|  | **Despite Miranda Violation Statement May Be Admissible Under the Rescue Doctrine**<br><br>By Brian S. Batterton<br>Legal & Liability Risk Management Institute |  |

*Arizona v. Londo, 2006 Ariz. App. LEXIS 131; 489 Ariz. Adv. Rep. 3 (November 3, 2006)*

The Court of Appeals of Arizona recently decided *Arizona v. Londo,* and held that even though an officer conducted a non-*Mirandized* custodial interrogation of a drug suspect, the statement was admissible under the "rescue doctrine."[1]  In this case, undercover officers were working a drug sting.  Shortly after Londo's arrest for selling crack cocaine, he began to gag, sway, vomit and froth from the mouth.  The narcotics detective believed that Londo was experiencing a medical emergency and asked him if he had swallowed crack cocaine.  Londo admitted that he had, and the detective immediately called paramedics.  He subsequently transported Londo to the emergency room for treatment.

At trial, the judge allowed the admission of Londo's statement that he had swallowed crack cocaine.  Londo was convicted and he appealed.  He argued that the statement was made in response to a custodial interrogation in which the officer had not advised him of his *Miranda* rights.

In analyzing Londo's appeal, the Court first stated that the detective's question as to whether Londo swallowed crack cocaine was a "custodial interrogation" for the purposes of *Miranda*.[2] Londo was under arrest and the officer asked a question that was reasonably likely to elicit an incriminating response.[3]  The Court then stated that, despite the *Miranda* violation, the statement should be admissible under an off-shoot of the public safety exception, which was developed by the U.S. Supreme Court in *New York v. Quarles*[4], called the "private safety exception.*"*  The "private safety exception" states that, when a suspect is reasonably considered to be in urgent need of rescue to avoid serious injury or death, a statement may be admitted even though it was obtained in violation of *Miranda* provided that it was obtained in an effort to save the suspect's life.[5]  Similarly, under the "rescue doctrine," the courts apply a three prong test which is as follows: (1) the presence of an urgent need, and no other course of action promises relief; (2) there is an objectively reasonable concern of the need to save a human life by rescuing a person in danger; and (3) rescue is the primary purpose and motive of the interrogator.[6]  The Court went on to cite several cases from around the United States that have applied the "private safety exception" or the "rescue doctrine."[7]  It is important to note that not all states follow these exceptions.[8]

In *Londo*, the Court reasoned that this case meets all requirements of the "rescue doctrine."  First, there was an urgent need for the information because Londo was vomiting and frothing at the mouth which indicated an immediate, medical emergency.[9]  Second, the detective testified that, based upon his experience, crack cocaine can be life threatening, therefore he needed to determine the cause of the symptoms.[10]  Third, the detective testified that his primary motive for

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the question was to prevent Londo from dying in his custody.[11]  This was evidenced by the fact the detective immediately called for paramedics and then took Londo to the emergency room. Therefore, the Court of Appeals of Arizona held that Londo's statement, although a product of a custodial interrogation in violation of *Miranda,* was nonetheless admissible under the "private safety exception" or the "rescue doctrine."

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[1] *Arizona v. Londo,* 2006 Ariz. App. LEXIS 131; 489 Ariz. Adv. Rep 3 (November 3, 2006)

[2] 489 Ariz. Adv. Rep at 6.

[3] *Id.*

[4] 467 U.S. 649 (1984).

[5] 489 Ariz. Adv. Rep. at 9.  (citing *People v. Stevenson,* 59 Cal. Rptr. 2d 878, 880-881 (Cal. Ct. App. 1996)) (holding that statement by defendant that he had swallowed crack cocaine was admissible despite lack of Miranda warnings under the rescue doctrine.)

[6] *Id.* at 10 (citing *People v. Riddle,* 83 Cal. App. 3d 563, 148 Cal.Rptr. 170, 177 (Cal. Ct. App. 1978)

[7] *Id.* at 9 (citing *People v. Stevenson,* 59 Cal. Rptr. 2d 878, 880-881 (Cal. Ct. App. 1996)) (holding that statement by defendant that he had swallowed crack cocaine was admissible despite lack of Miranda warnings under the rescue doctrine.); *Benson v. State,* 698 So. 2d 333, 337-338 (Fla. Distr. Ct. App. 1997 (holding the "necessity of protecting the defendant's health must take precedence over the procedural safeguards of Miranda."); *State v. Betances,* 265 Conn. 493, 828 A. 2d 1248, 1255-57 (Conn. 2003)(extended the public safety exception to Miranda and held defendant's response to the question of "whether he swallowed drugs" was admissible even absent Miranda); *Thomas v. State,* 128 Md. App. 274, 737 A.2d 622 (Md. Ct. Spec. App. 1999)(holding that Miranda warnings were not needed when asking if a defendant who bit an officer had a transmittable disease); *State v. Provost*, 490 N.W.2d 93, 96-97 (Minn. 1992) (adopting and applying the rescue doctrine to admit defendant's statements to the police to locate his wife who was missing in a wildlife refuge); *People v. Swoboda*, 190 Misc. 2d 214, 737 N.Y.S.2d 821, 822-828 (N.Y. Crim. Ct. 2002) (distinguishing the rescue doctrine from the public safety exception and applying the rescue doctrine to admit statements of the defendant relating to the location of her missing baby); *State v. Kunkel*, 137 Wis. 2d 172, 404 N.W.2d 69, 76 (Wis. Ct. App. 1987) (applying the rescue doctrine to admit the defendant's statements relating to the whereabouts of his missing daughter).

[8] *Id.* at 10. citing *State v. Montoya*, 937 P.2d 145, 151-52 (Utah Ct. App. 1997)(holding that the court went far beyond the purpose of the "public safety exception" when they attempted to expand it to a "private safety exception" applicable to the defendants personal safety.)

[9] *Id.* at 11.

[10] *Id.*

[11] *Id.*

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