

# Criminal procedures

Law



## Criminal Procedures

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 amendment?

The Fourth Amendment contains crystallized principles to guard against State encroachment on the privacy of its citizens. (Romero, 1988) It reads as follows: “ The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Unfortunately for Deft, he cannot invoke the Fourth Amendment to exclude his statement that “ he could make life very unpleasant” for Jones if she “ messed” with him. At the most basic level, he was not under arrest yet, so this statement was not made under custodial investigation. It should be remembered that Jones was simply asking for his license and registration. The exclusionary rule, first adopted by the Supreme court in 1914 in *Weeks v. United States*, is applicable to statements made under custodial investigation that have been made without the benefit of Miranda warnings. It does not exclude voluntary statements given while no arrest has been made or when the individual’s liberty has not been curtailed.

B. The purse seized from Deft's car, a motion based upon asserted violations of his rights under the fourth amendment?

At first blush, it may seem that the plain view doctrine is applicable in this case. The essence of the plain view doctrine is that it allows law enforcement  
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officers to effect warrantless seizures when the evidence/contraband is in plain view. (LaFave, 1983). However, the officer may not disturb other objects to obtain a better view. In this case, the purse was hidden under a seat and was clearly not in plain view.

The correct exception to the Fourth Amendment that would make the motion fail is the “ search incident to a lawful arrest” exception. In the case of *Maryland v. Buie* (494 US 325 1990), the Court extended the reach of a search incident to a lawful arrest from a search within the “ immediate reach” of the arrested individual to a “ protective sweep”, so as better to retrieve weapons or contraband that the accused could have hidden. In the case of *New York v. Belton* (453 U. S. 454, 1981), the Court established the doctrine that “ when a police officer has made a lawful custodial arrest of an occupant of an automobile, the Fourth Amendment allows the officer to search the passenger compartment of that vehicle as a contemporaneous incident of arrest.” The situation of Deft falls squarely within the exception. Thus, he cannot invoke the Fourth amendment to exclude the purse as evidence.

C. His confession at the police station, a motion based on asserted violations of Deft's rights under the Fifth Amendment?

The Fifth Amendment to the Constitution protects the rights of the accused to due process and against self-incrimination. One of the fundamental rights enshrined in this Amendment is the so-called Miranda Rights, created by virtue of *Miranda v. Arizona* (384 US 436, 1966), which essentially confers on policemen the duty to inform the accused of his right to remain silent and to be assisted by counsel. However, these rights may be waived, for as long as “ the totality of the circumstances” would demonstrate that the confession

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was voluntary. In the case of *Stein v. New York* (346 US 156, 1953) the Court said that involuntary confessions were untrustworthy. In other cases, such as *Watts v. Indiana* (338 US 49, 1949), admitting involuntary confessions as evidence against the accused offends the concept of due process.

In this problem, there is no indication that the confession was involuntary. It was explicitly stated that he was given Miranda warnings. Hence, there is no legal justification to exclude this confession in court.

#### References

LaFave, W. (1983) Fourth Amendment Vagaries (Of Improbable Cause, Imperceptible Plain View, Notorious Privacy, and Balancing Askew). *The Journal of Criminal Law and Criminology* (1973-), Vol. 74, No. 4, pp. 1171-1224

Romero, E. (1988) Fourth Amendment: Requiring Probable Cause for Searches and Seizures under the Plain View Doctrine. *The Journal of Criminal Law and Criminology*, Vol. 78, No. 4, pp. 763-791

#### Cited Cases:

*Maryland v. Buie* (494 US 325 1990)

*New York v. Belton* (453 U. S. 454, 1981)

*Stein v. New York* (346 US 156, 1953)

*Watts v. Indiana* (338 US 49, 1949\_