

QUESTION

Late at night Officer Jones observed a red sports car with one headlight out, a violation of a traffic law. Jones stopped the car, approached the driver to issue a citation and, following standard police procedure, asked the driver for his license and registration. The license identified the driver as Dan Deft. As Deft handed the license and registration to Jones, Deft said that he "could make life very unpleasant" for Jones if she "messed" with him.

As Jones was writing a citation, she heard a police all points bulletin to be on the alert for a red sports car driven by a male, about 5'8" tall, 150 pounds, clean-shaven, with dark hair, and wearing glasses, dark pants with a pink puff-sleeved shirt unbuttoned down to the navel. This person was wanted for robbery of Smith, whose purse had just been taken. Deft was actually 5'9" tall, 160 pounds, dean-shaven, with dark hair, and wore glasses, blue trousers and a rose-colored, puff-sleeved shirt buttoned up to the neck.

Jones placed Deft under arrest for robbery and read him Miranda warnings. Deft invoked his rights to remain silent and to counsel. Jones turned Deft over to other police officers who had arrived at the scene. She then searched Deft's car and discovered a purse under the seat.

One hour after Deft was arrested, Smith identified Deft as the robber in a one-on-one confrontation at the police station. She said that she was positive in her identification. She also identified the purse found in Deft's car as hers. Deft was again given Miranda warnings. This time he waived his rights and confessed to the robbery. Deft was then formally charged with robbery and is awaiting trial.

1. How should the court rule on Deft's pretrial motions, all based on the United States Constitution, to exclude the following evidence at trial:
 - a. His statement to Officer Jones at the scene of the arrest, a motion based on asserted violations of his rights under the Fourth, Fifth and Sixth Amendments? Discuss.
 - b. The purse seized from Deft's car, a motion based upon asserted violations of his rights under the Fourth Amendment? Discuss.
 - c. The identification of Deft by Smith at the police station, a motion based on asserted violations of Deft's rights under the Sixth Amendment and Due Process Clause of the Fourteenth Amendment? Discuss.
 - d. His confession at the police station, a motion based on asserted violations of Deft's rights under the Fifth Amendment? Discuss.
2. If Deft's confession is ruled inadmissible at trial because of a violation of the Fifth Amendment, and he testifies at trial, will the Fifth Amendment violation preclude use of the confession to impeach the testimony that Deft gave on either direct or cross-examination? Discuss.

ANSWER A

1.a. Motion to Exclude Deft's Statements at Scene of Arrest: 4th Amendment.

Deft's 4th Amendment challenge to the admissibility of this statement rests on a contention that the traffic stop was invalid and therefore all statements and evidence obtained as a result should be excluded as fruit of the poisonous tree.

It is true that police are not allowed to randomly stop automobiles in order to check for valid license and registration. However, where an officer has probable cause to stop an auto or where a traffic violation has been committed in the officer's presence, this suffices as a legitimate reason to stop the car. Here, Jones observed a traffic violation on Deft's car because one headlight was out. Thus, she had reason to perform a routine stop and cite Deft for the violation. Nothing in the facts states that Jones had an improper motive for stopping Deft.

Thus, the 4th Amendment will not preclude the state from introducing Deft's statements at the scene of arrest.

5th Amendment

Deft's 5th Amendment challenge to the statements will rest on an assertion that Jones should have advised him of his Miranda rights when she stopped him and therefore the statements he made were obtained in violation of Miranda.

This contention will fail, because Miranda must be observed in connection with custodial interrogation by police. Custodial interrogation is deemed to exist where the person is not free to leave and the officer makes statements or engages in conduct which is likely to elicit an incriminating response.

Here, even though Deft was clearly obligated to stop the car and submit to the routine check of license and registration, this does not qualify as custody pursuant to decisions of the U.S. Supreme Court. Routine traffic stops are viewed as imposing a minimal inconvenience on the driver of the stopped vehicle which does not rise to the level of custody. In addition, a police request to view license and registration is not normally something that is likely to result in incriminating statements being made. Thus, all that was involved here before Deft made the threatening statements to Jones was a routine traffic stop, no Miranda warnings were required at that point and the 5th Amendment will not preclude introduction of the statements.

6th Amendment

Deft may try to assert that he had a right to counsel at the traffic stop and the failure to have counsel present makes his statements inadmissible. This will fail because the 6th Amendment right attaches at post-charge critical stages of a criminal proceeding. Here, Deft was merely going to be cited for a traffic violation and was not charged with any crime. Thus, his 6th Amendment rights were not implicated.

1.b. Challenge to Seizure of Purse from Deft's Car:

Here, Deft will argue that the search and seizure of the purse from his car was a violation of the 4th Amendment guarantee against unreasonable searches and seizures.

In order for Deft to make such an assertion, he must have had a reasonable expectation of privacy in the place searched and the search must have been accomplished by government agents. Here, Deft probably has a reasonable expectation of privacy in his car to some degree; however, the Court has held that automobiles are subject to much less privacy restrictions than a home. However, Deft probably has some level of expectation of privacy in the car by virtue of his ownership of it. In addition, the search was conducted by official police so the government agency requirement is met.

Deft's contention will probably center around the fact that no warrant was obtained to search the car. Although a warrant based on probable cause is a requirement for many searches, there are exceptions to this rule. First, the state can probably establish that the search was conducted incident to Jones's lawful arrest of Deft. Probable cause to arrest Deft arose when a description which nearly exactly described Deft and his car was received by Jones during the routine traffic stop. When a proper arrest is performed, the officer has the ability to search the person and the surrounding area where he might reach for weapons or to conceal evidence.

Here, Deft may try to argue that he had been taken into custody and could not have reached into the car for anything when Jones searched it. However, the scope of a search incident to lawful arrest has been held to extend to the entire passenger compartment of the suspect's automobile at the time the suspect is taken into custody. Thus, the search which revealed the purse was proper.

In addition, the warrantless search of the auto is probably also justified under the auto exception, which states that once police have probable cause to stop a car suspected of being involved in a crime, the mobility of the vehicle creates an exigent circumstance which gives them the right to search it for weapons or contraband suspected of being in the car. Here, Jones had already stopped Deft, but once she had probable cause to believe he was involved in a crime, she was authorized to search the car for any fruit or instrumentality of that crime, namely the purse.

Thus, the seizure of the purse from the car was proper under the Fourth Amendment.

1.c. Motion to Exclude Identification at Police Station: 6th Amendment

Deft has a good argument that the identification by the victim was conducted in violation of his right to counsel. The right to have counsel present attaches to all critical stages of a criminal proceeding after the suspect is charged. Here, although Deft has not yet been indicted, he has been arrested and charged with robbery. In addition, a face to face identification by the victim has been held to be a critical stage at which defendants have a right to have counsel present. In addition, Deft had already invoked his 5th Amendment right to counsel, which would effectively rebut any assertion that he waived his right to have an attorney at the lineup.

Due Process:

Deft can also challenge the manner in which the identification was conducted. A criminal defendant has the right to due process by not having identifications conducted in a way that

unnecessarily suggests that the suspect is the culprit or which contains a substantial risk of misidentification. Here, Deft was the only suspect presented to the victim, which greatly increased (and probably guaranteed) the likelihood of his being identified as the perpetrator. In addition, it appears that the police may have suggested to the victim that they found her purse in Deft's custody, in which case they improperly suggested Deft's guilt, possibly influencing her identification.

As a result of these violations of due process, the victim will not be allowed to testify to Deft's identity as the robber at trial based on her police station ID. The ID proceedings will be completely excluded. However, if the victim has an independent basis for identifying the defendant, such as her observation of him when he robbed her, she will be able to testify to that observation and identify him in court as the person who robbed her.

1.d. Motion to Exclude Confession

This motion will encompass Deft's rights under the 5th Amendment and violations of his Miranda rights to remain silent and to have counsel present at custodial interrogation by police.

Here, because Deft invoked his right to remain silent and his right to counsel at the scene of his arrest, the police were precluded from attempting to question him again without having counsel present. The facts here suggest that the police attempted to do this because they re-Mirandized defendant after the ID by the victim. This was improper without counsel present and it was also improper interrogation because it was not initiated by the defendant. Thus, the confession obtained at this stage will be excluded.

2. Use of Confession at Trial

Even though the confession was obtained in violation of Deft's 5th Amendment rights and therefore cannot be used to prove his guilt, the Court has held that improperly obtained confessions can be used as impeachment at trial. Therefore, if Deft testifies that he did not commit the crime or gives an alibi to try to exonerate himself, the prosecution can on cross-examination question Deft about the invalid confession in order to destroy his credibility. The improper confession operates as a prior inconsistent statement in order to suggest that Deft has told a different version of the story before and therefore shouldn't be believed.

However, the prosecution cannot force Deft to testify in order to question him about the confession because this would violate his 5th Amendment right against compelled testimony which would incriminate him.

ANSWER B

This case grows out of an ordinary traffic stop that developed into an arrest, and eventual confession, for robbery.

I. Pre-Trial Motions

Deft has made a variety of claims via pretrial motions, each based on some provision of the United States Constitution. The Fourth, Fifth, and Sixth Amendments taken together provide a basic guide to appropriate (and constitutional) procedures to be followed by police when dealing with suspects

and evidence in criminal cases. Each of the constitutional guarantees will be discussed below in connection with Deft's specific claims.

Statement at the Scene of Arrest

Officer Jones stopped Deft because of a broken headlight. When he asked to see Deft's license and registration, Deft informed him that he "could make life very unpleasant" for Officer Jones if she continued to mess with him. Deft has challenged this under the Fourth, Fifth, and Sixth Amendments.

Fourth Amendment

The Fourth Amendment to the Constitution, which has been held to apply to the states through the Fourteenth Amendment's requirement of due process, protects people against unreasonable searches and seizures. This vague standard has been distilled by the Supreme Court to impose a basic requirement that searches not be conducted without a warrant, unless one of the six narrowly drawn and jealously guarded exceptions applies, and the additional requirement that arrests not be made without probable cause or without a warrant if made in one's home.

The Supreme Court has also interpreted the Fourth Amendment to require that any fruits of illicit searches or seizures be excluded at trial. The exclusionary rule, as it is termed, requires that evidence found pursuant to Fourth Amendment violations be excluded unless the police can show an independent source, inevitable discovery, an intervening act of free will by the defendant, or lack of taint.

Deft's only possible Fourth Amendment challenge here is that he was stopped without probable cause and thus any statement he made while stopped should be excluded. This claim is very unlikely to win, however. Officer Jones stopped Deft because he had a broken headlight, in violation of a city traffic law. Police are entitled to stop drivers for traffic violations, provided that they are not doing so just as a pretext for some illicit purpose. And in many jurisdictions, any stop that has a lawful basis is allowed, even if the officer would not have stopped any other driver for the same violation.

Thus, there is nothing in these facts to suggest that the stop constituted a violation of Deft's Fourth Amendment rights.

Fifth Amendment

The Fifth Amendment protects all persons against compelled self-incrimination. This requirement, as many other of the provisions of the Fifth Amendment, has been applied to the states through the due process clause of the Fourteenth Amendment.

The privilege against self-incrimination has been the subject of a great deal of the Supreme Court's criminal procedure jurisprudence. Most notably, the requirement that certain warnings be given to a suspect before being interrogated has been read into the Fifth Amendment. Miranda warnings must be given immediately after a suspect is arrested. These warnings include telling the suspect that he has a right to remain silent, that anything he says can and will be held against him in a court of law, that he has the right to the assistance of counsel during questioning, and that if he cannot afford a lawyer one will be appointed for him.

If a suspect invokes his Miranda right to counsel or his right to remain silent, questioning must cease. The same rule applies if warnings are not given in the first place.

Deft challenges his statement to police under the Fifth Amendment as well. This claim has no merit. Although he was not mirandized before he threatened the officer, there are three reasons why the statement was not taken in violation of Miranda. First, he likely had not been "arrested." Although he had been stopped by the police, it was a routine traffic stop that could not give rise to a custodial arrest without more evidence. Second, Miranda only applies when a suspect is in custody. Being the subject of a citation and release traffic stop does not constitute custody. Deft will argue that he did not feel free to leave and thus the stop was custodial. While he may prevail on this point, he faces an insurmountable additional hurdle. A statement must be the result of police interrogation in order to violate Miranda. Interrogation has been interpreted to occur when a statement is made in response to questions reasonably calculated to elicit incriminating statements. Here, Deft's statement was completely spontaneous. The officer asked him only to hand over his license and registration, a very normal, non-threatening request.

Because the statement was not in response to custodial interrogation, and because none of the coercion and pressure that Miranda was designed to prevent was present, this statement was not a violation of the Fifth Amendment and thus should not be excluded.

Sixth Amendment

Deft also challenges introduction of this statement based on the Sixth Amendment right to counsel. This claim is even weaker than the prior two. The Sixth Amendment provides every criminal defendant with a right to counsel. This right has also been held to apply to the states through the due process clause of the Fourteenth Amendment.

The Sixth Amendment is of no use to Deft for this claim, however, because it attaches only once a defendant has been formally charged. Formal charges usually occur upon indictment, or even arraignment, but never at the stage presented here. Thus, he may not challenge admission of his threatening statement based on the Sixth Amendment.

Seizure of the Purse

Deft challenges the seizure of the purse from his vehicle after he was arrested for robbery. This is a losing claim. Although, as explained above, searches normally must be conducted pursuant to a valid warrant, there are some exceptions to this rule. Searches may be conducted without a warrant in six situations (1) search incident to a lawful arrest; (2) the automobile exception; (3) stop and frisk; (4) consent; (5) plain view; and (6) exigent circumstances.

The most applicable exception in this case is for a search incident to a lawful arrest. The arrest in this case was clearly lawful. Although Deft could not have been executed simply for the traffic law violation, the officer developed probable cause during the initial detention. The bulletin specifying a suspect for a recent bank robbery matched Deft's description nearly perfectly. Moreover, Deft was driving the exact car described in the bulletin and was acting tense and guilty, as evidenced by his threat to the officer.

Arrest may be made in public without a warrant provided an officer has probable cause. That standard is easily met in this case and thus Officer Jones was entitled to conduct a

search incident to this lawful arrest

The search incident to arrest entitles the Officer to conduct a full body search of the suspect, as well as a search of the immediate area within the suspect's wingspan. This has been interpreted to include the interior compartment of a car when someone is arrested in his car. Thus, this search was lawfully undertaken and the purse was lawfully seized.

Identification by Smith

Deft challenges the identification of him made by the robbery victim at the police station. He claims violations of the due process clause and the Sixth Amendment.

Although a line-up or show-up identification is considered a critical stage for Sixth Amendment purposes, and thus a suspect is entitled to the representation of counsel, Deft's Sixth Amendment rights had not yet attached. The show-up occurred one-hour after he arrived at the police station. No formal charges had been filed and thus he did not have a right to the presence of counsel.

Deft may have a due process claim, although it too is weak. To challenge an out-of-court identification under the due process clause of the Fourteenth Amendment, a suspect must show that the line-up procedure was unreasonably and unnecessarily suggestive to the point that reliability of the identification is thrown into question. Deft's only possible argument is that because the victim was not shown any other suspects at the same time, Smith might have been mistaken in her identification. Showups, however, are generally constitutional and thus this will be a difficult argument for Deft.

Confession

After arriving at the police station, Deft was again given his Miranda rights, which he waived. At the time of arrest, he had been given his Miranda rights and invoked both his right to counsel and his right to silence. The question, then, is whether the police may use this confession at trial.

Deft has a strong argument here that his confession is invalid under Miranda. Even though he seemingly waived his rights before confessing, he had already invoked his rights previously. In a series of cases, the Supreme Court developed a number of prophylactic rules to ensure that a suspect's Fifth Amendment rights are scrupulously honored.

One of those rules is that once a suspect has invoked his Miranda right to counsel, the police may not reinitiate questioning of the suspect on any crime without the presence of counsel. In other words, it is insufficient to wait a period of time, re-warn a suspect and then commence questioning. It is the re-initiation itself that violates the suspect's rights. With the right to remain silent, the police may simply wait a reasonable period of time before questioning a suspect on a different crime. When that suspect has, however, invoked his right to counsel, waiting is insufficient. The police must ensure that the suspect then has counsel present for all questioning.

Thus, because the police reinitiated questioning after Deft invoked his Miranda right to counsel, it should be excluded at trial.

II. Confession as Impeachment Evidence

As a matter of evidence law, confessions are admissible against a party because they constitute an admission by a party opponent even though such statements would seem to qualify as hearsay. Hearsay is an out-of-court statement offered for the truth of the matter asserted. Party admission is, however, under the Federal Rules of Evidence, non-hearsay.

The question remains whether Deft's confession, taken in violation of Miranda, may be used and in what form.

Criminal Procedure

As a matter of criminal procedure, statements taken in violation of Miranda may be used to impeach a defendant's testimony at trial. Although this would seem to fly in the face of the elaborate rubric established for protecting defendants against having coerced or unreliable confessions used against them, the Supreme Court has held that statements taken in violation of Miranda, provided they are otherwise voluntary, are admissible to impeach. This exception has been justified by the explanation that Miranda itself is not a constitutional right, but rather just a prophylactic rule designed to protect a constitutional right. As such, it is not entitled to the same deference as a real constitutional right and may be admitted for some purposes.

Evidence

Under the Federal Rules of Evidence, a defendant may be impeached by prior inconsistent statements. For statements not taken under oath; such as this one, they are admissible only to impeach and not as substantive evidence (which wouldn't be allowed in any case here).

If Deft takes the stand and denies involvement in this robbery, the prosecutor may question him about this statement on cross-examination. He may also choose not to ask him about it first, and simply bring it out through the officer's testimony. Provided that Deft is at some point given a chance to explain or deny the statement, even if the opportunity is subsequent to the evidence being admitted, the prosecutor may introduce extrinsic evidence of the confession.