

Monterey College of Law
Criminal Law & Procedure – Section 1
Final Examination
SPRING 2022
Professor S. Haas

General Instructions:

Answer All Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

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QUESTION 1

Officer Terry was driving down Highway 101 when he saw a driver swerving a couple cars ahead. He turned on his lights and pulled over Kevan. Kevan appeared to be intoxicated and Officer Terry asked him to exit the vehicle. Kevan indicated that he did not want to exit the vehicle and asked if he was under arrest. Officer Terry pulled out his gun, pointed it at Kevan, and instructed him to exit the vehicle. After Kevan exited the vehicle, Officer Terry continued to point his gun at him. Officer Terry asked Kevan where he was coming from. Kevan replied, "I am going home from the bar." Officer Terry asked Kevan how many drinks he consumed at the bar. Kevan replied, "Several shots and a couple of beers." Kevan then stated, "I killed my sister this morning and needed something to help me forget."

At that time, Officer Terry read Kevan his Miranda rights and put him in handcuffs. After he put Kevan into the vehicle, Officer Terry searched the vehicle and found heroin in the glove compartment. Officer Terry opened the trunk and found a bloody knife. Officer Terry asked Kevan about the knife and he said that he wanted an attorney. Officer Terry kept questioning Kevan about the knife while waiting for the attorney. Before the attorney arrived, Kevan admitted that the knife was used to kill his sister.

Please discuss the 4th and 5th amendments in relation to the above fact pattern.

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QUESTION 2

Douglas worked at a famous gun store in Nevada and would often get recycled guns (old guns replaced by new guns) from local law enforcement agencies. On January 25, Patrick, a police detective brought in several old collectible shotguns to the gun store. As soon as Patrick entered the store, Douglas ran into the backroom, completely ignoring the Deputy's greetings. Ben told Patrick that Douglas' behavior has been odd lately.

The very next day, Douglas resigned from the store and left town. In a matter of weeks, Ben discovered several guns missing from the inventory. He called Patrick and reported the incident. Patrick tracked Douglas and one evening parked in front of Douglas' house. He watched the house for two days with military-grade binoculars, and observed several cars frequenting the residence and noted the license plates of those cars.

Patrick obtained a warrant and arrived at Douglas' residence with over hundred officers at 2:00 a.m. It was so noticeably aggressive that even neighbors described the event as a "military invasion." Patrick and the officers knocked and within a minute of knocking made forced entry. Douglas awoke to a room full of Officers pointing rifle-style guns at him and yelling multiple orders at him.

Douglas immediately raised his hands and asked "What do you want from me," to which an officer responded, "where are the guns." Douglas remained silent. Thereafter, officers searched every inch of the house for several hours, and found several guns.

After approximately 7:00 a.m., Patrick came and sat down with Douglas, and gave him a breakfast sandwich. While they sat together, Patrick informed Douglas that he has the right to talk to an attorney, but he's not under arrest and doesn't need one. Patrick further reiterated that they were just having a conversation between friends.

"Can you believe it, someone doing this to an old and nice guy like Ben." Douglas lowered his head and said, "So, this is just between you and me right? Man, it weighs on me, I took bunch of his stuff, I feel awful I think I need to talk to someone first though, you know like an attorney or something." Patrick terminated the conversation. After the search, Douglas is arrested for grand theft and embezzlement.

Douglas asks you for legal advice, please make recommendations regarding:

The admissibility of guns, and statements made by Douglas to Patrick.

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QUESTION 3

On September 11, Officers responded to a 911 call at 25 Lain Street at a mobile home park. Officer saw Dan, sitting on the back of his truck. As they entered the residence, they saw Vicki, on the couch, intoxicated, and crying and bleeding from her head. She was too intoxicated to give a statement, but a neighbor indicated that “this is their evening routine every night after couple drinks.”

Officers arrested Dan for Domestic Violence and booked him in jail. Dan was arraigned and was appointed an attorney. The very next day, Vicki was found deceased on the floor of her mobile home.

The news of his wife’s passing saddened Dan and he began sharing his relationship details with his cellmate. His cellmate immediately told his own attorney that he’d like a generous plea deal in return for information regarding Dan and Vicki.

Dan and his cellmate were then moved to a cell that faces the cemetery where Vicki is buried. Law enforcement asks the cellmate to befriend Dan.(to try and get information from Dan). One day, and with no prompting, Dan blurted out, “I think I hit her too hard this time?” To which, the cellmate responded, “I get it bro but sometimes there is no choice. My old lady gets crazy sometimes too. What did Vicky do to get you that mad?” Dan told the cellmate that he slammed Vicki’s head against the wall, but he didn’t kill her since he was in jail at the time of her death.

The cellmate informed the officers regarding the statement and for the first time, Dan was interrogated since he was arrested at his residence. The officers Mirandize Dan and ask him about any information regarding Vicki’s death.

Dan immediately says, “I have nothing to say.” The questioning is immediately terminated and Dan is returned to his cell.

Dan was charged with homicide and was arraigned the next day and appointed an attorney. Prosecutor moves to enter Dan’s statements to cellmate as evidence.

1. Defense moves to suppress the statement evidence on 5th and 6th Amendment grounds. Discuss.

Use the following additional facts in answering question 2:

During the preliminary hearing, Defense counsel questions the cellmate regarding facts surrounding the robbery for which he was in jail. The cellmate refuses to answer and asserts his rights under the Fifth Amendment. Judge orders the cellmate to respond since he is already negotiating with the DA for a “generous plea deal.”

2. Defense moves to request contempt action against the cellmate, What arguments would defense present to argue their position?

Use the following facts to answer question 3:

Defense asks the court to also order the surveillance video of cellmate’s robbing an older woman as character evidence. DA informs the court that the surveillance has been destroyed since the case was nearing resolution.

3. Defense moves to strike the cellmate and his testimony from the record, and admonish the DA against introducing the statements or the cellmate for any purpose before the Jury.

ANSWER OUTLINES

QUESTION 1

Seizure of Kevan

PC for traffic stop

Search of vehicle: PC for search based on Automobile Exception

Arrest or Terry Stop

Statements to Officer Terry

Gun pointed at Kevan, involuntary statements

Miranda violation regarding intoxication statements.

Statements to Officer Terry

Gun pointed at Kevan, involuntary statements.

Miranda warnings after statements regarding murdering of sister.

Invocation of right to attorney, continued questioning. Kevan admitted eventually, no waiver of right to attorney since Officer continued questioning.

Search of Car after arrest

Automobile Exception

Search incident to Arrest

QUESTION 2

Search of house

Patrick parked outside, used military grade binoculars, and made note of cars coming and going from the residence. It is not a search since the officer did not invade the right to privacy. Automobiles' information frequenting the home was made from a public viewpoint.

Search and Seizure of Guns

Warrant validity: It is based on Officer's observations, Ben's statement about Douglas acting odd, Douglas' reaction to Officer at the store, immediate resignation, and missing guns.

Execution of Warrant: night time, several officers, Entry immediately after knocking. Execution is questionable, but Exclusionary rule – not applicable (Cost v. Benefit analysis)

Search of every inch of the house: Guns can't fit in every inch of the house.

Statements to Patrick

Involuntary – several officers with guns. Could be voluntary based on Patrick's familiarity with Douglas.

Miranda violation: Never mirandized, in fact, he was informed he doesn't need an attorney. Invoked right to counsel. Termination of questioning, but there are statements made without Miranda warning.

QUESTION 3

Arrest of Dan

Vicki bleeding and crying plus neighbor's statement.

Statements made to cellmate

Fifth Amendment: Statements to Cellmate regarding Vicki's death and DV– Fifth Amendment OK. No coercion

Right to remain silent – scrupulously honored

Sixth Amendment:

Statements to cellmate regarding DV after arraignment, but before Arraignment for Homicide. Blockburger test- same transaction or different offense?

Cellmate testimony

Cellmate's refusal to answer questions regarding Prelim, Right against self-incrimination, but there is a plea deal so grant of immunity discussion.

Surveillance of robbery

Discovery: Duty to preserve evidence

Right against self-incrimination, not applicable for tangible evidence such as surveillance.

1)

Fourth amendment

is the right of the people to be protected in their person, houses, paper, and effects from search and seizures, shall not be violated. And no warrant shall issue without probable cause supported by oath or affirmation by a neutral/ detached judge and the warrant must particularly describe the places to be search and person and things to be seized.

✓ God Star!

Detained and probable cause

Detention & PC? Its "Probable Cause"

As we look at the facts, Kevin was swerving and was pulled over and was detained.

Detainment is when a reasonable person would ~~feel~~ ^{feel} that they were not free to leave. The

officer said that Kevan appeared to be intoxicated, which then gave him probable cause

to ask him to step out of the vehicle. Kevin in this case asked if he was under arrest and

then was threatened with a gun to step out. The officer showed force, intimidation and threatening demeanor by pointing his gun and at Kevin and instructed him to exit his

vehicle. Then the question began which led to custody and interrogation. The officer

would argue that because Kevan seemed intoxicated that probable cause existed for an arrest. Kevin would argue at this time that the officer abused his power by threatening

cohesive to get him out of the car, but this would not be important in regards to probable cause because once the officer saw Kevan swerving and pulled him over, he appeared intoxicated, probable cause was found. Thus there is probable cause at this point.

Custody

Very good job, but change the heading, confusing! restricted

Is where a person movement have been "significantly" ~~reduced~~ ^{restricted} where a reasonable person would feel that they were not free to leave. Here because the officer pulled him over, he

was detained for further investigation, but once the officer discovered Kevan was intoxicated, probable cause existed where he asked him to get out of the car.

Furthermore, the officer pointed his gun at Kevan and instructed him to get out, this alone would make a reasonable person feel they are not free to leave. Thus he is in custody. ✓

Interrogation

This occurs when there is probable cause that a crime has been committed (or in the process of one) and to investigate further by questioning. Here the officer pulled him over for K for swarming, then discovered he was intoxicated and then after threatening him with a gun to step out of the vehicle, started asking questions. Thus, this is an interrogation and Custody, where Miranda rights must be applied

which questions before miranda?

The Fifth amendment and Miranda rights

That no person be denied the right to life, liberty and property without due process and grants people the privilege against self incrimination. In addition, Miranda rights were established that people that are being interrogated Supra and Custody Supra, must have these rights read so to protect the people from self incrimination. Here there is custody and interrogation which was initiated after the probable cause, after a legal stop, that Kevan (K) was intoxicated. At that point, Miranda rights must be made or any statement or evidence may be suppressed. since Miranda rights were not read to the defendant, that the statement made will be suppressed. The offer would argue that he was only detaining K at this time for further investigation. K would argue that he asked if he was under arrest, and instead of receiving a yes or no answer, a gun was pointed at him and told to get out and kept "continued to point his gun at K, making this an interrogation and in custody where miranda rights must be read. Thus fifth amendment right or self incrimination and violation of Miranda rights.

Coercive statement

- not a legal heading

Coercive statements occur if an officer using technique to get a confession out of an individual, which can be several different tactics, where in this case, would be threat of force. Here the officer pointed a gun at K and instructed him to get out of the vehicle. Instead of putting the gun away, the officer continued to point his gun at K and started interrogating him. At this point, K started answering all questions the officer asked. A reasonable person that has a gun pointed at them would be coerced to say the truth or anything that they think the cop (or any individual) would want to hear. The officer may argue he had a gun incase K tried to flee, but K would argue that he showed no indications that he was violent or dangerous and the gun was a intimidating factor, where he felt apprehension and threatened and therefore gave these replied statements. Thus, the court would look at these factor and most likely conclude that this was a coerced statement made, so the evidence about his several shots and a couple bears would likely be suppressed and admissible.

Voluntary statement

I think you should may be work on including the Stone in OR analysis.

A voluntary statement is when a person in our out of custody and interrogation gives a statement from free will. Here K was being questioned about where he came from, which was the bar and how much did he drink, which was a few shots and a couple of beers. This as explained above was done in a violation of Miranda rights because he was being interrogated and in custody but was not read his miranda rights. But when he voluntary stated something that had nothing to do with the line of questioning, "I killed my sister this morning and needed something to help me forget" this would be considered a voluntary statement. K would argue that this should be suppressed evidence because his fifth amendment rights were violated. The officer would argue that he wasn't asking about why he was drinking, just about where he came from and how much did he drink. Thus, this would likely not be suppressed and admissible.

Very Good ✓

Automobile exception

An automobile has less rights under privacy and can be searched if there is probable cause for contraband or evidence of a crime which was the reason for the stop. Here if K's car was searched after he was put in the car and did not say that he killed his sister then the officer would not be able to search the vehicle because the threat or danger was not possible since K was in the car. In this case, since K voluntarily said that he killed his sister, this may give the officer additional probable cause that a weapon could possibly be in the car and the search and finding of the heroin and the bloody knife would be admissible. ✓ *Wonderful*

Custodial searches and inevitable evidence

When cars are taken after an arrest to the impound center, the car may be searched, as courts have held, to check for weapons. Here the car was not in the impound center, but since at this time K was under arrest, it was inevitable that the knife and heroin would have been found. ✓ *Separate then, two totally diff. principles*

Invocation

This is when a person that has been arrested or being interrogated and in custody either say that do not want to speak to the officer anymore or wish to speak to a lawyer. If either of these two occur, all questioning must immediately cease. Here K at this time said he wanted an attorney so the questioning must have stopped until his lawyer is present. The officer did not stop the interrogation and continued questioning which then, before K attorney arrived, admitted that the knife was used to kill his sister. Here because K Invocation of wanting a lawyer, the questioning should have ceased, thus any statement said is suppressed because of the fruit of the poisonous tree doctrine.

Fruit of the poisonous tree

when a statement is made in violation of Miranda rights (Miranda v. Arizona) which "additional" statements or certain evidence, besides weapons is obtained, the evidence must be suppressed. Here K Miranda rights were violated and after invocation of a lawyer was made but was not honored, so the statement about the knife being used to kill his sister would be suppressed.

✓ Perfect

Exclusionary rule

When evidence is obtained in violation of miranda rights, the evidences and statements are made, the evidence must be suppressed. This is a deterrent for officers to not violate the rights of people. Here statements were taken in violation of the miranda rights besides the voluntary statement. Thus the court must suppressed the statements obtained. This will most likely not impact the evidence of the drugs or the bloody knife.

As a conclusion, All statements besides the voluntary one would be suppressed and the knife and heroin, may be admissible, either because of the voluntary statement or the inevitable evidence doctrine.

Amazing job, just work on your headings and organization.
98

2)

.Guns

100

Fourth Amendment- Protects against unwarranted searches and seizures from a government actor ✓

Government Actor- The 4th only protects against searches and seizures committed by a government actor, or someone under a GA's control, Here, Patrick (P) is a police officer, thus a government actor. ✓

Search- Under Katz, a search occurs when a government actor intrudes upon something that the defendant has a subjective expectation of privacy for, that society is prepared to regards as reasonable. Warrant-less searches are per se unreasonable unless they fall under specific delineated exceptions. A person always has a reasonable exception of privacy in their own home. ✓
Very Good job

Tips- A tip given to the police is judged by the totality of the circumstances. what tip? ↑
Here, D will argue that the guns should be excluded as the warrant relied on a tip from his old boss. However, because the tipster was not anonymous, P had observed first had D's behavior and the observations made at his home, P can argue that the warrant has enough other information to back up the tip. Additionally, p can argue that B's Statement was not a 'tip' at all but a police report- and therefore not subject to totality of the circumstances analysis.
↳ Explain more neg. what tip?

Sensory enhancing Technology- A search occurs even in open fields if conducted using sensory enhancing technology not available to the general public.

Here, While P was observing D's Home, P used "military grade" binoculars to gather evidence. D will argue that because he used military grade binoculars, the Observations of his home falls under the 4th. P will argue that he did not gather any evidence with binoculars that would not have been available to anyone using regular binoculars, as the only evidence he gather stated in the facts are license plate numbers- information anyone could have gathers from the street, and thus the actions were NOT a search. Additionally P will argue that "military grade" does not mean military exclusive, and anyone with an Amazon account or a military surplus store nearby could have access to identical binoculars, making them available to the general public.

beautiful

Thus, the observation of D's Home was not a search.

Warrant- A search must be backed by a warrant if it does not fall into specific exceptions. A warrant is a listing of the items to be seized and places to to be searched backed by probable cause and signed by a neutral magistrate.

Here, D will argue that P did not have enough probable cause to execute a warrant. However, P will argue that between his observations of D acting weird, the Police report about the missing guns from B and the observations that P made of D's home, that there was enough evidence for P/C that D had taken the guns. D will argue that the license plate information gathered proves nothing about guns at hims home, simply that he has lots of visitors, and that acting weird is not enough probable cause for theft. However, between the "acting odd", the sudden resignation and the report of missing guns, there was enough evidence to execute a warrant. P will further argue that the theft of the guns is evidence enough, as guns are items that are stored securely in stores, and only an employee would have been able to steal guns in a way in which the owner would not find them missing for "weeks"

Therefore the courts will rule the warrant valid.

Exclusionary rule- Is a prophylactic judge made rule to prevent the inclusion of evidence gathered illegally. The exclusionary rule only applies to gross police misconduct, and evidence gathered can still be used as impeachment purposes. Knock and announce violations are not grounds for evidence to be excluded. *Good job*

Here, D will argue that the guns should be excluded because P violated the Knock and announce rule in serving a warrant, and that the executed the warrant with undue force-coming in at two am with over a hundred officers. However, P will argue that a violation of a k&A rule is not enough for the exclusionary rule to apply. In addition he will argue that the force was not excessive, as B had reported *several* guns missing, and there was great danger in arresting D, to the point where knocking and announcing with a regular amount of officers would likely have cause officers harm and turned into a shoot-out.

D will Additionally argue that the search of him home under the warrant should be excluded as the officers exceed the scope of the search- The search was for evidence of stolen guns - fairly large items, but officers searched "every inch" of his home for several hours, exceeding the limitations of the warrant and rendering the search invalid. However P will argue that guns can be fairly small, and bullets (other evidence of stolen guns) are even smaller. He may also argue that that he executed the warrant in good faith, but this is unlikely to work as he exceed the scope of the warrant. ✓

Ultimately, the courts will rule that the evidence of the guns should not be admitted. While the violations in obtaining the warrant are not strong enough to suppress the evidence, the execution of the warrant exceeded the scope, and thus violated 4a's reasonableness standard. As the purpose of the exclusionary rule is to deter bad police conduct and no exceptions apply, the guns will be excluded from evidence.

Statements

Voluntary Statement- The fifth amendment does not protect against volunteered statements- a voluntary statement is when the person says something spontaneously without any act of the government actor.

Here, P will argue that D's statement of "taking a bunch of B's stuff" was a voluntary statement. However under the totality of the circumstances the courts will likely rule that the statement was not voluntary.

Miranda- applies when a statement is made during interrogation in police custody.

Custody- If under similar circumstances a reasonable person would not have felt free to leave.

Here, D was arrested at 2 am in his own home with over a hundred officers pointing guns at him- no one would have felt free to leave. Therefore he was in custody.

Interrogation- an act by a government actor that they know or have reason to know is likely to elicit an incriminating response. Miranda only applies if there is both custody and interrogation.

After refusing to answer the question of "where are the guns?" a question that does not require the miranda warning as it is a matter of officer safety that D be able to answer, D was required to sit for several hours while over 100 officers searched his home in the early morning. Only much later did P come in and start to question D. *Very Good*

While not a questioning in a traditional sense, When P insisted that they were having a "Conversation between friends," and went out of his way to assure D that he was not under arrest. P knew or had reason to know that such statements were likely to elicit and incriminating response. P went out of his way to give D a sandwich and act friendly, encouraging D to confide in him. Because D was in custody, and P was interrogating him,

P should have mirandized him. because he did not, D's Statement is a violation of the Miranda warning, and should be excluded.

5th Right to counsel- while in custody, a person can invoke the right to counsel, once unambiguously invoked all questioning must cease until counsel has been provided. Any statements after invocation are deemed inadmissible as evidence unless the suspect restarts questioning. this is judged by determining if his right to cease questioning was scrupulously honored.

Here, once D stated that he "wanted to talk to a lawyer or something" P terminated the conversation, honoring D right to counsel, thus D cannot ask to suppress the statements under right to counsel. However, if D had been mirandized at the correct time, he would likely have invoked sooner and thus the previous statement should be suppressed

Because of the Miranda warning violation and the coercive nature of the conversation, D's statement regarding the theft will be suppressed from evidence but it can still be used to Impeach his character at trial.

Amazing job!

100

3) 4th amendment?

1. Statement Suppression under 5th and 6th Amendments

5th Amendment (5A)

5A guarantees the right to not self-incriminate. Under Miranda the suspect must voluntarily, thus knowingly and intelligently waive the right to silence and to counsel.

Here, Dan (Da) makes 2 statements to his cell mate.

In the first statement, a jail house confession, Da confesses his relationship and sadness to his cell mate. At this point Da has been ^{DV}arrested and appointed an attorney. However, the cell mate at this point in time is not an informant for the Officers (O), therefore he is not acting as an undercover government agent. This statement can be admitted into evidence by the P. The D will not succeed in suppressing it because it jail house gossip, voluntarily given. Da has knowingly and intelligently shared this statement with his cell mate. This statement could be admitted at trial as it does not violate Da's 5A.

unsolicited stmt

The second statement Da makes regarding the details of his violence toward his wife, is coerced testimony by the cell mate who is now acting as a police informant. However, here Da is facing a cemetery where his wife is buried and this is a coercive environment. Thus, this second statement violates Da's 5A rights and cannot be admitted at trial, because under this duress Da cannot have made a voluntary statement both knowingly and intelligently.

why

6th Amendment (6A)

Under 6A a suspect is entitled to counsel after adversarial judicial proceedings have begun. This bright line prevents police from interrogation a suspect without counsel present. Under due process the defendant's rights are violated by incompetent representation and by officers coercion of testimony after the defendant has counsel.

Here, because Da has already been arraigned and has counsel this second statement by Da regarding his violence toward his wife, is coerced testimony by the cell mate who is now acting as a police informant. The officers through the cell mates coercion have crossed the bright line. Thus, Da's constitutional 6A rights have now been violated. Therefore, the D can now justifiably request that the statements be made inadmissible as evidence at trial. The P could however use this second statement against Da for impeachment if he takes the stand. ✓ *very Good*

2.

Here, the cell mate (cm) refuses to answer questions about his own court case on the basis of violating his own 5A rights.

However, cm cannot incriminate himself in Da's trial. This is not cm's trial. Da is entitled to have his attorney cross-exam any and every witness against himself in order to ensure a fair, unbiased trial. The D can argue that cm's testimony has been 'bought' by the P and thus tainted because of the "generous plea deal". The D can argue that cm is actually jeopardizing a fair trial for Da and can suggest that he, the D, will argue for dismissal of all charges against Da. — *Preminity discussion was warranted here.*

3.

The D wanted to use the videotape of the cm robbing an older woman as physical testimony to discredit the P's witness, cm. This video would have provided independent character evidence under the exclusionary rule. It would have discredited cm as a reliable witness for the P. The destruction of this evidence is a great loss to the D. The court must balance the interests of all parties in a trial. The defendant has the right to a fair trial and to all evidence which can support his claim. The defendant has the right to have witnesses against him cross examined. By destroying this evidence Da cannot get ^{fair} ~~the best~~ ^{trial} ~~legal representation possible.~~ Thus, the court should strike cm and his testimony from the record.

You did well, missed some issues, but you demonstrate good understanding in your analysis.

END OF EXAM