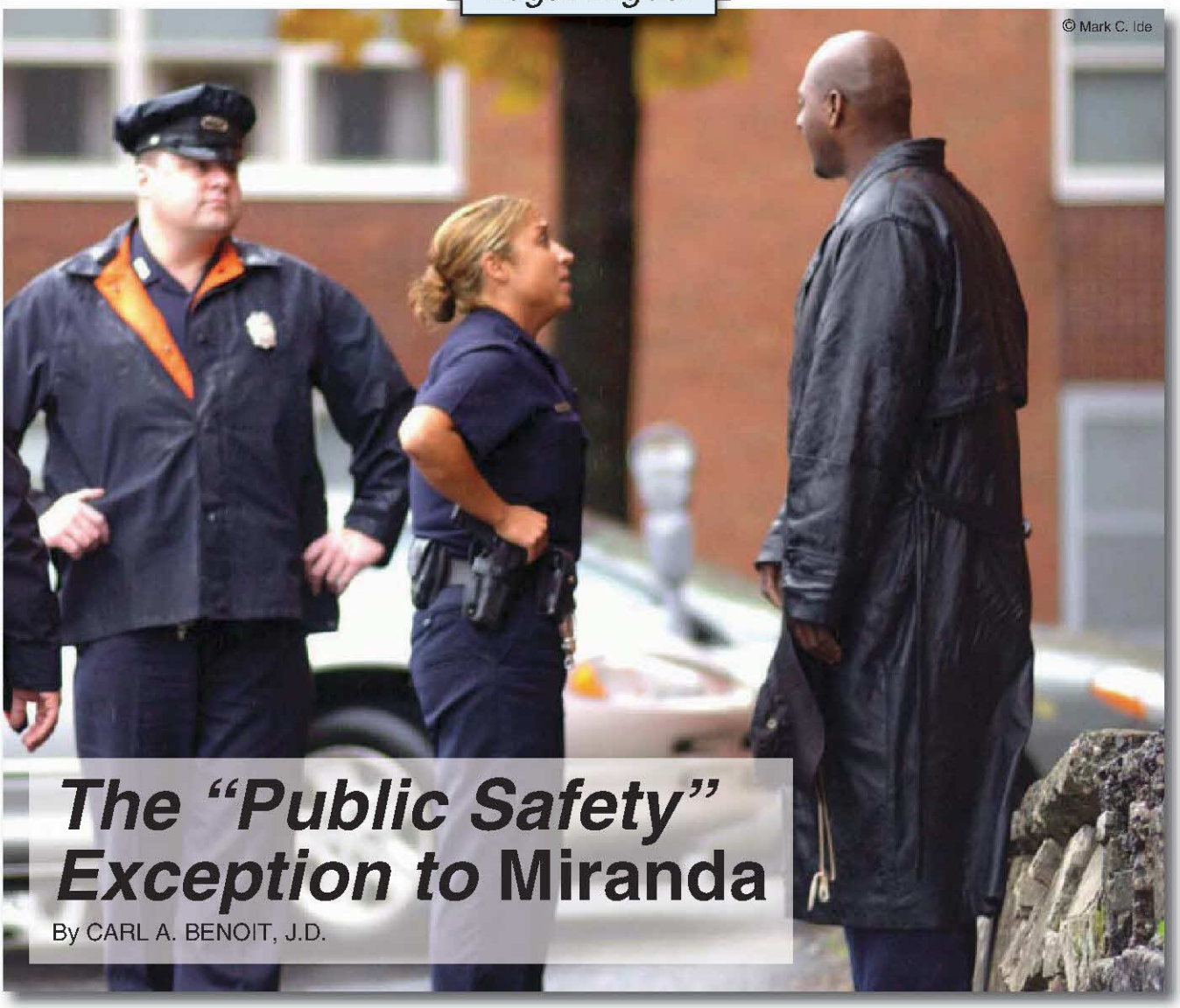

The "Public Safety" Exception to Miranda

By CARL A. BENOIT, J.D.

After 44 years, the *Miranda* decision stands as a monolith in police procedure.[1] Its requirements are so well known that the Supreme Court remarked, "*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture."[2] And, although the Supreme Court has clarified and refined *Miranda* over the years, its central requirements are clear.[3] Whenever the prosecution seeks in its direct case to introduce a statement made by a suspect while in custody and in response to interrogation, it must prove that the subject was warned of specific rights and voluntarily waived those rights.[4] The penalty imposed on the prosecution for failing to prove that the *Miranda* procedures were properly followed is harsh. While some secondary and limited uses of statements obtained in violation of *Miranda* are permitted, such statements are presumed to be coerced and cannot be introduced by the prosecution in its direct case.[5]

The strength of the *Miranda* decision is its clarity in its nearly unwavering protection of a suspect's Fifth Amendment protection against self-incrimination. The commitment

to this rule is so strong that the Supreme Court has recognized only one exception to the *Miranda* rule—the "public safety" exception—which permits law enforcement to engage in a limited and focused unwarned interrogation and allows the government to introduce the statement as direct evidence.

Recent and well-publicized events, including the attempted bombing of Northwest Airlines Flight 235 near Detroit, Michigan, on December 25, 2009, and the attempted bombing in New York City's Times Square in May 2010, highlight the importance of this exception.[6] Those current events, occurring in a time of heightened vigilance against terrorist acts, place a spotlight on this law enforcement tool, which, although 26 years old, may play a vital role in protecting public safety while also permitting statements obtained under this exception to be used as evidence in a criminal prosecution. In brief, and as discussed in this article, police officers confronting situations that create a danger to themselves or others may ask questions designed to neutralize the threat without first providing a warning of rights. This article discusses the origins of the public safety exception and provides guidance for law enforcement officers confronted with an emergency that may require interrogating a suspect held in custody about an imminent threat to public safety without providing *Miranda* warnings.

ORIGIN OF THE RULE

The origin of the public safety exception to *Miranda*, the case of *New York v. Quarles*, began in the early morning hours of September 11, 1980. While on routine patrol in Queens, New York, two New York City police officers were approached by a young woman who told them that she had just been raped. She described the assailant as a black male, approximately 6 feet tall, wearing a leather jacket with "Big Ben" printed in yellow letters on the back. The woman told the officers that the man had just entered a nearby supermarket and that he was carrying a gun.

The officers drove to the supermarket, and one entered the store while the other radioed for assistance. A man matching the description was near a checkout counter, but upon seeing the officer, ran to the back of the store. The officer pursued the subject, but lost sight of him for several seconds as the individual turned a corner at the end of an aisle. Upon finding the subject, the officer ordered him to stop and to put his hands over his head. As backup personnel arrived, the officer frisked the man and discovered he was wearing an empty shoulder holster. After handcuffing him, the officer asked where the gun was. The man gestured toward empty milk cartons and said, "The gun is over there." The officer found and removed a loaded handgun

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from a carton, formally placed the man under arrest, and then read the *Miranda* rights to him. The man waived his rights and answered questions about the ownership of the gun and where it was purchased.[7]

The state of New York charged the man, identified as Benjamin Quarles, for criminal possession of a weapon.[8] The trial court excluded the statement "The gun is over there," as well as the handgun, on the grounds that the officer did not give Quarles the warnings required by *Miranda v. Arizona*.[9] After an appellate court affirmed the decision, the case was appealed to the New York State Court of Appeals.

The New York Court of Appeals upheld the trial court decision by a 4 to 3 vote.[10] According to the New York Court of Appeals, because Quarles responded "to the police interrogation while he was in custody, [and] before he had been given the preinterrogation warnings…," the lower courts properly suppressed the statement and the gun.[11] The court refused to recognize an emergency exception to *Miranda* and noted that even if there were such an exception, there was "no evidence in the record before us that there were exigent circumstances posing a risk to the public safety or that the police interrogation was prompted by such concern."[12]

In dissent, Judge Watchler believed that there was a public safety exception to *Miranda* and that the facts presented such a situation. Judge Watchler noted that "*Miranda* was never intended to enable a criminal defendant to thwart official attempts to protect the general public against an imminent, immediate and grave risk of serious physical harm reasonably perceived."[13] He also believed there was "a very real threat of possible physical harm which could result from a weapon being at large."[14] The state of New York appealed the case to the Supreme Court.

The Supreme Court ruled on these facts that a public safety exception to *Miranda* existed. To understand how the Court reached this conclusion and the implications of this exception on the admissibility of the statement and the handgun, a consideration of a summary of the steps used by the Court is important.

The first step toward this conclusion was a discussion by the Court of the relationship between the *Miranda* requirements and the Fifth Amendment to the U.S. Constitution. The Fifth Amendment provides that "[n]o person…shall be compelled in any criminal case to be a witness against himself."[15] The Fifth Amendment "does not prohibit all incriminating admissions," only those that are "officially coerced self-accusations…."[16] In *Miranda*, the Supreme Court "for the first time extended the Fifth Amendment privilege against compulsory self-incrimination to individuals subjected to

> ***The* Quarles *case provides a framework that police officers can use to assess a particular situation, determine whether the exception is available, and ensure that their questioning remains within the scope of the rule.***

custodial interrogation by the police."[17] Thus, *Miranda* created a presumption that "interrogation in custodial circumstances is inherently coercive" and that statements obtained under those circumstances "are inadmissible unless the subject is specifically informed of his *Miranda* rights and freely decides to forgo those rights."[18] Importantly, the Court noted that *Miranda* warnings were not required by the Constitution, but were prophylactic measures designed to provide protection for the Fifth Amendment privilege against self-incrimination.[19]

After providing this explanation of the relationship between the Fifth Amendment and *Miranda*, the Court explained that Quarles did not claim that his statements were "*actually* compelled by police conduct which overcame his will to resist."[20] Had police officers obtained an involuntary or coerced statement from Quarles in violation of the due process clause of the Fifth Amendment, both the statement and the handgun would have been suppressed. [21] And, in this regard, the Court explained that the failure to administer *Miranda* warnings does not, standing alone, make a confession involuntary in violation of the Constitution.[22]

The Supreme Court then proceeded to determine whether the *Miranda* rule was implicated in this case and agreed with the New York Court of Appeals that it was. The Court agreed with the New York courts that Quarles was in custody. As the Court noted, "Quarles was surrounded by at least four police officers and was handcuffed when the questioning at issue took place."[23] Therefore, on the facts of the case, the Court found that the *Miranda* decision was clearly implicated. The Court then referred to the determination by the New York

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courts that there was nothing in the record indicating that any of the police officers were concerned with their safety when they questioned Quarles. The Supreme Court noted that the New York Court of Appeals did not address the issue of whether there was an exception to *Miranda* in cases that involve a danger to the public "because the lower courts in New York made no factual determination that the police had acted with that motive."[24]

The Supreme Court chose to address whether a public safety exception to *Miranda* should exist. In this regard, the Court held that: "there is a 'public safety' exception to the requirement that *Miranda* warnings be given before a suspect's answers may be admitted into evidence, and the exception does not depend upon the motivation of the individual officers involved."[25] Thus, according to the Court, without regard to the actual motivation of the individual officers, *Miranda* need not be strictly followed in situations "in which police officers ask questions reasonably prompted by a concern for the public safety."[26]

The Court then applied the facts to the situation confronting them when Quarles was arrested. In the course of arresting Quarles, it became apparent that Quarles had removed the handgun and discarded it within the store. While the location of the handgun remained undetermined, it posed a danger to public safety.[27] In this case, the officer needed an answer to the question about the location of the gun to ensure that its

concealment in a public location would not endanger the public. The immediate questioning of Quarles was directed specifically at resolving this emergency. Since the questioning of Quarles was prompted by concern for public safety, the officers were not required to provide *Miranda* warnings to Quarles first. Therefore, the statement made by Quarles about the location of the handgun was admissible.[28] In addition, because the Court found there was no violation of *Miranda*, the handgun also was admissible. The Court declined to address whether the handgun would have been suppressed if the statements were found to be inadmissible.[29]

FRAMEWORK OF THE EXCEPTION

The *Quarles* case provides a framework that police officers can use to assess a particular situation, determine whether the exception is available, and ensure that their questioning remains within the scope of the rule. This framework includes the presence of a public safety concern, limited questioning, and voluntariness.

Public Safety Concern

According to the Supreme Court, the public safety exception is triggered when police officers have an objectively reasonable need to protect the police or the public from immediate danger. Because the standard is objective, the availability of the exception does not depend on subjective motivation of the officers. Legitimate concerns for officer safety or public safety prompting unwarned custodial questioning arise in a variety of contexts. A common factor that can be gleaned from the courts addressing this issue is the prior knowledge or awareness of specific facts or circumstances that give rise to the imminent safety concern that prompted the questioning.

> ***...the public safety exception is triggered when police officers have an objectively reasonable need to protect the police or the public from immediate danger.***

For example, in *U.S. v. Talley,* police officers executing a federal arrest warrant at a residence heard sounds indicating that a number of unexpected people were inside the home.[30] The officers returned to their vehicles to get their bulletproof vests and then returned to the front door. After the defendant and another individual were secured by a police officer just inside the residence, the officer noticed other people inside the house who had not complied with the demand to come outside. The officer entered further into the residence to gain control of the unsecured subjects and tripped over a trash can that contained bullets and a magazine for a semiautomatic pistol. The officer returned to the two subjects and asked, "Where is the gun?" The defendant told the officer that the gun was inside a vacuum cleaner, from where it was retrieved. The defendant sought to suppress the gun, claiming the officer did not provide him his *Miranda* warnings first. The district court suppressed the defendant's statement, finding a violation of *Miranda*. The circuit court reversed and upheld the admissibility of the statement. The court stressed the context of the arrest in finding that the public safety exception was applicable. The court stated that "[o]nce Officer Rush had seen the magazine, he had reason to believe a gun was nearby and was justified, under *Quarles*, in asking his question prior to administering a *Miranda* warning."[31]

In *U.S. v. Jones,* members of a fugitive task force arrested Phillip Jones for a homicide he committed with a handgun on

June 27, 2006.[32] Members of the task force met on August 10, 2006, the day of the arrest, and were briefed about the nature of the homicide, the possibility that Jones may have two weapons, and that he had two previous convictions for gun and drug offenses. After going to search for Jones in a dangerous high-crime area in northeast Washington, D.C., Deputy U.S. Marshal Cyphers made eye contact with Jones, who immediately fled. The marshal pursued and caught Jones in a partially lit stairwell of an apartment building. At some point during the chase, Cyphers heard a gunshot fired. Within 30 seconds of arresting Jones and before providing the *Miranda* warnings, Cyphers asked if Jones had anything on him. Jones replied, "I have a burner in my waistband."[33] Jones sought to suppress his statement. The circuit court had little difficulty in determining that "Cypher's questions fell squarely within the public safety exception."[34] The circuit court stressed the information that Deputy U.S. Marshal Cyphers knew about Jones *before* making the arrest, as well as the circumstances surrounding the chase and arrest, concluding that the question was prompted by a concern for public safety.

In each of the two cases above, information that came to the attention of the law enforcement officers concerning an immediate threat to safety prompted the officers to ask questions directed at neutralizing the danger. In both cases, the reviewing courts agreed with the officers that the information prompted a public safety concern.

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Limited Questioning

The *Quarles* Court made clear that only those questions necessary for the police "to secure their own safety or the safety of the public" were permitted under the public safety exception.[35] In *U.S. v. Khalil*, New York City police officers raided an apartment in Brooklyn after they received information that Khalil and Abu Mezer had bombs in their apartment and were planning to detonate them.[36] During the raid, both men were shot and wounded as one of them grabbed the gun of a police officer and the other crawled toward a black bag believed to contain a bomb. When the officers looked inside the black bag, they saw pipe bombs and observed that a switch on one bomb was flipped.

Officers went to the hospital to question Abu Mezer about the bombs. They asked Abu Mezer "how many bombs there were, how many switches were on each bomb, which wires should be cut to disarm the bombs, and whether there were any timers."[37] Abu Mezer answered each question and also was asked whether he planned to kill himself in the explosion. He responded by saying, "Poof."[38]

Abu Mezer sought to suppress each of his statements, but the trial court permitted them, ruling that they fell within the public safety exception. On appeal, Abu Mezer only challenged the admissibility of the last question, whether he intended to kill himself when detonating the bombs. He claimed the question was unrelated to public safety. The circuit court disagreed and noted "Abu Mezer's vision as to whether or not he would survive his attempt to detonate the bomb had the potential for shedding light on the bomb's stability."[39]

A common theme throughout cases such as this is the importance of limiting the interrogation of a subject to questions directed at eliminating the emergency. Following *Quarles*, at least two federal circuit courts of appeals have addressed the issue of the effect of an invocation of a right on the exception. In *U.S. v. DeSantis,* the Ninth Circuit Court of Appeals held that the public safety exception applies even after the invocation of counsel.[40] According to the court: "The same consideration that allows the police to dispense with providing *Miranda* warnings in a public safety situation also would permit them to dispense with the prophylactic safeguard that forbids initiating further questioning of an accused who requests counsel."[41]

In *U.S. v. Mobley*, the Fourth Circuit Court of Appeals also ruled that the public safety exception applied even when the subject had invoked his right to counsel.[42] The court recognized that a threat to public safety still may exist even after *Miranda* rights are provided and invoked.

> ***Once the questions turn from those designed to resolve the concern for safety to questions designed solely to elicit incriminating statements, the questioning falls...within the traditional rules of* Miranda.**

Voluntariness

Voluntariness is the linchpin of the admissibility of any statement obtained as a result of government conduct.[43] Thus, statements obtained by the government under the public safety exception cannot be coerced or obtained through tactics that violate fundamental notions of due process.[44] Here, it is worth mentioning that prior to the *Miranda* decision, the only test used to determine the admissibility of statements in federal court was whether the statement was voluntarily made within the requirements of the due process clause.[45] This test requires that a court review the "totality of the circumstances" to determine whether the subject's will was overborne by police conduct. If a court finds that the questioning of a subject, even in the presence of a situation involving public safety, violated due process standards, the statement will be suppressed.[46]

In the *Khalil* case, Abu Mezer also argued that the statements he made to police officers while he was in the hospital should be suppressed because they were not voluntary. Testimony from the interviewing agent indicated that although Abu Mezer was in pain, "he was alert, seemed to understand the questions, and gave responsive answers."[47] Testimony from the surgeon indicated that Abu Mezer "was alert and had no

difficulty understanding her explanation of the surgical procedure he would undergo."[48] The district court found that under the totality of the circumstances, Abu Mezer's statements were voluntary, and the court of appeals upheld this determination.

Police officers must be vigilant to ensure that the questioning and other actions of the police, even if prompted by an emergency situation involving public safety, permits subjects to exercise their free will when deciding to answer questions. This exception does not permit police officers to compel a statement from a subject. It simply permits them to question a subject before providing any *Miranda* warnings to resolve an imminent public safety concern.

CONCLUSION

The "public safety" exception to *Miranda* is a powerful tool with a modern application for law enforcement. When police officers are confronted by a concern for public safety, *Miranda* warnings need not be provided prior to asking questions directed at neutralizing an imminent threat, and voluntary statements made in response to such narrowly tailored questions can be admitted at trial. Once the questions turn from those designed to resolve the concern for safety to questions designed solely to elicit incriminating statements, the questioning falls outside the scope of the exception and within the traditional rules of *Miranda*.✦

Endnotes

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[2] *Dickerson v. U.S.*, 530 U.S. 428, (2000).

[3] *Berghuis v. Thompkins*, 560 U.S.___ (2010) and *Maryland v. Shatzer*, 559 U.S.__(2010). See also Jonathan L. Rudd, "The Supreme Court Revisits the Miranda Right to Silence," *FBI Law Enforcement Bulletin*, September 2010, 25-31; and Kenneth A. Myers, "Fifth Amendment Protection and Break in Custody," *FBI Law Enforcement Bulletin*, May 2010, 26-32.

[4] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[5] *Miranda v. Arizona*, 389 U.S. 436; *Michigan v. Tucker*, 417 U.S. 433 (1974); *United States v. Patane*, 542 U.S. 630 (2004); *Oregon v. Hass*, 420 U.S. 714 (1975).

[6] Holder, Eric, Letter to Senator Mitch McConnell, United States Department Of Justice. 3 Feb. 2010. Web. 8 December 2010.

[7] *New York v. Quarles*, 467 U.S. 649, 651-652 (1984).

[8] There is no indication as to why the state did not pursue the original charge of rape.

[9] *Quarles* at 652.

[10] *People v. Quarles*, 58 N.Y.2d 664 (1982).

[11] *Id.* at 666.

[12] *Id.*

[13] *Id.* at 671.

[14] *Id.*

[15] U.S. Const. Amend. V.

[16] *New York v. Quarles*, 467 U.S. 649, 654 (1984). See also *Miranda v. Arizona*, 384 U.S. 436, 460-461, 467 (1966).

[17] *Id.*

[18] *Id.*

[19] *Id.* Citing *Michigan v. Tucker*, 417 U.S. 433 (1974).

[20] *Id.* (emphasis added).

[21] Add cite regarding remedy for 5th Amendment violation.

[22] *Id.* at 655 fn. 5.

[23] *Id.*

[24] *Id. People v. Quarles*, 58 N.Y.2d 664, 666 (1982).

[25] *Id.* at 655, 656.

[26] *Id.* at 656.

[27] *Id.* at 657.

[28] *Id.* at 660.

[29] *Id.* See *U.S. v. Patane.*

[30] 275 F.3d 560 (6th Circ. 2001).

[31] *Id.* at 564.

[32] 567 F.3d 712 (D.C. Cir. 2009).

[33] *Id.* at 713-714.

[34] *Id.* at 715.

[35] *New York v. Quarles*, 467 U.S. 649, 659 (1984).

[36] 214 F.3d 111 (2d Cir. 2000).

[37] *Id.* at 115.

[38] *Id.*

[39] *Id.* at 121.

[40] 870 F.2d 536 (9th Cir. 1989).

[41] *Id.* at 541.

[42] 40 F.3d 688 (4th Cir. 1994).

[43] *Colorado v. Connelly*, 479 U.S. 157 (1986).

[44] *New York v. Quarles*, 467 U.S. at 655. The *Quarles* Court made clear that Quarles did not make any claim that the police compelled his statements. The Court also noted that Quarles was free to argue "that his statement was coerced under traditional due process standards." *Id.* at 655 fn. 5.

[45] See *New York v. Quarles*, 467 U.S. 649, 661 (1984) (Justice O'Connor concurring in the judgment and dissenting in part).

[46] See *U.S. v. Patane*, (2004) (Plurality opinion); *Chavez v. Martinez*, 538 U.S. 760 (2003) (Plurality opinion).

[47] 214 F.3d 111, 121 (2d Cir. 2000).

[48] *Id.*

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.