

THE CURRENT SCOPE OF THE PUBLIC SAFETY EXCEPTION TO *MIRANDA* UNDER *NEW YORK V. QUARLES*

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In *New York v. Quarles*¹ the United States Supreme Court announced an exception to the rule established in *Miranda v. Arizona*.² *Miranda* bars the use of any statement in the prosecution's case in chief obtained during custodial interrogation unless the suspect has first been advised of his or her constitutional right against self-incrimination³ and has voluntarily waived that right.⁴

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¹ 467 U.S. 649 (1984).

² 384 U.S. 436 (1966).

³ U.S. CONST. amend. V.

⁴ *Miranda*, 384 U.S. at 444-45. Prior to interrogation, a person in custody must be clearly informed that: (1) he has the right to remain silent; (2) anything he says can be used against him in court; (3) he has the right to the presence of an attorney at the questioning; and (4) if he cannot afford an attorney, one will be provided for him by the court. *Id.* at 444. There must be a voluntary, knowing, and intelligent waiver of these rights for the interrogation to continue. *Id.* at 479. If these criteria are not met, any statements made by the defendant are inadmissible at trial in the prosecution's case in chief. *Id.*

When a person is not in custody, the police may question him/her as part of their investigation and may introduce elicited answers into evidence if that person is subsequently charged with a crime. *See Minnesota v. Murphy*, 465 U.S. 420, 433 (1984). Questioning of a suspect in custody, however, must conform to the guidelines set forth in *Miranda* outlined above.

A suspect is considered to be in custody when "a 'formal arrest or restraint or freedom of movement' of the degree associated with a formal arrest" has taken place. *Quarles*, 467 U.S. at 655 (citation omitted). Express questioning or its functional equivalent constitutes an interrogation. *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). A "custodial interrogation [therefore is] questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444 (citations omitted). The test is whether the police should have known that their statements to the suspect or from the suspect "were reasonably likely to elicit an incriminating response." *Innis*, 446 U.S. at 301 (citation omitted).

The *Innis* court determined that an arrestee's response to a conversation he overheard between two police officers regarding the dangers of a gun previously held by the suspect toward handicapped children did not constitute an interrogation. *Id.* at 302. *Miranda* requirements therefore did not apply, and the arrestee's statement about the gun's location was admissible as evidence. *Id.* at 302-03. By contrast, in *Quarles*, the police directly questioned the defendant regarding the location of a gun. *Quarles*, 467 U.S. at 652. Under *Innis*, this would constitute express questioning. *Innis*, 446 U.S. at 300-01.

Quarles established a public safety exception to *Miranda* (the "exception") which allows the admission of otherwise barred statements where police questioning is "necessary to secure their own safety or the safety of the public"⁵ This article will discuss the application of the exception in the thirteen years since the Supreme Court decided *Quarles*. It will point out the limited degree to which courts have extended the exception beyond the bounds set forth by the Supreme Court. This article will also discuss a related exception for questioning in emergency situations involving hostages and other persons at risk.

I. BACKGROUND

Familiarity with the facts of *Quarles* are essential to understanding the scope of the exception. Shortly after midnight, a young woman approached a police patrol car and informed the officers that a man armed with a gun had just raped her.⁶ She further informed the police that the suspect had entered a nearby supermarket.⁷ The police entered the supermarket, spotted a man who matched the woman's description, and apprehended him after a brief pursuit.⁸ The police handcuffed and frisked the suspect, Benjamin Quarles, who wore an empty holster but did not possess a gun.⁹ One of the officers inquired as to the location of the gun, and Quarles told him where to find it, saying "the gun is over there."¹⁰ The police recovered the loaded gun where *Quarles* indicated it would be.¹¹ Quarles was subsequently charged with crimi-

The use of collateral statements made in violation of *Miranda* has been held to be permissible at trial. *Harris v. New York*, 401 U.S. 222, 224 (1971). Specifically, statements obtained in violation of *Miranda* may be used for impeachment purposes (i.e., such statements may not be used substantively in the prosecution's case in chief, but may be used by the prosecution to impeach statements made by the defendant during direct examination). *Id.* at 224. In addition, the prosecution may use otherwise inadmissible statements to impeach statements made in response to proper cross examination. *United States v. Havens*, 446 U.S. 620, 627-28 (1980).

Statements in violation of the *Miranda* rule may also be used in grand jury proceedings, *United States v. Calandra*, 414 U.S. 338 (1974); in sentencing proceedings, *United States v. Schipani*, 315 F. Supp. 253 (E.D.N.Y. 1970), *aff'd*, 435 F.2d 26 (2d Cir. 1970), *cert. denied*, 401 U.S. 983 (1971); parole revocation hearings, *United States ex rel. Sperling v. Fitzpatrick*, 426 F.2d 1161 (2d Cir. 1970); and warrant applications, *United States v. Patterson*, 812 F.2d 1188 (9th Cir. 1987).

⁵ *Quarles*, 467 U.S. at 659.

⁶ *Id.* at 651-52.

⁷ *Id.*

⁸ *Id.* at 652.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

nal possession of a weapon.¹² The defendant sought to have his statement indicating the location of the gun, and the gun itself, suppressed.¹³ The motion to suppress was granted by the trial court and upheld by the appellate courts of New York.¹⁴

The Fifth Amendment to the United States Constitution prohibits the use of any statement obtained by compulsion against a defendant in a criminal case.¹⁵ *Miranda* warnings serve to dispel a suspect's inherent compulsion to respond to police questioning while in custody. *Miranda* warnings must be given before a suspect answers questions during a custodial interrogation in order to admit his/her response into evidence at trial.¹⁶ Under *Miranda*, Quarles' statement and the recovered gun were properly suppressed because the statement was obtained during a custodial interrogation conducted in violation of *Miranda* requirements.¹⁷

The United States Supreme Court, however, granted New York State's petition for certiorari in *Quarles* and overturned the Court of Appeals' decision.¹⁸ The statement and gun were deemed admissible under the public safety exception.¹⁹ The Court indicated that the exception to *Miranda* would apply to police questions objectively necessary to protect either the police or the public from immediate danger.²⁰ After the police obtain the information

¹² *Id.*

¹³ *Id.* at 649, 656.

¹⁴ *People v. Quarles*, 447 N.Y.S.2d 84 (N.Y. App. Div. 2d Dep't 1981), *aff'd*, 444 N.E.2d 984 (N.Y. 1982), *rev'd*, 467 U.S. 649 (1984).

¹⁵ U.S. CONST. amend. V.

¹⁶ *Quarles*, 467 U.S. at 655.

¹⁷ *Id.* Justice O'Connor, in her concurring opinion in *Quarles*, agreed with the majority in admitting the gun. She argued, however, that the defendant's statement as to where the gun was located should have been suppressed because "[t]he harm caused by failure to administer *Miranda* warnings relates only to admission of testimonial self-incriminations, and the suppression of such incriminations should by itself produce the optimal enforcement of the *Miranda* rule." *Id.* at 669 (O'Connor, J., concurring). Furthermore, when an interrogation provides leads to other evidence it "does not offend the values underlying the Fifth Amendment privilege any more than the compulsory taking of blood samples, fingerprints, or voice exemplars, all of which may be compelled in an 'attempt to discover evidence that might be used to prosecute [a defendant] for a criminal offense.'" *Id.* at 671 (quoting *Schmerber v. California*, 384 U.S. 757, 761 (1966)).

The United States Supreme Court has not ruled on the question of whether physical evidence obtained as a result of a statement taken in violation of *Miranda* should be admitted into evidence, although the issue has been presented to the Court. See *United States v. Patterson*, 812 F.2d 1188 (9th Cir. 1987), *cert. denied*, 485 U.S. 922 (1988) (holding that unwarned voluntary statements made after coerced statements were properly used in an affidavit for a search warrant).

¹⁸ *Quarles*, 467 U.S. at 660.

¹⁹ *Id.* at 657.

²⁰ The Court explained that *Miranda* would not penalize officers for "asking the

needed to neutralize the threat to public safety, they must then give the suspect *Miranda* warnings before engaging in further questioning.²¹ The *Quarles* majority indicated that the exception is to be applied in emergency situations only.²² Whether the exception is applicable depends upon a court's objective assessment of the facts facing the police officer at the moment of questioning. The analysis does not turn upon the officer's subjective motivation.²³

In dissent, Justice Marshall, joined by Justices Brennan and Stevens, found the majority's departure from *Miranda* "troubling" for several reasons.²⁴ First, Justice Marshall stated, "the majority proposes to protect the public's safety without jeopardizing the prosecution of criminal defendants. I find in this reasoning an unwise and unprincipled departure from our Fifth Amendment precedents."²⁵ He asserted that police, as a result of *Quarles*, could

very questions which are the most crucial to their efforts to protect themselves and the public." *Id.* at 658 n.7. The *Quarles* Court distinguished the facts before it from those in *Orozco v. Texas*, 394 U.S. 324, 324-25 (1969). *Quarles*, 467 U.S. at 659 n.8. In *Orozco*, the Court suppressed statements made by a suspect concerning a gun used in a murder four hours earlier. *Orozco*, 394 U.S. at 324-25. Police surrounded the suspect and questioned him at length in his boardinghouse room in the middle of the night. *Id.* at 325.

According to Justice Rehnquist, *Orozco* and *Quarles* were consistently decided because:

In *Orozco* . . . the questions about the gun were clearly investigatory; they did not in any way relate to an objectively reasonable need to protect the police or the public from any immediate danger associated with the weapon. In short there was no exigency requiring immediate action by the officers beyond the normal need expeditiously to solve a serious crime.

Quarles, 467 U.S. at 659 n.8.

²¹ *Berkemer v. McCarty*, 468 U.S. 420, 429 n.10 (1984) (citing *Quarles*, 467 U.S. at 649). The *Quarles* Court referred to *Miranda* warnings as prophylactic and "not themselves rights protected by the Constitution but [are] instead measures to insure that the right against compulsory self-incrimination [is] protected." *Quarles*, 467 U.S. at 654 (quoting *Michigan v. Tucker*, 417 U.S. 433, 444 (1974)). Holding that *Miranda* warnings were not constitutionally mandated, the *Quarles* Court found "that the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination." *Quarles*, 467 U.S. at 657.

²² *Quarles*, 467 U.S. at 456. "In a kaleidoscopic situation such as the one confronting these officers, where spontaneity . . . is necessarily the order of the day . . . we do not believe that . . . *Miranda* [should] . . . be applied in all its rigor. . . ." *Id.* at 656.

²³ *Id.* at 655-56. *But see* Marc Schuyler Reiner, Note, *The Public Safety Exception to Miranda: Analyzing Subjective Motivation*, 93 MICH. L. REV. 2377 (1995) (arguing that the *Quarles* test requires analysis of the officer's subjective motivation). Justice Marshall referred to the New York Court of Appeals finding that the officers who arrested *Quarles* were not concerned about any threat to either their own safety or to the safety of the public. *Id.* at 675-76 (Marshall, J., dissenting).

²⁴ *Id.* at 677 (Marshall, J., dissenting).

²⁵ *Id.* at 678.

no longer apply *Miranda* with clarity.²⁶ Moreover, he found that the decision "invites the government to prosecute through the use of what necessarily are coerced statements."²⁷

Second, the dissent indicated that *Miranda*, in interpreting the United States Constitution's Fifth Amendment Self-Incrimination Clause,²⁸ established a constitutional presumption that statements made during custodial interrogations are compelled.²⁹ As such, they violate the Fifth Amendment and are inadmissible in criminal prosecution.³⁰ Under *Miranda*, the prosecution may rebut this presumption after demonstrating that the police informed the suspect of his *Miranda* rights and the suspect "knowingly and intelligently" waived them.³¹ According to Justice Marshall, the *Quarles* majority never addressed this presumption, and it failed to establish that public safety interrogations are less likely to be coerced than other interrogation.³²

Third, the dissent asserted that the *Quarles* holding would allow law enforcement officers to deliberately withhold *Miranda* warnings in an effort to obtain information from suspects who, if so advised, would otherwise refuse to respond to interrogation.³³ The dissent argued that law enforcement officers were not required to choose between public safety and admissibility. "The prosecution does not always lose the use of incriminating information revealed in these situations. After consulting with counsel, a suspect may well volunteer to repeat his statement in hopes of gaining a favorable plea bargain or more lenient sentence."³⁴ In the dissent's view, a calculation of the costs of the public should not override the Fifth Amendment's absolute protection against self-incrimination. "Indeed, were constitutional adjudication always conducted in such an ad hoc manner, the Bill of Rights would be a most unreliable protector of individual liberties."³⁵

Essentially, *Quarles* holds that answers to questions posed while under custodial interrogation may be admitted into evidence when made without the benefit of *Miranda* warnings where there is a threat to the safety of a crime victim, the public, or the police.

²⁶ *Id.* at 679.

²⁷ *Id.* at 681.

²⁸ U.S. CONST. amend. V.

²⁹ *Quarles*, 467 U.S. at 683 (Marshall, J., dissenting).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 684.

³³ *Id.* at 685.

³⁴ *Id.* at 687.

³⁵ *Id.* at 688.

Such a threat may arise when a weapon is inexplicably absent and police have substantial reason to believe it is in a place where it may be used by an innocent third party, or more importantly, where it may be used by a confederate of the suspect.³⁶ If the exception is applicable, police may inquire as to the location of weapons even after they arrest and handcuff the suspect.³⁷

Numerous questions were left unanswered by *Quarles*: should the exception apply to weapons other than guns? Should it apply to dangerous substances other than weapons? Should it apply if a substantial gap in time exists between the use or disposition of the weapon and the questioning? Should it apply to protect potential victims of crime or hostages involved in ongoing crimes? How great must the danger be to trigger applications of the exception? Must the weapon be in a public place or may the exception be applied in private homes? Have the concerns of the *Quarles* dissent become reality?

II. THE UNANSWERED *QUARLES* QUESTIONS

A. *Can Police Routinely Ask a Suspect if He or She Is Armed With a Gun?*

In *Quarles*, the police arrested a suspect alleged to have been armed while committing a rape.³⁸ When arrested, Quarles wore an empty holster but had no gun.³⁹ It was reasonable for the police to believe that he had disposed of the weapon in the brief time between the rape and his apprehension. It was also reasonable for police to inquire as to the location of the gun. Other jurisdictions have denied motions to suppress statements based on equally compelling facts (e.g., a likelihood that a person was armed or a weapon was nearby).⁴⁰

³⁶ The *Quarles* Court indicated that "[s]o long as the gun was concealed somewhere in the supermarket, with its actual whereabouts unknown, it obviously posed more than one danger to the public safety: an accomplice might make use of it, a customer or employee might later come upon it." *Id.* at 657.

³⁷ *People v. Sims*, 853 P.2d 992, 1000 (Cal. 1993), *cert. denied*, 114 S. Ct. 2782 (1994); *State v. Duncan*, 866 S.W.2d 510 (Mo. Ct. App. 1993); *State v. Dempsey*, 514 N.W.2d 56 (Wis. Ct. App. 1993) (unpublished opinion). Of course, other factual circumstances not mentioned here may also produce the required danger to safety which permits questioning without the benefit of *Miranda* warnings.

³⁸ *Quarles*, 467 U.S. at 651-52.

³⁹ *Id.* at 652.

⁴⁰ *See, e.g.*, *United States v. Watkins*, 12 F.3d 1110 (9th Cir. 1993) (unpublished opinion) (responding to a report of gunfire in a mobile home park and finding a mobile home with windows shot out and wounded man inside, police were justified in asking the suspect about the presence of a gun); *United States v. Kelly*, 991 F.2d 1308

Some courts, however, have expanded the reach of *Quarles*. For example, courts have admitted into evidence responses to police questions regarding the location of a weapon where no facts indicated that the suspect was armed.⁴¹ In *United States v. Ronayne*,⁴² the police arrested and handcuffed Ronayne after he made a cocaine sale.⁴³ Upon police inquiry, he directed them to his gun located in the pocket of his jacket which had come off during a struggle with the police.⁴⁴ The police clearly had the right to search Ronayne pursuant to a lawful arrest, including his jacket. In *Ronayne* the court failed to articulate the precise circumstances where the public's safety was compromised, but then permitted the pre-*Miranda* questioning. Was it objectively reasonable for the court to assume that all alleged drug dealers may be armed? The court in *United States v. Edwards*⁴⁵ suggests that it was.

In *Edwards*, the Seventh Circuit held that the exception allowed police to ask a suspect arrested for selling drugs if he was armed.⁴⁶ The court reasoned that drug dealers pose a danger to arresting officers because they "are known to arm themselves, particularly when making a sale"⁴⁷

(7th Cir. 1993) (person stopped for speeding had ammunition in his pocket); *United States v. Lawrence*, 952 F.2d 1034 (8th Cir.), *cert. denied*, 503 U.S. 1011 (1992) (gun thrown away while suspect was being pursued); *United States v. Knox*, 950 F.2d 516 (8th Cir. 1991) (suspect's jacket contained a loaded magazine for a .38 caliber pistol); *People v. Melvin*, 591 N.Y.S.2d 454 (App. Div. 2d Dep't 1992) (numerous people were present at scene of shooting where man admitted to shooting the deceased and police asked the location of the gun).

In *United States v. Johnson*, No. 90-50676, 1993 WL 114861 (9th Cir. Apr. 14, 1993) (unpublished opinion), *cert. denied*, 510 U.S. 882 (1993), police questions about weapons were held to fall within the exception. Although the police had no indication that Johnson was armed or had recently been armed, the court found *Quarles* applicable on the grounds that Johnson was in a high crime area, at a late hour, near an open liquor store, and appeared as if he was about to be involved in a robbery. *Id.* at *1-*2. See *Stauffer v. Zavaris*, 37 F.3d 1495 (10th Cir. 1994) (unpublished opinion) (holding that pre-*Miranda* questions regarding weapons were deemed proper under *Quarles* where suspect fled from a car containing two holsters and one handgun on the front seat); *State v. Lopez*, 652 A.2d 696, 698 (N.H. 1994) (the exception applied where suspect in two shootings, which occurred within a short time of arrest, was wearing an empty shoulder holster when arrested).

⁴¹ See *United States v. Ronayne*, No. 94-1374-78, 1995 WL 258137 (6th Cir. May 2, 1995), *aff'd*, 53 F.3d 332 (6th Cir. 1970) (unpublished opinion), *cert. denied*, 115 S. Ct. 2631 (1995); *United States v. Edwards*, 885 F.2d 377 (7th Cir. 1989); *United States v. DeSantis*, 870 F.2d 536 (9th Cir. 1989).

⁴² *Ronayne*, No. 94-1373-78.

⁴³ *Id.* at *1-*2.

⁴⁴ *Id.*

⁴⁵ 885 F.2d 377 (7th Cir. 1989).

⁴⁶ *Id.* at 384.

⁴⁷ *Id.* See *State v. Harris*, 384 S.E.2d 50, 54 (N.C. Ct. App. 1989), *aff'd*, 391 S.E.2d

*United States v. Brutzman*⁴⁸ provides the clearest example of the exception's expansion. In *Brutzman*, ten police officers executed a search warrant of the home and office of Warren Brutzman, a convicted felon, who was suspected of mail and wire fraud arising from a telemarketing business.⁴⁹ One of the ten officers asked Brutzman if there was a weapon on the premises.⁵⁰ Brutzman disclosed that there was a shotgun in the closet.⁵¹

In essence, because Brutzman was a convicted felon, the statement and shotgun were admitted at trial and the questioning at the scene was proper. Despite the overwhelming presence of police at the scene, the fact that the police had no reason to believe Brutzman was armed and that the purpose of the search was to locate evidence of mail and wire fraud, not weapons, the appellate court found the question permissible under *Quarles*.⁵² The statement made in response to pre-*Mirandized* questioning was instrumental in convicting Brutzman of felonious possession of a firearm.⁵³ Similarly, in *United States v. DeSantis*,⁵⁴ the Ninth Circuit explicitly stated that "[t]he fact that [police] had no reason to believe that [the suspect] was armed and dangerous . . . is of no consequence."⁵⁵

Initially, *Quarles* was limited to situations where particular facts led officers to believe that a threat to public safety existed. *Ronayne*, *Brutzman*, and *DeSantis* encourage police to routinely ask suspects whether they are armed. Such routine questioning represents a clear expansion of the exception. These decisions, in effect, have labeled virtually any situation a threat to public safety.

187 (N.C. 1990) (court, under *Quarles*, permitted question about existence and location of weapons because officer testified that, in his experience, people are armed in at least 85% of drug transactions).

⁴⁸ No. 93-50839, 1994 WL 721798 (9th Cir. Dec. 28, 1994) (unpublished opinion), cert. denied, 514 U.S. 1077 (1995).

⁴⁹ *Id.* at *1.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ 870 F.2d 536 (9th Cir. 1989).

⁵⁵ *Id.* at 539. Similarly, in *Fleming v. Collins*, 954 F.2d 1109 (5th Cir. 1992), the police responded to a bank's silent alarm. *Id.* at 1110. Prior to confirming that a robbery had taken place, the police observed two men in a field, one holding a pistol, and the other bent over on the ground holding his wounded arm. *Id.* at 1110-11. The police did not know how the wounded man had been shot, whether he was a crime victim or suspect, or about the nearby bank robbery at which a robber was shot and had escaped. *Id.* at 1111, 1114. Yet the court concluded it was proper to ask the wounded man about the location of his gun. *Id.* at 1114.

Thus, it is always reasonable for police to inquire as to the location of weapons.

B. Does the Exception Apply to Questions Concerning Other Weapons, Drugs, Needles, and Other Suspects?

Courts have extended the exception to allow questioning about weapons other than guns, drugs, and hypodermic needles. For example, although *Quarles* involved an officer's inquiry as to the location of a gun, the courts have found pre-*Miranda* questions appropriate that seek to procure the location of a knife.⁵⁶

In *United States v. Carrillo*,⁵⁷ the police asked a suspected drug seller, before conducting an inventory search, whether "he had any drugs or needles on his person."⁵⁸ The trial court found his response, "[n]o, I don't use drugs, I sell them," admissible.⁵⁹ The appellate court affirmed, finding an objectively reasonable need to protect officers from needle pricks or skin irritations resulting from drug contact.⁶⁰ Thus *Carrillo* justifies a routine pre-search, pre-*Miranda*, inquiry as to possession of drugs or drug paraphernalia. Such questioning is appropriate regardless of the existence of facts suggesting that the suspect used drugs or was carrying them. This ruling should be narrowed to apply only to instances involving arrested drug sellers or to instances where police reasonably fear that the suspect has drugs or needles on his person.

However, in *United States v. Cox*,⁶¹ the Fourth Circuit applied an even broader rule, permitting questions as to drug use. The court in *Cox* stated that the exception permitted police to ask a suspect if he was a heroin user after a search uncovered drug resi-

⁵⁶ *People v. Cole*, 211 Cal. Rptr. 3d 242 (Cal. Ct. App. 1985) (*Quarles* applicable where, following report that a man attempted a kidnapping by holding a knife to a victim's throat, police chased and caught the suspect and immediately asked him the location of his knife); *Ohio v. Jergens*, No. 13294, 1993 WL 333649 (Ohio Ct. App. Sept. 3, 1993) (the exception applies where, the day after his wife's death, a suspect in the stalking murder was asked, upon arrest, about the location of the knife used in the murder); see also *State v. Deases*, 518 N.W.2d 784 (Iowa 1994) (the court found *Quarles* inapplicable to police questioning of stabbing suspect as to where he obtained the knife used because officers were already in possession of the knife, not because the weapon was something other than a gun).

⁵⁷ 16 F.3d 1046 (9th Cir. 1994).

⁵⁸ *Id.* at 1049.

⁵⁹ *Id.* In fact, the officer in *Carrillo* testified that it was his policy to ask such a question before conducting any search, regardless of the existence of any facts suggesting that the suspect used or was carrying drugs. *Id.*

⁶⁰ *Id.*

⁶¹ No. 90-5853, 1992 WL 29136 (4th Cir. Feb. 20, 1992) (unpublished opinion), cert. denied, 504 U.S. 928 (1992).

due and paraphernalia in the suspect's car.⁶² The *Cox* court found the inquiry reasonable because drug users often act irrationally, and, therefore, pose a threat to police officers' safety.⁶³

Questioning to secure public safety may also refer to matters other than weapons or drugs. For example, in *State v. Leone*,⁶⁴ the court permitted questions as to the location of a wounded police officer,⁶⁵ and the person whom Leone claimed had shot the officer.⁶⁶ Leone's statements were deemed voluntary since police did not draw their guns and did not apply physical force.⁶⁷ The trial court found that Leone exercised his rational intellect and free will in making these statements.⁶⁸ The court further noted that Leone made unsolicited statements that someone else had shot a police officer, and that he stated to one officer "go ahead and pull the trigger if you're man enough."⁶⁹

In sum, *Quarles* has been extended to pre-*Miranda* questions involving drugs,⁷⁰ drug paraphernalia,⁷¹ drug use,⁷² and the location of a wounded officer and the shooter of that officer.⁷³

C. Does *Quarles* Apply Only to Public Places?

Although the exception applies to threats to safety in a public place,⁷⁴ the *Quarles* rationale logically allows questioning any time

⁶² *Id.* at *4.

⁶³ *Id.* at *9.

⁶⁴ 581 A.2d 394 (Me. 1990).

⁶⁵ *Id.* at 396. The trial court suppressed these answers as being involuntary products of police coercion, in violation of the Fifth Amendment because the arresting officers obtained these statements after pounding Leone's head on the ground several times, aiming a gun at his head, and threatening to kill him. *Id.*

⁶⁶ *Id.* at 397. The court reasoned that the circumstances of an armed man threatening police, an officer's telephone message that he had been shot, and the inability of the officers to find their wounded fellow officer in dense woods made it "reasonable . . . to ask Leone if he was alone and about the gun. . . . After Leone's later statement that another person had shot Officer Payne, it was also reasonable for the officers to inquire about the identity of that other person." *Id.* See, e.g., *Hill v. State*, 598 A.2d 784, 785 (Md. Ct. Spec. App. 1991) (police chased three suspected armed robbers into a museum complex and caught two of them; it was held proper to ask one of the arrested men where the third armed man was).

⁶⁷ *Leone*, 581 A.2d at 397.

⁶⁸ *Id.*

⁶⁹ *Id.* at 396.

⁷⁰ *United States v. Carillo*, 16 F.3d 1046, 1049 (9th Cir. 1994).

⁷¹ *Id.*

⁷² *United States v. Cox*, No. 90-5853, 1992 WL (4th Cir. Feb. 20, 1992), cert. denied, 503 U.S. 928 (1992) at *1.

⁷³ *Leone*, 581 A.2d at 394.

⁷⁴ The Court in a later case indicated that "[i]n *New York v. Quarles*, 467 U.S. 649 (1984), we recognized a public safety exception to the usual Fifth Amendment rights

the requisite safety concern is present regardless of whether the location is public or private. For example, in *United States v. Simpson*,⁷⁵ a suspect was alleged to have held a weapon to his stepchild's head.⁷⁶ The Seventh Circuit in *Simpson* relied on *Quarles* to allow officers to inquire as to the location of the weapon after the suspect had been arrested in his apartment.⁷⁷ Conversely, in *United States v. Mobley*,⁷⁸ the court held the exception inapplicable where the police asked a suspect, arrested in his home on drug charges, whether there were any dangerous devices or weapons in the apartment.⁷⁹ Mobley told the officers that a weapon was hidden in his bedroom closet and led them to it.⁸⁰ The Fourth Circuit concluded that the circumstances did not demonstrate the immediate need for questioning because there was no threat to public safety.⁸¹

afforded by *Miranda v. Arizona*, 384 U.S. 436 (1966) so that police could recover a firearm which otherwise would have remained in a public area." *Baltimore Dep't of Soc. Serv. v. Bouknight*, 488 U.S. 1301, 1305 (1988) (emphasis added).

⁷⁵ 974 F.2d 845 (7th Cir. 1992).

⁷⁶ *Id.* at 846.

⁷⁷ *Id.* at 847.

⁷⁸ 40 F.3d 688 (4th Cir. 1994).

⁷⁹ *Id.* at 691, 693. *But see* *United States v. DeSantis*, 870 F.2d 536 (9th Cir. 1989) (suspect's home); *People v. Childs*, 651 N.E.2d 252 (Ill. 1995), *cert. denied sub nom. Childs v. Illinois*, 516 U.S. 1134 (1996) (apartment of another person); *People v. Sims*, 853 P.2d 992 (Cal. 1993), *cert. denied*, 114 S. Ct. 2782 (1994) (motel room); *Missouri v. Duncan*, 866 S.W.2d 510 (Mo. Ct. App. 1993) (home); *State v. Harris*, 384 S.E.2d 50 (N.C. Ct. App. 1989) (outside motel room); *State v. Leone*, 581 A.2d 394 (Me. 1990) (wooded rural area).

⁸⁰ *Mobley*, 40 F.3d at 691.

⁸¹ *Id.* at 693. Police arrested a naked Mobley when he responded to a knock at his door. *Id.* at 690. He clearly was not armed. *Id.* Police made an initial survey of the apartment to be sure that no one else was present. *Id.* Police asked Mobley about the existence of a weapon after he got dressed and was being led away from the apartment. *Id.* at 691. Despite the *Quarles* violation, the *Mobley* court affirmed his conviction because the error was harmless. *Id.* at 694.

In *United States v. Raborn*, 872 F.2d 589 (5th Cir. 1989), the Fifth Circuit explained its reasoning for finding *Quarles* inapplicable. In *Raborn*, police conducting a drug surveillance of a building in an isolated rural area engaged in a car chase of a truck leaving the building. *Id.* at 592. Seven officers stopped the vehicle. *Id.* One of the occupants wore a holster with a gun in it. *Id.* He removed the gun and placed it somewhere in the vehicle. *Id.* The police required all of the occupants to exit. *Id.* The occupants were arrested and the police searched for the gun but did not find it. *Id.* The police asked the man with the empty holster where the gun was located and he told them. *Id.* The appellate court concluded that the exception did not justify the question asked because "the gun was [not] hidden in a place to which the public had access. Raborn's truck, where the police officers believed the gun to be, had already been seized and only the police officers had access to the truck." *Id.* at 595. *Quarles* was inapplicable, not because the truck was in a place inaccessible to the public, but rather, because the gun presented no danger to anyone—public or police. *Id.* The gun was properly admitted because it would inevitably have been discovered during the police inventory search of the truck. *Id.*

Several courts have stressed that the exception requires questioning related to a danger occurring in a place accessible to the public.⁸² Although there is language in *Quarles* that supports this argument,⁸³ it is not consistent with the reasoning of *Quarles*, which should logically allow questioning to protect police officers or others present at the scene of an arrest regardless of whether it occurs in a public or a private place.

D. Does Quarles Apply After Giving a Suspect Miranda Warnings?

The exception allows for the introduction at trial of statements and related evidence obtained by inquiring of individuals in police custody despite the failure of police to give *Miranda* warnings before asking questions.⁸⁴ In addition, some courts have applied *Quarles* to allow questioning of individuals about public safety who had already received, but had not waived, their *Miranda* rights.⁸⁵

In *Edwards v. Arizona*,⁸⁶ the Supreme Court held that an accused who had been *Mirandized* and made a request to speak with counsel "[could] not [be] subject to further interrogation by the authorities until counsel ha[d] been made available to him, unless

⁸² In *Edwards v. United States*, 619 A.2d 33 (D.C. Ct. App. 1993), the police arrested a suspect who, moments earlier, threatened several people with a rifle. *Id.* at 34. The suspect, pursued by police, entered a partly occupied, unlocked, somewhat derelict, apartment building. *Id.* at 34-35. After arrest, the suspect responded to a question about the location of the weapon. *Id.* at 35. The court found that the weapon was in a place accessible to the public in accordance with *Quarles*. *Id.* at 36. Some apartments were occupied, the building's front door was unlatched, and vagrants used the building. *Id.* at 37. In *Wisconsin v. Hoag*, No. 92-2523-CR, 1993 WL 245669 (Wisc. Ct. App. May 12, 1993) (unpublished opinion), the court recognized that the exception "would not apply in a situation where there is an area readily accessible to the public and there is no exigency requiring immediate police action." *Id.* at *3 n.3 (citations omitted). Nevertheless, the *Hoag* court held that *Quarles* applied to the questioning of a suspect in an armed bank robbery who no longer had the gun used in the robbery and who had been pursued by a citizen from the bank to a wooded area. *Id.* at *1.

⁸³ In *Quarles*, 467 U.S. at 659 n.8, the Supreme Court distinguished *Orozco v. Texas*, 394 U.S. 324 (1969), in which the questioning of the suspect occurred at his boardinghouse in the middle of the night with armed officers asking numerous questions regarding a murder and whether the arrestee owned a gun. *Quarles*, 467 U.S. at 659 n.8 (1984). *Orozco* is distinguishable from *Quarles* beyond whether the site of the questioning was a public or private place. The questioning in *Orozco* was extended and concerned the crime, not merely the location of the gun. Because *Orozco* was arrested a mere four hours after the murder, logically, brief questioning of *Orozco* solely regarding the location of the gun used in the murder would have been proper under *Quarles*.

⁸⁴ *Id.* at 659.

⁸⁵ See, e.g., *United States v. DeSantis*, 870 F.2d 536 (9th Cir. 1989).

⁸⁶ 451 U.S. 477 (1981).

the accused himself initiate[d] further communication . . . with the police."⁸⁷ Nevertheless, the exception has, at least in one case, been extended to permit a question otherwise barred by *Edwards*.⁸⁸

In *United States v. DeSantis*, Rocco DeSantis had been arrested at his home, pursuant to a warrant, and requested to speak to counsel.⁸⁹ The police accompanied a partially clothed DeSantis to his bedroom so he could dress.⁹⁰ An officer asked him if there were any weapons in the bedroom.⁹¹ DeSantis stated that there was a gun and identified its location.⁹² The officer seized the weapon. The trial court denied DeSantis' subsequent motion to suppress his statement and the recovered gun.⁹³ The Ninth Circuit affirmed, reasoning that the officer had an objectively reasonable basis to fear for his safety in DeSantis' bedroom.⁹⁴ Thus, the *Quarles* exception was applicable despite DeSantis' invocation of his right to counsel.⁹⁵

By contrast, in *People v. Laliberte*,⁹⁶ the Illinois Appellate Court held it was improper for police to ask further questions of an arrestee who repeatedly asked for an attorney.⁹⁷ In that case police suspected Laliberte of kidnapping a one-year-old child and abandoning her in the woods.⁹⁸ The court rejected the state's argument that the danger to the child justified evidentiary use of the defendant's answers to questions asked after he had been *Mirandized* and then requested to speak to counsel.⁹⁹

E. Have Courts Created New Exceptions to Miranda?

The *Quarles* dissent, as well as numerous critical commentators, expressed concern that *Quarles* created an exception to the previous "bright line" rule of *Miranda*, which banned the use of compelled statements.¹⁰⁰ The exception, it is feared, could lead to

⁸⁷ *Id.* at 484-85.

⁸⁸ *United States v. DeSantis*, 870 F.2d 536, 538 (9th Cir. 1989).

⁸⁹ *Id.* at 537-38. There was dispute as to whether DeSantis actually requested to speak to counsel. The court accepted DeSantis' version of the matter. *Id.* at 538 n.1.

⁹⁰ *Id.* at 537.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 541.

⁹⁵ *Id.* at 539, 541.

⁹⁶ 615 N.E.2d 813 (Ill. App. Ct. 1993).

⁹⁷ *Id.* at 821.

⁹⁸ *Id.* at 816.

⁹⁹ *Id.* at 819-20, 822-23.

¹⁰⁰ *New York v. Quarles*, 467 U.S. 649, 663-86 (1984). (O'Connor, J., concurring and dissenting in part); *See, e.g.*, Steven Andrew Drizin, *Fifth Amendment—Will the Pub-*

the creation of other exceptions to *Miranda*. However, this concern has not been realized in the thirteen years since *Quarles* was decided. It is true that several courts have utilized a "rescue doctrine"¹⁰¹ exception to *Miranda* to permit questioning of suspects in situations involving hostages or kidnapped persons. However, these cases logically fall under *Quarles* because they include a substantial threat to someone's safety and involve emergency situations.¹⁰²

Another new exception to *Quarles* may be found where courts have ruled that police are permitted to ask questions in order to "clarify the nature of the situation" they face.¹⁰³ For example, in

lic Safety Exception Swallow the Miranda Exclusionary Rule?, 75 CRIM. L. & CRIMINOLOGY 692, 712 (1984); Marla Belson, Note "Public-Safety" Exception to *Miranda*: *The Supreme Court Writes Away Rights*, 61 CHI-KENT L. REV. 577, 591 (1985); Daniel Brian Yeager, Note, *The Public Safety Exception to Miranda Careening Through the Lower Courts*, 40 U. FLA. L. REV. 989, 992-93 (1988).

¹⁰¹ The "rescue doctrine" was developed primarily by California courts to allow into evidence a suspect's responses to police questioning in situations in which the suspect has not received *Miranda* warnings and the police undertake the interrogation for the purpose of saving a life. The doctrine was first announced pre-*Miranda* in *People v. Modesto*, 398 P.2d 753 (Cal. 1965), cert. denied sub nom. *Modesto v. Nelson*, 389 U.S. 1009 (1967) and continued to be utilized post-*Miranda* in *People v. Riddle*, 83 Cal. App. 3d 563 (Cal. Ct. App. 1978), cert. denied sub nom. *Riddle v. California*, 440 U.S. 937 (1979). The *Riddle* court indicated that the rescue doctrine, also known as the "private safety" doctrine, applied in situations where (1) there was an urgent need for the information which could not be obtained in any other way; (2) the possibility existed of saving a human life by rescuing a person whose life is in danger; and (3) the rescue is the primary purpose and motive behind the interrogation. *Id.* at 576. The doctrine has been adopted by other jurisdictions as well. See *State v. Kunkel*, 404 N.W.2d 69 (Wis. 1987), cert. denied, 484 U.S. 929 (1987); *State v. Provost*, 490 N.W.2d 93 (Minn. 1992), cert. denied sub nom. *Provost v. Minnesota*, 507 U.S. 929 (1993); *United States v. DeSantis*, 870 F.2d 536, 541 (9th Cir. 1989).

The private safety exception is much more narrow than the *Quarles* exception. The danger must involve a threat to a specific person's life rather than a general threat to public safety. The police, when acting in accordance with the private safety exception, must have a subjective intention to rescue the person in danger, whereas the *Quarles* test is an objective one. The private safety exception requires that the information be unavailable by any other means, whereas the *Quarles* exception does not.

¹⁰² The rescue doctrine is necessary only if *Quarles* is limited to situations involving threats to public safety. Given that the basic rationale of *Quarles* does not justify such a limitation, there is probably no need for the rescue doctrine. Regardless of the nature of the threat to safety, whether to a particular individual or to the public in general, the *Quarles* objective approach should be favored in determining whether there was a threat to safety which permitted the questioning of a suspect without receiving *Miranda* warnings, and whether the scope of the questioning was limited to that which was necessary to protect safety interests. Nevertheless, some courts have continued to reject the rescue doctrine. See, e.g., *Laliberte*, 615 N.E.2d at 813.

¹⁰³ *People v. Luna*, 559 N.Y.S.2d 377 (App. Div. 2d Dep't 1990) (citing *People v. Huffman*, 359 N.E.2d 353, 356 (N.Y. 1976)).

*People v. Luna*¹⁰⁴ police responded to a restaurant's burglar alarm, found Luna in the closed restaurant, and caught him after a chase.¹⁰⁵ As they subdued Luna, one of the officers found a bulge in Luna's pocket and asked him what it was.¹⁰⁶ Luna answered that he obtained it in the restaurant and that two other persons had been there with him.¹⁰⁷ The object turned out to be a roll of money.¹⁰⁸ The Appellate Division, Second Department, rejected Luna's argument that admission of his answer violated *Miranda*,¹⁰⁹ and permitted officers at the scene of an arrest to ask questions designed to clarify the situation confronting them.¹¹⁰

F. *Does the Exception Apply if There is a Gap in Time Between the Use of a Weapon and the Arrest?*

In *Quarles*, police inquired as to the weapon's location a few minutes after it was allegedly used.¹¹¹ However, the exception has been properly applied to inquiries about weapons where there existed a gap in time between the suspect's alleged possession of the weapon and the police questioning.¹¹²

A compelling basis for pre-*Mirandized* questioning exists so long as there is a reasonable basis to believe that there is a danger to public safety. In *People v. Sims*,¹¹³ the police arrested a suspect for an armed robbery and murder, which had occurred two weeks earlier.¹¹⁴ The suspect was believed to possess a handgun and machine gun in his hotel room.¹¹⁵ The court found that the danger to the police was inherent because the suspect was sought for the commission of violent armed felonies and was believed to be armed at the time of apprehension.¹¹⁶ The danger did not fail to exist merely because the crimes occurred two weeks earlier.

Likewise, in *United States v. Thurston*¹¹⁷ the defendant bought a

¹⁰⁴ *Luna*, 559 N.Y.S.2d at 377.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 378.

¹¹⁰ *Id.*

¹¹¹ *New York v. Quarles*, 467 U.S. 649, 652 (1984).

¹¹² See *People v. Sims*, 853 P.2d 992 (Cal. 1993), cert. denied sub nom. *Sims v. California*, 114 S. Ct. 2782 (1994); *United States v. Thurston*, 774 F. Supp. 666 (D. Me. 1991).

¹¹³ *Sims*, 853 P.2d at 992.

¹¹⁴ *Id.* at 998-1000.

¹¹⁵ *Id.* at 1000.

¹¹⁶ *Id.* at 1019.

¹¹⁷ 774 F. Supp. 666.

handgun in the morning and used it to threaten his wife. He then drank heavily during the day and was arrested at night.¹¹⁸ Although many hours had passed since the gun was used to threaten Thurston's wife, the public safety exception was applicable because the gun could have been dangerous if found by someone else or the defendant upon his release from custody.¹¹⁹ The danger to the public in that case arose from a possibility of subsequent use of the weapon, regardless of when it might have been discovered, and regardless of the gap in time between the use of weapon and the questioning.

G. *How Substantial May the Police Questioning Be Under Quarles?*

In *Quarles*, the police officer asked a single question regarding the location of the suspect's gun.¹²⁰ After retrieving the gun, the officer then read the defendant his *Miranda* rights.¹²¹ The *Quarles* Court indicated that "Officer Kraft asked only the question necessary to locate the missing gun before advising respondent of his rights."¹²² The Court distinguished these events from those in *Orozco v. Texas*,¹²³ where police officers questioned a suspect at length in his boardinghouse room regarding the location of a gun used in a murder.¹²⁴ The *Quarles* Court stated that because the questions in *Orozco* were "clearly investigatory [in that] they did not in any way relate to an objectively reasonable need to protect the police or public from any immediate danger associated with the weapon,"¹²⁵ they differed from those in *Quarles* which related to immediate dangers associated with the weapon seized.¹²⁶

The bulk of the cases which followed the *Quarles* exception were instances where the police asked a single question or a small number of questions about a weapon, or other dangers, and then ceased further questioning until *Miranda* rights were read.¹²⁷ In

¹¹⁸ *Id.* at 667.

¹¹⁹ *Id.* at 667-68.

¹²⁰ 467 U.S. at 652.

¹²¹ *Id.*

¹²² *Id.* at 659.

¹²³ 394 U.S. 324 (1968).

¹²⁴ *Id.* at 324-25.

¹²⁵ 467 U.S. at 659 n.8. In *Berkemer v. McCarty*, 468 U.S. 420 (1984), the Supreme Court, within a month of deciding *Quarles*, explained the public safety exception as allowing "questions essential to elicit information necessary to neutralize the threat to the public. Once such information has been obtained, the suspect must be given the standard warnings." *Id.* at 429 n.1.

¹²⁶ *Id.*

¹²⁷ See, e.g., *Hill v. State*, 598 A.2d 784, 786 (Md. Ct. Spec. App. 1991) (two questions before giving of *Miranda* warnings); *People v. Howard*, 556 N.Y.S.2d 940 (App.

instances where questioning extended beyond the scope permitted by *Quarles*, the answers were suppressed.¹²⁸ For example, in *People v. Roundtree*,¹²⁹ where shots were fired during a fight between two men in a car, the court suppressed a defendant's answer to a police question regarding the ownership of a suitcase in the car.¹³⁰ The *Roundtree* court reasoned that the police officer "had secured control of the scene before he asked the question. Furthermore . . . [n]either the suitcase [n]or its contents posed a threat to the public safety. . . ."¹³¹

Similarly, in *State v. McCarthy*¹³² the Supreme Court of Nebraska found the exception inapplicable to questions regarding the whereabouts of a separate murder suspect.¹³³ The court concluded that there was no immediate danger requiring the suspect to be questioned without receiving *Miranda* warnings.¹³⁴ Similarly, in *State v. Deases*,¹³⁵ the questioning of a prisoner regarding where he obtained a shank (i.e., knife) that he used to stab another inmate was deemed inapplicable because the shank was in the prison officials' possession at the time of questioning.¹³⁶ The Supreme Court of Iowa held that there was no immediate threat to public safety, thus, the pre-*Miranda* questioning was not justified.¹³⁷

Div. 2d Dep't 1990) (limited questions followed by *Miranda* warnings); *People v. Luna*, 559 N.Y.S.2d 377, 377 (App. Div. 2d Dep't 1990) (one question before *Miranda* warnings).

In many cases, the opinions indicated that one question or a few questions were asked, but no mention was made of the giving of *Miranda* warnings. See, e.g., *State v. Duncan*, 866 S.W. 2d 510, 511 (Mo. Ct. App. 1993) (one question); *People v. Lopez*, 652 A.2d 696, 698 (Sup. Ct. N.H. 1994) (one question); *State v. Ingram*, 596 N.Y.S.2d 352 (App. Div. 2d Dep't 1991) (two questions).

¹²⁸ In *United States v. Eaton*, 676 F. Supp. 362, 365-66 (D. Me. 1988), the court found the question to a person arrested at a drug sale, regarding the reason for the arrestee's presence at the site of the arrest, outside the scope of questioning permitted by *Quarles*. *Id.* See *State v. Cross*, No. A-93-368, 1993 WL 311554, at *4 (Neb. App. Ct. Aug. 17, 1993) (unpublished opinion) (no immediate need for question about location of a gun when suspect and accomplice were in custody after car chase ended in a snowdrift on a dead end road); *United States v. Gonzalez*, 864 F. Supp. 375, 382 (S.D.N.Y. 1994) (two questions allowed when suspect in gun battle with police claimed to be a police officer and crime victim; subsequent questions were held not justified under *Quarles*).

¹²⁹ 482 N.E.2d 693 (Ill. App. Ct. 1985).

¹³⁰ *Id.* at 698.

¹³¹ *Id.* at 697-98.

¹³² 353 N.W.2d 14 (Neb. 1984).

¹³³ *Id.* at 16-17.

¹³⁴ *Id.*

¹³⁵ 518 N.W.2d 784 (Iowa 1994).

¹³⁶ *Id.* at 790-91.

¹³⁷ *Id.* at 791. *Accord* *People v. Ratliff*, 584 N.Y.S.2d 871, 872 (App. Div. 2d Dep't 1992) (police responding to an armed robbery at a private social club asked one sus-

In a limited number of cases, courts have improperly admitted into evidence answers to numerous investigatory questions. The most serious example of such an erroneous application of the exception occurred in *Fleming v. Collins*.¹³⁸ In *Fleming*, after responding to a bank alarm, police questioned a man they observed in a field holding a pistol over another man.¹³⁹ Police approached, ordered the man to drop his gun, and ordered both men to put their hands up.¹⁴⁰ Fleming, the man on the ground, stated that he could not raise his arm because he had been shot.¹⁴¹ The officer asked who shot him,¹⁴² and the suspect said it was the man at the bank.¹⁴³ At that point, the officers realized that Fleming was a suspect in the bank robbery and that the other man was merely an armed bystander who followed Fleming from the bank and captured him.¹⁴⁴ The officer continued to inquire as to who was with Fleming, the location of the guns and whether anyone at the bank was shot.¹⁴⁵ The trial court admitted Fleming's answers to all the questions and the appellate court affirmed.¹⁴⁶

The appellate court in *Fleming* found that the *Quarles* exception permitted all of the questions because the officers initially did not know the location of the accomplices or whether Fleming was a victim of a crime or a suspect.¹⁴⁷ The majority opinion asserted that *Quarles* was satisfied because the questioning ended once Fleming stated that he had acted alone.¹⁴⁸ The majority chose to look at the situation as a whole to discover whether the danger permitted pre-*Mirandized* questioning.¹⁴⁹ The dissent, in contrast, concluded that the safety concerns were satisfied once the police

pect the number and whereabouts of other robbers not yet apprehended); *Hill v. State*, 598 A.2d 784, 785 (Md. Ct. Spec. App. 1991) (the court allowed a question asked of a suspected armed robber regarding the location of another armed participant in the robbery who had just evaded arrest).

¹³⁸ 954 F.2d 1109 (5th Cir. 1992).

¹³⁹ *Id.* at 1110.

¹⁴⁰ *Id.* at 1110-11.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 1114. (Williams, J. & Brown, J., dissenting).

¹⁴⁷ *Id.* at 1113. The officers had already frisked Fleming so they knew he was no longer armed. *Id.* at 1115.

¹⁴⁸ The majority opinion quotes from the officer's suppression hearing testimony, which includes this testimony rather than the trial testimony. *Id.* at 1111, 1114-15. The dissent points out that the suppression hearing testimony was never heard by the trial jury but that, of course, the trial testimony was. *Id.* at 1114.

¹⁴⁹ *Id.* at 1113-14.

knew that Fleming was fleeing from a bank robbery, had dropped his gun, and was not armed.¹⁵⁰ Thus, the dissent argued that the officer's continued questioning was improper.¹⁵¹

Quarles requires that the questioning cease and *Miranda* rights be read as soon as the threat to public safety ends. Therefore, the majority in *Fleming* erred by permitting all five minutes of questioning to be admitted. Once the safety concerns were alleviated, Fleming should have been *Mirandized*. The *Fleming* dissent reasoned consistently with *Quarles* by approving the questioning directed at public safety and disapproving the use of answers to questions no longer necessary to secure the public safety. Accordingly, all of Fleming's statements made after it was clear that no threat to the public safety existed should have been suppressed.

III. CONCLUSION

In creating an exception to *Miranda*, the *Quarles* Court articulated a narrow set of circumstances in which police officers are permitted to engage in pre-*Miranda* questioning. The exception allows questioning of suspects before they are informed of their *Miranda* rights whenever a court may objectively conclude that officers are faced with a situation endangering the police or the public safety. However, subsequent trial and appellate court decisions have implemented *Quarles* in ways inconsistent with its rationale. Police officers may now question suspects where dangers arise from the presence of guns, or other weapons, drugs or drug paraphernalia, as to the possible presence of other suspects or crime victims and where questioning will result in searches beyond the scope of a valid search warrant. In addition, *Quarles* may be applied regardless of whether the danger exists in a private or public setting.

Questions permitted by *Quarles* have generally been limited to those designed to protect against danger to the public or to police, and no further questioning has been permitted without providing the warnings required by *Miranda*. Perhaps the greatest and most unwarranted expansion of the exception involves court approval of the practice of questioning suspects as to the location of weapons or drugs regardless of whether there exists an objective reason to believe that the particular suspect possessed or used same. These

¹⁵⁰ *Id.* at 1115.

¹⁵¹ *Id.* According to the dissenting judges, *Quarles* never intended to allow police questioning of this type: "How many thousands of unfortunate persons in totalitarian countries have confessed at the end of the loaded barrel of a gun held by police officers, whether or not they were guilty?" *Id.*

departures dilute the Supreme Court's original rationale for creating the exception in *Quarles*.