



# Custody Under *Miranda v.* Arizona

## *Is Arizona Using the Wrong Focus?*

by Hon. Crane McClennen

In a series of opinions from 1976 through 1994, the United States Supreme Court has held that “focus” on a suspect *is not* a factor to be used in determining whether the suspect is in custody for purposes of the *Miranda* warnings.<sup>1</sup> Yet as recently as 1996, the Arizona Supreme Court has held that “focus” on a suspect *is* a factor to be used in determining whether the suspect is in custody for purposes of the *Miranda* warnings.<sup>2</sup> And as recently as 1999, the Arizona Court of Appeals also relied on “focus” to determine custody.<sup>3</sup> What makes this even more puzzling is that, in 1983, the Arizona Supreme Court specifically disapproved of the use of “focus” as a factor to be used in determining custody.<sup>4</sup> This raises the question of how the Arizona Supreme Court has come to rely on a factor that both it and the United States Supreme Court had previously rejected.

### **Miranda v. Arizona, An Overview**

In *Miranda v. Arizona*,<sup>5</sup> the United States Supreme Court held that a suspect was entitled to receive the *Miranda* warnings whenever subjected to “custodial interrogation.”<sup>6</sup> This has led to various cases discussing what is “interrogation,”<sup>7</sup> and what is “custody.” The first case dealing with the relationship between “focus” and “custody” was *Beckwith v. United States*<sup>8</sup> in 1976. The case involved two Internal Revenue Service agents who met with Beckwith in a private home, and questioned him for three hours. Prior to trial, Beckwith moved to suppress his statements because the agents had not given him the *Miranda* warnings, claiming that, although he was neither arrested nor detained against his will, the principle of *Miranda* “should be extended to cover interrogation in non-custodial circumstances after a police investigation has focused on the suspect.”<sup>9</sup> The Court rejected that conten-

tion, reaffirming that *Miranda* warnings were required whenever a person was subjected to “custodial interrogation,” and thus if a person was not in custody, it did not matter whether or not the investigation had focused on the person.<sup>10</sup>

Next, in 1983 came *California v. Beheler*.<sup>11</sup> After Beheler and several others tried to steal the victim’s hashish and one of the others shot and killed the victim, Beheler called the police and told them about the killing. Officers told Beheler he was not under arrest, and he voluntarily agreed to accompany the police to the police station. The trial court denied Beheler’s motion to suppress the statements, but the appellate court reversed, holding that, although Beheler was not under arrest, because the interview took place at the police station and because the investigation had focused on Beheler, he was entitled to the *Miranda* warnings. The United States Supreme Court disagreed, holding that a person is entitled to the warnings when the “person has been taken into custody or otherwise deprived of his freedom of action in any significant way,”<sup>12</sup> and that the person is not entitled to the warnings “simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect.”<sup>13</sup>

Finally, in 1994 came *Stansbury v. California*.<sup>14</sup> Officers investigating a homicide believed Stansbury was a potential witness, so they went to his house, told him they thought he might be a witness to the homicide, and asked him if he would accompany them to the police station to answer some questions. Stansbury agreed to the interview and rode to the station in the front seat of the police car. There officers questioned Stansbury, but did not give the *Miranda* warnings. Stansbury admitted talking to the victim at about 6:00 p.m., and said he returned home about 9:00 p.m. and then left around midnight driving his roommate’s car. Because the description of the car matched one a witness saw near the scene of the crime, the lead detective became suspicious, and

when Stansbury admitted to prior convictions for rape, kidnapping and child molestation, the detective terminated the interview and another officer advised Stansbury of his *Miranda* rights.<sup>15</sup>

The trial court denied Stansbury’s motion to suppress in part, finding he was not “in custody” and thus not entitled to *Miranda* warnings until he mentioned the car and the midnight drive, and thus allowed admission of all statements up to that point.<sup>16</sup> On appeal, the California Supreme Court addressed the issue of custody using the following four factors: (1) the site of the interrogation, (2) whether the investigation had focused on the subject, (3) whether the objective indicia of arrest were present, and (4) the length and form of questioning.<sup>17</sup> The court analyzed the second factor in detail, and accepted the trial court’s factual determination “that suspicion focused on [Stansbury] only when he mentioned that he had driven a turquoise car on the night of the crime.”<sup>18</sup> The court “conclude[d] that [Stansbury] was not subject to custodial interrogation before he mentioned the turquoise car,” and thus approved the trial court’s ruling that *Miranda* did not bar the admission of statements Stansbury made before that point,<sup>19</sup> and affirmed the conviction.

Although the United States Supreme Court agreed with the California Supreme Court that the statements that were admitted were admissible, it disagreed with the California court’s consideration of the “focus” factor. The Court restated the language from *Miranda* that a person is entitled to the warnings when the person is “taken into custody or otherwise deprived of his freedom of action in any significant way,”<sup>20</sup> but stated that “the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.”<sup>21</sup> It stated that, to determine whether an individual was in custody, a court must examine all of the circum-

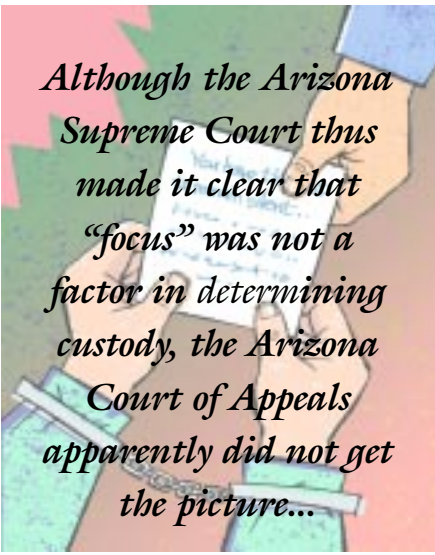
stances surrounding the interrogation, but “the ultimate inquiry is simply whether there [was] a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest,”<sup>22</sup> and concluded that whether the investigation had focused on the person was not relevant in determining whether the person was in custody and thus entitled to *Miranda* warnings.<sup>23</sup>

## Custody in Arizona— What’s Wrong With This Picture?

In light of the clear pronouncement by the United States Supreme Court that “focus” is *not* a factor in determining whether a person is entitled to *Miranda* warnings, the question is why the Arizona courts still use “focus” as a factor. This path in the wrong direction begins with *State v. Kennedy*,<sup>24</sup> a 1977 Arizona Court of Appeals case. The defendants offered to pay a person to kill their business partner, but that person first went to the police. The police “wired” the person and were able to obtain incriminating statements from the defendants. On the night after the killing was to have taken place, plainclothes officers spoke to the defendants at the pool area of their apartment complex, and arrested them after obtaining statements from them. The trial court suppressed those pre-arrest statements because it found the officers had enough information to arrest the defendants, and thus concluded the officers should have given them the *Miranda* warnings.<sup>25</sup> The Arizona Court of Appeals concluded, however, that the defendants were not in custody and reversed the trial court, and used language almost identical to what the United States Supreme Court would use 17 years later in *Stansbury*:

Custody is an objective condition. The subjective intent of the interrogator to arrest the suspect is not, in itself, a sufficient basis upon which to conclude that custody exists.<sup>26</sup>

For purposes of determining whether a person was in custody for



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purposes of *Miranda*, the court listed four factors:

When an arrest has not yet taken place, the factors to be considered in deciding whether the custody has attached are many. Among the most important are (1) the site of the interrogation; (2) whether the investigation has focused on the suspect; (3) whether the objective indicia of arrest are present; and (4) the length and form of the interrogation.<sup>27</sup>

The only authority the court gave for these four factors was a California case, *People v. Herdan*.<sup>28</sup> As discussed above, these were the same four factors used by the California court in *Stansbury*,<sup>29</sup> and thus included the “focus” factor rejected by the United States Supreme Court. The reason these same four factors appear in *Stansbury* is that *Stansbury* relied on *People v. Boyer*<sup>30</sup> for authority, and *Boyer* relied on *Herdan* for authority.<sup>31</sup>

Thus “whether the investigation has focused on the suspect” entered the picture in Arizona. But three years later in 1980, the Arizona Supreme Court in *State v. Morse*<sup>32</sup> specifically rejected “focus” as a factor:

Defendant emphasizes that at the time the statements were made, the investigation had focused on the defendant, the officer had probable cause to arrest defendant for driving a motor vehicle without a driver’s license or registration, and the officer felt that defendant was

not free to go. The United States Supreme Court [in *Beckwith*] has rejected the argument ‘that the principle of *Miranda*...should be extended to cover interrogation in non-custodial circumstances after a police investigation has focused on the suspect.’ It is not the focus of the interrogation but the custody of the suspect which triggers the requirement of *Miranda* warnings.<sup>33</sup>

Although the Arizona Supreme Court thus made it clear that “focus” was not a factor in determining custody, the Arizona Court of Appeals apparently did not get the picture because in 1981 in *State v. Riffle*,<sup>34</sup> it analyzed the admissibility of a statement the defendant made in a hospital waiting room, and cited *Kennedy* for the four factors, including “focus on the suspect.”<sup>35</sup> The Arizona Supreme Court again attempted to clarify the picture in 1983 in *State v. Cruz-Mata*,<sup>36</sup> where a detective suspected the defendant was involved in a killing, and went to where the defendant was working to ask the defendant to accompany him to the police station. The detective then questioned the defendant without first giving the *Miranda* warnings. The Arizona Supreme Court started by discussing what the United States Supreme Court had said in *Beheler*:

The Court stated that an individual is not in custody for purposes of *Miranda* warnings simply because the interview takes place in a police station, or the defendant is a suspect in the case.<sup>37</sup>

And then, in what appears to be an effort to make sure that no future cases followed *Kennedy*, it cited *Kennedy* and rejected “focus on the suspect,” adding its own fourth factor:

In *State v. Kennedy*, the court of appeals listed four factors, three of which we approve, to consider in making the determination of whether an individual is in custody. These three factors are: the site of the questioning; whether objective indicia of arrest are present; and the length and form

of the interrogation. We also will consider the method used to summon the individual.<sup>38</sup>

Applying those four factors, the Arizona Supreme Court concluded that the defendant was not in custody, and thus his statements were admissible.

One would have thought that everyone would then have had a clear picture of the law in this area. The United States Supreme Court had decided *Beckwith* and *Beheler* rejecting the “focus” factor, and the Arizona Supreme Court had rejected “focus” as a factor in *Morse* and *Cruz-Mata*, and in *Cruz-Mata* had specifically disapproved of *Kennedy*’s use of the “focus” factor.

But then something unexplained happened. Less than one year after it had decided *Cruz-Mata*, the Arizona Supreme Court decided *State v. Perea*,<sup>39</sup> and in determining whether the defendant was in custody, again used the four factors that included “focus:”

Our Court of Appeals has indicated that the factors indicative of custody are: 1) the site of the interrogation, 2) whether the investigation has focused on the accused, 3) whether the objective indicia of arrest are present, and 4) the length and form of the interrogation.<sup>40</sup>

For authority, the Arizona Supreme Court relied on *Riffle*, which in turn had relied on *Kennedy*, which the Arizona Supreme Court had disapproved in *Cruz-Mata*. From there the “focus” factor continued to appear in Arizona Supreme Court cases like a replicating virus, first in *State v. Carter*,<sup>41</sup> which relied on *Perea* and *Riffle* for authority; then in *State v. Stanley*,<sup>42</sup> which relied on *Carter* for authority; and then in *State v. Rodriguez*,<sup>43</sup> which relied on *Stanley* for authority. The Arizona Court of Appeals had not been immune either, listing “focus” as a factor in *State v. Smith*,<sup>44</sup> which relied on *Perea* for authority; *State v. Wright*,<sup>45</sup> which relied on *Perea* and *Carter* for authority; *State v. Pettit*,<sup>46</sup> which relied on *Stanley* for authority;

and *State v. Smith*,<sup>47</sup> which relied on *Carter* and *Stanley* for authority.

So what then is the law in this area? Instructive on this issue is *State v. Mauro*<sup>48</sup> (*Mauro I*). Officers arrested Mauro for the killing of his son, took him to the police station, and advised him of the *Miranda* rights. Mauro said he did not want to make any statements without an attorney present, which meant officers were then precluded by *Miranda* and *Edwards v. Arizona*<sup>49</sup> from interrogating him. While officers were questioning Mauro's wife, she asked to talk to Mauro, and the officers agreed as long as an officer was present and the conversation was recorded. During that conversation, Mauro made incriminating statements. The Arizona Supreme Court held the officers' conduct was functional equivalent of interrogation under *Rhode Island v. Innis*<sup>50</sup> and thus violated Mauro's rights under the Fifth Amendment of the United States Constitution, and so held the statements inadmissible.<sup>51</sup> The United States Supreme Court granted review, however, and reversed.<sup>52</sup> The Court held what the officers did was not the functional equivalent of interrogation,<sup>53</sup> thus using federal law to determine what is and what is not an interrogation or the functional equivalent of interrogation under the Fifth Amendment and *Miranda*. After that decision, the Arizona Supreme Court affirmed Mauro's conviction in *State v. Mauro*<sup>54</sup> (*Mauro II*).

Because federal law controls what is and what is not "interrogation" or the "functional equivalent of interrogation" under the Fifth Amendment and *Miranda*, federal law would also control what is and what is not "custody" under the Fifth Amendment and *Miranda*. It is clear from the opinions of the United States Supreme Court in *Beckwith*, *Beheler* and *Stansbury* that "focus" is not a factor to be considered under federal law when determining custody; thus the Arizona courts are precluded from considering "focus" in determining custody for purposes of *Miranda*. And

because *Miranda* and custody for purposes of *Miranda* are matters of federal law, Arizona would not be able to craft its own test, and thus *Perea* and all its progeny would be using a test that is not valid under federal law.

But what about Arizona's ability to craft a test under state law? On that issue, *Mauro II* is instructive. After the United States Supreme Court had held the statements admissible under federal law, on remand Mauro argued that the Arizona Supreme Court could exclude them under the Arizona Constitution.<sup>55</sup> The Arizona Supreme Court acknowledged that on occasion it had interpreted provisions of the Arizona Constitution more expansively than the United States Supreme Court had interpreted the federal counterparts.<sup>56</sup> It then addressed all the arguments Mauro made for a more expansive interpretation under state law, but concluded that Mauro "has not convinced us to adopt a standard that would change the result in this case on the basis of separate state constitutional protections greater than those afforded under the Fifth Amendment."<sup>57</sup>

Thus in *Perea*, the Arizona Supreme Court could have adopted a more expansive standard than that under federal law, but that is not what it did. All the court did in *Perea* was give a list of the four factors used by the Arizona Court of Appeals in *Riffle*,<sup>58</sup> and then apply those four factors, which included the "focus" factor. The only authority cited in *Riffle* for those four factors was *Kennedy*,<sup>59</sup> and as noted above, *Kennedy* got those four factors from a California case.<sup>60</sup> Nowhere in *Perea* or in any of the cases following *Perea* is there any language even remotely hinting that either the Arizona Supreme Court or the Arizona Court of Appeals was adopting a more expansive standard under the Arizona Constitution. Because the Arizona Supreme Court in *Cruz-Mata* had specifically disapproved of *Kennedy's* use of the "focus" factor,<sup>61</sup> the Arizona Supreme Court in *Perea* was thus either overruling *Cruz-Mata*

*sub silencio*, or else it was doing something without even realizing what it was doing. Moreover, as noted above, *Kennedy* got the four factors from the California case of *People v. Herdan*,<sup>62</sup> *People v. Stansbury* got the four factors from *People v. Herdan* through *People v. Boyer*,<sup>63</sup> and the United States Supreme Court specifically rejected the "focus" factor in *Stansbury v. California*.<sup>64</sup> It thus appears there is no valid authority for the use of "focus" in determining whether a person is in custody for purposes of receiving the *Miranda* warnings.

## Conclusion

So what's a person to do? If you are a prosecuting attorney, you argue that the United States Supreme Court is the supreme law of the land, thus a trial court has to follow the United States Supreme Court authority and not consider "focus" as a factor in determining custody. If you are a defense attorney, you argue that the trial court must follow the law given by the Arizona Supreme Court until such time as the Arizona Supreme Court changes the law. If you are a trial court, first you follow the United States Supreme Court and determine custody without considering "focus," and then you follow the Arizona Supreme Court and consider "focus" and determine whether that factor would make any difference in determining custody and if you are the Arizona Supreme Court, you issue an opinion making a definitive pronouncement on this issue.

As discussed above, the United States Supreme Court has held that "focus" is not a factor to be considered in determining custody under *Miranda*. Further, it appears there is no valid basis for those Arizona cases that do use "focus" as a factor in determining custody. Because there is not now, nor was there ever, a valid basis for the use of "focus" in the *Perea* opinion, it is time for the Arizona Supreme Court to recognize the mistake that was made in *Perea*, and get "focus" out of the picture when determining custody under *Miranda*. 🗑️

*Hon. Crane McClennen has been a judge on the Maricopa County Superior Court bench for more than three years.*

ENDNOTES:

1. *Beckwith v. United States*, 425 U.S. 341, 96 S. Ct. 1612, 48 L. Ed. 2d 1 (1976); *California v. Beheler*, 463 U.S. 1121, 103 S. Ct. 3517, 77 L. Ed. 2d 1275 (1983); *Stansbury v. California*, 511 U.S. 318, 114 S. Ct. 1526, 128 L. Ed. 2d 293 (1994).
2. *State v. Rodriguez*, 186 Ariz. 240, 245, 921 P.2d 643, 648 (1996).
3. *State v. Smith*, 305 Ariz. Adv. Rep. 3, ¶ 5 (Ct. App. Sept. 23, 1999).
4. *State v. Cruz-Mata*, 138 Ariz. 370, 373, 674 P.2d 1368, 1371 (1983).
5. 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).
6. 384 U.S. at 444.
7. *Rhode Island v. Innis*, 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980) (showing suspect photographs functional equivalent of questioning); *Arizona v. Mauro*, 481 U.S. 520, 107 S. Ct. 1931, 95 L. Ed. 2d 458 (1987) (tape recording conversation between wife and husband, who had been arrested, was not functional equivalent of questioning).
8. 425 U.S. 341, 96 S. Ct. 1612, 48 L. Ed. 2d 1 (1976).
9. 425 U.S. at 345.
10. 425 U.S. at 345-48.
11. 463 U.S. 1121, 103 S. Ct. 3517, 77 L. Ed. 2d 1275 (1983).
12. 463 U.S. at 1123.
13. 463 U.S. at 1125.
14. 511 U.S. 318, 114 S. Ct. 1526, 128 L. Ed. 2d 293 (1994).
15. 511 U.S. at 319-20.
16. 511 U.S. at 321.
17. *People v. Stansbury*, 4 Cal. 4th 1017, 1050, 846 P.2d 756, 775 (1993), citing *People v. Boyer*, 48 Cal. 3d 247, 272, 768 P.2d 610, 622B23 (1989), citing *People v. Herdan*, 42 Cal. App. 3d 300, 306-07, 116 Cal. Rptr. 641, 645 (1974).
18. 4 Cal.4th at 1052, 846 P.2d, at 776.
19. 4 Cal.4th at 1054, 846 P.2d, at 777-78.
20. 384 U.S. at 444.
21. 511 U.S. at 323.
22. 511 U.S. at 322, quoting *California v. Beheler*, 463 U.S. at 1125.
23. 511 U.S. at 323-26.
24. 116 Ariz. 566, 570 P.2d 508 (Ct. App. 1977).
25. 116 Ariz. at 568, 570 P.2d at 510.
26. 116 Ariz. at 569, 570 P.2d at 511, citing *People v. Kelley*, 66 Cal.2d 232, 424 P.2d 947 (1967).
27. 116 Ariz. at 569, 570 P.2d at 511.
28. 42 Cal. App. 3d 300, 307, 116 Cal. Rptr. 641, 645 (1974).
29. 4 Cal. 4th at 1050, 846 P.2d at 775.
30. 48 Cal. 3d 247, 768 P.2d 610 (1989).
31. 48 Cal. 3d at 272, 768 P.2d at 622-23.
32. 127 Ariz. 25, 617 P.2d 1141 (1980).
33. 127 Ariz. at 28, 617 P.2d at 1144, quoting *Beckwith*, 425 U.S. at 345.
34. 131 Ariz. 65, 638 P.2d 732 (Ct. App. 1981).
35. 131 Ariz. at 67, 638 P.2d at 734.
36. 138 Ariz. 370, 674 P.2d 1368 (1983).
37. 138 Ariz. at 373, 674 P.2d at 1371.
38. *Id.* (citations omitted).
39. 142 Ariz. 352, 690 P.2d 71 (1984).
40. 142 Ariz. at 354-55, 690 P.2d at 73-74.
41. 145 Ariz. 101, 105, 700 P.2d 488, 492 (1985).
42. 167 Ariz. 519, 523, 809 P.2d 944, 948 (1991).
43. 186 Ariz. 240, 245, 921 P.2d 643, 648 (1996).
44. 156 Ariz. 518, 521, 753 P.2d 1174, 1177 (Ct. App. 1987).
45. 161 Ariz. 394, 397, 778 P.2d 1290, 1293 (Ct. App. 1989).
46. 194 Ariz. 192, 195, 979 P.2d 5, 8 (Ct. App. 1998).
47. 305 Ariz. Adv. Rep. 3, ¶ 5 (Ct. App. Sept. 23, 1999).
48. 149 Ariz. 24, 716 P.2d 393 (1986).
49. 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981).
50. 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980).
51. 149 Ariz. at 31, 716 P.2d at 400.
52. *Arizona v. Mauro*, 481 U.S. 520, 107 S. Ct. 1931, 95 L. Ed. 2d 458 (1987).
53. 481 U.S. 528-30.
54. 159 Ariz. 186, 766 P.2d 59 (1988).
55. Ariz. Const. art 2, § 10.
56. 159 Ariz. at 190, 766 P.2d at 63.
57. 159 Ariz. at 191, 766 P.2d at 64.
58. 142 Ariz. at 354-55, 690 P.2d at 73-74.
59. 131 Ariz. at 67, 638 P.2d at 734.
60. Note 28 *supra*; *People v. Herdan*, 42 Cal. App. 3d 300, 116 Cal. Rptr. 641 (1974).
61. 138 Ariz. at 373, 674 P.2d at 1371.
62. Note 28 *supra* and accompanying text.
63. Notes 30 and 31 *supra* and accompanying text.
64. Note 23 *supra* and accompanying text.