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The “Public Safety Exception” to *Miranda*

By **Tara G. Harper**
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Ralph Opines

I would like to welcome Ms. Tara Harper to the SR&S law firm. Howdy! You are gonna LOVE it here, I betcha! I know you can hold your own with the resident heavyweight brains of the firm: Kevin, Greg and Reece. I believe, however, I can take you in an arm wrestle. We shall see.

I always thought we were the best tactical attorneys for law enforcement in the state and nation. If we weren't, with Tara, now we are. And you may tell everybody I SAID SO.

To business: Tara and I discussed Quarles a number of times and we thought that even though it was decided in 1984, we wanted to be certain everybody knew about the “public safety exception” to the *Miranda* requirement. Read this Roll Call Bulletin and you will know all about it.

Facts

[Much of what Ralph and I have written here are direct quotes of the facts and law as reported by the US Supreme Court.]

In Quarles' case, the record showed that a woman approached two police officers who were on road patrol, told them that she had just been raped, described her assailant, and told them that the man had just entered a nearby supermarket and was carrying a gun.

While one of the officers radioed for assistance, the other officer entered the store and spotted Quarles, who matched the description given by the woman. Quarles ran toward the rear of the store, and the officer pursued him with a drawn gun, but lost sight of him for several seconds.

Upon regaining sight of Quarles, the officer ordered him to stop and put his hands over his head; frisked him and discovered that he was wearing an empty shoulder holster. After handcuffing him, the officer asked Quarles where the gun was. He nodded toward some empty cartons and responded "the gun is over there." The officer

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JANUARY 4, 2006

VOLUME V NUMBER 1

then retrieved the gun from one of the cartons, formally arrested Quarles, and read him his rights under *Miranda*. Quarles indicated that he would answer questions without an attorney being present and admitted that he owned the gun and had purchased it in Florida.

The Supreme Court held that “this case presents a situation where concern for public safety must be paramount to adherence to the literal language of the prophylactic rules enunciated in *Miranda*.” In other words, where your safety or that of the public is threatened, you may ask an in-custody under arrest suspect where his weapon is even though you have not warned him of his *Miranda* rights.

Although Quarles was in police custody when he made his statements and the facts come within the ambit of *Miranda* nevertheless, on these facts, there is a "public safety" exception to the requirement that *Miranda* warnings be given before a suspect's answers may be admitted into evidence!

Miranda does not require that you apply it to a situation in which you have an objectively reasonable concern for your safety or the safety of the public.

The Supreme Court also found the officer's actions AFTER finding the gun to be appropriate. Remember, the officer asked WHERE the gun was and only after *Miranda* rights were given and waived, asked questions showing possession or knowledge of the gun. So, keep in mind that this public safety exception only applies to questions regarding the LOCATION of the weapon.

Officers frequently ask if this public safety exception has been extended to items other than weapons (such as drugs). We know of no case law that has taken the public safety exception that far. Officers should adhere to the reasonable belief that the person is armed or has knowledge of the location of a weapon that could be used to harm the officer or the public.

What First-Line Supervisors Should Know

The Supreme Court said that this exception will not be difficult for law enforcement officers to apply, because, in each case, “it will be circumscribed by the exigency which justifies it.” That is, officers “can and will distinguish almost instinctively between questions necessary to secure their own safety or the safety of the public and questions designed solely to elicit testimonial evidence from a suspect.” Don't you just love it? You should use this exception sparingly but always where you can articulate a reasonable fear the arrestee is armed with a weapon and could hurt you or a member of the public.

Summation

1. There is a public safety exception to the *Miranda* requirement.
2. It is accepted law in North Carolina.
3. If you arrest a person, or place him in custody that is equal to an arrest, and have an objective and reasonable need to ask him if he is armed, or where a suspected weapon might be found, you may do so before warning him of *Miranda* and getting a waiver.
4. For further study see Bob Farb's *Arrest Search and Investigation in North Carolina*, School of Government, University of North Carolina [How 'bout dem Heels!], Third Edition, 2003, page 200.

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