

ID: 214

Criminal Procedure - Anderson-Go.Anderson-Goldste...

ID: 214 (Exam Number)
Exam Name: Criminal Procedure - Anderson-Goldstein
Instructor: Anderson-Goldstein
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Terry Stop

Did Officer Greer (OG) have authority to stop?

An officer is allowed to make a Terry Stop (Terry v. Ohio) when he has reasonable suspicion to believe that a crime is or has been committed. However, the state actor must be able to articulate with particularity his basis for the reasonable suspicion. Here, OG had been advised two days earlier that a girl had been found missing. He was also advised that an eye witness had described the suspect's car to be a blue 4 door sedan driven by a young male. Prior to stopping the suspect's vehicle, OG observed that he was driving a car that matched the description provided by the Eye Witness. Additionally, his experience led him to label the driver as a male approx 26 years of age. OG likely will not be able to meet the objective reasonable standard for Reasonable suspicion (RS) based on just these facts alone (thus making the stop illegal). However, OG also observed the suspect weave slightly in his lane. The addition of this fact to the TOC analysis makes a whole lot of difference. Now, OG had RS, based on his experience to believe that a crime was afoot (drunk driving). Thus his stop was legal and all the basic activities (license and registration) seem to fall within proper police protocol for such a stop.

Is suspect statement "visiting friends" & "I have not been drinking" admissible?

At this point Miranda was not given. However, there is no need for Miranda, as a Terry Stop has not been interpreted to rise level of custody. In order for suspect to invoke his 5th amendment right he needs to be in custody. He was sitting in his car when he made the "visiting friends" statement. His second statement was in response to an order to step out of the vehicle. Both statements were made during the course of a routine traffic violation. Although, suspect may have a better argument with the second statement, an objective court is likely going to find that his freedom had not been limited significantly in any way. At this point this was just a routine traffic stop and suspect could fully expect to leave once the stop was over (if he passed FST).

His statement is admissible.

Is suspects slurred speech admissible?

Slurred speech falls into the category of physical evidence. His counsel's argument in limiting it from evidence will be weak at best. The court has repeatedly held that the 5th amendment only protects against testimonial evidence. Suspect may have a shot at keeping his statement out if they can prove the stop was illegal under the 5th amendment. However, the slurred fashion of his statement will definitely be admissible.

Was OG authorized to order suspect out of the car?

A police officer can automatically order the driver as passengers out of the car. The analysis authorizing such action is if the driver in such a situation has 1) a reasonable expectation of privacy (reop) and 1) if society is willing to accept such expectation as legitimate. Although, the driver in such a situation might have a REOP, society has not accepted it as legitimate. The reason being, that the limited intrusion into a driver privacy does NOT outweigh the need for police safety. Thus, OG order to suspect to step out of the vehicle was valid. No issue.

Terry Frisk

A state actor is allowed to "pat down" (no manipulation) if he can articulate (with particularity) a reasonable suspicion that the suspect is armed and is a danger to either the officer or others. The officers RS is analyzed under an objective standard (reasonable prudent person) using the TOC. However, the court has recognized the need for officer safety and has given due weight (under TOC) to the facts and circumstances presented to the officer in light of his experience. Here, OG was an officer with only 2 years experience. Further, thus far there were no facts provided that the suspect was a threat to the officer or others. Thus far, OG had only determined that Joe was probably driving under the influence of drugs or alcohol. His attire was normal. Nothing thus far indicated that the suspect was armed and dangerous. A terry frisk is only

authorized for reasonable suspicion of a weapon. Even with consideration given to his minimal 2 years of experience), OG will likely not be able to articulate reasonable suspicion to "pat down" the suspect.

An individual has a high level of expectation of privacy to his person. Society in general has accepted such a privacy to be highly legitimate. Thus, in the absence of RS, an officer in such a situation would need a search warrant (with PC) to search the suspects person.

Since there was no RS for a weapon and no PC for a warrant - the search of suspects person was illegal. Under the exclusionary rule, all evidence obtained either directly (illegal) or indirectly (fruit of a poisonous tree - FOPT), in result from an illegal initial search are inadmissible unless the state actor can prove a valid exception exists.

Valid exceptions include inevitable discover, independent source (for PC), Indep act of free will, attenuation, etch. Here, there was not act of free will nor was their any attenuation. Further, the police at that point in time did not have an independent source for PC, nor did they have any independent source of PC to search him. Thus a valid exception is not something a state has a shot at winning.

Thus, the absence of RS, PC and an exception holds that the BRUSH found was a fruit of a poisonous tree. The Terry Frisk was an illegal activity and evidence found as a result of it is to be excluded from the prosecutions case in chief. The state will not be able to use the brush against suspect to prove his guilt. However, the govt is allowed to use the evidence in order to impeach the suspect. It may be permissible for impeachment purposes.

SEARCH OF CAR:

Courts have held that person has a diminished expectation of person has a diminished expectation of privacy to their vehicles (as opposed to their homes). The philosophy behind this is that vehicles are highly mobile instruments that can easily be used to thwart police

investigation. As such the courts have provided a number of scenarios where a car can be searched without a warrant. However, each has a different set of limitation placed on the state.

Here, a police search subsequent to the Terry Stop/Frisk resulted in the discovery of a pair of "young girls underwear" and a scrap of paper with 50K on it. The suspect is trying to suppress such evidence. However, his success will vary depending on the success of states arguments.

Reas Suspicion- Police are allowed to search a vehicle in conjunction with a valid Terry Frisk. Court has ruled that the entire car (including containers, glove compartment) may be searched for weapons irrespective of suspects actual ability to reach such weapons. However, this does not extend to the trunk. Here, the state is likely not going to be able to articulate reas suspicion was armed and dangerous. Further, the evidence was provided in the trunk. Thus, the RS argument is not going to be successful. If state argues only this...suspect will be able to suppress the underwear.

Search INcident to Arrest- The court has ruled that an individual person as well as anything in his immediate grab area may be searched as incident (after) a lawful arrest. Like RS search of a car, the court has held that the entire vehicle (including containers; glove) but excluding the trunk is a valid grab area. Since the evidence was in the trunk, this would not apply. Further, suspect would have to be under arrest. An arrest is where a person is in custody in order for criminal prosecution. A person is in custody when their freedom is limited significantly. Here suspect was placed in cuffs and put on the pavement. He is going to argue that the cuffs equaled custody and thus an arrest. However, cuffs alone are not enough to equal custody. Police can easily articulate that the cuffs were necessary for safety or to prevent escape. MOst importantly, since the evidence was in the trunk SITA is not going to apply, regardless of suspects success's in proving arrest.

Probable Cause - The court has held that a warrant less search of a car is valid upon probable cause. Probable cause exists when a reasonable person, taking into consideration of his experience of the sate actor, and considering the facts and circumstances of the situation, finds

that there is a fair probability that a crime is or has been afoot. Where the state actor (police officer) analyzes the situation under the TOC and finds probable cause to believe the vehicle contains evidence related (nexus) to crime committed, he may search the entire vehicle, including the trunk.

Here, the officers searched the car pursuant to their discovery of the Strawberry Princess Brush. They will argue that in light of their experience and the facts of the situation (same car, young driver), they had PC to believe that there may be further evidence related to the kidnapping in the vehicle. However, suspect is going to contend that the discovery of the brush was a FOPT in result of an illegal Terry frisk. Suspect will argue that probable cause did not exist without the discovery of the brush and that the brush cannot be used to justify PC. The suspect had standing to assert an expectation of privacy against the search of his person and that there was no independent source (besides the brush) to authorize probable cause for a search of the vehicle.

Thus the admissibility of the UNDERWEAR is going to depend on the courts finding on the legality of the Terry Frisk. If the court finds the frisk to be legal (unlikely) the search will come in. If not, search of the car was a FOPT and thus illegal.

When was suspect Arrested:

As discussed above, a suspect is arrested when he is placed in custody for the purposes of criminal prosecution. Custody def above. Here, suspect was in hand cuffs, he was placed into the car, he was booked, he was transported to the station house and placed in an interrogation room. A reasonable person would find that he was not free to leave and that his freedom was limited in a sig way. He was in custody and under arrest.

Does his statement at booking " ive been to Lewisbug before" come in?

Suspect had not yet been read Miranda prior to booking. Thus the suspect is going to argue that any incriminating statement prior to Miranda should not come in. In Miranda v. Arizona the

court held that in order for prosecution to use a statement, exculpatory or inculpatory, as result of a custodial interrogation, they must demonstrate the use of proper safe guards, effective in securing the privilege against self incrimination.

Suspect is going to argue that the proper safeguard of Miranda were not given. However, the court has ruled that routine booking question do not require a Miranda warning. Evidence obtained in result of a booking question is admissible as long as the question was part of documented police procedure and was in good faith.

Booking question here "Been to Lewisburg before" seems to be a normal booking question. No facts to indicate it was in bad faith. Thus, his response in the affirmative will be admissible.

Right to counsel:

Once an individual clearly requests assistance of counsel the police must stop questioning him on any crime unless suspect later reinitiates and waives right. Ambiguity of suspects request falls in favor of the state. They are not required to clarify and may continue interrogating. Here, there is no ambiguity and no issue. Counsel can either be retained or appointed. Suspect requested "Attorney" Jones. Jones compliance with sitting in on the interrogation was enough to meet the retained requirement. Police have no duty to confirm the qualification of the counsel. It does not matter that Jones was a family law attorney. State here complied with suspects request so there is no issue.

Was waiver of DUI a waiver of right to remain silent?

A suspects waiver of one crime does not automatically result in waiver of all crimes. Suspect, here clearly stated that he ONLY wished to talk about the DUI allegations. Suspects waiver here was clear and unambiguous. A reasonable police officer would have been able to understand the limitation on his waiver.

Additionally, a waiver must be voluntary and intelligent. The burden is on the police to prove that the waiver was voluntary and intelligent. Voluntariness, Knowing and intelligent is analyzed under the TOC. The court will look to many factors such as suspects physical condition, mental condition, age, experience with the law, coercion/intimidation by police. Up till this point here was no police coercion and facts provide that OG was only officer in the room, and of adult age. The only possible argument suspect can make was that he was under a limited mental capacity (since drunk). However, the court has ruled that a mentally ill patient can waive his right. Such determination must be made on a case by case approach. Since, suspect was able to correctly respond to the booking agent, and since he was able to recognize and request assistance of counsel, chances are he was in proper mental state. Considering the facts, suspects waiver was legitimate.

Did Suspect Invoke Right to Remain Silent?

A suspect may invoke the right to remain silent at any point during a custodial interrogation. here, suspect invoked his right to remain silent twice on the issue of kidnapping. He first did it when he advised OG he only wished to speak of the DUI. A suspects invocation of the right to remain silent must be "scrupulously honored." Under, TOC analysis, "scrupulously honored" is met when a reasonable person would believe that they had regained some control. Upon suspects invocation the officer(s) must stop questioning on the specific offense (her kidnapping) immediately. However, the officer may return after a sufficient amount of time. There is no requirement that suspect reinitiate. Upon return Miranda does not need to be restated unless sufficient time has passed. Here, OG initially complied with suspects request to remain silent. He "scrupulously honored" suspects request since he only questioned him on the DUI allegation.

However, OG re-initiated questioning on the topic after a break from interrogation. His reinitiation came after 45+ minutes since suspect initially invoked his right to remain silent. Thus far, OG re-initiation of kidnapping questions seems to be legitimate. However, suspect

immediately responded with a re-invocation of his right to remain silent when he said "I told you I only wanted to talk about the DUI charge." At that point, OG was once again required to "scrupulously request" suspects second request.

Unfortunately for the state, OG did not do so when he stated "I want to talk about the underwear." Although, this statement was not a question, it still met the requirement of an interrogation. An interrogation is a question or a functional equivalent (statement and actions) that a state actor should know would illicit a response from the suspect. OG did not scrupulously honor suspects 5th amendment right to remain silent and was an illegal activity by the police. Any response at this point by suspect would be involuntary.

Was Search w/ SWAB legal?

As mentioned above an individual has a high expectation of privacy to their person. Society has found such an expectation to be legitimate. Thus, a person may not be searched for physical evidence without a warrant. DNA is a physical property and is considered evidence. In order, to search a person a state actor would need to obtain a warrant.

In order to obtain a search warrant the state actor must convince the court that probable cause exists. A warrant is issued when a officer provides an signed affidavit under oath, particularly describing the place to be searched (body) and the thing (DNA) or person to be seized. The affidavit must also provide a nexus linking the thing to be seized with the crime.

With all those things in hand the court looks to the totality of the circumstances (Gates) to determine whether probable cause exists for the search. The state will look at things such as nature of the crime, opportunity for officer to observe, independent investigation of the officer, freshness of the crime, etc. If PC is found a neutral magistrate signs the warrant making it official.

Here no warrant was issued prior to the search. Suspect is going to argue that the failure of a

warrant was an intrusion into his REOP and thus any evidence obtained in result of the search is a FOPT and should be excluded. However, state is going to argue that they had independent probable cause at that point to search his person. Suspect, is going to rebut with an argument that state has the appropriate resources to obtain a warrant. They were at the police station. State will respond that there is a good faith exception, that their failure was just a simple error and that independent probable cause (underwear, brush, etc) should allow the swab in.

The ultimate outcome of the swab will depend on multiple court findings, including the legality of the underwear and the brush. The court may also look at whether the use of the swab at that point was just a error as opposed to a coercive tactic by the police to scare the suspect into cofessing. It seems that the use of the swap is suspicious and many of the underlying independent source for probable cause are likely FOPT. Thus, the evidence obtained from the swab is likely not going to get in.

Confession

Miranda holds that Statements made during custodial interrogation may not be used by prosecution unless they demonstrate use of procedural safeguards. Here, the state is going to argue that Miranda was administered and that suspects invocation of silence was subsequently waived by his surprising confession. The State is gong to try to stengthen their argument by articulating that the confession was made without force and on the advise as well as in the presence of Attorney Jones. A cursory analysis would make it seem that the state has a very strong argument pursuant to the holding in the Miranda case.

However, the court has recently started to chip away at Miranda and return to an analysis of voluntariness. The suspect is going to argue that his confession was in result of deliberate police coercion. Suspect will argue taht but for OG coercive tactic of swabing suspects mouth, the suspect would have never confessed.

The state will refute suspects contention by arguing that the waiver was merely a trick (as

opposed to a coercive action). The court has held that mere trickery is acceptable as creative police work. They will add that the use of the swab was merely a trick b/c they did not actually run the swab. They merely lied to suspect to make him believe he was doomed. They will further add that his confession came with counsel present and that under the facts and circumstances his confession was completely voluntary.

If the state is successful in their argument (likely) they will be able to use his confession. If they are not, they will not be able to use it for both their case in chief or impeachment (because involuntary).

Based on the facts, it seems that the state is likely going to be able to succeed in their argument that the confession was voluntary.

Will state be able to use the body?

Here, suspect is going to argue that the body should not be allowed into evidence since it was in result of an involuntary (coerced) confession. However, confessions are treated differently than physical evidence when it comes to FOTPT argument. FOTPT confessions are often forgiven on the rationale that an individual has free will to volunteer testimonial information. In contrast, evidence will never volunteer its existence on its own. Thus, the physical evidence (body) is more likely to be excluded pursuant to the exclusionary rule.

However, the state may have a legitimate argument that a valid exception to the exclusionary rule exists. They will argue that the body was inevitably going to be discovered. The facts indicate that a search party was already in the process of being formed. Further, the body was in a shallow grave in a public place. They will argue that sooner or later the body would have been found by the search party.

Thus, although suspect might be successful in suppressing his confession, he WILL NOT be able to suppress the body.

Search Warrant for his house (child porn):

Requirement for search warrant discussed above.

The state will argue that the child porn obtained from suspects home should be allowed since it was in result of a valid search warrant signed by a neutral magistrate. Facts advise that the search warrant was "properly prepared and executed." (Thus we can assume that child porn was listed as a category of items on the warrant).

The suspect will attempt to suppress the child porn found at his home. He will do this by trying to traverse the warrant itself on grounds that it was faulty. The D in this scenario has the burden to prove that the judge erred in signing the warrant. Suspect will assert that the information provided by the officer (brush, confession, etc) was obtained in violation of his own REOP. He will argue that everything that is found to be a violation of his REOP should be excluded from the affidavit and should not be considered towards probable cause. In his effort, the suspect is authorized to call the officer (affiant) to the stand for questioning.

Those things that are found should be excluded and the magistrate at that point should reconsider the warrant. If the magistrate finds that probable cause exists despite exclusion of certain facts in the affidavit, the child porn will come in. If magistrate does not find PC the child porn will be suppressed.

Officers good faith here does not apply. The challenge is based on error by the magistrate.

END OF EXAM