



MIRANDA FOR ALL

*Everyone who has watched a police procedural on television knows the routine: a detective arrests a suspect, and almost immediately informs the handcuffed suspect that “you have the right to remain silent.” You know the rest: the officer must admonish the suspect of his rights as prescribed by the Supreme Court’s groundbreaking decision in *Miranda v. Arizona* (1966) 384 U.S. 436.*

BY SCOTT A. SUGARMAN

Officers, however, are not obligated to read Miranda’s admonition only to one who is arrested and in custody. Rather, an officer may have to give the Miranda warnings even if the individual is questioned in his home, car or office, and is not under arrest and has been told that they may walk away. Miranda warnings are required if a reasonable person would not feel free to leave. Hence, in a sense, Miranda may be available to all.

Miranda held that a person questioned by a law enforcement

officer after being “taken into custody” must first be warned that he or she has the right to remain silent, that any statement he or she makes may be used against them in court, and that he or she has a right to the presence of an attorney prior to, and during, the interrogation, and will be provided an attorney if he/she cannot afford to retain an attorney. Miranda explained that a suspect is considered “in custody” if the suspect has been “deprived of his freedom of action in any significant way.” (384 U.S. at 444, emphasis added.) The Supreme Court explicitly held the individual need not be under arrest.

Miranda warnings need to be provided to an individual not only when he/she has been formally arrested, but also, as the California Supreme Court has long held, when the individual is deemed as a matter of law to be “in custody.” If police take a suspect into custody and then interrogate the person without informing of such rights, the person’s responses cannot be introduced into evidence to establish his or her guilt. (*Berkemer v. McCarty* (1984) 468 U.S. 420, 429.)

“Custody occurs if the suspect is physically deprived of his freedom of action in any significant way or is led to believe, as a reasonable

person, that he is so deprived.” (People v. Arnold (1967) 66 Cal.2d 438, 448.) Courts commonly address whether a suspect should have been given Miranda warnings when that individual is at a police station. However, the Supreme Court required that the admonitions must be given whenever an individual believes his/her freedom has been constrained in a significant way: Miranda “serves to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves.” (384 U.S. at 467.) Hence, as one Court of Appeals decision explained, “[we] must determine whether ‘the officers established a setting from which a reasonable person would believe that he or she was not free to leave.’” (United States v. Kim (9th Cir. 2002) 292 F.3d 969, 973-974.) The focus is not on the reasonableness of the officer’s conduct or the officer’s intentions. The critical inquiry is whether a reasonable person would have believed he/she was not at liberty to end questioning and leave in light of the circumstances of the interrogation.

Because Miranda warnings are most commonly associated with the interrogation of a suspect unwillingly brought to a police station by law enforcement, it would be easy to think that an individual who has voluntarily come to a police station, and is then told he is free to leave, would not be entitled to be advised of his constitutional rights. A seminal California appellate decision considered just those circumstances and provides guidance on when an individual is entitled to be advised of his rights against self-incrimination and counsel.

In *People v. Saldana* (2018) 19 Cal. App.5th 432, several girls reported that Saldana had molested them. Following an investigation, an officer went to Saldana’s home and left a note asking Saldana to call him. Saldana called the detective and agreed to come to the police station and talk.

Once at the station, Saldana was brought into an interrogation room. The detective did not handcuff Saldana and told Saldana that he was not under arrest and could leave whenever he wanted. Indeed the officer pointed out the door was open to show that he was free to leave [“we’re not going to arrest you right now. That’s why the front door is open to go out without—without us arresting you.”] The officer then closed the door and questioned Saldana for 40 minutes. The Court characterized the questioning as “persistent, confrontational, and accusatory.”

[T]he detective utilized classic interrogation techniques designed to convey two things. The first is the interrogator’s rock-solid belief the suspect is guilty and all denials will fail. The second is to provide the suspect with moral justification and face-saving excuses for having committed the crime, a tactic that “communicates by implication that leniency in punishment is forthcoming upon confession.” (19 Cal.App.5th at 437.)

While Saldana repeatedly denied that he molested the girls, the officer told Saldana that he did not believe him. Saldana eventually told the officer that he touched the girls inappropriately but “inadvertently.” Saldana was arrested.

At the hearing on the motion to

suppress his statements, Saldana testified.

“he believed he could not leave the police station unless he confessed: ‘[H]e asked me many times and he don’t believe me I don’t [sic] did it. And I don’t [sic] did it. [¶] And I was thinking, if I say that, he will not let me go home.’” (19 Cal.App.5th at 437.)

The trial court denied the motion to suppress Saldana’s statement.

On appeal, the Court of Appeal detailed the critical inquiry:

Miranda’s primary concern is the “psychological pressures ‘which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely,’” which are created by “‘incommunicado interrogation’” in an unfamiliar “‘police-dominated atmosphere.’” [Cit.] The Miranda court reasoned that “[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.” [Cit.]

In determining whether a person is in custody for purposes of applying Miranda, the issue is whether, in light of the “‘objective circumstances of the interrogation,’ [citation], a ‘reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.’” [Cit.] “And in order to determine how a suspect would have ‘gauge[d]’ his ‘freedom of movement,’ courts must examine ‘all of the circumstances surrounding the interrogation.’” (19 Cal.App.5th at 454-455.)

To analyze whether a particular individual was “in custody,” the Court listed numerous factors to be considered:

“[1] whether contact with law enforcement was initiated by the police or the person interrogated, and if by the police, whether the person voluntarily agreed to an interview; [2] whether the express purpose of the interview was to question the person as a witness or a suspect; [3] where the interview took place; [4] whether police informed the person that he or she was under arrest or in custody; [5] whether they informed the person that he or she was free to terminate the interview and leave at any time and/or whether the person's conduct indicated an awareness of such freedom; [6] whether there were restrictions on the person's freedom of movement during the interview; [7] how long the interrogation lasted; [8] how many police officers participated; [9] whether they dominated and controlled the course of the interrogation; [10] whether they manifested a belief that the person was culpable and they had evidence to prove it; [11] whether the police were aggressive, confrontational, and/or accusatory; [12] whether the police used interrogation techniques to pressure the suspect; and [13] whether the person was arrested at the end of the interrogation.” [Cit.] (19 Cal. App.5th at 455.)

The Court evaluated each factor in light of the evidence in the record. In concluding that Saldana should have been advised of his Miranda rights, the Court of Appeal rooted its decision in several facts and dynamics. First, while Saldana came to the police station voluntarily, he would have understandably felt the officer was entirely in control

once the officer brought him to an interrogation room and closed the door. Second, the persistent accusatory tone used by the officer – reflecting his belief in the truth of the minors’ allegations while rejecting Saldana’s denials – would have reasonably induced Saldana to believe he was not free to leave until he confessed. (See, *People v. Aguilera* (1996) 51 Cal.App.4th 1151 [custody inquiry becomes whether a reasonable person in the defendant’s situation would think he was free to break off the interview and leave, where the interrogating officer communicated his belief that the defendant was guilty.].) Third, the Court concluded the “interrogation was persistent, confrontational, and accusatory.” (19 Cal.App.5th at 459.) In sum,

[t]aking into consideration all the factors, we hold that well before Saldana’s confession, a reasonable person in his circumstances would not have felt free to leave. Thus, Saldana was in custody during the interrogation and his confession was inadmissible. (19 Cal.App.5th at 461.)

The Court’s holding is all the more significant in light of circumstances not present. First, the officer did not interrogate Saldana for hours, but for about 40 minutes. Second, Saldana was not interrogated by multiple officers but by a single officer. Third, while the officer’s demeanor was confrontational, the Court found the officer did not yell or shout at Saldana but spoke in a calm voice. Fourth, there was no suggestion that Saldana was especially young and naive, mentally handicapped or otherwise especially susceptible to police authority. In sum, Saldana concluded an unremarkable though pointed, relatively short interrogation of an individual

who the officer communicated he regarded to be a suspect triggered the officer’s obligation to provide Miranda warnings.

Six months later, the same Division of the Court of Appeal confronted the same issue arising from a police interrogation of a suspect in their car. In *People v. Torres* (2018) 25 Cal.App.5th 162, a minor told her parents that the defendant molested her. Torres denied any impropriety. Two weeks later, two officers came to Torres’ residence to interview him about the allegations. The officers advised him that he did not have to speak to them, was not under arrest and was free to leave. The officers told Torres that they wanted to speak to him in their parked patrol car to protect the privacy of the conversation, and Torres agreed. Torres was seated in the front passenger seat.

The Torres Court detailed an analysis much like that in Saldana. The Court noted that Torres agreed to the interview, the officers were in plain clothes and did not threaten Torres or raise their voices, and the interview lasted only 45 minutes. Nevertheless, the Court concluded a reasonable person would not have felt at liberty to terminate the officers’ interrogation.

The Torres Court summarized the analysis in Saldana that led that Court to find violation of Miranda:

the sole purpose of the [Saldana] interview was to obtain a confession, the detective used persistent, confrontational, and accusatory interrogation techniques, insisted that defendant was guilty, disbelieved the defendant's many denials and suggested to the defendant that he would “in some way feel better or benefit if he

confesse[d], such as appealing to less morally culpable reasons for committing the offense.” [Cit.] This created a police-dominated atmosphere (25 Cal.App.5th at 175.)

Torres found the interrogation of Torres followed much the same pattern as found in Saldana and thus concluded that Miranda warnings should have been given.

The detectives used a classic two-sided interrogation process relying “on negative incentives (i.e., tactics that suggest the suspect should confess because no other course of action is plausible, such as confronting suspects with real or invented evidence, identifying contradictions in the suspect’s account, and refusing to credit his denials or alibi) and positive incentives (i.e., tactics that suggest the suspect will in some way feel better or benefit if he confesses, such as appealing to the suspect’s self-interest or minimizing the seriousness of the offense).” [Cit.] These interrogation techniques placed Torres in a hopeless position—the police had evidence that Y.C. was not lying, that he had touched Y.C.’s vagina and he needed to have the courage to admit his mistake or the judge would think he was a liar and an animal. (25 Cal.App.5th at 178.)

These two decisions find support in an earlier Court of Appeal decision. In *re James M.* (1977) 72 Cal.App.3d 133, an officer ordered two men seated in a car to leave. A second officer saw nun-chakus which are illegal to possess inside the car. When the officers inquired James M. admitted ownership of the nun-chakus. On appeal, James claimed the officer was required to advise him of his Miranda rights before

asking him whether he possessed that illegal item.

The Court of Appeal agreed:

It may well be that the officers did not believe that they had effected an arrest, but that is immaterial. “The ‘custodial’ element of the accusatory stage when the right to counsel attaches does not depend on the interrogator’s subjective intent; ‘custody’ occurs if the suspect is physically deprived of his freedom of action in any significant way or is led to believe, as a reasonable person, that he is so deprived.” [Cit.] (72 Cal.App.3d at 136.)

The Court’s focus was not on whether the officer’s question was directed at one individual or another but on whether an individual in the suspect’s circumstance would reasonably conclude he was “in custody” at the time of the questioning. Finding the officer improperly questioned James M. without reading him the Miranda admonitions, the Court ordered James’ statement suppressed. (Accord *United States v. Lee* (9th Cir. 1982) 699 F.2d 466 [agents who questioned Lee during a murder investigation in police car should have read Miranda warnings prior to the interview, even though the agents advised Lee he was free to leave and could terminate interview at any time].)

Several federal decisions, including one cited in Saldana, explored the same issue arising from police questioning outside a police station. In *United States v. Kim* (9th Cir. 2002) 292 F.3d 969, agents believed someone in a store co-owned by defendant Kim was selling large quantities of a pseudoephedrine, a precursor drug used to make

methamphetamine. The agents secured a search warrant for the store. When the agents arrived, Kim’s son was at the store and Kim was at home. When Kim could not reach her son by phone, Kim and her husband drove to the store.

Upon arrival, Kim saw numerous police cars in the parking lot and initially found the store’s front door locked. Officers allowed her to enter the store but promptly locked the door to exclude Kim’s husband. Officers instructed her to sit in a chair while they conducted their search. The officers did not handcuff Kim at any point. Soon, an officer began to question Kim in English, a language in which she was not proficient. Kim testified that at least two officers sat or stood around her in such a way that made her feel surrounded by them. The officer who interrogated Kim testified that he told Kim that she was not under arrest and was free to leave. Kim testified that no officer told her she was free to leave. Officers questioned Kim for 30 minutes without an interpreter and 15 additional minutes after an interpreter arrived. No Miranda warnings were given. The officers left without arresting Kim or her son, but the government later indicted her for distributing drugs.

In determining whether Kim was in custody, the Court noted there were several important factors that must be considered:

(1) the language used to summon the individual; (2) the extent to which the defendant is confronted with evidence of guilt; (3) the physical surroundings of the interrogation; (4) the duration of the detention; and (5) the degree of pressure applied to detain the individual. (*Id.*, at

974 [internal quotation marks and citation omitted].)

The Court explained that the enumerated considerations were not exhaustive, and “other factors may also be pertinent to, and even dispositive of, the ultimate determination whether a reasonable person would have believed he could freely walk away from the interrogators.” (Ibid.)

Turning to consideration of circumstances surrounding Kim's interrogation, the Court noted that officers had not summoned Kim to the store nor had they brought her there. These facts weighed against finding Kim would believe that she could not walk away. However, the Court explained that in weighing the import of whether the defendant came to encounter the police voluntarily, a court must consider a related fact: “in determining whether suspects were ‘in custody’ for Miranda purposes, the Supreme Court has considered whether they voluntarily approached or accompanied law officers understanding that questioning would ensue.” (Id., at 974.)

There is a critical distinction, however, between voluntarily entering one's own place of business without any intention to present oneself for a police interview, and voluntarily accompanying the police to their station upon request for the very purpose, known in advance, of answering their questions. Here, Kim did not willingly agree to submit to an encounter with the police. Rather, she went to her store because an officer's visit to her home caused her to worry about her son when he did not answer the store's phone. (Ibid.)

In addition, the Court concluded that “the police in this case

temporarily took over complete control of Kim's store, creating ‘a police-dominated atmosphere,’ in which the police kept Kim physically isolated from two family members who could have provided both moral support.” (292 F.3d at 977.) The Court held “under all the circumstances here, we conclude that a reasonable person would not have felt free to leave and therefore that Kim was sufficiently restrained so as to be considered ‘in custody.’” (292 F.3d at 977.)

The Court was careful to distinguish the situation where a suspect may be detained during the execution of a search warrant at the individual's home or work without the officers violating the Fourth Amendment. However, the detention during the execution of a warrant does not allow interrogation; rather, the officers may only seek identification of the individual and pose similar innocuous questions. Further questioning implicates the Fifth Amendment rights of that individual and may trigger the need for Miranda warnings.

In *United States v. Craighead* (9th Cir. 2008) 539 F.3d 1073, officers obtained a search warrant for Craighead's home to search for child pornography and found him inside his home. An agent told him

he was not under arrest, that any statement he might make would be voluntary, and that he would not be arrested that day regardless of what information he provided. [The agent] also testified that she told Craighead that he was free to leave. (539 F.3d at 1078.)

As the house was being searched, two agents walked Craighead to a storage room at the back of the house so that, according to

the agents, they could speak to Craighead “in private.” One agent closed the door. The agents did not handcuff him, and an agent may have repeated that Craighead was free to leave. The agents questioned Craighead for 20 – 30 minutes about child pornography. During that interrogation, he made damaging statements about possessing and downloading child pornography. The agents testified they did not use any force, make any promises or threaten Craighead during the interview. The agents did not arrest Craighead at the conclusion of the interview.

In analyzing Craighead's motion to suppress his statement, the Court of Appeals explained that the only issue was whether Craighead was “in custody” considering the totality of the circumstances. The Court found Craighead was questioned in a “police-dominated environment,” such that a reasonable person would not have felt he was free to leave. Hence, Craighead was “in custody,” and the failure to advise him of his Miranda rights prior to the interview required the suppression of Craighead's statements.

The Court highlighted several facts. The Court first focused on the number of officers present in the home:

When a large number of law enforcement personnel enter a suspect's home, they may fill the home such that there are no police-free rooms or spaces to which the suspect may retreat should he wish to terminate the interrogation. Similarly, when the number of law enforcement personnel far outnumber the suspect, the suspect may reasonably believe that, should he attempt to leave, he will be stopped by one of the many

officers he will encounter on the way out. The suspect may also believe that the large number of officers was brought for the purpose of preventing his departure. (539 F.3d at 1084-1085.)

In *Craighead*, the Court found the presence of eight armed officers supported the conclusion that the home had become a police-dominated environment, where a reasonable person would not have felt free to leave.

Second, the Court considered whether the suspect was at any point restrained, either by physical force or by threats. While *Craighead* was not handcuffed or physically restrained in any way, two agents escorted him to the room where he was interviewed. The Court concluded that with one agent standing with his back against a wall near the door, a reasonable person would not have believed he was free to leave; he would believe he was confined to the room until freed by the agents. "It was certainly objectively reasonable for *Craighead* to believe he was under guard." (539 F.3d at 1086.)

Third, as in *Kim*, the Court considered whether the individual was isolated from non-law enforcement personnel – here, *Craighead* was placed in a room, albeit a room in his own home, and thereby isolated from any family or friends. Such a placement would make him feel isolated and not free to leave. (539 F.3d 1073, 1086-1087.)

Fourth, the Court considered the affirmative representations made by the officers about the suspect's status. Though told he was free to leave and not under arrest, the Court concluded the plain

meaning of those statements was undermined by the setting in which the statements were made.

We consider whether the suspect was informed that questioning was voluntary and that he was free to leave or terminate the interview. If a law enforcement officer informs the suspect that he is not under arrest, that statements are voluntary, and that he is free to leave at any time, this communication greatly reduces the chance that a suspect will reasonably believe he is in custody. (539 F.3d at 1087.)

The mere recitation of the statement that the suspect is free to leave or terminate the interview, however, does not render an interrogation non-custodial per se. We must consider the delivery of these statements within the context of the scene as a whole. [Cit.] The *Miranda* test for custody does not ask whether the suspect was told that he was free to leave; the test asks whether "a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave." (539 F.3d at 1088.)

The Court observed that the existence of such advice weighs in favor of finding the individual not "in custody." Conversely, the absence of such advice supports a finding the individual was "in custody." However, informing a suspect that he is "free to leave" or providing a similar admonition does not insulate the interrogation from a *Miranda* challenge.

If a reasonable person is interrogated inside his own home and is told he is "free to leave," where will he go? The library? The police station? He is already in the most constitutionally protected

place on earth. To be "free" to leave is a hollow right if the one place the suspect cannot go is his own home. (539 F.3d at 1083.)

Considering the circumstances together, the Court held that *Craighead* was "in custody" for purposes of *Miranda*, notwithstanding the fact an agent told him he was free to leave and that he did not have to answer the agents' questions. The Court ordered his statement to be suppressed.

As in *Kim*, the Court was not insensitive to the need for law enforcement officers executing a search warrant in a home for some control of the environment for self-protection and preservation of evidence. However, the Court explained that legitimate need may make a reasonable individual believe he was not free to leave.

We understand that in many cases, when law enforcement agents conduct an in-home interrogation while conducting a lawful search of the home, physical control of the suspect will be necessary to preserve evidence and protect the safety of the agents. The fact that these precautions may be necessary to the success of the lawful search does not lessen their tendency to make a reasonable person believe he is in custody. (539 F.3d at 1086.)

In the above decisions, save *Saldana*, officers did not question the individual in a police station, but in the less police-dominated setting of a business, home or car. Still, even though none of the individuals had been placed under arrest, each Court held the officers erred in not reading the *Miranda* warnings to the suspect.

The question in each case was not whether the officers had a right under the Fourth Amendment to detain the defendant. The right to detain did not establish a right to interrogate. Rather, the question was whether the officers' conduct would lead a reasonable person in the suspect's circumstances to believe or feel that he was not free to leave for purposes of protecting that individual's Fifth and Sixth Amendment rights. As the Supreme Court explained in *Miranda*, "interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms." (384 U.S. at 448.)

In concluding that each of the above defendants was "in custody" for purposes of *Miranda*, each Court was faithful to *Miranda*'s core analysis. That is, the Supreme Court was keenly aware of the coercive power of isolation of a suspect by police officers, and the fragility of core constitutional rights in a police-dominated environment.

To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will

to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and persistence, at times relentless questioning, are employed. To obtain a confession, the interrogator must "patiently maneuver himself or his quarry into a position from which the desired objective may be attained. (384 U.S. at 455.)

These decisions teach that *Miranda* warnings may be mandated even if a suspect's interrogation occurs outside a police station, the questioning is relatively brief, and an officer has told the suspect he is not under arrest and is free to leave. Where a suspect is isolated in a police-dominated environment and his denials of culpability are dismissed, the officer's continued questioning might well lead to a court to conclude that a reasonable person in those circumstances would not feel free to leave and thus, *Miranda* warnings were mandated. That conclusion is particularly compelled where officers convey a message that the suspect has no meaningful choice but to admit the allegations and that he would be interrogated until he confessed.

These decisions reflect a commonsense realization that when an individual is confronted

by officers, particularly in a police-dominated environment like a police station or closed room, or surrounded by a number of officers, that person is likely to feel compelled to answer the officers' questions. As *Miranda* recognized and understood, that is exactly the situation in which the officers must inform the individual of his basic constitutional rights.

See, recently passed, *People NavaAdame*, relying *People v. Saldana* and employing the analysis in this article. (*People NavaAdame* (2025) 116 Cal. App.5th 1 [interrogation was noncustodial at outset but became custodial before defendant admitted to engaging in sexual acts with one victim. Because officer conducting the interrogation did not advise defendant of *Miranda* rights at the time the interrogation turned custodial, his statements should have been suppressed].)



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