

Admissibility of Confessions:

More than just *Miranda*

Not all
confessions
(statements) are
the same!



Question 1: Custodial Interrogation?

- Suspect has been arrested = Custodial Interrogation.
- If suspect has not been formally arrested, the inquiry is whether a reasonable person in the suspect's position would feel at liberty to terminate the questioning and leave. *Rosky v. State*, 121 Nev. 184 (2005).
 - Objective inquiry, not subjective.
 - "Totality of the Circumstances" *State v. Taylor*, 114 Nev. 1071 (1998)
 - Length and Location of Questioning
 - Indicia of Arrest: (was suspect told he was free to leave, suspect free to move about, police dominated)

Custodial Interrogation: Yes

Question 2:

Suspect *Mirandized* (properly)? No.

- “A suspect’s statements during a custodial interrogation are not admissible unless *Miranda*’s procedural requirements have been followed.” *Dewey v. State*, 123 Nev. 483 (2007).

Custodial Interrogation: Yes

Question 2:

Suspect *Mirandized* (properly)? Yes

- **Question 3:**

- **Did the suspect waive his *Miranda* rights?**

- Waiver must be: Voluntary, Knowing, and Intelligent

Covington v. State, 2017 Nev. App. Unpub. LEXIS 826 (Nev. Ct. App. 2017) (Judge Tao's concurring opinion provides good outline)

- **Or did the suspect invoke a right under *Miranda*?**

- ***Question 3.a: Which Miranda right?***

- **Right to counsel:** "Affirmatively invoked" an "unambiguous and unequivocal request for attorney." Questioning must cease; police cannot re-engage; suspect can.

- **Right to Remain Silent:** Questioning must cease but police CAN re-engage if safeguards followed, including **another *Miranda* warning.**

Dewey v. State, 123 Nev. 483 (2007)

Right to Counsel:

A Quick Side Note

- A custodial interrogation itself does not trigger the right to counsel; it triggers the *Miranda* warning and the suspect must invoke the right to counsel
- The Right to Counsel is triggered after judicial proceedings have been initiated by way of a formal charge.
 - Once the Right to Counsel is triggered (or attaches), police may not question the defendant without an attorney on that charge.
 - Charge specific
 - No right to counsel during Non-Custodial Interrogation. (Why? Suspect can leave.)

Custodial Interrogation:

Miranda Safeguards Met and Valid Waiver

Question 4: Was the suspect's statement/confession voluntary?

- When there is a:
 - Custodial interrogation;
 - The suspect is properly *Mirandized*; and
 - The suspect knowingly, intelligently, and voluntarily waives his rights under *Miranda* ...
- The State must still prove by a preponderance of the evidence that the defendant made the statement “freely and voluntarily without compulsion or inducement” for the statement to be admissible.
 - Age; Education/Intelligence; Length of Detention; Nature of Questioning; Deprivation of Food and/or Sleep; Suspect's Prior Experience with Law Enforcement; Intoxication; Police Deception

Non-Custodial Interrogation

The confession must still be voluntary. *Silva v. State*,
113 Nev. 1365 (1997)



And a final question:
Why isn't a confession inadmissible hearsay?