

Best Answer for Criminal Procedure I

Final Exam, Spring 2005-05-27

Professor Moskovitz

Motion to Suppress M's Statement, Yes, he's my lover.?

Fruit of illegal stop? In looking at whether there was an illegal stop, first is there a seizure of M. A seizure is an act beyond normal social intercourse. A uniformed cop pulling up to your house and saying, Stop, I need to talk to you, is a seizure. C is specifying his need to talk to M, this is not just normal social intercourse. For the seizure to be reasonable, the cop needs specific and articulable facts in order to have reasonable suspicion. Here we have an anonymous caller, who says that there might be a boy that was molested. The informant also has no firsthand knowledge, for she overheard a stranger say this at a bar. This makes this information unreliable and the woman has no basis of knowledge for her claim. Additionally, she hung up when C asked her for her name. Thus, this is unreasonable and this stop is an illegal stop.

Fruit of Miranda Violation

Miranda warnings are required if a custodial interrogation exists. In our case, we have no arrest at this point. It is possible to still find custody even without an arrest.

We must look at the privacy and time in order to figure it out (Berkemer). The time is very brief. As for the privacy, M talked outside his home. M is on private property, but is outside. This is close, it is hard to know without knowing whether people in the street

could see the driveway at Wheneverland. Because the time was so brief, as it was in Berkemer, I will conclude that this is most likely not custody.

If custody were to be found, was there an interrogation? An interrogation is express questions by C or statements/actions that are reasonably likely to elicit incriminating statements from M. There C said, We had a report that a boy named Kenny has been staying with you. This is likely to lead to an incriminating statement, as it deals with why C is at Wheneverland. Although, interrogatin exists, because M is not in custody, Miranda warnings are not yet required.

Fruit of due process violation?

Police may not use threats/promises/beatings to get confessions. Here, there was a lie by c when he said that there was a report that Kenny was staying with M. We have no evidence of this. C lied here. But to lie is not a due process violation. In conclusion, the illegal stop here will lead to this statement getting suppressed.

II. Motion to suppress M's Statement, Yes, one with pictures of some beautiful boys?

Fruit of prior illegal stop? If this second statement is the fruit of a prior poisonous tree (the illegal stop), it will also be suppressed. Miranda warnings have now been given a little more time has passed, this illegal stop was flagrant by C and no intervening act has happened. There is thus no attenuation, and this statement is the fruit of the poisonous tree.

Fruit of prior Miranda violation?

Even if there was a prior Miranda violation (but there is not), Elstad says that a prior Miranda violation cannot be in poisonous tree.

Fruit of illegal arrest?

The current is outside the home in public, so only PC is needed to arrest without a search warrant. We now have corroboration that M knows Kenny and that M admitted that he is M's lover. Thus, we now have PC and the arrest is valid.

Fruit of new Miranda violation?

M is now in custody as he is arrested. As to whether there is an interrogation, C is asking the question of Do you have any magazines? Thus, we also have interrogation. Miranda warnings are therefore required.

Miranda's were given.

Waiver? For a waiver to be valid, M must say that he understands his rights. Here M said, I guess I should call my lawyers. M seems to understand his right to counsel here, but said nothing about understanding or waiving his right to silence. This is close here as to whether all his Miranda rights are waived or just his right to counsel. M said nothing about his right to silence, so I will conclude that he does not understand that he has a right to silence, but very close. So silence is not waived.

Assertion? "I guess" is not clear and unambiguous, so no assertion of right to counsel.

III. Motion to Suppress magazine?

Fruit of prior illegal stop? More time has passed and M has voluntarily pulled out a magazine. Is it foreseeable that if C asks him if he has any magazines, that M would just pull one out. This is close. Being that it happened right after M answered that he did and the question by C pertained to the magazine, I will conclude that it was foreseeable. This is different than Wang Sun where it was unforeseeable that Wang Sun would come back a few days later. More like Brown, right after was when the intervening act happened. Thus, there is no attenuation.

Fruit of prior Miranda? Elstad no poisonous tree.