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Criminal Law - Physical Evidence Obtained as a Result of Unwarned, Voluntary Statement Held Admissible Despite Failure to Issue Miranda Warnings - United States v. Patane, 124 S. CT. 2620 (2004)

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CRIMINAL LAW – PHYSICAL EVIDENCE OBTAINED AS A RESULT OF UNWARNED, VOLUNTARY STATEMENT HELD ADMISSIBLE DESPITE FAILURE TO ISSUE *MIRANDA* WARNINGS – *UNITED STATES v. PATANE*, 124 S. CT. 2620 (2004)

The Self-Incrimination Clause of the Fifth Amendment prohibits the government from compelling individuals to testify against themselves in criminal proceedings.[1] Courts have interpreted this clause as rendering statements of persons in custody inadmissible in their criminal proceedings, absent a prior warning of their constitutional right and a voluntary, informed waiver.[2] In *United States v. Patane*,[3] the Supreme Court declined to extend this exclusionary principle to instances where police have obtained physical evidence as a result of an unwarned, voluntary statement.[4]

Samuel Patane was indicted for possession of a firearm by a convicted felon, a violation of federal law[5], as a result of two independent investigations by the Colorado Springs Police Department.[6] The police had

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[1] U.S CONST. amend. V. The Fifth Amendment states, in pertinent part, "No person . . . shall be compelled in any criminal case to be a witness against himself." *Id.*

[2] *See* Miranda v. Arizona, 384 U.S. 436, 444-45 (1966). Statements taken or coerced from criminal defendants during a custodial interrogation, in the absence of a full warning of their constitutional rights, violate the Self-Incrimination clause and are inadmissible in criminal proceedings. *Id.* To admit statements from an interrogation into evidence at a criminal proceeding, authorities must warn those in custody that they have the right to remain silent, that any statements they make can be used as evidence against them in trial, and that they have the right to consultation with an attorney prior to the interrogation. *Id.* A person may only waive these rights if it is done voluntarily, knowingly, and intelligently. *Id.*

[3] 124 S. Ct. 2620 (2004).

[4] *Id.* at 2626 (noting Self-Incrimination clause not implicated by allowing physical fruit of a voluntary statement).

[5] 18 U.S.C. § 922(g)(1) (2004). Section 922(g)(1) provides that "it shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year . . . to possess in or affecting commerce, any firearm or ammunition." *Id.*

[6] United States v. Patane, 304 F.3d 1013, 1014 (10th Cir. 2002), *rev'd*, 124 S. Ct. 2620 (2004). Patane was under investigation for gun possession and violating a domestic violence restraining order. *Id.* at 1015. Officer Fox conducted an interview with Patane's ex-girlfriend during which she told him that Patane had violated the restraining order, and that she feared for her life because he always carried a gun. *Id.* Contemporaneously, Detective Benner received a tip from an ATF agent that Patane possessed a .40 caliber Glock pistol. *Id.* Officer Fox and Detective Benner arranged to travel to Patane's house to execute an arrest in connection with the restraining order violation. *Id.*

arrested Patane at his house for a violation of a domestic violence restraining order, and had reason to believe he possessed a Glock pistol.[7] The officers attempted to advise Patane of his *Miranda* rights, but Patane interrupted them by stating that he knew his rights.[8] The officers made no further attempt to complete the *Miranda* warnings.[9] The officers questioned Patane about the Glock pistol and he voluntarily responded that he in fact possessed the weapon, told the officers where they could find the pistol, and granted them permission to retrieve it.[10] Patane was subsequently charged with being a convicted felon in possession of a firearm.[11]

Patane sought to have the firearm suppressed because the officers did not have sufficient probable cause to arrest Patane for the restraining order violation, and, in the alternative, because the firearm was the fruit of an unwarned statement in violation of Patane's *Miranda* rights.[12] The district court granted Patane's motion to suppress the firearm upon finding insufficient probable cause to execute the arrest, and declined to rule whether the firearm should be suppressed as the fruit of an unwarned statement.[13] The United States Court of Appeals for the Tenth Circuit held that sufficient probable cause existed to arrest Patane for the violation of the restraining order, but upheld the suppression of the firearm, stating that the gun was the physical fruit of a *Miranda* violation.[14] The United States Supreme Court granted certiorari to determine whether the failure to properly advise a defendant of his *Miranda* rights requires the suppression of physical evidence obtained from his unwarned, voluntary statements.[15]

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[7] *Patane*, 304 F.3d at 1015.

[8] *Patane*, 124 S. Ct. at 2625. The officers did not get beyond the right to remain silent before being interrupted by Patane. *Id.*

[9] *Id.* The Government concedes that any subsequent answers by Patane at his house would be inadmissible under *Miranda*. *Id.* at 2625 n. 1; *see also Miranda*, 384 U.S. at 444-45.

[10] *Patane*, 124 S. Ct. at 2625.

[11] *Id.*

[12] *Id.*

[13] *Id.* An officer has probable cause to arrest if, under the totality of the circumstances, he learned of facts and circumstances through reasonably trustworthy information that would lead a reasonable person to believe an offense has been or is being committed by the person being arrested. *Patane*, 304 F.3d at 1016 (citing United States v. Morris, 247 F.3d 1080, 1088 (10th Cir. 2002)). The district court stated that domestic disputes often involve claims and counter-claims between parties who have ended an intimate relationship and uncorroborated allegations arising from these disputes do not establish probable cause. *Patane*, 304 F.3d at 1016.

[14] *Patane*, 304 F.3d at 1018-19 (finding probable cause existed for arrest but noting gun inadmissible because it was fruit of failure to warn).

[15] *Patane*, 124 S. Ct. at 2624 (noting Court has previously addressed question without reaching definitive answer).

In *Miranda v. Arizona*,[16] the United States Supreme Court held that under the Self-Incrimination Clause of the Constitution the government can introduce defendants' incriminating statements into evidence only if the police have warned criminal defendants of their constitutional rights prior to the statement. [17] The Court has also held that evidence obtained, either directly or indirectly, as a result of a constitutional violation must be suppressed unless the government can show that it learned of the evidence from an independent source.[18] Courts have used this exclusionary rule, however, only to suppress evidence obtained through a direct violation of a defendant's constitutional right, and have not extended it to violations of mere prophylactic protections of a constitutional right.[19] Courts have historically viewed *Miranda* protections as a prophylactic rule rather than a constitutional rule and therefore have not subjected seized evidence or statements to the "poisonous fruit" exclusion.[20]

A recent decision declaring the rule in *Miranda* a constitutional rule has clouded this historical view of *Miranda* protections as a prophylactic rule.[21] This uncertainty created a circuit split on the question of whether

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[16] 384 U.S. 436 (1966).

[17] *Id.* at 444-45; *see also supra* note 2 and accompanying text.

[18] Wong Sun v. United States, 371 U.S. 471, 484-87 (1963) (holding courts must suppress evidence indirectly obtained from unconstitutional conduct in Fourth Amendment context as fruit of poisonous tree). Provisions that forbid the acquisition of evidence in a particular way do not merely prevent its use before the court, but rather that the evidence may not be used at all. Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920). Thus, evidence that comes to light as a result of an unlawful invasion is the fruit of a poisonous tree and must be suppressed. *See Wong Sun*, 371 U.S. at 485.

[19] *See* Oregon v. Elstad, 470 U.S. 298, 305-07 (1985) (distinguishing procedural violation of *Miranda* rights from Fourth Amendment unlawful searches). The Court stated that "the purpose of the Fourth Amendment exclusionary rule is to deter unreasonable searches no matter how probative their fruits." *Id.* The *Miranda* exclusionary rule protects Fifth Amendment rights, but also sweeps more broadly than the Amendment itself. *Id.* at 306 (noting defendant who gives voluntary, unwarned statement receives *Miranda* remedy even in absence of identifiable constitutional harm).

[20] *See Elstad*, 470 U.S. at 306; New York v. Quarles, 467 U.S. 649, 654 (1984) (recognizing *Miranda* warnings as prophylactic and meant to protect against compulsory self-incrimination and not rights themselves protected by Constitution); Michigan v. Tucker, 417 U.S. 433, 445-46 (1974) (declining to extend "fruits of poisonous tree" doctrine to suppress evidence obtained from un-Mirandized confession). The *Miranda* warnings are prophylactic because they are measures intended to prevent compulsory self-incrimination in violation of the Fifth Amendment and are not themselves rights protected by the Constitution. *Quarles*, 467 U.S. at 654. The "fruit of the poisonous tree" doctrine forbids the use of evidence obtained directly or indirectly as a result of a violation of a defendant's *constitutional rights*. *See Wong Sun*, 371 U.S. at 485 (emphasis supplied).

[21] *See* Dickerson v. United States, 530 U.S. 428 (2000). In *Dickerson*, the Court addressed whether the decision in *Miranda* constituted an interpretation of judicially created rules of evidence that could therefore be legislatively modified, or whether it was an interpretation of the Constitution beyond the legislative reach of Congress. *See id.* at 437. The Court recognized that language used in opinions analyzing the effect of *Miranda* sug-

courts should extend the "fruit of the poisonous tree" doctrine to preclude evidence obtained from an unwarned, voluntary statement.[22] The classification of *Miranda* warnings as a prophylactic rule, however, has not been the sole justification in declining to extend the "fruit of the poisonous tree" doctrine.[23] Courts have also focused on differences between the Fourth and Fifth Amendments of the Constitution, as well as the underlying purpose of the *Miranda* rule.[24]

In *United States v. Patane*,[25] the Supreme Court considered whether the "fruit of the poisonous tree" doctrine should extend to suppress physical evidence discovered as a result of an unwarned, voluntary statement.[26] The Court answered this question in the negative stating that the *Miranda* rule, which sweeps beyond the actual protections of the Self Incrimination Clause, should only expand out of necessity to protect the actual right against self incrimination.[27] Accordingly, the Court stated that the intro-

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gested that the rule was not constitutionally based. *See id.* (noting judicially created exceptions along with references to *Miranda* as prophylactic rule rather than constitutional right created confusion). The Court clearly stated that the *Miranda* rule is a constitutional rule that may not be superceded legislatively. *Id.* at 444. Some courts read this as overruling the *Elstad* and *Tucker* holdings by implication because it undermined the reliance on *Miranda* warnings as a prophylactic rule. *See* United States v. Faulkingham, 295 F.3d 85, 92-93 (1st Cir. 2002) (noting *Dickerson* holding of *Miranda* warning as constitutional rule strengthened argument against admission of physical fruits of *Miranda* violation.); *Patane*, 304 F.3d at 1029 (noting *Dickerson* holding of *Miranda* warnings as constitutional rule fundamentally changed analysis of admission of physical fruits of *Miranda* violation).

[22] *See* United States v. Sterling, 283 F.3d 216, 218-19 (4th Cir. 2002); United States v. DeSumma, 272 F.3d 176, 180-81 (3d Cir. 2001) (noting physical fruits of *Miranda* violation never subject to suppression under poisonous fruit doctrine); *see also Faulkingham*, 295 F.3d at 90-94 (noting physical fruits of *Miranda* violation sometimes subject to suppression under poisonous fruit doctrine depending on need for deterring police misconduct).

[23] *See* United States v. Villalba-Alvarado, 345 F.3d. 1007, 1015 (8th Cir. 2003) (noting admission of physical fruit of *Miranda* violation does not offend purpose of *Miranda* rule). The *Miranda* rule was instituted to deter overzealous interrogation techniques by authorities as well as to prevent the introduction of untrustworthy evidence. *See id.* at 1015 (citing *Miranda*, 384 U.S. at 445-55). The introduction of physical evidence obtained from an unwarned, voluntary statement does not offend either of these purposes. *See Villalba-Alvarado*, 345 F.3d at 1015. Additionally, fundamental differences between the Fourth Amendment and Fifth Amendment affect the practicality of applying the "fruit of the poisonous tree" doctrine. *See DeSumma*, 272 F.3d at 180. The Supreme Court even specifically noted the difference between the Fourth and Fifth Amendments while declaring the *Miranda* rule as a constitutional rule. *See Dickerson*, 530 U.S. at 441. The refusal to extend the "fruit of poisonous tree" doctrine to *Miranda* violations did not prove *Miranda* was a prophylactic rule, but rather it was the product of the fundamental differences between the Fourth and Fifth Amendments. *See id.*

[24] *See supra* note 22 and accompanying text.

[25] 124 S. Ct. 2620 (2004).

[26] *See id.* at 2625.

[27] *Id.* at 2627; *see also* Chavez v. Martinez, 538 U.S. 760, 778 (2003) (Souter, J., plurality opinion) (requiring "powerful showing" before expanding the privilege against

duction of evidence derived from an unwarned statement did not implicate the Self Incrimination Clause, and that a blanket suppression rule fails to serve the goals of the Self-Incrimination Clause and *Miranda*.[28] The Court also stated that the textual composition of the Self-Incrimination Clause furthered the presumption against expanding the *Miranda* rule in this instance.[29] The Court stated that its recent decision declaring *Miranda* a constitutional rule did not change any of these observations, and that it did not invalidate previous decisions limiting the expansion of the *Miranda* rule.[30] In an attempt to strengthen its argument, the Court stated that failure to warn a defendant of his *Miranda* rights does not constitute a constitutional violation in and of itself; rather, a violation occurs only when the state attempts to introduce incriminating statements at trial.[31] This last assertion created a plurality opinion.[32]

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compelled self-incrimination).

[28] *See Patane,* 124 S. Ct. at 2625-28. The court stated that *Miranda* was a rule that swept beyond the actual protections of the Self Incrimination Clause, and an extension of the rule can only be justified if its serves to protect the actual right against compelled self-incrimination. *See id.* at 2627. The Self-Incrimination Clause is not implicated by the introduction of physical evidence. *See id.* at 2626 (citing United States v. Hubbell, 530 U.S. 27, 34 (2000)). The Court noted the use of the term witness in the Self-Incrimination Clause limits protections regarding incriminating communications to those that are testimonial in character. *Id.*; *see also* Oregon v. Elstad, 470 U.S. 298, 304 (1985) (noting Fifth Amendment not concerned with non-testimonial evidence). The Court also stated that a blanket rule suppressing physical evidence obtained as a result of a voluntary, unwarned statement does not address either the goals of deterrence or ensuring trustworthy evidence inherent in the Self-Incrimination Clause and *Miranda*. *Patane*, 124 S. Ct. at 2628. The deterrence rationale seeks to instill a greater degree of care in police with regards to a defendant's rights by rendering any coerced statement inadmissible and thereby removing the incentive to utilize such techniques. Michigan v. Tucker, 417 U.S. 433, 447 (1974). A blanket suppression rule would serve to render evidence obtained from a voluntary, unwarned statement inadmissible, even in the absence of bad faith where the deterrence rationale would not have the same force. *See id.* Also, the *Miranda* presumption of coercion in the absence of warnings does not require the statements and the fruits of the statements be discarded as inherently tainted. *Elstad*, 470 U.S. at 305.

[29] *See Patane*, 124 S. Ct. at 2628. The Self-Incrimination Clause, unlike the Fourth Amendment, contains self-executing language, and provides automatic protection against use of involuntary statements. *Id.* This specific textual protection creates a presumption against expanding the *Miranda* rule to encompass the "fruit of the poisonous tree" doctrine utilized in instances of Fourth Amendment violations. *Id.*; *see also supra* note 18, 21 and accompanying text (discussing fundamental differences between Fourth and Fifth Amendment).

[30] *Patane*, 124 S. Ct. at 2628. The *Dickerson* decision recognized the continuing validity of the *Miranda* precedents including *Elstad* and *Tucker*. *See id*; *see also supra* notes 21-22 and accompanying text (discussing confusion regarding *Miranda* precedents in light of the *Dickerson* decision).

[31] *See Patane*, 124 S. Ct. at 2628-629 (Thomas, J., plurality opinion) (classifying Self Incrimination Clause and *Miranda* rule as fundamental trial right). It follows that the police do not violate the Self-Incrimination Clause and the *Miranda* rule by a mere negligent or even deliberate failure to warn. *Id.* Potential violations only occur upon the admission of

In an attempt to eliminate confusion regarding admissibility of physical evidence obtained from an unwarned, voluntary statement, the Court appears to have unnecessarily allowed the confusion to survive.[33] Rather than compose a clear majority opinion stating that the "fruit of the poisonous tree" doctrine should not apply to the fruits of an unwarned, voluntary statement, the Court complicated the issue by focusing on whether the failure to warn is a violation of the *Miranda* rule itself.[34] The concurring opinion agreed with the plurality's argument that admission of physical evidence did not implicate the Self Incrimination Clause. Specifically, the admission of the glock would not serve to deter overzealous police practices or allow for the introduction of untrustworthy evidence.[35] The plurality's unnecessary assertion, however, that a failure to warn did not constitute a violation of the *Miranda* rule, and its subsequent substantial reliance on this assertion, may lead to confusion that it wished to eliminate.[36]

The *Miranda* precedents of the Court were called into question because they relied, in part, on the classification of *Miranda* as a prophylactic rule.[37] The unnecessary reliance on whether a failure to warn constitutes a violation of *Miranda* could similarly call this holding into question if this issue is further addressed by the Court.[38] It appears that the plurality ad-

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unwarned statements into evidence at trial. *Id.* The exclusion of these statements is a complete remedy for a *Miranda* violation. *Id.*

[32] *See Patane*, 124 S. Ct. at 2630-631 (Kennedy, J., concurring in judgment) (agreeing with plurality except holding it unnecessary to decide whether failure to warn is violation of *Miranda* in and of itself).

[33] *Patane*, 124 S. Ct. at 2624 (noting confusion regarding impact of *Dickerson* decision on the *Miranda* precedents); *see also supra* notes 21-22 and accompanying text (describing confusion and resulting Circuit split after *Dickerson* decision).

[34] *See Patane*, 124 S. Ct. at 2630-631 (Kennedy, J., concurring in judgment) (agreeing with plurality except holding it unnecessary to decide whether failure to warn is violation of *Miranda* in and of itself).

[35] *See supra* note 26 and accompanying text (explaining rationale for allowing the admission of physical evidence obtained from voluntary, unwarned statement); *see also Patane*, 124 S. Ct. at 2630-631 (Kennedy, J., concurring in judgment) (agreeing with plurality except holding it unnecessary to decide whether failure to warn is violation of *Miranda* in and of itself).

[36] *See Patane*, 124 S. Ct. at 2629-630 (Thomas, J., plurality opinion) (noting lack of *Miranda* violation weakens any deterrence rationale for suppression of gun). The Court apparently believed a strong deterrence argument could be made in favor of suppression if it was found that the police had violated the defendant's constitutional rights. *See id.* at 2629 (Thomas, J., plurality opinion).

[37] *See supra* notes 18-21 and accompanying text (explaining belief that Court implicitly overruled *Miranda* precedents when *Miranda* rule determined to be constitutional rule leading to Circuit split).

[38] *See Patane*, 304 F.3d at 1029 (noting *Dickerson* holding of *Miranda* warnings as constitutional rule fundamentally changed analysis of admission of physical fruits of

dressed this issue to counter a deterrence argument in favor of suppression.[39] The plurality's assertion, however, that even a deliberate failure to warn does not violate a defendant's constitutional rights seems to strengthen the deterrence argument.[40] Ultimately, the interests in eliminating confusion would be better served by focusing strictly on the explicit language of the Self-Incrimination Clause in securing a majority opinion while avoiding the issue of whether a failure to warn constitutes a violation of *Miranda* in and of itself.[41]

In *United States v. Patane*, the Supreme Court considered whether physical evidence obtained as a result of an unwarned, voluntary statement should be inadmissible under the "fruit of the poisonous tree" doctrine. The Court correctly held that the introduction of this physical evidence did not implicate the Self-Incrimination Clause, and that *Miranda* should not be expanded to include the "poisonous fruit" doctrine unless it closely fit the goal of protecting the actual right against self-incrimination. The Court's assertion, however, that a failure to warn is not a violation of *Miranda* in and of itself created a plurality opinion, and detracted from the Court's goal in clearly answering this question. In fact, by substantially relying on this non-majority assertion in its argument the Court may have left the door open for future confusion and Circuit splits regarding this issue.

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Miranda violation); United States v. Faulkingham, 295 F.3d 85, 92-93 (1st Cir. 2002) (noting *Dickerson* holding of *Miranda* warning as constitutional rule strengthened argument against admission of physical fruits of *Miranda* violation). A possible future holding classifying a failure to warn as a violation of *Miranda* could have similar consequences, allowing courts to possibly view this decision as being overruled by implication. *See id.*

[39] *See Patane*, 124 S. Ct. at 2629-630 (Thomas, J., plurality opinion) (noting lack of *Miranda* violation weakens any deterrence rationale for suppression of gun). The Court apparently believed a strong deterrence argument could be made in favor of suppression if it was found that the police had violated the defendant's constitutional rights. *See id.* at 2629 (Thomas, J., plurality opinion).

[40] *See Patane*, 124 S. Ct. at 2629 (Thomas, J., plurality opinion) (noting violation occurs upon introduction of unwarned statements into evidence rather than the failure to warn itself). It could be argued that this assertion could encourage police to intentionally withhold warnings if they believe physical evidence would be forthcoming. *See id.* at 2632 (Breyer, J., dissenting) (noting this case is an invitation to law enforcement to flout *Miranda* where physical evidence may be obtainable). This is the type of conduct *Miranda* intended to deter. *See Miranda*, 384 U.S. at 445-55.

[41] *See supra* notes 32-39 and accompanying text (explaining potential problems of plurality opinion and possible future confusion).