

Monterey College of Law
Criminal Law & Procedure
Midterm Examination
SPRING 2025
Professor S. Haas

General Instructions:

Answer Two (2) Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

MCL
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Question 1

Bryson and Cathy were at the local Target when Cathy slipped a pair of very cute high heels shoes into her purse. She didn't tell Bryson. Bryson and Cathy left Target after buying some organic avocados and headed home on Bryson's Harley Davidson motorcycle. Bryson had placed the avocados and Cathy's purse in the saddle bag of the motorcycle. While driving, Bryson cut off a car and hit a pedestrian that was lawfully crossing a crosswalk. Instead of stopping to see if the pedestrian was okay, Bryson sped away.

Officer Alan was the only police officer on duty that night. Within the hour he received two calls for assistance. The first call was from Target. Their safety officer had spotted a woman shoplifting a pair of high heels shoes on the surveillance camera. The safety officer wanted to make a police report providing the description of the woman. Officer Alan took the report over the phone and noted the description of the woman as medium height, medium build, middle aged with brown hair. The safety officer told Officer Alan he would bring over the surveillance video the next day so they could use the image of the woman for a wanted poster.

The second call was from a motorist who had witnessed a hit and run involving a pedestrian being hit by a motorcycle. Luckily the pedestrian only had a minor bruise. The motorist provided a description of the Harley Davidson motorcycle.

Officer Alan was quite alarmed by the report of the hit and run so he immediately hit the streets in his police cruiser to see if he could find the Harley.

In the meantime, Bryson and Cathy sped into the driveway of their house. Cathy was very alarmed that Bryson had left the scene of the accident so she ran into the house leaving her purse in the saddle bag. Still really wanting the avocados, Bryson opened the saddle bag and was grabbing for the avocados when Officer Alan pulled into the driveway behind him.

Seeing the Harley Davidson motorcycle and Bryson reaching into the saddle bag, Officer Alan drew his gun from his holster and shouted at Bryson to get on the ground with his hands behind his head. Officer Alan stood over Bryson with his gun and said, "What are you doing?" Bryson remained silent. Cathy saw the situation from the window and ran out into the driveway and yelled, "That is my purse!" as she tried to grab her purse out of the saddle bag.

Officer Alan turned his gun on Cathy and told her to freeze and put her hands up. She did. Officer Alan then reached into the saddle bag and pulled out the avocados and the purse, which contained the stolen high heels.

Officer Alan then asked, "Who is the owner of the Harley", and Cathy yelled, "It's Bryson's". Officer Alan asked Bryson – "Were you driving this motorcycle tonight?" Bryson, still on the ground, replied, "Yes I was driving."

Officer Alan then told Bryson he was placing him under arrest for a hit and run. He properly issued the Miranda Rights to Bryson.

Down at the police station, Officer Alan placed Bryson in an interrogation room. He asked him if he had hit a pedestrian and left the scene on his motorcycle. Bryson said, "I don't want to talk to you anymore."

Without any further evidence of guilt and having received DMV information that there were 25 other Harley Davidson motorcycles of the same description in town, Officer Alan let Bryson leave and go home.

The next day, the safety officer came into the police station with the security footage from Target. Officer Alan viewed the footage and immediately recognized Cathy from the night before as well as the purse which he had booked into evidence after Bryson's arrest.

Officer Alan went back to Bryson and Cathy's house the next day with a duly issued Warrant to search Cathy's home. Officer Alan knocked on the door and said, "I have a warrant, open the door!" Bryson, not knowing about Cathy's theft, and feeling harassed and overwhelmed by Officer Alan, opened the door and confessed to the hit and run.

A. Bryson's Attorney has filed a Motion to Suppress for the following statements. What arguments will be advanced by Bryson's attorney in support of the motion to suppress? How will the prosecution respond? How should the court rule as to each statement?

1. Yes, I was driving.
2. The confession to the hit and run.

B. Cathy's Attorney has filed a Motion to Suppress for the following statement and item. What arguments will be advanced by Cathy's attorney in support of the motion to suppress? How will the prosecution respond? How should the court rule as to each item or statement?

1. That's my purse.
2. The high heels eventually found in the purse.

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Question 2

There are five (5) short answer questions. Please review the fact pattern and provide an IRAC type analysis. Each question is worth 20 points, so please provide brief and detailed responses to the questions. You have 1.5 hours to finish the 5 questions.

Points will be allotted as follows: 5 points for issue spotting, 3 points for correct rule statement, 10 points for analysis and, 2 points for conclusion. Ideal response should be less than 500 words.

1. Arrest warrants were issued for David and Max on a charge of armed robbery of a liquor store. Police, who has been unable to locate them, received a call from Max in which he offered to turn himself in “if he could get a good deal.” Det. Sam told Max that they would consider “giving him a break” if he could have a conversation with him about liquor store the robbery. Sam also directed Max to “get David talking about the robbery of a Chase Bank”, for which David was arraigned a month ago and assigned an attorney.

Max met David the next day, wearing a recorder the police gave him and turned the conversation to reminiscing about the liquor store robbery. David made several incriminating statements. Max also got David boasting about all other crimes including his participation in Chase Bank Robbery.

- a. David moves to suppress his statements to Max. The prosecution seeks to use statements against David for trial in the liquor robbery case. How should the court rule?
 - a. How should the court rule on a motion to suppress the statements regarding Chase Bank Robbery?
2. Chatty Charlie, who has been an informant on a number of occasions for the FBI, was sharing a cell with Loose Lips, who was under indictment for first-degree murder. Lips and Charlie had a conversation in which Lips shared the detailed of his involvement in the murder. Seeking to benefit from the information, Charlie informed his FBI contact of the conversation and offered to testify in court.
 - a. May the prosecution use Lips’ statement during trial of first-degree murder? How should he court rule on Lips’ motion to suppress?

3. Lisa was robbed of her wallet at gunpoint while waiting at an intersection. Prior to the robbery, the robber conversed with Lisa for ten minutes. Lisa immediately reported the robbery to the police and describe the robber as a slim man, about 20 years old, six feet tall wearing a long grey coat and green beanie. A male of that description was observed in the vicinity shortly after her report and was taken into custody by the police. A search of the suspect turned up a wallet with Lisa's ID.

Lisa was brought to the station at 3 p.m. and shown her wallet. She was told that it was found on the suspect, and the police asked her to observe the man in his cell, Lisa did and immediately identified the individual as the robber. The robber was the only person in the cell and the only individual the police asked Lisa to observe.

- a. Is Lisa's identification at the cell permissible during trial?
 - b. What if robber had already been arraigned prior to the identification by Lisa?
4. Police arrested Dan on suspicion of first-degree murder and transported him to the police station. He is a 35-year-old high school drop-out of below-normal intelligence, and he has an extensive criminal record. Police was aware, that he suffered from diabetes, requiring him to take medication twice daily and to eat at regular intervals. He arrived at the police department at 9 p.m. and was interrogated in a small room for five hours by Officer Alan, during which time he refused to respond to questions.

He was taken to a cell in which he slept on concrete floor. He could not sleep. Early next morning, he was again taken to the interrogation room where he waited alone for two hours before Officer Alan appeared and resumed questioning. Within 30 minutes of questioning, he confessed. During the entire time at the police station, Dan received coffee and water but neither requested nor was offered food or medication.
 - a. Dan moves to have his confession suppressed on Fifth Amendment grounds. How should the court rule?
5. Adam is growing marijuana plants in a backyard garden immediately adjacent to his home. The small yard is surrounded by an eight-foot-high stockade fence. A hot tub is located next to the garden. Has a "search" occurred in any of the following situations?
 - a. Officer climbs over the fence into the yard, enters the garden and observes the plants.
 - b. Police officer climbs a stepladder that she placed on the public sidewalk, peers over the fence, and observes the plants.

- c. Officer obtains consent from Adam's neighbor and observes the plants from the neighbor's second-story bedroom window.
- d. Assume instead that Adam's marijuana plants are located 75 feet from his house in a wooded area of his unfenced property surrounded by a dense circle of pine trees. Officer enters the property and observes the plants.
- e. Assume instead, that Adam's plants are located 75 feet from his home inside a wooden shed. Officer enters the property and looks into the shed through an open window observing the plants.
- f. Assume Adam is conducting an indoor growing operation. The plants are in his den, and the windows are covered by thick shades. Detectives park their van across the street and aim a high tech listening device toward the house, picking up incriminating conversations that Adam is having with customers within.

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ANSWER OUTLINE

Outline of Issues: Q1

Bryson – Motion to Suppress

1. Yes, I was driving.

5th Amendment

Miranda

In custody – Yes, Officer had gun drawn on him and had him on the ground.

Reasonable Person felt free to leave – in this situation, no at gun point.

Interrogation – This one is tricky, First, Officer asked him what he was doing. This is likely not interrogation yet as this is probably a question asked by the Officer to maintain the officer's safety since Bryson was grabbing into a saddle bag of the motorcycle that fit the description of the hit and run vehicle. But the second question "Were you driving this motorcycle tonight" is probably the beginning of interrogation because it speaks specifically to the alleged hit and run crime.

Properly Mirandized -No Miranda rights were not given before this statement.

Judge will likely suppress the statement made while he was on the ground with a gun pointed at his head, "Yes, I was driving." As violation of 5th amendment.

2. The confession to the hit and run

5th amendment

Miranda

In custody – Tricky, he was at his house when the statement was made. He would usually feel like he could freely move about his home. But, the police officer was at his door and had yelled, I have a warrant, open the door. This could make a person feel trapped and have to open the door and/or be arrested again. Totality of circumstances. But likely it will be determined to be in custody.

Interrogation – The officer told him that he had a warrant and to open the door. The officer did not ask him any questions. Likely not interrogation.

Judge will likely rule to allow the statement into evidence.

Continuation/alternative analysis

Continuation of Interrogation from the prior day

Invocation – The day prior, Bryson had been placed under arrest and read his Miranda rights. It appears he chose his right to remain silent when he said, "I don't want to talk to you anymore." Clear - statement is clear; Unambiguous – statement is not ambiguous. Interrogation must cease until – Interrogation was "ended" and Bryson released the day prior.

D voluntarily initiates contact – Argument could be made that Bryson voluntarily initiated contact with Officer Alan the next day when he appeared at his house.

Shatzer - Or reasonable break in custody such that coerciveness is dissipated – was the day a reasonable break in custody? Or did Bryson still feel he was being coerced by the Officer showing back up at his house the next day with a warrant. Remember Bryson is unaware of Cathy's criminal activity.

Waiver -Argument could be made that Bryson waived the Miranda. Must be knowing and voluntary and a product of free will and not coercion. Likely Judge will find that the Miranda had been invoked the day prior and that there was not a waiver because police showed up the next day at his house with another warrant. Counter- argument that there was no interrogation the next day and that there was enough time for the interrogation to have ended from the day prior. It could go either way.

Cathy – Motion to Suppress

1. That's my purse

5th and 6th

Miranda

In custody – Police Officer had gun drawn -likely she would not have felt freely to move although she was reaching for her purse in the presence of the officer with gun drawn.

Interrogation – No questions were asked – no interrogation

Judge will not suppress the statement.

2. The high heels

4th amendment unreasonable search and seizure

State action – yes police officer

Standing – reasonable expectation of privacy – high heels were located in her purse that was also placed in a saddle bag. The saddle bag was in the motorcycle of Bryson so she

may have not had an expectation of privacy to the saddle bag. But it would be reasonable to have an expectation of privacy to the purse.

4th Amendment search and seizure occur? – yes. The saddle bag was opened and the purse and high heels removed without warrant.

Search conducted without probable cause? – Did Officer Alan had probable cause that a crime had been committed when he removed items from the saddle bag. He did know that a hit and run had been committed by a Harley Davidson which is the same motorcycle. But he had no description of the suspect. He did hear the description of Cathy from the Target safety officer but it was very vague and it was unsure he even noticed this. Appears Officer did not have probable cause to search the saddle bag at that point in time. If he did, Exception Exist?

Exigent circumstances – Does not appear it applies as the crime Officer Alan was aware of was the hit and run and this does not lend itself to this exception.

Search Incident to Arrest – Perhaps the saddle bag could have been searched after Bryson was arrested. But at this time Bryson had not been arrested.

Automobile Exception – PC needed of evidence of crime. The only info Officer Alan had was the type of motorcycle and Cathy's statement that it belonged to Bryson. This may or may not be enough to rise to PC to search the saddle bag.

Most likely it will be found that the arrest of Bryson did not have PC and thus the search of the saddle bag thereafter was in violation of the 4th amendment and would be excluded as to evidence against Cathy under exclusionary rule.

Exception to Exclusionary Rule

Inevitable Discovery – If the warrant issued to search Cathy's home had been executed, if the high heels hadn't been already in evidence, they would have been discovered through legal means.

The Judge will likely find that the High Heels can be entered into evidence as a valid search warrant for her house had been issued and there was PC due to the surveillance footage showing her shoplifting the high heels.

1. a. 5th amendment: no custody can be alleged. Questioned by friend, in non- coercive environment. Voluntariness standard met.
b. 6th amendment: right to counsel attached for Chase.
2. 6th amendment: No deliberate elicitation by LE.
3. a. Highly suggestive – violates due process, but can still be considered reliable if based on totality of the circumstances. Time to view the robber, degree of attention at the time of observance, the accuracy of her description of the robber prior to the ID, and time lapse between the crime and the confrontation.
b. After indictment – *Wade* attached and counsel should have been present.

4. 5th Amendment: Before Connelly - totality of circumstances. After Connelly, coercive actions by police.
5. Marijuana plants – Search or no search
 - a. Officer climbs over the fence into the yard, enters the garden and observes the plants – Yes, entry into curtilage.
 - b. Police officer climbs a stepladder that she placed on the public sidewalk, peers over the fence, and observes the plants – No search, public area.
 - c. Officer obtains consent from Adam’s neighbor and observes the plants from the neighbor’s second-story bedroom window. – no search, no REP in view from neighbor’s window.
 - d. Assume instead that Adam’s marijuana plants are located 75 feet from his house in a wooded area of his unfenced property surrounded by a dense circle of pine trees. Officer enters the property and observes the plants - No search, beyond curtilage.
 - e. Assume instead, that Adam’s plants are located 75 feet from his home inside a wooden shed. Officer enters the property and looks into the shed through an open window observing the plants – No search, open fields, no REP.
 - f. Assume Adam is conducting an indoor growing operation. The plants are in his den, and the windows are covered by thick shades. Detectives park their van across the street and aim a high tech listening device toward the house, picking up incriminating conversations that John is having with customers within – Yes, REP in conversations in the home.

1)

A. Motion to suppress: Bryson's statements

1. "yes I was Driving"

Issue:

Was Bryson's statement "yes, I was driving" elicited in violation of Miranda rights making it inadmissible?

Rule:

Under *Miranda v. Arizona*, statements made during custodial interrogations are inadmissible unless proper Miranda warnings are given and waived.

- Custody occurs when a reasonable person would not feel free to leave under the circumstances. *Restraint is similar to an arrest.*
- Interrogation includes both express questioning and its functional equivalent; words or actions by police reasonably likely to elicit an incriminating response.
- Public safety exception: in limited circumstances, the need to protect public safety can justify questioning before Miranda warnings are issued as seen in *New York v. Quarles*.

Application:

Bryson was in custody at the time of the statement. Officer Alan had already pulled his gun, ordered Bryson to the ground, and Bryson was on the ground with his hands behind his head. This constitutes a de facto arrest not a mere Terry stop or investigatory detention. A reasonable person would not feel free to leave. The statement was made in response to direct questioning by officer Alan, "were you driving this motorcycle

tonight?" that is interrogation, as it was likley to elicit an incriminating response and was posed while Bryson was detained and under armed threat. There is no indication that Bryson had been read his Miranda rights at this point. the statement preceded the formal arrest and subsequent Miranda warnings. the public saftey exception does not apply here; there was no immidiate danger to the public when officer Alan questioned Bryson about his driving. He had already disarmed the situation and secured the suspect.

Conclusion:

Because Bryson was in custody and subjected to interrogation without Miranda warnings, his statement "yes, I was driving" should b suppressed under Miranda and the fifth Amendment. The prosecution will likley argue the breifness and the public nature of the questioning mitigates the need for warnings, but the court should find the Miranda violation dispositive and exclude the statement.

✓ Good Job. Volunteerness?

2. Confession at the Police Station "I dont want to talk to you anymore" followed by a later confession

Issue:

Is Brysons eventual confession to the hit and run admissible after he invoked his right to remain silent?

Rule:

when a suspect invokes the right to remain silent, police must scrupulously honor that invocation as seen in Michigan v. Mosley. interrogation must immediately cease, and if returned, it must be ~~done~~ with care, considering: Beautiful

- whether questioning immediately stopped upon invocation
- whether there was a significant lapse of time

- whether a fresh set of Miranda warnings were given
- whether the second questioning was about the same or different crime
- and whether the suspect voluntarily reinitiated contact

Also confessions must be voluntary under the due process clause of the 14th Amendment.

Application:

Bryson was properly Mirandized before questioning at the station. when officer Alan asked about the hit and run, Bryson said "I dont want to talk to you anymore" this was a clear invocation of his right to remain silent. Officer Alan properly ceased questioning at that point and let bryson go due to lack of further evidence. However, the confession occurred the next day when officer Alan returned to Brysons house with a valid search warrant. So there is no indication bryson was re-mirandized or that he initiated the contact. however the confession seems to have been made at the doorstep of brysons home, outside of custody. Miranda applies only to custodial interrogations. voluntary statements made outside of custody are not subject to Miranda. moreover, the fact pattern states that Bryson confessed on his own initiative, out of a feeling of being overwhelmed, not as a response to custodial interrogation. Unless Officer Alan coerced the confession it is likley voluntary under Colorado v. Connelly. there is no evidence of threats, promise, or deception that would overbear Brysons will. *Outstanding!*

Conclusion:

The prosecution will argue that the confession was non-custodial and voluntary, and thus Miranda does not apply. the defense may argue residual coercion or that Brysons prior invocation tainted any later confession. but because the statement was made the next day outside of custody and was not illicited by interrogation it should be deemed admissible. the court should deny the motion to surpress the confession to the hit and run.

B. Motion to suppress: Cathys statement and physical evidence

1. "thats my purse"

Issue:

Was Cathys statement "thats my purse" obtained in violation of Miranda and should it be suppressed?

Rule:

Miranda v. Arizona protects against compelled self incrimination during custodial interrogation. a suspects statment is inadmissable if:

- it is made in custody (the suspect is not free to leave) *voluntary & spontaneous*
- it is the result of interrogation (like words/actions reasonably likely to elicit an incriminating response) *arrest.*
- and no Miranda warnings were given and waived

statements that are voluntary and spontaneous, not in response to interrogation are admissible even if made while in custody.

Application:

Cathy was not in custody at the time she made the statement. she was in her house observing officer Alan outside detaining Bryson and ran out into the drive way spontaneously yelling "thats my purse!" while trying to retrieve it. there is no indication that officer Alan interrogated her or asked any question designed to elicit that response.

Thus Cathys statement appears to be:

- Voluntary
- spontaneous
- and not the product of custodial interrogations

even though officer Alan had his gun drawn and just ordered Bryson down, Cathy was not the focus of the investigation at that moment, and there was no evidence that she was being detained or treated as a suspect.

Conclusion:

Cathys statement is not suppressible under Miranda or the fifth Amendment. the prosecution will argue it was spontaneous voluntary admission. the court should deny the motion to suppress the statement "thats my purse!".

2. The high heels found in the purse

Issue:

Was the warrantless search of the saddle bag that led to the discovery of the stolen high heels a violation of the 4th Amendment.

Rule:

Under the 4th Amendment, warrantless searches are per se unreasonable unless an exception applies, relevant doctrines here include:

- Automobile exception: Police may search a vehicle without a warrant if they have probable cause to believe it contains evidence of a crime as seen in Carroll v. United States
- Search incident to arrest: Police may search areas within the immediate control of the arrestee during or shortly after a lawful arrest as seen in Chimel v. California

- Plain view doctrine: Officers may seize items that are immediately apparent as contraband or evidence, if they are lawfully present the incriminating nature is readily apparent
- Consent: Voluntary consent waives warrant requirements
- Container doctrine: even within vehicles closed containers generally require their own justification of a search as seen in *California v. Acevedo*

under *California v. Acevedo*, officers with probable cause to believe a container within a vehicle holds contraband may search it without a warrant.

Application:

- Location of search: Officer Alan opened the saddle bag of the motorcycle located in Bryson and Cathys driveway. While this is within the curtilage of a home which are normally subject to much higher privacy protections, courts have held that vehicles parked in the driveways are subject to the automobile exception, provided probable cause exists
- Probable cause: at the time of the search Officer Alan had two sources of probable cause:

I. The shoplifting report from Target, including a partial description and the anticipated surveillance footage

II. Cathys own statement "that's my purse" which identified the container

Given this Officer Alan had probable cause to believe the purse in the saddle bag contained stolen goods. even though the full surveillance footage had not yet been reviewed yet, the shoplifting report provided an articulable basis for the search

- Search of the container: because the saddle bag is part of the vehicle and the purse was found inside, Officer Alan had probable cause to search the purse as a container
-

likely to hold contraband. even though Cathy had a possessory interest in the purse, the fourth Amendment permits the search of containers in vehicles when probable cause exists.

Standing
Conclusion:

The prosecution will argue the search was lawful under the automobile exception, and that the evidence was in plain view once the bag was opened. cathys attorney will argue the purse, as a distinct container, was entitled to a higher privacy expectation, and that it was not immediatly apparent that it contained stolen goods. however the courts will likley find:

- Probable cause existed to search the purse
- The automobile exception applies even on private property
- and Officer Alan's entry onto the property was justified by active investigation of two connected crimes

Therefore the motion to suppress the high heels should be denied.

Outstanding. Perfect Answer
93

Student only missed one issue
of Standing and voluntariness in
each 4th & 15th analysis.

2)

1(a).

Issue:

Can Davids recored statements to max who was acting as a police agent, be suppressed under the fifth or sixth Amendment?

Rules:

- Fifth Amendment (Miranda): protects against custodial interrogation without Miranda warnings. it applies only when the suspect is in custody and subjected to interrogation by police or their agents
- Sixth Amendment right to counsel: after formal judicial proceedings (arraignment) the government may not deliberately elicit statements from a defendant about the specific offense charged without consel present or a valid waiver

I. Applies even if the defendant is not in custody

II. Applies only to the crime for which the defendant has been formally charged with

III. A Cooperating informant or police agent (like max) may not deliberately elicit information after the right attaches

Application:

David had not yet been arrested or arraigned for the liquor store robbery at the time of his statements, thus:

- Sixth Amendment right to counsel had not yet attached for that charge

- the fifth amendment (miranda) also doesn't apply because David was not in custody, he was speaking freely with Max in a non custodial setting
- Max was acting as a police agent by direction of Det. Sam but since David wasn't in custody and hadn't yet been formally charged with the liquor store robbery no constitutional violation occurred

Conclusion:

The court should deny the motion to suppress the statements regarding the liquor store robbery. They were made voluntarily outside of custody and before sixth amendment right to counsel attached.

1(b).

Issue:

Can David's statements to Max about the Chase bank robbery be used given that he had already been arraigned and assigned counsel for that offense?

Rule:

- Under the sixth amendment once the defendant is formally charged the government may not deliberately elicit statements about the charge without defense counsel present or a valid waiver
- This protection does not require custody. It applies even to undercover questioning by informants or police agents as seen in *Messiah v. United States*

Application

- David had already been arraigned and assigned counsel for the Chase bank robbery. The sixth amendment had clearly attached for that charge

- Max was acting at the direction of law enforcement and deliberately elicited a statements about the chase bank robbery making him a state agent
- No counsel was present and no waiver occurred. therefore the use of these statements would violate David's sixth amendment right to counsel

Conclusion:

the court should grant the motion to suppress David's statements regarding the chase bank robbery. the deliberate elicitation by a government agent after the right to counsel had attached violated his sixth amendment rights.

Beautiful (20)

2(a).

Issue:

Can the prosecution use Lips' jailhouse statements to Charlie during trial or do they violate the sixth amendment right to counsel?

Rule:

Under Messiah v. United States once a defendant has been indicted or formally charged, the sixth Amendment right to counsel attaches, and the government may not deliberately elicit incriminating statements from the defendant in the absence of counsel or a valid waiver. Messiah v. United States showed us a few things:

- The right is offense specific and attaches upon indictment
- A government agent may not elicit statements about the charged crime
- a passive listening post (a cellmate who happens to hear confessions without government involvement) is not a violation

- If the informant is functioning as government agent deliberate elicitation is unconstitutional

Application:

- Lips was indicted for first degree murder. therefore, his sixth amendment right to counsel has attached
- Charlie was a known informant and had an established relationship with the FBI but the fact pattern does not indicate that charlie was acting as he FBI's direction at the time of the conversation. he only contacted the FBI after lips made the incriminating statements
- because there is no evidence that charlie was acting as a government agent at the time of the conversation the Messiah rule does not apply. charlie did not "deliberately elicit" statements on behalf of the government he merely listened then reported afterward
- even though charlie later offered to testify his status at the time of the conversation governs the analysis. opportunistically reporting a conversation after the fact does not violate the sixth amendment

Conclusion:

the court should deny the motion to suppress because charlie was not acting as a government agent at the time of the conversation. the statement does not violate lips sixth amendment right and is therefore admissible.

3(a).

Outstanding (20)

Issue:

was Lips in cell identification of the suspect so suggestive as to violate due process and if so is it admissible at trial?

Rule: (due process [✓]ID procedures)

under the due process clause of the 14th amendment, pretrial identifications may be excluded if they are:

- Unnecessarily suggestive
- create a substantial likelihood of misidentification as seen in Neil v. Biggers

Reliability

Courts assess the totality of the circumstances balancing suggestiveness of the procedure against factors like:

- the witness opportunity to observe the perpetrator
- the degree of attention during the crime
- accuracy of the prior description
- the level of certainty
- time between the crime and identification

even if the procedure was suggestive a reliable ID may still be admissible

Application:

The [✓]ID procedure here was highly suggestive

- Lisa was told the wallet had been found on the suspect
- she was shown only one person in a jail cell, implying guilt
- she was not shown a lineup or multiple options which courts frown upon

However [✓]several factors support reliability

- Lisa interacted with the robber for 10 minutes which is a significant observation period
- she gave a detailed and accurate description before the ID (age, height, and clothing)

- the ID happened shortly after the crime, enhancing her memory of the situation

Under Biggers, these factors may outweigh the suggestiveness, especially if Lisa expresses certainty and had a strong basis for her ID.

Conclusion:

Although the procedure was unnecessarily suggestive the ID is likely admissible because it meets the Biggers reliability test. The court will weigh the risk of misidentification against Lisa's strong observational basis and prior accuracy.

3(b)

Perfect Analysis 20

Issue:

Does the Sixth Amendment right to counsel invalidate Lisa's post-arraignment ID?

Rule: (Sixth Amendment post-charge ID)

Under *US v. Wade* once the Sixth Amendment right to counsel attaches the accused is entitled to have counsel present at any critical stage including lineups or show-ups

- A post-arraignment ID without counsel present is generally admissible unless the right was waived
- a one-on-one show-up after the right attaches is especially problematic if done without counsel ✓

Application:

If the robber had already been arraigned the police's decision to conduct a one-person in-cell show-up without counsel present violates the Sixth Amendment

- no waiver occurred
-

- no emergency justified the lack of counsel
- this was a critical stage of the prosecution and the procedure was both suggestive and uncounseled

As a result the ID would be inadmissible unless the government can prove independent basis for ID in court. Without that both the out of court and in court ID would likely be excluded

Conclusion:

If arraignment had occurred prior to the ID the ID should be suppressed due to violation of the sixth amendment right to counsel. The prosecution would then have to prove a strong independent source to allow any subsequent in court ID.

4(a).

Issue:

Was the confession obtained in violation of the fifth amendment, specifically the requirement that confessions be voluntary and not the product of coercion?

Rule: Voluntariness- fifth and fourteenth amendments

Even if Miranda warnings are given a confession is inadmissible if it is involuntary, whether that be through coercion, deprivation, or overbearing police conduct. Courts assess the totality of the circumstances as seen in *Colorado v. Connelly* to determine whether the suspect's will was overborne. Some key factors include:

- length and conditions of detention
 - Physical deprivation (food, sleep, medication)
-

- suspects mental condition or vulnerabilities
- tactics used by law enforcement
- timing and setting of the confession

Application:

- Custody and length: Dan was in custody for at least 12+ hours. he was interrogated for 5 hours the night before then placed in a cell with a concrete floor and not allowed proper sleep. the next morning he waited two more hours alone before being questioned again.
- Medical needs ignored: Police knew Dan was a diabetic and required regular food and medication, but they provided neither. giving only coffee and water. this constitutes intentional deprivation of medical and nutritional needs directly linked to his physical and mental functions
- Mental and intellectual vulnerability: Dan is described as a high school dropout of below normal IQ, further increasing his susceptibility to coercion. the combined effects of sleep deprivation and lack of food/medicine undermines the voluntariness of any confession
- No indication of waiver or Miranda compliance: there is no mention of Miranda warnings or any waiver of rights even assuming miranda was administered the involuntary nature of the confession still renders it inadmissible under Connelly
- Police misconduct: though there were no overt threats or physical abuse the deliberate withholding of basic medical care, prolonged isolation and mental pressure from fatigue and confusion collectively amount to coercive conduct

Conclusion:

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the court should grant Dan's motion to suppress his confession. the confession was not voluntary under the fifth and fourteenth amendments due to intentional deprivation of

medical care, prolonged interrogation, sleep deprivation and exploitation of his own vulnerabilities. Under the totality of the circumstances, this was clearly overborne.

5(a).

Yes, this is a search.

- The garden is clearly within the curtilage adjacent to the home enclosed by a fence and shielded from view
- the officer's physical trespass into a protected area to obtain information is a classic search
- no warrant or exception applies

Conclusion:

unconstitutional search

5(b)

Yes, this is a search

Aerial Surveillance

- though on public property, the officer uses artificial enhancement (the ladder) to circumvent efforts to maintain privacy
- the eight-foot high stockade fence indicates a strong expectation of privacy
- courts generally find this to be an intrusion into a reasonable expectation of privacy

Conclusion:

search occurred, and likely unconstitutional without a warrant

5(c)

No search occurred

- the observation was made from a lawful vantage point without entry into Adams property
- Adam has no reasonable expectation of privacy from being observed from a neighboring property as seen in *California v. Ciraolo*

Conclusion:

No search, observation is admissible

5(d).

No search occurred

- The area is not within curtilage which was 75 feet from the house and surrounded by natural vegetation
- under *Oliver v. United States*, open fields doctrine applies even if secluded or posted "no trespassing" there is no reasonable expectation of privacy in open fields.

Conclusion:

no search, observation is lawful

5(e).

Yes this is a search

- the shed is likely part of the curtilage particularly if used for personal rather than agricultural purposes
 - looking through an open window into an enclosed space within curtilage violates a reasonable expectation of privacy especially when the officer has entered the property without a warrant
-

Conclusion:

unconstitutional search

5(f).

yes this is a search

- using advanced tech to obtain information from inside the home the could not otherwise be obtained without physical intrusion violates the 4th amendment.
- The home recives the greatest 4th amendment protections and the use of tech to intercept conversations exceeds public observation

Conclusion:

14

unconstitutional search

You did an outstanding job.

END OF EXAM