

Monterey College of Law
Criminal Law & Procedure
Midterm Examination
SPRING 2024
Professor S. Haas

General Instructions:

Answer Two (2) Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

Question 1

Vance was walking home, when a man ran up to him and robbed him at gunpoint of his wallet and phone. Vance called the police. Based on the description, the police put out information that an armed robbery had occurred and the suspect was “a black male, 5’8,” in his early 20s, chubby, black hooded sweatshirt, baseball hat, and black gun.” The dispatch described the area where the robbery had happened.

After 30 minutes, about half a mile from the scene of the robbery, Officer Mason heard the description over his dispatch radio and David, a young man, leaning into the window of a car, talking to the passenger. David appeared to Officer Mason to be African-American and was wearing a dark-colored hooded sweatshirt with the hood up over his head, blue jeans, and bright white sneakers. Williams could not tell his age. He looked about 5’10-6’1”, medium build. Williams pulled over and walked up to the man, and said “Hey, I want to talk to you!”

From about 15 feet away, Officer Mason saw the young man did not have a face mask on and had an unusually long beard. To Officer Mason, David looked about 25-30 years old, medium build, around 5’9” feet tall. When David continued to stand there, Officer pulled out his firearm and pointed it at David, yelling, “Get on your knees!” David dropped a bag of cocaine behind the car’s tire. Officer Mason, not seeing the cocaine at the time, tackled David and handcuffed him.

Other officers told Vance, “We think we have the guy but we need you to make an ID” and brought Vance to the scene. Vance was standing, handcuffed, with scratches on his face from being tackled into the sidewalk, next to Officer Mason. Vance, from the back seat of the police car about 25 feet away, said “Yea, I think that’s him.”

Officer Mason told David, he was under arrest. Before putting David into the police car, Officer took all the items out of his pockets and put them into an evidence envelope, including a switchblade knife. Officer did not find Vance’s phone or wallet or a firearm. Officer Mason also picked up the cocaine on the ground and later booked it as evidence. The District Attorney charged David with robbery, possession of an illegal knife and possession of cocaine.

David’s attorney brings a motion to suppress the cocaine, the switchblade knife, and Vance’s identification based on fourth amendment and fifth amendment grounds.

1. What arguments may David reasonably raise in support of his suppression motion,
2. What arguments may the prosecution reasonably raise in response, and
3. How should the court rule with regard to each claim?

Question 2

Dina and Dawn shared a two-bedroom apartment. After a series of robberies from local art galleries, the police came to focus their suspicion on Dina. Officers went to Dina and Dawn's apartment, where they met Dawn at the door; they asked Dawn if they could come inside and look around, and she let them in.

The police looked around the apartment and came to a locked door, which said "Dina's Manor – no entry" across the front. They asked Dawn if she had a key; Dawn unlocked the door and let them in. Inside the room the police saw a painting on the wall which they suspected was stolen, although they did not know for sure.

Dina came home shortly thereafter and was told by the police to sit on the couch and hand over the car keys. She did. The police continued searching house for another 45 minutes, and eventually came over to Dina. An officer asked her "is it okay, if he took the painting." Dina said "no, that painting is mine and I don't want you to take it." Officer handcuffed Dina and put her in the back of the patrol vehicle. Immediately, thereafter, Officer searched Dina's vehicle and found two additional paintings.

The police seized the paintings and took Dina to the police station. At the station, the police read Dina her *Miranda* rights and asked her where she got the paintings. She remained quiet for three hours, but the questioning continued. Eventually, she said "I don't have to tell you anything, I am cold, tired and sleepy." The questioning continued, and finally Dina said, "Maybe I should talk to an attorney."

The police terminated the interrogation and next morning, Dina got arraigned. The police put Dina in a cell with Rita, who appears to be a prisoner but was really a police informant. Rita asks Dina why she's in jail. Dina says, "they think I stole a painting, but I'm just holding it for a friend."

The painting was in fact stolen; Dina was put on trial, and the prosecutor sought to introduce the painting and all of Dina's statements against her. Dina's defense attorney objected to the introduction of evidence on several grounds.

Please discuss all applicable constitutional grounds upon which Defense could challenge the introduction of evidence. As to each of the challenges, how will the Court rule? Discuss.

Outline

Seizure of David

1. Terry Stop/Reasonable suspicion – Description did not match. It was sufficient for detention to further investigate as David was a black male, wearing similar clothing in close proximity to the scene of the crime within 30 minutes of the robbery.
2. Defense would argue the description does not match and David had such distinct characteristics about him and his clothing that Vance did not provide in his description. (blue jeans, bright white sneakers, unusually long beard).
3. Arrest – PC, D was under arrest when he was tackled and handcuffed – What is he being arrested for – Officer did not know about the coke and Vance had still not identified him.

Seizure of Property

1. Switchblade – Search incident to valid arrest. Validity of the arrest is in question. No PC for the arrest.

ID – Showup

1. “we think we got the guy, but we need you to make an ID” is unduly suggestive. (Stovall vs. Denno) discussion is warranted.
2. Fifth Amendment only – IDs without counsel do not violate 5th amendment.

Outline for Q2

Fourth Amendment

Entry of the two-bed apartment.

1. Consent – Dawn allowed the officers in.

Entry of Dawn’s room

1. Consent – Dawn did not have authority to give consent to search Dina’s locked room.
2. Search of Dina’s room – No consent or PC.

Seizure of painting

1. Plain view – But illegality not apparent.
2. Consent – Dina specifically declined officer’s request to let him take the painting.
3. Fruit of the poisonous tree – obtained through illegal search of Dina’s room.

Search of vehicle

1. Arizona vs. Gant
 - a. Chimel – D handcuffed in the back of police car.
 - b. Lack PC to believe evidence would be found in car.

Seizure of Dina

1. Probable cause for arrest – painting found, but officers only suspected painting was stolen. Reasonable suspicion, not a standard for arrest.
2. Fruit of the poisonous tree – PC based on paintings discovered as a result of illegal search.

5th amendment

1. Voluntariness of statements.
2. Statement regarding painting being taken by officers.
3. When she was told to sit on the couch – Discuss Mendenhall, reasonable person would not feel he/she free to leave?
4. Was she under arrest? – Was her movement restricted in a significant way? Officer spoke to her about the painting without Miranda.
 - a. Was D in custody at the time officers asked her about the painting?
 - b. If yes, the statement about “is it okay if we take the painting” was interrogation – Brewer vs. Williams.
5. Invocation of right to silence
 - a. Initial silence – have to speak to invoke privilege.
 - b. Statement – “I don’t have to tell you anything, I am sleepy and cold – invocation.
 - c. Police continue questioning – not scrupulously honored.
6. Invocation of right to attorney
 - a. Maybe I should talk to a lawyer – not found to be unambiguous and unequivocal request for attorney.

Sixth Amendment

1. Statement to Rita
 - a. After arraignment – Interfered with D’s right to counsel under the Sixth Amendment.
 - b. Rita did ask questions to elicit a response.

1)

Introduction

Regarding the motion to suppress evidence of the cocaine, switchblade knife and David's identification, the court must decide what evidence provided by the prosecution is admissible. Evidence is determined to be admissible if it was obtained through reasonable search and seizure or by order of a warrant.

The Fourth Amendment

The 4th amendment guarantees that no one's person, property, papers or effects will be subject to an unreasonable search or seizure by the state, unless issued by a warrant. A

warrant must be based on probable cause, contain specific instructions on what is to be searched and a signed affidavit ^{by a} neutral magistrate. ^{supported by sworn} Under the Katz ruling, a person ^{Affidavit} must have a subjective interest in the expectation of privacy in the area searched, and ^{by} society at large must objectively appreciate that interest for a search to have occurred. ^{Officer}

Search Under the Jones ruling, the government must physically intrude into an area where a person has an objective expectation of privacy for their to be a search as protected by the 4th amendment. Under the Mendenhall ruling, a person is seized when an operative of the government displays a show of authority or physically restrains the persons liberty of movement. Good

Here, David was seized by police when Officer Mason pulled out a gun and instructed David to get on his knees. This constituted a show of authority because a reasonable person in David's position would not feel free to leave. Furthermore, David was detained by the officer when he was tackled and handcuffed as his liberty of movement was restrained.

Reasonable Suspicion

An officer has reasonable suspicion that a crime has occurred or there is evidence of criminal activity when their observation is supported by articulable facts.

Here, Officer Mason (hereafter Mason) likely had a reasonable suspicion that the person who he approached, who turned out to be David, was guilty of criminal activity. This suspicion was supported by the fact that Mason heard a police dispatcher describe what appeared to be a description of David, and that the person described had just committed a violent armed robbery. David may raise the defense that Mason did not have reasonable suspicion to detain him because the police dispatcher's description was not exactly what Mason witnessed. David will likely state that he is older, taller, and slimmer than the person described by the dispatcher. While it is true there are a number of discrepancies between the description and Mason's sighting, the prosecution will argue that the two were similar enough considering the totality of the circumstances. Notably, the prosecution will mention that the David was sighted only half a mile away from the robbery and was wearing similar clothes to the person originally described by the dispatcher.

Very Good

David's Detention

An officer may detain and search an individual when they have a reasonable suspicion that person had committed a criminal act, but only for weapons, and not evidence. Under the Terry ruling, officers may stop and frisk the outer layer of a person's clothes for weapons if they have reasonable suspicion. When a person is detained, it is objectively understood that they are not free to leave until the transaction with police has concluded. A detainment becomes illegal when a person is held for longer than is expected to be reasonable for the purpose of the stop.

Here, Mason likely had the reasonable suspicion necessary to detain David because according to what Mason had heard from the dispatcher, David might have been carrying a black gun. In the interest of his safety, Mason placed David under gunpoint, tackled,

and handcuffed him. Unusually, Mason did not immediately search David for weapons until he was later formally arrested.

David's Arrest, Probable Cause

Arrests must be supported by probable cause if they are to be legal. An officer obtains probable cause to arrest someone when, according to the facts known to them, they objectively determine that a person ~~is guilty of a~~ ^{committed a} criminal act. The totality of the circumstances also determines probable cause.

Here, David was arrested once Vance identified him as the person who had robbed him 30 minutes previous. Whether or not Mason had the probable cause to arrest David will be a point of contention between David and the prosecution. The prosecution will likely argue that upon Vance's identification of a suspect that an officer previously reasonably suspected to be guilty of a crime, an officer in that situation would objectively arrest David. David will likely say that the Mason did not have probable cause because he was not yet searched for weapons, and did not match the description of the dispatcher enough to seize him in the first place. ✓ Good

Warrant

See Supra "The Fourth Amendment".

Here, no warrant was issued.

Warrantless Search Exceptions

A warrantless search may be conducted by police due to a number of circumstances, but must always be supported by probable cause. After an officer makes an arrest, they require no warrant when conducting a search of someones immediate person to ensure they are not carrying any weapons. This is called a Search Incident to Arrest.

Here, if it is determined that Mason had probable cause to arrest David, then the search of his person will not have been unreasonable, despite the lack of a warrant, based on exceptions to the warrant requirement.

Search Incident to Arrest

When conducting a search incident to arrest, the scope of an officer's search is limited to the area in which the arrested person may access a weapon.

Here, Mason likely conducted a valid search incident to arrest as he conducted the search before David was placed in the back of the police car. Mason's search revealed a switchblade knife, which he seized in order to ensure his safety. The prosecution will argue that the switchblade was not unreasonably seized and is admissible evidence because it was obtained during a properly executed search incident to arrest. David will argue that the arrest itself was not supported by probable cause and as such, the switchblade is fruit of the poisonous tree and thus not admissible. The court will likely not grant David's motion to suppress the switchblade knife as it was rightfully seized based on a warrant requirement exception.

When Mason discovered the cocaine, he exceeded the scope of his search because the cocaine was not located in an area where David could have accessed a weapon. By the time Mason discovered the cocaine, David was already arrested and placed in the back of a police car, so it would be impossible for him to access any area outside. David will argue that the cocaine is inadmissible evidence because it was not obtained with probable cause. Additionally, David will state that the officer was unaware of the cocaine's presence during both David's detention and arrest. As such, Mason likely had no reasonable suspicion or probable cause that the David possessed the cocaine. The court will likely grant David's motion to suppress the cocaine due to these factors.

David discarded the Cocaine.
The Exclusionary Rule

The Exclusionary Rule is a judgemade construction that applies to evidence gathered by the 4th, 5th, and 6th amendments. The rule was created to deter grossly negligent, reckless and illegal police conduct. Evidence that is obtained as a result of this conduct is inadmissible in criminal trial against a defendant. Application of the Exclusionary Rule relies on a cost v. benefit analysis and the costs of letting useful evidence be dismissed is weighed against the benefit of deterrence.

The Fifth Amendment

The 5th amendment guarantees that a person does not have to become a witness against themselves and that they will not be deprived of their liberty, possessions and property without due process of law. Once a person has been formally arrested or placed in a custodial environment, their 5th amendment rights attach (A person is in custody when it

is objectively clear they are not free to leave.)

? when detained?

- Are they free to leave

Here, David was arrested and was placed in a custody when he was placed in the back of a police car. With his physical liberty restrained by handcuffs, David should have known he was not free to leave.

Identification Procedure

An identification procedure, often taking the form of a lineup, showup, or photo arrangement is admissible as evidence during a criminal procedure. If deemed to be factually reliable and not highly suggestive according to the totality of the circumstances, the procedure will not have violated a person's 5th amendment right of not being deprived due process of law. ✓

Good

Factual Reliability of the Witness

A witness to a crime who seeks to identify a suspect of criminal activity must be factually reliable. This reliability is determined by a totality of circumstances, namely: (1) the

certainty of witness, (2) the opportunity of the witness to view the suspect, (3) the time between the criminal act and the identification of the suspect, (4) the consistency between identifications of a subject and (5) the ability of the witness to determine the suspect's identity. Viewed in their totality, these elements determine if a witness's identification of a suspect is reliable enough to be admissible as evidence.

Here, Vance had an opportunity to view David because he first identified his robber to the police dispatcher and then was able to view David again at the scene of his arrest. Vance also was able to identify David 30 minutes after the robbery occurred, establishing a short time frame between the criminal act and the identification. The prosecution will likely point to these facts as evidence that Vance's identification was factually reliable and admissible as evidence.

However, David may argue that Vance did not have the adequate ability to determine the suspect of the robbery because Vance viewed David from the back of a police car 25 feet away, and this distance may be too great to adequately view a person who Vance has only met briefly once before. Furthermore, David may argue that Vance's identification of him was not certain, and that Vance only "thought" it was him. Lastly, David will mention that the consistency of descriptions of himself from Vance's description to the description Mason relied upon have been sufficiently inconsistent. David appeared different ages, had a different build, and had different height to multiple people and as such, the reliability of the description Mason relied upon may be faulty.

Overall, the totality of the circumstances likely indicate that Vance's identification was highly suggestive and factually unreliable because more factors point toward a failure of reliability. A court will likely grant David's motion to suppress evidence of the Identification.

Very good job. All issues addressed w/ logical analysis.

2)

What constitutional grounds could Dina's defense use to challenge the introduction of (1) the painting and (2) Dina's statements and how will the court rule?

4th Amendment

The right of the people to be secure from unreasonable, governmental search and seizure of their person, house, papers or effects. Search and seizure requires a warrant supported by probable cause, backed by oath or affirmation which details the place to be searched and the person or items to be seized.

Act by the Government

In this case, the acts were performed by police officers which are government officials.

Search

Search occurs in areas & places

Based on the Katz analysis, an act is a search if it is considered an invasion of privacy by ~~where a manifested sub. exp. of privacy~~
(1) subjectively by the individual, and (2) objectively by society. In this case, the search was of Dina and Dawn's two-bedroom apartment, which would meet both standards of invasion of privacy and would constitute a search under the 4th amendment. There are several incidents that are not considered a search, but this case would not fall into those exceptions: open area (excluding curtilage), aerial, accessible areas, trash cans outside of the curtilage, pen registers, and plain view.

In this case there were separate searches of (1) the apartment common area, (2) Dina's bedroom, and (3) Dina's car. These searches do not fall under any of the areas that are not considered a search.

Seizure

Seizure is either of items or of a person. A person is considered seized, when, by use of force or authority, they are restrained in their freedom of movement. In this case, the painting from Dina's room, the two paintings from Dina's car and Dina were seized. The officers did not have consent to seize the painting, when they asked Dina's permission, she said, "No, that painting is mine and I don't want you to take it."

Warrant

Under the 4th amendment, search and seizure both require a warrant, issued by an impartial magistrate, based on probable cause, supported by oath or affirmation, which details the place to be searched and persons and items to be seized. There are several exceptions to the warrant requirement including: (1) consent, (2) emergency situations/safety, (3) search incident to arrest, (4) automobile, (5) hot pursuit, and, (5) administrative.

Consent ✓

In this case the prosecution would argue that the police obtained consent to search Dina and Dawn's apartment, therefore they did not need a warrant. The officers did receive Dawn's consent to search the apartment, therefore they did not need a warrant to enter the common areas or Dawn's personal areas, if she provided consent to search her personal areas. The defense will argue that Dawn did not have standing to provide consent to ~~Dina's~~ ^{Dina's} private area within the apartment. The defense would point to the fact that Dawn's door was locked, which would pass both the subjective and objective expectation of privacy test. Even though Dawn had a key, the door was marked with, "Dina's Manor - no entry," which would further her argument that she had an expectation of privacy to her personal area. The court would likely rule that the officers did not get sufficient consent and therefore would not meet this exception.

Search Incident to Arrest

The officers may claim that the search was incident to arrest, but the painting in Dina's room was seized before the arrest. They would not have had the probable cause to arrest Dina without first seizing the paintings. In order for the search to be incident to arrest, the officers would have needed probable cause before the arrest. The fact pattern only states that the officers had a "suspicion" that Dawn was involved in the robbery. In addition, Dina was arrested in her home, not a public place, therefore, a warrant would be required for her arrest.

Automobile

The prosecution may claim the automobile exception, but the defense will argue that Dina was detained in her apartment, therefore the police would not be able to claim that they were searching for weapons as it would not have been within Dina's wingspan. The prosecution may also claim that they were looking for evidence of the crime, but the defense will claim that that due to the bad arrest so the officers would not have been able to search the car for evidence.

Exclusionary Rule PC to believe stolen paintings could be found in the car.

When determining whether to exclude evidence, the court weighs the cost of excluding evidence, which may cause a guilty person to go free, against the benefit of deterring police from violating individuals constitutional rights. In this case, we will examine, whether the items seized during the warrantless search would be excluded.

Painting Seized from Bedroom

The prosecution will argue that the officers did not need a warrant because they obtained consent from Dawn, but the defense will argue that Dawn did not have standing to provide consent to Dina's personal room. The court will likely find from

the evidence described supra, that the search was unreasonable and the officers should have recieved a warrant. The court would exclude the painting seized from Dina's bedroom.

Painting Seized from Car

The prosecution will argue the automobile exception, but the defense will argue that the police did not have probable cause to search the car, if the search and seizure of the painting from Dina's room is excluded. This would make the paintings seized from the car be fruit of the poisonous tree. The court would also exclude the paintings seized from Dina's car.

5th Amendment

No person shall be compelled in a criminal case to act as witness against themselves or to be deprived of life, liberty or property without due process of law.

Admissibility of Testimonial Statements

When determining the admissibility of statements, the statements will be examined based on voluntariness and Miranda violations. The totality of the circumstances must be examined to determine if the statements were coerced or provided voluntarily.

Voluntariness

Good Job

To determine voluntariness, courts will examine the totality of circumstances including: (1) the length of the interrogation, (2) deprivation of basic needs, (3) deception by LE, (4) location of interrogation, (5) capacity of suspect (age, mental health, condition), and (6) zealousness of LE.

In this case, the defense would probably argue that the length of the interrogation was coercive, but it would not likely be an issue, as it was only three hours (thought he fact

pattern is not entirely clear how long after Dina's statement, the questioning continued.) The defense would have a stronger argument regarding deprivation of basic needs. Dina stated, "I am cold, tired and sleepy." This would imply that at least three basic needs were being deprived. There does not appear to be deception by law enforcement. Though Dina was questioned at the police station, the location of questioning was not overtly coercive, other than it was cold. Dina did not appear to be in any type of mental state that would suggest a cause for incapacity other than she stated she was tired, we don't have more in the fact pattern. There are not many facts to examine the zealotry of the police, but they did appear to be somewhat zealous during the initial search and arrest. It is likely that the court would rule that the statements were voluntary, as looking at the totality of circumstances, there is not sufficient evidence of coercion.

Miranda

Due to the adversarial nature of custody and interrogation, Miranda warnings were designed by the court system to be a prophylactic measure to warn suspects of the danger of self incrimination. Miranda warnings include the right to remain silent, that anything you say can and will be used against you, you have the right to an attorney, and if you cannot afford one, one will be appointed to you. Miranda warnings are required if suspects are in custody and are being interrogated.

Custody

Though there is not a black letter point when suspects are considered in custody, it is when, by force or authority, a person would be restricted in their freedom of movement.

In this case, Dina's first statement was before she was Mirandized. The defense would claim that she was in custody, as the police told her to sit on the couch and had over her keys. The prosecution would argue that she was not in custody at this

point. I believe the court would rule that Miranda was not required at this point. It is likely that Dina would be considered in custody when the officer handcuffed her and put her in the back of the patrol vehicle.

Interrogation

Law Enforcement is considered to be interrogating a suspect when they are acting or questioning in a manner that they would reasonably (or should) know that they are likely to illicit a confession. In this case, the defense would also argue that Dina was being interrogated while she was in her apartment and the officer asked, "is it okay, if he took the painting." The defense would argue that it is not questioning likely to illicit a confession. The court may rule that this would be interrogation, but it would be unlikely. The officer's Mirandized Dina at the police station before they asked her where she got the paintings, which is most likely when the court would determine the first point of interrogation.

Waiver/Invocation

When examining the suspects rights under Miranda, we must examine the waiver of their right to remain silent and their invocation of the right to an attorney.

Right to Remain Silent ✓

The right to remain silent must be unambiguously waived/invoked, it cannot be waived by merely remaining silent. Once a supspect invokes their right to remain silent, the questioning must stop and the suspects right to remain silent must be scrupously obeyed. The defense will argue that Dina invoked her right to remain silent when she stated, "I don't have to tell you anything, I am cold, tired and sleepy." The defense will argue that this was not unambiguous, Dina was merely stating that she didn't have to tell them anything, not that she was

invoking her right to remain silent. The court would most likely agree that she did not invoke her right to remain silent.

Right to Counsel ✓

The invocation or waiver of the right to an attorney must also be unambiguously stated in clear terms, it is not enough to state that it might be useful or you should talk to an attorney. The defense will argue that Dina invoked her right to an attorney when she stated, "Maybe I should talk to an attorney." Though the prosecution could probably argue that this was not an unambiguous statement, the officers ended the questioning. This would show that the officers did not violate Dina's right to request counsel before further interrogation.

Exclusion of Statements

The courts would not exclude the statements, either while still in her apartment or at the police station based on voluntariness and the Miranda warning. Dina's statement, "I don't have to tell you anything," is not enough to invoke her right to remain silent and when she stated she should talk to an attorney, the officers ended their questioning.

6th Amendment ✓

The accused shall enjoy the right to counsel for defense in criminal actions.

Judicial Actions

The 6th amendment right to counsel attaches to a defendant once judicial proceedings begin, such as arraignment.

In this case, Dina's right to counsel attached when she was arraigned the morning after she was questioned.

Right to Counsel

Once the right to counsel attaches to a defendant under the 6th amendment, counsel must be present during any further interrogation.

In this case, the defense will argue that the police infringed on Dina's 6th amendment rights when they placed a police informant in the cell with Dina. The prosecution may argue that the informant was only a listening post, but the facts do not support this claim. Rita, the informant, asked Dina why she was in jail. This would be considered questioning that would be likely to illicit a confession.

Suppression of Evidence

The Mathias doctrine states that evidence will be suppressed if the defendant's 6th amendment rights were violated and law enforcement officers did it knowingly. In this case, the police placed the informant in the cell with Dina which would show intention. The court would exclude Dina's statement, "they think I stole a pointing, but I'm just holding it for a friend."

Conclusion

It is likely that the court would exclude the use of the paintings as evidence as the search and seizure was unreasonable under the 4th amendment because the police did not have a search warrant. Dina's statement, "no, the painting is mine and I don't want you to take it" may be used, but it may be excluded as fruit of the poisonous tree as it was obtained during an illegal search. It doesn't appear that Dina made any statement while under interrogation before her arraignment but after being Mirandized. Dina's statements to the informant would also be excluded as they were in violation of her 6th amendment right to counsel.
