

Exam:

Exam Form:

C2502

Response

1. Rob's statement "Yes, it was me"? Discuss.

Fourth Amendment

Under the fourth amendment people are protected from unreasonable search and seizure. People have a normal reasonable expectation of privacy to their property and to their person. An officer normally cannot just search people unless they have a warrant.

Warrant requirement

Officers need a warrant that is obtained by them writing an affidavit showing reasonable suspicion, it has to be signed by a neutral and magistrate judge and has to specify where to search. There are warrant exceptions like exigent circumstances, automobile exception, plain view, search incident to arrest, and Terry stops/searches.

Terry Frisk and Stop

A terry stop allows a police officer to search a person if they have reasonable belief the person committed the crime and the person is armed and dangerous they can search their person for weapons.

Exigent circumstances

Exigent circumstances exist when a suspect is running away an officer can stop them without obtaining a warrant.

The first issue is whether there a valid stop by officer Otto

As previously stated in order for the police to do a stop they normally need to have reasonable suspicion you just committed a crime, or they need a warrant. Unless there is an exception.

Exigent circumstances (supra)

Here, Officer Otto had just heard about the incident at the bank, and Rob was positively identified by the bank teller. When Officer Otto saw Rob sitting at the restaurant he told him to stay where he was and put his hands where he can see them.

Rob is going to argue that they needed a warrant to be able to follow him into the restaurant and that this stop was unreasonable.

Prosecution is going to argue that this was an exigent circumstance because the robbery had just occurred and the suspect had just gotten away.

Thus, the court is going to conclude that this stop was reasonable.

The next issue is whether Rob was in custody and needed to be read his miranda rights.**Fifth amendment**

The fifth amendment protects accused from incriminating themselves they have a right to remain silent and have to be read miranda if they are in custody and being interrogated.

Custody

An accused is in custody when they reasonably believe that they are not free to leave.

Here, Rob is sitting in a restaurant alone with a blue brief case. Given officer Otto was just told that there was a bank robbery and the suspect had a blue briefcase, Officer Otto had the ability to go after him. However when Officer Otto told him to stay and put his hands up he officially put Rob in custody

Prosecution is going to argue he is not in custody because Rob is free to leave. However Rob is going to argue he is not free to leave given the instructions of Officer Otto.

Thus, the court would find Rob is in custody.

Interrogation

When an accused is in custody and is being asked questions it can become an interrogation. The interrogation is when the officers ask questions they know can elicit incriminating responses. The officers have to miranda them.

Here, since Rob was not free to leave and he had his hands up in the air when officer otto went up to him. Officer otto had to read him his miranda rights. Rob is going to argue since officer otto arrested him immediately after he said he did it Officer Otto violated his fifth amendment by asking him if he did it without reading him his miranda. Rob is going to argue that he did not know he had a right to remain silent and had he known he wouldnt have talked.

Prosecution is going to say this was a voluntary statement given by Rob, and that since he was not in formal custody they had no reason to give him or read him his miranda.

Thus, the court would find this is a violation of Rob's fifth amendment, and would find his original statement of "yes it was me" does not come in.

2. Rob's statement that he had left the stolen money in his apartment? Discuss.

Fifth amendment

The fifth amendment protects accused from incriminating themselves they have a right to remain silent and have to be read miranda if they are in custody and being interrogated.

Custody

An accused is in custody when they reasonably believe that they are not free to leave.

Here, Rob is in custody at the station. He is already in handcuffs. He is not free to leave anymore.

Thus, Rob is in custody and should be mirandized.

Interrogation

When an accused is in custody and is being asked questions it can become an interrogation. The interrogation is when the officers ask questions they know can elicit incriminating responses. The officers have to miranda them.

Here, Rob is going to argue the miranda advisement is invalid because he was not given his miranda rights until 2 hours later. Prosecution is going to argue that it is normal for defendants to not receive their miranda rights until they are actually being interrogated.

Thus, the court would find that the officer miranda reading was proper to Rob even if it happened two hours later.

Exclusionary rule

The exclusionary rule states that any evidence that is tainted or obtained in violation of the fourth or fifth amendment must be excluded and cannot come in.

Here, Rob is going to argue that this evidence is tainted, since the officer had already failed to mirandize him originally and as such it should not come in.

Prosecution is going to argue that this statement would come in anyways since he was properly mirandized and that he gave this statement voluntarily and a warrant would have been issued anyways.

Thus, the court would likely not exclude the statement Rob made in regards to the stolen money under the exclusionary rule.

Fruit of the poisonous Tree Doctrine

The fruit of the poisonous tree states that any evidence obtained by illegality and evidence coming after the first illegal evidence must not come in.

Here, Rob is already given his miranda rights 2 hours later, and he decides to give Officer Otto a statement of where he left the money. Rob is going to argue that this evidence should be excluded since his miranda rights were violated in the first place, with his original statement and as such this evidence is fruit of the poisonous tree.

Prosecution is going to argue that this is not evidence of the fruit of poisonous doctrine and that they rightfully mirandized him once he was already arrested.

Thus, the court would probably overrule Rob's objections and would find although he should have been mirandized originally this evidence of the statement of the stolen would come in because it would have been discovered anyways.

3. The gun? Discuss.

Fourth Amendment

Under the fourth amendment people are protected from unreasonable search and seizure. An officer normally cannot just

search people unless they have a warrant.

Warrant requirement

Officers need a warrant that is obtained by them writing an affidavit showing reasonable suspicion, it has to be signed by a neutral and magistrate judge and has to specify where to search. There are warrant exceptions like exigent circumstances, automobile exception, plain view, search incident to arrest, and Terry stops/searches.

Terry Frisk and Stop

A terry stop allows a police officer to search a person if they have reasonable belief the person committed the crime and the person is armed and dangerous they can search their person for weapons.

Exclusionary rule (supra)

Fruit of the poisonous tree(supra)

Here, similar to the argument above Rob is going to argue that the gun should not come in because it was obtained because of an illegal search and as such it should be excluded under the exclusionary rule and fruit of the poisonous tree doctrine.

Prosecution is going to argue that it does come in because at the time that Rob ran from the bank he was armed and dangerous and as such Officer Otto was allowed to search him for any guns under a Terry stop and given he found the gun he used to rob the bank it is allowed to come in.

Thus, the court would likely rule that the gun would not be suppressed and would come in.

4. The stolen money? Discuss.

Exclusionary rule

The exclusionary rule states that any evidence that is tainted or obtained in violation of the fourth or fifth amendment must be excluded and cannot come in.

Fruit of the poisonous Tree Doctrine

The fruit of the poisonous tree states that any evidence obtained by illegality and evidence coming after the first illegal evidence must not come in.

Here, Rob is already given his miranda rights 2 hours later, and he decides to give Officer Otto a statement of where he left the money. Rob is going to argue that this evidence should be excluded since his miranda rights were violated in the first place, with his original statement and as such this evidence of the money is fruit of the poisonous tree.

Prosecution is going to argue that this is not evidence of the fruit of poisonous doctrine and that this evidence would have been obtained anyway because he was already identified as a robber and they would have gotten a warrant anyways. Prosecution would argue that this is a search incident to arrest, and thus the evidence should come in.

Thus, the court would probably overrule Rob's objections and would find although he should have been mirandized originally this evidence of the stolen money would come in regardless of his first statement since he had already been identified as the robber, and when they searched the suitcase the money was not there.

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Response

carrying blue briefcase robs bank, teller informs cops of what she saw sees rob sitting alone in a restaurant, with blue briefcase stay right where you are and keep your hands where i can see them? custody? would a reasonable person believe they are not free to leave? need to mirandize them? interrogation? search incident to arrest? fruit of the poisonous tree doctrine, plain view, probable cause to arrest, asked rob if he was the robber. says yes it was me. rob is under arrest. taken to [police station, inventories]