

Monterey College of Law  
Criminal Law & Procedure – Section 2 (Hybrid)  
Final Examination  
Spring 2024  
Prof. K. Smith

Instructions:

Answer two (2) Essay Questions.

Answer twenty (20) MBE Questions.

Total Time Allotted: Three (3) hours.

Recommended Allocation of Time: One (1) hour per section.

Complete sentences are required. Clearly identify which party you are discussing in your answers.

Please recite the applicable law and rules from the previously discussed cases.

Conclusions MUST be definitive. No “on one hand” answers for your conclusions.

Headings for each section are STRONGLY encouraged for grading purposes.

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### QUESTION 1

Officer Walters works for the Fresno Police Department as a narcotics officer. Officer Walters had worked previously as an undercover officer in Narcotics for two years. During that time, he had previously worked with informants. One specific informant, Lucy, had given Officer Walters information in the past that had proven to be correct and had led to several successful prosecutions.

One night, at ~ 2:03 a.m., Lucy calls Officer Walters and informs him that a white SUV will be in the area of McKinley and Marks Avenues in the City of Fresno at ~ 6a. Additionally, there will be a large “2A” sticker in the rear window of the vehicle. Inside, there will be two men who will be traveling southward out of town. Inside the trunk of the vehicle, there will be a large suitcase with a brick of marijuana found inside.

At ~ 6:03 a.m. the next morning, Officer Walters is in a marked vehicle and uniform at the corner of McKinley and Marks Avenues, waiting inside a parking lot. At ~ 6:15 a.m., Officer Walters observes a white Honda Accord with a large “2A” sticker in the rear window. Officer Walters cannot see inside of the Honda clearly, but he can see that there are two individuals inside.

Officer Walters pulls out of the parking lot and begins to follow the Honda from a few car lengths back. Both vehicles travel southward. Per Officer Walters’ database, the Honda’s registration is current, and the vehicle has not been reported stolen.

After following the Honda for several minutes, Officer Walters activates his siren and overhead lights. The Honda immediately slows but does not pull over for two blocks.

Once the vehicle stops, Officer Walters slowly approaches the vehicle. Officer Walters immediately detects the odor of burnt marijuana emanating from the vehicle’s open window. He also sees that there are two occupants of the vehicle; a male is driving, while a female is sitting in the passenger seat. Upon asking the driver, Michael Bosley, for his license and registration, he notices that Bosley is visibly nervous, his hands are shaking, and his eyes continue to dart between Officer Walters and the open road ahead of his vehicle. The passenger, Prathna Mehta, appears calm and cooperative.

Once Officer Walters runs Bosley’s license and registration, there are no stops, wants, or warrants associated with either Bosley or the Honda sedan. However, when Officer Walters re-approaches the car, he has both Bosley and Mehta exit the car. Bosley remains at the hood of the car while Mehta is directed to sit on the curb at the rear of the Honda. Officer Walters runs Bosley through field sobriety tests, which Bosley performs poorly on.

By this time, an additional unit arrives for backup. Officer Walters arrests Bosley for DUI. He places handcuffs on Bosley and places him in the backseat of the backup vehicle. Officer Walters then goes and speaks to Mehta, who remains on the curb. Mehta displays no objective signs of intoxication. Officer Walters then states he will be detaining Mehta in the backseat of his police vehicle. Mehta is not handcuffed when she is placed into the police vehicle.

Officer Walters then searches the vehicle. He finds nothing incriminating inside of the center console and glove compartment, or on the floor of the front of the vehicle. In addition, nothing incriminating is found inside of the rear compartment. Officer Walters then opens the trunk of the vehicle. Inside, he sees a large black suitcase and a large women's-styled purse. Officer Walters opens the suitcase and finds nothing incriminating. However, inside of the purse, Officer Walters finds ~ one kilo of plastic-wrapped marijuana.

Officer Walters informs Mehta that she is under arrest for possession for sale of marijuana. Bosley is informed that he is also under arrest for transportation of marijuana as well as for a DUI.

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What argument(s) should Bosley's lawyer make at a suppression motion? What should the prosecutor argue in response?

What argument(s) should Mehta's lawyer make at a suppression motion? What should the prosecutor argue in response?

DO NOT skip steps in the analysis.

## QUESTION 2

Andrew and Evelyn have been married for over twenty years. They live in a small house in the suburbs and have one dog and two cats. Andrew works as a manager of a local hardware store while Evelyn is a counselor for at-risk youth and those involved in gang violence. They enjoy outdoor activities, such as camping and hiking. Evelyn is an avid runner.

Both Andrew and Evelyn reported to work on Friday. Nothing appeared out of the ordinary. On Monday morning, Evelyn appeared to work, complaining of sore muscles from a long run she attempted over the weekend. Andrew did not show up to work on Monday. His boss called their house, asking where Andrew was. Evelyn expressed surprise, stating that Andrew had gone on a solo camping trip that weekend and told Evelyn he would go directly to work due to the long drive back from his campsite. Evelyn calls the police to make a missing persons report.

Days pass. Finally, a detective with Missing Persons calls Evelyn on her personal cell phone. After introducing himself, he asks Evelyn to come down to the station at a convenient time for her so he can get more information from her on Andrew's plans and schedule.

A day later, at 12:02 p.m., Evelyn arrives at the station house to speak to Detective Miller. Evelyn is escorted into a conference room. There is a long table with numerous comfortable chairs. The room is well-lit, with numerous windows with their shades up. After offering Evelyn a drink of water or coffee, Detective Miller sits down one full seat away from Evelyn, who is seated at the head of the table. There are two doors to the conference room, and both are open.

Before speaking to Evelyn about Andrew's disappearance, Detective Miller informs Evelyn that this is a formality of any interview he conducts in this fashion. Detective Miller states she is free to leave at any time, to take breaks, to use her cell phone to contact anyone she wishes, and that the interview is not being audio or video recorded.

During the interview, Evelyn repeats the schedule of the weekend and the attempted contacts she had with Andrew during the weekend. At Detective Miller's request, Evelyn shows Detective Miller her cell phone with unsuccessful phone calls and text messages to Andrew. However, Evelyn states that this was not unusual due to the remote locations Andrew liked to camp.

The interview lasts ~ 20 minutes during which time, Evelyn requests a bottle of water when she tears up while speaking to Detective Miller. Ultimately, Detective Miller thanks and ends the interview.

Through investigation of the family's finances and their cell phone records, Detective Miller discovers that the family home has three mortgages taken out on it, and that Andrew's cell

phone's last known location put it ~ 20 minutes outside of town in the opposite direction that Andrew would have had to travel to get to his intended campsite. Detective Miller also discovers that Evelyn had taken out a recent life insurance policy on Andrew that greatly increased the payout upon Andrew's untimely or violent death.

Detective Miller goes to Evelyn's workplace with three other officers. There, they arrest her without informing her of why they are doing so. Evelyn is handcuffed and transported via police car to the station. Evelyn is placed in an interrogation room, which is much smaller than the conference room. There is a table with three chairs around it. The room is windowless, and the door is locked. Evelyn is handcuffed to a leg chain attached to the wall of the room.

Detective Miller enters the room and reads Evelyn the complete list of her Miranda rights. When Detective Miller asks her if she understands them, Evelyn asks for clarification of the right to remain silent. Detective Miller again reads the Miranda right regarding Evelyn's right to remain silent and the fact that anything she says can be used against her in court. Evelyn states that she understands. When Detective Miller asks if she would like to speak to her, Evelyn immediately begins complaining about her arrest in her workplace, demanding to know why she was brought in.

Detective Miller slowly lays out his findings and the inconsistencies with her initial statement. During this point in the interview, Evelyn does not react at all. She sits mute. Her facial expressions do not change. Despite Detective Miller asking for her response, Evelyn does not answer. This portion of the interview lasts for over 30 minutes.

Finally, with a single tear running down her face, Evelyn states, "I'm not going to say anything to you." Detective Miller stands up, informs Evelyn that she will be charged with Andrew's murder. Detective Miller hands her his business card. Evelyn is brought to a holding cell to await her arraignment in 72 hours. During that time, and after a day had passed, Evelyn calls Detective Miller and asks to speak to him about the murder of Andrew.

Detective Miller arrives at the County Jail and meets with Evelyn in an interview room. Evelyn is in shackles and a prison jumpsuit. Detective Miller again reads Evelyn the complete list of her Miranda rights. Evelyn agrees to speak to Detective Miller. Evelyn admits to issues within the marriage, and states that Andrew had hit her several times in the weeks leading up to his camping trip. However, she states that she took out the new life insurance policy at Andrew's behest. When Detective Miller asks about the cell phone location data, Evelyn pauses and asks, "Should I have a lawyer present?" Detective Miller responds, "You can ask for one if you think you need one." Evelyn states, "I'm OK. Let's continue." Evelyn then states that Andrew sometimes drives in opposite directions from his usual camping site because he likes to visit a specific supply shop that is located on the opposite end of town.

Detective Miller expresses his disbelief at Evelyn's story and asks her if she killed Andrew in self-defense. Evelyn remains quiet for several seconds, then she states, "Yeah, I want a lawyer now." Detective Miller thanks Evelyn for contacting him again and terminates the interview.

Three days later, after Evelyn has been arraigned for the murder of her husband, she is still in-custody at the County Jail. Detective Miller discovers that Andrew's hardware store had been burglarized several days before the alleged camping trip. Included within the stolen items were a large black tarp, several shovels, zip ties, and numerous boxes of caustic chemicals.

Detective Miller returns to the County Jail and again interviews Evelyn after informing her of her complete list of her Miranda rights. Detective Miller also informs Evelyn that he knows she has been charged with Andrew's murder, but that he wanted to speak to her about the burglary of the hardware store. Evelyn denies any involvement in the burglary but does state she bought a shovel at that store several weeks before the burglary.

Evelyn then begins to speak about Andrew hitting her several times over the weeks leading up to the alleged camping trip. Detective Miller does not stop the interview. Evelyn starts asking Detective Miller about the legal ramifications of possible self-defense on her exposure in her murder case. Detective Miller demurs, stating she is not an attorney. Once Evelyn hears the word "attorney," she asks for her attorney to be present for the remainder of the interview. Detective Miller terminates the interview.

At trial, the prosecution asks the Court to admit Evelyn's statements from all points in the investigation.

What arguments should Evelyn's defense attorney make in a pretrial motion? How should the prosecutor respond? Ultimately, which statements, if any, are admissible?

For the purposes of your analysis, assume that the arrest was made with probable cause.

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### Question 3 – Multiple Choice Section

Answer in Exemplify

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### QUESTION 1 – MODEL ANSWER

**Issue:**

Is there state action so that the protections of the Amendments apply?

**Rule:**

Actions taken by police officers in their official capacity qualify as state action.

**Analysis:**

Officer Walters was on-duty as a police officer and made the traffic stop in his capacity as a police officer.

**Conclusion:**

State action exists in this instance.

**Issue:**

Is there a warrant?

**Rule:**

For a search or seizure to occur, probable cause (PC) must be presented to a neutral and detached magistrate for a warrant to issue.

Probable cause is a lesser standard than preponderance of the evidence. There must be enough particularized facts to lead a person of common sense to believe there is a fair probability of criminal activity.

If no warrant exists, an exception to the warrant must exist.

**Analysis:**

No warrant exists per the facts.

**Conclusion:**

NO warrant exists, so an exception must apply for the resulting searches and seizures to be found constitutional.

**Issue:**

Does the informant's information provide PC for the traffic stop and subsequent searches?

**Rule:**

Under Illinois v Gates, PC may be found when, under the totality of the circumstances, the reliability of the information is found by a reviewing court. However, the “two-pronged” test of Aguilar-Spinelli is still useful to determine the reliability of the information provided.

First, under Aguilar-Spinelli, the informant must be reliable and credible.

For a non-civilian witness, reliability can be shown if an informant has given reliable information in past instances.

Second, under Aguilar-Spinelli, the informant must have personal knowledge of the facts. If seen or overheard directly, this prong would be met. If there is no statement of personal knowledge, a statement with a wealth of detail can create an inference of personal knowledge.

Both prongs are independent, and due to the standard of totality of the circumstances, no one prong is dispositive. One prong may also make up for lack of strength in the other.

**Analysis:**

For the first prong, past reliability is present pursuant to the facts. Lucy had provided information in the past that had led to several successful prosecutions.

For the second prong, there is no indication that Lucy saw or overheard the details provided. However, her information was specific. She provided a type of vehicle, its color, the area of town, the timeframe, and the location of a specific narcotic.

However, defense for either defendant can argue that she in fact did get a few details incorrect, i.e., the SUV was a sedan, there was only one passenger inside the vehicle, and the marijuana was ultimately found inside of a women’s-styled purse instead of a suitcase.

The prosecution will focus on the time and location, the color of the vehicle, the “2A” Sticker in the rear window, the direction of travel, and the marijuana being found in the truck.

**Conclusion:**

Ultimately, under the totality of the circumstances, and given Lucy’s former reliability and many of the details turning out to be correct, the informant’s tip would likely be found to provide probable cause for the stop and search of the vehicle.

NOTE: NO violation of the Vehicle Code is stated by the facts. Therefore, a discussion of reasonable suspicion (RS) for the stop would be fruitless. If the students mention that a violation of the Vehicle Code would preclude the need for analysis of the informant’s tip, extra points to him or to her.

**Issue:**

Is there standing for Bosley to raise a 4th A challenge?

**Rule:**



For a person to assert their 4th Amendment rights, they must assert their own expectations of privacy.

**Analysis:**

As the driver of the vehicle that was stopped, Bosley clearly has standing to bring a 4th A challenge to the stop and subsequent searches.

**Conclusion:**

Bosley has standing to contest the stop, search, and subsequent seizure.

**Issue:**

Is Bosley detained for purposes of 4th A analysis?

**Rule:**

For a detention to occur, an officer must use physical force or make a show of authority that restrains the liberty of a person. Reasonable suspicion is required, which are specific and articulable facts that illustrate that a crime may have been committed. It is lower than PC, which is also lower than POTE. It cannot be based on a hunch.

Also, if a reasonable person in the same or similar situation would not feel free to leave or to terminate the encounter, that person is detained.

**Analysis:**

NOTE: PC already exists from the informant analysis, which is a higher standard than RS for a detention. Students should NOT be spending much time on this section.

Bosley is at the front of the vehicle after being asked to exit the vehicle and is running through field sobriety tests.

**Conclusion:**

Bosley is detained for purposes of 4th A analysis.

**Issue:**

Is there PC for an arrest of Bosley?

**Rule:**

There must be PC for an arrest.

Probable cause is a lesser standard than preponderance of the evidence. There must be enough particularized facts to lead a person of common sense to believe there is a fair probability of criminal activity.

**Analysis:**

As to Bosley, the officer has the background of the informant's tip, which corroborates several of the identifying factors previously discussed. In addition, Bosley has performed poorly on his field sobriety tests. In addition, his nervousness and his darting eyes add to the equation. Also, the smell of burnt marijuana lends itself to the DUI possibility.

Defense will highlight the fact that there was no bad driving to lead to a finding of DUI.

**Conclusion:**

There is PC to arrest Bosley.

**Issue:**

Can Officer Walters search the vehicle at this point?

**Rule:**

NOTE: There are two possibilities for the search of the vehicle at this point. SILA would be where most students would go since Bosley was arrested. However, the auto exception is a better choice for reasons seen below.

Under the auto exception, PC is required.

See above for definition of PC.

Under the auto exception, a search of the entire passenger compartment and any locked container is allowed as long as the officer is looking for evidence of the crime that has been committed. (IE., may not open a 2" x 2" drawstring sack if he is looking for a firearm).

However, the auto exception does NOT allow the officer to get into the truck of the vehicle.

**Analysis:**

In this instance, Officer Walters searched the entirety of the passenger compartment of the vehicle but found nothing of note.

However, he opened the trunk and proceeded to open the containers inside, both of which had the capacity to hold possible marijuana, including the supposed large amount of MJ as related by Lucy.

**Conclusion:**

The resulting opening of the trunk was an impermissible intrusion into an area NOT supported the auto exception. As a result, the motion to suppress would likely be granted at this stage of the analysis.

**Issue:**

Does Search Incident to Lawful Arrest allow Officer Walters to examine the trunk and the suitcases therein?

**Rule:**

SILA of the passenger compartment of a vehicle is allowed as long as the area to be searched is within the wingspan of the arrestee. Caselaw has cautioned us, stating that if the arrestee is placed in the backseat of a patrol vehicle and no longer has access to the vehicle, SILA is invalid to get into the passenger compartment of the vehicle.

**Analysis:**

Bosley was already arrested, handcuffed, and placed in the back of the patrol vehicle before the search began.

**Conclusion:**

The resulting search of the vehicle would NOT be covered by SILA. Bosley was not within wingspan of the vehicle.

**Issue:**

What if any fruits of the search may be suppressed?

**Rule:**

The exclusionary rule states that any evidence obtained in violation of a defendant's 4th A rights must be excluded from entry into evidence.

In addition, under *Wong Sun v. United States*, a defendant may argue for exclusion of any evidence gained as a result of the initial illegality.

**Analysis:**

As already established, there was a violation of Bosley's 4th A rights when Officer Walters got into the trunk of the vehicle. As a result, the discovery of marijuana inside of the women's-styled purse is the focus of this analysis.

**Conclusion:**

The discovery of marijuana would be suppressed as to Bosley. As a result, the charges of the transportation of MJ and possession for sale of MJ would be dismissed. No drugs, no charge.

**Result?**

The charges against Bosley for transportation of a controlled substance and possession for sale of the MJ would be dismissed due to a 4th A violation. However, the DUI charge would likely remain.

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## QUESTION 2 – MODEL ANSWER

### **Issue:**

Did the first interview with Evelyn require Miranda warnings?

### **Rule:**

Miranda warnings are required where a suspect is subject to custodial interrogation.

Custody is an objective standard of whether a reasonable person would feel free to leave or to terminate the encounter. The State must prove this element by a POTE standard.

### **Analysis:**

Evelyn is handcuffed and transported to the station against her will. She is placed in an interrogation room and is shackled to the wall. The room has no windows and it has much less spacious and comfortable seating.

### **Conclusion:**

Evelyn is in custody for purposes of Miranda analysis.

### **Issue:**

Is Evelyn being interrogated?

### **Rule:**

Interrogation is defined as any form of questioning or statements designed to elicit an incriminating response.

### **Analysis:**

Detective Miller is bringing out the evidence he has against Evelyn and is asking for her to explain it.

### **Conclusion:**

Evelyn is being interrogated.

Therefore, Miranda warnings ARE required.

### **Issue:**

Does Evelyn understand every one of her rights for her to make a valid waiver?

**Rule:**

A waiver of one's rights must be knowing, voluntary, and intelligent.

A waiver may be express or implied. An implied waiver can be assumed if a suspect begins to speak to the officer.

**Analysis:**

When Evelyn asked about her right to remain silent, Detective Miller re-read the right to remain silent and the fact that anything said could be used in court. At that point, Evelyn stated that she understood.

Instead of an express waiver, Evelyn began speaking to Detective Miller. The fact that she was complaining about her arrest makes no difference in terms of the analysis.

**Conclusion:**

Evelyn understood all of her rights, and she made an implied waiver to begin speaking to Detective Miller.

**Issue:**

Did Evelyn ever invoke her right to remain silent?

**Rule:**

In *Berguis v. Thompkins*, the USSC held that the right to remain silent must be expressly invoked.

However, the silence of a suspect that occurs after Miranda warnings are given up until the point of the assertion of the right to remain silent cannot be used against Evelyn.

Once invoked, the interview must cease.

**Analysis:**

Evelyn sat mute during this portion of the interview. She did not speak, react, or make any kind of movements in response to Detective Miller's questions.

Only when she explicitly stated, "I'm not going to say anything to you" does she ever respond to Detective Miller on the topics thus far.

**Conclusion:**

Evelyn explicitly invoked her right to remain silent. In addition, her silence cannot be used against her in the prosecution's case. In addition, Detective Miller expressly stopped the interview at the point of her express invocation.

**Issue:**

Was Detective Miller allowed to speak to Evelyn once she had invoked her right to remain silent?

**Rule:**

If a suspect reinitiates contact with police after he or she has claimed the right to remain silent, and if Miranda warnings are again given in their entirety, and if the suspect provides a knowing, intelligent, and voluntary waiver, then an officer may question the suspect about the same crime originally discussed.

**Analysis:**

In this instance, Evelyn is the one who has contacted Detective Miller, not the other way around. Here, Evelyn reached out to Detective Miller and stated she wished to speak about the alleged murder of her husband Andrew.

Once Detective Miller arrived at the County Jail, he read Evelyn her Miranda rights again in their entirety.

**Sub-Issue:**

Were Miranda rights required?

**Rule:**

Miranda warnings are required where a suspect is subject to custodial interrogation.

Custody is an objective standard of whether a reasonable person would feel free to leave or to terminate the encounter. The State must prove this element by a POTE standard.

Interrogation is defined as any form of questioning or statements designed to elicit an incriminating response.

**Analysis:**

Evelyn is in lockup at the County Jail. She is in a jumpsuit and is handcuffed. She cannot leave the jail.

Also, Detective Miller is asking her direct questions about the facts of the surrounding murder investigation.

**Conclusion:**

Evelyn is in custody and is subject to interrogation. Miranda warnings are required.

**Issue:**

Did Evelyn provide a valid waiver of her Miranda rights?

**Rule:**

A waiver of one's rights must be knowing, voluntary, and intelligent.

A waiver may be express or implied. An implied waiver can be assumed if a suspect begins to speak to the officer.

**Analysis:**

Evelyn has already had her Miranda rights read to her once approximately 24 hours previously. She also does not ask for clarification of any of her rights under Miranda. She agrees to speak to Detective Miller absent threats, coercion, or a promise of leniency.

**Conclusion:**

Evelyn provided a valid waiver of her Miranda rights.

As a result, her statements while at the County Jail up this point will likely be admissible.

**Issue:**

Did Evelyn make an unequivocal request for counsel the first time she mentioned a lawyer?

**Rule:**

A suspect's request for counsel must be made "unambiguously." The officers are not required to stop the interview or to clarify whether the suspect is asserting her right to counsel.

**Analysis:**

"Should I have a lawyer present?" is necessarily a question and not a statement of intent or of fact. Evelyn is asking for Detective Miller's advice or guidance. She is not making a specific request for a lawyer. Detective Miller is under no obligation to proceed or give advice to Evelyn at this point. However, Detective Miller states that Evelyn can ask for one if she needs one. Evelyn denies the suggestion and chooses to keep talking.

**Conclusion:**

Evelyn did not unambiguously ask for a lawyer. As a result, her statements until the next possible invocation of her right to counsel is likely admissible.

**Issue:**

Did Evelyn make an unequivocal request for counsel the second time she mentioned a lawyer?

**Rule:**

A suspect's request for counsel must be made "unambiguously." The officers are not required to stop the interview or to clarify whether the suspect is asserting her right to counsel.

**Analysis:**

In this instance, Evelyn was much more definitive. There is no hesitation or questioning tone. "I want a lawyer" is quite direct.

**Conclusion:**

Evelyn validly exercised her right to counsel. Detective Miller was right to end the interview at that point.

**Issue:**

Once Evelyn has counsel appointed, does Detective Miller have the right to speak to Evelyn about a different crime?

**Rule:**

The 6th A right to counsel is “offense-specific.” As a result, officers may speak to a defendant who has counsel appointed, as long as they speak to her about a different crime.

Under *Blockburger v. United States*, the Court takes a look at whether the two crimes, when compared, require different elements in order to be proved, even if the conduct itself is closely related to the underlying charged offense.

**Analysis:**

In this instance, a burglary has many different elements than homicide. In addition, despite it being possibly related the homicide investigation, it predated the alleged homicide by several days.

**Conclusion:**

Detective Miller may speak to Evelyn about the burglary.

**Issue:**

Were Miranda warnings required?

**Rule:**

See above for custody and interrogation.

**Analysis:**

Same as above. Evelyn is still a guest of the County Jail and cannot leave. She is also being asked questions about a specific crime.

**Conclusion:**

Miranda warnings are required.

**Issue:**

Did Evelyn provide a valid waiver?

**Rule:**

See above for rules on waivers.

**Analysis:**



Same as above. No indication she did not understand, nor was there any undue pressure exerted.

**Conclusion:**

Evelyn gave a valid waiver.

**Issue:**

Once Evelyn began speaking about the charged crime, are those statements admissible?

**Rule:**

Once counsel has been appointed, officers may not speak with a suspect without consulting and having their attorney present regarding that specific crime.

**Analysis:**

Evelyn is speaking about Andrew being violent with her in the weeks before the murder. Because this is not specifically related to the homicide, there is a close argument that this is unrelated. However, as this would be a possible motive for the murder of Andrew, or facts leading to a self-defense claim, the defense will argue to keep these excluded.

Evelyn is speaking about possible defenses in her charged homicide. Detective Miller did not redirect the interview, nor did he terminate the interview. This is much more clearly on point as to the charged homicide.

**Conclusion:**

Detective Miller cannot inquire as to these two topics and should have ended the interview or attempted to redirect Evelyn to the burglary.

**Issue:**

Did Evelyn make a valid request for an attorney?

**Rule:**

See above.

**Analysis:**

See above. Direct, no ambiguity, no hesitation. No qualifying words.

**Conclusion:**

Evelyn validly invoked her right to counsel. Detective Miller should and did terminate the interview.

**Main Result:**

Nothing from the first interview may be admitted, even the lack of responses before Evelyn invoked the right to counsel.

The second interview's statements are admissible until Evelyn unambiguously invokes her right to counsel.

The third interview will be admissible up until Evelyn makes her unambiguous request for counsel.

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### MULTIPLE CHOICE QUESTIONS – QUESTION 3

#### ANSWER KEY

1) The police executed a search warrant on a chemist's home, arresting 22 people who were present and confiscating a large quantity of methamphetamine. The chemist, however, was not home when the warrant was executed. Shortly after the arrests began, the chemist returned home in his car and was immediately taken into custody. The police searched the chemist and, finding nothing, placed him into the back seat of a police cruiser. The police then searched the chemist's car, inside and out, and found an illegal automatic weapon in the trunk. The chemist now moves to suppress the weapon found in the car.

The motion will most likely be:

- A granted, because the search exceeded the scope permissible under the circumstances.
- B granted, because it was seized without a warrant.
- C denied, because it was seized pursuant to the automobile exception.
- D denied, because it was seized pursuant to a search incident to lawful arrest.

#### **Explanation**

The correct answer is:

A) granted, because the search exceeded the scope permissible under the circumstances.

Discussion of correct answer: Because there was no valid basis for the search - neither an appropriate warrant nor grounds for a warrantless search - the gun should be thrown out. A search warrant must describe with particularity the place to be searched and the items or people to be seized. Here, the search warrant did not list the car in question. Therefore, an exception is required in order for the evidence to be admitted. The most obvious exception is the right of an arresting officer to search both an arrestee and the area within the arrestee's immediate control. In this case, the search was well beyond the scope of such a search incident to arrest, as the chemist

had already been placed into the backseat of a police cruiser. As such, the search exceeded the scope permissible under the circumstances, and this answer choice is correct.

Discussion of incorrect answers:

B) granted, because it was seized without a warrant. This answer choice is incorrect because it only partially addresses the relevant issue. The police could have searched the car if either (1) they had a warrant (as suggested by this answer) or (2) an exception to the warrant requirement applied (none do). On its own, the fact that evidence is seized without a search warrant would not prevent its admission into evidence, as in certain cases, warrantless searches are indeed permissible. Therefore, this answer choice is incorrect.

C) denied, because it was seized pursuant to the automobile exception. This answer choice is incorrect because the automobile exception to the warrant requirement requires probable cause that either contraband or evidence of a crime will be found. In this case, there is no indication in the fact pattern that the police had any probable cause to believe that the chemist's car would contain either anything illegal or evidence of a crime. As such, the automobile exception will not apply in this case.

D) denied, because it was seized pursuant to a search incident to lawful arrest. Warrantless search and seizure of items from an automobile may be justified under several scenarios, including a search incident to a lawful arrest. However, a search incident to a lawful arrest can only extend to that area within the immediate control of the arrestee. The trunk of an arrestee's vehicle is not considered within his immediate control. As such, this answer choice is incorrect.

2) A single mother left her teenage daughter alone in the house for the first time at night without a babysitter. The mother instructed her daughter not to let anyone into the house while she was gone. After the mother left, the daughter wanted to play a video game that she knew was located in a toy box in the cellar. Next to the toy box was a locked closet that the daughter had been instructed not to open. Being curious as to the contents of the closet and knowing the location of its key, the daughter retrieved the key and opened the closet. The daughter found a sandwich bag half-filled with marijuana in the pocket of a jacket in the closet. The daughter called the police, informing them of what she had found. When police arrived at the house, the daughter let them in and led them to the closet, where one of the officers confiscated the marijuana. About 10 minutes later, the mother returned and was arrested for possession of marijuana.

How should the judge rule on the mother's motion to exclude the marijuana from evidence?

A Deny it, because it was the daughter, not the police, who had unlocked the closet and found the marijuana.

B Deny it, because a teenager left alone in a house has the authority to invite police into the house to conduct a search.

C Grant it, because the daughter did not have the authority to allow the police into the house.

D Grant it, because the daughter did not have authority to allow the police to search a previously locked closet.

### **Explanation**

The correct answer is:

D) Grant it, because the daughter did not have authority to allow the police to search a previously locked closet.

Discussion of correct answer: Any person who has joint control or use of the premises may consent to a valid search, and any evidence obtained may be used against the other occupants [Frazier v. Cupp, 394 U.S. 731 (1969)]. Such consent applies to common areas, but not to private, reserved areas where the defendant has exclusive control [United States v. Matlock, 415 U.S. 164 (1974)]. In this question, the daughter did not have the apparent authority to allow police to search a locked closet that she had been warned not to open.

Discussion of incorrect answers:

A) Deny it, because it was the daughter, not the police, who had unlocked the closet and found the marijuana. The issue here is whether the person consenting to the search (i.e., the daughter) had the apparent authority to do so. While it is true that any person who has joint control or use of a home may consent to a valid search, and that any evidence obtained may be used against the other occupants, such consent applies only to “common areas” not to private, reserved areas (such as the mother's closet) where the defendant has exclusive control. Thus, this answer is incorrect.

B) Deny it, because a teenager left alone in a house has the authority to invite police into the house to conduct a search. This answer comes to a faulty conclusion via faulty reasoning. The dispositive issue here is not whether a teenager has the right to consent to a search of a house (which she does), but rather whether she has the right to consent to the search of her mother's closet (which she does not). A person who has joint control of the premises may consent to a search, but such consent applies only to common areas, and not to private, reserved areas where the defendant maintains exclusive control [United States v. Matlock, 415 U.S. 164 (1974)]. Thus, this answer is incorrect.

C) Grant it, because the daughter did not have the authority to allow the police into the house. To the contrary, any person, even a teenager, who has joint control or use of premises may consent to a search. Any evidence obtained in that search may then be used against the other occupants. However, such consent applies only to common areas, not, as here, to private, reserved areas (i.e., the closet) where the defendant has exclusive control. Thus, this answer is incorrect.

3) Two police officers received a call from a landlord that a violent struggle was taking place between a man and a woman in one of his apartments. The officers responded to the scene. They knocked on the door of the apartment. Getting no response, the landlord used his key to open the door of the apartment. The officers discovered a woman's dead body, which had several stab wounds about her neck and chest. The officers conducted a quick sweep of the apartment to search for other bodies or for the perpetrator. When one of the officers searched the kitchen, she noticed a spot of blood on the collar of the sink drain. The officer opened the cabinet under the sink and found a pipe wrench. The officer used the wrench to open the sink pipe. The officer discovered a slim knife that had blood on it. The blood later tested to be the victim's blood. The police subsequently arrested the victim's husband and charged him with murder. At trial, the victim's husband moved to exclude the knife from evidence.

How should the court rule?

- A Motion denied, because the victim's blood was in plain view.
- B Motion denied, because of the crime-scene exception to the search-warrant rule.
- C Motion granted, because the search was unlawful.
- D Motion granted, because the crime-scene exception does not apply.

### **Explanation**

The correct answer is:

C) Motion granted, because the search was unlawful.

Discussion of correct answer:

There is no exception (as suggested in the other answers) to the warrant requirement for searches at the scene of a crime [*Mincey v. Arizona*, 437 U.S. 385 (1978)]. At a murder scene, police may conduct a sweep of the scene to discover other bodies or the killer and, under the plain-view doctrine, evidence discovered in that search that the police immediately recognize as incriminating will be admissible. However, in this question, the officer merely saw a spot of blood near the sink drain, which led the officer to open the pipe to the sink, where she found the murder weapon. This search was constitutionally invalid, and under the "fruit of the poisonous tree" doctrine, the knife should be excluded from evidence.

Discussion of incorrect answers:

A) Motion denied, because the victim's blood was in plain view. Two requirements must be met in order for the plain-view doctrine to justify a warrantless seizure of property, as follows: (1) the police must be lawfully positioned; and (2) it must be immediately apparent that the evidence is incriminating [*Coolidge v. New Hampshire*, 403 U.S. 443 (1971)]. In this question, the spot of blood satisfies the elements, but the discovery of the knife does not. Thus, this answer is incorrect.

B) Motion denied, because of the crime-scene exception to the search-warrant rule. There is no exception to the warrant requirement for searches at the scene of a crime [*Mincey v. Arizona*, 437 U.S. 385 (1978)]. At a murder scene, the police may conduct a sweep of the scene to discover other victims or a remaining killer, but may not conduct a general search for evidence. Thus, this answer is incorrect.

D) Motion granted, because the crime-scene exception does not apply. This answer is simply a red herring as there is no such thing as a "crime-scene exception" to the warrant requirement. Under *Mincey v. Arizona* [437 U.S. 385 (1978)], the police may conduct a sweep of the scene of a crime in order to search for (1) other victims, or (2) a remaining killer. That does not give them constitutional permission to, as here, conduct a general search for evidence. Thus, this answer is incorrect.

4) A police department began to receive reports of violent attacks that typically occurred in the afternoon, just after the local high school let out for the day. The police put together a task force utilizing informants and surveillance of after-school hangouts to gather intelligence concerning students who might have gang affiliations or connections. Once the police compiled this list of gang-associated students, they asked the principal of the high school to summon the listed students to the office and to search them, and to contact the police if any potential evidence was found. Of the 25 students searched, only one was found to be carrying a weapon. In the student's ensuing trial, his lawyer moves to suppress the weapon.

What is the likely outcome of the student's motion?

A The motion will be granted, because the police did not conduct the search.

B The motion will be granted, because there was neither probable cause nor a search warrant in support of the search.

C The motion will be denied, because the student had no reasonable expectation of privacy in school.

D The motion will be denied, because the school did not need a warrant to search a student.

## **Explanation:**

The correct answer is:

B) The motion will be granted, because there was neither probable cause nor a search warrant in support of the search.

Discussion of correct answer:

The Fourth Amendment generally protects only against governmental conduct and not against searches by private persons; it does not prevent the introduction of evidence obtained by illegal searches done by private citizens [*Burdeau v. McDowell*, 256 U.S. 465 (1921)]. However, governmental "agents" include citizens acting under police direction. Here, the school officials were acting on behalf of the police. They would, therefore, be held to the same standard. Therefore, without probable cause and a search warrant (or warrant exception), the evidence will be considered illegally seized and will be inadmissible against the student. Here, there was neither probable cause (the only fact in support of the search was that the student was "gang associated") nor a warrant or applicable exception.

Discussion of incorrect answers:

A) The motion will be granted, because the police did not conduct the search. Generally speaking, a school is not required to obtain a search warrant before searching a student. Here, the school was acting at the direction of the police and was, therefore, required to adhere to the same standards of probable cause and warrant as the police [*Burdeau v. McDowell*, 256 U.S. 465 (1921)]. Thus, this answer is incorrect.

C) The motion will be denied, because the student had no reasonable expectation of privacy in school. All people have a reasonable expectation of privacy in their "houses, papers and effects" that is protected by the Fourth Amendment against unreasonable searches and seizures by the government. Here, because the school officials were acting at the direction of the police, the officials were required to adhere to the same standards of probable cause and warrants as the police. They therefore needed probable cause and either a warrant or a warrant exception to search the student. Thus, this answer is incorrect.

D) The motion will be denied, because the school did not need a warrant to search a student. It is true that, generally speaking, a school is not required to obtain a search warrant before searching a student. However, here, the facts indicate that the school was not acting of its own accord, but rather at the direction of the police. As such, the school will be considered a governmental agent, and the Fourth Amendment will apply. The police cannot circumvent the probable cause and warrant requirements by enlisting private or quasi-private entities to conduct searches on their behalf. Thus, this answer is incorrect.

5) A police officer saw a robber point a pistol at a couple and take items from them before fleeing on foot. The officer chased the robber on foot. The robber, with gun still in hand, ran into a nearby apartment. This apartment was being leased by the robber. The officer followed the robber into the apartment and the officer realized that there was no rear exit. The officer began to



search the apartment to locate the robber and found a large quantity of drugs when he opened a hallway closet. The robber was located under a bed in another room. The officer arrested the robber for the armed robbery and possession of drugs with the intent to distribute. At a pre-trial motion, the robber's attorney argued that the drugs were inadmissible evidence because the officer did not have a warrant to search the property.

How will the court rule?

- A Inadmissible, the officer needed a warrant to enter the apartment.
- B Inadmissible, the drugs were not in plain view.
- C Admissible, the officer was in hot pursuit.
- D Admissible, there were exigent circumstances.

**Explanation:**

The correct answer is:

- C) Admissible, the officer was in hot pursuit.

Discussion of correct answer:

C) Police may enter and search a private dwelling while in reasonable pursuit of a fleeing suspect. In such a circumstance, what would otherwise have been a warrantless search becomes lawful because the police are in actual "hot pursuit" of a fleeing suspect and actively attempting to apprehend him. While in that pursuit, they may seize not only evidence of the crime for which they are chasing the suspect but also any additional contraband that they find. Here, the officer was in hot pursuit of the robber and while attempting to apprehend him, the officer chased the robber into an apartment. The drugs were located in a closet while the officer was looking for the robber. Therefore, the drugs were lawfully seized contraband and can be admitted as evidence.

Discussion of incorrect answers:

A) Inadmissible, the officer needed a warrant to enter the apartment. A person can assert their Fourth Amendment rights against unreasonable search and seizure based on a legitimate expectation of privacy. The fruits of a warrantless search are only permissible as evidence in court when: 1) they are searches incident to a lawful arrest, 2) the search falls within the automobile exception, 3) the seized items were in plain view, 4) the officer had consent to search, 5) the search was pursuant to a stop or hot pursuit, or 6) there were other exigent circumstances which can be clearly articulated. Under this fact pattern, the officer was in hot pursuit of the

robber when the officer entered the apartment and the drugs were located incident to the search for the robber. Therefore, a warrant was not necessary.

B) Inadmissible, the drugs were not in plain view. Plain view is an exception to the requirement that an officer have a warrant before searching a location. Police may lawfully seize property that is clearly visible in plain view without a warrant if the police are lawfully positioned at the location and it is immediately apparent that the evidence is illegal or incriminating. If a police officer follows a suspect who is to be arrested into that suspect's home and sees contraband in plain view, it can be lawfully seized and admitted in court. However, the facts here indicate that the drugs located were inside a hallway closet, not in plain view. While it is true that they cannot be admitted as evidence on the basis that they were in plain view, the drugs are not necessarily inadmissible. The drugs can be admitted as evidence on the grounds that the officer was in hot pursuit of the robber.

D) Admissible, there were exigent circumstances. The drugs in this case are admissible but not because of exigent circumstances. Exigent circumstances exist when evidence may be lost or destroyed before a warrant can be obtained. In order to trigger this exception to the warrant requirement, there must be probable cause to believe that the nature of the evidence renders it easily destroyed or likely to disappear before a warrant can be obtained and that the procedure for seizing the evidence is a reasonable one. The officer chasing the robber was in hot pursuit of the robber but there is nothing in the fact pattern that suggests that there was any risk of those drugs being lost or destroyed between the time that the officer discovered them and when he may have been able to secure a search warrant.

6) Police received information from an undercover police officer that she had just seen two men (whom she described) in a red pickup truck selling marijuana to schoolchildren near the city's largest high school. A few minutes later, two police officers saw a pickup truck fitting the description a half block from the high school. The driver of the truck matched the description of one of the men described by the undercover officer.

The only passenger was a young woman who was in the back of the truck. The police saw her get out and stand at a nearby bus stop. They stopped the truck and searched the driver. In the pocket of the driver's jacket, the police found a small bottle of pills that they recognized as narcotics. They then broke open a locked toolbox attached to the flatbed of the truck and found a small sealed envelope inside. They opened it and found marijuana. They also found a quantity of cocaine in the glove compartment.

After completing their search of the driver and the truck, the police went over to the young woman and searched her purse. In her purse, they found a small quantity of heroin. Both the driver and the young woman were arrested and charged with unlawful possession of narcotics.

If the young woman moves to suppress the use as evidence of the heroin, what should the court do?

- Grant the motion, because she did not fit the description given by the informant and her mere presence does not justify the search.
- A

- B Grant the motion, because the police should have seized her purse and then obtained a warrant to search it.
- C Deny the motion, because she had been a passenger in the truck and the police had probable cause to search the truck.
- D Deny the motion, because she was planning to leave the scene by bus and so exigent circumstances existed.

**Explanation:**

The correct answer is:

A) Grant the motion, because she did not fit the description given by the informant and her mere presence does not justify the search.

Discussion of correct answer:

A warrantless search is only reasonable under the Fourth Amendment if it is based on a probable cause exception to the warrant requirement. The test for probable cause will be met when a reasonable person would conclude it to be more probable than not that evidence of named items or persons will be found. In this case, the undercover police officer only identified the two men in the pickup truck as selling marijuana. The undercover police officer never made mention of a woman doing that as well. There is no direct evidence that the woman was involved with selling or possessing marijuana. The police merely observed that she had been in the back seat of the pickup truck. That fact alone is insufficient to give the police probable cause to search her.

Discussion of incorrect answers:

B) Grant the motion, because the police should have seized her purse and then obtained a warrant to search it. There was no probable cause to stop the woman or search her purse. If the police were able to obtain a warrant after illegally stopping her then the evidence would still be suppressed due to the fruits of the poisonous tree doctrine.

C) Deny the motion, because she had been a passenger in the truck and the police had probable cause to search the truck. A warrantless search is only reasonable under the Fourth Amendment if it is based on a probable cause exception to the warrant requirement. The test for probable cause will be met when a reasonable person would conclude it to be more probable than not that evidence of named items or persons will be found. In this case, the undercover police officer only identified the two men in the pickup truck as selling marijuana. The undercover police officer never made mention of a woman doing that as well. The fact that she was a passenger in the truck where there is probable cause to believe there is drugs in the car will not give the police probable cause to search her as she is no longer in the car.

D) Deny the motion, because she was planning to leave the scene by bus and so exigent circumstances existed. One exception where a search is valid without a warrant is when there are exigent circumstances that the police reasonably believe that evidence may be lost or destroyed or a person is in imminent harm. In this case, there is no direct evidence that would lead a police officer to reasonably believe that the woman possessed drugs while waiting at the bus stop at the time of the police searching her.

7) A marijuana farmer had been missing for several months. The sheriff's department received an anonymous tip that his competitor, a rival marijuana farmer, had buried the marijuana farmer in a hillside about 200 yards from the competitor's farmhouse. The sheriff's deputies went to the competitor's farm. They cut barbed wire that surrounded the hillside and entered, looking for the grave. They also searched the adjacent fields on the competitor's farm that was within the area enclosed by the barbed wire and discovered clothing that belonged to the missing marijuana farmer hanging on a scarecrow. The competitor observed their discovery and began shooting. The deputies returned the fire and the competitor dashed to his pickup truck to escape. Unable to start the truck, he fled across a field toward the barn. A deputy tackled him just as he entered the barn.

As the competitor attempted to get up, the deputy pinned his arms behind his back. Another deputy threatened, "Tell us what you did with the missing marijuana farmer or we will shut you down and see your family on relief." The competitor responded that he had killed the missing marijuana farmer in a fight but did not report the incident because he did not want authorities to enter his land and discover his marijuana crop. Instead, he buried him behind the barn.

If the competitor moves to exclude the introduction of the missing marijuana farmer's clothing into evidence, what should the court do?

A Grant the motion because the police had not obtained a warrant.

B Grant the motion because the police conduct in its entirety violated the competitor's right to due process of law.

C Deny the motion because the competitor had no expectation of privacy in the fields around his farmhouse.

D Deny the motion because the clothing was not competitor's property.

### **Explanation:**

The correct answer is:

C) Deny the motion, because the competitor had no expectation of privacy in the fields around his farmhouse.

Discussion of correct answer:

An individual has the right to be free of unreasonable searches and seizures under the Fourth Amendment. However, the police may acquire probable cause from any evidence that they observe that is in plain view in an open field area that is not within the curtilage of the house. A view of an open field does not constitute a search. Since the clothes were in plain view on a scarecrow on an open field on his property the police may be allowed to use those clothes in evidence.

Discussion of incorrect answers:

A) Grant the motion because the police had not obtained a warrant. The police do not need to obtain a warrant to search an open field that is beyond the curtilage of the house.

B) Grant the motion because the police conduct in its entirety violated the competitor's right to due process of law. The Miranda rule states that no statements made by a defendant will be admitted into evidence unless prior to custodial interrogation the defendant receives his Miranda warnings. While it is true that the statement the competitor made would be excluded as a violation of the Miranda rule, the police search would still be valid as it was made on an open field beyond the curtilage of the competitor's house.

D) Deny the motion because the clothing was not competitor's property. The search was valid because the police do not need to obtain a warrant to search an open field that is beyond the curtilage of the house. Even if the clothing was the competitor's property it could still be properly seized as evidence.

8) The police received a call that there had just been an armed robbery at a local grocery store. When the police arrived at the store, the clerk gave a description of the robber and said that he had pulled a sawed-off shotgun out of his long coat and pointed it directly at her face. The police then broadcasted the clerk's summary over the radio. A few minutes later, two officers in a marked unit saw a man walking quickly and nervously, glancing back and forth. His clothing and build fit the basic description that had been reported over the radio. The patrol officers pulled up to the man and jumped out of the car with their guns drawn, ordering, "Put your hands on your head and get on the ground." The man quickly complied. One of the officers immediately frisked the suspect, and then reached into the man's long coat and pulled out the shotgun. They then arrested him. The man was subsequently charged with robbery.

If the man challenges the constitutionality of his initial encounter with the police, how is the court most likely to rule?

(A) The stop was proper under Terry, but the frisk was not.

(B) Both the stop and the frisk were proper under Terry.

(C) Neither the stop nor the frisk was constitutional under the Fourth Amendment.

(D) The entire encounter was constitutional under the inevitable discovery doctrine.

**Explanation:**

The correct answer is:

(B) Both the stop and the frisk were proper under Terry.

Discussion of correct answer:

Under *Terry v. Ohio* [392 U.S. 1 (1968)], a police officer must have "reasonable suspicion" of a crime in order to stop a suspect. If the police officer has a reasonable and articulable suspicion that a suspect is armed and dangerous, the officer may also, without probable cause, perform a pat-down search--i.e., a frisk for concealed weapons. Here, the fact that the man met the description of the perpetrator, was spotted close to the scene of the robbery, and was acting suspiciously and walking quickly all support a reasonable suspicion by the officers that he might be the suspect. The use of the gun in the crime also supports the reasonable and articulable suspicion that the suspect may be armed and dangerous.

Discussion of incorrect answers:

(A) Incorrect. The stop was proper under Terry, but the frisk was not.

Both the stop and the frisk were proper under the Terry standard. Here, the fact that the man met the description of the perpetrator, was spotted close to the scene of the robbery, and was acting suspicious and walking fast all support a reasonable belief by the officers that he might have committed a crime. In addition, the facts easily constitute a "reasonable and articulable" suspicion that the man might be armed and dangerous, thus permitting the officers to frisk him, under Terry.

(C) Incorrect. Neither the stop nor the frisk was constitutional under the Fourth Amendment.

To the contrary. Under *Terry v. Ohio* [392 U.S.1 (1968)], both the stop and the frisk were constitutional. The stop requires the reasonable suspicion of a crime (either in the past, under away, or about to be committed), and the frisk requires a reasonable and articulable suspicion that the suspect is armed and dangerous both of which are satisfied here by the facts.

(D) Incorrect. The entire encounter was constitutional under the inevitable discovery doctrine.

The conclusion is correct, but the analysis is not. The inevitable discovery rule applies where police unlawfully seize evidence that they would have eventually discovered by legal means. Thus, the doctrine is applicable only where the initial search was illegal. In this case, the officers' search of the man was legal.

9) After a series of armed robberies of pedestrians in and around the city's downtown entertainment district by a masked man, Defendant is indicted and charged with armed robbery. Witness works as a bouncer at one of the bars in the entertainment district and had seen one of the robberies. The police arranged for a lineup in the hope that Witness could identify Defendant. Defendant is a male of average height. The police line up seven men and three women of varying heights within the normal range for men. Witness identifies Defendant as the robber from the lineup. Defendant is represented by a lawyer, but the lawyer was not permitted to be present at the lineup. At trial, the key piece of prosecution evidence is the identification and testimony of Witness. Defendant is convicted and on appeal moves to have the conviction set aside based on the improper admission of the lineup.

Should the appellate court reverse the conviction?

- A Yes, because Defendant's right to counsel was violated.
- B Yes, because the lineup was unnecessarily suggestive and violated due process.
- C No, because Defendant's right to counsel was not violated.
- D No, because the lineup did not violate due process.

**Explanation:**

The correct answer is:

A) Yes, because Defendant's right to counsel was violated.

Discussion of correct answer:

The Sixth Amendment guarantees an accused the right to counsel not only at his trial but at any critical confrontation by the prosecution at pretrial proceedings where the results might well determine his fate and where the absence of counsel might affect the right to a fair trial. The Supreme Court has held that defendants have a right to have counsel present at post-indictment lineups. In this case, because there was a post-indictment lineup at which counsel was not permitted to be present, the lineup violated the right to counsel and its admission at trial would be unconstitutional.

Discussion of incorrect answers:

B) Yes, because the lineup was unnecessarily suggestive and violated due process. Any lineup will violate due process and be inadmissible if it is unnecessarily suggestive and is likely to produce a mistaken or misleading identification. This requires a fact-intensive inquiry, but in this case it is unlikely that a court would find the identification suggestive. The facts do not show any aspect of the lineup that would suggest to Witness that he should select Defendant.

C) No, because Defendant's right to counsel was not violated. The Sixth Amendment guarantees an accused the right to counsel not only at his trial but at any critical confrontation by the prosecution at pretrial proceedings where the results might well determine his fate and where the absence of counsel might affect the right to a fair trial. The Supreme Court has held that defendants have a right to have counsel present at post-indictment lineups. It is unclear whether this right attaches to a post-arrest, pre-indictment lineup, but the law is clear that there is a right to have counsel present at post-indictment lineups. Because counsel was not permitted to be present at the post-indictment lineup, the lineup violated the right to counsel and its admission at trial would be unconstitutional.

D) No, because the lineup did not violate due process. Although the lineup did not violate due process, that is not the only issue implicated here. The Sixth Amendment right to counsel applies to post-indictment lineups. In this case, the lineup did not violate due process because it was not unnecessarily suggestive or rigged against Defendant, but it was still unconstitutionally applied because it denied Defendant his Sixth Amendment right to counsel.

10) A defendant was suspected of a carjacking and kidnapping. Following a 15-minute car chase, the defendant was shot by the police and swerved off the road. When the police arrived at the car, the victim was not in the car. The defendant, however, was severely injured and in need of immediate medical treatment. The police called an ambulance and accompanied the defendant to the hospital, where he was seen by a doctor. At the hospital, a detective pulled the doctor aside and told her that the police must find out what the defendant did with the missing victim, and the detective urgently pressed the doctor to help the police obtain the information. The doctor agreed. The doctor returned to the defendant's room and told the defendant that unless the defendant disclosed the whereabouts of the victim, the doctor would let him die. The doctor glanced out the window of the hospital room and saw the detective nod his head in support. The doctor repeated her statement to the defendant and pretended to leave. The defendant called the doctor back and told her that the victim could be found in an alley downtown. The doctor passed this information on to the detective. In the defendant's ensuing trial, the defendant's attorney moved to suppress the defendant's statement to the doctor.

The court should find that the statement is:

A admissible, because the doctor was not a law enforcement officer.

B admissible, because the detective did not put the doctor in the position to obtain the statement from the defendant.



C inadmissible, because the defendant's statement was coerced.

D inadmissible, because the defendant was seriously ill at the time he consented to giving the statement.

### **Explanation:**

The correct answer is:

C) inadmissible, because the defendant's statement was coerced.

Discussion of correct answer:

The defendant's statement is inadmissible for a few reasons. The doctor obtained the defendant's statement by threatening to withhold medical treatment, an act which would result in the defendant's almost certain death. A statement obtained by threat of death cannot be considered "voluntary" under *Miranda v. Arizona* [384 U.S. 436 (1966)]. Furthermore, while the doctor herself was not a law enforcement agent, the defendant's statement was nevertheless obtained at the direction of the police and without the proper *Miranda* warnings.

Discussion of incorrect answers:

A) admissible, because the doctor was not a law enforcement officer. While it is true that the doctor was not a law enforcement agent, the defendant's statement was obtained at the direction of the police, through the detective's request to the doctor. Under the Federal Rules of Criminal Procedure, a non-member of law enforcement who acts at the direction of the police must nevertheless comply with the rules of criminal procedure regarding statements obtained from defendants. Here, the detective directed the doctor to obtain the statement, and the doctor failed to issue the defendant the proper *Miranda* warnings and used the threat of withholding essential medical treatment in order to obtain the defendant's statement. The fact that the doctor was not a member of law enforcement is insufficient to make this statement admissible when it was coerced and improperly solicited from the defendant. As such, this choice is incorrect.

B) admissible, because the detective did not put the doctor in the position to obtain the statement from the defendant. It is true that if the detective had installed a non-member of law enforcement in the doctor's position for the express purpose of obtaining an incriminating statement from the defendant, this fact would serve as additional evidence that that person was acting at the direction of the police. However, even if, as in this case, the police themselves did not install the doctor in this position, the fact that the detective approached the doctor and demanded the doctor's help in obtaining information from the defendant nevertheless makes the doctor an agent of the police. And, where a party acts as an agent of law enforcement, he or she is required to

comply with the federal rules in soliciting information from the accused. As such, this response is incorrect.

D) inadmissible, because the defendant was seriously ill at the time he consented to giving the statement. A statement by a seriously ill party can still be admissible so long as it is voluntary. Here, the doctor obtained the defendant's statement by threatening to withhold medical treatment, an act which would result in the defendant's almost certain death. A statement obtained by threat of death cannot be considered "voluntary" [Miranda v. Arizona, 384 U.S. 436 (1966)]. Thus, the manner in which the defendant's statement was obtained, not the defendant's medical condition, makes his statement inadmissible. As such, this response is incorrect.

11) A dentist was wandering down the street in a drunken stupor, periodically stepping off the sidewalk onto the street and into the path of oncoming traffic. When the dentist was almost hit by a car, a police officer decided he ought to help. He stopped the dentist and asked his name. The dentist told him. The officer then asked the dentist if he was all right. The dentist started mumbling something about how he loved her and shouldn't have done it. Figuring that the dentist was simply out on a drunken binge, the officer did not take the dentist's remarks seriously. The officer figured that the best thing he could do was remove any remaining alcohol from the dentist's person and hopefully the dentist would sober up. The officer reached into the dentist's coat pockets and, to his surprise, found a small pistol. "What are you doing with this?" the officer asked the dentist. "These things are dangerous."

When the dentist did not reply, the officer became angry and said, "I asked you a question. You'd better answer it." The dentist then told him that he killed his girlfriend and dumped her body in a drainage ditch down the road. The officer then placed the dentist under arrest and read him his rights. At the dentist's subsequent trial, the state moved to admit into evidence the dentist's statement to the officer.

How is the court likely to rule?

A The evidence will be admitted, because the dentist was not in custody.

B The evidence will be admitted, because the dentist was not being interrogated.

C The evidence will not be admitted, because the dentist was not read his Miranda rights.

D The evidence will not be admitted, because the officer knew that the dentist might provide incriminating evidence.

**Explanation:**

The correct answer is:

C) The evidence will not be admitted, because the dentist was not read his Miranda rights.

Discussion of correct answer:

During the period of the officer's stop of the dentist, the dentist was clearly in custody and being interrogated. A person is in custody when he is in the presence of a law enforcement officer and is not free to leave (and thus "deprived of his freedom of action in a significant way"), and any questioning by a police officer that is likely to lead to incriminating responses is considered an "interrogation." Here, the fact that it was not a formal interrogation or statement, and the fact that the officer did not anticipate the seriousness of the crime to which the dentist would subsequently confess, are both irrelevant. Given that a custodial interrogation occurred, the officer was required to advise the dentist of his Miranda rights in order for his statement to be admissible [Miranda v. Arizona, 384 U.S. 436 (1968)].

Discussion of incorrect answers:

A) The evidence will be admitted, because the dentist was not in custody. A defendant does not need to be arrested to be in custody. If a defendant is in the presence of a law enforcement officer and is deprived of his freedom of action, he is considered to be in custody. Here, the dentist was stopped by the officer, asked some questions, then searched, and asked more questions. Any reasonable person would believe he was not free to leave. Thus, during the period of the officer's stop of the dentist, the dentist was clearly in custody and being interrogated. Thus, this answer is incorrect.

B) The evidence will be admitted, because the dentist was not being interrogated. Any questioning by a police officer that is likely to lead to incriminating responses is considered "interrogation." Here, there is little question that the officer's questions were likely to elicit incriminating responses from the dentist. Thus, during the period of the officer's stop of the dentist, the dentist was clearly in custody and being interrogated. Thus, this answer is incorrect.

D) The evidence will not be admitted, because the officer knew that the dentist might provide incriminating evidence. The officer's knowledge of the direction a conversation is headed is not a factor in deciding whether the questions constitute an interrogation. An interrogation is any questioning by a police officer that is likely to lead to incriminating responses. Here, the question ("What are you doing with this?") was almost certain to lead to an incriminating response. Whether or not the officer realized that is irrelevant. Thus, this answer is incorrect.

12) The police had, over time, accumulated reliable information that the defendant operated a large cocaine-distribution network, that he and his accomplices often resorted to violence, and that they kept a small arsenal of weapons in his home.

One day, the police received reliable information that a large brown suitcase with leather straps containing a supply of cocaine had been delivered to the defendant's home and that it would be moved to a distribution point the next morning. The police obtained a valid search warrant to search for and seize the brown suitcase and the cocaine and went to the defendant's house.

The police knocked on the defendant's door and called out, "Police. Open up. We have a search warrant." After a few seconds with no response, the police forced the door open and entered. Hearing noises in the basement, the police ran down there and found the defendant with a large brown suitcase with leather straps. They seized the suitcase and put handcuffs on the defendant. A search of this person revealed a switchblade knife and a .45-caliber pistol. The defendant cursed the police and said, "You never would have caught me with the stuff if it hadn't been for that lousy snitch!"

The police then fanned out through the house, looked in every room and closet. They found no one else, but one officer found an Uzi automatic weapon in a box on a closet shelf in the defendant's bedroom.

In addition to charges relating to the cocaine in the suitcase, the defendant is charged with unlawful possession of weapons.

The defendant moves pretrial to suppress the use as evidence of the weapons seized by the police and of the statement he made.

As to the defendant's statement, should his motion to suppress be granted?

- A Yes, because the entry by forcing open the door was not reasonable.
- B Yes, because the police failed to read the defendant his Miranda rights.
- C No, because the statement was volunteered.
- D No, because the statement was the product of a lawful public safety search.

**Explanation:**

The correct answer is:

C) No, because the statement was volunteered.

Discussion of correct answer:

The Miranda rule states that no statements made by a defendant will be admitted into evidence unless prior to custodial interrogation the defendant receives his Miranda warnings. If the statement is volunteered and not the result of any interrogation on the part of the police then the statement can be admitted. Here, the defendant was in custody but his statement was blurted out and volunteered. It was not the result of any interrogation.

Discussion of incorrect answers:

A) Yes, because the entry by forcing open the door was not reasonable. The search of the home was made pursuant to a valid warrant.

B) Yes, because the police failed to read the defendant his Miranda rights. The Miranda rule states that no statements made by a defendant will be admitted into evidence unless prior to custodial interrogation the defendant receives his Miranda warnings. If the statement is volunteered and not the result of any interrogation on the part of the police then the statement can be admitted. Here the defendant was in custody but his statement was blurted out and volunteered. It was not the result of any interrogation.

D) No, because the statement was the product of a lawful public safety search. Even if the search is lawful the statement was admissible only because it was volunteered instead of the result of police interrogation.

13) A law student runs a side business selling methamphetamines to her classmates. Acting on a tip, police questioned the student after class one day and asked her whether she was selling drugs. The student tried to leave, but the police threatened her with arrest if she left. After 15 minutes of questioning, the police asked the student whether she was aware of her rights. She replied, "Yeah, silence, anything I say gets used against me, and lawyer, free if I can't afford it. So what if I've been selling drugs?" The student then proceeded to explain the rule in *Miranda v. Arizona* to the police for five minutes. After listening patiently, the police arrested the student and charged her with the distribution of a controlled substance. At trial, the student seeks to have her statement to police ruled inadmissible as a violation of her constitutional rights.

Should the Court grant the motion?

A Yes, because the police did not comply with the procedures required by Miranda.

B Yes, because the Defendant did not effectively waive her rights under Miranda.

C No, because the interrogation was not custodial.

D No, because admission of the confession does not violate the privilege against self-incrimination.

**Explanation:**

The correct answer is:

D) No, because admission of the confession does not violate the privilege against self-incrimination.

Discussion of correct answer:

*Miranda v. Arizona* [384 U.S. 436 (1966)] requires that, to protect the privilege against self-incrimination, the police must apprise a suspect of her constitutional rights before a custodial interrogation, which is an interrogation in which a defendant was not free to leave. However, a court will consider the defendant's Miranda rights waived if the prosecution can show that the defendant was aware of her Miranda rights, and that the waiver was knowing, voluntary, and intelligent. In this case, the Miranda warnings were required because the student was not free to leave police questioning, as she tried to do so but was restrained. However, the student effectively waived her rights because the police asked her about them and she was able to recite them to the police from memory. Under these circumstances, courts are likely to find a knowing, intelligent, and voluntary waiver of the Miranda rights, and the confession is therefore admissible.

Discussion of incorrect answers:

A) Yes, because the police did not comply with the procedures required by *Miranda*. *Miranda v. Arizona* [384 U.S. 436 (1966)] requires that the police apprise a suspect of four of their constitutional rights: the right to silence, the fact that incriminating statements they make might be used against them in court, the right to an attorney, and the right to a court-appointed attorney if they cannot afford private counsel. *Miranda* does not require that the warnings be given verbatim, but it does require that the defendant is sufficiently apprised of their rights. In this case, the student's ability to recite the rights back to the police demonstrated that she was aware of her rights, which satisfies the requirements of *Miranda*.

B) Yes, because the Defendant did not effectively waive her rights under *Miranda*. Defendants who have been made aware of their rights under *Miranda v. Arizona* [384 U.S. 436 (1966)] can waive their rights if the prosecution can show that the defendant was aware of her Miranda rights and that the waiver was knowing, voluntary, and intelligent. In this case, the student effectively waived her rights because the police asked her about them and she was able to recite them to the police from memory. Under these circumstances, courts are likely to find a knowing, intelligent, and voluntary waiver of the Miranda rights, and the confession is therefore admissible.

D) No, because the interrogation was not custodial. *Miranda v. Arizona* [384 U.S. 436 (1966)] requires that the police apprise a suspect of their constitutional rights before a custodial interrogation. A "custodial interrogation" is one in which the suspect experiences a significant restriction on their freedom of movement. If objective factors indicate that the suspect was free to leave, then the interrogation is not custodial and *Miranda* does not apply. Here, the student tried to leave and was told she would be arrested if she left. Objectively, then, she was not free to leave, and this was a custodial interrogation.

14) Suspect is a known gangster who is approached on the street by police who believe he was involved in the murder of a member of a rival gang. The police place Suspect in the back of a

police car and question him for two hours, during which time Suspect does not say anything. At the end of the two hours, Suspect confesses to the murder. The police apprise Suspect of his right to remain silent, that anything he says could incriminate him, and that he has both a right to a lawyer and a court-appointed lawyer if he so desires. The police then ask Suspect to repeat his confession again orally to them, which he does. Suspect is arrested and charged with the murder. At trial, the prosecution seeks to have the second confession admitted into evidence. Suspect objects, arguing that admission of the confession would violate his constitutional rights.

Should the court admit the confession into evidence?

- A Yes, because Suspect waived his right to silence.
- B Yes, because Suspect confessed after being given his Miranda warnings.
- C No, because Suspect's waiver of his Miranda warnings was not made in writing.
- D No, because admission of the confession would violate suspect's right against self-incrimination.

**Explanation:**

The correct answer is:

D) No, because admission of the confession would violate suspect's right against self-incrimination.

Discussion of correct answer:

Police must apprise a suspect of his constitutional rights before a custodial interrogation (one in which the suspect is not free to leave). *Miranda v. Arizona* [384 U.S. 436 (1966)]. The Supreme Court has held that police may not sidestep the requirements of *Miranda* by first obtaining a confession in violation of *Miranda*, and then giving a suspect *Miranda* warnings and asking for a repeat confession. In this case, we have an example of exactly the kind of *Miranda*-sidestepping tactic that is improper and the confession is inadmissible.

Discussion of incorrect answers:

A) Yes, because Suspect waived his right to silence. Although the constitutional right to silence can be waived in a knowing and voluntary way, *Miranda v. Arizona* requires that the police must apprise a suspect of this right before it can be waived. Because the police did not do this prior to

Suspect's first confession, they violated his constitutional rights and both the first and second confessions are inadmissible.

B) Yes, because Suspect confessed after being given his Miranda warnings. Although suspects are permitted to waive their constitutional rights and confess to criminal activity, the police may not sidestep the requirements of Miranda in a custodial interrogation by first obtaining a confession in violation of Miranda, and then giving a suspect Miranda warnings and requesting a second confession. In this instance, that is exactly what the police did, making both confessions inadmissible.

C) No, because Suspect's waiver of his Miranda warnings was not made in writing. Waivers of Miranda rights must be knowing and intelligent, but they need not be in writing. Thus, this answer is incorrect.

15) Early in the morning, Internal Revenue Service agents visit the home of Taxpayer, who is being investigated for criminal tax evasion. The agents identify themselves and their purposes and ask Taxpayer if they might enter the home to speak with him, to which Taxpayer agrees. The agents then proceeded to ask Taxpayer about his finances and tax payments for two hours, during which time Taxpayer made several incriminating statements. Taxpayer was arrested and charged with tax fraud. At trial, the prosecution introduced evidence of Taxpayer's statements to the agents, over his objection. Taxpayer was convicted and on appeal argues that the conviction should be reversed due to the unconstitutional admission of the statements.

Should the court of appeals reverse the conviction?

- A Yes, because Taxpayer was not sufficiently apprised of his constitutional rights.
- B Yes, because the agents entered the home without a search warrant.
- C No, because Taxpayer consented to the warrantless entry into his home.
- D No, because the agents did not need to apprise Taxpayer of his constitutional rights.

**Explanation:**

The correct answer is:

D) No, because the agents did not need to apprise Taxpayer of his constitutional rights.

Discussion of correct answer:



Miranda v. Arizona [384 U.S. 436 (1966)] requires that, to protect the privilege against self-incrimination, the police must apprise a suspect of his constitutional rights before a custodial interrogation. A custodial interrogation is one in which the defendant is not free to leave or terminate questioning. Here, the interrogation was not custodial because it occurred in Taxpayer's home after he consented to a warrantless entry by the agents. Because the agents entered the home without a warrant, Taxpayer could have required that they leave at any time. Therefore, this is the correct answer.

Discussion of incorrect answers:

A) Yes, because Taxpayer was not sufficiently apprised of his constitutional rights. Miranda v. Arizona [384 U.S. 436 (1966)] only requires that the police must apprise a suspect of their constitutional rights before a custodial interrogation - one in which a defendant is not free to leave. In this case, because the agents were in Taxpayer's home without a search warrant, they were only lawfully present in the home with his consent, which he could have revoked at any time. The interrogation was thus not custodial, and he therefore had no right to be apprised of his constitutional rights prior to any incriminating statements he made.

B) Yes, because the agents entered the home without a search warrant. This answer emphasizes an incorrect issue. While a warrant is normally required before police or other government agents enter a home, the warrant requirement can be waived by the consent of the homeowner, which was validly given in this case.

C) No, because Taxpayer consented to the warrantless entry into his home. This is a necessary but not sufficient condition to uphold the admissibility of the confession. Taxpayer's consent to the warrantless entry into the home is relevant in this case because it establishes that the I.R.S. agents were in the home with Taxpayer's consent. Because of the consent, they could be required to leave at any time. The interrogation was thus non-custodial. However, this is not the best answer available because the question of whether the agents were required to read Taxpayer his Miranda rights is the main issue and is unaffected by the consented-to search.

16) Defendant was approached by police who told him that they suspected him of the recent murder of a taxi driver. The police directed Defendant to a waiting police van where they held and questioned him for an hour in which the doors of the van were locked and the police had their guns out. After an hour of firm questioning, Defendant confessed to the murder and told the police that he had hidden the murder weapon under a nearby bridge. The police went to the bridge, found the gun, and arrested Defendant, giving him his full Miranda warnings. Subsequent forensic testing identified the gun as the murder weapon and revealed Defendant's fingerprints to be all over the weapon. At trial, the prosecution did not seek to admit Defendant's confession, but did introduce the gun and fingerprints as key evidence. Defendant was convicted and appeals his conviction on the grounds that the introduction of the gun and fingerprint evidence violated his Fifth Amendment rights.

Should the appeals court reverse Defendant's conviction?

A Yes, because the police did not give Defendant his Miranda

warnings.

- B Yes, because the gun was the fruit of the poisonous tree.
- C No, because the prosecution introduced the gun but not the confession into evidence.
- D No, because the police complied with *Miranda v. Arizona*.

**Explanation:**

The correct answer is:

D) No, because the prosecution introduced the gun but not the confession into evidence.

Discussion of correct answer:

*Miranda v. Arizona* [384 U.S. 436 (1966)] requires that police apprise a suspect of his constitutional rights before a custodial interrogation (one in which a defendant is not free to leave). However, while *Miranda* bars the admission of confessions obtained in violation of its procedural requirements, it does not bar the admission of physical evidence produced as a result. In this case, the police were required to give *Miranda* warnings to Defendant because there was a custodial interrogation where Defendant was held in a locked truck by police with guns drawn. The confession would have thus been inadmissible. But this is not true of the gun, which is physical evidence and not covered by *Miranda*, because *Miranda* is chiefly concerned with preventing self-incriminating testimony. The admission of the gun alone without the confession was thus constitutional and the court should uphold the conviction on appeal.

Discussion of incorrect answers:

A) Yes, because the police did not give Defendant his *Miranda* warnings. In this case, the police should have given Defendant his *Miranda* warnings prior to eliciting the confession because the interrogation in the van was custodial. Admission of the confession would thus have been unconstitutional as a violation of Defendant's Fifth Amendment right against self-incrimination. However, *Miranda* does not bar the introduction of physical, non-testimonial evidence obtained without complying with its procedural warnings. Thus, admission of the gun was constitutional notwithstanding the *Miranda* violation, and the conviction should stand.

B) Yes, because the gun was the fruit of the poisonous tree. The fruit of the poisonous tree doctrine provides that evidence obtained as a result of a violation of constitutional rights under the Fourth, Fifth, and Sixth Amendments must be excluded. However, an important exception to the fruit of the poisonous tree doctrine is that, while confessions obtained without complying with the procedural requirements of *Miranda* are inadmissible, physical evidence obtained as a

result of such statements are generally admissible. Thus, in this case, the admission of the gun would not be erroneous, and the fruit of the poisonous tree doctrine is inapplicable.

C) No, because the police complied with *Miranda v. Arizona*. *Miranda v. Arizona* [384 U.S. 436 (1966)] requires that police apprise a suspect of his constitutional rights before a custodial interrogation. A custodial interrogation is one in which a defendant was not free to leave. In this case, the locked van and drawn guns created a custodial interrogation, and the police failed to comply with *Miranda* because they did not give Defendant his warnings before eliciting the confession. The police did not comply with *Miranda*, so this is not a correct answer.

17) A police officer outside a grocery store heard gunshots coming from inside. He rushed into the freezer section and saw a man standing in front of a pile of boxes covered in blood. Two people were on the floor with gunshot wounds and customers were screaming as they tried to exit the store. Fearing that other customers might be in mortal danger, the officer turned to the man and asked where the gun was. The man pointed to an assault rifle hidden behind the boxes and said "here it is."

The man was subsequently charged with the attempted murders of the two customers lying on the floor. At trial, the prosecution offers the testimony of the police officer, who will relate what he observed, including the man's statement about the rifle. Defense counsel objects to the admission of the defendant's action of pointing and his statement to police.

How should the court rule?

A Overrule the objection because the statement was not the product of custodial interrogation.

B Overrule the objection because the action by the defendant was a verbal act.

C Sustain the objection because the officer did not advise the man of his *Miranda* warnings before questioning him.

D Sustain the objection because the prejudicial effect of such evidence far outweighs its probative value.

### **Explanation:**

The correct answer is:

A) Overrule the objection, because the statement was not the product of custodial interrogation.

Discussion of correct answer:

The court should overrule the objection. If a person questioned by the police has not been deprived of his freedom of action in any significant way, he is not in custody and need not be given Miranda warnings. Custody means "not to free to leave." Here, the police officer was acting to secure a dangerous weapon in an emergency situation and may act to do so. This is not considered to be interrogation of a possible suspect. The requirement to give Miranda warnings to a defendant before custodial interrogation takes place does not preclude evidentiary use of the man's action or statement to the police officer in this case.

Discussion of incorrect answers:

B) Overrule the objection because the action by the defendant was a verbal act. The answer is incomplete as the call of the question involved both the pointing and the statement "here it is." In addition, an emergency situation for public safety exists in these circumstances. See A.

C) Sustain the objection because the officer did not advise the man of his Miranda warnings before questioning him. See B, as well as A.

D) Sustain the objection because the prejudicial effect of such evidence far outweighs its probative value. Cal. Evid. Code §352 analysis is irrelevant in these circumstances.

18) A state trooper noticed that, in the car ahead of him, a lighter had been lit six times within two minutes, as if the lighter were being passed around. The car was weaving slightly. The trooper pulled over the car. The trooper approached the car and smelled recently burned crack cocaine. The occupants denied that they had been smoking crack. The trooper noticed that the driver had glassy eyes and ordered him from the car. The trooper arrested the driver for suspicion of driving under the influence. Performing a pat-down search on the driver, the trooper felt a lump in the driver's front pocket. The trooper reached into the driver's pocket and took out a bag that contained ten rocks of cocaine. The trooper then arrested the driver for possession of a controlled substance. The driver's attorney moved to exclude the cocaine from evidence.

Should the court grant the motion?

(A) No, because having smelled crack cocaine, the trooper had probable cause to search the driver's pockets.

(B) No, because the trooper had a reasonable suspicion that criminal activity was taking place in the car.

(C) Yes, because the trooper did not have a particularized and objective basis for suspecting legal wrongdoing sufficient to cause the trooper to pull over the car.

(D) Yes, because the trooper had no reason to perform a pat-down search on the driver.

**Explanation:**

The correct answer is:

(B) No, because the trooper had a reasonable suspicion that criminal activity was taking place in the car.

Discussion of correct answer:

A standard less than probable cause is applied in brief investigatory stops of persons or vehicles. The Fourth Amendment is satisfied if an officer's action is supported by reasonable suspicion to believe that criminal activity may be afoot. Courts must look to the totality of the circumstances of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing [United States v. Arvizu, 534 U.S. 266 (2002)]. Here, the fact that a lighter had been lit six times within two minutes, and the car was weaving, gave the trooper a reasonable suspicion that drug use was taking place in the car, which was sufficient for the trooper to pull over the car. Once he smelled burnt crack cocaine and noticed that the driver's eyes were glassy, he had probable cause to arrest the driver for driving under the influence. The search of the driver, therefore, was a search incident to a lawful arrest [Chimel v. California, 395 U.S. 752 (1969)].

Discussion of incorrect answer:

(A) Incorrect. No, because having smelled crack cocaine, the trooper had probable cause to search the driver's pockets.

To protect arresting police officers and to prevent the destruction of evidence, the person of a defendant who has been placed under arrest may be searched as well as the area within his immediate control (i.e., his wingspan) [Chimel v. California, 395 U.S. 752 (1969)]. Thus, it was not the smell that allowed the pocket search, but the fact that the driver was under arrest for driving under the influence.

(C) Incorrect. Yes, because the trooper did not have a particularized and objective basis for suspecting legal wrongdoing sufficient to cause the trooper to pull over the car.

The Fourth Amendment is satisfied if an officer's action is supported by reasonable suspicion to believe that criminal activity may be afoot. Courts must look to the totality of the circumstances of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing [United States v. Arvizu, 534 U.S. 266 (2002)]. Here, the fact that a lighter had been lit six times within two minutes, and the car was weaving, gave the trooper a reasonable suspicion that drug use was taking place in the car, which was sufficient for the trooper to pull over the car.

(D) Incorrect. Yes, because the trooper had no reason to perform a pat-down search on the driver.

To protect arresting police officers and to prevent the destruction of evidence, the person of a defendant who has been placed under arrest may be searched as well as the area within his immediate control (i.e., his wingspan) [Chimel v. California, 395 U.S. 752 (1969)]. Here, the

driver had been placed under arrest for suspicion of driving under the influence, so the trooper had the right to search the driver.

19) The defendant was charged with murder. Several witnesses testified that the crime was committed by a person of the defendant's general description who walked with a severe limp. The defendant in fact walks with a severe limp. He objected to a prosecution request that the court ordered him to walk across the courtroom in order to display his limp to the jury to assist it in determining whether the defendant was the person that the witnesses had seen.

With regard to the defendant's objection, what should the court do?

- A Sustained, because the order sought by the prosecution would violate the defendant's privilege against self-incrimination.
- B Sustained, because the order sought by the prosecution would constitute an illegal search and seizure.
- C Denied, because the order sought by the prosecution is a legitimate part of a proper courtroom identification process.
- D Denied, because a criminal defendant has no legitimate expectation of privacy.

**Explanation:**

The correct answer is:

C) Denied, because the order sought by the prosecution is a legitimate part of a proper courtroom identification process.

Discussion of correct answer:

The Fifth Amendment guarantees a defendant the right to avoid being compelled to testify against yourself. However, the privilege against self-incrimination protects only testimonial evidence, not physical evidence. The privilege also applies only to compelled self-incriminating testimony. Walking across a courtroom to display the defendant's limp is considered physical evidence, not testimonial evidence, and the defendant can be compelled to do it.

Discussion of incorrect answers:

A) Sustained, because the order sought by the prosecution would violate the defendant's privilege against self-incrimination. The Fifth Amendment guarantees a defendant the right to

avoid being compelled to testify against yourself. However, the privilege against self-incrimination protects only testimonial evidence, not physical evidence. The privilege also applies only to compelled self-incriminating testimony. Walking across a courtroom to display the defendant's limp is considered physical evidence, not testimonial evidence, and the defendant can be compelled to do it.

B) Sustained, because the order sought by the prosecution would constitute an illegal search and seizure. This issue is irrelevant to whether a defendant must display his limp as a legitimate part of the in-court identification process. The issue in dispute is whether the defendant's privilege against self-incrimination has been violated. In this case, the defendant walking across the courtroom would be physical evidence and not compelled testimony.

D) Denied, because a criminal defendant has no legitimate expectation of privacy. A criminal defendant does have a legitimate expectation of privacy against unreasonable searches and seizures under the Fourth Amendment. This issue is irrelevant to whether a defendant must display his limp as a legitimate part of the in-court identification process. The issue in dispute is whether the defendant's privilege against self-incrimination has been violated. In this case, the defendant walking across the courtroom would be physical evidence and not compelled testimony.

20) Police were investigating four separate armed robberies, all taking place at night at various convenient stores over a period of three weeks. In each case, the suspect entered the stores while wearing a brightly colored basketball jersey. Further investigation revealed that the jersey is a rare "throwback" jersey from the late 70's. Detectives subpoena sales records from all local stores that sell that specific jersey. Several names are discovered, which detectives follow up on. One such person, James, becomes the focus of the investigation. After a prolonged investigation of several months, James is located, arrested, and is charged with the four robberies. James is duly arraigned, and has counsel appointed to represent him in the case against him.

Several weeks later, during the pendency of the case, police later investigate a fifth convenient store robbery where a masked man entered a store while wearing a jersey similar to the brightly colored jersey James had allegedly been wearing. This robbery occurred during the pendency of the investigation of James and after the original four robberies.

Without consulting James' attorney, detectives go to the jail to interview James, who is awaiting trial. Detectives inform him that they will not be interviewing him about the previous four robberies; instead, their questions will be limited to the fifth uncharged robbery. Detectives read James his Miranda rights and he implicated himself in the fifth armed robbery.

James' attorney files a motion to exclude James' interview with Detectives.

What should the trial court rule?

A) Granted because the officers knew he had counsel appointed and the Sixth Amendment protects defendants from further interrogation once criminal proceedings have been started

B) Granted because even though officers knew James had appointed counsel assigned, they chose to interview him anyway

C) Denied as there was no violation of the Sixth Amendment

D) Denied because defendants, once arrested and charged, forfeit their right to have counsel present for subsequent interrogations about different crimes while they are in-custody

**Explanation:**

Correct Answer:

C) Denied as there was no violation of the Sixth Amendment

Discussion of correct answer:

The Sixth Amendment is offense specific. As long as the offenses are not avenues of charging multiple offenses for the same conduct, the Sixth Amendment would not apply. This robbery occurred on a different date than the previous four robberies. If officers Mirandize James and he enters a valid waiver and limit their statements to the fifth robbery, James statements would be admissible as to the fifth robbery. *Texas v. Cobb* (2001) 532 U.S. 162.

Discussion of incorrect answers:

A) Once invoked, the Sixth amendment right to counsel does not apply to any and all further investigations. To do so would be to immunize suspects from further investigations by law enforcement. As a result, this answer is incorrect.

B) Officers' knowledge of whether James had counsel appointed is irrelevant to the Sixth Amendment analysis here. There is no "good faith" exception to the Sixth Amendment right to counsel. Also, as the Sixth Amendment is offense specific, this is the incorrect answer.

D) The Sixth Amendment requires that a defendant cannot be questioned about the offenses for which she has been charged. In addition, Defendants do not forfeit their Sixth Amendment rights once indicted or charged.



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### **4th Amendment**

The 4th amendment is the right against unreasonable searches and seizures and that a search will be backed by a warrant that is signed by a neutral magistrate and particular as to what is to be seized and where is being searched.

### **State action**

This is any action done by police officers while conducting their normal duties or showing their authority.

Here Officer Walters is in a marked vehicle and wearing his uniform thus acting as a police officer and therefore having state action

### **Pulling over the vehicle**

To stop a vehicle an officer must have reasonable suspicion. Reasonable suspicion is a lower preponderance than probable cause that there criminal activity in progress taken into account the totality of the circumstances, however it is more than a mere hunch.

Here the defense will likely argue that the stop of the vehicle was unconstitutional due to a lack of Reasonable suspicion. The reason for this being that the Vehicle did not have any reports that it was stolen and the registration was current. As well as this the officer did not pull the vehicle over for a traffic violation and had no way of knowing that Micheal the driver was intoxicated when pulling over the vehicle. For these reasons the defense will argue that the initial stop of the vehicle was unconstitutional.

### **Search of the Car**

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Under *Katz*, a search occurs when a person shows a reasonable expectation of privacy and society is ready to regard that expectation as reasonable.

Here the officer performed a search vehicle after arresting Bosely for a DUI by looking through center console, the floor of the vehicle, the glove compartment, and finally the trunk. The officer then goes a step further by searching the large black suitcase and the large women's styled purse within the trunk. With the trunk of a Honda accord it is closed off to the outside and not able to be looked into or access without the owner of the vehicle opening it. With this Bosely showed that he had a reasonable expectation of privacy for the items within the trunk. As well as this society would generally agree with this since most people driving cars have trunks which are private to them and not accessible to people without the owners consent.

A search occurred.

### **Warrant Requirement**

The warrant requirement follows is that a search will be considered reasonable if it is carried out by a warrant that is signed by a neutral magistrate and particular as to what is to be seized and where is being searched. Any search that is done without a warrant must be done with a valid exception to the warrant requirement.

Here a search occurred(see above) so a valid exception must apply to the warrant requirement to make the evidence found from the search admissible.

### **Search incident to arrest**

When a suspect is under arrest police are allowed to search within the suspects wingspan or anywhere the could have accessed within their wingspan from where they were arrested.

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Here Prosecutor could argue that the searching of the vehicle as to the glove compartment and floor in the front was within this view, however this exception does would not reach the area in the trunk and back console since it was out of reach of the suspects wingspan and thus would be a very weak argument as to the reason of searching the trunk.

### **Automobile exception**

Since the nature of vehicle are easily movable. An officer can perform a search on a vehicle when the officer has probable cause that the evidence that a suspect has just been arrested for is linked to the vehicle and within it. Probable cause is what a reasonable facts that would lead someone to think there is crime.

Here Prosecutors will most likely argue this exception as to the searching of the trunk. The reason for this is that they can argue that the officer believed that the drugs that Bosely was intoxicated on was within the trunk when he was arrested for the DUI. With this Officer Walter could have believed that evidence for the crime of DUI was within the trunk and searched it. The issue here however is he was arrested for a DUI and it would be quite a for the probable cause to link the trunk to that evidence especially since the trunk is not accessible while driving. With this The Officer extended the scope when performing a search within the trunk.

### **Fruits of the poisonous tree doctrine**

The Fruits of the Poisonous Tree Doctrine is that if police used one illegality within an investigation that evidence found from that illegality is thus tainted and should not be admissible.

The defense will likely argue this from the initial stop of the vehicle that was performed without reasonable suspicion. Without the initial stop there would have been no reason for the DUI arrest since Officer Walter would not have smelled the odor of burnt

marijuana and would not have seen how nervous he was. Thus without the arrest the officer would never have searched the car and the trunk where he found the kilo of marijuana. However the prosecutor could argue that the taint was dissipated from an independent source.

### **Independent source**

Independent source refers to a tip that police receive from an informant. These tips must be corroborated and taken into how much of the tip actually relates to the circumstance. An anonymous tip is not viewed as being credible, unlike one that is from a known informant and has many facts within the tip to support it.

Here the prosecutor will most likely argue this in response to the unconstitutional stop. The issue however is the information in the tip itself and how accurate it was within the context. The tip had the right time as it said around 6 a.m. and the officer found the car at 6:15 at McKinley and Marks Avenues. As well as this the car was white along with it have a large "2A" sticker on the rear window. However the car was not an SUV and was a sedan, there was only one passenger traveling inside of it and the kilo of marijuana was in the trunk inside of a women purse rather than a large suitcase. With this the tip would most likely be seen as reasonable since it got most of the main characteristics correct as where it was going to be, the time, as well as the "2A" sticker along with this it was a tip from a reliable informant whom the officer had previously worked with and found that they had proven to be correct before.

### **Exclusionary rule**

The exclusionary rule is a prophylactic judge made rule to deter the use of police misconduct when conducting searches as to the 4th amendment. However it is not designed to put police in a worse position than they would have been in.

Since the search exceeded the scope of the exception as well as the initial stop being unconstitutional and the Fruits of the Poisonous Tree Doctrine applying, the defense will likely argue that the exclusionary rule should apply since there was police misconduct when the car was stop and the trunk was searched. With this the defense will argue that the exclusionary rule should apply to the evidence of the kilo of marijuana.

### **Conclusion**

The defense will likely argue to suppress the evidence of the kilo or marijuana as to the unreasonable search and the Fruits of the Poisonous Tree Doctrine applying for the initial stop and the taint not yet dissipating. The prosecutor will argue that the independent source dissipated the taint from the initial stop as well as the unreasonable search on the trunk. The court will likely side with the defense since the initial stop was done without reasonable suspicion.

2)

Main Issue: Which, if any, of Evelyn's statements are admissible in the pretrial motion?

The 5th Amendment protects U.S. citizens self incrimination.

The 6th Amendment protects U.S. citizens by providing counsel whether or not they can afford it.

(1) Issue: Is this situation created through government conduct?

Rule: To assert any rights under the Amendment, this must involve an agent acting on behalf of the Government.

Analysis: Detective Miller and three other officers arrested Evelyn; the four officers are law enforcement officers working under the Government.

Conclusion: This is a situation involving government conduct.

(2) Issue: Was the arrest made with probable cause?

Rule: For a valid arrest, a LEO must have probable cause that a crime was committed by the defendant.

Analysis: An investigation of the family's finances and their cell phone records shows that Evelyn and Andrew's finances are in dire conditions. However, the records are public and are able to be accessed without a warrant. The cell phone records revealed Andrew's last known location was about 20 minutes outside of town in the opposite direction that Andrew was said to have camped. Evelyn recently placed a life insurance policy on Andrew's life that would payout upon Andrew's untimely or violent death. Evelyn's statements to the police contradicted the evidence they were able to obtain through valid searches. Each incident alone would not lead someone to believe a crime had been

committed, however based upon the totality of the circumstances, there was probable cause for Evelyn's arrest.

Defense: The LEOs arrested Evelyn without informing her of why they were doing so. Evelyn was placed into police custody and transported without a valid reason. Without a reason, Evelyn would not know if there was probable cause upon her arrest.

Conclusion: The arrest was made with probable cause. ✓

(3) Issue: Was Evelyn in the custody of police? ✓

Rule: Custody is when a person is not free to leave the presence of the LEO and has the protections under the Amendments. ?

Analysis: Evelyn was taken to an interrogation room, which was smaller than a conference room, containing a table with three chairs and no windows. The door was locked, therefore Evelyn was not free to leave.

Conclusion: At this point, Evelyn is in custody.

(4) Issue: Were Evelyn's 5th Amendment rights violated in the interrogation room?

Rule: A person has the right against self incrimination under the 5th Amendment. Upon interrogation, Miranda Rights are required which state, "You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, the court will appoint one at no cost to you." A person can waive their Miranda Rights and speak to the LEOs or they can unequivocally and unambiguously state they want to invoke their rights. An interrogation occurs when questions regarding the crime are asked, not general questions about a person's personal information. ✓

Analysis: Detective Miller entered into the interrogation room and read Evelyn the complete list of her Miranda rights. Evelyn asked for clarification on the right to remain silent, but did not clearly state she wished to stay quiet. Detective Miller read the right to remain silent and stated anything she says can be used against her in court. Evelyn stated she understood her rights. Evelyn did not waive or invoke any of her rights. Evelyn and Detective Miller begin to speak. The questions asked were about the murder of Andrew and not identifying questions, therefore making this an interrogation. ?

Conclusion: Evelyn's rights under the 5th Amendment were not violated in the interrogation room.

(5) Issue: Did Evelyn invoke her right to stay silent while Detective Miller lays out his findings? ✓

Rule: If a person wants to invoke any of their 5th Amendment rights, they need to clearly and concisely state they are invoking their right. ✓

Analysis: Detective Miller laid out his findings and stated the inconsistencies with her statements. Evelyn did not react nor did she say anything. Detective Miller requested a response but Evelyn did not answer. This portion of the interview lasted 30 minutes. Because Evelyn did not react nor speak, she did not invoke a right to remain silent, it appears she was listening. ✓

Defense: Evelyn may not know that she must clearly and unambiguously state she is invoking her right to remain silent. Her actions would show a reasonable person she was invoking her right. ✓

Conclusion: Because Evelyn did not state she requested to invoke her right to remain silent, there is no violation against her 5th Amendment right. ✓

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(6) Issue: Did Evelyn invoke her right to remain silent after the 30 minutes of Detective Miller speaking when she said, "I'm not going to say anything to you."?

Rule: (supra- rule in issue 5)

Analysis: Evelyn stated, "I'm not going to say anything to you." Which is a clear invocation of her right to remain silent.

Conclusion: Evelyn has now invoked her right to remain silent.

(7) Issue: Did Evelyn retract her right to remain silent when she requested to speak with Detective Miller?

Rule: A person can retract their invocation of a right under the 5th Amendment by voluntariness but not coercion.

Analysis: When Evelyn invoked her right to remain silent, Detective Andrew immediately ended the stood up and ended the interrogation. Miller handed Evelyn his business card and held in a holding cell for 72 hours. After a day had passed, Evelyn called Detective Miller to speak to him about Andrew's murder. Evelyn voluntarily called Detective Miller, the facts do not state that he reached out to her for any reason.

Defenses: The facts do not state whether any coercion occurred while Evelyn was at the holding facility, and whether or not she was coerced into speaking with Detective Miller for a second time.

Conclusion: Evelyn retracted her invocation of the right to remain silent.

(8) Issue: Were Evelyn's rights under Miranda violated when Detective Miller spoke to her at the County Jail in an interview room?

Rule: supra (see issue 4 above). If a substantial amount of time has passed between meetings and receiving Miranda rights, Miranda rights must be given again. A substantial time is said to be more than 14-30 days.

Analysis: Although a substantial amount of time had not passed between meetings (72 hours), Detective Miller read Evelyn the complete list of Miranda rights when meeting again. Evelyn clearly agreed to speak with Detective Miller. Here, we know that Evelyn unambiguously retracted her invocation of the right to remain silent, even though she had previously voluntarily called Detective Miller. Evelyn admitted to various issues with the marriage, including abuse, and the new life insurance policy was purchased upon Andrew's request.

Defense: Evelyn had a tumultuous relationship and was not mentally stable to be spoken to about her marriage. Because of the severe issues, defense counsel should have requested Evelyn obtain a psych evaluation to see if she can stand for trial or if her mental incapacity is too weak to answer questions.

Conclusion: Evelyn's rights under Miranda were not violated upon the second meeting with Detective Miller.

(9) Issue: Did Evelyn invoke her right to having counsel present at the interrogation when she asked, "Should I have a lawyer present?"

Rule: supra (see issue 4 above).

Analysis: Evelyn asked Detective Miller, "Should I have a lawyer present?" to which he responded, "You can ask for one if you think you need one." Evelyn then stated, "I'm OK. Let's continue." Evelyn did not clearly state she wanted to have a lawyer present and consented with the continuing of the interview by stating, "I'm OK." A reasonable person would perceive that response as allowing for the conversation to continue without issue.

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Defense: Evelyn may not know that she must clearly and unambiguously state she is invoking her right to having counsel present.

Conclusion: Evelyn did not invoke her right to counsel during this time in the interview.

(10) Issue: Did Evelyn invoke her right to counsel clearly and unambiguously?

Rule: supra (see issue 4 above)

Analysis: After Detective Miller expressed disbelief in Evelyn's story, she was quiet then stated, "Yeah, I want a lawyer now." Detective Miller then promptly ended the interview.

Conclusion: By clearly stating "I want a lawyer now." Evelyn invoked her right to counsel.

(11) Issue: At what point is Evelyn arraigned for the murder and requires counsel present for under the 6th amendment?

Rule: The sixth amendment states every person who has been charged with a crime that imposes imprisonment for any amount of time can only be interrogated for that crime with an attorney present.

Analysis: Three days after the interview with Detective Miller inside of the county jail, Evelyn was arraigned for the murder of Andrew.

Conclusion: From this point forward, any information obtained regarding the murder of Andrew should only be done in front of Evelyn's defense counsel.

(12) Issue: Are Evelyn's rights under the 5th and 6th amendments violated when Detective Miller returns to the county jail to speak to her about the burglary of Andrew's hardware store?

Rule: Supra (issue 4 and issue 11)

Analysis: Detective Miller returned to the jail to speak with Evelyn regarding the burglary of Andrew's hardware store. Detective Miller read Evelyn her Miranda rights. Detective Miller acknowledges the murder charge, but requests to speak to her about the burglary. Evelyn denied any involvement in the burglary but stated she bought a shovel at the store several weeks before the burglary.

Conclusion: This portion of the third encounter is admissible because Evelyn has not been charged with any crime related to the burglary.

(13) Issue: Were Evelyn's 6th Amendment rights violated when she spoke to Detective Miller about Andrew's murder at the third encounter?

Rule: supra (issue 11)

Analysis: Evelyn began to speak about the abuse she endured during her marriage. Detective Miller did not stop the interview. The facts do not state that Evelyn had an attorney present. Evelyn asked questions about self-defense and the murder case to Detective Miller, which he then stated he is not an attorney and cannot give her an answer. Evelyn then stops the interview and requests her attorney for the remainder of the interview. Detective Miller then terminates the interview.

Defense: Detective Miller should have terminated the interview once the subject was changed from the burglary to the murder.

Conclusion: Any comments Evelyn made during this encounter would be inadmissible.

**Main conclusion:** Any statements Evelyn made during the first and second encounters are admissible regarding the murder, and the statements from the third encounter are inadmissible because no attorney was present. The statements regarding the burglary in

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the third encounter are admissible, because Evelyn had not been charged with any crime stemming from the burglary.

**END OF EXAM**