

Exam:

Exam Form:

C2502 - Static Form

Response

Gun in Briefcase

Under the 4th amendment, citizens have a right not to be subjected to unreasonable search and seizure. There are exceptions to this right such as routine border searches, automobiles during a traffic stop, vehicle checkpoints, eavesdropping, and search incident to an arrest, and stop and frisk. For stop and frisk, the purpose of the search is for officer safety.

Here, Otto saw Rob who matched the description of a person who committed a robbery just 15 minutes ago. This gave Otto reasonable suspicion that Rob may have been the robber. This would permit Otto to frisk Rob in search of a weapon since the crime involved a gun (robbery supra). Rob will argue that the gun was in the briefcase and that the "frisk" went beyond his ability to reach (wingspan). Otto may stop and frisk Rob based on a reasonable suspicion that he committed a crime just 15 minutes ago.

Thus, Otto's search of the briefcase exceeded the limits of a valid stop and frisk search. Since Rob was not yet under arrest at the time Otto searched the briefcase, the gun cannot be viewed as a legitimate search incident to an arrest.

Fruit of the poisonous tree

Under this doctrine, and secondary evidence recovered as a result of an unlawful search will be suppressed unless it falls under an exception. Such exceptions include inevitable discovery, that which might be found using independent sources or that which can be purged from the taint of the unlawful search.

Here, Rob will argue that the discovery of the gun was the result of an unlawful search of his briefcase since it was beyond his wingspan and since the search occurred before he was arrested. Otto may argue that discovery of the gun was inevitable since Rob already admitted he was the robber and there was probable cause to search the briefcase given this fact or certainly probable cause to get a warrant to search the briefcase. Otto may argue that this was an emergency since it involved a dangerous weapon or that combined with the admission of guilt and other strong evidence against Rob, the taint of the unlawful search could be purged such that the gun would be admissible.

Otto may assert that there was probable cause to arrest Rob following his confession and that the discovery of the gun would have been inevitable pursuant to an inventory search of his briefcase.

Thus, although technically this was an unlawful search of Rob's briefcase, the court will likely admit the gun evidence since the taint could be purged or the gun could have been discovered via alternative methods (administrative inventory search) or search incident to an arrest.

Rob's Statement "yes it was me"

An officer may conduct a field investigation that does not trigger 5th amendment right against self incrimination (*supra*). Such statements made in the field are deemed voluntary. For the 5th amendment to trigger, a defendant must be in custody and subject to interrogation. Interrogation is a line of questioning that is designed to elicit a confession of guilt.

Here, Rob was **not** in custody when he made the incriminating statement. Otto was conducting a field investigation pursuant to his reasonable suspicion that Rob was involved in the robbery (same description, briefcase, just 15 minute prior in nearby location).

Thus, Rob's confession will be admissible in court.

FRUIT OF THE POISONOUS TREE (5th Amendment Inadmissible Confessions)

Inadmissible confessions will be barred from evidence if in violation of the 5th amendment. Any subsequent confession after miranda rights are read can revive such statements.

Here, Miranda was followed by voluntary, intelligent consent of Rob.

Thus, Rob's in custody statements are admissible.

ROB'S STATEMENT ABOUT MONEY IN APT

This was an in-custody statement pursuant to a police interrogation and requires an advisal of miranda rights. Miranda rights must be read to a criminal defendant before police can interrogate. Such rights as the right to remain silent, that any statement will be used against them in court, the right to have an attorney present during questioning, etc. Such rights must be voluntarily waived and even if waived, may be invoked at anytime during the questioning.

Here, Otto read Rob his rights and Rob voluntarily waived his rights.

Thus, when Rob admitted that the money was in his apartment, those statements may be used in court as substantive evidence of Rob's guilt and also may be used as the basis for probable cause for a warrant.

MONEY IN APT/ SEARCH WARRANTS

For searches of places where there is a reasonable expectation of privacy, law enforcement must get a warrant or consent before conducting a search. There are exceptions. These exceptions include consent, search incident to arrest (wingspan/infra), automobiles, hot pursuit, emergency situations, autos incident to arrest, disappearing evidence, and stop and frisk.

Here, the information about the location of the money stolen in the robbery was attained by law enforcement after an advisal of miranda rights during interrogation. This supplied Otto with facts sufficient to include in his affidavit to the judge who issued the warrant. Rob may try to raise arguments in favor of his motion, like he did not make the in custody statements voluntarily but this is contrary to the facts as presented and thus are not reasonable.

Thus, the statement about the location of the money is sufficient basis for issuance of the warrant and subsequent search of Rob's home.

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Response

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