# Court of Appeals Rules That Probationer Was Not in Custody When Handcuffed for Safety Reasons

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Generally, custody occurs under *Miranda* when a suspect is handcuffed even if the suspect is not informed that he or she is under arrest for a crime. However, there are exceptions, as evidenced by the recent North Carolina Court of Appeals ruling in State v. Barnes (July 19, 2016), which is the subject of this post.

**Background.** Probably the most litigated issue involving *Miranda v. Arizona* is the meaning of custody under its ruling that requires law enforcement officers to give prescribed warnings when conducting custodial interrogation. I have recently discussed the custody issue in posts on June 14, 2016, and May 24, 2016.

The United States Supreme Court ruled in *Berkemer* v. McCarty 468 U.S. 420 (1984), California v. Beheler, 511 U.S. 318 (1994), and other cases that a person is in custody under the Miranda rule when officers have formally arrested the person—for any offense, whether a felony or misdemeanor—or have restrained a person's movement to a degree associated with a formal arrest (for example, handcuffing plus other circumstances; see State v. Johnston, 154 N.C. App. 500 (2002)). The North Carolina Supreme Court in State v. Buchanan, 353 N.C. 332 (2001), later ruling, 355 N.C. 264 (2002), made clear in *Buchanan* that it follows the Court's rulings on the meaning of custody and disavowed inconsistent statements in prior North Carolina appellate cases.

Custody is not the same as a seizure under the Fourth Amendment. For example, officers need not give Miranda warnings during an investigative stop unless and until they formally arrest the suspect or act in a manner that is functionally equivalent to a formal arrest. They also need not give Miranda warnings when they merely stop a person to issue a citation and then let the person go. *Berkemer*. Although in both situations (investigative stop and stop to issue a citation) officers may have seized people under the Fourth Amendment, they did not take them into "custody" as the term is used in the Miranda decision.

**State v. Barnes.** The defendant was visiting his cousin at the cousin's home. Both were on supervised probation. His cousin's parole officer arrived to conduct a search of the home (the opinion uses the term "parole" officer, but I assume the officer may have supervised probationers as well). City police officers accompanied the parole officer to provide security during the search. The officer recognized the defendant as a probationer, advised him that he was also subject to the warrantless search because of his probation status, and placed the defendant in handcuffs "for officer safety." The defendant and his cousin were kept on the home's porch in handcuffs for about 45 minutes to one hour while the search was conducted.

During the search, the parole officer discovered a jacket with what appeared to be crack cocaine inside a pocket. When the officer asked the defendant and his cousin on the porch who the jacket belonged to, the defendant said it was his but, after the officer told what she had found, he said that he had borrowed the jacket from someone else. The defendant was charged with a cocaine offense and moved to suppress his statements, arguing that the officer failed to advise him of his *Miranda* rights before asking her question. The trial court denied the motion, concluding that he was not in custody to require the giving of warnings.

**Court of Appeals opinion and ruling.** The court of appeals affirmed the trial court's ruling that the defendant was not

in custody under *Miranda*, based on the totality of circumstances. Whether a person is in custody depends on the circumstances, the court noting that a prisoner is certainly in custody in a general sense but not always in custody under *Miranda*, citing Howes v. Fields, 132 S. Ct. 1181 (2012) (prisoner questioned in prison's conference room about conduct committed outside prison was not in custody).

The court concluded that a reasonable person in the defendant's position, although in handcuffs, would not believe his restraint was associated with a formal arrest. It noted that regular probation condition requires a probationer to submit at reasonable times to warrantless searches by a probation officer of the probationers' person, vehicle, and premises. The defendant was told he was being handcuffed for officer safety, and was never informed that his detention would not be temporary. As a probationer, he would objectively understand the purpose of restraints and that the period of restraint was temporary. The court distinguished State v. Johnston, cited above, when not only was the defendant handcuffed, he was ordered out of a vehicle at gunpoint and placed in the back of a police car where he was interrogated. (I would also add that *Johnston* involved law enforcement officers responding to a recent shooting, and the defendant was not identified in the opinion as being a probationer.)

**Comments.** The *Barnes* court's opinion appears clearly consistent with United States Supreme Court rulings involving the *Miranda* custody issue. Of course, the *Barnes* ruling does not guarantee the same result with other probationer or parolee interactions with materially different facts. For example, if a probation or parole officer or law enforcement officers accompanying the officer place handcuffs on a probationer or parolee and draw a gun, physically take hold of the person, or place the person in law enforcement vehicle, that activity may result in a court ruling that a reasonable person in a defendant's position would believe his or her restraint was associated with a formal arrest.