants for identification and then proceed to ask about their previous whereabouts. The alibis given by the occupants are conflicting, both members of the vehicle exhibit nervous behavior, and rolling paper is in plain sight of the officers. After asking the driver for registration and insurance, the officer asks permission to search the car. Permission to do so is given only by the passenger in form of a head nod. Prior to searching the car, the officer asks the members of the vehicle whether there is any contraband located in it. Neither occupant answers this question and the results from the earlier identification check show that the passenger of the car is not a U.S. citizen.

The use or lack thereof, the Miranda Rights that were first established in the Supreme Court case, *Miranda v. Arizona*, have led to many other cases as well as overturned convictions. The Miranda warning was created to protect the rights given in the fourth, fifth, and sixth amendments of the United States Constitution. However, each court case that has touched on the topic of the Miranda rights since its initial creation has either furthered or limited its application. For this reason, the circumstances in which an individual must be Mirandized can sometimes be unclear or controversial.

Question 1

Is the Driver Being Detained? If So When Does the Detention Begin?

In the circumstance of the given traffic stop, the driver as well as the passenger are being detained. This detention began the moment that the traffic stop initiated and will conclude once the officer deems it to be completed. A traffic stop is considered a detention because neither of the occupants of the vehicle are free to leave at their own will. An officer must give the occupants of the car permission to leave in order for their detainment to end. According to the innumerable provisions of the New Mexico Vehicle Code, located in chapter 66, article seven, section 4 of the New Mexico statutes, if the occupants of the vehicle tried to avoid this detention, or left without official permission, they could be charged with a misdemeanor. A detention, although similar to being in custody, is not regarded to be the same thing. When someone is in custody, they are usually in handcuffs, in the back of the police car, a police officer has a weapon drawn, or the occupants are being questioned for an extended amount of time in an authoritarian or accusatory demeanor. In contrast, a detention usually does not involve handcuffs, the relocation of a citizen to a police car or police station, or an overly long questioning period. During a detention, the questions asked by the officer are in polite manner. Since the officer has not acted in a way that would imply that the occupants of the vehicle are in custody, and traffic stops are only a detention, it can be assumed from the given information that the driver and passenger of the car are only being detained.

Question 2

Are The Questions You Have Asked Incriminating? Why are you asking these questions?

Some of the questions that were asked by the officer were incriminating. The incriminating questions that were asked include asking the occupants of their previous whereabouts, asking permission to search the vehicle, and asking if there was illegal contraband. Self-incrimination is described as giving testimony against oneself. Therefore, an incriminating question would be any question that gives the respondent the ability to state something that can be used as testimony against them in the court of law. If the occupants of the vehicle said something about their previous whereabouts that linked them to the robbery this could incriminate them. If permission is given for an officer to search a car and paraphernalia or other suspicious or illegal items are found, these could incriminate the constituents of the vehicle as well. If the occupants would have answered the officer's question regarding contraband, that answer could also be used as testimony against them. It can also be argued that asking the passenger for their ID could be considered incriminating. In a routine traffic stop, the passenger of the vehicle will not be interacted with unless he or she is the owner of the vehicle. Since an identification check determined the passenger to be a non-citizen, this could lead to the passengers deportation or result in some other form of consequence if they are in the country illegally. All of these questions could also lead to an arrest or further investigation of the occupants, classifying them as incriminating.

Question 3

**Are the Driver and Passenger to be Advised of Their Miranda Rights Prior to you Asking
the Questions?**

During a routine traffic stop, a police officer is not required to advise occupants of a vehicle their Miranda rights. The Supreme Court case, *Berkemer v. McCarty* established that an individual only has to be Mirandized during custodial investigation. As mentioned before, a traffic stop is merely a detention and not the act of putting someone in custody. *Miranda v. Arizona* describes custodial interrogation as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” This definition of custodial interrogation was upheld later on in *California v. Beheler*. Although the occupants of the vehicle are deprived of freedom of action in the sense that they are unable to leave at their own will, this is not considered custodial interrogation. *Berkemer v McCarty* limited the application of the Miranda warning by determining that “The roadside questioning of a motorist detained pursuant to a routine traffic stop does not constitute "custodial interrogation" for the purposes of the Miranda rule.” Since the questions that are being asked by the officer currently are more closely related to traffic stop questioning rather than questioning that would be associated with investigation for the robbery, the officer does not have to Mirandize the occupants of the car. If the officer was to further his questioning to include questions to obtain information of the robbery, then the officer would have to Mirandize the citizens. Although the Miranda right is set in place to protect citizens from self-incrimination per the fifth amendment, it has been asserted that questions asked during a traffic stop do not greatly diminish this right. Therefore, a traffic stop does not constitute the use of the Miranda warning.

Question 4

If Prior to the Contraband Question, the Driver Says, “Maybe I Should Talk to a Lawyer” do you Have to Stop Questioning?

Under the given circumstances, if the driver said “Maybe I should talk to a lawyer,” the officer would not be required to stop questioning. For a citizen to utilize their right to counsel, they must specifically ask for it, rather than making an indirect statement, as the driver has done. However, even if the driver asked for counsel, he does not have the right to one at the moment. Although the sixth amendment gives citizens the right to counsel, it limits that right by stating “In all criminal prosecutions the accused shall enjoy the right...to have the assistance of counsel for his defense.” Since the driver of the vehicle is not being prosecuted, the rights guaranteed in the sixth amendment do not currently apply to him. As formerly mentioned, the Miranda warning helps to protect the right to counsel addressed in the sixth amendment. Since the Miranda warning is not applicable in this situation, neither is the right to counsel it offers.

Conclusion

The Miranda warning is commonly misunderstood by both the citizens whose rights are protected through it, as well as the cops who must use it. Since *Miranda v. Arizona*, other court cases such as *Berkemer v. McCarty* and *California v. Beheler* have redesigned the guidelines surrounding the Miranda rights. For this reason, the rights it entitles are commonly misused or not used at all. Many citizens have faced punishments they could have avoided if they had better understanding of this right. Just as many federal agents could have had more success placing criminals behind bars if they understood it well enough to avoid its misuse. The question “To

Mirandize or Not” is not only a question applicable to this essay, but a question that every U.S. citizen should have a correct answer to.

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Second Place

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To Mirandize or Not?

I. Introduction

Around the country millions of Americans tune into their favorite police dramas every week. Aside from all the high-stakes action, there is one aspect that these TV shows get mostly right - the Miranda warning. A condensed version (the one often read by actors portraying policemen) reads similar to this:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense (Mount 53-60).

This seems straightforward, but there are many exceptions and details to the Miranda rights that an average TV show viewer would be ignorant of.

To further analyze these details and exceptions take the following case into consideration. There are two police officers on highway patrol late at night. There is a car in front of the officers that not only matches a partial description of a car that was involved in an earlier robbery, but has also swerved and crossed the median twice. The officers pull over the car and a few “red flags” quickly become apparent: there are rolling papers and the driver’s account of the night and the passenger's account are completely different. One of the officers asks consent to search the car and the passenger nods his head up and down (seeming to signal “yes”). The officer also questions if there is any

contraband in the car, but neither the driver nor the passenger respond, which further propels suspicion.

This specific situation raises a few key questions about the Miranda warning. Does the United States have a clear definition of what detention really is and when it technically begins? Does being pulled over in a traffic stop constitute detention and are Miranda rights guaranteed? This case also begs the question of what exactly an interrogation is and when it must end. All of these points must be taken into consideration in the analysis and reading of Miranda warnings following a traffic stop.

II. What constitutes detention and when does it begin?

In this case, very technically, the driver and the passenger are being detained. The unanimous Supreme Court decision in the case *Brendlin v. California* held that when “police make a traffic stop, a passenger in the car, like the driver, is seized for Fourth Amendment purposes” (1). This continued the 1980 decision from *United States v. Mendenhall* outlining that a person has been "detained" within the meaning of the Fourth Amendment only if, “a reasonable person would have believed that he was not free to leave” (4). While this may seem somewhat subjective, it is cut and dry in this instance. The police officer is actively working and asking questions and a reasonable person would not feel as though they could leave without repercussions. Therefore, relying on the rulings in *Brendlin v. California* and *United States v. Mendenhall* (both of which are currently good law), the driver and the passenger are technically detained with the detention beginning the moment the police officer approaches the car.

III. When and under what circumstances do the Miranda rights get read?

It is easy to claim that the Miranda rights get read before the officer says a word to either the driver or the passenger (crime TV has taught us that much). The fact is, though, that there are a number of exceptions to when the Miranda rights get read. One of the most important exceptions is the public safety exception. The car swerving late at night when visibility is limited (and potentially the rolling papers) is a threat to public safety, but this does not fall under the public safety exception. This can only be invoked, “when police officers have an objectively reasonable need to protect the police or the public from immediate danger” (Benoit 16). At this point the car is stopped and while rolling papers may be visible, there are no drugs visible or being taken. Therefore, there is no objective need to protect anyone in this situation so the public safety exception is not invoked.

This means that the normal Miranda rights proceedings must occur. In this case, the Miranda warnings must be read prior to the officer asking if there is any contraband in the car. This is for a few reasons. If an individual is pulled off the road by a police officer for an infraction of a traffic law (such as a lane change violation, as in this case) an officer does not need to inform him of his constitutional right to remain silent or the right to consult with an attorney. This is in accordance with the Supreme Court case *Berkemer v. McCarty*. In *Berkemer v. McCarty* the Supreme Court ruled that “detention of a motorist pursuant to a traffic stop is presumptively temporary and brief” (2), “circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police” (3). Miranda rights do not have to be read unless the driver is either being arrested, put into police custody, or being questioned about

something unrelated to the traffic infraction. Thus, when the officer asks to search the car the driver could decline because he is not “completely at the mercy of the police” (*Berkemer v. McCarty* 3) so the driver does not need to be read his Miranda rights. The next question asked by the officer (“Is there any contraband in the car?”) has the potential to influence the driver to self incriminate. At this point, the officer must recite the Miranda warnings, and any further questioning would fall under the status of interrogation.

IV. What constitutes an interrogation and when does it end?

The definition of an interrogation is difficult to pin down. In this instance, though, interrogation can be simplified as “any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect” (*Rhode Island v. Innis*). In this specific case, referring to the definition provided by the Supreme Court in 1980, yes, the questions asked are incriminating and can be considered interrogation. Answering the question, “is there any contraband in the car?” is meant to “elicit an incriminating response from the subject” (*Rhode Island v. Innis*). The first question, though, falls within the scope of a routine traffic stop so it is not considered an interrogation. It has already been established that the question regarding contraband has the potential for the driver to self incriminate and needs the Miranda warning prior to questioning to advise the driver that he does have the right to remain silent. Thus, the second question is the start of an interrogation.

If the driver at any point in this interaction expresses an interest, want, or need to speak with a lawyer, questioning must stop. This is because the driver is technically

detained (as established in section II). The driver is in police custody and is therefore allowed at anytime to request a lawyer, and “questioning has to stop” (Kerr 6) under *Miranda v. Arizona*.

V. Conclusion

The Supreme Court rulings applicable to this case are clear and concise. The driver is being detained because the Supreme Court ruled in 2007 that when pulled over for a traffic stop, the driver and the passengers fall into police custody. The first question asked (about searching the car) is not incriminating, but the question regarding contraband is and falls under the umbrella of interrogation; therefore, the driver and passenger must be advised of their Miranda rights prior to the question regarding contraband and if at any point the driver wishes to speak to an attorney questioning must stop in accordance with *Miranda v. Arizona*.

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Third Place

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1,487 words

I. Introduction

“There is a world of difference... between compelling a suspect to incriminate himself and preventing him from foolishly doing so of his own accord.” *Dickerson v. United States*, 530 U.S. 428, 449 (2000) (Scalia, J., dissenting). In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court sought to protect a person’s Fifth Amendment right against self-incrimination by instating “procedural safeguards,” such as the requirement that officers inform suspects of their right to remain silent. However, these safeguards do not apply under every circumstance.

For instance, one night, a police officer and his partner pulled over a vehicle – which matched a partial description of a car involved in a robbery – for crossing the median twice. Inside the car were two occupants and a conspicuous packet of rolling papers. The officer requested identification (which revealed the passenger is not a U.S. citizen), registration, and insurance. Additionally, the officer asked about their actions that night, if the car could be searched, and if there was contraband inside. *Miranda* left open many questions regarding its applicability in situations such as this.

II. Is the driver being detained? If so, when does the detention begin?

The Fourth Amendment grants the “right to be secure...against unreasonable searches and seizures.” U.S. Const. amend. IV. Investigatory detentions and *de facto* arrests constitute “seizures.” In New Mexico, *State v. Wilson* held that “an investigatory detention occurs when an officer briefly detains and investigates a person based on reasonable suspicion of criminal activity.” 2007-NMCA-111, ¶18, 142 N.M. 737. “Whether a stop is an investigatory detention or a *de facto* arrest is a question analyzed under the Fourth Amendment reasonableness inquiry.” *Id.* In *Wilson*, the defendant staggered home and clenched his fists aggressively while being investigated for drunk driving, leading the officer to forcibly handcuff him and place him in his patrol vehicle. *Wilson* held that this was an investigatory detention rather than a *de facto* arrest. Under the Fourth Amendment, the officer’s actions were reasonable: he had received a report of a possible drunk driver and had acted in response to the defendant’s noncompliance.

The police officer in the present situation had “reasonable suspicion” that the occupants were involved in criminal activity – the driver had crossed the median twice and the car aroused suspicion. This inclined the officer to stop the driver to investigate the circumstances. By applying the Fourth Amendment reasonableness inquiry, this situation appears to be more of an investigatory detention than a *de facto* arrest: the officer’s questions were typical of brief detentions; there was no physical force used; and although the vehicle might have been searched, the officer, by asking for permission, was not coercive.

In *Terry v. Ohio*, the U.S. Supreme Court clarified that a seizure begins “whenever a police officer accosts an individual and restrains his freedom to walk away.” 392 U.S. 1, 16 (1968). Since the driver would not have been free to simply drive away after being stopped, the detention began when he was pulled over.

III. Are the officer's questions incriminating? Why is he asking the questions?

The officer's questions regarding the occupants' actions that night, along with his request for identification, registration, and insurance, are not incriminating. It would be difficult to argue that his questions were intended, or could be expected, to elicit incriminating responses. *Miranda* emphasized that its decision "does not in any way preclude police from carrying out their traditional investigatory function." 384 U.S. at 481. Furthermore, a detention "usually involves... a few questions relating to identity and the suspicious circumstances..." *United States v. Perdue*, 8 F.3d 1455, 1464 (10th Cir. 1993). These are routine traffic stop questions, not specific inquiries into a suspected offense.

Neither is the officer's request to search the car incriminating. The officer likely asked if he could search the vehicle because he had reasonable suspicion that there was contraband inside after noticing the rolling papers. But he did not directly inquire whether a criminal offense had been committed.

Contrastingly, the question "Is there any contraband in the car?" is incriminating. It is a direct question about the possession of illicit goods, so the officer had, or should have had, reason to expect an incriminating response. He is likely asking the question to confirm his suspicion that the rolling papers are being used for illegal narcotics.

IV. Are the driver and passenger to be advised of their *Miranda* rights prior to the officer's questions?

Miranda held that a suspect who is in custody must be informed before interrogation "...that he has the right to remain silent, that anything he says can be used against him in court of

law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning...” 384 U.S. at 479. In *Rhode Island v. Innis*, the term “interrogation” was defined as “either express questioning or its functional equivalent.” 446 U.S. 291, 301 (1980). Express questioning is direct questioning, and “its functional equivalent” is words or actions that officers should know are “reasonably likely to elicit an incriminating response.” *Id.* We have already discussed how the occupants were expressly questioned about a suspected offense, and therefore interrogated, but more is required before *Miranda* is triggered. “Custodial” interrogation is required. Since anyone facing criminal charges in the U.S. has the right against self-incrimination, regardless of citizenship status, we must determine if both the driver and passenger were in custody. *See In re Terrorist Bombings v. Odeh*, 552 F.3d 177, 200 (2d Cir. 2008).

State v. Olivas held that we should “...engage in a fact-specific analysis of the totality of the circumstances under which the questioning took place” to determine if someone is in custody. 2011-NMCA-030, ¶ 10, 149 N.M. 498. The following factors can assist in that analysis: “...the physical surroundings of the interrogation, the duration of the detention, and the degree of pressure applied to the defendant.” *State v. Munoz*, 1998-NMSC-048, ¶ 40, 126 N.M. 535. The totality of circumstances indicates that the occupants were not in custody.

Whereas individuals in custodial interrogation have been interrogated in intimidating locations, the occupants were questioned in the familiarity of their vehicle. By contrast, the defendants in *State v. Snell*, 2007-NMCA-113, and *Commonwealth v. Damiano*, 660 N.E.2d, 660, (Mass. 1996), were interrogated inside a police cruiser. Moreover, the even ratio of suspects

to officers and cordial questions indicates this was not a coercive, overbearing, police-dominated atmosphere.

An investigatory detention, as in this case, may qualify as *Miranda* custody, but there must be restraint “to a degree associated with a formal arrest” – an absent factor in this situation. *Olivas*, 2011-NMCA-030, ¶ 10. Rather, the driver was in a situation similar to that of the defendant in *Armijo v. State*, who was stopped and investigated by an officer after running a red light. 105 N.M. 771, 737 P.2d 552 (1987). Despite his lack of freedom of movement, Armijo was deemed not in custody because he was asked routine questions, temporarily detained, and treated with no coercion. Likewise, the occupants in this case were not in custody because they were asked brief, routine questions and were not under physical pressure. At no point were they handcuffed, treated with hostility, or escorted elsewhere. Therefore, they were not entitled to be advised of their *Miranda* rights.

V. If, prior to the contraband question, the driver says, “Maybe I should talk to a lawyer,” does the questioning have to stop?

In *Davis v. United States*, the defendant was interrogated by the Naval Investigative Service about the murder of a sailor. 512 U.S. 452 (1994). During the interview, the defendant stated, “Maybe I should talk to a lawyer”. When asked to clarify, the defendant stated he was not requesting a lawyer. The defendant subsequently requested counsel. The U.S. Supreme Court ruled that equivocal requests for an attorney did not require that officers cease questioning.

In this case, since the driver is not in *Miranda* custody, the officer could legally continue his interrogation regardless of whether the request for counsel is ambiguous. The right to counsel

under *Miranda* only applies to individuals who are in custodial interrogation. If the driver was in custody, the interrogation could legally continue anyhow because the driver's statement is vague – he would need to clearly and explicitly invoke his right to counsel for the questioning to cease.

VI. Conclusion

The Fifth Amendment right against self-incrimination guards citizens from unjust methods of interrogation. However, as Justice Scalia observed, there is a difference between forcing people to incriminate themselves and protecting ignorant citizens from doing so. *Miranda* intended to halt coercive police practices, not to impede upon praiseworthy police efforts. In this case, the officer engaged in exemplary police work when he observed a traffic violation, matched the car with the description of a suspicious vehicle, and conscientiously asked for permission to search the car when his sharp eye picked up on possible contraband.