

You authored two exceptionally well written exams covering a lot of issues and a lot of law! Well done!

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1) 1. Initial stop of Harry (H)

Under the 4th Amendment to the Constitution as applied to the states by the 14th Amendment persons are to be free from unreasonable search and seizure in their persons, homes, papers and effects. In order to allege a 4th Amendment violation a person must have standing and there must have been government intrusion.

Standing - Standing requires that the person manifest an actual expectation of privacy and it must also be one that society sees as reasonable. (*Rakas*) Here upon the initial stop of Harry Odie (O) flashes his lights. Under *Hodari* a seizure occurs whenever law enforcement applies physical force or when the suspect submits to the officers show of authority. Here H will argue that the show of authority was the flashing lights, and the slowing and stopping was the submission to authority, thus he was seized. A person would have an expectation of privacy in their person and it is one that society sees as reasonable, thus he has standing.

government intrusion - Means that the action must be the conduct of a government employee or one closely associated with the government. Here Officer (O) was in a police car and thus we have a government employee/official, thus government action.

Here H will argue that the officer violated his rights under the 4th Amendment when he stopped him. A search or seizure of a person without a warrant is per se illegal and it is the prosecutions burden to provide a valid exception. The prosecution will argue that it was a consensual encounter and that the flashing lights was only to get his attention. Next, under *Terry* two rules were created; 1) if an officer has a reasonable articulable suspicion that criminal activity is afoot, they may stop a person for a reasonable amount of time to investigate; 2) if they have reasonable articulable suspicion that the person is armed and dangerous they may also pat down the outside of the persons clothes for officer safety. Here the prosecution will argue that the officer thought that H may have been breaking a traffic ordinance since he was riding a shopping cart in the bike lane. Further they would argue that there is reasonable suspicion that the shopping cart is in fact stolen, since they normally aren't purchased. Thus it would be a valid stop.

O next asks for ID. Courts have found that simply asking a person for identification pursuant to an illegal stop is not a violation of ones constitutional rights. Thus he could ask for the ID card and check it. He could also pursuant to the *Terry* stop go back to the car and check quickly to verify the ID. At the point that he says don't move, H has definitely been seized since the officer has made another show of his authority.

2. Pat Search of H

Here again H would argue that when he was pat searched it was in violation of his 4th Amendment rights not to be illegally searched and seized. He would have a right to privacy of his person and society would deem it a reasonable one. Thus he has standing. It is done by O and as such would be governmental intrusion.

A valid *Terry* pat would allow the officer, having reasonable articulable suspicion that criminal activity is afoot to pat down the outside of the clothes. The officer does this and finds the flask in his back pocket. Here then under *Horton* the prosecution would argue that the plain view doctrine would allow the officer to seize the flask. The plain view doctrine requires :1) that the officer is in a valid position 2) that the item is obviously illegal and 3) that the officer sees it in

There should be some discussion here about the beginning of this issue of whether H was armed & dangerous.

plain view. (Hicks/Horton) Under Dikerson, plain view has been expanded to plain sense or in this case plain touch. The prosecution will argue that he was legally issuing a Terry pat, that through his training and experience he knew the item to be illegal and through Dickerson it was in plain view. However, H will argue that the officer wasn't in plain view since the initial frisk was illegal. H will argue that the Terry pat was invalid, thus the plain view doctrine is not a valid exception in this case. The mere fact that he is a Doggers fan would not be reasonable suspicion that he was armed and dangerous and so the prosecution couldn't argue that Terry would allow the search of H.

Even if O knew it was a flask, is a flask contraband?

However, there was a warrant issued for his arrest. For a warrant to be valid it must be signed by a neutral magistrate, based upon probable cause by oath or affidavit, and stating in particularity the time and places to be searched and the person and item to be seized. The probable cause for the arrest warrant is a violation of a Doggers ordinance. If the officer has a good faith belief that the warrant is valid he can effectuate an arrest. Even if it is found later that probable cause didn't exist for the warrant it won't make illegal the search and seizure.

use term must be used - judicial arrest

(Leon) Thus the prosecution may try and argue that he could search H as incident to arrest. Under Chimel the person and area in the persons immediate control can be searched incident to arrest. However, courts have ruled that a mere stop and issuing of a citation isn't enough to constitute a search so this wouldn't work. The arrest wasn't contemporaneous.

H will thus ask the court to suppress the evidence of the flask under the Exclusionary rule. (Mapp) H will also ask that under Silverthorn/Wong Sun the court also keep out any evidence which was directly or indirectly attained based upon that evidence.

3. The search of the Cart

Prolonged detention? Pretext?  
See 4th Amendment analysis supra

analogy

Standing - Here H will argue that this was his only possession in the world and that it was synonymous to an auto and as such he would have manifested an actual expectation of privacy, society would see this as reasonable. Thus he has standing. However, the prosecution may try and argue that the shopping car was most likely stolen and society doesn't see as reasonable an expectation of privacy in stolen goods.

how do you discuss?

Governmental intrusion = it's O = Cop = government

The prosecution will argue that based upon the training and experience of the officer he would have probable cause to believe that the cart contained contraband, thus he could invoke the automobile exception. Under the auto exception if an officer has probable cause to believe that an auto contains contraband they are allowed to search in any area where the items could be and a reasonable warrant could describe. Here if O really had probable cause it would be reasonable to assume that drugs could be hidden in the can, so the officer probably could search each one. The reason this is like an automobile and deserves a lesser standard than warrant is that it is mobile like a car and so there is some exigency more than say a house. However, H will argue that probable cause (a person of reasonable caution would believe that criminal activity had or is happening) was non-existent. O is operating on a hunch. Thus the automobile exception wouldn't work.

Use facts what would O use to support a P.C. search?

Under the exclusionary rule then the bundle of heroin must be kept out. (Mapp) not only does this guard H's constitutional rights but it also deters police misconduct.

4. At the point that H is arrested/Statement

*Only if officer interrogates*  
At the point that H is arrested he is entitled to be read his Miranda Rights. They are 1) the right to remain silent; 2) that anything you say may be used against you in court; 3) that you have a right to an attorney and 4) if you cant afford one, one will be provided. Here the officer does that.

H will argue that his statement that he uses and deals drugs must be kept out under three lines of analysis. 1) Due process violation under the Fifth Amendment; 2) Self incrimination under the Fifth Amendment and 3) right to counsel violation under the 6th Amendment.

1) Due process requires that a confession be volitional, be made of free will, based on the totality of the circumstances and not be due to police coercion. Here H will argue that he was tricked into making the statement by O. That as such this wasn't his free will. However, this is not the normal egregious action which would normally sustain a due process violation such as in Brooks. Thus the court probably wouldn't uphold the Due Process violation. *good*

2) Under the Fifth Amendment as applied to states by 14th Amendment to the constitution a person has a right not to incriminate themselves through testimonial statements. Here H will argue that he was under custodial interrogation and as such his rights were violated. Custody means actually in police custody or having ones freedom movement significantly restricted. Since he was formally under arrest this would qualify. Under Innis interrogation occurs whenever subjected to express police questioning or it's functional equivalent. H will argue that tricking him into confessing was the functional equivalent to express questioning. So he was custodially interogated. However, he was read his rights, and he could have thus remained silent. Thus this line of analysis wouldn't succeed either for H. *Did he waive his rights by talking? Was the statement designed to elicit incrimination?*

3) Under the Sixth Amendment of the Constution as applied to the states by the 14th Amendment a person has a right to an Attorney. However, a right to an Attorney is only gauranteed at critical stages of the criminal prosecution. (*Massaih*) police questioning prior to indictment is not such a critical stage. Thus this line fails as well. *good*

The statement may be in. However, under Wong Sun this statment would be conciidered fruit of the poisonous tree if the arrest was determined to be illegal. Because he had a valid warrant out for his arrest it would most likely be in.

## 5. Assigned a PD

See Six Amendment Supra

Under Gideon if an indigent person is otherwise unable to afford an attorney one will be afforded to them. They must be presented an attorney at all critical stages of the prosecution. The arraignment is conciidered a critical stage. Failure to appoint an attorney at such a critical stage is conciidered per se to prejudice the defense of a person. Thus the trial could be overturned based upon that. *10-read facts*

## 6. Jail cell snitch

H will argue that his statment that he uses and deals drugs must be kept out under three lines of analysis. 1) Due process violation under the Fifth Amendment; 2) Self incrimination under the Fifth Amendment and 3) right to counsel violation under the 6th Amendment.

1) As stated above simple trickery of the police wouldn't lead to a Due Process violation and

jsut because he thought he was a friend would constitute a Due process violation.

2) The facts state that the informant didn't say anything to H about the charges he was there on. As such although in custody he wasn't subjected to interrogation. Thus this line of analysis fails.

*Should be some discussion here about putting an informant in the cell w/ H.*

3)

Under the Sixth Amendment of the Constution as applied to the states by the 14th Amendment a person has a right to an Attorney, and once they have been arraigned all questioning must cease on those charges (charge specific). (Massaih) Here the D would argue that this was a violation of his rights to have council present. However, the prosecution would still argue that since he wasn't specifically questioned based on the chages filled, there was no 6th Amendment violation.

2)

1. Initial Stop of Cid (S)

The 4th Amendment as applied to the states by the 14th Amendment says that persons should be free from unreasonable search and seizure in their persons, homes, papers and effects. In order to assert a 4th Amendment violation there must be standing and governmental intrusion. Standing requires that the person manifest an actual expectation of privacy, and it is one that society views as reasonable. Here Side would have an expectation of privacy in his car and it is one that society would deem reasonable. Thus he would have standing. A government detective is the one instituting the stop, and thus there would be governmental intrusion.

Here the initial reasonable suspicion was based upon an anonymous informant. The cases on point are J.L and White in those cases it was determined that there needs to be more than just the information itself in order for reasonable suspicion to exist. There must be other indicia of reliability. In the present case the description of the car is somewhat vague (Honda civics are everywhere) and many people have somewhat broken taillights. Thus under the totality of the circumstances this alone wouldn't be enough to stop the car. However, the prosecution will argue that this was akin to a valid Terry stop based upon reasonable articulable suspicion that criminal activity is afoot. Terry Ordinarily this would be enough to stop a car as an exception to the normal warrant requirement.

*what about corroborating info*

*what is it*

However, all this is mute because as soon as the officer activates his lights the car speeds up, this would probably, with the informants information be enough to stop. However, S doesn't stop, instead he speeds up. In Hodari it was determined that a person isn't seized until there is the actual application of force by the officer, or the suspect submits to a show of the officers authority. Here S doesn't and in the process throws the marijuana out the window. A person has no expectation of privacy in abandoned property, prior to being seized. Thus the marijuana would be in. *Good analysis*

2. Sorting out Sid's name/Arrest

A person who is subjected to a legal Terry Stop may be detained for a reasonable amount of

time in order for the officer to investigate. Here it seems that in order to find out a name would be reasonable. In order to arrest a person there must be probable cause that they have indeed committed an felony, or misdemeanor in the presence of the officer. Here the officer saw that S was transporting drugs, thus we have a valid arrest.

### 3. Glove Box seizure

See 4th amendment analysis

*Good catch! You are the first one to even spot this issue!*

Standing - A person has a reasonable expectation of privacy in their car and society would accept it as reasonable. Thus he has standing.

Governmental Intrusion - O=Cop = Government

S will argue that the item in the glove box was illegally searched and seized. The prosecution will argue 1) search incident to a valid arrest and 2) automobile exception. Both are valid exceptions to the warrant requirement. 3) *impound + inventory*

1) Search incident to a valid arrest allows the officers to search the arrestee and the area within their immediate control. (*Chimel*) Under *Belton* this has been extended to cars in order and allows to search for police safety incident to arrest the wingspan of the arrestee. However, even if officer safety wasn't an issue, the officers could still search if there exists the reasonable possibility that evidence related to the arrest will be found. (*Gant*) Here it would be reasonable Under *Gant* to assume that since they found pot thrown out of the car there may be more evidence inside the car. Thus they could search for evidence anywhere within the car that pot could be found including the glove compartment. *use Gant, it changed the standard (okay below)*

2) Under the auto exception if an officer has probable cause to believe that contraband will be found in a car they can search it in any area where a warrant would reasonably allow. Here again they had just found pot thrown out of the car and as such it would be reasonable to assume that pot may be found in the car. However, the purpose of the automobile exception is due to the otherwise mobility of the car. S may argue that the car was disabled and as such there was no exigency to the situation and the police should have procured a warrant. This would be akin to *Carney* where a immobilized motor home would require a warrant.

However, since incident to arrest *Gant* would allow for the search it was most likely valid.

*Good!*

### 4. The Warrant

A warrant to be valid under the 4th Amendment of the Constitution must be: signed by a neutral magistrate, based upon probable cause, thru sworn oath of affidavit and stating in particularity the places and time to be searched and the items and persons to be seized. Based on the fact alone that there was pot found in S's car this might not be enough probable cause to get a warrant. The facts are a little unclear as to whether or not the officer is lying to try and get the warrant. If he is then under *Franks* the warrant would be invalid. Also the magistrate must be neutral. Here, the judge had just campaigned on tough on pot, this doesn't demonstrate neutrality and also may be a violation of the ABA model rules. *You hit the issues but there should be more developments of them here*

### 5. Entry into the home

*Good facts exception if not valid?*  
*Propriety of oral amendment?*

See 4th Amendment analysis supra

Standing as to Gaby - This presents an *Olsen v. Carter* situation. Under *Olson* if the girlfriend is a regular overnight guest then she would have a reasonable expectation of privacy that society would see as reasonable. However, under *Carter* if her only purpose of being there is for illegal drug sales then she wouldn't have standing as society would deem it unreasonable. Since she is his girlfriend and it is S's house it is likely to be reasonable that she would have standing.

Government Intrusion - Here we have cops = government

*Nighttime Service?*  
A warrant to enter a house requires that the officers first knock and announce unless there is exigency or a fear for officer safety. Here it seems that they did knock and announce since someone answered the door.

Consent is also a valid exception to the normal warrant requirement if it is voluntarily and intelligently (knowingly) given. Here the prosecution will argue that if warrant was invalid they still had the consent of a person, who in good faith the officers believed had standing to allow them entry into the house. G would argue that she didn't knowingly give them permission since she thought they were only there to let her know about S. This would seem to be enough to constitute consent.

However, this is a moot point for both Gaby(G) and S since the house was entered with a valid warrant and as such the initial entry would be valid.

#### 5. Hand cuffing G

See *Hodari supra*. Here the police have actually applied force to G and cuffed her, thus she is seized. However, courts have ruled that detaining suspects for a short amount of time is proper in order to conduct a search of a home pursuant to a warrant.

#### 6. Marijuana from bedroom

See 4th Amendment supra

Both S and G would have standing see discussion earlier for G, S would have standing since it was his home in which he would manifest an actual expectation of privacy and society would expect that expectation as reasonable.

Government Intrusion - Cops = government

Here if the warrant included the bedroom, as it probably would since marijuana could reasonably be stored there then there would be no 4th Amendment violation. The prosecution couldn't really argue protective sweep, since there is nothing in the facts which give the police officers a reasonable fear that other dangerous persons may be in the house.

#### 7. Search of Laptop

See 4th Amendment supra

G would have standing see discussion earlier for G, S would have standing since it was his

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laptop, in which he would have a reasonable expectation of privacy which society would deem reasonable. S wouldn't have standing since she has no connection to the laptop.

*Do you mean G?*

Government Intrusion - Cops = government

Here then G could argue that the search of the laptop exceed the scope of the warrant and thus was a violation of his 4th Amendment rights. The warrant must sight in particularity the scope of the warrant and unless it said computer equipment then the scope would have been exceeded. Thus scope was exceeded.

#### 8. Questioning of G

At the point that G is in custody she is entitled to be read her Miranda Rights. They are *Only if interrogating* 1) the right of remain silent; 2) that anything you say may be used against you in court; 3) that you have a right to an attorney and 4) if you cant afford one, one will be provided. Here the officer does that.

G will argue that his statement that she says . 1) Due process violation under the Fifth Amendment; 2) Self incrimination under the Fifth Amendment and 3) right to counsel violation under the 6th Amendment.

1) There are no facts which show overt police coercion and she freely gave a response as such Due process was proabb,ly not violated. Although she was sobbing

2) Here G will argue that she was in custody since her freedom of movement had been signifcantly restrained. That under Innis she was being subjected to express police questioning. Thus she was interrogated in violation of Miranda.

3) There is no right to counsel since pre arainment interrogation isn't considered a critical stage of proceedings.

Under the exclusionary rule statements which are made in violation of a persons constitutional rights must be kept out of the prosecutions case in chief (may be used to impeach). This is to dissuade governments bad conduct and to protect the rights of the individual. Under Wong Sun she will argue that he guns must also be kept out as fruit of the poisonous tree. However, the prosecution will argue that pursuant to the duties of the police in excuting the warrant they would have found the guns anyway. Under Nix inevitable discovery would vitiate the taint of the statement, thus the evidence could come in. *good*

#### The Fifth Amendment

Public Defender rep - If they were both represented by the same public *or officer* offender there would most likely have been conflict of interest. Normally ineffective assistance of counsel requires that the lawyer fall below a reasonable standard of due care, and the defendant must show that there was a reasonable possiblity that the outcome would be differnt save taht conduct. However, in terms of conflict of interest it is presumed that with a conflict of interest between multiple defendants prejudice is presumed. This would vitiate their convictions. *Good*