

Exam:

Exam Form:

C2502

## Response

The issues are what arguments may Rob reasonably raise in support of his motions; what arguments may the prosecution reasonably raise in response; and what is the likely outcome with regard to. Below, we analyze each statement and item.

**Exclusionary rule:**

Any evidence received via violation of 4th and 5th amendment will be excluded. Rob may use the theory of 4th or 5th amendmand violation to exclude the evidence and statement against Otto.

**1. Rob's Statement " Yes, it was me"**

Under the fifth amendment, all statements from a suspect must be voluntary. To prevent coercive police investigation, police are required to inform MIRANDA rights to a suspect before asking questions once a suspect is under cutodial investigation. Custodial refers to a person does not feel fee to leave and it usually occurs in police station. Investigation occurs when police asks any questions that is most likely to induce self-incriminating statement.

Here, Officer Otto is a law enforcement and asked a question Rob whether he was the robber. And he said YES. Rob is not under a custodial investigastion because Otto is still investigating for the bank robbery. He asked during an initial investigation to find out whether he was the right person or not regarding the band rubbery.

Although Rob may argue he felt he was not free to leave and police asked a question to have increminating statement from Rob that is violating the 5th Amendment rights; this argument is not persuasive because Rob was asked in a restaurant which is not police station and also public place. It does not fit into "custodial" situation.

In addition, the statement YES is Rob's voluntary statement, not involuntary statement because the facts do not tell Otto did anything coercive.

Therefore, most likely, a court decides to admit the statement and Otto did not violate Rob's 5th amendment rights.

**2. Rob's Statement that he had left the stolen money in his apartment**

**The issue is whether Rob waived MIRANDA warnning properly?**

see rule above

**Custodial Interrogation**

see rule above.

Here, Rob was in custdial interrogation because he was at the police station. Otto advised him of his MIRANDA rights. Therefore, there is no argument at this point.

A person is allowed to waive MIRADA warning when they waive intelligently, knowingly, and voluntary. Words to waive must not ambiguouse. Here, the facts do not say anything under what condition, how and what words Rob gave to Otto to waive his MIRANDA Warning. If he did not understand intelligently what MIRANDA Warning is and what legal consequences he is going to face, the waive of MIRANDA watning is invalid. Rob may argue he did not understand intelligently and knowingly the consequences of the waiver.

Otto may argue that there are no facts he misled Rob or Rob did not understand the warning. Rob at least can say I don't

understand or please say again.

In conclusion, the courts may need more facts how the warning was given to Rob and how actually Rob waived the rights.

### 3. The Gun

The forth amendment limits unlawful search and seizure without a valid warrant. To bring the claim, a defendant must have standing as his reasonable expectation of privacy has been intruded by law enforcement offices. Police commits illegal search and when a person has Reasonable expectation of privacy to his person or in home. Police commits illegal seizure the person when the person does not feel to leave. Police commits illegal seizure the person's personal property when the property is in his reasonable expectation of privacy. Whether people have reasonable expentancy of privacy to certain items is depend on objective and subjective test. Under objective test, people in community expects the certan item to have reasonable expectation of privacy. Under subjective test, a person expects the reasonable expectation of privacy to certain items.

Here, Otto opened Rob's briefcase and discovered a gun. Rob has reasonable expectation of privacy to his briefcase because people usually expect someone else to open their bags, and a person of the owner of bag, expects privacy. Moreover, Otto did not have a search warrant with him. Therefore, Otto violated the 4th amendment.

Exceptions

However, there are some exception to warrant requirement.

### Terry-Stop

A law enforcement officer is allowed to stop and search a person when the officer has reasonable suspicion with specificfication of the person has contraband.

Here, Otto knew that there was a bank robbery just two blocks away, and the bank teller informed the police that she recognized Rob, a bank customer as the Robber. These facts give him reasonable suspision. Also, it's passed only two blocks away. Most likely, his suspicion is adequate to stop him. Moreover, the bank teller informed Rob carried a blue briedcase and Otto saw the similar or same briefcase with Rob, and Otto knew Rob used a gun to rob the bank.

Rob may argue that the bank teller is informer and does not have credibility; thus, Otto did not have reasonable suspicion on him; however, this argument is not strong. The bank teller is not just a informer, she is a professional bank teller and recognize him as a bank customer.

Consent

A person can consent when it is voluntary given.

Here, Rob consented to open the briefcase. Yes is clear word to consent.

Therefore, Otto is entitled to open the briefcase.

In conclusion, the court most likely find the seizure of the gun is costitutional.

Otto saw Rob sitting alone in a restaurant two blocks away from Bank and saw a blue friefcase. Otto asked whether he was a robber and after he saied YES, he opened the suitecare then found the gun.

Therefore, the court most likely find Otto did not violate the 4th amendment.

### 4. The stolen money

Under the 5th amendment all statements must be voluntary.

Here, when Otto askekd Rob about the stolen money (after MIRANDA was given) and he voluntary gave the information that it was in his home.

Under the 4th Amendment, police is required have warrant to inter soeone's home.  
Here, Otto had an affidavit for a search warrant for Rob's apartment.  
Therefore, the enter to his room is constitutional.

Warrant must have where to look and what to look. Here, the search warrant seems valid because Otto was looking specific item" money" in his apartment.

Therefore, the court most likely does not support Rob's argument based on 4th and 5th Amendmant.

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