

Kern County College of Law

Criminal Procedure

Final Examination

Spring 2022

Prof. C. Bunton

Instructions:

Answer Two (2) Essay Questions.

Answer Ten (10) MBE Questions.

Total Time Allotted: Three (3) Hours.

### QUESTION 1

Betty was a wealthy stockbroker. Allen was one of her clients. After Allen slapped Betty during a violent argument regarding money while both were at his apartment, Betty stabbed Allen with a metal letter opener. Betty's clothes were spotted with blood from Allen's wound, and she ran from the apartment screaming, "What will I ever do? What will the Stock Exchange do to me?" Sylvia, Allen's friend, arrived at the front door just as Betty swung the door open and fled the apartment. Sylvia saw the blood on Betty's clothes and heard the statements she made while screaming.

Fearing for Allen's life, Sylvia hurriedly entered the apartment. She found him on the floor bleeding and unconscious. Sylvia called 911, giving a description of the woman she saw running from the apartment. Upon arrival, the police saw documents regarding stock transactions spread over the dining table. The police concluded that the assailant might be someone who had participated in these stock transactions, such as Allen's stockbroker.

Finding Betty's address among the documents, and relying on Sylvia's description, police arrived at Betty's house less than 10 minutes after the assault. The police rang the doorbell and Betty opened the door. She fit the description that had been provided. Betty was standing in the doorway while speaking with the police.

Betty was immediately arrested and taken to Allen's hospital room. Allen, who was in critical condition and not expected to live, identified Betty as his assailant. Allen died the next day.

After the hospital visit, Betty was booked into jail. Her clothing was confiscated and booked into evidence. The next morning, she was placed in a lineup. At the demand of the police and over Betty's objection, all participants were forced to repeat the words, "What will I ever do? What will the Stock Exchange do to me?" Sylvia identified Betty both by sight and by voice as the woman she saw and heard leaving Allen's apartment the night before. Subsequent laboratory analysis matched Allen's blood type and DNA with the blood on the clothes Betty had been wearing when arrested. Betty was charged with murder.

The police told Paula, another prisoner, that they were going to put her in the same cell with Betty. They told Paula that they were interested in obtaining incriminating statements from Betty. The police further advised Paula not to initiate any conversations or elicit information from Betty. She was told to listen if Betty wanted to talk.

Unable to restrain herself, Betty confided in Paula that she felt "very guilty about stabbing Allen."

Was Betty's arrest valid? Discuss.

Betty moved to prevent the introduction into evidence at trial of the following:

1. Any testimony relating to Allen's identification of her.
2. Any testimony relating to Sylvia's visual identification at the lineup.
3. Any testimony relating to Sylvia's voice identification at the lineup.
4. Betty's clothing and the result of the laboratory analysis of the blood found on it.
5. Betty's statement to Paula while awaiting trial.

How should the court rule on each of the five motions? Discuss.

QUESTION 2

Jones, a police officer in a small town in State X near an interstate freeway, was told by the police chief that, according to a report she had received, a lone male driving a car with out-of-state license plates would be coming through town within a few days in an easterly direction, carrying an illegal shipment of heroin. Shortly thereafter, while on a routine patrol, Jones saw a car with an out-of-state license plate traveling east. The car was being driven by a lone male, Don. Jones pulled Don over and asked him for his driver's license. Don's license had expired, so Jones placed Don under arrest for violation of State X's Vehicle Code. The violation was a misdemeanor carrying no more than 90 days in jail. The policy of the town was to arrest any out-of-town drivers and require them to post bail.

Jones removed Don from the vehicle, placed him under arrest, and patted him down. While doing so, Jones felt something small and round; Jones thrust his hand into Don's coat pocket to retrieve the object. The object turned out to be a small vial containing ten pills. Jones asked Don if he had a prescription for the pills, and Don replied that he did not. Jones then asked Don for permission to search the car, and Don replied, "Go ahead, why not?"

During the search of the car, Jones found a plastic bag taped behind the glove compartment; the bag contained a substance that looked and smelled like methamphetamine. After laboratory analysis, the pills found in Don's possession were determined to be contraband, and the substance in the plastic bag was determined to be methamphetamine.

Don was charged with 1) illegal possession of methamphetamine and other dangerous drugs (the pills) and 2) violation of the State X Vehicle's Code for driving without a valid license. Don's attorney filed a motion to suppress the evidence seeking to exclude Don's statements to Jones, as well as the pills and methamphetamine.

What rights, if any, could be asserted for Don in support of his motion to suppress evidence, and how should the court rule on the motion. Discuss.

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## ANSWER-Q1

### Arrest

*If the police did not have probable cause to arrest Betty or if an arrest warrant were required, much of the evidence described below probably would represent "fruits of the poisonous tree." As such, the evidence would be inadmissible.*

*Betty will contend that the police lacked probable cause to arrest her based solely upon Sylvia's description and upon the documents and records found on Allen's dining room table. Alternatively, she will argue that even if the police had probable cause to arrest, they were required to obtain an arrest warrant before they would be permitted to arrest Betty in her home.*

*On the probable cause issue, the prosecution will rely on the following: 1) the fact that Allen had financial documents pertaining to stock transactions strewn on his dining table, and 2) the statement concerning the Stock Exchange made by Betty. These were enough to arouse reasonable suspicion that Allen's stockbroker was responsible for the attack. When they arrived at Betty's house, and she fit the description given by the witness, their suspicion ripened into probable cause. As to the lack of a warrant, the prosecution will first assert that no warrant was needed because Betty was in a "public place, "the doorway of her home when she was arrested. Additionally, the prosecution can assert that no warrant was needed because they were in hot pursuit and exigent circumstances existed (i.e., realizing the police suspected her, Betty might flee the jurisdiction if not arrested immediately.)*

*The prosecution probably would prevail on the validity of Betty's arrest.*

### Hospital room identification

*Betty will argue that Allen's hospital room identification was inadmissible because her due process rights were violated. The appropriate test requires that the procedure used for identification not be "so unnecessarily suggestive and conducive to irreparable mistaken identification" as to deny the suspect her due process rights. See *Stovall v. Denno**

*Under the circumstances (the time span involved), we can assume that Betty was the only person shown to Allen and that she was wearing her blood-spattered clothing. Betty has a plausible argument that the procedure under which Allen identified her was indeed "unnecessarily suggestive" and "conducive to irreparable mistaken identification." The prosecution will reply that 1) it was conceivable that Allen would die at any moment- no time for a formal lineup and 2) because Allen had known Betty for a long time and she was alone with him at the time of the stabbing, there was little likelihood of misidentification. An in-hospital identification by a critically ill victim was upheld in *Stovall*. Allen's hospital identification would be admissible.*

*Betty will argue that her 6<sup>th</sup> Amendment right of confrontation would be violated by the introduction at trial of Allen's identification (statement) because 1) Allen's statement would be proven by testimony of the police officer who heard it (hearsay) and 2) Allen would not be available for cross-examination. *Crawford v. Washington* invigorated the 6<sup>th</sup> Amendment confrontation clause right. However, it specifically reserved judgment on the status of testimonial "dying declarations." Before *Crawford* "dying declarations" were deemed to have sufficient indicia of reliability to overcome an accused's 6<sup>th</sup> Amendment objections. Now there is a split in authority.*

*Lastly, Betty will assert that she had a 6<sup>th</sup> Amendment right to counsel during the hospital room identification. The argument will fail. A suspect has no right to the presence of counsel at a show-up or other identification procedure unless formal proceedings have been instituted against her. Kirby v. Illinois*

### *Sylvia's visual identification of Betty at the lineup*

*We assume the lineup was properly conducted and Sylvia will be available to testify as to her identification at trial. If these assumptions are accurate, the Sylvia's identification at the lineup will be admissible. If the lineup was not properly conducted, Betty's due process rights may have been violated. If Sylvia does not testify, then no cross-examination would be available, and that would be a 6<sup>th</sup> Amendment right of confrontation issue.*

*Betty had no 6<sup>th</sup> Amendment right to have counsel present since she had not yet been formally charged with a crime.*

### *Sylvia's voice identification of Betty at the lineup*

*The same assumptions will be made as to the visual lineup.*

*Betty will argue that her 5<sup>th</sup> Amendment rights were violated by requiring her to repeat the words that Allen's assailant was heard to scream as she left the apartment. But the prosecution will contend that the 5<sup>th</sup> Amendment applies only to "communications" or "testimony", not to real or physical evidence even evidence taken forcibly from the suspect's body (see Schmerber v. California) There is no expectation of privacy in one's voice. The prosecution will prevail on this issue.*

### *The results of the laboratory analysis performed on Betty's clothing*

*Betty will assert that because they never obtained a search warrant, the police had no right to seize the clothing she was wearing and do a lab analysis on the blood stains. If the prosecution prevails on the issue of a lawful arrest, the police search of the suspect's person and clothing would also be permitted as a full inventory search. The seizure of Betty's clothing and the results of the Lab tests would then be admissible.*

*If Betty does establish that her arrest was unlawful, her "fruit of the poisonous tree" argument as it applies to the lab results would be quite compelling. In that event, the seizure of the clothing would be the direct result of seizure; assuming an unlawful arrest, the court would find the lab results inadmissible.*

### *Betty's statement to Paula while awaiting trial.*

*Betty will contend that Paula was a police informant who was deliberately put into her cell, thus violating Betty's 6<sup>th</sup> Amendment right to an attorney at all "critical stages" of the proceedings. However, because Paula was strictly instructed to be a "passive" informant and to refrain from asking Betty any questions, and followed those instructions, Betty's statement to Paula will be admissible against Betty. These circumstances are distinguished from situations in which a cellmate/informant deliberately elicited statements from the defendant.*

## ANSWER TO QUESTION 2

*Was the stop of Don's car proper?*

*A warrantless vehicle stop is tested by the Terry stop rationale. The police need have only a reasonable suspicion, based on objective, articulable facts, that criminal activity may be afoot. Something less than probable cause is required. The prosecution will argue that the standard was satisfied. 1) Don fit the description of the heroin smuggler reported to the police chief, and 2) Don drove through town within the time frame contained in the report.*

*Even if we assume that the information reported to the police chief originated from a reliable informant, it is unlikely that the vague description here would constitute a "reasonable suspicion" that Don himself was engaged in criminal activity. Because the town was located near an interstate freeway, numerous out-of-state vehicles would be likely to pass through it. If the "reasonable suspicion" standard was not satisfied-the probable result on these facts- the stop was a violation of Don's 4<sup>th</sup> Amendment rights. Therefore, all the evidence derived from the illegal stop would be inadmissible as "fruits of the poisonous tree."*

*On the assumption, however, that the Court will reject our conclusions, we will discuss the other issues that can arise under these facts.*

*Was the request to see Don's driver license proper?*

*Assuming Jones had a reasonable suspicion to stop Don's vehicle, police are always free to verify that the driver is properly licensed. Therefore, if the stop was lawful. Don will lose on this issue, and the resulting arrest of Don for a violation of the license statute will not be found unlawful.*

*Was the warrantless arrest of Don valid?*

*An arrest outside of a suspect's home, even for a misdemeanor, be made without a warrant when probable cause exists. Don will argue his equal protection rights were violated because Jones arrested him for a minor traffic violation, which constituted unlawful selective enforcement. To successfully assert this theory, the defendant must show that 1) the defendant was, in fact, selected for prosecution while others who were similarly situated were not; and 2) the determination to prosecute the defendant was arbitrary or unreasonable. Out-of-town drivers would be less likely to appear for trial and collection of fines would be more difficult. If the stop and request for a driver's license was lawful, then Jones' decision to arrest Don was also proper. *Atwater v. City of Lago Vista**

*Was the pat down of Don proper and the evidence derived therefrom admissible?*

*When police make a valid arrest, they may search the suspect incident to arrest. Therefore, if the arrest was valid, the pills taken from Don were properly seized.*

*Even if the arrest was invalid, the prosecution would argue that Jones still had grounds for a Terry stop of Don's car, the pat down of /don, and the subsequent search of Don's pocket and seizure of the pills. But a Terry stop only allows a pat down of outer clothing for weapons not contraband. An officer may seize nonthreatening contraband discovered during a pat down if the officer does not exceed the bounds of the pat down. *Minnesota v. Dickerson* when Jones conducted the pat down, he felt a small round cylinder- which could not have been a weapon and Jones could not have immediately concluded it was contraband. For that reason, Jones did not have the right to reach into Don's pocket and did not have probable cause to seize the pills. If the search was considered a prebooking search, the seizure would have been valid.*

*Is Don's statement that he did not have a prescription for the pills admissible against him?*

*Don can argue that he was entitled to Miranda warnings before he admitted that he did not have a prescription for the pills. Don was entitled to Miranda warnings if Jones was conducting a custodial*

*interrogation. Because Don had already been placed under arrest when Jones asked his question about the pills, the inquiry would be considered custodial. If Jones neglected to give Don his Miranda warnings before he asked the question, Don's response would be inadmissible.*

*Did Don consent to a search of his car's interior?*

*The prosecution will contend that Don voluntarily gave permission to search. The prosecution will argue that in *Schneckloth v. Bustamonte*, permission by the occupant of a car to search the vehicle after a traffic stop was deemed voluntary. Don would argue his arrest prior to the request made the consent invalid. Don would lose, most consent searches after an arrest have been upheld. If the previous arrest was unlawful, the subsequent consent to search will ordinarily be invalid. See *Florida v. Royer**

*Was the search of the vehicle's interior valid even if Don did not consent to it?*

*If Don was properly arrested, the search of the vehicle's interior was legal as incident to arrest. *New York v. Belton* Therefore, if the arrest was valid, even if Don's consent is found not to have been voluntarily given. Also, an inventory search would also justify the search.*

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**1. Was Betty's arrest valid?**

Arrest

An arrest is valid if law enforcement officers have sufficient probable cause, i.e., particularized information that a reasonable person would determine indicates a likely probability of criminal activity. Here, per the facts, Betty stabbed Allen with a metal letter opener, ran from the apartment screaming "What will I ever do? What will the Stock Exchange do to me?" She was observed running and screaming by Sylvia as she fled. Once police arrived on scene, the police saw documents regarding stock transactions spread over the dining table and concluded that the assailant may be Allen's stockbroker. From the documentation, police found Betty's address and were at her home within 10 minutes of the assault. Per the description given by Sylvia and based on the totality of circumstances, police were able to identify Sylvia as the assailant, thus constituting probable cause to arrest.

Was an arrest warrant required?

At issue is whether the arrest, which was conducted as Betty stood in the doorway, was valid without an arrest warrant. A warrant is based on probable cause and must be signed by a neutral magistrate, who makes a determination as to whether there is sufficient probable cause. Police cannot arrest an individual inside their home without an arrest warrant. If an individual steps outside of their home, an arrest can be made without a warrant. However, there is a split in authority regarding whether the threshold of a residence, the doorway, is considered inside the home or outside the house. Initially, Betty opened the front door after the police rang the doorbell. Police did not need a warrant to knock on Betty's door, as they were conducting a preliminary investigation.

There are three types of police encounters — a consensual encounter (*Mendenhall*), a temporary detention (*Terry*), and arrest (*Watson*). Betty chose to answer the door — she did not have to answer to police, but she chose to open the door. The initial conversation where police knocked on her door would constitute a consensual encounter between Betty and the law enforcement officers.

Here, the defense would argue that this was an invalid arrest because Betty was standing in the doorway, and was therefore inside of her residence at the time of arrest. The defense will also argue

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that she perhaps did not know that she didn't have to open the door to police officers. The defense will also argue here that if they believed they had enough evidence to arrest, they could have gotten an arrest warrant. The state will argue that by Betty opening the door and standing in the doorway, she was not inside her home and was rather providing the idea to police that she was exiting the residence. The state will also argue that law enforcement is not required to obtain an arrest warrant if they have the time to do so.

It is likely a court will determine that Betty's arrest was valid. The police had probable cause to determine a felony had been committed. Based on the totality of circumstances, i.e., the identification by Sylvia, the documents at the scene which provided Betty's address, and Betty fitting the description of the woman who ran out of Allen's apartment, the arrest was valid. Concerning whether Betty was standing inside the home or outside the home, it is likely a court will find that she was not within the home as she stood in the doorway, therefore validating her arrest.

## **2. Betty's motions to suppress evidence at trial**

### *A) Any testimony relating to Allen's ID of Betty*

At issue is whether any testimony relating to Allen's identification of Betty should be suppressed.

After Betty was arrested, she was taken to Allen's hospital room for Allen to attempt to identify her as the assailant. This is what is known as a showup, whereby police typically bring the victim of a crime to the defendant shortly after a crime has been committed in order to attempt to secure a positive identification. In normal circumstances, the victim is brought to the suspect and is asked to identify whether the suspect in fact committed the alleged crime.

Here, after Betty's arrest, police brought Betty to Allen's hospital room for the showup. Allen was in critical condition and was not expected to live. The likelihood that police could bring Allen out of the hospital to conduct a showup was very low, as he was in poor condition and was not expected to survive the stabbing.

The defense will argue that this was a due process violation under the 14th amendment. They will argue that this was an unfair process whereby the defendant was brought to the victim instead of the victim being brought to the defendant. The defense will move to exclude this evidence under the exclusionary rule. The exclusionary rule states that any evidence that violates a defendant's fourth, fifth, sixth, or 14th amendment rights cannot be included in the state's case in chief and should therefore be thrown out. It will be argued that the identification of Betty by Allen violated the sense

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of fairness and, because of his then-current condition, Allen may not have been able to make a correct positive identification. The defense will likely argue it would be more fair to present Allen with a fair photo lineup, which would present typically six photos, including one of Betty, for Allen to make an identification.

The state will argue here that this was a situation whereby the defendant had to be brought to the victim in order to secure an identification. The state will argue that Allen was likely not going to survive — in fact, he died the next day — and it would be impossible to bring the victim to the defendant at a later time. The state will also argue in response to the defense's argument to conduct a photo lineup that time was of the essence; it was unclear how long Allen was going to survive, and because they had the defendant in their custody post-arrest, it was more realistic to bring the defendant to the victim in this case due to possible time constraints. The state will also argue that there was no violation of any of Betty's rights by bringing her to Allen's hospital room, as it was a special circumstance that required the police to do so.

It is likely that the court will rule in favor of the state, as Allen's identification was given in a way that was the best circumstance for the situation. Allen was on his deathbed and it was unsure how much longer he would survive, so it made more sense to bring Betty to Allen to identify her as the suspect. The defense's motion to prevent Allen's identification of Betty into evidence will likely fail.

*B) Any testimony relating to Sylvia's visual identification and voice identification at the lineup*

At issue is whether Sylvia's visual identification at the lineup should be suppressed.

A lineup is typically conducted with six people, including the defendant or suspect, in order for an eyewitness or victim to potentially positively identify the defendant or suspect. Lineups must be fair — for example, if the suspect is short, there cannot be five other tall people in the lineup. If the suspect is a woman, there cannot be five other men in the lineup. If the suspect is red-headed, there cannot be five blond individuals in the lineup. Essentially, law enforcement have to ensure that they are not coercing a victim or eyewitness to specifically pick one person over the other. After arraignment, a lawyer needs to be present at a lineup for their client.

Here, Betty had only been booked into jail. She had only been arrested; she was charged with murder after the lineup. Therefore, a lawyer present at the time of the lineup was not necessary. The lineup produced by police was not unfairly presented. Nothing in the facts state that there was an unfair choosing of individuals to be present in the lineup with Betty.

*excellent  
discussion*

Sylvia identified Betty by sight and by voice, after police required her to state "What will I ever do? What will the Stock Exchange do to me?" These phrases were the ones Sylvia heard Betty state as she ran out of the apartment building after stabbing Allen.

The defense will likely argue that Betty's objections to stating the phrases she previously stated should have indicated to law enforcement officers that her 14th amendment right to due process was being violated. The defense will argue that a lawyer should have been present at the time of the lineup, as having a legal authority backing her objections may have caused the law enforcement officers to change their tactics. The defense will also argue that forcing Betty to repeat the phrases in the lineup was a violation of her fifth amendment right against self incrimination. They will argue that she did not have to speak and should not be forced to incriminate herself, especially outside of the presence of a lawyer. This was an issue of due process and fairness and the voice identification should be excluded. The defense will argue that the whole lineup violated Betty's sixth amendment rights, as being arrested is a critical state in a criminal proceeding. Per the facts, it is assumed that Miranda was not read to Betty, and she likely did not know she had the right to a lawyer at this point in the criminal process. The defense will therefore attempt to argue that her fifth amendment right to an attorney during any substantial criminal proceeding was violated as well.

In response, the state will argue that Betty's 14th amendment right to due process was not violated, as she was placed in a lineup that was fairly established. Each of the participants in the lineup were required to restate the phrases, not just Betty. Betty was not the only person being shown to Sylvia. The state will further argue that Betty was not arraigned and therefore did not need a lawyer present at the lineup.

Ultimately, it is likely a judge will rule in favor of the state and will not approve the motion to suppress the visual and vocal identification of Betty by Sylvia at the lineup.

### *C) Betty's clothing and the result of the laboratory analysis of the blood found on it*

Once a suspect is in custody and is being booked into jail, police are required to confiscate any items brought into the jail by the suspect as a means of officer safety and inmate safety. This includes clothes worn by the suspect. Per the facts, there was blood on Betty's clothes, and Betty was observed wearing those bloody clothes as she left Allen's apartment.

The defense will argue that the clothing and any subsequent analysis of the blood found on it should be suppressed. The defense may argue that law enforcement needed a warrant to search, and by booking her clothes into evidence, law enforcement committed a fourth amendment seizure

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violation. A seizure occurs when a governmental actor, i.e. law enforcement, takes an item that violates reasonable expectation of privacy. Here, the defense will argue that Betty's clothes were seized illegally and a warrant was required to do so.

The state will argue that booking procedures do not require a warrant. Betty was being booked into jail, and the jail followed the protocols of taking items and clothing from those being detained before being booked. There was no fourth amendment violation of privacy.

Also at issue is whether the laboratory analysis of the blood on the clothing should be suppressed. Collection of DNA for evidence is not a violation of the fourth amendment so long as the collection process is not intrusive. Here, the collection of DNA was done solely from the clothes Betty was wearing when she got in. The DNA was matched to Allen's blood type and DNA. The defense will argue this was again a violation of Betty's fourth amendment right, and the state will argue that this was collected in a non-intrusive manner.

The court will likely rule in favor of the state and will deny the defense's motion to suppress the clothing or any laboratory analysis of the blood found on it.

*D) Betty's statement to Paula while awaiting trial*

At issue is whether Betty should have been mirandized prior to speaking with Paula, who was acting on behalf of the government, when she confided in Paula about the crime.

Police inside a jail cell or jailhouse informants are not required to mirandize those from whom they are attempting to gain evidence or statements. This would obviously create an unsafe environment for that person, as it could anger the suspect or blow the cover of the police/informant. So long as the jailed person does not initiate conversation or ask any questions to the suspect, any statements made by the suspect are admissible and do not violate *Miranda*. *Miranda* states that everyone has the right to remain silent, that anything one says can be used against them in a court of law, and that they have a right to an attorney.

Here, Betty confided in Paula and stated that she felt guilty about stabbing Allen. There was no direction by Paula toward Betty to answer any questions or talk about anything in particular about the alleged crime. The defense will attempt to argue that Betty was coerced into talking about the crime and it should therefore be thrown out. They will also argue that there was a *Miranda* violation, as Paula was working on behalf of the government, and she therefore should have been Mirandized.

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The state will argue that Paula did not initiate any conversation. Paula simply listened if Betty wanted to talk, which is what she was instructed to do. There was no Miranda violation because there was no questioning involved. Betty made a free and voluntary statement to Paula regarding her guilt.

It is likely the court will side with the state and will deny any motion to suppress the statement made to Paula while awaiting trial.

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What rights, if any, could be asserted for Don in support of his motion to suppress evidence, and how should the court rule on the motion?

Don can assert his 4th, 5th, 14th, and 8th Amendment rights to suppress evidence. The court should rule his 4th Amendment rights were violated when he was stopped without RS or PC. His 5th amendment rights were violated when he was interrogated without having been advised his Miranda rights to remain silent and to have an attorney. His 14th Amendment rights were violated when he was deprived of his liberty and property without due process. His 8th Amendment rights were violated when he was forced to pay bail simply because he was from out of town. The court should rule to exclude all evidence, and statements against him, and dismiss this case with prejudice.

To see any explanation for this conclusion, see the analysis of the issues, rules, analysis's, and conclusions below.

#### PROBABLE CAUSE

The 4th Amendment right against unreasonable search and seizure states a person cannot be arrested without probable cause, and sets forth rules about the particularity of the person to be arrested. Probable cause for arrest is satisfied when an officer has a reasonable belief there is a fair probability that a crime has been committed, and a particular person is guilty of a crime, based on articulate facts, and more than a hunch.

Here, J did not have independent probable cause to conduct a traffic enforcement stop because it's not illegal to have an out of state vehicle license, which is the PC for the stop. J may argue he had reasonable suspicion to stop D, which is a weak argument because the information he based his stop on was on what the chief told him, and not due to any independent observations, or probable cause. There could have been hundreds of cars traveling eastbound on an interstate highway in that time frame.

J might argue he had Reasonable suspicion

REASONABLE SUSPICION is a fair and suspicion that criminal activity is afoot, and a particular person is involved. It must be based on articulate facts, and more than a hunch. Police may briefly detain a person, or conduct a traffic stop, when they have reasonable suspicion.

Here, J could argue he had RS because his chief told him a car driven by one person will be driving eastbound with drugs in a car with out of state plates. J might argue the collective knowledge doctrine, which states an

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officer may base their RS and PC on the facts given to them by another officer, but the original officer (in this case, the chief) would have to prove how his information was reliable.

The defense would argue there was no RS because it's very common for out of state cars to travel on an interstate highway.

J did not have sufficient RS to stop the defendant's car.

SEIZURE: occurs when a suspect is not free to leave. The traffic stop was a seizure. Taking D out of the car was a temporary seizure, until he was arrested and taken into custody, then it became a custody matter.

MIRANDA: Miranda v. Arizona is the case law that states police must advise a person of their constitutional rights to 1) remain silent, 2) anything you say will be used against you, 3) you have the right to an attorney, and 4) if you cannot afford an attorney, one will be appointed.

Here, D was not advised of his Miranda rights per the 5th and 6th Amendment.

CUSTODY Custody is when a suspect is not free to leave, and in a highly restricted environment, and does not feel free to end questioning. The courts will evaluate the totality of circumstances (Katz) when it comes to a question of custody, and look at time, location, and tactics.

Here, D was in custody when he was arrested by J. The 4th Amendment allows a seizure (in this instance seizure took the form of custody) for any violation of the law, regardless of how minor. D was in custody before J asked D about the pills, and had not been Mirandized. D's statements would be inadmissible.

INTERROGATION is a method of eliciting incriminating responses through questions, statement, or conduct. For Miranda (infra) to apply, there must be custody (infra) and interrogation.

TERRY FRISK: A Terry frisk, aka cursory search, is derived from the case law Terry v. Ohio. A police officer may briefly detain a person if they can articulate facts leading them to have reasonable suspicion a person is committing, or is about to commit a crime. It must be based on more than a hunch. Further, Terry allows an officer to conduct a search of the suspect's outer clothing for weapons if the officer has a reasonable belief the suspect may be armed. The officer is not allowed to manipulate objects inside the pockets when determining if it's contraband. It must be immediately identifiable (Dickerson v. Minnesota). If an officer immediately identifies an object as contraband from the outer clothing, it may be seized.

Here, J conducted a search of D, but only after a search incident to arrest.

<sup>vial</sup>  
The vial in D's pocket would not have been admissible under Terry.

Good!

An exception to the warrant requirement is search incident to a lawful arrest.

**SEARCH INCIDENT TO ARREST** An exception to the 4th Amendment's warrant requirement is when there is a search incident to arrest. A search incident to arrest occurs when a person is arrested, and their belongings on their person are inventoried contemporaneously with the arrest.

Here, J arrested D, and searched his person, thereby finding the drugs in his pocket. The issue here is was the search lawful. The prosecution could try arguing it was lawful because D was arrested.

The prosecution would prevail because the search was incident to an unlawful arrest.

**8TH AMENDMENT RIGHT:** provides against cruel and unusual punishment.

**SEARCH OF THE VEHICLE:** Police may search a car when they have consent, probable cause, plain view, a warrant, or an inventory search.

Here, J did not do an inventory search because he did not tow the car. J did not see any contraband in plain view. J did not have a warrant, and J was not inside the car when he searched the vehicle. (Gant) The prosecution could argue J searched for evidence of the underlying crime of possessing drugs, which may be successful (also Gant)

Here, D was given a bail amount because of a policy that makes all out of town arrestees post bail. The prosecution could argue it was not cruel because it was necessary to make sure D appeared in court, and it was policy. The defense could argue it was cruel and unusual, and therefore an 8th Amendment violation because it was grossly unnecessary.

Illegally obtained evidence is evidence obtained from a violation of a persons's constitutional rights.

Here, D was seized without PC or RS, illegally. The drugs found on his person were illegally obtained. The consent J got to search D's car was arguably coerced.

**FRUIT OF THE POISONOUS TREE** is evidence derived from other illegally obtained evidence. FOPT evidence may be admitted when it's from 1) independent source, 2) inevitable discovery, or 3) attenuation.

Here, the evidence obtained from D's pocket, and his car were derivatives (FOTP) from illegally obtained evidence. The prosecution could argue it was derived from an independent source (the chief's information), but would likely fail because it was not reasonably predictable criminal activity particular to this car and driver. The drugs were not derived from an inevitable discovery because nothing points to any other agency suspecting this particular individual, or investigating him, and attenuation is a weak argument here because

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there was no break in the chain between police misconduct and the seizure of evidence. The prosecution could argue attenuation for the drugs in the car because D gave consent to search, but that consent would not have occurred but for an illegal traffic enforcement stop. Further, the defense could argue duress, and that consent was not voluntary.

All evidence obtained from this illegal traffic stop was fruit of the poisonous tree, and the court will likely find each piece of evidence and tainted statements by D inadmissible.

**END OF EXAM**