

Exclusionary Rule Approach Outline

Spring 2011

Jared W. Olen

- I. Was there a constitutional violation?
 - A. If No → No exclusion
 - B. If Yes → Maybe exclusion
- II. General Exclusionary Rule
 - A. 4th Amdt. → *Weeks* for federal & *Mapp* for state
 - B. *Miranda* → *Tucker*
- III. Exclusion?
 - A. “Standing” (personal right, illegal *seizure* of car, overnight guest)?
 - i. If No → No “standing,” no exclusion
 - ii. If Yes → Can object to admission. Exceptions apply?
 - a) Independent Source Doctrine applies (acquired in fashion untainted by illegal evidence-gathering activity)?
 - If Yes → Admit
 - If No → Exclude if no other exception
 - b) Inevitable Discovery Doctrine applies (info ultimately or inevitably would have discovered by lawful means)?
 - If Yes → Admit
 - If No → Exclude if no other exception
 - c) Attenuation Doctrine applies?
 - Yes:
 - Illegal arrest + release from custody
 - Unwarned statement + warned statement:
 - Deliberately calculated to undermine *Miranda* (“Missouri Two-Step”)?
 - └ If Yes → Exclude
 - └ If No → Admit
 - 4th Amdt. violation + discover live witness
 - K&A violation/illegal manner of entry
 - *Miranda* violation + discovery physical evidence
 - No:
 - Not sufficiently an act of free will (illegal search/arrest + nothing)
 - Illegal arrest + *Miranda* warnings
 - d) Good Faith Exception applies?
 - Yes:
 - Reasonable, good-faith reliance on search warrant
 - Reasonable reliance & warrant invalidated due to judicial error
 - Mere police negligence (police bookkeeping error)
 - No:
 - Lies in affidavit

- Absolutely no PC (e.g., based on uncorroborated tip alone)
- No particularity (facially deficient)
- e) Impeachment Exception applies (evidence still “excluded”)?
 - Yes:
 - Impeach D with unwarned statements
 - Impeach D with physical evidence illegally acquired
 - No:
 - Impeach defense witness
 - Impeach D by *involuntary* statement