

1)

QUESTION 1

80

Fourth Amendment (4th A)

You authored two very competent exams, although the 1st was stronger than the 2d. Your writing style is clear and well-organized. Don't forget the

The 4th A of the U.S. Constitution, applied to the States via the 14th Amendment, ^{exclusionary} protects the people from unreasonable searches and seizures, by the government, to their person, house, papers, and effects. Any search or seizure requires a warrant, issued by a neutral magistrate and founded in probable cause, particularly describing the person, place, or things to be searched and seized. ^{rule!}

As the number of exceptions to the warrant requirement have almost consumed the rule, the courts place greater emphasis now on the reasonableness clause in evaluating 4th A claims, balancing the interests of the government to public safety against individual interest in protection from arbitrary police/government agent conduct. Nevertheless, a warrantless search or seizure remains presumptively unreasonable, and the government has to rebut the presumption with a lawful exception.

Standing

In criminal procedure, Standing is the right of an individual to bring a claim of 4th (or 5th or 6th) Amendment violation into the court and to have evidence obtained from an unreasonable search or seizure excluded from the criminal proceedings. The test of standing is whether the individual's expectation of privacy is reasonable: whether the person has an actual, subjective expectation of privacy that society recognizes as legitimate and reasonable. (Katz)

State v. Sid

Does Sid have standing?

Style wise, I would move each standing discussion immediately above the discussion of ev. seized from that site -

The child pornography evidence obtained that will be used against Sid were gotten from the iPhone that he found at the bar and used as his own. The question is whether he has a reasonable expectation of privacy in the iPhone. Since he did not steal the iPhone, it would be for a jury to decide if he legally could claim ownership of the iPhone. More importantly, it will be for a jury to decide if the child pornography was content placed on the iPhone by Sid, given that he had only been using it for 2 weeks.

However, an iPhone, like a computer, contains significant personal information, and as an "effect", a person would have a subjective expectation of privacy in the phone, and society would recognize that expectation as legitimate and reasonable. If Sid had stolen the iPhone, he would NOT have a legitimate or reasonable expectation of privacy, as society doesn't grant 4th A protection to possessors of stolen goods. When Sid's phone was taken away from him, and subsequently kept from him after the police arrived, that constituted a government intrusion. Sid has standing.

Was this w/ Ernest or Ollie?

When Officer Ollie performed a fuller search into Sid's pants pocket and found the meth

in phone

in self

pipe, that constituted an intrusion into Sid's person. Society recognizes an expectation of privacy in one's person as legitimate and reasonable and Sid will have standing to contest the search.

Sid also has standing to contest the search of the shotgun in the Buick that he lawfully borrowed from his brother and was lawfully in possession of. Since the facts don't indicate otherwise, it will be assumed that Sid had permission to borrow his brother's car. Though a car is granted a lower expectation of privacy than a house, society accepts as reasonable and legitimate a person's expectation of privacy in items placed in a vehicle. When Officer Ollie went into the trunk without a warrant (to be discussed further below) and discovered the gun, that constituted a government intrusion. Sid has standing.

Ernie and the Apple Store

Ernie was essentially acting as an informant when he called the police after discovering the disturbing images on the iPhone. The linchpin with information passed on by an informant is reliability and the basis of knowledge for the information passed on. It is incumbent on the police officer to corroborate information passed on and to use his training and experience to ascertain reliability. Ernie didn't know that Sid "found" the iPhone at a bar, so he assumed that Sid had downloaded the child pornography.

Maybe Sid did; maybe he didn't. There isn't enough information to conclude one way or the other yet. When the police dispatcher told Ernie to keep Sid at the store until police arrived, and Gary, the Apple security guard escorted Sid into the back room, Sid was being detained. There are three types of encounters: consensual, detainment, and arrest. When a person is detained, they are seized, based on articulable, reasonable suspicion that criminal activity is afoot. (Terry v. Ohio). Here, the facts "suggest" that Sid is engaged in the crime of child pornography. To be detained, the suspect must either submit to a show of authority, or to an application of force (Hodari), and Sid has submitted to a show of authority, so he is formally detained based on reasonable suspicion. Gary is acting as a government agent by detaining Sid and carrying out the instruction of the police station.

Officer Ollie's search of Sid

When Ollie arrived, he immediately pat searched Sid. The Terry doctrine allows an officer to perform a limited, brief search of the person, after he has been detained, if he suspects the person might be armed and dangerous. That is the sole basis on which a Terry pat can be justified. Given that Sid was in an Apple store trying to get the iPhone to work, and that he had not evidenced any behavior arousing suspicion that he might be armed, Sid will argue that Ollie had no articulable facts to suggest he was armed and dangerous and that the Terry pat was an unreasonable search and seizure. If, in the course of the Terry pat for weapons, the officer feels something that might be contraband, he can then perform a fuller search. Here, Ollie feels a hard object in Sid's pants pocket and removes a pipe used to smoke methamphetamine. A pipe to smoke the drug is not as incriminating as discovery of the drug itself. Nevertheless, it sets up suspicion, and Sid will file a motion to suppress the evidence.

Any issue re: the initial opening of the phone by Eric?
Criminal Procedure (Stark+Slater) Professor Stark

Ollie's opening of the iPhone and arrest of Sid

Search presumed invalid w/o a warrant.

When Sid gave Ollie his password, he did so voluntarily. However, it's not clear if Sid has even been told why he's being detained, and how much he knows what's going on. When Ollie continued to access files beyond the file titled "Private", and found the child pornography photos, it could be argued by Ollie that he had consent to access any files when Sid gave him his password. The question is whether, given the totality of the circumstances, a reasonable person would have volunteered his password under the situation Sid was in. Again, it's not clear if he even knows why he's being held.

To arrest a person requires probable cause (PC). Probable cause is an officer's determination, based on the facts available, that a crime has been committed, or is being committed, or that there is evidence of a crime in a particular place. Ollie assumes he has PC to arrest Sid because there is evidence in the iPhone that Sid has committed a crime associated with child pornography. Sid, of course, will argue that none of Ollie's assumptions have been corroborated.

Once Sid is cuffed and placed in the police car and told he is under arrest, he is in custody, which occurs when a person's freedom of movement is significantly impaired.

Any issue re: 5th A w/o, (Miranda) in giving password?
The Buick

When Sid asked Ollie to lock "my car", he was giving Ollie permission - consent - to enter the vehicle for the sole purpose of locking it. Consent is a form of warrant exception. When he opened the door to engage the lock, Ollie saw the large bag of meth on the center console. It was in plain view, and the plain view warrant exception will allow the drug to be submitted as evidence against Sid. Plain view permits seizure of illegal objects if the officer is lawfully in the area where the illegal object is located (Ollie had consent from Sid to be in the car) and requires that the object be immediately apparent in its incriminating nature. Both requirements were met here. Plain View also requires that Probable Cause be established, however PC is established immediately upon viewing the illegal object (if it looks like marijuana, and smells like marijuana, it is marijuana!). Because Ollie had a warrant exception (consent) to enter the vehicle, he can invoke the plain view doctrine to justify seizure of the meth.

Ollie then searched the trunk and seized a stolen, sawed off shotgun. Ollie did not have consent to enter the trunk, and the consent warrant exception mandates that the officer search only where consent is given. Sid gave no permission to search the trunk.

However, Ollie will argue that he is permitted to perform a search incident to lawful custodial arrest of any weapons he might suspect are in the wingspan (Chimel) or grabbing area of the arrestee. Search incident to arrest gives an automatic right to search, and given that Ollie already pat searched Sid, ostensibly suspecting he was armed and dangerous, he will argue he searched the trunk for any weapons that might be present. This is a weak argument, however, as Sid is in the police car and unable to get to any weapons, and the court will expect more evidence linked to suspicion of weapons than Ollie has. (Gantz)

Ollie's search of the trunk was unreasonable and a violation of Sid's 4th A rights.

The search warrant

Assuming Judge Judy took into account the totality of the circumstances standard established by the Gates court and found probable cause to search Sid's iPhone, the search warrant would likely be valid. The Aguilar-Spinelli affidavit requirements were very stringent and required that the magistrate ensure reliability of informant information and probable cause details to an extent that was burdensome for law enforcement. So the more flexible totality of the circumstances approach was established.

50
2)

The Constitution of the United States provides several rights that are to be respected by the government. The Fourth Amendment guards against unreasonable search and seizure. It is the right of the people to be secure in their person, papers, home, and things and keep them free from unreasonable government intrusions. According to the Fifth Amendment, a person shall not be compelled to testify against himself in criminal proceedings. The Sixth Amendment requires that the accused be entitled to the assistance of counsel in any criminal proceedings. Messiah provides that at the onset of adversarial criminal proceedings, this right attaches. In order to object to a Constitutional violation, the person objecting must have standing. This means that they have a subjective interest of privacy and society is objectively willing to recognize this right.

Motion to Suppress the Arrest of Sal:

Was the roadblock that led to Sid's arrest constitutional? In order to object to a Constitutional violation, the person objecting must have standing. This means that they have a subjective interest of privacy and society is objectively willing to recognize this right. As long as roadblocks are random, there is no constitutional issue here. Society recognizes the importance of having roadblocks to help prevent drunk driving accidents and the like. As long as there is an imminent threat and urgency for having the roadblock, it will be lawful. In this case, a murderer was on the run; time was of the essence. Likely the roadblock will be constitutional.

Was the arrest of Sal at the roadblock constitutional? The standard for arrest is probable cause. Although there was not a warrant for Sal's arrest, the officer could still perform a lawful arrest with probable cause. Probable cause is determined by the totality of the circumstances under Gates. Several people had witnessed the shooting and had given a description. There was an exigency issue as well, preventing the officer from having time to get an arrest warrant as Sal was on the run. It is likely the court will find the arrest backed by probable cause and therefore legal. Even without the matching ID description of Sal to the shooter, the fact that Sal had slammed down a 400Z Beer could also give the police cause to arrest Sal, although there is no mention of this following Sal's initial drinking.

Was the search of Sal's car constitutional? The Fourth Amendment guards against unreasonable search and seizure. It is the right of the people to be secure in their person, papers, home, and things and keep them free from unreasonable government intrusions. Under Chimel (search incident to lawful custodial arrest), the search was lawful. Since there was no evidence found in the car, this is a non-issue. *good.*

Motion to Suppress the Gun as evidence:

good!
Was the incriminating statement made by Sal that led to the seizure of the gun constitutionally sound? There are three approaches to confessions/incriminating statements: the Due process approach under the 5th Amendment, made applicable to states through the 14th Amendment, the Right to Counsel Approach through the 6th Amendment, and self incrimination issues under the 5th and 6th Amendments. For the statement to be inadmissible under the Due Process Approach, the test is whether or not Sal's statement was voluntary and whether or not there was police coercion. The idea of a child finding the gun was too much for Sal to bear and he blurted out the gun's whereabouts. Because this statement was not prompted by police question, it is likely admissible. Under the Right to Counsel Approach, there would have to be some instigation of legal proceedings against Sal. At this point there had not been any formal adversarial proceedings, so there is not a right to counsel issue.

Under the Self-Incrimination approach, to violate Sal's rights under the 5th and 6th Amendments would be to neglect to tell him his Miranda rights when it was appropriate to do so. Sal was under arrest at this time and had not been read his Miranda rights. Ollie did not share that Sal had the right to remain silent, that anything he said could and would be used against him in the court of law, that he had the right to an attorney and if he could not afford an attorney, one would be appointed to him. If Sal was in a custodial interrogation, these rights are required to be shared by law. Was it a custodial interrogation? Sal was definitely in custody (he was under arrest-a reasonable person would not feel free to leave) and he was likely in interrogation (police are making statements designed to elicit an incriminating response). When Ollie asked him where the gun was, this is a question designed to elicit an incriminating response and the fact that Sal had not been read his Miranda rights was a violation of his 5th and 6th Amendment rights. Because the gun was obtained as fruit of the poisonous tree (incriminating statement unlawfully obtained), the gun would be inadmissible against Sal during trial (unless the statement needed to be brought in later to impeach him). The Fruit of the Poisonous Tree doctrine explains that any evidence obtained as a result of the evidence obtained in violation of a Constitutional right is also excluded as "tainted fruit" from the poisonous tree (original evidence) under the exclusionary rule. The prosecution may try to argue inevitable discovery of the gun since it was in a neighborhood park, but there is no way to be sure. Therefore, the gun would remain excluded.

Motion to Suppress the incriminating statement made by Sal when he blurted out that he was angry at Vic for kissing his sister:

Was Sal's statement taken in violation of his constitutional rights? There are three approaches to confessions/incriminating statements: the Due process approach under the 5th Amendment, made applicable to states through the 14th Amendment, the Right to Counsel Approach through the 6th Amendment, and self incrimination issues under

the 5th and 6th Amendments. For the statement to be inadmissible under the Due Process Approach, the test is whether or not Sal's statement was voluntary and whether or not there was police coercion. The statement was given after "several exhaustive hours." This could be views as coercive police behavior were there some extenuating circumstances. If Sal was merely questioned for several hours, this may not be coercive enough. There is no indication he was deprived of water or bathroom use, etc, so it is likely that his statement will be deemed voluntary and therefore admissible in court. Under the Right to Counsel Approach, there would have to be some instigation of legal proceedings against Sal. At this point, he has not been charged or indicted, so there is no violation under this approach. Under the Self-Incrimination approach, to violate Sal's rights under the 5th and 6th Amendments would be to neglect to tell him his Miranda rights when it was appropriate to do so. At this point, Sal had already been read his Miranda rights. He motioned that he was zipping his mouth shut and did not want to speak with Ollie, but he did not specifically state that he was invoking his right to remain silent. As of 2010, an officer may continue questioning a suspect until the right to remain silent has been unequivocally and specifically requested. *good.*

Motion to file for a mistrial on the grounds of ineffective counsel:

Was Larry's representation of Sal after having previously representing the victim, Vic, a violation of Sal's Constitutional rights? The Sixth Amendment requires that the accused be entitled to the assistance of counsel in any criminal proceedings. Messiah provides that at the onset of adversarial criminal proceedings, this right attaches. There can be no conflict of interest for the attorney and because of his previous relationship with the victim, he should have removed himself and advised Sal to retain different counsel. If Sal were convicted, the case could be thrown out and retried because of this issue.

Motion to Suppress the Post-Charge Lineup:

Should Wendy's ID of Sal be admissible? The Sixth Amendment requires that the accused be entitled to the assistance of counsel in any criminal proceedings. Messiah provides that at the onset of adversarial criminal proceedings, this right attaches. During all "critical" stages of the process, the defendant has his right to counsel and being a murder case, Sal's liberty would definitely be at risk and therefore he is required to have counsel. At the time of the lineup for Wendy's identification, the right to counsel had attached (charges had been brought against Sal) and Sal enjoys the right to counsel at any post-charge lineup. Ollie tried calling the attorney and left a message; this is insufficient. Sal has an absolute right for his attorney to be present at the lineup. Furthermore, the lineup was thrown together because the witness Wendy was getting cold feet. Sal was the only person in the lineup handcuffed, which is EXTREMELY SUGGESTIVE, and the only thing the men had in common was that they were middle-aged white males; not only was Sal's 6th Amendment right to counsel violated, this was also a violation of due process. There is no way that Wendy's ID of Sal will be admissible in trial. The fact that she was nervous further complicated matters because she may be too scared to go to trial, which would violate Sal's 6th Amendment right to confront any witnesses against him. Ollie was not acting in good faith and allowing her ID would not be a harmless error to the outcome of a trial; there is no exception to the exclusionary rule in this case. Wendy's ID is inadmissible.

*Separate
out it.
to counsel
and due
process
issues.*

P

Is Wendy an independent source?