

Monterey College of Law
Criminal Law & Procedure – Section 2 (Hybrid)
Final Examination
Spring 2025
Prof. K. Smith

Instructions:

Answer two (2) Essay Questions.

Answer twenty (20) MBE Questions.

Total Time Allotted: Three (3) hours.

Recommended Allocation of Time: One (1) hour per section.

Complete sentences are required. Clearly identify which party you are discussing in your answers.

Please recite the applicable law and rules from the previously discussed cases.

Conclusions MUST be definitive. No “on one hand” answers for your conclusions.

Headings for each section are STRONGLY encouraged for grading purposes.

QUESTION 1

Officer Walters works for the Fresno Police Department as a narcotics officer. Officer Walters had worked previously as an undercover officer in Narcotics for two years. During that time, he had previously worked with informants. One specific informant, Lucy, had given Officer Walters information in the past that had proven to be correct and had led to several successful prosecutions.

One night, at ~ 2:03 a.m., Lucy calls Officer Walters and informs him that a white SUV will be in the area of McKinley and Marks Avenues in the City of Fresno at ~ 6:00 a.m. Additionally, there will be a large “2A” sticker in the rear window of the vehicle. Inside, there will be two men who will be traveling southward out of town. Inside the trunk of the vehicle, there will be a large suitcase with a brick of marijuana found inside.

At ~ 6:03 a.m. the next morning, Officer Walters is in a marked vehicle and uniform at the corner of McKinley and Marks Avenues, waiting inside a parking lot. At ~ 6:15 a.m., Officer Walters observes a white Honda Accord with a large “2A” sticker in the rear window. Officer Walters cannot see inside of the Honda clearly, but he thinks he can see two individuals inside.

Officer Walters pulls out of the parking lot and begins to follow the Honda from a few car lengths back. Both vehicles travel southward. Per Officer Walters’ database, the Honda’s registration is current, and the vehicle has not been reported stolen.

After following the Honda for several minutes, Officer Walters activates his siren and overhead lights. The Honda immediately slows but does not pull over for two blocks.

Once the vehicle stops, Officer Walters slowly approaches the vehicle. Officer Walters immediately detects the odor of burnt marijuana emanating from the vehicle’s open window. He also sees that there is only occupant of the vehicle; a male is driving. Upon asking the driver, Michael Bosley, for his license and registration, he notices that Bosley is visibly nervous, his hands are shaking, and his eyes continue to dart between Officer Walters and the open road ahead of his vehicle.

Once Officer Walters runs Bosley’s license and registration, there are no stops, wants, or warrants associated with either Bosley or the Honda sedan. However, when Officer Walters re-approaches the car, he has Bosley exit the car. Bosley remains at the hood of the car. Officer Walters runs Bosley through field sobriety tests, which Bosley performs poorly on.

By this time, an additional unit arrives for backup. Officer Walters arrests Bosley for DUI. He places handcuffs on Bosley and places him in the backseat of the backup vehicle. Officer Walters then searches the vehicle. He finds nothing incriminating inside of the center console and glove compartment, or on the floor of the front of the vehicle. In addition, nothing incriminating is found inside of the rear compartment. Officer Walters then opens the trunk of the vehicle. Inside, he sees a large black suitcase and a large women’s-styled purse. Officer Walters opens the suitcase and finds nothing incriminating. However, inside of the purse, Officer Walters finds ~ one kilo of plastic-wrapped marijuana.

Officer Walters informs Bosley that he is also under arrest for transportation of marijuana, possession of marijuana for sale, as well as for a DUI.

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What argument(s) should Bosley's lawyer make at a suppression motion? What should the prosecutor argue in response? How should the Court rule?

DO NOT skip any steps in the analysis.

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QUESTION 2

Andrew and Evelyn have been married for over twenty years. They live in a small house in the suburbs and have one dog and two cats. Andrew works as a manager of a local hardware store while Evelyn is a counselor for at-risk youth and those involved in gang violence. They enjoy outdoor activities, such as camping and hiking. Evelyn is an avid runner.

Both Andrew and Evelyn reported to work on Friday. Nothing appeared out of the ordinary. On Monday morning, Evelyn appeared at work, complaining of sore muscles from a long run she attempted over the weekend. Andrew did not show up to work on Monday. His boss called their house, asking where Andrew was. Evelyn expressed surprise, stating that Andrew had gone on a solo camping trip that weekend and told Evelyn he would go directly to work due to the long drive back from his campsite. Evelyn called the police to make a missing persons report.

Through investigation of the family's finances and their cell phone records, Detective Miller discovers that the family home has three mortgages taken out on it, and that Andrew's cell phone's last known location put it ~ 20 minutes outside of town in the opposite direction that Andrew would have had to travel to get to his intended campsite. Detective Miller also discovers that Evelyn had taken out a recent life insurance policy on Andrew that greatly increased the payout upon Andrew's untimely or violent death.

Detective Miller goes to Evelyn's workplace with three other officers. There, they arrest her without informing her of why they are doing so. Evelyn is handcuffed and transported via police car to the station. Evelyn is placed in an interrogation room. There is a table with three chairs around it. The room is windowless, and the door is locked. Evelyn is handcuffed to a leg chain attached to the wall of the room.

Detective Miller enters the room and reads Evelyn the complete list of her Miranda rights. When Detective Miller asks her if she understands them, Evelyn asks for clarification of the right to remain silent. Detective Miller again reads the Miranda right regarding Evelyn's right to remain silent and the fact that anything she says can be used against her in court. Evelyn states that she understands. When Detective Miller asks if she would like to speak to her, Evelyn immediately begins complaining about her arrest in her workplace, demanding to know why she was brought in.

Detective Miller slowly lays out his findings and the inconsistencies with her initial statement. During this point in the interview, Evelyn does not react at all. She sits mute. Her facial expressions do not change. Despite Detective Miller asking for her response, Evelyn does not answer. This portion of the interview lasts for over 30 minutes.

Finally, with a single tear running down her face, Evelyn states, "I'm not going to say anything to you." Detective Miller stands up, informs Evelyn that she will be charged with Andrew's murder. Detective Miller hands her his business card. Evelyn is brought to a holding cell to await her

arraignment within 72 hours. During that time, and after a day had passed, Evelyn calls Detective Miller and asks to speak to him about the murder of Andrew.

Detective Miller arrives at the County Jail and meets with Evelyn in an interview room. Evelyn is in shackles and a County Jail jumpsuit. Detective Miller again reads Evelyn the complete list of her Miranda rights. Evelyn agrees to speak to Detective Miller. Evelyn admits to issues within the marriage, and states that Andrew had hit her several times in the weeks leading up to his camping trip. However, she states that she took out the new life insurance policy at Andrew's behest. When Detective Miller asks about the cell phone location data, Evelyn pauses and asks, "Should I have a lawyer present?" Detective Miller responds, "You can ask for one if you think you need one." Evelyn states, "I'm OK. Let's continue." Evelyn then states that Andrew sometimes drives in opposite directions from his usual camping site because he likes to visit a specific supply shop that is located on the opposite end of town.

Detective Miller expresses his disbelief at Evelyn's story and asks her if she killed Andrew in self-defense. Evelyn remains quiet for several seconds, then she states, "Yeah, I want a lawyer now." Detective Miller thanks Evelyn for contacting him again and terminates the interview.

Three days later, after Evelyn has been arraigned for the murder of her husband, she is still in-custody at the County Jail. Detective Miller discovers that Andrew's hardware store had been burglarized several days before the alleged camping trip. Included within the stolen items were a large black tarp, several shovels, zip ties, and numerous boxes of caustic chemicals.

Detective Miller returns to the County Jail and again interviews Evelyn after informing her of her complete list of her Miranda rights. Detective Miller also informs Evelyn that he knows she has been charged with Andrew's murder, but that he wanted to speak to her about the burglary of the hardware store. Evelyn denies any involvement in the burglary but does state she bought a shovel at that store several weeks before the burglary.

Evelyn then begins to speak about Andrew hitting her several times over the weeks leading up the alleged camping trip. Detective Miller does not stop the interview. Evelyn starts asking Detective Miller about the legal ramifications of possible self-defense on her exposure in her murder case. Detective Miller demurs, stating he is not an attorney. Once Evelyn hears the word "attorney," she asks for her attorney to be present for the remainder of the interview. Detective Miller then terminates the interview.

At trial, the prosecution asks the Court to admit Evelyn's statements from all points in the investigation.

What arguments should Evelyn's defense attorney make in a pretrial motion? How should the prosecutor respond? Ultimately, which statements, if any, are admissible?

For the purposes of your analysis, assume that the arrest was made with probable cause.

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QUESTION 1 – MODEL ANSWER

Issue:

Is there state action so that the protections of the Amendments apply?

Rule:

Actions taken by police officers in their official capacity qualify as state action.

Analysis:

Officer Walters was on-duty as a police officer and made the traffic stop in his capacity as a police officer.

Conclusion:

State action exists in this instance.

Issue:

Is there a warrant?

Rule:

For a search or seizure to occur, probable cause (PC) must be presented to a neutral and detached magistrate for a warrant to issue.

Probable cause is a lesser standard than preponderance of the evidence. There must be enough particularized facts to lead a person of common sense to believe there is a fair probability of criminal activity.

If no warrant exists, an exception to the warrant must exist.

Analysis:

No warrant exists per the facts.

Conclusion:

NO warrant exists, so an exception must apply for the resulting searches and seizures to be found constitutional.

Issue:

Does the informant's information provide PC for the traffic stop and subsequent searches?

Rule:

Under Illinois v Gates, PC may be found when, under the totality of the circumstances, the reliability of the information is found by a reviewing court. However, the “two-pronged” test of Aguilar-Spinelli is still useful to determine the reliability of the information provided.

First, under Aguilar-Spinelli, the informant must be reliable and credible.

For a non-civilian witness, reliability can be shown if an informant has given reliable information in past instances.

Second, under Aguilar-Spinelli, the informant must have personal knowledge of the facts. If seen or overheard directly, this prong would be met. If there is no statement of personal knowledge, a statement with a wealth of detail can create an inference of personal knowledge.

Both prongs are independent, and due to the standard of totality of the circumstances, no one prong is dispositive. One prong may also make up for lack of strength in the other.

Analysis:

For the first prong, past reliability is present pursuant to the facts. Lucy had provided information in the past that had led to several successful prosecutions.

For the second prong, there is no indication that Lucy saw or overheard the details provided. However, her information was specific. She provided a type of vehicle, its color, the area of town, the timeframe, and the location of a specific narcotic.

However, defense for the defendant can argue that she in fact did get a few details incorrect, i.e., the SUV was a sedan, there was only one passenger inside the vehicle, and the marijuana was ultimately found inside of a women’s-styled purse instead of a suitcase.

The prosecution will focus on the time and location, the color of the vehicle, the “2A” Sticker in the rear window, the direction of travel, and the marijuana being found in the truck.

Conclusion:

Ultimately, under the totality of the circumstances, and given Lucy’s former reliability and many of the details turning out to be correct, the informant’s tip would likely be found to provide probable cause for the stop and search of the vehicle.

NOTE: NO violation of the Vehicle Code is stated by the facts. Therefore, a discussion of reasonable suspicion (RS) for the stop would be fruitless. If the students mention that a violation of the Vehicle Code would preclude the need for analysis of the informant’s tip, extra points to him or to her.

Issue:

Is there standing for Bosley to raise a 4th A challenge?

Rule:

For a person to assert their 4th Amendment rights, they must assert their own expectations of privacy.

Analysis:

As the driver of the vehicle that was stopped, Bosley clearly has standing to bring a 4th A challenge to the stop and subsequent searches.

Conclusion:

Bosley has standing to contest the stop, search, and subsequent seizure.

Issue:

Is Bosley detained for purposes of 4th A analysis?

Rule:

For a detention to occur, an officer must use physical force or make a show of authority that restrains the liberty of a person. Reasonable suspicion is required, which are specific and articulable facts that illustrate that a crime may have been committed. It is lower than PC, which is also lower than POTE. It cannot be based on a hunch.

Also, if a reasonable person in the same or similar situation would not feel free to leave or to terminate the encounter, that person is detained.

Analysis:

NOTE: PC already exists from the informant analysis, which is a higher standard than RS for a detention. Students should NOT be spending much time on this section.

Bosley is at the front of the vehicle after being asked to exit the vehicle and is running through field sobriety tests.

Conclusion:

Bosley is detained for purposes of 4th A analysis.

Issue:

Is there PC for an arrest of Bosley?

Rule:

There must be PC for an arrest.

Probable cause is a lesser standard than preponderance of the evidence. There must be enough particularized facts to lead a person of common sense to believe there is a fair probability of criminal activity.

Analysis:

As to Bosley, the officer has the background of the informant's tip, which corroborates several of the identifying factors previously discussed. In addition, Bosley has performed poorly on his field sobriety tests. In addition, his nervousness and his darting eyes add to the equation. Also, the smell of burnt marijuana lends itself to the DUI possibility.

Defense will highlight the fact that there was no bad driving to lead to a finding of DUI.

Conclusion:

There is PC to arrest Bosley.

Issue:

Can Officer Walters search the vehicle at this point?

Rule:

NOTE: There are two possibilities for the search of the vehicle at this point. SILA would be where most students would go since Bosley was arrested. However, the auto exception is a better choice for reasons seen below.

Under the auto exception, PC is required.

See above for definition of PC.

Under the auto exception, a search of the entire passenger compartment and any locked container is allowed as long as the officer is looking for evidence of the crime that has been committed. (IE., may not open a 2" x 2" drawstring sack if he is looking for a firearm).

In addition, the auto exception allows the officer to get into the trunk of the vehicle.

Analysis:

In this instance, Officer Walters searched the entirety of the passenger compartment of the vehicle but found nothing of note.

However, he opened the trunk and proceeded to open the containers inside, both of which had the capacity to hold possible marijuana, including the supposed large amount of MJ as related by Lucy.

Conclusion:

The resulting opening of the trunk was an intrusion into an area supported the auto exception. In addition, as stated above, the containers in the trunk may also be opened as the sought-after items could be found within those containers. As a result, the motion to suppress would likely be denied at this stage of the analysis.

Issue:

Does Search Incident to Lawful Arrest allow Officer Walters to examine the trunk and the suitcases therein?

Rule:

SILA of the passenger compartment of a vehicle is allowed as long as the area to be searched is within the wingspan of the arrestee. Caselaw has cautioned us, stating that if the arrestee is placed in the backseat of a patrol vehicle and no longer has access to the vehicle, SILA is invalid to get into the passenger compartment of the vehicle.

Analysis:

Bosley was already arrested, handcuffed, and placed in the back of the patrol vehicle before the search began.

Conclusion:

The resulting search of the vehicle would NOT be covered by SILA. Bosley was not within wingspan of the vehicle.

Issue:

What if any fruits of the search may be suppressed?

Rule:

The exclusionary rule states that any evidence obtained in violation of a defendant's 4th A rights must be excluded from entry into evidence.

In addition, under *Wong Sun v. United States*, a defendant may argue for exclusion of any evidence gained as a result of the initial illegality.

Analysis:

As already established, there was NO violation of Bosley's 4th A rights when Officer Walters got into the trunk of the vehicle and into the container containing the MJ. As a result, the discovery of marijuana inside of the women's-styled purse is the focus of this analysis.

Conclusion:

The discovery of marijuana would be admitted against to Bosley. As a result, the charges of the transportation of MJ, possession for sale of MJ, and the DUI would remain.

Result?

The charges against Bosley for transportation of a controlled substance and possession for sale of the MJ would remain as there was no 4th A violation. The DUI charge would also remain.

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QUESTION 2 – MODEL ANSWER

Issue:

Did the first interview with Evelyn require Miranda warnings?

Rule:

Miranda warnings are required where a suspect is subject to custodial interrogation.

Custody is an objective standard of whether a reasonable person would feel free to leave or to terminate the encounter. The State must prove this element by a POTE standard.

Analysis:

Evelyn is handcuffed and transported to the station against her will. She is placed in an interrogation room and is shackled to the wall. The room has no windows and it has much less spacious and comfortable seating.

Conclusion:

Evelyn is in custody for purposes of Miranda analysis.

Issue:

Is Evelyn being interrogated?

Rule:

Interrogation is defined as any form of questioning or statements designed to elicit an incriminating response.

Analysis:

Detective Miller is bringing out the evidence he has against Evelyn and is asking for her to explain it.

Conclusion:

Evelyn is being interrogated.

Therefore, Miranda warnings ARE required.

Issue:

Does Evelyn understand every one of her rights for her to make a valid waiver?

Rule:

A waiver of one's rights must be knowing, voluntary, and intelligent.

A waiver may be express or implied. An implied waiver can be assumed if a suspect begins to speak to the officer.

Analysis:

When Evelyn asked about her right to remain silent, Detective Miller re-read the right to remain silent and the fact that anything said could be used in court. At that point, Evelyn stated that she understood.

Instead of an express waiver, Evelyn began speaking to Detective Miller. The fact that she was complaining about her arrest makes no difference in terms of the analysis.

Conclusion:

Evelyn understood all of her rights, and she made an implied waiver to begin speaking to Detective Miller.

Issue:

Did Evelyn ever invoke her right to remain silent?

Rule:

In *Berguis v. Thompkins*, the USSC held that the right to remain silent must be expressly invoked.

However, the silence of a suspect that occurs after Miranda warnings are given up until the point of the assertion of the right to remain silent cannot be used against Evelyn.

Once invoked, the interview must cease.

Analysis:

Evelyn sat mute during this portion of the interview. She did not speak, react, or make any kind of movements in response to Detective Miller's questions.

Only when she explicitly stated, "I'm not going to say anything to you" does she ever respond to Detective Miller on the topics thus far.

Conclusion:

Evelyn explicitly invoked her right to remain silent. In addition, her silence cannot be used against her in the prosecution's case. In addition, Detective Miller expressly stopped the interview at the point of her express invocation.

Issue:

Was Detective Miller allowed to speak to Evelyn once she had invoked her right to remain silent?

Rule:

If a suspect reinitiates contact with police after he or she has claimed the right to remain silent, and if Miranda warnings are again given in their entirety, and if the suspect provides a knowing, intelligent, and voluntary waiver, then an officer may question the suspect about the same crime originally discussed.

Analysis:

In this instance, Evelyn is the one who has contacted Detective Miller, not the other way around. Here, Evelyn reached out to Detective Miller and stated she wished to speak about the alleged murder of her husband Andrew.

Once Detective Miller arrived at the County Jail, he read Evelyn her Miranda rights again in their entirety.

Sub-Issue:

Were Miranda rights required?

Rule:

Miranda warnings are required where a suspect is subject to custodial interrogation.

Custody is an objective standard of whether a reasonable person would feel free to leave or to terminate the encounter. The State must prove this element by a POTE standard.

Interrogation is defined as any form of questioning or statements designed to elicit an incriminating response.

Analysis:

Evelyn is in lockup at the County Jail. She is in a jumpsuit and is handcuffed. She cannot leave the jail.

Also, Detective Miller is asking her direct questions about the facts of the surrounding murder investigation.

Conclusion:

Evelyn is in custody and is subject to interrogation. Miranda warnings are required.

Issue:

Did Evelyn provide a valid waiver of her Miranda rights?

Rule:

A waiver of one's rights must be knowing, voluntary, and intelligent.

A waiver may be express or implied. An implied waiver can be assumed if a suspect begins to speak to the officer.

Analysis:

Evelyn has already had her Miranda rights read to her once approximately 24 hours previously. She also does not ask for clarification of any of her rights under Miranda. She agrees to speak to Detective Miller absent threats, coercion, or a promise of leniency.

Conclusion:

Evelyn provided a valid waiver of her Miranda rights.

As a result, her statements while at the County Jail up this point will likely be admissible.

Issue:

Did Evelyn make an unequivocal request for counsel the first time she mentioned a lawyer?

Rule:

A suspect's request for counsel must be made "unambiguously." The officers are not required to stop the interview or to clarify whether the suspect is asserting her right to counsel.

Analysis:

"Should I have a lawyer present?" is necessarily a question and not a statement of intent or of fact. Evelyn is asking for Detective Miller's advice or guidance. She is not making a specific request for a lawyer. Detective Miller is under no obligation to proceed or give advice to Evelyn at this point. However, Detective Miller states that Evelyn can ask for one if she needs one. Evelyn denies the suggestion and chooses to keep talking.

Conclusion:

Evelyn did not unambiguously ask for a lawyer. As a result, her statements until the next possible invocation of her right to counsel is likely admissible.

Issue:

Did Evelyn make an unequivocal request for counsel the second time she mentioned a lawyer?

Rule:

A suspect's request for counsel must be made "unambiguously." The officers are not required to stop the interview or to clarify whether the suspect is asserting her right to counsel.

Analysis:

In this instance, Evelyn was much more definitive. There is no hesitation or questioning tone. “I want a lawyer” is quite direct.

Conclusion:

Evelyn validly exercised her right to counsel. Detective Miller was right to end the interview at that point.

Issue:

Once Evelyn has counsel appointed, does Detective Miller have the right to speak to Evelyn about a different crime?

Rule:

The 6th A right to counsel is “offense-specific.” As a result, officers may speak to a defendant who has counsel appointed, as long as they speak to her about a different crime.

Under *Blockburger v. United States*, the Court takes a look at whether the two crimes, when compared, require different elements in order to be proved, even if the conduct itself is closely related to the underlying charged offense.

Analysis:

In this instance, a burglary has many different elements than homicide. In addition, despite it being possibly related to the homicide investigation, it predated the alleged homicide by several days.

Conclusion:

Detective Miller may speak to Evelyn about the burglary.

Issue:

Were Miranda warnings required?

Rule:

See above for custody and interrogation.

Analysis:

Same as above. Evelyn is still a guest of the County Jail and cannot leave. She is also being asked questions about a specific crime.

Conclusion:

Miranda warnings are required.

Issue:

Did Evelyn provide a valid waiver?

Rule:

See above for rules on waivers.

Analysis:

Same as above. No indication she did not understand, nor was there any undue pressure exerted.

Conclusion:

Evelyn gave a valid waiver.

Issue:

Once Evelyn began speaking about the charged crime, are those statements admissible?

Rule:

Once counsel has been appointed, officers may not speak with a suspect without consulting and having their attorney present regarding that specific crime.

Analysis:

Evelyn is speaking about Andrew being violent with her in the weeks before the murder. Because this is not specifically related to the homicide, there is a close argument that this is unrelated. However, as this would be a possible motive for the murder of Andrew, or facts leading to a self-defense claim, the defense will argue to keep these excluded.

Evelyn is speaking about possible defenses in her charged homicide. Detective Miller did not redirect the interview, nor did he terminate the interview. This is much more clearly on point as to the charged homicide.

Conclusion:

Detective Miller cannot inquire as to these two topics and should have ended the interview or attempted to redirect Evelyn to the burglary.

Issue:

Did Evelyn make a valid request for an attorney?

Rule:

See above.

Analysis:

See above. Direct, no ambiguity, no hesitation. No qualifying words.

Conclusion:

Evelyn validly invoked her right to counsel. Detective Miller should and did terminate the interview.

Main Result:

Nothing from the first interview may be admitted, even the lack of responses before Evelyn invoked the right to counsel.

The second interview's statements are admissible until Evelyn unambiguously invokes her right to counsel.

The third interview will be admissible up until Evelyn makes her unambiguous request for counsel.

1)

State Action

Issue: Is there state action?

Rule: An act taken by a police officer in their official capacity qualifies as state action for the purposes of the 4th, 5th, and 6th Amendments.

Analysis: Officer Walters was in a marked vehicle and uniform acting in his official capacity as a police officer.

Conclusion: Thus, there was state action.

Warrant

Issue: Is there a warrant?

Rule: The 4th Amendment requires a warrant for specific action, presented to a neutral and detached magistrate with probable cause (PC). If no warrant exists, a valid exception to a warrant must exist.

PC is lower than the preponderance of the evidence (POTE).

PC is defined as facts that would lead a reasonable person to believe that a criminal act has occurred, is about to occur, or will occur.

Analysis: The facts do not indicate there is a warrant.

Conclusion: No warrant exists, so there must be a valid exception for the vehicle search.

standing?

Informant

Issue: Was there PC from Lucy's tip?

Rule: Under Illinois v. Gates, PC may be found when, under the totality of circumstances, the reliability of the information is found by the reviewing court.

Under Aguilar-Spinelli, there is a two-pronged test that is useful to determine the reliability of the information provided.

First prong, the informant must be reliable and credible. This prong is met if the informant has given reliable information in the past.

Second prong, the informant must have personal knowledge of facts. This prong is met if the facts are directly seen or overheard or the informant provides a wealth of details that create an inference of personal knowledge.

Both prongs are independent, but due to the totality of circumstances, no one is dispositive but one may make up for the other if lacking strength.

Analysis: The prosecution will argue that there is PC because Lucy meets both prongs under Aguilar-Spinelli. First prong, Lucy has given information in the past and had proven to be correct and had led to several successful prosecutions. Second prong, Lucy provided a wealth of details including white vehicle, 2A sticker on the rear window, traveling southward, suitcase in the trunk.

The defense will argue that there is not PC because Lucy got details wrong. The car was a sedan, not an SUV. Bosley was not driving with another male. The brick of marijuana was not inside the suitcase.

Conclusion: Ultimately under the totality of circumstances, the prosecution has a stronger case because Lucy was a reliable informant and got enough details correct. Thus, PC exists.

Standing

put at beginning.

Issue: Does Bosley have 4th Amendment standing?

Rule: For a person to assert 4th A standing, they must assert their expectation of privacy.

Analysis: Bosley is a driver that was pulled over by a police officer. Bosley had an expectation of privacy within his vehicle.

Conclusion: Thus, Bosley has standing.

Traffic Stop

Issue: Was the traffic stop constitutional?

Rule: For a traffic stop reasonable suspicion (RS) is required. A violation of the vehicle code may give rise to RS.

RS is lower than PC, which is lower than POTE.

RS requires specific and articulable facts that illustrate that a crime may have been committed. It cannot be a hunch and it is evaluated by the totality of the circumstances.

Analysis: While the officer did not witness any traffic violations, PC already existed with the informant's tip. PC supersedes RS.

Conclusion: Thus, the traffic stop was constitutional.

Detention

Issue: Was Bosley detained?

Rule: For a detention to occur, an officer must use physical force or show his authority that restricts a person's liberty. RS is required.

Also, if a reasonable person in the same or similar circumstances would not feel free to leave or terminate the encounter, the person is detained.

Analysis: Bosley was stopped, asked to exit the vehicle and was at the hood of the car. The officer used his authority to restrict Bosley's liberty. A reasonable person would not feel free to leave.

Conclusion: Bosley was detained.

Arrest

Issue: Is there PC for the arrest of DUI?

Rule: Arrest requires PC.

PC defined supra.

Analysis: The officer possessed the facts that: there was an odor of burnt marijuana, Bosley was visibly nervous, Bosley's hands were shaking, Bosley's eyes continued to dart between the officer and the road, and Bosley performed poorly on sobriety tests.

Evidence DUI of drugs gives rise to PC.

Conclusion: Thus, there was PC to arrest Bosley.

Auto Exception

Issue: May the officer search the vehicle under the auto exception?

Rule: Under the auto exception, PC is required. A search of the entire passenger compartment and any locked containers is allowed as long as the officer is searching for

evidence of the crime that was committed. However, the auto exception does not allow for search of a trunk unless there is PC.

Analysis: The prosecution will argue that the officer had PC to search the vehicle and the trunk because the informant tip specified the trunk. The auto exception generally does not allow the search of a trunk, however since the officer had PC from the informant tip and he was searching for a brick of marijuana it is allowed.

The defense will argue that after searching the passenger compartment and not finding anything, there was no PC to search the vehicle any further.

Conclusion: Ultimately, under the totality of circumstances the prosecution has a stronger argument. The officer was allowed to search under the auto exception.

SILA

Issue: May the officer search the vehicle under search incident to legal arrest (SILA)?

Rule: Under SILA, PC is required. A search of the entire passenger compartment is allowed as long as the area is within the wingspan of the arrestee even if removed and detained outside of the vehicle. However, SILA does not allow the search of a vehicle if the arrestee is in the backseat of a patrol vehicle without access to the vehicle.

Analysis: SILA would not apply because case law has ruled that once an arrestee in the backseat of a patrol vehicle and no longer has access to the vehicle, an officer may not search the vehicle because the vehicle is no longer in the wingspan of the arrestee.

Conclusion: SILA would not apply.

Arrest

Issue: Is there PC for arrest of transportation of marijuana and possession of marijuana for sale?

Rule: Supra.

Analysis: The prosecution will argue that there was PC search the trunk from the informant's tip, thus there was PC for arrest when the marijuana was discovered. Additionally, the auto exception allowed for the search of locked containers, in this case the purse because they were searching for the marijuana.

The defense will argue that the informant's tip only allowed for the search of the suitcase.

Conclusion: Ultimately, under the totality of circumstances the prosecution has a stronger argument. Thus, there was PC for the second arrest.

Exclusionary Rule

Issue: Will any evidence be suppressed?

Rule: Under the exclusionary rule, any evidence obtained in violation of the 4th A must be excluded from evidence.

Under *Wong Sun v. United States*, a defendant may argue for exclusion of any evidence gained as a result of initial illegality.

Analysis: No evidence will be excluded since the officer had PC from the informant tip and the the auto exception allowed for the search of the purse since he was looking for the marijuana.

Conclusion: All evidence will be admitted.

Result

The prosecution presents a stronger case so the court should rule in favor of the prosecution. Bosley will be charged with DUI, transportation of marijuana, and possession of marijuana for sale.

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2)

State Action

Issue: Is there state action? ✓

Rule: An act taken by a state agent in their official capacity qualifies as state action for the purposes of the 4th, 5th, and 6th Amendments. ✓

Analysis: The detective was investigating a crime in his official capacity. ✓

Conclusion: Thus, there is state action. ✓

Warrant

no 4th here.

Issue: Is there a warrant?

Rule: The 4th Amendment requires a warrant for specific action, presented to a neutral and detached magistrate with probable cause (PC). If no warrant exists, a valid exception to a warrant must exist.

PC is lower than the preponderance of the evidence (POTE).

PC is defined as facts that would lead a reasonable person to believe that a criminal act has occurred, is about to occur, or will occur.

Analysis: The facts do not indicate there was a warrant.

Conclusion: Warrant is not an issue in this case. ✓

Standing

Issue: Does Evelyn have 5th Amendment standing? ✓



Rule: For a person to assert 5th A standing, they must assert their right to remain silent.

Analysis: Evelyn is being interviewed by a detective.

Conclusion: Evelyn has standing.

Custody 1

Issue: Is Evelyn in custody in the first encounter?

Rule: Custody is an objective standard of whether a reasonable person would feel free to leave or terminate the encounter.

Preponderance of the evidence (POTE) is required. The evidence presented must show it is more probable than not.

Analysis: Evelyn was handcuffed, transported to the police station, placed in an interrogation room, the room was windowless, the doors were locked. Evelyn was even handcuffed to the leg of the chair attached to the wall of the room. Objectively, a person would not feel free to leave.

Conclusion: Evelyn was in custody.

Interrogation 1

Issue: Was Evelyn being interrogated in the first encounter?

Rule: Interrogation is defined as any form of questions or statements designed to elicit an incriminating response.

Analysis: The detective laid out his findings and inconsistencies with her initial statement. The detective asks for her response.

Conclusion: Thus, Evelyn is being interrogated.

Miranda Rights 1

Issue: Did Evelyn require Miranda rights?

Rule: Miranda rights are required where a suspect is subject to custodial interrogation.

Analysis: Upon entering the room, the detective read Evelyn her Miranda rights. The detective also confirmed that Evelyn understood.

Conclusion: Evelyn was required her Miranda rights and received them.

Right to Remain Silent

Issue: Did Evelyn invoke her right to remain silent?

Rule: Under *Berguis v. Thompkins*, the right to remain silent must be expressly invoked.

However, the silence that occurs after Miranda warnings are given up until the point of assertion of right cannot be used against the suspect.

Once the right is invoked, the interview must cease.

Analysis: Evelyn sat mute for approximately 30 minutes, then she expressly stated "I'm not going to say anything to you." At that point the detective terminated the interview.

Conclusion: Evelyn invoked her right to remain silent and that silence could not be used against her.

Custody 2

Issue: Was Evelyn in custody in the second encounter?

Rule: Supra.

Analysis: Evelyn is in shackles in the interview room at the county jail. Objectively, a reasonable person would not feel free to leave.

Conclusion: Evelyn was in custody.

Interrogation 2

Issue: Was Evelyn interrogated in the second encounter?

Rule: Supra.

Analysis: Evelyn agreed to speak with the detective. The detective asked about cell location data.

Conclusion: Evelyn was interrogated.

Miranda Rights 2

Issue: Did Evelyn require Miranda rights in the second encounter?

Rule: Supra.

Analysis: The detective read Evelyn her complete list of Miranda rights.

Conclusion: Evelyn was required her Miranda rights and received them.

Miranda Waiver

Issue: Did Evelyn validly waive her Miranda rights?

Rule: To validly waiver Miranda rights it must be either expressly or impliedly. A waiver must be knowingly, voluntary, and intelligently.

Analysis: Evelyn did not ask for any clarification on her Miranda rights. Evelyn voluntarily spoke to the detective.

Conclusion: Evelyn validly waived her rights.

Standing

Issue: Does Evelyn have 6th Amendment standing?

Rule: For a person to assert 6th A standing, they must assert their right to counsel.

Analysis: Evelyn is speaking with a detective and asked about her right to counsel.

Conclusion: Thus, Evelyn has standing.

Right to Counsel 1

Issue: Did Evelyn unambiguously invoke her right to counsel during the first mention of a lawyer?

Rule: The 6th A guarantees an accused a right to counsel, not only in trial but also in critical pre-trial proceedings that may determine her faith or may otherwise hinder right to a fair trial.

Invoking the right to counsel must be made unambiguously. An officer is not required to stop the interview or to clarify whether suspect is asserting her right to counsel.

Analysis: Evelyn paused and asked if she should have a lawyer present. This is not an affirmative statement, it is a mere question. Once the detective clarified that she could ask for one, she voluntarily decided to continue speaking.

Conclusion: Evelyn did not unambiguously request counsel.

Right to Counsel 2

Issue: Did Evelyn unambiguously invoke her right to counsel during the second mention of a lawyer?

Rule: Supra.

Analysis: Evelyn stated "Yeah, I want a lawyer now." The detective then terminated the interview. This is an affirmative statement now.

Conclusion: Evelyn unambiguously requested counsel.

Custody 3

Issue: Was Evelyn in custody in the third encounter?

Rule: Supra

Analysis: Evelyn is still in the county jail.

Conclusion: Evelyn is in custody.

Interrogation 3

Issue: Was Evelyn interrogated in the third encounter?

Rule: Supra

Analysis: Evelyn is being interviewed by the detective who knows about the murder charges.

Conclusion: Evelyn is being interrogated.

Miranda Rights 3

Issue: Did Evelyn require Miranda rights in the third encounter?

Rule: Supra

Analysis: Evelyn was subject to a custodial interrogation but was not read her rights for a different offense.

Facts: she was.

never?

Conclusion: Evelyn was required Miranda rights.

Different Offenses

Issue: Was the officer allowed to talk about the burglary crime?

Rule: The right to counsel is offense specific. Officers may speak to with the defendant who has counsel appointed, as long as they speak to her about a different crime.

Under Blockburger v. United States, courts take a look at whether two crimes require different elements in order to be proved, even if the conduct itself is closely related to the underlying charged offense.

Analysis: The detective *was* not allowed to speak to Evelyn about burglary. Murder and burglary require different elements.

Conclusion: Thus, the detective was allowed to speak to Evelyn about burglary.

? correct.

Right to Counsel 3

Issue: Did Evelyn invoke her right to counsel for the third time?

Rule: Supra.


Analysis: Evelyn expressly asked for her attorney to be present after discussing details of Andrew to the detective. The detective rightfully terminated the interview.

Conclusion: Thus, Evelyn invoked her right to counsel.

Admissible Statements

Issue: Were Evelyn's statement's admissible?

Rule: Once the right to counsel is invoked, officers may not speak with suspect without consulting and having their attorney present regarding a specific crime.

Analysis: The detective was allowed to speak to Evelyn about burglary charges, but he failed to give her Miranda rights. 

Conclusion: Thus, the statements in the third encounter were not admissible. 

Result

The defense has a strong case to suppress the statements in the third encounter were not admissible because Evelyn was not read her Miranda rights.

END OF EXAM

