

Empire College of Law
Criminal Law & Procedure II
Final Examination
Spring 2025
Prof. L. Stark-Slater

Instructions

1. This examination consists of three (3) questions.
2. There is a three (3) hour time limit to complete the exam.
3. 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.
4. The essay questions test your ability to apply the law to the facts. Use IRAC. 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.

Question 1

Carl detailed cars for the Squeaky Clean car wash; the car wash also contracted with the Santa Rosa Police Department to wash its patrol cars. Carl hoped if he did a good job officers would help him get off probation. While vacuuming a private car he saw a handgun under the seat. The next week Officer Oak came in for a wash; Carl described the event to Officer Oak and said the car was a newer white Range Rover with black rims, driven by a balding white male, who often came in before 49ers's football games.

On Sunday, Officer Oak saw a white Range Rover with black Rims and tinted windows two blocks from Squeaky Clean. Officer Oak activated his lights/sirens but the driver, later identified as Dan, headed toward the freeway at the speed limit but without pulling over. Officer Oak radioed other officers to deploy a "spike strip" to stop the car. When the Range Rover's tires started to deflate Dan threw a canvas bag out the window before hitting a tree; the impact caused Dan to hit his head on the steering wheel, leaving a large bleeding contusion.

Officer Oak stopped behind the car and ordered Dan out. Officer Oak frisked Dan, placed him in cuffs, and asked for his identification. Dan, slurring his words and trying to shake off some confusion, said it was in his pocket and motioned him toward his pants. Officer Oak reached into the pants pocket and removed Dan's wallet, a small baggie with suspected cocaine, and 3 rounds of ammunition. Officer Oak searched the Range Rover and seized a loaded ghost gun from under the front seat. Officer Oak transported Dan to the hospital for medical clearance before booking him in jail; enroute Officer Oak stopped to locate and seize the discarded canvas bag.

While waiting for the doctor, Officer Oak observed Dan suddenly swallow a remaining baggie of cocaine that had been stashed in his sock. Officer Oak re-cuffed Dan to the bed and alerted the doctor. At Officer Oak's request the doctor administered an intravenous drug designed to make Dan nauseous and expel the baggie. In conversation with Officer Oak, the Dr. mentioned that the emergency room had been slammed recently with overdoses and gun violence related injuries. As the drug set in, Dan spoke up and asked "if he was going back to jail for that gun?" Once cleared by the Dr., Officer Oak booked Dan into custody.

Two days later Officer Oak booked the canvas bag into evidence. The canvas bag contained additional large quantities of cocaine.

The District Attorney charged Dan with possession of cocaine for sale while armed with a firearm. Prior to trial, Dan's attorney sought to suppress the firearm and all baggies of cocaine seized in the case.

What rights, if any, can Dan advance under the 4th, 5th, and 6th Amendments. How should the court rule on any motions brought by Dan? Do not discuss substantive crimes.

Question 2

Jimmy received a drone for his 13th birthday. He duct taped his brother Bobby's "GoPro" camera to the top of the drone and launched it on its inaugural flight around his neighborhood. The camera altered the drone's weight and balance. Jimmy lost directional control, launching it into neighbor Norm's yard. Norm, a devoted survivalist (and paranoid schizophrenic), saw the drone hovering in the vicinity of his tree house, grabbed his 12 gauge Remington, and shot the drone out of the sky. Jimmy ran inside to tell his mom Mary. She called police to report the "sound of gun fire" in her neighborhood. Norm reloaded, waiting on his back deck for the second wave of drone attack[s].

Mary, angry at Norm's negligence, went to Norm's home and pounded on the front door. Officer Otis drove up and asked to search the property. Mary, seeing the police approach, stood on the porch pretending to be Norm's wife. She said "sure" and directed Officer Otis to the rear yard. Otis hopped the fence, saw Norm, and directed him to drop the gun; Norm complied. Otis searched Norm and felt an empty shotgun shell in the front pocket of Norm's overalls. Otis placed Norm in handcuffs and ordered him to sit on the deck.

Otis noticed what appeared to be an abandoned Chevy pickup with a camper shell on blocks in the yard. As Otis approached it, Norm's "real" wife Wanda exited the camper shell through the rear door. As she did, Otis leaned in and saw a countertop chemistry lab. Otis detained Wanda, entered the camper, and lifted a beaker to his nose. He recognized the smell of an ingredient used to manufacture methamphetamine. Otis then turned his attention to the Chevy's cab. He seized a handgun from under the front seat, a small quantity of suspected methamphetamine from the center console, and the vehicle registration from the glove box.

Otis placed Norm in the patrol car and called for a backup officer to transport him to jail. On his way out, Otis picked up the pieces of Jimmy's drone, including Bobby's still operable GoPro camera. Otis took the camera back to the station and downloaded its contents. In addition to footage of Norm's backyard, the drone had filmed Bobby, Jimmy's brother, in his bedroom using his 3-D printer making ghost guns. The video was date stamped one week earlier.

Norm was convicted of manufacturing meth and of being an ex-felon in possession of a firearm.

Bobby was charged with manufacturing firearms in juvenile court. At his arraignment on the Petition, the judge denied Bobby a public defender because Mary was a wealthy business owner. Mary, angry at her sons, refused to hire Bobby an attorney. Without any inquiry by the juvenile court Judge, Bobby represented himself and was adjudicated a ward of the court.

What rights, if any, can Norm and Bobby advance under the 4th, 5th, and 6th Amendments. How should the court rule on motions brought by Norm and Bobby? Do not discuss any crimes.

Question 3

Brittany was a frequent consumer of the criminal justice system with several felony convictions under her belt. She was arrested on charges of selling counterfeit designer handbags in the law school parking lot. She posted bail and hired attorney Al to represent her after seeing his ad on late night t.v. When they appeared in court, the District Attorney requested additional time to file charges. As she left the courtroom, Deputy Sheriff Dave motioned to her and said, "What a fabulous bag. Where can I get one for my wife?" Brittany explained that she sold them out of her home business at 76 Main St. Dave searched Brittany's business Instagram and located 3 women who said they had purchased bags from her company.

Unbeknownst to Brittany, Deputy Dave used this information in a Statement of Probable Cause for a search warrant of Brittany's home at "101 Main St." for "items of counterfeit fashion." Dave neglected to mention in his affidavit that during a photo lineup which included Brittany, none of the three witnesses who purchased fake bags picked her out as the seller. Dave entered Brittany's home without knocking first and Brittany shrieked, "Oh, Hi! Are you here to buy that bag?" Dave said, "No," and placed her in handcuffs. Seeing her in handcuffs and distressed, Brittany's deadly purse dog Princess bit Dave in the leg. He picked up Princess, intending to temporarily place her in the laundry room so he could complete the search. As he opened the laundry room door he noticed boxes and boxes of purses. Deputy Dave realized he couldn't distinguish a genuine bag from a fake one. So he took them all.

Dave retrieved Princess and sat next to Brittany on the couch. She tearfully asked him what was going to happen. Dave told her that Princess would be going the dog pound. He read her *Miranda* rights; she replied, "I think I need to call Al." Dave ceased questioning her and transported her to county jail. The next day, based upon the evidence seized during execution of the search warrant, the District Attorney charged Brittany by way of felony Complaint with illegal distribution of counterfeit goods. She entered a not guilty plea and refused to waive time. Before her Preliminary Hearing and at the request of the District Attorney, Deputy Dave went to visit Brittany. He read her *Miranda* rights, and asked her if she had talked to Al. She told Dave that Al had visited her, but that after listening to the solid legal advice of her cell mate, she wanted to tell Dave the truth. Her statement was incriminating, but also contained possible exculpatory facts. The District Attorney failed to provide Al with a copy of her statement until two days before trial. Brittany was subsequently convicted by a jury of illegal distribution of counterfeit goods.

What rights, if any, can Brittany advance under the 4th, 5th, and 6th Amendments. How should the court rule on any motions brought by Brittany? Do not discuss substantive crimes.

MCL/ECL 2025 Criminal Procedure Spring Final Q1/Prof. Stark-Slater *ISSUES OUTLINE*

People v. Dan:

Initial Encounter (20 points):

- Government action/standing in vehicle (5 points)
- Reasonable suspicions to conduct traffic stop (15 points)
 - Reliability/Veracity of informant/tip (5 points)
 - Sufficiency of informant's description (5 points)
 - Flight/failure to yield as reasonable suspicion (5 points)

Seizure of Dan (20 points):

- Use of "spike strip" as physical force to detain (5 points)
- Use of patrol car to detain (5 points)
- Constitutionality of ordering Dan out of vehicle (5 points)
- Constitutionality of asking Dan for his identification (5 points)

Seizure of Evidence (30 points):

- Detention or arrest (5 points)
- Search of pants (10 points)
 - Consent search exception (5 points)
 - Search incident to arrest exception (5 points)
- Search of the vehicle (10 points)
 - Automobile/PC exception (5 points)
 - Search incident to arrest exception (5 points)
- Seizure of the canvas bag (5 points)

Secondary Encounter in the Hospital (20 points):

- 5th Amendment due process violation for IV administration (5 points)
- 5th Amendment voluntariness approach/IV administration (5 points)
- Miranda* approach (10 points)
 - Custodial setting (5 points)
 - Functional equivalency test (5 points)

Application of exclusionary rule (10 points):

MCL/ECL 2025 Criminal Procedure Spring Final Q2/Prof. Stark-Slater *ISSUES OUTLINE*

People v. Norm: (75 points)

Backyard Encounter (25 points):

- Government action/standing in porch/backyard (5 points)
- Reasonable suspicion to investigate claim of gunfire (5 points)
- Search of backyard/property (15 points)
 - Consent exception (10 points)
 - Apparent authority (5 points)
 - Scope of consent (5 points)
 - Exigency exception (5 points)

Seizure and Search of Norm (15 points):

- Reasonable suspicion to detain (5 points)
- Probable cause to arrest (5 points)
 - Search of Norm Incident to Arrest (5 points)

Search of Pickup with Camper Shell (25 points):

- Standing in pickup (5 points)
- Search of camper (10 points)
 - Plain view exception (5 points)
 - Search incident to arrest exception (5 points)
- Search of truck's cab (10 points)
 - Automobile/PC exception
 - Search incident to arrest exception (5 points)

Application of exclusionary rule (10) points)

People v. Bobby: (25 points)

Search and Seizure of GoPro Camera (15 points)

- Government action/standing in GoPro Camera (5 points)
- Seizure and Search of GoPro Camera (10 points)

Juvenile self-representation /Faretta (5 points):

Application of exclusionary rule (5 points):

MCL/ECL 2025 Criminal Procedure Spring Final Q3/Prof. Stark-Slater *ISSUES OUTLINE*

People v. Brittany:

Courthouse Encounter (5 points):

Effect of DA decision requesting additional time—6th A (points)

Conversation with Brittany during consensual encounter (points)

Issuance and Execution of Search Warrant (50 points):

Government action/standing (5 points)

Probable cause/Gates analysis (10 points)

Franks hearing procedure for material falsehoods (15 points)

Issues re: execution of warrant (10 points)

Knock notice (2.5 points)

Detention or arrest of Brittany (7.5 points)

Search and seizure of purses (10 points)

Plain view exception (5 points)

Search incident to arrest exception (5 points)

First interview with Brittany (20 points):

6th Amendment Right to Counsel approach/Massiah/Cobb (5 points)

Miranda approach (15 points)

Custodial setting? (5 points)

Sufficiency of *Miranda* advisement? (5 points)

Invocation of 6th Amendment right? (5 points)

Second interview with Brittany (20 points):

6th Amendment Right to Counsel approach/Massiah/Cobb (5 points)

Miranda approach (10 points)

Custodial setting (5 points)

Reinitiation of questioning (5 points)

Brady violation (5 points)

Application of exclusionary rule (5 points):

Q1: 85
Q2: 85
Q3: 85

Monterey College of Law

ID: [REDACTED] (Student ID)
Exam Name: CrimLawPrc-ECL-SP25-StarkSlater-OS
Exam Date: May 2, 2025
File Name: [REDACTED]_CrimLawPrc-ECL-SP25-StarkSlater-OS_20250502_final.xmdx
Exam Length: 180 minutes (Started @May 2, 2025, 6:30 PM; Ended @May 2, 2025, 9:30 PM)
Downloaded: Apr 30, 2025, 6:09 PM
Uploaded: May 2, 2025, 9:30 PM
GRADE _____

Total Number of Words in this Exam = 5521
Total Number of Characters in this Exam = 33906
Total Number of Characters in this Exam (No Spaces, No Returns) = 28397

[REDACTED]: You authored 3 exceptionally well organized and well written exams, all of which demonstrated a solid understanding of the subject matter. Well done!

1)

Was there government action?

In order to assert a violation of an individual's constitutional rights, there must be **government action**. Government actors include Law enforcement, or those citizens acting under the direction of law enforcement.

Here, Officer Oak (O) is a police officer. Therefore, there was government action.

Does Dan (D) have Standing?

Standing to assert a violation of one's own constitutional rights exists where an individual has a legitimate expectation of privacy in the place searched or property seized, which requires a subjective manifestation of privacy which society is objectively prepared to accept as reasonable (Katz).

Here, D has a legitimate expectation of privacy to be free from unlawful and unreasonable searches and seizures from government actors. The facts tell us that D has several items seized (discussed infra) and is also seized. As such, D has standing to assert a violation of his constitutional rights.

What is the legal significance of Carl's (C) information to O?

4th Amendment (4A) protects individuals against unreasonable searches and seizures by government actors in areas where they have an objectively reasonable expectation of privacy. The 4A also establishes the general rule that warrants are required for searches and seizures unless a lawful valid exception applies.

Tips from reliable informants can give rise to reasonable suspicion or even probable cause. The informant's veracity, basis for the knowledge, and any police corroboration is taken into consideration in the totality of the circumstances to determine the validity of a tip. Anonymous tips typically require that the tip be predictive of future criminal activity that can be corroborated by police.

Here, C is a car detailer who also details police cars. The facts tell us that C had an incentive to provide O with information because he hoped to get off probation, and he did just that when advising O about the handgun in the white range rover. The facts are silent as to whether C had previously provided accurate information to law enforcement before, or whether this was his first time, making his tip essentially anonymous. C's tip is likely an anonymous tip, which police could attempt to corroborate.

What is the legal significance of O attempting to pull over D?

technically not anonymous, but untested.

Terry Stop. Under a Terry Stop, an officer may briefly seize an individual for purposes of conducting a brief investigatory stop to either confirm or deny any reasonable articulable suspicion the officer may have that criminal activity is afoot.

Here, O saw the car that matched the description that was given by C. The facts also tell us that the vehicle was close to the car wash where C noticed the handgun. The facts do not

indicate that D committed any traffic infraction that gave the officer reasonable suspicion to activate his lights/sirens. In fact he was going the speed limit. O may have been about to commit a pretext stop, however, since D did not stop, that gave O reasonable suspicion to continue pursuing D.

Is flight or failing to yield to a pretext stop still give reason to detain?
What is the legal significance of D failing to stop and then throwing the canvas bag out the window?

A **seizure** occurs when police (1) use force to physically restrain an individual or make a show of authority that the individual then submits to (*Hodari*) or (2) take possession of an item that the individual has a reasonable expectation of privacy in. Seizures without a warrant are presumptively invalid unless there is a lawful exception.

Encounters with police can be consensual, a detention, or an arrest. **Consensual** encounters are voluntary and are not protected by the 4A. A **detention** occurs when officers make an investigatory stop and it requires reasonable articulable suspicion that criminal activity is afoot or that the suspect is armed and dangerous. An **arrest**, the ultimate seizure of a person, requires probable cause that a crime is being committed or was committed.

First Standard
Here, O made a showing of authority when he ordered Dan out of the vehicle. O also used force (both by deploying spike strips to stop the car and by cuffing D). As such, because these two elements are present, D was seized. Here, much like *Hodari*, D threw his canvas bag out of the window before he was officially seized, making this canvas bag fair game for O because it was abandoned before the seizure and thus not subject to the 4A protection. The officers may search the canvas bag without a warrant. Under the **totality of the circumstances**, including but not limited to the tip from C, the pursuit of D that led to D hitting a tree and putting the public at risk, O had probable cause to believe a crime was being committed. As such, once cuffed, D was not free to leave or terminate the encounter with O and thus was under custodial arrest. *constitutional?*

What is the significance of D's statement that "it was in his pocket" and O reaching into D's pockets?

A **search** under the 4A is an intrusion by a government agent into an area where an individual has a reasonable expectation of privacy. Searches require a warrant unless an exception applies.

Consent by mothering?
Search incident to contemporaneous custodial arrest (SICA) allows officers to search an arrestee and the area within their immediate control (wingspan) for purposes of officer safety and the preservation of evidence (*Chimel*).

Vehicle SICA allows officers to search an arrestee and the area within their immediate control, including containers. Under the vehicle SICA exception, if the arrest was a recent occupant of the vehicle, the officer may extend their search outside of those areas within the immediate control of the arrest, including the trunk and closed containers, if the officer has probable cause that evidence of the crime of arrest will be found. The vehicle exception is allowed due to the inherent mobility of vehicles and a reduced expectation of privacy.

Here, D was in custodial arrest once cuffed after his pursuit ended and the search conducted by the officer was contemporaneous with that arrest. As such, the search fell under the exception to the search warrant requirement and the seizure of the wallet, small baggie suspected of cocaine, and 3 rounds of ammunition will be admitted. The search of the vehicle

was also valid under the vehicle exception of the search warrant requirement and because O had probable cause that evidence of the crime of arrest, i.e., additional contraband or weapons, could be found in the vehicle. *p.c. to believe what fruits of what crime? Evading? Cocaine?*

What is the significance of D asking he was going back to jail for the gun?

The **5th Amendment (5A)** protects individuals from coerced confessions, compelled-self incrimination, safeguards against unreliable identifications, and is the basis for the Miranda rule.

Under **Miranda**, officers must give a suspect his rights before custodial interrogation, or its functional equivalent, begins. Officer's must advise an individual of their right to remain silent, that anything they say can and will be used against them, that they have a right to an attorney and if they cannot afford one, one will be appointed for them, and are asked if they understand these rights as they have been provided in that moment. Incriminating statements made in violation of Miranda made be inadmissible unless an exception applies. Evidence seized in violation of Miranda is not subject to the exclusionary rule.

Here, D was in custody, *generally* but there was no interrogation. His statement which could lead to criminal implications, is likely consensual, which makes a confession or incriminating statement admissible. No violation of Miranda occurred because the facts are silent as to any interrogation or it's functional equivalent. *← discussion of "overdoses and gun related injuries?"*

What is the legal significance of the doctor's administering an intravenous drug to D?

A search, defined supra, must not be so egregiously unconstitutional that it "shocks the conscious".

Here, an intrusion into the body of another for purposes of preserving evidence is so unconstitutional that it shocks the conscious and therefore the admissibility of that baggie of cocaine is inadmissible as a result of an invalid unconstitutional search of an individual. *is an IV "shocking?" Is it only to preserve evidence?*

What is the legal significance of booking the canvas bag into evidence?

Search and seizure defined supra.

Here, the canvas bag was not subject to 4A protections because D threw it out of the car before an actual seizure occurred. D may attempt to argue that because 2 days had passed, there was no longer any probable cause for O to search the bag, however, probable cause was not needed since it was not taken from D during a seizure, rather he abandoned it. O may also make an argument that the search was part of an inventory search that was a departmental standardized procedure and not a fishing expedition.

4A
Does the exclusionary rule apply?

The **exclusionary rule** excludes/suppresses evidence, including derivative evidence, obtained in violation of an individual's constitutional rights.

Here, the baggie that was unconstitutionally taken from D's body will fall under the exclusionary rule and be inadmissible.

D will have a valid motion to suppress the baggie that was obtained as a result of the unconstitutional search of his person conducted in the hospital. The other items seized, the

other baggie of cocaine and three rounds of ammunition and the handgun will likely be admissible as they were seized under exceptions to the search and seizure warrant requirements.

2)

People v. Norm (N)

Was there government action?

In order to assert a violation of an individual's constitutional rights, there must be **government action**. Government actors include Law enforcement, or those citizens acting under the direction of law enforcement.

Here, Officer Otis (O) is a police officer. Therefore, there was government action.

Does N have Standing?

Standing to assert a violation of one's own constitutional rights exists where an individual has a legitimate expectation of privacy in the place searched or property seized, which requires a subjective manifestation of privacy which society is objectively prepared to accept as reasonable (Katz).

Here, N has a legitimate expectation of privacy to be free from unlawful and unreasonable searches and seizures from government actors in his home. The facts tell us that N had items seized and areas searched (discussed infra) and is also seized himself. As such, N has standing to assert a violation of his constitutional rights. *Use facts: yard, trailer, etc.*

What is the significance of Mom's call to police?

Tips from reliable informants can give rise to reasonable suspicion or even probable cause. The informant's veracity, basis for the knowledge, and any police corroboration is taken into consideration in the totality of the circumstances to determine the validity of a tip. Anonymous tips typically require that the tip be predictive of future criminal activity that can be corroborated by police.

Here, while Mom's call may not necessarily be a tip, it is enough information for police to begin an investigation. It is law enforcement's duty to protect the public and having received a call regarding gun fire, they are within their scope of duty to investigate any potential criminal activity.

What is the legal significance of O asking to search N's premises?

4th Amendment (4A) protects individuals against unreasonable searches and seizures by government actors in areas where they have an objectively reasonable expectation of privacy. The 4A also establishes the general rule that warrants are required for searches and seizures unless a lawful valid exception applies.

A search under the 4A is an intrusion by a government agent into an area where an individual has a reasonable expectation of privacy. Searches require a warrant unless an exception applies.

An exception to the search warrant requirement is consent. **Consent** must be giving knowing, voluntarily, and intelligently. The scope of the search is limited to those areas where the individual has consented to. The police do not need to advise an individual of their right to refuse consent and the police are also not required to inquire into the validity of the consent if it seems apparent that the person giving consent is actually able to do so.

Here, the O was acting under apparent consent when he entered N's yard to search. Mary pretended to be N's wife and O was reasonably acting in good faith believing he was given valid consent to conduct a warrantless search.

Exigency?
What is the legal significance of O and N's encounter in the backyard?

A **seizure** occurs when police (1) use force to physically restrain an individual or make a show of authority that the individual then submits to (*Hodan*) or (2) take possession of an item that the individual has a reasonable expectation of privacy in. Seizures without a warrant are presumptively invalid unless there is a lawful exception.

Encounters with police can be consensual, a detention, or an arrest. **Consensual** encounters are voluntary and are not protected by the 4A. A **detention** occurs when officers make an investigatory stop and it requires reasonable articulable suspicion that criminal activity is afoot or that the suspect is armed and dangerous. An **arrest**, the ultimate seizure of a person, requires probable cause that a crime is being committed or was committed.

Alpha
Terry frisk allows an officer to conduct a brief pat down of the outer clothing of a suspect if the officer reasonably believes the suspect is armed and dangerous. The rationale for this is officer safety. The police may seize any contraband or weapons felt during a terry frisk that are immediately apparent to the officer (no maneuvering).

Here, O made a show of authority to N. The facts tell us that O directed N to drop the gun and that N complied, thus, a show of authority was made by O when he made the demand, and a submission to that authority by N occurred when he complied. O found an empty shotgun shell. Under the circumstances, having heard gun fire, conducting a lawful terry frisk, and now finding a shell casing, the officer has reasonable articulable suspicion to believe criminal activity is afoot. The facts are silent as to whether the shell casing was immediately apparent to the officer, but assuming it was, the seizure of this item is lawful.

Further, the facts tell us that N was detained at this point. He was placed in handcuffs and ordered to sit on the deck. A reasonable person in the same situation would not feel free to leave or terminate the encounter with law enforcement.

What about P.C. to arrest?
Is there an exception to O leaning in and seeing countertop?

The **open fields doctrine** is an exception to the warrant requirement that allows officers to conduct a warrantless search of areas that are outside of the curtilage of the home. To determine whether an area is within the curtilage, the court looks at the proximity to the home, any steps taken to increase privacy, whether the area is enclosed, and the general use of the area.

The **plain view doctrine** is another exception to the warrant requirement that applies when police are (1) lawfully in a position to view such evidence; (2) the item is legitimately in plain view, meaning the officer cannot maneuver things to make the item appear to be in plain view;

and (3) the items incriminating nature must be immediately apparent.

Plain sense falls under the plain view doctrine and applies when the incriminating nature of something is immediately apparent to the officer by one of the senses (i.e., scent, touch).

Here, the facts indicate that the Chevy appeared to be abandoned and in the yard. The facts are not entirely descriptive as to proximity to the home itself, but given that it was in his yard the distance may be within close proximity as to render this within the curtilage. The fact that it seems "abandoned" does not indicate that there is no reasonable expectation of privacy. Under the totality of the circumstances, it could be reasonable to believe that this Chevy is within the curtilage. Further, there were steps taken to increase privacy, as it was enclosed, and since N's wife was inside, it is likely that there was a subjective manifestation of privacy in that Chevy that society may recognize as objectively reasonable. Thus, it is unlikely that O can rely on the open fields doctrine.

Further, it is unlikely that O can rely on the plain view doctrine either. The facts tell us that as N's wife was exiting the camper, O "leaned in" and saw a countertop chemistry lab. O was arguably lawfully in the yard, investigating and in the process of either confirming or denying any criminal activity, however, the item was not legitimately in plain view as O had to lean into the camper to be able to see what was in. Much like the case where the officer maneuvered the stereo to confirm whether it was stolen, O maneuvered his position to unlawfully attempt to make the product appear in "plain view." It is unlikely that O may rely on the plain view doctrine and evidence seized as a result may be inadmissible under the exclusionary rule.

Incident to arrest?
Seizure of the handgun and small quantity of suspected methamphetamine.

Seizure defined supra.

The **exclusionary rule** excludes/suppresses evidence, including derivative evidence, obtained in violation of an individual's constitutional rights. Exclusionary rule.

Under Wong Sun's Fruit of the Poisonous Tree Doctrine, evidence that derives from an unconstitutional search, seizure, or confession, may be inadmissible as fruit of the poisonous tree unless a valid exception applies (i.e., independent source, inevitable discovery, or attenuation).

Independent source allows the introduction of evidence originally obtained unlawfully if the prosecution can demonstrate that the evidence was actually obtained through methods independent of the original violation.

The **inevitable discovery doctrine** allows the prosecution to introduce evidence obtained unlawfully if they can show that the evidence would have otherwise been obtained lawfully during the natural course of discovery and investigation in the proceedings.

Attenuation permits the admissions of evidence obtained in violation of one's constitutional rights if the connection between the illegal conduct and evidence becomes sufficiently weakened or "attenuated" by intervening circumstances that breaks the causal link between the misconduct and evidence.

Here, the exclusionary rule applies to O unlawfully searched the Chevy pickup in violation of N's 4A rights. As mentioned, the facts tell us that N and his wife had subjectively manifested an

expectation of privacy in this Chevy and that the officer had no reasonable grounds to rely on an exception to the search warrant requirement. I.e., there was no plain view exception because O maneuvered himself into viewing the item, and the open fields doctrine does not apply. Further, the facts do not give any indication that the evidence would have otherwise been admissible by the independent source doctrine or the inevitable discovery doctrine. There was no attenuation as this all occurred within the timeframe of the detention, and therefore there was no superseding intervening act that broke the causal link between O's illegal conduct and the seizure of the evidence.

People vs. Bobby (B)

Was there government action?

In order to assert a violation of an individual's constitutional rights, there must be **government action**. Government actors include Law enforcement, or those citizens acting under the direction of law enforcement.

Here, Officer Otis (O) is a police officer. Therefore, there was government action.

Does B have Standing?

Standing to assert a violation of one's own constitutional rights exists where an individual has a legitimate expectation of privacy in the place searched or property seized, which requires a subjective manifestation of privacy which society is objectively prepared to accept as reasonable (Katz).

Here, B has a legitimate expectation of privacy to be free from unlawful and unreasonable searches and seizures from government actors in items where he has a reasonable expectation of privacy such as a camera. The facts tell us that O seized the camera. As such, B has standing to assert a violation of his constitutional rights. *Brother's camera?*

Unlawful search of the camera?

Search defined supra.

Seizure defined supra.

Exclusionary rule defined supra.

Here, the facts do not tell us whether B was aware of his camera being seized or not. Nonetheless, B still has a possessory interest in this item and once police take possession, the camera has been seized. A search occurs when police engage in downloading its contents. Because the camera was already in O's possession, and there was no longer any fear of destruction of evidence, O should have obtained a warrant. Here, the exclusionary rule will apply because O conducted an unlawful search of the camera without a warrant, which he could have reasonably obtained. *un*

The court is likely to grant both N's and B's motion to suppress evidence because they were the products of illegal searches and seizures by O.

3)

People v. Brittany (B)

Was there government action?

In order to assert a violation of an individual's constitutional rights, there must be **government action**. Government actors include Law enforcement, or those citizens acting under the direction of law enforcement.

Here, Deputy Dave (D) is a Deputy Sheriff. Therefore, there was government action.

Does N have Standing?

Standing to assert a violation of one's own constitutional rights exists where an individual has a legitimate expectation of privacy in the place searched or property seized, which requires a subjective manifestation of privacy which society is objectively prepared to accept as reasonable (Katz).

Here, B has a legitimate expectation of privacy to be free from unlawful and unreasonable searches and seizures by government actors and to be protected from coerced confessions or compelled self incrimination. The facts tell us that B had items seized, areas searched and possible incriminating statements solicited, all discussed infra. As such, B has standing to assert a violation of ^{her} his constitutional rights.

Does B have a Sixth Amendment (6A) right to counsel?

The **6A** provides individuals with the right to assistance from counsel during all critical stages of a criminal proceeding.

Here, the facts tell us that B hired a lawyer in the first instance for charges of selling counterfeit designer handbags. Because she hired a lawyer to represent her in her first appearance, she utilized her 6A right to counsel.

What is the legal significance of D asking B about her bag?

The **5th Amendment (5A)** protects individuals from coerced confessions, compelled-self incrimination, safeguards against unreliable identifications, and is the basis for the Miranda rule.

Under **Miranda**, officers must give a suspect his rights before custodial interrogation, or its functional equivalent, begins. Officers must advise an individual of their right to remain silent, that anything they say can and will be used against them, that they have a right to an attorney and if they cannot afford one, one will be appointed for them, and are asked if they understand these rights as they have been provided in that moment. Incriminating statements made in violation of ~~the~~ Miranda made be inadmissible unless an exception applies. Evidence seized in violation of Miranda is not subject to the exclusionary rule.

Custody under the 5A means that an individual has been arrested or that under the totality of the circumstances, has had their freedom restrained in a manner in which a reasonable person would not feel free to terminate the encounter with law enforcement. **Interrogation** under the 5A means express questioning or its functional equivalent (actions by law enforcement that elicit incriminating statements, i.e., the Christian Burial speech).

Here, it could be argued that D made the functional equivalent of interrogation when he asked B about her "fabulous bag" attempting to elicit potential incriminating statements. However, this was not in a custodial setting or its functional equivalent. The facts tell us that B was leaving the courtroom and there no charges were filed yet because the DA requested additional time. As such, no violation of Miranda has occurred yet.

Search Warrant Requirement

4th Amendment (4A) protects individuals against unreasonable searches and seizures by government actors in areas where they have an objectively reasonable expectation of privacy. The 4A also establishes the general rule that warrants are required for searches and seizures unless a lawful valid exception applies.

A **search warrant** must be issued by a neutral and detached magistrate and must be supported by probable cause. The search warrant must also state with reasonable particularity the places to be searched and the items to be seized. There must be probable cause at the officer's sworn affidavit is presented to the magistrate and also at the time of execution of the warrant. Failure to have probable cause at the time of the execution of the warrant may render the warrant stale.

Under a **Franks motion**, an individual may challenge the validity of a search warrant and must first make a preliminary showing that the warrant contained an intentional or reckless material misrepresentation or omission in the officer's sworn affidavit. If after removing the intentional or reckless material misrepresentation, the warrant fails to establish probable cause, then the warrant is rendered invalid and evidence resulting from the warrant may be suppressed.

Here, the facts tell us that D submitted a "Statement of Probable Cause" for B's home. The address was the only particular thing stated on the warrant. Other than the address, the warrant described the things to be seized as "items of counterfeit fashion." The warrant's failure to establish with reasonable particularity the items to be seized can be grounds for B to submit a Franks Motion. Further, in addition to the lack of particularity in the search warrant, D intentionally and recklessly committed a material fact, the fact being that B was not picked out by witnesses as a seller of counterfeit goods. Because of this, B is likely to prevail in a Franks motion. D will probably also not be able to use the good faith exception because he intentionally omitted facts in his sworn affidavit.

6A right to counsel and line ups (live or photo)

Generally, a defendant has a right to counsel present, post indictment, to have counsel present during the entirety of a live line up. If it is a photo line up, there is no right to have counsel present during the photo line up but it may be contested afterwards if it is unduly suggestive.

Here, the facts are limited but indicate that there was a live photo line up where witnesses did not identify B as the seller of counterfeit goods. B may contest this line up.

Knock and Announce Requirement.

Generally, police must knock and announce their presence and purpose when executing a search warrant before they enter an individuals home and must wait a reasonable time for the occupant to allow entry. There are limited circumstances where the knock announce requirement may be null, if under the totality of the circumstances, there is a legitimate concern

Not quite Franks if mere lack of particularity

for public safety or the destruction of evidence.

Arrest warrant requirement in homes. For an individual to be arrested in their own home, there must be a valid arrest warrant, unless the officers is in hot pursuit.

Here, D did not knock or announce his presence. The facts tell us that D entered B's home without knocking and immediately placed her handcuffs. This is a constitutional violation of B's rights.

was this a detention during a p.w. or an arrest
What is the legal significance of D placing B's dog in the laundry room and finding boxes of purses?

A search under the 4A is an intrusion by a government agent into an area where an individual has a reasonable expectation of privacy. Searches require a warrant unless an exception applies.

The plain view doctrine is another exception to the warrant requirement that applies when police are (1) lawfully in a position to view such evidence; (2) the item is legitimately in plain view, meaning the officer cannot maneuver things to make the item appear to be in plain view; and (3) the items incriminating nature must be immediately apparent.

Arrest requires probable cause that a crime is being committed or has been committed.

Search incident to contemporaneous custodial arrest (SICA) allows officers to search an arrestee and the area within their immediate control (wingspan) for purposes of officer safety and the preservation of evidence (Chimel).

Probable cause is determined by the totality of the circumstances that give an officer a reasonable belief that criminal activity is taking place or has taken place (for arrest) or that evidence of a crime can be found in a particular place (for a search).

Here, D will argue that he was acting under color of state law and was "executing a warrant." Upon However, because the warrant lacked sufficient information, and because D failed to knock and announce. D had unlawfully placed B under custodial arrest because he lacked sufficient probable cause. D will likely attempt to make two arguments. The first being that the seizure of the purse boxes were in plain view and he was lawfully in a possession to view those. However, this will fail because the facts tell us that the incriminating nature of the items were not immediately apparent, in fact, "he couldn't distinguish a genuine bag from a fake one." He will also try to argue that the search was valid under the theory of SICA, but this will also fail because this was not within B's immediate control.

What is the legal significance of D's first miranda warning?

The 5th Amendment (5A) protects individuals from coerced confessions, compelled-self incrimination, safeguards against unreliable identifications, and is the basis for the Miranda rule.

Under Miranda, officers must give a suspect his rights before custodial interrogation, or its functional equivalent, begins. Officer's must advise an individual of their right to remain silent, that anything they say can and will be used against them, that they have a right to an attorney and if they cannot afford one, one will be appointed for them, and are asked if they understand these rights as they have been provided in that moment. Incriminating statements made in

use the facts -
violation of miranda made be inadmissible unless an exception applies. Evidence seized in violation of Miranda is not subject to the exclusionary rule.

Here, D was in custody; as a reasonable person in her situation would not feel free to leave or terminate the encounter. D appropriately read her her Miranda rights and seized questioning when B said she thought she need to call her lawyer.

Proper invocation of Miranda rights?

An invocation of Miranda rights must be knowingly and unequivocal. The suspect must inform the officer of his or her wish to remain silent or to have the assistance of counsel present during questioning.

Here, B says "I think i need to call AI." This is not an unequivocal invocation of Miranda. Nonetheless, D ceased questioning.

Post Indictment Interrogation

Miranda supra.

Confessions fall either under a voluntary prong, under Miranda, or under the 6A right to counsel.

Massiah Error occurs when law enforcement engages in questioning or tactics (or their functional equivalent) attempting to elicit incriminating statements after formal charges have been made and without a valid waiver of an individuals right to counsel.

Here, B was formally charged by a complaint, one of the charging documents. This is now an adversarial proceedings where B's right to counsel kicks in. D went back to attempt to question B and read her her miranda rights once more. There is a possibility of a Massiah error as this was after charges were filed, and since D ceased questioning the last time B said she wanted to talk to AI, if D interpreted that to be an invocation of her 6th amendment right to counsel, it could fall under the Massiah error. However, because D went back a day later, and because the facts indicate that B made the confession voluntarily after talking to her cellmate, not based off police coercion, her statements are likely admissible.

Doesn't Massiah prohibited the return?

Does the exclusionary rule apply?

The **exclusionary rule** excludes/suppresses evidence, including derivative evidence, obtained in violation of an individual's constitutional rights. Exclusionary rule.

Under Wong Sun's Fruit of the Poisonous Tree Doctrine, evidence that derives from an unconstitutional search, seizure, or confession, may be inadmissible as fruit of the poisonous tree unless a valid exception applies (i.e., independent source, inevitable discovery, or attenuation).

Independent source allows the introduction of evidence originally obtained unlawfully if the prosecution can demonstrate that the evidence was actually obtained through methods independent of the original violation.

The **inevitable discovery doctrine** allows the prosecution to introduce evidence obtained unlawfully if they can show that the evidence would have otherwise been obtained lawfully

Need some facts to go with the law

during the natural course of discovery and investigation in the proceedings.

Attenuation permits the admissions of evidence obtained in violation of one's constitutional rights if the connection between the illegal conduct and evidence becomes sufficiently weakened or "attenuated" by intervening circumstances that breaks the causal link between the misconduct and evidence.

The exclusionary rule likely applies in this situation to the evidence that was derived from the unlawful search. This is likely to be held as fruit from the poisonous tree because the of the original unlawful activity.

Was there a Brady violation?

Under Brady, the prosecution must provide the defense any evidence that is exculpatory.

Here, the DA failed to provide AI with a copy of her statement that contained exculpatory facts. The DA committed a Brady violation.

END OF EXAM