Are Terry Stops "Custodial" for Miranda Purposes?

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I used to answer this question "no." But even though the United States Supreme Court recently said exactly that, *see Maryland v. Shatzer*, __ U.S. __, 130 S. Ct. 1213 (2010) ("[T]he temporary and relatively nonthreatening detention involved in a traffic stop or *Terry* stop does not constitute *Miranda* custody."), I think the correct answer is "sometimes."

I'll start off with why I've been saying "no." I based my answer on cases like *State v. Sutton*, 167 N.C. App. 242 (2004) ("The mere fact that Officer Sojack performed an investigative stop of defendant and then patted him down did not result in defendant being 'in custody' for purposes of *Miranda*."), and *United States v. Leshuk*, 65 F.3d 1105 (4th Cir. 1995) (holding that *Terry* stops do not amount to custody, and stating 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"). Further, the United States Supreme Court has held that traffic stops generally are not custodial, *Berkemer v. McCarty*, 468 U.S. 420 (1984), and our appellate courts have held that this is so even when the driver is ordered out of his vehicle and frisked, *State v. Benjamin*, 124 N.C. App. 734 (1996). Given the similarity between *Terry* stops and traffic stops, this seemed to me to provide further support for the idea that *Terry* stops were categorically, or at least almost categorically, noncustodial.

My opinion now, however, is that some *Terry* stops are custodial, so answering the *Miranda* question requires examining exactly how a particular stop was conducted. Generally, a suspect is in *Miranda* custody if the suspect is under arrest or its functional equivalent. The mere fact that the suspect is not free to leave does *not* mean that the suspect is in custody. After all, a driver who is the subject of a traffic stop is not free to leave, but the cases are clear that such a person is not normally in custody. However, some *Terry* stops involve very significant restraints on freedom. The court of appeals has noted that "the permissible scope of a *Terry* stop has expanded in the past few decades," allowing police to use handcuffs, detain suspects in police vehicles, and use "other forms of force typically used during an arrest." *State v. Campbell*, 188 N.C. App. 701 (2008) (quoting *Longshore v. State*, 924 A.2d 1129 (Md. 2007)).

Against this backdrop, it is worth observing that the federal courts are divided about whether *Terry* stops can ever be custodial, though the affirmative view appears to be gaining ground. *Compare Leshuk, supra* (concluding that the answer is no, even for very forceful stops), *with United States v. Newton*, 369 F.3d 659 (2d Cir. 2004) (holding that a handcuffed suspect was in custody for *Miranda* purposes even though he was told that he was not under arrest, arguing that whether a detention is properly classified as a *Terry* stop is "irrelevant" to the *Miranda* analysis, and noting the split of authority on this issue)*, and United States v. Martinez*, 462 F.3d 903 (8th Cir. 2006) (holding that a suspect who was frisked, handcuffed, and questioned was subject to a *Terry* stop and not arrested, yet was in custody for *Miranda* purposes).

The situation is somewhat clearer in North Carolina. *Sutton* notwithstanding, our appellate courts have decided several cases in which investigative stops have been found to be custodial. *See State v. Washington*, 330 N.C. 188 (1991) (defendant was in custody when, during a traffic stop, he was placed in the back seat of a police car; he could not leave the car, so he was effectively "incarcerated on the side of the road"); *State v. Johnston*, 154 N.C. App. 500 (2002) (defendant was in custody when he was "ordered out of his vehicle at gun point, handcuffed, placed in the back

of a patrol car, and questioned by detectives" about a shooting, even though he was told that he was not under arrest). *Cf. State v. Torres*, 330 N.C. 517 (1992) (defendant in custody when, after shooting her husband, she was escorted to the sheriff's office, kept under constant supervision, and not told that she was free to leave). The most recent case on point, and the one that got me thinking about this issue, is *In re L.I.*, where the court of appeals held, following *Johnston*, that a juvenile was in custody when an officer placed her in "investigative detention," in handcuffs, in his police vehicle.

The bottom line is one that you are not likely ever to see again on this blog: *never mind what the Supreme Court just said*, a *Terry* stop that is conducted in a way that is particularly restrictive may amount to custody under *Miranda*. The cases suggest that a finding of custody is more likely when the suspect is handcuffed, placed in a police vehicle, or subjected to an unusual display of force, such as the drawing of weapons or the involvement of a very large number of officers.