

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 06 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

JOHN WILLIAM DOBLE,

Defendant - Appellee.

No. 08-50044

D.C. No. CR-06-00039-AG-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andrew J. Guilford, District Judge, Presiding

Argued and Submitted February 5, 2009
Pasadena, California

Before: PREGERSON, GRABER, and WARDLAW, Circuit Judges.

In this interlocutory appeal, the United States challenges the grant of John William Doble's pre-trial suppression motion. Doble was charged with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). The district court concluded that statements the police obtained violated his rights under

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Miranda v. Arizona, 384 U.S. 436 (1966), and that the warrantless seizure of the gun was not justified by the emergency exception. We have jurisdiction pursuant to 18 U.S.C. § 3731, and we reverse.

We agree with the district court that Doble was in custody when the police obtained statements from him about the existence and location of the gun. However, the district court erred in finding that the public safety exception to *Miranda* was inapplicable, because it failed to consider, or even mention, the immediate risk of danger posed to Doble’s three-year-old daughter. The public safety exception applies when there is “an objectively reasonable need to protect the police or the public from any immediate danger associated with [a] weapon.” *United States v. Martinez*, 406 F.3d 1160, 1165 (9th Cir. 2005) (alteration in original) (quoting *New York v. Quarles*, 467 U.S. 649, 659 n.8 (1984)). After Doble left the residence and was taken into custody, the officers knew only that a potentially accessible firearm and a three-year-old child, who had recently been exposed to a violent encounter between her parents, remained inside. The officers thus had an objectively reasonable need to locate the gun so as to protect the child from immediate danger.

The district court also erred in concluding that the emergency exception to the Fourth Amendment did not justify the officers’ retrieval of the weapon. To

assess the validity of a warrantless search under the emergency exception, we apply “a two-pronged test that asks whether: (1) considering the totality of the circumstances, law enforcement had an objectively reasonable basis for concluding that there was an immediate need to protect others or themselves from serious harm; and (2) the search’s scope and manner were reasonable to meet the need.” *United States v. Snipe*, 515 F.3d 947, 952 (9th Cir. 2008). Here, the police had received two 911 calls from Mrs. Doble alerting them that her husband was becoming violent, that there was a restraining order on him, and that there was a rifle in a locked bedroom to which her husband had the key. The officers were not required to credit Doble’s self-serving statement that the firearm was locked away, particularly when Doble had called 911 ten minutes after his wife to find out whether she had called the police, and had disclaimed any acts of physical violence on his part while asserting that his wife had threatened him. Moreover, Doble had ample time between his wife’s call and his own encounter with the police to move the gun to another location, and had every reason to move it elsewhere. Under these circumstances, the officers had an objectively reasonable basis to conclude that the child was in immediate danger. Moreover, even when the officers arrived at the locked door within the residence, the only way to verify that the firearm was

inside was to retrieve it. Accordingly, “the search’s scope and manner were reasonable to meet the need.” *Id.*

REVERSED AND REMANDED.