

Empire College of Law  
Criminal Law & Procedure II  
Final Examination  
Spring 2024  
Prof. L. Stark-Slater

Instructions

1. This examination consists of three (3) questions.
2. There is a three (3) hour time limit to complete the exam.
3. There are three essay questions. Make sure that you read each essay question carefully before answering. Attempt to organize your answer before you start writing.
4. The essay questions test your ability to apply the law to the facts. Use IRAC. After stating the issue, provide a succinct statement of the relevant legal principles, followed by a detailed analysis of how these legal principles apply to the facts and a conclusion.

### Question 1

Judge Judy signed a search warrant for the home of suspect Sal based upon Deputy Dan's sworn affidavit:

"I received numerous complaints that suspect [Sal] was selling fentanyl from his residence at 111 Main Street. A reliable source advised that the source was at the residence a few days ago when a fellow visitor purchased 100 fentanyl pills. The next day Sal was detained during a traffic stop with 10 fentanyl pills and currency in small bills. This deputy, based upon his training and experience believes, there are illegal narcotics on the property."

Sal was in the shower and did not hear deputies knock when they executed the warrant; deputies permitted him to put on a robe before he was cuffed and searched. Deputies believed Sal might be under the influence himself. Deputies seized a phone from the pocket of the robe, 1000 fentanyl pills in the desk drawer and a laptop computer from the kitchen table. Deputy Dan drove Sal to jail; enroute Dan mentioned that he was also investigating a case of an infant who died from fentanyl contact. Sal told Dan "he used a bit and sold a bit—but never like that."

Deputies were finishing the search, when GrubHub driver Greg pulled into the driveway. Deputies asked him to step out of the car; he did with his insulated bag. Deputies frisked Greg and located a wad of cash in the bag.

While pending trial, Sal reviewed the search warrant with his attorney. Sal told his retained attorney Al that the affidavit was "all lies," that he never let's more than one person in his house at a time to purchase drugs, and that his wife could confirm that fact. Al sent an investigator to try to interview and subpoena Sal's wife. After Al missed Sal's Preliminary Hearing, Sal grew frustrated with Al and told Judge Judy he wanted to represent himself. Judy refused, finding that those with histories of substance abuse disorder should always be represented by counsel to ensure a fair trial. At trial, Sal's statement to Dan was admitted into evidence; Sal was subsequently convicted of possession for purpose of sales. Greg was also convicted during a separate trial of being an accessory to Sal.

*What arguments, if any, would Sal and Greg advance under the Fourth, Fifth, and Sixth Amendments. How should the court rule? Discuss.*

*Do not discuss substantive crimes.*

\*\*\*\*\*

## Question 2

Policeman Pete, suspicious of a Toyota Camry driving in front of him, ran the car's license plates. Dispatch advised the car's registered owner, Rosie, a 30 year old white female, had an arrest warrant for failing to appear in court on a felony assault. Pete conducted a traffic stop of the car. Pete asked the male driver and female passenger, seated in the rear, to sit on the curb. Pete asked their names. The driver identified himself as Dave and pointed to the female, saying he was driving Roxie's car home after a night of partying. Pete noticed the female was white and appeared in her 30's. She displayed symptoms of drug intoxication and when asked her name, slurred her words.

Pete pat searched Dave and removed a baggie containing a white powdery substance from his pocket. Pete placed Dave under arrest and seated him in his patrol car. Pete returned to the car and searched a purse left on the car's rear seat. Pete seized a knife from the purse, which he believed was illegal based upon the size of the blade. He also removed a business card for "Lou's Law Firm." Pete placed the female under arrest. She stumbled as he stood her up and again asked her name, to which she slurred, "Roxie". She said she wanted to talk to her lawyer Lou. Pete believed she was unable to care for herself. He transported both Pete and the female to the jail for booking. The next morning registered owner Rosie reported her car had been stolen from a party the night before.

The jail identified the female as Roxie with an old booking photo. Pete and Roxie were set to be arraigned. Roxie called her "go to" Lou, who, for a small fee, agreed to represent them both: Dave for drug possession and Roxie for auto theft and possession of the knife. Lou entered not guilty pleas for them and set the cases for a single trial.

Pete began to prepare for his trial testimony. He learned that it was in fact legal to possess a knife of the size seized from the purse. Pete also visited victim Rosie at her place of employment and showed her a photo line up with Roxie's picture in the #2 position. Rosie told Pete she didn't see who took the car, but that the female at #2 was at the party. Rosie told Pete that if she could work off her assault case, she would be "confident" in testifying that Roxie took her car. Pete did not share any of this information with the District Attorney or Lou.

Rosie testified at trial that she observed Roxie steal the vehicle. Both Dave and Roxie were convicted.

*Discuss the rights, if any, of Dave & Roxie under the Fourth, Fifth, and Sixth Amendments. How should the court rule?*

*Do not discuss substantive crimes.*

\*\*\*\*\*

### Question 3

Central High School installed a metal detector at a single entry point to campus to promote school safety. One morning Principal Pat observed freshman Jay dart around the metal detector and head toward his locker where Jay deposited items from his backpack. Pat called Jay to the office and called Central Police Officer Cal to campus. While Jay waited, Pat and Cal searched Jay's locker. They seized a "ghost gun" and marijuana in a brown bag and returned to interview Jay with the items in hand. They put them on Pat's desk, shut the door, and sat down.

Pat apologized for the long delay. Cal told Jay, "I just talked to your lawyer Lou a minute ago; he told me it was probably best you talk to me." Cal knew Jay was pending trial for assault, but in fact Cal had not spoken to Lou. Jay asked to speak to his Probation Officer; Pat handed him a phone. Jay left a message that he was arrested for bringing a gun to school. Hearing this, Cal asked Jay if he had additional firearms. Jay told them there was a real gun in his friend Finn's Firebird, parked in the school lot and that Finn was holding it in exchange for the marijuana.

Pat and Cal were removing the gun from the Firebird when Pat's phone rang. Jay's Probation Officer was returning his missed call. Probation had a soft spot for Jay and his many challenges, including learning disabilities. Probation recommended Cal release Jay to appear for arraignment on the new charges in three weeks. Cal did so.

The next week Cal visited Jay's home to ask Jay some clarifying questions for his report. Jay's Mom let Cal in, directing him to the kitchen table where Jay was sitting with his Dad. Cal said he needed to give Jay these warnings, even though they were "just formalities" as Jay already was represented by Lou, Cal elaborated:

"You know, you have a right to an attorney prior to and during questioning. An attorney is a lawyer like Lou who will speak for you and help you concerning the crime or any kind of offense that we might think that you or somebody else is involved in, if you were involved in it, okay...It doesn't necessarily mean that you were involved, but if you were, then that's what would apply...." Jay nodded, looked at his dad and began to speak. Jay confessed to Cal that both guns were to be used to protect him from being ripped off during marijuana sales at school.

*Discuss the rights of Jay, if any, under the Fourth, Fifth, and Sixth Amendments. How should the court rule?*

*Do not discuss substantive crimes or other statutes designed to protect juvenile suspects.*

\*\*\*\*

ECL CRIMINAL PROCEDURE-SPRING 2024-PROF. L. STARK-SLATER

Outline and Point Rubric

Q1/Prof. Stark-Slater

**P v. Sal (80 points):**

*Search Warrant (50 points):*

- Government action/standing (5 points)
- Probable cause/*Gates* analysis (15 points)
- Good faith reliance on warrant/*Leon* (10 points)
- Franks* hearing procedure for material falsehoods (15 points)
- Issues re: execution of warrant (5 points)
  - Knock notice (2.5 points)
  - Detention of Sal (2.5 points)

*Seizure of items from the residence (5 points)*

*Statement/Admission to Dan in the car (10 points):*

- Voluntariness approach/*Spano* (5 points)
- Self-incrimination or functional equivalency test/*Innis* (5 points)

*6th Amendment Right to Counsel (10 points):*

- Preliminary hearing/critical stage/*Coleman* (5 points)
- Denial of *Faretta* motion (5 points)

*Application of exclusionary rule (5 points)*

**P. v. Greg (20 points):**

*Government action/standing (5 points)*

*Reasonableness of detention and frisk (10 points)*

- Ordering out of car/*Mimms* (5 points)
- Search of GrubHub bag/*Terry* (5 points)

*Application of exclusionary rule (5 points)*

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**Outline and Point Rubric**  
**ECL Criminal Procedure Spring Final**  
**Q2/Prof. Stark-Slater**

**P. v. Roxie (70 points):**

*Initial Encounter (20 points):*

- Government action/passenger standing (5 points)
- Reasonable suspicion to conduct traffic stop (10 points)
- Good faith exception/mistaken identification (5 points)

*Search of the purse/seizure of contents (10 points):*

- Automobile exception (5 points)
- Search incident to arrest on the warrant (5 points)

*Invocation of Sixth Amendment right to counsel/Miranda (5 points)*

*Probable cause to arrest (5 points)*

*Co-defendant representation (5 points)*—applies equally to both defendants

*Post arraignment photo line up (10 points):*

- Brady violation? (5 points)
- Critical stage for Sixth Amendment purposes? (5 points)

*Good faith reliance on knife statute (5 points)*

*Application of exclusionary rule (5 points)*

**P. v. Dave (30 points):**

*Initial Encounter (20 points):*

- Government action/driver standing (5 points)
- Reasonable suspicion to conduct traffic stop (10 points)
- Terry frisk/seizure of white powdery substance (5 points)

*Probable cause to arrest (5 points)*

*Application of exclusionary rule (5 points)*

**Outline and Point Rubric**  
**ECL Criminal Procedure Spring Final**  
**Q3/Prof. Stark-Slater**

**P. v. Jay (100 Points):**

**Initial Encounter (20 points):**

- Government action/standing in locker (5 points)
- Reasonable suspicion to detain at school (10 points)
- Search of locker and seizure of gun and marijuana (5 points)

**Discussion in the Principal's Office (30 points):**

- 5<sup>th</sup> Amendment Voluntariness approach/intrinsic lies (10 points)
- 6<sup>th</sup> Amendment Right to Counsel approach/*Massiah/Cobb* (5 points)
- Miranda* approach (15 points)
  - Custodial setting? (5 points)
  - 6<sup>th</sup> amendment invocation by probation officer? (5 points)
  - Waiver by call to probation officer? (5 points)

**Seizure of gun from Firebird (10 points):**

- Standing in friend's car? (5 points):
- Seizure of gun from the car? (5 points):

**Discussion in Jay's Kitchen (30 points):**

- 5<sup>th</sup> Amendment Voluntariness approach/learning disabilities (5 points)
- 6<sup>th</sup> Amendment Right to Counsel approach/*Massiah/Cobb* (5 points)
- Miranda* approach (20 points)
  - Custodial setting? (5 points)
  - Sufficiency of *Miranda* advisement? (5 points)
  - Waiver by speaking after advisement? (5 points)
  - Law enforcement use of two-step technique? (5 points)

**Application of exclusionary rule (10 points)**




## Monterey College of Law

ID: (Student ID)  
Exam Name: CrimLawPrc-ECL-Sp24-StarkSlater-R  
Exam Date: Apr 30, 2024  
File Name: \_CrimLawPrc-ECL-Sp24-StarkSlater-  
R\_20240430213043032\_final.xmdx  
Exam Length: 180 minutes (Started @Apr 30, 2024, 6:30 PM; Ended @Apr 30, 2024, 9:30 PM)  
Downloaded: Apr 29, 2024, 10:29 AM  
Uploaded: Apr 30, 2024, 9:31 PM  
GRADE 90/90/80 : 86.66

Total Number of Words in this Exam = 5394

Total Number of Characters in this Exam = 31632

Total Number of Characters in this Exam (No Spaces, No Returns) = 26314

: You authored 3 exceptional exams which were well organized and demonstrated a solid knowledge of the law. I think the 3d exam may have been pushed for time. Continue to work on integrating your facts into your analysis.

1)

### **Government Actor (GA)**

A government actor is an individual who is a part of law enforcement whose job it is to uphold the law and to ensure public safety.

Here, Deputy Dan (D) is a government actor as he is a law enforcement actor. The facts indicate that D is a government actor as he provided a sworn affidavit to Judge Judy (J) that was later signed. Thus, D has the authority to conduct any reasonable searches and seizures.

D is a government actor.

### **Validity of the Warrant**

#### Search Warrant Requirements

A search warrant must be issued by a neutral and detached magistrate that requires probable cause. The search warrant must include with particularity the place(s) to be searched and the item(s) to seized.

Here, the facts indicate that a search warrant was issued by J for the home of suspect Sal (S) based upon D's sworn affidavit. The affidavit details the place to be searched as S' home that is provided as: 111 Main Street. The warrant indicates that the place to be searched is the home. The probable cause for the warrant consists of numerous complaints (possibly anonymous, facts do not indicate) that S was selling fentanyl from his residence and that a reliable source advised that the source was at the residence when an individual purchased 100 fentanyl pills. Additionally, the warrant indicates that S was detained during traffic stop with 10 fentanyl pills and currency in small bills.

Here, the search warrant is valid as it was issued by J, and indicates the place to be searched, and contains probable cause.

### **Reliability with complaints/source**

#### Anonymous Tips/Confidential Informant

An anonymous/confidential tip standard is the totality of the circumstances. Here, there has to be veracity, basis of knowledge, and corroboration.

Based on the sworn affidavit, the facts indicate that D established that the source was reliable as the individual indicated and identified the residence as S' home, provided the amount of pills an individual purchased from S. Consequently, the facts indicate that this information was corroborated by D as he

became aware that J was detained during a traffic stop with 10 fentanyl pills and currency in small bills.

Based on the facts, it appears that the confidential informant/ anonymous tips showed veracity, a basis of knowledge and corroboration. This is a reliable source.

## **Execution of the Warrant**

### Knock and Announce

When law enforcement is executing a warrant, they must knock-and-announce their presence. However, there are exceptions to this in which officers may not do so in the interest of officer and safety of others, to prevent the destruction of evidence/preservation of evidence, and to prevent a suspect from fleeing/escaping. Even if law enforcement did not knock-and-announce when they should have, the evidence seized despite the failure to announce themselves would not trigger the Exclusionary Rule and the evidence seized would still be admissible.

Here, law enforcement executing the warrant did announce, however, S was in the shower and did not hear law enforcement do so.

This was a valid execution of a warrant.

## **Entering the Home with the Warrant**

### 4th Amendment (4A)

The Fourth Amendment protects individuals from government intrusion/ government actor from conducting unreasonable searches or seizures.

Here, law enforcement entered S' home and allowed him to put on a robe prior to him being cuffed and searched.

### Standing

An individual has standing when they have a reasonable expectation of privacy of their person, place to be searched or item to be seized. Reasonable Expectation of Privacy (REOP) is two-pronged in which there is a subjective reasonable expectation of privacy and an objective one that society is willing to recognize as reasonable (Katz).

Here, S' had the highest expectation of privacy as he was in his home. This is both a subjective REOP as well as an objective REOP that society is willing to recognize.

## **Detention of S**

### Seizure

A seizure of a person occurs when a government actor uses physical force or a show of authority, and an individual submits to that show of authority (CA v Hodari).

### Encounters with law enforcement

There are three ways an individual can have encounters with law enforcement. These are a consensual encounter, a detention or an arrest. For a consensual encounter, officers need consent from the individual to talk with/cooperate with officers, and officers can conduct a consensual search. However, the scope of the search is dictated by the one consenting. In a detention, officers must have reasonable articulable suspicion which is a reasonable belief that the suspect has just engaged or is about to engage in some criminal or illegal activity. For an arrest, officers need probable cause. Probable cause is the facts or circumstances in which an officer has a reasonable belief that a crime has been committed or evidence of a crime can be found at a particular place. Here, officers can conduct a full search of an individual.

Here, the facts indicate that S was seized as he was cuffed and searched by government actors executing the warrant, making that show of authority by announcing themselves and S' submission by allowing himself to comply and be handcuffed.

S was seized/arrested. *was there p.c.?*

### **Search of S**

#### Search

A search is an intrusion by the government/government actor in a place, person, or item in which an individual has a REOP.

Law enforcement obtained a warrant to gain entry into S' home in which the warrant detailed that the search was limited to the scope of the home. The warrant only indicated that the items in the home could be searched and seized. Law enforcement seized 1000 fentanyl pills from in the desk drawer and a laptop computer from the kitchen table.

The laptop computer may be admissible into evidence as it is covered under the warrant, however, the fentanyl pills themselves, were located in the desk drawer. Despite the desk being in the home, the warrant did not detail that a drawer could be searched. This may be an issue later for admitting the pills.

### **Exception to the Search Warrant**

#### Search Incident to Arrest

Search Incident to Arrest (SITA) is an exception to the search warrant in where law enforcement can conduct a warrantless search of a suspect, and the area in the immediate control of the suspect (wingspan) in the interest of officer safety, preservation of evidence/destruction of evidence, or prevent

escape by the suspect.

Here, officers had a warrant to search the home: 111 Main Street. However, the warrant did not indicate that S could be searched. However, the facts indicate that S was cuffed, alluding to the possibility that S was under arrest. Thus, allowing law enforcement to conduct a search of S' person and any and all items in his immediate control (Chimel). Officers retrieved a phone from the pocket of the robe.

Here, despite the warrant not indicating that S' could be searched, it is likely S was under arrest and law enforcement conducted a valid SITA. Thus, this was a valid search supported by an exception to the warrant requirement. *all items?*

### 5th Amendment (5A)

The 5A prohibits coerced confessions, prohibits unreliable identification and protects individuals against compelled self-incrimination.

### Miranda Warning

A Miranda Warning consists of an individual having the right to remain silent, anything the individual says, can and will be used against him/her in a court of law, the individual has the right to an attorney present before and during all interrogations, if one cannot afford an attorney, one will be appointed one. An individual can invoke their Miranda right at any time. An officer must ask an individual if they understand these rights, if so, then the individual is asked if they would like to take. A waiver of a Miranda cannot be presumed based upon silence. Miranda rights are triggered when an individual is in custody and will be interrogated (custodial+interrogation).

Here, when S was en route to the jail, D mentioned that he was also investigating a case of an infant who died from fentanyl contact. Here, S proceeded to tell D that he used a bit and sold a bit, but never like that. Here, D did not need to make S aware of his Miranda rights as despite S being in custody, D did not directly question S nor exercised the function equivalent. However, the very nature of D appealing to S' emotions by detailing the death of an infant based on fentanyl could be coercive.

S did not need his Miranda rights to be read to him as he was in custody, but was not being interrogated. However, D' detail of the infant death may be coercive and be later inadmissible.

*Under  
What  
Confession  
Standard?*

### 4th Amendment

4A supra.

Standing supra.

Here, Greg (G) may not likely have a REOP as he is a Grubhub driver, and when he was detained, he was parked in S' driveway. While S' driveway could be a part of the curtilage to S' home, G did not have REOP into a home that was not his, and his mere purpose of being there was to deliver. If G has any standing, his REOP would be substantially decreased.

*But in this car? His person?*

Here, G does not have a high REOP in S' driveway.

## **Detention of G**

Seizure supra.

Encounters with law enforcement supra.

### Terry Frisk (Terry)

Terry Frisk is when officers can conduct a pat or frisk (not a fondle) on an individual that is detained. However, the basis of the frisk is that officers have a reasonable belief that the individual be armed and dangerous.

Here, law enforcement detaining G may have been based on reasonable articulable suspicion based on G arriving when the warrant was executed and given that G pulled into the driveway. However, the facts do not indicate that G may have been armed or dangerous. A Terry frisk did not reveal any weapons on G's person, rather a wad of cash was located in the bag. Therefore, this may an unlawful search and seizure.

### S being Arraigned

## **6th Amendment (6A)**

The 6A allows individuals the right to counsel, the right to effective counsel, and counsel at critical stages during the adversarial process. The 6A is offense specific however. These critical stages consist of preliminary hearings, motions, trial(s), live line ups and during interrogations. The defendant has the burden of proof of showing that the counsel was ineffective by indicating that such representation fell below the objective standard of reasonableness.

## **Massiah Rule**

Under Massiah, an individual who has had a complaint filed/arraigned, this triggers the adversarial process in which an individual has the right to an attorney at all critical stages.

## **Massiah Error**

An individual who has been arraigned or charges have been filed against him, has the right to have their attorney present at this critical stage.

A Massiah error occurs when an individual has been . . . ?

Here S, reviewed the search warrant with his attorney Al (A) and indicated that the warrant was based on lies. Later, A missed S' preliminary. This itself could trigger the Massiah rule where S' attorney was not present during a critical stage.

A's failure to be present at S' preliminary hearing could be a potential Massiah error.

*specific to  
Confessions*

### **Admission of S' statement made to D**

5A supra.

Miranda Warning supra.

Here, S' statement made to D did not require a reading of S' Miranda rights, however, such statement could have been coercion.

It is likely that the admission of S' statement to D was coercion.

### **G' conviction.**

Seizure supra.

Encounters with law enforcement supra.

Here, G conviction during a separate trial of being an accessory may have been invalid as while G did not have standing in S' driveway, the subsequent search and seizure may have been unlawful.

### **Exclusionary Rule**

The exclusionary rule indicates that an individual who has standing may have the right to complain about unreasonable searches and seizures can invoke the exclusionary rule and prevent the government from introducing evidence that was seized as a result of an unlawful search of seizure.

### **Fruit of the Poisonous Tree Doctrine**

Under this doctrine, an individual can indicate that any item seized based on a 4A violation or illegality, can be suppressed based on the illegality such as unlawful entry. Secondary evidence may be inadmissible as well as being tainted.

### **Exceptions to the Fruit of Poisonous Tree**

These consist of attenuation, independent source, inevitable discover, or good faith.

Here, G can invoke the Exclusionary rule to suppress the wad of cash in the bag that was seized by officers when conducting the Terry Frisk. Again, a Terry Frisk is limited to searching for weapons as officer have reasonable suspicion that the suspect may be armed or dangerous. The money itself was seized unlawfully.

G can invoke the Exclusionary rule and move to suppress the cash. This suppression could then dismantle the evidence that officers have against him as a "accessory" to S and may be consequently acquitted.

Here, S can argue that the warrant itself was defective based on his assertion that it was all lies, *Grants* (questioning the reliability of the warrant and sources) and the items seized were tainted fruit from a poisoned tree. However, this argument may likely fail as independent source. Here law enforcement can argue that the evidence is admissible due to the fact that aside from the warrant and source, S had already been previously detained for fentanyl and this itself source was independent from the original illegality.

S can also argue that his comment to D was coercive given that D appealed to S emotion. This will likely be coercion and his comment will be likely suppressed.

2)

### **Government Actor (GA)**

A government actor is an individual who is a part of law enforcement whose job it is to uphold the law and to ensure public safety.

Here, Policeman Pete (P) is a government actor as he is a law enforcement actor. The facts indicate that P is a government actor as he is a policeman.

P is a government actor.

### **Running of the License Plates**

#### **Reasonable articulable suspicion (RAS)**

Reasonable art. suspicion is a reasonable belief by law enforcement that a suspect has committed a crime or will commit one.

Here, by P running the plates and learning that the registered owner, Rosie (R), a 30 year-old white



## Monterey College of Law

ID: [REDACTED] (Student ID)  
Exam Name: CrimLawPrc-ECL-Sp24-StarkSlater-R  
Exam Date: [REDACTED] 2024  
File Name: [REDACTED]\_CrimLawPrc-ECL-Sp24-StarkSlater-R\_20240430213005473\_final.xmdx  
Exam Length: 179 minutes (Started @Apr 30, 2024, 6:30 PM; Ended @Apr 30, 2024, 9:30 PM)  
Downloaded: Apr 30, 2024, 12:25 PM  
Uploaded: Apr 30, 2024, 9:30 PM  
GRADE 87.5 / 90 / 85 = 87.5

Total Number of Words in this Exam = 5211

Total Number of Characters in this Exam = 30553

Total Number of Characters in this Exam (No Spaces, No Returns) = 25269

[REDACTED] You authored three well thought out and well-analyzed exams. I would encourage you to paragraph and sign-post more often to help out the reader. Well done!

2)

2)

### Government Action

Policeman Pete is a government actor, as he is a police officer employed by the government.

### Standing

Standing is when an individual has a reasonable expectation of privacy in a particular place. A reasonable expectation of privacy is defined by the Katz v. US case. In the Katz case, it is established that a subjective expectation of privacy exists when an individual makes an effort to shield a place, thing, or activity from the view of the public, and an individual has an objective expectation of privacy when it is one that society would recognize as reasonable and would accept.

In this instance, Roxie would have standing in her car, as it is her vehicle that she owns. It is unlikely that Dave would have standing in Roxie's car, as he is just viewed as a passenger of the vehicle even though he is driving. If Dave was also a registered owner of the car, he would also have standing in the vehicle.

*the purpose?*

*or stolen?*

### 4th Amendment

*would skip this no warrant*

The 4A provides that the right to be secure in one's person, houses, papers, or personal effects from unreasonable searches and seizures shall not be violated, and warrants shall only issue upon probable cause, typically with an affidavit signed under oath, and where the warrant outlines the places to be searched and the items to be seized. A search warrant must be issued by a neutral and detached magistrate, there must be probable cause, and the warrant must define the places to be searched and/or items to be seized. There are 9 exceptions to the search warrant requirement: aerial surveillance, automobile, abandoned property, open field, consent, plain view, exigency, Terry Stop/Frisk, and search incident to arrest.

It is legal for police to run a vehicle's license plates. When the policeman Pete ran the license plates to the Toyota camry driving in front of him, dispatch advised that the registered owner of the car had an arrest warrant out for failing to appear in court on a felony assault. Policeman Pete pulled over the Toyota camry and directed both occupants of the vehicle to sit on the curb. Dave advised Policeman Pete that he was driving Roxie's car home after a night of partying. There are 3 types of encounters that individuals can have with law enforcement. A consensual encounter (requires consent of individual and police can do a consent search), a detention (requires reasonable articulable suspicion and police can do a Terry frisk/pat), and an arrest (requires probable cause and police

What about the initial traffic stop?

can do a search incident to arrest). In this instance, Policeman Pete has the authority to arrest Roxie, as he has probable cause to believe she has an outstanding warrant (as told to him by dispatch). Dispatch stated that the registered owner's name was Rosie, but when Policeman Pete asked for the individuals names, he noticed that Roxie appeared to be intoxicated and she slurred her name. It is likely that Policeman Pete could mistake "Roxie" for "Rosie," especially if Roxie is slurring her words. Because policeman Pete is arresting Roxie based on his probable cause that she has a warrant for her arrest, he can search Roxie under the theory of search incident to arrest. He is allowed to search Roxie's person and anything within her wingspan under the Chimel case.

It is likely that Dave is currently under a detention. For a detention to occur, the officer must have a reasonable articulable suspicion of criminal activity and must either (1) use an application of force against the individual to restrain them, or (2) when the individual submits to the show of authority by the officer. In this instance, Dave following the Policeman Pete's instructions would be him submitting to the show of authority by Policeman Pete. Policeman Pete has a reasonable articulable suspicion of criminal activity. A reasonable suspicion is established when a reasonable person would believe that a suspect has or is about to commit a crime or engage in illegal activity. In this instance, Dave is stating that they are driving home after a night of partying. The police officer has reasonable articulable suspicion to believe that one or both parties may be under the influence of drugs or alcohol from Dave's statement, and therefore, the elements are met for a detention. When a detention occurs, the officer can do a Terry Frisk/Pat on the individual. The Terry v. US case established that an officer can frisk or pat down an individual when the officer has reasonable articulable suspicion of criminal activity, and a reasonable articulable suspicion that the suspect is armed and dangerous. The Terry Frisk was established for officer safety. In this instance, Policeman Pete believes that Roxie has an outstanding warrant for a felony assault. Policeman Pete could conclude that due to the felony assault charges, it is likely that Roxie and/or Pete might have weapons in the vehicle or on their persons. When Policeman Pete frisks Dave, he locates a baggie containing a white powdery substance in his pocket. It states that Dave was pat searched, so as long as Policeman Pete could articulate that the item in Dave's pocket was contraband, this will be admissible evidence. Policeman Pete now has enough probable cause to place Dave under arrest. Probable cause is a set of facts or circumstances which would lead a reasonable person to conclude that there is a fair probability that a crime has occurred or evidence of a crime will be found in a particular place. Probable cause can be established by eye witnesses, police investigation, informants, etc. In this instance, Policeman Pete knows based on his training and experience that it is likely that the white powdery substance in the baggie is an illegal drug.

Policeman Pete returns to search the vehicle. At this point neither individual is in the vehicle, so Policeman Pete would need a search warrant unless one of the exceptions apply. The Gant case has established that under the theory of search incident to arrest, an officer may also search a vehicle if the officer knows that the individual was a recent occupant of the vehicle and has probable cause to believe that evidence of a crime will be found in the vehicle. Policeman Pete has a valid exception to the search warrant requirement and can search the car, as both Dave and Roxie were recent occupants of the car and Policeman Pete has probable cause to

didn't  
the  
detention  
occur  
earlier?

believe evidence will be found in the vehicle. Policeman Pete searches the vehicle and locates a knife in Roxie's purse that he believes is illegal due to the blade size, as well as a business card for Lou's Law Firm. He seizes both items and then proceeds to arrest Roxie. Roxie immediately states that she wants to talk to her lawyer. An individual has a right to an attorney at all critical stages of a court proceeding or in a custodial interrogation. Roxie does not currently have a right to speak with an attorney.

*Invocation?*

### 6th Amendment

The 6A provides the right to counsel at critical stages, the right to counsel at confessions, the right to a fair/impartial jury, the right to a jury trial, and the right to confront witnesses. Under the *Massiah v. US* case, it is established that the initiation of the court proceedings triggers and individuals 6A right to counsel at all critical stages (interrogations, in-person line-ups, preliminary hearings, motion hearings, etc.). Pete and Roxie are both set to be arraigned, meaning their right to counsel under *Massiah* has not been triggered yet. However, Roxie, knowing her arraignment is upcoming, calls her attorney Lou and for a small fee he agrees to represent both Roxie and Dave. This is a huge conflict of interest, as Lou has no way to give both client's a fair defense when both of their cases stem from the same incident. He made need to implicate Roxie and/or Dave in the defense of either party. Lou setting the cases for a single trial just furthers this conflict of interest. He should not be representing both of them.

### *Photo Line-Up - 6A Right to Counsel?*

There are 3 identification procedures used by police. The first is an in-person physical lineup. This typically consists of 8 people and if it is a post-arraignment lineup, the individuals do have a 6A right to have their counsel present at this lineup. The second type of identification procedure is a photo lineup. This typically includes 6 people, and there is not a 6A right to counsel during a photo lineup. The third and final identification procedure is a show up or a 1 on 1 ID. This typically occurs only under exigent circumstances, where the victim may not be able to identify the perpetrator due to a concern they will not survive or something to that same effect. Police also do show up identifications in courtroom settings. The circumstances of the show up identification determine whether a 6A right to counsel applies. In this instance, since this was a photo lineup, Roxie had no 6A right for her counsel to be present at the presenting of the photos to Rosie.

### Brady Material

Brady material was established by the Brady case. The Brady case established that the prosecution must (at the request of the defense) turn over any material evidence to the defense that relates to the culpability or punishment of the defendant. In this situation, Rosie states to Policeman Pete that she would testify that Roxie stole the car even though she didn't know for certain it was her if Policeman Pete helped her work off her assault case. Policeman Pete should have shared this information with the district attorney, as this is brady material. It goes to the culpability of Roxie, because Rosie is stating that she is culpable when she actually doesn't know that Roxie stole the vehicle.

*Independent duty*

## Evidence

Policeman Pete found a baggie of a white powdery substance on Dave that we can infer was determined to be a drug, as Dave was charged with possession of drugs. Policeman Pete located this evidence from a valid Terry frisk, and therefore, this evidence will be admissible.

Policeman Pete also found what he believed to be an illegal knife in Roxie's purse, as well as a business card for her attorney Lou. Policeman Pete seized these items in a lawful search incident to arrest, and therefore, the items will likely be found admissible. *good faith? knife? (okay below)*

Roxie and Pete will try to argue that all of this evidence should be excluded, as it came from an unlawful search and seizure. Under the exclusionary rule, if evidence comes from the police violating an individual's constitutional right, it must be excluded from court. Here, Roxie was not the registered owner of the vehicle that Pete believed she was. However, because Policeman Pete acted on good faith reliance that Roxie was the individual with an outstanding arrest warrant, it is likely that the good faith exception will apply and the evidence Pete found will be admissible. This is the same with the knife. Policeman Pete acted on his good faith belief that the knife was an illegal weapon, so it will not be excluded from evidence.

3)

1)

## Government Action

Central Police Officer Cal (PO Cal) is a government actor, as he is a police officer working for the government.

## Standing

Standing is when an individual has a reasonable expectation of privacy in a particular place. A reasonable expectation of privacy is defined by the *Katz v. US* case. In the *Katz* case, it is established that a subjective expectation of privacy exists when an individual makes an effort to shield a place, thing, or activity from the view of the public, and an individual has an objective expectation of privacy when it is one that society would recognize as reasonable and would accept.

In this case, Jay does not have standing at school because he does not have a very reasonable expectation of privacy at school, neither does he have standing over his locker. School officials are allowed to detain and search student's belongings and the lockers as well. The locker is property of the school, and while the students are on school grounds, they must abide by all of the school rules. *none? conclusory*

## 4th Amendment

## Monterey College of Law

ID: (Student ID)

Exam Name: CrimLawPrc-ECL-Sp24-StarkSlater-R

Exam Date: Apr 30, 2024

File Name: \_CrimLawPrc-ECL-Sp24-StarkSlater-R\_20240430213059407\_final.xmdx

Exam Length: 180 minutes (Started @Apr 30, 2024, 6:30 PM; Ended @Apr 30, 2024, 9:30 PM)

Downloaded: Apr 29, 2024, 5:40 PM

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GRADE 85 / 85 / 90 = 86.66

Total Number of Words in this Exam = 5312

Total Number of Characters in this Exam = 30850

Total Number of Characters in this Exam (No Spaces, No Returns) = 25566

Your exams were well organized, solid, and consistent. You spotted most of the issues and demonstrated a competent understanding of the subject matter. Well done!

appear at court. Had it been an arrest warrant for drug or gun trafficking, then maybe Pete could search the car.

*Franks is a search warrant issue*  
The parties should move forward with a Franks Motion against Pete as he discovered evidence that he should have shared, such as the knife length rule. This is a serious accusation as it calls into question Pete's reliability and would accuse him of purposely hiding this evidence. Also, his coercive actions against Rosie should come up in this motion as it is poor police conduct.

*attorney?*  
The parties cannot have the same trial as one of them, if not both (probable Dave due to Roxie's intoxication) are guilty of stealing the car and need to have their due process rights ensured.

The court would likely grant a new trial for all the reasons stated above and overturn Roxie's conviction regarding the possession of an illegal knife.

3)

### **Jay's rights under the Fourth, Fifth and Sixth Amendments:**

The fourth amendment (4A) protects against searches and seizures by governmental agents in places of expected privacy. It also institutes that warrants are required to conduct searches and seizures, unless there is a relevant exception.

The fifth amendment (5A) ensures due process of law and protects against compelled self incriminating statements and provides the due process for identifications.

The sixth amendment (6A) secures a right to an attorney at critical stages.

### **Search and Seizure of Jay's Locker:**

Principle Pat (PP) observes Jay avoid the metal detector and place items from his backpack into his locker. This creates an reasonable articulable suspicion (RAS) that will allow PP to engage with Jay. RAS is a reasonable, articulable belief that creates a suspicion (must be more than a hunch) that criminal activity is afoot.

School administrators are able to act in a custodial capacity as they are allowed to search through lockers, backpacks etc if they have a RAS of criminal activity. PP also does a good thing by calling officer Cal, as it is always better to have an officer there who should be fully appraised of the appropriate way to carry out search and seizure investigations. *and further implicates the 4th*

Together PP and Cal search the locker. A search is governmental intrusion into an expected place of privacy. An expected place of privacy is both subjective and objective. When a person takes steps to ensure their privacy (i.e. put up a fence or put items in a lock box) they have subjectively created a private space. Society also recognizes an objective space of privacy in which a reasonable person would assume that privacy is

guaranteed (i.e. in the home).

They then seize a ghost gun and marijuana. A seizure is the exercise of governmental control over a person, place or thing.

Under Jay's 4A, he does have an expectation of privacy, however that is <sup>good</sup> diminished in a school setting. Many schools also have a waiver form that students and parents must sign that provide consent to search lockers/backpacks on school grounds. Jay doesn't not have standing to question this search as he does not have a reasonable expectation of privacy. Any school administrator can access those lockers, and it is not uniquely his.

### Detention of Jay:

Jay is effectively detained and <sup>define: 4th or 5th?</sup> in custody when he is sat down in PP's office and the door is closed. Custody is established when a reasonable person would not feel free to leave and end the police encounter. Jay would not feel free to leave as he is an underaged student, and there are 2 authority figures who have shut him in the room. There is no way he feels as though he can just get up and leave without the situation having a physical escalation. Further, a detention is when there is a submission to authority or physical restraint. Jay is effectively restrained to this room as the door has closed and he has submitted to authority by waiting for Cal and PP while they searched his locker.

PP also admits that there was a long delay, as Jay was waiting on PP's office while Cal arrived and the search followed.

### Questioning of Jay:

#### Cal's Lies:

Cal's first words to Jay are a lie about speaking to his lawyer. There are 2 types of lies that can occur, extrinsic and intrinsic. Extrinsic lies are lies police tell regarding changes they could make to judicial process, such as if you confess I will make sure only your friend is charged with the crime. These lies are not allowed and would be a violation of your due process rights. Intrinsic lies are those that are more specific to the offense being discussed and the situation at hand, such as your friend has already confessed, even though this has not happened. These are allowed and would not violate one's right to due process.

Here, Cal doesn't so much as lie about Jay's judicial process, but he does state that lawyer Lou said that Jay should talk to Cal. This would be in interference with Jay's right to counsel. Cal is aware that Jay has counsel and is aware that he has a pending assault trial.

#### Custodial Interrogation:

By stating that Lou said that Jay should talk to Cal, he basically remove's Jay's right to counsel during a custodial interrogation. It has been established above that Jay is in



4th or 5th? Careless?

custody. Interrogation is police conduct and action, in which they know or should have known, would likely illicit an incriminating response. It can be direct questioning or its functional equivalent. Per the rule established in the Williams case where the Christian Burial Speech was given and again in the case where the police told the story of handicapped children being present in the area in which they believed a murder weapon to be, questioning does not need to be direct to be interrogation. Its functional equivalent suffices when the police conduct themselves in such a manner that will likely illicit an incriminating response. Cal's assurance that Lou said that Jay could speak to him would be functionally equivalent to an interrogation.

When a custodial interrogation occurs, a Miranda Rights Advisement is required. Jay ~~should have been apprised of the following rights:~~ right to remain silent, anything you say or do can be used against you, right to have an attorney present at questioning, and if he couldn't afford one, one would be appointed to him. Jay was never advised of these rights, so any incriminating statement would likely be excluded from trial. It could come in only for impeachment purposes.

#### Call to Probation Office (PO):

Jay calls his PO during which he states that he was arrested for bringing a gun to school. At this time Jay has not been formally arrested by Cal, but for all intents and purposes he is under arrest. An arrest is a seizure of the person with probable cause. Probable cause is established when the officer uses all other knowledge, and reasonably believes that criminal activity has occurred. There is probable cause as there is marijuana and a ghost gun that was found in Jay's locker, which would establish a reasonable belief that criminal activity has occurred.

Jay's statement to his PO is voluntarily made, however, he is still in a custodial interrogation setting so any statements made without a Miranda Advisement would be excluded from evidence. Further, there is a possible Voluntariness/Due process issue. Jay is underaged, has learning disabilities and is in a setting that has become coercive due to Cal's lies. Jay is not able to knowingly, voluntarily, and freely give a statement. Any statements made in this setting should be excluded from evidence. *good*

#### Attempt to invoke? Jay's Statement about Finn's Firebird:

Jay states that his friend is holding the gun in exchange of the marijuana. While this statement was given without a needed Miranda Advisement, it would not prevent the evidence of the gun found in the Firebird. If this situation is found to be coercive enough to warrant a violation of Jay's 5A due process rights, then the evidence would not be allowed in as it would be fruit of the poisonous tree. As it stands, there is likely only a Miranda violation as the setting is probably not coercive enough to trigger this 5A protection. Since Miranda Advisement is not routed in the constitution and is only a judicially prescribed protection, it does not have the same standing as a 5A violation and the evidence of the gun would be allowed.

*What about the search of the car itself?*  
Jay is released to go home without a formal arrest.

#### Cal's Visit to Jay's Home:

*is this situation custodial?*  
Cal visits Jay one week after the interrogation in the office. Cal gains Jay's mother's consent to enter the home. He stated that he was going to ask clarifying questions for his report, so it is assumed that mother's consent was given knowingly, intelligently, and voluntarily.

Cal states that these warning he is about to give are just formalities as Jay is already represented by Lou. However, right to counsel is offense specific and Lou is only his attorney for this assault trial. Jay's arraignment has not yet occurred so he does not have legal representation for these new charges.

Cal attempts to give a new Miranda Advisement. While an advisement does not need to be the word for word rights as stated in the Miranda case, it needs to be its equivalent. Cal states that Jay has a right to an attorney prior to and during questioning. This isn't 100% accurate. Jay only has the right during questioning and then after a critical stage such as arraignment. Cal then rambles on and discusses some roles/responsibilities an attorney may have. This speech is not a valid Miranda advisement as there was never the right to remain silent expressed, nor the acknowledgement that an attorney could be provided for him. Again, Lou is not Jay's attorney in this situation as these are different charges.

Jay's subsequent confession would be again invalid as a proper Miranda advisement was not given. *Miranda "two-step" and here? (okay below)*

### Excluding Evidence:

The exclusionary rule allows evidence to be excluded from trial if it was obtained as a violation of a person's 4A right, or due process. It is in place to deter poor police work and lousy governmental action.

The ghost gun and marijuana were properly seized and should rightfully be entered into evidence at a trial.

Neither confession should be allowed. The reasoning for the first was explained above.

For the second confession, even if Cal's poor imitation of a Miranda advisement was considered to valid, the taint of the first Miranda violation has not cured. Attenuation is a way in which the taint of a Miranda Violation can be cured. For Miranda Violations, there needs to be a 2 week waiting period, a new location, the defendant needs to be returned to his "natural environment" and there need to be new officers resuming the questioning. A new miranda advisement would need to be given prior to the questioning, or functional equivalent. Cal only waited one week and not the required 2. Jay was thankfully in his natural environment, and the questioning did take place in a new location. However, Cal was the one who resumed questioning, again after failing to give a valid Miranda Advisement.

The court should exclude both confessions, but not the gun found in Finn's car (for reasons stated above) and the court can permit the ghost gun and marijuana into evidence at trial.

**END OF EXAM**

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