

Monterey College of Law - Hybrid

Criminal Procedure

Spring 2024

Prof. C. White

Instructions:

Answer three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

Question 1

Officer Bart is a police officer employed by the City of Pleasantview as narcotics detective. He started to suspect that a local, prominent, real-estate mogul, John Dealer was manufacturing and selling methamphetamine—a felony offense. Officer Bart decided to investigate Dealer.

At the beginning of the investigation Officer Bart approached Dealer's next-door neighbor, Jenny, and ask her if she will assist with their investigation. Jenny agreed and allowed Officer Bart to use her bedroom for the investigation. One of Jenny's bedroom windows faces one of Dealer's bedroom windows, which Dealer often leaves open. Officer Bart downloaded an eavesdropping application for his I-phone that had been released a few months prior. The app. used special software to detect and amplify sound, which it also records. Officer Bart then purchased a compact, high-powered microphone from Amazon.com which he hooked up to his I-phone. Officer Bart placed the I-phone and microphone on Jenny's windowsill facing Dealer's open bedroom window. He turned on the eavesdropping app. and left, returning several hours later. When Officer Bart listened to the recording from the eavesdropping app. he heard Dealer whispering to his wife. The recording is barely audible but Bart can hear Dealer discussing setting up a "big sale."

The next day, Officer Bart waited until Dealer left to run some errands and then walked up to Dealer's front door to try and interview Dealer's wife, Karen, hoping she will be cooperative. Bart approached the front door and knocked. Nobody responded but after about 30 seconds, Bart heard a glass break and a woman scream. Bart immediately opened the front door, which was unlocked and rushed in. He saw Karen standing in the kitchen next to a broken glass with her foot bleeding. Officer Bart told Karen he heard her scream and asks if she is ok. Karen responded she is fine and politely asks Officer Bart to leave. Officer Bart complied but while he was leaving, he observed two scales, several small baggies, and three phones on the dining room table in clear view. These items caught Officer Bart's attention because they appeared to be indicative of drug sales.

On the final day of his investigation Officer Bart approached the side of Dealer's detached, two car garage where he keeps his trash cans. The detached-garage was situated about 50 feet from Dealer's residence. Bart opened up the trash cans and went through the contents. Inside, they found several bottles of chemicals commonly used to

manufacture methamphetamine. They photographed the bottles but did not remove the bottles from the trash can.

Officer Bart applied for a search warrant to search Dealer's house and garage for evidence of methamphetamine manufacturing and sales. Judge Justice is asked to review the warrant. You work for Judge Justice as her law clerk and she asks you to advise her whether the investigation done by Officer Bart complied with the 4th Amendment. Please write a memorandum advising Judge Justice. You do not need to cite specific cases but please apply relevant holdings and rules.

Question 2

In recent weeks the City of Pleasantview has experienced an increase in retail thefts at local stores. The thefts are being committed by a retail-theft ring known as the Green Grabbers. The Police Chief of Pleasantview, Jim Lawman, reaches out to neighboring police departments for assistance and learns the following information:

- The Green Grabbers work in groups of four to six members.
- They enter stores dressed in green clothing and carrying green backpacks. Once inside the store, the members put on green facemasks and fill their backpacks with high value merchandise.
- During the thefts, members communicate with one another using small walkie talkies.
- One retail worker tried to stop a member of the Green Grabbers but was unsuccessful. The worker initially reported that he had been “pepper sprayed” but further investigation revealed the thief had used wintergreen breath spray.
- The members inside the store usually spend no more than three minutes inside before fleeing. (The average response time to a 911 call in Pleasantview is 5 minutes).
- No retail worker can remember the faces of the members due to the face coverings, but they have estimated the thieves are 18—21 years old.
- The members sometimes use a getaway driver who sits in front of the store with the car on, waiting for the other members to run out. The getaway car has been described by witnesses as a black or dark blue car.

Police Chief Lawman communicates the information to the patrol officers and tells them to be on the lookout.

Officer Sherman Holmes of the Pleasantview Police Department is out on patrol a few days after hearing the details about the Green Grabbers. He stops by his favorite

doughnut shop to grab a morning snack. The doughnut shop shares a parking lot with an Outlet Mall.

As Holmes exits his car, he sees a dark green sedan pull up outside one of the retail stores at the Mall. The driver, Charles, stops the car and a woman named Abby and a man named Barry get out and start walking toward the entrance to one of the shops. Abby, Barry, and Charles, all appear to be in their late twenties or early thirties. Barry is wearing a green shirt and carrying a green backpack and Abby is wearing a tie-dye shirt featuring heavy green accents.

Officer Holmes rushes over to the pair and immediately detains them, along with Charles. Officer Holmes conducts a patdown search of each of them and feels what he recognizes to be small walkie talkies. He removes the walkie talkies from their pockets. Officer Holmes also removes wintergreen breath spray from Barry's jacket pocket. Officer Holmes places Abby, Barry, and Charles under arrest for suspected retail theft. He places them in handcuffs and orders them to sit down on the sidewalk, which they do.

Officer Holmes then conducts a search of the vehicle for other evidence of retail thefts. While searching the trunk, Officer Holmes finds a large green backpack with ID's belonging to Abby, Barry, and Charles. Inside the backpack is an unregistered gun and two baggies of cocaine. Abby, Barry and Charles are transported to the Police Station for booking and the vehicle is towed away to the police impound lot and inventoried.

Abby, Barry, and Charles turn out to be members of the Green Grabbers and they are charged with attempted retail theft, possession of the unregistered gun, and possession of cocaine.

At their trial, attorneys for Abby, Barry, and Charles challenge the searches conducted by Officer Holmes.

Was Officer Holmes' decision to detain and search Abby, Barry, and Charles proper under the 4th Amendment? Why or why not?

Was Officer Holmes's search of the vehicle proper under the 4th Amendment? Why or why not?

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Criminal Procedure Sec. 3
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Question 3

Homicide Detectives were investigating the suspicious death of Mark and arrested a suspect, Sammy Suspicious. The next day, Detective Smith went to the county jail where Sammy was being held on suspicion of murder. Det. Smith went in plain clothes, unarmed and by himself. Guards brought Sammy to an interview room and Det. Smith asked the guards to unhandcuff Sammy and bring him a glass of water. Det. Smith gave Sammy a sandwich that he had brought with him.

Det. Smith asked Sammy how he was doing and asked if he was lacking anything in the jail facility. Sammy replied he had trouble sleeping and was very tired. Det. Smith then lied to Sammy, saying that Det. Smith grew up in a neighborhood just like Sammy's, and asked Sammy about his childhood. Sammy was quiet, occasionally giving one-word answers but he did tell Det. Smith that he had dropped out of school in the 8th grade. After about a half an hour, he ate the sandwich Det. Smith had brought.

Det. Smith knew, but Sammy didn't, that the homicide was on video. The video clearly established that it was an intentional murder and not self-defense. But the suspect could not be identified on the video. Det. Smith hoped to get Sammy to admit that he was the person in the video.

Det. Smith leaned in close and told Sammy that Det. Smith knew Sammy wouldn't kill Mark for no reason, that Det. Smith had spoken with Sammy's mother and knew Sammy was a good person. Det. Smith told Sammy that his partner, Detective Daisy, believed that Sammy had committed first degree, premeditated murder, but that Det. Smith believed that Sammy had just acted in self-defense. Det. Smith informed Sammy that self-defense was a complete defense to criminal charges but first-degree murder carried a penalty of 25 years to life. Det. Smith put down his pen and said to Sammy, "I won't write this down, but that's what happened, isn't it—you acted in self-defense?" Sammy said, "I guess" and looked at the ground. (Unbeknownst to Sammy, everything that happens in that room is audio and video recorded).

Det. Smith then said, "I have to read you these rights now just we can keep chatting, ok?" After reading all the *Miranda* warnings to Sammy, Det. Smith asked Sammy if he understood his rights and Sammy responded, "I guess." , Det. Smith immediately continued to ask Sammy about the death of Mark and Sammy made several incriminating statements. In total, the entire interview lasts three hours.

After Sammy is charged with murder, his attorney brings a motion to suppress the entire contents of what took place in the interview room between Det. Smith and Sammy on 5th Amendment grounds (Miranda) and 14th Amendment grounds (voluntariness). What arguments may Sammy's attorney reasonably raise, what arguments may the prosecution reasonably raise in response, and how should the court rule? Analyze the pre-*Miranda* and post-*Miranda* parts of the interrogation separately. Do not discuss whether suppression of the statement is a proper remedy.

ANSWER OUTLINE

QUESTION 1

- 4th Amendment prohibits searches and seizures that take place without a warrant.
- Police conduct a search within the meaning of the 4th Amendment when their conduct intrudes on an expectation of privacy that society is prepared to recognize as reasonable.

Did Officer conduct a warrantless search when he used the Eavesdropping App. and the high-powered microphone to record Dealer's conversation with Karen?

- Did Dealer have a subjective expectation of privacy in his conversation with Karen that took place in a room with an open window?
 - o People generally do not have an expectation of privacy in words and actions they omit to the public.
 - o When police make observations from a vantage point where they are lawfully positioned, they are generally not engaged in a search.
 - Officer Bart was lawfully present in Jenny's bedroom, the vantage point that allowed him to listen to the conversation.
 - o BUT, Dealer was whispering and conversation was barely audible using enhanced listening features of Eavesdropping App and high-powered microphone.
- Was Dealer's expectation of privacy reasonable?
 - o Did Bart's use of the Eavesdropping App and high-powered microphone constitute a search under Kilo v. United States: Where the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant.
 - o Were the App and microphone within general public use?
 - App was recently released—was it in general public use? Is it similar enough to other listening devices?
 - Did it just amplify Bart's sense of hearing or did it allow Bart to learn information that would previously have been unknowable without physical intrusion?

Did Officer Bart's entry into Dealer's Home Constitute a warrantless search?

Entry into home without a warrant presumably violates the 4th Amendment unless the entry was done pursuant to a recognized warrant exception.

Was there an exception to the 4th Amendment warrant requirement?

- Community Caretaking Exception/Emergency Exception: Officers may enter home to render medical aid or prevent harm from befalling occupants.
 - o Did Officer Bart Act pursuant to this exception?
- Plain View Exception: When an officer is lawfully present in a home, any observations an officer makes are not the product of a search if their evidentiary value is immediately ascertainable without further inspection.
- If Bart was lawfully in home pursuant to community caretaking exception, then the plain view doctrine applies.

Did Officer conduct a warrantless search when he opened the trash cans and photographed their contents?

- Searches that take place within the curtilage of the home require a warrant. Did this take place inside the curtilage or does the open field doctrine apply?

- o Garage is detached and 50 feet away from home—we are told trash is on side of garage.
- Separate building that is not generally associated with the privacy interests of one's home. BUT, it is clearly close enough that the family walks trash bags over.
 - o Does a person have an expectation of privacy in their trash—Not when it is on the sidewalk but that is not the case here. Clearly Dealer was looking to dispose of the items on trash day BUT he did not place the items onto a public street. He could argue he was going to take the trash to the dump himself.
 - o Trash was not removed, only observed.

QUESTION 2

4th Amendment protects against warrantless searches and seizures unless one of the well established exceptions apply.

Here, Holmes detained, searched and arrested A, B, and C without a warrant. He also conducted a search of the vehicle without a warrant.

Was Officer Holmes' decision to detain and search Abby, Barry, and Charles proper under the 4th Amendment? Why or why not?

- Was the detention proper?
 - o Police may briefly detain a person if the officer has reasonable suspicion that he/she has committed a crime or is about to commit a crime.
 - Facts in support of reasonable suspicion:
 - A and B are wearing green
 - C is driving a dark car and drops them off in front of the store.
 - A and B are carrying green bags
 - Facts cutting against reasonable suspicion:
 - A, B and C appear to be older than Green Grabbers suspects
 - Information is that Green Grabbers work in teams of 4-6 and here we only have 3 people.
 - Getaway car is generally black or dark blue—here we have dark green.
- Was the search of their person proper?
 - o Police may conduct a patdown search of a person if the officer has reasonable belief that subject is armed and dangerous. IF during the patdown the officer feels something that is clearly a weapon, or contraband, or of evidentiary value, he or she may reach inside and remove the item.
 - Facts in support of "armed and dangerous"
 - Prior use of breath spray as a weapon.
 - Barry wearing a jacket which could conceal weapon.
 - o Police may search someone incident to a lawful arrest. Search may take place contemporaneous with arrest or even before arrest as long as an arrest is made.
 - Here we are told A, B, and C are arrested right after search. Search of their pockets incident to arrest was proper as long as Officer Holmes had PC to arrest.
 - o Did Holmes have PC to arrest after search of their person? Officer may arrest for crime committed in his/her presence as long as supported by PC.
 - Facts in support of PC arrest:
 - Dressed in green, approaching retail store, carrying green bags, working as a team?, in possession of walkie talkies+wintergreen breath spray, dropped off by person in dark car.
 - Facts cutting against PC arrest:
 - Innocent explanation for approaching store—want to go shopping, wearing green is not a crime, walkie talkies can be used for many lawful purposes, fewer than 4—6 people, have not stolen anything yet.

Was Officer Holmes's search of the vehicle proper under the 4th Amendment? Why or why not?

- Officer may search an automobile incident to arrest of recent occupant if: 1) suspects are within reaching distance of car to obtain weapon or destroy evidence, OR 2) Officer has PC to believe evidence of arresting offense will be found therein.
 - Were A, B, and C within reaching distance of car to obtain weapon or destroy evidence?
 - A, B, and C are handcuffed and sitting on curb near car.
 - Handcuffing alone not controlling on analysis as long as suspects can reach vehicle.
 - Officer was outnumbered.
 - Officer has PC to believe evidence of arresting offense will be found therein?
 - What sort of evidence would Holmes expect to find? He had the walkie talkies and wintergreen breath spray...
- Scope of automobile search limited to places and containers that could contain evidence off offense of arrest. Did Holmes' search go beyond that scope?
 - Possible items from other thefts? Green bandanas? Other articles of green clothing?
 - Could those items be located in backpack in trunk?
- Officers may conduct an inventory search of an impounded vehicle to protect owner from theft and to protect and themselves from accusations of theft.
- Doctrine of Inevitable Discovery: permits the introduction of illegally obtained evidence if the prosecutor can prove that such evidence would have been lawfully discovered in the course of a routine, predictable investigation.
 - These two principles, taken together warrant analysis as to whether items in backpack would have been located during an inventory search.

QUESTION 3

Pre-Miranda Interview:

Was Miranda required? i.e., was Sammy Subjected to Custodial Interrogation in the First Half of the Interview?

Was Sammy in Custody During the interview?

A suspect is considered in custody when he or she has been subjected to arrest-like restraint. Test is objective and asks court to consider whether a reasonable person in suspect's situation would feel they were not free to leave because their freedom had been significantly restricted.

Facts in support of finding Sammy was in custody (defense arguments):

- Sammy has been arrested.
- Is in jail.

Facts against finding Sammy was in custody (prosecution arguments):

- Det. Smith is in plain clothes and is unarmed.
- Det. Smith appears to take calm tone with Sammy and offers him non-jail food and water.
- Taken from cell.
- Handcuffs taken off.

Was Sammy Interrogated (within the meaning of Miranda) during the interview?

Interrogation occurs when police know or should know that with their words or actions, they are likely to elicit an incriminating response.

Likely not a disputed issue—point of interviewing Sammy was to get him to admit he was person in video.

Was Sammy's Statement Voluntary?

To determine whether the defendant's statement was voluntary, you should consider all the circumstances surrounding it, including the age, education level, physical and mental condition of the defendant, and (his/her treatment [while in custody]/[under interrogation])/(whether he/she was promised any benefit) as shown by the other

evidence in this case. A statement is voluntary when made by a person exercising his or her free will. A statement made against a person's will in response to force, threat, or promise is not voluntary.

Facts in support of finding Sammy's statement were involuntary (defense arguments):

- Sammy is in jail—coercive police-dominated environment
- Sammy only has 8th grade education.
- Sammy states he is tired.
- Officer engaged in psychological manipulation designed to overcome Sammys' free will: recites statement from Sammy's mother; says he is from same area.
- Officer implies Sammy is facing 25 to life and if he admits that killing was done in self-defense then Sammy has not committed a crime (promise/threat).

Facts in support of finding Sammy's statements were voluntary (prosecution arguments):

- Sammy is unhandcuffed during interview.
- Officer feeds him and provides him with water.
- Interview was not particularly prolonged (3 hours).
- Officer is in plain clothes and is unarmed.
- Officers may use trickery or lies as long as they do not amount to psychological manipulation designed to overcome Sammys' free will: Officer did not tell Sammy his mom wanted him to confess; used lies to build rapport—not manipulate.

Post Miranda Interview

Did Sammy waive his Miranda Rights?

Invocation of Miranda Rights must be affirmatively asserted. If an officer properly informs a suspect of his/her Miranda Rights and the subject continues to answer questions, a waiver is implied.

Facts in support of finding Sammy did not properly waive his Miranda Rights (defense arguments):

- Sammy has lower education.
- Sammy did not clearly express that he understood his rights: "I guess."
- Sammy is tired.

Facts in support of finding Sammy waive his Miranda Rights (prosecution arguments):

- Sammy was provided water and food.
- Sammy stated in the affirmative that he understood his rights.
- Sammy did not invoke his rights or engage in behavior or answers that would imply invocation: "Maybe I should keep quiet. Maybe I should talk to an attorney."

Did Officer Smith engage in an improper two-step Miranda Interview?

Officers may not intentionally engage in systematic two-stage interviews designed to elicit an incriminating response in a pre-Miranda portion, only to give a Miranda warning and re-elicite incriminating statements

Facts in support of systematic two-stage interview (defense arguments):

- We are not told how long first and second interviews lasted but it appears Officer only Mirandized Smith after eliciting an incriminating response.
- Officer appeared to minimize and gloss over process of reading rights.
- There was no break between the first and second portions of the interview.
- Officer did not tell Sammy his first statement was not admissible against him.

Facts cutting against finding of systematic two-stage interview (prosecution arguments):

- We are not told the interview was intentionally broken up.
- Sammy's first admission that he acted in self-defense was vague and not particularly incriminating.
- Most of the incriminating statements were made after proper Miranda warning+waiver.

1)

4th A.

The 4th A. protects people's right to be free in their persons, homes, effects, and writing from unreasonable searches and seizures by the government. The 4th A. also establishes the warrant requirement.

Evidentiary Search

The 4th A. is triggered by searches conducted by agents of the government. Searches by private persons do not implicate the 4th A. There are two tests to determine compliance with the 4th A.: Jones and Katz. The Katz test considers whether there was a violation of a person's subjective expectation of privacy which society has deemed to be reasonable. The Jones test considers whether there was a trespass or physical intrusion by the government on constitutionally protected areas. Here, the facts require an analysis of both these tests.

Eavesdropping - REP

Officer Bart investigated Dealer by requesting cooperation from his neighbor. He created a set-up that would take advantage of the neighbor's property which allowed for enhancing technology to pick up conversations Dealer had within his home. This is likely to comply with the Jones test because the neighbor consented to having the Officer create his set-up and therefore did not trespass into anyone's property. This is also likely to comply with the Katz test because Dealer is unlikely to have a reasonable expectation of privacy (REP) claim. While it is not common to expect that an Officer has a set-up in a neighbor's home that will allow them to eavesdrop in conversations, the 4th A. does not protect against the nosey neighbor. Since the neighbor's property allowed also for the neighbor to take advantage of the proximity and position of her bedroom window, the Officer did not engage in any activity that a nosey neighbor would not otherwise been able to engage in. Additionally, the Officer's use of audio enhancing app and microphone comply with the 4th A. because they were available to the public. Had the Officer utilized equipment exclusively available to government agents, the defense may have a valid claim against the evidence collected with its use because it would go beyond what a member of the public would have been able to eavesdrop. Therefore, since the Officer obtain consent to utilize Jenny's bedroom and obtained audio enhancing equipment that was available to the public, Dealer's statement regarding a "big sale" was obtained in compliance with the

4th A.

Evidence and Instrumentalities of Contraband - Exigent Circumstances and Plain View Exceptions

In addition to Dealer's statement, the Officer is also submitting evidence of what he observed when he was within the Dealer's home. The officer knocked on the door and while waiting to be admitted, he heard a glass break and a scream which led him to enter the home. The Dealer's wife told him to leave, but before doing so, he saw two scales, several small baggies, and three phone on the dining room table. This evidence implicates the warrant requirement for the search of a home. The Officer is likely to argue that he had two warrant exceptions available to introduce his observations as evidence: exigent circumstances and plain view.

Exigent circumstances include being in hot pursuit of a fleeing felon, emergency situation, and fleeing evidence. Here, the Officer will argue that the scam and broken glass provided him the excuse to enter the home under the emergency situation exception. For this exception to be available, there must be a reasonable risk to life or serious harm. While there are several interpretations on what he scream and broken glass imply, there is a reasonable argument that suggests it would be understood as an emergency situation. Additionally, there is no indication that the Officer entered the home in bad faith. Therefore, this may be a valid warrant exception for entering the Dealer's home without a warrant.

The plain view warrant exception requires that the Officer was (1) legitimately on the premise, (2) discovered evidence/instrumentalities of a crime or contraband, (3) the evidence/instrumentalities were within clear view, and (4) there was probable cause to believe that the evidence/instrumentalities were associated with crime or contraband. Here, the Officer will argue that he was legitimately on the premise due to the emergency situation exception. However, if this argument fails, he is unlikely to have a plain view exception. The facts state that the objects he observed were in clear view. Probable cause requires enough knowledge or evidence for a reasonable officer to believe there was a fair probability or substantial chance of an association to a crime. Since the Officer is a narcotics detective, investigating the Dealer for manufacturing and selling meth, his knowledge and investigation provided him with probable cause to believe that the objects were associated with that crime. Therefore, the Officer's knowledge and obervation of the objects within the Dealer's home are likely in compliance with the 4th A.

Trash Search

The additional evidence that the Officer is submitting to establish enough probable cause to grant a warrant is the evidence of the bottles of chemicals he found in the Dealer's trash. This search implicates both the Katz and Jones test. Generally, courts have held that people do not have gauranteed REP for trash. If trash is left on the curb for collection, then the owner of the trash no longer has a REP because it is put out to the public. However, trash may be protected as under REP if it also implicates Jones. The home is the most constitutionally protected area, the area surrounding the home may also be included if it is within the curtilage of the main home. Additionally, other building such as a garage may be extended the additional consitutitonal protection depending on the distance from the main home building, the use of the garage, and the presence of a fence.

Here, the Officer went inside the detached garage that was within 50 feet from the Dealer's residence. There is not mention of any presence of a fence used to connecting the home and the garage into a single area or to indicate that the Dealer intended to restrict the area from the public. Other considerations that may be needed is whether the garage was situated 50 feet further into the Dealer's property and away from the sidewalk or if it was 50 feet away from the residence but still close to the sidewalk. Another consideration is the use of the garage, if the Dealer has private uses for the garage, it may be considered an extention of the curtilage.

If the garage was close to the sidewalk, there is a reasonable argument that the garage was suffciently away from the curtilage of the home and within an area that the public would be implied a license to enter. If the garage was away from the sidewalk, there may still be a reasonable argument that the garage was sufficiently away from the curtilage of the home and there was not need for a warrant to enter the area. However, if the Dealer had a private use for the garage, it may be considered an extension of the curtilage of the home and the trash being on the side of the garage would be within the constitutionally protected area.

Probable Cause

Probable cause for a search warrant requires enough knowledge or evidence for a reasonable officer to believe there is a fair probability or substantial chance that evidence of the crime will be found in the places to be searched.

Here, the evidence that is likely to be in compliance with the 4th A. and was submitted to establish probable cause is the Dealer's statement and the objects observed in plain view. This evidence is likely to be sufficient to establish probable cause for a search warrant. If the search of the Dealer's trash and

discovery of the chemical bottles is found to be in compliance of the 4th A., then it enforces the evidence in support of probable cause.

Conclusion

There is strong indication that the evidence submitted by the Officer established the probable cause required to grant a search warrant and that it was obtained in compliance with the 4th A.. There are additional consideration that may be needed to establish the complaine of the search of the Dealer's trash. Nevertheless, the additional evidence supports the granting of a search warrant on its own.

2)

The 4th Amendment protects an individual's right to freedom from unreasonable searches and seizures.

A search as referenced in the 4th amendment occurs when an individual has a reasonable expectation of privacy over an area, and that area is invaded by a government actor to seek out information.

A seizure as referenced in the 4th Amendment occurs when a reasonable person would not have believed they were free to leave.

Terry Stop

Officers can temporarily stop and detain suspects if they have reasonable suspicion that a crime has occurred or is occurring.

Reasonable suspicion is a lesser standard than probable cause, but facts must be able to be articulated as to why the officer(s) had reasonable suspicion, and it must amount to more than a mere "hunch."

Pleasantview Police Chief Jim Lawman seeks out information from neighboring police departments for assistance and information regarding the Green Grabbers. The neighboring departments advise that the green grabbers work in groups of 4-6 members, they enter stores in green clothing and carrying green backpacks, put on green facemasks inside the store, communicate via walkie talkies inside the store, they spend no more than three minutes inside the store, are estimated to be between 18-21 years of age though none of the retail workers can specifically recall their faces due to the face masks, the group sometimes has a getaway car described as either black or dark blue sedan wait outside for them, and one retail worker who attempted to stop them reported being sprayed with wintergreen breath spray by one of the thieves. The information provided by these other departments would be regarded as reliable since it comes from a vetted source.

Officer Sherman Holmes observes a group meeting some of these descriptions pull up outside of the local mall. He sees a group of three who appear to be in their late 20s-early 30s pull up in a dark green sedan, and sees two people exit the car wearing quite a bit (though not all) green, and one carrying a green backpack. Taking in this scene, Officer Sherman Holmes suspects the group may be a part of the Green Grabbers and are heading into the mall to commit a theft, and he completes a Terry Stop. All of the previous thefts have occurred quickly within a few minutes. With things happening so

quickly it can be difficult to discern similar dark colors from one another, particularly if the information is being gleaned from surveillance videos. A dark green car could easily be mistaken for black or dark blue. The fact that witnesses can not reliably point to one specific color further illustrates this. It is reasonable that Officer Holmes would be suspicious of a green car based on the description. The difference between three and four people is rather negligible, and could be explained by multiple factors. Again, the previous thefts occurred quickly, and perhaps witnesses miscounted, perhaps the rest of the group was not available to participate this particular theft. Whatever the reason, the fact that there were only three people in the group is not enough to discredit the scene observed by Officer Holmes from matching the description put out by Chief Lawman to be on the look out for. The fact that one person stays in the car, while two more dressed in predominantly green, with one carrying a green backpack approach the store is enough to put Officer Holmes at further suspicion.

Based on the totality of the circumstance, Officer Holmes had enough articulable information to justify the initial Terry Stop on the grounds that a potential theft was in progress.

Stop and Frisk

If an officer has reasonable suspicion that a suspect may be actively armed, they can complete a brief preliminary pat down of their body over their clothes. If something is felt that can justifiably be suspected of being a weapon the item can be removed.

In this case, there is no information that the Green Grabbers are suspected of being armed and dangerous with anything other than wintergreen spray. There is no mention of guns, knives, etc in any of their previous thefts, and there is no mention that anything appearing to be a weapon was visually observed to be in their possession. The stop and frisk was likely not warranted and constituted a search in violation of the 4th Amendment. An argument could potentially be made that since the wintergreen spray had been used as a "weapon" in the past, that Officer Holmes was justifiably completing the pat down in an effort to uncover weapons, making the pat down itself valid. However, he did not have grounds to remove the walkie talkies from their pockets as he suspected them for what they were - walkie talkies - not weapons. The walkie talkies would be considered the fruit of the poisonous tree.

At this point, Officer Holmes places them all under arrest for suspected theft, with the walkie talkies being a key evidence point in his probable cause for arrest without a warrant. Since the walkie talkies are not admissible evidence it is likely that the arrest at this time would not have been considered a good arrest. However, he did have enough probable cause to detain them while he searched the car

for evidence even if the arrest were to be deemed premature.

Search Incident to Arrest

A car can be searched incident to arrest to the extent that a defendant might be able to access it to avoid destruction of evidence, and to search for weapons which could threaten officer safety. Only the areas of the car accessible to the arrestee can be searched at this time.

An arrestee's person can be searched once under arrest.

Officer Holmes thoroughly searches the entire car including the trunk, and a green backpack inside of the trunk. A strong argument could be made that the trunk was well outside of the area within the arrestees control at the time as they were handcuffed and sitting on the sidewalk.

Automobile Exception

A car may be searched without a warrant if there is believed to be evidence in the car related to the crime at hand.

Officer Holmes had probable cause to believe that the car held evidence of the thefts the Green Grabbers were suspected of. It would be reasonable to Officer Holmes to believe that evidence related to the thefts might be located in the trunk. Since the information provided indicated that the Green Grabbers commonly put their stolen goods into green backpacks, Officer Holmes also had probable cause to open the backpack and inspect its contents.

Once Officer Holmes discovers the unregistered gun, two baggies of cocaine, and the IDs for each of the arrestees (connecting them all to the backpack) inside the backpack he has ample evidence to execute an arrest at that time.

Based on the automobile exception, the evidence uncovered in the vehicle does not violate the defendant's fourth amendment rights.

Doctrine of Inevitable Discover

If evidence was searched and/or seized as a result of a 4th Amendment violation it can still be admitted if it would have inevitably been found anyway.

Once all three are arrested the car inevitably needs to be towed to an impound lot. It is routine to

conduct inventory of items within a car taken to an impound lot incident to an arrest in an effort to protect the arrestee's belongings, and in an interest of officer and overall public safety. Even if the initial search of the car was ruled to be done in violation of the 4th Amendment, if the initial arrest was deemed a valid arrest the items would have inevitably been uncovered during the inventory search and would not be considered the fruit of the poisonous tree in connection to a 4th Amendment violation.

While the walkie talkies were initially seized in violation of the 4th Amendment, once the group was under arrest, Officer Holmes would have had the right to search their pockets incident to the arrest, and they would have been discovered anyways. The walkie talkies would be able to be admitted as evidence under the doctrine of inevitable discovery.

Conclusion

Officer Holmes' decision to detain and search and detain Abby, Barry, and Charles was proper under the 4th Amendment based on the totality of the circumstances.

Officer Holmes' search of the vehicle was proper under the the 4th Amendment based on the automobile exception to the warrant requirement.

3)

The Fifth Amendment protects individuals from being compelled to make incriminating statements against themselves. The court in *Miranda v. Arizona* established the prophylactic rules that ensure this protection. An individual's rights under *Miranda* are the right to remain silent, that anything they say can and will be used against them in a court of law, the right to an attorney, and if they can't afford one one will be appointed to them at no cost.

The Fourteenth Amendment establishes due process in criminal proceedings. Part of this protection is that law enforcement cannot use coercive tactics in order to obtain a confession. Confessions are required to be voluntary. It has been shown that when people are subject to coercive tactics their statements are unreliable due to self-preservation.

The overarching issue here is whether Det. Smith violated Sammy's Fifth and Fourteenth Amendment rights.

Pre-Miranda

Custodial Interrogation

An individual must be advised of their *Miranda* rights when they are subject to custodial interrogation.

An individual is found to be in custody when they are subject to arrest like restraint or if a reasonable person would not feel free to leave if under the same circumstances.

Here, Sammy was being held in county jail on suspicion of murder. Anyone in jail would not feel free to leave just by the nature of what jail is. Further, Sammy was brought by guards to an interview room. Because he was brought by guards and within an interview room, a reasonable person would not mistake this as being released from jail and feel free to walk out. Therefore Sammy was in custody.

An individual is being interrogated if an officer is asking questions that are likely to illicit an incriminating response. Here the prosecution will argue that the questioning being conducted, at least at first, would not rise to the level of an interrogation. Smith merely asked Sammy how he was doing and if he needed anything. He also shared with Sammy (falsely) that he grew up in a similar fashion to Sammy. While that was a lie, the prosecution can argue that it was merely to build rapport with

Sammy and that detectives may be deceptive, although they cannot be coercive.

The defense could argue that Smith was using facts that he knew about Sammy specifically to illicit an incriminating response. They will likely site the "christian burial case" in which officers used the suspects faith against him to illicit information. In fact Smith told Sammy that he had spoken with Sammy's mother and knew Sammy was a good person, tapping into a relationship between a son and his mom was similar to tapping into the knowledge of someone's deeply held religious beliefs.

Regardless of the nature of the initial questioning Smith pushed on Sammy and finally asked "I won't write this down, but that's what happened, isn't it--you acted in self-defense?" The defense will point out that the question that was asked putting aside the way it was asked would only allow for an incriminating response. The line of questioning that Smith began using in order to get Sammy to hopefully admit that he was the person that was captured committing homicide in the video was clearly the type of questioning that would raise to the level of interrogation.

Therefore, Sammy was being subject to custodial interrogation and should have been advised of his Miranda rights.

Voluntary Confession - Fourteenth Amendment Violation

In order for a confession to be admissible it must be voluntary for the reasons mentioned above. Although statements can be admissible for impeachment purposes if they are in violation of an individual's Miranda rights they are never admissible if they are made involuntarily.

The prosecution will argue that Sammy's confession was not subject to coercion, it was merely Smith being deceptive, which would not render it involuntary. During the interview Sammy was not handcuffed, he was given food and water by Smith. Denying an individual access to basic needs would render the confession involuntary, however Smith was making sure that Sammy's basic needs were met. The prosecution will also show that the interview didn't last an unreasonable amount of time. In all the interview was three hours. If the interview was for most of the day or well into the night it is likely that it would be viewed as coercive. That wasn't the case here.

The defense will argue that Sammy's confession would not have been made but for the coercive tactics used by Smith. The fact that Smith informed Sammy that he believed that he had acted in self-defense and that self-defense was a complete defense to criminal charges but first-degree murder carried a penalty of 25 years to life went beyond deceptive and became coercive. That statement

could have caused Sammy to go into self-preservation mode and admit to a crime he didn't commit. The defense will also note that Sammy had indicated that he had not been sleeping well in the jail facility and that he was tired. In fact his "confession" was a lackluster "I guess" while looking at the ground. That is more indicative of someone who is tired and beat down than it is a confession of a cold-blooded murder, which is what Smith thought he was.

After hearing these arguments it is likely that the court would rule the confession was involuntary and in violation of Sammy's Fourteenth Amendment rights.

Post-Miranda

After Sammy said "I guess" in response to Smith's questioning about the murder, Smith advised Sammy of his Miranda rights. The issue is whether the timing of the advising of the Miranda rights was appropriate and whether Sammy effectively waived those rights prior to giving incriminating statements.

Prior to recent court decisions it was common practice for officers to conduct an interrogation, gain a confession or incriminating statements, and then advise the person of their Miranda rights prior to taking an official statement. This is what Det. Smith seems to be doing in this case. However, the court has determined that this practice is a direct violation of an individual's Fifth Amendment rights. This is shown by the fact that Smith tells Sammy that he has read him the rights and they were just going to "keep chatting."

Waiver

An individual can waive their Miranda rights however it must be done knowingly, intelligently, and unequivocally.

Here the issue is whether Sammy unequivocally waived his rights.

First a valid waiver must be done knowingly. Smith read all of the Miranda warnings to Sammy and asked Sammy if he understood his rights. This indicates that he knew he had the right to waive them.

Secondly a valid waiver must be done intelligently. This can be an issue if an individual speaks a different language than the officer advising of his rights. There are no facts that indicate that Sammy did not understand what Smith was saying, however the defense could possibly raise the issue that

Sammy had only an 8th grade education, which he shared with Smith.

Finally Sammy must be clear and unequivocal in his waiver. When Smith asked Sammy if he understood his rights Sammy just responded "I guess." The prosecution would argue that this was a clear waiver of his rights. This waiver was then further shown when after Sammy was advised of his rights he continued to talk to Smith and made several incriminating statements.

The defense will argue that "I guess" was ambiguous and not clear. It was also just Sammy repeating the same response he gave to Smith's questioning and pushing that he had committed the murder. It is likely that Sammy understood his rights, but didn't fully feel that he could waive them since Smith was violating Sammy's constitutional protection of due process.

Conclusion

Overall the defense has the stronger argument that Smith violated Sammy's Fifth and Fourteenth Amendment rights and the court should rule for the defense.

END OF EXAM