

1. Motions to Suppress:

A. Gun

i. Checkpoint

Don's gun was confiscated at a police checkpoint. Checkpoints are constitutional if they a) serve a public purpose (such as a checkpoint for checking drunk driving, and b) are not administered arbitrarily or capriciously.

Here, the purpose of the checkpoint was to check for contraband, which does not meet the public policy requirement because it violated the 4th amendment right against unlawful search or seizure. The 4th amendment requires probable cause before the government can search your property. By checking every person who passes by, the government is not searching based on probable cause, and therefore such searches are not lawful.

There is no evidence that the checkpoint was administered arbitrarily.

ii. Stop and Frisk

Under the holding in *Terry v. Ohio*, a police officer may briefly detain a suspect and check him via a "pat down" to determine if the suspect has any weapons. There are two requirements: 1) the detention must be for a very short period of time (i.e. to conduct the pat down), and 2) the officer must have an articulable suspicion that the suspect is carrying a weapon or is about to engage in a criminal activity. Here, since Don was stopped at a checkpoint for a pat down, the officers did not have an articulable suspicion to stop him, merely they stopped him because he was walking in that area. Therefore, the pat down, which constituted a breach, and the taking of the gun, which constituted a seizure, were both violations of Don's 4th am rights.

Because both the checkpoint and the stop and frisk were unconstitutional, it is likely that the gun would be thrown out.

B. Cocaine

i. Search incident to lawful arrest

The police are absolutely authorized to conduct an inventory of defendant's belongings prior to placing defendant in jail. This search serves two purposes: 1) to prevent prisoners from taking weapons into jail, and 2) to prevent them from taking contraband into jail. Here, Don was arrested and at his booking, the officer conducted a lawful search incident to a lawful arrest and found the cocaine.

Don could challenge the search if the search was not the result of a lawful (ie warrantless) arrest. Absent exigent circumstances, a police officer is required to procure an arrest warrant from a neutral and detached magistrate that lists the probable cause for arrest and the name of the person to be arrested. The facts are silent as to whether the police had an arrest warrant. However, since the police waited a month to arrest Don, and there were no other circumstances to suggest that there were any exigent circumstances, the police would have been required to procure a warrant. It is irrelevant that the police waited a month to arrest Don because they still had probable cause that Don was in possession of the stolen handgun. There is no right to a speedy arrest or a requirement that the arrest take place contemporaneously with the acquisition of evidence.

ii. Fruit of the poisonous tree

Don could argue that since the evidence leading up to the arrest (ie the unlawful search and seizure of the gun) were unconstitutional, that there was no probable cause to arrest Don, and therefore, the evidence found at the search at booking would subject to the exclusionary rule as fruits of the poisonous tree. That doctrine states that where the police base their probable cause for searches on unlawfully obtained evidence, any evidence gathered as a result of that unlawful search or seizure is “tainted” and is fruit of the poisonous tree, and therefore, should be excluded. However, the police would be able to assert the good faith exception if they made a good faith error identifying the probable cause on the warrant.

Further, the cocaine was not found based on a defective warrant, it was found on independent grounds in a lawful search incident to a lawful arrest, therefore it is likely that the fruit doctrine will not apply and the cocaine will be admitted into evidence.

2. Withdrawal of guilty plea

A defendant has a 6th amendment right to a fair trial. That means that a defendant must have the mental capacity to represent himself and aid his own defense. Therefore, a defendant must be of sound mind at every step of the trial in order for the trial to proceed. By drinking of the homemade wine in jail, Don no longer had the mental capacity to make informed decisions in his defense and therefore he did not have the capacity to enter into the guilty plea. It makes no difference that the drunkenness was a result of voluntary intoxication. The important factor is whether the defendant had the requisite mental state, which he did not. Additionally, since he was slurring his words, the Court should have known that he was drunk at the time he entered into his guilty plea. It would have been an insubstantial burden on the state to wait a few hours for the effects of the intoxication to wear off. Therefore, the defendant’s 6th amendment rights were violated.

Further, guilty pleas must be entered into willingly and with a knowledge and understanding of the consequences. As discussed above, since Don was drunk, he likely did not have a full understanding of his consequences of his actions.

Accordingly, the judge should have thrown out the guilty plea.

3. Attempted Kidnapping of Harriet

Kidnapping is the moving or transporting of a person by use or force or threats of violence. Attempt is an inchoate crime, which requires the specific intent to commit the target offense and the defendant must make substantial steps to commit that offense. Here, Don used a gun and told Harriet, 'You're coming with me.' Therefore, he intended to move or transport her by use of threat or violence. Further, the entering of her property and carrying of a gun constitute substantial steps in the preparation of the crime, therefore, Don would likely be found guilty of attempted kidnapping.

It makes no difference that Harriet did not believe that the gun was real because the subjective belief of the intended victim is not relevant to the crime of intent. What is paramount is whether Don met the above requisite elements for attempt of the target offense of kidnapping.