

Miranda Exceptions

When Miranda may be disregarded

*“While life hangs in the balance, there is no room to require [Miranda] admonitions . . .”*¹

In the lead article, we discussed the rule that officers may not question a suspect in custody unless he waived his *Miranda* rights. As we will now explain, there are two exceptions to this rule.

The first is the “public safety exception,” and it applies when officers need information from the suspect to reduce or eliminate a substantial threat to a person or property. The second is known as the “undercover agent exception,” and it applies when the suspect is unaware that the person who is asking questions is an undercover officer or police agent.

PUBLIC SAFETY EXCEPTION

Under *Miranda*’s public safety exception, officers may question a suspect in custody without first obtaining a waiver if they reasonably believe he has information that would help save a life, prevent serious injury, or neutralize a substantial threat to property.² Like the Fourth Amendment’s “exigent circumstances” rule, *Miranda*’s public safety exception covers situations in which the need for quick action outweighs the need to comply fully with the constitutional rules of police procedure. In other words it is utilized when “spontaneity rather than adherence to a police manual is necessarily the order of the day.”³

The legal basis for the public safety exception is straightforward: When a substantial threat to people or property can be reduced or eliminated by questioning a suspect in custody, it makes no sense start out by telling him, essentially, that he’d be crazy to say anything before talking with a lawyer.⁴ As the U.S. Supreme Court explained, “To bring in a lawyer means a real peril to solution of the crime, because, under our adversary system, he deems that his sole duty is to protect his client—guilty or innocent—and that in such a capacity he owes no duty whatever to help society solve its crime problem.”⁵

Requirements

The public safety exception applies if, (1) the officers who questioned the suspect reasonably believed the information they sought was necessary to protect life or property, and (2) their questions were limited to those that were reasonably necessary to obtain this information.

THE “REASONABLE BELIEF” TEST: To determine whether the public safety exception applies, the courts apply the so-called “reasonable belief” test.⁶ Specifically, they ask whether a reasonable officer under the same circumstances would have believed that answers to his questions were necessary to protect people or property from a substantial threat. If so, the suspect’s responses will be admissible. Otherwise, they will be suppressed.

¹ *People v. Dean* (1974) 39 Cal.App.3d 875, 882.

² See *People v. Panah* (2005) 35 Cal.4th 395, 471 [waiver not required “where the purpose of police questioning is to protect life or avoid serious injury and the statement is otherwise voluntary.”]; *People v. Mayfield* (1997) 14 Cal.4th 668, 732 [waiver not required “in a situation posing such a threat to the public safety that the officer’s need for answers outweighs the need for [Miranda] compliance.”]; *People v. Riddle* (1978) 83 Cal.App.3d 563, 572 [“[E]xigent circumstances is not restricted to situations where human life is at stake.”]. ALSO SEE *People v. Ramey* (1976) 16 Cal.3d 263, 276 [“[E]xigent circumstances means an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property . . .”].

³ *New York v. Quarles* (1984) 467 U.S. 649, 656.

⁴ See *Oregon v. Elstad* (1985) 470 U.S. 298, 309 [“*Miranda* warnings may inhibit persons from giving information”]; *People v. Riddle* (1978) 83 Cal.App.3d 563, 573-4.

⁵ *Watts v. Indiana* (1949) 338 U.S. 49, 59.

⁶ See *New York v. Quarles* (1984) 467 U.S. 649, 656; *People v. Gilliard* (1987) 189 Cal.App.3d 285, 291; *Allen v. Roe* (9th Cir. 2002) 305 F.3d 1046, 1050 [“[T]he police must reasonably believe that there is a serious likelihood of harm to the public or fellow officers.”].

NOTE: If it was objectively reasonable to ask the question, the exception applies regardless of the officer’s primary motivation. See *New York v. Quarles* (1984) 467 U.S. 649, 656 [officers will “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 obtaining incriminating evidence from the suspect.”].

This is, of course, strictly a judgment call. Still, the courts tend to give officers the benefit of the doubt if there was a factual basis for their belief. For example, the California Court of Appeal ruled that even though it was likely that a kidnapping victim had been killed, the public safety exception permitted officers to ask the suspect where victim was located because there was at least a chance of saving her.⁷ Furthermore, the exception applies even though the threat could have been eliminated by other means.⁸

WHAT EMERGENCIES ARE COVERED? Although it is sometimes called the “rescue” or “emergency” rule,⁹ the public safety exception is not limited to situations in which there exists an imminent and devastating threat to life or property.¹⁰ Instead, it covers any situation in which a reasonable officer would have concluded that the need to obtain certain information outweighed the need for *Miranda* compliance. In addition, although it is called the *public safety* exception, it also applies when the person at risk was an officer or the suspect.¹¹

The following are examples of situations in which the “public safety” exception was found to apply:

DANGER TO THE PUBLIC (weapon in a public place)

- Officers reasonably believed that the suspect had discarded a handgun in a supermarket; they asked him where he’d put it.¹²

- A man who had just shot a woman was arrested on the street a short distance away; officers asked him what he’d done with the gun.¹³

DANGER TO VICTIM

- Immediately after arresting a kidnapping suspect, an FBI agent asked him where the victim was located.¹⁴
- Officers negotiated with a barricaded suspect who was holding a hostage.¹⁵

DANGER TO SUSPECT

- Officers reasonably believed that the suspect had just swallowed rock cocaine; they asked if he had, in fact, done so.¹⁶

DANGER TO OFFICERS

- After arresting a suspect for possessing a syringe, an officer asked if he had any other needles in his possession.¹⁷
- After arresting a drug dealer, an officer asked, “Do you have anything on you that could hurt me?”¹⁸
- After arresting an “armed and dangerous” suspect in a motel room, an officer asked, “Where are the guns?”¹⁸
- After arresting a suspect for firing shots at a house, an officer asked, “Do you have any guns or sharp objects on you?”²⁰
- An officer who found a shotgun shell in a detainee’s

⁷ See *People v. Riddle* (1978) 83 Cal.App.3d 563, 557 [“[I]t was still reasonable to hope she might be alive”]; *People v. Dean* (1974) 39 Cal.App.3d 875, 883 [“While it is sadly true that all kidnap victims are not found alive, this does not compel the conclusion that a belief rescue is possible is unreasonable.”]; *People v. Coffman* (2004) 34 Cal.4th 1, 57; *People v. Panah* (2005)) 35 Cal.4th 395, 471 [“[After 24 hours the] police could still reasonably have believed Nicole was alive”].

⁸ See *People v. Gilliard* (1987) 189 Cal.App.3d 285, 291 [“the supermarket [in *Quarles*] presumably could have been cordoned off.”].

⁹ **NOTE:** Before the U.S. Supreme Court announced the “public safety” exception in 1984, California courts were applying the “rescue” exception to *Miranda* when officers reasonably believed the suspect knew the whereabouts of someone in danger. See *People v. Riddle* (1978) 83 Cal.App.3d 563; *People v. Stevenson* (1996) 51 Cal.App.4th 1234, 1238-9.

¹⁰ See *People v. Gilliard* (1987) 189 Cal.App.3d 285, 291 [“[In *Quarles*] . . . the supermarket was almost deserted”].

¹¹ See *New York v. Quarles* (1984) 467 U.S. 649, 658-9; *Allen v. Roe* (9th Cir. 2002) 305 F.3d 1046, 1050; *People v. Simpson* (1998) 65 Cal.App.4th 854, 861, fn.3 [“[The exception] applies even when police questioning is designed solely to protect the lives of police officers and the lives of others are not at stake.”]; *U.S. v. Lackey* (10th Cir. 2003) 334 F.3d 1224, 1227-8 [“It is irrelevant that the principal danger in this case was the risk of injury to the officers or Defendant himself, rather than ordinary members of the ‘public’”].

¹² *New York v. Quarles* (1984) 467 U.S. 649. ALSO SEE *Allen v. Roe* (9th Cir. 2002) 305 F.3d 1046, 1050-1 [“[B]ased on what the police did know, the gun could have been anywhere between the campsite and the arrest scene”].

¹³ *People v. Gilliard* (1987) 189 Cal.App.3d 285. ALSO SEE *People v. Cole* (1985) 165 Cal.App.3d 41, 51-2.

¹⁴ *People v. Dean* (1974) 39 Cal.App.3d 875. ALSO SEE *People v. Riddle* (1978) 83 Cal.App.3d 563, 577.

¹⁵ *People v. Mayfield* (1997) 14 Cal.4th 668, 734.

¹⁶ *People v. Stevenson* (1996) 51 Cal.App.4th 1234; *People v. Jones* (1979) 96 Cal.App.3d 820, 827-8.

¹⁷ *People v. Cressy* (1996) 47 Cal.App.4th 981, 986-8. ALSO SEE *U.S. v. Carrillo* (9th Cir. 1994) 16 F.3d 1046, 1049-50.

¹⁸ *U.S. v. Reyes* (2nd Cir. 2003) 353 F.3d 148, 154.

¹⁹ *People v. Sims* (1993) 5 Cal.4th 405.

possession asked him where the gun was located and whether he had other guns.²¹

- Officers who were about to execute a warrant to search a house for cocaine, asked an arrested occupant if there were any guns or weapons on the premises.²²
- Officers who had just arrested a man outside a sporting goods store he had burglarized, asked if he had any accomplices in the building.²³

PERMISSIBLE QUESTIONS: As noted, *Miranda*'s "public safety" exception covers only those questions that are reasonably necessary to eliminate the threat. In the words of the Court of Appeal, "[The officer's inquiry] must be narrowly tailored to prevent potential harm."²⁴

For example, officers who are about to pat search a suspect could ask if he had any sharp objects in his possession or "anything that could hurt me."²⁵ But they could not ask general or investigatory questions, such as "What's in your pockets?"²⁶ "Why are you carrying this gun?"²⁷ "Why did you shoot the guy?"²⁸

This requirement seldom presents a problem for officers because, as the United States Supreme Court observed, "[P]olice 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."²⁹

UNDERCOVER AGENT EXCEPTION

The second *Miranda* exception, the "undercover agent" exception, covers situations in which the suspect doesn't know that the person who is asking him questions is an undercover officer or police agent.³⁰ The reason such questioning is exempt is that a suspect who is unaware he is speaking with an undercover officer or agent would not feel the type of coercion that *Miranda* was designed to alleviate. As the U.S. Supreme Court explained in *Illinois v. Perkins*:

Conversations between suspects and undercover agents do not implicate the concerns underlying *Miranda*. The essential ingredients of a "police-dominated atmosphere" and compulsion are not present when an incarcerated person speaks freely to someone that he believes to be a fellow inmate.³¹

QUESTIONING BY VICTIMS: The undercover agent exception has been applied when officers arranged to

²⁰ *U.S. v. Lackey* (10th Cir. 2003) 334 F.3d 1224, 1227.

²¹ *U.S. v. Fox* (1st Cir. 2004) 393 F.3d 52, 60.

²² *People v. Simpson* (1998) 65 Cal.App.4th 854, 862.

²³ *People v. West* (1980) 107 Cal.App.3d 987, 993-4.

²⁴ *People v. Cressy* (1996) 47 Cal.App.4th 981, 989. BUT ALSO SEE *U.S. v. Monroe Martinez* (9th Cir. 2005) __ F.3d __ [2005 WL 1139939] [after entering a house under exigent circumstances and seeing guns, an officer properly asked, "What are those doing there?"]; *U.S. v. Newton* (2nd Cir. 2004) 369 F.3d 659, 678 ["Courts recognize that public safety questions are framed spontaneously in dangerous situations. Precision crafting cannot be expected in such circumstances."]; *New York v. Quarles* (1984) 467 U.S. 649, 657 [an officer's decision to ask a public safety question (and what question to ask) must often be made "in a matter of seconds"].

²⁵ *People v. Cressy* (1996) 47 Cal.App.4th 981, 989; *U.S. v. Williams* (8th Cir. 1999) 181 F.3d 945, 152.

²⁶ *People v. Cressy* (1996) 47 Cal.App.4th 981, 989.

²⁷ See *U.S. v. Newton* (2nd Cir. 2004) 369 F.3d 659, 678; *U.S. v. Mobley* (4th Cir. 1994) 40 F.3d 688, 690-4 [question about dangerous items in apartment was improper because the apartment had already been secured].

²⁸ *People v. Turner* (1984) 37 Cal.3d 302, 319.

²⁹ *New York v. Quarles* (1984) 467 U.S. 649, 658-9.

³⁰ See *People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1194-5; *People v. Miranda* (1987) 44 Cal.3d 57, 85; *People v. Gallego* (1990) 52 Cal.3d 115, 170; *People v. Lucero* (1987) 190 Cal.App.3d 1065; *In re Victor F.* (1980) 112 Cal.App.3d 673, 680-1; *In re Deborah C.* (1981) 30 Cal.3d 125, 130-1; *In re Eric J.* (1979) 25 Cal.3d 522, 527; *People v. Williams* (1988) 44 Cal.3d 1127, 1142 ["*Miranda*] has never been applied to conversations between an inmate and an undercover agent.]; *People v. Wojtkowski* (1985) 167 Cal.App.3d 1077, 1081 ["[C]ourts have agreed that questioning by a police agent does not involve 'interrogation' as long as the defendant is unaware of the agent's relationship with the government."].

³¹ (1990) 496 U.S. 292, 296. **NOTE:** If the person who obtained an incriminating statement from the suspect was not an officer and was not working as a police agent, the statement cannot be suppressed under *Miranda*. See *Arizona v. Mauro* (1987) 481 U.S. 520, 520 (suspect's wife); *People v. Mayfield* (1997) 14 Cal.4th 668, 758 (suspect's father); *People v. Gallego* (1990) 52 Cal.3d 115, 169-70 (jail visitor); *People v. Claxton* (1982) 129 Cal.App.3d 638, 650 (juvenile hall supervisor); *In re Victor F.* (1980) 112 Cal.App.3d 673, 680 (school official); *People v. Lucero* (1987) 190 Cal.App.3d 1065, 1067-9 (an accomplice); *People v. Mangiefico* (1972) 25 Cal.App.3d 1041, 1049 (private investigator); *In re Deborah C.* (1981) 30 Cal.3d 125, 130-1 (store security).

have the suspect speak with his victim who coaxed him to discuss the crime. For example, in *People v. Guilmette*³² the defendant invoked his *Miranda* rights after he was arrested for raping his former girlfriend, Karen. While he was being held at the Alameda County Jail, Guilmette made two phone calls to Karen. She notified deputies who asked her to record any future calls.

As expected, Guilmette phoned again and, according to the court, the subsequent conversation “can best be described as an attempt by [Guilmette] to dissuade Karen from testifying against him.” Some of Guilmette’s incriminating statements were made in response to questions suggested by the deputies, while others were made in response to questions asked spontaneously by Karen.

On appeal, the court rejected Guilmette’s contention that, because Karen questioned him while he was in custody, his statements were obtained in violation of *Miranda*. Said the court:

One would be hard-pressed to characterize appellant’s conversation with Karen as “police custodial” interrogation as defined in *Miranda* . . . Since appellant was not forced to contact the victim and since he did not know that Karen was acting as a police agent, there was no “police dominated atmosphere,” there were no “inherently compelling pressures,” and there was no “coercive atmosphere.”

QUESTIONING BY FRIENDS: A conversation between a prisoner and a friend or relative who is working as a police agent also falls within the undercover agent exception because the atmosphere is inherently noncoercive. For example, the courts have ruled that a waiver was not required when a prisoner spoke with his father or an accomplice.³³

QUESTIONING BY FELLOW INMATES: Investigators sometimes arrange to have an incarcerated infor-

mant attempt to obtain incriminating information from the suspect. In some cases, they may even have an undercover officer pose as an inmate for this purpose. In either case, any questioning falls within the undercover agent exception.

For example, in *Illinois v. Perkins*³⁴ the defendant bragged to a fellow inmate that he had committed an unsolved murder in East St. Louis. The informant notified officers who, based on details Perkins had given to the informant, figured out who Perkins had killed. The officers then devised a plan whereby an officer, John Parisi, would pose as a prison inmate and would be housed in Perkins’ cellblock. His assignment was to engage Perkins “in casual conversation and report anything he said about the [East St. Louis] murder.” The plan worked. During a conversation with Perkins, Parisi asked him if he had ever “done” anybody. Perkins admitted he had, then “proceeded to describe at length the events of the [East St. Louis] murder.”

On appeal to the United States Supreme Court, Perkins claimed his statements were obtained in violation of *Miranda*. The Court disagreed, noting that “*Miranda* forbids coercion, not mere strategic deception by taking advantage of a suspect’s misplaced trust in one he supposes to be a fellow prisoner.”

POV

WATCH FOR SIXTH AMENDMENT ISSUE: Questioning by an informant or an undercover officer will violate the Sixth Amendment right to counsel if, (1) the suspect had been formally charged with the crime that was the subject of the conversation, and (2) the agent “deliberately elicited” incriminating information from the suspect about the crime.³⁵

³² (1991) 1 Cal.App.4th 1534. ALSO SEE *People v. Plyler* (1993) 18 Cal.App.4th 535, 544-5 [“[O]ne would be hard-pressed to characterize appellant’s phone conversation with [the victim] as ‘police custodial’ interrogation”]; *People v. Wojtkowski* (1985) 167 Cal.App.3d 1077, 1081.

³³ See *People v. Mayfield* (1997) 14 Cal.4th 668, 758; *People v. Webb* (1993) 6 Cal.4th 494, 526 [“[F]rom defendant’s perspective, he was talking with a friend and lover.”]. ALSO SEE *Arizona v. Mauro* (1987) 481 U.S. 520; *People v. Wojtkowski* (1985) 167 Cal.App.3d 1077, 1081.

³⁴ (1990) 496 U.S. 292.

³⁵ See *Michigan v. Jackson* (1986) 475 U.S. 625, 629; *Brewer v. Williams* (1977) 430 U.S. 398, 399; *People v. Superior Court (Sosa)* (1983) 145 Cal.App.3d 581, 593. ALSO SEE *Point of View* (Winter 2000) “Questioning Charged Suspects.”