

Kern County College of Law

Criminal Procedure

Final Examination

Spring 2024

Prof. A. Kohler

Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

Essay Question #1:

Mr. Johns stands to inherit a large sum of \$\$ if his only sibling, Mrs. Gregory, predeceases him. Mr. John does some computer searches at his home on how to accomplish the deed. Mr. Johns also takes out a large life insurance policy on his sister online and forges her signature.

One evening Mr. Johns goes to the home of Mrs. Gregory and shoots and kills her. He takes her body out the front door wrapped in a carpet. His movement triggers a motion sensor light and Ms. Alice, who is walking her dog, sees Mr. Johns, who she does not know and has never seen before, carrying a large bulky object in a carpet and placing it in the trunk of his vehicle.

The police discover the existence of the recently obtained insurance policy when a claim adjuster calls them after seeing in the paper that Mrs. Gregory was murdered. Additionally, an attorney for Mrs. Gregory contacts the police to inform them of the large sum of money now set to go to Mr. Johns.

The police contact Mr. Johns and ask him if he will come discuss the death of his sister. He is told that he is not a suspect and can leave whenever he wishes. He drives his own car down to the station and is shown into an interview room where he is given coffee. He is not read his Miranda rights and the police begin questioning him. He asks if he should have an attorney and the Detective informs him that it is not his place to give advice, it is up to Mr. Johns. Mr. Johns begins answering questions and gives the police a false alibi for the night of the murder. A phone call reveals the falsity of the alibi and Mr. Johns is arrested on the spot and charged with murder. While Mr. Johns is at the police station a search warrant is obtained for his home. The warrant directs the police to search his residence for a gun and the body of Mrs. Gregory. They do not find a gun or a body but see a computer in the home office with the password written on a sticky note and one of the searching officers fires up the computer and prints out numerous incriminating documents, searches about how to commit a murder and the online life insurance policy.

Ms. Alice sees an article in the newspaper about the murder of Mrs. Gregory and contacts the police. After hearing what she saw the evening of the murder, they have her come to the station where they show her a single photograph of Mr. Johns from his booking on the murder charges. She immediately identifies Mr. Johns as the man she saw carrying the bulky object the night of the murder.

At trial the Prosecution wishes to introduce the following evidence

- 1) Documents from the computer search, including the insurance policy.
- 2) The insurance policy documents later obtained from the company.
- 3) The false alibi given by Mr. Johns.
- 4) The photo identification of Mr. Johns by Ms. Alice
- 5) Testimony by Ms. Alice of what she saw the night of the murder.

Please discuss what legal issues are presented, the law that applies and analyze whether the proffered evidence is admissible. -2-

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Question #2:

- a.) Please state what the ***Exclusionary Rule*** is and in essay form describe the competing concerns implicated that weigh in favor of or against the application of the *Exclusionary Rule*.

Please give an example where the exclusionary rule would be applied and one where it would not, based on cases read or discussed during this course.

- b.) Please describe what a search warrant must state with specificity and list 3 exceptions to the warrant requirement and explain each.

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Question #3

The City of Tombstone has a narcotics task force that receives a tip from a confidential informant, “Druggy Doug” or DD as he is known to his friends and the police. DD is a known drug user and small-time thief who has given reliable information to police in the past in exchange for leniency on his own criminal cases. He tells officers from the task force that two men and a woman, Mr. Blue, Mr. Grey and Mrs. Green are all manufacturing and shipping narcotics from an old, abandoned building on the edge of town. He also advises that Mrs. Green takes numerous trips each month out of state driving an old beat-up white range rover and when she returns replenishes their chemical supplies.

Based on the information given by DD, the task force rents a crop duster and does a fly-over of the property, they are able to confirm the presence of a large building with smoke coming out of a smokestack and several large trucks parked outside near a loading dock. A computer search reveals no business license or lease attached to that property location. Unsure whether they have enough for a search warrant based on the information from DD, the fly-over and the computer search, the Task Force decides to go inspect the property. While looking through the windows of the building, agents see a large-scale methamphetamine cooking lab. They also hear a scream and a gunshot from inside the building, so they enter the building with guns drawn. Once they locate and arrest Mr. Blue who is waving a gun around and threatening to shoot, they make everyone on scene remain while they identify and search all the occupants for weapons. While they are searching the premises for additional suspects or anyone harmed, they discover a large pile of sophisticated assault rifles which they seize. The drug making equipment that they observed through the window is also seized. Mr. Grey who jumped out a back window and ran was pursued by officers, who saw him discard a large duffel bag. Mr. Grey was apprehended, and the duffel bag was found to contain more than a million dollars in cash, 3lbs. of methamphetamine and a sawed off shotgun. In another area of town, police officers have been following Mrs. Green from the City limits and all-around town. She is stopped in her Range Rover for driving erratically and in excess of 100 mph, both misdemeanor, jailable offenses. She is arrested and during an inventory search of her vehicle, a million dollars is located and 3 drums of methamphetamine chemicals.

Mr. Blue, Mr. Grey and Mrs. Green are arrested and charged with some very serious drug charges and Mr. Blue and Mr. Grey with gun charges too. The Prosecution is seeking to admit all the evidence seized, please discuss ALL 4<sup>th</sup> Amendment issues and whether the evidence is admissible or inadmissible and why. Please also briefly discuss whether the Tombstone Drug Task Force had enough information to put in an affidavit for a search warrant for the farm building prior to going out to the scene for an inspection.

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## ANSWER OUTLINE

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*Criminal Procedure Final Exam*

*Spring 2024*

*Prof. A. Kohler*

*Answer Key to Essay Question #1:*

*Per the 4<sup>th</sup> Amendment a search warrant must be based on probable cause and must detail with specificity the places to be searched and the items it intends to seize. The search of the computer was NOT within the items listed and there is no reasonable argument that can be made that they were searching for a gun or a body when police conducted the computer search. The documents seized from the computer search should be excluded.*

*The police obtained the insurance documents from a 3<sup>rd</sup> party who provided them. There was no search. Additionally, the documents came from an independent source and were not fruit of the poisonous tree as they were not discovered as a result of an illegal search and seizure. This copy of the policy should come in.*

*Police are required, pursuant to the 5<sup>th</sup> Amendment, to advise someone of their Miranda rights if there is a custodial interrogation by a gov'n't official or someone acting at his/her behest. Custody is defined as a person being taken into police custody OR otherwise deprived of their freedom in any significant manner. The test is an objective one utilizing the circumstances of the situation. In this case Mr. Johns drove himself to the station. He was offered a beverage and not put in restraints. He was advised he was not a suspect and was free to leave. He was NOT in custody, even if the Detective suspected him of foul play. The question by Mr. Johns about whether he should have a lawyer was not an invocation of his 6<sup>th</sup> Amendment right to an attorney as it was not unambiguous and certain. No Miranda warnings were required. The statements of Mr. Johns should come in at trial.*

*Unnecessarily suggestive identification procedures by police violate Due Process. Single photo identifications are widely disfavored when the suspect is unknown to the person making the identification. Nonetheless, Courts have typically taken a dim view of excluding an identification, except where there is evidence that the procedures employed were so lacking in reliability and were unduly suggestive such as to violate the due process rights of the suspect. While a six-pack photo line-up would have been a better and more reliable method of identification, the reliability of the identification given other factors such as the lighting conditions, the details that the witness was able to provide, will likely save the identification in this instance. In any event, testimony from Ms. Alice about what she saw the night of the murder is not the result of any 4<sup>th</sup>, 5<sup>th</sup> or 6<sup>th</sup> Amendment violation and will be admissible.*

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*Answer Key to Essay Question #2*

*a.) The exclusionary rule is a remedy applied in some instances where evidence, including statements of suspects, are made inadmissible and not permitted to be used in trial, or to only be used in rebuttal and not during the case-in-chief.*

*The competing concerns are the societal benefit to allowing police to fully investigate and use all tools and evidence to bring Justice to victims and to solve crimes, sometimes heinous ones. To require the police to pre-analyze every situation would stall many investigations and criminals would go free.*

*Society also has a strong interest in preserving our right to be free from unreasonable searches and seizures and to deter officers from gaining advantage by shady or impermissible law enforcement tactics.*

*b.)*

*1. Airport Screening*

*2. Checkpoints*

*3. Exigent Circumstances*

*4. Hot Pursuit*

*5. Inventory Search of Vehicle*

*6. Booking Search*

*7. Plain View*

*8. Searches incident to arrest*

*9. Protective Sweeps*

*10. Consent*

*11. Probation and Parole*

*12. Administrative searches*

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*Answer Key for Essay Question #3:*

*DD was a confidential reliable informant. The fact that he had given reliable and accurate information to the police in the past, as well as his own expertise about drug use and dealers in town provide a solid basis for an affidavit in a search warrant. Additionally, the fly-over confirmed that there was such a property and that there were indications that large scale- narcotics manufacture and shipping were occurring. Fly-overs of property are permissible and not a search. Additionally, even though there was no business leased or licensed at the property there was smoke coming from a makeshift smokestack and several trucks near a loading dock. There was enough for a search warrant.*

*Even without a search warrant, police officers did not violate the 4th Amendment by looking in the windows of the farm building. The building was not a dwelling, was not part of the curtilage and the fact that the agents were able to access it, indicate that there was no necessity for a warrant. This is known as the Open Fields Doctrine.*

*When officers were outside the building and heard a gunshot and a scream they were justified in making entry without a warrant under the Exigent Circumstances Exception and Emergency Aid Exception. It was necessary to ensure that no one was seriously wounded or dead and that evidence would not be destroyed.*

*The arrest of Mr. Blue was valid and not in violation of the 4th A. An arrest warrant is generally not required when an officer has probable cause to believe that an individual has committed a felony. The officers were also justified in detaining and doing a quick Terry frisk of all present on the premises for officer safety reasons and had at least reasonable suspicion that those on the premises were in some manner involved in the drug operation. As for the cache of assault weapons located, those should be admissible at trial. The Officers were reasonable in their belief that a Protective Sweep of the building for other suspects or anyone injured was necessitated by the totality of the circumstances that confronted them. It was during that sweep that the weapons were located in plain view.*

*All the evidence seized in the duffel bag discarded by Mr. Grey is admissible. Mr. Grey has no standing to object to the abandoned property that the officers saw him discard and there was no search or seizure that occurred, that placed the officers in possession of the incriminating contents of the duffel bag.*

*Even if Officers were following Mrs. Green for hours prior to her speeding and erratic driving, there is no search and seizure conducted when observations made by officers are on a public thoroughfare and visible to the naked eye. When Mrs. Green decided to make herself a misdemeanant who could and would be jailed, an inventory search of her vehicle is a well-recognized administrative type exception to any warrant requirement. It is recognized that law enforcement as well as suspects have a vested interest in ensuring that valuables and contents of a vehicle are well-documented and safeguarded prior to impoundment. The fact that the officers were looking for Mrs. Green and wanted a reason to stop and search her vehicle does not invalidate this search and seizure. An officer's subjective thoughts and desires are not the standard for analysis. All items seized during the Inventory Search should be Admissible. It could also be argued that based on the information developed by the task force, if it was communicated to the officers following and stopping Mrs. Green may well have given them ample probable cause for a traffic stop and search, even without the speeding. Probably more facts need to be known but a fair argument to make.*

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**5th Amendment (The False Alibi)**

A individuals right against self-incrimination applies during a custodial interrogations in which a reasonable person would not feel free to leave or terminate the conversation. To determine is a custodial interrogation is taking place you must look at the totality of the circumstances, custody arises when the individual no longer has the right to free movement and the interrogation begins when governmental official begin asking questions of the suspect. Also taken into consideration are the place where the questioning is happening and the conduct of the interviewing officers. Miranda warnings are given to ensure the suspect knows that he has the right to remain silent, anything he says can be used against him, he has the right to an attorney, and if he can not afford one, one will be appointed to him. Unless, a person under probable cause is arrested for an interrogation but shows up to the interrogation voluntarily, it would not treated as a custody, thus Miranda would not apply.

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Here, Officers received probable cause to interviewing Mr. Johns when they discover the existence of the recently obtained insurance policy when a claim adjuster called them after seeing in the papers that Mrs. Gregory was murdered. Additionally Mrs. Gregory contacted the police to inform them of the large sum of money now set to go to Mr. John. The officer's assured Mr. John that he was not a suspect in the crime and he can leave whenever he wishes. Mr. John drove his own car to the station and is shown to the interview room where he is given coffee. Mr. John voluntarily begins answering the detectives questions but give police a false alibi. This gives police more probable cause to arrest John on the spot and charged with murder. As the entire interview was voluntarily conducted and Mr. John could terminate the conversation at any time, Miranda warnings were not required. Thus, the use the false alibi given by Mr. Johnson is admissible.

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**5th Amendment (Right to Counsel)**

Under Miranda v. Arizona a suspect under custodial interrogation not only has the right to remain silent but also have the right to counsel. For a Miranda warnings to apply, the suspect must knowingly, expressly, and intelligently let the officers know that he would like a right to counsel. However, questions such as "should I have an attorney present?" or "I think I need an attorney" are not expressly stated as invoking ones Miranda Rights.

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Here, Mr. John stated "Should I have an attorney present" here the officer did the right things by saying it is not there place to give advice. Since John did not expressly invoke the right to counsel, the officers can continue to question John. ✓

#### **4th Amendment (Insurance Policy obtained from the insurance company)**

An individual's 4th amendment right includes the right to privacy against unreasonable searches and seizures. An individual must have standing in order to challenge 4th amendment violation including have possessory rights over the property or have a subjective/ objective right to privacy under the Katz two prong test and the search/ seizure must be conducted by governmental officials. 900

Here, Mr. John will argue that the officer's violated his 4th amendment when they received his insurance policy documents that they obtained from his insurance adjuster. He would argue that he has possessor rights to them and a reasonable expectation of privacy concerning his finances. However, under the Katz two prong test his argument must meet both prongs. Mr. John has a subjective belief reasonable privacy but a reasonable person of society (objective) would argue that those documents are considered public record because others such as the adjuster can view them. Since the Katz test fails, Mr. John does not have a right to privacy to the documents and they are not a violation of his 4A rights. The documents will be had admissible. 900  
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#### **Valid Arrest**

An arrest occurs when police place an individual into custody for the purpose of interrogation or criminal proceedings and must be based on probable cause. Here, the arrest of Mr. John was valid as the false alibi, Mrs. Gregory's attorney, and the adjuster sending them the insurance policy gave rise to probable cause (knowing facts that the person committed or is going to commit a crime) that Mr. John is the one who committed the murder. ✓

#### **Valid Search Warrant**

Under the 4A, a valid search warrant must be based on probable cause, describe with specificity of the places to be searched and the things to be seized, must be executed in a timely manner, and be signed off by a neutral magistrate.

Here, the officers received probable cause from the insurance policy adjuster, Mrs. Gregory's lawyer, and Mr. John's false alibi for the night of the murder. The search warrant also described Mr. John's residence as the one to be searched and included the search for a gun and the body of Mrs.

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Gregory. Any searches outside the scope of the warrant will cause the evidence to be seized as a violation of the the suspect 4A and subject the evidence to the exclusionary rule. ]9

### Exclusionary Rule

The exclusionary rule is a remedy used when illegal police conduct violates an individual's 4th, 5th, or 6th amendment and renders the evidence found inadmissible during criminal proceedings. good Under

Here, the search warrant issued for Mr. John's residence was valid. However, when officers found the computer with the password located on it and began looking through its contents, it violated the scope of the warrant as the computer was not listed. Any evidence obtained from the computer such as his searches about how to commit murder and the online life policy will be inadmissible as the fruit of the poisonous tree. ✓

### Photo Identification

#### 5th A

An individual's right against self-incrimination applies during a custodial interrogation in which a reasonable person would not feel free to leave or terminate the conversation. To determine if a custodial interrogation is taking place you must look at the totality of the circumstances, custody arises when the individual no longer has the right to free movement and the interrogation begins when governmental officials begin asking questions of the suspect. Also taken into consideration are the place where the questioning is happening and the conduct of the interviewing officers. Miranda warnings are given to ensure the suspect knows that he has the right to remain silent, anything he says can be used against him, he has the right to an attorney, and if he can not afford one, one will be appointed to him. Miranda Warnings only attach to oral testimony. ✓

#### 6th A

An individual's 6th amendment right to counsel automatically applies during critical stages of criminal proceedings, including lineups. However, the right to counsel does not attach to photo spreads. 90

Here, even though charges had been filed against Mr. John and his right to counsel had been invoked. Police showed Ms. Alice a singular photo of Mr. John which does not violate Mr. John's 6A rights.

### 14th Amendment

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However, a defendant has a right to challenge a witness photo identification if it is found to be highly suggestive and the substantial likelihood of misidentification will occur.

Here, Mr John could argue that identification was highly suggestive as they only shown Ms. Alice one photo of a "potential suspect". He could also argue that it was evening when the witness "allegedly" saw him coming out of Mrs. Gregory's home and there was no way so could get a positive identification of the suspect due to the lighting and this was the first and only time Mrs. Gregory had seen him. This would be a violation of his due process and would prevent the prosecution from the using the witness's identification in their case in chief and for impeachment purposes.

yes

However, the prosecution can argue that even though it was night time, the motion sensor light was triggered and even though Ms. Alice has never seen Mr. John before that night, she was confident in her identification of him and clearly got a good look at him and since the crime was committed recently it lessens the likelihood of misidentification because not very much time at passed

### Witness Testimony

Ms. Alice's witness testimony will be admissible during trial as it was voluntary statement given to police. It would supplement as an independent source to break the chain of the fruit of the poisonous tree doctrine if it is found that her photo identification of Mr. John was inadmissible under the exclusionary rule as unduly suggestion. Here, her testimony would identify Mr. John as the one leaving Mrs. Gregory's resident with what was described as a large bulky object rolled in a carpet being placed in the back of Mr. John's car.

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you nailed it

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**a. What is the Exclusionary Rule?**

The exclusionary rule states that evidence obtained illegally in violation of the 4th, 5th, or 6th amendment is inadmissible in a criminal proceeding.

Under the 4th amendment, the exclusionary rule would apply to evidence obtained via an illegal search or seizure. A search or seizure is considered illegal if it comes from government action that violates a citizen's reasonable expectation of privacy.

Under the 5th amendment, the exclusionary rule would apply to self-incriminating evidence that was not voluntarily provided during a custodial interrogation. A defendant is considered in custody when they don't believe they are free to leave at any time, and interrogation is when the government asks questions that could lead to the defendant provide self-incriminating evidence.

Under the 6th amendment, the exclusionary rule would apply to evidence obtained during an interrogation without an attorney present during the critical criminal proceedings.

The exclusionary rule is very controversial. The rule is essential to protect the constitutional rights of citizens to their privacy, against unreasonable search and seizure, to protect against involuntary self-incrimination, and to ensure citizens have legal representation during a criminal proceeding. Those in support of the rule would argue that if all evidence obtained illegally was admitted into trial, there would be significant motivation for police to simply disregard the law and invade citizens privacy at will to obtain evidence. It would create a dangerous environment where the rights of citizens were ignored and, in a worst case scenario, could open the door for a "police state", where officers could easily obtain or manufacture evidence to apply the law as they see fit. Ignorance of the exclusionary rule could be a treat to democracy itself.

On the other hand, the application of the exclusionary rule may (and assuredly does) result in evidence that could put guilty people in jail being "excluded" from evidence and allowing criminals to go free. Strict adherence to this rule can go against common sense; why should evidence be excluded if it proves beyond a doubt that a party is guilty simply because it is obtained in an "uncomfortable" manner? Those against the exclusionary rule may argue

that the courts allow ideology to get in the way of effective criminal prosecution, and endanger citizens by allowing criminals who know how to "work" the system to go free.

In the Wong Sun case, the Defendant disposed of evidence while running from the police and claimed that it should be excluded because he had been "seized" and his rights to privacy were being violated. The courts ruled that evidence discarded while one was running from the police was admissible, and that while running from the police the Defendant was not considered seized. This would be an instance where the exclusionary rule did not apply.

In *Miranda V. Arizona*, the Defendant claimed his confession should be excluded from evidence because he was not given sufficient warning from the police about the implications of his answers to an interrogation given during custody. This case led to the requirement of police reading suspects their "Miranda rights" once they were engaged in a custodial interrogation. In this instance, the evidence given by the Defendant was excluded from admission into criminal proceedings under the exclusionary rule.

**b. A valid search warrant must:** 1. Be issued by a neutral and detached magistrate; 2. Be based on probable cause; 3. state with specificity the **property to be searched and the items to be seized**. If property outside the warrant is searched or items outside the warrant are seized, they will not be admissible in criminal proceedings unless they fall under a warrant exception. Exceptions to the requirement of a valid warrant in order to perform a search include:

**1. Search Incident to Arrest:** Police have the right to search a Defendant during the course of a valid arrest. If the arrest is being done in public, the search is limited to the suspect's person and wingspan where he could reach weapons or contraband. If the arrest is performed in a home, police may search the person, his wingspan, and do a protective sweep of the property for other suspects. If the arrest is performed in a car, police may search the vehicle if: 1. The suspect is not secured and may be able to access the car to remove or destroy evidence; 2. If they reasonably believe there is evidence within related to the suspected crime at hand. Contraband obtained without a warrant from a search incident to arrest is admissible at trial.

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**2. "Terry" Stop & Frisk:** Police may perform a cursory "Terry" stop if they have reasonable suspicion that a suspect may be engaged in legal wrong doing. If the police believe the suspect may be armed and dangerous, they may do a search of his outer clothing for weapons. If based on plain feel the police discover anything that feels like a weapon or contraband, they may reach into the suspect's pocket and seize the item. Weapons or contraband seized during a Terry frisk are admissible as evidence without a warrant.

**3. Exigent Circumstances:** Police may enter a home without a search warrant if they have "exigent circumstances" leading them to believe that evidence within may be destroyed or may "disappear" (evanescent evidence) if they do not enter the home imminently. The suspicion must be based on probable cause. This exception is only valid if the police do not create the exigency themselves. Police may also enter the home if they believe there is an emergency or danger to public safety that will arise or is underway that can only be addressed with their imminent entry. Evidence obtained from entry into a property during exigent circumstances is admissible without a warrant. The evidence seized must be related to the specific crime which created the probable cause for the police to enter in the first place.

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### Potential 4th Amendment Issues

The 4th Amendment protects citizens from illegal search and seizure. A search is government intrusion into a place where a citizen has a reasonable expectation of privacy. Seizure is when the government takes control of a person or thing.

The Katz two prong test for reasonable expectation of privacy provides that: 1. The Defendant has a Subjective Belief of a reasonable expectation of privacy; 2. Society would reasonably agree that the Defendant has a reasonable expectation of privacy in that circumstance.

Evidence obtained with the naked eye or publicly available technology (like binoculars) during a flyover of a property does not require a warrant. Furthermore, evidence obtained from the open fields outside the curtilage of a home is also admissible without a warrant.

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Police need a search warrant to legally search a home unless there is a search warrant exception. Search warrant exceptions include Search Incident to Arrest, the Plain View Doctrine, Automobile Searches, Consent, Exigent Circumstances, and Terry Stop and Frisk.

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**1. Was the flyover search and discovery of the large building with smoke and large trucks permissible without a warrant under the 4th Amendment?** Yes, this search was permitted.

yes

Anything observed during a flyover with the naked eye is permitted without a warrant.

**2. Was the Observation of the Methamphetamine lab through the windows of the property properly obtained under the 4th Amendment?** The Prosecution will argue that anybody walking by the property would be able to see the meth lab through the window, thus it should be permissible under the plain view doctrine (any evidence obtained by the police that is in plain view of a place the police have a legal right to be is obtained legally). The Defendants will argue that the police had to enter their property curtilage in order to make this observation, and since the property is on the outskirts of town, it is unlikely anybody from the public would be close enough to see the meth lab. The police did not illegally enter the property in order to observe the lab. The facts do not specify how close they were when observing the lab, however since it was a "large scale lab" it was likely visible even from the street. The observation of the lab will likely be considered a legal search that did not impede on the Defendant's right to privacy.

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**3. Did the Police have a Right to Enter the building and arrest Mr. Blue?** Once the police heard a scream and gunshot, they were permitted to enter the building without a warrant. The exigent /

emergency circumstances warrant exception allows to police to enter a property without a warrant if they believe the safety of the public may be in peril without police taking imminent action. **The police had a right to enter the building under the emergency circumstance exception.** *good*

Once inside, they saw Mr. Blue waving a gun around and threatening to shoot, which gave them probable cause to make an arrest. The police have probable cause when truthful facts or circumstances would give them a reasonable belief that a crime is being committed or is about to be committed. **The police had probable cause to arrest Mr. Blue.** *yes*

**4. Were the Police Permitted to Detain and Search all occupants after Arresting Mr. Blue?** During an arrest at a property, police may detain all occupants during the length of time it takes them to complete a protective sweep of the property. In order to perform a "Terry Frisk" search of all occupants for weapons without a warrant, the police would need to have reasonable suspicion that the occupants may have weapons on them. Reasonable suspicion is defined as an articulable belief that a suspect may be guilty of legal wrong doing. It is based on the totality of the circumstances. The fact that Mr. Blue had just fired a gun in a fairly obvious criminal enterprise should **provide reasonable suspicion to allow a terry frisk of all occupants for weapons.** *great spec*

**5. Was the seizure of assault rifles during the search of the premises for additional suspects or anybody harmed permitted?** The information received from DD gave the officers reasonable suspicion that there may be a narcotics inside the building at question. The informant also named three potential suspects, Mr. Blue, Mr. Grey, and Mrs. Green. Upon visiting the building and seeing the methamphetamine lab from outside, the information from DD corroborated with the plain view observation of the meth lab provided the officers with probable cause of criminal activity. The gunshot and scream gave them the clear right to enter the property. *✓*

Upon Mr. Blue's arrest, the police had the right to do a protective sweep of the property. At this time, they would have probable cause of potentially others with weapons and at least two other suspects potentially present at the property (Mr. Grey and Mrs. Green). **The police had sufficient Probable cause to search for weapons or other suspects, and further were allowed to perform a protective sweep incident to arrest for further dangers to officers or the public in the property. Contraband obtained during a protective sweep related to the crime that was the result of the arrest would be admissible. The search should be permitted and the guns should be admissible.** *✓*

**6. Was the Seizure of the Drug Making Equipment Permitted under the 4th Amendment?** The drug making equipment was in plain view from outside the property and once the police were inside

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the property. Exigent circumstances had allowed the officers to enter the property legally.

**Contraband that is within the plain view of an officer who is in a place he has the legal right to be can be seized without a warrant, so the drug making equipment was legally seized.** 90

**7. Was Mr. Grey's Duffel Bag Legally Obtained?** Mr. Grey jumped out the back window of the property and was pursued by officers, who saw him discard of a large duffel bag. Seizure is the exercise of control over a person or thing when there is a reasonable expectation of privacy. The bag was dropped in a public area during a time when Mr. Grey was running from the police. Mr. Grey is not considered seized until he is under police control. Evidence discarded by a suspect while on the run from police is **not** considered seized, and thus would not be the result of an illegal search or seizure. **The million dollars cash, 3 lbs. meth, and sawed off shotgun were all legally obtained and should be admitted into evidence.** Yes

**8. Was Mrs. Green legally stopped in her Range Rover?** Yes, Mrs. Green was breaking the law while driving erratically over 100 MPH. **The police had reasonable suspicion (the standard for a traffic stop) to stop her vehicle.** 90

**9. Was the money and meth discovered in Mrs. Green's vehicles legally obtained and Permissible Evidence?** Ms. Green was validly arrested for misdemeanor charges of driving erratically and over 100 MPH. When a suspect is arrested and the vehicle apprehended, the police are permitted do an inventory search of the vehicle. The police are allowed to search the entirety of the vehicle, including the trunk and any closed containers, during an inventory search. All evidence discovered during an inventory search is **admissible in criminal proceedings.** 90

**10. Did the Tombstone Drug Task force have enough information to put in an affidavit for a search warrant prior to going out to the scene for an inspection?** A valid search warrant needs to be based on probable cause and contain specific information about the area to be searched and the items to be seized. The police received a tip from an informant, DD, who had given reliable information to the police in the past. DD claimed the building was abandoned, used for manufacturing and shipping narcotics, and they used an old beat-up white Range Rover to replenish chemical supplies. }

When they flew over the building, they were able to confirm a large building with smoke coming out of a smokestack and several large trucks parked outside. They also independently discovered that that there was no business license or lease attached to the property (evidence that it may have been abandoned).

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It is borderline whether the the Drug Task Force would have enough information for a warrant before visiting the property. The only information from DD's tip they could definitively corroborate was that there was a large potentially abandoned building being used for a purpose that may include some kind of fire or smoke creating activity. While this may be sufficient for reasonable suspicion, the court would **likely rule that this was not enough evidence for the probable cause required to issue a search warrant.**

**END OF EXAM**

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