

San Luis Obispo College of Law

Midterm Examination

Criminal Law & Procedure

Spring 2025

Professor S. Wagner

Instructions

1. This examination consists of three essays of equal value. There is a three (3) hour time limit to complete the exam.
2. Make sure that you read each essay question carefully before answering. Attempt to organize your answer before you start writing. The essay questions test your ability to apply the law to the facts. After stating the issue, provide a succinct statement of the relevant legal principles, followed by a detailed analysis of how these legal principles apply to the facts and a conclusion.

QUESTION 1

Dave went to Department 9 of the Superior Court to attend the sentencing proceedings for defendant Jones. Jones was previously convicted of several counts of child molestation and the victim in the case was Dave's son, Ian. Jones had suffered several prior felony convictions for sex-related offenses and had served a prior prison term, so the prosecution and Dave expected the judge to impose the maximum sentence of 25 years. The prosecutor cautioned Dave in advance that Judge Boone was very unpredictable. Dave took a valium prior to entering the courtroom in effort to calm his nerves.

The judge sentenced Jones to 6 years, which was the lowest possible sentencing term. Dave reacted by leaping from his seat and running toward bailiff, Brock. Dave forcefully removed Brock's sidearm and opened fire on Jones, striking Jones three times in the chest killing him instantly. Utilizing his taser (non-lethal weapon), Brock fired three times, striking and neutralizing future attacks by Dave. Deputy Wayne, a witness to the incident, placed restraints on Dave and transported Dave to the hospital for removal of the taser barbs, pursuant to protocol. As Dave was being treated by Nurse Nancy, Deputy Wayne said, "Man that judge is weak, that lowlife got what he deserved." In response to this comment, Dave said, "I thought the valium would keep me calm." This prompted Nurse Nancy to ask, "Why did you take the valium?" In response, Dave said, "Because I worried I might do something crazy."

Assume that the prosecution has elected not to charge Felony Murder. Do not discuss Felony Murder.

1. What substantive crimes would you expect to be charged against Dave and what defenses or factors in mitigation would Dave assert? Discuss.
2. Are Dan's extrajudicial statements made at the hospital admissible? If so, may they be used in the prosecution's case in chief? Why? Why not? Discuss.

QUESTION #2

Police officers developed probable cause to believe that Dale had violently assaulted Bart because Bart failed to pay Dale for cocaine Dale sold to Bart. The officers obtained a valid warrant for the arrest of Dale on an assault charge. They went to Dale's apartment and arrested Dale without incident at the front door when he responded to their knock. The officers then walked through the apartment and, in a rear bedroom, saw drug paraphernalia which they left in place. A police officer validly advised Dale of his Miranda rights. Dale immediately stated: "I do not want to talk to you." Dale was booked and placed in a cell with Sam, an inmate who was known by the jailers to be an informant. Conversations ensued between Sam and Dale during which Dale made statements incriminating himself concerning drug trafficking. Sam promptly related Dale's statements to jail personnel.

Police then applied for and obtained a warrant authorizing a search of Dale's apartment for cocaine and drug paraphernalia. The affidavit in support of the warrant recited that Dale had sold cocaine to Bart. The affidavit also recited that a police officer had seen drug paraphernalia in Dale's apartment. The affidavit did not disclose Dale's statements to Sam or the circumstances in which police observed the drug paraphernalia. Officers who executed the search warrant seized the drug paraphernalia and cocaine which they also found in the apartment.

Dale has been charged with possession of cocaine and drug paraphernalia under applicable state laws.

1. Dale has moved to exclude from evidence his statements to Sam. Dale claims his statements were involuntary, were elicited after he invoked his Miranda rights, and were obtained in the absence of counsel. He argues that admission of the evidence would violate his rights under the Fifth and Sixth Amendments to the United States Constitution. What arguments should the prosecutor make in opposition to the motion, and how should the court rule on the motion? Discuss.
2. Dale has also moved to exclude any testimony regarding the police officers' initial observations of drug paraphernalia in Dale's home and to exclude the items seized in the search made pursuant to the search warrant. What arguments based on the Fourth Amendment to the United States Constitution should Dale make in support of this motion, what arguments should the prosecutor make in opposition to the motion, and how should the court rule on the motion? Discuss.

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QUESTION # 3

San Luis Obispo Detective Monroe befriended Del at a local tavern and asked Del if he wanted to “make some quick money.” Del told Monroe that he wanted to learn more.

The next day a second meeting between Monroe and Del took place at the same tavern. Monroe told Del that the two of them could make some money if Del were to enter a local warehouse and steal some precious gems. Monroe told Del that he already arranged to have an “inside guy” disengage the warehouse’s alarm system. The plan called for all three men to meet immediately after Del made it out of the warehouse with the goods and to split up the merchandise.

Late that night, Del entered the warehouse through a partially opened skylight. Bob, a police officer, saw Del enter the warehouse through the skylight and followed him inside, intending to apprehend Del. Del spotted Bob and quickly ran through the warehouse and exited through a side door and onto the property of a nearby apartment complex. Bob was in very close foot pursuit of Del, but momentarily lost sight of Del. Bob expanded his search for Del to the outside of the warehouse and a nearby apartment complex. Bob began randomly knocking on the doors of several apartments to ask residents if they heard or saw anything unusual. May responded to Bob’s knock but refused to fully open the door. Bob saw Del crouching down behind a sofa inside of the apartment and pushed the door open and announced “police get down on the floor, let me see your hands.” Bob placed handcuffs on Del and demanded that Del sit on the sofa. Bob asked May for consent to search the apartment and May replied “I don’t know, I guess so, I’m just watching the apartment for Del’s cousin Joe.” Immediately after May’s response Bob started his search. During the search, Bob found and seized several large uncut diamonds stuffed behind the cushions of the sofa. Incident reports detailing the above events were submitted to the District Attorney’s Office for review and potential charging.

1. Do the facts support conspiracy charges? Discuss the likelihood of a conviction using both Common Law and Model Penal Code theories. Clearly define the target crime that would be used by the prosecution to support the conspiracy theory. What defenses would you expect Del to assert? Discuss.
2. Was Del lawfully detained and/or arrested? Discuss.
3. Assume that Del’s counsel seeks to block the introduction of the uncut diamonds. What theories would be advanced by Del’s counsel and how will the prosecution respond? Discuss.
4. Has May committed a criminal act or acts? Discuss.

QUESTION 1

ISSUE OUTLINE

1. Substantive Crimes (State v. Dave) **Assault** (Dave confronts Bailiff, Brock). Did Brock experience apprehension and see or sense Dave approaching him? Unclear on these facts. Argue and make logical inferences. **Battery** (Did Dave cause an offensive and non-consensual touching of Brock?) The facts state “forceful removal,” suggesting that the requisite level of force was used. The niche inquiry is whether the law requires the actual touching of the person of another. The answer is no. The law is such that taking an item from the grasp or control of another may be sufficient to warrant a battery charge (see purse-snatch line of cases or legion of Tort hypos with cross-over application to Criminal Law). **Robbery/Larceny** for the taking of the sidearm? If Robbery, it would have been accomplished by force and likely not by fear (see no apprehension above).

Culpability for the Death of Jones (Prosecution’s Burden BRD)

Students must work through Homicide / Murder and first address the appropriate and supporting theory of “malice.” These facts do support “Intent to Kill” as an express form of malice. The use of the deadly weapon and the overall conduct and timing of the killing/shooting lend strong support to the argument that Dave had the requisite state of mind of malice - more specifically, Express Intent to Kill.

Were the acts Premeditated and Deliberate in nature? Would or could the prosecution proceed on a First-Degree Murder theory? Rule re P&D: Focus is on the quality of reflection and NOT the amount of time engaged in reflection. Per case law, the requisite level of reflection can be completed rapidly/quickly. Students would be expected to cite to the total course and conduct. This should include reference to Dave’s use of valium to “calm his nerves.” This is a double-edged sword issue, as the use/ingestion of valium may provide a mens rea defense or be advanced as mitigation.

Can malice be mitigated as a means of getting to Voluntary Manslaughter? The potentially viable path to Vol Man is the “Legally Adequate Provocation” path. Note that ISD will not apply on these facts. How will Dave’s statements at the hospital impact the Murder versus Vol Man discussion?

2. Miranda (Fifth Am.) and DP Volunarity (Coercion) are the expected discussions. There was no advisement issued on these facts. Is this a setting where the Miranda Advisement was required? Need Custody and Interrogation in order to trigger the required advisement.

Do the facts support “Custody?” No formal arrest here, but Dave has been restrained and transported. Students must measure custody objectively. The measure is “freedom to leave” and this is measured by resort to totality of the circumstances (setting/location, use of restraints, number of officers, etc.,...)

Was there direct interrogation of functional equivalent of questioning? No direct questioning here, but there's room to argue that Dep. Wayne's statement was aimed at deliberately eliciting an incriminating statement.

Students would be expected to carefully evaluate the exact content of the statements, comments and questions by all three people present at the ER. What is the legal significance of Nurse Nancy's follow-up question?

Q2 - ISSUE OUTLINE / COMMENTS

Rog #1

The initial arrest warrant is described as validly obtained, so when the officers executed the arrest warrant they were lawfully positioned at Dale's apartment. As noted, this led to Dale's arrest and subsequent transport/booking at jail. Dale was arrested on the assault charge and the arrest and the "Miranda" advisement came after the officers conducted their walk-through and made their plain-view observations (all worthy discussions in Rog #2).

"Miranda" and Dale's Express Invocation

The facts state that the officer issued a valid advisement, so there is no need to treat this encounter as a point of contention. Students are expected to state that Dale expressly invoked his right to silence. Dale did not invoke his right to counsel. So, when Dale was booked and placed in the cell with Sam, Dale was cloaked with 5th Amendment right to silence rights; meaning that LEAs must scrupulously honor Dale's right and cease all further questioning (both direct and functional equivalent forms).

The Sam and Dale Exchange (Theories to Exclude Statement)

The Rog #1 prompt invites consideration of three potential theories: 1.) Involuntary Statement (a Coercion argument); 2.) Fifth Amendment ("Miranda") and 3.) Sixth Amendment (Right to Counsel).

Sixth Amendment RTC would be ruled-out by students perfunctorily, as there is no triggering event to cloak Dale with this right (he is an uncharged suspect). Students would then turn to 5th Am and/or a DP Voluntariness argument. All jailhouse informant cases place emphasis on the totality of circumstances relative to presence or absence of police orchestration in advance of the subject encounter. The facts indicate that informant, Sam, was "known by the jailers to be an informant." This fact does give rise to a discussion about Sam acting in the role of agent and an argument that Sam engaged in either coercive conduct or tactics or direct or functional equivalent of questioning of Dale. The facts state that a "conversation ensued,..." without reference to any direct questioning by Sam. It is equally dubious to attribute coercive-like conduct or actions to Sam, as it appears that he was merely serving as a "listening post." Per caselaw arising out of the spate of "jailhouse informants" scenarios, the action always centers on whether the informant was simply passively listening versus coaxing, cajoling or even issuing threats.

There was no "Miranda" violation here. Dale spoke at his own peril. This scenario is modeled after "Illinois v. Perkins."

Rog #2

Fourth Amendment Discussion (Initial Observations)

Expected discussions here would be "Search Incident to Lawful Arrest," "Protective Sweep" and "Plain View Doctrine."

Fourth Amendment Discussion (Subsequent Search Warrant)

The anticipated discussion here should focus on what information was provided in the warrant application and what information was omitted. It is the omission of information that gives rise to extra scrutiny. It would appear that officers relied heavily on the information provided or gleaned from Sam, yet they did not disclose that in the warrant affidavit. Does this rise to the level of bad faith and deception such that the warrant could be quashed? Note that the fact that Sam would likely not be deemed an agent of the police is a key factor in the warrant assessment. Moreover, the facts do state that police had the requisite PC (see first sentence of fact pattern).

On balance, the warrant would likely survive challenges due to the fact that the initial observations were lawfully made.

END

Q3 - ISSUE OUTLINE / COMMENTS

1. Students are expected to define both CL and Modern applications of "Conspiracy." Point value resides in discerning the niche differences in the definitions and application. The main distinctions are that CL absolutely requires "two guilt minds" - aka "plurality." Whereas modern application will allow for proof of unilateral conspiracy; meaning that one ostensible or perceived member of the agreement does not genuinely wish or agree to commit the target offense. Another critical distinction is that at CL the crime of conspiracy is complete at the point of agreement, whereas under modern application, the crime of conspiracy is only complete where one or more members commit an overt act in furtherance. Lastly, there is no requirement that verbal assent or agreement be proven, as subsequent actions/conduct may serve as support.

These events likely took place in California, an overt act jurisdiction, so the prosecution can and will proceed on a Uni theory. These facts present a "sting" scenario giving rise to the Uni discussion and the potential defense of entrapment.

Students would be expected to note the target crime as Commercial Burglary and to note that the prosecution may charge Del with both conspiracy and the target crime of commercial burglary (2d Degree) - no merger here.

Who are the other members of the alleged conspiracy?

Detective Bob does not harbor the requisite mens rea, as his goal is likely to make an arrest (thwart, not further/commit the crime). But, note that if Del thinks that Bob genuinely wants to complete the crime, then the Uni theory is tidy/met.

What about the unnamed “inside guy?” The issue here centers on whether all members of an alleged conspiracy need to know of each others identity. They do not.

Del will likely assert the affirmative defense of entrapment (the “I did it, but... defense). Students were expected to work through the factors that drive the analysis; such as, was Del’s will overborne due to pressure employed by Det. Monroe? Was Del in fact predisposed (ready, willing,...) to commit the crime? This was a pretty passive overture or invitation by Monroe on these facts, so entrapment will likely fail.

2. Did students define both detention and arrest and then make inferences? The fact that law enforcement submitted reports, suggests that an arrest was made. Short responses were expected here, as there was no extrajudicial statement made by Del when he was handcuffed and ordered to sit on the sofa. Students needed to note that the “detention versus arrest” distinction could critically impact part of the Rog 3 discussion (“Search-Incident” search warrant exception).

3. This search was conducted without a warrant, so the action centers on warrant exceptions; including of course, the entry into the apartment.

Fourth Amendment

Gov. Actor? REP? Yes on both. Looks like Del likely has a REP. Seems as though May let him inside and that Del’s cousin rents or owns the apartment.

What warant exceptions apply?

Exigency (Fleeing felon; possible desctruction of evidence) - a POC here due to Bob aparently losing site of Del, momentarily.

Assuming (and students should) Bob’s entry was lawful, the next discussion would be “consent” followed by “search-incident to lawful arrest.” Was May’s dubious and ambiguous consent valid? Lots of room to riff on this here. The expected pivot here would be to search-incident under “Chimel,” “Gant.”

4. Was May an accessory after the fact? Was she instrumental in helping or aiding Del in evading capture? Likely answer: No, use no proof of specific intent or knowledge.



1)

1. Crimes committed by Dave?

Assault

B as J.V.

Assault occurs when a willful, intentional, nonconsensual act causes reasonable apprehension of harmful or offensive touching. Assault can be elevated to aggravated if committed in a particularly aggressive manner or with the use of a deadly weapon.

Here, the facts provide that Dave was attending the sentencing proceedings for Jones, a man who committed crimes of child molestation against Dave's son. After listening to Jone's receive the lowest possible sentencing term for his crimes, Dave responded by leaping from his seat and running toward Bailiff Brock. Dave then forcefully removed Brock's sidearm and opened fire on Jones. While the facts are silent as to the feelings or anticipations of Bailiff Brock during this time, it can be reasonably inferred that one would feel reasonable apprehension or fear of imminent harmful or offensive touching if they witnessed an individual leap from their seat, and run towards them. Especially in a court room setting where decorum and etiquette are practiced and expected. It can also be reasonably inferred that Bailiff Brock's experiences apprehension when Dave "forcefully" removed his sidearm.

good

It is likely that Dave will be charged with Assault of Bailiff Brock.

Battery

Battery occurs when a willful, intentional, nonconsensual act causes harmful or offensive touching. Battery can be elevated to aggravated if committed in a particularly aggressive manner or with the use of a deadly weapon. Battery can tried as a lesser charge to Robbery.

elem. met here?

See assault discussion above.

It is possible that Dave will be charged with Battery against bailiff, Brock.

Robbery

Robbery is the trespassory caption and asportation of the property of another with intent to permanently deprive, through use of force or fear, with out consent or privilege.

Here, the facts provide that Dave hastily approached Bailiff Brock and "forcefully" removed his sidearm from his person. After removing Brock's side arm, Dave opened fire on Jones. Dave's action of taking and utilizing could

F/A
(H)

be deemed as "asportation" of Brock's property and the facts do not provide indication that Dave intended to return the sidearm to Brock.

It is likely that Dave will be charged with Robbery.

B was disposed = law. long as m R met

Homicide

Homicide is the killing of a human being by another human being.

Causation

For culpability of murder to attach, one's acts must be the actual and proximate cause of the victim's death.

Actual

Can be tested using the but-for test or substantial factor test.

✓ Here, but for Dave's shooting of Jones 3 times in the chest, Jones would not have died instantly.

Dave is the actual cause of Jones's death.

Proximate

Proximate causation can be measured by the foreseeability of the death, given the actions of the defendant.

Here, Dave's unlawful stealing and wielding of a deadly weapon, is likely (foreseeable) to cause either death or great bodily harm.

Dave is the proximate cause of Jones's death.

Murder

Common Law Murder is the unlawful killing of another human being by act or omission, with malice aforethought. The four malice theories are as follows: (1) Intent to kill - express malice; (2) Intent to cause great bodily harm (GBI) - implied malice ; (3) Wanton willful disregard for human life/depraved heart/reckless conduct that results in a murder - implied malice (4) Felony Murder Rule (FRM) - expressed malice. Murder in the 1st degree requires premeditation and deliberation, felony murder can be charged in the 1st degree, while 2nd degree murder encompasses all other murders.

Applicable Malice Theories

Intent to Kill

Dave did have the intent to kill, given that he, of his own volition, leapt out of his seat, stole a weapon (firearm) and discharged it directly at his intended target.

The facts however, do not provide explicit proof of premeditation or deliberation. Prosecution may argue that premeditation and deliberation do not require a time component.

It is possible that Dave will be charged with murder, intent to kill in the first degree.

Intent to cause GBI

Wanton willful disregard for human life/depraved heart/reckless conduct...

1st Degree

As stated supra, 1st degree murder requires premeditation and deliberation. Dave will assert that he had no prior intention of killing Jones. However, the prosecution could argue that Dave's comment in the hospital, "I thought the valium would keep me calm...Because I worried I might do something crazy" is proof of premeditation and deliberation, given that Dave was fearful of his reaction to the sentencing to the point of attempting to mitigate the possibility of his overreacting by ingesting a valium pill.

2nd Degree

As stated supra, all other murders.

Voluntary Manslaughter

A murder charge can be mitigated to Voluntary or Involuntary Manslaughter if the defense can prove that the suspect was adequately provoked, was in the heat of passion with no cooling off period, or claims of imperfect self defense. In this case, Dave's son was molested by Jones and Dave is present when the Judge gives Jones the lowest possible sentencing term. It can be reasonably inferred that this news, heard by the father of a molestation victim, would be adequate provocation for an emotional response. After hearing the sentence, Dave reacted by leaping from his seat, running toward bailiff Brock, gaining control of Brock's firearm, and shooting Jone's in the chest 3 times, killing him instantly. Based on the provided facts, it seems that there was no "cooling off period" for Dave, however, the prosecution will likely argue that Dave had enough time to reconsider his actions during the time it took him to make it from his seat to Bailiff Brock's firearm.

It is possible that Dave's murder charged will be mitigated to Voluntary Manslaughter.

Don't merge Expressions and I think which requires P+D

make inferences

But there is plenty of room to argue - (15-20 issue)

good

absolutely + Notice re Judge

more here than the comment - admission

Malice can be mitigated

(+)

F/A (+)

Good balance here

much will depend on whether D's admission comes in

Defenses to Murder

Intoxication- Voluntary

good point

Voluntary intoxication is an applicable defense to specific intent crimes only. It is not an applicable defense if the suspect became intoxicated with the intent to commit a crime.

(D) POC

Here, Dave will assert that he took the valium to calm his nerves before the sentencing out of fear that he might act out if he did approve of the sentencing outcome. The prosecution will likely argue that the valium's intended use is for calming effects, an even so, Dave still committed a violent crime. The facts also provide that Dave took "one valium". The facts are devoid of the dosed amount in that single valium, but it can be reasonably inferred and possibly argued by prosecution that ingestion of one valium by what seems to be an adult man, does not intoxication make.

It is unlikely that Dave will be able to successfully claim voluntary intoxication as a defense to his murder of Jones.

2. Dave's Extrajudicial Statements Admissible?

5th Amendment (5th A)

The 5th A protects citizens from government compelled self-incrimination. It is enforced by the Miranda Rule, which is a list of statements provided by LEO to suspects in custodial interrogation settings, and informs them of the following; (1) Right to remain silent; (2) Anything you say can and will be used against you in a court of law; (3) Right to an attorney; (4) If you do not have an attorney, one will be appointed to you. Miranda rights must be provided to a suspect prior to interrogative questioning, any statements made before Miranda Rights are inadmissible. A suspect can waive his rights, though he must do so knowingly, and intelligently. Once a suspect invokes his right to an attorney, all questioning must cease. 5th A rights are not case specific, so LEO cannot question about any possible crimes.

Was Dave in a Custodial Interrogation setting?

Custody can be determined by considering if a reasonable person would feel free to leave? Here, it can be reasonably inferred that after shooting someone in the chest 3 times, being tased, detained, and transported with Deputy supervision to the hospital, one would not feel free to leave the hospital room. It is likely that Dave was in fact in lawful custody- arrest.

The statements in question were given while Dave is in a hospital room being treated by Nurse Nancy to remove the taser barbs that were used on Dave. Dave is accompanied by Deputy Wayne, and given the nature of Dave's

So under TOC! custody elem. met

2 stmts

crimes, ie. murder, it can be inferred that even though he is in a hospital room, he is still under watchful eye of Deputy Wayne, who personally restrained and transported Dave from the courthouse. It is likely that Dave is legally in Custody/Arrest while receiving medical treatment pursuant to protocol, before he is taken to a police station setting.



Interrogation

Words or conduct given in a custodial and coercive police setting that LEO can reasonably assume will incite an incriminating response. Interrogations can be conducted in 2 ways, (1) direct questioning (2) functional equivalent.

aimed at triggering a response?

Here, Deputy Wayne said "Man, that judge is weak, that lowlife got what he deserved." to which Dave responds, "thought the valium would keep me calm". It can be reasonably inferred that Dave is in fact in custody or has been arrested given the probable cause to do so, since he was witnessed killing Jones. Therefore he should have been read his Miranda Rights and the facts do not provide any indication that he was read his Miranda Rights.

① N's Q to D?

Therefore, Dave's extrajudicial statements made at the hospital are inadmissible but may still be used to impeach his testimony.

END OF EXAM

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2)

1)

FIFTH AMENDMENT - *MIRANDA* RIGHTS

The Fifth Amendment protects an individual from self-incrimination. In order for a defendant to be interrogated in a custodial setting, law enforcement must provide the individual with their Miranda rights, i.e., the right to remain silent, anything said can be used against them in a court of law, they have the right to an attorney, and if they cannot afford one, a lawyer will be provided to them, at no cost to them.

Here, the facts do not include the officer's exact phrasing of his *Miranda* warnings recital to Dale. However, it can be reasonably assumed that the officer properly and appropriately stated the warning because the facts state Dale was "validly advised" of his rights.

Therefore, Dale was properly advised of his *Miranda* rights.

Custody

A person is "in custody" if a reasonable person in their position would not feel free to leave (objective standard).

Here, the facts indicate that there was a formal arrest conducted at Dale's apartment. The officer's were lawfully positioned at his front door and were there to execute an arrest warrant. Dale was arrested, booked, and placed into a jail cell. Based on these observations, it can be argued that a reasonable person in Dale's position would not feel free to leave.

Therefore, Dale is in custody.

Interrogation

Interrogation is any line of questioning done by law enforcement as a way to obtain information from the individual that the officer knows or should reasonably know would cause the individual to self-incriminate themselves. There are two forms of interrogation: (1) direct questioning, and (2) functional equivalent, usually implied by words or conduct.

Here, Dale was placed in a cell with an informant. The informant engaged in conversation with Dale, during which Dale made incriminating statements about himself concerning drug trafficking. The facts do not state what exactly was said between the two during their conversation, so it is unknown whether the informant asked specifically pointed questions or if they just had a normal chat. This form of questioning constitutes the functional equivalent

Facts state "validly advised"

OK

(+)

So what's the best inference?

of direct questioning because the informant is not asking any direct questions related to the crime in question, rather he is just having a conversation to see what information is volunteered to him. There are no other facts to support any other law enforcement officials attempting to question Dale.

Acting at
Behest
Facts
here

Therefore, there is functional equivalent interrogation.

To make this
conclusion
you would need
more facts

DUE PROCESS / VOLUNTARINESS

In order for a statement or confession to be admissible, it must be voluntary based on the totality of the circumstances, not coerced.

Got facts?

Here, Dale spoke to an informant, who was planted as a listening post by law enforcement in his cell. The facts do not state what exactly was said between the two during their conversation, so it is unknown if the informant used any type of tactic at the behest of law enforcement to try to forcefully obtain self-incriminating information. In order for Dale's statements to be considered involuntary, Dale would have had to be aware of the fact that Sam was an informant working at the behest of law enforcement. Considering Dale ended up making self-incriminating statements about himself during his conversation with Sam, it can be reasonably assumed that had Dale known Sam was planted as a listening post, he would not have volunteered the same self-incriminating statements to be later used against him. As stated above, there are insufficient facts to support whether or not other police officers may have tried to coerce Dale into giving up self-incriminating information.

OK

FIA
(+)

Ditto
for
Miranda
analysis

Therefore, Dale's statements were likely voluntary and will be deemed admissible.

INVOCATION OF MIRANDA RIGHTS

A defendant can invoke his Fifth Amendment right to silence or right to counsel at any time, but he must do so clearly and unambiguously.

Right to Counsel

There is no evidence to support Dale clearly and unambiguously invoked his right to counsel at any point.

Right to Silence

invocation
to - of
silence

Dale invoked his Fifth Amendment right to silence shortly after having been advised of his *Miranda* rights: "I do not want to talk to you." This statement clearly and unambiguously indicated to the police officers that he did not want to be further questioned. If police, for some reason or other, are still unclear as to whether the defendant wishes to cease all questioning, they may ask clarifying questions to make sure that is what the defendant wants, so

clear
invocation

long as the questioning does not cross the line into becoming an interrogation. Here, police did not continue to ask questions and immediately ceased all questioning as soon as Dale said he did not want to talk to them.

Therefore, Dale clearly and unambiguously invoked his Fifth Amendment right to silence.

(Rt. 5 in - place i intact while in jail)

CONCLUSION: Therefore, since Dale invoked his right to silence and not his right to counsel, the prosecution (will be able to prove beyond a reasonable doubt that his statements were obtained in the absence of counsel.)

(?)

SIXTH AMENDMENT - RIGHT TO COUNSEL

The Sixth Amendment right to counsel attaches after the defendant has been formally charged with a crime and adversarial proceedings have begun.

at the time of the D-S conversation

good

Here, the facts do not suggest that Dale was formally charged with assault. Instead, he was picked up by law enforcement on an arrest warrant based on probable cause. Therefore, without the formal filing of criminal charges against Dale, he does not have proper standing to raise a Sixth Amendment violation of his right to counsel.

ADMISSIBILITY UNDER THE EXCLUSIONARY RULE

Under the exclusionary rule, testimonial evidence is admissible in the prosecution's case-in-chief if it is coerced or obtained in violation of the individual's constitutional protections, unless an exception applies. This does not apply to physical evidence, such as DNA.

at his own risk - peril

✓ Here, Dale's statements will more than likely be admissible because he spoke with an informant. There are no facts to support that notion that Dale was coerced in any way by law enforcement to give up self-incriminating behavior. Thus, it can be reasonably assumed that Dale's statements were made voluntarily.

CONCLUSION: Therefore, the court should deny the defense's motion to suppress and admit Dale's statements into evidence for the prosecution's case-in-chief.

2)

FOURTH AMENDMENT - UNREASONABLE SEARCHES & SEIZURES

The Fourth Amendment protects individuals from unreasonable searches and seizures by the government.

✓

GOVERNMENT ACTOR

In order for a Fourth Amendment violation to be established, there must be either a government actor or a private individual acting at the behest of law enforcement.

Here, there is an informant, Sam, acting at the behest of law enforcement and police officers executing a search and arrest warrant.

Therefore, there is a government actor.

STANDING / REP

In order for a defendant to have standing to bring forth a Fourth Amendment claim, they must have had a reasonable expectation of privacy in the place to be searched or the items to be seized. Under the application of the *Katz's* 2-prong test, the subjective standard is used if the defendant thought they had a reasonable expectation of privacy and the objective standard is used if a reasonable person in society would agree that a person would have a reasonable expectation of privacy in the place/item to be searched.

Here, the place to be searched is Dale's home, which is a constitutionally protected area.

Therefore, Dale has a reasonable expectation of privacy in his home.

SEARCH OF DALE'S APARTMENT

Here, the police were arrived at Dale's apartment with an arrest warrant. An arrest warrant requires probable cause, which the officer's had (they believed Dale had violently assault Bart). Based on the facts, it is established that the officer's obtained a valid arrest warrant based on probable cause, making the officer's lawfully positioned at Dale's apartment. The officer's knocked and announced their arrival. Dale responded to their knock and then the officers walked through his apartment. Generally, an arrest warrant is only for the seizure of the person and requires a search warrant for the search of the individual's home, unless a search warrant exception applies. In this case, it can be reasonably assumed that the officers at the scene were simply conducting a search for any other possible persons who may be in the home at the time of the suspect's arrest, as a way to secure the area and ensure their safety while on the premises. There are no facts to support that the officers exceeded the scope of their search while inside the home.

SEARCH WARRANT

A valid search warrant must be: (1) issued by a neutral magistrate; (2) based on probable cause; and (3) specific particularity with regards to what is being searched/seized.

fatal?

Here, the police obtained a search warrant authorizing a search of Dale's apartment based on probable cause. In their affidavit, officers included that Dale sold cocaine to Bart and the officer's recital of what he had seen when arresting the suspect at his home, but failed to disclose Dale's statements to Sam or the circumstances in which police observed the paraphenelia. Although the undisclosed information may at its face not seem pertinent to the particularity of the warrant, the defense may argue that the officers were not being forth coming in how they initially came to learn about the existence of the paraphenalia and that those statements could have potentially convinced a judge to not issue the warrant in the first place.

Good Faith

Therefore, the officer's properly executed the search warrant.

SEARCH WARRANT EXCEPTIONS

PLAIN VIEW DOCTRINE

Re initial obs

Under the plain view doctrine, law enforcement may lawfully seize illegal items, such as drugs, if they are lawfully positioned, use their senses to observe the paraphenalia (i.e., sight, smell, hearing), and do not exceed the scope of their search in order to discover the item. Here, the officers were lawfully positioned because they were executing a valid arrest warrant. They entered the home to do a sweep for any other potential persons who may be inside the home who can potentially hurt/be a threat to the responding officers. The officer observed the drugs in plain view, meaning that facts do not support that officer opened any drawers, doors, etc. in order to discover the item. However, given that the arrest warrant was for an assault charge, the officer was correct in leaving the drugs behind because that would've required a search warrant or exigent circumstances, which there were none at the time and they had not yet applied for a search warrant of Dale's home.

Also SILA

END OF EXAM

3)

1)

Conspiracy Charges Against Dell

Conspiracy

At common law, conspiracy is an agreement between two or more people to commit an unlawful act or a lawful act by unlawful means. No overt act is required under the traditional common law rule.

Under MPC conspiracy requires an agreement to commit a crime, purpose to promote or facilitate the commission of the offense, and an overt act in furtherance of the conspiracy. The MPC allows unilateral conspiracy, meaning one party can be feigning agreement (e.g., an undercover cop) and the other can still be guilty.

Agreement

Monroe proposed that Dell break into a warehouse and steal precious gems. Dell expressed interest and returned the next day to hear the plan., His later actions-- entering the warehouse through a skylight lat at night-- demonstrate that he agreed to participate.

Target Crime

The target crime of the conspiracy was burglary-- unlawful entry into a structure with intent to commit a felony therein (theft of gems).

Overt Act

Dell's act of entering the warehouse through a skylight constitutes an overt act under the MPC.

Monroe is an undercover cop who feigned participation. Under common law, a conspiracy requires two genuine parties. Since Monroe never intended to commit a crime, Dell may not be guilty under common law due to lack of mutual criminal intent.

Under the NPC, Dell may still be convicted because the MPC permits unilateral conspiracy, so long as Dell subjectively believed he was in a real agreement.

Possible Defenses by Dell

Entrapment

Dell may argue entrapment, claiming Monroe induced him to commit a crime he otherwise would not have committed. However, for entrapment to succeed, Dell must show the idea originated with the police, and he lacked a predisposition to commit the crime. Dell expressed interest in "quick money" and followed through on the plan, suggesting predisposition. This will likely defeat the entrapment defense.

Withdrawal

Withdrawal is a defense only to liability for future crimes committed by co-conspirators-- not to the conspiracy itself. No facts suggest Dell withdrew before the burglary.

Conclusion- 1

Dell is likely guilty of conspiracy under the MPC, but not under common law due to the lack of genuine co-conspirator. His defenses are unlikely to succeed.

2)

Was Dell lawfully detained and/or arrested?

The 4A prohibits unreasonable searches and seizures. A warrantless arrest in a home generally requires probable cause and exigent circumstances or consent to enter.

Bob saw Dell enter the warehouse through a skylight late at night-- a strong basis for probable cause to believe a burglary was in progress. Dell then fled the scene, further strengthening probable cause. Furthermore, Bob pursued Dell and saw him crouched behind a sofa through the open door of May's apartment.

The Supreme Court has held that hot pursuit of a fleeing felon may justify a warrantless entry due to many warrant exceptions. Dell had fled once he saw Bob in pursuit and lost sight of him only briefly. Additionally, Bob did not force entry until after spotting Dell again through the door. That visual identification, paired with hot pursuit, likely justifies the entry and arrest.

Hot Pursuit

Exigent circumstances is a valid search warrant exception. It allows warrantless searches when officers face an emergency that makes getting a warrant impractical if in hot pursuit, to avoid destruction of evidence, or if suspect is a risk to the public or law enforcement.

Conclusion - 2

Dell's arrest was lawful under 4A due to hot pursuit and probable cause.

3)

Motion to suppress Diamonds

Fourth Amendment Consent and 3rd Party Authority

Police may conduct a warrantless search if they obtain valid consent from someone with actual or apparent authority over the premises.

If the consenter is a mere guest or temporary occupant without common authority, their consent is invalid. The scope of consent also matters-- it must be voluntary, not coerced.

May's Consent

Bob asked May for consent after seeing Dell and handcuffing him. May stated "I guess so, I'm just watching the apartment for Dell's cousin Joe." This indicates uncertainty and suggests May did not have authority over the apartment. Courts have ruled that guests or babysitters without regular access typically cannot consent to full searches. Even if Bob believed she had authority, May's statement undermines any reasonable belief in her actual or apparent authority.

Fruit of the Poisonous Tree Doctrine

If consent is invalid, then the search was unlawful, and the diamonds must be suppressed unless inevitable discovery applies, or exigent circumstances existed (none here), or the diamonds were in plain view (they were hidden). Because the diamonds were behind the sofa cushions, they were not in plain view. No warrant was obtained and no exigency is present. Prosecution may argue that Bob obtained consent from someone who appeared to be in control of the apartment, and alternatively, that Dell abandoned the diamonds, though this is weak given they were hidden in a private home.

Conclusion- 3

The diamonds were found during an unlawful search based on invalid third-party consent, and should be excluded under the 4A.

Has May committed a crime?

Harboring or Aiding a Fugitive

A person may be guilty of harboring a fugitive or obstruction of justice if they knowingly assist a person in evading arrest or conceal a suspect from law enforcement.

May allowed Dell to hide in her apartment, and Dell was crouched behind her sofa. There is no evidence that May knew Dell committed a crime or that she invited him in to avoid arrest. She said she was just watching the apartment for Dell's cousin, suggesting she may have been surprised by his presence or had no intent to help him. Criminal liability generally requires knowledge and intent. Without evidence that May knew Dell was a fugitive or intended to shield him, she likely has not committed a criminal act.

Possession of Stolen Property

May did not appear to exercise control over the diamonds. There's no indication she knew about them or knew they were stolen.

Conclusion- 4

May is unlikely to be found criminally liable unless further facts establish that she knowingly harbored Dell or possessed stolen goods. Based on available facts, she likely committed no crime.

Overall Conclusion

Dell can be charged with conspiracy under MPC but not under common law and his entrapment defense is weak. Dell's arrest was lawful under the hot pursuit exception to the 4A. The diamonds should be suppressed due to invalid 3rd party consent and no applicable exception to the warrant requirement. May likely committed no criminal offense given the absence of knowledge or intent.

END OF EXAM