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# The Unlikely Meeting between Dzhokhar Tsarnaev and Benjamin Quarles

Brian Gallini, *University of Arkansas, Fayetteville*



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# THE UNLIKELY MEETING BETWEEN DZHOKHAR TSARNAEV AND BENJAMIN QUARLES

*Brian Gallini*<sup>†</sup>

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## INTRODUCTION

It was 12:30 a.m. in Queens, New York, on September 11, 1980, when a panicked young woman flagged down officers on routine patrol and told them she was just raped.<sup>1</sup> She described the assailant to officers, told them he was armed, and that he just retreated into a nearby supermarket.<sup>2</sup> Law enforcement apprehended the assailant in the back of the store and handcuffed him following a frisk that revealed an empty shoulder holster.<sup>3</sup> An officer asked where the gun was and the suspect responded, “the gun is over there.”<sup>4</sup>

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<sup>†</sup> Associate Dean & Professor of Law, University of Arkansas-Fayetteville School of Law. The author first thanks Spencer Sims for her invaluable research assistance in preparing this Article. Second, the author thanks Professors George Thomas and Peter Henning for their helpful comments. Third, the author thanks the University of Arkansas-Fayetteville School of Law's library staff—especially Lorraine Lorne—for their invaluable research assistance. Fourth, the author thanks the School of Law for a summer research grant that provided support for this project. Last, but far from least, the author thanks his wife for her tremendous support. Amazingly, she is not bored reading my work after all these years.

1. *New York v. Quarles*, 467 U.S. 649, 651 (1984).
2. *Id.* at 651–52.
3. *Id.* at 652.
4. *Id.*

Because the suspect was in custody and responded to interrogation at the time of his incriminating statement, *Miranda* presumably mandated exclusion of his response.<sup>5</sup> But in a 1984 Supreme Court opinion titled *New York v. Quarles*,<sup>6</sup> the Court held the suspect's response—"the gun is over there"—admissible at his trial for criminal possession of a weapon by creating "a 'public safety' exception" to *Miranda*.<sup>7</sup>

Fast forward to 2:49 p.m. on April 15, 2013, when the first of two pressure cooker bombs exploded near the finish line of the Boston Marathon.<sup>8</sup> A second bomb exploded between twelve to thirteen seconds later 214 yards away.<sup>9</sup> Collectively, the explosions killed three people and wounded 264 others.<sup>10</sup> At the conclusion of a citywide manhunt that ended at around 8:30 p.m. on April 19,<sup>11</sup> law enforcement apprehended a severely wounded Dzhokhar Tsarnaev hiding inside a boat in the city of Watertown.<sup>12</sup> His condition initially deteriorated, prompting medical personnel to intubate him to keep him alive.<sup>13</sup>

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5. See *Miranda v. Arizona*, 384 U.S. 436, 471–79 (1966) (holding that when a state actor takes an individual into custody, the state actor must inform the individual about some rights before interrogating the individual or evidence obtained from the questioning will be excluded).
  6. 467 U.S. 649 (1984).
  7. *Id.* at 652, 655.
  8. *102 Hours in Pursuit of Marathon Suspects*, BOS. GLOBE (Apr. 28, 2013), <http://www.bostonglobe.com/metro/2013/04/28/bombreconstruct/VbSZhzHm35yR88EVmVdbDM/story.html#> [https://perma.cc/MJ75-8A6H].
  9. Compare *id.* (suggesting the explosions were twelve seconds apart), with Sara Morrison & Ellen O'Leary, *Timeline of Boston Marathon Bombing Events*, BOSTON.COM (Jan. 5, 2015, 9:01 AM), <http://www.boston.com/news/local/massachusetts/2015/01/05/timeline-boston-marathon-bombing-events/qiYJmANm6DYxqsusVq66yK/story.html> [https://perma.cc/3BPS-B87C] (reporting the explosions as thirteen seconds apart).
  10. *Boston Marathon Bombing Injury Total Climbs to 264, Officials Say*, HUFFINGTON POST (June 23, 2013, 5:12 AM), [http://www.huffingtonpost.com/2013/04/23/boston-marathon-bombing-injury-total\\_n\\_3138159.html?](http://www.huffingtonpost.com/2013/04/23/boston-marathon-bombing-injury-total_n_3138159.html?) [https://perma.cc/WB6Z-Z5BE].
  11. Morrison & O'Leary, *supra* note 9.
  12. Katharine Q. Seelye et al., *2nd Bombing Suspect Caught After Frenzied Hunt Paralyzes Boston*, N.Y. TIMES (Apr. 19, 2013), [http://www.nytimes.com/2013/04/20/us/boston-marathon-bombings.html?hp&\\_r=0](http://www.nytimes.com/2013/04/20/us/boston-marathon-bombings.html?hp&_r=0) [https://perma.cc/8YEW-4QUL]; Russell Goldman, *Boston Bomber Dzhokhar Tsarnaev Was Shot in Face, Say Doctors*, ABC NEWS (Aug. 20, 2013), <http://abcnews.go.com/US/boston-bomber-dzhokhar-tsarnaev-shot-face-doctors/story?id=20012945> [https://perma.cc/HB39-PWBH].
  13. Milton J. Valencia, *Lawyers Say Tsarnaev's Hospital Remarks Were Involuntary*, BOS. GLOBE (May 7, 2014), <http://www.bostonglobe.com/metro/2014/05/07/dzhokhar-tsarnaev-alleged-marathon-bomber-asks-judge->

But by 7:22 p.m. the next day, a high value FBI interrogation group began questioning Tsarnaev without first reading him his *Miranda* rights.<sup>14</sup> Although citizens openly lined the streets of Boston in celebration of Tsarnaev's capture and in praise of law enforcement,<sup>15</sup> the government nonetheless expressly relied on the public safety exception to justify questioning Tsarnaev without giving him *Miranda*.<sup>16</sup> And although he was heavily sedated, repeatedly requested a lawyer, and asked investigators to leave him alone,<sup>17</sup> the interrogation continued for at least sixteen hours during which Tsarnaev provided several incriminating statements.<sup>18</sup> Only after judicial intervention was Tsarnaev read his *Miranda* warnings.<sup>19</sup>

Reaction to the government's reliance on *Quarles* as a basis not to provide Tsarnaev, a naturalized citizen, with *Miranda* warnings was predictably mixed<sup>20</sup>—perhaps particularly so given that James Holmes

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rule-out-statements-made-hospital/uCQd9PETLWJVqeJuQhSdeL/story.html [https://perma.cc/PE4X-MF24].

14. *Id.*
15. Tyler Kingkade, *College Students Celebrate In Boston After Capture of Bombing Suspect Dzhokhar Tsarnaev*, HUFFINGTON POST (Apr. 20, 2013, 11:58 AM), [http://www.huffingtonpost.com/2013/04/20/college-students-boston-celebration\\_n\\_3120859.html](http://www.huffingtonpost.com/2013/04/20/college-students-boston-celebration_n_3120859.html) [https://perma.cc/S49E-DFC8]; Jaclyn Reiss et al., *Residents Cheer Capture of Marathon Bombing Suspect*, BOS. GLOBE (Apr. 20, 2013), <http://www.bostonglobe.com/metro/2013/04/19/watertown-residents-cheer-capture-dzhokhar-tsarnaev-boston-marathon-bombing-suspect/M8FwdarJzTCVrww6PNc81N/story.html> [https://perma.cc/FQY6-SE84].
16. Brian Beutler, *DOJ Official: No Miranda Rights for Boston Bombing Suspect Yet*, TALKING POINTS MEMO (Apr. 19, 2013, 10:18 PM), <http://talkingpointsmemo.com/livewire/doj-official-no-miranda-rights-for-boston-bombing-suspect-yet> [https://perma.cc/6KPQ-XSWR]; Josh Gerstein, *Terror Suspect: 5 Legal Questions*, POLITICO (Apr. 21, 2013, 6:03 PM), <http://www.politico.com/story/2013/04/no-miranda-rights-for-now-for-bombing-suspect-90362.html?hp=f1> [https://perma.cc/UC5S-KSZQ].
17. Valencia, *supra* note 13.
18. Associated Press, *Boston Marathon Bombing Suspect Dzhokhar Tsarnaev Silent After Read Miranda Rights*, CBS NEWS (Apr. 25, 2013, 5:00 PM), <http://www.cbsnews.com/news/boston-marathon-bombing-suspect-dzhokhar-tsarnaev-silent-after-read-miranda-rights/> (providing duration of interrogation) [https://perma.cc/DDU6-KHFK]; Government's Opposition to Defendant's Motion to Suppress Statements at 6–7, *United States v. Tsarnaev*, 53 F. Supp. 3d 450 (D. Mass. 2014) (Crim. No. 13-10200-GAO).
19. Devlin Barrett et al., *Judge Made Call to Advise Suspect of Rights*, WALL ST. J. (Apr. 25, 2013, 7:40 PM), <http://www.wsj.com/articles/SB10001424127887323789704578444940173125374> [https://perma.cc/4JW4-TLRN].
20. Charlie Savage, *Debate Over Delaying of Miranda Warning*, N.Y. TIMES (Apr. 20, 2013), <http://www.nytimes.com/2013/04/21/us/a-debate-over-delaying-suspects-miranda-rights.html> [https://perma.cc/V8XD-EMA8]; Ken Dilanian & Brian Bennett, *Legal Questions Surround Boston Bombing*

and Timothy McVeigh, among other high profile examples,<sup>21</sup> each received warnings sooner despite lingering concerns for public safety after their capture.<sup>22</sup> Agreeing with the government's decision, Senator Lindsey Graham said on social media, "[t]he last thing we may want to do is read Boston suspect Miranda Rights telling him to 'remain silent.'"<sup>23</sup> In contrast, former prosecutor with terrorism case experience Gerard T. Leone Jr. commented, "[y]ou'd be hard-pressed not to say that to allow these statements in would require a wide expansion of the law as it presently exists."<sup>24</sup>

What was clear about the government's invocation of *Quarles* was the absence of clarity alongside a corresponding desire for clarity.<sup>25</sup>

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- Suspect*, L.A. TIMES (Apr. 20, 2013), <http://articles.latimes.com/2013/apr/20/nation/la-na-boston-bombings-legal-20130421> [<https://perma.cc/N4DL-4P2E>]; Deon J. Hampton, *Boston Marathon Bombing Suspect Not Read Miranda Rights; Justice Department's Decision Spurs Debate*, NEWSDAY (Apr. 20, 2013, 9:30 PM), <http://www.newsday.com/news/nation/boston-marathon-bombing-suspect-not-read-miranda-rights-justice-department-s-decision-spurs-debate-1.5112089> [<https://perma.cc/7YCD-URX6>].
21. *E.g.*, William Branigin & Anne Kornblut, *Holder Defends Decision to Read Miranda Rights to Shahzad, Cites His Continuing Cooperation*, WASH. POST (May 6, 2010, 4:09 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/06/AR2010050603380.html> [<https://perma.cc/N6BZ-5MNA>] (reporting the decision to read *Miranda* warnings to the "Times Square Bomber"); *Miranda Rights Take Center Stage at James Holmes Trial*, CBS NEWS (Oct. 15, 2013, 10:10 AM), <http://www.cbsnews.com/news/miranda-rights-take-center-stage-at-james-holmes-trial/> [<https://perma.cc/3RQ9-5RKF>] (noting police read Holmes *Miranda* warnings approximately two hours after his detention); Adam Banner, *Miranda, McVeigh, and the Boston Marathon Bombing: Where's the Distinction*, HUFFINGTON POST (July 9, 2013, 5:12 AM), [http://www.huffingtonpost.com/adam-banner/miranda-mcveigh-and-the-b\\_b\\_3245308.html](http://www.huffingtonpost.com/adam-banner/miranda-mcveigh-and-the-b_b_3245308.html) [<https://perma.cc/7R7V-CDUV>] (noting McVeigh, who killed 168 people with an explosives blast, was "not . . . deprived of his Miranda rights").
  22. Kim Morava, *Trooper Who Arrested Timothy McVeigh Shares Story*, SHAWNEE NEWS-STAR (Feb. 25, 2009, 4:17 AM), <http://www.news-star.com/article/20090225/NEWS/302259941> [<https://perma.cc/GV8T-77L2>] (discussing the saga of Timothy McVeigh's arrest). Although the government relied on the public safety exception to delay reading *Miranda* warnings to James Holmes, he ultimately received them approximately two hours after his apprehension. *Miranda rights take center stage at James Holmes trial*, *supra* note 21.
  23. Glenn Greenwald, *What Rights Should Dzhokhar Tsarnaev Get and Why Does It Matter?*, GUARDIAN (Apr. 20, 2013, 9:24 AM), <http://www.theguardian.com/commentisfree/2013/apr/20/boston-marathon-dzhokhar-tsarnaev-miranda-rights> [<https://perma.cc/7W4K-FY4E>].
  24. Valencia, *supra* note 13.
  25. Barrett et al., *supra* note 19 (reporting that House Intelligence Committee Chairman Mike Rogers said "[t]here will be more instances like [the Tsarnaev

That, in a nutshell, is the problem with *Quarles*. Scholars and courts alike have for years debated the limits, if any, on the public safety exception's applicability.<sup>26</sup> Most recently, scholars have considered the public safety exception's applicability to terror cases.<sup>27</sup> One scholar has even sought to apply the exception to Tsarnaev's specific interrogation, concluding that although the *Quarles* Court would not permit admission of Tsarnaev's statements, modern courts relying on the public safety exception would.<sup>28</sup>

But this Article makes different arguments: first, identifying who in the debate is right about the scope of *Quarles* is now more important than ever. Unquestionably, the judiciary has increasingly expanded the public safety exception's limits in recent years,<sup>29</sup> but this Article argues that the government's reliance on *Quarles* during Tsarnaev's interrogation reflects the culmination—or peak—of that expansion.<sup>30</sup> If the

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interrogation], and we will need to have a much better understanding about what is appropriate").

26. See Alan Raphael, *The Current Scope of the Public Safety Exception to Miranda Under New York v. Quarles*, 2 N.Y. CITY L. REV. 63, 81 (1998) (discussing the limits on the public safety exception); Rorie A. Norton, *Matters of Public Safety and the Current Quarrel Over the Scope of the Quarles Exception to Miranda*, 78 FORDHAM L. REV. 1931, 1935 (2010) (arguing that there is a "broad" and "narrow" approach to the public safety exception); Andrew T. Winkler, *Quarreling Over Quarles: Limiting the Extension of the Public Safety Exception*, 16 RICH. J. L. & PUB. INT. 349, 350 (2013) (addressing the current conflict between courts over whether the *Quarles* public safety exception applies after a suspect has invoked his right to counsel); Aaron J. Ley & Gordie Verhovek, *The Political Foundations of Miranda v. Arizona and the Quarles Public Safety Exception*, 19 BERKELEY J. CRIM. L. 206, 241–49 (2014) (comparing the manner in which federal courts apply *Quarles*).
27. Bruce Ching, *Mirandizing Terrorism Suspects? The Public Safety Exception, the Rescue Doctrine, and Implicit Analogies to Self-Defense, Defense of Others, and Battered Woman Syndrome*, 64 CATH. U. L. REV. 613, 637–46 (2015); Ley & Verhovek, *supra* note 26, at 245–49; Randall Blowers, *Miranda Rights for Terrorists: the Obama Administration's New Policy and What it Means for the War on Terror*, 28 CONN. J. INT'L L. 321 (2013); H. Joshua Rivera, Note, *At Least Give Them Miranda: An Exception to Prompt Presentment as an Alternative to Denying Fundamental Fifth Amendment Rights in Domestic Terrorism Cases*, 49 AM. CRIM. L. REV. 337, 339–40 (2012).
28. Joanna Wright, *Applying Miranda's Public Safety Exception to Dzhokhar Tsarnaev: Restricting Criminal Procedure Rights by Expanding Judicial Exceptions*, 113 COLUM. L. REV. SIDEBAR 136, 145–46 (2013).
29. See Jim Weller, *The Legacy of Quarles: A Summary of the Public Safety Exception to Miranda in the Federal Courts*, 49 BAYLOR L. REV. 1107, 1113 (1997) (summarizing expansions of the public safety exception by the federal circuit courts).
30. Wright, *supra* note 28, at 139; see Ley & Verhovek, *supra* note 26, at 242 (noting that lower federal courts and state courts have broadly applied

government's reliance on *Quarles* in the context of Tsarnaev's interrogation is constitutionally correct, then law enforcement's mentality about *Miranda* should change—and change now. Rather than *Quarles* serving as a “seldom-used” exception to *Miranda*,<sup>31</sup> *Miranda* should become the exception to *Quarles* and officers should assume a threat to public safety following even a routine arrest. One criminal is often connected to another,<sup>32</sup> after all, and interrogating one without the benefit of apprehending the other is a threat to public safety. When viewed through that lens, the government is surely correct that *Quarles* enables Boston citizens to simultaneously celebrate Tsarnaev's capture publicly yet also experience a threat to their collectively safety.

Second, this Article argues that the time has come for reexamination of *Quarles*. Just as a computer, car, or phone needs frequent updating, so too does *Miranda* jurisprudence.

Part I explores the Marathon Bombing in more detail alongside the government's reliance on *Quarles* to interrogate Tsarnaev. Part II then seeks to place the Tsarnaev interrogation in the context of modern judicial constructions of the public safety exception. Doing so firmly illustrates that the government's position was unsupported by judicial precedent.

By focusing on the *Quarles* decision itself, Part III then seeks to provide a proper historic context for the government's decision not to read Tsarnaev his *Miranda* warnings. In particular, Part III considers the Justices' private papers from *Quarles* to demonstrate that the Court never considered anything beyond applying the public safety exception to concern about a missing weapon at the time of Benjamin Quarles's arrest. Part III therefore contends that applying *Quarles* to intricate questions of national security is both careless and constitutionally questionable. This Article concludes that *Quarles* should overtake *Miranda*, or the modern Court should reexamine *Quarles*.

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the *Quarles* exception); Louis D. Bilonis, *Conservative Reformation, Popularization, and the Lessons of Reading Criminal Justice as Constitutional Law*, 52 UCLA L. REV. 979, 995–97 (2005) (detailing how criminal justice safeguards have been weakened over time).

31. *Boston Marathon Suspect in No Condition Yet to Be Questioned*, *Boston Police Chief Says*, FOXNEWS.COM (Apr. 22, 2013), <http://www.foxnews.com/us/2013/04/22/second-boston-bombing-suspect-under-heavy-guard/> [<https://perma.cc/PL9X-DLPF>].
32. Albert J. Reiss, Jr. & David P. Farrington, *Advancing Knowledge About Co-Offending: Results from a Prospective Longitudinal Survey of London Males*, 82 J. CRIM. L. & CRIMINOLOGY 360 (1991); Kevin P. Conway & Joan McCord, *Longitudinal Examination of the Relation Between Co-Offending with Violent Accomplices and Violent Crime*, NAT'L CRIM. JUST. REFERENCE SERV. (Feb. 1, 2002); Joan McCord & Kevin P. Conway, *Patterns of Juvenile Delinquency and Co-Offending*, NAT'L CRIM. JUST. REFERENCE SERV. (Feb. 1, 2002).



## I. THE MARATHON BOMBING & TSARNAEV'S INTERROGATION

Patriots' Day is loaded with history.<sup>33</sup> Speaking generally, it is a civic holiday observed by Massachusetts,<sup>34</sup> Maine,<sup>35</sup> Wisconsin,<sup>36</sup> and Florida (sort of).<sup>37</sup> The day honors the centenary of the first American Revolution battles, otherwise known as the Battles of Lexington and Concord.<sup>38</sup> Fought on April 19, 1775, in Middlesex County, Massachusetts,<sup>39</sup> Patriots' Day in Massachusetts and Maine—since 1969—commemorates those battles on the third Monday of April.<sup>40</sup>

But in Boston specifically, the modern Patriots' Day recognizes more than the Revolutionary War. Today, Patriots' Day means the running of the Boston Marathon (hence the popular phrase "Marathon Monday")<sup>41</sup> and a home Boston Red Sox game at Fenway Park.<sup>42</sup> The

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33. This paper is about *New York v. Quarles*, and I am an academic, not a journalist. But I am also a runner with deep ties to Boston, and the bombings impacted me greatly. Although stories about the Marathon bombing have appeared in newspapers, online, and on television, I am proud to be the first to tell this story in a formal law review article.
34. *Massachusetts Legal Holidays*, SEC'Y OF THE COMMONWEALTH OF MASS., <http://www.sec.state.ma.us/cis/cishol/holidx.htm> [<https://perma.cc/YH7A-LDPP>] (last visited Jan. 13, 2016).
35. *Human Resources Policy and Practices Manual: 12.5 Holidays*, MAINE.GOV [http://www.maine.gov/bhr/rules\\_policies/policy\\_manual/12\\_5.htm](http://www.maine.gov/bhr/rules_policies/policy_manual/12_5.htm) [<https://perma.cc/NL5T-PVDM>] (last visited Jan. 13, 2016).
36. Todd D. Milewski, *Patriots' Day Recognized Here, Too, Along with 20 Other School Special Observance Days*, THE CAP. TIMES (Apr. 21, 2014), [http://host.madison.com/ct/news/local/writers/todd-milewski/patriots-day-recognized-here-too-along-with-other-school-special/article\\_cae14ddc-c961-11e3-bb6b-001a4bcf887a.html](http://host.madison.com/ct/news/local/writers/todd-milewski/patriots-day-recognized-here-too-along-with-other-school-special/article_cae14ddc-c961-11e3-bb6b-001a4bcf887a.html) [<https://perma.cc/N8QP-8NE4>].
37. FLA. STAT. ANN. § 683.14 (West Supp. 2016) ("[A]ll citizens are encouraged to commemorate Patriots' Day on April 19 of each year.").
38. Jolie Lee, *Patriot's Day: 5 Things You Should Know*, USA TODAY (Apr. 21, 2014, 10:06 AM), <http://www.usatoday.com/story/news/nation-now/2014/04/18/patriots-day-5-things/7871721/> [<https://perma.cc/G7HC-TBJF>].
39. *The Battles of Lexington and Concord*, THEAMERICANREVOLUTION.ORG, <http://www.theamericanrevolution.org/battledetail.aspx?battle=1#header> [<https://perma.cc/FYD3-QVGP>] (last visited Jan. 13, 2016).
40. Kim Knox Beckius, *When Is Patriots' Day?*, ABOUT.COM (Dec. 28, 2014), <http://gonewengland.about.com/od/holidaydates/a/When-Is-Patriots-Day.htm> [<https://perma.cc/W8XJ-T6ZD>].
41. Jon Terbush, *What the Boston Marathon Means to a Bostonian*, THE WEEK (Apr. 15, 2013), <http://theweek.com/articles/465525/what-boston-marathon-means-bostonian> [<https://perma.cc/FVX6-XJF6>].
42. Pat DeCola, *Top 9 Boston Red Sox Traditions*, BLEACHER REP. (Nov. 22, 2012), <http://bleacherreport.com/articles/1419044-top-9-boston-red-sox-traditions/page/9> [<https://perma.cc/DWM5-GDYG>].

Boston Marathon stands as the giant of those two events. Although a sold-out Fenway Park holds 37,221 fans during day games,<sup>43</sup> the Marathon draws approximately 30,000 runners and roughly 500,000 spectators annually.<sup>44</sup> It is, in short, the marathon of marathons and draws interest accordingly.<sup>45</sup>

Patriots' Day on April 15, 2013, called for the 117th running of the Boston Marathon.<sup>46</sup> It began smoothly enough with clear skies and mild temperatures,<sup>47</sup> a true runner's treat given the traditionally unpredictable climate on Marathon Monday.<sup>48</sup> Shortly before the 10:00 am start, 23,181 runners proudly gathered at the start line.<sup>49</sup> Of that figure, roughly 21,600 runners earned their spot at the line by running a prior qualifying marathon time whereas the others began the race as charity

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43. *Fenway Park*, BALLPARKSOFBASEBALL.COM, <http://www.ballparksofbaseball.com/al/FenwayPark.htm> [<https://perma.cc/6WAF-BBDV>] (last visited Jan. 13, 2016).
44. Scott Douglas, *2015 Boston Marathon Will Likely Have Field of 30,000*, RUNNER'S WORLD (Aug. 13, 2014, 11:27 AM), <http://www.runnersworld.com/boston-marathon/2015-boston-marathon-will-likely-have-field-of-30000> [<https://perma.cc/Y72V-PAP3>]; *Boston Marathon History: Participation*, BOS. ATHLETIC ASS'N, <http://www.baa.org/races/boston-marathon/boston-marathon-history/participation.aspx> [<https://perma.cc/Y2UE-GB8Z>] (last visited Jan. 18, 2016); *About Boston Athletic Association*, BOS. ATHLETIC ASS'N, <http://www.baa.org/about.aspx> [<https://perma.cc/GK8K-2LJ3>] (last visited Jan. 13, 2016).
45. Molly Mirhashem, *Why the Boston Marathon Is the Best in the World*, BOS. MAG. (Apr. 14, 2013, 9:00 PM), <http://www.bostonmagazine.com/health/blog/2013/04/14/history-boston-marathon-special/> [<https://perma.cc/3LPH-A7UK>]; *10 Biggest Marathons in the U.S.*, ACTIVE, <http://www.active.com/running/articles/10-biggest-marathons-in-the-u-s> [<https://perma.cc/Q3UW-KV2D>] (last visited Jan. 13, 2016).
46. Ethan Grant, *Boston Marathon 2013: Route, Start Time, Date and TV Info*, BLEACHER REP. (Apr. 12, 2013), <http://bleacherreport.com/articles/1602617-boston-marathon-2013-route-start-time-date-and-tv-info> [<https://perma.cc/D27N-ZHD3>].
47. James O'Brien, *"I Saw the Finish Line, and I Sprinted"*, BOS. ATHLETIC ASS'N, <http://www.baa.org/races/boston-marathon/results-commentary/2013-boston-marathon/2013-mens-recap.aspx> [<https://perma.cc/QHZ4-EYTG>] (last visited Jan. 13, 2016).
48. *2013 Boston Marathon: Winners and Finishers*, CBS BOS. (Apr. 15, 2013, 2:35 PM), <http://boston.cbslocal.com/2013/04/15/2013-boston-marathon-winners-and-finishers/> [<https://perma.cc/LK6N-GEYK>].
49. *Id.* The field has since expanded. The 2016 field size is 30,000. Scott Douglas, *2016 Boston Marathon Registration FAQ*, RUNNER'S WORLD (Apr. 23, 2013, 12:00 AM), <http://www.runnersworld.com/boston-marathon/qualifying-times> [<https://perma.cc/8LQ4-VSRB>].

runners.<sup>50</sup> But regardless of their path, those who lined up at the starting line sought to share a common experience: to run a race unlike any other in the nation.<sup>51</sup>

Explaining the Boston Marathon experience to those who have not participated, either as a runner or spectator, is a challenge. The streets are lined with spectators in a manner unlike any other race, particularly so nearby the finish line.<sup>52</sup> That April day, twenty-nine-year-old Krystle

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50. In 2013, roughly 21,600 qualifier spots were available. Scott Douglas, *Boston Marathon Registration for Qualifiers Is Closed*, RUNNER'S WORLD (Sept. 17, 2014, 12:16 PM), <http://www.runnersworld.com/boston-marathon/boston-marathon-registration-for-qualifiers-is-closed> [https://perma.cc/3KCV-DL98]. Qualifying requires that a runner complete a previous marathon within a certain timeframe. For example, in order for me to qualify, I must run a 3:10:00 marathon or faster. *How to Enter into the Boston Marathon*, BOS. ATHLETIC ASS'N, <http://www.baa.org/races/boston-marathon/participant-information/qualifying.aspx> [https://perma.cc/K9J7-S8VJ] (last visited Jan. 13, 2016). Running that time, however, does not guarantee placement. As the Boston Athletic Association (B.A.A.) warns, “[A]chieving one’s qualifying standard does not guarantee entry, but simply the opportunity to submit for registration. Those who are the fastest among the pool of applicants in their age and gender group will be accepted.” *Id.* I can attest from personal experience that qualifying is hard. At the time this article was written, my fastest time was 3:15:43.

Beyond qualifier spots, the B.A.A. sets aside invitational entries for charity runners. *B.A.A. Supports Community Fundraising at the Boston Marathon*, BOS. ATHLETIC ASS'N, <http://www.baa.org/utilities/charities.aspx> [https://perma.cc/4UV3-KBJU] (last visited Jan. 13, 2016). In 2010, for example, around 2,150 runners participated in the charity program. Jill Jaracz, *How the Boston Marathon Works*, HOWSTUFFWORKS.COM (July 14, 2010), <http://adventure.howstuffworks.com/outdooractivities/running/events/boston-marathon1.html> [https://perma.cc/2DRA-B4ZN].

51. Mirhashem, *supra* note 45; see also *Why You Should Run the Boston Marathon (Plus 4 Other Races to Put on Your Bucket List)*, HUFFINGTON POST (Apr. 15, 2014, 12:59 PM), [http://www.huffingtonpost.com/2014/04/15/runners-bucket-list-races-boston-marathon\\_n\\_4935057.html](http://www.huffingtonpost.com/2014/04/15/runners-bucket-list-races-boston-marathon_n_4935057.html) [https://perma.cc/J6SL-LQ5S] (“[I] wanted to participate in the best race in the world—the Boston Marathon. . . . [T]he organization of this race is unlike any other race I’ve run.”).

52. *Boston Marathon: Boston’s Famous Patriots’ Day Race*, BOSTON DISCOVERY GUIDE, <http://www.boston-discovery-guide.com/boston-marathon.html> [https://perma.cc/P3M6-RS63] (last visited Jan. 13, 2016) (“If you want to be near the finish line in Copley Square, be warned: crowds get huge and intense.”).

Campbell,<sup>53</sup> eight-year-old Martin Richard,<sup>54</sup> and twenty-three-year-old Lu Lingzi were all among the spectators out to watch the race.<sup>55</sup>

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53. Campbell was a restaurant manager who went to the marathon that day to watch the finish line with her friend, Karen McWatters. Scott Malone, *Jury in Boston Marathon Bombing Trial Sees Krystle Campbell Autopsy Photos*, HUFFINGTON POST (May 26, 2015, 5:59 AM), [http://www.huffingtonpost.com/2015/03/26/krystle-campbell-photos\\_n\\_6950478.html](http://www.huffingtonpost.com/2015/03/26/krystle-campbell-photos_n_6950478.html) [https://perma.cc/P69R-HBW9]. McWatters, who lost her leg in the explosions, would ultimately testify at the penalty phase of Tsarnaev's trial. Louise Boyle, "Krystle Said Her Leg Hurt," DAILY MAIL (Mar. 5, 2015, 8:06 AM), <http://www.dailymail.co.uk/news/article-2979093/Boston-set-remember-bloody-week-bombing-trial-opens.html#ixzz3bveYOVt2> [https://perma.cc/N2DN-BA6H]. She testified, in part, that "I didn't know how bad she was hurt. She said her legs hurt, then her hand went limp in mine and she never spoke again." *Id.*
54. Martin Richard was the youngest victim of the Marathon bombing. Jason Silverstein, *8-Year-Old Victim of Boston Marathon Bombing Appeared to Reach for his Mom in Final, Painful Moments: Testimony*, N.Y. DAILY NEWS (Apr. 24, 2015, 1:21 AM), <http://www.nydailynews.com/news/national/boston-marathon-8-year-old-victim-appeared-reach-mom-article-1.2197056> [https://perma.cc/5VW4-8HB5]. According to his parents, Richard "loved learning, sports and the world around him." *Our Mission*, MARTIN RICHARD FOUNDATION, <http://www.teammr8.org/our-mission> [https://perma.cc/E5AJ-H9BU] (last visited Jan. 13, 2016). He was standing less than four feet away from the bomb when it went off. Silverstein, *supra* note 54. A heart-wrenching video shown to Tsarnaev's penalty phase jury revealed Richard reaching for his mother as he died. *Id.*
55. Originally from Shenyang, China, Lu Lingzi was a graduate student at Boston University studying mathematics and working toward a career in finance. Jenna Johnson & Steven Mufson, *Boston University Identifies Third Bombing Victim as Lu Lingzi*, WASH. POST (Apr. 17, 2013), [http://www.washingtonpost.com/national/3rd-victim-of-bombings-identified-as-lingzi-lu-graduate-student/2013/04/17/ce65e660-a776-11e2-b029-8fb7e977ef71\\_story.html](http://www.washingtonpost.com/national/3rd-victim-of-bombings-identified-as-lingzi-lu-graduate-student/2013/04/17/ce65e660-a776-11e2-b029-8fb7e977ef71_story.html) [https://perma.cc/4YMF-EFNF]; Chris Buckley, *Grad Student With Eye on Career in Finance Is Mourned in China*, N.Y. TIMES (Apr. 17, 2013), [http://www.nytimes.com/2013/04/18/world/asia/china-mourns-the-death-of-student-in-boston-blast.html?hp&\\_r=1](http://www.nytimes.com/2013/04/18/world/asia/china-mourns-the-death-of-student-in-boston-blast.html?hp&_r=1) [https://perma.cc/NUJ9-QFH7].

Described by friends as "optimistic" and "sweet and nice," Lingzi graduated from Shenyang's Northeast Yucai School in 2008, after which she obtained an academic scholarship to study economics and international trade at the Beijing Institute of Technology. *Id.*; Johnson & Mufson, *supra* note 55; Ben Brumfield & Steven Jiang, *Chinese Student Killed in Bombings had Followed her Passion to Boston*, CNN (Apr. 18, 2013, 10:37 PM), <http://www.cnn.com/2013/04/17/us/boston-marathon-student-victim/index.html> [https://perma.cc/ZJ9T-92DF]. On the morning of the Marathon, she went with two of her friends to watch runners complete the race. *Id.* Lingzi was killed in the second blast. Susan Zalkind, *The Devastating Story of Lingzi Lu's Death*, BOS. MAG. (Mar. 11, 2015, 9:52 AM), <http://www.bostonmagazine.com/news/blog/2015/03/11/linzi-lu-tsarnaev-trial/> [https://perma.cc/GT2V-292S].

Tamerlan and Dzhokhar Tsarnaev also showed up near the finish line that day (referred to hereafter as “Tamerlan” for Tamerlan Tsarnaev and “Tsarnaev” for Dzhokhar Tsarnaev). But they were not there to watch the race; rather, they were there to create the largest crime scene in Boston’s history.<sup>56</sup> Tamerlan moved with his family from Kyrgyzstan in 2003 seeking a new life in America.<sup>57</sup> The transition to the United States began smoothly enough for the athletic Tamerlan who registered to fight with USA Boxing and began work as a pizza deliveryman.<sup>58</sup> He enrolled in Bunker Hill Community College part-time from the fall of 2006 to the fall of 2008, won a local heavyweight boxing title in 2010, and got married that same year.<sup>59</sup> He and his wife, Katherine Russell, had a daughter in 2010.<sup>60</sup>

Somewhere around 2009, though, Tamerlan’s personality began to change.<sup>61</sup> He had a falling out with friends and told his uncle that he was unconcerned with school or work because “God had a plan for him.”<sup>62</sup> Tamerlan traveled to Russia from New York for roughly seven

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56. Shelley Murphy et al., *Source: Investigators “very close” in Boston Marathon Terror Bomb Case*, BOSTON.COM (Apr. 17, 2013, 9:41 PM), <http://www.boston.com/metrodesk/2013/04/17/boston-medical-center-reports-five-year-old-boy-critical-condition-victims-treated-from-boston-marathon-bombings/gkKXBTqL2jyNhsC2Kz5GyO/story.html> [https://perma.cc/7XTM-BKWK].
57. *Timeline: A Look at Tamerlan Tsarnaev’s Past*, CNN (Apr. 22, 2013, 6:25 PM), <http://www.cnn.com/2013/04/21/us/tamerlan-tsarnaev-timeline/> [https://perma.cc/YM3D-HP4K]; Erica Goode & Serge F. Kovaleski, *Boy at Home in U.S., Swayed by One Who Wasn’t*, N.Y. TIMES (Apr. 19, 2013), [http://www.nytimes.com/2013/04/20/us/details-of-tsarnaev-brothers-boston-suspects-emerge.html?\\_r=0](http://www.nytimes.com/2013/04/20/us/details-of-tsarnaev-brothers-boston-suspects-emerge.html?_r=0) [https://perma.cc/TN6S-F3PN].
58. *A Look at Tamerlan Tsarnaev’s Past*, *supra* note 57.
59. *Id.*
60. Michael Cooper et al., *Path from “Social Butterfly” to Boston Suspect’s Widow*, N.Y. TIMES (May 03, 2013), <http://www.nytimes.com/2013/05/04/us/path-from-social-butterfly-to-suspects-widow-in-hijab.html> [https://perma.cc/GJ42-UWDQ].
61. Whether Tamerlan matured into an Islamic radical around this time (or at any time) is not entirely clear. Following a five-month investigation by the *Boston Globe*, the newspaper suggested that Tamerlan was plagued by inner voices alongside a complete absence of family stability. Sally Jacobs et al., *The Fall of the House of Tsarnaev*, BOS. GLOBE, <http://www.bostonglobe.com/Page/Boston/2011-2020/WebGraphics/Metro/BostonGlobe.com/2013/12/15tsarnaev/tsarnaev.html> [https://perma.cc/86VR-LKAH] (last visited Jan. 29, 2016) (“Taken together, these findings suggest that the motivation for the Tsarnaev brothers’ violent acts is more likely rooted in the turbulent collapse of their family and their escalating personal and collective failures than, as federal investigators have suggested, on the other side of the globe.”).
62. *A Look at Tamerlan Tsarnaev’s Past*, *supra* note 57.

months in 2012. Shortly after his return, he created a YouTube channel that included two videos under a category labeled “Terrorists.”<sup>63</sup> He then had separate confrontations with a religious leader at his local mosque late in 2012 and again in 2013 when, at one point, he accused another leader of being a “non-believer.”<sup>64</sup>

Like his older brother, Tsarnaev immigrated to the United States from Kyrgyzstan but arrived one year earlier, in 2002.<sup>65</sup> Unlike his brother, who some described as “angry”<sup>66</sup> or “aggressive,”<sup>67</sup> Tsarnaev as a boy showed “virtually no signs of anger, let alone radical political ideology or any kind of deeply felt religious beliefs.”<sup>68</sup> Following success in high school both academically and athletically as a wrestler, Tsarnaev attended UMass-Dartmouth beginning in the fall of 2011.<sup>69</sup> But his successes stopped there; after nearly four semesters, his transcript reflected that he was failing most of his classes.<sup>70</sup> Tsarnaev then became angry.<sup>71</sup>

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63. *Id.*

64. *Id.*

65. Janet Reitman, *Jahar’s World*, ROLLING STONE (July 17, 2013), <http://www.rollingstone.com/culture/news/jahars-world-20130717> [<https://perma.cc/7RPD-V9NC>].

66. *The Radicalization of Tamerlan Tsarnaev—Profile Slowly Emerges of Boston Marathon Bomber*, N.Y. DAILY NEWS (Apr. 23, 2013, 9:11 AM), <http://www.nydailynews.com/news/national/radicalization-tamerlan-tsarnaev-article-1.1324806> [<https://perma.cc/SHF2-YQED>].

67. *Roommate of Tamerlan Tsarnaev’s wife says he was controlling and quarrelsome*, GUARDIAN (May 5, 2015, 1:33 PM), <http://www.theguardian.com/us-news/2015/may/05/boston-bombing-trial-tamerlan-tsarnaev-wife> [<https://perma.cc/S6X3-SGUV>].

68. Reitman et al., *supra* note 65.

69. *Id.*

70. Eric Levenson, *Dzhokhar Tsarnaev Was Enrolled in “Intro to Ethics” Class During Boston Marathon Bombing*, BOSTON.COM (March 24, 2015, 7:05 PM), <http://www.boston.com/news/local/massachusetts/2015/03/24/dzhokhar-tsarnaev-was-taking-intro-ethics-class-during-boston-marathon-bombing/NkCg0nsDVEpuVX9K4cjsxJ/story.html> [<https://perma.cc/JE6H-GNWT>].

71. Juli Weiner, *Dzhokhar Tsarnaev’s Possible Motive: Anger over Wars in Iraq and Afghanistan*, VANITY FAIR (Apr. 25, 2013, 12:16 PM), <http://www.vanityfair.com/news/2013/04/dzhokhar-tsarnaev-s-possible-motive-anger-over-wars-in-iraq-and-afghanistan> [<https://perma.cc/N35H-HV4Q>]. Prosecutors at Tsarnaev’s trial pointed to his social media activity on Twitter as proof that he was becoming radicalized on his own. His postings, which come from two different accounts, include tweets like “Never underestimate the rebel with a cause” (March 10, 2013), and “Listen to Anwar al Awlaki’s (a shaheed iA) the here after [sic] series . . . You will gain an unbelievable amount of knowledge” (March 11, 2013). Dylan Stableford, *Tsarnaev Had Second Twitter Account, Tweeted Praise for Anwar al-*

The race began that morning without any signs foretelling an attack.<sup>72</sup> A race within the race quickly emerged between the front-running Ethiopian and Kenyan runners.<sup>73</sup> Following an exciting three-way sprint down Boylston Street between Micah Kogo (Kenya), Lelisa Desisa (Ethiopia), and Gebre Gebremariam (Ethiopia), Desisa won the men's race with a finishing time of 2:10:22.<sup>74</sup> The winner of the women's race, Rita Jeptoo, finished in 2:26:25.<sup>75</sup> More than two hours later and with roughly 5,700 runners still on course,<sup>76</sup> the first of two bombs went off at 2:49 p.m. EST.<sup>77</sup> Twelve to thirteen seconds later and roughly a block away, a second explosion occurred.<sup>78</sup> The detonations blew out windows in nearby buildings.<sup>79</sup>

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*Awlaki, FBI agent testifies*, YAHOO! NEWS (Mar. 9, 2015, 5:33 PM), <http://news.yahoo.com/tsarnaev-twitter-accounts-j-tsar-al-firdausia-201340765.html> [<https://perma.cc/Z7NH-L6FL>].

72. Josh Levs & Monte Plott, *Boy, 8, One of 3 Killed in Bombings at Boston Marathon; Scores Wounded*, CNN (Apr. 18, 2013, 10:25 AM), <http://edition.cnn.com/2013/04/15/us/boston-marathon-explosions> [<https://perma.cc/RV4R-6UT3>]; *Boston Marathon Bombings*, HISTORY <http://www.history.com/topics/boston-marathon-bombings> [<https://perma.cc/YN5K-R3Y6>] (last visited Jan. 24, 2016).
73. O'Brien, *supra* note 47.
74. *Id.*; *Winners and Finishers*, *supra* note 48.
75. Barbara Huebner, *Jeptoo returns to the championship podium*, BOS. ATHLETIC ASS'N, <http://www.baa.org/races/boston-marathon/results-commentary/2013-boston-marathon/2013-womens-recap.aspx> [<https://perma.cc/2M3H-HST2>] (last visited Jan. 24, 2016). Jeptoo subsequently failed two drug tests. Shira Springer, *Jeptoo scandal angers, frustrates clean marathon competitors*, BOS. GLOBE (Apr. 19, 2015), <https://www.bostonglobe.com/sports/2015/04/18/rita-jeptoo-angers-and-frustrates-clean-marathon-competitors/s2ymwOysUOAsP7Jurn8S0L/story.html> [<https://perma.cc/56EX-C5A9>].
76. Scott Malone & Aaron Pressman, *Triumph Turns to Terror as Blasts Hit Boston Marathon*, REUTERS (Apr. 15, 2013, 8:42 PM), <http://www.reuters.com/article/2013/04/16/us-athleticsmarathon-boston-blast-witne-idUSBRE93F00Q20130416> [<https://perma.cc/59ZZ-FQ4U>].
77. *102 Hours in Pursuit of Marathon Suspects*, *supra* note 8.
78. *Id.*; Morrison & O'Leary, *supra* note 9.
79. John Eligon & Michael Cooper, *Blasts at Boston Marathon Kill 3 and Injure 100*, N.Y. TIMES (Apr. 15, 2013), <http://www.nytimes.com/2013/04/16/us/explosions-reported-at-site-of-boston-marathon.html?pagewanted=all> [<https://perma.cc/M5GZ-RQKY>].

The marathon stopped,<sup>80</sup> and chaos enveloped the streets of Boston.<sup>81</sup> Rescue workers and medical personnel immediately began to assist the wounded.<sup>82</sup> Many onlookers and other runners were confused, wondering if there was a shooting at the finish line or perhaps the stands had collapsed.<sup>83</sup> According to Tyler Dodd's firsthand account, "[t]here were people screaming, a lot of people with lower extremity injuries, and a lot of blood."<sup>84</sup> Said surviving victim Rebekah Gregory, who had to wheel past Tsarnaev's hospital room before each of her eleven operations, "[a]ll I could do was look around for [my son]. When I found him behind me, I reached out for him and saw all the bones sticking out of my left hand and blood dripping. It was at that moment that I really thought I was going to die."<sup>85</sup> The smell of human flesh haunted the scene.<sup>86</sup>

The blasts killed Campbell, Richard, and Lingzi.<sup>87</sup> More than 260 others were also wounded including sixteen people who lost legs, the youngest of whom was a seven-year-old girl.<sup>88</sup> After securing the scene, more than 1,000 members of state, federal, and local law enforcement immediately began investigating who was responsible.<sup>89</sup> Collectively, law enforcement officials promised to "go to the ends of the Earth" to identify them.<sup>90</sup>

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80. Charles P. Pierce, *The Marathon*, GRANTLAND (Apr. 16, 2013), [http://grantland.com/features/boston-marathon-explosion/?ex\\_cid=grantland33](http://grantland.com/features/boston-marathon-explosion/?ex_cid=grantland33) [<https://perma.cc/7DU4-BBCX>].
81. Tyler Dodd, *An Account from the Marathon Medical Tent*, ESQUIRE (Apr. 16, 2013), <http://www.esquire.com/news-politics/news/a33026/firsthand-account-of-boston-bombing-041613/> [<https://perma.cc/E7JE-AM4P>].
82. Alan Duke, *Boston Marathon Bombing Heroes: Running to Help*, CNN (Apr. 17, 2013, 4:08 PM), <http://www.cnn.com/2013/04/16/us/boston-heroes/> [<https://perma.cc/MC7S-TJVM>].
83. Justin Fauteux, *Laurier Student Had First-Hand Account of Boston Marathon Bombings*, THE CORD (Apr. 25, 2013), <http://www.thecord.ca/laurier-student-had-first-hand-account-of-boston-marathon-bombings/> [<https://perma.cc/6X6M-9S89>].
84. Dodd, *supra* note 81.
85. Cristina Goyanes, *10 Chilling Accounts of the Boston Marathon Bombing*, SHAPE, <http://www.shape.com/lifestyle/mind-and-body/10-chilling-accounts-boston-marathon-bombing> [<https://perma.cc/7ZFK-M5AN>] (last visited Jan. 24, 2016).
86. Fauteux, *supra* note 83.
87. Murphy et al, *supra* note 56.
88. *Boston Marathon Bombings*, *supra* note 72.
89. *Id.*
90. Jay Lindsay & Eileen Sullivan, *FBI Takes Charge of Boston Marathon Bombing Investigation*, HUFFINGTON POST (June 15, 2013), <http://www>.



After the bombings, Tsarnaev largely returned to his daily life. He took to social media less than three hours after the attack, tweeting, “Ain’t no love in the heart of the city, stay safe people.”<sup>91</sup> In a more sinister tweet later that evening, he posted in part, “Lol those people are cooked.”<sup>92</sup> By now back on the campus of UMass-Dartmouth, Tsarnaev went to the gym the next day, attended his classes, and discussed the attacks with his friends.<sup>93</sup> He commented to one friend on Tuesday evening, “It’s crazy this is happening now. This is so easy to do. These tragedies happen all the time in Afghanistan and Iraq.”<sup>94</sup> He even went out to a college party Wednesday night, April 17.<sup>95</sup>

But by then Tsarnaev’s time was running out. That Wednesday, authorities had identified an image of a suspect carrying a black bag at the site of the second bombing.<sup>96</sup> The FBI then released pictures of two male suspects to the public at approximately 5 p.m. EST on Thursday, April 18.<sup>97</sup> Back at the dorm where Tsarnaev lived, students joked that Tsarnaev looked like the person pictured on the FBI photos.<sup>98</sup> One specific friend, Dias Kadyrbayev, texted Tsarnaev to ask if Tsarnaev saw

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[huffingtonpost.com/2013/04/16/fbi-boston-marathon-bombing-investigation\\_n\\_3089106.html](http://huffingtonpost.com/2013/04/16/fbi-boston-marathon-bombing-investigation_n_3089106.html) [<https://perma.cc/L7ZD-DZKL>].

91. Morrison & O’Leary, *supra* note 9; ‘Lol these people are cooked:’ Boston Bomber’s Chilling Tweet Sent Just Hours After the Deadly Attack, DAILY MAIL (Apr. 27, 2013, 1:26 PM), <http://www.dailymail.co.uk/news/article-2315718/Boston-Bomber-Twitter-Dzhokhar-Tsarnaevs-chilling-tweet-sent-just-hours-deadly-attack.html> [<https://perma.cc/YD9X-G927>].
92. “Lol these people are cooked,” *supra* note 91.
93. Sasha Goldstein, *Dzhokhar Tsarnaev Smiles, Goes to College Campus Gym Day After Boston Marathon Bombing, New Video Shows*, N.Y. DAILY NEWS (July 14, 2014, 9:18 PM), <http://www.nydailynews.com/news/crime/dzhokhar-tsarnaev-smiles-gym-day-boston-marathon-bombing-article-1.1866774> [<https://perma.cc/3Z3Z-2JTU>]; Ann O’Neill & Melissa Gray, *As Boston reeled, younger bombing suspect partied*, CNN (Apr. 22, 2013, 5:15 PM), <http://www.cnn.com/2013/04/20/us/boston-younger-brother/index.html> [<https://perma.cc/8MRL-NMXQ>].
94. “Lol these people are cooked,” *supra* note 91.
95. *Id.*
96. Murphy et al., *supra* note 56.
97. Greg Botelho, *Timeline: The Boston Marathon Bombing, Manhunt and Investigation*, CNN (May 2, 2013, 9:09 AM), <http://www.cnn.com/2013/05/01/justice/boston-marathon-timeline/> [<https://perma.cc/RXU9-DLDH>].
98. *Id.*

the news and whether “u saw urself there?”<sup>99</sup> Tsarnaev responded in part, “yu can go to my room and take what’s there.”<sup>100</sup>

At approximately 9 p.m. that evening, Kadyrbayev texted his roommate, Azamat Tazhayakov, and suggested that Tsarnaev was involved in the bombings.<sup>101</sup> Kadyrbayev then texted another of their friends, Robel Phillipos, proposing that the three—Kadyrbayev, Tazhayakov, and Phillipos—meet in Tsarnaev’s room.<sup>102</sup> The trio agreed but, by the time they arrived, Tsarnaev’s roommate reported that Tsarnaev had already left a few hours earlier.<sup>103</sup>

Tsarnaev, meanwhile, had reunited with his brother, Tamerlan, and the pair hastily made plans for an escape to New York.<sup>104</sup> At approximately 10:30 p.m., the pair approached twenty-seven-year-old MIT

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99. *Records of Dias Kadyrbayev text messages*, BOS. GLOBE: METRO, <https://www.bostonglobe.com/2014/05/16/records-dias-kadyrbayev-text-messages/pWfbgsipWW0EMDtyRVfkiI/story.html> [https://perma.cc/9SKK-THYJ] (last visited Jan. 24, 2016).

100. *Id.*

101. Botelho, *supra* note 97.

102. Patricia Wen, *Tsarnaev’s Texts with Friend Offer New Glimpse of Case*, BOS. GLOBE (May 15, 2014), <https://www.bostonglobe.com/metro/2014/05/15/testimony-delayed-dzhokhar-tsarnaev-friend/f7MtvIk1BE0zjjz9LAPpM/story.html> [https://perma.cc/4SCV-782B].

103. The trio nonetheless entered Tsarnaev’s room and spotted Tsarnaev’s laptop and a backpack filled with fireworks, Vaseline, and a thumb drive. U.S. Attorney’s Office, *Dias Kadyrbayev Sentenced to Six Years for Impeding the Boston Marathon Bombing Investigation*, DEPT. OF JUSTICE (June 2, 2015), <http://www.justice.gov/usao-ma/pr/dias-kadyrbayev-sentenced-six-years-impeding-boston-marathon-bombing-investigation> [https://perma.cc/C28B-9NZX]. Kadyrbayev placed the backpack and its contents into a garbage bag and tossed the bag into a garbage dumpster. *Id.* Kadyrbayev then decided to keep Tsarnaev’s laptop computer. *Id.*

Kadyrbayev was sentenced on June 2, 2015, to six years in prison for “conspiring to obstruct justice and obstructing justice with the intent to impede the Boston Marathon bombing investigation.” *Id.* Tazhayakov received a three and one-half year sentence for his role in throwing the backpack into the trash. Milton J. Valencia et al., *Tsarnaev Friend Sentenced to 3½ Years in Prison*, BOS. GLOBE (June 5, 2015), <https://www.bostonglobe.com/metro/2015/06/05/boston-marathon-bombing-dzhokhar-tsarnaev-azamat-tazhayakov-dias-kadyrbayev-robelt-phillipos-kazakhstan/mb4cAuiQ6CHoTLBnVWtyJ/story.html> [https://perma.cc/42Y4-QYL3]. Phillipos was sentenced to three years for his role. Eric Levenson & Hilary Sargent, *Despite Dukakis’s Plea, Tsarnaev Friend Robel Phillipos Sentenced to Three Years in Prison*, BOSTON.COM (June 5, 2015, 3:21 PM), <http://www.boston.com/news/local/massachusetts/2015/06/05/despite-dukakis-plea-tsarnaev-friend-robelt-phillipos-sentenced-three-years-prison/ZykCXTcgXtZBAaULhceUhI/story.html> [https://perma.cc/X36F-TCXE].

104. Wayne Drash, *From Fear to Cheers: The Final Hours That Paralyzed Boston*, CNN (Apr. 28, 2013, 11:05 AM), <http://www.cnn.com/2013/04/>

campus police officer Sean Collier's cruiser from behind and shot him to death using a borrowed gun.<sup>105</sup> After unsuccessfully attempting to acquire Collier's weapon, Tsarnaev and his brother briefly split up; Tamerlan then carjacked the driver of a parked Mercedes-Benz SUV at around midnight.<sup>106</sup> With the driver held hostage, Tamerlan forced him to drive in tandem with another vehicle, a green Honda Civic, driven by Tsarnaev to East Watertown where the brothers transferred "heavy objects" from the Civic to the Mercedes.<sup>107</sup> With the Mercedes running low on gas, the three pulled into a gas station shortly after midnight.<sup>108</sup> When the brothers became momentarily distracted,<sup>109</sup> the hostage successfully fled to a nearby separate gas station where the cashier called 911.<sup>110</sup>

With the carjacking victim's cell phone still inside the SUV, law enforcement began to track the stolen Mercedes as it stopped to pick up Tsarnaev's green Honda Civic.<sup>111</sup> An officer then spotted and began to follow the Mercedes, traveling in tandem with the Civic, shortly after 12:30 a.m.<sup>112</sup> Just as additional officers arrived, Tsarnaev and Tamerlan abruptly stopped their vehicles and began shooting at the officers.<sup>113</sup> The police and the Tsarnaev brothers exchanged more than 200 shots during the next five to ten minute period, a period that included one of the brothers throwing a pressure cooker bomb at law enforcement.<sup>114</sup>

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26/us/boston-manhunt-recap/index.html?iid=article\_sidebar [https://perma.cc/K9ZF-ACZ4].

105. Wendy Ruderman et al., *Officer's Killing Spurred Pursuit in Boston Attack*, N.Y. TIMES (Apr. 24, 2013), [http://www.nytimes.com/2013/04/25/us/officers-killing-spurred-pursuit-in-boston-attack.html?ref=us&\\_r=0](http://www.nytimes.com/2013/04/25/us/officers-killing-spurred-pursuit-in-boston-attack.html?ref=us&_r=0) [https://perma.cc/Q4UH-QVMQ]; *Friend Says He Gave Handgun to Boston Marathon Bomb Suspect*, GUARDIAN (Mar. 17, 2015, 6:19 PM), <http://www.theguardian.com/us-news/2015/mar/17/friend-gave-handgun-boston-marathon-bomb-suspect> [https://perma.cc/GX8L-FMLZ].

106. Ruderman et al, *supra* note 105.

107. Drash, *supra* note 104.

108. *Id.*

109. Eric Moskowitz, *Carjacking Victim Describes Harrowing Night*, BOS. GLOBE (Apr. 26, 2013), <http://www.bostonglobe.com/metro/2013/04/25/carjack-victim-recounts-his-harrowing-night/FX6CAnypP1NbrMuPFb6zTM/story.html> [https://perma.cc/6K8X-TXPH].

110. Ruderman et al, *supra* note 105.

111. Drash, *supra* note 104.

112. *Id.*

113. *Id.*

114. Melissa Gray, *Police Chief: Boston Manhunt Began with Intense Firefight in Dark Street*, CNN (Apr. 22, 2013, 5:32 AM), <http://www.cnn.com/2013/04/20/us/boston-details/index.html> [https://perma.cc/3WEV-ZMD5].

Suddenly, Tamerlan emerged and began shooting at officers “trying to get closer.”<sup>115</sup> An officer successfully tackled Tamerlan just after Tamerlan ran out of ammunition.<sup>116</sup> But as officers began to handcuff Tamerlan, Tsarnaev sped toward them driving the stolen Mercedes, ran over his brother (killing him),<sup>117</sup> and escaped just after 1 a.m.<sup>118</sup>

With Tsarnaev presumably still close, Massachusetts Governor Deval Patrick shut the city down that morning and ordered residents of Boston and Watertown to stay inside.<sup>119</sup> The manhunt for Tsarnaev lasted all day that Friday, April 19, as officers went door to door in Watertown searching for Tsarnaev.<sup>120</sup> That evening, shortly after Governor Patrick lifted the citywide lockdown, Dave Henneberry went outside his home to check on his boat.<sup>121</sup> He saw “a good amount of blood” inside and promptly called 911.<sup>122</sup> Thousands of officers converged on Henneberry’s residence alongside a police helicopter that used a thermal imaging camera to determine that Tsarnaev was inside the boat.<sup>123</sup> Following an exchange of gunfire and police use of flash-bang grenades, law enforcement employed a robotic arm to lift the tarp covering the boat.<sup>124</sup> Tsarnaev then stood up and lifted his shirt to demonstrate that he was not wearing an explosive vest.<sup>125</sup> Police finally took him into custody at

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115. *Id.*

116. *Id.*

117. Gray, *supra* note 114; *Investigation Concludes Tsarnaev Fatally Ran Brother over After Bombing*, WWMT (June 3, 2015), <http://www.wwmt.com/news/features/national/stories/-Investigation-concludes-Tsarnaev-fatally-ran-brother-over-after-bombing-144163.shtml#.VXIEsudm0XF> [https://perma.cc/HTY9-LCXL].

118. Drash, *supra* note 104.

119. Alan Greenblatt, *Boston on Lockdown: “Today Is So Much Scarier”*, NPR (Apr. 19, 2013, 7:20 PM), <http://www.npr.org/sections/thetwo-way/2013/04/19/177934915/The-Scene-In-Boston-Today-Is-So-Much-Scarier> [https://perma.cc/3TNN-NVR5].

120. Drash, *supra* note 104.

121. Ruderman et al., *supra* note 105; Greenblatt, *supra* note 119.

122. Drash, *supra* note 104.

123. Gray, *supra* note 114; Drash, *supra* note 104.

124. Chelsia Rose Marcus et al., *Boston Marathon Bombing Suspect Remains Hospitalized in “Serious Condition,” Unable to Be Questioned About Motives*, N.Y. Daily News (Apr. 21, 2013, 1:43 AM), <http://www.nydailynews.com/news/national/boston-marathon-bombing-suspect-dzhokhar-tsarnaev-serious-condition-hospital-article-1.1322801> [https://perma.cc/8U3Z-43SK].

125. Drash, *supra* note 104.

approximately 8:45 p.m.<sup>126</sup> Residents took to the streets in celebration of law enforcement's successful investigative efforts.<sup>127</sup>

## II. MODERN JUDICIAL CONSTRUCTIONS OF THE PUBLIC SAFETY EXCEPTION

As discussed in detail below, the government ultimately interrogated Tsarnaev without *Miranda* warnings in preemptive reliance on *Quarles*'s public safety exception despite Tsarnaev requesting counsel and seeking to remain silent. The government moreover planned to *continue* interrogating Tsarnaev without providing warnings were it not for judicial intervention.<sup>128</sup> How did we get to that point—a point where government actors decide that a naturalized citizen is not entitled to warnings by unilaterally and generously interpreting *New York v. Quarles*? This Part attempts an answer.

The Tsarnaev interrogation was not the first time, of course, that law enforcement—in reliance on *Quarles*—interrogated a high-profile suspect without first providing *Miranda* warnings. Recent years are indeed replete with important illustrations. But what happened in Boston was something different. The Tsarnaev interrogation represents the culmination of an increasingly expansive view of *Quarles* taken by law enforcement. That viewpoint, which began to aggressively expand in 2009, interprets *Quarles* extremely—but perhaps appropriately.

Section A considers increasingly expansive law enforcement applications of *Quarles* to federal and state suspects. Although law enforcement interprets *Quarles* to allow lengthy interrogations of suspects without *Miranda* warnings, that approach—even if correct—neglects the many unanswered questions about the scope of *Quarles* that arose in the Tsarnaev interrogation.

Section B considers the judiciary's modern approach to *Quarles*. Doing so illustrates that the government's aggressive reliance on *Quarles* during and before Tsarnaev's interrogation was, by any measuring stick, a dramatic expansion of the judiciary's guidance on *Quarles*-based interrogations. It moreover reveals how little guidance the government's approach actually provides.

### A. Expanding Law Enforcement Interpretations of *Quarles*

On October 21, 2010, the FBI internally circulated an unsigned Department of Justice memorandum titled *Custodial Interrogation for*

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126. Gray, *supra* note 114.

127. Reiss et al., *supra* note 15.

128. Barrett et al., *supra* note 19.

*Public Safety and Intelligence-Gathering Purposes of Operational Terrorists Inside the United States.*<sup>129</sup> Expressly and *solely* relying on Quarles, the memorandum provided in relevant part as follows:

Identifying and apprehending suspected terrorists, interrogating them to obtain intelligence about terrorist activities and impending terrorist attacks, and lawfully detaining them so that they do not pose a continuing threat to our communities are critical to protecting the American people. The Department of Justice and the FBI believe that we can maximize our ability to accomplish these objectives by continuing to adhere to FBI policy regarding the use of *Miranda* warnings for custodial interrogation of operational terrorists who are arrested inside the United States:

1. If applicable, *agents should ask any and all questions that are reasonably prompted by an immediate concern for the safety of the public or the arresting agents without advising the arrestee of his Miranda rights.*
2. After all applicable public safety questions have been exhausted, agents should advise the arrestee of his *Miranda* rights and seek a waiver of those rights before any further interrogation occurs, absent exceptional circumstances described below.
3. There may be exceptional cases in which, although all relevant public safety questions have been asked, agents nonetheless conclude that *continued unwarned interrogation is necessary to collect valuable and timely intelligence not related to any immediate threat*, and that the government's interest in obtaining this intelligence outweighs the disadvantages of proceeding with unwarned interrogation.<sup>130</sup>

Without additional supporting citation, the memorandum added this:

In light of the magnitude and complexity of the threat often posed by terrorist organizations, particularly international terrorist organizations, and the nature of their attacks, *the circumstances surrounding an arrest of an operational terrorist may warrant significantly more extensive public safety interrogation without Miranda warnings than would be permissible in an ordinary criminal case.*<sup>131</sup>

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129. *F.B.I. Memorandum*, N.Y. TIMES (Mar. 25, 2011), [http://www.nytimes.com/2011/03/25/us/25miranda-text.html?\\_r=0](http://www.nytimes.com/2011/03/25/us/25miranda-text.html?_r=0) [<https://perma.cc/K4CQ-8HBU>].

130. *Id.* (emphasis added) (citations omitted).

131. *Id.* (emphasis added).

Understanding the genesis of that memorandum is tricky. The memorandum's generous interpretation of *Quarles* arguably dates back to July 1997 when the New York City Police Department received a tip that Gazi Ibrahim Abu Mezer and Lafi Khalil planned to detonate bombs in a crowded subway or bus terminal.<sup>132</sup> After raiding their apartment and wounding both in a gunfight, officers questioned Abu Mezer without first providing him *Miranda* warnings some unknown time later for an unspecified duration at the hospital where he received treatment.<sup>133</sup> In reliance only on *Quarles*, the Second Circuit's 2000 opinion in *United States v. Khalil* took just two sentences to uphold the denial of Mezer's motion to suppress incriminating statements he made during that interrogation.<sup>134</sup>

*Khalil* was the first case ever to apply *Quarles* to an interrogation that (1) lasted for an unspecified duration beyond just a few minutes, and (2) seemingly required officers to ask more than just one or two questions.<sup>135</sup> The door was thus suddenly open for expansive interpretations of *Quarles*,<sup>136</sup> and, therefore, questions persisted about precisely how far *Quarles* could go.

One former FBI agent thought then—and still thinks<sup>137</sup>—that *Quarles* has far-reaching applicability. After the September 11, 2001 attacks, agent Coleen Rowley wrote to then FBI Director Robert Mueller in May 2002 criticizing the Bureau's investigation into Zacarias Moussaoui prior to the attacks.<sup>138</sup> The thirteen-page letter included the following passage:

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132. *United States v. Khalil*, 214 F.3d 111, 115 (2d Cir. 2000).

133. *Id.* at 115, 121.

134. *Id.* at 121.

135. *See id.* ("Following the raid on Abu Mezer's apartment, officers questioned Abu Mezer that morning at the hospital about the construction and stability of the bombs . . ."). For a chart of every case involving the public safety exception, see *infra* Appendix.

136. *See In re Terrorist Bombings of U.S. Embassies in E. Afr.*, 552 F.3d 177, 203 n.19 (2d Cir. 2008) (assuming the applicability of *Quarles* to an "unwarned interrogation in order to protect the public").

137. Coleen Rowley, *Quarles Public Safety Exception—Constitutional and Proven Effective!*, Huffington Post (May 25, 2011, 4:20 PM), [http://www.huffingtonpost.com/coleen-rowley/quarles-public-safety-exc\\_b\\_564138.html](http://www.huffingtonpost.com/coleen-rowley/quarles-public-safety-exc_b_564138.html) [<https://perma.cc/5FF5-GV2G>]; Coleen Rowley, *Quarles Public Safety Exception to Miranda: the Ethical, Legal and Effective Answer to "Ticking Time Bombs"*, Huffington Post (May 25, 2011, 4:30 PM), [http://www.huffingtonpost.com/coleen-rowley/quarles-public-safety-exc\\_b\\_580218.html](http://www.huffingtonpost.com/coleen-rowley/quarles-public-safety-exc_b_580218.html) [<https://perma.cc/7DKU-CN26>].

138. *Coleen Rowley's Memo to FBI Director Robert Mueller*, AM. PATRIOT FRIENDS NETWORK (May 21, 2002), [http://www.apfn.org/apfn/wtc\\_whistleblower1.htm](http://www.apfn.org/apfn/wtc_whistleblower1.htm) [<https://perma.cc/R9BZ-QRB7>].

[I]f prevention rather than prosecution is to be our new main goal, (an objective I totally agree with), *we need more guidance on when we can apply the Quarles “public safety” exception* to Miranda’s 5th Amendment requirements. We were prevented from even attempting to question Moussaoui on the day of the attacks when, in theory, he could have possessed further information about other co-conspirators.<sup>139</sup>

The letter, published on *Time Magazine’s* website,<sup>140</sup> received widespread attention,<sup>141</sup> earned Coleen Rowley the 2002 Persons of the Year honor from *Time Magazine*,<sup>142</sup> and thrust *Quarles* back into the spotlight.<sup>143</sup>

Flash forward to Christmas Day 2009 when Nigerian-born Umar Farouk Abdulmutallab—better known as the “Underwear Bomber”—boarded Northwest Airlines flight 253 from Amsterdam to Detroit.<sup>144</sup> After a failed attempt to detonate an explosive device on the plane as it approached Detroit, federal law enforcement took Abdulmutallab into custody and interrogated him for approximately fifty minutes without first providing *Miranda* warnings.<sup>145</sup> He quickly confessed,<sup>146</sup> but

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139. *Id.* (emphasis added).

140. Julian Borger, *Agent Accuses FBI of “Sabotage”*, *GUARDIAN* (May 27, 2002, 9:29 PM), <http://www.theguardian.com/world/2002/may/28/september11.usa> [<https://perma.cc/VZ7F-7FYP>].

141. *E.g.*, Kevin Johnson, *Letter Shifts Heat to FBI*, *USA TODAY* (May 28, 2002, 12:56 AM), <http://usatoday30.usatoday.com/news/nation/2002/05/28/letter-fbi.htm> [<https://perma.cc/E6LW-7XR9>] (discussing Rowley’s allegations in her whistleblowing letter about the neglect of “critical intelligence”).

142. Richard Lacayo & Amanda Ripley, *Persons of the Year*, *TIME*, Dec. 30, 2002, at 30.

143. *E.g.*, Jonathan Turley, Commentary, *Wrong, as a Matter of Law*, *L.A. TIMES* (May 30, 2002), <http://articles.latimes.com/2002/may/30/opinion/oe-turley30> [<https://perma.cc/V7US-AFST>] (“[Rowley] suggests that a limited ‘public safety exception’ should be expanded to virtually negate [the right to remain silent and have counsel] protections of the 6th Amendment.”).

144. Richard Sisk et al., *U.S. Officials Investigating How Abdulmutallab Boarded Flight 253 as More Missed Red Flags Surface*, *N.Y. Daily News* (Jan. 2, 2010, 9:49 PM), <http://www.nydailynews.com/news/national/u-s-officials-investigating-abdulmutallab-boarded-flight-253-missed-red-flags-surface-article-1.457102> [<https://perma.cc/66KE-ZULV>].

145. *United States v. Abdulmutallab*, No. 10-20005, 2011 U.S. Dist. LEXIS 105462, at \*17 (E.D. Mich. Sept. 16, 2011).

146. Precisely how quickly Abdulmutallab confessed is not clear. “*Underwear bomber*” Umar Farouk Abdulmutallab Handed Life Sentence, *GUARDIAN* (Feb. 16, 2012, 3:42 PM), <http://www.theguardian.com/world/2012/feb/16/underwear-bomber-sentenced-life-prison> [<https://perma.cc/EMR2-FTAB>] (“He quickly confessed after he was hauled off the plane.”).



later moved to suppress his incriminating statements by arguing that he should have received *Miranda* warnings.<sup>147</sup>

Relying on *Khalil*, the district court denied his motion. Citing just *Khalil* and *Quarles*, it held “the logic of *Quarles* extends to the questioning of Defendant, a terrorism suspect at the time of his December 25, 2009 questioning.”<sup>148</sup> But fascinatingly the government at the time of Abdulmutallab’s interrogation was not so confident about its decision not to *Mirandize* him. Five hours after the fifty minute interrogation, federal officials sent in a “clean team” to read Abdulmutallab his *Miranda* rights and begin the questioning anew.<sup>149</sup> When Abdulmutallab said nothing more,<sup>150</sup> the media chastised the government’s decision to give Abdulmutallab warnings *at all*.<sup>151</sup>

The fifty-minute interrogation of Abdulmutallab without *Miranda* warnings seemed brief when compared to the May 2010 hours long *Miranda*-less interrogation of Faisal Shahzad. At approximately 6:28 p.m. EST on May 1, Shahzad drove a 1993 Nissan Pathfinder into Times Square for the purpose of detonating explosive devices.<sup>152</sup> Explosives in the vehicle failed to detonate and Shahzad escaped.<sup>153</sup> He was

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147. *Abdulmutallab*, 2011 U.S. Dist. LEXIS 105462, at \*13–14.

148. *Id.* at \*15. The Sixth Circuit upheld Abdulmutallab’s convictions on appeal, but did not reach the *Quarles* question because “he waived any right to challenge the suppression of his statements when he entered the guilty plea.” *United States v. Abdulmutallab*, 739 F.3d 891, 904 (6th Cir. 2014).

149. Devlin Barrett, *Details of Arrest of Bombing Suspect Disclosed*, WASH. POST (Jan. 24, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/23/AR2010012302678.html> [<https://perma.cc/8ZHT-P5JY>].

150. *Id.*

151. See, e.g., Kasie Hunt, GOP Rips Holder on Miranda Rights, POLITICO (Jan. 27, 2010, 11:14 AM), <http://www.politico.com/news/stories/0110/32073.html> [<https://perma.cc/H7UG-NKM4>] (reporting Republican discontent associated with the government’s decision to read Abdulmutallab *Miranda* rights); *Abdulmutallab in 50 Minutes: The More We Learn About His “Interrogation,” the Worse White House Policy Looks*, WALL ST. J. (Jan. 26, 2010, 12:01 AM), <http://www.wsj.com/articles/SB10001424052748703808904575025231056290438> [<https://perma.cc/9WDJ-B4EY>] (“This talky terrorist should have been questioned for 50 hours, not 50 minutes.”); Stephen F. Hayes, *Abdulmutallab’s Encounter With the “Clean Team:” Before Being Mirandized, He was Singing Like a Canary*, WKLY. STANDARD (Jan. 23, 2010, 8:11 PM), <http://www.weeklystandard.com/blogs/abdulmutallabs-encounter-clean-team> [<https://perma.cc/GBK5-YYGW>] (“If Abdulmutallab provided such valuable intelligence on AQAP and its role in his attack in just 50 minutes, why would the Justice Department allow him to be Mirandized.”).

152. William K. Rashbaum & Al Baker, *Smoking Car to an Arrest in 53 Hours*, N.Y. TIMES (May 4, 2010), <http://www.nytimes.com/2010/05/05/nyregion/05tictoc.html?pagewanted=all> [<https://perma.cc/9CJX-J3E8>].

153. *Id.*

arrested at 11:45 p.m. two days later—on May 3—attempting to board a flight out of the country at John F. Kennedy International Airport.<sup>154</sup> After taking him into custody, the FBI questioned Shahzad for approximately three hours without first providing *Miranda* warnings.<sup>155</sup> During that time, he “provided what the F.B.I. called ‘valuable intelligence and evidence.’”<sup>156</sup> Unlike Abdulmutallab, though, Shahzad waived *Miranda* once he received his warnings and continued talking.<sup>157</sup> Some were nevertheless quick to criticize the decision to read Shahzad—an American citizen<sup>158</sup>—his rights.<sup>159</sup>

Attorney General Eric Holder addressed the Shahzad interrogation alongside the government’s reliance on *Quarles* at a May 6, 2010, hearing on the Justice Department’s Fiscal Year 2011 budget request.<sup>160</sup> During an exchange with Senator Diane Feinstein, she asked, “[A]ccording to process and precedent, about what is the vicinity of time that . . . the public safety . . . exception can last?”<sup>161</sup> He responded in part, “[T]hat’s not really been defined by the courts. It is not a prolonged period of time[.]”<sup>162</sup> He later responded to a related question from

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154. Alison Gendar et al., *Faisal Shahzad, Times Sq. Bomb Suspect, Nabbed Within “Minutes” of Escape; 2 Held in Pakistan*, N.Y. DAILYNEWS (May 4, 2010, 5:13 PM), <http://www.nydailynews.com/new-york/faisal-shahzad-times-sq-bomb-suspect-nabbed-minutes-escape-2-held-pakistan-article-1.444249> [<https://perma.cc/ZHX5-PLLS>].

155. Evan Perez, *Rights are Curtailed for Terror Suspects*, WALL ST. J. (Mar. 24, 2011, 12:01 AM), <http://www.wsj.com/articles/SB10001424052748704050204576218970652119898> [<https://perma.cc/4GXP-LDVJ>].

156. Peter Baker, *A Renewed Debate over Suspect Rights*, N.Y. TIMES (May 4, 2010), <http://www.nytimes.com/2010/05/05/nyregion/05arrest.html> [<https://perma.cc/6RC2-JCJD>].

157. *Id.* Shahzad would ultimately receive a life sentence. Michael Wilson, *Shahzad Gets Life Term for Times Square Bombing Attempt*, N.Y. TIMES (Oct. 5, 2010), <http://www.nytimes.com/2010/10/06/nyregion/06shahzad.html> [<https://perma.cc/Z2T2-JUBG>].

158. Nina Bernstein, *Bombing Suspect’s Route to Citizenship Reveals Limitations*, N.Y. TIMES (May 7, 2010), <http://www.nytimes.com/2010/05/08/nyregion/08immig.html> [<https://perma.cc/Q327-DHJQ>].

159. *E.g.*, Baker, *supra* note 156 (“Senator John McCain of Arizona called it a mistake to read Mr. Shahzad his *Miranda* rights so soon.”); Branigin & Kornblut, *supra* note 21 (“Some congressional Republicans have criticized the administration’s handling of the Shahzad case, questioning the decision to read him his *Miranda* rights and suggesting he should have immediately been treated as an enemy combatant.”).

160. *Justice Department Fiscal Year 2011 Budget*, C-SPAN (May 6, 2010), <http://www.c-span.org/video/?293362-1/justice-department-fiscal-year-2011-budget> [<https://perma.cc/3JZT-XRXS>].

161. *Id.*

162. *Id.*

her by emphasizing, “as long as you are asking . . . appropriate questions probing about public safety issues, I think the courts are generally going to be supportive.”<sup>163</sup>

Presumably authored by a government armed with experience gained from an approving judiciary but a disapproving public, the October 2010 DOJ memorandum makes more sense.<sup>164</sup> But among other questions, it left unanswered whether the government believed *Quarles* allowed for interrogations without *Miranda* beyond three hours,<sup>165</sup> and whether its interpretation of *Quarles* applied beyond what it considered terror cases.<sup>166</sup>

Meanwhile, federal authorities were not alone in struggling with the scope of *Quarles*. At approximately 12:38 a.m. on July 20, 2012,<sup>167</sup> James Holmes walked into an Aurora, Colorado, movie theater and opened fire into the audience, killing twelve and wounding seventy others.<sup>168</sup> Ninety seconds after the first 911 call, police arrived and arrested Holmes without incident roughly six minutes later.<sup>169</sup> State law

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163. *Id.*

164. *Cf.* Ley & Verhovek, *supra* note 26, at 207 (suggesting that the Abdulmutallab experience made “the Obama Administration . . . profoundly aware of the political consequences of informing terrorism suspects of their constitutional rights”).

165. In response to questions about its new policy, the Justice Department would later implicitly make clear its intent to leave the question of duration ambiguous. Justin Elliott, *Obama Rolls Back Miranda Rights*, Salon (Mar. 24, 2011, 9:24 AM), [http://www.salon.com/2011/03/24/obama\\_rolls\\_back\\_miranda/](http://www.salon.com/2011/03/24/obama_rolls_back_miranda/) [<https://perma.cc/CZH6-8KH8>]. A DOJ spokesperson said in March 2011 that “the complexity of the threat posed by terrorist organizations and the nature of their attacks—which can include multiple accomplices and interconnected plots—creates fundamentally different public safety concerns than traditional criminal cases.” *Id.*

166. The *Los Angeles Times* published an editorial in April 2011 suggesting that the DOJ memorandum should apply beyond just terror cases. Editorial, *Miranda Rights and Terror Suspects*, L.A. TIMES (Apr. 4, 2011), <http://articles.latimes.com/2011/apr/04/opinion/la-ed-warnings-20110404> [<https://perma.cc/7G69-JKEG>] (“[The memorandum] shouldn’t be limited to terrorism cases but should apply to any case—a gang-related case, say, or a murder plot—in which a suspect may have knowledge of a possible future threat.”).

167. Miguel Bustillo et al., *Theater Rampage Jolts Nation*, Wall St. J. (July 21, 2012, 9:55 AM), <http://www.wsj.com/articles/SB10000872396390444464304577538292604705890> [<https://perma.cc/ZJC5-HCF4>].

168. *Colorado Theater Shooting Fast Facts*, CNN (Dec. 5, 2015, 6:02 PM), <http://www.cnn.com/2013/07/19/us/colorado-theater-shooting-fast-facts/> [<https://perma.cc/SB2U-LZE7>].

169. *Aurora, Colo Theater Shooting Timeline, Facts*, Eyewitness News ABC7 (July 26, 2012, 9:28 AM), <http://abc7.com/archive/8743134/> [<https://perma.cc/VSF8-6R9N>].

enforcement then questioned Holmes roughly two hours after the shooting without initially reading him his *Miranda* warnings.<sup>170</sup> At the time of his arrest, and again during their first interrogation of Holmes, officers asked him questions about weapons and explosives, and whether there were other shooters.<sup>171</sup> “It’s just me,” Holmes said.<sup>172</sup> He added, referring to his booby-trapped apartment, “I have four guns. I have improvised explosive devices, and they won’t go off unless you set them off.”<sup>173</sup>

After Holmes was charged with 165 counts including first-degree murder, attempted murder, and possession of explosive devices,<sup>174</sup> the defense moved to suppress the statements he made to officers prior to receiving *Miranda* warnings.<sup>175</sup> Citing *Quarles*, the prosecution argued that officers faced a chaotic situation and “urgently needed to know whether Holmes had an accomplice . . . .”<sup>176</sup> The trial court agreed that *Quarles* permitted introduction of Holmes’s answers, holding as follows: “Given the magnitude of the dangers posed by the situation, the need for answers to the officers’ questions far outweighed the need for the prophylactic *Miranda* warnings to protect the defendant’s Fifth Amendment privilege against self-incrimination.”<sup>177</sup>

Although appellate review of the trial court’s denial of Holmes’s motion to suppress is a long way off,<sup>178</sup> the point seems clear: by the

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170. *Miranda Rights Take Center Stage*, *supra* note 21.

171. *Id.*

172. Keith Coffman, *Colorado Police Officer Says Movie Theater Gunman Was “Very Calm”*, YAHOO (Apr. 30, 2015, 4:11 PM), <http://news.yahoo.com/colorado-police-officer-says-movie-theater-gunman-very-165639024.html#https://perma.cc/QA7T-VK4T>.

173. *Id.*; Kelly Burke, *James Holmes’ Lawyers Argue over His Statements to Police*, FOX NEWS (Oct. 15, 2013), <http://www.foxnews.com/us/2013/10/15/james-holmes-lawyers-argue-over-his-statements-to-police/> [https://perma.cc/CA2S-SABR].

174. *Colorado Theater Shooting Fast Facts*, *supra* note 168.

175. Dan Elliott, *Holmes’ Defense: Police Violated His Constitutional Rights for Questioning Without Reading Miranda Rights*, HUFFINGTON POST (Aug. 11, 2013, 1:31 PM), [http://www.huffingtonpost.com/2013/08/10/james-holmes-miranda-rights\\_n\\_3736700.html](http://www.huffingtonpost.com/2013/08/10/james-holmes-miranda-rights_n_3736700.html) [https://perma.cc/Q5HS-QH4S].

176. Burke, *supra* note 173.

177. John Ingold, *James Holmes’ Statements at Theater Shooting Scene Allowed at Trial*, DENVER POST (Nov. 1, 2013, 3:55 PM), [http://www.denverpost.com/news/ci\\_24436693/james-holmes-statements-at-theater-shooting](http://www.denverpost.com/news/ci_24436693/james-holmes-statements-at-theater-shooting) [https://perma.cc/NY73-RZ6R].

178. At the time this piece was written, a jury had just found Holmes guilty of twenty-four counts of first-degree murder. Ana Cabrera et al., *James Holmes Found Guilty of Murder in Colorado Theater Shooting*, CNN (July 17, 2015, 10:18 AM), <http://www.cnn.com/2015/07/16/us/james->

time of Tsarnaev's interrogation, both federal *and* state authorities had begun to aggressively employ *Quarles* in ways never before authorized by the judiciary and in ways that extend beyond so-called terror cases.<sup>179</sup>

*B. Judicial Limitations on Quarles.*

By the time of the April 2013 Tsarnaev interrogation, the longest *Quarles*-based interrogation any state or federal court had approved of since 1984, outside the hostage negotiation context,<sup>180</sup> was three and one-half hours.<sup>181</sup> In that case, also distinct from the roughly 571 public safety cases before 2013,<sup>182</sup> the public safety interrogation occurred one week after commission of a kidnapping, when officers were still hoping the victim was alive.<sup>183</sup> Although Tsarnaev's public safety interrogation occurred comparatively sooner (four days after the bombing), relying on *Quarles* to interrogate Tsarnaev without *Miranda* for sixteen hours four days after the incident is, by any measuring stick, abnormal.<sup>184</sup>

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holmes-trial-colorado-movie-theater-shooting-verdict/ [https://perma.cc/M7KV-33ZW].

179. Cf. Christopher R. Schaedig, Comment, *Protecting the Worst Among Us: A Narrow Quarles Public-Safety Exception in the Boston Bombing and Other Terror Investigations*, 30 THOMAS M. COOLEY L. REV. 449, 451–52 (2013) (arguing for a narrow application of *Quarles* to federal criminal prosecutions).
180. *United States v. Webb*, 755 F.2d 382, 392 n.14 (5th Cir. 1985); *United States v. Headbird*, No. 14-cr-331 (PJS/LIB)(1), 2014 U.S. Dist. LEXIS 180911, \*19 (D. Minn. Dec. 22, 2014); *Rowland v. Thaler*, No. 4:09-CV-630-A, 2010 U.S. Dist. LEXIS 115914, at \*19 (N.D. Tex. Nov. 1, 2010); *People v. Lubrano*, 985 N.Y.S.2d 754, 757 (App. Div. 2014); *People v. Scott*, 710 N.Y.S.2d 228, 230 (App. Div. 2000); *People v. Treier*, 630 N.Y.S.2d 224, 227 (Ct. Ct. 1995); *State v. Finch*, 975 P.2d 967, 990–91 (Wash. 1999).
181. *People v. Coffman*, 96 P.3d 30, 73 (Cal. 2004).
182. See *infra* Appendix.
183. *Coffman*, 96 P.3d at 48–50 (describing a kidnapping that occurred on November 7; defendants were arrested on November 14).
184. Justin Elliott, *Experts: Obama Admin Pioneering Robust Use of Miranda Exception in Terrorism Cases*, TALKING POINTS MEMO (May 7, 2010, 9:52 PM), <http://talkingpointsmemo.com/muckraker/experts-obama-admin-pioneering-robust-use-of-miranda-exception-in-terrorism-cases-video> [https://perma.cc/V6YU-8FHF] (“[T]he length of the pre-Miranda interrogations in the two recent cases—50 minutes and a few hours respectively—also appears to break new ground.”); Meredith Clark, *Now Charged, Boston Suspect Was Longest Held Without Miranda Rights*, MSNBC (Aug. 12, 2013, 9:02 AM), <http://www.msnbc.com/up-with-steve-kornacki/now-charged-boston-suspect-was-longest-held> [https://perma.cc/5R2M-MN53] (“Dzhokhar Tsarnaev, the 19-year-old prime suspect in the bombings, had been held longer, without Miranda protections, than any other terrorism suspect since the Obama administration announced it would rely on this expanded exception in 2010.”).

More commonly before the interrogations of Tsarnaev, Shahzad, Holmes, and Abdulmutallab, state and federal courts encountered limited law enforcement questioning of a suspect within an hour after commission of a crime.<sup>185</sup> But each facet of the public safety exception—duration of interrogation and passage of time since commission of the crime prior to interrogation—expanded after the 2010 DOJ memorandum.

Consider first how long the judiciary, whether federal or state, had approved of a *Quarles*-based interrogation prior to the 2010 DOJ memorandum. From 1984–2010, state and federal courts most commonly admitted a suspect’s statements pursuant to *Quarles* when obtained by a state or federal law enforcement officer who, in one or two questions, asked a suspect about the location of a weapon,<sup>186</sup> an accomplice,<sup>187</sup> and/or more generally whether anything on the suspect could be used to hurt the arresting officer.<sup>188</sup> Courts were ordinarily unwilling to interpret *Quarles* to allow for deviation from those general guidelines.<sup>189</sup> It would therefore be an understatement to say that extended questioning pursuant to *Quarles* was rarely permissible prior to 2010.

But amongst the hundreds of cases representing the general rule, there were a few outliers. In 1991, a New York trial court declined to suppress a defendant’s statements made during an eight-hour standoff with police.<sup>190</sup> In holding that *Quarles* allowed admission of defendant’s statements, the court reasoned that “so long as the emergency condition continued unabated, the overriding concern for the safety of the public, the police, and even the defendant is paramount to defendant’s individual right against self-incrimination.”<sup>191</sup> Another New York state court reached the same result in a 1995 multi-hour hostage situation, during which defendant made incriminating statements in response to questioning without *Miranda* from a hostage negotiator.<sup>192</sup>

Outside of New York, and outside the hostage context, a California appellate court in 1996 reviewed application of *Quarles* when officers confronted the so-called “ticking time bomb scenario.”<sup>193</sup> In *People v. Tritchler*,<sup>194</sup> law enforcement stopped a suspicious vehicle after hearing

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185. See *infra* Appendix.

186. See *infra* Appendix.

187. See *infra* Appendix.

188. See *infra* Appendix.

189. See *infra* Appendix.

190. *People v. Manzella*, 571 N.Y.S.2d 875, 876, 879 (Sup. Ct. 1991).

191. *Id.*

192. *People v. Treier*, 630 N.Y.S.2d 224, 225, 227 (Cty. Ct. 1995).

193. *People v. Tritchler*, 48 Cal. App. 4th 367 (Ct. App. 1996).

194. 48 Cal. App. 4th 367 (Ct. App. 1996).

explosions.<sup>195</sup> Concerned about the prospect of additional explosions, different officers questioned the defendant over a period of approximately forty-five minutes without providing *Miranda* warnings.<sup>196</sup> In holding that *Quarles* permitted admission of defendant's statements, the court in its reasoning highlighted the "evidence of the explosion, the unknown nature of the devices found hidden under the [car] seats and the necessity of further handling of the devices . . . ."<sup>197</sup>

Finally, in *Commonwealth v. Dillon D.*,<sup>198</sup> a school police officer improperly read *Miranda* warnings to a juvenile suspect prior to commencing a roughly thirty-minute interrogation about the location of a weapon.<sup>199</sup> Although the trial court suppressed defendant's statements, the Massachusetts Supreme Judicial Court in 2007 reversed and held that *Quarles* permitted admission.<sup>200</sup> In allowing the extended public safety interrogation, the court reasoned in part that an undiscovered weapon in the school presented "an emergency situation that required protecting approximately 890 children at the middle school and residents of the neighborhood."<sup>201</sup>

Consider next how much time, before 2010, normally expired after the commission of a crime prior to the commencement of a *Quarles*-based interrogation. The overwhelming majority of public safety interrogations take place immediately at the time of arrest shortly after commission of a crime.<sup>202</sup> A handful of permissible *Quarles*-based interrogations occur either in the patrol car before and during transport to

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195. *Id.* at 375.

196. *Id.* at 378–79.

197. *Id.* at 380.

198. 863 N.E.2d 1287 (Mass. 2007).

199. *Id.* at 1289.

200. *Id.* at 1289–90.

201. *Id.* at 1290.

202. See, e.g., *United States v. Noonan*, 745 F.3d 934, 936–939 (8th Cir. 2014); *United States v. Buchanan*, No. 3:14-00062, 2015 U.S. Dist. LEXIS 6117, at \*7–10 (M.D. Tenn. Jan. 20, 2015); *United States v. Jeronimo-Rodas*, No. 4-13-cr-00153-RBH, 2013 U.S. Dist. LEXIS 72970, at \*2–4 (D.S.C. May 23, 2013); *United States v. Harris*, No. 11-00118-01-CR-W-DGK, 2013 U.S. Dist. LEXIS 45822, at \*1–2 (W.D. Mo. Mar. 7, 2013); *United States v. Wilson*, 914 F. Supp. 2d 550, 560 (S.D.N.Y. 2012); *People v. Brown*, No. H039502, 2015 Cal. App. Unpub. LEXIS 178, at \*2 (Ct. App. Jan. 12, 2015); *People v. Caldera*, No. F035948, 2002 Cal. App. Unpub. LEXIS 3128, at \*5 (Ct. App. Mar. 13, 2002); *State v. White*, 619 A.2d 92, 93 (Me. 1993); *People v. Hurst*, 688 N.Y.S.2d 306, 306 (App. Div. 1999); *People v. Williams*, 595 N.Y.S.2d 61, 61 (App. Div. 1993); *State v. Thompson*, Nos. 98 JE 28, 98 JE 29, 2001 WL 69197, at \*4 (Ohio Ct. App. Jan. 24, 2001); *State v. Williams*, No. CA92-07-133, 1993 Ohio App. LEXIS 2749, at \*4–6 (Ct. App. June 1, 1993).

book the suspect,<sup>203</sup> at the stationhouse or detention facility,<sup>204</sup> or in a hospital when the suspect is injured.<sup>205</sup> Most courts, however, decline to admit a suspect's statements pursuant to *Quarles* beyond that period by reasoning that the threat to public safety has expired by the time the defendant is in custody and the surrounding scene has been secured.<sup>206</sup>

Like the interrogation length cases, some outlying cases before 2010 recognized the continued existence of a threat to public safety despite an increased passage of time since completion of a crime. In 1995, the District of Columbia Court of Appeals in part held in *Trice v. United States*<sup>207</sup> that *Quarles* permitted admission of defendant's statement about the location of a gun despite officers interrogating him four days

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203. See, e.g., *People v. Akhtar*, No. C042427, 2003 Cal. App. Unpub. LEXIS 11565, at \*5–6 (Ct. App. Dec. 11, 2003) (noting the “police officer opened the left rear door of the car” and asked the defendant about the victim's health status).

204. *United States v. Blackmon*, Nos. 96-6701; 96-6702, 1998 U.S. App. LEXIS 3786, at \*2 (6th Cir. Mar. 3, 1998); *United States v. Carrillo*, 16 F.3d 1046, 1049 (9th Cir. 1994); *Palmer v. Greiner*, No. 00 Civ. 6677, 2003 U.S. Dist. LEXIS 14974, at \*6–7 (S.D.N.Y. Aug. 22, 2003); *People v. Chatman*, 71 Cal. Rptr. 2d 867, 868 (Ct. App. 1998); *Trice v. United States*, 662 A.2d 891, 893 (D.C. App. 1995); *People v. Oquendo*, 685 N.Y.S.2d 437, 438 (App. Div. 1999); *People v. Palmer*, 693 N.Y.S.2d 539, 540–541 (App. Div. 1999); *New York v. Allen*, 658 N.Y.S.2d 393, 394 (App. Div. 1997); *People v. Shah*, 980 N.Y.S.2d 724, 725–726 (Sup. Ct. 2013); *State v. Davis*, No. 96-CO-44, 1999 Ohio App. LEXIS 5492, at \*3–4 (Nov. 19, 1999).

205. See, e.g., *United States v. Khalil*, 214 F.3d 111, 121 (2d Cir. 2000); *People v. Stevenson*, 59 Cal. Rptr. 878, 879 (Ct. App. 1996); *Thomas v. State*, 737 A.2d 622, 632 (Md. Ct. Spec. App. 1999); *United States v. Abdulmutallab*, No. 10-20005, 2011 U.S. Dist. LEXIS 105462, at \*3–4 (E.D. Mich. Sept. 16, 2011); *People v. Stryker*, No. A118638, 2010 Cal. App. Unpub. LEXIS 447, at \*29 (Ct. App. Jan. 22, 2010); *People v. Dennis*, 866 N.E.2d 1264, 1276 (Ill. App. Ct. 2007); *People v. Panah*, 107 P.3d 790, 840 (Cal. 2005); *Thomas v. State*, 737 A.2d 622, 627 (Md. Ct. Spec. App. 1999); *State v. Garcia-Lorenzo*, 430 S.E.2d 290, 294 (N.C. Ct. App. 1993).

206. See, e.g., *Brathwaite*, 458 F.3d 376, 382–83 n.8 (5th Cir. 2006) (denying admission of incriminating statements pursuant to *Quarles* in part because “the occupants were handcuffed”); *United States v. Molina-Tepozteco*, No. 07-181, 2007 U.S. Dist. LEXIS 101576, at \*17 (D. Minn. Sept. 24, 2007) (declining to allow admission of defendant's *Miranda*-less statements in part because “[t]he SWAT team had fully secured the premises, and Defendant was restrained”); *United States v. Mengis*, No. 04-CR-508-BR, 2006 U.S. Dist. LEXIS 62476, at \*12 (D. Or. Aug. 31, 2006) (declining to admit statements because “officers were 20 blocks from where weapons might be located, [and] they did not confront the potential danger for approximately 90 minutes after questioning the accused”).

207. 662 A.2d 891 (D.C. App. 1995).



after the shooting and an additional hour after his arrest.<sup>208</sup> Noting that defendant was arrested in the presence of children while the weapon was still missing, the court reasoned, “the detective did not learn of the specific threat his question was designed to eliminate—danger to children—until he saw children in appellant’s home at the time of arrest, four days after the shooting.”<sup>209</sup> Thus, concluded the court, “[a] refusal to apply the exception in this case would effectively penalize the government because [the detective] asked a question reasonably prompted by a concern for the well-being of small children.”<sup>210</sup>

The *Trice* holding, though rare, was not anomalous. After *Trice*, sporadic courts admitted statements taken pursuant to *Quarles* thirty to forty minutes after defendant turned himself in,<sup>211</sup> fifteen to thirty minutes after an arrest,<sup>212</sup> at a treating hospital following an injury to defendant,<sup>213</sup> and during execution of a search warrant well after commission of the alleged crime.<sup>214</sup> Then, in *Allen v. Roe*,<sup>215</sup> the Ninth Circuit in 2002 upheld admission of incriminating statements pursuant to *Quarles* made by a suspect about the location of a gun where the suspect was detained a “significant amount of time” after the shooting.<sup>216</sup> Noting the “danger posed by the gun does not dissipate over time[.]” the court reasoned, “[the gun] posed a continuing immediate danger because anyone could have found the gun at any time.”<sup>217</sup>

From 2002–2010, courts admitted statements pursuant to *Quarles* taken from a suspect hours or days after commission of the crime in fifteen more cases.<sup>218</sup> For example, courts during that period admitted

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208. *Id.* at 896.

209. *Id.*

210. *Id.* at 897.

211. *State v. Dubak*, No. 99-03430CR, 1999 Wisc. App. LEXIS 1067, at \*2 (Ct. App. Sept. 28, 1999).

212. *In re Pao C.V.*, No. 99-1991, 2000 Wisc. App. LEXIS 9, at \*3 (Ct. App. Jan. 11, 2000).

213. *United States v. Khalil*, 214 F.3d 111, 121 (2d Cir. 2000).

214. *United States v. Powell*, 444 F. App’x 517, 518–19 (3d Cir. 2011).

215. 305 F.3d 1046 (9th Cir. 2002).

216. *Id.* at 1051.

217. *Id.*

218. Nine of those cases were published. Of those nine, four were federal court decisions, and five originated in state court. *United States v. Newsome*, 475 F.3d 1221, 1222–23 (11th Cir. 2007); *United States v. Newton*, 369 F.3d 659, 664 (2d Cir. 2004); *United States v. Lackey*, 334 F.3d 1224, 1225–26 (10th Cir. 2003); *United States v. Mendoza*, 333 F. Supp. 2d 1155, 1157–58 (D. Utah 2004); *People v. Panah*, 107 P.3d 790, 839–40 (Cal. 2005); *Anglin v. State*, 157 S.W.3d 400, 401 (Mo. Ct. App. 2005); *People v. Coffinan*, 96

incriminating statements pursuant to *Quarles* about a gun (1) at the time of arrest three days after commission of the crime,<sup>219</sup> (2) at the time of arrest seven days after commission of the crime,<sup>220</sup> and (3) one month after commission of the crime.<sup>221</sup> Note that in even in these extreme examples, the judiciary remained faithful to the core concern expressed by the *Quarles* Court—location of a weapon. Deviations from questions about weapons, though rare, do exist; courts during that period admitted statements made after public safety questions about the existence of contraband generally,<sup>222</sup> the safety or condition of a victim,<sup>223</sup> and imminent completion of a robbery.<sup>224</sup>

Collectively, those twenty-one total cases between 1984–2010 are the dramatic exceptions; they are twenty-one among a list of 611 total public safety exception cases between 1984 and October 21, 2010 when the DOJ memorandum was authored.<sup>225</sup> Stated differently, 3.4% of courts prior to the DOJ memorandum permitted public safety interrogations that occurred sometime other than immediately following defendant's commission of the crime and subsequent apprehension.

But according to Attorney General Eric Holder in a May 2010 interview that in hindsight foreshadowed the DOJ memorandum, none of those cases address the “ticking time bomb” scenario.<sup>226</sup> That scenario,

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P.3d 30, 48–50 (Cal. 2004); *People v. Kimes*, 831 N.Y.S.2d 1, 13 (App. Div. 2006); *Jackson v. State*, 146 P.3d 1149, 1155 (Okla. Crim. App. 2006).

The other six public safety decisions during that time period were unpublished cases, one of which was a federal decision, and five were state court opinions. *United States v. Phillips*, 94 F. App'x 796, 801 (10th Cir. 2004); *State v. Luke*, No. 2003CA00413, 2004 Ohio App. LEXIS 5615, at \*6 (Ct. App. Nov. 15, 2004); *Palmer v. Greiner*, No. 00 Civ. 6677, 2003 U.S. Dist. LEXIS 14974, at \*7 (S.D.N.Y. Aug. 22, 2003); *People v. Akhtar*, No. C042427, 2003 Cal. App. Unpub. LEXIS 11565, \*5–6 (Ct. App. Dec. 11, 2003); *People v. Gray*, No. B156966, 2003 Cal. App. Unpub. LEXIS 5230, at \*3–4 (Ct. App. May 28, 2003); *People v. Taylor*, No. 1845/2000, 2002 N.Y. Misc. LEXIS 171, at \*11–12 (Sup. Ct. Mar. 20, 2002).

219. *Newsome*, 475 F.3d at 1222–24.

220. *Lackey*, 334 F.3d at 1225–26.

221. *Mendoza*, 333 F. Supp. 2d at 1157–58.

222. *Newton*, 369 F.3d at 678 (questioning whether defendant had any “contraband” in the house).

223. *Panah*, 107 P.3d at 839; *Coffman*, 96 P.3d at 58; *Kimes*, 831 N.Y.S.2d at 13; *Luke*, 2004 Ohio App. LEXIS 5615, at \*6; *Akhtar*, 2003 Cal. App. Unpub. LEXIS 11565, at \*4–6; *Gray*, 2003 Cal. App. Unpub. LEXIS 5230, at \*10.

224. *Palmer v. Greiner*, No. 00 Civ. 6677, 2003 U.S. Dist. LEXIS 14974, at \*6–7 (S.D.N.Y. Aug. 22, 2003).

225. See *infra* Appendix.

226. Justin Elliot, *Holder: Obama Admin Seeks Changes to Miranda Rule*, TALKING POINTS MEMO (May 9, 2010, 10:29 PM), <http://talkingpointsmemo.com>.

he implied, arises where immediate threats are posed to the public because of the prospect that an explosive is set for imminent detonation.<sup>227</sup> The weekend following the Shahzad interrogation, Holder appeared on *Meet the Press*, during which he sought to justify the FBI's decision not to read Shahzad his *Miranda* warnings. Arguing for a rule with "more flexibility," he commented, "we want the public safety exception to be consistent with the public safety concerns that we now have in the 21st century as opposed to the public safety concerns that we had back in the 1980s."<sup>228</sup> That statement about *Quarles*, alongside the government's subsequently solidified position as expressed in the DOJ memorandum, would seemingly make a significant impact both on ordinary public safety cases after 2010 and those involving the "ticking time bomb."

Holder's suggestion, though, that public safety exception cases prior to 2010 did not address modern public safety concerns in the form of so-called "ticking time bomb" cases is misleading. State and federal courts by then surprisingly already had experience with applying *Quarles* to bomb threats, mass casualty situations, or possible explosions. Indeed, during the time preceding Holder's interview (from 1984–2010), courts confronted ten *Quarles*-based interrogations where bomb detonation, explosions, or mass casualties were either threatened or had actually taken place.<sup>229</sup> In those ten examples, the longest judiciary-approved *Quarles*-based interrogation—a clear outlier—was forty-five minutes;<sup>230</sup> the next longest consisted of a few questions during an extended traffic stop.<sup>231</sup> But in the seven public safety interrogations

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com/muckraker/holder-obama-admin-seeks-changes-to-miranda-rule-video [https://perma.cc/R4QA-GZX4].

227. See *id.* (referring to the "ticking time bomb" scenario, Holder said that you "use the public safety exception that the Supreme Court has defined to make sure that there are no immediate threats").

228. *Id.*

229. *United States v. Rumble*, 714 F. Supp. 2d 388, 392–93 (N.D.N.Y. 2010); *United States v. Spoerke*, 568 F.3d 1236, 1249 (11th Cir. 2009); *United States v. Kramer*, No. 07-80136-CR, 2008 WL 169615, at \*1 (S.D. Fla. Jan. 16, 2008); *State v. Simmons*, 714 N.W.2d 264, 275 (Iowa 2006); *United States v. Khalil*, 214 F.3d 111, 121 (2d Cir. 2000); *State v. Kane*, 951 P.2d 934, 936 (Haw. 1998); *In re Travis*, 675 N.E.2d 36, 37 (Ohio Ct. App. 1996); *People v. Tritchler*, 48 Cal. App. 4th 367, 375–76 (Ct. App. 1996); *United States v. Fairchild*, 943 F. Supp. 1174, 1181 (W.D. Mo. 1996), *aff'd*, 168 F.3d 495 (8th Cir. 1999); *United States v. Dodge*, 852 F. Supp. 139, 142 (D. Conn. 1994).

230. *Tritchler*, 48 Cal. App. 4th at 379.

231. *Spoerke*, 568 F.3d at 1249.

involving possible explosions since 2010,<sup>232</sup> courts seemed more comfortable with extended questioning—approving of statements taken pursuant to *Quarles* in two of those cases after interrogations that lasted forty minutes<sup>233</sup> and about one hour.<sup>234</sup>

Post-2010 courts also routinely approved of extended-length public safety interrogations in more ordinary street crimes. Indeed, whereas courts prior to 2010 normally approved of one or two questions in the absence of *Miranda* warnings,<sup>235</sup> extended public safety questioning

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232. United States v. Buchanan, No. 3:14-00062, 2015 U.S. Dist. LEXIS 6117, at \*25–26 (M.D. Tenn. Jan. 20, 2015); United States v. Peace, NO. 4:14-CR-11-HLM-WEJ-1, 2014 U.S. Dist. LEXIS 169455, at \*10–19 (N.D. Ga. Sept. 25, 2014), *adopted in* United States v. Peace, NO. 4:14-CR-011-01-HLM-WEJ, 2014 U.S. Dist. LEXIS 169112, at \*7–8 (N.D. Ga. Dec. 8, 2014); People v. Rose, No. B250224, 2014 Cal. App. Unpub. LEXIS 8230, at\*2–3 (Ct. App. Nov. 17, 2014); United States v. Hodge, 714 F.3d 380, 385 (6th Cir. 2013); United States v. Rogers, No. 13-cr-130 (ADM/JJG), 2013 U.S. Dist. LEXIS 173175, at \*24–25, (D. Minn. Aug. 29, 2013); United States v. Stevens, NO. 1:12 CR 238, 2012 U.S. Dist. LEXIS 121260, at \*3-5 (N.D. Ohio Aug. 27, 2012); United States v. Stout, 439 F. App'x 738, 741 (10th Cir. 2011).

233. *Rogers*, 2013 U.S. Dist. LEXIS 173175, at \*9–10.

234. *Peace*, 2014 U.S. Dist. LEXIS 169455, at \*10, \*19.

235. A representative though by no means exhaustive sample includes the following cases:

**1984.** *See* United States v. Udey, 748 F.2d 1231, 1240 n.4 (8th Cir. 1984).

**1985.** *See* Huntsman v. State, No. 121, 1984, 1985 Del. LEXIS 580, \*5 (Del. May 17, 1985).

**1986.** *See, e.g.,* Hubbard v. State, 500 So. 2d 1204, 1225–26 (Ala. 1986); State v. Turner, 716 S.W.2d 462, 466 (Mo. Ct. App. 1986).

**1987.** *See, e.g.,* United States v. Brady, 819 F.2d 884, 887–89 (9th Cir. 1987); United State v. Padilla, 819 F.2d 952, 961 (10th Cir. 1987); People v. Gilliard, 189 Cal. App. 3d 285, 292 (Cal. Ct. App. 1987).

**1988.** *See, e.g.,* United States v. Eaton, 676 F. Supp. 362, 365 (D. Me. 1988); United States v. Ochoa-Victoria, No. 87-5232, 1988 U.S. App. LEXIS 21664, \*8–10 (9th Cir. July 6, 1988); State v. Jackson, 756 S.W.2d 620, 622 (Mo. Ct. App. 1988).

**1989.** *See, e.g.,* United States v. Edwards, 885 F.2d 377, 384–85 (7th Cir. 1989); State v. Vickers, 768 P.2d 1177, 1183 (Ariz. 1989); State v. Harris, 384 S.E.2d 50, 54 (N.C. App. Ct. 1989).

**1990.** *See, e.g.,* State v. Leone, 581 A.2d 394, 397 (Me. 1990); State v. Orso, 789 S.W.2d 177, 184 (Mo. Ct. App. 1990); State v. Trangucci, 796 P.2d 606, 608–09 (N.M. Ct. App. 1990).

**1991.** *See, e.g.,* United States v. Knox, 950 F.2d 516, 519 (8th Cir. 1991); State v. Stanley, 809 P.2d 944, 949 (Ariz. 1991); Alomari v. State, No. 365, 1991 Del. LEXIS 44, \*8–9 (Del. 1991).

**1992.** *See, e.g.*, United States v. Cox, No. 90-5853, 1992 U.S. App. LEXIS 2229, \*10 (4th Cir. Feb. 20, 1992); United States v. Simpson, 974 F.2d 845, 847 (7th Cir. 1992); United States v. Lawrence, 952 F.2d 1034, 1036–37 (8th Cir. 1991).

**1993.** *See, e.g.*, Johnson v. Estelle, No. 91-55158, 1993 U.S. App. LEXIS 4572, \*3–4 (9th Cir. Mar. 3, 1993); People v. Sims, 853 P.2d 992, 1019 (Cal. 1993); Edwards v. United States, 619 A.2d 33, 36–37 (D.C. 1993).

**1994.** *See, e.g.*, United States v. Gonzalez, 864 F. Supp. 375, 381 (S.D.N.Y. 1994); United States v. Dodge, 852 F. Supp. 139, 142 (D. Conn. 1994); Howard v. Garvin, 844 F. Supp. 173, 175 (S.D.N.Y. 1994).

**1995.** *See, e.g.*, Smith v. State, 452 S.E.2d 494, 497 (Ga. 1995); State v. Bailey, 889 P.2d 738, 744 (Kan. 1995); People v. Treier, 630 N.Y.S.2d 224, 227 (N.Y. Co. Ct. 1995).

**1996.** *See, e.g.*, United States v. Fisher, 929 F. Supp. 26, 29 (D. Me. 1996); Com. v. Kitchings, 598, 666 N.E.2d 511, 517 (Mass. App. Ct. 1996); People v. Pulley, 231 A.D.2d 534, 534 (N.Y. App. Div. 1996).

**1997.** *See, e.g.*, People v. Cotton, 662 N.Y.S.2d 135, 136 (N.Y. App. Div. 1997); People v. Allen, 240 A.D.2d 418, 418 (N.Y. App. Div. 1997); State v. Barros, No. 36915-6-I, 1997 Wash. App. LEXIS 557, \*14–15 (Wash. Ct. App. Apr. 14, 1997).

**1998.** *See, e.g.*, United States v. Creech, 52 F. Supp. 2d 1221, 1230 (D. Kan. 1998) *aff'd*, 221 F.3d 1353 (10th Cir. 2000); People v. Simpson, 76 Cal. Rptr. 2d 851, 856 (Cal. Ct. App. 1998); Joppy v. State, 719 So. 2d 316, 318 (Fla. Dist. Ct. App. 1998).

**1999.** *See, e.g.*, Marshall v. State, 228, 5 S.W.3d 496, 498–99 (Ark. Ct. App. 1999); Borrell v. State, 733 So. 2d 1087, 1089 (Fla. Dist. Ct. App. 1999).

**2000.** *See, e.g.*, United States v. Reilly, 224 F.3d 986, 993–94 (9th Cir. 2000); Commonwealth v. Clark, 730 N.E.2d 872, 884–85 (Mass. 2000); In re Roy L., 446, 4 P.3d 984, 989 (Ariz. Ct. App. 2000).

**2001.** *See, e.g.*, United States v. Jones, 154 F. Supp. 2d 617, 629–30 (S.D.N.Y. 2001); People v. Attebury, 624 N.W.2d 912, 917–18 (Mich. 2001); Luckett v. State, 797 So. 2d 339, 346 (Miss. Ct. App. 2001).

**2002.** *See, e.g.*, Allen v. Roe, 305 F.3d 1046, 1051 (9th Cir. 2002); United States v. Young, 186 F. Supp. 2d 642, 644 (E.D. Va. 2002); Bailey v. State, 763 N.E.2d 998, 1002 (Ind. 2002).

**2003.** *See, e.g.*, United States v. Williams, 282 F. Supp. 2d 586, 597 (E.D. Mich. 2003); State v. Betances, 828 A.2d 1248, 1257 (Conn. 2003); Dyson v. United States, 815 A.2d 363, 369 (D.C. 2003).

**2004.** *See, e.g.*, United States v. Fox, 393 F.3d 52, 60 (1st Cir. 2004); United States v. Newton, 369 F.3d 659, 677–78 (2d Cir. 2004); United States v. Reynolds, 334 F. Supp. 2d 909, 913–14 (W.D. Va. 2004).

**2005.** *See, e.g.*, United States v. Estrada, 430 F.3d 606, 613 (2d Cir. 2005); United States v. Luker, 395 F.3d 830, 833–34 (8th Cir. 2005); United States v. King, 366 F. Supp. 2d 265, 275 (E.D. Pa. 2005).

after the DOJ memorandum grew increasingly common. For example, courts approved of a roughly forty-five minute *Miranda*-less interrogation in a manslaughter and false imprisonment case,<sup>236</sup> an interrogation of unspecified duration in a murder case,<sup>237</sup> and a one-hour interrogation in a rape case.<sup>238</sup> One federal court interpreted *Quarles* to allow a thirty- to forty-five-minute interrogation about the presence of a gun—the very situation presented by *Quarles* itself.<sup>239</sup> But no court in any context—ticking time bomb or otherwise—had approved of a public safety interrogation lasting sixteen hours.

Like the expanded duration of public safety questioning, courts nationwide after 2010 grew more forgiving of *Quarles*-based interrogations that began later than immediately after defendant's commission of and apprehension for an offense. Compared to the 3.4% of courts between 1984–2010 that allowed public safety interrogations to commence sometime later than immediately following defendant's commission or apprehension for a crime,<sup>240</sup> sixteen of 135 public safety opinions after 2010—or roughly twelve percent—admitted incriminating statements under similar circumstances.<sup>241</sup> Courts tolerated a broad range of extended delays including public safety interrogations that took place hours

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**2006.** *See, e.g.,* Brown v. State, 982 So. 2d 565, 601 (Ala. Crim. App. 2006); State v. Londo, 158 P.3d 201, 204 (Ariz. Ct. App. 2006); State v. Simmons, 714 N.W.2d 264, 275 (Iowa 2006).

**2007.** *See, e.g.,* United States v. Newsome, 475 F.3d 1221, 1225 (11th Cir. 2007); United States v. Oung, 490 F. Supp. 2d 21, 33 (D. Mass. 2007); State v. Hewson, 642 S.E.2d 459, 466 (N.C. Ct. App. 2007).

**2008.** *See, e.g.,* United States v. Everman, 528 F.3d 570, 572 (8th Cir. 2008); Harris v. Phelps, 550 F. Supp. 2d 551, 564 (D. Del. 2008); People v. Allah, 863 N.Y.S.2d 682, 683 (N.Y. App. Div. 2008).

**2009.** *See, e.g.,* United States v. Are, 590 F.3d 499, 506 (7th Cir. 2009); United States v. DeJear, 552 F.3d 1196, 1202 (10th Cir. 2009); United States v. Jones, 567 F.3d 712, 715 (D.C. Cir. 2009).

**2010.** *See, e.g.,* Smith v. State, 46 So. 3d 608, 610 (Fla. Dist. Ct. App. 2010); Commonwealth v. Loadholt, 923 N.E.2d 1037, 1044 (Mass. 2010).

236. People v. Alger, No. A126581, 2013 Cal. App. Unpub. LEXIS 6693, \*69–76 (Ct. App. Sept. 19, 2013).

237. People v. Zalevsky, 918 N.Y.S.2d 790, 792–93 (App. Div. 2011).

238. State v. Miller, 264 P.3d 461, 466 (Kan. 2011).

239. United States v. Ferguson, 702 F.3d 89, 91 (2d Cir. 2012).

240. *Infra* Appendix.

241. United States v. Williams, 681 F.3d 35, 41 (2d Cir. 2012); *Ferguson*, 702 F.3d at 90; Williams v. Jacquez, 472 F. App'x 851, 852 (9th Cir. 2012); United States v. Powell, 444 F. App'x 517, 519 (3d Cir. 2011); United States v. Peace, NO. 4:14-CR-11-HLM-WEJ-1, 2014 U.S. Dist. LEXIS 169455, at \*10–19 (N.D. Ga. Sept. 25, 2014); United States v. Rogers, No. 13-cr-130 (ADM/JJG), 2013 U.S. Dist. LEXIS 173175, at \*9–10, 2013 WL 6388459

after an arrest,<sup>242</sup> two days after commission of the crime,<sup>243</sup> nearly four months after an offense,<sup>244</sup> and three months after a crime.<sup>245</sup> And interestingly, unlike the pre-DOJ memorandum cases, these sixteen cases covered a broader array of questioning: that is, questioning that differed from the *Quarles* Court's concerns about locating a weapon. For example, courts allowed extended questioning prior to *Miranda* warnings in the context of collecting evidence for a rape kit,<sup>246</sup> and "asking [three hours of] general questions designed to investigate a crime and elicit incriminating statements."<sup>247</sup>

But lengthier public safety interrogations and longer times before commencing those interrogations are just part of the story. Indeed, addressing the expansion of *Quarles* in the limited contexts of interrogation length alongside when that interrogation occurs provides no guidance on how to approach the other challenges presented by Tsarnaev's interrogation,<sup>248</sup> namely (1) whether the government can preemptively "invoke" *Quarles* before an interrogation;<sup>249</sup> (2) the permissible scope of

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(D. Minn. Aug. 29, 2013); *United States v. Stevens*, No. 1:12 CR 238, 2012 U.S. Dist. LEXIS 121260, \*3–4 (N.D. Ohio Aug. 27, 2012); *United States v. Vega-Rubio*, No. 2:09-cr-00113-GMN-PAL, 2011 U.S. Dist. LEXIS 8656, \*25 (D. Nev. Jan. 21, 2011); *People v. Alger*, No. A126581, 2013 Cal. App. Unpub. LEXIS 6693 (Ct. App. Sept. 19, 2013); *People v. Doll*, 998 N.E.2d 384, 385–86, 388 (N.Y. 2013); *People v. Mendez*, No. E057294, 2013 Cal. App. Unpub. LEXIS 7299, \*4 (Ct. App. Oct. 10, 2013).

242. *See, e.g.*, *Ferguson*, 702 F.3d at 96 (sixty to ninety minutes); *Jacquez*, 472 F. App'x at 852 (several hours); *Peace*, 2014 U.S. Dist. LEXIS 169455, at \*8–10 (more than an hour); *Stevens*, 2012 U.S. Dist. LEXIS 121260, at \*15–16 (four-hour interview began at midnight after defendant was "clearly suffering from having been exposed to the elements at the time of his arrest"); *People v. Alger*, A126581, 2012 Cal. App. Unpub. LEXIS 793, \*13 (Ct. App. Jan. 31, 2012) (several hours); *People v. Doll*, 998 N.E.2d 384, 385–87 (N.Y. 2013) (several hours).

243. *Melendez*, 30 A.3d at 323.

244. *United States v. Powell*, 444 F. App'x 517, 519 (3d Cir. 2011).

245. *Vega-Rubio*, 2011 U.S. Dist. LEXIS 8656, at \*24–26.

246. *Miller*, 264 P.3d at 466.

247. *Jacquez*, 472 F. App'x at 852 (Murguia, J., concurring).

248. *Cf.* H. Joshua Rivera, *At Least Give Them Miranda: An Exception to Prompt Presentment as an Alternative to Denying Fundamental Fifth Amendment Rights in Domestic Terrorism Cases*, 49 AM. CRIM. L. REV. 337, 353 (2012) (arguing the DOJ memo "is unclear as to how agents will remain within the public safety exception in 'exceptional cases' while ensuring an opportunity to lawfully detain suspects").

249. As used here and throughout this Article, preemptive invocation refers to a scenario where law enforcement makes the premeditated decision to rely on *Quarles* prior to questioning a suspect. That, of course, is counterintuitive to the logic of *Quarles* itself, which emphasized that the spontaneous nature of a threat to public safety causes law enforcement to "act out of a

questions that are necessary to secure the public's safety; (3) whether the suspect's invocation of counsel or silence impact *Quarles*; and (4) whether *Quarles* allows for the admission of an involuntary statement.<sup>250</sup> The 2010 DOJ memorandum does not even attempt to answer those questions. But that's a problem; the Supreme Court has never addressed them and lower courts have struggled in various capacities with each question.

Consider first whether law enforcement can invoke *Quarles* before commencing an interrogation. The government's decision to do so prior to questioning Tsarnaev in 2013 was unusual, and highlighted yet another question left unanswered by *Quarles*. The first of only two other instances—at least in case law—wherein the government preemptively relied on *Quarles* to question a suspect without *Miranda* occurred shortly after the Marathon Bombings.<sup>251</sup> In *United States v. Rogers*,<sup>252</sup> FBI agents received a tip that defendant planned “to destroy a radio tower or communications equipment in the City of Montevideo, raid the National Guard armory, and attack the Montevideo police station.”<sup>253</sup> Based in part on that tip, the FBI obtained a search warrant to seize firearms and other related personal property associated with explosives or explosive-making.<sup>254</sup>

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host of different, instinctive, and largely unverifiable motives[.]” New York v. Quarles, 467 U.S. 649, 656 (1984).

250. Arguably also unanswered by *Quarles* is the question of who the relevant “public” is in the public safety exception. *Cf.* United States v. Fautz, 812 F. Supp. 2d 570, 621 (D. N.J. 2011) (noting “public safety” includes officer safety); State v. Betances, 828 A.2d 1248, 1255–57 (Conn. 2003) (discussing who “public” in “public safety” includes). Given that that question is less relevant to the Boston Marathon bombing, this Article does not consider it.

251. United States v. Rogers, No. 13-cr-130, 2013 U.S. Dist. LEXIS 173175 (D. Minn. Aug. 29, 2013). There is also language in *United States v. Abdulmutallab* implying that the FBI invoked the public safety exception prior to questioning defendant:

Mindful of Defendant's self-proclaimed association with al-Qaeda and knowing the group's past history of large, coordinated plots and attacks, the agents feared that there could be additional, imminent aircraft attacks in the United States and elsewhere in the world. For these reasons, Agent Waters questioned Defendant for about 50 minutes without first advising him of his Miranda rights.

United States v. Abdulmutallab, No. 10-20005, 2011 U.S. Dist. LEXIS 105462, \*4 (E.D. Mich. Sept. 16, 2011). The *Abdulmutallab* opinion is not addressed here given that the opinion is not explicit on the question of preemptive invocation.

252. *Rogers*, 2013 U.S. Dist. LEXIS 173175.

253. *Id.* at \*4–5.

254. *Id.* at \*6.



Agents located defendant while executing the search warrant and took him into custody.<sup>255</sup> One agent in particular believed that an attack was imminent and therefore wanted to speak with defendant immediately.<sup>256</sup> That agent preemptively declined to give defendant his *Miranda* warnings; indeed, with the Marathon Bombings on his mind,<sup>257</sup> the agent proceeded to question defendant for forty minutes.<sup>258</sup> To explain his rationale for doing so, the agent would later testify, “[w]e utilized the public safety exception, specifically because we had solid information that a plot was in the works, that an individual had weapons, explosives, and knowledge, wherewithal, those things, in order to commit a plot.”<sup>259</sup>

Noting in part that the interrogating agent focused his questions on “the nature and quantity of the explosive and incendiary devices,” “who else had access to similar devices or weapons[,]” and defendant’s “potential collaborators and associates[,]”<sup>260</sup> the reviewing magistrate recommended denial of defendant’s motion to suppress incriminating statements he made during the public safety interrogation.<sup>261</sup> Although “not every question was crafted meticulously,” the court emphasized that the questions must be viewed “in the context of the haste and urgency that created the public exigency, not in the calm and academic setting afforded by retrospective review.”<sup>262</sup>

Fascinatingly, the district court in part rejected the magistrate’s recommendation and ordered certain of the pre-*Miranda* statements be suppressed.<sup>263</sup> Focusing on the wide scope of the agent’s questions, the court found problematic questions “about when [defendant] handled particular firearms explaining to [defendant] that fingerprints cannot be dated.”<sup>264</sup> Admission of answers to those and similar questions, the court reasoned, would expand public safety questioning “to include nailing down by admission elements of an anticipated charging offense[.]”<sup>265</sup>

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255. *Id.* at \*12.

256. *Id.* at \*12–13.

257. *Id.* at \*10 (“The Boston Marathon bombings had occurred three weeks earlier and were forefront in the minds of Agent Ball and the other law enforcement officers involved in the investigation.”).

258. *Id.* at \*16–17.

259. *Id.* at \*13.

260. *Id.* at \*24–26.

261. *Id.* at \*27–28.

262. *Id.*

263. *United States v. Rogers*, No. 13-130, 2013 U.S. Dist. LEXIS 172000, \*12 (D. Minn. Dec. 6, 2013).

264. *Id.* at \*10.

265. *Id.* at \*11.

That, concluded the court, would improperly “allow the public safety exception to swallow the *Miranda* rule.”<sup>266</sup>

The second preemptive invocation case arose early in 2014 when Terry Peace used an Internet forum to promote an attack against the government.<sup>267</sup> Using a confidential informant, the government in *United States v. Peace*<sup>268</sup> set up a meeting with Peace to deliver decoy explosives to him.<sup>269</sup> Peace was arrested at the meeting site, along with a confederate in the afternoon—approximately 1:35 p.m.—and taken into custody.<sup>270</sup>

Meanwhile, the FBI “had previously determined that the apprehension of defendants posed an ‘emergency situation.’”<sup>271</sup> Feeling they were “good to go on the public safety exception,”<sup>272</sup> the FBI therefore elected to interrogate defendant for nearly an hour without *Miranda* warnings.<sup>273</sup> The court acknowledged that Peace’s interrogation extended the traditional boundaries of public safety, but otherwise paid no specific attention to the government’s premeditated invocation of *Quarles*.<sup>274</sup> Given the court’s decision to deny defendant’s motion to suppress, however, the inference of judicial approval is unmistakable.<sup>275</sup>

Consider next the permissible scope of *Quarles*-based questions that courts have deemed appropriate to secure the public’s safety. Stated

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266. *Id.*

267. *United States v. Peace*, 2014 U.S. Dist. LEXIS 169455, at \*3–4 (N.D. Ga. Sept. 25, 2014). A magistrate authored this *Peace* opinion; his recommendations about the applicability of the public safety exception were subsequently adopted in pertinent part. *United States v. Peace*, NO. 4:14-CR-011-01-HLM-WEJ, 2014 U.S. Dist. LEXIS 169112, at \*4 (N.D. Ga. Dec. 8, 2014). See Ryan J. Reilly, *Georgia Men Used Facebook to Plot Anti-Government Militia Uprising, Prosecutors Say*, HUFFINGTON POST (Feb. 21, 2014, 7:07 PM), [http://www.huffingtonpost.com/2014/02/21/georgia-militia-facebook\\_n\\_4834322.html](http://www.huffingtonpost.com/2014/02/21/georgia-militia-facebook_n_4834322.html) [<https://perma.cc/8L5M-EKVC>] (explaining how Georgia men “plan[ed] to ‘start a fight’ with the government by attacking” various infrastructure targets in order to “trigger martial law”).

268. *Peace*, 2014 U.S. Dist. LEXIS 169455.

269. *Id.* at \*7–8.

270. *Id.* at \*8.

271. *Id.* at \*9–10.

272. *Id.* at \*10.

273. The interrogation lasted from roughly 2:44 p.m. until 3:39 p.m. *Id.* at \*10, \*19. The government sought only to introduce statements defendant made between 2:44–3:14 p.m. *Id.* at \*2, n.2.

274. *Id.* at \*35 (“[P]olice here subjected defendant to a lengthy, pre-planned interrogation, which was intended to neutralize a less defined, less isolated threat than a gun or other dangerous instrumentality located within the vicinity of the suspect and officers.”).

275. *Id.* at \*47.

generally, courts typically admit answers to questions pursuant to *Quarles* that are not investigative in nature.<sup>276</sup> Thus, beyond the basic “where is the gun,”<sup>277</sup> illustrative permissible questions include the following: “[w]hat is that object”;<sup>278</sup> “the number and whereabouts of the remaining robbers”;<sup>279</sup> and whether the suspect has “any drugs or needles on his person?”<sup>280</sup> By comparison, impermissible investigative questions include the following: “[w]hy do you have this gun”;<sup>281</sup> “is there anything in here I need to know about”;<sup>282</sup> “do you have anything on you”;<sup>283</sup> “do you have any of these items”;<sup>284</sup> and “who owned the suitcase?”<sup>285</sup>

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276. See, e.g., *United States v. Brady*, 819 F.2d 884, 888 (9th Cir. 1987) (stating questions arising from public safety concerns are not investigatory); *United States v. Chartier*, No. 13-CR-18-LRR, 2013 U.S. Dist. LEXIS 150778, \*22–23 (N.D. Iowa Oct. 21, 2013) (demonstrating that questions “designed solely to solicit testimonial evidence” are not admissible); *United States v. Dominguez*, No. 11-CR-0129-CVE, 2011 U.S. Dist. LEXIS 118750, \*9 (N.D. Okla. Oct. 13, 2011) (illustrating that questions asked for officer safety are not investigative); *United States v. Garcia-Meza*, No. 1:02-CR-56, 2003 U.S. Dist. LEXIS 8318, \*10 (W.D. Mich. May 6, 2003) (showing that questions for officer safety are admissible under the public safety exception); *United States v. Harris*, 961 F. Supp. 1127, 1134 (S.D. Ohio 1997) (saying that questions regarding public safety fall under the exception to *Miranda*); *Jackson v. State*, 146 P.3d 1149, 1158 (Okla. Crim. App. 2006) (discussing the differences between the public safety exception and the private safety exception, also known as the rescue doctrine); *State v. Stephenson*, 796 A.2d 274, 281–83 (N.J. Super. Ct. App. Div. 2002) (asserting that questions asked when there is no immediate danger are investigative and do not fall under the exception to *Miranda*); *State v. Barros*, No. 36915-6-I, 1997 WL 177525, \*4 (Wash. Ct. App. Apr. 14, 1997) (affirming that *Miranda* warnings are not required when the police ask a question “to control an immediate threat to public safety”).

277. See *infra* Appendix.

278. *State v. Sneed*, 851 N.E.2d 532, 535, 537 (Ohio Ct. App. 2006).

279. *People v. Howard*, 556 N.Y.S.2d 940, 942 (App. Div. 1990).

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

281. *United States v. Coleman*, No. 10-484, 2011 U.S. Dist. LEXIS 71272, \*12 (D.N.J. July 1, 2011).

282. *United States v. Redrick*, 48 F. Supp. 3d 91, 96, 104 (D.D.C. 2014); *Commonwealth v. Jones*, No. 06-P-1072, 2007 Mass. App. Unpub. LEXIS 871, \*7–8 (App. Ct. Nov. 29, 2007).

283. *State v. Strozier*, 876 N.E.2d 1304, 1307, 1310 (Ohio Ct. App. 2007).

284. *People v. Allen*, 199 P.3d 33, 38 (Colo. App. 2007).

285. *People v. Roundtree*, 482 N.E.2d 693, 696–98 (Ill. App. Ct. 1985); see *People v. Johnson*, 716 N.Y.S.2d 493, 494 (App. Div. 2000) (holding *Quarles* did not allow admission of incriminating statement made in response to officer’s question about whether defendant owned a pair of pants).

Interestingly—but problematically—not all courts evaluate the permissibility of public safety questions solely by considering whether they are investigative in nature. Indeed, some courts, apparently the minority, are willing to admit a suspect’s responses to questions that, in part, may elicit incriminating information so long as officers asked them spontaneously.<sup>286</sup> Still other courts focus less on the precise wording of the question and more on the temporal relationship between the question and the immediacy of any threat.<sup>287</sup> The disagreement amongst lower courts about how to evaluate the permissibility of an officer’s question can produce directly conflicting results. Some courts, for example, admit responses to an officer asking, “is there anything we need to be aware of,”<sup>288</sup> whereas others conclude that same question is open-ended and framed to elicit an incriminating response.<sup>289</sup>

Confusion likewise persists in courts nationwide about whether a suspect’s invocation of the right to silence or counsel impacts admission of incriminating statements obtained pursuant to *Quarles*.<sup>290</sup> Shortly before *Quarles*, the Supreme Court in 1981 held in *Edwards v. Arizona*<sup>291</sup> that an accused’s request for counsel terminates the interrogation until an attorney is present.<sup>292</sup> Some federal and state courts hold that *Quarles* trumps *Edwards*; thus, statements taken during a public

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286. See, e.g., *United States v. Newsome*, 475 F.3d 1221, 1225 (11th Cir. 2007) (stating broad phrasing of officers questions is allowed under the public safety exception to *Miranda*); *United States v. Estrada*, 430 F.3d 606, 612 (2d Cir. 2005) (allowing statements made after broad questions by a restrained defendant under the public safety exception); *United States v. Williams*, 181 F.3d 945, 953 n.13 (8th Cir. 1999) (affirming that broad questions do not prevent the public safety exception from applying); *United States v. Newton*, 369 F.3d 659, 678–79 (2d Cir. 2004) (permitting spontaneous questions under the public safety exception).

287. See, e.g., *United States v. Hasan*, 747 F. Supp. 2d 642, 665 (E.D. Va. 2010) (stating that the threat must be immediate for the public safety exception to apply); *United States v. Molina-Tepozteco*, No. 07-181, 2007 U.S. Dist. LEXIS 101576, \*15–17 (D. Minn. Sept. 24, 2007) (demonstrating that the public safety exception to *Miranda* does not apply when the defendant and premises are restrained); *State v. Hazley*, 428 N.W.2d 406, 411 (Minn. Ct. App. 1988) (asking about missing accomplices is not immediate enough to fall under the public safety exception).

288. *Williams*, 181 F.3d at 953; *United States v. Nelson*, 489 F. Supp. 2d 309, 315 (S.D.N.Y. 2007).

289. See *United States v. Redrick*, 48 F. Supp. 3d 91, 96, 104 (D.D.C. 2014) (stating that if there is no concern for safety then the public safety exception cannot apply).

290. *State v. Cosby*, 169 P.3d 1128, 1138–39 (Kan. 2007) (discussing conflict but declining to “weigh in”).

291. 451 U.S. 477 (1981).

292. *Id.* at 484.

safety interrogation are admissible despite noncompliance with *Miranda*.<sup>293</sup> Those courts typically reason that public safety concerns do not dissipate simply because a defendant seeks to invoke his rights.<sup>294</sup>

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293. **Federal cases.** *See, e.g.*, *United States v. DeSantis*, 870 F.2d 536, 541 (9th Cir. 1989) (stating that statements should be evaluated based on whether they were obtained coercively without evaluating *Edwards*); *United States v. Mobley*, 40 F.3d 688, 692–93 (4th Cir. 1994) (holding that *Quarles* applies in *Edwards* situations); *United States v. Bell*, 343 F. App'x 72, 74 (6th Cir. 2009) (applying the public safety exception to an *Edwards* situation); *United States v. Dominguez*, No. 11-CR-0129-CVE, 2011 U.S. Dist. LEXIS 118750, \*9–10 (N.D. Okla. Oct. 13, 2011) (allowing admission of a question asked after defendant invoked their right to remain silent); *Palmer v. Greiner*, 00 Civ. 6677, 2003 U.S. Dist. LEXIS 14974, \*26–27 (S.D.N.Y. Aug. 22, 2003) (declaring that the public safety exception applies after defendant has invoked their right to counsel).

**State cases.** *See, e.g.*, *People v. Broderick*, No. E060006, 2015 Cal. App. Unpub. LEXIS 700, \*10–11 (Ct. App. 4th Dist. Jan. 30, 2015) (applying the rescue doctrine after defendant has invoked right to counsel); *People v. Alger*, No. A126581, 2012 Cal. App. Unpub. LEXIS 793, \*57–58 (Cal. Ct. App. 1st Dist. Jan. 31, 2012) (stating that *Edwards* should be dismissed and statement should be examined based on coercion in public safety situations); *State v. Melendez*, 30 A.3d 320, 335 (N.J. Super. Ct. App. Div. 2011) (asserting that there is no distinction between pre- and post-*Miranda* in the public safety exception); *People v. Kimes*, 831 N.Y.S.2d 1, 13 (App. Div. 2006) (affirming that police can continue to question after an attorney has been requested if the public safety is at stake); *State v. Meyer*, No. WM-03-008, 2004 WL 2334150, \*5 (Ohio Ct. App. Sept. 30, 2004) (maintaining that questions about the safety of officers and the public justified continued questioning); *People v. Brewer*, No. A100489, 2004 Cal. App. Unpub. LEXIS 1832, \*25–26 (Ct. App. Feb. 27, 2004) (stating that the time the question was asked did not matter because the public was still at risk); *People v. Palmer*, 693 N.Y.S.2d 539, 541 (N.Y. App. Div. 1999) (explaining that the public safety exception still applies after defendant has invoked the right to counsel before being read their *Miranda* rights); *State v. Davis*, No. 96-CO-44, 1999 WL 1050092, at \*6 (Ohio Ct. App. Nov. 19, 1999) (claiming that the public safety exception applies before and after *Miranda* rights); *Borrell v. State*, 733 So. 2d 1087, 1089 (Fla. Dist. Ct. App. 1999) (stating the public safety exception applies both before and after *Miranda*); *People v. Tritchler*, 48 Cal. Rptr. 2d 650, 657 (Ct. App. 1996) (explaining that the public safety exception does not expire after *Miranda* warnings are given); *Trice v. United States*, 662 A.2d 891, 895 (D.C. 1995) (agreeing that *Quarles* applies to a *Edwards* situation); *State v. Taylor*, No. 92CA005313, 1992 Ohio App. LEXIS 6369, \*6–7 (Ct. App. Dec. 16, 1992) (explaining that the private safety exception applies before and after *Miranda* warnings are given); *State v. Stanley*, 809 P.2d 944, 949–950 (Ariz. 1991), *cert. denied*, 502 U.S. 1014 (1991) (claiming that voluntary statements given by a defendant after asking for right to counsel are admissible); *State v. Kunkel*, 404 N.W.2d 69, 76 (Wisc. 1987) (stating that the rescue doctrine always provides a limited exception to *Miranda*).

294. *See, e.g., Tritchler*, 48 Cal. Rptr. 2d at 657 (“[T]he public safety exception does not disappear merely because the individual has stated he would like with an attorney.”); *Mobley*, 40 F.3d at 692 (stating that the danger to the

The Ninth Circuit's widely cited 1989 decision in *United States v. DeSantis*<sup>295</sup> is illustrative. In *DeSantis*, the defendant contended that he requested an attorney as soon as law enforcement entered his apartment to arrest him.<sup>296</sup> Because he immediately sought counsel, he further argued that his later statement that "there was a gun on the shelf in the closet" should be suppressed.<sup>297</sup> Recognizing that it faced a novel issue, the Ninth Circuit held that *Quarles* applies even where a suspect invokes his right to counsel.<sup>298</sup> The court reasoned, in oft-quoted language,<sup>299</sup> that "[s]ociety's need to procure the information about the location of a dangerous weapon is as great after, as it was before, the request for counsel."<sup>300</sup>

But *DeSantis* was not universally embraced. Many jurisdictions hold that a suspect's invocation of counsel or silence renders *Quarles*-based statements inadmissible.<sup>301</sup> Identifying a unifying analytical thr-

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public is the same before and after *Miranda* warnings); *DeSantis*, 870 F.2d at 541 (explaining that the danger to the public exists before and after defendant requested counsel).

295. 870 F.2d 536, 540 (9th Cir. 1989).

296. *Id.* at 537.

297. *Id.*

298. *Id.* at 541.

299. *See, e.g., Mobley*, 40 F.3d at 692; *Trice v. United States*, 662 A.2d 891, 895 (D.C. 1995); *Borrell v. State*, 733 So. 2d 1087, 1089 (Fla. Dist. Ct. App. 1999).

300. *DeSantis*, 870 F.2d at 541.

301. **Federal cases.** *See, e.g., United States v. Guess*, 756 F. Supp. 2d 730, 745 (E.D. Va. 2010) (stating that statements given when the suspect was in custody were not admissible because none of the exceptions to *Miranda* apply); *United States v. Fautz*, 812 F. Supp. 2d 570, 633 (D.N.J. 2011) (claiming that *Quarles* does not apply after *Miranda* warnings have been given unless there is "a genuine situation of exigency"); *United States v. Brown*, 2005 U.S. Dist. LEXIS 29437, \*22 (D. Idaho Oct. 26, 2005) (explaining that statements beyond those for officers safety are not admissible); *see also Williams v. Jacquez*, No. CIV S-05-0058 LKK GGH, 2011 U.S. Dist. LEXIS 16442, \*43 (E.D. Cal. Feb. 18, 2011) (asserting that *Quarles* does not apply when an interrogator probes for public safety risks).

**State cases.** *See, e.g., Russell v. State*, 215 S.W.3d 531, 534-36 (Tex. App. 2007) (distinguishing a right to counsel in a judicial proceeding from a *Miranda* right to counsel); *Commonwealth v. Bruce*, No. CRIM. A. 99-1226, 2000 WL 1545790, at \*5 (Mass. Super. Ct. Oct. 18, 2000) (stating that when a suspect asserted the right to counsel and did not volunteer later information that the public safety exception did not apply); *People v. Ingram*, 984 P.2d 597, 605 (Colo. 1999) (explaining that the constitutional right to remain silent is greater than the public safety exception); *People v. Laliberte*, 615 N.E.2d 813, 822-23 (Ill. App. Ct. 1993) (arguing that *Quarles* did not apply); *State v. Cross*, No. A-93-368, 1993 Neb. App. LEXIS 353, \*10-11 (Neb. Ct. App. Aug. 17, 1993) (stating that *Quarles* does not apply if there is not an immediate need);

ead in those jurisdictions' decisions is challenging. Consider, for example, the Supreme Court of Oregon's 1985 decision in *State v. Miller*.<sup>302</sup> There, defendant confessed to his brother that he "strangled a kid."<sup>303</sup> His brother advised that defendant call a mental health professional; defendant heeded the advice and called a mental health hospital that, in turn, relayed defendant's confession to law enforcement.<sup>304</sup> Following defendant's apprehension and placement in an officer's patrol car, the officer persistently questioned defendant without providing *Miranda* warnings—over the latter's request to speak to a lawyer.<sup>305</sup> The Oregon Supreme Court held that *Quarles* was inapplicable by reasoning that defendant invoked his right to counsel and had not waived his Fifth Amendment rights, and, as a result, *Edwards* governed.<sup>306</sup> In particular, it emphasized, "the Supreme Court has unequivocally stated that in custodial interrogation, if an accused requests counsel, questioning must cease until an attorney is present."<sup>307</sup>

Unlike *Miller*, other courts reason either that cases where a suspect seeks to invoke counsel or silence typically do not involve an "immediate necessity,"<sup>308</sup> or that the *Quarles* exception is too narrow to allow such an expansive interpretation.<sup>309</sup> Moreover, at least one other court has expressed concern that applying *Quarles* to statements made after defendant invokes counsel could improperly allow officers to decide for themselves the effectiveness of a suspect's invocation.<sup>310</sup>

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State v. Miller, 709 P.2d 225, 241 (Or. 1985) (asserting that the public safety exception does not extend to a constitutional violation); see also State v. Thompson, Nos. 98 JE 28, 98 JE 29, 2001 WL 69197, \*11 (Ohio Ct. App. Jan. 24, 2001) (using the totality of circumstances to determine that the right to remain silent was not honored); State v. Harris, 544 N.W.2d 545, 553 (Wis. 1996) (stating that violating the right to counsel under *Edwards* creates a fruit of the poisonous tree violation).

302. State v. Miller, 709 P.2d 225 (Or. 1985).

303. *Id.* at 230 (internal quotation marks omitted).

304. *Id.*

305. *Id.* at 230–31.

306. *Id.* at 241.

307. *Id.*

308. *E.g.*, State v. Cross, No. A-93-368, 1993 Neb. App. LEXIS 353, \*10 (Neb. Ct. App. Aug. 17, 1993) (explaining that the exception to *Miranda* is limited to an immediate need).

309. *E.g.*, People v. Ingram, 984 P.2d 597, 605 (Colo. 1999) (stating that the public safety exception is narrow).

310. People v. Zanini, No. F038571, 2003 Cal. App. Unpub. LEXIS 377, \*21 (Ct. App. Jan. 10, 2003).

Although less controversial than some of the other unanswered *Quarles* issues, whether *Quarles* allows for the admission of an involuntary or coerced statement remains an open question.<sup>311</sup> As a firm general rule in the lower courts—state or federal—*Quarles* does not allow admission of involuntary statements; i.e., statements obtained through coercion, admission of which would normally violate due process.<sup>312</sup> Those courts almost uniformly reason that although *Quarles* is an exception to *Miranda*, it is not an exception to the requirements of due process.<sup>313</sup> Perhaps not surprisingly, then, no court has interpreted *Quarles* to allow for admission of an arguably coerced or involuntary statement.<sup>314</sup>

Now with that primer in mind, let's return to April 2013 when *all* of the unanswered *Quarles* questions surfaced during the Tsarnaev interrogation. Following his capture on the night of April 19, Tsarnaev arrived at the hospital “covered in blood” where he received treatment

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311. The *Quarles* Court itself expressly disclaimed resolution of this issue. *New York v. Quarles*, 467 U.S. 649, 654 (1984) (“In this case we have before us no claim that respondent’s statements were actually compelled by police conduct which overcame his will to resist.”). It moreover observed that *Quarles* was free to argue “that his statement was coerced under traditional due process standards.” *Id.* at 655 n.5.

312. **Federal cases.** *United States v. Carroll*, 207 F.3d 465, 472 (8th Cir. 2000); *United States v. DeSantis*, 870 F.2d 536, 540 (9th Cir. 1989); *United States v. Buchanan*, No. 3:14-00062, 2015 U.S. Dist. LEXIS 6117, \*27–28 (M.D. Tenn. Jan. 20, 2015); *United States v. Stanton*, No. 11-57, 2013 U.S. Dist. LEXIS 8983, \*17 (W.D. Pa. Jan. 22, 2013); *United States v. Kelly*, No. 08-109(1)(RHK/RLE), 2008 WL 5382272, at \*6 (D. Minn. Dec. 23, 2008); *United States v. Veilleux*, 846 F. Supp. 149, 154 (D.N.H. 1994); *United States v. Rullo*, 748 F. Supp. 36, 40–42 (D. Ma. 1990); *United States v. Rosario*, 558 F. Supp. 2d 723, 729 (E.D. Ky. 2008).

**State cases.** *State v. Morrissey*, 214 P.3d 708, 719 (Mont. 2009); *Green v. United States*, 974 A.2d 248, 261–62 (D.C. 2009); *People v. Fanelli*, No. D050425, 2007 WL 2626215, at \*3–4 (Cal. Ct. App. Sept. 12, 2007); *People v. Coffman*, 96 P.3d 30, 74 (Cal. 2004); *Commonwealth v. Batista*, No. CRIM. A. 99-0512, 2000 WL 192247, at \*5 (Mass. Super. Ct. Jan. 21, 2000), *aff’d*, 761 N.E.2d 523 (Mass. App. Ct. 2002); *State v. Brown*, No. 94-CA-15, 1994 Ohio App. LEXIS 5761, \*4–6 (Ohio Ct. App. Dec. 21, 1994); *State v. Leone*, 581 A.2d 394, 397 (Me. 1990); *People v. B.R.*, 479 N.E.2d 1084, 1086–87 (Ill. App. Ct. 1985).

313. *See, e.g., Carroll*, 207 F.3d at 472 (stating that involuntary statements are not admissible despite a public safety exception); *DeSantis*, 870 F.2d at 540 (explaining that officers cannot compel self-incriminating statements); *In re J.D.F.*, 553 N.W.2d 585, 589 (Iowa 1996) (stating that the totality of the circumstances must be examined to determine if a statement is voluntary).

314. *But cf. Price v. State*, 591 N.E.2d 1027, 1030 (Ind. 1992) (demonstrating how the totality of the circumstances are examined to determine the voluntariness of a statement that falls under the public safety exception).



for substantial injuries,<sup>315</sup> including a gunshot wound to the mouth and “multiple gunshot wounds to the extremities.”<sup>316</sup> Doctors worked to stabilize Tsarnaev, who ultimately required intubation and emergency surgery.<sup>317</sup> While Tsarnaev received treatment and was unable to speak,<sup>318</sup> the government told the media of its intent to question him without first providing *Miranda* warnings.<sup>319</sup>

Using a specialized FBI interrogation team,<sup>320</sup> the government began interrogating Tsarnaev at approximately 7:22 p.m. on April 20 and continued with breaks until the morning of April 22.<sup>321</sup> Before the interrogation began, lawyers from the Federal Public Defender’s Office asked a federal district court to appoint them to represent Tsarnaev.<sup>322</sup> Two lawyers from that office alongside a private lawyer went to the hospital in an effort to meet with Tsarnaev, but were turned away by law enforcement.<sup>323</sup> Law enforcement, moreover, declined to accept a letter from defense lawyers addressed to Tsarnaev to inform him of counsels’ availability.<sup>324</sup>

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315. Ashleigh Banfield, *Dzhokhar Tsarnaev Arrived at Hospital ‘Covered in Blood’*, CNN (May 1, 2013, 5:35 AM), <http://www.cnn.com/2013/04/29/us/boston-bomber-hospital-arrival/> [<https://perma.cc/PV9Z-LU56>].

316. Ed Payne, *Documents Detail Boston Bombing Suspect Dzhokhar Tsarnaev’s Injuries*, CNN (Aug. 20, 2013, 8:06 AM), <http://www.cnn.com/2013/08/20/us/boston-bombing-tsarnaev-injuries> [<https://perma.cc/RFN6-7DU9>]; Travis Andersen, *Dzhokhar Tsarnaev’s Injuries Detailed in Documents*, BOS. GLOBE (Aug. 20, 2013), <https://www.bostonglobe.com/metro/2013/08/19/tsarnaev-injuries-detailed-court-filings/iosBu05QsC8fwGwMKHtdHL/story.html> [<https://perma.cc/R2BL-HWDB>].

317. Heidi Evans & Larry McShane, *‘What Have We Done? We Just Saved Him’: Some ER staff Weigh Results of Dzhokhar Tsarnaev Surgery*, NY DAILY NEWS (Apr. 25, 2013), <http://www.nydailynews.com/news/national/doctors-weigh-outcome-dzhokhar-tsarnaev-lifesaving-surgery-article-1.1326896> [<http://perma.cc/HP2M-CWE9>].

318. See Banfield, *supra* note 315.

319. Beutler, *supra* note 16.

320. See Jonathan Karl, *Feds Make Miranda Rights Exception for Marathon Bombing Suspect Dzhokhar Tsarnaev*, ABC NEWS (Apr. 19, 2013), <http://abcnews.go.com/blogs/politics/2013/04/next-for-bombing-suspect-high-value-detainee-interrogation-group/> [<http://perma.cc/49RU-GEJ7>] (noting the interrogation team is called the “High-Value Detainee Interrogation Group”).

321. Valencia, *supra* note 13; Government’s Opposition to Defendant’s Motion to Suppress Statements, *supra* note 18, at 6.

322. Defendant’s Motion to Suppress Statements at 3, United States v. Tsarnaev, No. 13-10200-GAO (D. Mass. May 7, 2014), ECF No. 295.

323. *Id.*

324. *Id.*

When the unrecorded interrogation began,<sup>325</sup> Tsarnaev was medicated and handcuffed to his bed with his jaw wired closed and one eye sutured shut.<sup>326</sup> He at times was confused, writing his Cambridge address incorrectly and asking if the investigators could “hear some noise.”<sup>327</sup> During the lengthy questioning, which lasted on and off for a total of thirty-six hours,<sup>328</sup> Tsarnaev wrote answers to the investigators’ questions in a notebook because he could not talk.<sup>329</sup> He asserted during questioning that he was no longer a public safety threat and asked for time to rest.<sup>330</sup> He wrote at one point, “I am tired. Leave me alone. I want a l[illegible].”<sup>331</sup> His pen then trailed off the page.<sup>332</sup> At other times, he wrote “I’m hurt,” “I’m exhausted,” “[c]an we do this later[.]” “[y]ou said you were gonna let me sleep[.]” and “I need to throw up.”<sup>333</sup>

Tsarnaev also “wrote the word ‘lawyer’ ten times, sometimes circling it.”<sup>334</sup> An FBI report confirmed that Tsarnaev “asked to speak to a lawyer on multiple occasions,” but was told “he first needed to answer questions to ensure that the public safety was no longer in danger from other individuals, devices, or otherwise.”<sup>335</sup> Questioning persisted on a wide range of subjects, including how and where the bombs were assembled alongside Tsarnaev’s views about Islam, U.S. foreign policy, his career goals, and accomplishments in school.<sup>336</sup> Agents quickly obtained a confession, according to the government, “[f]rom the moment the agents began questioning Tsarnaev about the Marathon bombings, he readily admitted his own involvement[.]”<sup>337</sup> Investigators also

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325. Valencia, *supra* note 13.

326. *Id.*

327. Defendant’s Motion to Suppress Statements, *supra* note 320, at 4.

328. *Id.* at 1.

329. Valencia, *supra* note 13.

330. *Id.*; Government’s Opposition to Defendant’s Motion to Suppress Statements, *supra* note 18, at 7.

331. Defendant’s Motion to Suppress Statements, *supra* note 322, at 4–5.

332. *Id.* at 5.

333. *Id.*

334. *Id.* at 4.

335. *Id.* at 5 (internal quotation marks omitted).

336. *Id.*

337. Government’s Opposition to Defendant’s Motion to Suppress Statements, *supra* note 18, at 7.

asked about “his activities with his brother in the days after the bombings, the shooting of an MIT police officer, and . . . his sports activities[.]”<sup>338</sup>

During the interrogation, a federal criminal complaint was filed against Tsarnaev at 6:45 p.m. on Sunday evening, April 21.<sup>339</sup> On the morning of April 22, magistrate judge Marianne B. Bowler conducted Tsarnaev’s initial appearance at his hospital bedside at which time Judge Bowler advised Tsarnaev of his *Miranda* rights and appointed counsel.<sup>340</sup> Tsarnaev immediately invoked his right to silence and stopped talking.<sup>341</sup> The interrogation ceased.<sup>342</sup>

Although the government later stipulated not to introduce at trial the statements Tsarnaev made at the hospital,<sup>343</sup> the Tsarnaev interrogation—by raising every unanswered question about the applicability of *Quarles*—showcases the public safety exception’s doctrinal shortcomings alongside modern law enforcement’s expansive interpretation of the doctrine. But whether the 2010 DOJ memorandum (or 911 or something else)<sup>344</sup> is truly the proximate cause (so to speak) of expanding views about *Quarles* is largely beside the point. Rather, the clear point is this: courts no longer view *Quarles* as a “narrow exception,”

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338. Valencia, *supra* note 13; see Defendant’s Motion to Suppress Statements, *supra* note 322, at 5–6.

339. Complaint at 1, United States v. Tsarnaev, No. 1:13-mj-02106-MBB (D. Mass. Apr. 21, 2013).

340. Barrett et al., *supra* note 19; Defendant’s Motion to Suppress Statements, *supra* note 322, at 6.

341. *Boston Marathon Bombing Suspect Dzhokhar Tsarnaev Silent after Read Miranda Rights*, CBS NEWS (Apr. 25, 2013), <http://www.cbsnews.com/news/boston-marathon-bombing-suspect-dzhokhar-tsarnaev-silent-after-read-miranda-rights/> [<http://perma.cc/T4ND-M7SC>].

342. See *id.*

343. Government’s Opposition to Defendant’s Motion to Suppress Statements, *supra* note 18, at 20. Prosecutors presumably abandoned introduction of these statements in favor of showing the jury pictures of incriminating statements that Tsarnaev scrawled into the side of the boat where he hid shortly before his capture. Aaron Katersky & Michele McPhee, *What Boston Marathon Bombing Suspect Dzhokhar Tsarnaev Wrote in Blood-Stained Boat*, ABC NEWS (Mar. 10, 2015), <http://abcnews.go.com/US/boston-marathon-bombing-suspect-dzhokhar-tsarnaev-wrote-blood/story?id=29534415> [<http://perma.cc/N8NA-GP7D>].

344. Joanna Wright, *Mirandizing Terrorists? An Empirical Analysis of the Public Safety Exception*, 111 COLUM. L. REV. 1296, 1317 n.91 (2011) (collecting resources suggesting that September 11 changed the way the judiciary applies the public safety exception).

but rather a doctrine that requires case-by-case analysis unbound by any particular requirement—temporal or otherwise.<sup>345</sup>

### III. THE HISTORIC ROOTS OF *NEW YORK V. QUARLES*

Expanding judicial views of *Quarles* have remarkably evolved without any guidance from the Supreme Court since the decision's issuance in 1984. Unguided lower court and law enforcement expansion, though, is problematic because, as this Part demonstrates, the Burger Court never considered applying the public safety exception to anything other than ordinary street crime. Thus, neither in *Quarles*—nor since—has the Court addressed the constitutionality of *any* of the issues raised by the Tsarnaev interrogation. But that's not to say that it has not had its opportunities.

*Quarles* is, at its core, a *Miranda* decision. The roots of *Quarles* therefore were predictably planted long before 1984. Issued in 1966, *Miranda* created a substantial backlash from law enforcement, the media, and legislators alike.<sup>346</sup> The litany of critics included then Presidential hopeful, Richard M. Nixon, who promised if elected to fill the high Court with “strict constructionists.”<sup>347</sup> Once elected in 1968 despite having received just 43.4% of the popular vote,<sup>348</sup> Nixon targeted *Miranda* in part by appointing four justices who were on record as critical of the decision.<sup>349</sup> One of those nominees in particular—William

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345. See, e.g., *United States v. Peace*, 2014 U.S. Dist. LEXIS 169455, at \*36 (N.D. Ga. Sept. 25, 2014) (“*Quarles* does not drape a blanket over any class of cases (i.e., those that bear upon national security), but demands a case-by-case analysis.”); *United States v. Duncan*, 308 F. App’x 601, 605 (3d Cir. 2009); *United States v. Estrada*, 430 F.3d 606, 612 (2d Cir. 2005) (“[W]e have described the public safety exception as ‘a function of the facts of cases so various that no template is likely to produce sounder results than examining the totality of the circumstances in a given case.’” (quoting *United States v. Reyes*, 353 F.3d 148, 152 (2d Cir. 2003))).

346. See, e.g., SETH STERN & STEPHEN WERMIEL, *JUSTICE BRENNAN: LIBERAL CHAMPION* 239 (2010) (recounting law enforcement reactions to the *Miranda* decision); BERNARD SCHWARTZ, *THE GREAT RIGHTS OF MANKIND: A HISTORY OF THE AMERICAN BILL OF RIGHTS* 234 (1992) (describing criticism of *Miranda* as “another set of handcuffs on the police”); Arthur Krock, *In the Nation: The Wall Between Crime and Punishment*, N.Y. TIMES, June 14, 1966, at 46 (describing *Miranda* as adding to the difficulties the Supreme Court has already imposed on police interrogations).

347. Evan Thomas, *Inside the High Court*, TIME MAGAZINE, Nov. 5, 1979, <http://www.time.com/time/magazine/article/0,9171,912517,00.html> [<https://perma.cc/9L7U-WGET>].

348. ALLEN J. MATUSOW, *THE UNRAVELING OF AMERICA* 437 (1987).

349. Fred P. Graham, *The “Nixon Court”: A Premature Label?*, N.Y. TIMES, Jan. 7, 1972, at 8 (reporting that the four Nixon appointees “are all critics” of *Miranda* and *Escobedo*). During his presidency, Nixon appointed Warren

Rehnquist—joined the Court in 1971 with “a desire to counteract some ‘excesses’ of the liberal activist Warren Court.”<sup>350</sup> That view mirrored the one he expressed during a speech at the University of Arizona while serving as Assistant Attorney General, during which he suggested “that the Court should overrule decisions like *Miranda*, without feeling bound by ‘stare decisis.’”<sup>351</sup> The other Nixon appointees—Chief Justice Warren Burger, and Associate Justices Lewis Powell, and Harry Blackmun—shared Justice Rehnquist’s vision to overrule *Miranda*.<sup>352</sup>

But fascinatingly *Miranda* remained good law by the time the Court heard *Quarles* in 1984. That’s not to say, though, that *Miranda* was doctrinally as strong then as it was at the time of its issuance. Since appointment of the so-called Nixon four,<sup>353</sup> the Court had steadily chipped away at *Miranda*’s core holding—that is, the idea that the Fifth Amendment required the provision of certain warnings to a suspect and waiver of those rights prior to custodial interrogation.<sup>354</sup> Beginning in 1971, for example, the Court in *Harris v. New York*<sup>355</sup> held that voluntary statements taken in violation of *Miranda* are admissible

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Burger as Chief (1969), and Associate Justices William Rehnquist (1971), Lewis Powell (1971), and Harry Blackmun (1970). Maxwell L. Stearns, *Standing at the Crossroads: The Roberts Court in Historical Perspective*, 83 NOTRE DAME L. REV. 875, 896 (2008).

350. Stuart Taylor, Jr., *A Pair of Rehnquist Opinions Sets Legal Experts Buzzing*, N.Y. Times, Feb. 28, 1988, at 182, <http://www.nytimes.com/1988/02/28/weekinreview/a-pair-of-rehnquist-opinions-sets-legal-experts-buzzing.html> [<https://perma.cc/7W4Y-CL3L>].

351. Alan Dershowitz, *The Court: Of Justices and ‘Philosophies’*, N.Y. TIMES, Oct. 24, 1971, at E1.

352. See, e.g., Stephen Wasby, *Justice Harry A. Blackmun: Transformation from “Minnesota Twin” to Independent Voice*, in THE BURGER COURT: POLITICAL AND JUDICIAL PROFILES 93 (Charles M. Lamb & Stephen C. Halpern eds., 1991) (discussing Justice Blackmun’s unhappiness with *Miranda*); LIVA BAKER, *MIRANDA: CRIME, LAW AND POLITICS* 194–97 (1983) (explaining the relationship between Nixon and Burger); Graham, *supra* note 349, at 8 (describing dissatisfaction with *Miranda* and noting that Nixon’s four appointees were all critics).

353. See, e.g., Ian Haney-Lopez, *Intentional Blindness*, 87 N.Y.U. L. REV. 1779, 1809 (2012) (describing Nixon’s appointments as “the Nixon four”); Lee Epstein & Tonja Jacobi, *Super Medians*, 61 STAN. L. REV. 37, 68 (2008); Ian Millhiser, *What Happens to a Dream Deferred? Cleansing the Taint of San Antonio Independent School District v. Rodriguez*, 55 DUKE L.J. 405, 421 (2005).

354. E.g., Richard A. Leo & Welsh S. White, *Adapting to Miranda: Modern Interrogators’ Strategies for Dealing with the Obstacles Posed by Miranda*, 84 MINN. L. REV. 397, 451 (1999) (discussing *Miranda*’s core holding).

355. 401 U.S. 222 (1971).

to impeach a defendant's credibility on cross-examination.<sup>356</sup> About *Miranda*, the *Harris* Court commented, "[s]ome comments in the *Miranda* opinion can indeed be read as indicating a bar to use of an uncounseled statement for any purpose, but discussion of that issue was not at all necessary to the Court's holding and cannot be regarded as controlling."<sup>357</sup>

The Court decided *Michigan v. Tucker*,<sup>358</sup> the case that "deconstitutionalized" *Miranda*, just three years later.<sup>359</sup> In *Tucker*, an interrogation in violation of *Miranda* produced a witness who would later testify against defendant at the latter's criminal trial for rape.<sup>360</sup> Following defendant's conviction, defendant argued on appeal that the witness, a fruit of the *Miranda* violation, never should have testified against him.<sup>361</sup> The Court disagreed and held that although *Miranda* mandated exclusion of defendant's statement about the witness, it did not reach the fruit of that statement; that is, the witness.<sup>362</sup> Writing for the Court, Justice Rehnquist's opinion in support of the Court's relatively narrow holding included this sweeping language: "[T]he police conduct at issue here did not abridge respondent's constitutional privilege against compulsory self-incrimination, but departed only from the prophylactic standards later laid down by this Court in *Miranda* to safeguard that privilege."<sup>363</sup>

Remaining pre-*Quarles* opinions involving the Nixon four likewise showcased the quartet's view of *Miranda* as decreasingly applicable. In 1975, the Court reaffirmed *Harris*,<sup>364</sup> and then held in 1976 that *Miranda* warnings were unnecessary in a noncustodial interview by Internal Revenue agents.<sup>365</sup> Three years later, in 1979, the Court in *Fare v. Michael C.* declined to construe a minor's request to speak with his probation officer as an invocation of *Miranda*.<sup>366</sup> Then, in *Fletcher v. Weir*,<sup>367</sup> the final *Miranda*-based case leading up to *Quarles*, the Court

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356. *Id.* at 226.

357. *Id.* at 224.

358. 417 U.S. 433 (1974).

359. *E.g.*, Yale Kamisar, *Can (Did) Congress "Overrule" Miranda?*, 85 CORNELL L. REV. 883, 940 (2000).

360. 417 U.S. 433, 435 (1974).

361. *Id.* at 438–39.

362. *Id.* at 452.

363. *Id.* at 445–46.

364. *Oregon v. Hass*, 420 U.S. 714, 723 (1975).

365. *Beckwith v. United States*, 425 U.S. 341, 347 (1976).

366. *Fare v. Michael C.*, 442 U.S. 707, 724 (1979).

367. 455 U.S. 603 (1982) (per curiam).

allowed the prosecution to rely on defendant's post-arrest silence to impeach his exculpatory trial testimony.<sup>368</sup>

But by the time of *Quarles*, whether *Miranda* permitted a true exception to its applicability remained an open question. To be sure, some lower courts prior to *Quarles* had already construed *Miranda*'s definition of "interrogation" as inapplicable to, for example, "booking" or "pedigree" questions.<sup>369</sup> Other lower courts had also held that certain other questions did not constitute *Miranda* interrogation, like those considered "routine,"<sup>370</sup> "threshold,"<sup>371</sup> "neutral,"<sup>372</sup> or "casual, lone, and conversational."<sup>373</sup> Some lower courts more pointedly had even already created an "on-scene questioning" exception for "an on the scene investigation of an emergency situation,"<sup>374</sup> or for "on-the-scene questioning designed to determine what had occurred."<sup>375</sup> Lower courts by the time of *Quarles* were particularly forgiving in an emergency when officers neglected to provide *Miranda* warnings before asking about the presence of a firearm.<sup>376</sup> Thus had emerged something of a general rule in the lower courts: "[w]here a state has alleged that there was a sufficiently compelling noninvestigatory purpose for asking questions of an accus-

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368. *Id.* at 607.

369. *See, e.g.*, United States *ex rel.* Hines v. LaVallee, 521 F.2d 1109, 1113 (2d Cir. 1975); State v. Rassmusen, 449 P.2d 837, 841–42 (Idaho 1969); Clarke v. State, 240 A.2d 291, 294 (Md. Ct. Spec. App. 1968); People v. Hernandez, 69 Cal. Rptr. 448, 454–55 (Ct. App. 1968).

370. State v. Cobb, 539 P.2d 1140, 1143 (Or. Ct. App. 1975); People v. Wright, 66 Cal. Rptr. 95, 97–98 (Ct. App. 1968).

371. Shy v. State, 218 S.E.2d 599, 604 (Ga. 1975); Neal v. State, 263 S.E.2d 185, 187–88 (Ga. Ct. App. 1979).

372. State v. Simoneau, 402 A.2d 870, 873 (Me. 1979); State v. Taylor, 343 A.2d 11, 19–20 (Me. 1975).

373. State v. Persinger, 433 P.2d 867, 868 (Wash. 1967).

374. State v. Holsclaw, 257 S.E.2d 650, 653 (N.C. Ct. App. 1979).

375. State v. Health, 592 P.2d 1302, 1305 (Ariz. Ct. App. 1979).

376. *See, e.g.*, United States v. Castellana, 500 F.2d 325, 326 (5th Cir. 1974); United States v. Ganter, 436 F.2d 364, 369 (7th Cir. 1970); State v. Levy, 292 So. 2d 220, 221 (La. 1979); State v. LaRue, 578 P.2d 66, 70 (Wash. Ct. App. 1978); Pope v. State, 478 P.2d 801, 804–05 (Alaska 1977); People v. Copperwohl, 229 N.W.2d 913, 916 (Mich. Ct. App. 1975); People v. Mullins, 532 P.2d 733, 735 (Colo. 1975); State v. Lane, 467 P.2d 304, 306 (Wash. 1970); People v. Brown, 266 N.E.2d 131, 135–36 (Ill. App. Ct. 1970); People v. Superior Court for County of Santa Clara, 3 Cal. App. 3d 476, 489 (Cal. Ct. App. 1970); People v. Ramos, 170 N.W.2d 189, 191 (Mich. Ct. App. 1969); Ballew v. State, 441 S.W.2d 453, 456–57 (Ark. 1969).

ed who had not been informed of or waived his rights . . . any statements made in response to the questions [may] be used by the prosecution at trial.”<sup>377</sup>

What seemed like a uniform or at least clear trend amongst lower courts nationwide hardly translated to a uniform handling of the *Quarles* litigation. Following Benjamin Quarles’s arrest and November 24, 1980, indictment for criminal possession of a weapon,<sup>378</sup> he moved to suppress his statement—“the gun is over there”—alongside the weapon itself.<sup>379</sup> After a hearing, the New York Supreme Court, Queens County, granted Quarles’s motion by holding that Officer Kraft’s question about the weapon after handcuffing Quarles violated *Miranda*.<sup>380</sup> Moreover, the court reasoned, “the officer’s safety was not in question.”<sup>381</sup> The New York Appellate Division affirmed without opinion in December 1981.<sup>382</sup>

Following a further prosecutorial appeal, the New York Court of Appeals granted leave to hear the case.<sup>383</sup> In a largely unremarkable opinion issued in November 1982, the court again affirmed suppression of both Quarles’s statements and the gun.<sup>384</sup> But there existed one intriguing facet of the opinion: the court’s observations about the potential applicability of “an emergency exception”—observations that directly contradict Justice Rehnquist’s later assessment of the threat posed by Quarles and his undiscovered weapon at the time of arrest. Pointing to Officer Kraft’s own suppression hearing testimony that “the situation was under control” at the time of Quarles’s arrest,<sup>385</sup> the New York Court of Appeals concluded:

[T]here is no evidence in the record before us that there were exigent circumstances posing a risk to the public safety or that the police interrogation was prompted by any such concern. Nor, so far as appears from the record, was any such theory advanced by the People at the suppression hearing. Undeniably neither of the courts below, with fact-finding jurisdiction, made any factual

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377. *Harryman v. Estelle*, 616 F.2d 870, 874–75 (5th Cir. 1980).

378. *New York v. Quarles*, 467 U.S. 649 joint app. at \*2-3 (1984) (No. 82-1213), 1983 U.S. S. Ct. Briefs LEXIS 684.

379. *Id.* at \*9–10.

380. *Id.* at \*37–38.

381. *Id.* at \*38.

382. *Id.* at \*41–42.

383. *Id.* at \*43.

384. *People v. Quarles*, 444 N.E.2d 984, 985 (N.Y. 1982).

385. *Id.*



determination that the police acted in the interest of public safety.<sup>386</sup>

Despite two consecutive appellate affirmances, the prosecution—perhaps knowing its audience—pressed forward by petitioning for Supreme Court review.<sup>387</sup> Aligned with Justice O'Connor,<sup>388</sup> the Nixon four voted to grant certiorari on May 23, 1983.<sup>389</sup>

Oral argument several months later on January 18, 1984,<sup>390</sup> foretold the differing views that created what became a 5-4 court sharply divided by the issue presented in *Quarles*. When Stephen J. Rappaport got up to argue on behalf of Petitioner-New York, he made a variety of arguments to support admission of Quarles's statement and the weapon. He in particular argued alternatively that (1) Quarles was not subject to interrogation,<sup>391</sup> or (2) "the exigent circumstances of having the gun loose in the supermarket overrode the necessity for *Miranda* warnings."<sup>392</sup> Finally, as a failsafe, Rappaport asserted that the doctrine of inevitable discovery applied.<sup>393</sup> Thus, Rappaport argued, "we think that there is no question on the facts of this case that that gun would have been discovered without the defendant's statement."<sup>394</sup>

Still other theories arose during oral argument to support possible admission of Quarles's statement and the weapon. First, the Justices debated with respondent's counsel, David A. Strauss, whether *Miranda*

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386. *Id.*

387. Brief of Petitioner for Writ of Certiorari, *New York v. Quarles*, 467 U.S. 649 (1984) (No. 82-1213).

388. It was hardly uncommon for the Nixon appointees to vote together, particularly on criminal procedure issues. *See, e.g.*, Graham, *supra* note 349, at 8; STEPHEN L. WASBY, CONTINUITY AND CHANGE: FROM THE WARREN COURT TO THE BURGER COURT 68 (1976); Paul C. Bartholomew, *The Supreme Court of the United States, 1972-1973*, 27 W. POL. Q. 164, 164 (1974).

389. *New York v. Quarles*, 461 U.S. 942 (1983); Justice Lewis F. Powell, Jr., Certiorari Vote Sheet in *New York v. Quarles* (April 15, 1983) (on file with the Library of Congress, Manuscript Division, Lewis Powell Papers). From Justice Powell's papers, Justice Blackmun's vote appears tentative. *Id.* The issue, it turned out, was immaterial because Justice O'Connor would change her mind and vote to grant. Letter from Justice Sandra Day O'Connor to Justice William Rehnquist (May. 12, 1983) (on file with the Library of Congress, Manuscript Division, Harry A. Blackmun Papers, Box 399, File, "Folder 3").

390. *Quarles*, 461 U.S. at 942 (listing oral argument date).

391. Transcript of Oral Argument at 2, *New York v. Quarles*, 467 U.S. 649 (1984) (No. 82-1213).

392. *Id.* at 4.

393. *Id.* at 6.

394. *Id.*

warnings are necessary before questioning during a *Terry* stop.<sup>395</sup> Second, discussion arose about whether questioning Quarles was proper as part of administrative questioning incident to the arrest process.<sup>396</sup>

At the conference on *Quarles* two days later, the Nixon four once again voted together.<sup>397</sup> Specifically, Chief Justice Burger alongside Justices Rehnquist, Blackmun, Powell, and White comprised the majority that voted in favor of reversing the New York Court of Appeals.<sup>398</sup> Justices Brennan, Marshall, and Stevens voted together to affirm, and Justice O'Connor was alone in voting to affirm in part and reverse in part.<sup>399</sup>

Although the varying theories for admission clearly weighed on the Justices during the conference, the majority Justices manifested a clear focus on two things: the weapon and the timing of Officer Kraft's question.<sup>400</sup> For instance, during conference, Chief Justice Burger suggested that the Court "craft an exception to *Miranda* for exigent circumstances"<sup>401</sup> that, he thought, should be limited to weapons.<sup>402</sup> Justice Powell agreed, but went a step further, arguing for a "per se rule that a cop learning that a weapon is in the vicinity should be *required* to ask this question."<sup>403</sup> Although Justice Rehnquist disagreed with Powell's per se rule, he agreed, "[S]pontaneous questions incident to arrest should be admitted."<sup>404</sup> Focused also on the spontaneous nature of the situation presented in *Quarles*, Justice Blackmun supported reversing because the "need for public safety is compelling" and "this type of custody is not like that in stationhouse or elsewhere."<sup>405</sup> Only Justice White's rationale drifted from his majority colleagues; although he supported reversal, he did so on the basis of inevitable discovery.<sup>406</sup>

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395. *Id.* at 8.

396. *Id.* at 9.

397. Justice Lewis F. Powell, Jr., Vote Sheet in *New York v. Quarles* (Jan. 20, 1984) (on file with Washington & Lee University School of Law) [hereinafter "Powell Vote Sheet"].

398. *Id.*

399. *Id.*

400. See THE SUPREME COURT IN CONFERENCE (1940-1985) 524 (Del Dickson ed. 2001).

401. *Id.*

402. Powell Vote Sheet, *supra* note 397.

403. SUPREME COURT IN CONFERENCE, *supra* note 400, at 524.

404. Powell Vote Sheet, *supra* note 397.

405. SUPREME COURT IN CONFERENCE, *supra* note 393, at 525; Powell Vote Sheet, *supra* note 397.

406. SUPREME COURT IN CONFERENCE, *supra* note 400, at 525.

Even the Justices outside the majority focused almost exclusively on the role of a weapon alongside the spontaneous nature of the interaction between Officer Kraft and Quarles. At conference, Justice Marshall openly admitted “[t]his is like a *res gestae* case,” but stubbornly asserted, “I will find some way to affirm.”<sup>407</sup> Justices Brennan, Stevens, and O’Connor, though acknowledging the presence of an exigency, construed that exigency as having compelled defendant’s response.<sup>408</sup> As Justice Brennan commented, asking Quarles about the weapon’s location while surrounded by officers “compel[s] you to be a witness against yourself[.]”<sup>409</sup> More generally, he said, creating exception would “only complicate the policeman’s life and undermine one of *Miranda*’s principal virtues: simple and clear application.”<sup>410</sup> For her part, Justice O’Connor agreed at conference that Quarles’s answer to the gun question was compelled.<sup>411</sup>

The twin concerns expressed at conference as a basis for admitting Quarles’s statement—locating the weapon alongside the spontaneous interaction between Quarles and Officer Kraft—were featured prominently in Justice Rehnquist’s majority opinion.<sup>412</sup> Immediately in his first draft dated February 17, 1984, Justice Rehnquist created, in an effort to harmonize the conference feedback, a public safety exception that acknowledged but discarded application of *Miranda*.<sup>413</sup> Days later, Chief Justice Burger along with Associate Justices Powell and White all joined the opinion.<sup>414</sup>

As the conference vote foreshadowed, not everyone agreed with Rehnquist’s approach. On the same day Justice Rehnquist circulated his first draft, Justice Marshall notified the Court of his intent to file a

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407. *Id.*

408. *Id.* at 524–25.

409. *Id.* at 524.

410. *Id.*

411. *Id.* at 525.

412. *New York v. Quarles*, 467 U.S. 649, 652–53 (1984).

413. First Draft of *New York v. Quarles* Majority Opinion (Feb. 17, 1984) (on file with Washington & Lee University School of Law).

414. The Chief Justice joined Justice Rehnquist’s opinion on February 22, 1984. Letter from Chief Justice Warren E. Burger to Justice William Rehnquist (Feb. 22, 1984) (on file with the Library of Congress, Manuscript Division, Thurgood Marshall Papers, Box 342, File, “Folder 8”). Justice White joined on February 24. Letter from Justice Byron R. White to Justice William Rehnquist (Feb. 24, 1984) (on file with the Library of Congress, Manuscript Division, Thurgood Marshall Papers, Box 342, File, “Folder 8”). Justice Powell joined on February 27. Letter from Justice Lewis F. Powell, Jr., to Justice William Rehnquist (Feb. 27, 1984) (on file with the Library of Congress, Manuscript Division, Thurgood Marshall Papers, Box 342, File, “Folder 8”).

dissent,<sup>415</sup> which Justices Brennan and Stevens would later join.<sup>416</sup> Justice O'Connor meanwhile wrote to Justice Rehnquist on February 21, indicating her intent to write separately and asserting, "if we are to adhere to *Miranda*, a clear, bright line will serve us better than a blurring of the rule for a 'public safety' exception."<sup>417</sup> Behind the scenes, Justice Blackmun's clerk, Elizabeth Taylor,<sup>418</sup> expressed concern to Justice Blackmun about the opinion, noting in part, "the lower court made no findings about whether there was a public safety need for the officer to question the defendant in this case."<sup>419</sup> Observing that other Justices planned to write, she recommended that Justice Blackmun "wait for the further writings."<sup>420</sup>

As Justice Blackmun contemplated his vote, Taylor also later expressed her concern about the uncertainty associated with injecting a public safety exception into *Miranda*'s bright-line rule. In a memorandum to the Justice dated April 27, 1984, Taylor wrote:

[E]ven if there might be cases where a public safety exception to Miranda is called for, this is not such a case. WHR has refused to do what he repeatedly insists that the Court must do (in cases where the defendant loses)—to defer to the factual determinations of the state courts. Here, the state courts found that there was no

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415. Letter from Justice Thurgood Marshall to Justice William Rehnquist (Feb. 17, 1984) (on file with the Library of Congress, Manuscript Division, Thurgood Marshall Papers, Box 342, File, "Folder 8").

416. Letter from Justice John Paul Stevens to Justice Thurgood Marshall (Apr. 26, 1984) (on file with the Library of Congress, Manuscript Division, Harry A. Blackmun Papers, Box 399, File, "Folder 3"); Letter from Justice William J. Brennan to Justice Thurgood Marshall (Apr. 27, 1984) (on file with the Library of Congress, Manuscript Division, Harry A. Blackmun Papers, Box 399, File, "Folder 3").

417. Letter from Justice Sandra Day O'Connor to Justice William Rehnquist (Feb. 21, 1984) (on file with the Library of Congress, Manuscript Division, Byron R. White Papers, Box 632, File, "Folder 4").

418. The memorandum is hand-signed "Elizabeth" and initialed "ET," but Elizabeth Taylor, Justice Blackmun's clerk during the 1983–84 term, must have authored it. Amy Woolard, *Todd '00 Earns Clerkship with Justice Alito; Virginia Third Among Law Schools in Number of Clerks this Term*, VIRGINIA SCHOOL OF LAW (Sept. 8, 2006), [http://www.law.virginia.edu/html/news/2006\\_fall/todd.htm](http://www.law.virginia.edu/html/news/2006_fall/todd.htm) [https://perma.cc/R52S-BK5D].

419. Memorandum from Elizabeth Taylor for Justice Blackmun (Feb. 17, 1984) (on file with the Library of Congress, Manuscript Division, Harry A. Blackmun Papers, Box 399, File, "Folder 3").

420. *Id.*

risk either to the arresting officers or to the public. There is no basis for this Court to reject or ignore that finding.<sup>421</sup>

Despite Taylor's reservations, Justice Blackmun joined Justice Rehnquist's opinion on April 30, thereby solidifying the five Justice majority.<sup>422</sup> With the Court's composition now solidified, attention naturally shifted to finalizing the Justices' varied opinions.

Notwithstanding the differing approaches taken by the Court to resolve *Quarles*, each opinion once again consistently showcased a narrow focus on the role of a missing weapon during a spontaneous police-citizen interaction. Although Justice Rehnquist for the majority acknowledged in creating the public safety exception that *Miranda* applied to Quarles's arrest,<sup>423</sup> he wrote that officers during the arrest encountered a "kaleidoscopic situation."<sup>424</sup> That situation included "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."<sup>425</sup> Indeed, said to the Court, "[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."<sup>426</sup> Creation of this "narrow exception to the *Miranda* rule"<sup>427</sup> was therefore necessary, said the Court, because officers in these unpredictable interactions must make decisions "often in a matter of seconds[.]"<sup>428</sup> Accordingly, deference to "spontaneity rather than adherence to a police manual is necessarily the order of the day[.]"<sup>429</sup>

Although Justice O'Connor wrote separately, concurring in part and dissenting in part, she too focused on the lost weapon alongside the exigency created by Quarles's arrest. But unlike the majority's effort to justify the public safety exception, she took a different tack, asserting

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421. Memorandum from Elizabeth Taylor for Justice Blackmun (Apr. 27, 1984) (on file with the Library of Congress, Manuscript Division, Harry A. Blackmun Papers, Box 399, File, "Folder 3").

422. Letter from Justice Harry A. Blackmun to Justice William Rehnquist (Apr. 30, 1984) (on file with the Library of Congress, Manuscript Division, Harry A. Blackmun Papers, Box 399, File, "Folder 3").

423. *New York v. Quarles*, 467 U.S. 649, 655 (1984).

424. *Id.* at 656.

425. *Id.* at 657.

426. *Id.*

427. *Id.* at 658.

428. *Id.* at 657.

429. *Id.* at 657.

that it “unnecessarily blurs the edges of the clear line heretofore established and makes Miranda’s requirements more difficult to understand.”<sup>430</sup> She added that despite concerns about the missing weapon, Quarles was still subject to custodial interrogation; thus, “a principled application of *Miranda* requires that respondent’s statement be suppressed.”<sup>431</sup>

Finally, like his colleagues, Justice Marshall in dissent focused on the risk to the public created by the missing weapon. Unlike the majority, Justice Marshall asserted that no danger existed; rather, he noted, “the arresting officers were sufficiently confident of their safety to put away their guns.”<sup>432</sup> Apart from focusing on the exigency created by Quarles’s arrest, Justice Marshall also asserted that creating a public safety exception was wholly unnecessary.<sup>433</sup> In stirring language, directly applicable to the Tsarnaev interrogation, Justice Marshall said this:

If a bomb is about to explode or the public is otherwise imminently imperiled, the police are free to interrogate suspects without advising them of their constitutional rights. Such unconsented questioning may take place not only when police officers act on instinct but also when higher faculties lead them to believe that advising a suspect of his constitutional rights might decrease the likelihood that the suspect would reveal life-saving information. \*\*\* [N]othing in the Fifth Amendment or our decision in *Miranda v. Arizona* proscribes this sort of emergency questioning. All the Fifth Amendment forbids is the introduction of coerced statements at trial.<sup>434</sup>

*Quarles* was finally published on June 12, 1984—six months after oral argument.<sup>435</sup> It was, and remains, “the only exception to *Miranda* that permits police officers intentionally to delay administering Miranda warnings while interrogating a suspect who is ‘in custody.’”<sup>436</sup> Everything about *Quarles* throughout that period, from the Court’s own private deliberations to the opinions’ final drafts, focused on how—or whether—*Miranda* should work when officers sought to identify a

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430. *Id.* at 663 (O’Connor, J., concurring in part and dissenting in part).

431. *Id.* at 664.

432. *Id.* at 675 (Marshall, J., dissenting).

433. *Id.* at 686.

434. *Id.* Applying Justice Marshall’s logic, the FBI’s high value interrogation group was free to interrogate Tsarnaev without relying on *Quarles*. Had they done so in a world without *Quarles*, *Miranda* would have precluded introduction at trial of Tsarnaev’s responses, but the government could freely rely on information gleaned from Tsarnaev’s *Miranda*-less interrogation.

435. *Id.* at 649 (listing date of decision).

436. *United States v. Fautz*, 812 F. Supp. 2d 570, 621 (D.N.J. 2011).

lost weapon while arresting a rape suspect. The idea that such a narrowly focused opinion could, twenty-nine years later, support interrogating a domestic terror suspect for sixteen hours four days after detonating explosives at a marathon seems, at best, misguided.

At this point, something about the public safety doctrine needs to change. Either the Court should revisit *Quarles*, something it has never done, or create an entirely different exception—perhaps one focused on national security.<sup>437</sup> Some state courts have already gone this route, electing to create an entirely separate “rescue doctrine,” wherein law enforcement is excused from providing *Miranda* warnings when “‘information is being sought to save a life[.]’”<sup>438</sup> But letting important Supreme Court doctrine continue to sit untouched for what is now more than three decades will—for better or worse—allow for more of the same: judicial and law enforcement expansion of the public safety exception.

### CONCLUSION

According to the majority opinion authored in 1984, *Quarles* created a “narrow exception” to *Miranda*.<sup>439</sup> That exception permits officers to ask suspects—without providing *Miranda* warnings—questions that are “reasonably prompted by a concern for the public safety.”<sup>440</sup> Since then, the Supreme Court has not addressed a number of questions that *Quarles* left unanswered, including the permissible length and scope of a public safety interrogation alongside the impact, if any, of a suspect’s invocation of counsel or silence.

Letting *Quarles* sit dormant has allowed a once narrow doctrine to expand dramatically—as best exemplified by the sixteen-hour, 2013 public safety interrogation of Dzhokhar Tsarnaev four days after the Marathon Bombings. During that interrogation, a badly wounded and

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437. Creation of a “national security exception” seems logical. There indeed seems to exist a plausible line to draw between terrorism and ongoing criminal activity (like a kidnapping) on the one hand and ordinary criminal activity on the other.

438. *State v. Kunkel*, 404 N.W.2d 69, 74 (Wis. Ct. App. 1987) (quoting *People v. Willis*, 104 Cal. App. 3d 433, 447 (Ct. App. 1980)). *See, e.g.*, *People v. Davis*, 208 P.3d 78, 120–21 (Cal. 2009) (reasoning that “the rescue doctrine must be grounded on objective facts known to law enforcement” and that a “possibility of saving the life of a missing victim” must exist); *State v. Londo*, 158 P.3d 201, 205 (Ariz. Ct. App. 2006) (holding that an officer witnessing a defendant gag and froth at the mouth met standards for admissibility under the rescue doctrine); *Benson v. State*, 698 So. 2d 333, 337 (Fla. Ct. App. 1997) (holding that the rescue doctrine applied to an officer’s need to question a defendant about how much crack cocaine he swallowed in order prevent a drug overdose).

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

440. *Id.* at 656.

heavily medicated Tsarnaev requested counsel, sought to remain silent, and confessed immediately. But law enforcement pressed forward and, were it not for judicial intervention, would have continued questioning Tsarnaev without *Mirandizing* him.

The government's approach to interrogating Tsarnaev was likely unconstitutional pursuant to present law, though it may normatively have been correct. If indeed the government's approach is modernly permissible, then the Supreme Court should say so and *Miranda* should become the exception to *Quarles*.



APPENDIX

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
1984	United States v. Udey, 748 F.2d 1231, 1240 n.4 (8th Cir. 1984)	Harboring a fugitive after deadly shootout	D taken into custody following shootout, questioned immediately thereafter	Others present in the home?	<i>Quarles</i> is not material to the holding, but the court mentions <i>Quarles</i> in a footnote and says that it would have permitted the response D made to law enforcement
1984	State v. McCarthy, 353 N.W.2d 14, 17 (Neb. 1984)	Homicide investigation	Day after murder, D transported to station for questioning	"I need to know if [suspect] is in that house"	<i>Quarles</i> did not allow admission of D's response because there was no immediate danger
1985	United States v. Webb, 755 F.2d 382, 392 n.14 (5th Cir. 1985)	D, a homicide suspect, threatened suicide	Homicide occurred some weeks earlier, questioning contemporaneous with D's threats	Negotiators engaged D in a dialogue	<i>Quarles</i> is not material to holding, but the court says in dicta that it would apply to D's threat to commit suicide
1985	Huntsman v. State, No. 121, 1984, 1985 Del. LEXIS 580, *5 (Del. May 17, 1985)	Attempted prison murder	Question occurred during a strip search immediately after the attempted murder	Where did the shank come from?	<i>Quarles</i> is not material to the holding, but the court says that the questioning may have been justified under the public safety exception
1985	Derrington v. United States, 488 A.2d 1314, 1328 (D.C. 1985)	D arrested for felony murder & armed robbery	D arrested a day after the crime, transported to the stationhouse, and questioned thereafter	"If you have anything to tell me, you can"	<i>Quarles</i> did not allow admission of D's response because the questions were designed to elicit an incriminating response
1985	People v. Roundtree, 482 N.E.2d 693, 697–98 (Ill. App. 1985)	Officer's car rear-ended then officer heard a gunshot	Immediately after D was placed under arrest, the officer discovered a suitcase in the car.	Who owned the suitcase?	<i>Quarles</i> did not allow admission of D's response because the scene was secured
1985	<i>In re</i> B.R., 479 N.E.2d 1084, 1086 (Ill. App. 1985)	Investigation of double shooting	Same day as the shooting, D questioned while in police car	Officers told D that they wanted the gun "off the street"	<i>Quarles</i> did not allow admission of D's response because the police were not attempting to neutralize a volatile situation
1985	State v. Miller, 709 P.2d 225, 241 (Or. 1985)	Homicide investigation	D confessed via telephone, officers located and questioned him in police car	Officer asked D if he had hurt someone	<i>Quarles</i> did not allow admission of incriminating statement taken after D requested counsel
1986	Jennings v. Rees, 800 F.2d 72, 75 (6th Cir. 1986)	D's residence searched, illegal handgun seized	During execution of a search warrant meant to locate drugs	No questioning, weapon seized during warrant execution	<i>Quarles</i> is not material to holding, but court says that a felon having a gun raises the same types of concerns that were before the <i>Quarles</i> court

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
1986	Hubbard v. State, 500 So. 2d 1204, 1225–26 (Ala. 1986)	Murder investigation	D's response made on scene prior to arrest but over an hour after shooting occurred	"What happened?" & "Where's the gun?"	<i>Quarles</i> is not material to holding, but the court says in dicta that it would apply to the questioning about the presence of a gun
1986	State v. Meola, 488 So. 2d 645, 646 (Fla. Ct. App. 1986)	Aggravated assault investigation	D's response made on the scene prior to arrest, shortly after the incident	"Do you have a gun?" & "Is there a gun in the car?"	<i>Quarles</i> did not allow admission of the gun because it was in plain view in D's car rather than hidden in a public place
1986	State v. Obran, 496 So. 2d 1132, 1134 (La. Ct. App. 1986)	Officer stopped D for driving recklessly	Officer arrested D immediately. When D exited vehicle, officer observed gun on front seat	No questioning, officer retrieved weapon from car seat	<i>Quarles</i> allowed admission of the gun
1986	State v. Turner, 716 S.W.2d 462, 466 (Mo. Ct. App. 1986)	Report of shooting during an argument	Immediately upon arriving at the scene and making contact with D	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1986	State v. Wright, 517 A.2d 171, 173 (N.J. Super. Ct. App. Div. 1986)	Report of a man with a gun at motel	Search of shed occurred shortly after placing D in custody	No questioning of D (warrantless search)	<i>Quarles</i> awkwardly relied upon in part to justify warrantless search of a shed
1986	People v. Chatman, 504 N.Y.S.2d 703, 704 (N.Y. App. Div. 1986)	Report of a shooting at a private residence	Officer responded to 911 call, questioning immediately upon arrival	Where's the gun?	<i>Quarles</i> not material to holding, but says that if the D was actually in custody, the public safety exception would have admitted the D's response about the location of a gun
1986	State v. Hoyer, 506 N.E.2d 1190, 1192 (Ohio Ct. App. 1986)	D stopped for driving while intoxicated	D transported to detention facility, questioning during pat-down	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1987	United States v. Brady, 819 F.2d 884, 887–89 (9th Cir. 1987)	911 call about man assaulting a woman	Immediately after making contact with D but some-time after alleged beating occurred	Officer asked if there was a gun in D's car	<i>Quarles</i> allowed admission of D's response
1987	United State v. Padilla, 819 F.2d 952, 961 (10th Cir. 1987)	Report of a man firing shots in front of residence	Officer conducted pat-down of D upon arriving at scene, questioning immediately thereafter	"How about inside the house?"	<i>Quarles</i> allowed admission of D's response
1987	Edwards v. State, 515 So. 2d 86, 91 (Ala. Crim. App. 1987)	Dispatched to the scene of a shooting	Immediately upon making contact with D at the scene of the shooting	Where's the gun? (Question directed at fellow officers)	<i>Quarles</i> not material to holding, but the court said that it would allow D's response if the question asked was in fact directed towards D

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
1987	People v. Gilliard, 189 Cal. App. 3d 285, 292 (Cal. Ct. App. 1987)	D arrested and transported to scene of a shooting	Questioning some-time after actual shooting but immediately upon arrival the scene	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1987	<i>In re</i> John C., 130 A.D.2d 246, 249 (N.Y. App. Div. 1987)	Responded to report of a shooting involving youths	Immediately upon arriving at the scene and making contact with D	"Did you shoot him?" & "Where's the gun?"	<i>Quarles</i> did not allow admission of D's response because questions were investigatory in nature
1987	State v. Moore, No. 54-CA-86, 1987 Ohio App. LEXIS 8660, *5 (Ohio Ct. App. Sept. 4, 1987)	Armed robbery	Shortly after making contact with D	Whereabouts of the gun and other suspect?	<i>Quarles</i> allowed admission of D's response
1987	State v. Kunkel, 404 N.W.2d 69, 76 (Wisc. Ct. App. 1987)	Investigation to find missing child	D arrested seventeen hours after the crime, questioning at station and during subsequent transport	Full interrogation, detective asked D where son was	<i>Quarles</i> expanded to include a private "rescue doctrine," allowed admission of D's response even though D invoked his right to counsel
1988	United States v. Eaton, 676 F. Supp. 362, 365 (D. Me. 1988)	Investigation of federal drug violations	Drug bust, questioning during pat-down of D immediately after arrest	Carrying a gun? What are you doing here?	<i>Quarles</i> allowed admission of D's response
1988	United States v. Ochoa-Victoria, No. 87-5232, 1988 U.S. App. LEXIS 21664, *9-10 (9th Cir. July 6, 1988)	Search warrant based on suspected drug offenses	Questions asked prior to executing search warrant	How many people in there? Any weapons?	<i>Quarles</i> allowed admission of D's response
1988	State v. Hazley, 428 N.W.2d 406, 411 (Minn. Ct. App. 1988)	Dispatched to scene of an armed robbery	Arrest took place after car chase, questioning contemporaneous with arrest	Who are you? & Who are you with?	<i>Quarles</i> did not allow admission of D's response because the question was not limited to considerations of public safety
1988	State v. Jackson, 756 S.W.2d 620, 622 (Mo. Ct. App. 1988)	Dispatched to the scene of a shooting	Immediately upon arriving at the scene and making contact with D	Where's the gun?	<i>Quarles</i> allowed admission of D's response and subsequent D's response at the police station
1988	State in Interest of A.S., 548 A.2d 202, 205 (N.J. Super. Ct. App. Div. 1988)	Tip regarding juvenile delinquent with a gun	Friend led officers to D, D ran, officers caught him and questioned him after pat-down	What did you do with the gun?	<i>Quarles</i> allowed admission of D's response
1988	People v. Vaughn, 527 N.Y.S.2d 869, 870 (N.Y. App. Div. 1988)	Armed robbery investigation	D apprehended "shortly after" the robbery, gun found in D's waistband during pat-down	"Where's the other gun?"	<i>Quarles</i> allowed admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
1988	De Leon v. State, 758 S.W.2d 621, 625 (Tex. Ct. App. 1988)	Prison gang stabbing	Shortly after discovery of victim's body, D was handcuffed and questioned	Location of knives?	<i>Quarles</i> not material to holding, but the court says in dicta that it would have allowed admission of D's response
1989	United States v. Doe, 878 F.2d 1546, 1552 (1st Cir. 1989)	Drug distribution charges	Ds moving drugs when ship caught on fire, Coast Guard arrested and questioned them immediately	Questions about name and citizenship	<i>Quarles</i> did not apply to a case where Ds were rescued from their burning ship
1989	United States v. Raborn, 872 F.2d 589, 595 (5th Cir. 1989)	Investigation of drug trafficking	Drug operation was discovered, officers followed and arrested D, questioned during search of vehicle	Where did you put the gun?	<i>Quarles</i> did not apply when D had a weapon in his truck, but officers had already secured the truck. However, the evidence was admissible for other reasons
1989	United States v. Edwards, 885 F.2d 377, 384–85 (7th Cir. 1989)	Anonymous tip about a drug deal	Officers waited at scene of drug deal, followed and arrested D, immediately asked question	"Do you have a gun?"	<i>Quarles</i> allowed admission of D's response
1989	United States v. De Santis, 870 F.2d 536, 538–41 (9th Cir. 1989)	Arrest warrant issued for drug charges	During execution of arrest warrant, officers entered home, searched, and then asked question	Any weapons in the bedroom?	<i>Quarles</i> allowed admission of D's response even when D asserts his right to counsel. The public safety exception protects police as well as the public
1989	State v. Vickers, 768 P.2d 1177, 1183 (Ariz. 1989)	Prison fire set to kill another prisoner	Questioning immediately after fire alarm sounded and D was pulled from the smoke	"What happened?" & "Is he dead?"	<i>Quarles</i> allowed admission of D's responses
1989	State v. Harris, 384 S.E.2d 50, 54 (N.C. App. Ct. 1989)	Execution of a search warrant, felon in possession	Immediately before execution of a search warrant, question during frisk for weapons on D	Do you have a weapon?	<i>Quarles</i> allowed admission of D's response
1990	United States v. Rullo, 748 F. Supp. 36, 40–42 (D. Ma. 1990)	Attempted drug sale to undercover agents	D fled, officers searched for him for fifteen to twenty minutes, apprehended him, questioning thereafter	"Give us the gun and we'll let you up . . . Where's the gun?"	<i>Quarles</i> did not allow admission of D's response because the public safety exception does not trump voluntariness
1990	United States v. Norat, No. 90-54, 1990 U.S. Dist. LEXIS 6727, *4–5 (E.D. Pa. May 30, 1990)	Arrest warrant	During execution of arrest warrant, question after finding and restraining D on second floor	Any guns in the room?	<i>Quarles</i> allowed admission of the guns

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
1990	Fleming v. Collins, 917 F.2d 850, 853 (5th Cir. 1990)	Responding to armed bank robbery alarm	Immediately upon arriving at the scene and making contact with D	Who shot you? Who are you? Where's the gun?	<i>Quarles</i> did not allow admission of all of D's responses because the questions were investigatory in nature
1990	Andersen v. Thieret, 903 F.2d 526, 531 (7th Cir. 1990)	Attempted rape and murder	D arrested twelve days after the crime, conversation in the police car on the way to station	Questions about the weapon, spontaneous D's response	<i>Quarles</i> was not material to holding, but the court says in dicta that the public safety exception would have allowed the question about the gun
1990	People v. Tobin, 269 Cal. Rptr. 81, 84 (Cal. Ct. App. 1990)	Transportation of cocaine	Immediate	No real questioning	<i>Quarles</i> justified the pat-down of a person who was walking on the highway and an officer offered to give a ride to
1990	State v. McKessor, 785 P.2d 1332, 1337 (Kan. 1990)	Investigation of armed robbery	About four days after robbery, questioning during execution of a search warrant at a motel room	Anyone else in the room? Location of the gun?	<i>Quarles</i> allowed admission of the gun
1990	State v. Leone, 581 A.2d 394, 397 (Me. 1990)	Responding to call about a suspicious bloody person	Shootout, D questioned immediately after being apprehended	Location of victim and gun? Anybody else present?	<i>Quarles</i> allowed admission of D's response
1990	State v. Orso, 789 S.W.2d 177, 184 (Mo. Ct. App. 1990)	Murder investigation	Some days after victim's disappearance, officers found D and asked him about her whereabouts	Location of the victim?	<i>Quarles</i> allowed admission of D's response
1990	State v. Trangucci, 796 P.2d 606, 608–09 (N.M. Ct. App. 1990)	Aggravated battery and robbery investigation	Day after the crime, officers located D and apprehended him, question immediate upon entrance	Where's the gun?	<i>Quarles</i> allowed admission of D's response because police are part of the "public" in public safety
1990	People v. Howard, 556 N.Y.S.2d 940, 942 (N.Y. App. Div. 1990)	Robbery at a crowded club	Officers arrived, took D into custody, and immediately asked questions	How many robbers? Where are the rest?	<i>Quarles</i> allowed admission of D's response
1990	People v. Hawthorne, 553 N.Y.S.2d 799, 801 (N.Y. App. Div. 1990)	Armed suspect fled after robbery	D apprehended after a brief chase, officer caught D and immediately asked	Where's the gun? & "I thought you didn't have a gun?"	<i>Quarles</i> allowed admission of D's response
1990	Commonwealth v. Bowers, 583 A.2d 1165, 1171 (Pa. Super. Ct. 1990)	Officers responded to scene of aggravated assault	Short search for D, found him, placed him in handcuffs, questioned immediately thereafter	Where's the gun? (Several times)	<i>Quarles</i> allowed admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
1990	State v. Stevenson, 784 S.W.2d 143, 145 (Tex. Ct. App. 1990)	Dispatched to the scene of a shooting	Detained D at the scene immediately but prior to search of D's home	Where's the gun?	<i>Quarles</i> did not allow admission of D's response because <i>Quarles</i> does not apply in a completely private space
1991	United States v. Thurston, 774 F. Supp. 666, 667–68 (D. Me. 1991)	Felon threatened wife with a firearm	Shortly after D's arrest but prior to the protective sweep	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1991	United States v. Fravola, No. 91 Cr. 791 (MBM), 1991 U.S. Dist. LEXIS 18619, *12 (S.D.N.Y. Dec. 26, 1991)	Report of a man with a gun threatening doorman	No questions asked, but D was detained shortly after officers arrived at the scene	No questioning	<i>Quarles</i> was not at issue in this case, but the court says that the officers <i>could</i> have asked him about the gun under the public safety exception.
1991	United States v. Seibert, 779 F. Supp. 366, 368 (E.D. Pa. 1991)	Drug charges	Officers arrested D over a year after sale of drugs, questions during arrest	Any firearms in the trailer?	<i>Quarles</i> not material to the holding, but D's statements were admissible
1991	United States v. Taylor, 1991 U.S. App. LEXIS 12806, *8 n.2 (6th Cir. June 11, 1991)	Traffic stop, officers saw pistol in car	Immediately after arrest during frisk, officer found bullets to different gun and asked about them	Where's the gun?	<i>Quarles</i> was not material to holding, but the court says that D's response would have been admissible under the public safety exception
1991	United States v. Knox, 950 F.2d 516, 519 (8th Cir. 1991)	Officers on patrol in high-crime neighborhood	Immediately upon contact with D, officers found loaded magazine during frisk, questioned then	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1991	State v. Stanley, 809 P.2d 944, 949 (Ariz. 1991)	Report of missing persons/murder investigation	About a day after crime, D agreed to go to the station for questioning	Are you all right? Might the victims still be alive?	<i>Quarles</i> allowed admission of D's confession and information about the bodies even though the D invoked his right to counsel
1991	Alomari v. State, No. 365, 1991 Del. LEXIS 44, *8–9 (Del. 1991)	Shooting resulting in death	After shooting, officers found D and immediately frisked D for weapons	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1991	People v. Ingram, 576 N.Y.S.2d 352, 352 (N.Y. App. Div. 1991)	Report of "shots fired, man shot"	Officers made contact with D, D was immediately frisked	What are you doing? Where's the gun?	<i>Quarles</i> allowed admission of D's response
1991	People v. Strickland, 570 N.Y.S.2d 712, 714 (N.Y. App. Div. 1991)	Report of man wielding a firearm	About an hour after crime, officers executed warrant, searched, and then asked D in patrol car	Where's the gun? "Just tell us where it is"	<i>Quarles</i> did not allow admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
1991	People v. Manzella, 571 N.Y.S.2d 875, 879 (N.Y. Sup. Ct. 1991)	D shot two officers who were executing a warrant	Officers arrived for backup and called D, questions throughout the 8-hour standoff	"Anyone else in the house?" etc.	<i>Quarles</i> allowed D's admission during the standoff
1991	Commonwealth v. Starkey, 27 Va. Cir. 31, 46 (Va. Cir. Ct. 1991)	Murder investigation	Officer pursued D, found him in house, and immediately questioned D about weapons	Location of firearms?	<i>Quarles</i> allowed admission of D's response
1991	State v. Drinkwine, No. 91-0260-CR, 1991 Wisc. App. LEXIS 1197, *5 (Wis. Ct. App. 1991)	Report of a stabbing	Officers found D, handcuffed immediately	"Where is the knife?"	<i>Quarles</i> allowed admission of D's response
1991	Bryant v. State, 816 S.W.2d 554, 557 (Tex. Ct. App. 1991)	Dispatched to the scene of a shooting	Officers arrived, saw the victim, immediately asked question	"Who shot her?"	<i>Quarles</i> allowed admission of D's response
1992	United States v. Cox, No. 90-5853, 1992 U.S. App. LEXIS 2229, *10 (4th Cir. Feb. 20, 1992)	Drug and firearm offenses	Traffic stop, search of car incident to arrest, D placed in patrol car	Are you a drug user?	<i>Quarles</i> allowed admission of D's response
1992	United States v. Simpson, 974 F.2d 845, 847 (7th Cir. 1992)	Call about a domestic disturbance	After making contact with D, a while after the 911 call	Do you own a weapon? Do you have a firearm ID?	<i>Quarles</i> allowed admission of D's response
1992	United States v. Lawrence, 952 F.2d 1034, 1036-37 (8th Cir. 1991)	Routine traffic stop, felon fled	D apprehended, arrested, and made statements during ride to police station	"Where did you throw the gun?"	<i>Quarles</i> allowed admission of D's response
1992	United States v. Johnson, No. 90-50534, 1992 U.S. App. LEXIS 26297, *3 (9th Cir. Oct. 13, 1992)	Patrol in a high crime area, suspicious person	Officer approached D, immediate	Any weapons?	<i>Quarles</i> allowed admission of D's response
1992	United States v. Maestas, No. 91-2219, 1992 U.S. App. LEXIS 13494, *4 (10th Cir. May 28, 1992)	Manufacturing more than one hundred marijuana plants	Officers observed D enter field, immediately apprehended D, and performed a frisk	"What is that?"	<i>Quarles</i> allowed admission of D's response
1992	People v. Colantuono, 20 Cal. App. 4th 702, 716 (Cal. Ct. App. 1992)	Assault with firearm & great bodily injury	D came to the police station later that evening to surrender	Location of gun	<i>Quarles</i> allowed admission of gun

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
1992	Price v. State, 591 N.E.2d 1027, 1030 (Ind. 1992)	Attempted murder	D reported a shooting, officers arrived at scene and made contact with D, immediately	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1992	State v. Provost, 490 N.W.2d 93, 96 (Minn. 1992)	Murder	D came to station to confess	Where can your wife be found?	<i>Quarles</i> did not allow admission of D's response, but the statements were admissible for other reasons
1992	People v. Melvin, 591 N.Y.S.2d 454, 454 (N.Y. App. Div. 1992)	Manslaughter	Immediately upon making contact with D at the scene of the shooting	Where's the gun?	<i>Quarles</i> allowed admission of D's response, even though it is a "limited exception"
1992	People v. Ratliff, 584 N.Y.S.2d 871, 872 (N.Y. App. Div. 1992)	Armed robbery of social club	D fled, officers pursued, D detained and immediately asked questions	How many robbers? Where are they?	<i>Quarles</i> allowed admission of D's response
1992	State v. Nitenson, No. 796, 1992 Ohio App. LEXIS 4733, *7 (Ohio Ct. App. Sept. 9, 1992)	Telephone harassment/ hostage situation	Officers forced entry into D's home, immediately asked about potential hostage	Other people in the apartment?	<i>Quarles</i> allowed admission of D's response
1992	State v. Richmond, 828 P.2d 1180, 1182 n.4 (Wash. Ct. App. 1992)	Report of a stabbing	Immediately upon making contact with D at the scene of the crime	Who called the police? Other person in apartment?	<i>Quarles</i> was not material to holding, but the court says that <i>Quarles</i> could have allowed admission of D's response
1992	State v. Camacho, 487 N.W.2d 67, 76 (Wis. Ct. App. 1992)	Traffic stop that escalated into a shootout	D fled, was apprehended shortly thereafter, question immediately upon contact	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1992	Dice v. State, 825 P.2d 379, 386 (Wyo. 1992)	Burglary investigation	Immediately upon apprehending D, around 3 AM	Anyone else in the building?	<i>Quarles</i> allowed admission of D's response
1993	United States v. Bater, 830 F. Supp. 28, 38 n.6 (D. Ma. 1993)	Reported theft & burglary	Immediately upon apprehending D the day after the crimes	Questions about the gun	<i>Quarles</i> argument abandoned by government
1993	United States v. Kelly, 991 F.2d 1308, 1313 (7th Cir. 1993)	Traffic stop for speeding	During the course of the traffic stop and search of persons/vehicle, not immediately upon contact	Drugs in the car? Do you have a gun?	<i>Quarles</i> allowed admission of D's response



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1993	United States v. Watkins, No. 92-50463, 1993 U.S. App. LEXIS 33557, *4-5 (9th Cir. Dec. 9, 1993)	Reported heavy gunfire at trailer park	Immediately upon making contact with D and observing broken windows and wounded person	Is there a gun here?	<i>Quarles</i> allowed admission of D's response
1993	United States v. Kipp, No. 92-10557, 1993 U.S. App. LEXIS 20668, *2-3 (9th Cir. Aug. 12, 1993)	Felon in possession of firearm	Not clear, but seems as though D was in the police car at the time of questioning	Opinion does not clearly state officer's question	<i>Quarles</i> allowed admission of D's response because D explicitly conceded that the public safety exception justified the pre- <i>Miranda</i> questioning by a police officer
1993	Johnson v. Estelle, No. 91-55158, 1993 U.S. App. LEXIS 4572, *3-4 (9th Cir. Mar. 3, 1993)	Murder investigation	Unclear, but seemed immediate	Location of gun?	<i>Quarles</i> allowed admission of D's response
1993	People v. Sims, 853 P.2d 992, 1019 (Cal. 1993)	Murder and robbery investigation	Officers located D about two weeks after crimes, immediately asked upon arrest	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1993	Edwards v. United States, 619 A.2d 33, 36-37 (D.C. 1993)	Reported aggravated assault	Immediately upon apprehending D, a short time after the assault occurred	Where's the gun? & "Where's the rifle?"	<i>Quarles</i> allowed admission of D's response
1993	People v. Liliberte, 615 N.E.2d 813, 819-23 (Ill. App. Ct. 1993)	Aggravated Kidnapping	Hours after crime, high speed chase, forty minutes of "intense questioning"	Location of the baby?	<i>Quarles</i> did not allow admission of all of D's responses because D unambiguously invoked his right to counsel
1993	State v. Duncan, 866 S.W.2d 510, 511 (Mo. Ct. App. 1993)	Call about theft, woman brandishing rifle	Sometime after the call, two visits to scene, D arrested and questioned during second visit	Where's the rifle?	<i>Quarles</i> allowed admission of D's response
1993	State v. White, 619 A.2d 92, 94 (Me. 1993)	D called 911, "I think I killed my girlfriend"	Immediately upon arriving at the scene and making contact with D	Location of the victim?	<i>Quarles</i> allowed admission of D's response
1993	State v. Cross, No. A-93-368, 1993 Neb. App. LEXIS 353, *11 (Neb. Ct. App. Aug. 17, 1993)	Armed robbery	Hours-long pursuit, questioning at station around 2:30 AM	Question about the gun used in the robbery	<i>Quarles</i> did not allow admission of D's response because it is a "narrow" exception
1993	People v. Clark, 603 N.Y.S.2d 450, 451 (N.Y. App. Div. 1993)	Robbery	Unclear, but seemed immediate after apprehending D	Location of weapon?	<i>Quarles</i> allowed admission of D's response

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1993	People v. Williams, 595 N.Y.S.2d 61, 61 (N.Y. App. Div. 1993)	Criminal possession of a weapon	Post-arrest, while in the patrol car	Location of the gun?	<i>Quarles</i> allowed admission of D's response
1993	State v. Garcia-Lorenzo, 430 S.E.2d 290, 294 (N.C. Ct. App. 1993)	Manslaughter	D injured and taken to hospital, question posed at the hospital upon arrival	Were you alone in the car?	<i>Quarles</i> allowed admission of D's response
1993	State v. Jergens, No. 13294, 1993 Ohio App. LEXIS 4322, *8-9 (Ohio Ct. App. Sept. 3, 1994)	Murder	Immediately upon finding D, which was the day after the crime	Where is the knife?	<i>Quarles</i> allowed admission of D's response
1993	State v. Williams, No. CA92-07-133, 1993 Ohio App. LEXIS 2749, *4-6 (Ohio Ct. App. June 1, 1993)	Responding to call about assault with a gun	Immediately upon making contact with D at the scene of the crime	Multiple questions, including one about the location of the gun	<i>Quarles</i> allowed admission of D's response
1993	State v. Hoag, No. 92-2523-CR, 1993 Wisc. App. LEXIS 875, *5 (Wis. Ct. App. May 12, 1993)	Armed robbery	Ds apprehended a short time after the crime, in a field, questioned upon being apprehended	Location of the gun?	<i>Quarles</i> allowed admission of D's response
1993	State v. Dempsey, No. 93-1661-CR-FT, 1993 Wisc. App. LEXIS 1464, *6-7 (Wisc. Ct. App. Nov. 16, 1993)	Carrying concealed weapon	D stopped by officers, they performed search of vehicle, asked when they found gun cleaning kit	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1993	Commonwealth v. Davis, 31 Va. Cir. 250, 252 (Va. Cir. Ct. 1993)	Shoplifting arrest	D handcuffed at the store, officers arrived and posed the question before formal arrest and search	Anything on you that I should know about?	<i>Quarles</i> did not allow admission of D's response
1994	United States v. Osorio, 877 F. Supp. 771, 776 (D.P.R. 1994)	Arrest of a federal fugitive	Officers tackled D, noticed gun in the grass, then asked	Is that your gun?	<i>Quarles</i> did not allow admission of a non-verbal admission where officers had already secured D and the weapon
1994	United States v. Veilleux, 846 F. Supp. 149, 155 (D.N.H. 1994)	Possession of a firearm by convicted felon	D questioned while in custody at the courthouse, a day after his arrest	Location of gun? (Several questions)	<i>Quarles</i> did not allow admission of D's response because it was involuntary
1994	United States v. Gonzalez, 864 F. Supp. 375, 381 (S.D.N.Y. 1994)	Felon in possession of firearm	Officer noticed suspicious persons, pursued, questions posed while detaining D	Questions about D's brother & whether D is a police officer	<i>Quarles</i> allowed admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
1994	United States v. Dodge, 852 F. Supp. 139, 142 (D. Conn. 1994)	Weapons charges (undercover officers)	Immediately upon apprehending D, moments after the crime	"Where is the bomb?"	<i>Quarles</i> allowed admission of D's response
1994	Howard v. Garvin, 844 F. Supp. 173, 175 (S.D.N.Y. 1994)	Robbery of a social club, potential hostages	Immediately upon apprehending D, shortly after the crime	How many people with you? How many in club?	<i>Quarles</i> allowed admission of D's response
1994	United States v. Mobley, 40 F.3d 688, 692-94 (4th Cir. 1994)	Felon in possession of firearm	During warrant execution, after apprehending D but before searching the residence	Anything in the house that could harm the searching officers?	<i>Quarles</i> did not allow admission of D's response
1994	United States v. Roberson, No. 93-7303, 1994 U.S. App. LEXIS 41976, *10-11 (5th Cir. Apr. 15, 1994)	Drug and firearm offenses	Controlled drug bust, upon completion of the crime, officers arrested D and asked	Any other weapons?	<i>Quarles</i> allowed admission of D's response
1994	United States v. Carrillo, 16 F.3d 1046, 1050 (9th Cir. 1994)	Drug offenses (cocaine distribution)	Question after arrest and transport, but prior to admission to detention facility	Any drugs or needles on your person?	<i>Quarles</i> allowed admission of D's response
1994	Stauffer v. Zavaris, No. 93-1358, 1994 U.S. App. LEXIS 27594, *10 (10th Cir. Sept. 29, 1994)	Cocaine possession	Immediately upon apprehending D	Where's the gun? Are there more guns?	<i>Quarles</i> allowed admission of D's response
1994	Smith v. State, 646 So. 2d 704, 708 (Ala. Crim. App. 1994)	Report of a shooting, homicide	Immediately upon making contact with D at the scene of the shooting	"Do we know where the shooter is?"	<i>Quarles</i> allowed admission of D's response
1994	State v. Ramirez, 871 P.2d 237, 245 (Ariz. 1994)	Murder	Immediately upon taking D into custody at the scene of the crime	What's going on? Who else is inside? Anybody else hurt?	<i>Quarles</i> allowed admission of D's response
1994	State v. Deases, 518 N.W.2d 784, 790 (Iowa 1994)	Prison fight & stabbing	Two different questionings post-incident; seemed somewhat removed from the incident	Questions about the stabbing incident	<i>Quarles</i> did not allow admission of D's response
1994	State v. Lopez, 652 A.2d 696, 699 (N.H. 1994)	Aggravated assault, murder	Immediately upon locating and apprehending D, officer saw empty gun holster	Where's the gun?	<i>Quarles</i> allowed admission of D's response

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1994	State v. Brooks, 446 S.E.2d 579, 587 (N.C. 1994)	Drug and firearm offenses	Search warrant, immediately upon making contact with D and observing empty gun holster	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1994	State v. Brown, No. 94-CA-15, 1994 Ohio App. LEXIS 5761, *4-6 (Ohio Ct. App. Dec. 21, 1994)	Drug offenses	Contemporaneous with arrest, immediate	Anything on D?	<i>Quarles</i> did not allow admission of D's response because it was involuntary
1994	State v. Willis, No. 14276, 1994 Ohio App. LEXIS 3296, *5-7 (Ohio Ct. App. July 27, 1994)	Officers heard gunshots, saw D shoot a gun	Pursuit of D, after search of D's person	No questioning; officer just retrieved weapon	<i>Quarles</i> allowed admission of weapon
1994	State v. Rogers, No. 93-0950-CR, 1994 Wisc. App. LEXIS 416, *19 (Wis. Ct. App. Apr. 19, 1994)	Murder & attempted murder	Not clear	No real questioning	<i>Quarles</i> relied on to justify warrantless entry into home
1995	United States v. Chan, 901 F. Supp. 480, 486 (D. Mass. 1995)	Warrant for RICO violations	Execution of arrest warrant, still on the scene, handcuffed, and then asked	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1995	Trice v. United States, 662 A.2d 891, 894 (D.C. 1995)	Aggravated robbery	Arrested pursuant to a warrant a few days after robbery, questioning at the station after booking	"I'd like to know where the shotgun is . . ."	<i>Quarles</i> allowed admission of D's response, even after invocation of the right to silence
1995	People v. Childs, 651 N.E.2d 252, 257 (Ill. App. Ct. 1995)	Police searching for murder suspect	In the house while searching, immediate	Where is [suspect]?	<i>Quarles</i> would have allowed admission of D's response if there was in fact a Fifth Amendment issue
1995	State v. Koren, 654 N.E.2d 131, 133 (Ohio Ct. App. 1995)	Aggravated robbery with a firearm	Arrest during warrant execution, asked immediately when officer found bullets during pat-down	"Where's the gun that goes with these bullets?"	<i>Quarles</i> did not allow admission of D's response because the private residence was secure
1995	United States v. Alfonso, No. 94 Cr. 813 (HB), 1995 U.S. Dist. LEXIS 86, *9 (S.D.N.Y. Jan. 6, 1995)	Drug offenses	Immediately, during warrant execution	Other people in the apartment?	<i>Quarles</i> allowed admission of D's response

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1995	United States v. Swearingen, Nos. 4-30202, 94-30215, 94-30222, 1995 U.S. App. LEXIS 11916, *10 (9th Cir. May 18, 1995)	Conspiracy to commit bank robbery	Post-arrest, while walking to police car	"Do you know what this is about?"	<i>Quarles</i> not material to holding
1995	United States v. Davis, No. 94-381C, 1995 U.S. Dist. LEXIS 17168, *13 (E.D. La. Nov. 8, 1995)	Search for weapons in house	Warrant execution, D in custody, asked question during search of house	Questions about gun and empty gun case	<i>Quarles</i> allowed admission of D's response
1995	Smith v. State, 452 S.E.2d 494, 497 (Ga. 1995)	Felony murder	D turns himself in just hours after crime, question at station prior to booking	Did you bring the gun with you?	<i>Quarles</i> allowed admission of D's response
1995	State v. Bailey, 889 P.2d 738, 744 (Kan. 1995)	D shot girlfriend in front of witnesses, murder	Following a police chase on the same day of the crime, question immediate upon apprehending D	Where's the gun?	<i>Quarles</i> allowed admission of D's response and gun
1995	Commonwealth v. Gruning, No. 9577-474-479, 1995 Mass. Super. LEXIS 520 (Mass. Super. Ct. July 25, 1995)	911 call about shots fired	Immediately after officers made contact with D on the phone	Weapons in the house?	<i>Quarles</i> allowed admission of D's response
1995	People v. Treier, 630 N.Y.S.2d 224, 227 (N.Y. Co. Ct. 1995)	Murder, hostage situation	During the course of hostage negotiation, several hours	Hostage negotiation	<i>Quarles</i> allowed admission of D's response
1995	State v. Marino, No. CR9-124100, 1995 Conn. Super. LEXIS 2124, *8 n.1 (Conn. Super. Ct. July 20, 1995)	Drug offenses	Immediately upon apprehending D, within an hour	Are you armed?	<i>Quarles</i> not material to holding, but the court states in a footnote that <i>Quarles</i> would have allowed D's response
1996	United States v. Redmond, No. 96-40041-01-SAC, 1996 U.S. Dist. LEXIS 13049, *5-10 (D. Kan. Aug. 15, 1996)	Unregistered firearm (suspicious person 911 call)	Officers pursued D, tackled D, asked after pat-down	Where's the gun? Color of gun?	<i>Quarles</i> allowed admission of D's response
1996	United States v. Fairchild, 943 F. Supp. 1174, 1181 (W.D. Mo. 1996)	Drug offenses (meth lab)	Officers entered home, asked within five minutes	Who owns the home? Heat source?	<i>Quarles</i> allowed admission of D's response

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1996	People v. Tritchler, 55 Cal. Rptr. 2d 650, 658 (Cal. Ct. App. 1996)	Possession of explosives	Immediately upon apprehending D	Questions about loud explosion & devices found in car	<i>Quarles</i> allowed admission of D's response
1996	People v. Cressy, 47 Cal. App. 4th 981, 988-99 (Cal. Ct. App. 1996)	Drug offenses & prior felony	Moments after traffic stop, D arrested, question prior to searching D	Any other needles on you?	<i>Quarles</i> allowed admission of D's response
1996	In Interest of J.D.F., 553 N.W.2d 585, 589 (Iowa 1996)	Dispatched to call of juvenile with a weapon	D fled, officer pursued & apprehended him, questioned still on scene in patrol car	Do you know anything about a gun?	<i>Quarles</i> allowed admission of D's response and gun
1996	United States v. Rodriguez, 931 F. Supp. 907, 925 (D. Mass. 1996)	Felon in possession of unregistered firearm	Question fifteen minutes after arrest, just before officer placed D in patrol car for transport	Where are the guns?	<i>Quarles</i> did not allow admission of D's response
1996	People v. Stevenson, 51 Cal. App. 4th 1234, 1236 (Cal. Ct. App. 1996)	Undercover narcotics investigation	Post-arrest, D was immediately transported to the hospital & questioned there	Did the D ingest narcotics?	<i>Quarles</i> allowed admission of D's response
1996	People v. Williams, 173 Ill. 2d 48, 77 (Ill. 1996)	First degree murder	During execution of an arrest warrant same day as crime, question during pat-down post-arrest	Any guns, needles, or weapons on you?	<i>Quarles</i> allowed admission of D's response
1996	United States v. Fisher, 929 F. Supp. 26, 29 (D. Me. 1996)	Drug offenses and firearm offense	D pursued, apprehended and immediately searched, question after finding empty holster	Where's the gun? A child could get hurt if they find it	<i>Quarles</i> allowed admission of D's response
1996	Com. v. Kitchings, 598, 666 N.E.2d 511, 517 (Mass. App. Ct. 1996)	Unlawful possession of firearm and drugs (traffic stop)	After handcuffing and placing D in patrol car, officer saw clip in van and immediately asked	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1996	People v. Pulley, 231 A.D.2d 534, 534 (N.Y. App. Div. 1996)	Assault in the first degree	Not clear	Location of gun?	<i>Quarles</i> allowed admission of D's response
1996	<i>In re</i> Travis, 110 Ohio App. 3d 684, 688 (Ohio Ct. App. 1996)	Juvenile set off bomb in park	Immediately upon making contact with D at the scene of the crime	Questions about the bomb and if D had set it off	<i>Quarles</i> allowed admission of D's response

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1997	State v. Montoya, 937 P.2d 145, 151 (Utah Ct. App. 1997)	Drug offense (911 call about a suspicious person)	First responders arrived and handcuffed D, Officer McCarthy responded and immediately asked question	Did you do some cheve?	<i>Quarles</i> did not allow admission of D's response
1997	State v. Dosh, 572 N.W.2d 903, 903 (Wis. Ct. App. 1997)	Call for assistance after shots fired	Immediately upon making contact with group, officer asked after pat-downs of each person	Any firearms? (Directed at entire group)	<i>Quarles</i> does not apply because no suggestion that other guns might be present and no danger to the public
1997	Benson v. State, 698 So. 2d 333, 336 (Fla. Dist. Ct. App. 1997)	Undercover narcotics investigation	Immediately upon arresting D and observing him swallow something	How many crack cocaine rocks did you swallow?	<i>Quarles</i> allowed admission of D's response
1997	United States v. Harris, 961 F. Supp. 1127, 1134 (S.D. Ohio 1997)	Wire fraud and mail fraud (Search for deadly bacteria)	Execution of a search warrant, no questioning at the scene, but interrogation at the station	No real questioning	<i>Quarles</i> allowed admission of D's response
1997	People v. Betts, No. 185612, 1997 Mich. App. LEXIS 1779, *3-4 (Mich. Ct. App. Dec. 30, 1997)	Kidnapping	After arrest, questioning at station	No questioning at scene, unclear about interrogation at station	<i>Quarles</i> did not allow admission of D's statements made at the station because there were no exigent circumstances present
1997	People v. Cotton, 662 N.Y.S.2d 135, 136 (N.Y. App. Div. 1997)	Manslaughter and possession of weapon	Unclear, but seemed immediate during the arrest	Location of weapon?	<i>Quarles</i> allowed admission of D's response
1997	People v. Allen, 240 A.D.2d 418, 418 (N.Y. App. Div. 1997)	Assault and possession of weapon	D turned himself in at the station after the crime	Location of the knife?	<i>Quarles</i> allowed admission of D's response
1997	State v. Barros, No. 36915-6-I, 1997 Wash. App. LEXIS 557, *14-15 (Wash. Ct. App. Apr. 14, 1997)	911 call about shots fired in upstairs apartment	After making contact with D, D was handcuffed and officers asked immediately	Anyone else present? Do you have any guns?	<i>Quarles</i> allowed admission of D's response
1998	State v. Hendrickson, 584 N.W.2d 774, 776 (Minn. Ct. App. 1998)	Theft of loaded gun	D arrested a few hours after crime, officers asked immediately	Location of the gun? (D stole gun)	<i>Quarles</i> did not allow admission of the D's response about the gun
1998	United States v. Creech, 52 F. Supp. 2d 1221, 1230 (D. Kan. 1998), <i>aff'd</i> , 221 F.3d 1353 (10th Cir. 2000)	Possession of sawed-off shotgun (arrest warrant)	After executing arrest warrant, officers searched inside home, asked before searching	Any guns present in the apartment?	<i>Quarles</i> allowed admission of D's response, as well as the gun

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1998	People v. Simpson, 76 Cal. Rptr. 2d 851, 856 (Cal. Ct. App. 1998), <i>as modified</i> (Aug. 21, 1998)	Possession of drugs and firearm	Search warrant execution, D taken to different location, asked within five minutes of the stop	Any guns or weapons on the property?	<i>Quarles</i> allowed admission of D's response
1998	Joppy v. State, 719 So. 2d 316, 318 (Fla. Dist. Ct. App. 1998)	Burglary	After chasing and physically arresting D, questioned immediately	Anyone else in the building? (Any accomplices?)	<i>Quarles</i> allowed admission of D's response
1998	State v. Kane, 87 Haw. 71, 79 (Haw. 1998)	Robbery and possession of a bomb	Car stopped in reference to a burglary, D questioned during search of car and after formal arrest	Asked about a device found that looked like a bomb	<i>Quarles</i> did not allow admission of D's response
1998	United States v. Blackmon, No. 96-6701, 1998 U.S. App. LEXIS 3786, *7-8 (6th Cir. Mar. 3, 1998)	Felon in possession of firearm	D arrested on outstanding warrants, question during pat-down at booking	Did you take everything out of your pockets? Anything I need to know?	<i>Quarles</i> not material to holding, but the court mentions in dicta that it would have applied
1998	Bramble v. Smith, No. 96 CIV. 5905 (JFK), 1998 U.S. Dist. LEXIS 10494, *39-42 (S.D.N.Y. July 14, 1998)	Murder after an argument	Arrested same day as crime, question asked during arrest in D's home	Where's the knife?	<i>Quarles</i> allowed admission of D's response, as well as the knife
1998	People v. Chatman, 71 Cal. Rptr. 2d 867, 868-70 (Cal. Ct. App. 1998)	Drug possession	Post-arrest, question during medical screening (part of the booking process at the jail)	Questions about recent drug use	Jail nurses may ask arrestees about drug usage as part of a routine medical screening under the public safety exception
1998	State v. Granger, No. 97-3860-CR, 1998 Wisc. App. LEXIS 1257, *10-15 (Wis. Ct. App. Oct. 29, 1998)	Homicide (use of vehicle while intoxicated)	Immediately upon apprehending D, just after car wreck and foot chase	Driver of the car? Anyone else in the vehicle?	<i>Quarles</i> allowed admission of D's response to the question about if he was alone. However, asking if D was driving should have been suppressed because no public safety concern, but admission was harmless error
1998	United States v. Shea, 150 F.3d 44, 48 (1st Cir. 1998)	Conspiracy to commit bank robbery	FBI agents placed D under arrest before crime could be completed, immediate questioning	Name? Have any weapons or needles?	<i>Quarles</i> allowed admission of D's response



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1998	United States v. Brown, No. 97-4710, 1998 U.S. App. LEXIS 18229, *3-4 (4th Cir. Aug. 6, 1998)	Possession of drugs & firearm (felon)	Immediately upon arriving and detaining D, just before executing a search warrant	Any weapons in the house?	<i>Quarles</i> allowed admission of D's response
1998	United States v. Webster, 162 F.3d 308, 332 (5th Cir. 1998)	kidnapping resulting in death	D arrested a few days after the crime, question during arrest immediately before pat-down	Any needles in pockets that could injure officers?	<i>Quarles</i> allowed admission of D's response
1998	Seagroves v. State, 726 So. 2d 738, 742 (Ala. Crim. App. 1998)	Robbery, BOLO for suspect	D approached officer, officer realized who he was, asked as soon as he saw gun, then detained D	Gun in truck?	<i>Quarles</i> allowed admission of D's response
1998	Com. v. Kenney, No. CRIM. A. 97-2204, 1998 Mass. Super. LEXIS 447, *11 n.4 (Mass. Super. Aug. 27, 1998)	Murder	D arrested soon after shooting, spontaneous statements contemporaneous with arrest	No real questioning	<i>Quarles</i> mentioned in a footnote; states that the public safety exception could have applied
1998	People v. Vincent, No. 196342, 1998 Mich. App. LEXIS 1589, *5-7 (Mich. Ct. App. May 26, 1998)	Kidnapping	Immediately upon handcuffing D, shortly after the crime	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1998	People v. Sanchez, 680 N.Y.S.2d 29, 30 (N.Y. App. Div. 1998)	911 call shots fired	Immediately upon making contact with D at the scene, after pat-down but before arrest	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1998	People v. McDow, 674 N.Y.S.2d 647, 648 (N.Y. App. Div. 1998)	Domestic disturbance	Not clear	No interrogation; "clarification of a confusing situation"	<i>Quarles</i> mentioned in dicta (D was not in custody)
1998	State v. Chinnell, No. 21882-8-II, 1998 Wash. App. LEXIS 2804, *4 (Wash. Ct. App. 1998)	Unlawful firearm possession	Arrest warrant executed three months after it was obtained, asked while placing D under arrest	Any firearms in the residence?	<i>Quarles</i> allowed admission of D's response
1999	Com. v. Stewart, 740 A.2d 712, 719 (Pa. Super. Ct. 1999)	Attempted murder	Search of vehicle to recover firearms quickly, after arrest	No questions, only warrantless search	Held that <i>Quarles</i> cases are "instructive" in the context of warrantless searches

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1999	People v. Ingram, 984 P.2d 597, 605 (Colo. 1999)	Reckless endangerment; shooting	Hours after detaining D, D placed under arrest, taken back to the crime scene, and then asked question	Questions about what type of gun and where it is	<i>Quarles</i> did not allow admission of D's responses
1999	Marshall v. State, 228, 5 S.W.3d 496, 498–99 (Ark. Ct. App. 1999)	Aggravated robbery	D pursued by officers, asked immediately upon contact with D (held at gunpoint)	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1999	Borrell v. State, 733 So. 2d 1087, 1089 (Fla. Dist. Ct. App. 1999)	Murder first degree	Officer arrived and apprehended D within minutes of the shooting, immediately asked question	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1999	People v. Oquendo, 685 N.Y.S.2d 437, 439 (N.Y. App. Div. 1999)	Radio report of shots fired	Officer apprehended D after a pursuit, question asked immediately, also questioned at precinct	Do you have the gun?	<i>Quarles</i> allowed admission of D's response
1999	State v. Davis, No. 96-CO-44, 1999 Ohio App. LEXIS 5492, *13–19 (Ohio Ct. App. Nov. 19, 1999)	Aggravated murder	D turned himself in at the station within an hour, question asked immediately after his confession	Do you have the gun?	<i>Quarles</i> allowed admission of D's response even though D invoked his right to counsel
1999	Thomas v. State, 737 A.2d 622, 629–31 (Md. Ct. Spec. App. 1999)	Robbery and first degree assault	Both taken to hospital for treatment after D bit the officer	Do you have any diseases?	<i>Quarles</i> allowed admission of the substance of the conversation between Detective Bleach and D at the hospital to which both of them had been taken for treatment
1999	United States v. McDaniel, No. 98-3279, 1999 U.S. App. LEXIS 9150, *9 (7th Cir. May 10, 1999)	Possession with intent to distribute	Controlled drug bust, immediately after apprehending D, before arrest	Any guns or drugs?	<i>Quarles</i> allowed admission of D's response
1999	United States v. Williams, 181 F.3d 945, 953–54 (8th Cir. 1999)	Possession with intent to distribute	Immediately after cuffing D in his bedroom during execution of a search warrant	Is there anything we need to be aware of?	<i>Quarles</i> allowed admission of D's response
1999	United States v. Hartwell, 67 F. Supp. 2d 784, 795 (E.D. Mich. 1999)	Conspiracy to distribute & firearms	Traffic stop, asked while placing D under arrest	Do you also have a gun?	<i>Quarles</i> allowed admission of D's response

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1999	Com. v. Alan A., 47 Mass. App. Ct. 271, 275 (Mass. Ct. App. 1999)	Juvenile/weapons violations	Immediately upon arrest, post- <i>Miranda</i> , same day as D was reported as a run-away	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1999	State v. Prim, 134 Ohio App. 3d 142, 154-55 (Ohio Ct. App. 1999)	Aggravated murder	Immediately after D flagged down police to surrender, an hour or so after the shooting	Questions to identify/find weapon	<i>Quarles</i> allowed admission of D's response
1999	State v. Finch, 975 P.2d 967, 990-91 (Wash. 1999)	Telephone contact with barricaded and armed suspect	D called 911 to tell them that he shot the man	Are you sure it wasn't self-defense?	<i>Quarles</i> allowed admission of D's response
1999	United States v. Munera-Urbe, No. 98-20438, 1999 U.S. App. LEXIS 18426 (5th Cir. Aug. 5, 1999)	Undercover narcotics investigation	Immediately after D was detained and handcuffed	Where is your friend's apartment?	<i>Quarles</i> allowed admission of D's response
1999	United States v. Tisdale, 70 F. Supp. 2d 1210, 1217 (D. Kan. 1999)	Shooting outside of D's residence	Almost immediately upon arriving at the scene and making contact with D	Who shot you? Do you have a gun? Where is it?	<i>Quarles</i> allowed admission of D's response
1999	State v. Brann, 736 A.2d 251, 256 (Me. 1999)	One-car accident (DUI)	"At some point" while they were still at the scene	Who was driving the wrecked vehicle?	<i>Quarles</i> did not allow admission of D's response because there was no threat to the safety of the public or the officer
1999	People v. Hurst, No. KA 98-8044, 1999 N.Y. App. Div. LEXIS 3391, *1 (N.Y. App. Div. 1999)	Criminal possession of weapon	After arrest and placement in cruiser	Where's the gun?	<i>Quarles</i> allowed admission of D's response
1999	State v. Dubak, No. 99-0343-CR, 1999 Wisc. App. LEXIS 1067, *4-5 (Wis. Ct. App. 1999)	Possession of drugs	D turned himself in at the scene, asked thirty to forty minutes afterwards	Questions about other people in the vehicle	<i>Quarles</i> allowed admission of D's response
1999	People v. Palmer, 693 N.Y.S.2d 539, 541 (N.Y. App. Div. 1999)	Robbery, kidnapping, larceny	At the jail after arrest, two months after first robbery	Questioned D about his plan for the future robbery	<i>Quarles</i> allowed admission of D's response
1999	In re Buchanan, No. 98-CA-0309, 1999 Ohio App. LEXIS 2719, *6-8 (Ohio Ct. App. June 1, 1999)	Juvenile accidentally shot himself with stolen gun	Immediately upon arriving at the scene and making contact with D	What happened? Where's the gun?	<i>Quarles</i> allowed admission of D's response

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2000	Davis v. State, 536 S.E.2d 596, 599 (Ga. Ct. App. 2000)	Armed robbery (shots fired)	Immediately after handcuffing D, sometime after the crime	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2000	Shelton v. Commonwealth, 538 S.E.2d 333, 337 (Va. Ct. App. 2000)	Robbery and carjacking	Immediately after apprehending D about forty-five minutes after crime	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2000	In re Pao C. V., No. 99-1991, 2000 Wisc. App. LEXIS 9, *15 (Wis. Ct. App. 2000)	Possession of a dangerous weapon	Fifteen to thirty minutes after arrest but still at the scene	Location of the gun?	The court did not reach the <i>Quarles</i> question because they found D's response to be involuntary
2000	United States v. Reilly, 224 F.3d 986, 993-94 (9th Cir. 2000)	Armed bank robbery (warrant execution)	Immediately after apprehending D	Location of the gun? & identification questions	<i>Quarles</i> allowed admission of D's response
2000	Com. v. Clark, 730 N.E.2d 872, 884-85 (Mass. 2000)	Murder first degree	Shortly after D was handcuffed, about 30 minutes after the shooting	Are you alone?	<i>Quarles</i> allowed admission of D's response
2000	People v. Scott, 710 N.Y.S.2d 228, 230 (N.Y. App. Div. 2000)	Assault in the first degree (hostages)	Conversation with hostage negotiator	Officer pressed D for information	<i>Quarles</i> is mentioned in dicta (D was not in custody or interrogated, but the public safety exception would have applied)
2000	State v. Turner, No. C-990388, 2000 Ohio App. LEXIS 2620, *9-11 (Ohio Ct. App. June 16, 2000)	Aggravated robbery	Shortly after D was handcuffed, "several minutes" after the crime	Where is the white guy that was with you?	<i>Quarles</i> allowed admission of D's response
2000	Com. v. Bruce, No. CRIM. A. 99-1226, 2000 Mass. Super. LEXIS 453, *5 (Mass. Super. Ct. Oct. 18, 2000)	Shooting resulting in a murder	Shortly after they stopped D (met description from radio call), prior to being taken to the station	Asked to remove hat; asked about gun	<i>Quarles</i> allowed admission of D's responses made upon being detained
2000	United States v. Khalil, 214 F.3d 111, 122 (2d Cir. 2000)	Officers raided apartment based on tip about bombs	D injured during the raid, sent to hospital, questioned at hospital the same morning	How many bombs? Details?	<i>Quarles</i> allowed admission of D's responses
2000	United States v. Carroll, 207 F.3d 465, 472 (8th Cir. 2000)	Armed robbery and firearm offenses	Immediately after apprehending D after high-speed chase	Where did you drop the gun?	Presumes that <i>Quarles</i> would allow admission of the statement because D did not raise violation of <i>Miranda</i>
2000	In re Roy L., 446, 4 P.3d 984, 989 (Ariz. Ct. App. 2000)	Call about juvenile showing gun to other students	While D walked towards police cruiser, immediately upon making contact with D	Do you have a gun?	<i>Quarles</i> allowed admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2000	People v. Johnson, 716 N.Y.S.2d 493, 494 (N.Y. App. Div. 2000)	Possession of drugs and firearm	Opinion does not clearly state	Who do these pants belong to?	<i>Quarles</i> did not allow admission of D's statement
2000	People v. Forbes, 705 N.Y.S.2d 197, 204 (N.Y. Sup. Ct. 2000)	Firearms charges, traffic stop	Before arrest, sometime into the traffic stop	Was the other person in the car involved?	<i>Quarles</i> allowed admission of D's response
2000	United States v. Soto, No. 99-CR-1246 (LMM), 2000 U.S. Dist. LEXIS 16961, *3-4 (S.D.N.Y. Nov. 21, 2000)	Opinion is not clear	Sometime after D was taken into custody, opinion is not clear	Any firearms in the residence?	<i>Quarles</i> allowed admission of D's response
2001	People v. Attebury, 624 N.W.2d 912, 917-18 (Mich. 2001)	Terroristic threatening with a gun	During execution of warrant, minutes after making contact with D	Any weapons in the residence?	<i>Quarles</i> allowed admission of D's response
2001	United States v. Jones, 154 F. Supp. 2d 617, 629-30 (S.D.N.Y. 2001)	Arrest warrant on narcotics charges	During execution of warrant, immediately after handcuffing D	I know there are guns in here; tell me where they are	<i>Quarles</i> allowed admission of D's response
2001	Lockett v. State, 797 So. 2d 339, 346 (Miss. Ct. App. 2001)	Search warrant for drugs	During warrant execution, upon entering house and making contact with D	Why do you have that firearm?	<i>Quarles</i> allowed admission of D's response
2001	United States v. Talley, 275 F.3d 560, 564 (6th Cir. 2001)	Arrest warrant execution	During warrant execution, several minutes after making contact with D	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2001	Crook v. United States, 771 A.2d 355, 359-60 (D.C. 2001)	Weapons offenses	Immediately after making contact with D and handcuffing him, shortly after the shooting	Questions about the cause of D's wounds	<i>Quarles</i> allowed admission of D's response
2001	State v. Thompson, No. 98-JE-28, 2001 Ohio App. LEXIS 269, *15-18 (Ohio Ct. App. Jan. 24, 2001)	Juvenile shot at victim, 911 call	After a foot chase, during transport to the police station	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2001	United States v. DeSumma, 272 F.3d 176, 181 (3d Cir. 2001)	Firearm and conspiracy charges	After surveillance, D arrested, asked immediately after handcuffing D and performing a pat-down	Any weapons or firearms on D's possession?	The court did not reach the <i>Quarles</i> question

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2001	Argueta v. State, 764 A.2d 863, 872 (Md. Ct. Spec. App. 2001)	Carrying a concealed deadly weapon	No prior crime, officer approached because of suspicious behavior, asked as approaching D	Possess any drugs or weapons?	<i>Quarles</i> did not allow admission of D's response
2001	United States v. Sanderson, 23 F. App'x 150, 151 (4th Cir. 2001)	Firearm and drug charges	Search warrant execution, opinion does not provide details	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2001	United States v. Holt, 264 F.3d 1215, 1226 (10th Cir. 2001)	Possession with intent to distribute	D stopped at checkpoint, detained in officer's patrol car, and then asked question	Anything in vehicle officers should be aware of?	<i>Quarles</i> allowed admission of D's response
2001	United States v. Walters, No. CR. 01-37-PH, 2001 U.S. Dist. LEXIS 14036, *15 n.2 (D. Me. Sept. 7, 2001)	Felon in possession of firearm	Officer heard noise, stopped, came into contact with D and asked question immediately	What are you doing? Shooting off fireworks?	<i>Quarles</i> allowed admission of D's response but only mentioned in a footnote
2001	People v. Galo, No. 2285N-00, 2001 N.Y. Misc. LEXIS 554, *11-12 (N.Y. Co. Ct. Aug. 29, 2001)	Response to shooting with children nearby	Immediately upon apprehending D, moments after the shooting	Are you Juan? Where's the gun?	<i>Quarles</i> allowed admission of D's response
2001	Flores v. State, No. 13-00-182-CR, 2001 Tex. App. LEXIS 6128, *11 (Tex. App. Aug. 31, 2001)	Aggravated assault	D fled the scene of the shooting, officers apprehended D and asked during arrest	Where's the shotgun?	<i>Quarles</i> allowed admission of D's response
2001	United States v. Baroni, 14 F. App'x 815, 822 (9th Cir. 2001)	Felon in possession of firearms	During execution of a search warrant, D detained but not arrested yet, not immediately asked question	Are there firearms in the house? Where are they?	<i>Quarles</i> allowed admission of D's response
2002	United States v. Thomas, 190 F. Supp. 2d 49, 62-63, (D. Me. 2002)	Criminal trespass resulting in firearm charges	After taken into custody and transported to residence to find valid ID	What is this? Is it loaded?	<i>Quarles</i> did not allow admission of D's response
2002	United States v. McKeckney, 29 Fed. App'x 627, 629 (2d Cir. 2002)	Homicide and robbery investigation	During execution of a search warrant, opinion not clear about time	Are there any weapons on the premises?	<i>Quarles</i> allowed admission of D's response, as well as the weapon
2002	United States v. Newton, 181 F. Supp. 2d 157, 175-177, (E.D.N.Y. 2002)	Domestic violence	During parole safety search by officer, D handcuffed	Any contraband in the home? What is in the box?	The court found D was not in custody but if he had been <i>Quarles</i> would have applied

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2002	United States v. Young, 186 F. Supp. 2d 642, 644 (E.D. Va. 2002)	Search warrant for suspected counterfeiting	Well after alleged crime, while executing valid search warrant but asked prior to frisk	Any sharp objects, knives, needles, or guns?	<i>Quarles</i> allowed admission of D's response
2002	Allen v. Roe, 305 F.3d 1046, 1051 (9th Cir. 2002)	Murder, firearm charges	Significant amount of time after D was taken into custody, D taken back to crime scene for info	If the wrong person found the gun, it could hurt someone else	<i>Quarles</i> allowed admission of D's response, as well as the gun
2002	United States v. Patzer, 277 F.3d 1080, 1085 (9th Cir. 2002)	Traffic stop, D intoxicated while driving	Some lapse in time while conducting sobriety tests, asked after arrest	Do you have anything you're trying to hide? Be straight with me	<i>Quarles</i> did not allow admission of D's response because the arrest was unlawful
2002	United States v. Lutz, 207 F. Supp. 2d 1247, 1258 (D. Kan. 2002)	Possession of narcotics and a firearm	After being placed in patrol car for outstanding warrants and suspended license	Did you swallow meth?	<i>Quarles</i> distinguished and motion to suppress granted
2002	People v. Bellinger, No. B150819, 2002 Cal. App. Unpub. LEXIS 7391, *6–10 (Cal. Ct. App. Aug. 6, 2002)	Attempted murder, robbery, assault with a gun	After pat-down, about an hour after crime occurred	Question about the gun	<i>Quarles</i> allowed admission of D's response
2002	People v. Caldera, No. F035948, 2002 Cal. App. Unpub. LEXIS 3128, *19–21 (Cal. Ct. App. Mar. 13, 2002)	Possession of illegal weapon (nunchaku)	Very soon after crime; D placed in patrol car, witness was questioned before D was questioned	Location of Nunchaku?	<i>Quarles</i> allowed admission of D's response
2002	State v. Alexander, 810 So. 2d 552, 558 (Fla. Dist. Ct. App. 2002)	Robbery with a firearm	Substantial time after crime; questioning contemporaneous with arrest	Where's the gun?	<i>Quarles</i> did not allow admission of D's response due to the coercive nature that lead to the D's response. The court also distinguishes <i>Quarles</i> factually
2002	Bailey v. State, 763 N.E.2d 998, 1002 (Ind. 2002)	Victim called 911 after murder and battery	Officers responded to 911 call, asked immediately upon arriving and detaining D	Where is the second victim?	<i>Quarles</i> allowed admission of D's response
2002	State v. Kiehl, No. C6-01-1622, 2002 Minn. App. LEXIS 991, *5–6 (Minn. Ct. App. Aug. 27, 2002)	Possession of firearm, victim called 911	Immediately upon entering the premises and searched D	Where's the gun?	<i>Quarles</i> allowed admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2002	State v. Caldwell, 639 N.W.2d 64, 68–69 (Minn. Ct. App. 2002)	Assault with a firearm	Immediately after arriving at the scene and handcuffing D	Do you have a gun?	<i>Quarles</i> allowed admission of D's response, as well as the guns
2002	State v. Stephenson, 796 A.2d 274, 281–83 (N.J. Super. Ct. App. Div. 2002)	Responding to 911 call about threats with a gun	Immediately following frisk, noncustodial	Do you have any weapons? Where's the gun?	<i>Quarles</i> is distinguished and granted motion to suppress the D's response, as well as the gun and drug paraphernalia
2002	People v. Hartley, 743 N.Y.S.2d 455, 456 (N.Y. App. Div. 2002)	Manslaughter, possession of a firearm	After crime, no reference to time	Location of the gun?	<i>Quarles</i> allowed admission of D's response
2002	People v. Encarnacion, 737 N.Y.S.2d 6, 7 (N.Y. App. Div. 2002)	Robbery, kidnapping, firearm investigation	After crime, no reference to time	Do you have a gun?	<i>Quarles</i> allowed admission of D's response, as well as the firearm
2002	People v. Daniels, 752 N.Y.S.2d 218, 226 (N.Y. Sup. Ct. 2002)	Drug charges	During a parole officer visit, before consensual search of the D's bedroom	Do you have any contraband in the room?	<i>Quarles</i> allowed admission of D's response, as well as the cocaine
2002	People v. Ross, 748 N.Y.S.2d 845, 849 (N.Y. Sup. Ct. 2002)	Robbery with a firearm	Shortly after crime, while in custody	Officer falsely told D that the victims wouldn't press charges	<i>Quarles</i> would have been allowed absent the officer promising that charges would not be filed against D
2002	People v. Taylor, No. 1845/2000-1, 2002 N.Y. Misc. LEXIS 171, *52 (N.Y. Sup. Ct. Mar. 20, 2002)	Multiple homicides, robbery	Two days after the murders, D questioned outside his home while handcuffed	Are you carrying a weapon? (Asked twice)	<i>Quarles</i> allowed admission of D's response, as well as the gun
2002	People v. Swoboda, 737 N.Y.S.2d 821, 827 (N.Y. City Crim. Ct. 2002)	Missing child	Baby had been missing for 11 days, 4 hours between arrest and questioning	Where's the baby? (Several questions)	<i>Quarles</i> did not allow admission of D's response
2002	State v. Santiago, No. 01CA007798, 2002 Ohio App. LEXIS 1063, *9–11 (Ohio Ct. App. Mar. 13, 2002)	Murder	Officers arrived at the scene and immediately asked upon making contact with D	What happened? Who else is present? How was she killed?	<i>Quarles</i> allowed admission of D's response
2002	State v. Pender, 47 P.3d 63, 65 (Or. Ct. App. 2002)	Drug charges (warrant for parole violation)	Immediately following arrest warrant execution, asked while handcuffing D	Any knives, guns, syringes, [or] controlled substances?	<i>Quarles</i> is not applicable and motion to suppress is granted
2007	United States v. Joseph, 333 F.3d 587, 591 (5th Cir. 2003)	Bank robbery	Officers located D, placed him under arrest, asked before pat-down	Do you have a weapon on you?	<i>Quarles</i> allowed admission of D's response



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2003	United States v. Garcia, 279 F. Supp. 2d 294, 301–03 (S.D.N.Y. 2003)	Drugs found during traffic stop	D stopped, officer performed pat-down, asked after finding a gun on D's person (D handcuffed)	Is there anything else you want to tell us about?	<i>Quarles</i> allowed admission of D's response, as well as the drugs
2003	United States v. Reyes, 249 F. Supp. 2d 277, 282 (S.D.N.Y. 2003)	Undercover narcotics investigation/arrest	Immediately upon arrest, prior to search incident to arrest	Anything on you that could harm the officer? (Asked twice)	<i>Quarles</i> is distinguished and D's response is suppressed
2003	United States v. Simmons, No. 02-CR-314(JG), 2003 U.S. Dist. LEXIS 652, *18 (E.D.N.Y. Jan. 9, 2003)	Search warrant obtained to find gun	During the execution of valid search warrant, D handcuffed and questioned a few minutes later	Where's the gun? (three times) Officers will leave sooner if you tell us	<i>Quarles</i> allowed admission of D's response, as well as the gun
2003	United States v. Edwards, No. 02-662 2003 U.S. Dist. LEXIS 12116, (E.D. Pa. July 10, 2003)	Gun (Domestic violence)	Crime occurred that morning, question asked after handcuffed and pat down	Do you have a gun on you?	<i>Quarles</i> did not allow admission of D's response
2003	United States v. Ball, 2003 U.S. Dist. LEXIS 12198, *17–18 (E.D. Pa. June 10, 2003)	Drugs and Guns (Parole search)	Parole search after tip	"Where's the gun?" (Multiple times)	<i>Quarles</i> allowed admission of D's response
2003	United States v. Thomas, 77 Fed. App'x 673, 675 (4th Cir. 2003)	Drug trafficking investigation	During arrest and search warrant execution	Any drugs or weapons?	<i>Quarles</i> allowed admission of the gun
2003	United States v. Davis, 70 Fed. App'x 730, 731 (4th Cir. 2003)	Simple assault, possession of firearm and ammunition	Opinion does not clearly state	Question about the guns	<i>Quarles</i> allowed admission of the guns
2003	United States v. Young, 58 Fed. App'x 980, 982 (4th Cir. Va. 2003)	Gun (Counterfeiting)	During execution of a search warrant	Do you have any weapons?	<i>Quarles</i> allowed admission of guns
2003	United States v. Williams, 282 F. Supp. 2d 586, 597 (E.D. Mich. 2003)	Traffic stop for speeding	Immediately after arrest, D handcuffed outside of car	Anything inside the vehicle that's going to poke or hurt me?	<i>Quarles</i> allowed admission of D's response
2003	United States v. Garcia-Meza, No. 1:02-CR-56, 2003 U.S. Dist. LEXIS 8318, *10 (W.D. Mich. May 6, 2003)	Murder, assault with a deadly weapon (stabbing)	Shortly after police arrived to respond to call, before pat-down	Do you have any weapons on you?	<i>Quarles</i> allowed admission of D's response

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2003	United States v. Ames, No. TH-02-010-CR-01-T/L, 2003 U.S. Dist. LEXIS 6451, *6 (S.D. Ind. Jan. 27, 2003)	Missing person case	Warrant execution for driving without a license, sometime into the stop	Is there a weapon present?	<i>Quarles</i> did not allow admission of D's response
2003	United States v. Howard, No. CR03-2024-LRR, 2003 U.S. Dist. LEXIS 14103, *6 (N.D. Iowa Aug. 14, 2003)	Officers looking for D who violated parole	During warrant execution for D's brother, officers performed a pat-down of D and asked question	Was known associate in the room?	<i>Quarles</i> allowed admission of D's response
2003	United States v. Boose, No. 03-00015-01-CR-W-SOW, 2003 U.S. Dist. LEXIS 9164, *16 (W.D. Mo. May 20, 2003)	Traffic stop, careless driving	D fled on foot following stop, asked immediately when officer apprehended D.	Do you have a gun or know where the gun is located?	<i>Quarles</i> allowed admission of D's response
2003	United States v. Lackey, 334 F.3d 1224, 1226 (10th Cir. 2003)	Firearm charges	Seven days after crime, immediately following arrest	Do you have any guns or sharp objects on you?	<i>Quarles</i> allowed admission of D's response
2003	United States v. Morrison, 58 Fed. App'x 381, 385 (10th Cir. 2003)	Zip gun found during traffic stop	Shortly after crime, before search of D's car	How to disarm? (Directed at another officer)	<i>Quarles</i> allowed admission of D's response
2003	United States v. Wynne, No. 01-6386, 2003 U.S. App. LEXIS 186, *12 (10th Cir. Jan. 7, 2003)	Domestic violence call	Immediately upon making contact with D after stopping his vehicle	Do you have a weapon in the car?	<i>Quarles</i> allowed admission of D's response
2003	United States v. Johnson, No. 03-40068-01-RDR, 2003 U.S. Dist. LEXIS 20711, *10-11 (D. Kan. Sept. 9, 2003)	Bank robbery with accomplices	After car and foot chase, D apprehended and asked question	How many people were involved and who are they?	<i>Quarles</i> allowed admission of D's response
2003	People v. Akhtar, No. C042427, 2003 Cal. App. Unpub. LEXIS 11565, *3 (Cal. Ct. App. Dec. 11, 2003)	Attempted murder and torture	Day after the crime, D voluntarily surrendered at the county jail, detained in patrol car when asked	Victim's condition and whereabouts?	<i>Quarles</i> allowed admission of D's response
2003	People v. Clark, No. D039836, 2003 Cal. App. Unpub. LEXIS 10012, *7 (Cal. Ct. App. Oct. 24, 2003)	Parole search	Parole search, questions upon entering the house and making contact with D	Anyone else in the mobile home? Did he share the bedroom?	<i>Quarles</i> allowed admission of one statement but not the other

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2003	People v. Brandon, No. B156969, 2003 Cal. App. Unpub. LEXIS 8676, *15–17 (Cal. Ct. App. Sept. 11, 2003)	Shooting resulting in a death	D in jail, but no reference to time between 1999 shooting and D's responses	Who had been murdered? What was the murder involved with?	<i>Quarles</i> allowed admission of D's response
2003	People v. Gray, No. B156966, 2003 Cal. App. Unpub. LEXIS 5230, *9–10 (Cal. Ct. App. May 28, 2003)	Officer found map drawn by D	Months after original shooting arrest, prior to his voir dire proceedings	Questions re: Map (of courthouse, judges parking space and description of car)	<i>Quarles</i> allowed admission of D's response
2003	People v. Dixon, No. B156724, 2003 Cal. App. Unpub. LEXIS 743, *17–19 (Cal. Ct. App. Jan. 24, 2003)	Armed robbery	After fleeing, D was apprehended and placed in a holding cell at the station, then asked question	Does he have another gun?	<i>Quarles</i> allowed admission of D's response
2003	People v. Zanini, No. F038571, 2003 Cal. App. Unpub. LEXIS 377, *19–20 (Cal. Ct. App. Jan. 10, 2003)	Murder and assault with a deadly weapon (knife)	D arrested the day after the stabbing, taken to hospital to have blood drawn, asked while there	Location of knife?	<i>Quarles</i> did not allow admission of D's response
2003	State v. Betances, 828 A.2d 1248, 1257 (Conn. 2003)	Drug task force operation	D arrested, searched, placed in back of patrol car, began showing signs of distress, then asked	Did you swallow any drugs?	<i>Quarles</i> allowed admission of D's response
2003	Dyson v. United States, 815 A.2d 363, 369 (D.C. 2003)	Drug charges, officers on patrol	Officers approached D, he fled, officers asked immediately after D was apprehended and searched	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2003	Martin v. State, 587 S.E.2d 650, 652 (Ga. 2003)	Stabbing resulting in a death	Shortly after the crime occurred, not entirely clear in the opinion	Location of the knife?	<i>Quarles</i> allowed admission of D's response, as well as the knife
2003	Oldham v. Commonwealth, No. 2002-CA-002301-MR, 2003 Ky. App. Unpub. LEXIS 1046, *9 (Ky. Ct. App. Aug. 22, 2003)	Gun, officers on patrol	Officers were informed about D's gun, went to check, D searched and asked question	What did you do with the gun?	<i>Quarles</i> allowed admission of D's response

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2003	People v. Henry, No. 227626, 2003 Mich. App. LEXIS 748, *14-15 (Mich. Ct. App. Mar. 20, 2003)	Unlawful discharge of a firearm (road rage shooting)	Shortly after the shooting, officers stopped D and asked shortly into the interaction	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2003	State v. Diloreto, 829 A.2d 1123, 1140 (N.J. Super. Ct. App. Div. 2003)	Officer on patrol, car belonging to missing person	Officer approached D in the car, called for backup, conducted a pat-down, found clip, then asked question	Where's the gun for the clip?	<i>Quarles</i> allowed admission of D's response, as well as the gun
2003	In re Jemar J., 762 N.Y.S.2d 894, 895 (N.Y. App. Div. 2003)	Not clear	Opinion does not clearly state	Location of the gun?	<i>Quarles</i> was not material to holding, but the court stated it would have been warranted
2003	State v. Crudup, 580 S.E.2d 21, 25 (N.C. Ct. App. 2003)	Response to call for alleged burglary	D detained for alleged burglary, officers searched apartment, then asked question	Do you own the possessions in the house?	<i>Quarles</i> did not allow admission of D's response
2003	State v. Spence, 2003-Ohio-4237, ¶18 (Ohio Ct. App. Aug. 11, 2003)	Murder	A few days after the murder, D handcuffed at scene, officer asked while walking D to the cruiser	Victim's location?	<i>Quarles</i> allowed admission of D's response
2003	State v. Christensen, 663 N.W.2d 691, 695 (S.D. 2003)	D ordered to surrender weapons	Officers entered D's home to collect weapons after waiting 48 hours, conducted a search	No questions	<i>Quarles</i> was used to allow warrantless entry into the D's home
2003	Benton v. Commonwealth, 578 S.E.2d 74, 76-77 (Va. Ct. App. 2003)	Domestic dispute, gun discharged	Officers placed D in patrol car, took back to the scene, then asked question	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2003	State v. Main, No. 29237-8-II, 2003 Wash. App. LEXIS 2502, *12 (Wash. Ct. App. Oct. 28, 2003)	Search warrant for firearms	During execution of a search warrant, officers made contact with D, asked while handcuffing him	Do you have a weapon in the car?	<i>Quarles</i> allowed admission of D's response
2003	State v. Williams, No. 52783-5-I, 2003 Wash. App. LEXIS 2389, *5-6 (Wash. Ct. App. Oct. 20, 2003)	Shooting	Shortly after shots fired, officers apprehended D after he fled, asked after handcuffing D	Where's the gun? (3 times)	<i>Quarles</i> allowed admission of D's response
2003	State v. Hopkins, No. 01-2797-CR, 2003 Wisc. App. LEXIS 748, *8 (Wis. Ct. App. 2003)	Shots fired call	Shortly after shots fired, officers approached D in car, asked while approaching	Are there any guns or drugs?	<i>Quarles</i> allowed admission of the gun

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2004	United States v. Fox, 393 F.3d 52, 60 (1st Cir. 2004)	Traffic stop	Officer ordered D to exit the vehicle, searched D, then asked question	Any weapons in the car? Where's the gun? How to breach the shotgun?	<i>Quarles</i> allowed admission of D's response
2004	United States v. Newton, 369 F.3d 659, 677-78 (2d Cir. 2004)	Terroristic threats/ domestic dispute	Day after the crime, during a parole search, immediately after handcuffing D	Any "contra-band" in the house?	<i>Quarles</i> allowed admission of D's response
2004	United States v. Beckett, No. 04-Cr.-158(WHP), 2004 U.S. Dist. LEXIS 24970, *5-7 (S.D.N.Y. Dec. 13, 2004)	Call about an armed man	Shortly after the call, immediately upon apprehending D, prior to frisk	Are you in possession of anything you are not supposed to have?	<i>Quarles</i> allowed admission of gun
2004	United States v. Memoli, 333 F. Supp. 2d 233, 237 (S.D.N.Y. 2004)	Gun dealing, undercover investigation	One month after being made aware of gun sales before arrest	Any weapons in the house?	<i>Quarles</i> did not allow admission of guns
2004	Manzella v. Senkowski, No. 97-CV-921A(F), 2004 U.S. Dist. LEXIS 30103, *88 (W.D.N.Y. July 2, 2004)	Police shooting/stand-off	During warrant execution, D and officers in a stand-off, telephone contact	Officers asked D about his wellbeing and tried to get him to surrender	Court found the D was not in custody when D's responses were made but if he had been <i>Quarles</i> would have allowed the admission of D's response
2004	United States v. Fleurissaint, No. S3-03 Cr.-906 (LBS), 2004 U.S. Dist. LEXIS 7307, *7 (S.D.N.Y. Apr. 28, 2004)	Arrest warrant for armed robbery	No reference to time between crime & warrant issued, D handcuffed and asked before search	Anybody else or anything we should know about before going in there?	<i>Quarles</i> allowed admission of the gun
2004	United States v. Johnson, 95 Fed. App'x 448, 452 (3d Cir. 2004)	Road rage incident with gun (felon)	Almost a month after the incident, within minutes of approaching D, prior to frisk	Do you have a gun?	<i>Quarles</i> allowed admission of D's response
2004	United States v. Reynolds, 334 F. Supp. 2d 909, 913-14 (W.D. Va. 2004)	Shooting occurred	Within minutes after the incident, officers arrived at the scene, some-time passed before asked question	Do you have any other weapons?	<i>Quarles</i> allowed admission of D's response, as well as the gun
2004	United States ex rel. Williams v. McAdory, 342 F. Supp. 2d 765, 768-69 (N.D. Ill. 2004)	Murder and attempted murder	In the morning after the shooting, D arrested and asked after being handcuffed	Do you have any weapons, knives, or needles on you?	<i>Quarles</i> allowed admission of D's response, as well as the gun

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2004	United States v. Andreano, 2004 U.S. Dist. LEXIS 8654, *4 (S.D. Iowa Apr. 27, 2004)	Narcotics investigation	After surveillance, D arrested and searched, asked before his car was impounded	Anything in the car that could harm the officer searching the vehicle?	<i>Quarles</i> allowed admission of D's response
2004	United States v. Donachy, 118 Fed. App'x 424, 426–27 (10th Cir. 2004)	Domestic dispute	A short time after the call, officers arrested D at the scene and asked after a search	Where's the other gun?	<i>Quarles</i> allowed admission of D's response, as well as the gun
2004	United States v. Phillips, 94 Fed. App'x 796, 801 (10th Cir. 2004)	Search warrant for narcotics	Warrant executed three days after officers became aware of crimes, officers secured scene and asked question	Any drugs or weapons in the home?	<i>Quarles</i> allowed admission of D's response, as well as the gun
2004	United States v. Mendoza, 333 F. Supp. 2d 1155, 1161–62 (D. Utah 2004)	Assault (arrest warrant)	Arrest warrants executed a month after the crime, D handcuffed and asked after search	Any other guns in the house?	<i>Quarles</i> allowed admission of D's response, as well as the gun
2004	United States v. Gorrell, 360 F. Supp. 2d 48, 53 (D.D.C. 2004)	Traffic stop, driving without a license	Officer pulls D over, arrests D after checking system, asked before search incident to arrest	Anything I should know about? Anything else?	<i>Quarles</i> allowed the first statement and suppressed the follow up question
2004	People v. Coffman and Marlow, 96 P.3d 30, 76 (Cal. 2004)	Murder, kidnapping, and robbery	Ds arrested seven days after the kidnapping, taken to police station and interviewed for 3.5 hours	Where is the victim?	<i>Quarles</i> allowed admission of D's response
2004	In re Joseph R., Coming Under the Juvenile Court Law, No. H026772, 2004 Cal. App. Unpub. LEXIS 8401, *4, 2004 WL 2039501 (Cal. Ct. App. Sept. 14, 2004)	Probation search	Officers secured house, searched the home, asked during the search	Are they any other guns?	<i>Quarles</i> allowed admission of D's response
2004	People v. Dismuke, No. F043422, 2004 Cal. App. Unpub. LEXIS 7965, *8 (Cal. Ct. App. Aug. 30, 2004)	Drug trafficking, hit and run	D fled, officer chased and apprehended, placed in patrol car, then asked question	Where's the gun?	<i>Quarles</i> allowed admission of D's response

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2004	People v. Brewer, No. A100489, 2004 Cal. App. Unpub. LEXIS 1832, *17 (Cal. Ct. App. Feb. 27, 2004)	Armed robbery and burglary	Hours after the crime, D taken to jail, asked multiples over time	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2004	Hawai'i v. Rodriguez, No. 22978, 2004 Haw. LEXIS 204, *22 (Haw. Mar. 24, 2004)	Domestic dispute	Officers arrived shortly after the incident, minutes after making contact with D	Where's the gun?	<i>Quarles</i> did not allow admission of D's response
2004	State v. Yager, 85 P.3d 656, 661 (Idaho 2004)	Murder of police officer	Within minutes of the incident, D handcuffed and asked question	Where's your buddy? Where's your car?	<i>Quarles</i> allowed admission of D's response
2004	State v. Drennan, 101 P.3d 1218, 1233 (Kan. 2004)	Domestic dispute	Officers arrived shortly after the dispute, apprehended D and asked question	Where's the victim?	<i>Quarles</i> allowed the admission of D's response
2004	State v. Pennington, No. 89, 671, 2004 Kan. App. Unpub. LEXIS 877, *11 (Kan. Ct. App. Dec. 17, 2004)	Armed robbery, kidnapping	Less than an hour after the crime, officer stopped D	Location of the victim?	Court decided that D was not in custody and, therefore, his responses were voluntary but could have been admitted under the <i>Quarles</i> exception as well
2004	People v. Leach, 774 N.Y.S.2d 335, 335 (N.Y. App. Div. 2004)	Gun	No time referenced	How to unload the pistol?	<i>Quarles</i> allowed admission of D's response
2004	State v. Wilson, No. COA03-374, 2004 N.C. App. LEXIS 336, *8 (N.C. Ct. App. Mar. 2, 2004)	Reported shooting	Officers needed to search D's car, saw dog, and asked question	Is the dog vicious?	<i>Quarles</i> allowed admission of D's response
2004	State v. Luke, 2004-Ohio-6137, ¶14 (Ohio Ct. App. Nov. 15, 2004)	Murder of child	D turned himself in at station day after crime, officers placed him in cruiser after pat-down, asked question	Where is your son?	<i>Quarles</i> allowed admission of D's response
2004	State v. Meyer, 2004-Ohio-5229, P2 (Ohio Ct. App. Sept. 30, 2004)	Traffic stop for speeding	Appeared immediate	Potential victims?	<i>Quarles</i> allowed admission of D's response
2004	Commonwealth v. Sepulveda, 855 A.2d 783, 791 (Pa. 2004)	Call received about domestic dispute	Officers arrived in less than an hour, immediately placed D in patrol car and asked question	Where is she?	<i>Quarles</i> allowed admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2004	State v. Ragsdale, 687 N.W.2d 785, 789 (Wis. Ct. App. 2004)	Terroristic threatening	Officers responded to the scene, made contact with D	No questioning directed towards D	<i>Quarles</i> allowed admission of D's response
2004	Mackrill v. State, 100 P.3d 361, 367 (Wyo. 2004)	Arrest warrant related to drugs	During execution of a warrant, D handcuffed and immediately asked question	Any weapons or contraband inside the vehicle?	<i>Quarles</i> allowed admission of D's response
2005	United States v. Estrada, 430 F.3d 606, 613 (2d Cir. 2005)	Arrest warrant for probation violation	During execution of a warrant, asked question immediately	Are there any weapons in the home?	<i>Quarles</i> allowed admission of D's response
2005	United States v. Cherino, 418 F. Supp. 2d 93, 95 (E.D.N.Y. 2005)	Search of D's residence	Immediately upon finding a gun	Any other firearms in the apartment?	<i>Quarles</i> did not allow admission of D's response or the gun
2005	United States v. Nazario, No. 04-Cr.-796(DAB), 2005 U.S. Dist. LEXIS 20031, *10 (S.D.N.Y. Sept. 8, 2005)	Routine parole visit	Officers stopped D's vehicle, D taken back home, drug tested, search of home, then asked question	Officers asked about the ammunition they found in the house	<i>Quarles</i> allowed admission of D's response
2005	United States v. Miller, 382 F. Supp. 2d 350, 373 (N.D.N.Y. 2005)	Traffic stop, D had an outstanding	During the course of the stop, after searching the glove compartment	Anything else in the car we should know about?	<i>Quarles</i> did not allow admission of D's response
2005	Madore v. Beaver, 368 F. Supp. 2d 219, 221 (W.D.N.Y. 2005)	Stabbing	Shortly after the crime, officers found D and asked question	Then why are you hiding?	<i>Quarles</i> did not allow admission of D's response, but the court found that the admission of said statement was harmless
2005	United States v. King, 366 F. Supp. 2d 265, 275 (E.D. Pa. 2005)	Search warrant for meth lab	Execution of a search warrant, D in custody, question prior to the search	Was there any cooking going on? What chemicals were used?	<i>Quarles</i> allowed admission of D's response
2005	United States v. Patmon, No. 3:05-00174, 2005 U.S. Dist. LEXIS 28008, *12-14 (S.D. W. Va. Oct. 28, 2005)	Arrest warrant execution	Before execution of an arrest warrant, immediately upon making contact with D	Guns or weapons in the house?	<i>Quarles</i> did not allow admission of D's response
2005	United States v. Myers, No. 3:00-00062, 2005 U.S. Dist. LEXIS 46695, *3 (S.D. W. Va. Aug. 11, 2005)	911 call about murder	No reference to time, officers stopped D's car, asked D to exit car, then asked	Where's the gun?	<i>Quarles</i> allowed admission of D's response



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2005	United States v. Blackwell, 416 F.3d 631, 632 (7th Cir. 2005)	Arrest warrant for domestic battery	Just before execution of arrest warrant, D handcuffed	Any other weapons in the home?	<i>Quarles</i> was not material to the holding, but the court mentions the public safety exception as a reason to ask about weapons
2005	United States v. Johnson, 415 F.3d 728, 729 (7th Cir. 2005)	Terroristic threatening	Apparently brief lapse in time, asked after sweep of house	Location of gun	Court does not reach the <i>Quarles</i> issue but states that <i>Quarles</i> exception allowed in the lower court was probably an error
2005	United States v. Luker, 395 F.3d 830, 833–34 (8th Cir. 2005)	Traffic stop for loud muffler	After sobriety tests and pat-down	Anything in the vehicle that should not be there?	<i>Quarles</i> allowed admission of D's response
2005	United States v. Kazmarek, 151 Fed. App'x 569, 570 (9th Cir. 2005)	Felon in possession of firearm	Appears immediate, D was handcuffed	Location of Gun	<i>Quarles</i> allowed admission of D's response
2005	United States v. Martinez, 406 F.3d 1160, 1165 (9th Cir. 2005)	Domestic dispute	Immediate response, officer entered and saw guns in plain view, asked immediately	What are those [guns] doing there?	<i>Quarles</i> allowed admission of D's response
2005	United States v. Brown, No. CR05-73-S-EJL, 2005 U.S. Dist. LEXIS 29437, *21 (D. Idaho Oct. 26, 2005)	Traffic stop	Immediate	"I'm interested in narcotics"	<i>Quarles</i> did not allow admission of D's response
2005	United States v. Paredes, 388 F. Supp. 2d 1185, 1191 (D. Haw. 2005)	Negligent homicide (vehicular)	Two hours after wreck, D detained at the scene	Location of gun	<i>Quarles</i> allowed admission of D's responses to the questions about the location of the gun but not the other questions
2005	United States v. Kinzlow, No. CR-05-122-F, 2005 U.S. Dist. LEXIS 45281, *4 (W.D. Okla. Nov. 7, 2005)	Contraband (not clarified)	D detained, officer asked immediately before searching D's person	Any dangerous items on your person?	<i>Quarles</i> allowed admission of D's response
2005	People v. Panah, 107 P.3d 790, 840 (Cal. 2005)	Murder	Two days after the murder, D questioned at scene of arrest and when taken to hospital	Where's the little girl?	<i>Quarles</i> allowed admission of D's response

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2005	State v. Hernandez, 867 A.2d 30, 36 (Conn. App. Ct. 2005)	Shots fired 911 call, drug offenses	Minutes after call, D asked to step out of car, immediately handcuffed and asked before pat-down	Whether he had a gun, contraband or anything that might prick officer.	<i>Quarles</i> allowed admission of D's response
2005	People v. Rodriguez, No. 256226, 2005 Mich. App. LEXIS 2716, *6 (Mich. Ct. App. Nov. 1, 2005)	Homicide	Same day	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2005	Anglin v. State, 157 S.W.3d 400, 404 (Mo. Ct. App. 2005)	Murder and robbery	Two days after the murder D was arrested, asked after D was handcuffed	Do you have a gun on you? Where's the shotgun?	<i>Quarles</i> allowed admission of D's response
2005	People v. Gucla, 794 N.Y.S.2d 126, 127 (N.Y. App. Div. 2005)	Robbery	No reference to time	Location of the gun	<i>Quarles</i> allowed admission of D's response
2005	State v. al-Bayyinah, 616 S.E.2d 500, 508 (N.C. 2005)	Stabbing	Officers apprehended D after D fled, asked question immediately	Where's the knife?	<i>Quarles</i> allowed admission of D's response
2005	State v. Powell, No. COA05-224, 2005 N.C. App. LEXIS 2720, *7 (N.C. Ct. App. Dec. 20, 2005)	Gun	Apprehended the next day, question during search incident to arrest	Do you have any weapons?	<i>Quarles</i> allowed admission of D's response
2005	State v. Morgan, 2005-Ohio-6542, ¶2 (Ohio Ct. App. Dec. 9, 2005)	Shooting	Less than thirty minutes after officers heard gunshots, asked while handcuffing D	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2005	State v. Hudson, No. 2004AP1956-CR, 2005 Wisc. App. LEXIS 1067, *20 (Wis. Ct. App. 2005)	Robbery	Officer arrested and placed D in patrol car, "conversed" for the next forty-five minutes	Gun	<i>Quarles</i> did not allow admission of D's response
2005	State v. Dilworth, No. 2004AP2805-CR, 2005 Wisc. App. LEXIS 434, *11-12 (Wis. Ct. App. 2005)	D stopped because he was suspicious	No previous crime committed (was charged with carrying a concealed weapon), after pat-down	Where's the gun?	<i>Quarles</i> allowed admission of D's response

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2006	Sliney v. United States, No. No. 05-033-ML, 2006 U.S. Dist. LEXIS 70115, *2 (D.R.I. Sept. 12, 2006)	Tip that D was in possession of stolen guns	At least several hours after receiving the tip, during search warrant execution	"Show us the guns or weapons."	<i>Quarles</i> would not have allowed admission of D's response
2006	United States v. Reyes, 434 F. Supp. 2d 58, 61 (D. Mass. 2006)	Traffic violation	Questions asked after D was handcuffed	Do you have anything on you? You don't smoke crack do you?	<i>Quarles</i> allowed admission of D's response to the officer's first question but not the other two
2006	United States v. Gregg, No. 03-1229-cr, 2006 U.S. App. LEXIS 23530, *7 (2d Cir. Sept. 12, 2006)	Gun	Arrested D in a subway station, immediately took him into a utility room and asked question	How to unload this gun?	<i>Quarles</i> allowed admission of D's response/demonstration
2006	Pierre v. Artus, No. 05 Civ. 7706, 2006 U.S. Dist. LEXIS 95166, *10 (S.D.N.Y. Dec. 13, 2006)	Murder (writ of habeas corpus)	Appears immediate	Tell me where the gun is.	<i>Quarles</i> allowed admission of D's response
2006	United States v. Ross, No. 05-398-1, 2006 U.S. Dist. LEXIS 16772, *30-32 (E.D. Pa. Apr. 4, 2006)	Drug trafficking	Month long operation, D arrested and placed in police van, then asked question	Is there anyone else in house?	<i>Quarles</i> allowed admission of D's response
2006	United States v. Jenkins, 426 F. Supp. 2d 336, 343 (E.D.N.C. 2006)	Shooting occurred	Search under car after D suspiciously placed something there and ran	Search under car for gun	<i>Quarles</i> allowed a search for a hidden weapon under a car
2006	United States v. Brathwaite, 458 F.3d 376, 382 (5th Cir. 2006)	Counterfeiting IDs	Two month long operation, asked before execution of a search warrant	Are there guns in the house?	<i>Quarles</i> did not allow admission of D's response
2006	United States v. Lee, 188 Fed. App'x 326, 328 (5th Cir. 2006)	D fled after traffic stop	Immediately after D was arrested and handcuffed	Location of firearm?	<i>Quarles</i> allowed admission of D's response
2006	United States v. Smith, 210 Fed. App'x 533, 535 (7th Cir. 2006)	Multiple arrest warrants	No reference to when warrants were issued, D handcuffed and hotel room secured when asked	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2006	United States v. Landin, No. 8:05 CR131, 2006 U.S. Dist. LEXIS 24880, *8 (D. Neb. Apr. 18, 2006)	Search warrant for drug trafficking	Appears immediate	Anything dangerous that would be harmful to the officers?	<i>Quarles</i> did not allow the admission of D's response

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2006	United States v. Gill, No. 4:05 CR701CDP (MLM), 2006 U.S. Dist. LEXIS 9944, *5 (E.D. Mo. Mar. 13, 2006)	Search warrant for drugs	Prior to executing the warrant, immediately upon making contact with D	Any guns on your person? Any guns in your home?	<i>Quarles</i> allowed admission of D's response
2006	United States v. Lawrence, No. 05-333, 2006 U.S. Dist. LEXIS 17121, *24 (D. Minn. Jan. 10, 2006)	Drunk and disorderly conduct	Immediate response to call	Search for gun in D's home	<i>Quarles</i> allowed the search of the D's home for a firearm under the public safety exception
2006	United States v. Gaines, 200 Fed. App'x 707, 712 (9th Cir. 2006)	Bank robbery	D apprehended, handcuffed, then asked question	Where's the gun?	Court found the D voluntarily waived his rights, but had they not been waived the <i>Quarles</i> exception would have applied
2006	Ray v. McDaniel, 184 Fed. App'x 640, 641 (9th Cir. 2006)	Triple homicide	Appears immediate, opinion does not clearly state	Location of the murder weapon?	<i>Quarles</i> allowed admission of D's response
2006	United States v. Held, 184 Fed. App'x 620, 622 (9th Cir. 2006)	911 call about a man with a gun	Immediate response to call, gun found in hotel room, opinion does not clearly state	Question about gun	<i>Quarles</i> allowed admission of D's response
2006	Villescas v. Hernandez, 163 Fed. App'x 612, 613 (9th Cir. 2006)	Gun	Opinion does not clearly state	Location of firearm?	This case speaks to effectiveness of attorney, but the court found the attorney's lack of objection to <i>Miranda</i> issue was not ineffective because the questioning fell within the <i>Quarles</i> exception
2006	United States v. Mengis, No. 04-CR-508-BR, 2006 U.S. Dist. LEXIS 62476, *12 (D. Or. Aug. 31, 2006)	Kidnapping and rape	Less than two hours, D arrested, prior to searching his apartment	Anyone inside the apartment?	<i>Quarles</i> did not allow admission of D's response
2006	Ramirez v. Schriro, No. CV 97-1331-PHX-JAT, 2006 U.S. Dist. LEXIS 6367, *26 (D. Ariz. Feb. 13, 2006)	Murder	No reference to time	What's going on? Is there anyone else in the house? Are they hurt?	<i>Quarles</i> allowed admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2006	United States v. Ford, No. 06-40110-01-RDR, 2006 U.S. Dist. LEXIS 88804, *10 (D. Kan. Dec. 7, 2006)	Shoplifting and brandishing a gun	Same day, but hours had passed since firearm discarded by D	Location of firearm	<i>Quarles</i> allowed admission of D's response
2006	United States v. McBride, No. 05-40083-01-SAC, 2006 U.S. Dist. LEXIS 60787, *6 (D. Kan. Aug. 15, 2006)	Terroristic threatening	Shortly after the 911 call, D apprehended and asked question	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2006	United States v. Baskerville, No. CR406-304, 2006 U.S. Dist. LEXIS 101487, *12 (S.D. Ga. Nov. 21, 2006)	Criminal trespass and warrant	Shortly after the call, D detained, sometime passed, then asked	Whether the ammunition was the D's and whether the D had a gun	<i>Quarles</i> allowed admission of D's response
2006	United States v. Brown, 449 F.3d 154, 159 (D.C. Cir. 2006)	Bank robbery	Police apprehended D minutes after the crime	Gun	This case speaks to effectiveness of attorney but the court found the attorney's lack of objection to <i>Miranda</i> issue was not ineffective because the questioning fell within the <i>Quarles</i> exception
2006	Brown v. State, 982 So. 2d 565, 601 (Ala. Crim. App. 2006)	Murder and robbery	D caught about twenty minutes after crime	Location of gun	<i>Quarles</i> allowed admission of D's response
2006	State v. Londo, 158 P.3d 201, 204 (Ariz. Ct. App. 2006)	Drug trafficking investigation	Shortly after arrest	Did you swallow crack cocaine?	An expanded version of <i>Quarles</i> allowed for the admission of statement for the safety of the D
2006	People v. Van Hoose, No. C049907, 2006 Cal. App. Unpub. LEXIS 6866, *9 (Cal. Ct. App. Aug. 7, 2006)	Gun, trespass, officers responded to call	Immediately asked as D was being handcuffed	Location of gun	<i>Quarles</i> allowed admission of D's response
2006	People v. Furness, No. B183779, 2006 Cal. App. Unpub. LEXIS 6249, *6 (Cal. Ct. App. July 19, 2006)	Rape and kidnapping	Immediate, D flagged down officer and confessed to crime	Did you penetrate her?	<i>Quarles</i> allowed admission of D's response
2006	State v. Simmons, 714 N.W.2d 264, 275 (Iowa 2006)	Meth lab	Immediately upon entering the premises	Is there a meth lab and where is it located?	<i>Quarles</i> allowed admission of D's response

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2006	State v. Brumfield, 944 So. 2d 588, 596 (La. Ct. App. 2006)	Assault and terroristic threatening	Immediate response, officer searched and placed D in patrol car	Warrantless search of home	<i>Quarles</i> allowed a warrantless search of the house
2006	Commonwealth v. Guthrie G., 848 N.E.2d 787, 790 (Mass. App. Ct. 2006)	Gun	Immediate response, D fled with a gun	Location of gun	<i>Quarles</i> allowed admission of D's response
2006	State v. Boretsky, 894 A.2d 659, 666 (N.J. 2006)	Stabbing	Immediate response	How long did you wait to call the police?	<i>Quarles</i> allowed admission of D's response
2006	State v. Elkwisni, 894 A.2d 1180, 1191 (N.J. Super. Ct. App. Div. 2006)	Robbery	Less than thirty minutes, police arrived while the robbery was in progress and apprehended D	Location of gun	<i>Quarles</i> did not allow the admission of the statement
2006	People v. Kimes, 831 N.Y.S.2d 1, 13 (N.Y. App. Div. 2006)	Kidnapping	A couple months after the crime, D taken into custody and questioned	Victim's location?	<i>Quarles</i> could have allowed admission of D's response
2006	People v. Alicea-Cruz, 818 N.Y.S.2d 461, 461 (N.Y. App. Div. 2006)	Assault and reckless endangerment	Opinion does not clearly state	Location of gun	<i>Quarles</i> allowed admission of D's response
2006	People v. Moreno, 817 N.Y.S.2d 29, 31 (N.Y. App. Div. 2006)	Lawful traffic suspicionless stop	No reference to time	Location of gun	Court found that D was not in custody and, therefore, the D's responses were voluntary, but the court found the public safety exception would apply even if they weren't voluntary
2006	State v. Anderson, 710 N.W.2d 392, 401 (N.D. 2006)	Call about D with gun	No crime occurred prior to incident, shortly after call, questioned pre- <i>Miranda</i>	Do you have a weapon?	<i>Quarles</i> allowed admission of D's response
2006	State v. Kimble, 2006-Ohio-6863, ¶55 (Ohio Ct. App. Dec. 22, 2006)	Search warrant for drugs	Prior to search warrant execution	Are there children in the house? Is anyone home? Dogs in the house?	<i>Quarles</i> allowed admission of D's response
2006	State v. Sneed, 851 N.E.2d 532, 537 (Ohio Ct. App. 2006)	Car accident 911 call	Less than an hour after wreck, asked when D was placed under arrest	What is that object? Is it alcohol or is it a gun?	<i>Quarles</i> allowed admission of D's response
2006	Jackson v. State, 146 P.3d 1149, 1158 (Okla. Crim. App. 2006)	Missing child	D apprehended day after the crime, returned to Tulsa	Questions about the missing child	<i>Quarles</i> allowed admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2006	Still v. State, No. 2-05-408-CR, 2006 Tex. App. LEXIS 8865, *12 (Tex. Crim. App. Oct. 12, 2006)	Shoplifting	Immediate response, search of D's car	Anything that could poke the officers during a search?	<i>Quarles</i> allowed admission of D's response
2007	United States v. Williams, 483 F.3d 425, 429 (6th Cir. 2007)	Firearm charges	Immediately upon contact with D during warrant execution	Is anyone else in the room? Do you have any weapons?	Further fact findings were needed in order to determine applicability of public safety exception
2007	People v. Olachea, No. E040239, 2007 Cal. App. Unpub. LEXIS 5358, *24 (Cal. Ct. App. June 29, 2007)	Lewd acts with a child	Shortly after	Do you have any weapons in the house? What's going on here?	<i>Quarles</i> did not allow the admission of D's response
2007	United States v. Burford, No. 3:06-CR-102JWS, 2007 U.S. Dist. LEXIS 13123, *3 (D. Alaska Feb. 23, 2007)	Drug charges	Contemporaneous	Is there anyone or anything in the house that would pose danger?	<i>Quarles</i> allowed admission of some of D's responses
2007	State v. Strozier, 876 N.E.2d 1304, 1310 (Ohio Ct. App. 2007)	Drug charges	D handcuffed, asked after pat-down	Do you have anything on you?	<i>Quarles</i> did not allow admission of D's response
2007	People v. Washington, No. B194035, 2007 Cal. App. Unpub. LEXIS 3992, *9 (Cal. Ct. App. May 17, 2007)	Drug charges	Immediate response to call, apprehended D handcuffed him and took him to patrol car	Do you have anything on you that I should know about?	<i>Quarles</i> should have allowed for admission of evidence and D's response
2007	United States v. Melvin, No. 05-4997, 2007 U.S. App. LEXIS 16794, *32 (4th Cir. July 13, 2007)	Drug & firearm charges (fugitive)	Arrest warrant execution, D taken into custody	Anything we need to know about the truck?	<i>Quarles</i> did not allow for admission of D's response
2007	People v. Miller, No. 266508, 2007 Mich. App. LEXIS 804, *4 (Mich. Ct. App. Mar. 22, 2007)	Possession of weapons	Immediate	Is there anything else I need to know about?	<i>Quarles</i> allowed admission of D's response
2007	United States v. Nelson, 489 F. Supp. 2d 309, 315 (S.D.N.Y. 2007)	Felon in possession of firearm	Officers entered apartment based on tip, made contact with D	Is there anything in the bedroom that should not be there?	<i>Quarles</i> allowed admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2007	Com. v. Dillon D., 863 N.E.2d 1287, 1290 (Mass. 2007)	Juvenile delinquent with a firearm	Same day	Multiple questions	<i>Quarles</i> should have been applied, remanded for further proceedings
2007	People v. Fanelli, No. D050425, 2007 Cal. App. Unpub. LEXIS 7401, *7 (Cal. Ct. App. Sept. 12, 2007)	Attempted murder/assault with a firearm	Immediately upon apprehending D, shortly after the crime	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2007	United States v. Rogers, No. CR-06-0212 WBS ALL, 2007 U.S. Dist. LEXIS 32298, *4 (E.D. Cal. Apr. 20, 2007)	Felon in possession of firearm (traffic stop)	Officer stopped D, asked shortly thereafter during the course of the stop	Any weapons or drugs in the car? (Asked twice)	<i>Quarles</i> allowed admission of D's response
2007	United States v. Laster, No. S1 06 CR. 1064 (JFK), 2007 U.S. Dist. LEXIS 45999, *5 (S.D.N.Y. June 26, 2007)	Felon in possession of firearm	Shortly after call, immediately upon apprehending D	If you have a weapon, where?	<i>Quarles</i> allowed admission of D's response
2007	United States v. Oung, 490 F. Supp. 2d 21, 33 (D. Mass. 2007)	Drug trafficking investigation	Search warrant execution, D taken outside of home and handcuffed	Question about guns	<i>Quarles</i> allowed admission of D's response
2007	People v. Dennis, 866 N.E.2d 1264, 1276 (Ill. App. Ct. 2007)	Battery, attempted murder	Same day, at the hospital where D was taken	Multiple questions	<i>Quarles</i> did not allow admission of D's response
2007	United States v. Lantry, No. 0306CR-00186-LRH-RAM, 2007 U.S. Dist. LEXIS 85498, *5 (D. Nev. Nov. 7, 2007)	Attempted murder	Search warrant execution, D surrendered "after a lengthy period of time"	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2007	United States v. Kent, No. S1-1:06CR 88 JCH, 2007 U.S. Dist. LEXIS 27111, *14 (E.D. Mo. Apr. 12, 2007)	Suspicious person call (man with a gun)	Officer responded immediately, before pat-down	No real questioning, officers conducted a pat-down and arrest	<i>Quarles</i> was not material to the holding but would have allowed for admission of evidence
2007	United States v. Newsome, 475 F.3d 1221, 1225 (11th Cir. 2007)	Attempted murder/felon in possession of firearm	Three days after receiving tip, officers arrested D, asked immediately upon handcuffing D	Anything or anyone in the room I should know about?	<i>Quarles</i> allowed admission of D's response



Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2007	People v. Allen, 199 P.3d 33, 36 (Colo. App. 2007)	Traffic stop	During arrest and at the station during booking	Do you have any of these items? Why didn't you tell me earlier?	<i>Quarles</i> did not allow for admission of D's response. Police exceeded public safety exception with their questioning
2007	In re Cy R., 841 N.Y.S.2d 25, 28 (N.Y. App. Div. 2007)	Criminal possession of stolen property	Shortly after crime, D apprehended & placed in patrol car	Opinion does not clearly state the questions asked	<i>Quarles</i> allowed admission of D's response
2007	Commonwealth v. Jones, No. 06-P-1072, 2007 Mass. App. Unpub. LEXIS 871, *7 (Mass. App. Ct. Nov. 29, 2007)	Traffic stop	D walked away from officer after stop, officer ordered him to stop, asked before pat-down	Do you have anything on you that I should know about?	<i>Quarles</i> did not allow admission of D's response
2007	People v. Zalevsky, 836 N.Y.S.2d 488, 488 (N.Y. Sup. Ct. 2007)	Missing person and assault	Same day as missing person reported, D in custody at police station	Multiple questions regarding the missing person's location	<i>Quarles</i> allowed admission of D's response
2007	United States v. Molina-Tepozteco, No. CRIM.07-181PJSSRN, 2007 U.S. Dist. LEXIS 101576, *16 (D. Minn. Oct. 12, 2007)	Illegal alien in possession	Search warrant executed six days after it was granted, D questioned prior to full search	Multiple questions, including biographical info and existence of gun	<i>Quarles</i> did not allow admission of D's response
2007	State v. Sowards, 2007-Ohio-4863, ¶ 15 n.2 (Ohio Ct. App. 2007)	Driving with suspended license/ drug possession	Arrested during traffic stop, asked before pat-down	Do you have marijuana or drug paraphernalia on you?	<i>Quarles</i> did not allow for admission of D's response
2007	Townsend v. State, No. 49A02-0606-CR-54, 2007 Ind. App. Unpub. LEXIS 1147, *8 (Ind. Ct. App. Apr. 16, 2007)	Felon in possession of firearm	Officer arrived shortly after crime, D handcuffed after a few moments	What's going on? What happened?	<i>Quarles</i> did not allow admission of D's response
2007	People v. Morgan, No. 272143, 2007 Mich. App. LEXIS 2375, *7 (Mich. Ct. App. Oct. 16, 2007)	Attempted murder/shooting in the home	Somewhat immediate, officers responding to 911 call	Multiple questions about who shot the weapon, what happened	<i>Quarles</i> not material to holding, but the questions were permissible for officer's safety

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2007	United States v. Yanez, 490 F. Supp. 2d 765, 773 (S.D. Tex. 2007)	During investigation, officers heard gunshots	Officers immediately found source of gunshots, asked after searching D	Where's the gun?	<i>Quarles</i> was not material for holding, but used to justify warrantless search
2007	State v. Hewson, 642 S.E.2d 459, 466 (N.C. Ct. App. 2007)	First degree murder, call about shooting	Immediately upon arriving & detaining D	Where is she . . . where's the gun?	<i>Quarles</i> allowed admission of D's response
2007	State v. O'Neal, 921 A.2d 1079, 1089 (N.J. 2007)	Selling cocaine in a school zone	Officers apprehended D shortly after observing drug transaction	What's this?	<i>Quarles</i> not material to holding, but court said it would not apply to this question
2007	United States v. Martin, No. CRIMA 2:06-0226, 2007 U.S. Dist. LEXIS 17012, *8 (S.D.W. Va. Mar. 9, 2007)	Traffic stop	After stopping car, D placed in handcuffs and asked question	Any drugs or weapons on you?	<i>Quarles</i> allowed admission of D's response
2007	State v. Cosby, 169 P.3d 1128, 1136 (Kan. 2007)	First degree murder	Questioned at the station after arrest	Where's the gun?	Court did not decide on the <i>Quarles</i> issue
2007	State v. Blount, 184 N.C. App. 189, 645 S.E.2d 903, 2007 N.C. App. LEXIS 1277, *6 (N.C. Ct. App. 2007)	Firearm charges	Officer observed crime, stopped and arrested D, then asked question	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2007	United States v. Orman, 486 F.3d 1170, 1176 (9th Cir. 2007)	Call about man with a gun in shopping mall	Officers responded, found D, approached and asked him	Is it true that you have a gun?	<i>Quarles</i> allowed admission of D's response
2007	United States v. Henderson, 237 F. App'x 834, 838 n.2 (4th Cir. 2007)	Drug possession/traffic stop	Immediate, D outside of vehicle, before search of vehicle	Any weapons or harmful objects?	<i>Quarles</i> was not material to the holding, but mentioned in a footnote
2007	State v. Hagos, No. 1 CA-CR 06-0743, 2007 Ariz. App. Unpub. LEXIS 666, *13 (Ariz. Ct. App. Dec. 6, 2007)	Drug possession/traffic stop	During the course of the stop, D still seated in his vehicle	Any other weapons or anything that we need to know about?	<i>Quarles</i> did not allow for admission of D's response
2007	United States v. Moore, No. 3:03-CR-178 (RNC), 2007 U.S. Dist. LEXIS 19805, *13 (D. Conn. Feb. 20, 2007) <i>aff'd</i> , 670 F.3d 222 (2d Cir. 2012)	Felon in possession of firearm	D apprehended during arrest warrant execution, question next day at station	Question about location of gun, facts not entirely clear	<i>Quarles</i> did not allow admission of D's response

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2007	State v. Crawford, No. E2005-02018-CCA-R3CD, 2007 Tenn. Crim. App. LEXIS 83, *23 (Tenn. Crim. App. Feb. 1, 2007)	Shooting	Officer responded and arrived at the scene, D walked towards him and confessed, officer asked question	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2007	United States v. Gable, No. 1:06-00001, 2007 U.S. Dist. LEXIS 39854, *38 (M.D. Tenn. May 31, 2007)	Domestic violence incident	Officer responded to call, arrested D, placed in patrol car, talked with witness, then asked D	Is there a gun?	<i>Quarles</i> did not allow admission of D's response
2008	Henry v. Com., 275 S.W.3d 194, 199 (Ky. 2008), <i>overruled by</i> Rose v. Com., 322 S.W.3d 76 (Ky. 2010)	Illegal possession of a firearm	D arrested "a few minutes" after discarding gun, asked question after secured and frisked	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Lewis, No. 08-20028, 2008 U.S. Dist. LEXIS 90557, *24 (W.D. Tenn. Nov. 6, 2008)	Officers on patrol noticed gang members	Officers immediately approached and asked question	Do you possess any weapons?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Everman, 528 F.3d 570, 572 (8th Cir. 2008)	Felon in possession of firearm	Officers on patrol came upon D and arrested him, asked question while searching	Do you have any weapons?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Jefferson, No. 2:07-CR-311-WKW, 2008 WL 1848798, *1 (M.D. Ala. Apr. 24, 2008)	Unlawful possession of firearm	Officers entered residence, saw gun on sofa and asked question	Is it loaded?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Davis, No. 4:07 CR646 RWS, 2008 WL 2224788, *1 (E.D. Mo. May 27, 2008)	Traffic stop	D fled, officer apprehended him and asked question immediately	Why did you flee from me?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Ball, 282 Fed. App'x 126, 128 (3d Cir. 2008)	Possession of illegal firearms, drugs	Opinion does not clearly state	Location of firearms?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Bridges, No. 1:07 CR175 CDP, 2008 WL 1701092, *7 (E.D. Mo. Apr. 9, 2008)	Dispatch about weapons violation	Officers immediately responded, located D, asked him to step out of the car, asked after pat-down	Is there a weapon on you?	<i>Quarles</i> allowed admission of D's response

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2008	McMurray v. State, No. CACR 07-1124, 2008 WL 4425581, *3 (Ark. Ct. App. Oct. 1, 2008)	Call for possible shooting	Officers chased D, apprehended her, asked while conducting pat-down	Location of the gun?	<i>Quarles</i> allowed admission of D's response
2008	State v. Boatwright, No. CR070244484S, 2008 Conn. Super. LEXIS 2966, *5 (Conn. Super. Ct. Oct. 23, 2008)	Battery/illegal possession of a firearm	Officer responded, located D, asked question at scene and again at the station	Questions about the location of the gun	<i>Quarles</i> did not allow admission of D's response
2008	United States v. Pickar, No. CRIM 08-116 PJS/SRN, 2008 U.S. Dist. LEXIS 106240, *21 (D. Minn. Nov. 18, 2008) <i>report and recommendation adopted in part</i> , No. 08-CR-0116 (PJS/SRN), 2008 WL 5412363 (D. Minn. Dec. 23, 2008)	Bank robbery dispatch call	Thirty minutes after the crime, officer located D and pulled him over, questioned in back of patrol car	Multiple questions	<i>Quarles</i> did not allow admission of D's response
2008	United States v. Jordan, 303 Fed. App'x 439, 441 (9th Cir. 2008)	Unclear	Seems immediate, opinion does not clearly state	Opinion does not clearly state officer's question	<i>Quarles</i> allowed admission of D's response
2008	United States v. Kelley, 268 F. App'x 304, 305 (5th Cir. 2008)	Possession of drugs/firearm by felon	Response time unclear, D arrested, hand-cuffed, and then asked question	Location of firearms?	<i>Quarles</i> allowed admission of D's response
2008	State v. Hollins, No. A07-0350, 2008 Minn. App. Unpub. LEXIS 576, *6 (Minn. Ct. App. May 20, 2008)	Possession of firearm	Warrantless search shortly after report	Warrantless search	<i>Quarles</i> used to justify warrantless search
2008	People v. Allah, 863 N.Y.S.2d 682, 683 (N.Y. App. Div. 2008)	Second degree assault	D in custody, time frame unclear	Location of the knife?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Anderson, No. 2:08-CR-25, 2008 WL 4739534, at *1 (W.D. Mich. Oct. 24, 2008)	Felon in possession/well check	Shortly after call	Location of guns?	<i>Quarles</i> could have allowed admission of D's response

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2008	United States v. Williams, 272 F. App'x 473, 478 (6th Cir. 2008)	Possession with intent to distribute	Search warrant execution, D immediately detained, asked shortly thereafter	Any weapons in the house?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Dutchie, No. 2:07-CR-537-TC, 2008 U.S. Dist. LEXIS 66823, *28 (D. Utah Sept. 2, 2008)	Second degree murder	Officers responded to call, asked question immediately after placing D in custody, before search of house	Where's the gun?	<i>Quarles</i> allowed admission of D's response to the question about the gun's location
2008	Harris v. Phelps, 550 F. Supp. 2d 551, 564 (D. Del. 2008)	Call about robbery	Officers apprehended D before crime could be committed, asked question immediately	Do you have any weapons?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Sayre, No. CR08-61-1-TUCRCC JJM, 2008 WL 4820099, *1 (D. Ariz. Nov. 3, 2008)	Illegal possession of a firearm	Officer stopped D, asked during the course of the traffic stop	Presence of weapons and drugs?	<i>Quarles</i> allowed admission of D's response
2008	People v. Benitez, No. G038375, 2008 Cal. App. Unpub. LEXIS 10281, *21 (Cal. Ct. App. Dec. 19, 2008)	Conspiracy to commit second degree murder	Officers immediately responded to call, apprehended D and asked question	Is there a weapon around here?	<i>Quarles</i> allowed admission of D's response
2008	People v. Gause, 1394, 856 N.Y.S.2d 287, 289 (N.Y. App. Div. 2008)	Promoting prison contraband	During frisk in prison	Do you have any metal objects on you?	<i>Quarles</i> did not allow admission of D's response
2008	Barnes v. State, 174 P.3d 732, 738 (Wyo. 2008)	Traffic stop	D fled, officer chased and apprehended him, asked question immediately	Is that powder meth? How much did you swallow?	<i>Quarles</i> allowed admission of D's response
2008	People v. Singh, No. E041484, 2008 Cal. App. Unpub. LEXIS 1727, *24 (Cal. Ct. App. Feb. 29, 2008)	Call about a man with a gun	Officer responded to address, made contact with D, sometime passed, D detained and asked question	Do you have a gun?	<i>Quarles</i> did not allow for admission of D's response
2008	United States v. Thies, No. CR08-3032-MWB, No. CR08-3032-MWB (N.D. Iowa Nov. 4, 2008)	Felon in possession of a firearm	Same night	Is there a gun in the house?	<i>Quarles</i> did not allow for admission of D's response, but it was admitted for other reasons

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2008	<i>In re Austin M.</i> , No. 2 CA-JV 2008-0060, 2008 U.S. Dist. LEXIS 90348 (Ariz. Ct. App. Sept. 12, 2008)	Minor in possession of drugs	Officers responded to call about the minor, asked before searching D	Anything that could hurt officer? Needed to be aware of?	<i>Quarles</i> did not allow for admission of D's response, however, harmless error
2008	<i>United States v. Salahuddin</i> , No. 05-CR-145, 2008 WL 5483062, at *1 (E.D. Wis. June 23, 2008) <i>report and recommendation adopted in part, rejected in part</i> , 607 F. Supp. 2d 930 (E.D. Wis. 2009), <i>report and recommendation adopted as modified</i> , 668 F. Supp. 2d 1136 (E.D. Wis. 2009)	Illegal possession of a firearm	Same day	Any weapons in the house?	<i>Quarles</i> allowed admission of D's response
2008	<i>United States v. Vann</i> , No. CR-07-288-M, 2008 U.S. Dist. LEXIS 61947, *5-6 (W.D. Okla. Aug. 13, 2008)	Traffic stop	Officers approached vehicle, ordered D to step out of the car, then asked question	Is there a gun to go with the shells?	<i>Quarles</i> allowed admission of D's response
2008	<i>United States v. Davis</i> , No. CRIM. H-08-028, 2008 U.S. Dist. LEXIS 72006, *13 (S.D. Tex. Sept. 22, 2008)	Felon in possession of firearm	Officers on patrol, approach D and reaches towards D's waist for gun	I just want to make sure you're not armed first	Court declined to apply <i>Quarles</i> as a justification for a <i>Terry</i> frisk
2008	<i>United States v. Kramer</i> , No. 07-80136-CR, 2008 U.S. Dist. LEXIS 3434 (S.D. Fla. Jan. 16, 2008)	Traffic stop	Officer stopped D's vehicle, D outside of vehicle	Possible explosives?	<i>Quarles</i> allowed admission of D's response
2008	<i>United States v. Liddell</i> , 517 F.3d 1007, 1008 (8th Cir. 2008)	Traffic stop for loud music	D arrested and placed in patrol car, officers searched D's car, found bullets, then asked D question	Is there anything else in there we need to know about?	<i>Quarles</i> allowed admission of D's response

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2008	People v. Ross, 76 Cal. Rptr. 3d 477, 481 (Cal. Ct. App. 2008), <i>as modified on denial of reh'g</i> (June 11, 2008)	Assault with a knife	D arrested, frisked, taken to jail, asked question upon arrival at the jail	Do you have a weapon on your person?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Lariscy, No. CR 607-10, No. 2008 U.S. Dist. LEXIS 123466, *15 (S.D. Ga. Mar. 4, 2008)	Domestic dispute call	Same night, officers responded to second incident, made contact with D, asked question	What are you doing?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Santiago, No. 08-353, 2008 U.S. Dist. LEXIS 77960, *8 (E.D. Pa. Oct. 3, 2008), <i>aff'd in part</i> , 387 F. App'x 223 (3d Cir. 2010)	Homicide	During search warrant execution, D secured, then asked question	Are you armed?	<i>Quarles</i> allowed admission of D's non-verbal response
2008	United States v. Kelly, No. CRIM08-109(1) RHK/RLE, 2008 U.S. Dist. LEXIS 115723, *20 n.4 (D. Minn. Dec. 23, 2008)	Aggravated sexual abuse	Immediate	D's response made spontaneously not in questioning	<i>Quarles</i> was not material to holding; D was not in custody. <i>Quarles</i> is mentioned in a footnote
2008	United States v. Jackson, 544 F.3d 351, 360 n.9 (1st Cir. 2008)	Felon in possession, report of stolen gun	Officers went to D's home, began asking questions upon making contact with D	Location of gun?	<i>Quarles</i> did not allow for admission of D's response
2008	State v. Sharpe, 882 N.E.2d 960, 971 (Ohio Ct. App. 2008)	Dispatched to domestic violence incident	Same day, 2-3 hour standoff, D eventually came out and was placed in custody	Attempts to get D to surrender	<i>Quarles</i> did not allow for admission of D's statements
2008	People v. Hernandez, 854 N.Y.S.2d 282, 289 (N.Y. Sup. Ct. 2008)	Traffic stop/drug charges	D outside of the vehicle, asked during pat-down	Do you have any weapons? What is it?	<i>Quarles</i> allowed admission of D's responses at the scene
2008	People v. Tapia-Huante, No. B194335, 2008 Cal. App. Unpub. LEXIS 1904, *16 (Cal. Ct. App. Mar. 6, 2008)	Drug trafficking investigation	After surveillance of D, D stopped, searched car, taken back to apartment, asked question before search	Any people or weapons inside?	<i>Quarles</i> allowed admission of D's response

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2008	Garbutt v. Conway, No. 05 CIV. 9898 (SHS), 2008 U.S. Dist. LEXIS 62373 (S.D.N.Y. Aug. 15, 2008), <i>aff'd</i> , 668 F.3d 79 (2d Cir. 2012)	Second degree murder	Same day as crime, officers located D and entered apartment, handcuffed D and asked question	Are you in possession of a weapon?	<i>Quarles</i> allowed admission of D's response
2008	United States v. Farmer, No. 207-CR-50-FTM-34SPC, 2008 U.S. Dist. LEXIS 45596, *13 n.8 (M.D. Fla. June 10, 2008)	Traffic stop	During the course of the stop	Presence of weapons	<i>Quarles</i> was not material to holding, but the court says in dicta that the public safety exception would have applied
2009	United States v. Duncan, 308 F. App'x 601, 605 (3d Cir. 2009)	Officers investigating drug tip	Officers approached D in his car, during pat-down, officer felt weapon and asked question	Is that a gun?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Are, 590 F.3d 499, 506 (7th Cir. 2009)	Drug trafficking investigation	During execution of arrest warrant, D immediately handcuffed and asked question	Any weapons in the house?	<i>Quarles</i> allowed admission of D's response
2009	United States v. DeJear, 552 F.3d 1196, 1202 (10th Cir. 2009)	Officers on patrol in high-crime arrest	Officers approached D, D acting suspiciously, asked question a few moments into the interaction	Asked D what he was stuffing	<i>Quarles</i> allowed admission of D's response
2009	United States v. Doble, No. 08-50044, 2009 U.S. App. LEXIS 4561, *2-3 (9th Cir. Mar. 6, 2009)	Felon in possession of firearm	Opinion is not clear, D was in custody outside of the residence	Location of gun?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Salahuddin, 668 F. Supp. 2d 1136, 1142 (E.D. Wis. 2009)	Outstanding warrant, felon in possession	During execution of arrest warrant, D immediately handcuffed and asked	Any other weapons in the house?	<i>Quarles</i> did not allow for admission of D's response
2009	United States v. Ezell, No. 8:09 CR137, 2009 U.S. Dist. LEXIS 85831, *10 (D. Neb. Sept. 18, 2009)	Theft of gun	On the same day of report, D located and arrested	Anything in the house that could harm someone or get them in trouble?	<i>Quarles</i> allowed admission of D's response



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2009	People v. Martinez, No. C054551, 2009 Cal. App. Unpub. LEXIS 403, *10 (Cal. Ct. App. Jan. 20, 2009)	Assault with a firearm investigation	Hours after the shooting, D found at home, D handcuffed and placed in patrol car, then questioned	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Landor, 699 F. Supp. 2d 913, 922 (E.D. Ky. 2009)	Routine search at prison	Staff found weapon during search of D's cell, D taken to office, questioned there	Questions about the weapon found	<i>Quarles</i> did not allow admission of D's statements
2009	United States v. Jones, 567 F.3d 712, 715 (D.C. Cir. 2009)	Possession with intent to distribute	During execution of arrest warrant, D fled, officer apprehended D and asked within thirty seconds	Do you have anything on you?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Hill, 340 F. App'x 950, 951 (4th Cir. 2009)	Possession of drugs/firearm	Opinion does not clearly state, D's residence was not yet secure	Is there a weapon in the residence?	<i>Quarles</i> allowed admission of D's response
2009	People v. Swain, No. 283368, 2009 Mich. App. LEXIS 1548, *7 (Mich. Ct. App. July 21, 2009)	Armed robbery	Opinion does not clearly state, D in custody, asked question after search of D and D's home	Location of the gun?	<i>Quarles</i> allowed admission of D's response
2009	Green v. United States, 974 A.2d 248, 258 (D.C. 2009)	Dispatch about a man with a gun	Officers approached D, immediately handcuffed him, and asked question	Where is the gun?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Zamora, No. 2:06CR 20089-014, 2009 U.S. Dist. LEXIS 31379, *7 (W.D. La. Apr. 9, 2009)	Illegal possession of firearms	D had been detained for "several hours" when asked	Question about weapons	<i>Quarles</i> did not allow admission of D's response
2009	People v. Reyes, 881 N.Y.S.2d 36, 38 (N.Y. App. Div. 2009)	Homicide involving firearm	After arrest, opinion does not clearly state	Where's the cylinder?	<i>Quarles</i> allowed admission of D's response
2009	People v. Mendiola, No. E043582, 2009 Cal. App. Unpub. LEXIS 342, *7 (Cal. Ct. App. Jan. 15, 2009)	Felon in possession of firearm/drugs	Parole search, D detained and asked question	Location of the gun?	<i>Quarles</i> did not allow admission of D's response
2009	United States v. Kellogg, 306 F. App'x 916, 924 (6th Cir. 2009)	Warrant/felon in possession of firearm	During execution of arrest warrant, asked question before search of residence	Multiple questions	<i>Quarles</i> did not allow admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2009	People v. Mixon, No. 281417, 2009 Mich. App. LEXIS 611, *3 (Mich. Ct. App. Mar. 17, 2009)	Illegal possession of a firearm	During execution of arrest warrant, asked during pat-down	Do you have any weapons?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Riekenberg, No. 4:09CR3010, 2009 U.S. Dist. LEXIS 53351, *30 (D. Neb. June 24, 2009)	Dispatch to a potential suicide	Officers arrived about five minutes after the call, officers surrounded him immediately upon contact	Do you have a gun? Is anyone else present in the apartment?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Watters, 572 F.3d 479, 482 (8th Cir. 2009)	Dispatch about a man trying to buy drugs	Officers approached D, arrested him, then asked question	Is there a gun anywhere on Dickson street?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Avery, No. 07-20040 MA/P, 2009 U.S. Dist. LEXIS 124216, *42 (W.D. Tenn. Nov. 4, 2009), <i>report and recommendation adopted as modified</i> , No. 07-20040, 2010 WL 419946 (W.D. Tenn. Jan. 28, 2010)	Robbery (B.O.L.O.)	Officers approached van, made contact with D and immediately asked question	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Iqbal, No. CRIM. H-08-574, 2009 U.S. Dist. LEXIS 10039, *14 n.10 (S.D. Tex. Feb. 11, 2009)	Stolen property	During execution of a search warrant, some time into the search	Who is the owner of this gun?	<i>Quarles</i> was not material to holding, but the court says in a footnote that the public safety exception would not have applied
2009	Com. v. White, 906 N.E.2d 1011, 1015 (Mass. App. Ct. 2009)	Weapons charges (radio call about red car)	Officer stopped D's car five minutes after crime, ordered him out, frisked him	No real questioning, just a pat-down	<i>Quarles</i> not material to holding, but said in dicta that the officer's actions would have been justified by the public safety exception
2009	White v. Com., No. 2292-07-2, 2009 Va. App. LEXIS 107, *12 n.4 (Va. Ct. App. Mar. 4, 2009)	Felon in possession of a firearm	Officers approached D, looked in car, handcuffed D, retrieved weapon, then asked question	Does this gun belong to you?	<i>Quarles</i> did not allow admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2009	United States v. Frazier, No. 09-0179-CV-W-GAF, 2009 U.S. Dist. LEXIS 91670, (W.D. Mo. Oct. 1, 2009), <i>aff'd</i> , 394 F. App'x 339 (8th Cir. 2010)	Homicide	During execution of arrest warrant, asked after D was arrested and preliminary sweep of house	Any weapons on you or in the house?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Bell, 343 F. App'x 72, 74 (6th Cir. 2009)	Drug trafficking	D arrested on the same day, taken to a holding cell at DEA office, then questioned	What are you doing?	<i>Quarles</i> allowed admission of D's response
2009	United States v. Hunter, No. 1:09-CR-124WTLKPF 1, 2009 U.S. Dist. LEXIS 114515, *6 (S.D. Ind. Dec. 7, 2009)	Domestic disturbance with shots fired	Officers stopped D's vehicle shortly after the crime, arrested and asked question	Location of the gun?	<i>Quarles</i> allowed admission of D's response
2009	Caballero v. Hartley, No. CV 08-5725 JFW(E), 2009 U.S. Dist. LEXIS 130514, *26 (C.D. Cal. July 28, 2009)	Elder abuse, 911 call	Officers responded, made contact with D when they got there, placed D in handcuffs, asked question	No real questioning, D made spontaneous statements	<i>Quarles</i> not material to holding, but the court says in dicta that if D was actually being questioned, the public safety exception would apply
2009	United States v. Owens, No. 5:09-CR-14/RS, 2009 U.S. Dist. LEXIS 81378, *11 (N.D. Fla. Aug. 20, 2009), <i>aff'd</i> , 445 F. App'x 248 (11th Cir. 2011)	Traffic stop, felon in possession of firearm	Officer stopped D, asked him to step out of the vehicle, asked before search of car	Do you have weapons or drugs in your vehicle?	<i>Quarles</i> did not allow admission of D's response
2009	United States v. Savage, 677 F. Supp. 2d 756, 763 (E.D. Pa. 2009)	Report of man banging on door with gun	Officers came into contact with D just minutes after report, frisked him	What's going on, do you have a weapon?	<i>Quarles</i> not material to holding, but the court says in dicta that the public safety exception would have applied if D was in fact in custody
2010	United States v. Nazario, 374 Fed. App'x 63, 65 (2d Cir. 2010)	Ammunition	No reference to time	Where did the bullets come from? Where's the gun?	<i>Quarles</i> allowed admission of D's response
2010	United States v. Williams, 758 F. Supp. 2d 287, 311 n.11 (S.D.N.Y. 2010)	Warrant issued for sale of guns	No reference to time after execution of search warrant	Ownership of the guns?	<i>Quarles</i> did not allow the admission of the statement

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2010	Morgan v. Rock, 2010 U.S. Dist. LEXIS 96946, *27, 2010 WL 3703697 (W.D.N.Y. Sept. 16, 2010)	Murder investigation	Three weeks after the murder, D arrested on different warrant, asked after arrest	Questions about the victim's fate and location	<i>Quarles</i> allowed the admission of D's responses
2010	United States v. Rumble, 714 F. Supp. 2d 388, 393 (N.D.N.Y. 2010)	Search warrant for drugs and guns	During search warrant execution, D secured and asked prior to search	Any traps or explosives inside? Meth lab?	<i>Quarles</i> did not allow admission of D's responses
2010	United States v. Howard, No.08-CR-211-A, 2010 U.S. Dist. LEXIS 93872, *19 (W.D.N.Y. May 10, 2010)	Search warrant for drug trafficking	D stopped, another officer arrived, conducted pat-down, then asked question	What's that bulge in your jacket?	<i>Quarles</i> allowed admission of D's response
2010	United States v. Evans, No. 09-CR-376A(Sr), 2010 U.S. Dist. LEXIS 113586, *10 (W.D.N.Y. May 6, 2010)	Search warrant	During search warrant execution, D secured and asked question prior to search	Do you have any weapons on you?	<i>Quarles</i> allowed admission of D's response
2010	United States v. Murray, No. 1:10-cr-00024, 2010 U.S. Dist. LEXIS 77954, *35 n.18 (D.V.I. 2010)	Shooting	Officers responded immediately, D fled, caught up to D and asked question	Do you have anything on you that I need to know about?	<i>Quarles</i> not material to the holding, but the court says in a footnote that the public safety exception also applies
2010	United States v. Benjamin, No. No. 10-131, 2010 U.S. Dist. LEXIS 85960, *18 (E.D. Pa. July 26, 2010)	Shooting	Four weeks after shooting, officer searched D's home, asked during the course of the search	Where's the gun? Where is James Birch?	<i>Quarles</i> did not allow the admission of D's response
2010	United States v. Pete, No. 09-82, 2010 U.S. Dist. LEXIS 21907, *16 n.2 (W.D. Pa. Mar. 10, 2010)	Sale of narcotics	Month long operation, D taken into custody during car stop	Do you have a weapon?	<i>Quarles</i> allowed admission of D's response
2010	Dove v. State, No. 08-3215 (JAG), 2010 U.S. Dist. LEXIS 4668, *28 (D.N.J. Jan. 20, 2010)	Shooting	Same day, at the time of D's apprehension	Location of the gun?	<i>Quarles</i> allowed admission of D's response
2010	United States v. Guess, 756 F. Supp. 2d 730, 745 (E.D. Va. 2010)	Possession of narcotics, sting operation	D taken into custody, searched, and then asked question	Do you have a vehicle?	<i>Quarles</i> did not allow admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2010	United States v. Asar, No. 7:10-cr-00429-GRA-1, 2010 U.S. Dist. LEXIS 73748, *4 n.1 (D.S.C. July 21, 2010)	Traffic stop, discovered gun	D stopped, asked during the course of the stop	Location of revolver release lever?	<i>Quarles</i> allowed admission of D's response
2010	United States v. Green, 388 Fed. App'x 375, 377, 380 (5th Cir. 2010)	Traffic stop, discovered gun and drugs	D stopped, placed in patrol car, there for an hour and a half, then taken to motel room	Are there any weapons in the room?	The court did not reach the <i>Quarles</i> issue, but it seems as though they would have ruled against application of the public safety exception here
2010	Rowland v. Thaler, No. 4:09-CV-630-A, 2010 U.S. Dist. LEXIS 115914, *19 (N.D. Tex. Oct. 1, 2010)	Armed robbery	Six hours (five hour standoff)	Audiotapes of negotiator and D interactions during standoff	<i>Quarles</i> allowed admission of the audiotapes
2010	United States v. Carrizales, No. 3:10CR004, 2010 U.S. Dist. LEXIS 104798, *7 (N.D. Ohio Sept. 29, 2010)	Arrest warrant, discovered gun	During execution of arrest warrant, D placed in custody	Are there any weapons in the home?	<i>Quarles</i> did not allow the admission of D's response
2010	United States v. Hemphill, No. 1:10-CR-053, 2010 U.S. Dist. LEXIS 94392, *17 n.2 (S.D. Ohio Aug. 20, 2010)	Parole check, discovered drugs	Officer saw pills, made contact with D, entered apartment, placed D in custody	Question about the pills	<i>Quarles</i> would not be applicable to this case
2010	United States v. Sutton, No. 3:09-CR-139, 2010 U.S. Dist. LEXIS 53362, *19 (E.D. Tenn. Apr. 22, 2010)	Call about a man with a gun	Immediate response to call, questioned immediately upon contact, prior to frisk	Do you have any knives or weapons on you?	<i>Quarles</i> allowed admission of D's response
2010	United States v. Manners, No. 06-20465, 2010 U.S. Dist. LEXIS 17046, *13 (E.D. Mich. Feb. 25, 2010)	Search warrant, discovered gun	During execution of search warrant, officers made contact with D and detained him, then asked question	Do you have a weapon?	<i>Quarles</i> allowed admission of D's response
2010	United States v. Williams, No. 10-CR-172, 2010 U.S. Dist. LEXIS 125717, *20 (E.D. Wis. Nov. 2, 2010)	Robbery	No exact time, but court states some time has lapsed, D taken into custody at his home	Are there weapons in the apartment?	<i>Quarles</i> did not allow the admission of D's responses

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2010	United States v. Golden, No. 10-00149-01-CR-W-HFS, 2010 U.S. Dist. LEXIS 138827, *20 (W.D. Mo. Nov. 3, 2010)	Gun (suspected drug car)	Officers approached D and arrested on outstanding warrant, asked before search of car	Is there anything in the car that could hurt him?	<i>Quarles</i> allowed admission of D's response
2010	Steen v. Schmalenberger, No. 1:07-cv-094, 2010 U.S. Dist. LEXIS 108160, *54 (D.N.D. Aug. 20, 2010)	Officers served D with civil process	D placed in custody for outstanding warrant, then asked question	Anything in the room that is hazardous?	<i>Quarles</i> allowed admission of D's response
2010	Dixon v. Williams, No. 2:09-cv-0066-PMP-PAL, 2010 U.S. Dist. LEXIS 105291, *44 (D. Nev. Sept. 17, 2010)	Murder	D approached officer, not clear on the timing	Whereabouts of the gun	<i>Quarles</i> allowed admission of D's response
2010	White v. Yates, No. CV 09-3211-PSG(E), 2010 U.S. Dist. LEXIS 87536, *35 (C.D. Cal. July 12, 2010)	Murder, 911 call	Officer responded, ordered D out of apartment, asked question	What's going on?	<i>Quarles</i> allowed admission of D's response
2010	United States v. Guerrero-Heredia, No. CR 09-1248-PHX-DGC, 2010 U.S. Dist. LEXIS 21823, *4 (D. Ariz. Feb. 24, 2010)	Unlawful discharge of a firearm	Less than thirty minutes, officers pursued D's vehicle, pulled him over, asked question	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2010	Fanelli v. Small, No. EDCV 09-1840-GAF(CT), 2010 U.S. Dist. LEXIS 15199, *8 (C.D. Cal. Jan. 13, 2010)	Attempted murder, aggravated assault	D fled after shooting, officers apprehended him	Location of gun	<i>Quarles</i> allowed admission of D's response
2010	United States v. Cartwright, No. 10-CR-104-CVE, 2010 U.S. Dist. LEXIS 106473, *4 (N.D. Okla. Oct. 5, 2010)	Prison escape	Twenty days after escape	Anything illegal on you? Anything that could poke me?	<i>Quarles</i> allowed admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2010	United States v. Cole, No. 1:09-CR-0412-ODE-RGV, 2010 U.S. Dist. LEXIS 82822, *83 (N.D. Ga. Aug. 11, 2010)	Roadblock	D stopped, officer saw drugs and gun clip, asked question	What is that? Do you care to explain the marijuana? Weapons in the car?	<i>Quarles</i> allowed admission of D's response
2010	State v. Adams, No. 1 CA-CR 09-0200, 2010 Ariz. App. Unpub. LEXIS 1178, *6 (Ariz. Ct. App. Aug. 24, 2010)	Admission (burglary)	Officer responded to alarm, made contact with D, immediately asked question	Is there anyone else in the building?	<i>Quarles</i> allowed admission of D's response
2010	State v. Mendoza-Ruiz, 476, 240 P.3d 1235, 1238 (Ariz. Ct. App. 2010)	Report of two men stealing a tire	Immediate	Securing the D's firearm	<i>Quarles</i> allowed the securing of the gun
2010	People v. Brown, No. A124311, 2010 Cal. App. Unpub. LEXIS 8685, *11 (Cal. Ct. App. Oct. 29, 2010)	Arrest warrant for drugs	After transport but before entering the jail	Any weapons, drugs or anything that could poke or stab him?	<i>Quarles</i> allowed admission of D's response
2010	People v. Montonen, No. A125257, 2010 Cal. App. Unpub. LEXIS 7938, *4 (Cal. Ct. App. Oct. 5, 2010)	Drugs (Traffic Stop)	During stop, officer asked D to step out of the car, asked question	What's that?	<i>Quarles</i> allowed admission of D's response
2010	People v. Morfin, No. B217669, 2010 Cal. App. Unpub. LEXIS 5026, *9 (Cal. Ct. App. July 1, 2010)	Burglary, two 911 calls	Officer responded immediately, made contact with D and arrested him, not clear on timing	No real questioning, D made incriminating statement	<i>Quarles</i> did not allow the admission of the D's response
2010	People v. Stryker, No. A118638, 2010 Cal. App. Unpub. LEXIS 447, *29 (Cal. App. 1st Dist. Jan. 22, 2010)	Shooting	D admitted to hospital with gunshot wound, officers alerted	Location of the gun?	<i>Quarles</i> was one of the reasons the court allowed the admission of the statement
2010	Smith v. State, 46 So. 3d 608, 610 (Fla. Dist. Ct. App. 2010)	Drug charges	Immediate	Is there any more crack in your system?	<i>Quarles</i> allowed the admission of D's response
2010	Smith v. Commonwealth, 312 S.W.3d 353, 360 (Ky. 2010)	Search warrant for drugs	Immediately upon entering residence and making contact with D	Any drugs or weapons on you?	<i>Quarles</i> did not allow the admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2010	Commonwealth v. Loadholt, 923 N.E.2d 1037, 1044 (Mass. 2010)	Arrest warrant	During arrest warrant execution, D found and immediately handcuffed	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2010	Commonwealth v. Kaleb, No. 09-P-1162, 2010 Mass. App. Unpub. LEXIS 942, *2 (Mass. App. Ct. Aug. 16, 2010)	Armed robbery	Same day as report, juvenile taken to holding cell, then asked	I don't want to know anything, except where the gun is	<i>Quarles</i> allowed admission of D's response
2010	State v. Myers, 2010 N.J. Super. Unpub. LEXIS 1836, *19 (N.J. Super. Ct. App. Div. Aug. 2, 2010)	Armed robbery	The next day, in the debriefing room	Location of gun?	<i>Quarles</i> did not allow the admission of D's response
2010	People v Mohabir, 910 N.Y.S.2d 407, 407 (N.Y. Sup. Ct. 2010)	Armed robbery	More than four days after the robbery	Location of gun?	<i>Quarles</i> did not allow the admission of D's response
2010	State v. Garnett, 2010-Ohio-5865, ¶14 (Ohio Ct. App. Dec. 2, 2010)	Traffic stop, discovered gun	During the course of the stop, prior to searching the car	I'm going to look in the car for weapons or drugs	<i>Quarles</i> allowed admission of D's response
2010	Anderson v. Commonwealth, 688 S.E.2d 605, 609 (Va. 2010)	Officer on patrol	Officer on patrol approached D, D fled, officer apprehended D and asked question	Is the gun loaded?	<i>Quarles</i> allowed admission of D's response
2011	United States v. Simmons, 661 F.3d 151, 155 (2d Cir. 2011)	Call about a man with a gun	Immediately, D located in apartment, asked question	Location of gun?	<i>Quarles</i> allowed admission of D's response, as well as the gun
2011	Martinez v. Connelly, No. 09-CV-648, 2011 U.S. Dist. LEXIS 127293, *5 (S.D.N.Y. Nov. 3, 2011)	Stabbing	Apartment secured	Location of knife?	<i>Quarles</i> not material to holding, but the court says in dicta that the public safety exception would have applied
2011	United States v. Ferguson, No. 10 Cr. 843 (LTS), 2011 U.S. Dist. LEXIS 37205, *17 (S.D.N.Y. Apr. 4, 2011)	Shooting	Immediate response	Location of gun?	<i>Quarles</i> allowed admission of D's response
2011	United States v. Judge, 447 Fed. App'x 409, 415 (3d Cir. 2011)	Shooting, murder	Immediate response, officers found D hiding in a field	Location of gun?	<i>Quarles</i> allowed admission of D's response



Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2011	United States v. Powell, 444 Fed. App'x 517, 520 (3d Cir. 2011)	Armed bank robbery	Search warrant executed months after bank robbery	Are they any weapons in your house?	<i>Quarles</i> allowed admission of D's response
2011	United States v. Fautz, 812 F. Supp. 2d 570, 633 (D.N.J. 2011)	Search warrant	Search warrant execution	Location of weapon?	<i>Quarles</i> did not allow the admission of D's response
2011	United States v. Coleman, No. 10-484 (JBS), 2011 U.S. Dist. LEXIS 71272, *12 (D.N.J. July 1, 2011)	Suspicious parked car	Officers approached D	Why do you have this gun?	<i>Quarles</i> did not allow the admission of D's response
2011	United States v. Powell, No. 5:10 CR45, 2011 U.S. Dist. LEXIS 27222, *3 (N.D. W. Va. Mar. 16, 2011)	Call about a man with a gun	Immediate response	Location gun, concealed weapon, military ID	<i>Quarles</i> allowed admission of one statement but not the others
2011	United States v. Fuentes, No. 4:11 CR118, 2011 U.S. Dist. LEXIS 153004, *10 (E.D. Tex. Nov. 10, 2011)	Domestic disturbance with a gun	Immediate response, made contact with D and handcuffed him, then asked question	Location of gun?	<i>Quarles</i> allowed admission of D's response
2011	United States v. Ayala, No. 4:10-CR-234, 2011 U.S. Dist. LEXIS 49454, *10 (E.D. Tex. May 9, 2011)	Domestic disturbance call	Immediate response, officers forced entry, asked sometime into the interaction	Are there any guns in the home?	<i>Quarles</i> did not allow the admission of D's response
2011	United States v. Umar Farouk Abdulmutallab, No. 10-20005, 2011 U.S. Dist. LEXIS 105462, *4 (E.D. Mich. Sept. 16, 2011)	Possible terrorist attack (attempted bombing)	Same day within four hours, D taken to hospital, fifty minutes of questioning	Identify any other attackers or other potentially imminent attacks	<i>Quarles</i> allowed admission of D's response
2011	United States v. Moore, No. 10 CR 896, 2011 U.S. Dist. LEXIS 133140, *9 (N.D. Ill. Nov. 18, 2011)	Armed robbery	"Short time later"	Location of gun?	<i>Quarles</i> allowed admission of D's response
2011	United States v. Delgado, 814 F. Supp. 2d 874, 893 (E.D. Wis. 2011)	Shooting	Immediate response	Criminal record	<i>Quarles</i> did not allow admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2011	United States v. Lopez-Sanchez, No. 3:11-CR-00008-JD, 2011 U.S. Dist. LEXIS 86376, *24 (N.D. Ind. Aug. 4, 2011)	Suspected drug activity	Immediate	Securing the D's firearm	Court used <i>Quarles</i> to justify securing the D's shotgun
2011	United States v. Miller, No. 3:09-cr-11-RLY-WGH, 2011 U.S. Dist. LEXIS 16751, *9 (S.D. Ind. Feb. 19, 2011)	Armed robbery	While D was being handcuffed	Do you have any weapons in the car?	<i>Quarles</i> allowed admission of D's response
2011	United States v. Basher, 629 F.3d 1161, 1167 (9th Cir. 2011)	Shooting	Immediate response	Are there any weapons present?	<i>Quarles</i> allowed the admission of the D's response
2011	United States v. Crisosto-Vera, 10-1592-TUC-CKJ, 2011 U.S. Dist. LEXIS 87610, *4 (D. Ariz. Aug. 5, 2011)	Gun	Immediate	Location of gun?	<i>Quarles</i> allowed the admission of D's response
2011	United States v. Mora, No. 2:10-cr-00320 MCE, 2011 U.S. Dist. LEXIS 50857, *2 (E.D. Cal. May 9, 2011)	Marijuana operation	Officers surrounded D, immediately placed in handcuffs	Any other people or guns present?	<i>Quarles</i> allowed admission of D's response
2011	Williams v. Jacquez, No. CIV S-05-0058 LKK GGH, 2011 U.S. Dist. LEXIS 16442, *4 (E.D. Cal. Feb. 18, 2011)	Stabbing	Immediate response	Location of the victim?	An expanded version of <i>Quarles</i> , the rescue doctrine, allowed the admission of the statement
2011	United States v. Vega-Rubio, No. 2:09-cr-00113-GMN-PAL, 2011 U.S. Dist. LEXIS 8656, *25 (D. Nev. Jan. 21, 2011)	Missing child, kidnapping	Three months after the kidnapping	Location of missing child?	<i>Quarles</i> allowed the admission of D's responses
2011	State v. Yokley, No. E2009-02646-CCA-R3-CD, 2011 Tenn. Crim. App. LEXIS 357, *64 (Tenn. Crim. App. May 20, 2011)	Shooting, second degree murder	Immediate response, asked during pat-down	Weapons?	<i>Quarles</i> allowed admission of D's response

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2011	Underwood v. State, 252 P.3d 221, 236 (Okla. Crim. App. 2011)	Murder, missing child	Two days after girl went missing	Where is she?	<i>Quarles</i> allowed admission of D's response (rescue doctrine)
2011	People v Bowens, 958 N.Y.S.2d 647, 647 (N.Y. Sup. Ct. 2011)	Shooting	D taken into custody "soon after the shootings," asked question immediately	Question about the gun?	<i>Quarles</i> allowed admission of D's response
2011	People v Zalevsky, 918 N.Y.S.2d 790, 793 (N.Y. App. Div. 2011)	Second degree murder	Questioning before and after they found victim's body, D in custody	Victim's whereabouts	<i>Quarles</i> allowed admission of some of D's responses but not all
2011	State v. Melendez, 30 A.3d 320, 336 (N.J. Sup. Ct. App. Div. 2011)	Murder	Two days after the crime, officer came into contact with D, D surrendered, then asked	Any guns or weapons on you?	<i>Quarles</i> did not allow admission of D's responses, but responses were admissible on other grounds
2011	State v. Baker, No. A-2708-09T2, 2011 N.J. Super. Unpub. LEXIS 2401, *16 (N.J. Sup. Ct. App. Div. Sept. 14, 2011)	Robbery	Immediate response, officer chased and apprehended D, asked question immediately	Do you have a weapon in your possession?	<i>Quarles</i> allowed admission of D's response
2011	State v. Kraszewski, No. A-3080-09T2, 2011 N.J. Super. Unpub. LEXIS 1753, *11 (N.J. Sup. Ct. App. Div. July 5, 2011)	Aggravated assault	Immediate response, asked before arrest	Where's the gun?	<i>Quarles</i> did not allow admission of D's response
2011	People v Perez, 85 A.D.3d 1538, 1540 (N.Y. App. Div. 2011)	Prison incident	Asked before pat-down in prison	Do you have anything on you?	<i>Quarles</i> allowed admission of D's response
2011	People v. Davis, 2011 IL App (3d) 090454-U, ¶21 (Ill. App. Ct. 2011)	Possession with intent to deliver	After arrest	Do you have anything illegal on you?	<i>Quarles</i> allowed admission of D's response
2011	Commonwealth v. McCollum, 945 N.E.2d 937, 952 (Mass. App. Ct. 2011)	Surveillance of stolen car	D fled, officers located him, asked after protective sweep of the apartment	Do you have a gun in the apartment?	<i>Quarles</i> allowed admission of D's response
2011	Dike v. Commonwealth, 358 S.W.3d 495, 499 (Ky. Ct. App. 2011)	Arrest warrant execution	During execution of arrest warrant, asked upon locating and handcuffing D inside home	Asked about the amount and type of drugs taken?	<i>Quarles</i> did not allow admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2011	State v. Johnson, 46 Kan. App. 2d 387, 393 (Kan. Ct. App. 2011)	Traffic stop, drugs	After sobriety tests, D placed under arrest, asked prior to pat-down	Any weapons? Anything on your person we need to know about?	<i>Quarles</i> allowed admission of D's response
2011	Lamb v. State, 251 P.3d 700, 705 (Nev. 2011)	First degree murder	Within hours of shooting, D detained, asked immediately, prior to search	Asked any people, dog, or weapons in the apartment?	<i>Quarles</i> allowed admission of D's response
2011	Bowling v. State, 289 Ga. 881, 888 (Ga. 2011)	Murder	Officers arrived within minutes of the shooting, asked immediately after taking D into custody	Where's the weapon?	<i>Quarles</i> allowed admission of D's response
2011	People v. Arizmendi, No. H035784, 2011 Cal. App. Unpub. LEXIS 7284, *8 (Cal. Ct. App. Sept. 27, 2011)	Possession of assault weapon	Immediate response, asked after D taken into custody	Not clear	<i>Quarles</i> allowed warrantless search
2011	People v. Montalbo, No. F060053, 2011 Cal. App. Unpub. LEXIS 6187, *8 (Cal. Ct. App. Aug. 16, 2011)	911 call about robbery	Immediate response	Warrantless search of D's house	<i>Quarles</i> allowed warrantless search
2011	United States v. Holsey, No. 4:06-cr23-RH, 2011 U.S. Dist. LEXIS 146534, *13 (N.D. Fla. Nov. 14, 2011)	Firearm charges, search warrant	Search warrant executed day after crime	Any guns in the house?	<i>Quarles</i> would have allowed admission of D's responses and the search
2011	United States v. Dominguez, No. 11-CR-0129-CVE, 2011 U.S. Dist. LEXIS 118750, *9 (N.D. Okla. Oct. 13, 2011)	Drug charges, search warrant	During search warrant execution, D secured and then asked question	Anyone else present in the house?	<i>Quarles</i> allowed admission of D's response
2012	United States v. Cobb, No. 3:12-CR-53, 22012 U.S. Dist. LEXIS 186155, *27 (E.D. Tenn. Dec. 27, 2012)	Traffic stop, outstanding warrants	D handcuffed and placed in patrol car	Any guns hidden in the vehicle?	<i>Quarles</i> did not allow admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2012	United States v. Bunch, 2012 U.S. Dist. LEXIS 190428, *70 (N.D. Ga. Dec. 19, 2012)	Marijuana investigation, search warrant	During execution of a search warrant, asked immediately after arrest	Anyone else present in the house?	<i>Quarles</i> allowed admission of D's response
2012	United States v. Wilson, 914 F. Supp. 2d 550, 560 (S.D.N.Y. 2012)	Call about domestic disturbance with a gun	D arrested, driven back to scene of disturbance, then asked	Location of the gun?	<i>Quarles</i> allowed admission of D's responses about the location of the gun
2012	United States v. Chavez-Maciel, No. 1:10-CR-00490-TCB-LTW, 2012 U.S. Dist. LEXIS 183038, *31 (N.D. Ga. Dec. 7, 2012)	Arrest warrant, traffic stop	During execution of arrest warrant forty-five minutes after stop, asked after the protective sweep	Any contraband in the residence?	<i>Quarles</i> did not allow admission of D's response
2012	United States v. Ferguson, 702 F.3d 89, 94 (2d Cir. 2012)	911 call, firearm discharged	Hour or so after crime, D arrested, questioned at station	Interrogation about finding the gun	<i>Quarles</i> allowed admission of D's responses
2012	Moreno v. California, No. CV 12-00981-SVW (SH), 2012 U.S. Dist. LEXIS 187929, *24 (C.D. Cal. Nov. 30, 2012)	Attempted murder	During transport to station, in the patrol car, shortly after being detained	Questions about location of the gun	<i>Quarles</i> allowed admission of D's responses
2012	People v. De Leon, 2012 IL App (2d) 111124-U, ¶47 (Ill. App. Ct. 2012)	D threatened to shoot two people, felon	Immediate response, officers entered home, asked before search and before arrest	Any weapons in the apartment?	<i>Quarles</i> allowed admission of D's responses
2012	United States v. Mohammed, No. 10-4145, 2012 U.S. App. LEXIS 22908, *33 (6th Cir. 2012)	Drug charges	Immediately after arrest, arrest moments after crime	Any drugs or weapons on you? Anything sharp on you?	<i>Quarles</i> allowed admission of D's responses
2012	United States v. Paetsch, 900 F. Supp. 2d 1202, 1220 (D. Colo. 2012)	Bank robbery	More than an hour and a half after the crime, D secured and asked	Location of the gun?	<i>Quarles</i> did not allow admission of D's responses
2012	United States v. Ashmore, No. 2:12-CR-34, 2012 U.S. Dist. LEXIS 161612, *13 (E.D. Tenn. Oct. 2, 2012)	Arrest warrant, drug charges	Arrest warrant executed a couple weeks after crime, D asked immediately after arrest	Do you have anything dangerous on you or in the car?	<i>Quarles</i> did not allow admission of D's response

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2012	United States v. Stevens, No. 1:12 CR 238, 2012 U.S. Dist. LEXIS 121260, *16 (N.D. Ohio Aug. 27, 2012)	Occupy Movement participant, not clear	Four hour interview, seems to have taken place in an interview room somewhere	Questions about his involvement, not entirely clear	<i>Quarles</i> allowed admission of D's responses
2012	United States v. Rucker, No. 5:12-cr-5-RS, 2012 U.S. Dist. LEXIS 78323, *10 (N.D. Fla. June 6, 2012)	Drug trafficking investigation	Surveillance for some time, asked immediately after D was secured and handcuffed	Any weapons on you?	<i>Quarles</i> allowed admission of D's response
2012	Deputy v. McQuiggin, No. 2:10-cv-334, 2012 U.S. Dist. LEXIS 188773, *15 (W.D. Mich. June 28, 2012)	Robbery	Wife stated that D committed a robbery, officer asked immediately	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2012	United States v. Williams, 681 F.3d 35, 41 (2d Cir. 2012)	Search warrant, recovered firearms	During execution of a search warrant, officer asked within a minutes of entering apartment	Whose firearms? Where are the other firearms? The other guy?	<i>Quarles</i> allowed admission of D's responses made at the scene
2012	Williams v. Jacquez, 472 Fed. App'x 851, 852 (9th Cir. 2012)	Not clear	Opinion does not clearly state	Not clear	<i>Quarles</i> allowed admission of D's responses
2012	Watson v. United States, 43 A.3d 276, 287 (D.C. 2012)	Traffic stop	Officer stopped D's vehicle, placed him under arrest, asked during search	What's that? (bulge in sock)	<i>Quarles</i> allowed admission of D's response
2012	United States v. Hill, No. 3:07 CR407, 2012 U.S. Dist. LEXIS 33681, *9 (E.D. Va. Mar. 12, 2012)	Search warrant, drugs	Before executing search warrant, officers performed traffic stop, D placed in handcuffs	Anyone else in the apartment? Is there a gun? Drugs?	Court does not clearly decide on the <i>Quarles</i> issue
2012	State v. Hines, No. A-4206-10T4, 2012 N.J. Super. Unpub. LEXIS 177, *5 (N.J. Super. Ct. App. Div. Jan. 27, 2012)	Drug charges	Immediate after arrest	Is there a gun that can harm officers?	<i>Quarles</i> allowed admission of D's response
2012	State v. Wood, No. 2 CA-CR 2011-0193, 2012 Ariz. App. Unpub. LEXIS 115, *3 (Ariz. Ct. App. 2012)	Prison assault	D handcuffed shortly after incident, asked immediately	What's going on?	<i>Quarles</i> allowed admission of D's response

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2012	People v. Alger, No. A126581, 2012 Cal. App. Unpub. LEXIS 79, *55 (Cal. Ct. App. Jan. 31, 2012)	Murder, kidnapping	D apprehended hours after crime, taken to field office for interview	Several questions about what happened	<i>Quarles</i> should have allowed admission of D's responses
2012	State v. Sexton, 2012-Ohio-658, ¶15 (Ohio Ct. App. Feb. 7, 2012)	Drugs	Immediately after stop	What are you reaching for?	<i>Quarles</i> allowed admission of D's response
2013	People v. Shah, 980 N.Y.S.2d 724, 728 (N.Y. Sup. Ct. 2013)	Assault in jail	Shortly after the fight, D taken to intake area for questioning	Series of questions	<i>Quarles</i> did not allow admission of D's response
2013	State v. Reed, No. M2012-02542-CCA-R3-CD, 2013 Tenn. Crim. App. LEXIS 1011, *36 (Tenn. Crim. App. Nov. 20, 2013)	Felony murder	Nine minutes	Why are you here? Are you alone?	<i>Quarles</i> allowed admission of D's responses
2013	United States v. Edmonds, No. 12-70, 2013 U.S. Dist. LEXIS 160773, *41 (W.D. Pa. Nov. 12, 2013)	Guns	Immediately after being taken into custody	Do you have a permit?	<i>Quarles</i> did not allow admission of D's response
2013	United States v. Colbert, 542 Fed. App'x 700, 701 (9th Cir. 2013)	Intent to distribute cocaine	"A couple of minutes" after handcuffing D, prior to pat-down, not clear on time after crime	Any weapons on your body?	<i>Quarles</i> allowed admission of D's response
2013	United States v. Chartier, No. 13-CR-18-LRR, 2013 U.S. Dist. LEXIS 150778, *22 (N.D. Iowa Oct. 21, 2013)	Officer on patrol, drugs	Thirteen minutes into the traffic stop	Anything that would stick him? Any controlled substances on you?	<i>Quarles</i> allowed admission of some of D's responses, but not all
2013	People v. Mendez, No. E057294, 2013 Cal. App. Unpub. LEXIS 7299, *7 (Cal. Ct. App. Oct. 10, 2013)	Guns and drugs	Officers responded immediately to call, D surrendered an hour later, asked immediately	Location of gun?	<i>Quarles</i> allowed admission of D's response

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2013	United States v. Goldstein, No. 2:10-cr-00525-JAD-PAL, 2013 U.S. Dist. LEXIS 137567, *9 (D. Nev. Sept. 25, 2013)	Carjacking	Five to eight minutes, asked immediately upon being taken into custody	Where is the gun?	<i>Quarles</i> did not allow admission of D's response because the government failed to distinguish this questioning from other questioning
2013	United States v. Arroyo, 972 F. Supp. 2d 112, 121 (D. Mass. 2013)	Call about domestic disturbance	During execution of a search warrant one day later, D handcuffed and taken to the basement	Questions about drug trafficking	<i>Quarles</i> allowed admission of D's statements about the handgun
2013	United States v. Rogers, No. 13-cr-130 (ADM/JJG), 2013 U.S. Dist. LEXIS 173175, *28 (D. Minn. Aug. 29, 2013)	Search warrant, explosive devices and firearms	D transported to interview room, questioned for forty minutes pre- <i>Miranda</i>	Questions about explosives	<i>Quarles</i> allowed admission of D's response
2013	Conn. v. Bardales, No. CR11000486 73, 2013 Conn. Super. LEXIS 1651, *14 (Conn. Super. Ct. July 24, 2013)	Drugs and guns	Officer stopped D's vehicle, asked before search	Anything in the vehicle I should be concerned about?	<i>Quarles</i> allowed admission of D's response
2013	Commonwealth v. Martin, No. 1552 MDA 2012, 2013 Pa. Super. Unpub. LEXIS 3069, *8 (Pa. Super. Ct. 2013)	Report of a man with a weapon	Immediate response, officers pursued D, asked immediately upon apprehending D	Where's the gun?	<i>Quarles</i> allowed admission of D's response
2013	United States v. Noonan, No. 12-CR-1016-LRR, 2013 U.S. Dist. LEXIS 17794, *18 (N.D. Iowa Feb. 11, 2013)	Traffic stop, reasonable suspicion	D placed in the back of the patrol car after search, questioned thereafter	Series of questions; any weapons or contraband in car?	<i>Quarles</i> allowed admission of D's response
2013	United States v. Stanton, No. 11-57, 2013 U.S. Dist. LEXIS 8983, *16 (W.D. Pa. Jan. 22, 2013)	Drugs and guns	After arrest	Questions about concealed carry license and biographical information	<i>Quarles</i> allowed admission of D's response
2013	State v. Fontaine, No. CR-12-4193, 2013 Me. Super. LEXIS 7, *3 (Me. Super. Ct. Jan. 22, 2013)	Assault	After arrest	Asked about what happened at the mall	<i>Quarles</i> did not allow admission of D's response



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2013	United States v. Forney, No.3:12-cr-00381-FDW-DCK, 2013 U.S. Dist. LEXIS 74624, *30 (W.D.N.C. May 28, 2013)	Traffic stop	Fifteen minutes into the stop, D outside of vehicle but not handcuffed	Any contraband in the car?	<i>Quarles</i> allowed admission of D's response
2013	United States v. Jeronimo-Rodas, No. 4:13-cr-00153-RBH, 2013 U.S. Dist. LEXIS 72970, *14 n.4 (D.S.C. May 23, 2013)	Firearms investigation	Officer stopped D's vehicle, asked during unrestrained ride back to the residence	Anything that could hurt the officers?	<i>Quarles</i> was not material to holding, but the court says in a footnote that it would have applied
2013	United States v. Hodge, 714 F.3d 380, 385 (6th Cir. 2013)	Search warrant, drugs, guns, and a pipe bomb	During search warrant execution, D detained and asked immediately after being handcuffed	Anything that could hurt the officers? Question about a bomb	<i>Quarles</i> allowed admission of D's response
2013	State v. Hughes, 2013-Ohio-808, ¶24 (Ohio Ct. App. Mar. 8, 2013)	Traffic stop, drugs	D placed in handcuffs, asked during pat-down	Anything that will poke or stick the officer?	<i>Quarles</i> allowed admission of D's response
2013	United States v. Harris, No. 11-00118-01-CR-W-DGK, 2013 U.S. Dist. LEXIS 45822, *4 (W.D. Mo. Mar. 7, 2013)	Traffic stop	D placed under arrest, asked after searching the car	You know I asked you. . . . There's a freaking gun	<i>Quarles</i> allowed admission of D's response
2014	United States v. Headbird, No. 14-cr-331 (PJS/LIB)(1), 2014 U.S. Dist. LEXIS 180911, *19 (D. Minn. Dec. 22, 2014)	Possession of firearm	Stand-off shortly after report, officer made contact with D over the phone	Phone conversation about hostages	<i>Quarles</i> allowed admission of D's response
2014	People v. Brooks, No. 317402, 2014 Mich. App. LEXIS 2441, *47 (Mich. Ct. App. Dec. 11, 2014)	Assault with a deadly weapon	Officers responded immediately, no custodial arrest	Question about the gun	<i>Quarles</i> allowed admission of D's response
2014	United States v. Peace, No. 4:14-CR-011-01-HLM-WEJ, 2014 U.S. Dist. LEXIS 169112, *4 (N.D. Ga. Dec. 8, 2014)	Terrorist plot, destructive devices	D arrested, taken to be interviewed at the jail, questioned for forty minutes	Question about failed pipe bomb	<i>Quarles</i> allowed admission of D's response

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2014	United States v. Smith, No. 1:14 CR232, 2014 U.S. Dist. LEXIS 163440, *16 (N.D. Ohio Nov. 21, 2014)	Officers on patrol, felon in possession of weapon	Officers approached, D fled, officers apprehended D and immediately asked question	Anything on your person we should know about?	<i>Quarles</i> allowed admission of D's response
2014	People v. Rose, No. 1:14CR232, 2014 Cal. App. Unpub. LEXIS 8230, *6 (Cal. App. 2d Dist. Nov. 17, 2014)	False bomb threats	Immediately after detaining D, he was questioned	Questions about false bomb threats	The trial court found that <i>Quarles</i> did not apply
2014	State v. Joel I.-N. (In the Interest of Joel I.-N.), 856 N.W.2d 654, 658 (Wis. Ct. App. 2014)	Armed robbery	Search for suspects, D arrested, taken to hospital, questioned while in the ambulance	Questions about the robbery and accomplices	<i>Quarles</i> allowed admission of D's response
2014	United States v. Shoen, No. 14-cr-00031(1)(JNE/TNL), 2014 U.S. Dist. LEXIS 143870, *11 (D. Minn. Sept. 8, 2014)	Traffic stop, found guns	Surveillance of D, traffic stop, questioned immediately after taking D into custody	Any other weapons on you?	<i>Quarles</i> allowed admission of D's response
2014	United States v. Bunnell, No. CR-14-00119-001-PHX-DGC, 2014 U.S. Dist. LEXIS 120974, *7 (D. Ariz. Aug. 29, 2014)	Search warrant for drugs	Search warrant, asked D before executing	Anything in either location that could harm them?	<i>Quarles</i> allowed admission of D's response
2014	State v. Brown, 2014-Ohio-3257, ¶19 (Ohio Ct. App. July 25, 2014)	Shooting investigation, tampering with evidence	Day after the shooting, officer approached D, D fled, apprehended and placed in car, asked question	Where's the gun? (among other statements)	<i>Quarles</i> allowed admission of D's response
2014	United States v. Redrick, 48 F. Supp. 3d 91, 102 (D.D.C. 2014)	Arrest warrant for parole violation	While executing arrest warrant, D handcuffed, protective sweep of apartment, then asked question	Is there anything in here I need to know about?	<i>Quarles</i> did not allow admission of D's response
2014	United States v. Cesario, No. 14-cr-92(1)(PJS/TNL), 2014 U.S. Dist. LEXIS 97970, *19 (D. Minn. June 30, 2014)	Narcotics investigation	D apprehended before executing search warrant, asked immediately after handcuffing D	Anyone else in the hotel room? Any weapons or drugs?	<i>Quarles</i> allowed admission of D's response

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2014	United States v. Quinn, No. 13-00213-01-CR-W-DW, 2014 U.S. Dist. LEXIS 85821, *14 (W.D. Mo. May 15, 2014)	Wrecked stolen vehicle, found drugs	Shortly after crime, officer apprehended D, took him into custody, handcuffed, then asked question	Anything on your person that I need to be aware of?	<i>Quarles</i> allowed admission of D's response because the public to be protected can include the officers themselves
2014	People v. Lubrano, 985 N.Y.S.2d 754, 757 (N.Y. App. Div. 2014)	911 call about aggravated assault with a gun	Stand-off shortly after crime, officer contacted D on the telephone	Opinion does not clearly state officer's question	<i>Quarles</i> allowed admission of D's responses
2014	United States v. Calix, No. 3 CR 582(RPP), 2014 U.S. Dist. LEXIS 67146, *22 (S.D.N.Y. May 12, 2014)	Armed bank robbery	During execution of arrest warrant, D placed in custody, asked after receiving consent to search	Anything in the bedroom we need to be aware of? Where's the gun?	<i>Quarles</i> allowed admission of D's response
2014	State v. Neyland, 12 N.E.3d 1112, 1137 (Ohio 2014)	911 call about shots fired, aggravated murder	D apprehended about three hours after crime, officers asked before hand-cuffing him	Do you have any weapons?	<i>Quarles</i> allowed admission of D's response
2014	United States v. Hernandez, 751 F.3d 538, 541 (7th Cir. 2014)	Officers on patrol, suspicious behavior, guns and drugs	Officers approached D, D arrested, then asked question	What's in the red bag?	<i>Quarles</i> allowed admission of D's response
2014	People v. Scott, 43 Misc. 3d 1215(A), 1215A (N.Y. Sup. Ct. 2014)	911 call about burglary in progress	Officers responded immediately, D detained at scene, asked immediately	Where are the guns?	<i>Quarles</i> allowed admission of D's response
2014	People v. Jemmott, 984 N.Y.S.2d 443, 446 (N.Y. App. Div. 2014)	Threat with a gun	D stopped very shortly after crime, asked after pat-down & D handcuffed	Do you have a gun or did you toss it away?	<i>Quarles</i> allowed admission of D's response
2014	State v. Smith, 86 A.3d 524, 530 (Conn. App. Ct. 2014)	911 call about robbery & assault	D turned himself in forty minutes after crime, placed in hand-cuffs, and asked question	Do you have any weapons?	<i>Quarles</i> allowed admission of D's response
2014	State v. Maxwell, 9 N.E.3d 930, 962 (Ohio 2014)	Aggravated murder	D arrested a couple weeks after crime, asked as D was being handcuffed	Do you have any weapons on or near you?	<i>Quarles</i> did not allow admission of D's response

Year	Case	Why did the Police become Involved?	Time Between Crime and Questioning	Question Asked by Officer	Did <i>Quarles</i> allow admission?
2014	United States v. Smith, No. 2:13 CR46, 2014 U.S. Dist. LEXIS 1439, *12 (N.D. W. Va. Jan. 7, 2014)	Arrest warrant found	During execution of arrest warrant, officer asked during pat-down	What's the substance in the bag?	<i>Quarles</i> did not allow admission of D's response
2014	State v. Teats, No. M2012-01232-CCA-R3-CD, 2014 Tenn. Crim. App. LEXIS 18, *40 (Tenn. Crim. App. Jan. 10, 2014)	Robbery	After being taken into custody	Location of the gun?	<i>Quarles</i> allowed admission of D's response
2014	State v. Cook, No. 12-0836, 2014 W. Va. LEXIS 127, *6, 2014 WL 620478 (W. Va. Feb. 12, 2014)	First degree murder	Questioned at the scene of the crime and at the station in the interview room	Location of gun, opinion does not clearly state officer's questions	<i>Quarles</i> allowed admission of D's responses
2015	United States v. Silva, No. 2:15-cr-1, 2015 U.S. Dist. LEXIS 57609, *26 (N.D. W. Va. Apr. 10, 2015)	Narcotics investigation, traffic stop	During the traffic stop	Any drugs or weapons in the vehicle?	The court did not reach the <i>Quarles</i> issue because it found that D was not in custody for <i>Miranda</i> purposes
2015	United States v. Bohn, No. 3:12-CR-63 RLM, 2015 U.S. Dist. LEXIS 45146, *15 (N.D. Ind. Apr. 7, 2015)	Parole violation, found drugs	Several hours, during execution of a search warrant	Anything in the house that can harm?	<i>Quarles</i> allowed admission of D's response
2015	Reyes v. Artus, No. 10cv7379 (LAP)(MHD), 2015 U.S. Dist. LEXIS 34505, *73 (S.D.N.Y. Mar. 12, 2015)	Second degree murder	Immediately upon finding D, timing is not clear	Where's the gun? Where is the cylinder?	<i>Quarles</i> allowed admission of D's response
2015	United States v. Terrell, No. 12 CR 0049, 2015 U.S. Dist. LEXIS 27464, *5 (N.D. Ill. Mar. 6, 2015)	Search warrant	During execution of a search warrant, asked immediately after the arrest at the home	Where are the guns?	<i>Quarles</i> allowed admission of D's response
2015	Solis-Caseres v. State, No. 09-13-00580-CR, 2015 Tex. App. LEXIS 2046, *12 (Tex. Crim. App. Mar. 4, 2015)	Arrest warrant, murder	D walked into police substation, officers arrested D on outstanding warrant, asked immediately	Where's the gun?	<i>Quarles</i> allowed admission of D's response

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2015	People v. Session, No. E060544, 2015 Cal. App. Unpub. LEXIS 1412, *13–14 (Cal. Ct. App. Feb. 25, 2015)	Investigation of abuse, found guns and drugs	Officer and CPS officer went to D's home, entered, asked immediately after arrest	Where do you keep your gun?	<i>Quarles</i> allowed admission of D's response
2015	People v. Broderick, No. E060006, 2015 Cal. App. Unpub. LEXIS 700, *9 (Cal. Ct. App. Jan. 30, 2015)	911 call, armed robbery	Officer responded, stopped D on motorcycle, asked immediately after arrest	Location of the gun?	<i>Quarles</i> allowed admission of D's response, despite D's invocation of the right to counsel
2015	United States v. Buchanan, No. 3:14-00062, 2015 U.S. Dist. LEXIS 6117, *25 (M.D. Tenn. Jan. 20, 2015)	Possession of incendiary devices	Car wreck, D subjected to sobriety tests, D arrested, asked while in the back of the patrol car	Anything illegal or of value? Been in trouble before?	<i>Quarles</i> not material to holding, but the court seems to suggest in dicta that it would apply
2015	United States v. Luckett, No. 6:14-cr-192-Orl-37KRS, 2015 U.S. Dist. LEXIS 3860, *7–8 (M.D. Fla. Jan. 13, 2015)	Possession of a firearm	After arrest, during search incident to arrest	Immediately asked numerous questions	<i>Quarles</i> not material to holding because the evidence is admissible under the inevitable discovery doctrine
2015	People v. Lachris Shoneteze Brown, No. H039502, 2015 Cal. App. Unpub. LEXIS 178, *49 (Cal. Ct. App. Jan. 12, 2015)	Drugs, surveillance on D	After arrest, D placed in the back of the patrol car and asked	Do you have anything illegal on you?	<i>Quarles</i> allowed admission of D's response
2015	Merriweather v. City of New York, No. 12 Civ. 5258 (KPF), 2015 U.S. Dist. LEXIS 432, *34 (S.D.N.Y. Jan. 5, 2015)	Drugs	During the execution of the search warrant	Do you have anything in the room?	<i>Quarles</i> allowed admission of D's response