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Remember 9/11/01: Support Our Troops

Dedicated to San Diego Police Officer Jeremy Henwood, murdered in the Line of Duty on August 7, 2011,
Further dedicated to Rapid City, South Dakota, Police Officers J. Ryan McCandless and Nick Armstrong, murdered in the line of duty on August 2, 2011

Robert C. Phillips (858) 395-0302 (C)
Deputy District Attorney (Ret.) RCPhill808@AOL.com

THIS EDITION'S WORDS OF WISDOM:

"*The two enemies of the People are criminals and government. So let us tie the second down with the chains of the Constitution so that the second will not become the legal version of the first*." (Thomas Jefferson)

IN THIS ISSUE: Page:

ADMINISTRATIVE NOTES:

Corrected Return Message System: For some time now (probably a year), there has been a glitch in the "*www.legalupdate.com*" system that has prevented messages from being sent back to me via this link. (This does not include messages sent directly to me via RCPhill808@aol.com.) As a result, (1) any questions or comments you attempted to send never got to me, and (2) abandoned e-mail addresses were not deleted from the e-mail address list. As for the former, just know that I didn't intentionally ignore you. If you still have a question or comment, try me again and I'll get back to you as soon as possible. As for the latter, I've since gone back and updated the e-mail list. But in the process, I may have inadvertently deleted e-mail addresses for people who didn't wish to be deleted. So if your partner is still getting the *Legal Update* and you are not, just let me know and I'll add you again. But know that if you were deleted, it is because after the glitch was fixed, I got an automated message from your system to the effect that the *Legal Update* notification sent via www.legalupdate.com was undeliverable. It might be a problem with your system. Check with your agency's IT section to see if there is some reason why they won't allow you to receive the *Legal Update* and then let me know so I can put you back on the list.

Detaining Occupants of a Search Warrant Site: It is a well-settled rule that the occupants of a house being searched via a search warrant may be temporarily detained during the execution of the warrant. (*Michigan v. Summers* (1981) 452 U.S. 692, 702-703.) Justification for such a detention has to do with the need for officer safety and to facilitate an orderly search through cooperation of the residents. But the issue of whether you can detain an occupant *after* the occupant has already left the place to be searched is an open question, at least in California and with the federal Ninth Circuit. A new case out of the federal Second Circuit Court of Appeal (*United States v. Bailey* (2nd Cir. 2011) __ F.3rd __ [2011 U.S. App. LEXIS 13706].), however, held that you can, at least as long as the detention is made as soon as practical after the occupant has left the place being searched. In *Bailey*, the defendant had gotten about a mile away before being detained. The stated reason for the delay in detaining the defendant was to prevent anyone else still in the residence from be alerted to the pending execution of the search warrant. Three other federal circuits agree and two disagree (the cites for which I can give you upon request). Until California or the Ninth Circuit rules on this issue, *Bailey* is a great case to cite for the legality of this type of detention.

CASE LAW:

***DUI Checkpoints*:**

People v. Alvarado **(Feb. 7, 2011) 193 Cal.App.4th Supp. 13**

Rule: A DUI checkpoint is illegal where the prosecution fails to offer evidence of (i) the role of supervisory personnel in prescribing the procedures to be used at the checkpoint,

(ii) the rationale for selecting the particular location used for the checkpoint, (iii) the length of detentions, and (iv) advance publicity.

Facts: Defendant was stopped and ultimately arrested at a DUI (Driving while Under the Influence of alcohol) checkpoint set up by a law enforcement agency in the County of San Francisco. Based upon the evidence as presented at trial by the prosecution, the location of the checkpoint was apparently decided by a captain, although there was no evidence of the factors the captain may have taken into account in making this decision. The captain did not testify. The court heard instead from a Sergeant Edgar Callejas who testified that the location had been used as a DUI checkpoint about four to six times previously, but he did not say why. The evidence also showed that the date of February 1, 2009, was chosen because it was "Super Bowl Sunday" and the police hoped to deter the drinking and driving which they felt generally accompanies such an event. In operating the checkpoint, the officers brought five vehicles into the checkpoint area at a time. When the fifth vehicle left the checkpoint, the officers would bring in five more, and repeat the process. Sergeant Callejas, as the ranking officer at the scene, made the decision on the process and criteria used to select vehicles. On occasion, the process was changed; i.e., when traffic flow was very light, the police would proceed with fewer than five cars at a time. Based upon this evidence, the trial court denied defendant's motion to suppress the evidence collected against him as a result of his detention and arrest. Defendant appealed to the Appellate Department of the San Francisco County Superior Court.

Held: The Appellate Department of the Superior Court reversed. The question on appeal was whether the People had sustained their burden of proof on the issue of whether the DUI checkpoint was set up and operated in compliance with the factors dictated by the California Supreme Court in *Ingersoll v. Palmer* (1987) 43 Cal.3rd 1321. Failure to do so necessarily requires a finding that the detentions conducted at such a checkpoint were in violation of the Fourth Amendment. *Ingersoll* held that in ruling on the constitutionality of the temporary detentions made at a DUI checkpoint, at least eight separate factors must be considered: (1) Whether the decision to establish the checkpoint, the selection of the site, and the procedures for operation are established by supervisory "command level" law enforcement personnel; (2) whether motorists are stopped according to a neutral formula; (3) whether adequate safety precautions are taken, such as proper lighting, warning signs, and signals, and whether clearly identifiable official vehicles and personnel are used; (4) whether the location of the checkpoint was determined by a policymaking official, and was reasonable; (5) whether the time the checkpoint was conducted and its duration reflected "good judgment" on the part of law enforcement officials; (6) whether the checkpoint exhibits sufficient indicia of its official nature (to reassure motorists of the authorized nature of the stop); (7) whether the average length and nature of detention is minimized, and; (8) whether the checkpoint is preceded by publicity. The Court found that based upon the record, the People had failed to meet enough of the *Ingersoll* factors to pass constitutional muster. For instance, it was apparent that Sgt. Callejas, as opposed to "command level personnel," established and directed the procedures used at the checkpoint. Also, there was no evidence concerning why the particular location of the checkpoint was chosen. Similarly, the People failed to present any evidences relevant to the timing, duration, and nature of the detentions made at the checkpoint. Lastly, there was no evidence of any advanced publicity made to the

public. While the publicity factor is one that has been held not to be absolutely necessary to a finding of the legality of a checkpoint (See *People v. Banks* (1993) 6 Cal.4th 926, 934.), it is still one that, if not met, weighs in favor of a finding of unconstitutionality. Defendant further argued that the evidence of a neutral formula for who was to be stopped was insufficient. The court found for the prosecution on this point, noting that taking five cars at a time was such a neutral formula, even if the plan was altered when the traffic was light. But overall, because the People failed to sustain their burden as to at least (i) the role of supervisory personnel in prescribing the procedures to be used at the checkpoint, (ii) the rationale for selecting the particular location used for the checkpoint, (iii) the length of detentions, and (iv) advance publicity, the DUI checkpoint in this case constituted a Fourth Amendment violation. As such, the evidence against defendant, being the product of an illegal detention, should have been suppressed.

Note: DUI checkpoints necessarily involve temporary detentions made on absolutely no particularized suspicion of criminal activity. The general rule is that suspicionless detentions are a Fourth Amendment violation. An exception is made for DUI (and other specific types of) checkpoints due to the deterrent effect they have. Recognizing the serious danger DUI drivers are to other motorists on our streets, the courts have carved out this exception to the standard search and seizure rules as a means of deterring people from driving while under the influence. A successful DUI checkpoint is one where no arrests are made. *Ingersoll* established a whole set of prerequisites to a legal checkpoint. While it's not necessary to satisfy all eight of these factors, as many of them as possible must be present before a checkpoint will be upheld.

***Assault with a Deadly Weapon per P.C. § 245(a)(1)*:**

In re Brandon T. **(Jan. 24, 2011) 191 Cal.App.4th 1491**

Rule: Except for weapons that are deadly or dangerous as a matter of law, other instruments are not deadly weapons unless used "in a manner as to be capable of producing, and likely to produce, death or great bodily injury."

Facts: Fifteen-year-old defendant got into an argument with another student, Deon H., at school, and challenged him to a fight. A teacher broke it up before it got started. A half hour later, defendant with two others came up behind Deon in a school hallway and took him to the ground with an arm around the throat. While the other two thugs held Deon's arms down, defendant stood over him with a knife. Defendant touched the knife to Deon's cheek and throat. He then moved the knife up and down the side of Deon's cheek in a slashing motion. He tried two times to cut Deon's face with the knife but didn't do any more than leave a welt. He then tried to cut Deon's throat with the knife but the handle broke off. Defendant and his two companions ran off. Deon picked up the knife blade and reported the incident to a school police officer, giving him the blade. The Officer later testified that Deon had a small scratch on the side of his face, but no cuts. The blade was testified to as having come from a butter knife. A petition was filed in Juvenile Court charging defendant with assault with a deadly weapon per P.C. § 245(a)(1). The petition was sustained and he appealed.

Held: The Second District Court of Appeal reversed. As used in P.C. § 245(a)(1), a "*deadly weapon*" is defined as "*any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury*." Some objects are deadly weapons as a matter of law, such as dirks and daggers. These are weapons which are designed to be used as such. Other objects, while not deadly per se, may become deadly under certain circumstances; i.e., when used in a manner likely to produce death or great bodily injury. (E.g., baseball bats, ice picks, etc.) In attempting to determine whether an object in this second category is a deadly weapon, the nature of the object, the manner in which it is used, and all other facts relevant to the issue, may be considered. The blade to the knife in this case was described as 3¼ inches long with a rounded end and slight serrations on one side. The parties agreed that this object, referred to as a "butter knife," did not qualify as a deadly weapon as a matter of law. The issue then is whether defendant used the knife "in a manner as to be capable of producing, and likely to produce, death or great bodily injury." The Court determined that there was insufficient evidence to prove that the knife defendant used was used in such a manner. While it is not necessary that an injury be proved in order to find that the instrument used in an assault was a deadly weapon, such injuries, or the lack thereof, are relevant to the issue whether or not the object qualifies as a deadly weapon. Here, the best defendant could do with his knife is cause a small scratch to Deon's face, not even drawing blood. As such, the butter knife did not, and apparently could not, produce great bodily injury (i.e., "a significant or substantial injury"). Applying pressure to Deon's throat with the knife didn't do any more than cause the blade to break. Lastly, while any pointed object might in fact be capable of inflicting death or great bodily injury, it was noted here that the butter knife was rounded at its end, thus lacking such a point. Under these facts, where the knife neither caused, nor was capable of causing, death or great bodily injury, the evidence was insufficient to support the Juvenile Court's conclusion that defendant was guilty of assault with a deadly weapon.

Note: The Court never described what the knife was made out of. But since the parties stipulated to the fact that the knife was not a deadly weapon as a matter of law, and the evidence showed that try as he might, defendant couldn't inflict any injury, let alone great bodily injury, on the victim, it is probably irrelevant whether it was metal or plastic. The lesson for you is to remember here is that unless a weapon used qualifies as a deadly weapon as a matter of law, you'll have to document everything a prosecutor will need to prove that the weapon used was at the very least capable of inflicting death or great bodily injury.

***Miranda; Non-Custodial Interrogations*:**

People v. Moore **(Jan. 31, 2011) 51 Cal.4th 386**

Rule: A non-custodial interrogation does not necessarily become custodial merely because it becomes accusatory so long as there's no other evidence of a restraint on the person's freedom of movement. But it will likely become custodial when the suspect's request to leave is ignored.

Facts: Rebecca Carnahan came home after work one day in March, 1998, to find her 11-year-old daughter, Nicole, missing. Her house had been ransacked. Checking the back door, which was unlocked and ajar, she saw defendant running away with a package tucked under his arm. Calling to him, defendant called back; "*I didn't do it*." Carnahan called the police. Defendant returned before the police arrived and told Carnahan that he'd seen Nicole at the back door earlier when he asked her for a drink of water. He also claimed to have chased away two Mexicans that he'd seen in her back yard. Monterey County Sheriff's Deputy Larry Robinson responded. Checking the area, he followed a trail in the grass from Carnahan's back fence to defendant's nearby trailer. Deputy Robison contacted defendant and asked him if he would submit to an interview at the deputy's patrol car in that defendant's trailer didn't have any electricity and it was getting cold and dark. Defendant agreed. Without the benefit of a *Miranda* admonishment, defendant was questioned about what he knew concerning Nicole's disappearance. This time he claimed that another neighbor had chased off the two Mexicans (a fact the neighbor later denied) and that he himself had confronted one of them, but couldn't catch him because he (defendant) was suffering from "Lou Gehrig's" disease. During this conversation, they heard Carnahan scream when Nicole's lifeless body was found stuffed between her bed and the wall of her bedroom. Among other wounds, the jugular vein and carotid artery in her neck had been slashed and she had blunt force trauma to her head, severely fracturing her skull. Defendant at first ignored Carnahan's scream, but then asked; "*Did they find her*?" When asked if he would "volunteer" to come to the sheriff's station to give a statement, defendant was at first hesitant to do it "right now," but then agreed when told that it had to be done now and that he'd be given a ride home after the interview. While en route to the police station, defendant was not questioned, but engaged in small talk with the transporting deputy about the circumstances of the case and his difficulty in getting along with Carnahan. He was neither handcuffed nor patted down for weapons. At the station in an interview room, again with no *Miranda* admonishment, defendant repeated his story about the two Mexicans. He admitted that he'd talked to Nicole at her back door, but claimed he never entered the house. He also admitted to commonly carrying a butcher knife on his waistband and a piece of pipe which he referred to as his "club." When told that Nicole had been murdered, he claimed that he was incapable of such a deed due to his degenerative muscular illness. Defendant was eventually arrested and finally advised of his rights under *Miranda*. Blood eventually found in defendant's trailer was determined to be Nicole's. Property stolen from Carnahan's home was also found in defendant's trailer. Charged with murder with special circumstances, defendant's statements were used against him at his trial. He was convicted, the special circumstances found to be true, and sentenced to death. His appeal to the California Supreme Court was automatic.

Held: The California Supreme Court affirmed. Among the issues on appeal was the admissibility of defendant's various statements made to the Sheriff's deputies and detectives without the benefit of a *Miranda* admonishment and waiver. Defendant's argument was that he was in custody from the time of his initial contact with Deputy Robinson, in his trailer, and questioned without a *Miranda* wavier. The Court disagreed, ruling that he was not in custody. *Miranda* is not applicable until the suspect questioned is "*in custody*." "*Custody*," for purposes of *Miranda*, requires that the suspect "has been

taken into custody or otherwise deprived of his freedom of action in any significant way." This means that the suspect has either been (1) formally arrested, or (2) there is "*a restraint on freedom of movement of the degree associated with a formal arrest*." With no formal arrest, as in the present case, the issue becomes one of "*how a reasonable person in the defendant's position would have understood his situation*." Factors to consider include the location, the length, and the form of the interrogation, the degree to which the investigation was focused (as perceived by a reasonable person) on the defendant, and whether any indicia of arrest were present. The statements used against defendant at trial were obtained under three different situations. *First*, in Deputy Robinson's patrol car, defendant was considered to be no more than a witness. Indicating that he would have invited the deputy into his trailer if he had any electric power, he was not hesitant to talk with the deputy. No guns or handcuffs were used, and defendant was not patted down for weapons. He began volunteering information even before he was asked anything. Deputy Robinson's questions were non-accusatory. The interview lasted only 15 minutes. When Deputy Robinson returned after leaving for a few minutes, defendant, smoking a cigarette, was still in the back seat, but with the door open and his feet hanging out. Nothing was said or done that would have indicated to a reasonable person that he wasn't free to leave. There was no custody at that point. *Second*, during the ride to the station, the Court found that there was no interrogation, custodial or otherwise. As before, there was no indicia of arrest; no handcuffs and no pat down. Defendant was still under the impression that the officers only wanted a statement and that he was going to get driven home afterwards. While he was hesitant to go at first, he accepted the detective's reasonable explanation that time was of the essence. Under these circumstances, there was no custody for purposes of *Miranda*. *Third*, at the station, defendant was escorted to an interview room. The door to the room either had a key left in the lock, or was propped open, allowing people to come and go. After giving detectives some background information, defendant was again told that he was not under arrest and that he was only there to give a statement and that he was "free to go or whatever." Eventually, however, the interview began to center on defendant, his criminal history, and the possibility that he had burglarized Carnahan's home. He was also asked about the pipe and the knife he was known to carry. It was suggested that maybe he had accidentally hurt Nicole. The Court held, however, that this still didn't necessarily convert the interview into custody. "While the nature of the police questioning is relevant to the custody question, police expressions of suspicion, with no other evidence of a restraint on the person's freedom of movement, are not necessarily sufficient to convert voluntary presence at an interview into custody." Eventually, however, defendant requested to be taken home. His request was ignored. This, per the court, without really deciding the issue, probably marked the beginning of custody. But nothing of any significance was said by defendant after this point, so any of the rest of the interview introduced into evidence was harmless error.

Note: There's really nothing new here, but worth reviewing anyway. The only issue subject to debate is deciding at what point the interrogation became custodial. Despite being told any number of times that he was not under arrest (i.e., sometimes called a "*Beheler* admonishment," pursuant to *California v. Beheler* (1983) 463 U.S. 1121.), a reasonable person in defendant's position would likely have started to feel that he was no

longer free to leave when his request to be taken home was ignored. Prior case law has held that it is possible to inadvertently convert a non-custodial interrogation into custody. (See *People v. Aguilera* (1996) 51 Cal.App.4th 1151.) Getting too accusatory, heavy-handed, loud or aggressive, to the point where a reasonable person would begin to feel that he's about to hit the pit despite earlier assurances to the contrary, may be enough to do it. The Supreme Court here hinted, without really deciding, that when defendant started insisting that the detectives honor their earlier promise to take him home, such requests (made several times) being ignored, that the interrogation was no longer non-custodial. At that point, therefore, defendant should have been *Mirandized*.

***Detentions*; *Flight*:**

United States v. Smith **(9th Cir. Feb. 3, 2011) 633 F.3rd 889**

Rule: The mere attempt to detain a person without the necessary reasonable suspicion is not a Fourth Amendment violation. Flight of the suspect while in a high-crime neighborhood supplies the necessary reasonable suspicion to justify a detention.

Facts: Defendant crossed the street in a "high-crime neighborhood" in front of a patrol car driven by Officer Tyler Dominguez of the Las Vegas Metropolitan Police Department. Officer Dominguez hit his siren twice and pulled his car to the curb. He got out of his car and called to defendant to stop and come over to the front of the car. Defendant stopped, momentarily moving towards the officer, and asked either; "*Who*? *Me*?" or "*What for*" (depending upon whose testimony you believe). Officer Dominquez confirmed that he was addressing defendant and then repeated the command to come stand in front of the patrol car. Defendant asked if he was under arrest, to which the officer told him that he was not. Ordered again to stand in front of the patrol car, defendant instead began backing away (later claiming the officer appeared to be reaching for his gun), turned, and ran. Officer Dominguez pursued defendant on foot, threatening to use a Tazer on him if he didn't stop. Instead, defendant tripped and fell, allowing Officer Dominguez to catch up to him. As Dominguez moved towards defendant for the purpose of handcuffing him, defendant blurted out that he had a gun in his pocket. Officer Dominguez recovered a Walther P99 nine-millimeter pistol from defendant's person. Charged in federal court with being a felon in possession of a firearm, defendant filed a motion to suppress. Upon the trial court's denial of his motion, defendant pled guilty and appealed from his 71-month prison term.

Held: The Ninth Circuit Court of Appeal affirmed. Defendant's argument on appeal was that the gun was the product of an illegal detention, done without any reasonable suspicion of criminal activity. For the sake of argument, the Court assumed that there was no legal cause to stop and detain defendant merely because defendant had crossed the street in front of the officer. The officer did in fact attempt to detain defendant at that time. However, the attempt was unsuccessful because defendant chose to flee instead of submit. The U.S. Supreme Court has held that the Fourth Amendment is not implicated by a police officer's unsuccessful attempt to detain a person. (*California v. Hodari D.* (1991) 499 U.S. 621.) The High Court further held that a person is not detained merely

by a police officer chasing him, irrespective of whether the officer has, or does not have, a reasonable suspicion to believe the person is engaged in criminal activity. A person is not detained until his freedom of movement is restrained by (1) means of physical force, or (2) until he submits to a show of authority. Defendant further argued that when he was initially confronted by Officer Dominguez, by stopping and inquiring as to whether he was under arrest, he had submitted, and was therefore detained at that point. The Court disagreed, finding that with defendant's flight immediately after this brief confrontation, there was no detention. The Court further held that defendant's ensuing flight, occurring in an acknowledged high-crime neighborhood, constituted a reasonable suspicion. "Because (defendant) was not seized before he fled, and because (defendant's) flight under these circumstances created a reasonable suspicion that he was involved in criminal activity, Officer Dominguez did not violate (defendant's) Fourth Amendment rights . . ."

Note: Prior to the decision in *Hodari D.*, the California rule was that it was a Fourth Amendment violation to even threaten an unlawful detention. Under California's prior rule, therefore, had this been a California case, the decision in this case would have been different. Also, note that defendant volunteered that he had a gun in his pocket prior to Officer Dominguez taking him into physical custody. Had the flight been insufficient to constitute a reasonable suspicion, then defendant's volunteered admission to carrying a concealed pistol would have been enough. Also note the interesting constitutional conundrum *Hodari D.* and this case create: Flight in a high-crime area constitutes a reasonable suspicion while flight in an affluent, low-crime area does not. So when a poor person runs from the police in his own neighborhood, you can stop and detain him. But should a rich person run from the same police in *his* neighborhood, detaining him would be a Fourth Amendment violation. *What do you think of that*?

***Miranda*; *Undoing Custody*:**

People v. Thomas **(Feb. 3, 2011) 51 Cal.4th 449**

Rule: Custody, requiring a *Miranda* admonishment and waiver, can be undone by removing the indicia of an arrest before questioning him, such as by removing the suspect from a locked patrol car.

Facts: Defendant was working as a substitute janitor at a high school in Sacramento County. Michelle Montoya was an 18-year-old senior. She was last seen alive as she was looking for a phone to call for a ride home after school hours. Students were sometimes allowed to use the telephone in shop classroom L-1. At about that same time, defendant was seen by other janitors leaving a bathroom near shop classroom L-1. Within minutes, defendant sought the help of the other janitors, taking them to shop classroom L-1 where they found Michelle's unconscious body lying on the floor in a pool of blood. Defendant claimed to have found her there when he entered the room to empty the wastebaskets. Michelle died in the ambulance on the way to the hospital. She was later determined to have died from blunt force trauma to the head, consistent with a blow from a crowbar. Her skull was shattered. She also had a black eye, wounds to her hands, arms, legs and feet, and cuts to her neck. She was stabbed three times in the back. A

used tampon was found nearby that was later found to have semen on it with defendant's DNA. Other blood evidence connected defendant to the crime scene and to Michelle's body. Deputy Sheriff Michael Abbott was one of the first officers to arrive at the scene. Deputy Abbott was told that defendant claimed to have found Michelle's body and that he had been seen washing his hands in the nearby bathroom where blood was found. Deputy Abbott asked another deputy to detain defendant while he checked out the bathroom. Deputy Mark Bearor asked defendant to accompany him to his patrol car, telling him that he was a witness and that he was going to be interviewed. Defendant agreed. He was placed in the back seat of the patrol car and the doors, which could not be opened from the inside, were shut. Defendant was not searched nor handcuffed. Twenty minutes later, Deputy Abbott returned and let defendant out of the patrol car. Abbott asked defendant to accompany him to the rear of the vehicle where he asked defendant to tell him what had happened that day. During the interview, defendant pointed out that he had blood on him and explained why, describing circumstances that were later determined to be inconsistent with the physical evidence at the scene. The interview lasted about 20 or 30 minutes before he was returned to the patrol car. No *Miranda* admonition was ever provided. (He was apparently arrested shortly thereafter under circumstances not described in the decision.) He was charged with first degree murder with the special circumstance of a murder during the commission of rape. His motion to suppress his statements made to Deputy Abbott was denied by the trial court. Convicted, with the special circumstance found to be true, defendant was sentenced to death. His appeal to the California Supreme Court was automatic.

Held: The California Supreme Court affirmed. Among the issues on appeal was whether defendant's statements to Deputy Abbott should have been suppressed. Defendant's argument was that by putting him into a locked patrol car, he had been taken into custody and should have been read his *Miranda* rights before any questioning. The Court decided that whether or not he was in custody when first placed into the patrol car is irrelevant in that even if he was, the custody was in effect *undone* when he was removed and questioned outside the car. In the words of the Court: "Even if we were to conclude that defendant had been in custody when he was detained in the patrol car it does not necessarily follow that he remained in custody when he was released from the vehicle before he was interviewed." The issue was whether he was in custody for purposes of *Miranda* "*at the time of questioning*." Citing other cases as its authority, the Court found that by removing the indicia of arrest, including taking the suspect out of a patrol vehicle, a *Miranda* admonition may no longer be required. Under the facts of this case, it was ruled that the trial court did not err in finding that defendant was no longer in custody when questioned and by denying his motion to suppress his statements.

Note: I've argued for years that you can undo custody by removing the circumstances that might cause a reasonable person to believe that he was under arrest, such as putting away the firearms, removing the handcuffs, and/or taking the suspect out of a locked patrol car. This case clearly makes that point for us. But I've also suggested that you should reinforce the argument by actually telling the suspect that he's not under arrest and/or not presently going to jail, being careful not to say anything that could be interpreted as a promise of immunity or an offer of leniency.