

Wednesday, November 29, 2006

### **The public safety exception to Miranda.**

This follows up on my September 8 blog entry about the exceptions to the Miranda rule. In 1984, the United States Supreme Court held that Miranda does not preclude police -- for public safety purposes -- from asking a non-Mirandized arrestee the location of a weapon, from introducing into evidence the arrestee's response to said questions, and then introducing into evidence the arrestee's Mirandized statement that follows. *New York v. Quarles*, 467 U.S. 649 (1984). Quarles says: "We hold that 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, and that the availability of that exception does not depend upon the motivation of the individual officers involved. In a kaleidoscopic situation such as the one confronting these officers, where spontaneity rather than adherence to a police manual is necessarily the order of the day, the application of the exception which we recognize today should not be made to depend on post hoc findings at a suppression hearing concerning the subjective motivation of the arresting officer. Undoubtedly most police officers, if placed in Officer Kraft's position, would act out of a host of different, instinctive, and largely unverifiable motives -- their own safety, the safety of others, and perhaps as well the desire to obtain incriminating evidence from the suspect." Similar approaches have been rejected in other contexts. See *Rhode Island v. Innis*, supra, at 301 (officer's subjective intent to incriminate not determinative of whether "interrogation" occurred); *United States v. Mendenhall*, 446 U.S. 544, 554, and n. 6 (1980) (opinion of Stewart, J.) (officer's subjective intent to detain not determinative of whether a 'seizure' occurred within the meaning of the Fourth Amendment); *United States v. Robinson*, 414 U.S. 218, 236, and n. 7 (1973) (officer's subjective fear not determinative of necessity for 'search incident to arrest' exception to the Fourth Amendment warrant requirement)." *Quarles*, 467 U.S. at 655-56. Quarles is just another police tool to blur the line between non-Mirandized information that is admissible at trial versus information that requires Miranda warnings to be admissible at trial. It becomes psychologically harder to assert one's Miranda rights after already having answered police questions before being Mirandized including when the police go into divide and conquer mode, asking questions of a suspect in the presence of the suspect's friends who urge the suspect to "cooperate". Buffered by this Quarles decision, it is apparently common for police, without first giving Miranda warnings, to ask arrestees and occupants of cars stopped for traffic and other violations whether anybody has any drugs, weapons or bombs. Police have further support for asking a litany of non-Mirandized questions of motor vehicle occupants by the Supreme Court's holding that "a routine traffic stop is not a custodial stop requiring the protections of Miranda." *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 187 (2004) (citing *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984)). Praised be the dissenters in *Quarles*, although only one of them -- Justice Stevens -- is left on the court. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00