

Monterey College of Law
Criminal Law & Procedure
Final Examination
SPRING 2023
Professor S. Haas

General Instructions:

Answer All Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

Criminal Law & Procedure
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Question 1

Police Officer Parker was on Facebook Marketplace, an online forum to buy and sell items, while off duty at his home. While browsing he noticed an account user named “John Discount” was selling a lot of Target brand items at greatly discounted prices. Parker was a seasoned officer and knew that many criminals steal items from stores and then sell the items online at discounted prices. Working on his hunch, Parker messaged “John Discount” with an offer to buy all his merchandise. John quickly accepted the offer and Parker requested they meet up to exchange the payment for the goods.

When Parker showed up at John’s home he was wearing his police uniform. He knocked on the door and when John answered the door Parker told him he was there to buy the discounted items. John walked Parker outside his house to a shed in his backyard. The backyard gate was unlocked but the shed had a padlock. While John was unlocking the padlock, Parker looked around the backyard.

In the backyard he noticed large containers of Drano and Lighter Fluid. Suspecting a meth lab in the house, Parker quickly pretended to receive an urgent text message and told John he had to leave before John could unlock the shed.

Parker went and immediately obtained a warrant to search John’s home. The warrant specifically authorized a search of the home for purposes of confirming if a meth lab existed. John was not home to know there was a warrant to search his home.

When Parker searched John’s home he found a meth lab set up inside as well as a large quantity of meth. Parker continued his search into the backyard and remembered the shed and the suspected stolen goods.

He broke the lock on the shed and looked inside. Inside he found all of the Target brand items. Parker confiscated the items to further investigate if they were stolen.

John arrived at his house to find Parker in his house securing the meth lab. At that time, Parker read John his Miranda rights and informed him he was under arrest for possession and manufacturing of methamphetamine.

While in the police car being driven to the police station for booking, John told Parker, “You probably think you are so smart for messaging me on Facebook Marketplace. If I would have known you were a cop when you messaged me I would have never let you come to my house. You tricked me into letting you come on my property. And know you got me for the stuff I stole from Target and the meth! When I get out of jail I am going to make you pay!”

After Parker informed the DA of John’s confession to the stolen items from the police car ride, John was also charged with possession of stolen property as well as terrorist threats.

John retains an attorney to defend him on the charges of possession of stolen property, possession of methamphetamine, manufacturing of methamphetamine and terrorist threats.

John’s attorney filed a Motion to Suppress the evidence obtained by Parker during the search as well as the statements made in the police car.

How will the Judge rule on the Motion to Suppress? Discuss.

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Question 2

Officer Dante was patrolling a local park when he saw Jim who appeared to be threatening a person with a knife. Officer Dante was not able to clearly see the knife and was not sure that Jim was holding a knife. Officer Dante started to walk up to Jim when he ran away, jumped into his car, and sped out of the parking lot. Officer Dante quickly ran to his patrol vehicle and followed Jim.

Officer Dante pulled Jim over, had him step out of the vehicle and searched his person. Then, while Jim was sitting handcuffed on the sidewalk behind his car, Officer Dante searched Jim's entire vehicle including the trunk and glove compartment. In the trunk, Officer Dante found several pounds of cocaine, scales, plastic baggies, and other drug sale paraphernalia. Officer Dante did not find a knife anywhere in the vehicle. Officer Dante asked if the drug paraphernalia belonged to Jim and he said that it was his.

Officer Dante arrested Jim and read him his Miranda Rights.

At the police station, Officer Dante asked Jim about the cocaine again. Jim sat quietly for an hour, and Officer Dante asked him about whether Jim knew that "cocaine overdose is a leading cause of death." Jim responded with, "its not my fault how someone uses it, everyone's gotta make a living."

Officer Dante continued to question Jim about the cocaine, when Jim finally said, "I am not saying anything until my attorney gets here." Officer Dante told Jim that the attorney was on her way and that he only had a couple more questions and began asking about his accomplices. Jim finally gave the name of Adam, an accomplice that led to Adam's arrest.

Jim filed the following motions: 1. Suppressing the cocaine as evidence; 2. suppressing his confession as to ownership and sale paraphernalia.

His accomplice filed Motion to suppress evidence of Jim's confession that led to his arrest.

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

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Question 3

Officer Mason was patrolling at Union Square in San Francisco, and noticed Dan, well-known for his criminal background including drugs, burglaries, and failures to appear. Officer Mason called dispatch to run a warrant check, which came back with a current warrant for failure to appear for a burglary charge.

Officer Mason arrested Dan for the warrant leading to Dan getting arraigned next day for the burglary charge. While Dan was awaiting trial, Officer Mason called Dan to the interview room, mirandized him, and questioned him about the recent kidnapping and murder of a two-year old girl.

Dan said, he has nothing to say, and left the interview room. Officer Mason terminated the questioning immediately. Officer Mason immediately set up an informant in Dan's cell to question Dan about the kidnapping and murder. The informant told Dan that "he was in hot water as no one likes a baby killer and he can't protect him until he knows the truth."

Dan did not make any incriminating statements to the informant. After further investigation, Officer Mason obtained statement of the two-year old's neighbor who said she witnessed the kidnapping. She said, on 11/11/11 at 2:00 p.m. she was doing her regular walks and saw the defendant carrying the child out of the house, she stopped and asked the defendant if the child was okay, and spoke with him for approximately five minutes while standing approximately three feet from him. Officer Mason called her to the station and showed her Dan's booking photo and she said, "that's the guy, I'll never forget that face."

Discuss all constitutional violations and whether evidence would be excluded.

CrimLaw&Proc - OUTLINE

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Question 1 Answer Outline:

4th Amendment

1. Entry into John's home for stolen items.
 - a. Katz – Search because of physical intrusion into the back yard?
 - i. Open fields exception as to backyard unlocked.
 - ii. Shed – padlocked – REP – based on hunch corroborated by further investigation
 - iii. Consent – knew Parker was officer as he was wearing uniform.
2. Meth lab
 - a. Katz - Search of home
 - i. Warrant based on PC based on officer's observation of drano and lighter fluid.
 1. PC - Plain view – existence of drano and lighter fluid is not in and of itself criminal, but seasoned officer coupled with officer's knowledge of stolen items.
 2. Warrant – places to be searched/things to be seized.
 - i. Execution – Search of shed for stolen items, but warrant stated any items related to meth lab, which could be found in the shed as well. Officer's subjective intent – irrelevant.
 - ii. Seizure of Meth – Valid execution of warrant for meth and related items.
 - iii. Seizure of stolen items in the shed – Objective standard.
 3. Statements:
 - i. Miranda – Custody, but no interrogation – John made gratuitous statements.

Question 2 Answer Outline

1. Seizure
 - a. 4th amendment - Mendenhall
 - i. Reasonable suspicion for traffic stop – Witnessed possible threatening with knife.
 - ii. Jim ran as soon as he started to Officer Dante started walking up to Jim.
 - iii. Hot pursuit exception
 - b. Search of person
 - i. Officer Dante suspected Jim had knife
 - ii. Officer safety – Terry stop
 - c. Search of vehicle
 - i. Automobile exception
 1. Evidence of threat with a knife in the car
 2. Search incident to arrest – wingspan – Arizona vs. Gant
 - d. Statements – fifth amendment
 - i. Statement regarding ownership of cocaine – voluntary?
 - ii. Statement regarding ownership of cocaine – prior to Miranda warnings.
 - e. Statements at the jailhouse
 - i. Invoking the Right to remain silent – Sitting quietly is not considered invoking the right.
 - ii. Waiver of right to remain silent – Jim blurted out on his own after the moral comment by Officer Dante.
 - iii. Invoking the right to counsel – Unequivocal, not scrupulously honored and Officer Dante continued questioning.
 - f. Statement leading to Adam's arrest
 - i. Fruit of the poisonous tree – violation of sixth amendment right of Jim. Adam does not have standing.

Outline for Question 3

Arrest for burglary – Sixth Amendment right attaches

Questioning regarding kidnapping/murder charge – Different offense- Miranda (Custody plus interrogation)

Invoked right to remain silent – I have nothing to say and leaving of room.

Scrupulously honored the invocation – terminated questioning, but immediately set up an informant. Jail house informants are okay since no inherent pressures of custodial interrogation.

Voluntariness of statement – threat of force.

Sixth amendment – offense specific, arrest for warrant, ID for murder and kidnapping

ID procedure: Suggestive, but Biggers factors would allow the evidence to go to Jury.

Criminal Procedure Question #1

~~Both motions will likely be denied:
the motion to suppress the physical
evidence as well as the statements.~~

4th Amendment protects against unreasonable searches and seizures.

Katz: A search occurs when an individual manifests their expectation of privacy and society recognizes that expectation as reasonable.

CONSENT

Upon Parker's initial entry into the courtyard around the suspect's home, Parker only observed those areas that the suspect freely gave him access to being reasonably aware based on Parker's uniform that he was law enforcement.

During this initial entry the suspect never manifested an expectation of privacy and freely gave the officer access. Regardless of why the suspect thought Parker was there the officer's actions during the initial

encounter do not constitute a search.

Plain view exception: Even if the officer's actions could be described as a search under Katz the incriminating evidence (the drano and lighter fluid) that formed the probable cause for the warrant would be admissible under the plain view exception since the officer was in a place the suspect freely gave him access to.

Consent: John consented to the officer's presence inside the home by allowing him in even though he was in a full police uniform.

Connect facts to law. Drano + lighter fluid - PC?

~~Following~~ Following the acquisition of the warrant Parker did not need John's permission to search the home, so John's absence would only affect the validity of the search based on the specificity of the manner of search dictated by the warrant.

suspect
General police do not need the person to be present in order to execute a search warrant.

~~Even~~ The warrant explicitly stated that the search of the home was to determine the presence of a meth lab inside the home. and John, by locking the shed in the backyard containing the stolen merchandise, manifested his expectation of privacy. This might have revealed the evidence of the stolen merchandise ~~front~~ of the porcessess tree and inadmissible under the exclusionary rule.

Perfect
Good job

Except that, regardless of the language in the ~~warrant~~ warrant, the shed falls within the curtange of the home and is subject to search. The shed qualifies as part of the home.

Probable cause for the warrant was based on the officer's training and experience, and ~~also~~ absent any differences with warrant on its face, any discrepancies in the execution of it are cured by the officer's probable cause to believe

in the presence of criminal activity regarding the shield.

5th Amendment protects ~~and~~ an individual's right against ~~unreasonable~~ self incrimination. ✓

Very
Good
Organization

Voluntariness: Statements of self incrimination must be made free from coercion or police misconduct. ✓

In the present matter, John's incriminating statements on the back of the police car were spontaneous statements that did not flow from ~~the~~ any attempt by law enforcement to elicit an incriminating statement. ✓

Miranda: John Miranda requires officers to advise detainees of their rights against self incrimination and right counsel during custodial interrogations.

Here, John was properly advised of his miranda rights when he was placed under arrest - PD CUSTODY Interrogation.

Both the motion to suppress the memorandum statements and the motion regarding the physical evidence (both of the drug changes and the stolen property) will likely be denied by the court.

Good job, ^{Seems} ~~like~~ like you ran out of time w/ miranda analysis.

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2)

4th Amendment

The right of the people to be free in their persons, homes, effects, and writings from unreasonable searches and seizures by the government.

Search and Seizure

A search is an intrusion upon an individual's reasonable expectation of privacy. An individual's expectation of privacy is determined by the application of the *Katz* analysis, two-prong test. Whether the individual demonstrated a subjective expectation of privacy and whether society would objectively recognized that demonstration as a valid expectation of privacy. ✓ Good job

Here, we have a search being conducted by Dante of Jim's person and vehicle. All individuals have the right to be free from unreasonable searches and seizures for anything pertaining to their self and their belongings. Despite having a lower expectation of privacy for an automobile, a search warrant is required unless something makes the search reasonable as made arguable by the officer. Dante had valid reasons for stopping Jim, based on probable cause when Jim evaded him. The stopping of Jim's vehicle was legal.

Terry Stop

An officer may conduct an investigatory stop based on experience or knowledge if they have a reasonable suspicion that a crime is being committed. The officer will conduct their investigation and either confirm or dispel their suspicions. ✓

When Dante first observed Jim, he had a reasonable suspicion that Jim was in possession of a knife and was in the process of threatening someone. Although, Dante did not know for a fact whether Jim has holding a knife, Dante approached in an effort to

confirm his suspicion. At that point in time, Dante would have legally been able to seize Jim and conduct a stop and frisk, for his own safety, in the attempt to confirm or dispel his suspicion. If Jim was in fact holding a knife and Dante was performing a stop and frisk based on reasonable suspicion, then the seizing of the knife would have been permitted. However, Dante never got the chance to perform his investigation because upon seeing Dante approaching, Jim evaded, confirming to Dante his suspicion that some sort of criminal activity was in fact occurring. *Good*

Probable Cause

Probable cause is based on the totality of the circumstances as well as an objective standard in which an officer would reasonable believe that a crime has been committed, is being committed, or will be committed. Upon having probable cause, an officer may arrest an individual. *Perfect Rule Statement*

Dante had his suspicions confirmed when Jim evaded him. Upon evading the officer, Dante now had probable cause to reasonably believe that based on the circumstances, a crime is in the process of being committed. At this point in time, Dante had valid reason to stop Jim and search his person for his own safety and ultimately arrest him for evasion. *Evading is not determinative factor,*

Warrant Requirement

In order to conduct a lawful search, a valid and effective warrant is required. A valid and not defective on its face warrant contains the specificity of what is to be searched and what is to be seized, as well as information pertaining to the warrant's execution. A valid warrant also requires support by an affidavit of probable cause and to be signed off by a neutral magistrate. *but considering the circumstances of incident @ the park.*

In order to conduct a legal search, an officer must have a valid warrant or reason to conduct a search without a warrant. Here, Dante had valid reason to search Jim upon seizing him, for his safety. *✓*

Excuses to Warrant Requirement/Reasonable Search

If a search is conducted and an officer has an objective, reasonable belief to make their search valid, then an exception may apply that would make the search reasonable without a warrant. ✓

Very good job!

Search Incident to Arrest

Officers may conduct a search of the area within the immediate wingspan, or reach, of the individual after they had been arrested.

Upon having arrested Jim and having him in handcuffs besides the car, Dante could argue that he could conduct a search of the vehicle's interior as it was well within the wing span and reach of Jim at the time of arrest in order to prevent any hazards to Dante's safety. However, the search of the trunk would most likely not be acceptable as Jim being handcuffed would not have readily access to the trunk. The glove compartment, on the other hand, may be a valid search as it relates to a search incident to arrest. ✓

Automobile Exception

If an officer has probable cause to believe that the evidence for the arrest could be located in the vehicle, then they may legally conduct a search of the vehicle in search of the evidence without needing a warrant.

This excuse for a warrant requirement is likely to fail because the reason for the arresting of Jim was for the evasion of the officer and not for any reason that would have given Dante probable cause to believe that evidence that relates to the arrest could be found in the vehicle. The search of the trunk may not have been legal and the evidence obtained may be fruit of the poisonous tree. *What about knife?*

Evidence Obtained from Administrative Searches - Inventory Search

An inventory search is done for the sole reason to document all belongings and objects in a vehicle to prevent any claims of stolen property or damaged property, and also for the reason to search for anything that could pose a threat to the officers.

An inventory search of the vehicle could have inevitably made the discovery of the drugs and drug paraphernalia possible when officers would have conducted a deep and thorough search of the vehicle in their effort to search for hazards and document personal property.

Exclusionary Rule

The purpose of the exclusionary rule is to deter deliberate, reckless, or grossly negligent police conduct by taking into consideration a cost and benefit analysis as it applies to society and illegal searches and seizures. The cost of deterring bad police work is that often a guilty individual will be able to walk free after seizing of evidence illegally, however, the benefit is that future rights of individuals will not be infringed upon by bad police work.

✓ Perfect

Defense counsel would most likely argue that the seizing of the evidence that was found in the trunk would be inadmissible due to the officer not having any warrant to search the trunk nor any reason that would make the search reasonable. It would be argued by them that the seizing of the cocaine and other related paraphernalia is inadmissible as its discovery went beyond Dante's power or reach.

Exception to Exclusionary Rule

There are certain exceptions to the exclusionary rule which would make the evidence obtained lawful. Those are inevitable discovery, independent source, and the breaking of the chain of the tainted evidence. It is likely to be argued that the discovery of the drugs and paraphernalia would have been inevitably discovered due to an inventory search of the vehicle after it would have been taken into an impound lot and thoroughly searched.

Inventory Search

See supra

5th Amendment

The right of the people ~~to~~ not self-incriminate themselves nor be witnesses against themselves. ✓

Voluntariness

Testimony that is voluntarily made is credible and reliable, as it would not have been obtained by coercion. We take into consideration the totality of the circumstances, such as physical force being used, threats of force, deprivation of basic necessities, a person's education level, mental condition, or deception that may have been used against them.

It may be argued that the ~~first~~ statement made by Jim was voluntary, after being asked if the drug paraphernalia belonged to him and Jim confirmed that they did. This statement is most likely not going to be admissible because at that point in time, Dante had probable cause to arrest Jim and upon being in custody and being interrogated, Miranda applies.

However, statements made later on at the police station when Dante asked Jim whether he knew that cocaine overdose is a leading cause of death, Jim responded with his involvement with the sale of drugs in order to "make a living." It will be argued that this was in direct violation of Jim's fifth amendment rights, however, at this point in time, Jim never invoked his right to remain silent and only sat in silence. Dante could proceed with questions as much as he liked. Ultimately, the statement made by Jim about his involvement with the sale of drugs, was made voluntarily and with free will because he waived his 5th amendment rights after he was Mirandized.

Miranda

Good, but I'd recommend keeping Miranda & Wong Sun Analysis separate.

Miranda warnings need to be provided to suspects upon a custodial interrogation. The purpose of the Miranda warnings is to safeguard an individual's fifth amendment rights against self-incrimination. It is understood that an individual, under a custodial and interrogative setting, would either forget their rights or succumb to pressures and make an incriminating and damaging statement against themselves.

After being taken into custody, Jim was read his Miranda rights by Dante and taken to the police station. Upon arriving to the police station, Jim was questioned by Dante about the drugs and drug paraphernalia, in which Jim responded with an incriminating response. Jim had not expressly and unambiguously invoked his fifth amendment rights. His sitting in silence was not a valid invoking of his rights. After the questioning continued, Jim invoked his rights when he requested the presence of an attorney and that he would not say anything else until his requested counsel arrived. Now, there was a valid invoking of fifth amendment rights and all questioning was to cease until the arrival of Jim's attorney or if Jim initiated conversation. However, Dante would violate Jim's rights against self-incrimination when he proceeded to ask more questions concerning Jim's accomplice. Jim provided the name of Adam, his accomplice, which resulted in Adam's arrest. The testimony received from Jim concerning his accomplice, Adam, will not be admitted because he had already invoked his rights and was still subjected to further questioning despite wanting his attorney present. *Good job.*

Physical Evidence Obtained from a Fifth Amendment Violation

Jim's fifth amendment rights were violated when he was subjected to further questioning after having had invoked his right to remain silent. However, any physical evidence obtained from a fifth amendment violation may still be admitted for use at trial, but the incriminating statements made, would not be admissible. Adam, as physical evidence, would be used against Jim at trial for involvement with drugs and drug paraphernalia. Any of Jim's testimony regarding Adam, would not be permitted for use.

Jim's Motion to Suppress Cocaine as Evidence

Jim's motion to suppress the cocaine would most likely fail because the exclusionary rule's exception of inevitable discovery would most likely have resulted in the production of the evidence anyway. An inventory search of Jim's vehicle would have resulted in officers discovering the cocaine and drug paraphernalia.

Jim's Motion to Suppress Confession as to Ownership and Sale of Drugs and Paraphernalia

Jim's statements as they related to the possession of paraphernalia and involvement of drug sales were made voluntarily and would be used against Jim at trial. The motion to have this evidence suppressed would most likely fail. The first instance was made in violation of Miranda because Jim was in a position where an objective, reasonable person would believe that their freedom of movement was restricted and he was expressly interrogated by Dante's question concerning ownership of the paraphernalia. The testimony as it relates to the drug paraphernalia is most likely to be inadmissible. However, the testimony that was made by Jim regarding his involvement with the sale of drugs came completely voluntary, as he was well aware of his right to remain silent at that point and he had not yet invoked his right to remain silent.

Adam's Motion to Suppress Evidence of Jim's Confession

Adam was arrested due to being the result of physical evidence that was obtained from an incriminating testimony made by Jim. Jim's testimony naming Adam as an accomplice will not be used in trial, as that testimony came after Jim had already invoked his right to remain silent. However, Adam as physical evidence, could be used against Jim.

Did Adam have standing?

You missed minor issues, but a very well & complete essay. Good job!

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Criminal Procedure Question #3

4th Amendment: The Fourth Amendment of the United States Constitution protects an individual's rights against unreasonable searches and seizures.

Search: A search is an action by the state (law enforcement) which violates an individual's expectation of privacy that society would deem reasonable. (Katz)

Here, since Dan was in a public place that any member of public would have access to and the warrant check did not require the officer to in any way restrain Dan's freedom of movement, the warrant check cannot be accurately described as a search.

Seizure: Seizure may be constituted by any action taken by law enforcement in which a suspect's ~~or~~ freedom of movement has been restrained.

Upon completing the warrant check the officer had probable cause to

Seize Dan, based on the warrant that was issued for failure to appear. Prior to this the officer merely had a reasonable suspicion predicated upon Dan's reputation as a frequent offender. This reasonable suspicion formed the basis of belief that lead the officer to conduct the warrant check.

Based on the totality of the circumstances the seizure of Dan was supported by probable cause the current arrest warrant.

5th amendment

The fifth amendment of the United States constitution protects an individual's rights against self incrimination.

Voluntariness: Under the fifth amendment and the subsequent case law any confessions provided by a defendant must be made free from any fear or apprehension from coercion or

police misconduct.

good

In the present matter, Dan's cell mate, acting as an informant for officer Mason, attempted to threaten Dan by implying that the other inmates would harm Dan. Dan's cell mate, by offering him protection in exchange for "the truth", attempted to elicit incriminating statements from Dan.

Any statement Dan gave to the informant would not have been regarded as voluntary, and this would not be admissible in a trial.

Exclusionary Rule: Should an incriminating statement by Dan have lead to some physical evidence, however, that evidence would be admissible as it would not have recovered solely from the self incrimination but rather the follow up investigation.

The Goal of the exclusionary rule is to deter police misconduct, but

the courts will not place law enforcement in a worse position than they would have otherwise been absent any misconduct.

Here, absent the incriminating statements Dan might have given, had he not refused to speak, law enforcement would still investigate and might discover such physical evidence anyway.

Miranda: During a custodial interrogation a suspect must be advised of their right to remain silent and right to effective assistance of counsel.

In the present matter Officer Nelson is obligated to advise Dan of Miranda rights both for the arrest regarding the burglary charge and for the questioning regarding the kidnap and murder.

Custodial Interrogation: A custodial

interrogation occurs where a suspect is placed in an environment controlled by law enforcement and their freedom of movement has been restrained.

Questioning by law enforcement renders such a setting a custodial interrogation and triggers the officer's need to issue a Miranda warning.

Invocation: Invoking of one's Miranda rights must be clear and unambiguous.

By stating he has nothing to say, Dan has invoked his right against self incrimination regarding the kidnap and murder. The further attempts by officer Mason to elicit incriminating statements by placing an informant in Dan's cell is ^{not} a violation of Dan's right against self incrimination. This is because the cell shared by the two inmates could not be regarded as a custodial environment.

Also - Miranda applies to interrogation

by officers only

Discovery: Identification Procedures

that are suggestive with regards to the identity or validity of the perpetrator are improper because they increase the likelihood of a misidentification.

In the present matter by showing the neighbor only one photo and using Dan's boating photo the officer's conduct may be deemed suggestive, but this does not necessarily mean that the neighbor's recognition of Dan as the perpetrator is invalid.

The neighbor saw Dan with the minor child ~~outs~~ outside, during daylight hours, while standing within a yard of both him and the victim. She also infatigably stated "I'll never forget that face." ✓

Based on these facts it is reasonable and probable that the identification flowed the neighbor's own recollection of the perpetrator rather than any suggestion made by Officer Mason. Good job 87