

FLORIDA CASE LAW UPDATE 16-08

Case: State v. Maloney, 41 Fla. L. Weekly D1156d (Fla. 5th DCA)

Date: May 13, 2016

Subject: Custodial Interrogation Regarding the Location of Weapons at a Shooting Scene was Admissible under the Public Safety Exception

FACTS: Police responded to the scene of a shooting between two rival gangs in the parking lot of a VFW hall. Multiple people were killed or severely injured. In an effort to safely secure the location and large crowd, police made the decision to handcuff 30-40 people and order them to lay face down on the ground—including Maloney (who had been found crouching in front of a truck). Police then roped off the area with crime-scene tape and controlled access to the area. Maloney and others were placed in investigative detention for officer safety and public safety. When Maloney was patted down for weapons, an officer seized a .22 caliber derringer pistol and a double-edged fish blade knife from Maloney's person. The weapons were placed nearby, but out of Maloney's reach. Police continued to lay a number of weapons out on a sidewalk in front of a grassy area where the detainees were held. A sergeant decided to collect the weapons and put them in a central location, but wanted the detainees to identify their property so the items could be bagged accordingly. Maloney was cooperative, he had not been placed under arrest, and he had not been advised of his *Miranda* warnings. Approximately 30 minutes into Maloney's detention, the sergeant asked Maloney which weapons belonged to him and Maloney claimed ownership of the .22 caliber pistol and the knife. The sergeant noticed that Maloney was also wearing a holster for a much larger gun, so he asked Maloney if he had any additional weapons that fit the empty holster. Maloney answered that he had a .380 caliber Ruger pistol and pointed it out on the ground, where he had dropped it during the shooting. Eventually the police narrowed down the suspects to Maloney and three others, who were later arrested and charged. Maloney filed a motion to suppress his statements to police indicating ownership of the .22 caliber derringer and the knife, arguing that his statements were elicited in response to a custodial interrogation without being advised of his *Miranda* warnings. The trial court granted the motion and the State appealed.

RULING: The appellate court found that Maloney was in custody for purposes of *Miranda* because he was restrained in a manner that was consistent with formally being under arrest. However, the appellate court also held that the questioning of Maloney about weapons before being read *Miranda* was justified by what has become known as the public safety exception, established in the case of New York v. Quarles, 467 U.S. 649 (1984). ("[T]he 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.")

DISCUSSION: In order to apply the public safety exception, the threat must be imminent. Moreover, the threat's imminence must be viewed from the objective perspective of a reasonable person in the position of the officer at the time—not hindsight. Although the imminence of a threat may diminish with time, the public safety exception could still apply over an hour after an arrest/detention, or if a gun is missing. In this case, the appellate court considered the large number of people detained at the scene to be "an extraordinary circumstance posing an imminent risk to law enforcement and the public." The Fifth District pointed out that in this situation there were 30 to 40 people being detained in an outdoor area, which was open to the public and adjacent to a parking lot. Additionally, the missing gun could have been located anywhere, including places where Maloney, another detainee, a passerby, or even a child could have accessed it. The Fifth District concluded, "Because the danger existing from a missing gun in a public place does not diminish with time...a residual danger to the law enforcement officers and the public existed at the time [the sergeant] questioned Maloney about the empty holster."

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.