



# El Segundo Police Department

## Training Section

348 Main Street, El Segundo, CA 90245

Phone (310) 524-2253

## TRAINING BULLETIN

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### Use of Handcuffs May Not Constitute Custody

The Federal Circuit Courts of Appeals in the Ninth and Fourth Circuits have indicated that handcuffing a suspect does not necessarily mean that the person is in custody for purposes of *Miranda*. In *United States v. Bautista*, the U.S. Circuit Court of Appeals for the Ninth Circuit noted that handcuffing a suspect does not necessarily dictate a finding of custody for purposes of *Miranda*, but was a reasonable measure to ensure the safety of the officer or the public. In *Bautista*, three men had robbed a bank. Officers spotted Bautista and another individual about one-half of a mile away from the bank and three and one-half blocks away from the suspected getaway car. The officers noted that Bautista and his accomplice matched the descriptions of the robbers, so they stopped them for questioning.

As the police officers exited their car, Bautista voluntarily informed them that he had just gone to a nearby home and asked the woman who answered the door if she could call a cab for him. One of the officers frisked both men for weapons, but none were found. The officer also handcuffed both men. Leaving Bautista and his associate with his partner, the officer went to the woman's house to verify Bautista's story. The woman verified the story, but reported that Bautista had claimed his car had broken down. Bautista denied ever having a car.

Bautista and his associate then were separated, and officers asked each suspect a series of questions. Both individuals gave the police inconsistent answers because they did not know each other's names, the names of the streets, who dropped them off, who they were meeting, or the color of the car that dropped them off. Bautista also switched his story, claiming that he was, in fact, dropped off to make illicit drug purchases.

Approximately 10 minutes after the initial stop, the officers told Bautista and his accomplice that they were under arrest. The suspects were taken to police headquarters, searched, and given *Miranda* warnings. Police discovered several “bait bills,” which are used to identify stolen money, and both suspects confessed to the robbery. On appeal, the defendants argued that they were in custody when they were questioned separately, so the officers’ failure to give them *Miranda* warnings required suppression of the statements made during the stop, as well as later at the police station.

The U.S. Circuit Court of Appeals for the Ninth Circuit stated that *Miranda* warnings are a necessary precursor to interrogation during a *Terry* stop if a suspect is taken into custody or the questioning takes place in a police-dominated or compelling atmosphere. The court indicated that even though *Terry* stops inherently may be somewhat coercive, they typically do not involve the type of police-dominated or compelling atmosphere necessitating *Miranda* warnings. The court further stated that *Miranda* warnings are only required when there has been such a restriction on persons’ freedom as to render them in custody.

The court found the following factors important to the custody analysis: “the language used by the officer to summon the individual, the extent to which he or she is confronted with evidence of guilt, the physical surroundings of the interrogation, the duration of the detention and the degree of pressure applied to detain the individual.” The court further indicated that these objective factors determine whether a reasonable, innocent person in such circumstances would conclude that after the brief questioning, he or she would not be free to leave and was, therefore, in custody for *Miranda* purposes.

The court stated that the defendants in *Bautista* were not in custody during their separate questioning because they were not confronted by evidence of their guilt. Further, the court found that neither the language used by the officers to summon the defendants, the physical surroundings, nor the duration of the detention could be considered coercive. The court also noted that the only difference between this situation and a routine *Terry* stop was the use of the handcuffs; however, the court stated that the use of handcuffs alone does not mean that a subject is in custody for purposes of *Miranda*.

In *United States v. Leshuk*, the defendants sought to suppress statements they made after their initial confrontation by deputies at a marijuana cultivation site and prior to being given *Miranda* warnings.

In *Leshuk*, the U.S. Circuit Court of Appeals for the Fourth Circuit indicated that *Miranda* is meant to protect statements that a suspect makes during custodial interrogations and further stated that a suspect is in custody for the purposes of *Miranda* “if the suspect has been formally arrested or if he is questioned under circumstances in which his freedom of action is curtailed ‘of the degree associated with a formal arrest.’” The court cautioned that this test does not necessarily convert a *Terry* stop into custody for the purposes of *Miranda*. The court indicated the circumstances of the interrogation should be viewed objectively, rather than through the subjective views harbored by the interrogating officers or the person being questioned. Therefore, the court stated that instead of looking to whether the stop objectively restricts an individual’s freedom, it is important to look at whether the stop lasted no longer than necessary to verify or dispel the officer’s suspicion.

The court concluded that *Leshuk* was not in custody for the purposes of *Miranda* until the officers discovered the marijuana and informed him that he was under arrest. Although the deputies in *Leshuk* did not handcuff the defendants during the course of the encounter, the U.S. Circuit Court of Appeals for the Fourth Circuit stated in dicta that in considering the Fourth Amendment standards regarding seizures, “we have concluded that drawing weapons, handcuffing a suspect, placing a suspect in a patrol car for questioning, or using or threatening to use force does not necessarily elevate a lawful stop into a custodial arrest for *Miranda* purposes.”

## **Conclusion**

The role that handcuffing plays in determining whether a subject is in custody for purposes of officers having to give *Miranda* warnings is an important issue for law enforcement officers to consider to prevent the possible suppression of a subject’s statement due to a *Miranda* violation. Courts analyze the totality of the circumstances to determine whether an individual is in custody for purposes of *Miranda*. This article has examined how courts have viewed handcuffing as part of the totality-of-the-circumstances analysis. Because courts differ on when the use of handcuffs constitutes custody for purposes of giving *Miranda* warnings, law enforcement officers should consult with their legal advisors regarding the status of the law in their jurisdictions pertaining to this issue.

*Source: FBI Legal Digest*