

In *People v. Null*, a Colorado Supreme Court decision released today, the Court revisited the question of what constitutes being “in custody” and at what point a traffic stop may become custodial. To determine whether a suspect was in custody, the Court asks whether a reasonable person in the suspect’s position would have felt “deprived of his freedom of action to the degree associated with a formal arrest.” This is an objective inquiry made on a case-by-case basis in light of the totality of the circumstances.

In deciding this question, the Court does not rely upon an exclusive list of factors, but considers

Although there is no exclusive list of factors, we have considered the following circumstances to determine whether a suspect was in custody during interrogation: the time, place, and purpose of the encounter; the persons present during the interrogation; the words spoken by the officer to the defendant; the officer’s tone of voice and general demeanor; the length and mood of the interrogation; whether any limitation of movement or other form of restraint was placed on the defendant during the interrogation; the officer’s response to any questions asked by the defendant; whether directions were given to the defendant during the interrogation; and the defendant’s verbal or nonverbal response to such directions.

In *Null*, the defendant was detained on the side of the road while Washington County police officers investigated him for drunk driving. Null was not free to leave during this time, and he failed a series of roadside sobriety tests, including a preliminary breath test. Following this relatively lengthy detention, two officers surrounded Null, whose back was against a patrol car, and interrogated him without first advising him of his Miranda rights. Null gave several incriminating responses.

The Court held that what began as a “routine” encounter between police and the defendant quickly became a custodial situation. First, Null was not free to go during questioning. When he attempted to walk away, the officer followed him and told him to return to the patrol car. Second, Null’s freedom of movement was significantly limited during questioning. Although he was not handcuffed and the officers had not drawn their weapons, the officers stood only a few feet from Null. Null appears to have been “surrounded” by the patrol car and the officers on either side of him. Third, Null was held on the side of the road for at least fifteen minutes plus the amount of time it took for Henderson to conduct several roadside sobriety tests and call dispatch to check Null’s license. This was a relatively lengthy detention. Finally, Null failed two sobriety tests and the preliminary breath test before the interrogation began. As such, the officers had grounds to arrest Null. These circumstances, when combined, establish that Null had objective reasons to believe that he was under arrest and would not be briefly detained and then released.

Thus, considering the totality of the circumstances, the Court concluded that Null was in custody during questioning, because it was a “coercive and police-dominated atmosphere”, and a “reasonable person in

similar circumstances would have felt deprived of his freedom of action to the degree associated with a formal arrest.”

Some have argued that a different standard, mentioned in dicta in the Matheny case, applied to determining whether an individual is in custody for purposes of Miranda – but this case clearly indicates which standard is correct and applicable to these situations.