Missouri Law Review

Volume 75
Issue 1 *Winter 2010*

Article 7

Winter 2010

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Recommended Citation
Bradley S. Dixon, *Call to Police the Margins: The Eighth Circuit's Expansion of Miranda's Public-Safety Exception, A*, 75 Mo. L. Rev. (2010)
Available at: https://scholarship.law.missouri.edu/mlr/vol75/iss1/7

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A Call to Police the Margins: The Eighth Circuit's Expansion of *Miranda*'s Public-Safety Exception

United States v. Liddell[1]

I. INTRODUCTION

The right of every citizen against compulsory self-incrimination is a principle firmly embedded in the American justice system.[2] The Supreme Court of the United States in *Miranda v. Arizona*, a decision that has established itself in the public consciousness, found the abuses of law enforcement so grave that the Court mandated certain prophylactic measures to protect Fifth Amendment rights.[3] In doing so, the Court recognized that it was balancing the interest of protecting individuals' Fifth Amendment rights against the potential detrimental costs to effective law enforcement.[4]

In *New York v. Quarles*, the Supreme Court found a public policy exception to *Miranda* where there were exigent circumstances that constituted a sufficient risk to "public safety," which then justified disregarding *Miranda*'s prophylactic measures in favor of effective law enforcement.[5] An immediate and serious danger to public safety could upset the balance of public interests protected by *Miranda*, and *Quarles*'s new exception sought to regain that balance. In subsequent years, the public-safety exception has undergone an expansion beyond the exigency requirement originally articulated in *Quarles*.

The United States Court of Appeals for the Eighth Circuit has disregarded immediacy as being absolutely necessary in finding the public-safety exception to *Miranda*. In *United States v. Liddell*, the Eighth Circuit held that the public-safety exception applies to circumstances in which there is potential harm to police officers if there is an objectively reasonable belief that they may mishandle or happen upon an inherently dangerous item.[6] In finding the public-safety exception applicable in these circumstances, the Eighth Circuit has upset the balance struck by the Supreme Court in *Miranda* and *Quarles* and ought to re-examine the exception to bring it back within its original conception – one rooted in exigency.

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1. 517 F.3d 1007 (8th Cir. 2008), *cert. denied*, 129 S. Ct. 627 (2008).
2. *See* U.S. CONST. amend. V; *see also infra* notes 26-36 and accompanying text.
3. 384 U.S. 436 (1966).
4. *See id.* at 478-91.
5. 467 U.S. 649, 651 (1984).
6. 517 F.3d at 1009-10.

II. FACTS & HOLDING

Antonio Ray Liddell was stopped in his car for a loud music violation by police officers in Iowa.[7] A subsequent check of his license revealed that Liddell was barred from driving in the state, and he was duly arrested.[8] A pat-down search of Liddell's person disclosed a bag of marijuana, $183 in cash, and two cell phones.[9] Liddell was then handcuffed and placed inside a patrol car.[10] While Liddell was secured in the patrol car, an officer conducted a search of his vehicle incident to his arrest and "discovered an unloaded .38 caliber revolver [placed] under the front seat."[11]

Following the discovery of the revolver, police officers "removed Liddell from the patrol car and, . . . referring to Liddell's" vehicle, Officer Adney asked, "Is there anything else in there we need to know about?"[12] Officer Melvin interjected, "That's gonna hurt us," which prompted Officer Adney to repeat, "That's gonna hurt us? Since we found the pistol already."[13] Liddell responded by "laugh[ing] and said, 'I knew it was there but . . . it's not mine,'" and also denied that there were other weapons in the car.[14] After this questioning, the officers completed their search of the vehicle and found rolling papers and .38 caliber ammunition.[15]

Liddell was charged with unlawful possession of a firearm and unrelated drug offenses.[16] The District Court for the Southern District of Iowa denied Liddell's motion to suppress his statement that he knew the revolver was in the vehicle, even though the government conceded that Liddell was in custody and had not been read his *Miranda*[17] warnings before police questioning.[18] The district court relied on the public-safety exception[19] to *Miranda* to deny Liddell's motion to suppress and thereby justified admitting Liddell's statements prior to any *Miranda* warnings.[20]

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7. *Id.* at 1008. The police officers' names were Officers Adney and Melvin. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Liddell*, 517 F.3d at 1008.
14. *Id.*
15. *Id.*
16. *Id.*
17. *See* Miranda v. Arizona, 384 U.S. 436 (1966).
18. *Liddell*, 517 F.3d at 1008-09.
19. *See* New York v. Quarles, 467 U.S. 649, 657 (1984) (announcing the public-safety exception to *Miranda* in situations where the "threat to the public safety outweighs the need for" *Miranda*'s protection of "the Fifth Amendment[] privilege against self-incrimination").
20. *Liddell*, 517 F.3d at 1008-09.

After the district court's refusal to suppress his highly incriminating statements regarding knowledge of the firearm, Liddell entered a conditional plea of guilty to the charge of being a felon in possession of a firearm.[21] Per his conditional plea, Liddell appealed to the Eighth Circuit the district court's denial of his motion to suppress his post-arrest and pre-*Miranda* statements regarding knowledge of the presence of the revolver in his vehicle.[22]

On appeal, Liddell argued that the public-safety exception to *Miranda* was inapplicable to his case because there was no objectively reasonable need to protect the public from immediate danger.[23] The Eighth Circuit rejected Liddell's argument and adopted the reasoning of the government and district court, which applied the public-safety exception to *Miranda* to the facts of *Liddell*.[24] The court held that the risks inherent in "unknown firearms or drug paraphernalia provide[] a sufficient public safety basis" upon which to justify questions regarding whether there are weapons or other dangerous items located in or about a place that police are going to search.[25]

III. LEGAL BACKGROUND

A. The Fifth Amendment and Miranda

The Fifth Amendment to the United States Constitution provides, inter alia, that "no person . . . shall be compelled in any criminal case to be a witness against himself."[26] So important was this principle to the Framers of the Constitution that they took from England what had formerly been a "mere rule of evidence"[27] and "clothed [it] in this country with the impregnability of a constitutional enactment."[28] Finding that the rights embodied in the Fifth Amendment and incorporated to the states through the Fourteenth Amendment were not properly safeguarded by law enforcement, the Supreme Court took preventative action.

The Supreme Court, in *Miranda v. Arizona*, addressed what it found to be the destruction of human dignity attendant to encroachments on liberty when suspects were forced to speak under compulsion while in state custody.[29] *Miranda* was a consolidation of four cases in which law enforcement

21. *Id.* at 1008. Liddell was charged with violations of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (2006). *Id.*

22. *Id.*

23. *Id.* at 1009.

24. *Id.* at 1009-10.

25. *Id.*

26. U.S. CONST. amend. V.

27. Miranda v. Arizona, 384 U.S. 436, 443 (1966) (citing Brown v. Walker, 161 U.S. 591, 596-97 (1896)). The maxim is *nemo tenetur seipsum accusare*. It is translated as "no one is bound to accuse himself." (author's translation).

28. *Miranda*, 384 U.S. at 443 (citing Brown v. Walker, 161 U.S. at 596-97).

29. *Id.* at 457-59.

officials took suspects into custody and interrogated them without advising them of their rights to remain silent and to consult with an attorney.[30] The Court evaluated common interrogation procedures of the time, which included intimidation, isolation of suspects, and mental abuse, such that the Court opined that any confession obtained under these procedures, and other like procedures, could not be the product of the suspect's free will.[31] The Court held that the Fifth Amendment privilege against compulsory self-incrimination extends to any situation in which a person's "freedom of action is curtailed" by law enforcement "in any significant way."[32] Further, the Court held that a person cannot be given a genuine opportunity to exercise his privilege against self-incrimination unless he is first effectively notified of his rights.[33] Without these prior warnings, statements received through pre-*Miranda* questioning would have been presumptively obtained through compulsion and, therefore, obtained in a constitutionally deficient manner.[34]

Miranda's guarantee that law enforcement must inform a suspect of his Fifth Amendment privilege against compulsory self-incrimination entered into the public consciousness, and the term "*Miranda* rights" entered into the public lexicon.[35] However, the Supreme Court later found unwavering adherence to this new procedure to be untenable. Pragmatism demanded a scheme that was more pliable since, after all, the *Miranda* warnings are not rights in and of themselves but rather prophylactic measures guaranteeing rights based in the Fifth Amendment.[36]

B. Quarles *and The Public-Safety Exception*

In *New York v. Quarles*, the Supreme Court considered whether there should be a public-safety exception to the *Miranda* warnings.[37] In *Quarles*, a young woman approached police officers in their car, stated that she had just been raped, provided a detailed description of the alleged perpetrator, told the officers that the suspect had just entered a supermarket located nearby, and

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30. *Id.* at 439-40.

31. *Id.* at 447-58.

32. *Id.* at 467. *Miranda,* on its facts, only applied to station house questioning, but the Court subsequently clarified that it applies anywhere that law enforcement seeks to interrogate a suspect. *See, e.g.*, Rhode Island v. Innis, 446 U.S. 291 (1980) (police car); Orozco v. Texas, 394 U.S. 324 (1969) (defendant's bedroom).

33. *Miranda*, 384 U.S. at 467.

34. *Id.*

35. *See* Dickerson v. United States, 530 U.S. 428, 435, 443 (2000) ("*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture.").

36. New York v. Quarles, 467 U.S. 649, 654 (1984) (citing Michigan v. Tucker, 417 U.S. 433, 444 (1974)).

37. 467 U.S. at 651.

said that the man was carrying a gun.[38] One of the officers radioed for help while the other entered the supermarket and found the alleged perpetrator, Quarles, who then proceeded to run.[39] Having momentarily lost sight of the suspect, the officer pursued him with his gun drawn, caught up with the suspect, and ordered him to stop.[40] The police officer then frisked the suspect and discovered an empty shoulder holster.[41] After handcuffing the suspect and before informing him of his *Miranda* rights, the officer asked him where the gun was located.[42] The suspect responded, "[T]he gun is over there," and nodded toward some empty cartons, where the officer then found the gun.[43]

At Quarles's subsequent prosecution for criminal possession of a weapon, the trial judge excluded the statements concerning the gun obtained both prior to and after his *Miranda* warnings because the evidence surrounding the gun was impermissibly tainted by the statements given prior to Quarles receiving *Miranda* warnings.[44] The Appellate Division of the Supreme Court of New York affirmed the judgment without opinion, and the New York Court of Appeals affirmed by a four to three vote.[45] The court of appeals refused to recognize an exigency exception to the strictures of *Miranda* because there was no evidence in the record of the police officer's subjective belief that the situation was one in which concerns of public safety required derogation from *Miranda*.[46]

The Supreme Court of the United States agreed to consider the case to determine whether this was an instance where concern for public safety justified an exception to the protections enunciated by *Miranda*.[47] The Court began by noting that it had recognized exigent-circumstance exceptions that negate normal protections afforded by the Fourth Amendment's guarantee against unreasonable searches and seizures.[48] The Court then analyzed the policies behind the *Miranda* warnings. It reasoned that the *Miranda* warnings are not an end in themselves but are a means wherethrough the Court seeks to guard the right against compulsory self-incrimination guaranteed by the Con-

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38. *Id.* at 651-52.

39. *Id.* at 652.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.* at 652-53.

45. *Id.* at 653. The New York Court of Appeals is the highest state court in New York.

46. *Id.*

47. *Id.*

48. *Id.* at 653 n.3 (noting that the Court has found "the warrant requirement of the *Fourth Amendment* inapplicable in cases where the '*exigencies of the situation* make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment'" (quoting Mincey v. Arizona, 437 U.S. 385, 394 (1978)) (emphasis added)).

stitution.[49] The Court recognized that the suspect in the instant case was in police custody and also noted that there was no claim that Quarles's statements were coerced or that the police officers subjectively feared for their own safety.[50] The only issue presented was whether the officer was justified in failing to apprise the suspect of his *Miranda* rights before questioning.[51]

The Supreme Court found that, under the circumstances of the case, there was a public-safety exception to the procedures mandated by *Miranda*.[52] This exception was not dependent on the subjective beliefs or motivations of police officers but was to be determined objectively by considering whether the officers' questions were reasonably prompted by a concern for public safety.[53] The Court classified this exception as a narrow one, limited to situations "where spontaneity rather than adherence to a police manual is necessarily the order of the day."[54]

In justifying the public-safety exception in *Quarles*, the Court noted that the police "were confronted with the immediate necessity of" finding a gun that the officers reasonably believed to be somewhere in the supermarket.[55] Often this judgment regarding public safety must be made "in a matter of seconds."[56] According to the Court, this was a situation that was a danger to public safety because the gun could be happened upon by an innocent bystander or grabbed by an accomplice.[57] The Court recognized that there was a balance of social costs that had been achieved in *Miranda*, which balanced the costs of added protection to suspects' rights on the one hand and, on the other, the possibility of less effective questioning and fewer convictions.[58] However, the balance achieved by *Miranda* is upset when the weight of immediate danger to public safety is added to the possibility of fewer convictions.[59] The public-safety exception to *Miranda*, therefore, recognizes that in some situations the immediate danger to public safety justifies derogation from the strictures of *Miranda*.[60]

The Court stressed that the public-safety exception is a workable rule that will not be difficult to apply because the exigency of the situation will demand it, and officers will be able to distinguish this narrow exception "almost instinctively."[61] The Supreme Court, having found that there is a pub-

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49. *Quarles*, 467 U.S. at 654.
50. *Id.* at 654-55.
51. *Id.*
52. *Id.* at 655-56.
53. *Id.*
54. *Id.* at 656.
55. *Id.* at 657.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.* at 658-59.

lic-safety exception to *Miranda* and that the circumstances in *Quarles* justified derogation from the strictures of *Miranda*, held that the New York Court of Appeals erred in excluding Quarles's statements to police regarding the weapon.[62] It reversed the decision and remanded the case.[63]

C. The Eighth Circuit and the Public-Safety Exception

The Eighth Circuit's reasoning in its application of the public-safety exception to *Miranda* has generally rested on two distinct and alternative grounds. First, the Eighth Circuit has found the public-safety exception to be applicable in circumstances where there is an immediate threat to public safety.[64] Second, the Eighth Circuit has applied the public-safety exception in circumstances involving inherently dangerous items.[65]

In *United States v. Lawrence*, the Eighth Circuit used the first ground, an immediate threat to public safety, to justify pre-*Miranda* questioning.[66] Todd Lawrence fled on foot from police after a routine traffic stop.[67] Lawrence was apprehended, and, while in custody on the way to the police station, he volunteered to the police that he had thrown away a gun and was informing the officers because he did not want it to be found by children.[68] After the statement, and before the suspect had been given *Miranda* warnings, police questioned the suspect in an effort to locate the gun.[69] Lawrence moved to suppress the evidence at trial, but the trial court found, and the Eighth Circuit affirmed, that the questions and answers fit the public-safety exception to *Miranda*.[70] The court reasoned that the officers had a reasonable fear that the gun would be found by a child and could cause harm to a child.[71] Because the gun was out in the open, there was an immediate need to locate it before it could be happened upon and before it could injure a member of the general public.[72]

The second ground the Eighth Circuit has found to support the application of the public-safety exception to *Miranda* rests on the idea that inherently dangerous items or situations that could harm police officers pose a significant safety risk that justifies derogation from procedures established by *Miranda*.[73] In *United States v. Williams*, police were informed that narcotics

62. *Id.* at 659-60.
63. *Id.* at 660.
64. *See* United States v. Lawrence, 952 F.2d 1034, 1035 (8th Cir. 1992).
65. *See* United States v. Williams, 181 F.3d 945, 953-54 (8th Cir. 1999).
66. *Lawrence*, 952 F.2d at 1036.
67. *Id.* at 1035.
68. *Id.*
69. *Id.*
70. *Id.* at 1036.
71. *Id.*
72. *Id.*
73. *See infra* notes 81-82 and accompanying text.

trafficking was occurring in the apartment of Tonnie Williams.[74] Williams was arrested after police executed an authorized no-knock warrant and secured his apartment.[75] While Williams was handcuffed in his apartment, and before he was read his *Miranda* warnings, police asked him, "[I]s there anything we need to be aware of?"[76] Williams informed the police that there was a gun in the closet.[77] At trial, Williams argued that the evidence of the gun and his statements concerning the gun should be suppressed because they were obtained during questioning before he was read his *Miranda* rights.[78]

The Eighth Circuit, finding the public-safety exception applicable, rested its decision on two alternative grounds. First, the court found that the officers could not have known whether any other individuals were present in the apartment or were expected to arrive.[79] The inference was that since the apartment was a known narcotics trafficking center the situation was immediately dangerous and therefore an exigency upon which to base the public-safety exception.[80]

The second justification the court found for applying the public-safety exception was that the officers could not have known whether there were any other "hazardous weapons" or materials located in the apartment.[81] If officers came upon them unknowingly or mishandled them, it could cause injury to law enforcement.[82] In *Williams*, the Eighth Circuit identified an alternative ground to justify applying the public-safety exception to *Miranda* that did not involve any element of exigency, namely a situation in which inherently dangerous items were believed to be present and thereby presented a potential threat to the safety of law enforcement.

The Eighth Circuit again used this alternative ground – police suspicion of the presence of dangerous items – to justify applying the public-safety exception in *United States v. Luker*.[83] However, in *Luker* there was no additional justification rooted in a need for immediacy.[84] In *Luker*, police stopped Tony Luker in his vehicle for having an excessively loud muffler.[85] Luker failed a field sobriety test and was arrested for drunk driving.[86] Before performing the pat-down search of Luker and reading him his *Miranda* warnings, one of the officers asked if there was anything on Luker's person that

74. 181 F.3d 945, 947 (8th Cir. 1999).
75. *Id.* at 947-48.
76. *Id.* at 948.
77. *Id.*
78. *Id.* at 953.
79. *Id.* at 953-54.
80. *Id.*
81. *Id.* at 954.
82. *Id.*
83. 395 F.3d 830, 833-34 (8th Cir. 2005).
84. *Id.*
85. *Id.* at 831-32.
86. *Id.* at 832.

could "stick or poke" the police officer.[87] The officer claimed at trial that he asked this question because he was aware of Luker's past methamphetamine use.[88] Also, after performing the pat-down search and before giving Luker his *Miranda* warnings, the officers asked Luker if there was anything in Luker's vehicle that should not be there or of which the officers should be aware.[89] Luker responded, "Just my .410 [shotgun]."[90] Because Luker had a previous felony conviction, he was charged with being a felon in possession of a firearm.[91] At trial, Luker moved to suppress the evidence of his statement about the shotgun because "he was not given his *Miranda* warnings prior to questioning."[92]

The Eighth Circuit affirmed the trial court's denial of Luker's motion to suppress under the public-safety exception to *Miranda*.[93] The court reasoned that the officers, who were aware of Luker's history of methamphetamine use, had a sufficient public-safety justification to question Luker about the contents of his vehicle before informing Luker of his *Miranda* rights.[94] The court affirmed the public-safety exception without the presence of immediacy.[95]

Judge Heaney, dissenting in *Luker,* feared that the circuit may have unjustifiably widened the narrow public-safety exception to *Miranda*. He indicated that the police officers' only bases for suspecting Luker's methamphetamine use were "unsupported assertions."[96] "[T]here was no 'outward indication'" that weapons or drugs were involved in this routine traffic stop, and Luker had no prior arrests or convictions involving methamphetamine.[97] Judge Heaney argued that suspicion cannot form an objectively reasonable

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* Luker was charged with a violation of 18 U.S.C. § 922(g). *Id.*

92. *Id.*

93. *Id.* at 833.

94. *Id.* at 833-34.

95. *Id.* at 833. The United States Court of Appeals for the First Circuit appears to agree with the Eighth Circuit's interpretation. In *United States v. Fox*, the First Circuit considered a traffic stop in which a police officer, after frisking a suspect, found a shotgun shell and proceeded to question Fox without giving him any *Miranda* warnings. 393 F.3d 52, 56-57 (1st Cir. 2004), *vacated and remanded on other grounds*, 545 U.S. 1125 (2005), *conviction and sentence aff'd*, 429 F.3d 316 (1st Cir. 2005). After completing the body search and placing Fox in the police vehicle, the officer asked whether there were any other weapons inside his vehicle. 393 F.3d at 57. The First Circuit found that, because the officer had reason to believe that Fox possessed a firearm, the police officer had a "reason to fear for his own safety and that of the public," and, therefore, the public-safety exception to *Miranda* applied. *Id.* at 60.

96. *Luker*, 395 F.3d at 834 (Heaney, J. dissenting).

97. *Id.*

fear for public safety and that, combined with the fact that there were no other people in the vicinity to be harmed or to pose a threat, the Eighth Circuit had in this case "expand[ed] the public safety exception far beyond its original scope."[98]

D. Other Circuits' Rejection of "Widening" the Public-Safety Exception

Other circuits have retained a narrower view of the public-safety exception than that of the Eighth Circuit, excluding from the exception situations without an objective and immediate danger.[99]

In *United States v. Mobley*, the United States Court of Appeals for the Fourth Circuit considered a situation in which police executed arrest and search warrants against Delbert Mobley.[100] Mobley was found naked in his apartment and secured by law enforcement, and a security sweep was conducted in his apartment without incident.[101] Mobley was read his *Miranda* rights, at which time he indicated that he wished to speak with an attorney.[102] One of the officers then proceeded to ask Mobley whether there were any other weapons or dangers in the apartment.[103] Mobley stated that there was a weapon located in his bedroom and then led the officers to the weapon.[104] At trial, Mobley argued that the evidence of his statement and the weapon itself should be suppressed due to the police officer's interrogation after his request for counsel in violation of the rule set forth by *Edwards v. Arizona*,[105] which generally forbids continued questioning after the "Mirandized" suspect indicates his desire to speak with counsel.[106] The trial court denied Mobley's motion under the public-safety exception to *Miranda*.[107]

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98. *Id.* at 834-35.

99. *See* United States v. Mobley, 40 F.3d 688, 693 (4th Cir. 1994); United States v. Williams, 483 F.3d 425, 428 (6th Cir. 2007); United States v. Raborn, 872 F.2d 589, 595 (5th Cir. 1989).

100. 40 F.3d 688, 690 (4th Cir. 1994).

101. *Id.*

102. *Id.*

103. *Id.* at 690-91.

104. *Id.* at 691.

105. 451 U.S. 477, 484-85 (1981).

106. *Id.* The rule of *Edwards* states that where a person subject to *Miranda* has indicated a desire to exercise his right to speak to an attorney, further questioning must cease until counsel has been made available to him. *Id.* at 484-85. In *Mobley*, the Fourth Circuit first addressed the issue of whether the public-safety exception to *Miranda* could, in the abstract, be applicable to the rule of *Edwards* as well. 40 F.3d at 692. The court held, as had the United States Court of Appeals for the Ninth Circuit before it, that the public-safety exception to *Miranda*, articulated in *Quarles*, does apply in an *Edwards* situation as well. *Id.* at 693; *see also* United States v. DeSantis, 870 F.2d 536, 541 (9th Cir. 1989). Therefore, the public-safety exception analysis is

The Fourth Circuit, however, rejected the trial court's application of the public-safety exception. The court reasoned that the public-safety exception under *Quarles* is an exception to "be construed narrowly" when there is "'an objectively reasonable need to protect the police or the public from any *immediate* danger associated with [a] weapon.'"[108] In *Mobley*, the court found no objective and apparent danger presented to police or the public.[109] The suspect was not armed, he was in custody, a security sweep of the home had been made, he was the sole individual present, and it was solely Mobley's residence.[110] In a footnote, the court also specifically found that a suspicion that there are weapons on the premises is not in itself enough to create an objectively reasonable concern for immediate danger to the public or police.[111] Each case must be examined individually and examined on its own facts to determine whether a determination of danger to public safety is objectively reasonable under the circumstances.[112]

The United States Court of Appeals for the Sixth Circuit, in *United States v. Williams*, addressed a case in which four Memphis police officers executed an outstanding warrant for Williams's arrest.[113] Police officers found Williams's residence in a boarding house and knocked on his door.[114] The Sixth Circuit found that the facts of what occurred after that moment were unclear due to inconsistent and inadequate findings by the trial court and remanded the case back to the trial court.[115] However, before doing so the Sixth Circuit found that the trial court had determined that the officers questioned the suspect without advising him of his *Miranda* rights, and the Sixth Circuit then proceeded to elaborate its position on the public-safety exception to *Miranda*.[116]

When considering the public-safety exception, the court began with an evaluation of the context that took into account a number of factors, including "the known history and characteristics of the suspect, the known facts and circumstances of the alleged crime, and the facts and circumstances con-

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applicable in *Edwards* situations and is generally relevant to the analysis of the public-safety exception under *Quarles*.

107. *Mobley*, 40 U.S. F.3d at 691.

108. *Id.* at 693 (quoting New York v. Quarles, 467 U.S. 649, 659 n.8 (1984)) (emphasis added).

109. *Id.* at 693.

110. *Id.*

111. *Id.* at 693 n.2.

112. *Id. See also* United States v. Melvin, No. 05-4997, 2007 U.S. App. LEXIS 16794, at *32-33 (4th Cir. July 13, 2007) (affirming *Mobley* in suppressing evidence concerning the defendant's truck that was on its way to an impound lot to which there was no evidence the public had access).

113. 483 F.3d 425, 427 (6th Cir. 2007).

114. *Id.*

115. *Id.* at 430.

116. *Id.* at 428.

fronted by the officer when he undertakes the arrest."[117] The court found that, at a minimum, the officer must reasonably believe that the defendant might have recently possessed "a weapon, and . . . that someone *other than police* might gain access to that weapon and inflict harm with it."[118] The court specifically stated that reasonably believing that other weapons may be in the vicinity is not enough to support a finding of an objectively reasonable fear for public safety unless there is also reason to believe that someone other than police could come upon the weapon and cause harm with it.[119]

IV. INSTANT DECISION

In *United States v. Liddell*, the Eighth Circuit reviewed de novo whether the facts of the case supported a finding that the public-safety exception to *Miranda* was warranted.[120] The majority began its analysis by citing the basic premise that there is a public-safety exception to *Miranda*, which was enunciated in *Quarles*.[121] Application of the public-safety exception, the court elaborated, does not depend upon the subjective motivations of the inquisitor, but it is objective and dependent on whether "'police officers ask[ed] questions reasonably prompted by a concern for the public safety.'"[122]

The court characterized Liddell's argument as essentially contending that, in the circumstances of his arrest, there lacked a need for immediacy that would justify the public-safety exception.[123] The Eighth Circuit then cited with approval the district court's conclusion that finding one firearm inside a vehicle, when the sole occupant of the vehicle is in custody and rendered incapable of harm, is sufficient to create a reasonable concern that other firearms may be located in the vehicle.[124] The court reasoned that this reasonable concern, in turn, justifies the public-safety exception because the police officers may accidentally fire or mishandle additional firearms.[125] Therefore,

117. *Id.*

118. *Id.* (emphasis added). The court also stated that, even if these two minimum requirements are met, there is still an opportunity to rebut the inference of an objectively reasonable fear for public safety "with context-specific evidence." *Id.* (citing United States v. Estrada, 430 F.3d 606, 613 (2d Cir. 2005)).

119. *Id.* at 429. The United States Court of Appeals for the Fifth Circuit used this same reasoning, in dicta, and rejected the government's argument that questioning concerning a weapon before giving *Miranda* warnings was warranted by the public-safety exception when the vehicle had been seized and police had sole access to it. United States v. Raborn, 872 F.2d 589, 595 (5th Cir. 1989).

120. 517 F.3d 1007, 1009 (8th Cir. 2008), *cert. denied*, 129 S. Ct. 627 (2008).

121. *Id.* (citing New York v. Quarles, 467 U.S. 649, 655 (1984)).

122. *Id.* (quoting *Quarles*, 467 U.S. at 656).

123. *Id.*

124. *Id.*

125. *Id.* at 1009-10. The court cited the *Luker* and *Williams* decisions as precedent. *See supra* notes 74-98 and accompanying text.

according to the court, limited questioning concerning the possibility of further dangerous weapons located inside the vehicle is permissible because the questioning is not "designed solely to elicit testimonial evidence from a suspect."[126]

Judge Gruender's concurring opinion in *Liddell* made it clear that his concurrence was based on the circuit's precedent, but that he was concerned that the court had at a prior time set down a path that had impermissibly expanded the public-safety exception to *Miranda*.[127] Judge Gruender argued that the original public-safety exception enunciated by *Quarles* was tethered to the existence of exigent circumstances, a restriction that had been erased from the Eighth Circuit's relevant decisions.[128]

The concurring opinion began with an analysis of the *Quarles* decision and emphasized that the Supreme Court's rationale for the public-safety exception was based on the existence of exigent circumstances.[129] In *Quarles*, the fear was that a firearm, located somewhere in a public place, could be taken by an accomplice or encountered by an unwitting member of the general public.[130] The concurring judge stressed that nowhere in the Supreme Court's *Quarles* decision was there a "concern that a trained police officer discovering a weapon in an otherwise secured environment would justify applying the exception."[131] To illustrate the point, the concurring judge pointed to a case called *Orozco v. Texas*,[132] which the Supreme Court had used in *Quarles* to distinguish between situations in which exigency called for the application of the public-safety exception and those situations in which exigency was absent and the public-safety exception was therefore inapplicable.[133]

In *Orozco*, four police officers entered into Orozco's home to question him about a murder committed earlier that day.[134] The police interrogated Orozco without giving him any *Miranda* warnings and asked him whether he had been to the crime scene where a shooting had taken place, whether he owned a gun, and where it was located.[135] Orozco responded by telling the officers where his gun was located.[136] The Supreme Court held that these statements had to be suppressed because they were clearly investigatory and obtained prior to giving the suspect his *Miranda* warnings.[137] As the concur-

126. *Liddell*, 517 F.3d at 1009 (quoting *Quarles*, 467 U.S. at 659).
127. *Id.* at 1010 (Gruender, J., concurring).
128. *Id.*
129. *Id.* at 1010-11.
130. *Quarles*, 467 U.S. at 657.
131. *Liddell*, 517 U.S. at 1011 (Gruender, J., concurring).
132. *Id.* (discussing Orozco v. Texas, 394 U.S. 324 (1969)).
133. *Quarles*, 467 U.S. at 659 n.8 (1984).
134. *Orozco*, 394 U.S. at 325.
135. *Id.*
136. *Id.*
137. *Id.* at 326-27.

ring judge in *Liddell* observed, there was no "'immediate danger associated with the weapon'" and, therefore, "no exigency requiring immediate action."[138] The concurring judge continued to reason that, had the Supreme Court believed that the public-safety exception applied to circumstances in which the sole basis for the exception was that police officers reasonably believe that they could happen upon a firearm, the public-safety exception would have been applicable in *Orozco*.[139] In *Orozco*, the police officers did have a reason to believe there was a firearm located in Orozco's residence, but the public-safety exception was inapplicable.[140]

The concurring judge's reading of *Quarles* would justify the public-safety exception to *Miranda* in two circumstances. The exception "applies only when (1) an immediate danger to the police officers or the public exists, or (2) when the public may later come upon a weapon and thereby create an immediately dangerous situation."[141]

The record in *Liddell*, according to the concurrence, did not indicate the existence of any exigent circumstances upon which the public-safety exception to *Miranda* could be founded.[142] Liddell had been removed from his vehicle, patted-down, and secured.[143] There were no other people in the vicinity that had access to the vehicle, and there was no immediate need to search the vehicle in order to protect the public safety.[144] Concurring Judge Gruender concluded that the only basis upon which the Eighth Circuit could conclude that the public-safety exception to *Miranda* applied was that police officers might have encountered unexpected additional weapons in the vehicle that could prove harmful if mishandled in some way.[145] Therefore, according to Judge Gruender, the public-safety exception to *Miranda* should not have been applied in *Liddell* due to a complete lack of exigent circumstances justifying application of the exception.[146]

V. COMMENT

The public-safety exception to the strictures of *Miranda*, enunciated in *Quarles*, was an exception rooted in exigency. The Supreme Court in *Quarles* repeatedly linked the public-safety exception to situations of imme-

138. *Liddell*, 517 F.3d at 1011 (Gruender, J., concurring) (quoting New York v. Quarles, 467 U.S. 649, 659 n.8 (1984) (emphasis omitted)).
139. *Id.*
140. *Id.*
141. *Id.* at 1011-12.
142. *Id.* at 1012.
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.* at 1013.

diacy,[147] spontaneity,[148] exigent circumstances,[149] volatile situations,[150] and instinct.[151] In certain situations where exigent[152] circumstances exist and the danger to public safety is immediate and serious, the benefits from the protections afforded to suspects by *Miranda* are outweighed by a need to protect the public.[153]

There are two distinct grounds upon which the public-safety exception can rest, and each has different requirements. The distinction between the two grounds was elaborated in the *Quarles* opinion that first established the public-safety exception. In *Quarles*, the majority expounded upon a case substantially analogous to *Liddell.* The Court stated that the public-safety exception enunciated therein was not inconsistent with its holding in *Orozco v. Texas.*[154] In *Orozco*, the Court held that police officers in the home of the suspect could not question him regarding weapons he may have possessed in the home until after he was secured and given his *Miranda* warnings because there was no "*immediate* danger associated with the weapon."[155] The Supreme Court made clear in *Quarles* that it did not recognize the inherent danger in the possibility of trained police officers mishandling or happening upon a firearm as a sufficient justification for the public-safety exception.[156] The Court noted a lack of *immediate* danger with respect to possible weapons in the home of the suspect.[157] This should be contrasted with the *Quarles*

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147. New York v. Quarles, 467 U.S. 649, 657 (1984) ("The police in this case, in the very act of apprehending a suspect, were confronted with the immediate necessity of ascertaining the whereabouts of a gun which they had every reason to believe the suspect had just removed from his empty holster and discarded in the supermarket.").

148. *Id.* at 655 ("In a kaleidoscopic situation such as the one confronting these officers . . . spontaneity rather than adherence to a police manual is necessarily the order of the day . . . .").

149. *Id.* at 658 ("The exception will not be difficult for police officers to apply because in each case it will be circumscribed by the exigency which justifies it.").

150. *Id.* at 657-58 ("We decline to place officers such as Officer Kraft in the untenable position of having to consider, *often in a matter of seconds*, whether it best serves society for them to ask the necessary questions without the *Miranda* warnings and render whatever probative evidence they uncover inadmissible, or for them to give the warnings in order to preserve the admissibility of evidence they might uncover but possibly damage or destroy their ability to obtain that evidence and neutralize the volatile situation confronting them." (emphasis added)).

151. *Id.* at 658-59 ("We think police 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.").

152. Exigent is defined as "[r]equiring immediate action or aid; urgent." BLACK'S LAW DICTIONARY (8th ed. 2004).

153. *Quarles*, 467 U.S. at 658.

154. *Id.* at 659 n.8 (citing Orozco v. Texas, 394 U.S. 324 (1969)).

155. *Id.* (emphasis added). *See supra* notes 134-40 and accompanying text.

156. *Quarles*, 467 U.S. at 659.

157. *Id.*

Court's observation that the fact that a member of the general public might later come upon the gun is one danger contemplated by the Court in elaborating the public-safety exception.[158]

A comparison of *Orozco*, where the public-safety exception was not applicable, to *Quarles*, where it was applicable, suggests that when the danger to be avoided is aimed toward the general public, immediacy already exists as an element. The majority of the general public is not trained in the proper methods and procedures for dealing with dangerous items or situations. When dangerous items are left exposed in an area to which the public at large has access and in an area that police have not secured, public incompetence in dealing with such situations is the exigent circumstance that justifies immediate questioning by police.

The police, however, specifically train and prepare for such situations. When a law enforcement officer comes upon a situation where dangerous items may be present and no other exigent circumstance exists to suggest *immediate* danger, the public-safety exception to *Miranda* is not applicable. Therefore, when a potential danger is not present to the public at large but only to police officers, the public-safety exception is inextricably bound to the existence of exigent circumstances that justify a need for *immediate* action to protect the police officers and cannot be resorted to out of mere convenience.

The Eighth Circuit, along with other circuits, expanded the public-safety exception to *Miranda* beyond its original scope. In *Williams* and *Luker*, the Eighth Circuit articulated a ground for the public-safety exception that essentially justified its application when police officers questioned a suspect concerning items potentially present that were inherently dangerous and could prove harmful to law enforcement if mishandled or found unexpectedly.[159] The potential scope of this public-safety exception is far from the narrow one that the Supreme Court articulated in *Quarles*.[160]

Police work is inherently dangerous, and officers are constantly confronting situations involving potentially dangerous items. Under the *Williams*, *Luker*, and now *Liddell* line of cases, a police officer is not bound to the strictures of *Miranda* if he has an objectively reasonable fear that inherently dangerous items may be located near the suspect. It is not an unlikely extrapolation of this logic that any suspect with a known prior criminal history involving firearms, or potentially any felony history, would automatically create an objectively reasonable fear that he may be associated with dangerous weapons. Therefore, prior criminal status alone could potentially create a *Miranda* exception for prior offenders.

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158. *Id.* at 657.

159. *See supra* notes 74-98 and accompanying text.

160. *Quarles*, 467 U.S. at 658 ("In recognizing a narrow exception to the *Miranda* rule in this case, we acknowledge that to some degree we lessen the desirable clarity of that rule.").

It is vital to understand what the standard for applying the public-safety exception is and what it is not. The United States Court of Appeals for the First Circuit described the public-safety doctrine as permitting "questions 'reasonably prompted by a concern for . . . safety,' which must be distinguished from those 'designed solely to elicit testimonial evidence from a suspect.'"[161] Although this is true, framing the question in this way is prone to misunderstanding and abuse. It is correct that questions genuinely designed to protect public safety would not have the sole purpose of eliciting testimonial evidence from the suspect. However, using the motivations of the police officer in assessing whether the questions fit the public-safety exception is an improper and ill advised foray into subjective belief – a journey that the Supreme Court sought to avoid.[162]

The Supreme Court in *Quarles* clearly announced that exigent circumstances form the proper basis for the public-safety exception to *Miranda*.[163] The test for the public-safety exception was not to be a subjective test but an objective one based on an objectively reasonable fear for the public safety.[164] Therefore, courts should not consider whether the questions asked *could* have been prompted by a subjective concern for the safety of police officers but whether the questioning before *Miranda* warnings was objectively reasonable and immediately necessary to protect public safety. Analysis of the questions asked is pertinent to whether the questions were properly within the scope of the public-safety exception, but it is not sufficient to determine whether there was an immediate and objectively reasonable situation in which the public-safety exception was properly applied.

The exigency requirement limits the public-safety exception to circumstances in which it is not feasible for a suspect to be informed of his *Miranda* rights *before* police begin investigating while at the same time ensuring the public safety. When a suspect is in custody and there is no objective reason to believe that there is an immediate danger to public safety, the policy rationale behind the exception ceases to have force. The *Quarles* court elaborated on the justification for the exception when it considered the balance between the right against self-incrimination and effective law enforcement.[165] The Court stated that, in ordinary circumstances, the benefit of the procedural

161. United States v. Fox, 393 F.3d 52, 60 (1st Cir. 2004) (quoting *Quarles*, 467 U.S. at 656, 659), *vacated and remanded on other grounds*, 545 U.S. 1125 (2005), *conviction and sentence aff'd*, 429 F.3d 316 (1st Cir. 2005).

162. *Quarles*, 467 U.S. at 656. The Supreme Court stated that members of law enforcement act out of a variety of overlapping and unverifiable motives when questioning suspects. *Id.* Included are the desire to protect "their own safety, the safety of others, and . . . the desire to obtain incriminating evidence." *Id.* Therefore, the availability of the public-safety "exception does not depend on the motivation of the individual officers involved." *Id.*

163. *Id.*

164. *Id.* at 656.

165. *Id.* at 657.

safeguards afforded by *Miranda* to ensure adequate protection of Fifth Amendment constitutional rights outweighs the primary social cost of these warnings, which is the possibility of fewer convictions.[166] The balance of the benefits and burdens of the strictures of *Miranda* is upset when the additional cost of immediate danger to public safety is added to the scales, which in turn justifies the public-safety exception to *Miranda*'s prophylactic protections.[167]

The Eighth Circuit stated in *Liddell* that the risk of police officers mishandling unknown firearms or drug paraphernalia is alone a sufficient basis upon which to find that the public-safety exception is applicable with regard to weapons or contraband on the premises or in the vehicle in which the suspect is found.[168] If this is an accurate description of the public-safety exception, meaning that immediacy is not necessary, the implications are sobering. Under this rationale, there is no basis upon which to find police conduct improper in the following scenario.

Police officers take a suspect into custody, transport him to the police station, and leave him in the station for an extended period of time. The police officers have a reasonable belief that weapons may be located in the suspect's apartment, where he lives alone and to which he has sole access. Police then proceed to question him with respect to what other dangerous items may be found in his apartment, which they are authorized to search, without first giving him his *Miranda* warnings.

In this scenario, the risk the Eighth Circuit seeks to avoid is the same as the one in *Liddell*. First, there is a reasonably objective belief that other weapons may be located in the suspect's apartment. Second, these weapons are potentially dangerous if mishandled. Third, the questioning is restricted to ascertaining what other weapons may be located in the apartment. This is clearly not the situation that was contemplated by the Supreme Court in creating the public-safety exception because no exigency exists to justify circumventing *Miranda*.

When the Eighth Circuit applies the public-safety exception when there are no exigent circumstances that make *immediate* action necessary to protect the public safety, the court turns this narrow exception into one that is far too broad and that undermines the strictures of *Miranda*. The objectively reasonable belief that questioning is immediately necessary to protect the public safety before issuing *Miranda* warnings has become a question of whether there is an objectively reasonable belief that other weapons or dangerous items may be associated with the suspect. The Eighth Circuit has exceeded the scope of the public-safety exception created in *Quarles*, and by doing so it has weakened the safeguards provided by *Miranda* to protect Fifth Amendment rights.

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166. *Id.*

167. *Id.* at 657-58.

168. United States v. Liddell, 517 F.3d 1007, 1009-10 (8th Cir. 2008).

VI. CONCLUSION

Protecting constitutional rights always comes with a cost, and protecting the constitutional rights of alleged criminals is never a publicly popular path to take. However, the Supreme Court in *Miranda* made a determination that there is a proper balance between protecting Fifth Amendment rights and effective law enforcement. *Miranda*'s prophylactic measures to protect Fifth Amendment rights, however, have not always proven to be tenable. Numerous exceptions to *Miranda* and paths around Fifth Amendment violations have developed.

In *Quarles*, such an exception was created where there was an immediate need for questioning, without *Miranda* warnings, to protect public safety. The Eighth Circuit's expansion of the public-safety exception to include situations in which an element of immediacy is not present is both beyond the scope of the original exception and ill advised. Without the need for immediate action, the justifications for the public-safety exception fail. The right against self-incrimination is essential to protecting the dignity and integrity of American citizens. *Miranda* was an attempt to protect against "subtle encroachments on individual liberty."[169] Although public policy may at times dictate that protections afforded to safeguard constitutional rights be disregarded, the margins should be fastidiously protected, lest what was proclaimed in the Constitution become in reality but a "form of words."[170]

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169. Miranda v. Arizona, 384 U.S. 436, 459 (1996).

170. *Id.* at 444 (quoting Silverthorn Lumber Co. v. United States, 251 U.S. 385, 392 (1920)).