



FIFTH AMENDMENT · RESOURCES

United States v. Nahkai: Miranda Custody and Voluntary Interviews Outside the Home

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The Tenth Circuit recently released their decision for *United States v. Nahkai*, which examines when someone is in custody for *Miranda*. The Tenth Circuit held that Andy Nahkai was not in custody for purposes of *Miranda* during his interview with investigators in an unlocked vehicle outside his home. The court concluded that the setting, lack of physical restraint, and overall circumstances would not have led a reasonable person to believe that they were under formal arrest. As a result, the officers were not required to provide *Miranda* warnings before questioning him. The court therefore reversed the district court's suppression ruling and held that Nahkai's statements were admissible.

Summary of the Facts

In February 2022, Navajo Criminal Investigator Reeder Nez and FBI Agent Jarrod Girod went to Andy Nahkai's residence to investigate sexual abuse allegations made by his wife's niece. His wife was standing at the front gate when they arrived, spoke with Investigator Nez, and allowed the officers to enter the property.

When Nahkai came out, Investigator Nez introduced Agent Girod as "a friend" and asked if they could talk with just him. Agent Girod suggested conducting the interview in their unmarked vehicle, and Nahkai voluntarily walked to it, sitting in the passenger seat.

Although the vehicle was unmarked, there were indications that it was for law enforcement, including the radio control and rifle rack. For the entire duration of the interview, the vehicle remained unlocked. During the interview, Nahkai was never physically touched, searched, or handcuffed, and the officers did not block his exit from the vehicle. The agents never administered *Miranda* warnings. They also did not explicitly tell Nahkai that he was free to leave, could refuse to answer questions, or could terminate the interview at any time. However, the officers kept the discussion within the truck, did not summon additional officers, and did not move Nahkai to a station or any more secure environment. The entire interaction occurred outside his own home, lasted around forty-one minutes, and was audio-recorded..

At the beginning of the interview, Agent Girod identified himself as an FBI agent and began asking questions, including why the minor no longer lived with them. In response, Nahkai stated that social services had removed her because she reported that his wife physically abused her and that he had sexually abused her. This answer shifted the conversation to the alleged sexual conduct.

The agent began asking more pointed questions about what exactly had occurred, focusing in particular on massages that the minor allegedly gave to Nahkai. He explained that he asked her to massage his leg after a hip injury. Nahkai then described a massage that “got out of hand” when the minor’s hand “slipped” and touched his penis. He claimed that he told her “No. Don’t do it.” Nahkai eventually admitted that the minor touched his penis on two separate occasions. Once when she massaged his leg and then three year years later. However, he continually framed the incident as something the minor initiated and that he tried to stop her.

At the conclusion of the interview, Nahkai was not arrested. Instead, he left the truck and returned to his home, and the officers departed. The government decided to formally arrest and charge Nahkai later based on the statements he made in the vehicle. He was indicted for two counts of abusive sexual contact with a child within Native American country and one count of abusive sexual contact with a child aged 12–16 within Native American country.

Procedural History

In district court, Nahkai moved to suppress the statements he made during the truck interview, arguing that he had been subjected to custodial interrogation without Miranda warnings in violation of the Fifth Amendment. The government opposed suppression, contending that he was not in custody for Miranda purposes because he had agreed to the interview. The district court ultimately granted the motion to suppress, concluding that the interview was custodial since the officers did not tell Nahkai that he did not have to answer questions or that he was free to end the questioning. The United States appealed to the Tenth Circuit.

United States Court of Appeals for the Tenth Circuit

On appeal, the Tenth Circuit ultimately reversed the suppression, concluding that that Nahkai was not in custody during the interview; therefore, the officers were not required to give Miranda warnings.

The court emphasized that under *United States v. Miranda*, the Supreme Court of the United States concluded that Miranda warnings do not be given to every individuals but rather only need to be given to an individual who is “subject to custodial interrogation.”

Custodial interrogation was further defined by the Supreme Court in their *Berkemer v. McCarty* decision. Under *Berkemer*, “[a] suspect is deemed to be in custody when their ‘freedom of action is curtailed to a degree associated with formal arrest.’” However, the test of custodial inquiry is objective and “asks whether ‘a reasonable person in the suspect’s position would have understood the situation ... as the functional equivalent of formal arrest.’”

The Tenth Circuit noted that multiple factors are relevant. This includes whether: (1) officers advised the suspect that he could refuse to answer questions or terminate the interview, (2) the nature and tone of the questioning, and (3) the extent to which officers dominated the setting. The court emphasized that the failure to tell a suspect he is free to leave is an important consideration but is only one factor in looking at the totality of the circumstances.

In this case, the vehicle remained unlocked, and Nahkai could see the unlocked door handle from his seat. Moreover, he was not searched, handcuffed, or physically touched by the officers and sat in the front passenger seat rather than in the back of a patrol car or some more confining space. Further, Nahkai first mentioned the sexual abuse allegations himself before the agent's questioning became more pointed, supporting a conclusion that the conversation unfolded without coercive domination by law enforcement. Additionally, the interview lasted about forty-one minutes. The court found the length of the interview to be not long enough to weigh heavily toward Nahkai being in custody, particularly considering that it took place outside his own home. Therefore, the court held that the environment was not the functional equivalent of a formal arrest and that a reasonable person in Nahkai's position would have felt free to terminate the questioning and return home as he actually did.

In conclusion, the Tenth Circuit held that Nahkai was not "in custody" for Miranda purposes during the interview in the vehicle. Thus, the agents were not required to administer Miranda warnings before questioning him. Since there was no Miranda violation, the court ultimately concluded that Nahkai's statements were voluntary and admissible and rejected any argument that the questioning itself posed an independent Fourth Amendment problem. The court therefore reversed the district court's order suppressing Nahkai's statements and remanded the case for further proceedings consistent with its opinion.

Key Takeaways

- Miranda custody is evaluated objectively based on the totality of the circumstances.
- A non-coercive and unrestrained setting may be considered a non-custodial interrogation even if formal Miranda warnings are not given.
- Interviews conducted in locations such as an unlocked vehicle outside a person's home may still be considered non-custodial.
- Factors supporting a non-custodial encounter include the suspect not being handcuffed, searched, or physically restrained and retaining the ability to leave the interview.
- Officers should structure voluntary field interviews in open, visible, and non-restraining environments.

- Displays of authority or coercion should be kept to a minimum during these encounters.
- When feasible, officers should clearly explain that the individual is not under arrest and may stop answering questions.
- Providing this clarification can reduce Miranda disputes and help preserve the admissibility of statements.

***United States v. Nahkai*, No. 24-4058 (10th Cir. 2025)**

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