

3B Miranda Briefing Training

Miranda 101

- Why do we read the Miranda Rights/Warning?
 - Miranda v. Arizona
- When do we read the Miranda Rights?
 - Custody: a reasonable person believes they are not free to leave
 - Interrogation: asking questions designed to illicit an incriminating response
- Exceptions
- Additional Info
 - Search warrants etc

Juvenile Miranda

- Custody and Interrogation
- Under 16 must contact legal council
 - A child under 16 may not waive unless they have contacted a lawyer
- Can J's invoke/waive?
 - Court rulings...70% exonerated
- Parent/No parent

Scenario 4

An officer investigating a report of malicious mischief by two males confronted both of them on the front porch of their residence. After the first one (Joseph) said he knew nothing about the incident, the officer handcuffed him and placed him in the back of the patrol car for about five minutes while he talked the second male. When the officer returned, he took Joseph out of the patrol car, removed the handcuffs, and asked him some questions to which Joseph gave incriminating responses.

1) Was Joseph in “custody” for Miranda purposes when he was in the patrol vehicle?

2) Was Joseph in “custody” for Miranda purposes when the officer returned and questioned him?

3) Were Joseph’s statements admissible against him at trial to prove guilt?

Scenario 4 Answers

- 1) Yes. For the time Joseph was handcuffed and in the back of the patrol car, he was in Miranda custody because, although he had not been actually arrested, he was under equivalent restraints.
- 2) No, because once Joseph was out of the car and no longer in handcuffs, he was no longer in "custody." "Interrogation" and "custody" must both exist at the same time before Miranda warnings are necessary. Since "custody" was lacking at the time of interrogation, there was no Miranda violation.
- 3) Yes, his answers were admissible at trial to prove guilt

Scenario 5

You take a suspect into custody, advise him per Miranda, and he agrees to give a statement. However, thirty minutes into the interrogation, he says, "I think maybe I should have a lawyer."

- 1) Has he invoked his Miranda right to counsel?
- 2) What is your obligation at this point?
- 3) Is anything different if the suspect had made this comment at the time you gave Miranda warnings and asked him if, having these rights in mind, he wanted to give a statement?
- 4) What if the suspect had said, "I think I would like to talk to a lawyer?"

Scenario 5 answers

- 1) No, the suspect did not invoke his Miranda right to counsel, because that must be done clearly and unmistakably, without any ambiguity (per Supreme Court)
- 2) When a remark is ambiguous, like this one, you have a choice: You may either try to clarify the situation and determine whether the suspect is trying to invoke, or you may ignore the comment and continue with the questioning
- 3) No court ruling, but you would probably have an obligation to clarify
- 4) The request to invoke needs to be clear and not ambiguous. If this happened at the time of Miranda you would need to clarify.

Scenario 6

While a suspect was talking to an investigator from the county Public Defender's office at a friend's apartment, the suspect implicated himself in a shooting and asked for an attorney. The investigator contacted the police, told them the suspect's involvement and his request for an attorney, then accompanied the suspect to the police department. Without contacting an attorney or providing one for the suspect, the police advised the suspect of his Miranda rights, obtained a waiver, and got incriminating statements.

- 1) Did the police violate Miranda by initiating questioning after the suspect had invoked his right to counsel, thus making the suspect's statements inadmissible?
- 2) Were the police required, under Miranda, to advise the suspect of his rights before questioning him?

Scenario 6 answers

- 1) No, there was no Miranda violation. A suspect cannot invoke what he does not have, and Miranda rights do not come into existence until both "custody" and "interrogation" exist. In other words, Miranda rights cannot be invoked "anticipatorily." (McNeil, Calderson.) Here, the suspect was not in "custody" at the time he was being interviewed by the Public Defender's investigator. Therefore, although he requested an attorney, he was not invoking his Miranda right to counsel, because he didn't have that right yet. Since the subsequent statements were obtained after advisement and waiver, they were perfectly admissible.
- 2) As for whether Miranda advisements were necessary at the police station, it depends on whether the suspect was in "custody." "Custody" exists, at a police station, if a reasonable (and innocent) person in the suspect's position would not think he is free to leave, so it would depend on the physical set up, what was said by the cops, etc.

Scenario 7

A suspect is booked into the Sacramento County Jail for crime X. While in custody, in response to being Mirandized, he says he does not want to talk. Five days later, officers from San Joaquin County visit him in jail to ask questions about crime Y, a different crime. They give him his Miranda advisement, obtain a waiver, and get some incriminating statements.

- 1) Are these statements admissible at trial to prove guilt, or was there a Miranda violation?
- 2) Would your analysis be any different if the suspect had originally invoked his right to counsel instead of his right to silence?
- 3) What if, instead of officers from San Joaquin County, Sacramento County officers returned to the suspect to “try again” on the original crime, that is, to see if, now that some days had gone by, he would be willing to answer their questions about crime X?

Scenario 7 answers

- 1) Yes, the statements are admissible because there was no Miranda violation. *There are different rules regarding the right to silence as opposed to the right to counsel. Where, as here, the suspect invokes his right to silence, the U.S. Supreme Court has permitted officers from a different jurisdiction to question the suspect about a different crime, assuming, of course, that they first re-Mirandize the suspect and obtain a valid waiver. (Mich. v. Mosley.)*
- 2) Yes, the answer would be different. In 2010, the USSC created a bright line rule in *Maryland v. Shatzer*. The Court held that officers must wait 14 fourteen days to approach a suspect who invokes his right to an attorney during an interrogation. Further, the Court held that the suspect must be free of custody for that amount of time for the subsequent waiver to be valid. If the suspect remains in custody for those 14 days he may not be questioned. However, the Court held that being in prison or county jail was a different status than being taken into an interrogation room and being questioned. Shatzer was able to return to his normal prison life after his interrogation. The Court held that under those circumstances the coercive nature of a subsequent interrogation was diminished as though Shatzer was released from custody. Thus, Shatzer could be reinterviewed as more than 14 days had passed between police contact which was defined as Miranda custody and general prison custody.

Scenario 7 answers cont.

- 3) As for the same officers coming back to “try again” about the same crime the suspect previously invoked on, this would be prohibited if the suspect had earlier invoked his right to counsel. And even where he has previously invoked his right to silence, there is no case permitting it (or forbidding it), although arguably it might be ok under very favorable circumstances.

Scenario 11

You make a warrantless arrest and take the suspect to the station for booking. A few hours later, at the request of the suspect's uncle, an attorney shows up and says he wants to talk to the arrestee.

- 1) Are you under any obligation to let the attorney visit the suspect, or at least inform the suspect that an attorney is there?
- 2) What if, at the time the attorney arrives, the suspect has been Mirandized and waived and is in the middle of an interrogation?

Scenario 11 answers

- 1) Yes, you have such an obligation. Penal Code section 825 states, in subdivision (b), "After the arrest, any attorney at law entitled to practice in the courts of record of California, may, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor" and "shall forfeit and pay to the party aggrieved the sum of five hundred dollars (\$500), to be recovered by action in any court of competent jurisdiction." Note that (1) there must have been an arrest; (2) the person arriving at the station must be an attorney, and must be currently licensed to practice in California; (3) the attorney must be at the facility in person; and (4) the attorney must be there at the request of either the suspect himself or of a "relative" of the suspect. If all these conditions are met, you must at least inform the suspect that the attorney is there and wants to see him.
- 2) Same, you would be obligated to inform him.