

KERN COUNTY COLLEGE OF LAW

Final Examination

Spring 2021

**Criminal Procedure**

Professor C. Bunton

Instructions

1. This examination consists of three sections of equal value. There is a four (4) hour time limit to complete the exam.
2. There are three essay questions. Make sure that you read each essay question carefully before answering. Attempt to organize your answer before you start writing. You may print the essays to make notes and mark key words as you review each essay before starting to write.
3. The essay questions test your ability to apply the law to the facts. After stating the issue, provide a succinct statement of the relevant legal principles, followed by a detailed analysis of how these legal principles apply to the facts, and a conclusion.
4. There are multiple issues to address in the essay questions. Some issues may be fairly straightforward and do not require detailed analysis. Other issues may be more complicated; those issues merit more extended discussion.

I'm sorry but the Professor's answers are not available.

## QUESTION ONE

On February 5, 2021, at 3:30 pm an armed bank robbery was reported at the Wells Fargo branch on 23<sup>rd</sup> Street in Bakersfield, less than a block from the onramp to Highway 178. The report indicated the robber left the bank on a motorcycle, red in color, getting onto Highway 178 heading east. The Bakersfield Police Department (BPD) responded immediately, taking detailed descriptions of the robber from several witnesses. A similar colored motorcycle was seen leaving Highway 178 heading south on Oswell. Sighting of the motorcycle was lost within 5 minutes in the vicinity of Niles and Oswell. Officers were dispatched to the area to search for it. Approximately thirty minutes after the robbery, Officer Jones spotted a dark burgundy motorcycle in a carport at one of the apartments in the area. Officer Jones called for backup, then got out of his car and approached the motorcycle. He entered the carport area and felt the warm engine. As he walked back towards his car, Tom Owens came out of the apartment yelling at the officer, "What do you think you are doing, this is private property." Backup arrived. Officer Jones asked Owens if he had ridden the motorcycle that day. Owens, seeing the other police cars, reentered the apartment and tried to close the door.

Officer Jones put his foot in the door and pushed it open. He and two other officers entered the apartment. Owens was immediately handcuffed, and a pat down was done. Owens was told to identify himself, which he did. He was told to sit on the sofa. Officer Jones stayed with Owens while the other officers made a sweep of the apartment. No one else was present, but one of the officers found a handgun in the nightstand. Police dispatch informed Officer Jones that Owens was a convicted felon. Officer Jones took a picture of the motorcycle before leaving the premises. When the officer brought in the weapon from the bedroom, Owens said, "That's not mine. You are trying to set me up."

Owens was arrested and charged with being an ex-felon with a firearm and bank robbery. Two cell phones were seized from him at the time of the arrest. Owens was then mirandized and refused to say anything about the bank robbery. At one point he said, "Maybe I need a lawyer." When he was asked where he was that afternoon, he claimed he had been home the entire day. The interrogation lasted three hours. He refused to say anything else.

The day after the robbery, detectives showed two witnesses who had described the getaway vehicle, a picture of the motorcycle. Both positively identified it as the one used by the robber. Later that day, Owens was placed in a lineup with 5 other individuals. Four witnesses from the bank robbery viewed the lineup and two selected Owens as the robber. The other two were not sure. A search warrant was obtained for Owens' apartment. A bag containing money consistent with the money from the bank robbery was found in a locked cupboard in the carport area along with a loaded firearm, like the one described by the witnesses. Another firearm was found concealed on the motorcycle, along with some narcotics. Another search warrant was obtained for the two cell phones, allowing the police to look at the text history and numbers saved on them. One of the phones had numerous drug transactions in its text history.

Mr. Owens was arraigned on the gun charge and the bank robbery on February 9, 2021. An attorney was appointed to represent him.

Two weeks after his arraignment on the gun and bank robbery charges, Owens was brought to the police department from the jail and read his Miranda rights. He asked for his lawyer. The detectives did not terminate the interrogation but continued to ask questions until Owens said, "Okay I was stupid, I did it. Now leave me alone." The police reports given to the defense only showed two witnesses at the lineup and two different witnesses who identified the picture of the motorcycle. There is information in the discovered documents showing that the police had cell tower information placing one of the phones seized from Owens in the downtown area at the time of the robbery.

1. What issues should the defense raise as to pretrial and trial motions? Please designate, for extra credit, which would be trial issues. Please discuss each issue fully including supporting cases for your position.
2. How would the prosecutor respond to each issue the defense raised? Please support your argument with cases.
3. How is the court likely to rule on the various issues you discussed?

## QUESTION 2

Detective Thompson, of the Bakersfield Police Department Narcotics Division (BPD), had information from an informant that John Doe was selling methamphetamine from his apartment near West High School. The informant what Doe looked like, described the vehicle Doe drove, and the general vicinity of his apartment. He did not know the actual address but he described what the apartment looked like. The informant said he had purchased drugs from Doe on several occasions in the last month. The informant gave the detective Doe's cell number, which he said was used to arrange a purchase.

Detective Thompson and his team surveilled the area the informant described. After several days, the vehicle described by the informant was seen on New Stine Road in Bakersfield, purported near Doe's apartment location. Thompson ordered a marked police car to make a traffic stop of the vehicle. The vehicle was stopped and Doe was identified as the driver. The officer obtained Doe's address from his driver's license. A warning was given for failing to signal a lane change.

Based on that information, surveillance was conducted of Doe's residence. During late evening hours on three separate nights, there was a large volume of cars arriving at the residence, going into the house for a short period and then leaving. Detective Thompson tried to obtain a search warrant for the premises based on all the information detailed above. It was denied. Detective Thompson then went to Doe's residence and knocked on the door. Doe answered the door, and upon seeing the Detective, stepped outside and closed the door behind him. In the brief time that the door was open, Detective Thompson saw what appeared to him to be scales, a box of baggies and something white on the coffee table in the living room. Doe was immediately arrested and placed in the patrol car. Detective Thompson knocked on the door again. The door was answered by a woman. Permission was asked to enter the residence, which was granted. Detective Thompson saw what appeared to be methamphetamine on the coffee table along with items used for drug sales. He seized the items. Then other officers entered the apartment and searched the entire apartment finding a large sum of money and more drugs in the master bedroom. The woman was arrested. Both Doe and the woman were charged with possession of methamphetamine for sale.

1. What issues should the defense raise in this case. Please support your argument with cases.
2. How should the prosecution respond?
3. What is the likely outcome?

### QUESTION 3

Eddie is walking away from the courthouse on Truxtun Avenue in Bakersfield around 9 am on March 10, 2021. BPD Officer O'Brian sees him as he gets out of his car. O'Brian thinks Eddie may be under the influence of drugs but does not see any obvious signs of intoxication. Eddie was observed throwing something into the bushes near where he had been walking. O'Brian steps in Eddie's path and says, "I want to talk with you." Eddie tries to step around the officer but is blocked. Eddie responds in a mumbled voice, "I ain't talking with you. Nothing good comes from that." Eddie walks up on the grass and gets by Officer O'Brian. O'Brian quickly catches up, grabs Eddie's arm, and spins him around to face him. O'Brian says "What's wrong with you. I said I wanted to talk with you. Spread your legs and put your hands behind your head."

Eddie refuses and tries to pull away. Officer O'Brian trips Eddie who falls to the ground. Another BPD officer arrives to assist. Eddie is handcuffed. O'Brian demands identification from Eddie. Eddie refuses to give his name. After assisting him to stand, Officer O'Brian does a pat down search and feels an item he believes to be a baggie of narcotics. O'Brian reaches into the pocket and pulls out two small baggies containing what he believed to be rock cocaine. In another pocket, O'Brian finds a wallet that has an ID of an Eddie Rogers. While the assisting officer escorts Eddie to the police car, O'Brian walks back and finds a short, folded knife. The knife turned out to be a switchblade knife, which is illegal to possess. Eddie's name is run through police dispatch. He has an outstanding misdemeanor warrant. Eddie then says, "That's a lie. I just took care of that. The papers are in my wallet." O'Brian does see what appears to be court documents in the wallet but says "Take it up with the judge. You are going to jail."

Eddie is charged with delaying or obstructing an officer in the performance of his duties, resisting arrest, possession of narcotics and possession of an illegal knife.

1. What motions, if any, should the defense file? Please discuss with cases to support your position.
2. How should the prosecution respond?
3. What is the likely outcome as to each charge? Support your opinion.

1)

**People v. Owens**

**4th Amendment Search (all 4th amendment search issues are pretrial motions)**

A search is governmental intrusion into an area where a person has a reasonable expectation of privacy that society is willing to recognize.

**Warrant Requirement and Exceptions**

Any search by a government agent must be conducted with a warrant supported by probable cause, issued by a neutral magistrate, that describes the place to be searched and what the search is for. Without this it is unreasonable.

There are exceptions to the warrant requirement which include: (1) search incident to a lawful arrest; (2) automobile exception; (3) hot pursuit/exigent circumstances/other emergencies; (4) plain view doctrine; (5) consent; (6) Stop and frisk under Terry v. Ohio.

**Search of the Carport after spotting the motorcycle**

Curtilage determinations require 4 factors: (1) proximity to the home; (2) whether it is enclosed in the same area as the home, for example with a fence; (3) the way the area is used; (4) the steps the resident takes to protect the area from observation by other people.

Here, the police spotted a motorcycle similar to the one that was reported seen fleeing from the scene of the bank robbery. The officer went into the carport for the apartment. The carport does not seem to be too far from the apartment as Owens could see the officer leaving fairly quickly. From the facts it appears that the carport is open to the street so that anyone passing by can see into it, and likewise is not enclosed completely as a garage would be. Also from the facts there appear to be personal items within the carport and locked cupboards as well. Owens contends that the carport is part of the curtilage of his home by saying "this is private property." The proximity to the apartment and the personal items can be seen to make the carport as part of the curtilage of the

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apartment. However, this is unlikely to be a strong argument, since it is open to the public and the police saw the motorcycle from a place they had the legal right to be. Owens saying "this is private property" does not mean that the police are not allowed to enter the carport.

Most likely the court would find that the officer entering the carport to touch the motorcycle was not a search, and thus no need for a warrant.

### **Entry into the apartment**

Any entry into a residence must be supported by a warrant or through an exception to the warrant requirement.

Here, the officer stuck his foot in the door while Owens was attempting to close it. The officer pushed the door open and entered the apartment. There was no warrant obtained, and no exceptions to the warrant requirement applied. The court gives special protections and considerations to the residences of people.

Prosecution will argue that based on the totality of the circumstances, including finding the recently used motorcycle that matched the description from the robbery, that they had an exigent circumstance and were in hot pursuit of a criminal that had just committed a crime, since after seeing the police Owens might have tried to dispose of the evidence. This is not a strong argument since without more than the motorcycle matching the description there are no specific, articulable facts that would lead the police to think that there was evidence or contraband in Owens apartment.

The entry to the apartment is a search without a warrant and is unreasonable.

### **Seizure of Owens**

A seizure under the 4th amendment is when a reasonable person would feel that they are not allowed to leave or decline an officers requests, under the totality of the circumstances. An arrest in a public space must be supported by probable cause, but a warrant is not necessary. An arrest at a residence must be supported by a warrant. Probable Cause is a fair possibility that the police will find evidence of a crime or

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contraband in a place, or that a person can be reasonable suspected of committing a crime.

Here, the police handcuffed Owens and told him to sit on the sofa. In this situation it would appear that Owens was not able to leave if he chose to or to decline the officers requests. Therefore, he has been seized under the 4th amendment and his seizure is unreasonable due to there being no warrant.

Police will say that, like the entrance into the apartment, they were in hot pursuit and the arrest was valid without a warrant. Most likely this argument will not hold for the reasons stated above in the entry to the apartment.

### **Search of the Apartment**

A search incident to a lawful arrest is an exception to the warrant requirement. From *Chimel v. California*, the search must be within the "wingspan" of the person arrested where he might have weapons or could destroy evidence. Can be stretched to the room he is in as well. If the police suspect that there are accomplices present they may do a protective sweep, searching places that a person might be able to hide in.

Here, the police did a protective sweep of the home. The report of the robbery only mentioned one suspect, so a protective sweep for accomplices is not allowed, and there was no suspicion that there might be someone else in the residence. Likewise, the search of the nightstand was unlawful as Owens was on the couch and the nightstand was not within his reach and was in another room.

Prosecution will argue that an exigent circumstance allowed them to search, such as destruction of evidence, but since Owens was already detained and handcuffed, this will not be an excuse. The handgun will not be admissible.

### **Arrest of Owens**

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Here, once the gun was found and Owens was officially arrested, the search incident to arrest found two cell phones. Owens will contend that the arrest was unlawful, and as such the phones are inadmissible as evidence.

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The prosecution will cite *Strieff* which can still admit evidence due to an unlawful arrest if there is another valid arrest made and the search incident to that arrest.

The cell phones will most likely not be admitted as evidence.

### **Cell Tower Data**

*Carpenter* held that data on location from a cell phone is a reasonable expectation of privacy and requires a warrant, and the location data has to be restricted to a certain time period.

Here, Owens will claim that the police did lawfully obtain the cell phones, and thus could not obtain a valid warrant to get the tower data that proved one of the phones was in his possession during the robbery.

The prosecution will say that the warrant for the tower was independent from the search that found the phones so the data and location is admissible.

Most likely the tower data will not be admissible.

### **Exclusionary Rule**

Prohibits introduction of evidence gained through violation of someone's constitutional rights. Such evidence would be "fruit of the poisonous tree" and must be excluded.

There are 3 exceptions to the exclusionary rule: (1) Independent source exception which allows evidence initially discovered through an unlawful search to be obtained through later independent activities untainted by the initial illegality (*Murray*); (2) Inevitable discovery, which if the police prove they would have eventually found the evidence without a violation of the 4th amendment the exclusionary rule doesn't apply (*Nix v. Williams*); and (3) Attenuation of the Taint, if there is an intervening cause that breaks the causal chain between unlawful police conduct and the evidence acquired. (*Brown v. Illinois*)

All of the subsequent evidence found and used to charge Owens with a crime was the fruit of the initial unlawful search of his apartment and seizure of Owens as a result of the unlawful search. Therefore, all the evidence from the apartment (handgun), carport

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(bag of money, firearm), and motorcycle (firearm and narcotics) was obtained unlawfully as fruit of the poisonous tree.

The prosecution will argue that the identification of the motorcycle and Owens by the witnesses after the fact was an independent source that then allowed them to obtain a search warrant untainted by the initial unlawful search.

Most likely, the taint of the initial unlawful search and seizure will have been attenuated by the independent source doctrine, allowing the evidence later found with a lawful search warrant to be admitted.

## **Fifth Amendment/Sixth Amendment**

### **Interrogation/Miranda Rights**

*Miranda v. Arizona* gives a fifth amendment right against self-incrimination in custodial interrogations. The warnings are: (1) right to remain silent; (2) anything said can be used against him in court; (3) he has the right to an attorney; and (4) if he cannot afford an attorney one will be appointed to him. The rights to remain silent and to an attorney must be unequivocally invoked and without a waiver.

Here, Owens was properly mirandized prior to his interrogation. He did not speak and said nothing about the burglary. He said that he "maybe needed a lawyer" but was not given one. Anything he said after this he will claim was in violation of his right to have an attorney.

The prosecution will say that Owens did not invoke either his right to remain silent nor his right to an attorney. The right to remain silent must be very clearly invoked, simply remaining silent will not suffice. Likewise the right to an attorney must be unequivocal and firm. The prosecution will say that "maybe i need a lawyer" is not a firm ask for an attorney.

The court will likely find that Owens did not invoke his rights to either an attorney or to remain silent.

### **Lineup (pretrial motion)**

A lineup after indictment is a critical stage of the proceedings and the accused has the right to counsel at the lineup. A lineup prior to being charged does not require an attorney be present.

Here, Owens had been arrested for the gun and burglary charges. He had the right to have an attorney present when the police did the lineup he was in. This is critical as his attorney would be able to tell the jury the way the lineup was conducted and the results. This is important in this case because, while there were 4 witnesses that viewed the lineup, the police report that the attorney saw later only put 2 there.

The prosecution will argue that the lineup was before he was arraigned so it was not a critical stage of the proceedings and there were no unnecessarily suggestive procedures, there was no need for Owens to have an attorney present.

Most likely the lineup identification of Owens will be inadmissible in court.

**Right to Counsel during questioning (Trial motion for the confession)**

The 6th amendment right to counsel attaches once adversarial proceedings have started. The accused cannot be questioned without counsel present unless they have waived their right to an attorney.

Here, Owens was formally arraigned on his charges and had an attorney appointed to him. Once the police brought him in for questioning, after mirandizing him, he had the right to have an attorney present, which he asked for as well. The police kept asking him questions until he confessed. This confession is inadmissible because he was denied his 5th and 6th amendment right to an attorney.

The prosecution will argue that he voluntarily gave a statement but this is not a defense at all since he was interrogated by police, had been charged and arraigned and was brought from jail.

Owens confession is inadmissible.

**END OF EXAM**

2)

**Informant**

Officers were alerted by an informant that John Does was selling meth from his apartment. The informant knew a description of Doe, his vehicle and a general location of his residence, and that he purchased drugs from Doe. The informant provided a cellphone that was allegedly used for the purchase/sale of drugs. Here, officers went to surveil the location of where it was assumed that Doe was conducting illegal activities, yet the officers failed to validate the information that was provided by the informant. The law requires that the information from an informant be reliable. The facts only show that an individual was able to provide alleged activity by Doe, yet there is no valid support to show that the tip was valid. The officers watched Doe's apartment for days and nights and saw various cars going in and out of the residence. Yet, this does not support that the the defendant was involved in the presumed activity of selling drugs. It is reasonable to conclude that the people seeing near the apartment were for other tenants that occupied the area. The tip that was provided must be creditable, and officers are required to due their due diligence to investigate the creditability and reliability of the tip. Here, officers did not further investigate the actual location of the alleged house selling drugs, nor did officers call the cellphone or run the cellphone to get additional details. Given the advancement of technology it is reasonable that the officers would have been able to verify the address by running a reverse phone search using the number that the informant provided. However, officers did not do further investigation to verify that the information that they were provided was valid/true. If officers went off of every "tip" they received we would have a wide arrange of citizens who would have their rights violated at the hands of a guess/hunch of criminal activity. The law is clear, an informant or tip must be credible and reliable. The tip that the officers received was not carefully verified or researched and officers immediately investigated based on the word of an individual that they did not verify credibility.

**Prosecution Argument:**

In Draper v. Us the court found that an informant that provides specific details which lends creditability to the informant is reliable information. Here, officers were given multiple important and detailed information that led them to the residence of Doe. They were

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provided with all except the house number. The informant provided detailed information that a reasonable person would conclude is reliable. The fact that the informant did not give an exact house address does not negate the fact that the informant's information was reliable. The officers went to the residence of Doe, based on the reliable information from a credible source. Therefore, the court should deem that the informant was credible and the tip that was provided is a reliable source of information.

**Court:**

The court will likely conclude that the informant's detailed information regarding the defendant, their location, contact information and illegal activity provides sufficient support to show that the informant is reliable. The officers acted upon a credible tip by a reliable witness that was able to identify crucial details of Doe's alleged illegal activities.

**Traffic Stop**

Doe was stopped after Detective Thompson and his team conducted surveillance of Doe. Doe was cited for failure to signal a lane change, however the basis for his stop was because they presumed he was involved in illegal activity. Here, Doe was stopped by officers in a marked police car and obtained his address from his driver's license. Officers were not able to obtain this information from the informant, because they did not have knowledge of Doe's address. Doe was stopped for a traffic violation that was unsupported by any support of reasonable suspicion. Officers conducted the stop in an effort to secure information that was unknown to them, and in order to obtain it they conducted a traffic stop with our client. Based upon the information provided, there was no reason to stop Doe. The facts do not show that the officers were conducting a stop that was incident to their suspicion that Doe was involved in a crime. Doe was temporarily detained because officers were unable to confirm where he lived, and they obtained this through a traffic stop. A reasonable person in his position would not feel free to leave or feel free not to provide their contact information to police. Doe provided his contact information for a traffic stop that was disguised as a means to gather evidence to support his involvement in a crime.

**Prosecution Arguments:**

Officers has reasonable suspicion to believe that Doe was involved in illegal activity based upon the tip from a reliable source, an informant who was found to be credible. Doe was

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identified as the driver, and as a routine traffic stop he was asked for his identification. Officers were able to secure his contact information which resulted from a valid traffic stop. Officers provided a warning to Doe for failing to lane change. Doe willingly provided his contact information to officers. Officers can stop a vehicle if there is probable cause to support that a party has committed a crime. Here, there was sufficient support to show that there was a possibility that Doe was the person selling drugs out of his residence. Therefore, the traffic stop was valid and did not violate any of Doe's rights.

**Court:**

The court will likely conclude that the stop was valid and did not violate any 4th amendment rights of Doe. Unless there is additional evidence to conclude otherwise, it appears that officers were conducting a routine stop. The officers gave a traffic warning for failing to signal a lane change which would support that they conducted a stop for a valid basis.

**Warrant / Doe Stepped Outside of Residence/ Plain View**

Officers attempted to secure a search warrant of Doe's residence and was denied. They went to Doe's residence and knocked on the door and he stepped outside and closed the door behind him. The officers did not have a warrant to enter into Doe's residence, so the officer went to his home in an effort to support his assumption that Doe was involved in illegal activity. The moment that Doe shut the door and stepped outside of the residence, a reasonable person would conclude that he was not allowing entrance into his home. The officer alleges during the brief time the door was open he viewed drugs. The items the officer saw were within the privacy of Doe's residence. The officers were in a location that they were not lawfully allowed to be in, they were denied a search warrant but went to the residence despite the denial. Here, the facts support that officers went to the residence in hopes to get Doe to allow them in the residence. Doe made it clear by shutting his door that he was not allowing officers inside the home. Doe was arrested without sufficient support to show that he was involved in a criminal act. Therefore, the officers showing up at Doe's home shows that they were attempting to bypass the denial they received on a warrant.

**Prosecution Arguments:**

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The warrant that officers were denied was for entry into the residence. It did not prevent the officers from conducting a lawful investigation of a crime that they suspected Doe was involved in. The officers remained within the curtilage of the home and never violated his 4th amendment rights. The officers did not force their way into his home, nor did they enter without permission. The officers did not ask Doe to come outside, he voluntarily stepped out and in the process officers were able to view drugs in plain view. The moment that the officer was able to see drugs in his view using his senses, it would fall under the plain view doctrine. The drugs that the officer saw on the table would be admissible because it was viewed legally and did not violate or override the lack of a warrant. The officer was able to arrest Doe when he stepped outside of the residence based upon seeing the drugs in plain view, he had reasonable suspicion to conclude that Doe was involved in a crime and therefore it was valid to arrest and place him in a patrol car.

**Court:**

The court will likely conclude that the officer did not violate the denial of the warrant or the warrant requirement. The officer remained out of the home and Doe voluntarily exited out of the residence. And while exiting the officer was able to see illegal drugs within the home in plain view. The evidence within the residence in plain view and supported the officers suspicion that Doe was doing illegal activity.

**Permission To Enter By Female Occupant/ Seizure of Drugs**

Officers went back to the residence and asked permission to enter a residence from a woman within the home. The officers did not verify if the woman had a possessory right to the residence or had the ability to give permission/access to the residence. The officers were denied a search warrant and found a unlaw means of entry into Doe's home, by trying to get one of the occupants to give them access. After permission was provided the officers saw what appeared to be meth on the table and drug sales supplies. Officers then seized these items without a warrant. The officers overstepped and exceeded their authority to enter into ones residence and take their personal property. The officers did not have a legal means of gaining access into the home unless they had a warrant or were given permission by Doe. Officers were unable to satisfy the required elements to lawfully enter the residence

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and lawfully seize the items within the home. All items that were seized as a result of the unlawful search and seizure should be suppressed and inadmissible at trial.

**Prosecution Arguments:**

Officers were given access to the residence by a party whom a reasonable person would believe had the ability to grant access. The officers were able to see items in plain view that were illegal and in result they arrested the female companion in the residence and seized the illegal items. The evidence that was secured was based upon the approval from the female to enter the residence and all items were within the plain view of the officer. The officers did not have to go through any items or search through Does belongings. All of the illegal items were in plain view for the officers to see and conclude that Doe and the female were involved in illegal activity. Therefore, the entry into the residence was valid and fully supported with permission by the occupant and the search was valid and supported by the plain view doctrine.

**Court:**

The court will likely conclude that the entry into the residence did not violate the 4th amendment unless it can be shown that officers gained entry through an illegal means such as force or intimidation. Here, officers were invited inside the residence where they were able to view illegal items in plain view. However, the items that were in plain view the officers were required to obtain a warrant before moving or relocating them. The seizure of the drugs and drugs supplies constituted an illegal seizure due to the lack of a warrant. The officers taking these items were illegal and a direct violation of Doe's & the females constitutional rights.

**END OF EXAM**



3)

The defense should file a motion to suppress the initial encounter, the baggie of narcotics, and the folded knife.

Here, we are dealing with 4th amendment seizure of a person which gives people the rights to be free from unreasonable searches and seizures of personal property by the government. The facts state that BPD Officer O'Brian (herein OO) is a police officer. Thus we have a government agent.

The defense should file a suppression motion suppress the baggies on Eddie.

There are 3 types of encounters: Consensual, temporary stops (must not be prolonged), and custodial arrest.

**Consensual stops:** No RS or PC requires just the consent of the individual. The individual can terminate the encounter at any time.

Here the defense can argue that the first interrogation between Eddie and OO was not consensual. The facts state that OO told Eddie he wanted to talk to him to which Eddie replied "I ain't talking with you". This shows that Eddie did not give consent. Moreover, when Eddie stepped around OO he was blocked.

The prosecution will argue that although Eddie did not give consent, OO had developed RS because he observed Eddie throwing something into the bushes.

The prosecution will further argue that now that OO had RS had been established, he could conduct a temporary stop (Terry Stop).

- Eddie did not submit to the command and thus was not under seizure.
- *California v. Hodari D (1991)*: A Fourth Amendment seizure occurs where the police exercise physical force over a subject or where a subject submits to an officer's show of authority.

**Investigatory detentions (Terry Stop):** Police have the authority to briefly detain a person for investigative purposes even if they lack PC to arrest. To make such a stop, police must have reasonable suspicion (RS) by articulable facts of criminal activity or involvement in a

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completed crime. If the police have RS to believe that the detainee is armed and dangerous, they may also conduct a frisk (a limited search no reaching-plain touch) to ensure that the detainee has no weapons (Terry v. Ohio 1968).

Here, the defense will argue that OO did not have RS that Eddie was armed and dangerous. The defense can argue that the police said that he had observed Eddie throwing something away. Arguably, he could have thrown the "weapon" away and thus Eddie could not have been armed.

The prosecution will attempt to argue that they did have RS from their observations of Eddie throwing something into the bushes. Since OO has RS he could pat down Eddie and OO was able to reach into the pockets because he thought there was illegal contraband.

**Development of probable cause:** if during an investigatory detention, the officer develops PC, detention become an arrest, and the officer can proceed on that basis. The officer can conduct a full search incident to a lawful arrest.

It is likely that a court would find that OO has RS to conduct a temporary detention and, based on this, the baggies would not be suppressed because as a result OO developed PC. Once OO has PC the warrant exception applies. More specifically the search incident to lawful arrest. OO could search anything that was in Eddie's wingspan including his person (*Chimel v. California*)

The defense is likely to get this suppressed and could likely succeed, however this evidence will still be admissible against Eddie based on the inevitable discovery which is one of the exceptions to the **Doctrine of the fruit of the poisonous tree**. This doctrine requires that illegally obtained evidence be excluded.

**Inevitable discovery:** If the prosecution can show that the police would have discovered the evidence whether or not they had acted unconstitutionally, the evidence will be admissible (*Nix v. Willimans*)

Here, the prosecution will likely argue that baggies that seemed to contain narcotics would have been found at the time of booking thus making their discovery inevitable.

**Arrest:** an arrest must be based on PC. PC is present, when at the time of arrest, the officer has within her knowledge reasonably trustworthy facts and circumstances sufficient to warrant a reasonably prudent person to believe that the suspect has committed or is committing a crime for which arrest is authorized by law.

Here, the defense will argue that Eddie was under custodial arrest and his Miranda rights were violated because he was not given warnings. The defense will use ***United States v. Mendenhall*** to show that a Fourth Amendment "seizure" occurs when a reasonable person would believe that he is not free to leave police custody which was Eddie's case. He was blocked from leaving and was frisked and was later placed in handcuffs. The defense is also likely to argue that Miranda warnings must be given when there has been such a restriction on a person's freedom as to render him "in custody." ***Oregon v. Mathiason***.

### **Outstanding warrant**

The facts state that OO checked the records and found that there was an outstanding misdemeanor warrant for Eddie. The defense will argue that Eddie had proof on his person that he was taken care of the outstanding warrant and that OO did not believe him. However, **Reasonable Mistakes allowed under the 4th amendment:** A reasonable mistake of law also might result in the discovery of evidence that will not be suppressed (*Hein v. North Carolina*)

The Fourth Amendment does not prohibit the warrantless search and seizure of garbage left for collection outside the curtilage of a home (*California v. Greenwood*)

### **Eddie's failure to identify himself**

**Hibel v. Sixth Judicial District of Nevada:** An arrest for failure to provide identification does not violate the Fourth Amendment so long as the request was reasonably related to the circumstances justifying the stop.

**Eddie did not have to provide ID he just had to state his name that is all that is required under Hibbel.**

Police generally need to obtain a warrant before arresting a person in a **public place**, even if they have time to get a warrant. [United States v. Watson, 423 U.S. 411 (1976)]

It is likely that the initial stop, the baggie

**END OF EXAM**