

Student ID:

Instructor:

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Exam Name:

Criminal Procedure

Grade:

Total Number of Words in this Exam = 1398

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Defendant Dork**M/S "It's My Dope."**Fruit of Illegal Stop

The first issue to look at is whether Cop had reasonable suspicion to stop Dork. In order to have a valid Terry Stop, the officer must have specific and articulable facts to believe that a crime is being committed or has been committed. Looking at the facts of this case, the officer had only read a newspaper article about illegal drug use at a club and saw Dork and a woman leaving a club and decided to stop them. For one, the paper did not mention which club. Therefore, the vagueness of the article or the information of the club name makes the source unspecific. Second, the officer randomly chooses Dork and his lady friend. The officer has no specific names or identifications of suspects, therefore, there is most likely no reasonable suspicion to have a valid Terry Stop. If it is determined that the stop was invalid, the the M/S Dork's statement should be granted because it the incriminating statement is relatively close to the heels of the illegal stop, hence, the fruit of the illegal stop. However, it could be argued that it was not the stop that lead to Dork's statement, but rather the search. Also, there is some flagrancy issue here. There was barely any reasonable suspicion on behalf of Cop. This is a close issue, however, but for the stop, Cop would not have searched woman's purse and Dork would not have made his incriminating statement.

Fruit of the Illegal Search

The first issue to address is whether Dork has standing to make his motion to suppress based on the illegal search of the woman's purse. Does Dork have a reasonable expectation of privacy within the woman's purse? First, the relationship between Dork and the

woman is unknown. There seems to be no evidence that they were long term boyfriend and girlfriend or even husband and wife. This is similar to the Rawlings case. There is no evidence that Dork has an ownership interest in the purse, and ownership interest in the cocaine is not enough to establish expectation of privacy. Second, Dork most likely does not have the right to exclude other from the woman's purse. On the other hand, it could be argued that if the woman was a wife or long term girlfriend of Dork, than he may have some expectation of privacy within her purse. Maybe Dork has exclusive use to the purse and is able to take things from the purse whenever he wants. It could be argued that since his cocaine was in there, he has rights to the purse. Most likely, Dork does not have a legitimate expectation of privacy in the woman's purse, so he would not have standing to make his motion. However, if he does have standing, the next question was the search illegal?

In order to have a valid search without a warrant, Cop needs PC. The Cop most likely did not have PC to search the purse. This search was not a frisk, but rather a full blown search, entrance into one's purse. Looking at attenuating factors, it could be argued that after the illegal search, Dork looked into the purse and made initiation to claim the drugs as his. This could be looked at as an act of free will, and intervening act that broke the causal connection between the illegal search and his statement. This is a close issue, however, if Dork has standing, M/S his statement should be granted because his statement was made right on the heels of the illegal search, the taint had not disipated.

Fruit of Miranda

Miranda warnings must be given to suspects subjected to custodial interrogation. First thing to look at is whether Dork was in custody. Custody is where a person is deprived of freedom in a significant way. Comparing this case to Berkemer, Dork was in public, where

people were around, and the stop was most brief. On the other hand, it was dark, there may not have been many people out so late. Most likely Dork was not in custody. If, however, he was in custody, was he interrogated.

Interrogation is any action or statement that an officer should know would elicit and incriminating response. In this situation, there doesn't seem to be any action that the cop did to elicit an incriminating response. It could be argued that his search elicited a response, but that is stretching it. Most likely there was no Miranda violation.

Dork's M/S his statement should be granted as fruit of the illegal stop and possibly the search of the woman's purse if he had standing to make that motion.

M/S "That's because most of us were high on cocaine."

Fruit of Illegal Stop

Same analysis as above, however there are more attenuating circumstances. Here, time is a factor. The officer has stopped Dork, search a purse, arrested Dork and driven him to the police station. Not only this, it is arguable that it is not foreseeable that when Cop stopped Dork, that later on in the evening Dork would make such an incriminating statement. On the other hand, it could be argued that a Cop stopping Dork for drugs should expect the person to say something about the drugs. This is a stretch of an argument. Also, Dork's statement could be such as the one made in Wong Sun, the willing act of the defendant. It is possible that Dork's statement is voluntary and completely unforeseeable from the stop. This is a close issue, however, most likely this statement is not fruit of the illegal stop and the M/S should be denied. The taint seems to have dissipated. ✓

Fruit of Illegal Search

Same analysis as above, such that Dork did not have standing to make this original motion.

Fruit of earlier Miranda Violation

If there was a Miranda violation from above, motion should not be granted based on a Miranda violation, because the court in Elstad determined that Miranda is a prophylactic rule and cannot be a poisonous tree in which tainted fruit can be found from. ✓

Fruit of Illegal Arrest

In order to have a valid arrest without a warrant, Cop must have PC. By this time, Cop most likely has PC to arrest b/c he actually has seen the cocaine combined with Dork's statement.

Fruit of New Miranda Violation

As mentioned above, Miranda warnings must be given to all suspects subjected to a custodial interrogation. First, Dork is in custody b/c he has been arrested. Hence, the first issue to look at is whether Dork waived his Miranda warnings. A valid waiver can either be expressed or implied, however waiver will not be sufficient based on silence. Dork's statement "Maybe I shouldn't say anything" sounds like Dork is not waiving his rights. In fact, it seems as if Dork understands his rights and does not want to talk. On the other hand, Dork's language is vague, and is not clear as to whether he is waiving his rights. Cop, however, does not have clarify Dork's statement. By looking at the totality of the circumstances, it seems that Dork did not waive his rights.

Was there an interrogation? An interrogation is any statement or action in which an officer should know would reasonably elicit an incriminating response from a suspect. In this case, the officer stated, "That club is pretty noisy." This statement does not mention anything about the drugs or about any situation relating to the arrest. On the other hand, the Cop making a reference to the club in which is supposed to have illegal activity going on could make suspect talk about what was going on in the club, the type of music, the activity such as drug exchange. This is a far stretch, however. It there doesn't seem to be a correlation between the noise level and drug activity in which Cop should know would reasonably elicit an incriminating response. Yeah, it would have been better if Cop did not talk to the suspect at all, however, it doesn't seem that his comment would reasonably elicit Dork to talk about the drugs. It looks as if Dork made a voluntarily made his comment and that there was no interrogation from the Cop. Therefore, the M/S Dork's last statement should be denied and not the fruit of an illegal interrogation.

END OF EXAM