

1810: Your issue/analysis at the first half of each question was outstanding. Great use of the facts you were given. Very strong on the 4th A. But both questions trailed off a bit - perhaps under time pressure. But still 2 of the best!

Gov't Actor

The constitution protects against actions by the government, therefore to have a violation of a constitutional right there must be a government actor involved.

In this case Paul was a policeman, so he is the government actor who could potentially violate a 4th, 5th, or 6th amendment of Jack.

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Standing

In order to have standing against a 4th amendment violation, the suspect must have had a reasonable expectation of privacy in the place/items searched and/or the items seized. The reasonable expectation of privacy will be measured by the Katz standard: if the person manifested a subjective expectation of privacy and if society finds that expectation to be objectively reasonable. In this case Jack will have standing for the search of his own person and clothing because a person would expect privacy in his own pockets and on his own person and additionally society would agree that is reasonable. He will also have standing with his cell phone because he had a passcode on it which shows he had a subjective expectation of privacy in it and society would most likely agree because cell phones are common for everyone to have and most people keep them locked and keep private information in them. He would most likely also have standing in the vehicle search and items found within, because even though the car was owned by his father, he had the keys and the exclusive use of it at the time. A person does not have to have proprietary ownership of an item in order to have standing. Therefore he would also have standing against any 4th violation made during a search of the car of seizure of evidence within it.

Micro R

Informant

When Nan called 911 with a tip, she was acting as an non-government informant. A government actor can use information from an informant to help determine if there is articulable reasonable suspicion to detain a person, or probable cause to arrest a person or search a place. The usefulness and trustworthiness of the information will be weighed by the totality of the circumstances including prior reliability of informant, corroboration of information by police, specific of information, among other relevant factors. In this case Nan was the President of the Neighborhood Watch which would indicate that she is a reliable source who has possibly informed before. She would not be anonymous and this would increase her reliability. She provided information for a crime she believed to be in progress and heard what sounded like the boys discussing breaking in to a house. She had specific information about the type of car and the clothes the boys were wearing, and the location they were in. All taken together, this was enough information to create articulable

if she id her self

reasonable suspicion for a detention. However it would not seem to be enough for probable cause as that is a higher standard and there was no specific description of Jack in the information (height, hair color, race, etc) and also Paul did not corroborate any of the information prior to interacting with Jack. Even though the boys were yelling about Pokemon and not about breaking into a house, this was a good faith mistake of information used, not a lie, and therefore would not negate the ARS. Therefore this tip provided ARS but not PC for Paul's initial interaction with Jack.

Detention

An initial encounter with a policeman and an individual can be consensual which means a person is free to leave or end the conversation at any time, and no constitutional rights attach. An interaction will go from consensual to Detention, when the police show a physical sign of force or a person submits to the authority.

When Paul pulled up he immediately blocked Jack's ability to exit the alley by pulling his police vehicle up to block the alleyway. This was a physical blocking of Jack's ability to leave freely, which would meet the standard of a detention. As discussed supra, Paul had ARS so this detention has not violated Jack's rights thus far. Additionally, Paul shined his flashlight, which would most likely indicate to Jack that he was a policeman, and with the light from it, Jack could possibly see his uniform and patrol car, therefore Jack most likely knew Paul was a policeman. Paul may have requested to talk to Jack, which could be considered consensual, however with the car blocking the exit and making the statement in a loud voice with his flashlight shining, a reasonable person would most likely not feel free to leave, which is the standard for determining a detention. Jack then walks over to Paul, which shows that he has submitted to his authority, further confirming that this interaction is now a detention. *Nice!*

Paul searches Jack

The 4th amendment provides every person the right to be free from unreasonable searches and seizures of his person, house, papers and effects. Additionally it provides that a warrant shall be had prior to any search or seizure, and that the warrant contain probable cause supported by an oath or affirmation, and that it contain specific information on the person or place to be searched or the items to be seized. Therefore a search or seizure generally requires a warrant unless an exception applies.

At this point we are in a detention which under Terry, *only if articulably armed + dangerous* would allow Paul to do an open hand pat down of Jack's clothing for the purpose of officer safety. *facts to support* If during that pat down, Paul felt something he immediately recognized as contraband, he could do a further search to remove and seize the item. In this case Paul tells Jack he is going to search him and goes straight to removing items that he found. These facts indicate that Paul did a search and not a simple pat/frisk at this time. A full search is not allowed under the 4th amendment at this point because Paul did not have probable cause and had not placed Jack under

arrest. Therefore by stating he was doing a search and going in and removing the items, this would be a violation of Jack's 4th amendment rights, because as mentioned supra Jack has standing in his own person and clothing. Paul might argue that he told Jack he was going to search and Jack did not object which would indicate consent, however Jack did not say he consents so this would be invalid.

Confessions While it is okay to take these out of order, it does become more difficult to do wrong. Sup analysis re: attenuation
During the search Paul seized the CM and drugs from Jack's person and took them into his possession. Paul then asked Jack his age to which Jack responded and discovered that Jack was a juvenile. This created probable cause to know that Jack was committing a crime, because people under age cannot possess alcohol or marijuana. This questioning could be considered questioning in the field, but it also could be considered a custodial interrogation.

If a person is being subjected to custodial interrogation then he must be read his Miranda Rights, or any statement made will be gained through a constitutional violation. Determining if a person is in custodial interrogation will be examined through a totality of the circumstances. Custody will be determined if the reasonable person felt they were free to leave and if there was government coercion, and any direct question or questions that a gov't actor would reasonably know would elicit a criminal response from a person is considered interrogation.

In this situation, Jack is being detained by Paul and would not feel free to leave. Even though he is not in the station house, the exit is blocked and Paul has just seized his illegal contraband. This is creating an environment in the field where 16 year old Jack would feel dominated by the police authority. In addition, Paul asked a question specifically to get information to determine if Jack was committing a crime by the possession, which means he knew the possible answer would be eliciting criminal information. Paul should have read the Miranda rights to Jack before asking this question. This was a violation of Jack's 5th and 6th right under Miranda, since the statement was never read.

Paul continued questioning Jack without reading Miranda when he asked if he was nervous or just drunk. This was another statement to elicit criminal information. (He then told Jack to help make it easy by cooperating, which is an extrinsic lie, because Paul can't help make it go easy. Extrinsic lies are not allowed during questioning, as it violates Due Process.)

Due Process is another way that a confession can be suppressed, if a person's statement is not voluntary. When Paul made the extrinsic lie, he was using coercion, and therefore Jack's statement of his passcode, would be evidence gained through coercion and violated Jack's 5th amendment right of Due process. Any statements indicating guilt have to be made voluntarily, freely, and knowingly, and the coercive technique made this involuntary. Therefore the statement used to then access the phone information would be suppressed.

Is giving a passcode an admission or confession?

Does all coercion lead to a finding of involuntariness?

Additionally Paul spoke to Jack again in the cop vehicle, and coerced a confession out of him using other coercive techniques. Paul did read the Miranda rights, but he never asked Jack if he understood them, therefore Jack speaking would not be a waiver of his right to an attorney or silence because Paul didn't confirm that he made it knowingly.

Impact of Jack asking for mom

A 6th amendment right to an attorney is also a possibility for suppressing a confession, but this Massiah right, only kicks in at or after adversary proceedings have begun, and there had been no indictment at that time. *True. Non-issue.*

Searching phone and car

The seizure of the cell phone could have been valid (if it wasn't fruit of the poisonous tree from prior violation), because at this point Paul had probable cause that Jack had committed a crime (alcohol and drugs) and had placed him under arrest and in handcuffs. At this point a search could happen incident to arrest and any other items related to the crime, or that could cause person to flee, or weapons can be searched within wingspan of person and seized. The cell phone could be seized but not searched without a warrant under Riley, and therefore the search of the cell phone information was illegal.

Consent

The search of the vehicle was allowed under search incident to arrest, but this would only be areas reachable by Jack. However the officer could potentially be allowed into the trunk under the probable exception to vehicle searches. Paul has already found drugs on Jack and found tax pay owe sheet indicating Jack is selling drugs, which would give probable cause that more drugs could be found anywhere in the trunk. However finding all of these items would be fruit of the poisonous tree because Paul should not have found the alcohol and drugs on Jack in the first place and therefore everything found as a result of that would be suppressed under FOPT doctrine, unless attenuated. Which all of this happened in one incident and could not be attenuated. *What are the requirements for Consent.*

However Paul could possibly argue that items could have been inventoried when the car was impounded which would mean the marijuana would have been discovered inevitably anyway. This could potentially keep the marijuana as evidence in this case.

Additionally Jack testified on his own behalf at trial and this evidence could be used to impeach him even if not used to prove the rest of the case.

2)

Frank's Rights

Government Actor

The Fourth Amendment to the United States Constitution (hereinafter, Fourth Amendment) protects against unreasonable searches and seizures by government actors. Here, Dave is a detective, and is therefore a government actor for Fourth Amendment purposes.

Standing in Home

In order to challenge the constitutionality of a search or seizure, a person must have standing. To have standing, a person must exhibit an actual (subjective) expectation of privacy, and that

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expectation must also be one that society is prepared to recognize as reasonable.

Here, despite being on a "wheeled trailer," the mobile unit is Frank's home. Frank has standing to challenge unreasonable searches and seizures in his home, even if a small part of that home is used for commercial purposes (his office). *Should be more significant discussion re: Carney*
Significance of Frank being on bail pending Trial

The 6th Amendment right to counsel attaches when adversary judicial proceedings have begun, or at any critical stage in the criminal prosecution. Here, Frank is on bail pending trial related to a defunct cannabis enterprise, and his right to have counsel present at all interrogations has attached. The 6th amendment right to counsel is offense specific, however, and only attaches to the cannabis enterprise charge.

Detective Dave's Initial Investigation

In order for a warrant to be issued, a neutral and detached magistrate must be furnished with probable cause (supported by Oath or affirmation). Reasonable articulable suspicion (*Terry*) is not enough. Probable cause exists when the police ~~the police~~ have within their knowledge reasonably trustworthy facts and circumstances sufficient to justify a reasonably prudent person to believe that a suspect has committed or is committing a crime (*Beck*).

Regulatory inspection?
 Dave first becomes aware of Frank when his canine alerts to a chemical smell coming from Frank's home. Although canine alerts can furnish probable cause (*Caballes*), here, Dave was in the process of approaching Frank's tiny porch. Dave may be exceeding his license to approach the curtilage by allowing his canine to explore the home. Curtilage is generally determined by four factors: (1) the proximity to the home, (2) whether the area is within the same enclosure as the home, (3) the purposes for which the area is used (and its relationship to the home), and (4) the person's efforts to prevent viewing by passersby. Areas outside of the curtilage are open fields, and can be reasonably searched without a warrant or an exception to the warrant requirement.

From the facts it's not immediately clear if Dave and Carl had entered Frank's curtilage yet. The facts state that Dave and Carl "approached" the screen door. It may be that they were still outside of the curtilage, and within the open field surrounding Dave's home.

It's likely that, due to the nature of the mobile home, and the lack of any clear fencing around it, that Dave was still in an open field. Therefore, Carl's alert can furnish probable cause, and is reasonable. *Take a look at Jardines*

Dave then moved to stand on the trailer hitch, where he observed Frank examining a sheet of \$20 bills. Dave sees this evidence in plain view (an exception to the warrant requirement), however, standing on the trailer hitch may exceed his license on the property, as now Frank is only ~~the~~ curtilage, in an area not normally occupied by pedestrians. *define the requirements for this exception*

Based on Dave's investigation: Carl alerting to the chemical smell, the sounds of a copy machine, and Frank examining a *sheet* of \$20 bills, Dave now has enough information to furnish probable cause for a warrant.

Search Warrant and Knock and Announce

Generally (absent exigencies), the police must knock and announce their presence prior to serving a warrant. The Knock-and-Announce rule exists to protect both officer and homeowner from the confusion and potential unnecessary violence that might result from an unannounced entry the police. Here, Dave did knock and announce.

Frank was never shown a copy of the warrant, which he has a right to view to limit police misconduct. This also allows Frank to understand the scope of the search (particularity requirement), better understand his rights, and to know for certain there is a valid warrant allowing police entry to his home.

However, because Dave does have probable cause sufficient to justify the warrant, and assuming the warrant does exist, if Dave's failure to produce the warrant was a good faith error, it will likely not be unreasonable.

Frank is seized for Fourth Amendment purposes upon submitting to the officer's show of authority (opening the door upon their command) (Hodari).

A.M. hears?
Automobile Exception

This is different than your conclusion above
If it later turns out that Dave lacks a warrant, he may still be able to search Dave's home because it is mobile. Vehicles are "readily mobile," and therefore subject to lesser expectations of privacy than traditional homes. If Dave has probable cause to believe that Frank's mobile home contains evidence, fruits or instrumentalities of crime, or contraband, he can validly search the home absent a warrant. Here, it's not clear whether there was a warrant that Dave neglected to present, or whether the reference to the warrant was untrue.

Search Incident to Custodial Arrest Exception

If Dave is searching the mobile home as an automobile, and he has probable cause to arrest Frank (*supra*), then Dave may search Frank incident to that arrest, even absent a warrant. Here, it's not clear whether there was a warrant that Dave neglected to present, or whether the reference to the warrant was untrue. If there was no warrant, and the wheeled home is treated as a mobile home or vehicle, then Dave may still search Frank incident to custodial arrest.

Call from Frank to Gina

Frank made incriminating statements to his ex-girlfriend Gina. Frank, however, has no expectation of privacy in his comments he makes over the phone. Frank assumes the risk that the person he is speaking with is a "false friend," or an "unreliable ear." Therefore, he cannot challenge the statements Gina later relays to Dave.

Gina as informant?
Call from Gina to Frank

When Dave employs Gina to digitally record her conversation with Frank, she becomes a Government Actor.

Due Process

The Due Process clause of the 5th Amendment requires that confessions be voluntary. Whether or not a confession is voluntary is determined by the totality of the circumstances. Here, Frank is not unduly coerced, nor are there any facts to support that Frank is impaired in any way. Frank runs the risk that Gina is a false friend or an unreliable ear, and information "put out to the public" has no reasonable expectation of privacy. Therefore, Frank's confession to Gina is voluntary.

Miranda

The 5th Amendment provides protection against compelled self-incrimination in all custodial interrogations. An interrogation is custodial if the person is not free to terminate the encounter and leave, and the environment has the same coercive characteristics of a police dominated interrogation. An interrogation is any express questions designed to elicit an incriminating response, or the functional equivalent—conduct that the government agent knows or reasonable should know will elicit an incriminating response.

Here, Frank's confession is entirely voluntary. He is not in a police dominated interrogation, and in fact believes he is simply speaking with his ex-girlfriend. Therefore, because he is not in "custody" for the purposes of *Miranda*, his rights have not been violated. *good.*

6th Amendment Right to Counsel

Under the 6th Amendment, Frank has the right to have counsel present at all critical stages of the criminal prosecution where adversary proceedings have begun. Here, Frank's right to counsel has only attached to the cannabis charge. The 6th amendment right is offense specific. Therefore, Frank has no 6th amendment right to an attorney during his confession to Gina.

Frank's request to proceed Pro Se

Under the 6th Amendment, Frank has the right to the assistance of counsel, but can also voluntarily, knowingly, and intelligently waive that right to counsel. In order to be voluntary, knowing, and intelligent, Frank is entitled to a Faretta instruction from the judge to ensure that Frank understands his rights, and the risks of proceeding *Pro Se*, and to determine that Frank is competent to do so.

If Frank was entitled to a Faretta instruction and did not receive it, he will be entitled to automatic reversal of his conviction.

State elicited statement re: "million dollar"

Confession to Dave

Due Process

The Due Process clause of the 5th Amendment requires that confessions be voluntary. Whether or not a confession is voluntary is determined by the totality of the circumstances. Here, Frank had the "freedom to move around the facility." Frank was working in the kitchen. There are no facts to support that Frank was coerced. Dave's statement that he would "hate for Gina to get wrapped up in this mess," is not a promise of an outcome, and instead a lie to

encourage Frank to talk, but not enough to make his confession involuntary under due process.

5th Amendment Miranda Right

The 5th Amendment provides protection against compelled self-incrimination in all custodial interrogations. An interrogation is custodial if the person is not free to terminate the encounter and leave, and the environment has the same coercive characteristics of a police dominated interrogation. An interrogation is any express questions designed to elicit an incriminating response, or the functional equivalent--conduct that the government agent knows or reasonable should know will elicit an incriminating response.

Here, Frank had "Freedom to move around the facility." He was working in the kitchen, and was not in an overly coercive environment. Although Dave's comment about Gina was the functional equivalent of interrogation, the fact that Frank was not in custody for the purposes of the 5th Amendment will mean his rights were not violated.

6th Amendment Right to Counsel

Under the 6th Amendment, Frank has the right to have counsel present at all critical stages of the criminal prosecution where adversary proceedings have begun. Here, Frank was arraigned and assigned a Public Defender to represent him. Frank had a right to have his Public Defender present during any interrogations. (Frank had a right to have counsel present when he confessed to Dave in the kitchen.)

→ but not on this case...

END OF EXAM