

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12333
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHNNY SMITH, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 5:23-cr-00031-MW-MJF-1

Before JILL PRYOR, BRANCH, and TJOFLAT, Circuit Judges.

PER CURIAM:

Johnny Smith Jr., a federal prisoner serving a 120-month sentence after pleading guilty to possession with intent to distribute 50 grams or more of methamphetamine and possession of a firearm

in furtherance of a drug trafficking offense, appeals the denial of his motion to suppress evidence.

First, the District Court did not err in denying Smith's motion to suppress evidence found in his residence because the search warrant affidavit established probable cause where law enforcement's controlled buy of methamphetamine sufficiently corroborated an earlier tip received by a confidential informant ("CI"). Next, the District Court did not err in finding that, given the facts known to the officers at the time they conducted an investigatory stop of Smith's vehicle, law enforcement had a reasonable suspicion that Smith possessed a firearm as a convicted felon. Finally, the District Court did not err in denying Smith's motion to suppress his pre-*Miranda*¹ statements because it properly found that the public safety exception² allowed for officers to inquire about a gun in the car before reading Smith his *Miranda* warnings.

Accordingly, we affirm.

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

² The District Court and the parties' briefs use the term "officer-safety exception." Our Circuit precedent, cited by both parties on appeal, uses the term "public safety exception." See *United States v. Newsome*, 475 F.3d 1221, 1223 (11th Cir. 2007); *New York v. Quarles*, 467 U.S. 649, 655–59, 104 S. Ct. 2626, 2631–33 (1984). Because *Quarles* and *Newsome* explicitly understand officer safety as a component of public safety exception analysis, we understand the terms to be interchangeable.

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I. BACKGROUND

A. The CI's Tip and the Controlled Buy Leads to a Search Warrant Affidavit

In November 2022, a CI working with the Bay County Sheriff's Office ("BCSO") provided information to Investigator Stephen Pettijohn that Johnny Smith Jr. and his wife, Brandy Sue Skipper, were selling methamphetamine from their residence.³ The CI physically showed Smith's residence to Investigator Pettijohn. Investigator Pettijohn confirmed Smith's identity through BCSO records and prior booking photographs, and, using BCSO's database, confirmed the residence was Smith's. Investigator Pettijohn searched Smith's arrest history within Bay County and discovered Smith had criminal charges dating to 2007, which included "principal to production of methamphetamine, possession of listed chemicals, possession of a weapon or ammo by a convicted felon, carrying a concealed weapon, possession of methamphetamine with intent to [sell, manufacture, or distribute] and numerous other charges."

Following the CI's tip, law enforcement organized a controlled buy of methamphetamine at Smith's residence. Law enforcement searched the CI, gave the informant money, and followed the informant to Smith's residence. Law enforcement observed the CI going into and coming from Smith's residence with

³ Investigator Pettijohn noted that he had never used this CI before, but the CI did not have any prior charges related to false statements or perjury.

no other stops or contacts. A few moments later, the CI emerged from the residence and provided officers with methamphetamine the informant claimed to have obtained from Smith. The CI also reported that, while Smith was not initially present during the transaction, Smith entered the residence before the completion of the controlled buy brandishing a sawed-off shotgun. The shotgun was not visible in law enforcement's recording of the controlled buy, but the audio captured the CI stating, "I don't want no trouble" as Smith entered the residence.

Following the controlled buy, Investigator Pettijohn submitted a search warrant affidavit for Smith's residence. The affidavit stated that the CI's tip and the controlled buy occurred within a twenty-one-day period before Investigator Pettijohn's submission of the affidavit. Bay County Judge E. William Dyer signed and issued the search warrant on November 21, 2022.

B. The Investigatory Stop and Arrest

Early the following morning, on November 22, 2022, law enforcement set up around Smith's residence and prepared to execute the search warrant. Investigator Pettijohn, who planned and coordinated the execution of the search warrant, testified he decided to detain Smith away from his residence because of safety concerns involving the presence of firearms in the residence, the

tactical disadvantage posed to law enforcement due to the residence's layout,⁴ and the presence of Smith's teenage children and multiple dogs within the home. Investigator Pettijohn stationed Deputy John Allen and Lieutenant David Higgins nearby to prepare for Smith's departure. Investigator Pettijohn told Allen and Higgins that Smith was a convicted felon, law enforcement had a search warrant for Smith's residence, and Smith was known to possess firearms.⁵

At around 6:30 a.m., Lieutenant Higgins observed Smith leaving his residence and alerted Deputy Allen. Deputy Allen followed Smith, activated his lights, and stopped Smith roughly one-third of a mile from Smith's residence. As Deputy Allen stopped Smith's truck, Lieutenant Higgins arrived and placed his vehicle in front of the truck. Lieutenant Higgins then approached the driver's side window of Smith's truck, told Smith that law enforcement was executing a search warrant at his residence, and asked Smith to step out of the truck. Deputy Allen asked Smith if he had any weapons in the truck. Smith replied there was a firearm in the truck. The officers removed Smith from the truck, handcuffed him, and read

⁴ Investigator Pettijohn testified that the residence could be fairly characterized as a "junkyard." From the dirt road outside the residence, "the house was recessed into the property . . . had a high fence around the perimeter of the property, and the interior of the property . . . was very filled with broke-down cars and scrap metal and anything and everything you could think of."

⁵ Lieutenant Higgins testified Investigator Pettijohn told him Smith had an "arsenal" at his residence. Law enforcement later recovered 27 firearms from Smith's home, in addition to the handgun recovered from Smith's truck.

him his *Miranda* warnings. Deputy Allen took Smith to the back of the truck, and Lieutenant Higgins searched Smith's truck. Lieutenant Higgins' search revealed a handgun under the center console and methamphetamine and drug paraphernalia in the back seat. After waiving his *Miranda* rights, Smith told the officers (1) the guns and drugs were his, (2) there were narcotics inside a box in his master bedroom, and (3) he bought four ounces of methamphetamine per week, selling two and keeping two. Deputy Allen placed Smith in the back of Allen's patrol car and took him into custody.

C. The Motion to Suppress Hearings

In August 2023, a federal grand jury charged Smith with knowing and intentional possession of 50 grams or more of methamphetamine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)(viii) ("Count One"); knowingly being a felon in possession of a firearm affecting interstate commerce, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8) ("Count Two"); and knowingly possessing a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i) ("Count Three"). Smith initially pleaded not guilty.

On April 26, 2024, Smith moved the District Court to suppress all items seized from his residence and vehicle and all statements he made as a result of his detention on November 22, 2022.

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The District Court held two hearings on Smith’s motion to suppress.⁶ At the first hearing, the Court heard testimony from Investigator Pettijohn, Deputy Allen, Lieutenant Higgins, and from Smith himself.

On the search warrant issue, the District Court found the warrant was supported by probable cause where a CI’s tip about drug trafficking was corroborated with a controlled buy at the same residence. The Court described this probable cause finding as a “no-brainer” and was “astound[ed]” by Smith’s position that the warrant neither established probable cause nor created an objective, good-faith basis for Investigator Pettijohn’s reliance on the signed warrant in executing the search of Smith’s residence. The Court also found that Smith received his *Miranda* warnings when officers secured Smith outside of his truck. In reaching this finding, the District Judge explained he “absolutely believe[d] that Lieutenant Higgins was telling the truth” when Lieutenant Higgins testified his common practice is to *Mirandize* a suspect as soon as he secures the suspect in handcuffs.⁷

After hearing additional arguments by both parties, the Court denied Smith’s motion to suppress evidence found in Smith’s residence and reserved ruling on the balance of the motion

⁶ Hearings on the motion to suppress were held on June 6, 2024, and August 20, 2024.

⁷ At the second hearing on Smith’s motion to suppress, the Court reiterated it “absolutely, one hundred percent found credible” the officers’ testimony in this case.

pending supplemental briefing by both parties. The Court's findings left two issues to be decided: (1) whether reasonable suspicion supported law enforcement's stop of Smith's truck and (2) whether the public safety exception applied to the officers' question to Smith about whether he had a firearm in his truck.

The Court held a second evidentiary hearing on Smith's motion to suppress on August 20, 2024. At the hearing, it summarized the issue before the Court:

There does not have to be probable cause to stop a vehicle, but there does have to be reasonable suspicion. The case law makes plain that while you can consider the officer's experience and while you can consider the criminal history, that those things alone are not enough. And there's also case law that says just because you've been seen with a gun before is not enough. So the question becomes when we combine those three things . . . is that enough to articulate a reasonable suspicion that [Smith] has a gun in the vehicle. . . . Is it reasonable suspicion, or is it a hunch?

After a thorough review of the parties' testimony and the case law, the District Court denied the balance of Smith's motion to suppress. In ruling on the motion, the Court explained its reasoning:

[T]he officers provided specific, articulable, and objective facts based on which they could reasonably suspect that Defendant was unlawfully in possession of a firearm. Namely, the officers' testimony, which this Court credits, established, among other things,

that (1) they were aware that Defendant had previously engaged in a suspected drug transaction with a confidential informant in the past three weeks, (2) the informant disclosed that during the transaction, Defendant brandished a sawed-off shotgun, (3) this information was corroborated by the audio recording of the transaction, (4) they were aware of Defendant's criminal history, including a prior felony conviction, (5) law enforcement was planning to execute a search warrant for Defendant's home based on suspected drug sales, and (6) their training and experience with respect to suspected drug dealers alerted them to the likelihood that Defendant would be armed for his own protection given his suspected drug trafficking activities. Although the information known to officers at the time of the traffic stop would not necessarily support an arrest supported by probable cause or a conviction beyond a reasonable doubt, these specific facts, in combination, provide sufficient support for a brief, investigatory stop founded upon a reasonable suspicion that Defendant was a convicted felon in possession of a firearm. This Court also finds that the officer-safety exception allowed for the officers to inquire about a gun in the car prior to Defendant receiving his Miranda warning.

On April 2, 2025, Smith pleaded guilty to Counts One and Three. The plea agreement stated that, although Smith waived his right to appeal his conviction and sentence, he reserved the right to appeal the denial of his motion to suppress.

II. STANDARDS OF REVIEW

We review a district court’s denial of a motion to suppress evidence under a mixed standard. *United States v. Morley*, 99 F.4th 1328, 1336 (11th Cir. 2024). We review the district court’s findings of fact under the clearly erroneous standard and its application of law to those facts de novo. *Id.* We give “due weight” to the inferences the district court and law enforcement officers draw from the facts. *Ornelas v. United States*, 517 U.S. 690, 699, 116 S. Ct. 1657, 1659 (1996). When reviewing a ruling on a motion to suppress, we must construe all facts in the light most favorable to the party prevailing in the district court. *United States v. Behety*, 32 F.3d 503, 510 (11th Cir. 1994).

III. DISCUSSION

On appeal, Smith argues that: (1) the District Court erred in denying his motion to suppress the evidence seized in his residence because the police’s search warrant was not supported by probable cause; (2) the District Court erred in denying Smith’s motion to suppress evidence seized from Smith’s truck because law enforcement lacked a reasonable suspicion of criminal activity when they made an investigatory stop of Smith’s truck; and (3) the District Court erred in denying Smith’s motion to suppress his statement during the investigatory stop that he had a gun in the truck based on the public safety exception to *Miranda*. We address each of Smith’s challenges in turn.

A. *The Search Warrant*

Smith argues that the residential search warrant was not supported by probable cause because the CI had never previously

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worked with law enforcement and therefore lacked a historical record of reliability. Smith also argues that the temporal gap between the controlled buy at Smith's residence and the issuance of the search warrant reduced the likelihood that contraband would be present at the time of the search.

The Fourth Amendment provides:

[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. For searches of a place, probable cause means a fair probability that contraband or evidence of a crime will be found in that particular place. *United States v. Holmes*, 141 F.4th 1183, 1194–95 (11th Cir. 2025). To establish probable cause, the affidavit must state facts “sufficient to justify a conclusion that evidence or contraband will probably be found at the premises to be searched.” *United States v. Martin*, 297 F.3d 1308, 1314 (11th Cir. 2002). The information in the affidavit must also be fresh. *Id.* “We give great deference to a lower court’s determination of probable cause.” *United States v. Bradley*, 644 F.3d 1213, 1263 (11th Cir. 2011).

Here, the search warrant affidavit established probable cause. The affidavit alleged that, within the past twenty-one days, Investigator Pettijohn had received a tip from a CI that Smith was

selling methamphetamine from the residence. It included Smith's criminal history.⁸ The affidavit also explained the process of the controlled buy executed in the same twenty-one-day period, in which law enforcement searched the CI, gave the informant money, and followed the informant to Smith's residence. Law enforcement observed as the CI went into Smith's residence with no other stops or contacts and emerged from the residence a few moments later, providing officers with methamphetamine the informant claimed to have obtained from Smith.

The information in the affidavit was neither stale nor uncorroborated. Smith's argument on appeal focuses on reliability of the CI, who had never previously cooperated with law enforcement, coupled with the twenty-one-day window between the controlled buy and Investigator Pettijohn's submission of the affidavit.

To support his argument that the CI was unreliable, Smith points to *Ortega v. Christian*, 85 F.3d 1521, 1525 (11th Cir. 1996), where we held that law enforcement lacked probable cause to execute an arrest where it relied solely on a confidential informant identifying the perpetrator of a crime. But *Ortega* is distinguishable

⁸ On appeal, Smith argues that the affidavit was misleading because it presented Smith's criminal history of arrests, even where those arrests did not result in formal charges or convictions. However, in ruling on the motion to suppress, the District Court found that the affidavit contained no material omission with respect to Smith's criminal history. Moreover, the District Court stated that even if it "struck [Smith's] criminal history, the rest of the information in the affidavit would still be enough to support a valid search warrant."

from the facts here. In *Ortega*, law enforcement took no steps “to investigate the informant’s tip” and gathered “no evidence . . . which would have corroborated the informant’s identification of Ortega as a perpetrator in the commission of the crime.” *Id.* Here, law enforcement organized a controlled buy at Smith’s residence and engaged in covert surveillance to monitor the CI throughout the buy. Law enforcement searched the CI before and after the buy and tested the methamphetamine provided by the CI after the buy. Here, as in *Ortega*, we reiterate that “the corroboration of the details of an informant’s tip through independent police work adds significant value to the probable cause analysis.” 85 F.3d at 1525. *See Martin*, 297 F.3d at 1314 (“When there is sufficient independent corroboration of an informant’s information, there is no need to establish the veracity of the informant.”).

Finally, Smith cites no Eleventh Circuit case law indicating a twenty-one-day window between a controlled buy and a search warrant application constitutes an unreasonable delay. Applying a rule of reasonableness to all the circumstances here, we find that Investigator Pettijohn submitted the affidavit within a reasonable time considering the necessary coordination with other law enforcement officers. *See United States v. Mitchell*, 565 F.3d 1347, 1352 (11th Cir. 2009) (accepting some delay in obtaining a warrant in circumstances where the assistance of another law enforcement officer was sought).

The District Court did not err in denying Smith’s motion to suppress the evidence seized in his residence because the search warrant affidavit was supported by probable cause.

B. The Investigatory Stop

Next, Smith argues that law enforcement failed to provide specific, articulable facts to support a reasonable suspicion that Smith possessed a firearm when law enforcement searched and seized Smith’s truck on November 22, 2022.

In *Terry v. Ohio*, the Supreme Court held that the Fourth Amendment governs “seizures” that do not result in a traditional arrest and prosecution for a crime. 392 U.S. 1, 16. 88 S. Ct. 1868. 1877 (1968).⁹ A person is seized “whenever a police officer accosts an individual and restrains his freedom to walk away.” *Id.* Even in the absence of probable cause, law enforcement may stop and briefly detain a person to investigate a reasonable suspicion that he is involved in criminal activity. *United States v. Williams*, 876 F.2d 1521, 1523 (11th Cir. 1989). “An officer may conduct a brief investigative stop of a vehicle, analogous to a *Terry*-stop, if the seizure is justified by specific articulable facts sufficient to give rise to a reasonable suspicion of criminal conduct.” *United States v. Strickland*, 902 F.2d 937, 940 (11th Cir. 1990). “The reasonable suspicion necessary to justify such a stop is dependent upon both the content of

⁹ The Fourth Amendment is made applicable to the States by the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691 (1961).

information possessed by police and its degree of reliability.” *Navarette v. California*, 572 U.S. 393, 397, 134 S. Ct. 1683, 1687 (2014) (internal quotation marks omitted). “Although a mere ‘hunch’ does not create reasonable suspicion, the level of suspicion the standard requires is ‘considerably less than proof of wrongdoing by a preponderance of the evidence,’ and ‘obviously less’ than is necessary for probable cause.” *Id.* (quoting *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585 (1989)). In evaluating the validity of an investigatory stop, we must consider “the totality of the circumstances—the whole picture.” *Sokolow*, 490 U.S. at 7.

The District Court was correct in finding that, given the record and the facts known to the officers at the time they conducted the stop of Smith’s truck, law enforcement had reasonable suspicion that Smith unlawfully possessed a firearm as a convicted felon. In making its finding, the District Court clarified that neither the officers’ training and experience with respect to suspected drug dealers, Smith’s prior arrests, nor Smith brandishing a gun at his residence would, taken individually, support a reasonable suspicion that Smith was armed when he left his residence. When taken together, however, the District Court correctly held the factors created specific, articulable facts supporting the officer’s reasonable suspicion.

Smith argues the facts considered by the District Court cannot support a reasonable suspicion Smith was armed *while driving his truck to work*. We disagree. Our analysis is controlled by the totality of the circumstances, and reasonable suspicion may exist

“even if each fact alone is susceptible of innocent explanation.” *United States v. Bishop*, 940 F.3d 1242, 1249 (11th Cir. 2019). Here, it is undisputed the officers conducted the investigatory stop of Smith’s truck away from the residence on November 22, 2022, as part of their operational plan to execute the search warrant. Both Lieutenant Higgins and Deputy Allen knew Smith’s status as a convicted felon. They knew that Smith had been convicted of carrying a concealed weapon.¹⁰ The officers were aware of the CI’s tip that Smith sold narcotics and owned several firearms, and the CI’s report that Smith walked into the controlled buy midway through the transaction brandishing a sawed-off shotgun. These specific facts, in combination, provide sufficient support for an investigatory stop founded upon a reasonable suspicion that Smith was a convicted felon in possession of a firearm when he exited his residence in the early morning on November 22, 2022. We therefore affirm the District Court’s denial of Smith’s motion to suppress evidence seized from Smith’s truck.

¹⁰ While this conviction was for the concealed carry of a knife rather than a firearm, the officers were not aware of this information based on their review of the records. The reasonableness of the stop must be judged on the facts known to the officer at the time of the stop. *United States v. Martin*, 636 F.2d 974, 976 (5th Cir. 1981).

C. Smith's Statement Prior to Receiving his Miranda Warnings

Finally, Smith challenges the District Court's finding that the public safety exception allowed the officers to inquire about a gun in Smith's truck before Smith receiving his *Miranda* warnings.

The Fifth Amendment provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”¹¹ U.S. Const. amend. V. In *Miranda*, the Supreme Court held that the government “may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.” 384 U.S. at 444, S. Ct. at 1612. It is undisputed in the record that Smith was in custody for purposes of *Miranda* after he was pulled over, and, thus, Lieutenant Higgins' question about the presence of a gun in the vehicle prior to his arrest is subject to exclusion unless an exception applies. The Supreme Court has carved out a “narrow exception to *Miranda* for situations where there is a threat to public safety.” *United States v. Newsome*, 475 F.3d 1221, 1223 (11th Cir. 2007) (citing *New York v. Quarles*, 467 U.S. 649, 655–59, 104 S. Ct. 2626, 2631–33 (1984)).

¹¹ The Fifth Amendment privilege against self-incrimination is incorporated against the states through the Fourteenth Amendment. *Malloy v. Hogan*, 378 U.S. 1, 3, 84 S. Ct. 1489, 1491 (1964).

In *Quarles*, the Supreme Court held that officers may question a suspect without first giving a *Miranda* warning where necessary to protect either themselves or the general public. 467 U.S. at 655–59, 104 S. Ct. at 2631–33. The officer in *Quarles* “asked only the question necessary to locate the missing gun before advising respondent of his rights” and “[i]t was only after securing the loaded revolver and giving the warnings that [the officer] continued with investigatory questions about the ownership and place of purchase of the gun.” *Id.* at 659, 104 S. Ct. at 2633. The Court reasoned that the public safety exception allows law enforcement officers to “follow their legitimate instincts when confronting situations presenting a danger to the public safety” rather than balancing, in the heat of the moment, “whether it best serves society for them to ask the necessary questions without the *Miranda* warnings and render whatever probative evidence they uncover inadmissible, or for them to give the warnings . . . but possibly damage or destroy their ability to obtain that evidence and neutralize the volatile situation confronting them.” *Id.* at 658–59, 104 S. Ct. at 2632–33.

The District Court’s factual findings are clear and supported by evidence in the record. It found that “before [the officers] began a search, before [they did] anything, for officer safety, [they] ask[ed] about the weapon.” The District Court also credited Lieutenant Higgin’s testimony that he read Smith his *Miranda* warnings as soon as he cuffed Smith outside the truck. As discussed above, the officers had reasonable suspicion to believe that Smith was armed in his truck because they reasonably believed Smith sold narcotics,

there were several guns in his house, and a CI reported Smith brandished a sawed-off shotgun during the controlled buy. The officers' reasonable suspicion did not dissipate upon pulling Smith over, when they came into close proximity with Smith and when Smith's hands were free to reach for a weapon. Once Smith admitted to having a weapon in his truck, law enforcement had probable cause to search his truck. *See United States v. Tamari*, 454 F.3d 1259, 1261 (11th Cir. 2006) (holding the "automobile exception" permits the search of an operational vehicle where "agents have probable cause to believe the vehicle contains evidence of a crime").

On appeal, Smith argues that the officers' questions were investigatory and lacked a reasonable nexus to police protection. He relies on *Orozco v. Texas*, 394 U.S. 324, 89 S. Ct. 1095 (1968), where four law enforcement officers entered a sleeping defendant's room and—without administering a *Miranda* warning—questioned him about a gun used in a murder at a restaurant several hours earlier. Law enforcement then asked the defendant whether he had been to a restaurant that night, and, when he answered yes, asked him if he owned a pistol. *Id.* at 325, 89 S. Ct. at 1096. He admitted owning one. *Id.* Law enforcement then asked the defendant twice where the pistol was located. *Id.* He admitted it was in the washing machine. *Id.* The Court held that the use of the defendant's testimony, obtained in the absence of a *Miranda* warning, violated the Fifth Amendment. *Id.* at 326, 89 S. Ct. at 1096–97.

The instant facts are distinguishable. Whereas the four officers in *Orozco* entered the defendant's bedroom while he was sleeping and proceeded to ask him a series of investigatory questions, the officers here asked Smith one question as soon as they encountered him: whether he had a gun in the truck. A clear nexus exists between officer safety when conducting an investigatory stop and ascertaining whether a suspect carries a firearm in his truck. After Smith admitted having a firearm, the officers provided Smith with his *Miranda* warnings before proceeding with further questioning.

Smith's later statements took place after he received his *Miranda* warnings. Smith's knowing and voluntary statements made after he received his *Miranda* warnings are admissible. *Oregon v. Elstad*, 470 U.S. 298, 318, 105 S. Ct. 1285, 1298 (1985). The District Court properly denied suppression of those statements.

Here, as in *Quarles*, the public safety exception is properly applied where Lieutenant Higgins asked "only the question necessary" to secure the officers' safety before advising Smith of his rights. 467 U.S. at 659, 104 S. Ct. at 2633. Therefore, we affirm the District Court's denial of Smith's motion to suppress statements made before he received his *Miranda* warning.

IV. CONCLUSION

For the foregoing reasons, we affirm the District Court's denial of Smith's motion to suppress evidence.

AFFIRMED.