

Allen v. Roe
(9th Cir. 2002) ___ F.3d ___

ISSUE

Did officers violate *Miranda* when they questioned a murder suspect about the location of a gun?

FACTS

Allen shot and killed his son at a homeless encampment in a rural area of Sacramento. When officers arrived they spoke with a man who said he'd heard gunshots and later saw that the victim's head was bleeding. It's not clear whether the man or someone else told officers that Allen was a shooter. In any event, the officers and the court were satisfied that there was probable cause to arrest him for the shooting. Accordingly, a description of Allen was broadcast over the police radio, and officers in the vicinity began looking for him.

A short time later, two officers spotted Allen talking on a pay phone at a gas station about a mile from the crime scene. They arrested him and conducted a pat search but did not find a gun. They also looked for the gun in the phone booth and in the surrounding area but did not find it.

While transporting Allen back to the crime scene, one of the officers pointed out to him that if the "wrong person" found the gun "it could hurt someone else." When they arrived, Allen told an officer, "I think I can show you where the gun is. . . . I don't want this to happen to someone else." Allen then led the officers to a trail near a levee where they found Allen's backpack with the gun inside.

During Allen's trial for first degree murder, his statements to the officers were admitted into evidence. He was convicted.

DISCUSSION

Allen contended his statements to the officers should have been suppressed because he had not waived his *Miranda* rights; in fact, he had not even been advised of his rights. The question was whether a waiver was required.

Ordinarily, officers must obtain a *Miranda* waiver before they "interrogate" a suspect who is "in custody." Here, it was apparent that Allen was "in custody" because he had been arrested. But was he "interrogated?"

The term "interrogation" includes both direct questioning and any words or conduct that were reasonably likely to elicit an incriminating response.¹ Although the officer did not expressly question Allen about the location of the gun, his comments were reasonably likely to elicit an incriminating response; i.e., a statement as to the location of the murder weapon.² Consequently, Allen did, in fact, have *Miranda* rights when he made the incriminating statements.

There is, however, an exception to the rule that officers must obtain a waiver before interrogating a suspect who is in custody. It is known as the "public safety" exception. Under this rule, officers need not obtain a waiver if they reasonably believed, (1) the suspect had information that would help them save a life, prevent serious injury, or

¹ See *Rhode Island v. Innis* (1980) 446 US 291, 301; *Arizona v. Mauro* (1986) 481 US 520, 526; *Pennsylvania v. Muniz* (1990) 496 US 582, 600-601; *People v. Stephens* (1990) 218 Cal.App.3d 575, 581; *People v. Wader* (1993) 5 Cal.4th 610, 637; *People v. Mickey* (1991) 54 Cal.3d 612, 651; *People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1161; *People v. Celestine* (1992) 9 Cal.App.4th 1370, 1374.

² See *Brewer v. Williams* (1977) 430 US 387.

neutralize a substantial threat to property, and (2) the officers' questions were reasonably necessary to eliminate the danger.³

Applying these requirements to the facts, the court ruled the public safety exception applied because, (1) a gun obviously poses a threat, (2) Allen knew its whereabouts, and (3) the officers' comments were directed at locating the gun and eliminating the danger. Said the court:

The police knew the gun was not at the campsite and that it was not in Allen's possession when he was arrested. Therefore, based on what the police did know, the gun could have been anywhere between the campsite and the arrest scene [I]t was reasonably possible that anyone could have found the gun and used it. It was therefore objectively reasonable for [the officer] to believe that there was a need to protect the safety of the public.
Allen's habeas petition was denied.

³ See *New York v. Quarles* (1984) 467 US 649, 655-6; *People v. Mayfield* (1997) 14 Cal.4th 668, 732 ["An officer need not give the *Miranda* warnings in a situation posing such a threat to the public safety that the officer's need for answers outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination."].